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Our File No.: 005923.00369

April 4, 2017

British Columbia Utilities Commission
Sixth Floor, 900 Howe Street
Vancouver, BC V6Z 2N3

**Attention: Patrick Wruck, Commission Secretary and
Manager, Regulatory Support**

Dear Sir:

**Re: Application by Gibson Energy ULC, Superior Plus LP, 2028093 Alberta Ltd., Canwest
Propane ULC and Cal-Gas Inc.**

Please find enclosed ten paper copies of the Application filed electronically by

- Gibson Energy ULC, Superior Plus LP and 2028093 Alberta Ltd. under section 54 of the *Utilities Commission Act*, RSBC 1996, c 473 (the "Act"),
- Superior Plus LP, 2028093 Alberta Ltd., Canwest Propane ULC and Cal-Gas Inc. under sections 52 and 53 of the Act, and
- Superior Plus LP and Cal-Gas Inc. under section 46 and 52 of the Act.

The Applicants are also filing paper copies of the following two documents

- the unredacted Option Purchase Agreement dated February 13, 2017 included in the Application as Appendix "B", a redacted copy of which was filed electronically, and
- the unredacted Option Agreement dated March 1, 2017 included in the Application as Appendix "C", a redacted copy of which was filed electronically.

The Applicants request that these unredacted agreements be kept confidential, because

- the redacted portions of these agreements are commercially-sensitive,

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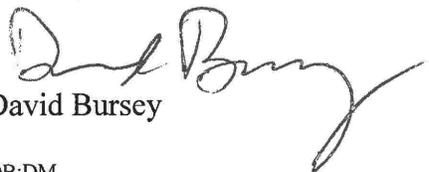
- the disclosure of the redacted portions of these agreements to competitors of the Applicants through the public record could harm the competitive position of the Applicants in the market,
- the Commission has access to the redacted portions of these agreements for the purpose of this Application, and
- any interested party who registers as an intervenor and demonstrates a legitimate interest in reviewing information in the redacted portions of these agreements may be permitted access to that information solely for the purpose of the review of this Application after committing to a non-disclosure undertaking.

If the Commission denies the request for confidentiality, the Applicants request that the Commission return the Application without first publishing the unredacted Option Purchase Agreement and the unredacted Option Agreement.

We would be pleased to provide any further information that the Commission requires to complete its review of this application.

Yours truly,

BENNETT JONES LLP



David Bursey

DB:DM
Enclosures

BRITISH COLUMBIA UTILITIES COMMISSION

IN THE MATTER OF the *Utilities Commission Act*, RSBC 1996, c 473, as amended, and the Regulations made thereunder;

AND IN THE MATTER OF an Application by Gibson Energy ULC, Superior Plus LP and 2028093 Alberta Ltd. pursuant to section 54 of the *Utilities Commission Act*;

AND IN THE MATTER OF an Application by Superior Plus LP, 2028093 Alberta Ltd., Canwest Propane ULC and Cal-Gas Inc. for Amalgamation pursuant to sections 52 and 53 of the *Utilities Commission Act*;

AND IN THE MATTER OF an Application by Superior Plus LP and Cal-Gas Inc. for Transfer pursuant to section 46 and 52 of the *Utilities Commission Act*.

**APPLICATION BY GIBSON ENERGY ULC,
SUPERIOR PLUS LP AND 2028093 ALBERTA LTD. FOR APPROVAL OF THE
SALE AND ACQUISITION OF CAL-GAS INC.**

AND

**APPLICATION BY SUPERIOR PLUS LP,
2028093 ALBERTA LTD., CANWEST PROPANE ULC
AND CAL-GAS INC. REGARDING AMALGAMATION**

AND

**APPLICATION BY SUPERIOR PLUS LP
AND CAL-GAS INC.
FOR APPROVAL OF THE TRANSFER OF ASSETS**

To: Patrick Wruck, Commission Secretary and Manager, Regulatory Support
British Columbia Utilities Commission
900 Howe Street
Vancouver, BC V6Z 2N3

4 April 2017

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APPENDIX “A”:	Pre-Closing Corporate Ownership Chart
APPENDIX “B”:	Option Purchase Agreement dated February 13, 2017 (Redacted)
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APPENDIX “D”:	Structure Following Sale, Amalgamation and Transfer
APPENDIX “E”:	Draft Commission Order under Section 54
APPENDIX “F”:	Draft Commission Order under Section 52 (Amalgamation)
APPENDIX “G”:	Draft Commission Order under Section 52 (Transfer)

APPENDIX "H": Order No. C-16-01 (Kicking Horse Mountain Resort) and Order No. C-3-05 (Canyon Ridge Estates)

I. INTRODUCTION

1. This application seeks approval of three transactions
 - a. the sale of a reviewable interest in Cal-Gas Inc. (“**Cal-Gas**”),
 - b. the amalgamation of two parent companies into Cal-Gas, and
 - c. the transfer from Cal-Gas to Superior Plus LP (“**Superior**”) of the public utility assets and related approvals of Cal-Gas, so Superior would become the new public utility owner and operator.
2. The three transactions would occur in the sequence noted, but each transaction does not depend on approval of the subsequent transaction – i.e. the sale may proceed without the amalgamation and transfer being approved, and the amalgamation may proceed without the transfer being approved.
3. We have applied for approval of each transaction in this Application to allow for an efficient review of all three transactions concurrently. However, we ask the British Columbia Utilities Commission (“**Commission**”) to consider the sale approval as soon as possible, so the sale may proceed once the Commission is ready to grant approval, regardless of the timing required for the review of the amalgamation and transfer.
4. Similarly, we ask the Commission to consider the amalgamation independent of the transfer, so the amalgamation may then proceed once the Commission approval and Lieutenant Governor in Council (“**LGIC**”) consent are ready to be given regardless of the timing required for the review of the transfer.

II. APPROVALS REQUESTED

Approval of the Sale under section 54

5. Gibson Energy ULC (“**Gibson**”), Superior and 2028093 Alberta Ltd. (“**2028093**”) (collectively, the “**Sale Applicants**”) apply to the Commission under section 54 of the *Utilities Commission Act*¹ (“**UCA**”) for an Order approving the sale of a reviewable

¹ RSBC 1996, c 473.

ownership interest in Cal-Gas by Gibson to Superior (the “**Interim Sale**”) and then the sale of that reviewable interest by Superior to 2028093 (the “**Final Sale**”). We will refer to the Interim Sale and Final Sale collectively as the “**Sale**.”

Approval of the Amalgamation under sections 52 and 53

6. Once the Sale is completed, 2028093 and Canwest Propane ULC (“**Canwest ULC**”) would amalgamate with Cal-Gas to continue as Cal-Gas (the “**Amalgamation**”). Subject to the approval of the Sale, 2028093, Canwest, and Cal-Gas (collectively, the “**Amalgamation Applicants**”) request the following for the amalgamation
 - a. approval of the Commission under section 52 of the UCA,
 - b. a Commission report to the LGIC that the Amalgamation would be beneficial in the public interest, and
 - c. consent from the LGIC under section 53.

Approval of the Transfer of the Assets and Approvals under section 52 and section 46

7. Subject to the approval of the Sale and the Amalgamation, Superior and Cal-Gas (collectively, the “**Transfer Applicants**”) request
 - a. approval of the Commission under section 52 of the UCA for the transfer from Cal-Gas to Superior of the public utility assets of Cal-Gas and all related UCA approvals (the “**Transfer**”),
 - b. amendments under section 46 of the UCA to relevant Certificates of Public Convenience and Necessity (“**CPCN**”) to record Superior as the owner and operator of
 - (i) the Kicking Horse Mountain Resort public utility near Golden, British Columbia, which comprises two underground propane grid systems authorized by a CPCN issued by Order No. C-16-01 on November 13, 2001, and

- (ii) the Canyon Ridge Estates public utility near Golden, British Columbia, which is an underground propane grid system authorized by the CPCN issued by Order No. C-3-05 on March 30, 2005, and

(collectively, the “**Public Utilities**”)

- c. consequential amendments to the UCA approvals of Cal-Gas’ rates and tariffs to reflect the transfer of the Public Utilities from Cal-Gas to Superior.
- 8. Draft approval orders for each transaction are provided in Appendices “E”, “F”, and “G”, respectively, for the Commission’s consideration.
 - 9. We will refer to the Sale Applicants, Amalgamation Applicants and Transfer Applicants collectively as the “**Applicants.**”
 - 10. The Applicants request that the Commission review this Application by written hearing in accordance with section 86.2 of the UCA. Any issues related to these Applications can be effectively reviewed in writing and do not warrant the cost and effort of an oral hearing. Canwest ULC’s acquisition of Cal-Gas in 2014 was approved by the Commission following a written hearing.²

III. BACKGROUND

A. Pre-Closing Ownership Structure

- 11. Gibson is an Alberta unlimited liability corporation that owns
 - a. all of the share capital of Stittco Energy Limited (“**Stittco**”), a federally incorporated corporation,
 - b. all of the share capital of Canwest ULC, an Alberta unlimited liability corporation, and
 - c. approximately 71% of the Canwest Propane Partnership (“**Canwest Partnership**”), an Alberta general partnership.

² See Order No. G-90-14.

12. Canwest ULC is an Alberta unlimited liability corporation that owns
 - a. all of the share capital of Cal-Gas, and
 - b. approximately 3% of the Canwest Partnership.
13. Cal-Gas owns approximately 26% of the Canwest Partnership.
14. A pre-closing corporate ownership chart is provided in Appendix “A” of this Application.

B. Description of the Public Utilities

15. Stitcco, Canwest ULC and Canwest Partnership are not “public utilities” under the UCA since they do not own or operate any public utility undertakings in British Columbia.
16. Cal-Gas is a “public utility” as defined in the UCA and it owns and operates the Public Utilities.
17. Copies of Order No. C-16-01 (Kicking Horse Mountain Resort) and Order No. C-3-05 (Canyon Ridge Estates) are provided in Appendix “H”.
18. All books, records and supporting data for Cal-Gas’ financial and regulatory records, including for the Public Utilities, are currently located in Calgary, Alberta. Cal-Gas or Superior, as appropriate, would apply to the Commission for consent if it intends to change the location of those records.
19. Canwest ULC’s acquisition of Cal-Gas was approved by the Commission in Order No. G-90-14. Canwest ULC provided information regarding the operations of the Public Utilities to the Commission in that proceeding.

C. Description of Superior

20. Superior is an Ontario limited partnership. Superior Plus Corp., a public company listed on the Toronto Stock Exchange with an aggregate market value of approximately \$1.8 billion, owns a 99.9% interest in Superior and Superior General Partner Inc., a direct, wholly-owned subsidiary of Superior Plus Corp., owns the remaining 0.1% interest.

21. Superior is Canada's largest distributor of propane and related products and services. It provides distribution, wholesale procurement and related services in relation to propane, heating oil and other refined fuels throughout Canada and the North Eastern United States. It has many years of experience and a large sophisticated network of infrastructure and technical capability to operate propane distribution services.
22. Superior has a long history of serving companies operating utilities in British Columbia and has been a main supplier for companies such as FortisBC Inc., Corix Water Products and Pacific Northern Gas Ltd. due in large part to Superior's extensive supply chain and technical expertise.
23. Superior has the proven technical and governance capability to operate public utilities in British Columbia. Superior operates as a "public utility" under the UCA for its propane service operations at the Seascapes development, which is a 100 unit residential development in North Vancouver.³ Superior undertakes the measurement and billing and operates a 24-hour customer service center providing emergency services through its own local employees and is also a member of Emergency Response Assistance Canada. By Order No. C-5-16, dated December 15, 2016, the Commission issued a CPCN to Superior for the Seascapes development gaseous propane grid.
24. As further described in section IV of this Application, Superior will acquire the shares of Canwest ULC, the direct parent of Cal-Gas (Interim Sale), following which 2028093, an indirect wholly-owned subsidiary of Superior Plus Corp. and an affiliate of Superior, will immediately acquire the shares of Canwest ULC from Superior (Final Sale). 2028093 is a new corporate entity that was incorporated for the purpose of this transaction.
25. 2028093, Canwest ULC and Cal-Gas will subsequently amalgamate with the resulting amalgamated entity being Cal-Gas. Following the Amalgamation, on Commission approval, Cal-Gas will transfer all of its assets, including the Public Utilities, to Superior. Further details on the Sale, Amalgamation and Transfer are set out in section IV of this Application.

³ BCUC Order G-133-15. Rate application for the Seascapes development approved by BCUC Order G-172-16.

26. Section VII of this Application explains why the Public Utilities and their customers will not be detrimentally affected by the Sale, Amalgamation and Transfer, and why the Commission's criteria for granting approval are met.

IV. THE PROPOSED TRANSACTIONS

A. Description of the Sale

27. Gibson, Stittco, Canwest ULC, Canwest Partnership and Cal-Gas entered into an Option Purchase Agreement with Superior dated February 13, 2017 (the "**Option Purchase Agreement**"), under which Gibson and Superior agreed to enter into an option agreement, by which Gibson granted an irrevocable option (the "**Option**") to Superior to, directly or indirectly through one or more affiliates, purchase all of the share capital of Stittco and Canwest ULC, as well as all of its partnership interests in Canwest Partnership, subject to certain conditions (the "**Option Agreement**"). A copy of the Option Purchase Agreement is provided in Appendix "B" of this Application.
28. In accordance with the Option Purchase Agreement, Gibson entered into the Option Agreement with Superior on March 1, 2017. A copy of the Option Agreement is provided in Appendix "C" of this Application.
29. Superior exercised the Option on March 1, 2017, but the closing of the Sale is subject to certain conditions, including obtaining the necessary approval from the Commission under section 54 of the UCA.
30. When the Option Agreement was executed on March 1, 2017, Superior paid to Gibson the aggregate purchase price of \$412,000,000 (the "**Purchase Price**"), subject to certain working capital adjustments. The Purchase Price was determined after a detailed review of sensitive and confidential business information. The value of the Public Utilities was considered in that process, but that value was only a nominal portion of the Purchase Price.
31. After the Final Sale, Cal-Gas will be an indirect wholly-owned subsidiary of Superior Plus Corp. and an affiliate of Superior through 2028093 (pending Transfer approval). A

chart showing the corporate ownership of Cal-Gas after the Final Sale is provided on the second page of Appendix “D” of this Application.

32. The Interim Sale, shown on the first page of Appendix “D” of this Application, is being completed for commercial and tax planning purposes and will have no bearing on the operation of the Public Utilities since the Final Sale will follow immediately after the Interim Sale.

B. Description of the Amalgamation

33. 2028093, Canwest ULC and Cal-Gas will amalgamate, with the resulting amalgamated entity being Cal-Gas. The Amalgamation requires the approval of the Commission under section 52 and the consent of the LGIC under section 53, because Cal-Gas is a “public utility” under the UCA.
34. After the Amalgamation, Cal-Gas will own approximately 29% of the Canwest Partnership and Superior will own the remaining 71%. A chart showing the corporate ownership of Cal-Gas after the Amalgamation is provided on the fourth page of Appendix “D” of this Application.
35. The Amalgamation would be beneficial in the public interest, including the interests of the customers of the Public Utilities, because it will simplify the regulatory, managerial and administrative aspects of the corporate ownership of the Public Utilities, which will increase efficiency.
36. Pending the approval of the Transfer, the Public Utilities will continue to be operated by Cal-Gas in a safe and responsible manner, and they will continue to be regulated by the Commission.

C. Description of the Transfer

37. Following the Amalgamation, Cal-Gas would transfer its public utility assets – the Public Utilities – and the related UCA approvals to Superior. Cal-Gas would then amalgamate with Superior General Partner Inc. with the resulting amalgamated entity being Superior General Partner Inc.

38. The Transfer requires the approval of the Commission under section 52 of the UCA since it is a disposition of a public utility's "property, franchises, licences, permits, concessions, privileges or rights."
39. The related CPCNs would need to be amended under section 46 to record Superior as the new owner and operator of the Public Utilities. Similarly, the related UCA approvals for the rates and tariffs must be amended accordingly.
40. A chart showing the corporate structure following the Transfer is provided on the fifth page of Appendix "D" of this Application.
41. The Transfer would be beneficial in the public interest, including the interests of the customers of the Public Utilities, because it will simplify the ownership, regulatory, managerial and administrative aspects of the Public Utilities, which will increase efficiency.
42. After the Transfer, Superior will operate the Public Utilities in a safe and responsible manner with no significant changes. Any impact would be positive, resulting from increased efficiency. The Public Utilities will continue to be regulated by the Commission.
43. On Transfer approval, Superior will assume all of the assets, liabilities and obligations, including all contractual commitments of Cal-Gas. Any employees of Cal-Gas would become employees of Superior.

V. STAKEHOLDER CONSULTATION

44. After the filing of this Application, Cal-Gas will consult with its customers and employees about the proposed Sale, Amalgamation, and Transfer, and offer the opportunity to give feedback.
45. As part of this consultation, Cal-Gas will provide customers and employees with access to this Application and explain how to participate in the Commission proceeding or give feedback directly to Cal-Gas.

VI. POST-CLOSING OPERATIONS OF THE PUBLIC UTILITIES

46. Superior does not expect any significant changes to the operations of the Public Utilities as a result of the Sale, Amalgamation and Transfer. The Sale, Amalgamation and Transfer will change and simplify the corporate ownership, which will be positive. These changes will not adversely affect the performance of the Public Utilities or service to current customers of Cal-Gas.
47. Since the Public Utilities represent such a small part of the overall operations of Cal-Gas, and ultimately Superior, it is not necessary or desirable to segregate or “ring fence” the Public Utilities after the Sale, Amalgamation or Transfer.
48. The Public Utilities and Cal-Gas unregulated operations currently operate without a ring fence structure and no issues have been encountered. Similarly, no issues are expected to be encountered relative to the operations of the Public Utilities and the unregulated operations of Superior and the Superior family of companies post-Transfer.
49. The Superior corporate family structure is shown on Appendix “A”. The Superior family of businesses can be broadly divided into two divisions – the energy distribution division and the specialty chemicals division
 - a. The energy distribution division provides distribution, wholesale procurement and related services in relation to propane, heating oil and other refined fuels throughout Canada and the North Eastern United States.
 - b. The specialty chemicals division is a supplier of sodium chlorate and technology to the pulp and paper industry and a regional supplier of potassium and chloralkali products to western North America.
50. The Public Utilities, like the Seascapes development, will represent a small portion of the business of the energy distribution division.
51. Post-Transfer, there will be no cross-subsidization of other Superior businesses (or the businesses of the Superior family) at the expense of the Public Utilities or their customers.

52. The Applicants expect limited transaction costs associated with the Sale, Amalgamation and Transfer. The transaction costs would include legal, regulatory, financial, environmental and information technology costs, as well as management and staff time in dealing with matters such as due diligence and regulatory matters (including this Application). Any transaction costs related to the acquisition of Cal-Gas and resulting Amalgamation and Transfer will likely be nominal in relation to the Purchase Price.
53. Superior confirms that
- a. neither it, nor any of its affiliates will seek to recover any acquisition premium or transaction costs incurred in connection with the Sale, Amalgamation or Transfer from the customers of the Public Utilities, and
 - b. neither it, nor any of its affiliates will seek to recover through the regulated customer rates any premium paid over the book value of the shares of Canwest ULC and Cal-Gas or as a result of any tax planning related to the Transfer.
54. Following the Sale, Amalgamation and Transfer, Superior intends to take the steps necessary to optimize the collective public utility experience within the current operation and supplement it with other technical expertise and resources to ensure the operations of the Public Utilities continue to be safe, reliable and efficient.

VII. THE PROPOSED TRANSACTION SHOULD BE APPROVED

A. The Sale should be approved

55. Section 54(5) of the UCA states that a public utility must not, without the approval of the Commission, sell, purchase or transfer shares in the utility if it would cause any person to have a reviewable interest, as defined in section 54(4) of the UCA.
56. Pursuant to the Sale, Superior will acquire a reviewable interest in Cal-Gas. Superior will then immediately transfer that reviewable interest to 2028093. The Commission's approval is required for both transfers of shares.
57. Section 54(9) of the UCA states that the Commission may give its approval subject to conditions and requirements it considers necessary or desirable in the public interest, but

the Commission must not give its approval unless it considers that the public utility and the users of the service of the public utility will not be detrimentally affected.

58. In determining whether a public utility and the users of the service of a public utility will not be detrimentally affected, the Commission has considered the following criteria⁴
- a. the utility's current and future ability to raise equity and debt financing will not be reduced or impaired,
 - b. there is no violation of existing covenants, the effect being detrimental to the customers,
 - c. the conduct of the utility's business, including the level of service, either now or in the future, will be maintained or enhanced,
 - d. the application is in compliance with appropriate enactments and/or regulations,
 - e. the structural integrity of the assets will be maintained in such a manner as to not impair utility service, and
 - f. the public interest is being preserved.
59. The Sale involves a transfer of the shares of Cal-Gas' parent corporation, so there will be no adverse effect on the Public Utilities, its operations or its customers. For the reasons below, Cal-Gas and its customers will not be detrimentally affected if the Sale is approved.

Ability to raise equity and debt financing not reduced or impaired

60. Any impact resulting from the Sale on Cal-Gas' ability to raise equity and debt financing is expected to be positive.

⁴ See e.g. page 6 of Appendix A of Order No. G-52-06 regarding the approval of the acquisition of the common shares of Terasen Utility Services Inc.

61. Superior is a well-capitalized Canadian company with the ability to raise both equity and debt financing. Its parent company, Superior Plus Corp., is a publicly listed entity with a strong balance sheet and credit ratings from both Moody's and Standard & Poor's.

Existing covenants will not be violated

62. No existing covenants will be violated.
63. Superior and then 2028093 are acquiring an indirect ownership interest in Cal-Gas, so the Public Utilities' current entities will continue. Similarly, any existing covenants will continue.

Utility business conduct will be maintained or enhanced

64. As explained in section III of this Application, Superior is Canada's largest distributor of propane and related products and services. It has the experience, technical expertise and financial capacity to operate the Public Utilities at a high level of performance.
65. Further, the Sale will not alter the regulatory oversight of the Commission over Cal-Gas. Pending Transfer approval, the Commission will continue to exercise on-going regulation of the operations of Cal-Gas, including over the rates, terms of service, and public utility equipment. Customers will have recourse to the Commission if any concerns arise related to the Public Utilities' operation or service.

Application is in compliance with enactments

66. The Sale will only close once all applicable federal and provincial legislative requirements have been met. This Application complies with the requirements of the UCA.

Structural integrity of assets will be maintained

67. As explained in section III of this Application, Superior has the experience, technical expertise and financial capacity to operate the Public Utilities at a high level of

performance. The structural integrity of the assets will be maintained or improved, as necessary.

68. The Sale would not alter the regulatory obligations of Cal-Gas or Superior to provide safe, reliable and secure service to its customers.

Public interest is being preserved

69. Superior is a well-capitalized Canadian company with the expertise, commitment and resources to continue and improve the performance of the Public Utilities.
70. The Sale will have no direct effect on the Public Utilities, its operations or customers. Any indirect effect will be neutral or positive. Accordingly, the Sale will be beneficial in the public interest.

B. The Amalgamation should be approved

71. Section 52 of the UCA states that a public utility must not amalgamate with another person without first obtaining the Commission's approval. Section 53 of the UCA states that a public utility must not amalgamate unless the LGIC has
- a. first received from the Commission a report that includes an opinion that the amalgamation would be beneficial in the public interest, and
 - b. consented to the amalgamation.

72. In considering an application under section 53 of the UCA, the Commission has held⁵

The Panel is of the view that the essence of section 53 is not to find that amalgamation would be beneficial in the public interest by a particular order of magnitude. Rather, the Panel considers that sufficient evidence of amalgamation to be beneficial in the public interest exists. While the FEU [FortisBC Energy Utilities] acknowledge that the benefits of acting as one entity have already been realized for the most part, the Panel is also persuaded that the regulatory efficiency from one entity filing

⁵ Commission Decision dated February 26, 2014 regarding *Application for Reconsideration and Variance of Commission Order G-26-13 on the FortisBC Energy Utilities' Common Rates, Amalgamation and Rate Design Application* at page 10.

revenue requirements applications, one set of income tax returns, one set of annual reports filed with the British Columbia Corporate Registry, etc., and the resultant reduction in some costs such as interest expenses, are sufficient to warrant a conclusion that amalgamation of the FEU is beneficial in the public interest. While the Panel concludes that regulatory efficiency gains are adequate to determine public interest, the Panel also notes there are additional benefits such as greater rate stability for all ratepayers of an amalgamated entity due to the larger customer base.

73. Similarly, the Amalgamation will be beneficial in the public interest, because the corporate governance and regulatory compliance will be more efficient, the related costs will be reduced, the management structure of Superior will be simplified, and corporate transparency will be increased. This will result in more efficient operations and better service for the customers of Superior, including customers of the Public Utilities.
74. The Amalgamation will
 - a. have no detrimental effect on the operations of Cal-Gas or its customers,
 - b. not alter the regulatory oversight of the Commission over Cal-Gas and the Public Utilities, and
 - c. not change the regulatory obligations of Cal-Gas to provide safe, reliable and secure service to its customers.
75. As explained above, Superior is well-capitalized and it has the expertise, commitment and resources to continue and improve the business being conducted by Cal-Gas in British Columbia.
76. Accordingly, the Amalgamation will not detrimentally affect Cal-Gas and the users of its service, but will instead be beneficial in the public interest.

C. The Transfer should be approved

77. Section 52(1)(a) of the UCA states that a public utility must not dispose of its property, franchises, licenses, permits, concessions, privileges or rights without first obtaining the Commission's approval. Section 52(2) of the UCA further states that the Commission may give its approval subject to conditions and requirements considered necessary or desirable in the public interest.
78. For the same reasons set out above, the Transfer will be beneficial in the public interest because the corporate governance and regulatory compliance will be more efficient, the related costs will be reduced, the management structure of Superior will be simplified, and corporate transparency will be increased. This will result in more efficient operations and better service for the customers of Superior, including customers of the Public Utilities.
79. As explained above, Superior is well-capitalized and it has the expertise, commitment and resources to continue and improve the business currently being conducted by Cal-Gas in British Columbia.
80. Any effects of the Transfer on the Public Utilities, its operations or customers will be neutral or positive. Accordingly, the Transfer is in the public interest.

VIII. CONCLUSION

81. The Sale Applicants respectfully request that the Commission approve the Sale and grant an Order similar to the draft Order provided in Appendix "E" of this Application.
82. The Amalgamation Applicants also respectfully request that the Commission approve the Amalgamation and report to the LGIC that the Amalgamation is beneficial in the public interest and may be consented to by the LGIC. A proposed draft Order for the Amalgamation under section 52 of the UCA is provided in Appendix "F" of this Application.

83. The Transfer Applicants also respectfully request that the Commission approve the Transfer and grant an Order similar to the draft Order provided in Appendix “G” of this Application.
84. The Applicants have electronically filed with the Commission redacted versions of the Option Purchase Agreement (Appendix “B”) and the Option Agreement (Appendix “C”). The Applicants have also filed with the Commission paper copies of those agreements that are unredacted. The Applicants request that the unredacted agreements be kept confidential, because
- a. the redacted portions of these agreements are commercially-sensitive,
 - b. the disclosure of the redacted portions of these agreements to competitors of the Applicants through the public record could harm the competitive position of the Applicants in the market,
 - c. the Commission has access to the redacted portions of these agreements for the purpose of this Application, and
 - d. any interested party who registers as an intervenor and demonstrates a legitimate interest in reviewing information in the redacted portions of these agreements may be permitted access to that information solely for the purpose of the review of this Application after committing to a non-disclosure undertaking.
85. If the Commission denies the request for confidentiality, the Applicants request that the Commission return the Application without first publishing the unredacted Option Purchase Agreement and the unredacted Option Agreement.
86. The Applicants request an expedited hearing of the Applications.
- a. The Sale represents a small part of the overall transaction, and raises no substantive issues. Therefore, the approval should be viewed as administrative in nature under section 54 of the UCA.

- b. The Amalgamation and Transfer would result in a simplified corporate ownership structure with resulting efficiency for the Public Utilities.
- c. It is in the public interest to expedite the review of these transactions to minimize the duration of any uncertainty regarding the outcome for the customers of the Public Utilities pending the Commission's review.

All of which is respectfully submitted this 4th day of April 2017.

Original signed by

Counsel for the Applicants, Gibson Energy ULC,
Canwest Propane ULC and Cal-Gas Inc.

Bennett Jones LLP per David Bursey

Original signed by

Counsel for the Applicants, Superior Plus LP and
2028093 Alberta Ltd.

Blakes, Cassels & Graydon LLP per Katie Slipp

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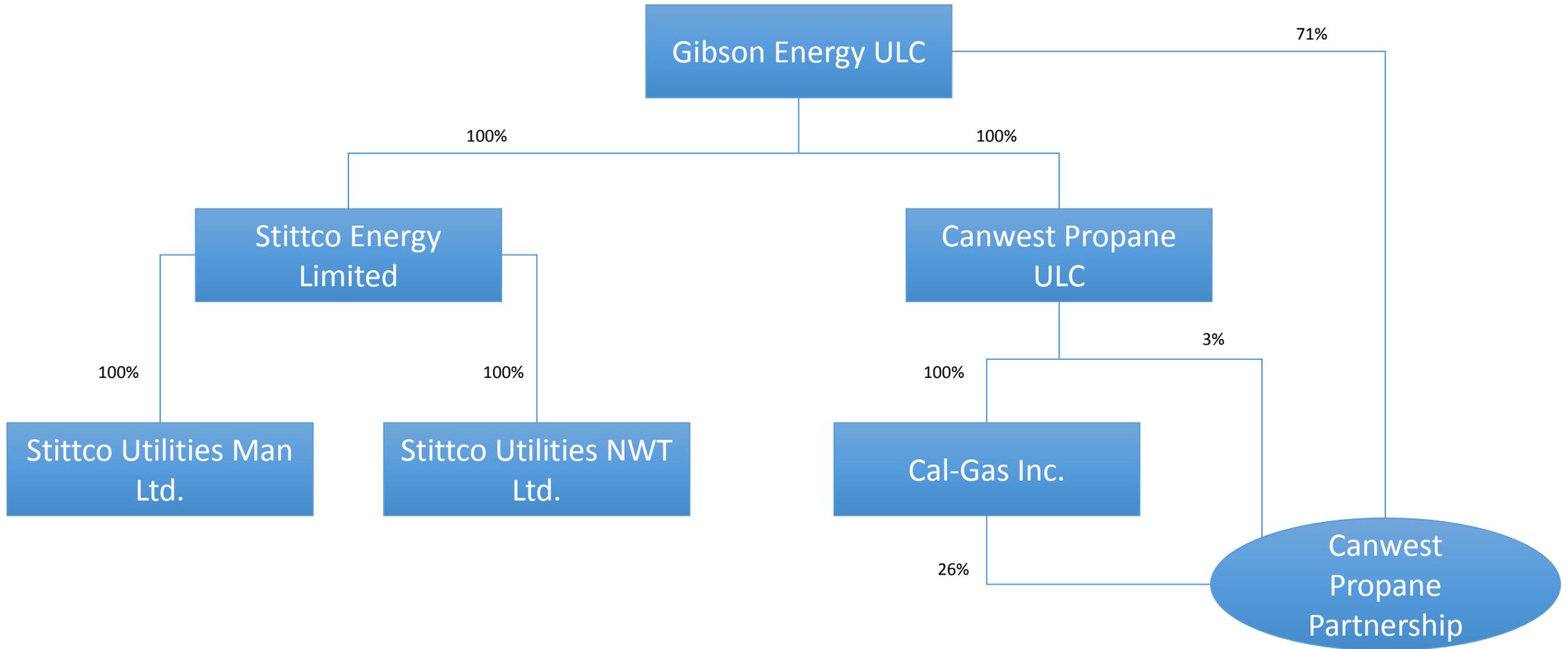
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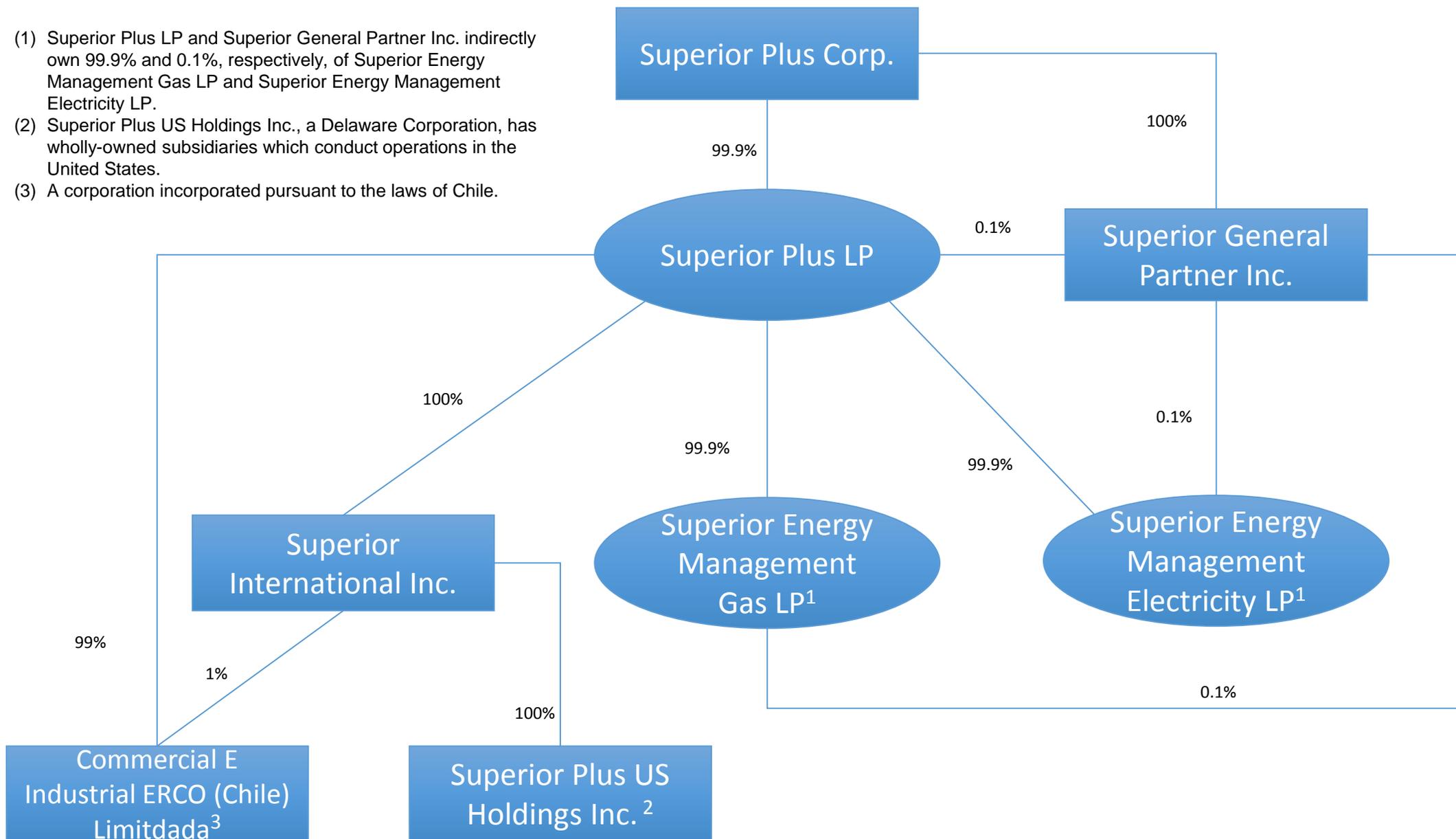
and to:

Darren Hribar, Senior Vice-President and General Counsel
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PRE-CLOSING CORPORATE OWNERSHIP CHART OF CAL-GAS INC.

PRE-CLOSING CORPORATE OWNERSHIP CHART OF SUPERIOR

- (1) Superior Plus LP and Superior General Partner Inc. indirectly own 99.9% and 0.1%, respectively, of Superior Energy Management Gas LP and Superior Energy Management Electricity LP.
- (2) Superior Plus US Holdings Inc., a Delaware Corporation, has wholly-owned subsidiaries which conduct operations in the United States.
- (3) A corporation incorporated pursuant to the laws of Chile.



SUPERIOR PLUS LP

- and -

GIBSON ENERGY ULC

- and -

CANWEST PROPANE ULC

and

STITTCO ENERGY LIMITED

and

CAL-GAS INC.

and

CANWEST PROPANE PARTNERSHIP

OPTION PURCHASE AGREEMENT

FEBRUARY 13, 2017

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EXHIBITS

- Exhibit A – Share and Partnership Capital
- Exhibit B – Guarantee
- Exhibit C – Allocation of Purchase Price
- Exhibit D – Option Agreement
- Exhibit E – Trucking Agreement
- Exhibit F – Supply Agreement
- Exhibit G – Transferred Lands
- Exhibit H – Form of Lease Agreement

OPTION PURCHASE AGREEMENT

THIS AGREEMENT is made as of February 13, 2017,

AMONG:

SUPERIOR PLUS LP, a limited partnership organized under the laws of Ontario (the "**Purchaser**")

- and -

GIBSON ENERGY ULC, an unlimited liability corporation incorporated under the laws of the Province of Alberta (the "**Seller**")

- and -

CANWEST PROPANE ULC, an unlimited liability corporation incorporated under the laws of the Province of Alberta ("**Canwest ULC**")

- and –

STITTCO ENERGY LIMITED, a corporation incorporated under the laws of Canada ("**Stittco**")

- and –

CAL-GAS INC., a corporation incorporated under the laws of the Province of Alberta ("**Cal-Gas**")

- and –

CANWEST PROPANE PARTNERSHIP, a general partnership formed under the laws of the Province of Alberta ("**Canwest Partnership**")

WHEREAS the Seller is the legal and beneficial owner of (i) all of the share capital of Stittco, (ii) all of the share capital of Canwest ULC, and (iii) an interest in Canwest Partnership which comprises approximately seventy percent (70%) of all partnership interests in Canwest Partnership;

WHEREAS Canwest ULC is the legal and beneficial owner of (i) all of the share capital of Cal-Gas, and (ii) an interest in Canwest Partnership which comprises approximately three percent (3%) of all partnership interests in Canwest Partnership;

WHEREAS Cal-Gas is the legal and beneficial owner of an interest in Canwest Partnership which comprises approximately twenty seven percent (27%) of all partnership interests in Canwest Partnership; and

WHEREAS the Seller has agreed, on the terms and subject to the conditions hereinafter set out, to grant an irrevocable option to the Purchaser to require that the Seller sell and convey to the Purchaser (or its designate) all of the issued and outstanding share capital of Stittco and Canwest ULC, and all partnership interests in Canwest Partnership other than the partnership interests owned by Cal-Gas and Canwest ULC.

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

ARTICLE 1 **INTERPRETATION**

1.1 Definitions

In this Agreement, the preamble and recitals hereto, and the exhibits attached hereto (the "**Exhibits**", and each, an "**Exhibit**"), unless there is something in the subject matter or context inconsistent therewith, the following words and terms will have the indicated meanings and grammatical variations of such words and terms will have corresponding meanings:

"**Accounts Payable**" means, at any point of determination, all trade and other accounts payable, notes payable and other debts due or accruing by the Business Entities relating to goods and/or services received prior to such time, determined in accordance with GAAP;

"**Accounts Receivable**" means, at any point of determination, all trade and other accounts receivable, notes receivable and other debts due to or accruing to any Business Entity relating to goods and/or services provided prior to such time determined in accordance with GAAP;

"**AcquisitionCo**" has the meaning ascribed thereto in Section 11.6(a);

"**Additional Units**" has the meaning ascribed thereto in Section 5.12(a)(i);

"**Adjusted Purchase Price**" has the meaning ascribed thereto in Section 2.6(c);

"**affiliate**" has the meaning ascribed thereto in the Securities Act;

"**Agreement**", "**this Agreement**", "**herein**", "**hereto**" and "**hereof**" and similar expressions refer to this option purchase agreement as the same may be amended, supplemented or otherwise modified from time to time in accordance with the terms hereof and, where applicable, to the Exhibits hereto;

"**Amendment to the Disclosure Letter**" has the meaning ascribed thereto in Section 3.3(c);

"**Annual Financial Statements**" means the financial statements attached to the Disclosure Letter in Schedule 1.1 under the heading "Annual Financial Statements", all of which prepared in accordance with GAAP;

"**Anti-Money Laundering Laws**" has the meaning ascribed thereto in Section 3.1(II);

"**arm's length**" has the meaning ascribed thereto in the Tax Act;

"**associates**" has the meaning ascribed thereto in the Securities Act;

"**BAR Costs**" means any and all out-of-pocket costs and expenses incurred by the Seller and/or any Business Entities in respect of the matters contemplated by Section 5.2(c);

"**BAR Costs Paid by Closing**" means all BAR Costs incurred and paid by the Business Entities by the Closing Date;

"**BAR Costs Unpaid at Closing**" means all BAR Costs incurred by the Business Entities by the Closing Date which remain unpaid as of the Closing Date;

"**BCUC Approval**" means the approval of the British Columbia Utilities Commission of the Final Transaction, as contemplated by Subsection 54(5) of the British Columbia Utilities Commission Act;

"**Budget Account**" means the notional account of a customer of a Business Entity whereby such customer makes periodic payments, which payments are applied to the obligations of such customer in respect of product deliveries made from time to time or the rental of tanks or other equipment, and "**Budget Accounts**" means all such Budget Accounts as of the Closing Date;

"**Business**" means the propane supply and distribution business carried on by the Business Entities as of the Closing Date;

"**Business Assets**" means, collectively, all of the assets, properties, Permits, rights or other privileges (whether contractual or otherwise) of the Business Entities;

"**Business Day**" means any day, other than a Saturday, Sunday or statutory holiday in Calgary, Alberta;

"**Business Employees**" means all of the employees, including officers, employed by any Business Entity;

"**Business Entities**" means, collectively, the Target Entities, Cal-Gas and the Stittco Subsidiaries, and "**Business Entity**" means any of them;

"**Business Entities Straddle Period Income**" means the taxable income (as computed for the purposes of the Tax Act or, to the extent applicable, the taxation law of a province) in respect of each of the Business Entities (excluding the Canwest Partnership) for the Interim Tax Allocation Period, calculated as if the taxation year of each Business Entity ended at the end of the Interim Tax Allocation Period and on the basis of each Business Entity claiming all discretionary deductions and reserves permitted by the Tax Act and consistent with its past practices but without giving rise to a loss, including a proportion, based upon the proportion that the number of days in the Interim Tax Allocation Period is of the number of days in the actual fiscal year of such Business Entity, of any amounts that are deductible in respect of the fiscal year of Business Entity which includes the Interim Tax Allocation Period, such as deductions for capital cost allowance, provided that the Business Entities Straddle Period Income shall exclude any amount included in the Interim Tax Allocation Period Income;

"**Business Entities Straddle Period Tax Liability**" means the aggregate liability of the Business Entities for Taxes arising from Business Entities Straddle Period Income, calculated using a combined federal and provincial income tax rate of 26.5%, calculated without duplication of the Interim Canwest Partnership Tax Liability;

"**Cal-Gas**" means Cal-Gas Inc., a corporation formed pursuant to the laws of the Province of Alberta;

"**Cal-Gas Shares**" means all of the shares of every class and kind issued and outstanding in the capital of Cal-Gas, as at the Effective Time, a true and complete listing of which is set out in Exhibit A hereto;

"**Cal-Gas Units**" means the Canwest Units held by Cal-Gas, a true and complete listing of which is set out in Exhibit A hereto, which comprise twenty seven percent (27%) of all Canwest Units;

"**Canwest Partnership**" means Canwest Propane Partnership, a general partnership formed pursuant to the laws of the Province of Alberta and governed by the Canwest Partnership Agreement;

"**Canwest Partnership Agreement**" means the Amended and Restated Partnership Agreement dated October 1, 2008 in respect of Canwest Partnership;

"**Canwest Shares**" means all of the shares of each class and every kind and issued in the capital of Canwest ULC, as at the Effective Time, a true and complete listing of which is set out in Exhibit A hereto;

"**Canwest ULC**" means Canwest Propane ULC, a corporation formed pursuant to the laws of the Province of Alberta;

"**Canwest ULC Units**" means the Canwest Units held by Canwest ULC, a true and complete listing of which is set out in Exhibit A hereto, which comprise three percent (3%) of all Canwest Units;

"**Canwest Units**" means all of the partnership units of Canwest Partnership, a true and complete listing of which is set out in Exhibit A hereto;

"**Cash and Cash Equivalents**" means cash, cash equivalents, money on deposit with banks, certificates of deposit and similar instruments and short-term investments, less any escrowed cash or other restricted cash balances and less the amounts of any unpaid cheques, drafts, and wire transfers issued on or prior to the Effective Time (to the extent not theretofore deducted from the cash on hand or otherwise forming part of the Current Liabilities), determined in accordance with GAAP;

"**Claim**" means any claim, demand, action, cause of action, suit, arbitration, investigation, proceeding, dispute, complaint, grievance, charge, prosecution, assessment or reassessment, including any appeal or application for review;

"**Closing**" means the closing of the Transaction;

"**Closing Date**" has the meaning set out in Section 9.1;

"**Closing Indebtedness**" means, as at the Effective Time, without duplication, the aggregate of all Indebtedness of the Business Entities (other than any Indebtedness which constitutes a Current Liability) which is not repaid and discharged on or prior to the Effective Time, and shall include, for the purposes of this Agreement, for greater certainty, the current maturity of any long-term Indebtedness, the current maturity of equipment financing; "**Closing Indebtedness**" shall also include any Transaction Expenses owing by the Business Entities, the Retention Bonus Payment Obligations, but "**Closing Indebtedness**" shall in any event exclude all Indebtedness owing by any Business Entity to another Business Entity, all Retained Liabilities and all BAR Costs Unpaid at Closing;

"**Closing Proceeds**" has the meaning ascribed thereto in Section 2.3(b);

"**Closing Purchase Price**" has the meaning ascribed thereto in Section 2.4(a)(i);

"**Closing Statement**" has the meaning ascribed thereto in Section 2.6(a);

"**Closing Statement Objection**" has the meaning ascribed thereto in Section 2.6(b);

"**Collective Agreements**" means all collective bargaining agreements or union agreements, whether written or oral, that any Business Entity and any of their Business Employees are currently subject to, or are proposed to become subject to, and all related documents, including letters of understanding, letters of intent and other written communications with bargaining agents for any Business Employee which impose any obligations upon any Business Entity;

"**Commissioner**" means the Commissioner of Competition appointed pursuant to subsection 7(1) of the Competition Act or his designee;

"**Competition Act**" means the *Competition Act* (Canada);

"**Competition Act Clearance**" means that one or more of the following shall have occurred: (i) the Commissioner shall have issued an advance ruling certificate pursuant to Section 102 of the Competition Act in respect of the Final Transaction; (ii) the Commissioner shall have issued to the Purchaser a "no action letter" indicating that he does not intend to apply to the Competition Tribunal for an Order under Section 92 of the Competition Act in respect of the Final Transaction and the relevant waiting period under Section 123 of the Competition Act shall have expired or been terminated in respect of the Final Transaction; or (iii) the relevant waiting period under Section 123 of the Competition Act shall have expired or been terminated in respect of the Final Transaction and there shall not be any Restraining Order or voluntary agreement with the Commissioner not to consummate the Final Transaction in effect in respect of the Final Transaction;

"**Condition Satisfaction Date**" means the date of the satisfaction or waiver (subject to applicable laws) of the conditions set out in Article 6 of this Agreement (excluding conditions that, by their terms, cannot be satisfied until the Closing Date, but subject to the satisfaction or waiver of those conditions as of the Closing Date) by the applicable Parties;

"**Confidentiality Agreement**" means the confidentiality agreement dated [REDACTED- Date of agreement] between the Purchaser and the Seller;

"**Consent**" means any consent, approval, waiver or acknowledgement from any person which is provided for or required in respect of or pursuant to the terms of any Contract in connection with the Transaction or the Final Transaction;

"**Contract**" means any pending or executory contract, agreement, license, franchise, Lease or other legally binding arrangement, commitment, understanding or other right or obligation (whether written or oral) to which any Business Entity is a party or by which any Business Entity is bound or affected or to which any of the Business Assets is subject;

"**Current Assets**" means, without duplication, in respect of the Business Entities on a consolidated basis and at any applicable date of determination, all current assets, as determined in accordance with GAAP, including all Accounts Receivable, unbilled revenue, Customer Account Deficits, restricted cash, Inventory (provided, however, that for purposes of calculating Net Working Capital, Inventory shall not include Inventory that is obsolete or otherwise not saleable at normal prices or useable), prepaid expenses, deposits, Cash and Cash Equivalents, but, for greater certainty, "**Current Assets**" shall in any event exclude all deferred tax assets, and shall be deemed to include 50% of all BAR Costs Paid by Closing;

"**Current Liabilities**" means, without duplication, in respect of the Business Entities on a consolidated basis and at any applicable date of determination, all current liabilities, as determined in accordance with GAAP, including all Accounts Payable, accrued liabilities (including, for greater certainty, accrued Taxes and holdbacks payable), any contingent consideration, Customer Account Surpluses, unearned revenue, and 50% of all BAR Costs Unpaid at Closing, but, for greater certainty, "**Current Liabilities**" shall in any

event exclude all Retained Liabilities, the amount of the Retention Bonus Payment Obligations, Interim Canwest Partnership Tax Liability, the current maturity of any long-term Indebtedness, the current maturity of equipment financing, any Transaction Expenses, any deferred tax liabilities, and all BAR Costs (other than the 50% of all BAR Costs Unpaid at Closing expressly included by this definition);

"**Customer Account Deficit**" means, in respect of a Budget Account, the amount on the Closing Date, if any, by which the value of the product delivered to the customer exceeds the aggregate payments made by such customer;

"**Customer Account Surplus**" means, in respect of a Budget Account, the amount on the Closing Date, if any, by which the customer has made payments that exceed the value of the product delivered;

"**Data Room**" means the virtual data room established and maintained by IntraLinks, Inc. in connection with the Transaction;

"**Deductible**" has the meaning ascribed thereto in Section 10.4(a);

"**disclosed in writing**" means actually disclosed in the contents of the Disclosure Letter as of the Execution Date;

"**Disclosing Party**" has the meaning ascribed thereto in the definition of "Transferred Information";

"**Disclosure Letter**" means the disclosure letter dated the Execution Date from the Target Entities to the Purchaser delivered to the Purchaser concurrently with the execution and delivery of this Agreement, as amended or supplemented in accordance with Section 3.3(c);

"**Effective Time**" means 12:01 a.m. (Mountain Time) on the Closing Date or such other time as the Parties may agree upon in writing;

"**Employee Benefit Plans**" means all written compensation, overtime, bonus, deferred compensation, incentive compensation, share purchase, share appreciation, share option, severance or termination pay, change of control, vacation pay, holiday pay, hospitalization or other medical, health and welfare benefits, life or other insurance, dental, eye care, disability, accidental death and dismemberment, supplemental employment insurance benefits, profit-sharing, employee loan, employee assistance, counselling, pension, retirement or supplemental retirement benefit plans, arrangements or agreements, including the Quarterly Branch Manager Incentive Program, LTIP and any defined benefit or defined contribution pension plans and any group registered retirement savings plans, savings plans, post-retirement benefits and any other similar written employee benefit plans, arrangements or agreements, funded or unfunded, including policies with respect to holidays, sick leave, disability, vacations, expense reimbursements and automobile allowances and rights to company-provided automobiles, that are sponsored or maintained or contributed to or required to be contributed to, by the Seller or a Business Entity for the benefit of any of the Business Employees, former employees or consultants of the Business or beneficiaries of any of them, whether or not insured, except that the term "**Employee Benefit Plans**" shall not include any statutory plans with which the Seller is required by any Governmental Entity to comply, including the Canada/Quebec Pension Plan or plans administered pursuant to applicable provincial health Tax, workers' compensation, workers' safety and insurance and employment insurance legislation;

"**Employment Laws**" has the meaning ascribed thereto in Section 3.1(hh)(iii);

"**Encumbrance**" means any mortgage, hypothec, prior Claim, lien, pledge, assignment for security, security interest, guarantee, right of third parties or other charge, encumbrance, any collateral securing the payment obligations of any person, option, warrant, right of first refusal, pre-emptive rights, lease, sublease,

right to possession, Claim, right or restriction which affects, by way of a conflicting ownership interest or otherwise, the right, title or interest in or to any particular property, as well as any other agreement or arrangement with any similar effect whatsoever;

"**Environment**" means the natural environment (including soil, land surface or subsurface strata), surface waters, groundwater, sediment, ambient air (including all layers of the atmosphere), organic and inorganic matter and living organisms, and any other environmental medium or natural resource and all sewer systems;

"**Environmental Laws**" means all laws relating in full or in part to the protection of the Environment and includes, those laws relating to the storage, generation, use, handling, manufacture, processing, labeling, advertising, sale, display, transportation, treatment, Release and disposal of Hazardous Substances;

"**Environmental Representations**" has the meaning ascribed thereto in Section 10.3(d);

"**Estimated Closing Statement**" has the meaning ascribed thereto in Section 2.4(a);

"**ETA**" means the *Excise Tax Act* R.S.C. 1985, c. E-15.;

"**Execution Date**" means the date of this Agreement;

"**Final Compulsory Payment Amount**" has the meaning ascribed thereto in Section 10.10(b);

"**Final Compulsory Payment Indemnification Event**" means a Final Payment Determination having been made regarding a liability requiring payment under applicable law or any Order;

"**Final Determination**" has the meaning ascribed thereto in Section 2.6(c);

"**Final Payment Determination**" means a determination made by a Governmental Entity (including pursuant to a settlement) where all rights to object to or appeal from the determination (including any right to obtain relief under a competent authority or similar process) have been exhausted or have expired;

"**Final Transaction**" means the "Transaction" as defined in and contemplated by the Option Agreement;

"**Financial Advisor**" means RBC Capital Markets;

"**Financial Statements**" means, collectively, the Annual Financial Statements and the Interim Financial Statements;

"**Financing Commitment Letters**" means one or more binding, executed commitment letters from a lender or group of lenders, as required with respect to the provision of the requisite third party debt financing needed by the Purchaser to consummate the Transaction;

"**Fundamental Representations**" means, collectively: (a) the representations and warranties provided in Sections 3.1(a), 3.1(d), (e), (f) and (g); and (b) all representations and warranties provided in Section 3.2;

"**GAAP**" means, at any time, accounting principles generally accepted in Canada as set out in Part I of the Canadian Institute of Chartered Accountants Accounting Handbook – International Financial Reporting Standards, applied on a consistent basis with past practice;

"**Gibson Financial Statements**" means the audited consolidated financial statements of Gibson Energy Inc. for the years ended December 31, 2015 and 2014, prepared in accordance with GAAP;

"**Gibson Guarantee**" means the guarantee in the form set out as Exhibit B;

"**Gibson Real Property Leases**" has the meaning ascribed thereto in Section 5.12(c);

"**Governmental Entity**" means: (a) any Canadian, U.S. or other jurisdiction's federal, provincial, state, regional, municipal, local or other government, governmental or public department, ministry, central bank, court, tribunal, arbitral body, commission, commissioner, board, bureau or agency; (b) any subdivision, agency, agent or authority of any of the foregoing; or (c) any quasi-governmental or private body, including any tribunal, commission, regulatory agency or self-regulatory organization, exercising any regulatory, expropriation or taxing authority under or for the account of any of the foregoing;

"**GST**" means the Tax imposed under Part IX of the ETA;

"**Hazardous Substances**" means any waste or other substance that is prohibited, listed, defined, designated or classified as dangerous, hazardous, radioactive, explosive or toxic or a pollutant or a contaminant under or pursuant to any applicable laws relating in full or in part to the protection of the Environment, and specifically including petroleum and all derivatives thereof or synthetic substitutes therefor and asbestos or asbestos-containing materials or any substance which is deemed under such laws to be deleterious to the Environment;

"**Head Office Services**" has the meaning ascribed thereto in Section 3.5;

"**Indebtedness**" of any person means, without duplication:

- (a) all obligations of such person for borrowed money or with respect to refundable deposits;
- (b) all obligations of such person evidenced by bonds, debentures, notes or similar instruments;
- (c) all obligations of such person upon which interest charges are customarily paid;
- (d) all obligations of such person under conditional sale or other title retention agreements relating to property acquired by such person;
- (e) all obligations of such person in respect of the deferred purchase price of property acquired or services provided prior to the Closing Date, (excluding Accounts Payable) including, for greater certainty, earn-out obligations, if any, calculated pursuant to GAAP;
- (f) all guarantees by or similar security or payment assurance obligations provided by such person of Indebtedness of others including obligations of such person as an account party in respect of letters of credit and letters of guarantee (other than letters of credit and letters of guarantee issued in support of current Accounts Payable incurred in the Ordinary Course of Business);
- (g) all capital lease obligations of such person (excluding any prepayment penalties);
- (h) all obligations, contingent or otherwise, of such person in respect of bankers' acceptances;
- (i) all obligations under any foreign exchange contract, currency swap agreement, foreign currency futures or options, exchange rate insurance or other similar agreement or combination thereof;

- (j) all obligations of such person to purchase, redeem, retire, defease or otherwise acquire for value (other than for other equity securities) any equity securities of such person, valued, in the case of redeemable equity securities, at the greater of voluntary or involuntary redemption price, plus accrued and unpaid dividends; and
- (k) any amendment, supplement, modification, deferral, renewal, extension, refunding or refinancing of any Indebtedness of the types referred to above;

"**Indemnified Party**" has the meaning ascribed thereto in Section 10.5;

"**Indemnifying Party**" has the meaning ascribed thereto in Section 10.5;

"**Indemnity Claim**" has the meaning ascribed thereto in Section 10.5;

"**Independent Accountant**" means an accounting firm of recognized national standing in Canada which is independent of the Parties and which shall be appointed by the mutual agreement of the Parties as required by the terms and conditions of this Agreement. If the Parties are unable to agree on the Independent Accountant within the prescribed time period then the Independent Accountant shall be [REDACTED-Name of accounting firm];

"**Independent Contractor**" means any consultant or contractor: (a) engaged by any Business Entity, the majority or all of whose services are provided to one or more Business Entities; or (b) engaged by Gibson and utilized solely in respect of the Business, and the majority or all of whose services are provided in respect of the Business;

"**Ineligible Person**" means a person exempt from Tax under section 149 of the Tax Act or a non-resident person, within the meaning of the Tax Act;

"**Intellectual Property**" means any Intellectual Property Rights owned or licensed by the Business Entities, or any of them;

"**Intellectual Property Rights**" includes any right or protection existing from time to time in any jurisdiction, whether registered or not, under any patent laws or other invention or discovery laws, copyright laws, moral rights laws, trademark or unfair competition laws, industrial design or design laws, confidential information laws, trade secret laws or other similar laws and includes any legislation or regulation by any Governmental Entity and judicial decisions under common law or equity;

"**Interim Canwest Partnership Tax Liability**" means the aggregate liability of the partners of Canwest Partnership for Taxes arising solely from their respective allocations of the Interim Tax Allocation Period Income, calculated using a combined federal and provincial income tax rate of 26.5% on the basis of Cal-Gas and Canwest ULC claiming all discretionary deductions and reserves permitted under the Tax Act and in a manner that is consistent with past practices but without giving rise to a loss, and in any case in a manner that is consistent with the Tax Act or applicable provincial tax law;

"**Interim Financial Statements**" means the financial statements attached to the Disclosure Letter in Schedule 1.1 under the heading "Interim Financial Statements";

"**Interim Period**" means the period, if any, from and including the Execution Date to and including the Closing Date;

"**Interim Tax Allocation Period**" means the period, if any, from the beginning of the day following the Most Recent Tax Year End until the end of the day immediately prior to the Closing Date;

"Interim Tax Allocation Period Income" means the taxable income (as computed for the purposes of the Tax Act or, to the extent applicable, the taxation law of a province) in respect of Canwest Partnership for the Interim Tax Allocation Period, calculated as if the fiscal year of the Canwest Partnership ended at the end of the Interim Tax Allocation Period and on the basis of Canwest Partnership claiming all discretionary deductions and reserves permitted by the Tax Act and consistent with the past practices of Canwest Partnership but without giving rise to a loss, including a proportion, based upon the proportion that the number of days in the Interim Tax Allocation Period is of the number of days in the actual fiscal year of Canwest Partnership, of any amounts that are deductible in respect of the fiscal year of Canwest Partnership which includes the Interim Tax Allocation Period, such as deductions for capital cost allowance;

"Inventory" means, at any point of determination, all inventory owned by any Business Entity on the Closing Date and which is to be used and consumed in the Ordinary Course of Business, all of which shall be quantified and valued in accordance with the principles used by the Business Entities to quantify inventory in connection with the preparation of the Annual Financial Statements consistent with GAAP;

"Investment Canada Act" means the *Investment Canada Act*, R.S.C. 1985, c. 28 (1st Supp);

"Leased Personal Property" means all personal or movable property leased or subleased by any Business Entity;

"Leased Real Property" means all real or immovable property leased, subleased, licensed or occupied by any Business Entity or leased, subleased or licensed to others by any Business Entity as at the Execution Date, as specifically identified in the Disclosure Letter, and the Occupied Gibson Real Property;

"Leases" means, collectively, all real property lease, sublease or license agreements (including amendments) which have been entered into by any of the Business Entities, as tenants, subtenants, or licensees or as landlord, sub-landlords or licensors and, for greater clarity, will include the Gibson Real Property Leases at Closing;

"Legal Actions" has the meaning ascribed thereto in Section 3.1(y);

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

"Losses" means any amounts on account of damages, losses, deficiencies, costs, Liabilities, Claims, causes of action, indemnities, fines, penalties and expenses (including reasonable costs, fees and expenses of investigation and of legal counsel on a full indemnity basis, including those incurred in connection with pursuing Indemnity Claims under this Agreement);

"LTIP" means the Gibson Energy Inc. 2011 Equity Incentive Plan in the form filed on March 10, 2016 on sedar.com in the Gibson Energy Inc. company profile;

"LTIP Payment Obligations" has the meaning ascribed to it in Section 3.1(jj)(iv);

"Material Adverse Effect" means, with respect to the Business Entities taken as a whole, any change, event, occurrence, circumstance, result or fact that, when considered individually or in the aggregate, has or could reasonably be expected to have a materially adverse effect on the completion of the Transaction or the Final Transaction or on the Business, Business Assets, Liabilities, capitalization, condition (financial or otherwise) or results of operations of the Business Entities taken as a whole, other than any change,

event, occurrence, circumstance or fact resulting from or arising in connection with: (a) general economic, financial, currency exchange, securities or commodity market conditions in Canada, the United States or elsewhere; (b) any decline in crude oil or natural gas prices in Canada, the U.S. or internationally, on a current or forward basis; (c) any changes in credit markets generally, including changes in interest rates or the availability of financing; (d) changes in political conditions domestically or internationally; (e) acts of God, acts of terrorism, acts of war, calamities, national or international political or social conditions; (f) changes in law, GAAP or any other applicable accounting standards; (g) conditions affecting the propane supply and distribution industry generally in the markets where any Business Entity carries on business, and not specifically relating to the Business Entities, including changes in applicable laws or Taxes after the date of this Agreement; (h) any matter disclosed in the Disclosure Letter as of the Execution Date; (i) any changes or effects arising from matters expressly permitted by this Agreement or the Option Agreement, including as a result of the announcement of the Transaction; or (j) the Target Entities' failure to meet internal projections, forecasts or revenue or earnings estimates for any period;

"Material Consents" means those Consents identified as "Material Consents" in the Disclosure Letter;

"Material Contract" means any Contract that:

- (a) if terminated would materially impair the ability of the Business Entities, taken as a whole, to carry on the Business in the Ordinary Course of Business or would reasonably be expected to have a material adverse impact on the Business or Business Assets, considered in the aggregate;
- (b) provides, or could reasonably be expected to provide, for payments to or from any Business Entity in excess of \$[REDACTED- Quantum: competitively sensitive information] per annum or more than \$[REDACTED- Quantum: competitively sensitive information] over the Contract's term;
- (c) provides for the purchase of any materials, supplies, equipment, merchandise or services that obligates a Business Entity to purchase all or substantially all of its requirements of a particular product or service from a supplier or to make periodic minimum purchases of a particular product or service from a supplier including, for certainty, any "take or pay" contracts, which are, individually or in the aggregate, in excess of \$[REDACTED- Quantum: competitively sensitive information];
- (d) could reasonably be expected to remain in effect for longer than 12 months from the Execution Date and cannot be cancelled or terminated by a Business Entity without a financial penalty in excess of \$[REDACTED- Quantum: competitively sensitive information] and without more than 120 days' notice;
- (e) contains a "most favoured nations" or similar pricing clause;
- (f) contains covenants of a Business Entity not to compete in any line of business, in any geographic area or with any person, or grants any exclusivity rights, rights of first refusal, or similar rights to any person in respect of any material Business Assets or Business;
- (g) relates to or evidences Indebtedness of a Business Entity in excess of \$[REDACTED- Quantum: competitively sensitive information] or pursuant to which any Business Entity has agreed to, or assumed, any obligation to indemnify, hold harmless, guaranty or otherwise assume or incur Liability (contingent or otherwise) of any other person;

- (h) is a financial risk management Contract, such as a currency, commodity, interest or equity-related hedge, swap or derivative Contract;
- (i) is a Contract with the Seller or an affiliate of the Seller;
- (j) establishes a partnership, alliance or joint venture;
- (k) is an agency or other agreement which allows a third party to bind any Business Entity, other than powers of attorney granted in the Ordinary Course of Business in respect of matters which individually or in the aggregate are not material to the Business Entities (considered on a consolidated basis); or
- (l) any Contract not made in the Ordinary Course of Business;

"Most Recent Tax Year End" means, in respect of each Business Entity, the most recent tax year end (or fiscal period end, as applicable) of such Business Entity prior to the Closing Date, which will be December 31 of the calendar year preceding the calendar year in which Closing occurs;

"Net Working Capital" means, at any applicable date of determination, the amount by which Current Assets exceed (or is less than) Current Liabilities;

"Non-Competition Agreement" means the "Non-Competition Agreement" as defined in and contemplated by the Option Agreement;

"Non-Competition Covenants" has the meaning ascribed thereto in Section 2.8(c);

"Occupied Gibson Real Property" has the meaning set out in Section 5.12(c);

"Option" means the rights granted to the Purchaser pursuant to the Option Agreement;

"Option Agreement" means the option agreement to be entered into at Closing between the Seller and the Purchaser in the form attached hereto as Exhibit D;

"Option Closing" means the completion of the "Closing" as defined in and contemplated by the Option Agreement;

"Optioned Securities" means, collectively, the Optioned Shares and the Optioned Units;

"Optioned Shares" means all of the shares of every class and kind issued and outstanding in the capital of each Target Company as at the Effective Time and immediately prior to the purchase thereof by the Purchaser, a true and complete listing of which is set out in Exhibit A hereto;

"Optioned Units" means the Canwest Units held by the Seller, a true and complete listing of which is set out in Exhibit A hereto, which comprise seventy percent (70%) of all Canwest Units;

"Order" has the meaning ascribed thereto in Section 10.10(a);

"Ordinary Course of Business" when used in relation to the taking of any action by a Business Entity means that the action is consistent in nature, scope and magnitude with the past practices of the Business Entity and is taken in the ordinary course of normal day-to-day operations of the Business Entity;

"Outside Date" means May 1, 2017;

"Owned Personal Property" means all personal or movable property owned by any Business Entity;

"Owned Real Property" means all lands owned by any of the Business Entities and all plants, buildings, structures, erections, improvements, appurtenances and fixtures (including fixed machinery and fixed equipment) situate thereon, therein, thereunder or forming part thereof, and, for greater clarity, will include the Transferred Lands at Closing;

"Parties" means the parties to this Agreement, and **"Party"** means any one of them;

"Pension Plan" has the meaning ascribed thereto in Section 3.1(jj)(viii);

"Permit" means any license, permit, certificate, franchise, consent, grant, easement, covenant, approval, classification, registration or other authorization of and from any person, including any Governmental Entity;

"Permitted Encumbrance" means:

- (a) liens, adverse Claims, penalties and other Encumbrances identified in respect of the Business Assets and listed in the Disclosure Letter;
- (b) construction, builders, mechanics', carriers', workers', repairers', storers' or other similar Encumbrances (inchoate or otherwise) if individually or in the aggregate they: (i) arose or were incurred in the Ordinary Course of Business; and (ii) the obligation secured by them is not in arrears;
- (c) minor title defects or irregularities, and unregistered instruments, agreements, easements, rights of way, encroachments and restrictions, provided such title defects, irregularities, instruments, agreements and restrictions are complied with in all material respects and do not, in the aggregate in respect of each individual Real Property, materially adversely affect the operation of the Business or the continued use of such Real Property after the Closing Date on substantially the same basis as the Business has been operated prior to Closing, or the marketability of the Real Property;
- (d) easements, rights of way, servitudes and similar rights in land including rights of way and servitudes for highways and other roads, railways, sewers, drains, gas and oil pipelines, gas and water mains, electric light, power, telephone, telegraph or cable television conduits, poles, wires and cables, in existence on the Execution Date, provided the same are registered on title on the Execution Date;
- (e) zoning and building by-laws and ordinances, regulations made by public authorities and other restrictions affecting or controlling the use, marketability or development of real or immovable property;
- (f) Contracts with any municipal, provincial or federal governments or authorities and any public utilities or private suppliers of services, including subdivision agreements, development agreements, site control agreements, engineering, grading or landscaping agreements and similar Contracts, provided the same are registered on title on the date of this Agreement;
- (g) Taxes, assessments or governmental charges which are not yet due and payable or delinquent or the validity of which are being contested in good faith by appropriate

proceedings, but only for so long as such contestation effectively postpones enforcement of such liens; and

- (h) Encumbrances incurred, created and granted in the Ordinary Course of Business to a public utility, municipality or Governmental Entity in connection with operations conducted with respect to the Business Assets, but only to the extent such Encumbrances relate to costs and expenses for which payment is not due and are registered on title on the date of this Agreement;

"person" includes an individual, limited or general partnership, limited liability company, limited liability partnership, trust, joint venture, association, body corporate, unincorporated organization, trustee, executor, administrator, legal representative, government (including any Governmental Entity) or any other entity, whether or not having legal status;

"Personal Information" means information about an identifiable individual other than their business contact information when used or disclosed for the purpose of contacting such individual in that individual's capacity as an employee or an official of an organization and for no other purpose;

"Pre-Closing Tax Period" means any taxation year or fiscal period, as applicable, ending on or before the Closing Date;

"Preliminary Compulsory Payment Amount" has the meaning ascribed thereto in Section 10.10(a);

"Principal Customers" means the 20 largest customers of the Business Entities (on a consolidated basis) determined by gross amounts billed by the Business Entities under Contract or otherwise to their customers during the period beginning January 1, 2015 and ending December 31, 2016;

"Principal Suppliers" means the 20 largest suppliers to the Business Entities (on a consolidated basis) determined by gross amounts paid by the Business Entities to their respective suppliers under Contract or otherwise during the period beginning January 1, 2015 and ending December 31, 2016;

"Purchase Price" has the meaning ascribed thereto in Section 2.2;

"Purchaser" has the meaning ascribed thereto in the recitals to this Agreement;

"Purchaser's Counsel" means Blake, Cassels & Graydon LLP;

"Purchaser Indemnified Parties" means the Purchaser and its respective direct and indirect subsidiaries, officers, directors, shareholders, employees and agents;

"Quarterly Branch Manager Incentive Program" means the "Canwest Propane Manager's Incentive Program" available to Canwest Branch Managers, providing for a potential annual bonus opportunity of up to [REDACTED- Bonus amount: confidential information]% of base salary, details of which have been disclosed to the Purchaser;

"Real Property" means any premises from which the Business Entities operate, conduct or maintain the Business, including the Owned Real Property and the Leased Real Property;

"Recipient" has the meaning ascribed thereto in the definition of "Transferred Information";

"Regulatory Approvals" means the Competition Act Clearance, the BCUC Approval and all other sanctions, rulings, consents, filings, registrations, exemptions, permits and no-action letters, approvals

(including the lapse, without objection, of a prescribed time under a statute or regulation that states that a transaction may be implemented if a prescribed time lapses following the giving of notice without an objection being made) of any Governmental Entity required in order to effect the completion of the Final Transaction in accordance with applicable laws;

"Related Person" means, with respect to any specified person: (i) any affiliate of such specified person, and any director, officer, executive employee, general partner or managing member of such affiliate; (ii) any person who serves or within the past five years has served as a director, officer, executive employee, partner, or in a similar capacity for, such specified person; and (iii) any other person not at arm's length from such specified person as contemplated by the Tax Act;

"Release" means any release, spill, leak, pumping, addition, pouring, emission, emptying, discharge, migration, injection, escape, leaching, disposal, dumping, deposit, spraying, burial, abandonment, incineration, seepage, placement or introduction of a Hazardous Substance, whether accidental or intentional, into the Environment that would constitute a violation of Environmental Law;

"Restraining Order" means an Order pursuant to Section 92, 100 or 104 of the Competition Act that prohibits the completion of the Final Transaction;

"Retained Liabilities" has the meaning ascribed thereto in Section 8.1;

"Retention Bonus Commitment Letters" has the meaning ascribed thereto in Section 3.1(hh)(ii);

"Retention Bonus Payment Obligations" means the Aggregate Initial Retention Payment Obligation defined in and contemplated by the Disclosure Letter;

"Returns" means all reports, forms, elections, designations, schedules, information statements and returns with respect to Taxes, including any amendments, attachments, appendices and exhibits thereto, made, prepared or filed with any Governmental Entity or required to be made, prepared or filed with any Governmental Entity;

"Securities Act" means the *Securities Act*, R.S.A. 2000, c. S-4;

"Seller" has the meaning ascribed thereto in the recitals to this Agreement;

"Seller's Counsel" means Bennett Jones LLP;

"Seller Indemnified Parties" means the Seller and the Business Entities (in the event that the Transaction is not consummated, their affiliates and their respective shareholders, directors, officers, employees and agents, as applicable, but excluding the Business Entities);

"Shareholder Loan" has the meaning ascribed thereto in Section 2.7(b);

"Shortfall Amount" has the meaning ascribed thereto in Section 2.6(d);

"Stittco" means Stittco Energy Limited, a corporation formed pursuant to the laws of Canada;

"Stittco Shares" means all of the shares of each class and every kind and issued in the capital of Stittco, as at the Effective Time, a true and complete listing of which is set out in Exhibit A hereto;

"Stittco Subsidiaries" means, collectively, the following entities:

- (a) Stittco Utilities Man. Ltd.; and
- (b) Stittco Utilities NWT Ltd.;

"**Stittco Subsidiary Shares**" means all of the shares of every class and kind issued and outstanding in the capital of the Stittco Subsidiaries, as at the Effective Time, a true and complete listing of which is set out in Exhibit A hereto;

"**Straddle Period**" has the meaning ascribed thereto in Section 10.9;

"**subsidiary**" has the meaning ascribed thereto in the Securities Act;

"**Superior GP**" has the meaning ascribed thereto in Section 4.1(a);

"**Supply Agreement**" means the supply agreement to be entered into at Closing between the Business Entities and Gibson Gas Liquids Partnership in the form attached hereto as Exhibit F;

"**Target Companies**" means, collectively, Stittco and Canwest ULC, and "**Target Company**" means either of them;

"**Target Entities**" means, collectively, the Target Companies and Canwest Partnership;

"**Target Working Capital Amount**" means fourteen million, two hundred and seventeen thousand dollars (\$14,217,000);

"**Tax**" or "**Taxes**" means all taxes, assessments, charges, dues, duties, rates, fees, imposts, levies and similar charges of any kind lawfully levied, assessed or imposed by any Governmental Entity, including Canada Pension Plan and provincial pension plan contributions and installments, unemployment insurance contributions and employment insurance contributions, worker's compensation and deductions at source, taxes based on or measured by reference to gross receipts, gross income, net income, profits, sales, capital, use and occupation, and including goods and services, harmonized sales, ad valorem, transfer, franchise, withholding, customs, payroll, stamp, recapture, premium, windfall profits, employment, excise and property duties and taxes, together with all interest, penalties, fines and additions imposed with respect to such amounts, and in each case whether disputed or not;

"**Tax Act**" means the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.);

"**Tax Proceeding**" has the meaning ascribed thereto in Section 5.7(d);

"**Terminated Agreement**" has the meaning ascribed thereto in Section 5.10(a)(i);

"**Third Party Liability**" has the meaning ascribed thereto in Section 10.5(b);

"**Transaction**" means the execution and delivery by the Seller of the Option Agreement and the execution and delivery by the Parties of the other documents required pursuant to Article 9;

"**Transaction Expenses**" means all fees and expenses payable by the Business Entities to any person in connection with the negotiation, execution and delivery of this Agreement and the consummation of the Transaction, including: (i) the costs, fees and expenses of investment bankers, legal counsel, accountants, consultants and other advisors; (ii) all sale, retention, change of control or similar bonus payments or benefits to any current or former directors, officers, employees and consultants of any Business Entity triggered by, or paid as a result of or in connection with, the Transaction; and (iii) all fees or other payments

payable by the Business Entities to the Seller or an affiliate of the Seller as a result of or in connection with, the Transaction; but excluding BAR Costs, the amount of the Retention Bonus Payment Obligations and any Transaction Expenses fully satisfied as of the close of business on the day immediately prior to the Closing Date;

"Transferred Information" means the Personal Information to be disclosed or conveyed to a Party or any of its representatives or agents (a **"Recipient"**) by or on behalf of another Party (a **"Disclosing Party"**) as a result of or in conjunction with the Transaction or the Final Transaction, and includes all such Personal Information disclosed to the Recipient prior to the execution of this Agreement; and

"Transferred Lands" has the meaning ascribed thereto in Section 5.12(a)(i);

"Trucking Agreement" means the trucking agreement to be entered into at Closing between the Business Entities and Gibson Energy Partnership in the form attached hereto as Exhibit E.

1.2 Interpretation Not Affected by Headings

The division of this Agreement into Articles and Sections and the insertion of a table of contents and headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement. The terms "hereof", "hereunder" and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles, Sections and Exhibits are to Articles and Sections of and Exhibits to this Agreement.

1.3 Interpretation

In this Agreement words importing the singular number include the plural and vice versa, and words importing any gender include all genders. The term "third party" means any person other than the Parties and their respective affiliates.

1.4 Date for Any Action

If the date on which any action is required to be taken hereunder by a Party is not a Business Day, such action shall be required to be taken on the next succeeding day that is a Business Day.

1.5 Statutory References

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

1.6 Currency

Unless otherwise stated, all references in this Agreement to sums of money are expressed in lawful money of Canada and "\$" refers to Canadian dollars.

1.7 Accounting Principles

All accounting terms used in this Agreement are to be interpreted in accordance with GAAP and all determinations of an accounting nature in respect of the Business Entities required to be made shall be made in a manner consistent with GAAP.

1.8 Knowledge

Where any reference herein is expressly qualified by reference to "the knowledge" of a Party or words to like effect, such qualification shall be deemed to mean:

- (a) in the case of the Target Entities or the Seller, the actual knowledge of the senior officers in their capacity as officers of such entities, as applicable, and the knowledge that each such person would reasonably be expected to have after due enquiry in the course of diligently performing his or her duties as senior officer of such entities;
- (b) in the case of the Purchaser or when made with reference thereto, the actual knowledge of the senior officers of the Purchaser and the knowledge that each such person would reasonably be expected to have after due enquiry in the course of diligently performing his or her duties as a senior officer of the Purchaser.

1.9 Inclusive Terminology

Whenever used in this Agreement, the words "includes" and "including" and similar terms of inclusion will not, unless expressly modified by the words "only" or "solely", be construed as terms of limitation, but rather will mean "includes but is not limited to" and "including without limitation", so that references to included matters will be regarded as illustrative without being either characterizing or exhaustive.

1.10 Interpretation Not Affected by Party Drafting

The Parties acknowledge that their respective legal counsel have reviewed and participated in negotiating, drafting and settling the terms of this Agreement, and the Parties agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting party will not be applicable in the interpretation of this Agreement.

1.11 Governing Law; Waiver of Jury Trial

This Agreement shall be governed, including as to validity, interpretation and effect, by the laws of the Province of Alberta and the federal laws of Canada applicable therein (without reference to conflict of laws principles), and shall be construed and treated in all respects as an Alberta contract. Each of the Parties hereby irrevocably attorns to the exclusive jurisdiction of the courts of the Province of Alberta in respect of all matters arising under and in relation to this Agreement, *provided, however*, that for the purposes of Section 11.2(a), the Parties may enforce equitable remedies in any jurisdiction in which the Purchaser is located, in addition to the Province of Alberta. Each Party hereby waives any right to trial by jury in any action, proceeding or counterclaim (whether based on contract, tort or otherwise) arising out of or relating to this Agreement or the Transaction or the actions of the Parties in the negotiation, administration, performance and enforcement of this Agreement.

1.12 Laws

Whenever used in this Agreement, "**law**" or "**laws**" means all laws (including common law), statutes, by-laws, rules, regulations, principles of law and equity, Orders, rulings, ordinances, judgments, injunctions, determinations, awards, decrees or other requirements, whether domestic or foreign, and the terms and conditions of any grant of approval, permission, authority or license of any Governmental Entity.

1.13 Exhibits

The following Exhibits are annexed to this Agreement and are incorporated by reference into this Agreement and form an integral part hereof:

Exhibit A	–	Share and Partnership Capital
Exhibit B	–	Guarantee
Exhibit C	–	Allocation of Purchase Price
Exhibit D	–	Option Agreement
Exhibit E	–	Trucking Agreement
Exhibit F	–	Supply Agreement
Exhibit G	–	Transferred Lands
Exhibit H	–	Form of Lease Agreement

ARTICLE 2 **ISSUANCE OF OPTION**

2.1 Issuance of Option

On the terms and subject to the fulfillment of the conditions hereof, in consideration of the payment of the Purchase Price by the Purchaser to the Seller, the Seller hereby agrees to grant the Option by executing and delivering the Option Agreement.

2.2 Purchase Price

The aggregate purchase price payable in respect of the execution and delivery by the Seller of the Option Agreement shall be FOUR HUNDRED TWELVE MILLION DOLLARS (\$412,000,000) (the "**Purchase Price**"). The Purchase Price shall be subject to adjustment as set out herein and, the extent to which such Purchase Price relates to the rights to acquire each of the Optioned Securities shall be as set out in Exhibit C.

2.3 Closing Date Payments

At Closing:

- (a) an amount, if any, equal to the Closing Indebtedness (as set out in the Estimated Closing Statement) shall be advanced by the Purchaser as a loan to the applicable Business Entities and, at the direction of such Business Entities shall be paid by the Purchaser directly to the payees thereof pursuant to payout statements to be delivered on or before the Closing Date; and
- (b) the Purchase Price, as adjusted pursuant to Section 2.5(a)(i), 2.5(a)(ii), 2.5(a)(iii) and 2.5(b) in accordance with the Estimated Closing Statement (such net and adjusted amount, the "**Closing Proceeds**"), shall be paid by the Purchaser to the Seller's Counsel, in trust for the Seller.

2.4 Estimated Closing Statement

- (a) The Purchaser and the Seller acknowledge that it will not be possible to conclusively determine the adjustments to the Purchase Price required by Section 2.5 until the Closing Statement is finalized in accordance with Section 2.6. Accordingly, the Purchaser and the

Seller agree that, not less than five (5) Business Days prior to the Closing Date, the Seller shall deliver to the Purchaser:

- (i) a good faith estimate of the adjustments to the Purchase Price set out in Sections 2.5(a)(i) and 2.5(a)(ii), and Section 2.5(b), and the Adjusted Purchase Price based thereon (the "**Closing Purchase Price**"); and
- (ii) with respect to any Closing Indebtedness, a list reflecting the payees thereof, amounts owing thereto and their respective wire transfer instructions;

(the statement reflecting the estimates set out in this Section 2.4(a), the "**Estimated Closing Statement**").

- (b) The estimates and adjustments set out in the Estimated Closing Statement shall be calculated in accordance with GAAP, consistent with past practice, and shall include supporting documentation. The Purchaser shall have the right to review the amounts set out in the Estimated Closing Statement and the Seller and the Target Entities shall provide the Purchaser with access to all relevant documentary backup; *provided, however*, that in the event of a dispute on any given item, the position set out in the Estimated Closing Statement shall govern.

2.5 Purchase Price Adjustments

- (a) The Purchase Price shall be adjusted, on a dollar for dollar basis, as follows:
 - (i) increased by the amount (if any) by which the Net Working Capital as at the Effective Time is greater than the Target Working Capital Amount;
 - (ii) decreased by the amount (if any) by which the Net Working Capital as at the Effective Time is less than the Target Working Capital Amount; and
 - (iii) decreased by the amount of Closing Indebtedness as at the Effective Time.
- (b) The Parties acknowledge that, pursuant to the terms of the Canwest Partnership Agreement, for tax purposes, taxable income for the fiscal year which includes the Closing Date will be allocated to the partners of Canwest Partnership as at the end of such fiscal year, according to each such partner's respective partnership interests at that time. The Parties further acknowledge that (i) Closing will not trigger a fiscal year-end for Canwest Partnership or a taxation year-end for the Business Entities, and (ii) the owner of the Optioned Units, Cal-Gas, as the holder of the Cal-Gas Units, and Canwest ULC, as the holder of the Canwest ULC Units, will for tax purposes be allocated all taxable income of Canwest Partnership for the entire fiscal year during which Closing occurs. Therefore, in addition to the adjustments contemplated by Section 2.5(a), the Purchase Price shall be reduced by the amount of the Interim Canwest Partnership Tax Liability and the Business Entities Straddle Period Tax Liability. For clarity, to avoid duplication, all Liabilities taken into account in calculating the Interim Canwest Partnership Tax Liability and the Business Entities Straddle Period Tax Liability shall be excluded from Liabilities taken into account for the purposes of the calculation of the adjustments contemplated by Section 2.5(a).

2.6 Post-Closing Purchase Price Adjustment Process

- (a) Within ninety (90) days of the Closing Date, the Seller shall prepare and deliver to the Purchaser a statement (the "**Closing Statement**") which sets out the adjustments to the Purchase Price referred to in Section 2.5 above, and which sets out a breakdown of the calculation of Net Working Capital and Closing Indebtedness among each of Stittco, Cal-Gas, Canwest ULC and Canwest Partnership. The methodology and assumptions used by the Seller to prepare the Closing Statement shall be consistent with the methodology used and assumptions made by the Target Entities in the preparation of the Annual Financial Statements, provided that such methodology and assumptions are in accordance with GAAP and provided further that in the event of an inconsistency between GAAP and the application in prior periods, that GAAP shall take precedence.
- (b) The Purchaser shall have thirty (30) days from the date they receive the Closing Statement to review the Closing Statement and to inform the Seller in writing of any disagreement with the Closing Statement (a "**Closing Statement Objection**"). If the Purchaser does not deliver a Closing Statement Objection to the Seller within such 30-day period, the Closing Statement shall be deemed to have been accepted by the Purchaser and shall become final and binding upon the Parties. If a Closing Statement Objection is delivered within such 30-day period, the Seller shall then have thirty (30) days from the time the Closing Statement Objection is received to review and respond to the Closing Statement Objection. If the Purchaser and the Seller are unable to resolve their disagreement(s) with respect to the Closing Statement within five (5) days following the foregoing 30-day period, then such disagreement shall be submitted to an Independent Accountant. The Independent Accountant shall, as promptly as practicable (but in any event within forty-five (45) days following its appointment), make a determination on the disputed elements of the Closing Statement based solely on written submissions submitted by the Purchaser and the Seller to the Independent Accountant. The decision of the Independent Accountant as to the Closing Statement shall, absent manifest error, be final and binding upon the Purchaser and the Seller and shall constitute the Purchase Price (as adjusted in accordance with the terms of this Agreement) for purposes of this Agreement. The Purchaser shall pay one-half of the fees, expenses and GST of the Independent Accountant with respect to the resolution of any such dispute and the Seller shall pay the balance.
- (c) Upon acceptance of the Closing Statement by the Purchaser and the Seller, or a final determination pursuant to Section 2.6(b) hereof (a "**Final Determination**"), if the Purchase Price, as finally adjusted in accordance with the provisions hereof (the "**Adjusted Purchase Price**"), is greater than the Closing Purchase Price, then the Purchase Price shall be increased, dollar for dollar, by the amount by which the Adjusted Purchase Price exceeds the Closing Purchase Price, and the Purchaser shall, within three (3) Business Days of the Final Determination, pay in cash, to the Seller's Counsel in trust for the Seller, the amount of such difference.
- (d) Upon acceptance of the Closing Statement by the Purchaser and the Seller or a Final Determination, if the Adjusted Purchase Price is less than the Closing Purchase Price (the amount of such difference, the "**Shortfall Amount**"), then the Purchase Price shall be decreased, dollar for dollar, by the Shortfall Amount, and the Seller shall, within three (3) Business Days of the determination of the Adjusted Purchase Price in accordance with this Section 2.6, pay in cash, to the Purchaser's Counsel in trust for the Purchaser, the amount of such difference.

2.7 Purchase Price Allocation

- (a) The extent to which the Purchase Price relates to the rights to acquire each of the Optioned Securities pursuant to the Option shall be as set out in Exhibit C hereto (which Exhibit allocates the Purchase Price before any adjustments pursuant to Section 2.5). Adjustments to the Purchase Price as per the Final Determination shall be allocated among the rights to acquire the Optioned Securities (and the amounts set out in Exhibit C shall be adjusted) as follows:
- (i) the Target Working Capital Amount was derived as an aggregate based on Stittco and the Stittco Subsidiaries collectively having aggregate Target Working Capital Amount of three million eight hundred thirty one thousand five hundred seventeen dollars (\$3,831,517), Cal-Gas and Canwest ULC collectively having aggregate Target Working Capital Amount of negative two hundred fifty eight thousand one hundred eight dollars (\$-258,108), and Canwest Partnership having aggregate Target Working Capital Amount of fourteen million two hundred seventeen thousand dollars (\$14,217,000). To the extent that the Net Working Capital for each (i) of Stittco, and (ii) Cal-Gas and Canwest ULC, as set out in the Final Determination, is less or greater than their respective Target Working Capital Amount, the Purchase Price allocation set out in Exhibit C in respect of the Stittco Shares and the Canwest Shares shall be adjusted on a dollar-for-dollar basis with reference to the finally determined Net Working Capital of (i) Stittco and the Stittco Subsidiaries collectively; and (ii) Cal-Gas and Canwest ULC; respectively. To the extent that the Net Working Capital for Canwest Partnership, as set out in the Final Determination, is less or greater than the Target Working Capital Amount for Canwest Partnership, the difference shall be allocated 70% to the Optioned Units, and 30% to the Canwest Shares;
 - (ii) any reduction to the Purchase Price for Closing Indebtedness of each of (i) Stittco; and (ii) Cal-Gas and Canwest ULC; shall be allocated to the Stittco Shares and the Canwest Shares, respectively;
 - (iii) any reduction to the Purchase Price for Closing Indebtedness of Canwest Partnership shall be allocated 70% to the Optioned Units and 30% to the Canwest Shares;
 - (iv) any reduction to the Purchase Price for the Business Entities Straddle Period Tax Liability shall be allocated among the Stittco Shares and the Canwest Shares, as applicable; and
 - (v) any reduction to the Purchase Price for Interim Canwest Partnership Tax Liability shall be allocated 70% to the Optioned Units and 30% to the Canwest Shares.
- (b) As at the Execution Date, Canwest ULC has loans owing to the Seller (any and all such loans, the "**Shareholder Loan**"). The aggregate unpaid principal and accrued interest of Canwest ULC pursuant to the Shareholder Loan as of the Effective Time does not exceed \$[REDACTED- Quantum of loan: confidential information]. Prior to the Closing Date:
- (i) loan obligations owing by the Seller to Canwest ULC will be off-set against the amount of the Shareholder Loan;

- (ii) the remaining amount of the Shareholder Loan will be contributed by the Seller to the capital of the Canwest Shares, without the issuance of additional shares; and
 - (iii) the Shareholder Loan shall thereby be deemed to have been fully repaid and cancelled.
- (c) The Seller and the Purchaser shall file their respective Returns based upon and in accordance with such allocation and will not make any inconsistent statements or take any inconsistent positions on any Returns or in any refund claims or during the course of any audits by any taxing authorities.

2.8 Non-Competition Agreement

- (a) Other than as expressly contemplated by this Agreement and the Option Agreement, and without restricting activities to be expressly permitted by the Non-Competition Agreement (as defined in the Option Agreement) the Seller shall not, and shall ensure that its affiliates (other than the Business Entities) do not, either directly or indirectly, in any capacity whatsoever, carry on, be engaged in, assist, lend money to, invest in, act as a shareholder of, guarantee the debts or obligations of, service, consult for, represent, advise, acquire control of, permit Seller's or any of its affiliate's names or any parts thereof to be used or employed by, or be otherwise commercially or financially involved in, the Business or any business (or any part thereof) which is similar to or competes with the Business or any part thereof anywhere in Canada, at any time prior to completion of the Final Transaction.
- (b) The Seller acknowledges and confirms that: (i) concurrently with the Option Closing, the Seller will, and will cause Gibson Energy Inc. to, execute and deliver the Non-Competition Agreement; (ii) it will receive substantial financial benefit from the completion of the Transaction; (iii) any other consideration that would otherwise be paid in consideration for the Non-Competition Agreement has been paid to the Seller in connection with the purchase and sale of the Option pursuant to this Agreement; and (iv) the Purchaser would not have completed the Transaction without the covenant of the Seller in the Option Agreement to execute and deliver the Non-Competition Agreement concurrently with the Option Closing.
- (c) The Parties intend that the conditions set out in subsection 56.4(7) of the Tax Act have been met such that subsection 56.4(5) of the Tax Act applies to any "restrictive covenants" (as defined in subsection 56.4(1) of the Tax Act) granted by the Seller pursuant to Section 2.8(a) or the Non-Competition Agreement (the "**Non-Competition Covenants**"). For greater certainty, the Parties agree and acknowledge that: (i) for the purposes of paragraph 56.4(7)(d) of the Tax Act, other than \$1, no proceeds in respect of the Purchase Price and no proceeds received by the Seller in respect of the Option Closing shall be attributable, allocable, received or receivable by the Seller in respect of the Non-Competition Covenants; and (ii) the Non-Competition Covenants are integral to this Agreement and the Option Agreement, and have been granted to maintain or preserve the Business and the fair market value of the Option and the Optioned Securities.

ARTICLE 3
REPRESENTATIONS AND WARRANTIES OF THE SELLER

3.1 Representations and Warranties regarding Business Entities

The Seller represents and warrants to and in favor of the Purchaser that as of the Execution Date and as of the Effective Time, except to the extent such representations and warranties speak as of a specific date (in which case such representations and warranties are made only as of that specific date):

- (a) Authority Relative to this Agreement. Each Target Entity has the requisite corporate power and authority to enter into this Agreement and any agreement ancillary hereto and to carry out its obligations hereunder and thereunder. The execution and delivery of this Agreement by the Target Entities and the consummation by the Target Entities of the Transaction have received all necessary organizational approval of each Target Entity, and no other corporate proceedings on its part are necessary to authorize the execution and delivery by it of this Agreement or any agreement ancillary hereto (other than the Option Agreement) and the consummation by it of the Transaction. This Agreement has been duly executed and delivered by each Target Entity and constitutes a legal, valid and binding obligation of it enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws relating to or affecting creditors' rights generally and to general principles of equity.
- (b) Approvals. No Business Entity is under any material obligation, contractual or otherwise, to notify, request or obtain the consent of any person and no authorizations of, or notifications to, any Governmental Entity are required to be obtained by it, in connection with the execution, delivery or performance of this Agreement or any other agreement to be entered into pursuant to this Agreement (other than the Option Agreement) or, subject to obtaining the Competition Act Clearance and the BCUC Approval, the Final Transaction.
- (c) Compliance with Agreements and Laws. The execution, delivery and performance of this Agreement and any other agreement contemplated hereby to be entered into (other than the Option Agreement) by the Seller and the Business Entities, and the completion of the Transaction or the Final Transaction, will not (i) constitute or result in any violation or breach or default under, any contract to which a Business Entity or the Seller is a party or by which any Business Entity is bound, or any law applicable to a Business Entity or the Seller or (ii) create any Encumbrance or result in the enforcement of any Encumbrance under, any contract to which a Business Entity or the Seller is a party or by which any Business Entity is bound, or any law applicable to a Business Entity or the Seller.
- (d) Organization and Qualification of the Business Entities.
 - (i) Each Business Entity is a corporation or partnership, as applicable, duly organized and validly existing under the laws of its jurisdiction of incorporation or formation, and has the requisite power and authority, as applicable, to own its respective assets as now owned and to carry on its respective businesses as it is now being conducted. Each Business Entity is duly registered to do business, and each is in good standing (to the extent such concept applies in such jurisdiction), in each jurisdiction in which the character of its properties and assets, owned, leased, licensed or otherwise held, or the nature of its activities makes such registration or

authorization necessary, except where the failure to be so registered or in good standing is immaterial to the Business Entities;

- (ii) Canwest Partnership, and the rights and obligations of the partners of Canwest Partnership in respect of Canwest Partnership, are governed by the Canwest Partnership Agreement.
- (e) Authorized and Issued Capital.
- (i) The authorized and issued capital of each Business Entity is as set out in Exhibit A hereto.
 - (ii) The Optioned Shares represent all the issued and outstanding shares in the capital of the Target Companies.
 - (iii) The Optioned Units represent 70% of the issued and outstanding units of Canwest Partnership. The Cal-Gas Units represent 27% of the issued and outstanding units of Canwest Partnership. The Canwest ULC Units represent 3% of the issued and outstanding units of Canwest Partnership. The Optioned Units, the Cal-Gas Units and the Canwest ULC Units collectively constitute all of the issued and outstanding units of Canwest Partnership.
 - (iv) The Stittco Subsidiary Shares represent all the issued and outstanding shares in the capital of the Stittco Subsidiaries.
 - (v) All of the Optioned Shares, Stittco Subsidiary Shares and Canwest Units have been duly authorized and issued in compliance with all applicable laws including, without limitation, applicable securities laws and in compliance with the articles of incorporation, by-laws or other constating documents of the applicable issuer or any Contract to which any Business Entity is a party, or by which it is bound.
 - (vi) The Target Entities have no subsidiaries, other than the Stittco Subsidiaries, and the Business Entities have no interest in any other partnership, corporation or other business organization.
- (f) Title to Shares. The Seller is the registered and beneficial owner of the Optioned Securities, free and clear of Encumbrances. Canwest ULC is the registered and beneficial owner, free and clear of Encumbrances, of the Cal-Gas Shares and the Canwest ULC Units. Cal-Gas is the registered and beneficial owner, free and clear of Encumbrances, of the Cal-Gas Units. Stittco is the registered and beneficial owner of all of the Stittco Subsidiary Shares, free and clear of Encumbrances.
- (g) Capitalization of the Business Entities. There are no options, warrants, purchase rights, subscription rights, conversion privileges, exchange rights or pre-emptive rights or other rights, agreements, arrangements or commitments of a similar nature to which the Seller or any Business Entity is bound relating to the outstanding or unissued share capital or partnership capital of such Business Entity, as applicable, or obligation to issue any shares or units of, or other equity interest in, any Business Entity or securities or obligations of any kind convertible into or exchangeable for any shares or units of any Business Entity, nor are there any outstanding stock appreciation rights, phantom equity or similar rights, agreements, arrangements or commitments based upon the book value, income or any other attribute of any Business Entity. There are no outstanding bonds, debentures or other

evidences of Indebtedness of any Business Entity having the right to vote (or that are convertible for, exercisable into or exchangeable for securities having the right to vote) on any matter on which the holders of shares may vote.

- (h) Shareholder Agreements, etc. There are no investor rights agreements, shareholder agreements, pooling agreements, voting trusts or other similar agreements (other than the Canwest Partnership Agreement) with respect to the ownership or voting of any of the shares or units in the capital of the Business Entities and no person has the right, directly or indirectly, to acquire shares or units in the capital of the Business Entities.
- (i) Customer Relations. The Disclosure Letter sets out the identity of the Principal Customers and the aggregate amount which each Principal Customer was invoiced over the twelve (12) calendar months preceding the Execution Date. Other than as set out in the Disclosure Letter, as of the Execution Date, the Business Entities have not received any notice that any Principal Customer intends to cancel, terminate or otherwise modify in any manner materially adverse to the Business Entities or not continue its relationship with any Business Entity. As of the Execution Date, no Principal Customer has provided notice to any Business Entity that it will stop or materially decrease the rate of buying services from any Business Entity. To the knowledge of the Target Entities as of the Execution Date, no Principal Customer has threatened to cancel, terminate or otherwise modify in any manner materially adverse to the Business Entities or not continue its relationship with any Business Entity as a result of the Transaction or the Final Transaction. As of the Execution Date, there are no unresolved disputes with any Principal Customer. The products manufactured, distributed, delivered or sold, or services performed by, the Business Entities meet all requirements of applicable law and meet the specifications in all Contracts with customers of the Business Entities relating to the sale of such products. Except as set out in the Disclosure Letter, there are no warranty Claims (in each case whether based in contract or otherwise) pending or, to the knowledge of the Target Entities, threatened, against the Business Entities and, to the knowledge of the Target Entities, no facts or circumstances exist that could reasonably be expected to form the basis of any warranty Claim against the Business Entities.
- (j) Supplier Relations. The Disclosure Letter sets out the identity of the Principal Suppliers and the aggregate amount which each Principal Supplier invoiced the Business Entities over the twelve (12) calendar months preceding the Execution Date. As of the Execution Date, the Business Entities have not received any notice that any Principal Supplier intends to cancel, terminate or otherwise modify in any manner materially adverse to the Business Entities or not continue its relationship with any Business Entity. Except as set out in the Disclosure Letter, as of the Execution Date, no Principal Supplier has provided notice to any Business Entity that it will stop or materially alter the rate of supplying products or services to any Business Entity. To the knowledge of the Target Entities as of the Execution Date, no Principal Supplier has threatened to cancel, terminate or otherwise modify in any manner materially adverse to the Business Entities or not continue its relationship with any Business Entity as a result of the Transaction or the Final Transaction. As of the Execution Date, there are no unresolved disputes with any Principal Supplier.
- (k) Material Contracts. All Material Contracts in effect as of the Execution Date have been disclosed in writing to the Purchaser and: (A) such Material Contracts are valid and binding obligations of the applicable Business Entity and, to the knowledge of the Target Entities, any other party to such Material Contract, subject in each case, to bankruptcy, insolvency,

fraudulent transfer, reorganization, moratorium and other laws relating to or affecting creditors' rights generally and to general principles of equity; (B) each Business Entity has performed, in all material respects, all respective obligations required to be performed by it to date under such Material Contracts and no Business Entity is in material breach or material default under any such Material Contract, nor, to the knowledge of the Target Entities as of the Execution Date, is there any condition that with the passage of time or the giving of notice or both would result in such a material breach or material default by any Business Entity under any such Material Contract or to the knowledge of the Target Entity by any other person; and (C) except as set out in the Disclosure Letter, as of the Execution Date no Business Entity has received any notice (whether written or oral) of any material breach or material default under any Material Contract or of any party seeking to renegotiate the terms of such Material Contract nor, to the knowledge of the Target Entities as of the Execution Date, does there exist as of the Execution Date any condition which with the passage of time or the giving of notice or both could result in such a material breach or material default under any such Material Contract by any other party to a Material Contract.

- (l) Change of Control. Except as set out in the Disclosure Letter, no Material Contract includes any change of control provision or other provisions which would require the consent of any person, or a payment by a Business Entity to any person, in connection with the Transaction or the Final Transaction.
- (m) No Guarantees. Except as set out in the Disclosure Letter, other than: (i) the indemnification of directors and officers of any Business Entity pursuant to applicable laws or their respective corporate by-laws; and (ii) customary indemnities in favour of the Business Entities' bankers or financial advisors (each as set out in the Disclosure Letter), the Business Entities have not guaranteed, endorsed, assumed, indemnified or accepted any responsibility for, and do not and will not guarantee, endorse, assume, indemnify or accept any responsibility for, contingently or otherwise, any Indebtedness or the performance of any material obligation of any other person (excluding other Business Entities).
- (n) Non-Arm's Length Transactions. (i) No Business Entity is indebted to: (A) any director, officer or employee of, or consultant to, any Business Entity; (B) the Seller (other than the Indebtedness of Canwest ULC to the Seller under the Shareholder Loan); (C) any affiliate or associate of any of the foregoing persons; or (D) any other person not dealing at arm's length with the Business Entities (except for amounts due for salaries, bonuses, vacation pay, reimbursement of ordinary expenses, directors' fees in the Ordinary Course of Business and amounts owing between Business Entities or between the Seller and a Business Entity); and (ii) no director, officer, employee or agent of the Business Entities or any of its respective affiliates, associates or any other person not dealing at arm's length with the Business Entities is a party to any loan, Contract, arrangement or understanding or other transaction with the Business Entities that is material to the Business Entities on a consolidated basis (except for employment-related Contracts and amounts owing between Business Entities).
- (o) Distributions. Subject to applicable laws relating to solvency requirements, except as required by the Option Agreement, no Business Entity is prohibited, directly or indirectly, from paying any distributions, dividends or interest payments, from making any other distribution on such Business Entity's share capital or other ownership interest, from repaying any notes, loans or advances to such Business Entity or from transferring any of such Business Entity's property or assets.

- (p) No Violations. Except as permitted or contemplated by this Agreement, none of the execution and delivery of this Agreement, the consummation of the Transaction or the Final Transaction or compliance with any of the provisions hereof by the Seller or the Business Entities will:
- (i) violate, conflict with, or result in a breach of any provision of, require any consent, approval or notice under, or constitute a default (or an event which with or without notice or lapse of time or both, would constitute a default) under: (A) the respective articles of incorporation, amalgamation or association, by-laws or other comparable formation or organizational documents of the Business Entities; (B) any Permit material to the Business Entities, taken as a whole, or the Business; or (C) any Material Contract;
 - (ii) (A) violate in any material way any law applicable to any Business Entity or any of their respective properties or assets (subject to obtaining the Competition Act Clearance and the BCUC Approval in connection with the Final Transaction) or (B) cause the suspension or revocation of any material Permit currently in effect; or
 - (iii) result in any material restriction on any Business Entity from engaging in its respective business, as now conducted, or from competing with any person or in any geographical area and does not and will not trigger or cause to arise any rights of any person under any Contract to restrict any Business Entity from engaging in their respective businesses, as now conducted.
- (q) Compliance with Laws. Each Business Entity has complied with and is not in violation of any applicable laws, in each case, in all material respects.
- (r) Financial Statements. The Gibson Financial Statements have been prepared in accordance with GAAP and are true, correct and complete and fairly represent in all material respects and to the extent required by GAAP: (i) the assets, liabilities (whether accrued, absolute, contingent, matured or unmatured or otherwise) and financial condition of Gibson Energy Inc. as at the respective dates thereof; and (ii) the revenues, earnings and results of operations of Gibson Energy Inc. for the respective periods covered thereby, except as may be indicated in the notes thereto.
- (s) Compliance with Certain Laws. None of the Business Entities nor any director or officer, or, to the knowledge of the Target Entities, employee, agent or other person acting on behalf of the Business Entities has: (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; (ii) made any direct or indirect unlawful payment to any foreign or domestic governmental official from corporate funds; (iii) violated or is in violation of any provision of the *U.S. Foreign Corrupt Practices Act of 1977*, the *Corruption of Foreign Public Officials Act (Canada)* or any other law, rule or regulation of similar purpose and scope; or (iv) made any unlawful bribe, rebate, payoff, influence payment, kickback or other unlawful payment.
- (t) No Undisclosed Liabilities. Except as set out in the Disclosure Letter or reflected, disclosed or reserved against in the most recent Annual Financial Statement, since the date of the most recent Annual Financial Statements, none of the Business Entities have

incurred any Liabilities (including Indebtedness), except in the Ordinary Course of Business.

- (u) Off-Balance Sheet Arrangements. No Business Entity is a party to any off-balance sheet arrangements, as that term is understood under GAAP.
- (v) Accounts Receivable. (i) The Accounts Receivable of the Business Entities arose from *bona fide* transactions in the Ordinary Course of Business and reflect appropriate reserves for bad debts and uncollectible accounts determined in accordance with past practice and GAAP; and (ii) no Business Entity is subject to any set-off against such Accounts Receivable for which reserves have not been established in accordance with GAAP.
- (w) Minute Books and Records. Each Business Entity's corporate and other books and records and minute books have been maintained in compliance with applicable laws and are complete and accurate in all material respects.
- (x) Absence of Certain Changes.

Since the date of the most recent Annual Financial Statements, each Business Entity has conducted its business in the Ordinary Course of Business, and, in particular, but without limitation, except as set out in the Disclosure Letter or expressly provided for in this Agreement, none of the Business Entities have:

- (1) amended its articles or by-laws or similar document adopted or filed in connection with the creation, formation or organization of the Business Entity;
- (2) except as contemplated by Section 5.12, issued or sold any shares, units or other securities or issued, sold or granted any option, warrant or right to purchase any of its shares, units or other securities or issued any security convertible into its shares or units, granted any registration rights or otherwise made any change to its authorized or issued share or equity capital;
- (3) disposed of any of the assets reflected on the balance sheet forming part of the most recent Annual Financial Statements, except sales of inventory or assets that are not material to the Business in the Ordinary Course of Business;
- (4) made any changes in its accounting principles, policies, practices or methods;
- (5) suffered any extraordinary loss;
- (6) mortgaged, pledged, granted a security interest in or otherwise created an Encumbrance on any of its property or assets, except in the Ordinary Course of Business and in amounts which, individually and in the aggregate are not material to the financial condition of the Business Entities, taken as a whole, or to the operation of the Business;
- (7) cancelled or waived any Indebtedness, Claim or other right with a value to the Business Entities in excess of \$250,000;
- (8) incurred any uninsured damage, destruction or loss with respect to any of the assets or properties of any Business Entity in excess of \$750,000;

- (9) made any capital expenditure or authorized any capital expenditure or made any commitment for the purchase, construction or improvement of any capital assets except in the Ordinary Course of Business;
 - (10) entered into any Contract or commitment to hire any officer or senior management employee, or terminated the services of: (A) any Business Employee who is an officer or senior management employee; or (B) other than as has been agreed to by the Purchaser, any employee employed by the Seller who is utilized predominantly in respect of the Business; or
 - (11) agreed, committed or entered into any understanding to take any actions enumerated in paragraphs (i) to (xi) of this Section 3.1(x).
- (y) Litigation. Except as disclosed in the Disclosure Letter, there are no Claims or other civil, criminal, administrative or investigative proceedings, or other investigations or examinations (collectively, "**Legal Actions**") pending or, to the knowledge of the Target Entities, threatened, against any Business Entity and, to the knowledge of the Target Entities, no facts or circumstances exist that could reasonably be expected to form the basis of a Legal Action against: (i) any Business Entity or against any of their respective properties or assets at law or in equity or by any Governmental Entity; or (ii) any director or officer of any Business Entity. Without limiting the generality of the foregoing, except as disclosed in the Disclosure Letter, there is no Legal Action involving any product liability Claim in progress, pending or, to the knowledge of the Target Entities, threatened against or affecting the Business Entities alleging any defect in, or failure to warn concerning any risks or damages inherent in, the design or manufacture of or the materials used in any of the products manufactured or distributed by or for any of the Business Entities. None of the Business Entities nor any Business Assets are subject to any outstanding judgment, Order, writ, injunction or decree.
- (z) Taxes.
- (i) Except as disclosed in the Disclosure Letter, each Business Entity has: (A) duly and timely filed, or caused to be filed, all Returns required to be filed by it prior to the Execution Date (taking into account any valid extension of the due date for filing), other than those which have been administratively waived, and all such Returns are true, complete and correct in all material respects and have not been amended except as set out in the Disclosure Letter; (B) paid on a timely basis, all Taxes and all assessments and reassessments of Taxes due on or before the Execution Date, other than Taxes which are being or have been contested in good faith and for which adequate accruals have been provided in the Financial Statements and which do not give rise to any Encumbrance other than a Permitted Encumbrance; (C) duly and timely withheld, or caused to be withheld, all Taxes required by applicable laws to be withheld by it (including Taxes and other amounts required to be withheld by it in respect of any amount paid or credited or deemed to be paid or credited by it to or for the account of any person, including any present or former employees, officers or directors and any persons who are non-residents of Canada for the purpose of the Tax Act) and duly and timely remitted, or caused to be remitted, to the appropriate taxing authority such Taxes required by applicable laws to be remitted by it; and (D) duly and timely charged and collected, or caused to be charged and collected, any sales or transfer taxes, including GST, harmonized sales and provincial or territorial sales taxes, required

by applicable laws to be charged and collected by it and duly and timely remitted, to the appropriate taxing authority any such amounts required by applicable laws to be remitted by it.

- (ii) Except as set out in the Disclosure Letter, to the knowledge of the Target Entities or the Seller and as of the Execution Date: (A) there are no audits, investigations, proceedings, assessments or reassessments in progress, pending or threatened by any Governmental Entity with respect to Taxes against or with respect to any Business Entity; and (B) there are no deficiencies, litigation, assessments, reassessments, proposed adjustments or matters in controversy with respect to any amount of Taxes that have been asserted or have been raised by any Governmental Entity which remain unresolved at the Execution Date.
- (iii) There are currently no effective elections, agreements or waivers extending the statutory period or providing for an extension of time with respect to the assessment or reassessment of any amount of Taxes of, or the filing of any Return or any payment of any amount of Taxes by, any Business Entity.
- (iv) No written Claim has been made in the preceding three (3) years, or to the knowledge of the Business Entities or the Seller at any time, by any Governmental Entity in a jurisdiction where the Business Entities do not file Returns that any Business Entity is or may be subject to taxation by, or required to file any Return in, that jurisdiction.
- (v) Except as set out in the Disclosure Letter, no Business Entity is a party to any indemnification, allocation or sharing agreement with respect to Taxes that could give rise to a payment or indemnification obligation after Closing (other than agreements among Business Entities as disclosed in the Disclosure Letter).
- (vi) Except as set out in the Disclosure Letter, no amount in respect of any outlay or expense that is deductible for the purposes of computing the income of any Business Entity for Tax purposes has been owing by any Business Entity, as the case may be, for longer than two (2) years to a person not dealing at arm's length (for the purposes of the Tax Act) with the Business Entity at the time the outlay or expense was incurred.
- (vii) Except as disclosed in the Disclosure Letter, there are no circumstances which have resulted in, sections 79 to 80.04 of the Tax Act applying with adverse consequences to any Business Entity.
- (viii) Each Business Entity that carries on business in Canada is duly registered under the ETA for GST purposes.
- (ix) None of the Business Entities has acquired property from a person not dealing at arm's length (for purposes of the Tax Act) with it in circumstances that would result in such Business Entity becoming liable to pay Taxes of such person under subsection 160(1) of the Tax Act or any analogous provision of any comparable law of any province or territory of Canada.

(aa) Intellectual Property.

- (i) The Business Entities directly or indirectly own or possess the right to use all of the Intellectual Property necessary for the current operation of the Business.
- (ii) No Business Entity has received any written notice from any person, nor acted in any manner that would give rise to a Claim that: (A) the past or present conduct by any Business Entity of its respective businesses or the use of the Intellectual Property has resulted or shall result in the infringement or violation of any Intellectual Property owned by any person; or (B) challenging the validity or ownership of the Intellectual Property.
- (iii) To the knowledge of the Target Entities, the Intellectual Property is not being and has not been infringed, violated or misappropriated by any other person.
- (iv) All commercially reasonable steps have been taken to protect and maintain the Intellectual Property (including any trade secrets or confidential information therein).

(bb) Real Property.

- (i) With respect to the Leased Real Property:
 - (1) as at the Execution Date, the applicable Business Entity has good and marketable leasehold title to all Leased Real Property (except Leased Real Property which is leased, subleased or licensed to others by any Business Entity as specifically identified in the Disclosure Letter) and following the Closing Date, the applicable Business Entity shall have good and marketable leasehold title to all Leased Real Property (except Leased Real Property which is leased, subleased or licensed to others by any Business Entity as specifically in the Disclosure Letter), free and clear of all Encumbrances except for Permitted Encumbrances;
 - (2) each of the Leases is valid, legally binding, enforceable in accordance with its terms and in full force and effect unamended by oral or written agreement except as disclosed in writing, true and complete, and no Business Entity is in material breach of or material default under any of the Leases;
 - (3) all rental and other payments and other obligations required to be paid and performed by any of the Business Entities pursuant to the Leases have been duly paid and performed;
 - (4) no third party has repudiated or has the right to terminate or repudiate any of the Leases or any provision thereof, except in accordance with the terms of the relevant Lease; and
 - (5) none of the Leases has been assigned by any Business Entity.
- (ii) To the knowledge of the Target Entities, no counterparty to any of the Leases is in material breach or material default thereunder.

- (iii) The Disclosure Letter sets out a complete and accurate list of all of the Leases in respect of all Leased Real Property, of which copies of applicable Leases or, if there is no written lease agreement, descriptions of the terms thereof, including all amendments thereof, have been disclosed in writing to the Purchaser.
 - (iv) The Disclosure Letter sets out registerable legal descriptions and municipal addresses of all Owned Real Property, together with the name of the Business Entity that is the owner thereof. As at the Execution Date, the applicable Business Entity is the beneficial owner of, and has good and marketable title in fee simple to, such Owned Real Property. Following the Closing Date, one or more Business Entities shall be the legal and beneficial owners of, and will have good and marketable title in fee simple to, such Owned Real Property, free and clear of all Encumbrances, except for Permitted Encumbrances.
 - (v) Except for reasonable wear and tear, all buildings, structures, improvements and appurtenances situated on the Real Property are in good operating condition and in a state of good maintenance and repair and are adequate and suitable for the purposes for which they are currently being used. None of such buildings, structures, improvements or appurtenances, nor the operating or maintenance thereof, violates any restrictive covenant or any provision of any applicable law, or encroaches on any property owned by others, and there are no encroachments onto the Real Property by a property owned by others, except for violations or encroachments that are not material.
 - (vi) To the knowledge of the Business Entities and the Seller, there are no existing or proposed expropriation proceedings that would result in the taking of all or any part of the Owned Real Property or that would materially adversely affect the current use of the Owned Real Property or any part of them.
 - (vii) There are no local improvement charges or special levies outstanding in respect of the Owned Real Property.
 - (viii) To the knowledge of the Business Entities and the Seller, all utilities required for the operation of the Business in the Ordinary Course of Business from the Owned Real Property connect into the Owned Real Property through adjoining public highways or, if they pass through adjoining private land, do so in accordance with valid registered easements and are sufficient for the operation of the Owned Real Property for purposes of the Business.
 - (ix) Each parcel of the Owned Real Property has full and free legally enforceable access to and from public highways, which access is sufficient for the purposes of the Business in the Ordinary Course of Business.
 - (x) The Owned Real Property is zoned so as to permit its current use.
- (cc) Personal Property.
- (i) With respect to the Owned Personal Property:
 - (1) as at the Execution Date, the applicable Business Entity has good and marketable title to all Owned Personal Property, and following the Closing Date, the applicable Business Entity shall have good and marketable title

to all Owned Personal Property, free and clear of any Encumbrances other than Permitted Encumbrances; and

- (2) there are no outstanding options or rights of first refusal to purchase any of the Owned Personal Property from the Business Entities, or any portion thereof or interest therein.
- (ii) With respect to the Leased Personal Property:
- (1) the lease or sublease agreement, as each may have been amended or extended from time to time in accordance with its respective terms, as applicable, for such property is valid, legally binding, enforceable and in full force and effect and, to the knowledge of the Target Entities, no Business Entity is in material breach of or material default under any such lease or sublease;
 - (2) no third party has repudiated or, to the knowledge of the Target Entities, has the right to terminate or repudiate any applicable lease or sublease agreement (except in the Ordinary Course of Business, for the normal exercise of remedies in connection with a default thereunder or any termination rights set out in the lease or sublease) or any provision thereof; and
 - (3) none of the applicable leases or subleases have been assigned by any Business Entity in favour of any third party. To the knowledge of the Target Entities, no counterparty to any lease or sublease agreement referred to above is in material default thereunder, nor are there any Encumbrances which shall survive Closing, other than Permitted Encumbrances, on the leasehold or subleasehold of any Business Entity to any material Leased Personal Property.
- (dd) Permits. The Business Entities have obtained, and are in material compliance with, all Permits required by applicable laws necessary to engage in their respective businesses, as now conducted, except where the failure to have obtained, or to have complied with, such Permits would not be material to the Business Entities, taken as a whole, and no such Permits will be impaired or otherwise adversely affected by the entering into of this Agreement or the consummation of the Transaction or the Final Transaction.
- (ee) No Restrictions on Business Activities. Other than confidentiality agreements or non-disclosure agreements executed in the Ordinary Course of Business as set out in the Disclosure Letter, and other than pursuant to the terms of the Option Agreement, no Business Entity is a party to or bound or affected by any Contract, judgment, injunction, Order, decree or document binding upon any Business Entity containing any covenant expressly and materially prohibiting, restricting or limiting its freedom or ability to: (i) compete in any line of business or geographic region; (ii) transfer or move any of its material assets or operations; (iii) conduct any material business practice of any Business Entity as now conducted; or (iv) effect any material acquisition of property by any Business Entity (including following the Transaction and the Final Transaction).
- (ff) Insurance. The Disclosure Letter sets out all policies of insurance providing coverage to the Business Entities or under which their Business is covered. All such insurance policies

are in full force and effect and are in good standing and none of the Business Entities are in default, whether as to payment of premium or otherwise, under the terms of any such insurance policies nor have the Business Entities failed to give any notice or present any material Claim under any such insurance policies in a timely fashion or received notice or otherwise become aware of any intent of an insurer to either claim any default on the part of the Business Entities or not to renew any policy of insurance on its expiry or to increase any deductible or cost. The Disclosure Letter sets forth and describes all pending Claims under any such insurance policies and identifies the most recent inspection reports, if any, received from insurance underwriters as to the condition or insurance value of the insured property and assets, copies of which have been disclosed in writing. To the knowledge of the Target Entities, there are no circumstances or occurrences which would or might form the basis of a material increase in premiums for the current insurance maintained by the Business Entities.

(gg) Environmental Matters. Except as set out in the Disclosure Letter:

- (i) Each Business Entity has materially complied with and is not in material violation of any Environmental Laws.
- (ii) There has been no Release of any Hazardous Substance by any Business Entity at any Real Property in quantities or under circumstances that would require material investigation or remedial action pursuant to applicable Environmental Laws. No part of the Real Property or other assets of the Business Entity contains a Hazardous Substance other than in compliance with Environmental Laws.
- (iii) There are no actual or pending material Claims or, to the knowledge of the Target Entities, threatened Claims, against the Business Entities arising out of any Environmental Laws.
- (iv) All material Releases pertaining to or affecting the Business Assets have been reported to the appropriate Governmental Entity to the extent required by Environmental Laws.
- (v) None of the Business Entities have received: (A) any Order or directive which relates to environmental matters that requires any material work, repairs, construction or capital expenditures; or (B) any demand or notice with respect to the material breach of any Environmental Law applicable to the Business Entities or the Business Assets, including any regulations respecting the use, storage, treatment, transportation or disposition of Hazardous Substances.
- (vi) No Encumbrances arising under Environmental Laws are pending or, to the knowledge of the Target Entities threatened, affecting, in any material respect, the Business Entities, or any Real Property.
- (vii) The Business Entities are in possession of, and in compliance with, all material environmental Permits that are required to own, lease, develop and operate the Business Assets and to conduct their respective businesses, as now conducted.
- (viii) The Business Entities have no material environmental assessments, reports, audits and other documents in their possession (to the extent not superseded by a subsequent assessment, report, audit or other document, as applicable) relating to any Real Property, or any other such assessments, reports, audits and other

documents which, to the knowledge of the Target Entities, are in their possession that relate to the current or past environmental condition of any Real Property that has not been disclosed in writing to the Purchaser.

(hh) Employment Matters.

- (i) The Disclosure Letter includes:
 - (1) a list containing date of hire, position or title, compensation (including salary and variable compensation), active or inactive status, employer and location of employment of all Business Employees;
 - (2) a list of all Independent Contractors, including a description of their fees; and
 - (3) true, correct, up-to-date and complete copies of all written employment and independent contractor Contracts with the Business Employees and Independent Contractors. To the knowledge of the Target Entities, all Independent Contractors are properly characterized as independent contractors.
- (ii) [REDACTED – Retention payments: competitively sensitive information]. Other than as set out in the Disclosure Letter, no Business Entity is a party to or bound or governed by any existing oral or written severance, retention, change of control or employment Contract with any Business Employee except for oral employment Contracts which are of indefinite term, terminable by the applicable employer without cause on provision of reasonable notice of termination (or pay in lieu thereof) calculated in accordance with the common law and without any special arrangements or commitments with respect to change of control.
- (iii) To the knowledge of the Target Entities, each Business Entity is in compliance in all material respects with all applicable laws regarding employment, employment standards and practices, terms and conditions of employment, occupational health and safety, worker classification, labour and labour practices, Tax withholdings, record keeping, workers' compensation, benefits (including pensions), human rights, privacy, pay equity and immigration ("**Employment Laws**"). Except as set out in the Disclosure Letter, there are no Claims ongoing, or to the knowledge of the Target Entities, threatened or pending, against any Business Entity relating to any Employment Laws, including before a federal, provincial or territorial human rights, privacy, workers' compensation or occupational health and safety board, council or tribunal (including appeals) or any other Governmental Entity.
- (iv) There is no labour dispute, strike, slowdown or work stoppage against any Business Entity ongoing or, to the knowledge of the Target Entities, pending or threatened against any Business Entity.
- (v) Except as set out in the Disclosure Letter, there is no ongoing litigation or, to the knowledge of the Target Entities, pending or threatened litigation, against any Business Entity for wrongful dismissal.
- (vi) All contributions and premiums required to be paid pursuant to all statutory employee benefit plans and all withholdings which the Business Entities are

required to comply with in relation to the Business Employees, including those relating to Canada Pension Plan and plans administered pursuant to applicable provincial health tax, workers' compensation and employment insurance laws, have been paid by the Business Entities, as applicable, in accordance with applicable law.

(ii) Collective Agreements.

- (i) No Business Entity is a party or subject to any Collective Agreement with any union, work council, staff council, or any labour or other collective bargaining representative.
- (ii) (A) There are no Collective Agreements pending certification, (B) no Business Entity is currently engaged in any labour negotiation nor to the knowledge of the Target Entities, subject to any union organization effort with respect to the Business Employees or Independent Contractors.

(jj) Employee Benefit Plans.

- (i) Except as listed in the Disclosure Letter, the Business Entities do not contribute to, or have any obligation to contribute to, any Employee Benefit Plan. All such Employee Benefit Plans listed in the Disclosure Letter are maintained and sponsored by the Seller. The Disclosure Letter also lists all material written employment policies, procedures and work related rules currently in effect with respect to Business Employees, including policies regarding holidays, sick leave, vacation, disability and death benefits, bereavement, termination, change of control, and severance pay, automobile allowances and rights to company-provided automobiles and expense reimbursements.
- (ii) The Data Room contains true, correct, up-to-date and complete copies of all the Employee Benefit Plans as amended as of the Execution Date.
- (iii) All of the Employee Benefit Plans have been established, registered (where required), funded, invested and administered in accordance with, and are in good standing under, all applicable laws and the terms of such Employee Benefit Plans.
- (iv) The Data Room contains a complete and accurate copy of the LTIP and the Disclosure Letter sets out the basis on which LTIP awards are awarded from time to time, the Business Employees that participate in the LTIP, and all accrued and unpaid long term incentive awards that have or will have accrued as of the Effective Time, or that will otherwise be payable to Business Employees as of the Effective Time (the "**LTIP Payment Obligations**"), (which are based on cumulative vesting as of the Effective Time, in the ordinary course, without acceleration), the respective entitlements of the Business Employees to such payments, and the dates on which such payments become due and owing.
- (v) Except as set out in the Disclosure Letter, no material changes have occurred to, or are affecting, any of the Employee Benefit Plans since the date of the Financial Statements, or to the knowledge of the Seller, are expected to occur, which would materially affect the information contained in the actuarial reports or Financial Statements with respect to the Employee Benefit Plans.

- (vi) All contributions or premiums required to be made or paid by any Business Entity under the terms of each Employee Benefit Plan have been made in a timely fashion in accordance with all applicable laws and the terms of the Employee Benefit Plans.
- (vii) No improvements have been made in respect of any of the Employee Benefit Plans that are not reflected in the copies of the Employee Benefit Plans provided or made available to the Purchaser.
- (viii) The Disclosure Letter identifies each Employee Benefit Plan that is a "registered pension plan" as that term is defined in subsection 248(1) of the Tax Act or an unregistered supplemental pension plan or arrangement (collectively the "**Pension Plans**"). No Pension Plan contains or has ever contained a "defined benefit provision", as that term is defined in subsection 147.1(1) of the Tax Act, that is applicable to any Business Employees.
- (ix) Except as set out in the Disclosure Letter, none of the Employee Benefit Plans provides post-retirement or post-employment benefits to or in respect of the Business Employees or any former Business Employees or to or in respect of the beneficiaries of such Business Employees and former Business Employees.
- (x) All data necessary to administer each Employee Benefit Plan which is administered by a Business Entity is in the possession of the Business Entities or their agents and is in a form which is sufficient for the proper administration of the Employee Benefit Plan in accordance with its terms and all applicable laws and such data is true and correct in all material respects.
- (xi) Except for the Retention Bonus Payment Obligations, the LTIP Payment Obligations, and as further set out in the Disclosure Letter, the execution of this Agreement and the completion of the Transaction and the Final Transaction will not constitute an event under any Employee Benefit Plan that will require, on the part of any Business Entity, any payment (whether of severance pay or otherwise), acceleration of payment or vesting of benefits, forgiveness of Indebtedness, distribution, restriction on funds, increase in benefits or obligation to fund benefits with respect to any Business Employee or former Business Employee or their beneficiaries.
- (xii) There exists no Liability of any Business Entity in connection with any former benefit plan relating to the Business Employees or former Business Employees or their beneficiaries that has terminated, and all procedures for termination of each such former benefit plan have been properly followed in accordance with the terms of such former benefit plans and applicable law.
- (kk) Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission from, or to the reimbursement of any of its expenses by, any Business Entity in connection with this Agreement, the Transaction or the Final Transaction.
- (ll) Compliance with Anti-Money Laundering Laws. The operations of the Business Entities are and have been conducted at all times in compliance with the anti-money laundering statutes of all applicable jurisdictions, the rules and regulations thereunder and any related

or similar rules, regulations or guidelines, issued, administered or enforced by any Governmental Entities to which they are subject, including Title 18 U.S. Code section 1956 and 1957, the *Bank Secrecy Act*, as amended by the *USA PATRIOT Act* and the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada) (collectively, the "**Anti-Money Laundering Laws**") and no action, suit or proceeding by or before any Governmental Entity or any arbitrator involving the Business Entities with respect to the Anti-Money Laundering Laws is, to the knowledge of the Target Entities, pending or threatened.

- (mm) Bank Accounts & Powers of Attorney. The Disclosure Letter sets forth the name and location (including municipal address) of each bank, trust company or other institution in which any of the Business Entities have an account, money on deposit or a safety deposit box and the name of each person authorized to draw thereon or to have access thereto and the name of each person holding a power of attorney from the Business Entity in respect thereof.
- (nn) Bankruptcy, Insolvency and Reorganization. None of the Business Entities are an insolvent person within the meaning of the *Bankruptcy and Insolvency Act* (Canada) nor has any Business Entity made an assignment in favour of its creditors nor a proposal in bankruptcy to its creditors or any class thereof nor had any petition for a receiving order presented in respect of it. No Business Entity has initiated proceedings with respect to a compromise or arrangement with its creditors or for its winding up, liquidation or dissolution. No receiver has been appointed in respect of any Business Entity, or any of their respective property or assets and no execution or distress has been levied upon any of its property or assets of any Business Entity. Except as expressly provided for in this Agreement, no act or proceeding has been taken or authorized by or against any Business Entity with respect to any amalgamation, merger, consolidation, arrangement or reorganization of, or relating to, any Business Entity nor have any such proceedings been authorized by any other person.
- (oo) Sufficiency of Assets. Each Business Entity has good and marketable legal and beneficial title to all of its property and assets, free and clear of any and all Encumbrances, except for Permitted Encumbrances. The property and assets owned and leased by the Business Entities, including the Occupied Gibson Real Property and the Transferred Lands, constitute all of the property and assets used or held for use in connection with the Business and are sufficient to permit the continued operation of the Business in substantially the same manner as conducted as of the Execution Date and during the year ended on the date of the most recent Annual Financial Statements. There is no agreement, option or other right or privilege outstanding in favour of any person for the purchase from any Business Entity of the Business or any part thereof or of any of the property or assets of the Business Entities, other than the purchase of Inventories in the Ordinary Course of Business.
- (pp) Related Person Interests and Transactions. Except as set forth in the Disclosure Letter, no Related Person of any Business Entity: (i) owns, directly or indirectly, any equity or other financial or voting interest in any competitor, registrar, reseller, supplier, licensor, licensee, lessor, lessee, distributor, or independent contractor customer of the Business Entities or the Business; (ii) other than the Occupied Gibson Real Property and the Transferred Lands (as of the Execution Date only), directly or indirectly, or has any interest in any property (real or personal, tangible or intangible) used at any time in or pertaining to the Business; or (iii) has any business dealings or a financial interest in any transaction with the Business Entities involving any assets or property of the Business, other than (A) business dealings

or transactions conducted in the Ordinary Course of Business on arm's length terms and (B) in such Related Person's capacity as a director or officer of the Business Entities.

3.2 Representations and Warranties of the Seller

The Seller hereby represents and warrants to and in favour of the Purchaser that, as of the date of this Agreement and as of the Effective Time:

- (a) Organization and Qualification. The Seller is an unlimited liability corporation duly organized, formed and validly existing under the laws of its jurisdiction of incorporation and has the requisite power and authority to own the Optioned Securities as set out in Exhibit A hereto.
- (b) Authority Relative to this Agreement. The Seller has the requisite corporate power and authority to enter into this Agreement and any agreement ancillary hereto to which it is a party and to carry out its obligations hereunder. The execution and delivery of this Agreement by the Seller and the consummation by it of the Transaction have been duly authorized by its board of directors, and no other corporate proceedings on its part are necessary to authorize the execution and delivery by it of this Agreement or any agreement ancillary hereto and the consummation by it of the Transaction. This Agreement has been duly executed and delivered by the Seller and constitutes a legal, valid and binding obligation of the Seller enforceable against each of it in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws relating to or affecting creditors' rights generally and to general principles of equity. The Seller is not an insolvent person within the meaning of the *Bankruptcy and Insolvency Act* (Canada) and will not become an insolvent person as a result of the Closing.
- (c) Approvals. The Seller is not under any obligation, contractual or otherwise, to notify, request or obtain the consent of any person and no authorizations of, or notifications to, any Governmental Entity are required to be obtained by it in connection with the execution, delivery or performance by it of this Agreement.
- (d) Ownership of Optioned Securities.
 - (i) The Seller is the registered and beneficial owner of the Optioned Securities, and it has the exclusive right to sell, assign and transfer such Optioned Securities as contemplated by the Option Agreement free of any restrictions of any kind (other than restrictions, if any, contained in the relevant constating documents).
 - (ii) The Optioned Shares are validly issued and outstanding as fully paid and non-assessable shares of the Target Companies and the Optioned Units are validly issued and outstanding units of Canwest Partnership.
 - (iii) Upon payment of the Shareholder Loan, which will occur prior to Closing, there will be no Indebtedness owing by Canwest ULC to the Seller.
 - (iv) Except for the Purchaser's rights upon execution and delivery of the Option Agreement, no person has any written or oral agreement, option or warrant or any right or privilege (whether by law, pre-emptive or contractual) for the purchase or acquisition of such Optioned Securities.
- (e) Residency. The Seller is not a non-resident of Canada for purposes of the Tax Act.

3.3 Disclosure Letter

- (a) Any disclosure or qualification set out in the Disclosure Letter which provides disclosure and qualification of a particular representation or warranty or covenant of the Seller or the Target Entities in this Agreement shall be deemed to be sufficient and adequate disclosure and qualification of all other representations or warranties or covenants of the Seller or the Target Entities to which the applicability of such disclosure and qualification is reasonably apparent, without the requirement for restating such disclosure and qualification elsewhere in the Disclosure Letter.
- (b) The Disclosure Letter is qualified in its entirety by reference to this Agreement and none of the statements contained therein are intended to constitute, and shall not be deemed or construed to constitute, representations or warranties of the Seller or the Target Entities, except as and to the extent set out in this Agreement. Inclusion of an item in the Disclosure Letter shall not, in and of itself, establish the materiality of an item or any standard of materiality. Further, no item in the Disclosure Letter relating to any possible breach or violation of any Contract, law or regulation shall be construed as an admission or indication that any such breach or violation exists or has actually occurred, and nothing in the Disclosure Letter constitutes an admission of any Liability or obligation of any of the Business Entities to any third party or shall confer or give to any third party any remedy, Claim, Liability, reimbursement, cause of action or other right.
- (c) The Target Entities may from time to time notify the Purchaser of any changes or additions to the Disclosure Letter regarding facts or circumstances arising between the Execution Date and five (5) days prior to the Closing Date by the delivery of amendments or supplements thereto, if any, no later than five (5) days prior to the Closing Date (each an "**Amendment to the Disclosure Letter**"). Any such changes or additions to the Disclosure Letter shall not affect any rights of indemnification of the Purchaser under Section 10.1; for greater certainty, the representations and warranties that would otherwise be qualified by any Amendment to the Disclosure Letter shall be considered without regard to any Amendment to the Disclosure Letter such that Sections 3.1 and 3.2 shall be determined without regard to any such amendments or additions.

3.4 General Disclaimer

Upon Closing, the Purchaser shall be deemed to have acknowledged that they have had an opportunity to conduct a due diligence review with respect to each of the Business Entities and the Business, and all books, records, accounts, documents and information of each of the Business Entities pertaining to the Business, and are relying solely upon their own counsel, consultants and advisors and due diligence respecting the Business Entities and the Business, other than as set out in this Agreement. Except as expressly set out in Sections 3.1 and 3.2, none of the Seller nor the Target Entities makes any warranty or representation of any kind whatsoever, direct or indirect, express or implied, in fact or by law, with respect to any of the Business Entities, the Business or the data or information supplied by the Seller, the Target Entities, or any of their representatives, to the Purchaser or its representatives or professional advisors in connection herewith. The Purchaser acknowledges that it is not relying on any representations or warranties with respect to the Seller, the Business Entities or the Business, except as set out in this Agreement.

3.5 Head Office Services

The Purchaser acknowledges that the Seller provides and has historically provided the following to the Business Entities in the conduct by the Business Entities of the Business (collectively, the "**Head Office**

Services): human resources, information services, corporate finance and accounting, corporate health, safety and environment, legal, facilities and administration, corporate communications and marketing, and corporate planning and development.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

4.1 Representations and Warranties of the Purchaser

The Purchaser hereby represents and warrants to the Seller as follows as of the Execution Date and as of the Effective Time, except to the extent such representations and warranties speak as of a specific date (in which case such representations and warranties are made only as of that specific date):

- (a) **Organization and Qualification.** The Purchaser is a limited partnership duly formed and validly existing under the laws of Ontario. Superior General Partner Inc. ("**Superior GP**") is a corporation duly incorporated and validly existing under the laws of Canada. The Purchaser and Superior GP have the requisite power and authority to own their respective assets as now owned and to carry on their respective businesses as now being conducted. The Purchaser and Superior GP are duly registered to do business and are in good standing in each jurisdiction in which the character of their respective properties and assets, owned, leased, licensed or otherwise held, or the nature of their respective activities makes such registration or authorization necessary.
- (b) **Authority Relative to this Agreement.** The Purchaser has the requisite power and authority to enter into this Agreement and to carry out its obligations hereunder and Superior GP has the requisite power and authority to execute this Agreement and the Option Agreement on behalf of the Purchaser. The execution and delivery of this Agreement by Superior GP on behalf of the Purchaser and the consummation by the Purchaser of the Transaction have been duly authorized by Superior GP, and no other proceedings on the Purchaser's part are necessary to authorize the execution and delivery by it of this Agreement or any agreement ancillary hereto and the consummation by it of the Transaction. This Agreement has been duly executed and delivered by Superior GP on behalf of the Purchaser and constitutes a legal, valid and binding obligation of the Purchaser enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws relating to or affecting creditors' rights generally and to general principles of equity. The Purchaser is not an insolvent person within the meaning of the *Bankruptcy and Insolvency Act* (Canada) and will not become an insolvent person as a result of the Closing.
- (c) **No Violations.** None of the execution and delivery of this Agreement by the Purchaser, the consummation of the Transaction or the Final Transaction or compliance by it with any of the provisions hereof will:
 - (i) violate, conflict with, or result in breach of any provision of, require any consent, approval or notice under, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under any of the terms, conditions or provisions of its partnership agreement or other constating documents; or
 - (ii) violate any law applicable to it or any of its subsidiaries or any of its properties or assets (subject to obtaining the Competition Act Clearance and the BCUC Approval in connection with the Final Transaction).

- (d) Litigation. As of the Execution Date, there are no Claims threatened against any of the Purchaser or Superior GP before any Governmental Entity, nor is the Purchaser or Superior GP subject to any outstanding judgment, Order, writ, judgment or decree that, either individually or in the aggregate, is reasonably likely to prevent or materially delay consummation of the Transaction or the Final Transaction.
- (e) Compliance with Agreements and Laws. The execution, delivery and performance of this Agreement and the completion of the Transaction and the Final Transaction, will not constitute or result in any violation or breach or default under, or create any Encumbrance or result in the enforcement of any Encumbrance under, any Contract to which the Purchaser or Superior GP is a party or by which either of them are bound, or any law applicable to them (subject to obtaining the Competition Act Clearance and the BCUC Approval in connection with the Final Transaction).
- (f) Investment Canada Act. Neither the Purchaser nor Superior GP is a "non-Canadian" or a "state-owned enterprise" within the meaning of the Investment Canada Act.
- (g) Strategic Buyer. The Purchaser is purchasing the Option, and at the Option Closing will take ownership of the Optioned Units as a strategic buyer and does not currently contemplate that an interest in Canwest Partnership will be acquired directly, or indirectly through a partnership or trust, by any Ineligible Person.
- (h) No Tax Exempt or Non-Resident Purchasers. The Purchaser is a partnership all of the partners of which are taxable Canadian corporations for purposes of the Tax Act. The Purchaser is purchasing the Option, and at the Option Closing will take ownership of the Optioned Units, as legal and beneficial owner and is not and will not purchase, and will not hold, the Optioned Units in the capacity of a trustee. The Purchaser covenants that it shall not, without the approval of the Seller, not to be unreasonably withheld, for a period of thirty (30) months following the date of the Option Closing sell or transfer the Optioned Units to, or admit as a partner of Canwest Partnership or the Purchaser, any of the following persons: (i) an Ineligible Person, (ii) a partnership to the extent that the interest in Canwest Partnership can reasonably be considered to be held, at that time, indirectly through one or more partnerships, by an Ineligible Person or a trust resident in Canada (other than mutual fund trust within the meaning of the Tax Act), or (iii) a trust resident in Canada (other than a mutual fund trust within the meaning of the Tax Act).
- (i) Availability of Funds. The Purchaser has on the Execution Date, and shall have at Closing sufficient available funds and/or Financing Commitment Letters to pay the Purchase Price and all other necessary fees, expenses and other amounts incurred by it in connection with the consummation of the Transaction.

ARTICLE 5

COVENANTS OF THE PARTIES

5.1 Covenants of the Target Entities Regarding the Conduct of Business

- (a) Subject to compliance with Section 5.1(b) and 5.1(c), each Target Entity covenants and agrees, during the Interim Period, unless the Purchaser shall otherwise consent in writing, or except as is otherwise expressly permitted or contemplated by this Agreement, or as is otherwise required by applicable law:

- (i) that the business of the Business Entities shall, in all material respects, be conducted in the Ordinary Course of Business, and the Target Entities shall cause the Business Entities to use commercially reasonable efforts to maintain and preserve the Business Entities' business organization, assets, properties, employees, goodwill and business relationships, and to take all other action reasonably requested by the Purchaser in order that the condition of the organization, assets, properties, employees, goodwill and business relationships of the Business will not be materially impaired during the Interim Period; and
- (ii) that none of the Business Entities shall directly or indirectly:
 - (1) amend their respective formation and organizational documents;
 - (2) reorganize, amalgamate or merge with any other person;
 - (3) sell, pledge, lease, license, dispose of, mortgage, grant a security interest in or otherwise create an Encumbrance on any of its property or assets, except in the Ordinary Course of Business and in amount which, individually or in the aggregate, are not material to the financial condition of the Business Entities taken as a whole, or to the operation of the Business
 - (4) acquire (by merger, amalgamation, consolidation or acquisition of shares or assets or otherwise) any corporation, partnership or other business organization or division thereof or make any investment either by the purchase of securities or contributions of capital, if any of the foregoing would be material to the Business Entities, taken as a whole;
 - (5) except in the Ordinary Course of Business, acquire any property or assets, or exercise an option to acquire, any property or assets of any other person;
 - (6) with the exception of those capital expenditures that have been made or otherwise committed to prior to the Execution Date, all of which are set out in the Disclosure Letter, make any capital expenditures in excess of \$1,000,000 in the aggregate;
 - (7) issue any debt securities or assume, endorse or otherwise as an accommodation become responsible for the obligations of any other person, other than in the Ordinary Course of Business and in any case not, in the aggregate, in excess of \$500,000;
 - (8) incur any Indebtedness or make any loans or advances other than in the Ordinary Course of Business (which for greater certainty would be included in the calculation of Closing Indebtedness);
 - (9) pay, discharge or satisfy any Claims, Liabilities or obligations in excess of \$250,000 other than (a) Liabilities reflected or reserved against in the Financial Statements, or (b) Liabilities which, if not for such payment, discharge or satisfaction, would be included in the calculation of Closing Indebtedness or Current Liabilities for the purposes of Section 2.5;

- (10) enter into any Contract which provides for gross revenues to, or gross payments by, the Business Entities, taken as a whole, in excess of \$2,000,000 per annum;
 - (11) pay any long-term Liability other than in the Ordinary Course of Business, or otherwise in accordance with the terms of that Liability or with applicable law;
 - (12) other than in the Ordinary Course of Business, (A) increase, in any material manner, the compensation (including bonuses) or benefits of any of the employees, officers, Independent Contractors or directors of any Business Entity, or (B) pay to any employee, officer, Independent Contractor or director of any Business Entity any pension, severance or termination amount or other benefit not required by any of the Employee Benefit Plans;
 - (13) make any additional grants under the LTIP or any other incentive program to any employee, officer, Independent Contractor or director of any Business Entity (provided that the Business Entities shall be permitted to make short-term incentive and retention grants in the amounts and to the persons described in the Disclosure Letter); or
 - (14) otherwise take any action which would make the representation and warranty of the Seller in Section 3.1(x) incorrect as of the Closing Date.
- (b) Given that certain of the information that may be required to be provided to the Purchaser in connection with Section 5.1(a) may be competitively sensitive, all competitively sensitive information to be provided to the Purchaser in connection Section 5.1(a), including competitively sensitive information in connection with obtaining the consent of the Purchaser or reviewing compliance by the Target Entities with their obligations under Section 5.1(a), shall be provided only to members of the "clean team" of the Purchaser, all in accordance with competition law compliance protocols that have been established by the Parties.
- (c) For greater certainty, nothing in this Agreement shall be construed to provide the Purchaser with a significant interest in or control of the whole or part of the Business Entities, within the meaning of the Merger Enforcement Guidelines established by the Commissioner, during the Interim Period.
- (d) Notwithstanding anything to the contrary contained in this Agreement, the Business Entities may, and the Seller may cause the Business Entities to, between the Execution Date and the Closing Date, take any steps necessary to distribute all Cash and Cash Equivalents of the Business Entities at or prior to the Closing Date, by way of dividend, distribution, return of capital or otherwise, to the Seller, its affiliates, or any of them.

5.2 Covenants of the Seller and the Target Entities

The Seller and the Target Entities shall, and shall cause the Business Entities to, perform all obligations required or desirable to be performed by the Seller or any of the Business Entities, as applicable, under this Agreement, co-operate with the Purchaser in connection therewith, and do all such other acts and things as may be necessary or desirable in order to consummate and make effective, as soon as reasonably practicable, the Transaction and, in the event that the Option is exercised, the Final Transaction, and,

without limiting the generality of the foregoing, the Seller and the Target Entities shall, and shall cause the Business Entities to:

- (a) cause all Contracts between the Seller or its affiliates and any Business Entity to be terminated as of the Closing Date (with the exception of employment-related Contracts, the Supply Agreement, the Trucking Agreement and any other Contracts identified in the Disclosure Letter);
- (b) use commercially reasonable efforts to obtain the Regulatory Approvals and to effect all necessary registrations, filings and submissions of information requested or required by Governmental Entities from the Business Entities, or any of their affiliates relating to the Final Transaction, provided that to the extent there is any contradiction between this Section 5.2(b) and Section 5.6, Section 5.6 will take precedence;
- (c) during the Interim Period, comply with the requirements of Section 4.3(a) of the Option Agreement, with effect as of the Execution Date;
- (d) the Purchaser shall from time to time, forthwith upon the request of the Seller, reimburse the Seller in respect of 50% of the BAR Costs incurred by the Seller prior to the Closing Date.; and
- (e) throughout the Interim Period, the Seller and the Target Entities shall provide to the Purchaser all assistance, cooperation and information required to assist the Purchaser in planning for integration following the closing of the Final Transaction (provided neither the Seller nor Target Entities shall be required to provide information that is not in its possession or not otherwise reasonably available to it), in accordance with competition law.

5.3 Covenants of the Purchaser

Except as contemplated in this Agreement, the Purchaser shall perform all obligations required or desirable to be performed by it under this Agreement, co-operate with the Business Entities in connection therewith, and do all such other acts and things as may be necessary or desirable in order to consummate and make effective, as soon as reasonably practicable, the Transaction and, in the event the Option is exercised, the Final Transaction and, without limiting the generality of the foregoing, the Purchaser shall:

- (a) use commercially reasonable efforts to effect all necessary registrations, filings and submissions of information requested or required by Governmental Entities from the Purchaser, or any of its affiliates relating to the Transaction or the Final Transaction; and
- (b) ensure that the Purchaser has available funds at the Closing Date to satisfy the Purchase Price and any adjustments thereto (including the repayment of the Closing Indebtedness) and take such actions as may be necessary to ensure that the Purchaser is able to pay such amounts in connection with Closing.

5.4 Mutual Covenants

Each of the Parties covenants and agrees that, except as contemplated in this Agreement, during the period from the Execution Date until the earlier of the Effective Time and the time that this Agreement is terminated in accordance with its terms such Party shall, and shall cause its respective subsidiaries to, use commercially reasonable efforts to satisfy (or cause the satisfaction of) the conditions precedent to its obligations hereunder as set out in Article 6 and to take, or cause to be taken, all other action and to do, or cause to be done, all other things necessary, proper or advisable under all applicable laws to consummate

the Transaction and the Final Transaction as expeditiously as possible, including using commercially reasonable efforts to: (a) oppose, lift or rescind any injunction or restraining Order against it or other Order or action against it seeking to stop, or otherwise adversely affecting its ability to consummate the Transaction or the Final Transaction; and (b) co-operate with the other Party in connection with the performance by it and its respective subsidiaries of their obligations hereunder.

5.5 Transaction Expenses

The Seller or the Target Entities shall pay the Transaction Expenses on or prior to the Closing; *provided, however*, if any of the Transaction Expenses have not been incurred at or prior to Closing, the Seller shall pay such Transaction Expenses on or prior to the due date thereof.

5.6 Regulatory Approvals

(a) Competition Act Clearance:

- (i) As promptly as practicable after the Execution Date, and in any event within ten (10) Business Days thereof: (A) the Purchaser shall file with the Commissioner a submission in support of a request for an advance ruling certificate under section 102 of the Competition Act in respect of the Final Transaction; and (B) the Purchaser and the Seller (or Target Entities, as applicable) shall each file with the Commissioner a complete notification under subsection 114(1) of the Competition Act in respect of the Final Transaction.
- (ii) Throughout the Interim Period, (i) the Parties shall use reasonable best efforts to comply with any requests for information from the Commissioner as soon as practicable and in consultation with each other, and (ii) the Parties shall use reasonable best efforts to certify completeness of their responses to any supplementary information requests received under subsection 114(2) of the Competition Act as promptly as practicable and no later than two months after the date of such issuance.
- (iii) Throughout the Interim Period, the Seller and the Target Entities shall provide to the Purchaser all assistance, cooperation and information required to obtain the Competition Act Clearance (provided the Seller and the Target Entities shall not be required to provide information that is not in its possession or not otherwise reasonably available to it), and each Party shall (i) permit the other Party to review in advance any proposed communications of any nature with any Governmental Entity, (ii) give due consideration to any comments received from such other Party, (iii) promptly notify the other Party of all material written communications of any nature received from any Governmental Entity and provide the other Party with copies thereof, and respond, as soon as reasonably practical, to all requests for information from a Governmental Entity in connection with obtaining the Competition Act Clearance.
- (iv) Neither Party shall participate in any material meeting or discussion (whether in person, by telephone or otherwise) with any Governmental Entity in respect of the Competition Act Clearance unless it consults with the other Party in advance and gives the other Party the opportunity to attend and participate thereat (except to the extent that in any such case the Governmental Entity expressly requests that such

- other Party not be present at such meeting or participate in such discussion, as applicable).
- (v) Notwithstanding anything to the contrary contained in this Agreement, in the case of a disagreement over the strategy, tactics or decisions relating to obtaining the Competition Act Clearance, the Purchaser shall have the final and ultimate authority over the appropriate strategy, tactics and decisions. Each Party shall use reasonable best efforts to ensure that all actions and communications regarding the Competition Act Clearance are consistent with such strategy, tactics and decisions.
 - (vi) The Purchaser shall be responsible for paying the filing fees in connection with the Competition Act Clearance.
- (b) BCUC Approval:
- (i) The Seller shall provide the Purchaser at its request with all information that the Seller has in its possession or under its direction or control which may be required or useful in connection with the preparation of all filings as are necessary to secure the BCUC Approval and any submissions in connection therewith.
 - (ii) The Seller shall provide the Purchaser with any assistance reasonably requested by the Purchaser in support of the preparation of all filings as are necessary to secure the BCUC Approval and any submissions in connection therewith.
- (c) Notwithstanding any requirement in this Agreement, where either Party is requested to provide information that it reasonably believes is competitively sensitive, it shall provide such information to the external legal counsel of the other Party on an external counsel only basis or to the other Party in accordance with competition law compliance protocols that have been established by the Parties.

5.7 Tax Returns and Tax Proceedings

- (a) The Seller shall be responsible for preparing, on or before the statutory due date, on behalf of and in the name of the Business Entities, all income tax and information returns of the Business Entities required by applicable law to be filed in respect of any taxation year or fiscal period, as applicable, ending on or before the Closing Date (each a "**Pre-Closing Tax Period**"), which returns are not required to be filed on or before the Closing Date (each such return being a "**Prior Period Return**"), provided that the Seller shall supply draft copies of the applicable Prior Period Returns to the Purchaser for its review not less than forty-five (45) days prior to the deadline for their filing, or, for any returns due to be filed within thirty (30) days after the Closing Date, as soon as practicable and in any event within ten (10) days after Closing. The Seller shall consider in good faith all comments provided by the Purchaser. All Prior Period Returns shall be prepared in a manner consistent with applicable law and, to the extent not inconsistent with applicable law, past practice. The Seller shall provide each completed Prior Period Return to the Purchaser for filing not less than fifteen (15) Business Days before the applicable filing deadline, and the Purchaser shall file or cause to be filed such Prior Period Returns on behalf of the applicable Business Entities.
- (b) Other than Taxes which were specifically taken into account in computing the Adjusted Purchase Price, the Seller shall pay all Taxes due with respect to all Returns for the Business Entities for any Pre-Closing Tax Period.

- (c) The Parties shall not at any time request, or cause or allow any of their affiliates to request, any audits by any taxation authority of any Return or matter of or affecting any of the Business Entities in respect of any Pre-Closing Tax Period or the portion of any Straddle Period that is before the Closing Date, and the Parties shall not cause or allow any of their affiliates to originate the recalculation and/or refiling of any such Return or file any waivers for any Pre-Closing Tax Period or with respect to the portion of any Straddle Period that is before the Closing Date, of any of the Business Entities, unless such recalculation and/or refiling is required by law. The Parties shall inform each other of, and cooperate with each other in respect of, any audit inquiries with respect to any Tax or information Return involving any of the Business Entities in respect of any taxation year or fiscal period, as applicable, that relates to a Pre-Closing Tax Period or the portion of any Straddle Period that is before the Closing Date.
- (d) The Purchaser and the Seller shall cooperate fully as and to the extent reasonably requested by the other Party, in connection with (i) the filing of any Returns (including any Returns required to be filed by the Business Entities in respect of any Pre-Closing Period or any Straddle Period), (ii) any audit, litigation or other proceeding (each a "**Tax Proceeding**") with respect to Taxes imposed on or with respect to the assets, operations or activities of the Business Entities, the transactions contemplated by this Agreement, and (iii) any Claim for indemnification with respect to Taxes made pursuant to Article 10. Such cooperation shall include the retention and (upon the other Party's request) the provision of records and information which are reasonably relevant to any such Return or Tax Proceeding and making employees available on a mutually convenient basis to provide additional information with respect to any Tax Proceeding and explanation of any material provided hereunder.

5.8 Employee Matters

- (a) The Seller shall retain responsibility for and satisfy its obligations with respect to all pension and other benefits provided under the Pension Plans accrued up to the Closing Date in respect of all Business Employees in accordance with the terms of the Pension Plans and applicable law based on service and pensionable earnings of such Business Employees up to the Closing Date.
- (b) The Seller and the Employee Benefit Plans shall retain responsibility for all amounts payable by reason of or in connection with any and all Claims incurred or benefits accrued under the Employee Benefit Plans by the Business Employees (and their eligible dependants) on or prior to the Closing Date whether such Claims are reported or benefits become payable before or after the Closing Date, and neither the Purchaser nor the Business Entities shall assume any Liability or obligations with respect to the Employee Benefits Plans except as contemplated by the Option Agreement.
- (c) For greater certainty, it is acknowledged that the Seller shall retain all Liabilities and obligations with respect to post-retirement health and life insurance benefits for employees of the Business Entities who as of the Closing Date were retired.

5.9 Insurance

Prior to the Closing Date, the Seller shall ensure that the Business Entities use commercially reasonable efforts to notify their applicable insurers of any damage to or loss of a material asset of the Business (i) that occurs prior to the Closing Date, (ii) of which an officer of any Business Entity

becomes aware prior to the Closing Date and (iii) that is covered by the insurance policies set forth in the Disclosure Letter. Prior to the Closing Date, the Seller shall cause each Business Entity to purchase or maintain insurance coverage covering pre-Closing incurred but not reported Losses of the Business for a period of not less than three years following the Closing Date in such amounts as the Seller determines, in its reasonable discretion, to be commercially reasonable. From and after the Closing, if and to the extent the Seller obtains any proceeds under such insurance policies in connection with any pre-Closing damage or Loss of the Business, the Seller shall pay over such proceeds, net of any increase in premiums and costs and expenses incurred in recovering such proceeds, to the Purchaser, in which case the Purchaser shall be precluded from recovering Losses pursuant to Section 10.1 for the amount of such proceeds actually received by the Purchaser.

5.10 Termination of Agreements with Related Persons

- (a) Prior to the Closing Date, the Seller shall, and shall cause the Business Entities to:
 - (i) except the Gibson Real Property Leases and except as expressly contemplated by the Option Agreement or as contemplated by the Disclosure Letter, terminate, cancel, retire, payoff or otherwise extinguish all Contracts between any of the Business Entities, on the one hand, and the Seller, any affiliate of the Seller (other than the Business Entities) and each Related Person of the foregoing, on the other hand, except for this Agreement (the “**Terminated Agreements**”); and
 - (ii) cancel, retire, payoff or otherwise extinguish (by way of capital contribution, cash settlement or as otherwise reasonably determined by the Seller) all payables and receivables under the Terminated Agreements, and all other intercompany advances, accounts, payables and receivables between any of the Business Entities, on the one hand, and the Seller, any affiliate of the Seller (other than the Business Entities) and each Related Person of the foregoing, on the other hand.
- (b) Each Party shall and shall cause its affiliates to execute and deliver all termination and other appropriate documentation at or after the Closing as is reasonably requested by any other Party to fully effectuate and document the provisions of this Section 5.10.

5.11 Consents

The Seller shall use all commercially reasonable efforts to obtain, at or prior to the Effective Time, all Consents, and shall continue to use all commercially reasonable efforts to obtain any outstanding consents following Closing.

5.12 Real Property Matters

- (a) During the Interim Period but no later than five Business Days after the Execution Date, the Seller shall:
 - (i) transfer legal and beneficial ownership of the real property municipally and legally described in Exhibit G under the heading “Transferred Lands” (in this Section 5.12, the “**Transferred Lands**”) from the Seller to Canwest ULC, for and on behalf of Canwest Partnership, in consideration of the issuance by Canwest Partnership of additional partnership units of Canwest Partnership to the Seller (in this Section 5.12, the “**Additional Units**”) having an estimated fair market value equal to the estimated fair market value of the Transferred Lands;

- (ii) take all necessary steps to complete the registration of transfers/deeds, transferring legal title in fee simple to Canwest ULC, for and on behalf of Canwest Partnership, free and clear of Encumbrances other than Permitted Encumbrances; and
 - (iii) provide the Purchaser with satisfactory written evidence of the completion of such registrations, including updated certificates of title showing Canwest ULC as the registered owner of each parcel of Transferred Lands.
- (b) Upon the completion of such transactions set out in Section 5.12(a):
- (i) the Transferred Lands shall constitute part of the Owned Real Property for the purposes of this Agreement; and
 - (ii) the Additional Units will constitute part of the Canwest Units for the purposes of this Agreement.
- (c) The Business Entities have occupied and utilized in the Business, pursuant to informal lease or sublease arrangements, portions of the real property owned by the Seller or its affiliates (other than the Business Entities) described in the Disclosure Letter under the heading “Occupied Gibson Real Property” (the “**Occupied Gibson Real Property**”). During the Interim Period but no later than five Business Days after the Execution Date, the Seller (or its affiliates, as applicable) shall enter into formal lease or sublease agreements (the “**Gibson Real Property Leases**”) in respect of the Occupied Gibson Real Property with the applicable Business Entities, substantially in the form attached as Exhibit H. The Seller will provide the Purchaser with satisfactory written evidence of the completion of the foregoing no later than five Business Days after the Execution Date. Such Gibson Real Property Leases shall constitute part of the Leased Real Property for the purposes of this Agreement.

ARTICLE 6

CONDITIONS

6.1 Mutual Conditions Precedent

- (a) The obligations of the Parties to complete the Transaction are subject to the fulfillment, on or before the Closing Date, of each of the following conditions precedent, which are for the mutual benefit of the Purchaser and the Seller and may be waived, in whole or in part, jointly by the Purchaser and the Seller at any time:
- (i) Orders. No restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal restraint or prohibition preventing the consummation of the Transaction shall be in effect.
 - (ii) Legal Action. No adverse Legal Action by a Governmental Entity shall have been commenced and no law shall have been proposed, enacted, promulgated or applied, in either case, challenging or seeking to restrain or prohibit the completion of the Transaction.
- (b) In the event that any condition set out in Section 6.1(a) is not satisfied at or prior to the Outside Date and at the Outside Date has not been waived in accordance with this Section 6.1, unless otherwise agreed to by the Parties, the obligations of the Parties to proceed with Closing shall be terminated, and the Parties shall have no further obligations under this

Agreement provided, however that no Party shall be released from any Liability on account of any breach of this Agreement arising prior to such termination, and provided further that the rights and remedies of the Parties shall be governed by and subject to Article 10. The Purchaser or the Seller, as the case may be, may waive in whole or in part any non-fulfilled or non-performed condition without prejudice to any other rights which such Party may have pursuant to the terms of this Agreement.

6.2 Additional Conditions Precedent to the Obligations of the Purchaser

- (a) The obligations of the Purchaser to complete the Transaction shall also be subject to the fulfillment of each of the following conditions precedent, which are for the benefit of the Purchaser and may be waived, in whole or in part, by the Purchaser any time:
 - (i) Covenants. The covenants of the Seller and the Target Entities under this Agreement to be performed on or before the Closing Date shall have been duly performed by the Seller and each of the Target Entities in all material respects, and the Purchaser shall have received a certificate from the Seller and each of the Target Entities addressed to the Purchaser dated the Closing Date confirming the same with respect to each such person.
 - (ii) Representations and Warranties. The representations and warranties of the Seller and the Target Entities set out in this Agreement shall be true and correct as of the Execution Date and as of the Effective Time, as though made on and as of the Effective Time, except to the extent such representations and warranties speak as of a specific date (in which case such representations and warranties shall be true and correct as of that specific date); unless the failure to be true or correct, individually or in the aggregate, does not constitute and would not reasonably be expected to have a Material Adverse Effect; *provided, however*, that the Fundamental Representations shall be true and correct in all respects as of the Execution Date and as of the Effective Time, except to the extent such representations and warranties speak as of a specific date (in which case such representations and warranties shall be true and correct as of that specific date); and the Purchaser shall have received a certificate from the Seller and each of the Target Entities addressed to the Purchaser and dated the Effective Time confirming the same with respect to each person.
 - (iii) Discharge of Indebtedness and Encumbrances. With the exception of the Permitted Encumbrances and Current Liabilities, the Target Entities and the Seller shall provide evidence satisfactory to the Purchaser (acting reasonably) that, upon payment by the Purchaser of Closing Indebtedness in accordance with Section 2.3(a), all Closing Indebtedness shall be discharged or repaid, and all secured creditors shall release any and all Encumbrances (with the exception of Permitted Encumbrances) relating to the assets of the Business Entities.
 - (iv) Third Party Consents. All Material Consents shall have been obtained.
 - (i) Material Adverse Effect. During the Interim Period, there shall have been no change, event, occurrence, circumstance, result or fact that, when considered individually or in the aggregate, has or could reasonably be expected to have a Material Adverse Effect.

- (ii) Amendments to the Disclosure Letter. If the Seller has delivered any Amendments to the Disclosure Letter, such amendments, either individually or in the aggregate, have not and could not be reasonably expected to result in, a Material Adverse Effect.
- (b) In the event that any condition set out in Section 6.2(a) is not satisfied at or prior to the Outside Date and at the Outside Date has not been waived by the Purchaser, or if any such condition is, or becomes, impossible to satisfy prior to the Outside Date, other than as a result of the failure of the Purchaser to comply with its obligations under this Agreement, and the Purchaser is not willing to waive such condition, the Purchaser may terminate this Agreement by written notice to the Seller. If this Agreement is terminated in accordance with this Section 6.2(b), the Parties shall have no further obligations under this Agreement provided, however that no Party shall be released from any Liability on account of any breach of this Agreement arising prior to such termination, and provided further that the rights and remedies of the Parties in respect of such breaches shall be governed by and subject to Article 10. The Purchaser may waive in whole or in part any non-fulfilled or non-performed condition without prejudice to any other rights which the Purchaser may have pursuant to the terms of this Agreement.

6.3 Additional Conditions Precedent to the Obligations of the Seller

- (a) The obligations of the Seller to complete the Transaction shall also be subject to the fulfillment of each of the following conditions precedent which are for the benefit of the Seller and may be waived, in whole or in part, by the Seller any time:
 - (i) Purchaser's Covenants. All covenants of the Purchaser under this Agreement to be performed on or before the Closing Date shall have been duly performed by the Purchaser in all material respects, and the Seller shall have received a certificate of the Purchaser, addressed to the Seller and dated the Closing Date, signed on behalf of the Purchaser, by two (2) directors or executive officers of the Purchaser, confirming the same.
 - (ii) Purchaser's Representations and Warranties. The representations and warranties of the Purchaser set out in this Agreement shall be true and correct as of the Execution Date and as of the Effective Time, as though made on and as of the Effective Time, except to the extent such representations and warranties speak as of a specific date (in which case such representations and warranties shall be true and correct as of that specific date), unless the failure to be true or correct, individually or in the aggregate, would not materially impair the ability of the Purchaser to consummate the Transaction on the terms set out herein. The Seller shall have received a certificate of the Purchaser addressed to the Seller and dated the Closing Date, signed on behalf of the Purchaser by two (2) directors or executive officers of the Purchaser, confirming the same.
 - (iii) Payment of Purchase Price. On the Closing Date, the Purchaser shall have paid the Closing Proceeds to the Seller, and shall have discharged the Closing Indebtedness, in accordance with the provisions of Section 2.3.
- (b) In the event that any condition set out in Section 6.3(a) is not satisfied at or prior to the Outside Date and at the Outside Date has not been waived by the Seller, or if any such condition is, or becomes, impossible to satisfy prior to the Outside Date, other than as a

result of the failure of the Seller to comply with its obligations under this Agreement, and the Seller is not willing to waive such condition, the Seller may terminate this Agreement by written notice to the Purchaser. If this Agreement is terminated in accordance with this Section 6.3(b), the Parties shall have no further obligations under this Agreement provided, however that no Party shall be released from any Liability on account of any breach of this Agreement arising prior to such termination, and provided further that the rights and remedies of the Parties in respect of such breaches shall be governed by and subject to Article 10. The Seller may waive in whole or in part any non-fulfilled or non-performed condition without prejudice to any other rights which the Seller may have pursuant to the terms of this Agreement.

ARTICLE 7

ADDITIONAL AGREEMENTS

7.1 Access to Information; Confidentiality

- (a) From the Execution Date until the earlier of the Final Transaction and the termination of this Agreement, subject to compliance with applicable law and the terms of any existing Contracts (including the Confidentiality Agreement), the Seller shall cause the Business Entities and their respective officers, directors, Business Employees, independent auditors, advisers and agents to, afford to the Purchaser and to its respective officers, employees, agents and representatives such access as the Purchaser (or its designate under the Option Agreement) may reasonably require at all reasonable times, including for the purpose of facilitating integration business planning, to its officers, employees, agents, offices, properties, books, records and Contracts, and shall make available to the Purchaser (or its designate under the Option Agreement) all data and information as the Purchaser (or its designate under the Option Agreement) may reasonably request.
- (b) Each Party agrees to hold in confidence all, and not to disclose to others for any reason whatsoever any, non-public information received by it or its representatives from any other Party in connection with this Agreement, the Transaction or the Final Transaction except: (i) as required by law; (ii) for disclosure to officers, directors, employees and representatives of such Party as necessary in connection with the Transaction or the Final Transaction (and the applicable Party hereby agrees to cause such persons to so hold in confidence such information and to be responsible for any breach of this provision by such persons); and (iii) for information that becomes publicly available other than through such Party; provided, that (A) in the event a Party is requested pursuant to, or required by, applicable law to disclose non-public information, such Party shall, to the extent permitted by law, immediately notify the other Party in writing of the request or requirement so that the other Party may seek a protective order or other appropriate remedy. In the event that such protective order is not, or cannot be obtained or such prior notice is not permitted by law, then the disclosing Party may disclose only such portion of the non-public information which, in the opinion of its legal counsel, is required to be disclosed under or by applicable law, and shall use commercially reasonable efforts to obtain assurances that confidential treatment will be accorded to such non-public information; and (B) the Purchaser and its shareholders may disclose non-public information to their respective officers, directors, employees, agents, advisors, shareholders, limited partners and financing sources who agree to hold in confidence such information to the same extent as provided in this Section 7.1(b) (and the Purchaser hereby agrees to cause such persons to so hold in confidence such information and to be responsible for any breach of this provision by such persons). If the Final Transaction is not completed, each Party: (A) will return to the other

Party or destroy all non-public documents obtained from such other Party, and all copies, summaries and extracts thereof, except to the extent such Party is required by law or its internal procedures to retain such documents, in which case such Party shall take appropriate measures to preserve their continuing confidentiality and provide a certificate to such other Party that such information has been returned or destroyed in accordance with this Section 7.1(b); and (B) agrees not to use for its own benefit or for the benefit of any other person any non-public information received by it or its representatives from the other Party in connection with the Transaction and the Final Transaction. If the Final Transaction is completed, (A) the Purchaser (and/or its designate under the Option Agreement) and its representatives shall not be bound by this Section 7.1; and (B) the Seller shall, and shall cause its representatives to, transfer to the Purchaser or its designate all non-public documents pertaining to the Business, and all copies, summaries and extracts thereof, except to the extent the Seller is required by law or its internal procedures to retain such documents, in which case the Seller shall take appropriate measures to preserve their continuing confidentiality and provide a certificate to the Purchaser (and/or its designate under the Option Agreement) that such information has been returned or destroyed in accordance with this Section 7.1(b).

- (c) No Party shall make any public statement or issue any press release concerning this Agreement or the Transaction without the consent of the Purchaser and the Seller (such consent not to be unreasonably withheld) or as may be necessary, after consulting counsel to the Party making that disclosure, to comply with the requirements of applicable law. If any public statement or release is so required, the Party making the disclosure shall use commercially reasonable efforts to consult with the other Parties before making that statement or release, and the Purchaser and the Seller shall use all reasonable efforts, acting in good faith, to agree on a text for the statement or release that is satisfactory to the Purchaser and the Seller.

7.2 Privacy Matters

- (a) Each Disclosing Party acknowledges and confirms that the disclosure of Transferred Information is necessary for the purposes of determining if the Parties shall proceed with the Transaction, and that the disclosure of Transferred Information relates solely to the carrying on of the Business and the completion of the Transaction.
- (b) Each Disclosing Party covenants and agrees to, upon request, use commercially reasonable efforts to advise the Recipient of all documented purposes for which the Transferred Information was initially collected from or in respect of the individual to which such Transferred Information relates and all additional documented purposes where the Disclosing Party has notified the individual of such additional purpose, and where required by law, obtained the consent of such individual to such use or disclosure.
- (c) In addition to its other obligations hereunder, Recipient covenants and agrees to: (i) prior to the completion of the Transaction, use and disclose the Transferred Information solely for the purpose of reviewing and completing the Transaction, including for the purpose of determining to complete such transactions; (ii) after the completion of the Transaction, collect, use and disclose the Transferred Information only for those purposes for which the Transferred Information was initially collected from or in respect of the individual to which such Transferred Information relates or for the completion of the Transaction, unless: (A) the Disclosing Party or Recipient have first notified such individual of such additional purpose, and where required by laws, obtained the consent of such individual to such

additional purpose; or (B) such use or disclosure is permitted or authorized by law, without notice to, or consent from, such individual; (iii) where required by law, promptly notify the individuals to whom the Transferred Information relates that the Transaction has taken place and that the Transferred Information has been disclosed to Recipient; (iv) return or destroy the Transferred Information, at the option of the Disclosing Party, should the Transaction not be completed; and (v) notwithstanding any other provision herein, where the disclosure or transfer of Transferred Information to Recipient requires the consent of, or the provision of notice to, the individual to which such Transferred Information relates, to not require or accept the disclosure or transfer of such Transferred Information until the Disclosing Party has first notified such individual of such disclosure or transfer and the purpose for same, and where required by laws, obtained the individual's consent to same and to only collect, use and disclose such information to the extent necessary to complete the Transaction and as authorized or permitted by laws.

- (d) Recipient shall at all times keep strictly confidential all Transferred Information provided to it, and shall instruct those employees or advisors responsible for processing such Transferred Information to protect the confidentiality of such information in a manner consistent with the Recipient's obligations hereunder and according to applicable laws Recipient shall ensure that access to the Transferred Information shall be restricted to those employees or advisors of the respective Recipient who have a bona fide need to access such information in order to complete the Transaction.
- (e) Recipient shall use commercially reasonable efforts to protect and safeguard the Transferred Information including to protect the Transferred Information from loss or theft, or unauthorized access, disclosure, copying, use, modification, disposal or destruction and promptly advise Disclosing Party should any such loss, theft or unauthorized activity occur and shall only use, disclose, process, store or enable access to such Transferred Information in Canada, the United States or such other jurisdictions as Disclosing Party may approve in writing from time to time.

ARTICLE 8

RETAINED LIABILITIES

8.1 Retained Liabilities

Without limiting the generality of the foregoing, it is agreed that the Purchaser and the Business Entities shall have no Liability for any of the following obligations or Liabilities and that the Seller shall be responsible for same (collectively, the "**Retained Liabilities**"):

- (a) any Liability of the Seller for Taxes arising as a result of the Seller having been a partner of Canwest Partnership at any time prior to the Most Recent Tax Year End;
- (b) the obligation to pay the Transaction Expenses as contemplated by Section 5.5;
- (c) the LTIP Payment Obligations and the obligations set forth in Section 5.8;
- (d) any Liability of a Business Entity to any Related Person of such Business Entity (other than another Business Entity);
- (e) any shareholder loans or other inter-company or related party Indebtedness owed by a Business Entity to a Related Person of such Business Entity (other than another Business Entity).

ARTICLE 9
CLOSING

9.1 Closing Arrangements

- (a) The Parties shall use commercially reasonable efforts to ensure that the Condition Satisfaction Date has occurred by February 27, 2017, in which case the “**Closing Date**” shall be March 1, 2017, provided however that if, despite such efforts, the Condition Satisfaction Date has not occurred by February 27, 2017, or the Seller or the Purchaser, in its sole and absolute discretion, is otherwise unable to complete the Closing by March 1, 2017, the “**Closing Date**” shall be April 3, 2017, provided however that if the Condition Satisfaction Date has not occurred by March 29, then subject to the Condition Satisfaction Date having occurred by no later than April 27, 2017, the “**Closing Date**” shall be May 1, 2017. In any event the Closing Date shall not be later than the Outside Date. The Closing Date may be at any other date that has been mutually agreed upon by the Parties.
- (b) The Transaction shall be completed at 10:00 a.m. (Mountain Time) on the Closing Date at the offices of Seller's Counsel in Calgary, Alberta, Canada or at such other place or places as may be mutually agreed upon by the Parties.

9.2 Documents to be Delivered

On or before the Closing Date, the Seller shall execute, or cause to be executed, and shall deliver, or cause to be delivered, to the Purchaser, all agreements, instruments, notices, certificates and other documents which are to be delivered by the Seller pursuant to the provisions of this Agreement, in form satisfactory to the Purchaser, acting reasonably, and the Purchaser shall execute, or cause to be executed, and shall deliver, or cause to be delivered to the Seller, in form satisfactory to the Seller, acting reasonably, all cheques or bank drafts or funds flow directions, all agreements, instruments, notices, certificates and other documents which the Purchaser is to deliver or cause to be delivered pursuant to the provisions of this Agreement, including the following:

- (a) documents to be delivered by the Seller:
 - (i) the Option Agreement, duly executed by the Seller;
 - (ii) the Supply Agreement, executed by Gibson Gas Liquids Partnership and the Business Entities that are party thereto;
 - (iii) the Trucking Agreement, executed by Gibson Energy Partnership and the Business Entities that are party thereto;
 - (iv) certified copies of all necessary corporate and shareholder resolutions, authorizations and proceedings of the Seller that are required in order to authorize the execution, delivery and performance of this Agreement, or required to be taken or obtained to permit the due and valid transfer of the Optioned Securities pursuant to the terms of the Option Agreement;
 - (v) duly executed certificates required by Sections 6.2(a)(i) and 6.2(a)(ii);
 - (vi) the Gibson Guarantee, executed by Gibson Energy Inc.;

- (vii) a certificate of status, compliance, good standing or like certificate with respect to each of the Business Entities issued by the appropriate government officials of the jurisdiction of such entity's incorporation; and
- (b) documents to be delivered by the Purchaser:
 - (i) the Option Agreement, executed by the Purchaser;
 - (ii) evidence of payment of the Closing Proceeds and the Closing Indebtedness in accordance with Section 2.3;
 - (iii) a certified copy of resolutions of the directors of the Purchaser as may be required in order to authorize the execution, delivery and performance of this Agreement and the completion of the Transaction;
 - (i) duly executed certificates required by Sections 6.3(a)(i) and 6.3(a)(ii); and
 - (ii) a certificate of status, compliance, good standing or like certificate with respect to each of the Purchaser and Superior GP issued by the appropriate government officials of the jurisdiction of such entity's incorporation or formation.

ARTICLE 10

INDEMNIFICATION

10.1 Indemnity by the Seller

- (a) The Seller shall indemnify and save harmless the Purchaser Indemnified Parties from and against any Losses which may be incurred by any of the Purchaser Indemnified Parties or which any of the Purchaser Indemnified Parties may suffer, or any Claims to which any of the Purchaser Indemnified Parties may become a party, as a result of, in respect of or arising out of:
 - (i) any misrepresentation, inaccuracy, incorrectness or breach of any representation or warranty made in Sections 3.1 and 3.2;
 - (ii) any breach or non-performance or non-fulfillment of any covenant or agreement on the part of the Seller or the Business Entities contained in this Agreement, or any breach or non-performance or non-fulfillment of any covenant or agreement on the part of the Seller contained in any other agreement required to be executed and delivered hereunder by the Seller in order to carry out the Transaction;
 - (iii) any brokerage or finder's fees or commissions or similar payments based upon any agreement or understanding made, or alleged to have been made, by any person with any of the Business Entities (or an affiliate thereof) in connection with the Transaction;
 - (iv) the Retained Liabilities;
 - (v) any Taxes (other than taken into account in the calculation of Net Working Capital and the Purchase Price adjustments contemplated by Section 2.5(b)) payable by any of the Business Entities in respect of (A) any Pre-Closing Tax Period or (B) the portion of any Straddle Period ending immediately prior to the Closing Date;

(for clarity, this Subsection does not apply to any recalculation of Interim Canwest Partnership Tax Liability and/or Business Entities Straddle Period Income and/or Business Entities Straddle Period Tax Liability by the Parties, but does apply to any changes to those amounts resulting from a reassessment by a Governmental Entity); and

- (vi) all costs and expenses including, without limitation, legal fees on a solicitor and his own client basis, incidental to or in respect of the foregoing Sections 10.1(a)(i) to (v).
- (b) For the purposes of determining the amount of Losses suffered by the Purchaser Indemnified Parties in respect of Section 10.1(a)(i), all qualifications or exceptions in any representation, warranty or covenant referring to the terms "material", "materiality", "in all material respects", or "Material Adverse Effect" shall be disregarded.

10.2 Indemnity by the Purchaser

- (a) The Purchaser shall indemnify and save harmless the Seller Indemnified Parties from and against any Losses which may be incurred by any of the Seller Indemnified Parties or which any of the Seller Indemnified Parties may suffer, or any Claims to which any of the Seller Indemnified Parties may become a party, as a result of, in respect of or arising out of:
 - (i) any misrepresentation, inaccuracy, incorrectness or breach of any representation or warranty made by the Purchaser in Section 4.1;
 - (ii) any breach or non-performance or non-fulfillment of any covenant or agreement on the part of the Purchaser contained in this Agreement or in any other agreement delivered hereunder;
 - (iii) any brokerage or finder's fees or commissions or similar payments based upon any agreement or understanding made, or alleged to have been made, by any person with the Purchaser (or an affiliate thereof) in connection with the Transaction;
 - (iv) all costs and expenses including, without limitation, legal fees on a solicitor and his own client basis, incidental to or in respect of the foregoing Sections 10.2(a)(i) to 10.2(a)(iii).
- (b) For the purposes of determining the amount of Losses suffered by the Seller Indemnified Parties in respect of Section 10.2(a)(i), all qualifications or exceptions in any representation, warranty or covenant referring to the terms "material", "materiality", "in all material respects", or "Material Adverse Effect" shall be disregarded.

10.3 Survival of Representations and Warranties

- (a) The representations and warranties made by the Seller and the Target Entities contained in this Agreement or in any document or certificate given in order to carry out the Transaction shall survive the Closing and, notwithstanding such Closing, shall continue in full force and effect for the benefit of the Purchaser for a period of 15 months following the Closing Date, and notice of any such Claims shall be made by the Purchaser Indemnified Parties on or before the date which is 15 months following the Closing Date, except as provided in Section 10.3(b), 10.3(c) and 10.3(d).

- (b) Any Claims which are based upon or relate to the Fundamental Representations or which are based upon any intentional misrepresentation, willful misconduct, or fraud by the Seller, may be made or brought by the Purchaser Indemnified Parties at any time for the maximum period permitted by law.
- (c) The representations and warranties set out in Section 3.1(z) (Taxes) shall survive and continue in full force and effect until 90 days following the expiration of all periods allowed for objecting to or appealing from the final determination of any proceedings relating to any assessment, reassessment or additional assessment of any of the applicable Business Entities or the Purchaser for any Liability for Tax under applicable Tax legislation.
- (d) The representations and warranties set out in Section 3.1(gg) (Environmental) (the "**Environmental Representations**") shall survive and continue in full force and effect for a period of 3 years following the Closing Date, and notice of any such Claims shall be made by the Purchaser Indemnified Parties on or before the date which is 3 years following the Closing Date, except as provided in Section 10.3(b).
- (e) After the expiration as provided in Section 10.3(a), 10.3(b), 10.3(c) or 10.3(d), as applicable, the Seller shall be released from all obligations and Liabilities in respect of such representations and warranties made by the Seller, the Target Entities or any of them, contained in this Agreement or in any document or certificate given in order to carry out the Transaction, except with respect to any Claims by the Purchaser Indemnified Parties notice of which was made in writing prior to the expiration of the applicable period provided for by Section 10.3(a), 10.3(b), 10.3(c) or 10.3(d), as applicable.
- (f) The representations and warranties made by the Purchaser contained in this Agreement or in any document or certificate given in order to carry out the Transaction shall survive the Closing and, notwithstanding such Closing, shall continue in full force and effect for the benefit of the Seller for a period of 15 months following the Closing Date, and notice of any such Claim shall be made by the Seller Indemnified Parties on or before the date which is 15 months following the Closing Date, except as provided in Section 10.3(g) and 10.3(h).
- (g) Any Claims which are based upon or relate to the representations and warranties in any of Sections 4.1(a), 4.1(b) or 4.1(c) or which are based upon any intentional misrepresentation, willful misconduct or fraud by the Purchaser may be made or brought by the Seller Indemnified Parties at any time for the maximum period permitted by law.
- (h) The representations and warranties set out in Section 4.1(g) (Strategic Buyer) and Section 4.1(h) (No Tax Exempt or Non-Resident Purchasers) shall survive and continue in full force and effect until 90 days following the expiration of all periods allowed for objecting to or appealing from the final determination of any proceedings relating to any assessment, reassessment or additional assessment of the Seller for any Liability for Tax under applicable Tax legislation.
- (i) After the expiration as provided in Section 10.3(f), 10.3(g) and 10.3(h), as applicable, the Purchaser shall be released from all obligations and Liabilities in respect of such representations and warranties made by it contained in this Agreement or in any document or certificate given in order to carry out the Transaction, except with respect to any Claims by the Seller Indemnified Parties notice of which was made in writing prior to the expiration of the period provided for by Section 10.3(f), 10.3(g) or 10.3(h), as applicable,

and subject to the rights of the Seller Indemnified Parties to make any Claim permitted by Section 10.3(g).

- (j) Nothing in this Section 10.3 shall be construed as an agreement pursuant to section 7(1) of the *Limitations Act* (Alberta) for the extension of a limitation period thereunder.

10.4 Limitations on Indemnity

Notwithstanding anything to the contrary contained in this Agreement:

- (a) The Seller shall have no Liability under Section 10.1(a)(i) until the aggregate amount of all Losses incurred by the Purchaser Indemnified Parties with respect to such matters equals or exceeds \$[REDACTED- Quantum: confidential information] in the aggregate (the "**Deductible**"). Once the total of all Losses with respect to any of such matters exceeds the Deductible, the Purchaser Indemnified Parties shall be entitled to make an Indemnity Claim for the total amount of all Losses in excess of the Deductible, subject to the limitations set out in Section 10.4(b). The Deductible set out in this Section 10.4(a) shall not apply to any Indemnity Claims made by the Purchaser in respect of (i) any Fundamental Representations, (ii) the representations and warranties set forth in Section 3.1(z), or (iii) the intentional misrepresentation, willful misconduct or fraudulent act of the Seller.
- (b) Notwithstanding the foregoing, in no event shall the aggregate Liability (for indemnification or otherwise) of the Seller with respect to Claims under Section 10.1(a)(i) exceed an amount equal to \$[REDACTED- Quantum: confidential information]. The limitations set out in this Section 10.4(b) shall not apply, and shall not count towards such limit, to the obligations of the Seller to any Indemnity Claims made by the Purchaser in respect of (i) any Fundamental Representations, (ii) the representations and warranties set forth in Section 3.1(z), (iii) the intentional misrepresentation, willful misconduct, or fraudulent act of the Seller or (iv) any Environmental Representations.
- (c) The amount of any damages which may be claimed by a Party shall: (i) be calculated after giving effect to any insurance proceeds actually paid (net of expected premium increases) to such Party or its officers, directors, employees, agents, affiliates, successors or permitted assignees in relation to the matter which is the subject of the Indemnity Claim; and (ii) be reduced by the amount of any net Tax benefit enjoyed by the Party making such Indemnity Claim (including through a carryback to a prior taxable period).
- (d) Notwithstanding anything to the contrary in this Agreement, but subject to Section 3.3(c), the Seller shall not have any Liability to or obligation to indemnify the Purchaser Indemnified Parties under Section 10.1(a)(i), in respect of any matter that was disclosed in writing to the Purchaser.
- (e) The Seller Indemnified Parties, on the one hand, and the Purchaser Indemnified Parties, on the other hand, shall not be entitled to double recovery for any Indemnity Claim hereunder.

10.5 Provisions Relating to Indemnity Claims

The following provisions will apply to any Claim by the Purchaser for indemnification by the Seller pursuant to this Agreement or to any Claim by the Seller for indemnification by the Purchaser pursuant to this Agreement (hereinafter, in this Section, the Party making a Claim for indemnification shall be referred to as the "**Indemnified Party**", the Party against whom the Claim for indemnification is made shall be

referred to as the "**Indemnifying Party**" and the Claim for indemnity shall be referred to as the "**Indemnity Claim**"):

- (a) promptly after becoming aware of any matter that may give rise to an Indemnity Claim, the Indemnified Party will provide to the Indemnifying Party written notice of the Indemnity Claim specifying (to the extent that information is available) the factual basis for the Indemnity Claim and the amount of the Indemnity Claim or, if an amount is not then determinable, an estimate of the amount of the Indemnity Claim, if an estimate is feasible in the circumstances;
- (b) if an Indemnity Claim relates to an alleged Liability to any other person (hereinafter in this Section 10.5 called a "**Third Party Liability**"), including without limitation any Governmental Entity or regulatory body or any taxing authority, then the following additional terms and conditions shall apply:
 - (i) the Indemnified Party will not negotiate, settle, compromise or pay (except in the case of payment of a judgment) any Third Party Liability as to which it proposes to assert an Indemnity Claim, except in accordance with the provisions hereof or with the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld, conditioned or delayed);
 - (ii) with respect to any Third Party Liability, provided the Indemnifying Party first admits the Indemnified Party's right to indemnification for the amount of such Third Party Liability which may at any time be determined or settled, then in any legal, administrative or other proceedings in connection with the matters forming the basis of the Third Party Liability, the following procedures will apply:
 - (1) except as contemplated by subparagraphs (3) or (5) below, the Indemnifying Party will have the right to assume carriage of the compromise or settlement of the Third Party Liability and the conduct of any related legal, administrative or other proceedings, but the Indemnified Party will have the right and will be given the opportunity at its own cost (none of which will form part of an Indemnity Claim) to participate in the defence of the Third Party Liability, to consult with the Indemnifying Party in the settlement of the Third Party Liability and the conduct of related legal, administrative and other proceedings (including consultation with counsel) and to disagree on reasonable grounds with the selection and retention of counsel, in which case counsel satisfactory to the Indemnifying Party and the Indemnified Party, each acting reasonably, will be retained by the Indemnifying Party;
 - (2) the Indemnified Party will cooperate with the Indemnifying Party in relation to the Third Party Liability and will make available on a reasonable basis to the Indemnifying Party all witnesses, pertinent records, materials and information in its possession or under its control relating thereto as is reasonably required by the Indemnifying Party and at the Indemnifying Party's expense;
 - (3) the Indemnifying Party will cooperate with the Indemnified Party in relation to the Third Party Liability, will keep the Indemnified Party fully advised with respect thereto, will provide the Indemnified Party with

copies of all relevant documentation as it becomes available, will provide the Indemnified Party with access to all records and files relating to the defence of the Third Party Liability and will meet with representatives of the Indemnified Party at all reasonable times to discuss the Third Party Liability; and

- (4) the Indemnifying Party will not negotiate, settle, compromise or pay (except in the case of a payment of a judgment) the Third Party Liability or conduct any legal, administrative or other proceedings in any manner that could, in the reasonable opinion of the Indemnified Party have a material adverse effect on the Indemnified Party, except with the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld or delayed); and
 - (5) The Seller and the Purchaser shall jointly control and participate in all proceedings taken in connection with (A) any third party Claim relating to Taxes of a Business Entity for any Straddle Period, and (B) any third party Claim relating to Taxes of a Business Entity that involves partly Pre-Closing Tax Periods and partly other taxable periods. Neither the Seller nor the Purchaser shall settle any such third party Claim relating to Taxes without the prior written consent of the other, which consent shall not be unreasonably withheld, conditioned or delayed.
- (c) if, with respect to any Third Party Liability, the Indemnifying Party declines to assume carriage of the settlement or of any legal, administrative or other proceedings relating to the Third Party Liability, then the following provisions will apply:
- (i) the Indemnified Party will not negotiate, settle, compromise or pay (except in the case of payment of a judgment) any Third Party Liability as to which it proposes to assert an Indemnity Claim, except with the prior consent of the Indemnifying Party (which consent shall not be unreasonably withheld, conditioned or delayed); and
 - (ii) any cost, Loss, damage or expense incurred or suffered by the Indemnified Party in the settlement of such Third Party Liability or the conduct of any legal, administrative or other proceedings shall be added to the amount of the Indemnity Claim.

10.6 Sole and Exclusive Remedy

Subject to Section 6.1 and Section 11.2 and the last sentence of this Section 10.6, the rights of indemnity set out in this Article 10 are the sole and exclusive remedy of each Party for any breach of the representations and warranties by the other Parties (or any of them) given hereunder, for any non-performance or non-fulfillment of any covenant or agreement of the other Parties (or any of them) hereunder, or for any other Claim in connection with this Agreement or the Transaction. Accordingly, the Parties waive any and all rights, remedies and Claims that one Party may have against the other, whether at law, under any statute or in equity (including Claims for contribution or other rights of recovery arising under any Environmental Laws, Claims for breach of contract, breach of representation and warranty, negligent misrepresentation and all Claims for breach of duty), or otherwise, directly or indirectly, relating to the provisions of this Agreement or the Transaction other than as expressly provided for in this Section 10.6. The Parties agree that if an Indemnity Claim is made by one Party in accordance with Section 10.1

or Section 10.2, as the case may be, and there has been a refusal by the other Party to make payment or otherwise provide satisfaction in respect of such Indemnity Claim, then a legal proceeding is the appropriate means to seek a remedy for such refusal. This Section 10.6 shall remain in full force and effect in all circumstances and shall not be terminated by any breach (fundamental, negligent or otherwise) by any Party of its representations, warranties or covenants under this Agreement or under any closing document or by any termination or rescission of this Agreement by any Party. Notwithstanding the foregoing, any Party may bring an action for specific performance or injunction in connection with the rights and obligations set out herein, as further described in Section 11.2.

10.7 Mitigation, Contribution and Insurance

The Indemnified Party shall in all cases take such actions that are commercially reasonable to: (a) mitigate any Losses which may be the subject matter of any Indemnity Claim against the Indemnifying Party; (b) properly defend any Claim made against the Indemnified Party, to the extent such Claim is not otherwise controlled by the Indemnifying Party in accordance with the terms hereof; (c) properly advance any Claim the Indemnified Party may have against any other third party for contribution or recovery from that third party, and to enforce any such Claims against such third parties, to the extent such Claim is not otherwise controlled by the Indemnifying Party in accordance with the terms hereof; and (d) properly advance any Claim which may be made against any insurance coverage available under any insurance policies held by the Business Entities or the Seller in respect of any Losses which may be the subject matter of any Indemnity Claim against an Indemnifying Party. Any Indemnity Claim for Losses shall be reduced by any and all recovery, settlement, or payment received by or to an Indemnified Party (whenever received) in respect of the foregoing.

10.8 No Liability for Certain Damages or Losses

Notwithstanding anything in this Agreement to the contrary and subject to Section 11.2, in no event shall any Party be liable for consequential, exemplary, indirect, punitive Losses, damages or Claims of any other Party hereto.

10.9 Straddle Periods

In the case of the portion of a taxation year or period beginning before and ending after the Closing Date (each a "**Straddle Period**"), the amount of Taxes allocable to the portion of the Straddle Period ending immediately prior to the Closing Date shall be:

- (a) in the case of Taxes imposed on a periodic basis (such as real or personal property Taxes), the amount of such Taxes for the entire period (or, in the case of such Taxes determined on an arrears basis, the amount of such Taxes for the immediately preceding period) multiplied by a fraction, the numerator of which is the number of days in the Straddle Period prior to the Closing Date and the denominator of which is the number of days in the entire relevant Straddle Period; and
- (b) in the case of Taxes not described in (a) above (such as franchise Taxes, Taxes that are based upon or related to income or receipts, or Taxes that are based upon occupancy or imposed in connection with any sale or other transfer or assignment of property), the amount of any such Taxes shall be determined as if such taxable period ended immediately prior to the Closing Date.

10.10 Compulsory Payments Prior to Settlement

- (a) In the case of any notice of a Claim for indemnification concerning an amount of Losses (i) required to be paid by an Indemnified Party under applicable law or any court or other binding order (an "**Order**"), or (ii) in respect of which any amount is garnished by a Governmental Entity (each such amount a "**Preliminary Compulsory Payment Amount**"), the Indemnifying Party shall, within ten (10) days of receipt of the notice of such Claim (or notice of such garnishment), pay the Indemnified Party an amount equal to the Preliminary Compulsory Payment Amount.
- (b) Upon the occurrence of a Final Compulsory Payment Indemnification Event (if any), (i) if the aggregate of all Preliminary Compulsory Payment Amounts is less than the amount so determined under the Final Payment Determination to be the amount owing (the "**Final Compulsory Payment Amount**"), the Indemnifying Party shall, within ten (10) days of the time that the Indemnified Party notifies the Indemnifying Party of the occurrence of the Final Compulsory Payment Indemnification Event, pay to the Indemnified Party an amount equal to the difference between the aggregate for all Preliminary Compulsory Payment Amounts and the Final Compulsory Payment Amount, and (ii) if the aggregate of all Preliminary Compulsory Payment Amounts exceeds the Final Compulsory Payment Amount, the Indemnified Party shall within ten (10) days of the receipt of any related refund or credit, pay to the Indemnifying Party the amount of such refund or credit (including any interest paid or credited with respect thereto but net of any Taxes payable by the Indemnified Party in respect of such refund, credit or interest).

ARTICLE 11 **GENERAL PROVISIONS**

11.1 Notices

- (a) Any notice, direction or other instrument required or permitted to be given to any Party hereto shall be in writing and shall be sufficiently given if delivered personally, mailed or transmitted by email or other form of recorded communication tested prior to transmission to such Party, as follows:

- (i) in the case of the Seller, at:

care of Gibson Energy ULC
Suite 1700, 440 2nd Avenue S.W.
Calgary, Alberta T2P 5E9

Attention: [REDACTED- personal information]
Telephone: [REDACTED- personal information]
Email: [REDACTED- personal information]
Fax: [REDACTED- personal information]

with a copy to:

Bennett Jones LLP
4500 Bankers Hall East
855 – 2nd Street S.W.
Calgary, AB T2P 4K7

Attention: [REDACTED- personal information]
Telephone: [REDACTED- personal information]
Email: [REDACTED- personal information]
Fax: [REDACTED- personal information]

(ii) in the case of the Purchaser, at:

care of Superior Plus Corp
401, 200 Wellington Street West
Toronto, ON M5V 3C7

Attention: [REDACTED- personal information]
Telephone: [REDACTED- personal information]
Email: [REDACTED- personal information]

with a copy to:

Blake, Cassels & Graydon LLP
199 Bay Street
Suite 4000, Commerce Court West
Toronto, ON M5L 1A9

Attention: [REDACTED- personal information]
Telephone: [REDACTED- personal information]
Email: [REDACTED- personal information]

- (b) Any such notice, direction or other instrument, if delivered personally, shall be deemed to have been given and received on the date on which it was delivered, provided that if such day is not a Business Day then the notice, direction or other instrument shall be deemed to have been given and received on the first Business Day next following such day; if mailed, shall be deemed to have been given and received on the third day after it was mailed, provided that if such day is not a Business Day then the notice, direction or other instrument shall be deemed to have been given and received on the first Business Day next following such day; and if transmitted by fax or email, shall be deemed to have been given and received on the day of its transmission, provided that if such day is not a Business Day or if it is transmitted or received after the end of normal business hours then the notice, direction or other instrument shall be deemed to have been given and received on the first Business Day next following the day of such transmission.

Any Party hereto may change its address for service from time to time by notice given to the other parties hereto in accordance with the foregoing provisions.

11.2 Equitable Remedies

- (a) The Parties agree that irreparable harm would occur for which monetary damages would not be an adequate remedy at law in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Parties shall be entitled to equitable remedies, including an injunction or injunctions to prevent or cure breaches of the provisions of this Agreement and to specifically enforce the terms and provisions of this Agreement, this being in addition to any other remedy such Party may have in accordance with the terms of this Agreements.
- (b) Each Party further agrees that (i) such Party will not oppose the granting of an injunction, specific performance and other equitable relief as provided herein on the basis that the other party has an adequate remedy at law or an award of specific performance is not an appropriate remedy for any reason at law or equity; and (ii) no other Party or any other person shall be required to obtain, furnish or post any bond or similar instrument in connection with or as a condition to obtaining any remedy referred to in this Section 11.2, and each Party irrevocably waives any right it may have to require the obtaining, furnishing or posting of any such bond or similar instrument.

11.3 Amendment

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

11.4 Waiver

The Seller (on behalf of itself and, where applicable, the Business Entities), on the one hand, and the Purchaser, on the other hand, may:

- (a) extend the time for the performance of any of the obligations or acts of the other;
- (b) waive compliance with any of the other's agreements or the fulfillment of any conditions to its own obligations contained herein; or
- (c) waive inaccuracies in any of the other's representations or warranties contained herein or in any document delivered by the other;

provided, however, that any such extension or waiver shall be valid only if set out in an instrument in writing signed on behalf of such Parties and, unless otherwise provided in the written waiver, will be limited to the specific breach, covenant or condition waived.

11.5 Time of Essence

Time shall be of the essence in this Agreement.

11.6 Assignment and Binding Effect

- (a) Except as expressly permitted by the terms hereof, neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the Parties without the prior written consent of the other Parties hereto. Notwithstanding the foregoing, the Purchaser may assign or transfer all or any part of its rights and obligations under this

Agreement to one or more affiliates of the Purchaser without written consent, provided that no such assignment or transfer shall relieve the Purchaser of its obligations under this Agreement. Notwithstanding anything to the contrary herein, the Seller hereby consents to the Purchaser's assignment of the rights, interests and obligations under this Agreement, including the Option granted pursuant to the Option Agreement, in whole or in part, to Superior General Partner Inc. ("AcquisitionCo"), an affiliate of Purchaser, and/or any subsidiary of AcquisitionCo (provided that such assignment shall not relieve the Purchaser of its obligations under this Agreement). The Parties hereby agree to make any necessary adjustments to the Option Agreement to reflect the impact of any assignment permitted pursuant to this Section 11.6.

- (b) This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

11.7 Further Assurances

Each Party shall, from time to time and at all times hereafter, at the request of the other Parties, but without further consideration, do all such further acts and things, and execute and deliver all such further documents and instruments and provide all such further assurances as may be reasonably required in order to fully perform and carry out the terms and intent hereof.

11.8 Severability

If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule or law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the Transaction is not affected in any manner materially adverse to either Party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, 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 an acceptable manner to the end that the Transaction is fulfilled to the fullest extent possible.

11.9 No Third Party Beneficiaries

This Agreement is not intended to confer any rights or remedies upon any person other than the Parties to this Agreement, other than the Indemnified Parties.

11.10 Counterparts, Execution

This Agreement may be executed in counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The Parties shall be entitled to rely upon delivery of an executed facsimile or similar executed electronic copy of this Agreement, and such facsimile or similar executed electronic copy shall be legally effective to create a valid and binding agreement between the Parties.

11.11 Expenses of Parties

Each of the Parties shall bear all expenses incurred by it in connection with this Agreement including, without limitation, the charges of its respective counsel, accountants, financial advisors, environmental consultants and finders.

11.12 Brokerage and Finder's Fees

Other than fees owing to the Financial Advisor, which shall be paid in full in connection with Closing, no Party is aware of any Claim for any brokerage, agency, finder's fee or commission in connection with the Transaction or the Final Transaction payable by any of the Parties and the Seller and the Purchaser agree that if such a Claim should arise as a result of any action taken by it, such Party who has taken such action that has given rise to such Claim shall indemnify the other Party in respect thereof.

11.13 Entire Agreement

This Agreement, the Confidentiality Agreement, and the Exhibits referred to herein constitute the entire agreement among the Parties and, except as otherwise stipulated herein, supersedes all prior agreements, representations, warranties, statements, promises, information, arrangements and understandings, whether oral or written, express or implied, with respect to the subject matter hereof.

11.14 Non-Merger

The covenants, representations and warranties shall not merge on and shall survive the Closing and shall continue in full force and effect. Closing shall not prejudice any right of one Party against the other Party in respect of anything done or omitted under this Agreement or in respect of any right to damages or other remedies.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

BY THE PURCHASER:

**SUPERIOR PLUS LP by its sole general partner
SUPERIOR GENERAL PARTNER INC.**

Per: "Darren Hribar"
Name: Darren Hribar
Title: Senior Vice President and Chief Legal Officer

Per: "Beth Summers"
Name: Beth Summers
Title: Senior Vice President and Chief Financial Officer

BY THE SELLER:

GIBSON ENERGY ULC

Per: "A. Stewart Hanlon"
Name: A. Stewart Hanlon
Title: President and Chief Executive Officer

Per: "Sean M. Brown"
Name: Sean M. Brown
Title: Chief Financial Officer

BY THE TARGET ENTITIES:

CANWEST PROPANE ULC

Per: "A. Stewart Hanlon"
Name: A. Stewart Hanlon
Title: President and Chief Executive Officer

Per: "Sean M. Brown"
Name: Sean M. Brown
Title: Chief Financial Officer

STITTCO ENERGY LIMITED

Per: "A. Stewart Hanlon"
Name: A. Stewart Hanlon
Title: President and Chief Executive Officer

Per: "Sean M. Brown"
Name: Sean M. Brown
Title: Chief Financial Officer

CAL-GAS INC.

Per: "A. Stewart Hanlon"
Name: A. Stewart Hanlon
Title: President and Chief Executive Officer

Per: "Sean M. Brown"
Name: Sean M. Brown
Title: Chief Financial Officer

**CANWEST PROPANE PARTNERSHIP, by its
managing partner, GIBSON ENERGY ULC**

Per: "A. Stewart Hanlon"
Name: A. Stewart Hanlon
Title: President and Chief Executive Officer

Per: "Sean M. Brown"
Name: Sean M. Brown
Title: Chief Financial Officer

EXHIBIT A

Share and Partnership Capital

I. Canwest Units

Partners	Units Held
Canwest ULC	462
Cal-Gas Inc.	4213
Gibson Energy ULC	11,058

II. Canwest Shares

Class	Number of Shares	Holder	Certificate Number
Common	10,100	Gibson Energy ULC	1C

III. Stittco Shares

Class	Number of Shares	Holder	Certificate Number
Class B Common	110,000	Gibson Energy ULC	BC-3
Class C Preferred	100	Gibson Energy ULC	CP-6

IV. Cal-Gas Shares

Class	Number of Shares	Holder	Certificate Number
Common	12,049	Canwest Propane ULC	C-4
Class A Preferred	9,315	Canwest Propane ULC	AP-3
Class B Preferred	14,344,759	Canwest Propane ULC	BP-5
Class C Preferred	2,959,487	Canwest Propane ULC	CP-4

V. Stittco Utilities Man Ltd. Shares

Class	Number of Shares	Holder	Certificate Number
Common	101	Stittco Energy Limited	4

VI. Stittco Utilities NWT Ltd. Shares

Class	Number of Shares	Holder	Certificate Number
Common	2,400,000	Stittco Energy Limited	3, 5, 7, 8

EXHIBIT B

Guarantee

[REDACTED- confidential information]

EXHIBIT C

Allocation of Purchase Price

The Purchase Price (subject to adjustment as provided in the Agreement) shall be allocated among the rights to acquire the Optioned Securities in accordance with the following table:

<u>Optioned Securities</u>	<u>Amount</u>
Optioned Units	\$[REDACTED: Allocation of purchase price]
Issued Share Capital of Stittco	\$[REDACTED: Allocation of purchase price]
Issued Share Capital of Canwest ULC	\$[REDACTED: Allocation of purchase price]
TOTAL	\$412,000,000

EXHIBIT D

Option Agreement

(See attached)

SUPERIOR PLUS LP

- and -

GIBSON ENERGY ULC

OPTION AGREEMENT
[], 2017

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EXHIBITS

- Exhibit A – Share and Partnership Capital
- Exhibit B – Non-Competition Agreement
- Exhibit C – Transition Services Agreement
- Exhibit D – Release
- Exhibit E – Interim Period Costs

OPTION AGREEMENT

THIS AGREEMENT is made as of [], 2017,

AMONG:

SUPERIOR PLUS LP, a limited partnership organized under the laws of Ontario (the "**Purchaser**")

- and -

GIBSON ENERGY ULC, an unlimited liability corporation incorporated under the laws of the Province of Alberta (the "**Seller**")

WHEREAS the Seller is the legal and beneficial owner of (i) all of the share capital of Stittco, (ii) all of the share capital of Canwest ULC, and (iii) an interest in Canwest Partnership which comprises approximately seventy percent (70%) of all partnership interests in Canwest Partnership;

WHEREAS Canwest ULC is the legal and beneficial owner of (i) all of the share capital of Cal-Gas, and (ii) an interest in Canwest Partnership which comprises approximately three percent (3%) of all partnership interests in Canwest Partnership;

WHEREAS Cal-Gas is the legal and beneficial owner of an interest in Canwest Partnership which comprises approximately twenty seven percent (27%) of all partnership interests in Canwest Partnership;

WHEREAS Seller has agreed to grant to the Purchaser an irrevocable option to purchase, on the terms and subject to the conditions hereinafter set out, all of the issued and outstanding share capital of Stittco and Canwest ULC, and all partnership interests in Canwest Partnership other than the partnership interests owned by Cal-Gas and Canwest ULC; and

WHEREAS the Parties are parties to the Option Purchase Agreement, and this is the Option Agreement contemplated by and defined therein.

NOW THEREFORE, in consideration of the payments, covenants and agreements made pursuant to the Option Purchase Agreement, including the payment by the Purchaser of the Option Issuance Price, and as herein contained (the receipt and sufficiency of which are hereby conclusively acknowledged), the Parties agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement, the preamble and recitals hereto, and the exhibits attached hereto (the "**Exhibits**", and each, an "**Exhibit**"), unless there is something in the subject matter or context inconsistent therewith, the following words and terms will have the indicated meanings and grammatical variations of such words and terms will have corresponding meanings.

"**Accounts Payable**" means, at any point of determination, all trade and other accounts payable, notes payable and other debts due or accruing by the Business Entities relating to goods and/or services received prior to such time, determined in accordance with GAAP;

"**Accrued Vacation Entitlements**" means any and all entitlements of the Business Employees as of the Option Right Effective Time in respect of accrued and untaken vacation time, including any and all rights to be paid in lieu thereof;

"**Adjusted Purchase Price**" has the meaning ascribed thereto in Section 2.6(c);

"**affiliate**" has the meaning ascribed thereto in the Securities Act;

"**Agreement**", "**this Agreement**", "**herein**", "**hereto**" and "**hereof**" and similar expressions refer to this option agreement as the same may be amended, supplemented or otherwise modified from time to time in accordance with the terms hereof and, where applicable, to the Exhibits hereto;

"**Allocated Canwest Partnership Tax Liability**" means the aggregate liability of the Seller, as a partner of Canwest Partnership, for Taxes arising solely from the allocation to the Seller of Tax Allocation Income, calculated using a combined federal and provincial income tax rate of 26.5%;

"**arm's length**" has the meaning ascribed thereto in the Tax Act;

"**Assumed Liabilities**" has the meaning ascribed thereto in Section 7.1;

"**Assumed Retention Obligations**" has the meaning ascribed thereto in the Disclosure Letter;

"**BAR Costs**" means any and all out-of-pocket costs and expenses incurred by the Seller and/or any Business Entities in respect of the matters contemplated by Section 4.3(a), provided that "**BAR Costs**" shall in any event exclude BAR Costs Paid by Closing and BAR Costs Unpaid by Closing, as those terms are defined in the Option Purchase Agreement;

"**BAR Costs Incurred by Closing**" means all BAR Costs incurred by the Seller or the Business Entities, as applicable, during the Interim Period;

"**BAR Costs Incurred following Closing**" means all BAR Costs incurred by the Seller or the Business Entities, as applicable, after the Closing Date;

"**BCUC Approval**" means the approval of the British Columbia Utilities Commission of the transactions contemplated by this Agreement, as contemplated by Subsection 54(5) of the British Columbia Utilities Commission Act;

"**BCUC Filings**" has the meaning ascribed thereto in Section 4.6(b)(i);

"**Benefit Plan Costs**" has the meaning ascribed thereto in Section 4.10(b);

"**Budget Account**" means the notional account of a customer of a Business Entity whereby such customer makes periodic payments, which payments are applied to the obligations of such customer in respect of product deliveries made from time to time or the rental of tanks or other equipment, and "**Budget Accounts**" means all such Budget Accounts as of the Closing Date;

"**Business**" means the propane supply and distribution business carried on by the Business Entities as of the Closing Date;

"**Business Day**" means any day, other than a Saturday, Sunday or statutory holiday in Calgary, Alberta;

"**Business Employees**" has the meaning ascribed thereto in Section 4.10(a);

"**Business Entities**" means, collectively, the Target Entities, Cal-Gas and the Stittco Subsidiaries, and "**Business Entity**" means any of them;

"**Cal-Gas**" means Cal-Gas Inc., a corporation formed pursuant to the laws of the Province of Alberta;

"**Cal-Gas Shares**" means all of the shares of every class and kind issued and outstanding in the capital of Cal-Gas, as at the Effective Time, a true and complete listing of which is set out in Exhibit A hereto;

"**Cal-Gas Units**" means the Canwest Units held by Cal-Gas, a true and complete listing of which is set out in Exhibit A hereto, which comprise twenty seven percent (27%) of all Canwest Units;

"**Canwest Partnership**" means Canwest Propane Partnership, a general partnership formed pursuant to the laws of the Province of Alberta and governed by the Canwest Partnership Agreement;

"**Canwest Partnership Agreement**" means the Amended and Restated Partnership Agreement dated October 1, 2008 in respect of Canwest Partnership;

"**Canwest Shares**" means all of the shares of each class and every kind and issued in the capital of Canwest ULC, as at the Effective Time, a true and complete listing of which is set out in Exhibit A hereto;

"**Canwest ULC**" means Canwest Propane ULC, a corporation formed pursuant to the laws of the Province of Alberta;

"**Canwest ULC Units**" means the Canwest Units of every kind issued and outstanding held by Canwest ULC, a true and complete listing of which is set out in Exhibit A hereto, which comprise three percent (3%) of all Canwest Units;

"**Canwest Units**" means all of the partnership units of Canwest Partnership, a true and complete listing of which is set out in Exhibit A hereto;

"**Claim**" means any claim, demand, action, cause of action, suit, arbitration, investigation, proceeding, dispute, complaint, grievance, charge, prosecution, assessment or reassessment, including any appeal or application for review;

"**Closing**" means the closing of the Transaction;

"**Closing Date**" means the tenth (10th) Business Day following the Condition Satisfaction Date, *provided, however*, that the Closing Date may be such earlier date as may be mutually agreed upon by the Parties;

"**Closing Proceeds**" has the meaning ascribed thereto in Section 2.3(b);

"**Closing Purchase Price**" has the meaning ascribed thereto in Section 2.4(a)(i);

"**Closing Statement**" has the meaning ascribed thereto in Section 2.6(a);

"**Closing Statement Objection**" has the meaning ascribed thereto in Section 2.6(b);

"**Commissioner**" means the Commissioner of Competition appointed pursuant to subsection 7(1) of the Competition Act or his designee;

"**Competition Act**" means the *Competition Act* (Canada);

"**Competition Act Clearance**" means that one or more of the following shall have occurred: (i) the Commissioner shall have issued an advance ruling certificate pursuant to Section 102 of the Competition Act in respect of the Transaction; (ii) the Commissioner shall have issued to the Purchaser a "no action letter" indicating that he does not intend to apply to the Competition Tribunal for an Order under Section 92 of the Competition Act in respect of the Transaction and the relevant waiting period under Section 123 of the Competition Act shall have expired or been terminated in respect of the Transaction; or (iii) the relevant waiting period under Section 123 of the Competition Act shall have expired or been terminated in respect of the Transaction and there shall not be any Restraining Order or voluntary agreement with the Commissioner not to consummate the Transaction in effect in respect of the Transaction;

"**Competition Act Submissions**" means all submissions made by Purchaser or Seller to the Commissioner pursuant to subsections 5.6(a) and 5.6(b) of the Option Purchase Agreement;

"**Competition Tribunal**" means the Competition Tribunal established under subsection 3(1) of the *Competition Tribunal Act* (Canada);

"**Condition Satisfaction Date**" means the date of the satisfaction or waiver (subject to applicable laws) of the conditions set out in Article 6 of this Agreement (excluding conditions that, by their terms, cannot be satisfied until the Closing Date, but subject to the satisfaction or waiver of those conditions as of the Closing Date) by the applicable Parties;

"**Confidentiality Agreement**" means the confidentiality agreement dated [REDACTED- Date of agreement: confidential information] between the Purchaser and the Seller;

"**Consent Agreement**" means an agreement with the Commissioner that is registerable in the Competition Tribunal under section 105 of the Competition Act;

"**Contract**" means any pending or executory contract, agreement, license, franchise, Lease or other legally binding arrangement, commitment, understanding or other right or obligation (whether written or oral) to which any Business Entity is a party or by which any Business Entity is bound or affected;

"**Customer Account Surplus**" means, in respect of a Budget Account, the amount on the Closing Date, if any, by which the customer has made payments that exceed the value of the product delivered;

"**Disclosure Letter**" has the meaning ascribed thereto in the Option Purchase Agreement;

"**Effective Time**" means 12:01 a.m. (Mountain Time) on the Closing Date;

"**Employee Benefit Plans**" means all written compensation, overtime, bonus, deferred compensation, incentive compensation, share purchase, share appreciation, share option, severance or termination pay, change of control, vacation pay, holiday pay, hospitalization or other medical, health and welfare benefits, life or other insurance, dental, eye care, disability, accidental death and dismemberment, supplemental employment insurance benefits, profit-sharing, employee loan, employee assistance, counselling, pension, retirement or supplemental retirement benefit plans, arrangements or agreements, including the Quarterly Branch Manager Incentive Program, LTIP and any defined benefit or defined contribution pension plans and any group registered retirement savings plans, savings plans, post-retirement benefits and any other similar written employee benefit plans, arrangements or agreements, funded or unfunded, including policies

with respect to holidays, sick leave, disability, vacations, expense reimbursements and automobile allowances and rights to company-provided automobiles, that are sponsored or maintained or contributed to or required to be contributed to, by the Seller or a Business Entity for the benefit of any of the Business Employees, former employees or consultants of the Business or beneficiaries of any of them, whether or not insured, except that the term "**Employee Benefit Plans**" shall not include any statutory plans with which the Seller is required by any Governmental Entity to comply, including the Canada/Quebec Pension Plan or plans administered pursuant to applicable provincial health Tax, workers' compensation, workers' safety and insurance and employment insurance legislation;

"**Encumbrance**" means any mortgage, hypothec, prior Claim, lien, pledge, assignment for security, security interest, guarantee, right of third parties or other charge, encumbrance, any collateral securing the payment obligations of any person, option, warrant, right of first refusal, pre-emptive rights, lease, sublease, right to possession, Claim, right or restriction which affects, by way of a conflicting ownership interest or otherwise, the right, title or interest in or to any particular property, as well as any other agreement or arrangement with any similar effect whatsoever;

"**Estimated Closing Statement**" has the meaning ascribed thereto in Section 2.4(a);

"**ETA**" means the *Excise Tax Act* R.S.C. 1985, c. E-15.;

"**Exercise Notice**" has the meaning ascribed thereto in Section 2.2;

"**Expiry Date**" has the meaning ascribed thereto in Section 2.8;

"**Extension Fee**" shall be the aggregate per diem amount for each day following December 31, 2017, until the Seller receives or is credited with, as a result of Closing, a refund of the incremental tax payable as a result of the Seller realizing a deemed gain pursuant to subsection 49(1) of the Tax Act because of its entering into this Agreement and receiving the Option Issuance Price. The per diem amount shall be \$31.5 million times [REDACTED- Quantum: competitively sensitive information] divided by 365;

"**Final Compulsory Payment Amount**" has the meaning ascribed thereto in Section 10.10(b);

"**Final Compulsory Payment Indemnification Event**" means a Final Payment Determination having been made regarding a liability requiring payment under applicable law or any Order;

"**Final Determination**" has the meaning ascribed thereto in Section 2.6(c);

"**Final Payment Determination**" means a determination made by a Governmental Entity (including pursuant to a settlement) where all rights to object to or appeal from the determination (including any right to obtain relief under a competent authority or similar process) have been exhausted or have expired;

"**Financial Advisor**" means RBC Capital Markets;

"**Financial Auditor**" has the meaning ascribed thereto in Section 4.2(iii);

"**Financing Commitment Letters**" means one or more binding, executed commitment letters from a lender or group of lenders, as required with respect to the provision of the requisite third party debt financing needed by the Purchaser to consummate the Transaction;

"**Fiscal Year**" has the meaning ascribed thereto in Section 2.5;

"**Fundamental Breach**" has the meaning ascribed thereto in Section 9.8;

"GAAP" means, at any time, accounting principles generally accepted in Canada as set out in Part I of the Canadian Institute of Chartered Accountants Accounting Handbook – International Financial Reporting Standards, applied on a consistent basis with past practice;

"Gibson Real Property Leases" has the meaning ascribed thereto in the Option Purchase Agreement;

"Governmental Entity" means: (a) any Canadian, U.S. or other jurisdiction's federal, provincial, state, regional, municipal, local or other government, governmental or public department, ministry, central bank, court, tribunal, arbitral body, commission, commissioner, board, bureau or agency; (b) any subdivision, agency, agent or authority of any of the foregoing; or (c) any quasi-governmental or private body, including any tribunal, commission, regulatory agency or self-regulatory organization, exercising any regulatory, expropriation or taxing authority under or for the account of any of the foregoing;

"GST" means the Tax imposed under Part IX of the ETA;

"Head Office Services" has the meaning ascribed thereto in the Option Purchase Agreement;

"IFRS" means International Financial Reporting Standards for Canadian public companies;

"Indebtedness" of any person means, without duplication:

- (m) all obligations of such person for borrowed money or with respect to refundable deposits;
- (n) all obligations of such person evidenced by bonds, debentures, notes or similar instruments;
- (o) all obligations of such person upon which interest charges are customarily paid;
- (p) all obligations of such person under conditional sale or other title retention agreements relating to property acquired by such person;
- (q) all obligations of such person in respect of the deferred purchase price of property acquired or services provided prior to the Closing Date, (excluding Accounts Payable) including, for greater certainty, earn-out obligations, if any, calculated pursuant to GAAP;
- (r) all guarantees by or similar security or payment assurance obligations provided by such person of Indebtedness of others including obligations of such person as an account party in respect of letters of credit and letters of guarantee (other than letters of credit and letters of guarantee issued in support of current Accounts Payable incurred in the Ordinary Course of Business);
- (s) all capital lease obligations of such person (excluding any prepayment penalties);
- (t) all obligations, contingent or otherwise, of such person in respect of bankers' acceptances;
- (u) all obligations under any foreign exchange contract, currency swap agreement, foreign currency futures or options, exchange rate insurance or other similar agreement or combination thereof;
- (v) all obligations of such person to purchase, redeem, retire, defease or otherwise acquire for value (other than for other equity securities) any equity securities of such person, valued, in the case of redeemable equity securities, at the greater of voluntary or involuntary redemption price, plus accrued and unpaid dividends; and

- (w) any amendment, supplement, modification, deferral, renewal, extension, refunding or refinancing of any Indebtedness of the types referred to above;

"**Indemnified D&O Party**" has the meaning ascribed thereto in Section 6.2;

"**Indemnified Party**" has the meaning ascribed thereto in Section 10.5;

"**Indemnifying Party**" has the meaning ascribed thereto in Section 10.5;

"**Indemnity Claim**" has the meaning ascribed thereto in Section 10.5;

"**Independent Accountant**" means an accounting firm of recognized national standing in Canada which is independent of the Parties and which shall be appointed by the mutual agreement of the Parties as required by the terms and conditions of this Agreement. If the Parties are unable to agree on the Independent Accountant within the prescribed time period then the Independent Accountant shall be E&Y, or, in the event of a conflict, KPMG;

"**Independent Contractor**" means any consultant or contractor: (a) engaged by any Business Entity, the majority or all of whose services are provided to one or more Business Entities; or (b) engaged by Gibson and utilized solely in respect of the Business, and the majority or all of whose services are provided in respect of the Business;

"**Ineligible Person**" means a person exempt from Tax under section 149 of the Tax Act or a non-resident person, within the meaning of the Tax Act;

"**Interim Period**" means the time period from the Issuance Date to the Closing;

"**Interim Period Costs**" means all costs incurred by the Seller in carrying out the Interim Period Operations, including the Benefit Plan Costs, at the rates set out in Exhibit E;

"**Interim Period Operations**" means all activities carried out by the Seller at any time and from time to time during the Interim Period as required and contemplated by Section 4.1, 4.2, and 4.9;

"**Investment Canada Act**" means the *Investment Canada Act*, R.S.C. 1985, c. 28 (1st Supp);

"**Issuance Date**" means the date of this Agreement;

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

"**Liquidated Damages**" has the meaning ascribed thereto in Section 9.8;

"**Losses**" means any amounts on account of damages, losses, deficiencies, costs, Liabilities, Claims, causes of action, indemnities, fines, penalties and expenses (including reasonable costs, fees and expenses of investigation and of legal counsel on a full indemnity basis, including those incurred in connection with pursuing Indemnity Claims under this Agreement);

"**LTIP**" means the Gibson Energy Inc. 2011 Equity Incentive Plan in the form filed on March 10, 2016 on sedar.com in the Gibson Energy Inc. company profile;

"**Most Recent Tax Year End**" means the most recent tax year end of Canwest Partnership being December 31, 2016;

"**Mutual Releases**" has the meaning ascribed thereto in Section 8.3;

"**Non-Competition Agreement**" means the non-competition and non-solicitation agreement to be entered into at Closing between the Seller, the Purchaser and Gibson Energy Inc. in the form attached hereto as Exhibit B, having a term expiring on the [REDACTED- Date: competitively sensitive information] anniversary of the Effective Time;

"**Option Issuance Price**" means the purchase price paid by the Purchaser to the Seller pursuant to the terms of the Option Purchase Agreement in consideration of the issuance by the Seller of the Option Right;

"**Option Purchase Agreement**" means the option purchase agreement dated February 13, 2017 among the Parties, pursuant to which this Agreement was executed and delivered;

"**Option Purchase Agreement Straddle Period**" means the portion of a taxation year or the fiscal period beginning before and ending after the date of the Option Right Effective Time;

"**Option Right**" has the meaning ascribed thereto in Section 2.1;

"**Option Right Effective Time**" means the "Effective Time" under the Option Purchase Agreement;

"**Option Term**" has the meaning ascribed thereto in Section 2.2;

"**Order**" has the meaning ascribed thereto in Section 10.10(a);

"**Ordinary Course of Business**" when used in relation to the taking of any action by a Business Entity means that the action is consistent in nature, scope and magnitude with the past practices of the Business Entity and is taken in the ordinary course of normal day-to-day operations of the Business Entity;

"**Outside Date**" has the meaning set out in Section 5.5;

"**Parties**" means the parties to this Agreement, and "**Party**" means any one of them;

"**Pension Plan**" has the meaning ascribed thereto in the Option Purchase Agreement;

"**person**" includes an individual, limited or general partnership, limited liability company, limited liability partnership, trust, joint venture, association, body corporate, unincorporated organization, trustee, executor, administrator, legal representative, government (including any Governmental Entity) or any other entity, whether or not having legal status;

"**Post-Exercise Period**" means the time period from the exercise of the Option Right to Closing;

"**Pre-Closing Tax Period**" has the meaning ascribed thereto in Section 5.7(a);

"**Preliminary Compulsory Payment Amount**" has the meaning ascribed thereto in Section 10.10(a);

"**Prior Period Return**" has the meaning ascribed thereto in Section 5.7(a);

"**Proposed Transferee**" has the meaning ascribed thereto in Section 4.7(a);

"**Proposed Transferee Notice**" has the meaning ascribed thereto in Section 4.7(a);

"**Prospectus**" has the meaning ascribed thereto in Section 4.3(a);

"**Privileged Communications**" has the meaning ascribed thereto in Section 10.13(a);

"**Purchase Price**" has the meaning ascribed thereto in Section 2.3(a);

"**Purchased Securities**" means, collectively, the Purchased Shares and the Purchased Units;

"**Purchased Shares**" means all of the shares of every class and kind issued and outstanding in the capital of each Target Company immediately prior to the purchase thereof by the Purchaser, a true and complete listing of which is set out in Exhibit A hereto;

"**Purchased Units**" means the Canwest Units held by the Seller, a true and complete listing of which is set out in Exhibit A hereto, which comprise seventy percent (70%) of all Canwest Units;

"**Purchaser**" has the meaning ascribed thereto in the recitals to this Agreement;

"**Purchaser Indemnified Parties**" means the Purchaser and its respective direct and indirect subsidiaries, officers, directors, shareholders, employees and agents;

"**Purchaser's Counsel**" means Blake, Cassels & Graydon LLP;

"**Regulatory Approvals**" means the Competition Act Clearance, the BCUC Approval and all other sanctions, rulings, consents, filings, registrations, exemptions, permits and no-action letters, approvals (including the lapse, without objection, of a prescribed time under a statute or regulation that states that a transaction may be implemented if a prescribed time lapses following the giving of notice without an objection being made) of any Governmental Entity required in order to effect the Closing in accordance with applicable laws;

"**Related Person**" means, with respect to any specified person: (i) any affiliate of such specified person, and any director, officer, executive employee, general partner or managing member of such affiliate; (ii) any person who serves or within the past five years has served as a director, officer, executive employee, partner, or in a similar capacity for, such specified person; and (iii) any other person not at arm's length from such specified person as contemplated by the Tax Act;

"**Remedy**" means (a) the sale, divestiture, licensing or disposition of all or any part of the businesses, properties or assets of the Purchaser, the Target Entities, the Seller, or any of their respective affiliates; (b) the termination of any existing contractual rights, relationships or obligations; (c) the taking of any other action that, after completion of the Transaction, would limit the freedom of action of, or impose any other requirement on, the Purchaser with respect to the operation of one or more of the businesses, properties or assets of the Purchaser, the Seller, or any of their respective affiliates; or (d) any other remedial action whatsoever that may be sought by the Commissioner or ordered by the Competition Tribunal;

"**Restraining Order**" means an Order pursuant to Section 92, 100 or 104 of the *Competition Act* that prohibits the completion of the Transaction;

"**Retained Liabilities**" has the meaning ascribed thereto in Section 8.1;

"**Returns**" means all reports, forms, elections, designations, schedules, information statements and returns with respect to Taxes, including any amendments, attachments, appendices and exhibits thereto, made,

prepared or filed with any Governmental Entity or required to be made, prepared or filed with any Governmental Entity;

"**Securities Act**" means the *Securities Act*, R.S.A. 2000, c. S-4;

"**Seller**" has the meaning ascribed thereto in the recitals to this Agreement;

"**Seller Indemnified Parties**" means the Seller and the Business Entities (in the event that the Transaction is not consummated, their affiliates and their respective shareholders, directors, officers, employees and agents, as applicable, but excluding the Business Entities);

"**Seller's Counsel**" means Bennett Jones LLP;

"**Shortfall Amount**" has the meaning ascribed thereto in Section 2.6(d);

"**Stittco**" means Stittco Energy Limited, a corporation formed pursuant to the laws of Canada;

"**Stittco Shares**" means all of the shares of each class and every kind and issued in the capital of Stittco, as at the Effective Time, a true and complete listing of which is set out in Exhibit A hereto;

"**Stittco Subsidiaries**" means, collectively, the following entities:

- (a) Stittco Utilities Man. Ltd.; and
- (b) Stittco Utilities NWT Ltd.;

"**Stittco Subsidiary Shares**" means all of the shares of every class and kind issued and outstanding in the capital of the Stittco Subsidiaries, as at the Effective Time, a true and complete listing of which is set out in Exhibit A hereto;

"**Superior GP**" has the meaning ascribed thereto in Section 4.1(a);

"**Supply Agreement**" means the Supply Agreement defined in and executed and delivered pursuant to the Option Purchase Agreement;

"**Target Companies**" means, collectively, Stittco and Canwest ULC, and "**Target Company**" means either of them;

"**Target Entities**" means, collectively, the Target Companies and Canwest Partnership;

"**Tax**" or "**Taxes**" means all taxes, assessments, charges, dues, duties, rates, fees, imposts, levies and similar charges of any kind lawfully levied, assessed or imposed by any Governmental Entity, including Canada Pension Plan and provincial pension plan contributions and installments, unemployment insurance contributions and employment insurance contributions, worker's compensation and deductions at source, taxes based on or measured by reference to gross receipts, gross income, net income, profits, sales, capital, use and occupation, and including goods and services, harmonized sales, ad valorem, transfer, franchise, withholding, customs, payroll, stamp, recapture, premium, windfall profits, employment, excise and property duties and taxes, together with all interest, penalties, fines and additions imposed with respect to such amounts, and in each case whether disputed or not;

"**Tax Act**" means the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.);

"Tax Allocation Income" means the taxable income allocated by Canwest Partnership to Seller in respect of any fiscal period ending after the Most Recent Tax Year-End;

"Tax Proceeding" has the meaning ascribed thereto in Section 4.8(d);

"Terminated Agreement" has the meaning ascribed thereto in Section 5.10(a)(i);

"Third Party Liability" has the meaning ascribed thereto in Section 10.5(b);

"Transaction" means the acquisition by the Purchaser (and/or the Proposed Transferee(s), as applicable) of all the Purchased Securities at Closing pursuant to the exercise of the Option Right as contemplated by this Agreement and the transactions ancillary thereto as contemplated by this Agreement;

"Transition Services Agreement" means the Transition Services Agreement in the form set out in Exhibit C, between the Target Entities and the Seller; and

"Trucking Agreement" means the Trucking Agreement defined in and executed and delivered pursuant to the Option Purchase Agreement.

1.2 Interpretation Not Affected by Headings

The division of this Agreement into Articles and Sections and the insertion of a table of contents and headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement. The terms "hereof", "hereunder" and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles, Sections and Exhibits are to Articles and Sections of and Exhibits to this Agreement.

1.3 Interpretation

In this Agreement words importing the singular number include the plural and vice versa, and words importing any gender include all genders. The term "third party" means any person other than the Parties and their respective affiliates.

1.4 Date for Any Action

If the date on which any action is required to be taken hereunder by a Party is not a Business Day, such action shall be required to be taken on the next succeeding day that is a Business Day.

1.5 Statutory References

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

1.6 Currency

Unless otherwise stated, all references in this Agreement to sums of money are expressed in lawful money of Canada and "\$" refers to Canadian dollars.

1.7 Accounting Principles

All accounting terms used in this Agreement are to be interpreted in accordance with GAAP and all determinations of an accounting nature in respect of the Business Entities required to be made shall be made in a manner consistent with GAAP.

1.8 Inclusive Terminology

Whenever used in this Agreement, the words "includes" and "including" and similar terms of inclusion will not, unless expressly modified by the words "only" or "solely", be construed as terms of limitation, but rather will mean "includes but is not limited to" and "including without limitation", so that references to included matters will be regarded as illustrative without being either characterizing or exhaustive.

1.9 Interpretation Not Affected by Party Drafting

The Parties acknowledge that their respective legal counsel have reviewed and participated in negotiating, drafting and settling the terms of this Agreement, and the Parties agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting party will not be applicable in the interpretation of this Agreement.

1.10 Governing Law; Waiver of Jury Trial

This Agreement shall be governed, including as to validity, interpretation and effect, by the laws of the Province of Alberta and the federal laws of Canada applicable therein (without reference to conflict of laws principles), and shall be construed and treated in all respects as an Alberta contract. Each of the Parties hereby irrevocably attorns to the exclusive jurisdiction of the courts of the Province of Alberta in respect of all matters arising under and in relation to this Agreement, *provided, however*, that for the purposes of Section 11.2(a), the Parties may enforce equitable remedies in any jurisdiction in which the Purchaser is located, in addition to the Province of Alberta. Each Party hereby waives any right to trial by jury in any action, proceeding or counterclaim (whether based on contract, tort or otherwise) arising out of or relating to this Agreement or the Transaction or the actions of the Parties in the negotiation, administration, performance and enforcement of this Agreement.

1.11 Laws

Whenever used in this Agreement, "**law**" or "**laws**" means all laws (including common law), statutes, by-laws, rules, regulations, principles of law and equity, Orders, rulings, ordinances, judgments, injunctions, determinations, awards, decrees or other requirements, whether domestic or foreign, and the terms and conditions of any grant of approval, permission, authority or license of any Governmental Entity.

1.12 Exhibits

The following Exhibits are annexed to this Agreement and are incorporated by reference into this Agreement and form an integral part hereof:

Exhibit A	–	Share and Partnership Capital
Exhibit B	–	Non-Competition Agreement
Exhibit C	–	Transition Services Agreement
Exhibit D	–	Release
Exhibit E	–	Interim Period Costs

ARTICLE 2 **GRANT OF OPTION**

2.1 Grant of Option Right

The Seller hereby grants to the Purchaser an exclusive and irrevocable (within the time limited for exercise) option to purchase the Purchased Securities (the "**Option Right**") for the Purchase Price and on the terms and conditions herein contained, free and clear of all Encumbrances, on the Closing Date.

2.2 Exercise of Option Right

The Purchaser shall be entitled to exercise the Option Right in accordance with the terms of this Agreement at any time up to and including the Expiry Date (the "**Option Term**"). This Option Right may be exercised by, and shall be deemed exercised upon, delivery of a written notice by the Purchaser to the Seller expressing that the Purchaser thereby unconditionally, exercises the Option Right (the "**Exercise Notice**") prior to the expiry of the Option Term. For clarity, the prior exercise of the Option Right shall not affect the rights and obligations of the Parties under Section 4.7.

2.3 Purchase Price

- (a) The aggregate purchase price payable at Closing in respect of the sale to the Purchaser of the Purchased Securities pursuant to the exercise of the Option Right (the "**Purchase Price**") shall be one dollar (\$1), which shall be subject to adjustment only as follows:
 - (i) the Purchase Price shall be increased by fifty percent (50%) of the amount of the BAR Costs Incurred by Closing by the Seller;
 - (ii) the Purchase Price shall be decreased by fifty percent (50%) of the amount of the BAR Costs Incurred by Closing by the Business Entities;
 - (iii) the Purchase Price shall be increased by the amount of all reasonable out-of-pocket expenses incurred by the Seller after December 31, 2017 for fees paid to legal and other professional advisors, to comply with Section 4.6;
 - (iv) the Purchase Price shall be increased by all Interim Period Costs not paid to the Seller by the Business Entities during the Interim Period; and
 - (v) the Purchase Price shall be increased by the amount of the Allocated Canwest Partnership Tax Liability, if any, as contemplated by Section 2.5, reduced by the

aggregate amount distributed or paid to the Seller by the Business Entities during the Interim Period on account of the same.

- (b) The Purchase Price, as adjusted pursuant to Section 2.3(a) in accordance with the Estimated Closing Statement (such net and adjusted amount, the "**Closing Proceeds**"), shall be paid by the Purchaser to the Seller's Counsel, in trust for the Seller at Closing.

2.4 Estimated Closing Statement

- (a) The Purchaser and the Seller acknowledge that it will not be possible to conclusively determine the adjustments to the Purchase Price required by Section 2.3(a) until the Closing Statement is finalized in accordance with Section 2.6. Accordingly, the Purchaser and the Seller agree that, not less than two (2) Business Days prior to the Closing Date, the Seller shall deliver to the Purchaser a good faith estimate of the adjustments to the Purchase Price set out in Sections 2.3(a), and the Adjusted Purchase Price based thereon (the "**Closing Purchase Price**"), (the statement reflecting the estimates set out in this Section 2.3(a), the "**Estimated Closing Statement**").
- (b) The estimates and adjustments set out in the Estimated Closing Statement shall be calculated in accordance with GAAP, consistent with past practice, and shall include supporting documentation. The Purchaser shall have the right to review the amounts set out in the Estimated Closing Statement and the Seller and the Target Entities shall provide the Purchaser with access to all relevant documentary backup; *provided, however*, that in the event of a dispute on any given item, the position set out in the Estimated Closing Statement shall govern for the purposes of the estimates of the adjustments to the Purchase Price set out in Section 2.3(a).

2.5 Tax Adjustments

The Parties acknowledge that, pursuant to the terms of the Canwest Partnership Agreement, for tax purposes, taxable income for each fiscal year of the Canwest Partnership (each, a "**Fiscal Year**") is allocated to the partners of Canwest Partnership as at the end of such fiscal year, according to each such partner's respective partnership interests at that time. The Parties further acknowledge that the Option Issuance Price was adjusted downward pursuant to the Option Purchase Agreement on the assumption that the Closing (as contemplated by this Agreement) would occur before the end of any Fiscal Year occurring after the Most Recent Tax Year End. Therefore, to the extent that the Seller, as owner of the Purchased Units, is for tax purposes allocated taxable income of Canwest Partnership for any Fiscal Year ending after Most Recent Tax Year End but the prior to Closing, the Purchase Price shall be increased by the amount of the Allocated Canwest Partnership Tax Liability.

2.6 Post-Closing Purchase Price Adjustment Process

- (a) Within ninety (90) days of the Closing Date, the Seller shall prepare and deliver to the Purchaser a statement (the "**Closing Statement**") which sets out the adjustments to the Purchase Price referred to in Section 2.3(a).
- (b) The Purchaser shall have thirty (30) days from the date it receives the Closing Statement to review the Closing Statement and to inform the Seller in writing of any disagreement with the Closing Statement (a "**Closing Statement Objection**"). If the Purchaser does not deliver a Closing Statement Objection to the Seller within such 30-day period, the Closing Statement shall be deemed to have been accepted by the Purchaser and shall become final and binding upon the Parties. If a Closing Statement Objection is delivered within such

30-day period, the Seller shall then have thirty (30) days from the time the Closing Statement Objection is received to review and respond to the Closing Statement Objection. If the Purchaser and the Seller are unable to resolve their disagreement(s) with respect to the Closing Statement within five (5) days following the foregoing 30-day period, then such disagreement shall be submitted to an Independent Accountant. The Independent Accountant shall, as promptly as practicable (but in any event within forty-five (45) days following its appointment), make a determination on the disputed elements of the Closing Statement based solely on written submissions submitted by the Purchaser and the Seller to the Independent Accountant. The decision of the Independent Accountant as to the Closing Statement shall, absent manifest error, be final and binding upon the Purchaser and the Seller and shall constitute the Purchase Price (as adjusted in accordance with the terms of this Agreement) for purposes of this Agreement. The Purchaser shall pay one-half of the fees, expenses and GST of the Independent Accountant with respect to the resolution of any such dispute and the Seller shall pay the balance.

- (c) Upon acceptance of the Closing Statement by the Purchaser and the Seller, or a final determination pursuant to Section 2.6(b) hereof (a "**Final Determination**"), if the Purchase Price, as finally adjusted in accordance with the provisions hereof (the "**Adjusted Purchase Price**"), is greater than the Closing Purchase Price, then the Purchase Price shall be increased, dollar for dollar, by the amount by which the Adjusted Purchase Price exceeds the Closing Purchase Price, and the Purchaser shall, within three (3) Business Days of the Final Determination, pay in cash, to the Seller's Counsel in trust for the Seller, the amount of such difference.
- (d) Upon acceptance of the Closing Statement by the Purchaser and the Seller or a Final Determination:
 - (i) if the Adjusted Purchase Price is greater than one dollar (\$1) but less than the Closing Purchase Price (the amount of such difference, the "**Shortfall Amount**"), then the Purchase Price shall be decreased, dollar for dollar, by the Shortfall Amount, and the Seller shall, within three (3) Business Days of the determination of the Adjusted Purchase Price in accordance with this Section 2.6, pay in cash, to the Purchaser's Counsel in trust for the Purchaser, the amount of such difference; or
 - (ii) if the Adjusted Purchase Price is less than one dollar (\$1), the Seller shall return to the Business Entities reimbursement payments previously made by the Business Entities as contemplated by Section 4.1(b).

2.7 Purchase Price Allocation

The Purchase Price shall be allocated among the Purchased Securities *pro rata* in accordance with the final allocation of the Option Issuance Price pursuant to the Option Purchase Agreement among the Purchased Securities.

2.8 Expiry of Option Right

The Option Right shall expire on, December 29, 2017 unless, at such time, a Restraining Order is in effect or the Purchaser has delivered a Proposed Transferee Notice, in which case the Purchaser may, by written notice prior to December 29, 2017, extend the expiry to September 30, 2018 (such date of expiry,

as the same may be extended, (the "**Expiry Date**"). Should Purchaser deliver a notice to extend the expiry to September 30, 2018, the Extension Fee shall become payable by Purchaser.

2.9 Non-Competition Agreement

- (a) The Seller acknowledges and confirms that: (i) due to its ownership of the Purchased Securities, it will receive substantial financial benefit from the completion of the Transaction; (ii) any other consideration that would otherwise be paid in consideration for the Non-Competition Agreement has been paid to the Seller in connection with the purchase and sale of the Purchased Securities; and (iii) the Purchaser would not have completed the Transaction without the execution and delivery by the Seller of the Non-Competition Agreement.
- (b) The Parties intend that the conditions set out in subsection 56.4(7) of the Tax Act have been met such that subsection 56.4(5) of the Tax Act applies to any "restrictive covenants" (as defined in subsection 56.4(1) of the Tax Act) granted by the Seller pursuant to the Non-Competition Agreement. For greater certainty, the Parties agree and acknowledge that: (i) for the purposes of paragraph 56.4(7)(d) of the Tax Act, other than \$1, no proceeds shall be attributable, allocable, received or receivable by the Seller in respect of the Non-Competition Agreement; and (ii) the Non-Competition Agreement is integral to this Agreement and has been granted to maintain or preserve the Business and the fair market value of the Purchased Securities.

ARTICLE 3 REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of the Seller

The Seller represents and warrants to and in favor of the Purchaser that as of the date hereof and as of the Effective Time:

- (a) Authority Relative to this Agreement (Seller). The Seller has the requisite corporate power and authority to enter into this Agreement and any agreement ancillary hereto and to carry out its obligations hereunder and thereunder. The execution and delivery of this Agreement by the Seller and the consummation by the Seller of the Transaction have received all necessary organizational approval of, and no other corporate proceedings on its part are necessary to authorize the execution and delivery by it of this Agreement or any agreement ancillary hereto and the consummation by it of the Transaction. This Agreement has been duly executed and delivered by the Seller and constitutes a legal, valid and binding obligation of it enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws relating to or affecting creditors' rights generally and to general principles of equity. The Seller is not an insolvent person within the meaning of the *Bankruptcy and Insolvency Act (Canada)* and will not become an insolvent person as a result of the Closing.
- (b) Authorized and Issued Capital.
 - (i) The authorized and issued capital of each Business Entity is as set out in Exhibit A hereto.
 - (ii) The Purchased Shares represent all the issued and outstanding shares in the capital of the Target Companies.

- (iii) The Purchased Units represent 70% of the issued and outstanding units of Canwest Partnership. The Cal-Gas Units represent 27% of the issued and outstanding units of Canwest Partnership. The Canwest ULC Units represent 3% of the issued and outstanding units of Canwest Partnership. The Purchased Units, the Cal-Gas Units and the Canwest ULC Units collectively constitute all of the issued and outstanding units of Canwest Partnership.
 - (iv) The Stittco Subsidiary Shares represent all the issued and outstanding shares in the capital of the Stittco Subsidiaries.
 - (v) All of the Purchased Shares, Stittco Subsidiary Shares and Canwest Units have been duly authorized and issued in compliance with all applicable laws including, without limitation, applicable securities laws and in compliance with the articles of incorporation, by-laws or other constating documents of the applicable issuer or any Contract to which any Business Entity is a party, or by which it is bound.
 - (vi) The Target Entities have no subsidiaries, other than the Stittco Subsidiaries, and the Business Entities have no interest in any other partnership, corporation or other business organization.
- (c) Title to Shares. The Seller is the registered and beneficial owner of the Purchased Securities, free and clear of Encumbrances. Canwest ULC is the registered and beneficial owner, free and clear of Encumbrances, of the Cal-Gas Shares and the Canwest ULC Units. Cal-Gas is the registered and beneficial owner, free and clear of Encumbrances, of the Cal-Gas Units. Stittco is the registered and beneficial owner of all of the Stittco Subsidiary Shares, free and clear of Encumbrances.
- (d) Capitalization of the Business Entities. There are no options, warrants, purchase rights, subscription rights, conversion privileges, exchange rights or pre-emptive rights or other rights, agreements, arrangements or commitments of a similar nature to which the Seller or any Business Entity is bound relating to the outstanding or unissued share capital or partnership capital of such Business Entity, as applicable, or obligation to issue any shares or units of, or other equity interest in, any Business Entity or securities or obligations of any kind convertible into or exchangeable for any shares or units of any Business Entity, nor are there any outstanding stock appreciation rights, phantom equity or similar rights, agreements, arrangements or commitments based upon the book value, income or any other attribute of any Business Entity. There are no outstanding bonds, debentures or other evidences of Indebtedness of any Business Entity having the right to vote (or that are convertible for, exercisable into or exchangeable for securities having the right to vote) on any matter on which the holders of shares may vote.
- (e) Shareholder Agreements, etc. There are no investor rights agreements, shareholder agreements, pooling agreements, voting trusts or other similar agreements (other than the Canwest Partnership Agreement) with respect to the ownership or voting of any of the shares or units in the capital of the Business Entities and no person has the right, directly or indirectly, to acquire shares or units in the capital of the Business Entities.
- (f) Organization and Qualification. The Seller is an unlimited liability corporation duly organized, formed and validly existing under the laws of its jurisdiction of incorporation and has the requisite power and authority to own the Purchased Securities as set out in Exhibit A hereto.

- (g) Authority Relative to Ancillary Agreements (Business Entities). Each Business Entity has the requisite corporate power and authority to enter into the Non-Competition Agreement and the Transition Services Agreement, as applicable, and to carry out its obligations thereunder. The execution and delivery of such agreements by a Business Entity have been duly authorized by its board of directors or managing partners (as applicable), and no other corporate proceedings on the part of a Business Entity are necessary to authorize the execution and delivery by any Business Entity of any agreement ancillary hereto. No Business Entity is an insolvent person within the meaning of the *Bankruptcy and Insolvency Act* (Canada) and no Business Entity will become an insolvent person as a result of the Closing.
- (h) Ownership of Purchased Securities.
 - (i) The Seller is the registered and beneficial owner of the Purchased Securities, and it has the exclusive right to sell, assign and transfer such Purchased Securities as provided in this Agreement free of any restrictions of any kind (other than restrictions, if any, contained in the relevant constating documents).
 - (ii) The Purchased Shares are validly issued and outstanding as fully paid and non-assessable shares of the Target Companies and the Purchased Units are validly issued and outstanding units of Canwest Partnership.
 - (iii) Upon completion of the Transaction, the Purchaser shall have good and valid legal and beneficial title to the Purchased Securities, free and clear of all Encumbrances. Except for the Purchaser's rights under this Agreement, no person has any written or oral agreement, option or warrant or any right or privilege (whether by law, pre-emptive or contractual) for the purchase or acquisition of such Purchased Securities.
- (i) Residency. The Seller is not a non-resident of Canada for purposes of the Tax Act.

3.2 Representations and Warranties of the Purchaser

The Purchaser hereby represents and warrants to the Seller as follows that as of the date hereof and as of the Effective Time:

- (a) Organization and Qualification. The Purchaser is a limited partnership duly formed and validly existing under the laws of Ontario. Superior General Partner Inc. ("**Superior GP**") is a corporation duly incorporated and validly existing under the laws of Canada. The Purchaser and Superior GP have the requisite power and authority to own their respective assets as now owned and to carry on their respective businesses as now being conducted. The Purchaser and Superior GP are duly registered to do business and are in good standing in each jurisdiction in which the character of their respective properties and assets, owned, leased, licensed or otherwise held, or the nature of their respective activities makes such registration or authorization necessary.
- (b) Authority Relative to this Agreement. The Purchaser has the requisite power and authority to enter into this Agreement and any agreement ancillary hereto to which it is a party and to carry out its obligations hereunder and Superior GP has the requisite power and authority to execute this Agreement and any agreement ancillary hereto on behalf of the Purchaser. The execution and delivery of this Agreement by Superior GP on behalf of the Purchaser and the consummation by the Purchaser of the Transaction have been duly authorized by

Superior GP, and no other proceedings on the Purchaser's part are necessary to authorize the execution and delivery by it of this Agreement or any agreement ancillary hereto and the consummation by it of the Transaction. This Agreement has been duly executed and delivered by Superior GP on behalf of the Purchaser and constitutes a legal, valid and binding obligation of the Purchaser enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws relating to or affecting creditors' rights generally and to general principles of equity. The Purchaser is not an insolvent person within the meaning of the *Bankruptcy and Insolvency Act* (Canada) and will not become an insolvent person as a result of the Closing.

- (c) Investment Canada Act. Neither the Purchaser nor Superior GP is a "non-Canadian" or a "state owned enterprise" within the meaning of the Investment Canada Act.
- (d) Anticipated Transfers. The Purchaser does not currently contemplate that an interest in Canwest Partnership will be acquired directly, or indirectly through a partnership or trust, by any Ineligible Person.
- (e) No Tax Exempt or Non-Resident Purchasers. The Purchaser is not an Ineligible Person or a partnership or trust described in class (ii) or (iii) below. The Purchaser is purchasing the Purchased Units as legal and beneficial owner and is not purchasing, and will not hold, the Purchased Units in the capacity of a trustee. The Purchaser covenants that it shall not, without the approval of the Seller, not to be unreasonably withheld, for a period of thirty (30) months following the Closing Date sell or transfer the Purchased Units to, or admit as a partner of Canwest Partnership or the Purchaser, any of the following persons: (i) an Ineligible Person, (ii) a partnership to the extent that the interest in Canwest Partnership can reasonably be considered to be held, at that time, indirectly through one or more partnerships, by an Ineligible Person or a trust resident in Canada (other than mutual fund trust within the meaning of the Tax Act), or (iii) a trust resident in Canada (other than a mutual fund trust within the meaning of the Tax Act).
- (f) Availability of Funds. The Purchaser has on the Issuance Date, and shall have at Closing sufficient available funds and/or Financing Commitment Letters to pay the Purchase Price and all other necessary fees, expenses and other amounts incurred by it in connection with the consummation of the Transaction.

ARTICLE 4

COVENANTS OF THE PARTIES

4.1 Interim Period Conduct of Business

- (a) Throughout the Interim Period except as is otherwise required by applicable law, the Seller shall provide the Business Entities with the Head Office Services and shall otherwise use reasonable efforts to cause the business of the Business Entities, in all material respects, to be conducted in the Ordinary Course of Business, and the Seller shall cause the Business Entities to use commercially reasonable efforts to maintain and preserve the Business Entities' business organization, assets, properties, employees, goodwill and business relationships. In furtherance of the foregoing, the Seller shall maintain and cause the Business Entities to maintain, as applicable, the Employee Benefit Plans.
- (b) The Seller shall be permitted from time to time during the Interim Period, to cause the Business Entities to make distributions to or to otherwise pay or satisfy by reimbursement,

all Interim Period Costs as they are incurred, and the amount of the Allocated Canwest Partnership Tax Liability, if any.

- (c) The Seller covenants and agrees that during the Interim Period, it shall not cause or permit the Business Entities to:
 - (i) other than as permitted by Section 4.1(b), authorize or pay any dividend or other distribution, or make any return of capital to the Seller, its affiliates, or any of them;
 - (ii) amend their respective formation and organizational documents;
 - (iii) reorganize, amalgamate or merge with any other person;
 - (iv) agree to amend the terms of the Supply Agreement or the Trucking Agreement or fail to enforce its rights under such agreements opposite any counterparty; or
 - (v) acquire (by merger, amalgamation, consolidation or acquisition of shares or assets or otherwise) any corporation, partnership or other business organization or division thereof or make any investment either by the purchase of securities or contributions of capital, if any of the foregoing would be material to the Business Entities, taken as a whole.
- (d) For greater certainty, nothing in this Agreement shall be construed to provide the Purchaser with a significant interest in or control of the whole or part of the Business Entities, within the meaning of the Merger Enforcement Guidelines established by the Commissioner, during the Interim Period.
- (e) Nothing in this Section 4.1 and nothing in Section 4.2 shall restrict or preclude the Seller from causing the Business Entities to carry out their obligations under the Trucking Agreement and the Supply Agreement.

4.2 Post-Exercise Period Conduct of Business

- (a) Throughout the Post-Exercise Period, the Seller shall take all actions reasonably requested by the Purchaser in order that the condition of the organization, assets, properties, employees, goodwill and business relationships of the Business will not be materially impaired during the Post-Exercise Period.
- (b) The Seller covenants and agrees that during the Post-Exercise Period, unless the Purchaser shall otherwise consent in writing, or except as is otherwise expressly permitted or contemplated by this Agreement, or as is otherwise required by applicable law:
 - (i) none of the Business Entities shall directly or indirectly:
 - (1) sell, pledge, lease, license, dispose of, mortgage, grant a security interest in or otherwise create an Encumbrance on any of its property or assets, except in the Ordinary Course of Business and in amount which, individually or in the aggregate, are not material to the financial condition of the Business Entities taken as a whole, or to the operation of the Business

- (2) except in the Ordinary Course of Business, acquire any property or assets, or exercise an option to acquire, any property or assets of any other person;
- (3) with the exception of those capital expenditures that have been made or otherwise committed to prior to the Issuance Date, all of which are set out in the Disclosure Letter (as defined in the Option Purchase Agreement), make any capital expenditures in excess of \$1,000,000 in the aggregate;
- (4) issue any debt securities or assume, endorse or otherwise as an accommodation become responsible for the obligations of any other person, other than in the Ordinary Course of Business and in any case not, in the aggregate, in excess of \$500,000.
- (5) except as contemplated by this Agreement, issue or sell any shares, units or other securities or issue, sell or grant any option, warrant or right to purchase any of its shares, units or other securities or issue any security convertible into its shares or units, grant any registration rights or otherwise make any change to its authorized or issued share or equity capital;
- (6) incur any Indebtedness or make any loans or advances other than in the Ordinary Course of Business;
- (7) pay, discharge or satisfy any Claims, Liabilities or obligations in excess of \$250,000;
- (8) enter into any Contract which provides for gross revenues to, or gross payments by, the Business Entities, taken as a whole, in excess of \$2,000,000 per annum;
- (9) pay any long-term Liability other than in the Ordinary Course of Business, or otherwise in accordance with the terms of that Liability or with applicable law;
- (10) other than in the Ordinary Course of Business, increase, in any material manner, the compensation (including bonuses) or benefits of any of the employees, officers, Independent Contractors or directors of any Business Entity; or pay to any employee, officer, Independent Contractor or director of any Business Entity any pension, severance or termination amount or other benefit not required by any of the Employee Benefit Plans;
- (11) enter into any Contract or commitment to hire any officer or senior management employee, or terminate the services of (A) any Business Employee other than for cause or performance based issues; or (B) other than as has been agreed to by the Purchaser, any employee employed by the Seller who is utilized predominantly in respect of the Business;
- (12) make any additional grants under the LTIP or any other incentive program to any employee, officer, Independent Contractor or director of any Business Entity (provided that the Business Entities shall be permitted to make short-term incentive and retention grants in the amounts and to the persons described in the Disclosure Letter); or

- (13) otherwise take any action which would make the representations and warranties of the Seller in Section 3.1 incorrect as of the Closing Date;
 - (14) agree, commit or enter into any understanding to take any actions enumerated in paragraphs (1) to (13) of this Section 4.2(b)(i).
- (ii) the Purchaser shall have the right to have a third party audit the Business, at its own expense;
 - (iii) subject to applicable competition laws, the Purchaser shall have the right to appoint an employee to act as a financial auditor (the "**Financial Auditor**") who shall have access to all personnel, records, information, and facilities required to monitor the financial performance of the Business and Seller's compliance with this Agreement or for the Purchaser to meet its financial reporting obligations; and
 - (iv) subject to applicable competition laws, Seller shall respond to all requests from the Financial Auditor in a timely manner and shall provide all information the Financial Auditor may reasonably request including periodic reporting of the financial performance of the Business (provided that the Seller may require the Financial Auditor to sign an appropriate confidentiality agreement in a form satisfactory to the Purchaser and the Seller, acting reasonably).
- (c) For greater certainty, nothing in this Agreement shall be construed to provide the Purchaser with a significant interest in or control of the whole or part of the Business Entities, within the meaning of the Merger Enforcement Guidelines established by the Commissioner, during the Post-Exercise Period.

4.3 Covenants of the Seller

The Seller shall, and shall cause the Business Entities to, perform all obligations required or desirable to be performed by the Seller under this Agreement, co-operate with the Purchaser in connection therewith, and do all such other acts and things as may be necessary or desirable in order to consummate and make effective, as soon as reasonably practicable, the Transaction and, without limiting the generality of the foregoing, the Seller shall, and shall cause the Business Entities to:

- (a) provide reasonable assistance (and cause the Target Entities to provide reasonable assistance) to the Purchaser with the preparation of disclosure to be included in a business acquisition report required to be filed by the Purchaser pursuant to Part 8 of National Instrument 51-102 *Continuous Disclosure Obligations*, (in this Section 4.3, "**NI 51-102**") as may be modified by exemptive relief granted pursuant to applicable law, and with the preparation and filing by the Purchaser or one of its affiliates of a short-form prospectus and/or prospectus supplement (the "**Prospectus**") to comply with the requirements of Part 8 of NI 51-102 pursuant to National Instrument 44-101 *Short Form Prospectus Distributions* and/or National Instrument 44-102 *Shelf Distributions* or an offering memorandum with similar level of disclosure, as applicable, as may be modified by exemptive relief granted pursuant to applicable law, with respect to one or more financing transactions undertaken by the Purchaser pursuant to, and required to comply with, applicable Canadian securities laws, including using commercially reasonable efforts to:
 - (i) provide the Purchaser with comparative audited annual combined financial statements for the Business Entities prepared in accordance with IFRS as at the year ended December 31, 2016, required by the Purchaser to comply with Part 8

of National Instrument 51-102 *Continuous Disclosure Requirements* no later than 60 days following the Execution Date;

- (ii) within 45 days of the completion of any interim quarterly period, or within 70 days of the completion of any annual period, (other than in respect of the year ended December 31, 2016), as applicable, of the Business Entities, provide to the Purchaser combined financial statements (which, for any annual period shall be audited in accordance with IFRS) for the Business Entities in respect of such period;
 - (iii) prior to the Closing Date, make available to the Purchaser, on reasonable notice, the material financial books and records related to the Business Entities;
 - (iv) make available to the Purchaser, on reasonable notice, financial personnel of the Seller and its affiliates;
 - (v) request the Business Entities' auditor(s) to provide to the Purchaser an audit opinion with respect to the financial statements referred to in Sections 4.3(a)(i) and (ii) and customary comfort letters and consents to the underwriters with respect to financial information relating to the Business Entities included or incorporated by reference in a business acquisition report, a Prospectus, and/or offering memorandum as applicable; and
 - (vi) provide the Business Entities' auditor(s) with customary and required management representation letters and other customary information and documents as may be reasonably requested by such auditor(s) in order to provide a customary auditor's report and customary comfort letters to the underwriters;
- (b) use commercially reasonable efforts to obtain the Regulatory Approvals and to effect all necessary registrations, filings and submissions of information requested or required by Governmental Entities from the Business Entities, or any of their affiliates relating to the Transaction, provided that to the extent there is any inconsistency between this Section 4.4(a) and Section 4.6, Section 4.6 will take precedence.
 - (c) The Seller shall from time to time, forthwith upon the request of the Purchaser, reimburse the Purchaser or the Business Entity, as applicable, in respect of 50% of the BAR Costs incurred following Closing by the Business Entities, and the Purchaser shall from time to time, forthwith upon the request of the Seller, reimburse the Seller in respect of 50% of the BAR Costs incurred following Closing by the Seller.
 - (d) provide to the Purchaser all assistance, cooperation and information required to assist the Purchaser, during the Interim Period, in planning for integration following the closing of the Final Transaction (provided neither the Seller nor Target Entities shall be required to provide information that is not in its possession or not otherwise reasonably available to it), in accordance with competition law.

4.4 Covenants of the Purchaser

The Purchaser shall perform all obligations required or desirable to be performed by it under this Agreement, co-operate with the Seller in connection therewith, and do all such other acts and things as may be necessary or desirable in order to consummate and make effective, as soon as reasonably practicable, the Transaction and, without limiting the generality of the foregoing, the Purchaser shall ensure that the

Purchaser has available funds at the Closing Date to satisfy the Purchase Price and any adjustments thereto and take such actions as may be necessary to ensure that the Purchaser is able to pay such amounts in connection with Closing.

4.5 Mutual Covenants

Each of the Parties covenants and agrees that, except as contemplated in this Agreement, such Party shall, and shall cause its respective subsidiaries to, use commercially reasonable efforts to satisfy (or cause the satisfaction of) the conditions precedent to its obligations hereunder as set out in Article 6 and to take, or cause to be taken, all other action and to do, or cause to be done, all other things necessary, proper or advisable under all applicable laws to consummate the Transaction as expeditiously as possible, including using commercially reasonable efforts to: (a) oppose, lift or rescind any injunction or Restraining Order against it or other Order or action against it seeking to stop, or otherwise adversely affecting its ability to consummate the Transaction; and (b) co-operate with the other Party in connection with the performance by it and its respective subsidiaries of their obligations hereunder.

4.6 Regulatory Approvals

(a) Competition Act Clearance

- (i) The Parties (and Target Entities, as applicable) shall use reasonable best efforts to comply with any requests for information from the Commissioner as soon as practicable and in consultation with each other. The Parties (and Target Entities, as applicable) shall use reasonable best efforts to certify completeness of their responses to any supplementary information requests received under subsection 114(2) of the Competition Act as promptly as practicable and no later than two months after the date of such issuance.
- (ii) The Purchaser shall use reasonable best efforts to obtain the Competition Act Clearance as soon as reasonably practicable, and in any event, no later than the Outside Date.
- (iii) If the Commissioner makes an application to the Competition Tribunal pursuant to any of sections 92, 100, or 104 of the Competition Act for an order that could prevent or delay the Closing, Purchaser shall defend any such application and shall use its reasonable best efforts to consummate the Transaction.
- (iv) Notwithstanding anything to the contrary contained in this Agreement, the Purchaser shall not be obligated to, and the Seller (and Target Entities, as applicable) shall not, propose, negotiate, or agree to any Remedy with the Commissioner.
- (v) The Seller shall and shall cause the Target Entities to provide to the Purchaser all assistance, cooperation and information required to obtain the Competition Act Clearance (provided neither the Seller nor Target Entities shall be required to provide information that is not in its possession or not otherwise reasonably available to it), and each Party shall (i) permit the other Party to review in advance any proposed communications of any nature with any Governmental Entity, (ii) give due consideration to any comments received from such other Party, (iii) promptly notify the other Party of all material written communications of any nature received from any Governmental Entity and provide the other Party with copies thereof, and respond, as soon as reasonably practical, to all requests for

information from a Governmental Entity in connection with obtaining the Competition Act Clearance. If the Commissioner makes an application to the Competition Tribunal pursuant to sections 92, 100 or 104 of the Competition Act seeking a Remedy, the Seller and the Target Entities shall provide to the Purchaser all assistance, cooperation and information required to defend against the application (provided the Seller and the Target Entities shall not be required to provide information that is not in its possession or not otherwise reasonably available to it).

- (vi) Neither Party (including the Target Entities, as applicable) shall participate in any material meeting or discussion (whether in person, by telephone or otherwise) with any Governmental Entity in respect of the Competition Act Clearance unless it consults with the other Party in advance and gives the other Party the opportunity to attend and participate thereat (except to the extent that in any such case the Governmental Entity expressly requests that such other Party not be present at such meeting or participate in such discussion, as applicable).
- (vii) Notwithstanding anything to the contrary contained in this Agreement, in the case of a disagreement over the strategy, tactics or decisions relating to obtaining the Competition Act Clearance, the Purchaser shall have the final and ultimate authority over the appropriate strategy, tactics and decisions (including, for greater certainty, entering into any timing agreement with the Commissioner). Each Party (including the Target Entities, as applicable) shall use reasonable best efforts to ensure that all actions and communications regarding the Competition Act Clearance are consistent with such strategy, tactics and decisions.
- (viii) The Purchaser shall be responsible for paying the filing fees in connection with the Competition Act Clearance.

(b) BCUC Approval

- (i) The Seller shall, for greater certainty, continue to provide the Purchaser at its request with all information that the Seller has in its possession or under its direction or control which may be required or useful in connection with the BCUC Filings and any submissions in connection therewith. As promptly as practicable after the exercise of the Option Right, the Seller and the Purchaser shall make all filings (or further filings), as are necessary to secure the BCUC Approval (in this Section 4.6, the "**BCUC Filings**"). All filing fees required to be paid in connection with the BCUC Filings shall be paid in full by the Purchaser. The Purchaser shall keep the Seller fully informed as to the status of the proceedings related to the BCUC Filings, but the Purchaser shall be under no obligation to deliver to the Seller copies of: (i) any notices or information supplied or filed by the Purchaser in support of the BCUC Filings or any correspondence with officials, or (ii) any information relating to the Purchaser or its activities whether of a confidential nature or in the public domain; provided, however, that the Purchaser shall provide the Seller with copies of the BCUC Filings, in draft form and containing only information relating to the Seller in order for the Seller to confirm that such information is consistent with information previously given to the Purchaser by the Seller and with copies of any confirmation or approval received. The Seller shall provide the Purchaser with any assistance requested by the Purchaser in support of the BCUC Filings.

- (ii) The Purchaser shall use its commercially reasonable efforts to obtain the BCUC Approval as soon as reasonably practicable but, in any event, no later than the Outside Date. For purposes of the foregoing, "commercially reasonable efforts" shall include, without limitation, proposing, negotiating, agreeing to and effecting, by any undertakings imposed in respect of the divestiture or BCUC regulated assets.
- (c) Prior to Closing, notwithstanding any requirement in this Section 4.6 or in the Option Purchase Agreement, where either Party is requested to provide information that it reasonably believes is competitively sensitive, it shall provide such information to the external legal counsel of the other Party on an external counsel only basis or to the other Party in accordance with competition law compliance protocols that have been established by the Parties.

4.7 Proposed Transferee(s)

- (a) Subject to the limitations set out below, the Purchaser shall be permitted on notice ("**Proposed Transferee Notice**") to the Seller, to assign all or a portion of (1) its interest in the Option Right, whether or not previously exercised, and/or (2) the Purchased Securities, to one or more arm's length persons (each, a "**Proposed Transferee**"), provided that each such Proposed Transferee shall have provided a binding written confirmation to the Seller (in a form satisfactory to the Seller, acting reasonably) that:
 - (i) it shall, subject to this Section 4.7, be bound by all obligations of the Purchaser hereunder, as the same apply to the Option Right (or, as applicable, the Purchased Securities) assigned or transferred to the Proposed Transferee;
 - (ii) the representations and warranties set out in Section 3.2 (other than Section 3.2(c) and (f)) are true and correct in respect of the Proposed Transferee (*mutatis mutandis*, in the case of Sections 3.2(a) and (b));
 - (iii) such Proposed Transferee shall use its reasonable best efforts to comply with the requirements of the Investment Canada Act, if applicable, in respect of the Transaction (as assigned to the Proposed Transferee); and
 - (iv) other than as set forth in this Section 4.7, no rights or obligations of the Purchaser pursuant to the Option Purchase Agreement are assigned to, or assumed by, the Proposed Transferee in whole or in part, and the Proposed Transferee shall not have the benefit of any such rights, nor shall the Proposed Transferee have the benefit of or be entitled to enforce any rights of, or any of the obligations under, the Purchaser pursuant to Section 4.6, or the ability to assign all or a portion of any of the rights it acquires pursuant to this Section 4.7;
- (b) Each Proposed Transferee shall have the right to receive the benefit of all or any portion of the Supply Agreement and Trucking Agreement, as the same apply to the Option Right (or, as applicable, the Purchased Securities) assigned or transferred to the Proposed Transferee. For greater certainty, each Proposed Transferee shall also have the right to receive the benefit of each of the closing documents set out in Section 8.2(a) *mutatis mutandis*, as well as the obligation to deliver each of the closing documents set out in Section 8.2(b) *mutatis mutandis*.

- (c) Other than as set out in Sections 4.7 and 10.6, the Purchaser shall have no right to assign any of its rights or obligations under this Agreement, in whole or in part, without the prior written consent of the Seller.
- (d) Without affecting Sections 4.7(b) and 4.7(c), the Seller will use commercially reasonable efforts to assist the Purchaser, upon the Purchaser's request, to coordinate the sale of the Option Right and/or the Purchased Securities to one or more Proposed Transferee(s) (which assistance may include providing access to confidential information and considering commercial transition arrangements, financing arrangements, obtaining regulatory approvals) or to give effect to this Section 4.7, but the Purchaser shall be solely responsible to identify any prospective buyer(s) of all or any portion of the Option Right and/or the Purchased Securities and conduct and arrange any sale process. Prior to the Purchaser disclosing any confidential information to any prospective buyer of all or any portion of the Option Right and/or the Purchased Securities, such buyer shall have signed a confidentiality agreement between such buyer, Purchaser and Seller, the form of which shall be acceptable to Seller, acting reasonably.
- (e) The exercise of the Option Right shall not affect or derogate from the right of the Purchaser to assign all or any portion of its interest in the Option Right and/or the Purchased Securities to one or more parties pursuant to the terms of this Agreement.

4.8 Tax Returns

- (a) The Seller shall be responsible for preparing, on or before the statutory due date, on behalf of and in the name of the Business Entities, all income tax and information returns of the Business Entities required by applicable law to be filed in respect of any taxation year or fiscal period, as applicable, ending on or before the Closing Date (each a "**Pre-Closing Tax Period**"), (each such return being a "**Prior Period Return**"), provided that the Seller shall supply draft copies of the applicable Prior Period Returns to the Purchaser for its review not less than forty-five (45) days prior to the deadline for their filing, or, for any returns due to be filed within thirty (30) days after the Closing Date, as soon as practicable and in any event within ten (10) days before the deadline for their filing. The Seller shall consider in good faith all comments provided by the Purchaser. All Prior Period Returns shall be prepared in a manner consistent with applicable law and, to the extent not inconsistent with applicable law, past practice. The Seller shall file or cause to be filed such Prior Period Returns on behalf of the applicable Business Entities.
- (b) The Purchaser shall be responsible for preparing, on or before the statutory due date, on behalf of and in the name of the Business Entities, all income tax and information returns of the Business Entities to be filed in respect of any period ending after the Closing Date, provided that the Purchaser shall supply draft copies of any such returns to the Seller that relate to an Option Purchase Agreement Straddle Period (each such return being a "**Post-Closing Return**") for its review not less than forty-five (45) days prior to the deadline for its filing, or for any returns due to be filed within thirty (30) days after the Closing Date, as soon as practicable and in any event within ten (10) days before the deadline for their filing. The Purchaser shall consider in good faith all comments provided by the Seller with respect to such Post-Closing Returns. All such Post-Closing Returns shall be prepared in a manner consistent with applicable law and, to the extent not inconsistent with applicable law, past practice. The Purchaser shall file or cause to be filed such Post-Closing Returns on behalf of the applicable Business Entities.

- (c) The Seller shall have no liability for, nor any obligation to pay any Taxes of the Business Entities other than as contemplated by Section 2.5, if applicable, or as contemplated by Section 2.5 or 5.7(b) of the Option Purchase Agreement or the indemnities contained in Section 10.1 of the Option Purchase Agreement.
- (d) The Purchaser and the Seller shall cooperate fully as and to the extent reasonably requested by the other Party, in connection with (i) the filing of any tax or information returns (including any Prior Period Returns or returns for any period ending after the Closing Date), (ii) any audit, litigation or other proceeding (each a "**Tax Proceeding**") with respect to Taxes imposed on or with respect to the assets, operations or activities of the Business Entities, the transactions contemplated by this Agreement, and (iii) any Claim for indemnification with respect to Taxes made pursuant to Article 10 of the Option Purchase Agreement. Such cooperation shall include the retention and (upon the other Party's request) the provision of records and information which are reasonably relevant to any such return or Tax Proceeding and making employees available on a mutually convenient basis to provide additional information with respect to any Tax Proceeding and explanation of any material provided hereunder.

4.9 Insurance

- (a) Throughout the Interim Period the Seller shall and shall cause the Business Entities to maintain for the benefit of and at the sole cost of the Business Entities, insurance policies having substantially the same terms as the insurance policies that are in effect for the benefit of the Business Entities as at the execution of this Agreement.
- (b) Throughout the Interim Period, the Seller shall ensure that the Business Entities use commercially reasonable efforts to notify the applicable insurers of any damage to or loss of a material asset of the Business (i) that occurs during the Interim Period, (ii) of which an officer of any Business Entity becomes aware during the Interim Period.

4.10 Employee Benefit Plans

- (a) Throughout the Interim Period, the Seller shall maintain all pension and other benefits provided under the Pension Plans in respect of all employees of the Business Entities (in this Section 4.10, the "**Business Employees**") in accordance with the terms of the Pension Plans and applicable law based on service and pensionable earnings of such Business Employees up to the Closing Date. Effective as of the Closing Date, the Business Employees shall cease to accrue further benefits under the Pension Plans. Neither the Purchaser nor any Business Entity shall assume any Liability or obligation with respect to the Pension Plans.
- (b) Effective as of the Closing Date, Business Employees shall cease to participate in, and accrue further benefits under, all Employee Benefits Plans. All amounts directly payable by the Seller at any time (i) in carrying out its obligations under this Section 4.10, and (b) by reason of or in connection with any and all Claims incurred or benefits accrued under the Employee Benefit Plans by the Business Employees (and their eligible dependents) during the Interim Period, whether such Claims are reported or benefits become payable during or after the Closing Date; are collectively referred to as the "**Benefit Plan Costs**", which, for greater certainty, shall not include any costs or amounts paid or payable by the Business Entities.

4.11 Termination of Agreements with Related Persons

- (a) Immediately prior to the Closing Date, the Seller shall, and shall cause the Business Entities to:
 - (i) terminate, cancel, retire, payoff or otherwise extinguish all Contracts between any of the Business Entities, on the one hand, and the Seller, any affiliate of the Seller (other than the Business Entities) and each Related Person of the foregoing, on the other hand, with the exception of the Gibson Real Property Leases, the Trucking Agreement and the Supply Agreement (the “**Terminated Agreements**”); and
 - (ii) cancel, retire, payoff or otherwise extinguish (by way of capital contribution, cash settlement or as otherwise reasonably determined by the Seller) all payables and receivables under the Terminated Agreements, and all other intercompany advances, accounts, payables and receivables between any of the Business Entities, on the one hand, and the Seller, any affiliate of the Seller (other than the Business Entities) and each Related Person of the foregoing, on the other hand.
- (b) Each Party shall and shall cause its affiliates to execute and deliver all termination and other appropriate documentation at or after the Closing as is reasonably requested by any other Party to fully effectuate and document the provisions of this Section 4.11.

4.12 Replacement of Letter of Credit

Royal Bank of Canada issued an irrevocable stand-by letter of credit (in this Section 4.12, the “**Letter of Credit**”) on or about [REDACTED- Date: confidential information] having a limit of \$[REDACTED- Quantum: confidential information] for the benefit of [REDACTED- Name of party: confidential information] which is owned by Canwest Partnership. The Letter of Credit, by its terms, is for terms of one year, which are automatically renewed by Royal Bank of Canada unless notified otherwise. The Letter of Credit was provided pursuant to the Gibson Energy Ltd. credit facility and any amounts drawn on the Letter of Credit are reimbursable to Royal Bank of Canada by the Seller. The Seller shall not take any action to terminate or prevent the automatic renewal of the Letter of Credit if Closing has not occurred. The Purchaser shall replace the Letter of Credit promptly following Closing.

4.13 Amendment to Tax Return

If Closing occurs after December 31, 2017, the Seller shall, as promptly as practicable, and in any event not more than ten (10) days following Closing, file an amended income tax return for its taxation year in which it received the Option Issuance Price pursuant to subsection 49(4) of the Tax Act excluding from its income for that taxation year the amount of the Option Issuance Price.

ARTICLE 5 **CONDITIONS**

5.1 Conditions Precedent

The obligations of the Parties to complete the Transaction following exercise of the Option Right are subject to the fulfillment of each of the following conditions precedent, which are for the mutual benefit of the Purchaser and the Seller and may be waived, in whole or in part, jointly by the Purchaser and the Seller at any time:

- (a) Regulatory Approvals. Without affecting the rights and obligations of the Parties in Section 4.6, the Competition Act Clearance and the BCUC Approval shall have been obtained.
- (b) Orders. No Order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal restraint or prohibition preventing the consummation of the Transaction shall be in effect.

5.2 Additional Conditions Precedent to Obligations of Purchaser

The obligations of the Purchaser to complete the Transaction shall also be subject to the fulfillment of each of the following conditions precedent, which are for the benefit of the Purchaser and may be waived, in whole or in part, by the Purchaser any time:

- (a) Seller's Covenants. All covenants of the Seller under this Agreement to be performed on or before the Closing Date shall have been duly performed by the Seller in all material respects, and the Purchaser shall have received a certificate of the Seller, addressed to the Purchaser and dated the Closing Date, signed on behalf of the Seller, by two (2) directors or executive officers of the Seller, confirming the same.
- (b) Representations and Warranties. The representations and warranties of the Seller set out in this Agreement shall be true and correct as of the date hereof and as of the Effective Time, as though made on and as of the Effective Time. The Purchaser shall have received a certificate of the Seller addressed to the Purchaser and dated the Closing Date, signed on behalf of the Seller by two (2) directors or executive officers of the Seller, confirming the same.

5.3 Additional Conditions Precedent to Obligations of the Seller

The obligations of the Seller to complete the Transaction shall also be subject to the fulfillment of each of the following condition precedent which is for the benefit of the Seller and may be waived, in whole or in part, by the Seller any time:

- (a) Payment. On the Closing Date, the Purchaser shall have paid the Purchase Price to the Seller in accordance with the provisions of Section 2.3.

5.4 Effect of Expiry

In the event that either condition set out in Section 5.1 is not satisfied at or prior to the Outside Date and at the Outside Date has not been waived in accordance with Section 5.1, unless otherwise agreed to by the Parties, the obligations of the Parties to proceed with Closing shall be terminated, and the Parties shall have no further obligations under this Agreement provided, however that no Party shall be released from any Liability on account of any breach of this Agreement arising prior to such termination, and provided further that the rights and remedies of the Parties shall be governed by and subject to Article 9. The Purchaser or the Seller, as the case may be, may waive in whole or in part any non-fulfilled or non-performed condition without prejudice to any other rights which such Party may have pursuant to the terms of this Agreement.

5.5 Outside Date

The "**Outside Date**" shall be December 29, 2017 unless, at such time, a Restraining Order is in effect or the Purchaser has delivered a Proposed Transferee Notice in which case the Purchaser may, by

written notice on or before December 29, 2017, extend the Outside Date to September 30, 2018. Should Purchaser deliver a notice to extend the expiry to September 30, 2018, the Extension Fee shall become payable by Purchaser. For clarity, in the event that the Purchaser seeks to extend the Expiry Date pursuant to Section 2.8 and the Outside Date pursuant to this Section 5.5, the Extension Fee need only be paid once and shall suffice for both such extensions.

ARTICLE 6

ADDITIONAL AGREEMENTS

6.1 Public Disclosure

No Party shall make any public statement or issue any press release concerning this Agreement or the Transaction without the consent of the Purchaser and the Seller (such consent not to be unreasonably withheld) or as may be necessary, after consulting counsel to the Party making that disclosure, to comply with the requirements of applicable law. If any public statement or release is so required, the Party making the disclosure shall use commercially reasonable efforts to consult with the other Parties before making that statement or release, and the Purchaser and the Seller shall use all reasonable efforts, acting in good faith, to agree on a text for the statement or release that is satisfactory to the Purchaser and the Seller.

6.2 Insurance and Indemnification

The Parties agree that all rights to indemnification existing in favour of the present and former directors and officers of the Business Entities (each such present or former director or officer an "**Indemnified D&O Party**") as in effect as of the Effective Time will survive and will continue in full force and effect and without modification, and the Purchaser will cause each Business Entity to honour such rights of indemnification and indemnity in favour of the Indemnified D&O Parties pursuant thereto, with respect to actions or omissions of the Indemnified D&O Parties occurring prior to the Effective Time, for a period of not less than the limitation period under the statutes of limitation applicable to such matters.

6.3 Post-Closing Access

In connection with the preparation of Tax and financial reporting matters, audits, legal proceedings, governmental investigations after the Closing Date and upon reasonable notice, the Purchaser shall provide to the representatives, employees, counsel and accountants of the Seller, access, during normal business hours, to examine the records of the Business Entities and the Business that relate to periods prior to the Closing Date and will permit such persons to examine and copy such records to the extent reasonably requested by the Seller in connection with the preparation of Tax and financial reporting matters, audits, legal proceedings or governmental investigations. The Purchaser agrees to, and shall cause the Business Entities to, retain and make available such records for a period of seven (7) years following the Closing Date.

6.4 Access to Information; Confidentiality

- (a) From the Exercise Date until the earlier of the Transaction and the termination of this Agreement, subject to compliance with applicable law and the terms of any existing Contracts (including the Confidentiality Agreement), the Seller shall cause the Business Entities and their respective officers, directors, Business Employees, independent auditors, advisers and agents to, afford to the Purchaser and to its respective officers, employees, agents and representatives such access as the Purchaser (or its designate) may reasonably require at all reasonable times, including for the purpose of facilitating integration business planning, to its officers, employees, agents, offices, properties, books, records and

Contracts, and shall make available to the Purchaser (or its designate) all data and information as the Purchaser (or its designate) may reasonably request.

- (b) Each Party agrees to hold in confidence all, and not to disclose to others for any reason whatsoever any, non-public information received by it or its representatives from any other Party in connection with this Agreement, the Transaction except: (i) as required by law; (ii) for disclosure to officers, directors, employees and representatives of such Party as necessary in connection with the Transaction (and the applicable Party hereby agrees to cause such persons to so hold in confidence such information and to be responsible for any breach of this provision by such persons); and (iii) for information that becomes publicly available other than through such Party; provided, that (A) in the event a Party is requested pursuant to, or required by, applicable law to disclose non-public information, such Party shall, to the extent permitted by law, immediately notify the other Party in writing of the request or requirement so that the other Party may seek a protective order or other appropriate remedy. In the event that such protective order is not, or cannot be obtained or such prior notice is not permitted by law, then the disclosing Party may disclose only such portion of the non-public information which, in the opinion of its legal counsel, is required to be disclosed under or by applicable law, and shall use commercially reasonable efforts to obtain assurances that confidential treatment will be accorded to such non-public information; and (B) the Purchaser and its shareholders may disclose non-public information to their respective officers, directors, employees, agents, advisors, shareholders, limited partners and financing sources who agree to hold in confidence such information to the same extent as provided in this Section 6.4(b) (and the Purchaser hereby agrees to cause such persons to so hold in confidence such information and to be responsible for any breach of this provision by such persons). If the Transaction is not completed, each Party: (A) will return to the other Party or destroy all non-public documents obtained from such other Party, and all copies, summaries and extracts thereof, except to the extent such Party is required by law or its internal procedures to retain such documents, in which case such Party shall take appropriate measures to preserve their continuing confidentiality and provide a certificate to such other Party that such information has been returned or destroyed in accordance with this Section 6.4(b); and (B) agrees not to use for its own benefit or for the benefit of any other person any non-public information received by it or its representatives from the other Party in connection with the Transaction. If the Transaction is completed, (A) the Purchaser (and/or its designate) and its representatives shall not be bound by this Section 6.4; and (B) the Seller shall, and shall cause its representatives to, transfer to the Purchaser or its designate all non-public documents pertaining to the Business, and all copies, summaries and extracts thereof, except to the extent the Seller is required by law or its internal procedures to retain such documents, in which case the Seller shall take appropriate measures to preserve their continuing confidentiality and provide a certificate to the Purchaser (and/or its designate) that such information has been returned or destroyed in accordance with this Section 6.4(b).
- (c) No Party shall make any public statement or issue any press release concerning this Agreement or the Transaction without the consent of the Purchaser and the Seller (such consent not to be unreasonably withheld) or as may be necessary, after consulting counsel to the Party making that disclosure, to comply with the requirements of applicable law. If any public statement or release is so required, the Party making the disclosure shall use commercially reasonable efforts to consult with the other Parties before making that statement or release, and the Purchaser and the Seller shall use all reasonable efforts, acting in good faith, to agree on a text for the statement or release that is satisfactory to the Purchaser and the Seller.

ARTICLE 7
LIABILITIES

7.1 Assumed Liabilities

- (a) It is acknowledged that, provided that Closing has occurred, the Purchaser will, as the owner of the Purchased Securities, have derived all economic benefit from the Business from and after the Option Right Effective Time, and other than as expressly provided in this Agreement, the Purchaser will have assumed the risk of all losses of the Business from and after the Option Right Effective Time. Therefore, if Closing has occurred, the Purchaser shall assume and be responsible for any and all Liabilities of the Seller which arise due to the Seller having been a shareholder of Canwest ULC and/or a partner of Canwest Partnership, excluding the Retained Liabilities, but including, without limitation, the following (collectively, the "**Assumed Liabilities**"):
- (i) all accrued expenses and Accounts Payable of Canwest Partnership (other than any Accounts Payable owing to Related Persons of Canwest Partnership) which remain unpaid as of the Option Right Effective Time;
 - (ii) all Customer Account Surpluses of Canwest Partnership as of the Option Right Effective Time;
 - (iii) all Liabilities and obligations of Canwest Partnership in respect of Accrued Vacation Entitlements;
 - (iv) any Liability to any of the customers under warranties implied by law and any warranty agreements and indemnities given by Canwest Partnership for goods or services delivered or performed, whether prior to or after the Option Right Effective Time;
 - (v) all performance obligations of Canwest Partnership under all Contracts to which it is a party or by which it is bound, all Contracts and all Liabilities in respect of such Contracts, whether arising before, on, or after the Option Right Effective Time;
 - (vi) any Liability arising out of or relating to products manufactured, distributed, delivered or sold, or services performed by Canwest Partnership whether prior to or after the Option Right Effective Time;
 - (vii) the Assumed Retention Obligations; and
 - (viii) any other Liabilities expressly assumed by the Purchaser under this Agreement.
- (b) Nothing in this Section 7.1 shall diminish or have any effect on the rights and obligations of the parties to the Option Purchase Agreement in respect of the Assumed Liabilities. Further, in respect of Sections 7.1(a)(i) to (vii), the assumption by Purchaser of the Assumed Liabilities is not to be interpreted to preclude the Purchaser from making a Claim under the Option Purchase Agreement with respect to any matter that is specifically the subject of a representation and warranty in Sections 3.1 or 3.2 of the Option Purchase Agreement.

7.2 Retained Liabilities

Without limiting the generality of the foregoing, it is agreed that the Purchaser and the Business Entities shall have no Liability for any of the following obligations or Liabilities and that the Seller shall be responsible for same (collectively, the "**Retained Liabilities**"):

- (a) any Liability of the Seller for Taxes arising as a result of the Seller having been a partner of Canwest Partnership at any time prior to the Most Recent Tax Year End; and
- (b) any shareholder loans or other inter-company or related party Indebtedness owed by a Business Entity to a Related Person of such Business Entity on or prior to the Effective Time (other than another Business Entity).

ARTICLE 8 **CLOSING**

8.1 Closing Arrangements

Subject to the terms and conditions hereof, the Transaction shall be completed at 10:00 a.m. (Mountain Time) on the Closing Date at the offices of Seller's Counsel in Calgary, Alberta, Canada or at such other place or places as may be mutually agreed upon by the Parties.

8.2 Documents to be Delivered

On or before the Closing Date, the Seller shall execute, or cause to be executed, and shall deliver, or cause to be delivered, to the Purchaser, all agreements, instruments, notices, certificates and other documents which are to be delivered by the Seller pursuant to the provisions of this Agreement, in form satisfactory to the Purchaser, acting reasonably, and the Purchaser shall execute, or cause to be executed, and shall deliver, or cause to be delivered to the Seller, in form satisfactory to the Seller, acting reasonably, all cheques or bank drafts or funds flow directions, all agreements, instruments, notices, certificates and other documents which the Purchaser is to deliver or cause to be delivered pursuant to the provisions of this Agreement, including the following:

- (a) documents to be delivered by the Seller:
 - (i) the Transition Services Agreement, duly executed by the Seller;
 - (ii) the Non-Competition Agreement, duly executed by the Seller and Gibson Energy Inc.;
 - (iii) certified copies of all necessary corporate and shareholder resolutions, authorizations and proceedings of the Seller that are required to be taken or obtained to permit the due and valid transfer of the Purchased Securities to and in the name of the Purchaser and the completion of the Transaction;
 - (iv) a release in favour of each Business Entity from the Seller in the form set out in Exhibit D;
 - (v) share certificates representing the Purchased Shares, duly endorsed for transfer to the Purchaser;

- (vi) unit certificates representing the Purchased Units, duly endorsed for transfer to the Purchaser;
 - (vii) duly executed share certificates representing the Purchased Shares registered in the name of the Purchaser;
 - (viii) duly executed unit certificates representing the Purchased Units registered in the name of the Purchaser;
 - (ix) duly executed certificates required by Sections 5.2(a) and 5.2(b)
 - (x) a certificate of status, compliance, good standing or like certificate with respect to each of the Business Entities issued by the appropriate government officials of the jurisdiction of such entity's incorporation;
- (b) documents to be delivered by the Purchaser:
- (i) the Transition Services Agreement, duly executed by the Target Entities;
 - (ii) the Non-Competition Agreement, duly executed by the Purchaser;
 - (iii) evidence of payment of the Closing Proceeds in accordance with Section 2.3;
 - (iv) a certified copy of resolutions of the directors of the Purchaser as may be required in order to authorize the performance of this Agreement and the completion of the Transaction; and
 - (v) a certificate of status, compliance, good standing or like certificate with respect to each of the Purchaser and Superior GP issued by the appropriate government officials of the jurisdiction of such entity's incorporation or formation.

8.3 Resignations

The Target Entities shall obtain and deliver to the Purchaser at Closing evidence reasonably satisfactory to the Purchaser of the resignations effective as of the Effective Time, of any of the directors of the Business Entities requested by the Purchaser. Such resignations shall be received in consideration for the Purchaser and the Business Entities, as applicable, providing releases to such persons (in a form satisfactory to the Purchaser and such resigning person, each acting reasonably) (the "**Mutual Releases**"), which Mutual Releases shall contain exceptions for amounts or obligations owing to such directors for accrued but unpaid directors' fees or bonuses (which amounts or obligations shall have been accounted for in the determination of Current Liabilities (as defined in, and for the purposes of, the Option Purchase Agreement), benefits and other compensation or pursuant to indemnity or directors' and officers' insurance arrangements, and for any change of control payments that may be owing to them pursuant to the terms of their employment with the Business Entities, in each case if applicable.

ARTICLE 9 **INDEMNIFICATION**

9.1 Indemnity by the Seller

- (a) The Seller shall indemnify and save harmless the Purchaser Indemnified Parties from and against any Losses which may be incurred by any of the Purchaser Indemnified Parties or

which any of the Purchaser Indemnified Parties may suffer, or any Claims to which any of the Purchaser Indemnified Parties may become a party, as a result of, in respect of or arising out of:

- (i) any misrepresentation, inaccuracy, incorrectness or breach of any representation or warranty made in Sections 3.1;
- (ii) any breach or non-performance or non-fulfillment of any covenant or agreement on the part of the Seller contained in this Agreement or any other agreement required to be executed and delivered hereunder by the Seller in order to carry out the Transaction;
- (iii) the Retained Liabilities;
- (iv) all costs and expenses including, without limitation, legal fees on a solicitor and his own client basis, incidental to or in respect of the foregoing Sections 9.1(a)(i) to (iii).

9.2 Indemnity by the Purchaser

- (a) The Purchaser shall indemnify and save harmless the Seller Indemnified Parties from and against any Losses which may be incurred by any of the Seller Indemnified Parties or which any of the Seller Indemnified Parties may suffer, or any Claims to which any of the Seller Indemnified Parties may become a party, as a result of, in respect of or arising out of:
 - (i) any misrepresentation, inaccuracy, incorrectness or breach of any representation or warranty made by the Purchaser in Section 4.1;
 - (ii) any breach or non-performance or non-fulfillment of any covenant or agreement on the part of the Purchaser contained in this Agreement or in any other agreement required to be executed and delivered hereunder by the Purchaser in order to carry out the Transaction;
 - (iii) any brokerage or finder's fees or commissions or similar payments based upon any agreement or understanding made, or alleged to have been made, by any person with the Purchaser (or an affiliate thereof) in connection with the Transaction;
 - (iv) the Assumed Liabilities; and
 - (v) all costs and expenses including, without limitation, legal fees on a solicitor and his own client basis, incidental to or in respect of the foregoing Sections 10.2(a)(i) to 9.2(a)(iv).
- (b) The Purchaser (i) releases and forever discharges the Seller Indemnified Parties in respect of any Losses which may be incurred or suffered by the Business Entities and/or the Purchaser, and (ii) indemnify and save harmless the Seller Indemnified Parties from and against any Losses which may be incurred by any of the Seller Indemnified Parties or which any of the Seller Indemnified Parties may suffer, or any Claims to which any of the Seller Indemnified Parties may become a party; as a result of, in respect of or arising out of the Interim Period Operations and/or in carrying out the obligations of the Seller under Section 4.8, provided however that:

- (i) no Seller Indemnified Party shall be entitled to indemnity in connection with any acts or omissions which constitute gross negligence or fraud; and
- (ii) nothing in this Section 9.2(b) shall effect any remedy to which the Purchaser may be entitled directly as against the Seller for a breach of Section 4.1(c), 4.2, 4.3, 4.5 or 4.6.

9.3 Survival of Representations and Warranties

- (a) The representations and warranties made by either Party in this Agreement shall survive the Closing and, notwithstanding such Closing, shall continue in full force and effect for the maximum period permitted by law.
- (b) Nothing in this Section 10.3 shall be construed as an agreement pursuant to section 7(1) of the *Limitations Act* (Alberta) for the extension of a limitation period thereunder.

9.4 Provisions Relating to Indemnity Claims

The following provisions will apply to any Claim by the Purchaser for indemnification by the Seller pursuant to this Agreement or to any Claim by the Seller for indemnification by the Purchaser pursuant to this Agreement (hereinafter, in this Section, the Party making a Claim for indemnification shall be referred to as the "**Indemnified Party**", the Party against whom the Claim for indemnification is made shall be referred to as the "**Indemnifying Party**" and the Claim for indemnity shall be referred to as the "**Indemnity Claim**"):

- (a) promptly after becoming aware of any matter that may give rise to an Indemnity Claim, the Indemnified Party will provide to the Indemnifying Party written notice of the Indemnity Claim specifying (to the extent that information is available) the factual basis for the Indemnity Claim and the amount of the Indemnity Claim or, if an amount is not then determinable, an estimate of the amount of the Indemnity Claim, if an estimate is feasible in the circumstances;
- (b) if an Indemnity Claim relates to an alleged Liability to any other person (hereinafter in this Section 10.5 called a "**Third Party Liability**"), including without limitation any Governmental Entity or regulatory body or any taxing authority, then the following additional terms and conditions shall apply:
 - (i) the Indemnified Party will not negotiate, settle, compromise or pay (except in the case of payment of a judgment) any Third Party Liability as to which it proposes to assert an Indemnity Claim, except in accordance with the provisions hereof or with the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld, conditioned or delayed);
 - (ii) with respect to any Third Party Liability, provided the Indemnifying Party first admits the Indemnified Party's right to indemnification for the amount of such Third Party Liability which may at any time be determined or settled, then in any legal, administrative or other proceedings in connection with the matters forming the basis of the Third Party Liability, the following procedures will apply:
 - (1) except as contemplated by subparagraph (3) below, the Indemnifying Party will have the right to assume carriage of the compromise or settlement of the Third Party Liability and the conduct of any related legal,

administrative or other proceedings, but the Indemnified Party will have the right and will be given the opportunity at its own cost (none of which will form part of an Indemnity Claim) to participate in the defence of the Third Party Liability, to consult with the Indemnifying Party in the settlement of the Third Party Liability and the conduct of related legal, administrative and other proceedings (including consultation with counsel) and to disagree on reasonable grounds with the selection and retention of counsel, in which case counsel satisfactory to the Indemnifying Party and the Indemnified Party, each acting reasonably, will be retained by the Indemnifying Party;

- (2) the Indemnified Party will cooperate with the Indemnifying Party in relation to the Third Party Liability and will make available on a reasonable basis to the Indemnifying Party all witnesses, pertinent records, materials and information in its possession or under its control relating thereto as is reasonably required by the Indemnifying Party and at the Indemnifying Party's expense;
 - (3) the Indemnifying Party will cooperate with the Indemnified Party in relation to the Third Party Liability, will keep the Indemnified Party fully advised with respect thereto, will provide the Indemnified Party with copies of all relevant documentation as it becomes available, will provide the Indemnified Party with access to all records and files relating to the defence of the Third Party Liability and will meet with representatives of the Indemnified Party at all reasonable times to discuss the Third Party Liability; and
 - (4) the Indemnifying Party will not negotiate, settle, compromise or pay (except in the case of a payment of a judgment) the Third Party Liability or conduct any legal, administrative or other proceedings in any manner that could, in the reasonable opinion of the Indemnified Party have a material adverse effect on the Indemnified Party, except with the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld or delayed); and
- (c) if, with respect to any Third Party Liability, the Indemnifying Party declines to assume carriage of the settlement or of any legal, administrative or other proceedings relating to the Third Party Liability, then the following provisions will apply:
- (i) the Indemnified Party will not negotiate, settle, compromise or pay (except in the case of payment of a judgment) any Third Party Liability as to which it proposes to assert an Indemnity Claim, except with the prior consent of the Indemnifying Party (which consent shall not be unreasonably withheld, conditioned or delayed); and
 - (ii) any cost, Loss, damage or expense incurred or suffered by the Indemnified Party in the settlement of such Third Party Liability or the conduct of any legal, administrative or other proceedings shall be added to the amount of the Indemnity Claim.

9.5 Mitigation, Contribution and Insurance

The Indemnified Party shall in all cases take such actions that are commercially reasonable to: (a) mitigate any Losses which may be the subject matter of any Indemnity Claim against the Indemnifying Party; (b) properly defend any Claim made against the Indemnified Party, to the extent such Claim is not otherwise controlled by the Indemnifying Party in accordance with the terms hereof; (c) properly advance any Claim the Indemnified Party may have against any other third party for contribution or recovery from that third party, and to enforce any such Claims against such third parties, to the extent such Claim is not otherwise controlled by the Indemnifying Party in accordance with the terms hereof; and (d) properly advance any Claim which may be made against any insurance coverage available under any insurance policies held by the Business Entities or the Seller in respect of any Losses which may be the subject matter of any Indemnity Claim against an Indemnifying Party. Any Indemnity Claim for Losses shall be reduced by any and all recovery, settlement, or payment received by or to an Indemnified Party (whenever received) in respect of the foregoing.

9.6 No Liability for Certain Damages or Losses

Notwithstanding anything in this Agreement to the contrary (except Section 9.8), in no event shall either Party be liable for consequential, exemplary, indirect, punitive Losses, damages or Claims of any other Party hereto.

9.7 Compulsory Payments Prior to Settlement

- (a) In the case of any notice of a Claim for indemnification concerning an amount of Losses (i) required to be paid by an Indemnified Party under applicable law or any court or other binding order (an "**Order**"), or (ii) in respect of which any amount is garnished by a Governmental Entity (each such amount a "**Preliminary Compulsory Payment Amount**"), the Indemnifying Party shall, within ten (10) days of receipt of the notice of such Claim (or notice of such garnishment), pay the Indemnified Party an amount equal to the Preliminary Compulsory Payment Amount.
- (b) Upon the occurrence of a Final Compulsory Payment Indemnification Event (if any), (i) if the aggregate of all Preliminary Compulsory Payment Amounts is less than the amount so determined under the Final Payment Determination to be the amount owing (the "**Final Compulsory Payment Amount**"), the Indemnifying Party shall, within ten (10) days of the time that the Indemnified Party notifies the Indemnifying Party of the occurrence of the Final Compulsory Payment Indemnification Event, pay to the Indemnified Party an amount equal to the difference between the aggregate for all Preliminary Compulsory Payment Amounts and the Final Compulsory Payment Amount, and (ii) if the aggregate of all Preliminary Compulsory Payment Amounts exceeds the Final Compulsory Payment Amount, the Indemnified Party shall within ten (10) days of the receipt of any related refund or credit, pay to the Indemnifying Party the amount of such refund or credit (including any interest paid or credited with respect thereto but net of any Taxes payable by the Indemnified Party in respect of such refund, credit or interest).

9.8 Liquidated Damages

Without limiting the indemnities and other obligations of the Seller to Purchaser under this Agreement, and notwithstanding section 9.1(a), in the event of any misrepresentation, inaccuracy, incorrectness or breach of any representation or warranty made in Section 3.1 that results in the Purchaser and the Seller being unable to complete the Transaction as contemplated in this

Agreement (a “**Fundamental Breach**”), the Seller shall immediately pay the amount equal to: (A) the Purchase Price, as adjusted in accordance with Section 2.3; plus (B) the Extension Fee, if applicable, such amount being the “**Liquidated Damages Amount**” to Purchaser. The Seller and the Purchaser agree that the actual damages, costs or expenses resulting from the occurrence of any Fundamental Breach would be very difficult or impossible to determine, that the Liquidated Damages Amount is a fair and equitable amount to compensate Purchaser for such actual damages, costs and expenses, and that the obligation of the Seller to pay the Liquidated Damages Amount is not a penalty. The Seller acknowledges and agrees that the Liquidated Damages Amount represents the minimum amount of actual damages, costs and expenses that would be incurred by Purchaser as a result of the occurrence of a Fundamental Breach. Payment of the Liquidated Damages Amount shall not limit or otherwise affect the rights and obligations of Purchaser under this Agreement or its remedies at law and in equity.

ARTICLE 10
GENERAL PROVISIONS

10.1 Notices

(a) Any notice, direction or other instrument required or permitted to be given to either Party hereto shall be in writing and shall be sufficiently given if delivered personally, mailed or transmitted by email or other form of recorded communication tested prior to transmission to such Party, as follows:

(i) in the case of the Seller, at:

care of Gibson Energy ULC
Suite 1700, 440 2nd Avenue S.W.
Calgary, Alberta T2P 5E9

Attention: [REDACTED- personal information]
Telephone: [REDACTED- personal information]
Email: [REDACTED- personal information]
Fax: [REDACTED- personal information]

with a copy to:

Bennett Jones LLP
4500 Bankers Hall East
855 – 2nd Street S.W.
Calgary, AB T2P 4K7

Attention: [REDACTED- personal information]
Telephone: [REDACTED- personal information]
Email: [REDACTED- personal information]
Fax: [REDACTED- personal information]

(ii) in the case of the Purchaser, at:

care of Superior Plus Corp
401, 200 Wellington Street West
Toronto, ON M5V 3C7

Attention: [REDACTED- personal information]
Telephone: [REDACTED- personal information]
Email: [REDACTED- personal information]

with a copy to:

Blake, Cassels & Graydon LLP
199 Bay Street
Suite 4000, Commerce Court West
Toronto, ON M5L 1A9

Attention: [REDACTED- personal information]
Telephone: [REDACTED- personal information]
Email: [REDACTED- personal information]

- (b) Any such notice, direction or other instrument, if delivered personally, shall be deemed to have been given and received on the date on which it was delivered, provided that if such day is not a Business Day then the notice, direction or other instrument shall be deemed to have been given and received on the first Business Day next following such day; if mailed, shall be deemed to have been given and received on the third day after it was mailed, provided that if such day is not a Business Day then the notice, direction or other instrument shall be deemed to have been given and received on the first Business Day next following such day; and if transmitted by fax or email, shall be deemed to have been given and received on the day of its transmission, provided that if such day is not a Business Day or if it is transmitted or received after the end of normal business hours then the notice, direction or other instrument shall be deemed to have been given and received on the first Business Day next following the day of such transmission.

Either Party hereto may change its address for service from time to time by notice given to the other parties hereto in accordance with the foregoing provisions.

10.2 Equitable Remedies

- (a) The Parties agree that irreparable harm would occur for which monetary damages would not be an adequate remedy at law in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Parties shall be entitled to equitable remedies, including an injunction or injunctions to prevent or cure breaches of the provisions of this Agreement and to specifically enforce the terms and provisions of this Agreement, this being in addition to any other remedy such Party may have in accordance with the terms of this Agreements.
- (b) Each Party further agrees that (i) such Party will not oppose the granting of an injunction, specific performance and other equitable relief as provided herein on the basis that the

other party has an adequate remedy at law or an award of specific performance is not an appropriate remedy for any reason at law or equity; and (ii) no other Party or any other person shall be required to obtain, furnish or post any bond or similar instrument in connection with or as a condition to obtaining any remedy referred to in this Section 11.2, and each Party irrevocably waives any right it may have to require the obtaining, furnishing or posting of any such bond or similar instrument.

10.3 Amendment

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

10.4 Waiver

The Seller (on behalf of itself and, where applicable, the Business Entities), on the one hand, and the Purchaser, on the other hand, may:

- (a) extend the time for the performance of any of the obligations or acts of the other;
- (b) waive compliance with any of the other's agreements or the fulfillment of any conditions to its own obligations contained herein; or
- (c) waive inaccuracies in any of the other's representations or warranties contained herein or in any document delivered by the other;

provided, however, that any such extension or waiver shall be valid only if set out in an instrument in writing signed on behalf of such Parties and, unless otherwise provided in the written waiver, will be limited to the specific breach, covenant or condition waived.

10.5 Time of Essence

Time shall be of the essence in this Agreement.

10.6 Assignment and Binding Effect

- (a) Except as expressly permitted by Section 4.7, neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the Parties without the prior written consent of the other Parties hereto. Notwithstanding the foregoing, the Purchaser may assign or transfer all or any part of its rights, interests and obligations under this Agreement to one or more affiliates of the Purchaser without written consent, provided that no such assignment or transfer shall relieve the Purchaser of its obligations under this Agreement.
- (b) Except as set out in Section 4.7, this Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.
- (c) Notwithstanding anything to the contrary herein, the Seller hereby consents to the Purchaser's assignment of the rights, interests and obligations under this Agreement, including the Option Right granted pursuant to Section 2.1 and the right to acquire all or a portion of the Purchased Securities, in whole or in part, to Superior General Partner Inc. ("**AcquisitionCo**"), an affiliate of Purchaser, and/or any subsidiary of AcquisitionCo (provided that such assignment shall not relieve the Purchaser of its obligations under this

Agreement). The Parties hereby agree to make any necessary adjustments to this Agreement to reflect the impact of any assignment permitted pursuant to this Section 11.6.

10.7 Further Assurances

Each Party shall, from time to time and at all times hereafter, at the request of the other Parties, but without further consideration, do all such further acts and things, and execute and deliver all such further documents and instruments and provide all such further assurances as may be reasonably required in order to fully perform and carry out the terms and intent hereof.

10.8 Severability

If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule or law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the Transaction is not affected in any manner materially adverse to either Party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, 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 an acceptable manner to the end that the Transaction is fulfilled to the fullest extent possible.

10.9 No Third Party Beneficiaries

This Agreement is not intended to confer any rights or remedies upon any person other than the Parties to this Agreement, other than the Indemnified Parties and the Indemnified D&O Parties.

10.10 Counterparts, Execution

This Agreement may be executed in counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The Parties shall be entitled to rely upon delivery of an executed facsimile or similar executed electronic copy of this Agreement, and such facsimile or similar executed electronic copy shall be legally effective to create a valid and binding agreement between the Parties.

10.11 Expenses of Parties

Each of the Parties shall bear all expenses incurred by it in connection with this Agreement including, without limitation, the charges of its respective counsel, accountants, financial advisors, environmental consultants and finders.

10.12 Brokerage and Finder's Fees

Other than fees owing to the Financial Advisor, which shall be paid in full in connection with Closing, no Party is aware of any Claim for any brokerage, agency, finder's fee or commission in connection with the Transaction payable by any of the Parties and the Seller and the Purchaser agree that if such a Claim should arise as a result of any action taken by it, such Party who has taken such action that has given rise to such Claim shall indemnify the other Party in respect thereof.

10.13 Solicitor-Client Privilege

- (a) Effective upon the consummation of the Transaction, the Target Entities (on behalf of themselves and the Business Entities) hereby irrevocably assign to the Seller all rights and interest to communications by or among the Seller and/or any of the Business Entities and

counsel to any of the Business Entities in respect of, in connection with or related to, this Agreement or the Transaction (the "**Privileged Communications**").

- (b) The Parties hereby confirm and agree that, upon the consummation of the Transaction, all Privileged Communications shall be subject to a solicitor-client privilege of the Seller and the Seller alone, and that the Seller shall maintain the sole and exclusive rights over such privilege. Without limitation, upon the consummation of the Transaction: (i) all Privileged Communications shall remain the property of the Seller and the Seller alone; (ii) the Business Entities shall be deemed to have irrevocably waived any, and shall have no rights to such Privileged Communications; and (iii) any release of such Privileged Communications to the Business Entities following Closing shall be presumed to be inadvertent and shall in no way be taken by any of the Parties hereto as any waiver of privilege by the Seller or as evidence in support of any joint retainer by the Seller and the Business Entities with counsel.

10.14 Entire Agreement

This Agreement, the Confidentiality Agreement, and the Exhibits referred to herein constitute the entire agreement among the Parties and, except as otherwise stipulated herein, supersedes all prior agreements, representations, warranties, statements, promises, information, arrangements and understandings, whether oral or written, express or implied, with respect to the subject matter hereof.

10.15 Non-Merger

The covenants, representations and warranties shall not merge on and shall survive the Closing and shall continue in full force and effect. Closing shall not prejudice any right of one Party against the other Party in respect of anything done or omitted under this Agreement or in respect of any right to damages or other remedies.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

BY THE PURCHASER:

**SUPERIOR PLUS LP by its sole general partner
SUPERIOR GENERAL PARTNER INC.**

Per: _____
Name:
Title:

BY THE SELLER:

GIBSON ENERGY ULC

Per: _____
Name:
Title:

**EXHIBIT A
(Option Agreement)**

Share and Partnership Capital

VII. Canwest Units

Partners	Units Held
Canwest ULC	462
Cal-Gas Inc.	4213
Gibson Energy ULC	11,058

VIII. Canwest Shares

Class	Number of Shares	Holder	Certificate Number
Common	10,100	Gibson Energy ULC	1C

IX. Stittco Shares

Class	Number of Shares	Holder	Certificate Number
Class B Common	110,000	Gibson Energy ULC	BC-3
Class C Preferred	100	Gibson Energy ULC	CP-6

X. Cal-Gas Shares

Class	Number of Shares	Holder	Certificate Number
Common	12,049	Canwest Propane ULC	C-4
Class A Preferred	9,315	Canwest Propane ULC	AP-3
Class B Preferred	14,344,759	Canwest Propane ULC	BP-5
Class C Preferred	2,959,487	Canwest Propane ULC	CP-4

XI. Stittco Utilities Man Ltd. Shares

Class	Number of Shares	Holder	Certificate Number
Common	101	Stittco Energy Limited	4

XII. Stittco Utilities NWT Ltd. Shares

Class	Number of Shares	Holder	Certificate Number
Common	2,400,000	Stittco Energy Limited	3, 5, 7, 8

EXHIBIT B
(Option Agreement)

Non-Competition Agreement

[REDACTED- competitively sensitive information]

EXHIBIT C
(Option Agreement)

Transition Services Agreement

[REDACTED- confidential information]

EXHIBIT D
(Option Agreement)

Release

[REDACTED- confidential information]

EXHIBIT E
(Option Agreement)

Interim Period Costs

[REDACTED- confidential information]

EXHIBIT E

Trucking Agreement

[REDACTED- competitively sensitive information]

EXHIBIT F

Supply Agreement

[REDACTED- competitively sensitive information]

EXHIBIT G

Transferred Lands

[REDACTED- confidential information]

EXHIBIT H

Form of Lease Agreement

[REDACTED- competitively sensitive information]

SUPERIOR PLUS LP

- and -

GIBSON ENERGY ULC

OPTION AGREEMENT
March 1, 2017

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EXHIBITS

- Exhibit A – Share and Partnership Capital
- Exhibit B – Non-Competition Agreement
- Exhibit C – Transition Services Agreement
- Exhibit D – Release
- Exhibit E – Interim Period Costs

OPTION AGREEMENT

THIS AGREEMENT is made as of March 1, 2017,

AMONG:

SUPERIOR PLUS LP, a limited partnership organized under the laws of Ontario (the "**Purchaser**")

- and -

GIBSON ENERGY ULC, an unlimited liability corporation incorporated under the laws of the Province of Alberta (the "**Seller**")

WHEREAS the Seller is the legal and beneficial owner of (i) all of the share capital of Stittco, (ii) all of the share capital of Canwest ULC, and (iii) an interest in Canwest Partnership which comprises approximately seventy percent (70%) of all partnership interests in Canwest Partnership;

WHEREAS Canwest ULC is the legal and beneficial owner of (i) all of the share capital of Cal-Gas, and (ii) an interest in Canwest Partnership which comprises approximately three percent (3%) of all partnership interests in Canwest Partnership;

WHEREAS Cal-Gas is the legal and beneficial owner of an interest in Canwest Partnership which comprises approximately twenty seven percent (27%) of all partnership interests in Canwest Partnership;

WHEREAS Seller has agreed to grant to the Purchaser an irrevocable option to purchase, on the terms and subject to the conditions hereinafter set out, all of the issued and outstanding share capital of Stittco and Canwest ULC, and all partnership interests in Canwest Partnership other than the partnership interests owned by Cal-Gas and Canwest ULC; and

WHEREAS the Parties are parties to the Option Purchase Agreement, and this is the Option Agreement contemplated by and defined therein.

NOW THEREFORE, in consideration of the payments, covenants and agreements made pursuant to the Option Purchase Agreement, including the payment by the Purchaser of the Option Issuance Price, and as herein contained (the receipt and sufficiency of which are hereby conclusively acknowledged), the Parties agree as follows:

ARTICLE 1 **INTERPRETATION**

1.1 Definitions

In this Agreement, the preamble and recitals hereto, and the exhibits attached hereto (the "**Exhibits**", and each, an "**Exhibit**"), unless there is something in the subject matter or context inconsistent therewith, the following words and terms will have the indicated meanings and grammatical variations of such words and terms will have corresponding meanings.

"**Accounts Payable**" means, at any point of determination, all trade and other accounts payable, notes payable and other debts due or accruing by the Business Entities relating to goods and/or services received prior to such time, determined in accordance with GAAP;

"**Accrued Vacation Entitlements**" means any and all entitlements of the Business Employees as of the Option Right Effective Time in respect of accrued and untaken vacation time, including any and all rights to be paid in lieu thereof;

"**Adjusted Purchase Price**" has the meaning ascribed thereto in Section 2.6(c);

"**affiliate**" has the meaning ascribed thereto in the Securities Act;

"**Agreement**", "**this Agreement**", "**herein**", "**hereto**" and "**hereof**" and similar expressions refer to this option agreement as the same may be amended, supplemented or otherwise modified from time to time in accordance with the terms hereof and, where applicable, to the Exhibits hereto;

"**Allocated Canwest Partnership Tax Liability**" means the aggregate liability of the Seller, as a partner of Canwest Partnership, for Taxes arising solely from the allocation to the Seller of Tax Allocation Income, calculated using a combined federal and provincial income tax rate of 26.5%;

"**arm's length**" has the meaning ascribed thereto in the Tax Act;

"**Assumed Liabilities**" has the meaning ascribed thereto in Section 7.1;

"**Assumed Retention Obligations**" has the meaning ascribed thereto in the Disclosure Letter;

"**BAR Costs**" means any and all out-of-pocket costs and expenses incurred by the Seller and/or any Business Entities in respect of the matters contemplated by Section 4.3(a), provided that "**BAR Costs**" shall in any event exclude BAR Costs Paid by Closing and BAR Costs Unpaid by Closing, as those terms are defined in the Option Purchase Agreement;

"**BAR Costs Incurred by Closing**" means all BAR Costs incurred by the Seller or the Business Entities, as applicable, during the Interim Period;

"**BAR Costs Incurred following Closing**" means all BAR Costs incurred by the Seller or the Business Entities, as applicable, after the Closing Date;

"**BCUC Approval**" means the approval of the British Columbia Utilities Commission of the transactions contemplated by this Agreement, as contemplated by Subsection 54(5) of the British Columbia Utilities Commission Act;

"**BCUC Filings**" has the meaning ascribed thereto in Section 4.6(b)(i);

"**Benefit Plan Costs**" has the meaning ascribed thereto in Section 4.10(b);

"**Budget Account**" means the notional account of a customer of a Business Entity whereby such customer makes periodic payments, which payments are applied to the obligations of such customer in respect of product deliveries made from time to time or the rental of tanks or other equipment, and "**Budget Accounts**" means all such Budget Accounts as of the Closing Date;

"**Business**" means the propane supply and distribution business carried on by the Business Entities as of the Closing Date;

"**Business Day**" means any day, other than a Saturday, Sunday or statutory holiday in Calgary, Alberta;

"**Business Employees**" has the meaning ascribed thereto in Section 4.10(a);

"**Business Entities**" means, collectively, the Target Entities, Cal-Gas and the Stittco Subsidiaries, and "**Business Entity**" means any of them;

"**Cal-Gas**" means Cal-Gas Inc., a corporation formed pursuant to the laws of the Province of Alberta;

"**Cal-Gas Shares**" means all of the shares of every class and kind issued and outstanding in the capital of Cal-Gas, as at the Effective Time, a true and complete listing of which is set out in Exhibit A hereto;

"**Cal-Gas Units**" means the Canwest Units held by Cal-Gas, a true and complete listing of which is set out in Exhibit A hereto, which comprise twenty seven percent (27%) of all Canwest Units;

"**Canwest Partnership**" means Canwest Propane Partnership, a general partnership formed pursuant to the laws of the Province of Alberta and governed by the Canwest Partnership Agreement;

"**Canwest Partnership Agreement**" means the Amended and Restated Partnership Agreement dated October 1, 2008 in respect of Canwest Partnership;

"**Canwest Shares**" means all of the shares of each class and every kind and issued in the capital of Canwest ULC, as at the Effective Time, a true and complete listing of which is set out in Exhibit A hereto;

"**Canwest ULC**" means Canwest Propane ULC, a corporation formed pursuant to the laws of the Province of Alberta;

"**Canwest ULC Units**" means the Canwest Units of every kind issued and outstanding held by Canwest ULC, a true and complete listing of which is set out in Exhibit A hereto, which comprise three percent (3%) of all Canwest Units;

"**Canwest Units**" means all of the partnership units of Canwest Partnership, a true and complete listing of which is set out in Exhibit A hereto;

"**Claim**" means any claim, demand, action, cause of action, suit, arbitration, investigation, proceeding, dispute, complaint, grievance, charge, prosecution, assessment or reassessment, including any appeal or application for review;

"**Closing**" means the closing of the Transaction;

"**Closing Date**" means the tenth (10th) Business Day following the Condition Satisfaction Date, *provided, however*, that the Closing Date may be such earlier date as may be mutually agreed upon by the Parties;

"**Closing Proceeds**" has the meaning ascribed thereto in Section 2.3(b);

"**Closing Purchase Price**" has the meaning ascribed thereto in Section 2.4(a);

"**Closing Statement**" has the meaning ascribed thereto in Section 2.6(a);

"**Closing Statement Objection**" has the meaning ascribed thereto in Section 2.6(b);

"**Commissioner**" means the Commissioner of Competition appointed pursuant to subsection 7(1) of the Competition Act or his designee;

"**Competition Act**" means the *Competition Act* (Canada);

"**Competition Act Clearance**" means that one or more of the following shall have occurred: (i) the Commissioner shall have issued an advance ruling certificate pursuant to Section 102 of the Competition Act in respect of the Transaction; (ii) the Commissioner shall have issued to the Purchaser a "no action letter" indicating that he does not intend to apply to the Competition Tribunal for an Order under Section 92 of the Competition Act in respect of the Transaction and the relevant waiting period under Section 123 of the Competition Act shall have expired or been terminated in respect of the Transaction; or (iii) the relevant waiting period under Section 123 of the Competition Act shall have expired or been terminated in respect of the Transaction and there shall not be any Restraining Order or voluntary agreement with the Commissioner not to consummate the Transaction in effect in respect of the Transaction;

"**Competition Act Submissions**" means all submissions made by Purchaser or Seller to the Commissioner pursuant to subsections 5.6(a) and 5.6(b) of the Option Purchase Agreement;

"**Competition Tribunal**" means the Competition Tribunal established under subsection 3(1) of the *Competition Tribunal Act* (Canada);

"**Condition Satisfaction Date**" means the date of the satisfaction or waiver (subject to applicable laws) of the conditions set out in Article 5 of this Agreement (excluding conditions that, by their terms, cannot be satisfied until the Closing Date, but subject to the satisfaction or waiver of those conditions as of the Closing Date) by the applicable Parties;

"**Confidentiality Agreement**" means the confidentiality agreement dated [REDACTED] between the Purchaser and the Seller;

"**Consent Agreement**" means an agreement with the Commissioner that is registerable in the Competition Tribunal under section 105 of the Competition Act;

"**Contract**" means any pending or executory contract, agreement, license, franchise, Lease or other legally binding arrangement, commitment, understanding or other right or obligation (whether written or oral) to which any Business Entity is a party or by which any Business Entity is bound or affected;

"**Customer Account Surplus**" means, in respect of a Budget Account, the amount on the Closing Date, if any, by which the customer has made payments that exceed the value of the product delivered;

"**Disclosure Letter**" has the meaning ascribed thereto in the Option Purchase Agreement;

"**Effective Time**" means 12:01 a.m. (Mountain Time) on the Closing Date;

"**Employee Benefit Plans**" means all written compensation, overtime, bonus, deferred compensation, incentive compensation, share purchase, share appreciation, share option, severance or termination pay, change of control, vacation pay, holiday pay, hospitalization or other medical, health and welfare benefits, life or other insurance, dental, eye care, disability, accidental death and dismemberment, supplemental employment insurance benefits, profit-sharing, employee loan, employee assistance, counselling, pension, retirement or supplemental retirement benefit plans, arrangements or agreements, including the Quarterly Branch Manager Incentive Program, LTIP and any defined benefit or defined contribution pension plans and any group registered retirement savings plans, savings plans, post-retirement benefits and any other similar written employee benefit plans, arrangements or agreements, funded or unfunded, including

policies with respect to holidays, sick leave, disability, vacations, expense reimbursements and automobile allowances and rights to company-provided automobiles, that are sponsored or maintained or contributed to or required to be contributed to, by the Seller or a Business Entity for the benefit of any of the Business Employees, former employees or consultants of the Business or beneficiaries of any of them, whether or not insured, except that the term "**Employee Benefit Plans**" shall not include any statutory plans with which the Seller is required by any Governmental Entity to comply, including the Canada/Quebec Pension Plan or plans administered pursuant to applicable provincial health Tax, workers' compensation, workers' safety and insurance and employment insurance legislation;

"**Encumbrance**" means any mortgage, hypothec, prior Claim, lien, pledge, assignment for security, security interest, guarantee, right of third parties or other charge, encumbrance, any collateral securing the payment obligations of any person, option, warrant, right of first refusal, pre-emptive rights, lease, sublease, right to possession, Claim, right or restriction which affects, by way of a conflicting ownership interest or otherwise, the right, title or interest in or to any particular property, as well as any other agreement or arrangement with any similar effect whatsoever;

"**Estimated Closing Statement**" has the meaning ascribed thereto in Section 2.4(a);

"**ETA**" means the *Excise Tax Act* R.S.C. 1985, c. E-15.;

"**Exercise Notice**" has the meaning ascribed thereto in Section 2.2;

"**Expiry Date**" has the meaning ascribed thereto in Section 2.8;

"**Extension Fee**" shall be the aggregate per diem amount for each day following December 31, 2017, until the Seller receives or is credited with, as a result of Closing, a refund of the incremental tax payable as a result of the Seller realizing a deemed gain pursuant to subsection 49(1) of the Tax Act because of its entering into this Agreement and receiving the Option Issuance Price. The per diem amount shall be \$31.5 million times [REDACTED] divided by 365;

"**Final Compulsory Payment Amount**" has the meaning ascribed thereto in Section 9.7(b);

"**Final Compulsory Payment Indemnification Event**" means a Final Payment Determination having been made regarding a liability requiring payment under applicable law or any Order;

"**Final Determination**" has the meaning ascribed thereto in Section 2.6(c);

"**Final Payment Determination**" means a determination made by a Governmental Entity (including pursuant to a settlement) where all rights to object to or appeal from the determination (including any right to obtain relief under a competent authority or similar process) have been exhausted or have expired;

"**Financial Advisor**" means RBC Capital Markets;

"**Financial Auditor**" has the meaning ascribed thereto in Section 4.2(iii);

"**Financing Commitment Letters**" means one or more binding, executed commitment letters from a lender or group of lenders, as required with respect to the provision of the requisite third party debt financing needed by the Purchaser to consummate the Transaction;

"**Fiscal Year**" has the meaning ascribed thereto in Section 2.5;

"**Fundamental Breach**" has the meaning ascribed thereto in Section 9.8;

"**GAAP**" means, at any time, accounting principles generally accepted in Canada as set out in Part I of the Canadian Institute of Chartered Accountants Accounting Handbook – International Financial Reporting Standards, applied on a consistent basis with past practice;

"**Gibson Real Property Leases**" has the meaning ascribed thereto in the Option Purchase Agreement;

"**Governmental Entity**" means: (a) any Canadian, U.S. or other jurisdiction's federal, provincial, state, regional, municipal, local or other government, governmental or public department, ministry, central bank, court, tribunal, arbitral body, commission, commissioner, board, bureau or agency; (b) any subdivision, agency, agent or authority of any of the foregoing; or (c) any quasi-governmental or private body, including any tribunal, commission, regulatory agency or self-regulatory organization, exercising any regulatory, expropriation or taxing authority under or for the account of any of the foregoing;

"**GST**" means the Tax imposed under Part IX of the ETA;

"**Head Office Services**" has the meaning ascribed thereto in the Option Purchase Agreement;

"**IFRS**" means International Financial Reporting Standards for Canadian public companies;

"**Indebtedness**" of any person means, without duplication:

- (a) all obligations of such person for borrowed money or with respect to refundable deposits;
- (b) all obligations of such person evidenced by bonds, debentures, notes or similar instruments;
- (c) all obligations of such person upon which interest charges are customarily paid;
- (d) all obligations of such person under conditional sale or other title retention agreements relating to property acquired by such person;
- (e) all obligations of such person in respect of the deferred purchase price of property acquired or services provided prior to the Closing Date, (excluding Accounts Payable) including, for greater certainty, earn-out obligations, if any, calculated pursuant to GAAP;
- (f) all guarantees by or similar security or payment assurance obligations provided by such person of Indebtedness of others including obligations of such person as an account party in respect of letters of credit and letters of guarantee (other than letters of credit and letters of guarantee issued in support of current Accounts Payable incurred in the Ordinary Course of Business);
- (g) all capital lease obligations of such person (excluding any prepayment penalties);
- (h) all obligations, contingent or otherwise, of such person in respect of bankers' acceptances;
- (i) all obligations under any foreign exchange contract, currency swap agreement, foreign currency futures or options, exchange rate insurance or other similar agreement or combination thereof;

- (j) all obligations of such person to purchase, redeem, retire, defease or otherwise acquire for value (other than for other equity securities) any equity securities of such person, valued, in the case of redeemable equity securities, at the greater of voluntary or involuntary redemption price, plus accrued and unpaid dividends; and
- (k) any amendment, supplement, modification, deferral, renewal, extension, refunding or refinancing of any Indebtedness of the types referred to above;

"**Indemnified D&O Party**" has the meaning ascribed thereto in Section 6.2;

"**Indemnified Party**" has the meaning ascribed thereto in Section 9.4;

"**Indemnifying Party**" has the meaning ascribed thereto in Section 9.4;

"**Indemnity Claim**" has the meaning ascribed thereto in Section 9.4;

"**Independent Accountant**" means an accounting firm of recognized national standing in Canada which is independent of the Parties and which shall be appointed by the mutual agreement of the Parties as required by the terms and conditions of this Agreement. If the Parties are unable to agree on the Independent Accountant within the prescribed time period then the Independent Accountant shall be E&Y, or, in the event of a conflict, KPMG;

"**Independent Contractor**" means any consultant or contractor: (a) engaged by any Business Entity, the majority or all of whose services are provided to one or more Business Entities; or (b) engaged by Gibson and utilized solely in respect of the Business, and the majority or all of whose services are provided in respect of the Business;

"**Ineligible Person**" means a person exempt from Tax under section 149 of the Tax Act or a non-resident person, within the meaning of the Tax Act;

"**Interim Period**" means the time period from the Issuance Date to the Closing;

"**Interim Period Costs**" means all costs incurred by the Seller in carrying out the Interim Period Operations, including the Benefit Plan Costs, at the rates set out in Exhibit E;

"**Interim Period Operations**" means all activities carried out by the Seller at any time and from time to time during the Interim Period as required and contemplated by Section 4.1, 4.2, and 4.9;

"**Investment Canada Act**" means the *Investment Canada Act*, R.S.C. 1985, c. 28 (1st Supp);

"**Issuance Date**" means the date of this Agreement;

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

"**Liquidated Damages**" has the meaning ascribed thereto in Section 9.8;

"**Losses**" means any amounts on account of damages, losses, deficiencies, costs, Liabilities, Claims, causes of action, indemnities, fines, penalties and expenses (including reasonable costs, fees and expenses

of investigation and of legal counsel on a full indemnity basis, including those incurred in connection with pursuing Indemnity Claims under this Agreement);

"**LTIP**" means the Gibson Energy Inc. 2011 Equity Incentive Plan in the form filed on March 10, 2016 on sedar.com in the Gibson Energy Inc. company profile;

"**Most Recent Tax Year End**" means the most recent tax year end of Canwest Partnership being December 31, 2016;

"**Mutual Releases**" has the meaning ascribed thereto in Section 8.3;

"**Non-Competition Agreement**" means the non-competition and non-solicitation agreement to be entered into at Closing between the Seller, the Purchaser and Gibson Energy Inc. in the form attached hereto as Exhibit B, having a term expiring on the [REDACTED] anniversary of the Effective Time;

"**Option Issuance Price**" means the purchase price paid by the Purchaser to the Seller pursuant to the terms of the Option Purchase Agreement in consideration of the issuance by the Seller of the Option Right;

"**Option Purchase Agreement**" means the option purchase agreement dated February 13, 2017 among the Parties, pursuant to which this Agreement was executed and delivered;

"**Option Purchase Agreement Straddle Period**" means the portion of a taxation year or the fiscal period beginning before and ending after the date of the Option Right Effective Time;

"**Option Right**" has the meaning ascribed thereto in Section 2.1;

"**Option Right Effective Time**" means the "Effective Time" under the Option Purchase Agreement;

"**Option Term**" has the meaning ascribed thereto in Section 2.2;

"**Order**" has the meaning ascribed thereto in Section 9.7(a);

"**Ordinary Course of Business**" when used in relation to the taking of any action by a Business Entity means that the action is consistent in nature, scope and magnitude with the past practices of the Business Entity and is taken in the ordinary course of normal day-to-day operations of the Business Entity;

"**Outside Date**" has the meaning set out in Section 5.5;

"**Parties**" means the parties to this Agreement, and "**Party**" means any one of them;

"**Pension Plan**" has the meaning ascribed thereto in the Option Purchase Agreement;

"**person**" includes an individual, limited or general partnership, limited liability company, limited liability partnership, trust, joint venture, association, body corporate, unincorporated organization, trustee, executor, administrator, legal representative, government (including any Governmental Entity) or any other entity, whether or not having legal status;

"**Post-Exercise Period**" means the time period from the exercise of the Option Right to Closing;

"**Pre-Closing Tax Period**" has the meaning ascribed thereto in Section 4.8(a);

"**Preliminary Compulsory Payment Amount**" has the meaning ascribed thereto in Section 9.7(a);

"**Prior Period Return**" has the meaning ascribed thereto in Section 4.8(a);

"**Proposed Transferee**" has the meaning ascribed thereto in Section 4.7(a);

"**Proposed Transferee Notice**" has the meaning ascribed thereto in Section 4.7(a);

"**Prospectus**" has the meaning ascribed thereto in Section 4.3(a);

"**Privileged Communications**" has the meaning ascribed thereto in Section 10.13(a);

"**Purchase Price**" has the meaning ascribed thereto in Section 2.3(a);

"**Purchased Securities**" means, collectively, the Purchased Shares and the Purchased Units;

"**Purchased Shares**" means all of the shares of every class and kind issued and outstanding in the capital of each Target Company immediately prior to the purchase thereof by the Purchaser, a true and complete listing of which is set out in Exhibit A hereto;

"**Purchased Units**" means the Canwest Units held by the Seller, a true and complete listing of which is set out in Exhibit A hereto, which comprise seventy percent (70%) of all Canwest Units;

"**Purchaser**" has the meaning ascribed thereto in the recitals to this Agreement;

"**Purchaser Indemnified Parties**" means the Purchaser and its respective direct and indirect subsidiaries, officers, directors, shareholders, employees and agents;

"**Purchaser's Counsel**" means Blake, Cassels & Graydon LLP;

"**Regulatory Approvals**" means the Competition Act Clearance, the BCUC Approval and all other sanctions, rulings, consents, filings, registrations, exemptions, permits and no-action letters, approvals (including the lapse, without objection, of a prescribed time under a statute or regulation that states that a transaction may be implemented if a prescribed time lapses following the giving of notice without an objection being made) of any Governmental Entity required in order to effect the Closing in accordance with applicable laws;

"**Related Person**" means, with respect to any specified person: (i) any affiliate of such specified person, and any director, officer, executive employee, general partner or managing member of such affiliate; (ii) any person who serves or within the past five years has served as a director, officer, executive employee, partner, or in a similar capacity for, such specified person; and (iii) any other person not at arm's length from such specified person as contemplated by the Tax Act;

"**Remedy**" means (a) the sale, divestiture, licensing or disposition of all or any part of the businesses, properties or assets of the Purchaser, the Target Entities, the Seller, or any of their respective affiliates; (b) the termination of any existing contractual rights, relationships or obligations; (c) the taking of any other action that, after completion of the Transaction, would limit the freedom of action of, or impose any other requirement on, the Purchaser with respect to the operation of one of more of the businesses, properties or assets of the Purchaser, the Seller, or any of their respective affiliates; or (d) any other remedial action whatsoever that may be sought by the Commissioner or ordered by the Competition Tribunal;

"Restraining Order" means an Order pursuant to Section 92, 100 or 104 of the *Competition Act* that prohibits the completion of the Transaction;

"Retained Liabilities" has the meaning ascribed thereto in Section 7.2;

"Returns" means all reports, forms, elections, designations, schedules, information statements and returns with respect to Taxes, including any amendments, attachments, appendices and exhibits thereto, made, prepared or filed with any Governmental Entity or required to be made, prepared or filed with any Governmental Entity;

"Securities Act" means the *Securities Act*, R.S.A. 2000, c. S-4;

"Seller" has the meaning ascribed thereto in the recitals to this Agreement;

"Seller Indemnified Parties" means the Seller and the Business Entities (in the event that the Transaction is not consummated, their affiliates and their respective shareholders, directors, officers, employees and agents, as applicable, but excluding the Business Entities);

"Seller's Counsel" means Bennett Jones LLP;

"Shortfall Amount" has the meaning ascribed thereto in Section 2.6(d);

"Stittco" means Stittco Energy Limited, a corporation formed pursuant to the laws of Canada;

"Stittco Shares" means all of the shares of each class and every kind and issued in the capital of Stittco, as at the Effective Time, a true and complete listing of which is set out in Exhibit A hereto;

"Stittco Subsidiaries" means, collectively, the following entities:

- (a) Stittco Utilities Man. Ltd.; and
- (b) Stittco Utilities NWT Ltd.;

"Stittco Subsidiary Shares" means all of the shares of every class and kind issued and outstanding in the capital of the Stittco Subsidiaries, as at the Effective Time, a true and complete listing of which is set out in Exhibit A hereto;

"Superior GP" has the meaning ascribed thereto in Section 3.2(a);

"Supply Agreement" means the Supply Agreement defined in and executed and delivered pursuant to the Option Purchase Agreement;

"Target Companies" means, collectively, Stittco and Canwest ULC, and **"Target Company"** means either of them;

"Target Entities" means, collectively, the Target Companies and Canwest Partnership;

"Tax" or **"Taxes"** means all taxes, assessments, charges, dues, duties, rates, fees, imposts, levies and similar charges of any kind lawfully levied, assessed or imposed by any Governmental Entity, including Canada Pension Plan and provincial pension plan contributions and installments, unemployment insurance contributions and employment insurance contributions, worker's compensation and deductions at source, taxes based on or measured by reference to gross receipts, gross income, net income, profits,

sales, capital, use and occupation, and including goods and services, harmonized sales, ad valorem, transfer, franchise, withholding, customs, payroll, stamp, recapture, premium, windfall profits, employment, excise and property duties and taxes, together with all interest, penalties, fines and additions imposed with respect to such amounts, and in each case whether disputed or not;

"**Tax Act**" means the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.);

"**Tax Allocation Income**" means the taxable income allocated by Canwest Partnership to Seller in respect of any fiscal period ending after the Most Recent Tax Year-End;

"**Tax Proceeding**" has the meaning ascribed thereto in Section 4.8(d);

"**Terminated Agreement**" has the meaning ascribed thereto in Section 4.11(a)(i);

"**Third Party Liability**" has the meaning ascribed thereto in Section 9.4(b);

"**Transaction**" means the acquisition by the Purchaser (and/or the Proposed Transferee(s), as applicable) of all the Purchased Securities at Closing pursuant to the exercise of the Option Right as contemplated by this Agreement and the transactions ancillary thereto as contemplated by this Agreement;

"**Transition Services Agreement**" means the Transition Services Agreement in the form set out in Exhibit C, between the Target Entities and the Seller; and

"**Trucking Agreement**" means the Trucking Agreement defined in and executed and delivered pursuant to the Option Purchase Agreement.

1.2 Interpretation Not Affected by Headings

The division of this Agreement into Articles and Sections and the insertion of a table of contents and headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement. The terms "hereof", "hereunder" and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles, Sections and Exhibits are to Articles and Sections of and Exhibits to this Agreement.

1.3 Interpretation

In this Agreement words importing the singular number include the plural and vice versa, and words importing any gender include all genders. The term "third party" means any person other than the Parties and their respective affiliates.

1.4 Date for Any Action

If the date on which any action is required to be taken hereunder by a Party is not a Business Day, such action shall be required to be taken on the next succeeding day that is a Business Day.

1.5 Statutory References

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

1.6 Currency

Unless otherwise stated, all references in this Agreement to sums of money are expressed in lawful money of Canada and "\$" refers to Canadian dollars.

1.7 Accounting Principles

All accounting terms used in this Agreement are to be interpreted in accordance with GAAP and all determinations of an accounting nature in respect of the Business Entities required to be made shall be made in a manner consistent with GAAP.

1.8 Inclusive Terminology

Whenever used in this Agreement, the words "includes" and "including" and similar terms of inclusion will not, unless expressly modified by the words "only" or "solely", be construed as terms of limitation, but rather will mean "includes but is not limited to" and "including without limitation", so that references to included matters will be regarded as illustrative without being either characterizing or exhaustive.

1.9 Interpretation Not Affected by Party Drafting

The Parties acknowledge that their respective legal counsel have reviewed and participated in negotiating, drafting and settling the terms of this Agreement, and the Parties agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting party will not be applicable in the interpretation of this Agreement.

1.10 Governing Law; Waiver of Jury Trial

This Agreement shall be governed, including as to validity, interpretation and effect, by the laws of the Province of Alberta and the federal laws of Canada applicable therein (without reference to conflict of laws principles), and shall be construed and treated in all respects as an Alberta contract. Each of the Parties hereby irrevocably attorns to the exclusive jurisdiction of the courts of the Province of Alberta in respect of all matters arising under and in relation to this Agreement, *provided, however*, that for the purposes of Section 10.2(a), the Parties may enforce equitable remedies in any jurisdiction in which the Purchaser is located, in addition to the Province of Alberta. Each Party hereby waives any right to trial by jury in any action, proceeding or counterclaim (whether based on contract, tort or otherwise) arising out of or relating to this Agreement or the Transaction or the actions of the Parties in the negotiation, administration, performance and enforcement of this Agreement.

1.11 Laws

Whenever used in this Agreement, "**law**" or "**laws**" means all laws (including common law), statutes, by-laws, rules, regulations, principles of law and equity, Orders, rulings, ordinances, judgments, injunctions, determinations, awards, decrees or other requirements, whether domestic or foreign, and the terms and conditions of any grant of approval, permission, authority or license of any Governmental Entity.

1.12 Exhibits

The following Exhibits are annexed to this Agreement and are incorporated by reference into this Agreement and form an integral part hereof:

Exhibit A	–	Share and Partnership Capital
Exhibit B	–	Non-Competition Agreement
Exhibit C	–	Transition Services Agreement
Exhibit D	–	Release
Exhibit E	–	Interim Period Costs

ARTICLE 2 **GRANT OF OPTION**

2.1 Grant of Option Right

The Seller hereby grants to the Purchaser an exclusive and irrevocable (within the time limited for exercise) option to purchase the Purchased Securities (the "**Option Right**") for the Purchase Price and on the terms and conditions herein contained, free and clear of all Encumbrances, on the Closing Date.

2.2 Exercise of Option Right

The Purchaser shall be entitled to exercise the Option Right in accordance with the terms of this Agreement at any time up to and including the Expiry Date (the "**Option Term**"). This Option Right may be exercised by, and shall be deemed exercised upon, delivery of a written notice by the Purchaser to the Seller expressing that the Purchaser thereby unconditionally, exercises the Option Right (the "**Exercise Notice**") prior to the expiry of the Option Term. For clarity, the prior exercise of the Option Right shall not affect the rights and obligations of the Parties under Section 4.7.

2.3 Purchase Price

- (a) The aggregate purchase price payable at Closing in respect of the sale to the Purchaser of the Purchased Securities pursuant to the exercise of the Option Right (the "**Purchase Price**") shall be one dollar (\$1), which shall be subject to adjustment only as follows:
 - (i) the Purchase Price shall be increased by fifty percent (50%) of the amount of the BAR Costs Incurred by Closing by the Seller;
 - (ii) the Purchase Price shall be decreased by fifty percent (50%) of the amount of the BAR Costs Incurred by Closing by the Business Entities;
 - (iii) the Purchase Price shall be increased by the amount of all reasonable out-of-pocket expenses incurred by the Seller after December 31, 2017 for fees paid to legal and other professional advisors, to comply with Section 4.6;
 - (iv) the Purchase Price shall be increased by all Interim Period Costs not paid to the Seller by the Business Entities during the Interim Period; and
 - (v) the Purchase Price shall be increased by the amount of the Allocated Canwest Partnership Tax Liability, if any, as contemplated by Section 2.5, reduced by the

aggregate amount distributed or paid to the Seller by the Business Entities during the Interim Period on account of the same.

- (b) The Purchase Price, as adjusted pursuant to Section 2.3(a) in accordance with the Estimated Closing Statement (such net and adjusted amount, the "**Closing Proceeds**"), shall be paid by the Purchaser to the Seller's Counsel, in trust for the Seller at Closing.

2.4 Estimated Closing Statement

- (a) The Purchaser and the Seller acknowledge that it will not be possible to conclusively determine the adjustments to the Purchase Price required by Section 2.3(a) until the Closing Statement is finalized in accordance with Section 2.6. Accordingly, the Purchaser and the Seller agree that, not less than two (2) Business Days prior to the Closing Date, the Seller shall deliver to the Purchaser a good faith estimate of the adjustments to the Purchase Price set out in Sections 2.3(a), and the Adjusted Purchase Price based thereon (the "**Closing Purchase Price**"), (the statement reflecting the estimates set out in this Section 2.3(a), the "**Estimated Closing Statement**").
- (b) The estimates and adjustments set out in the Estimated Closing Statement shall be calculated in accordance with GAAP, consistent with past practice, and shall include supporting documentation. The Purchaser shall have the right to review the amounts set out in the Estimated Closing Statement and the Seller and the Target Entities shall provide the Purchaser with access to all relevant documentary backup; *provided, however*, that in the event of a dispute on any given item, the position set out in the Estimated Closing Statement shall govern for the purposes of the estimates of the adjustments to the Purchase Price set out in Section 2.3(a).

2.5 Tax Adjustments

The Parties acknowledge that, pursuant to the terms of the Canwest Partnership Agreement, for tax purposes, taxable income for each fiscal year of the Canwest Partnership (each, a "**Fiscal Year**") is allocated to the partners of Canwest Partnership as at the end of such fiscal year, according to each such partner's respective partnership interests at that time. The Parties further acknowledge that the Option Issuance Price was adjusted downward pursuant to the Option Purchase Agreement on the assumption that the Closing (as contemplated by this Agreement) would occur before the end of any Fiscal Year occurring after the Most Recent Tax Year End. Therefore, to the extent that the Seller, as owner of the Purchased Units, is for tax purposes allocated taxable income of Canwest Partnership for any Fiscal Year ending after Most Recent Tax Year End but the prior to Closing, the Purchase Price shall be increased by the amount of the Allocated Canwest Partnership Tax Liability.

2.6 Post-Closing Purchase Price Adjustment Process

- (a) Within ninety (90) days of the Closing Date, the Seller shall prepare and deliver to the Purchaser a statement (the "**Closing Statement**") which sets out the adjustments to the Purchase Price referred to in Section 2.3(a).
- (b) The Purchaser shall have thirty (30) days from the date it receives the Closing Statement to review the Closing Statement and to inform the Seller in writing of any disagreement with the Closing Statement (a "**Closing Statement Objection**"). If the Purchaser does not deliver a Closing Statement Objection to the Seller within such 30-day period, the Closing Statement shall be deemed to have been accepted by the Purchaser and shall become final and binding upon the Parties. If a Closing Statement Objection is delivered

within such 30-day period, the Seller shall then have thirty (30) days from the time the Closing Statement Objection is received to review and respond to the Closing Statement Objection. If the Purchaser and the Seller are unable to resolve their disagreement(s) with respect to the Closing Statement within five (5) days following the foregoing 30-day period, then such disagreement shall be submitted to an Independent Accountant. The Independent Accountant shall, as promptly as practicable (but in any event within forty-five (45) days following its appointment), make a determination on the disputed elements of the Closing Statement based solely on written submissions submitted by the Purchaser and the Seller to the Independent Accountant. The decision of the Independent Accountant as to the Closing Statement shall, absent manifest error, be final and binding upon the Purchaser and the Seller and shall constitute the Purchase Price (as adjusted in accordance with the terms of this Agreement) for purposes of this Agreement. The Purchaser shall pay one-half of the fees, expenses and GST of the Independent Accountant with respect to the resolution of any such dispute and the Seller shall pay the balance.

- (c) Upon acceptance of the Closing Statement by the Purchaser and the Seller, or a final determination pursuant to Section 2.6(b) hereof (a "**Final Determination**"), if the Purchase Price, as finally adjusted in accordance with the provisions hereof (the "**Adjusted Purchase Price**"), is greater than the Closing Purchase Price, then the Purchase Price shall be increased, dollar for dollar, by the amount by which the Adjusted Purchase Price exceeds the Closing Purchase Price, and the Purchaser shall, within three (3) Business Days of the Final Determination, pay in cash, to the Seller's Counsel in trust for the Seller, the amount of such difference.
- (d) Upon acceptance of the Closing Statement by the Purchaser and the Seller or a Final Determination:
 - (i) if the Adjusted Purchase Price is greater than one dollar (\$1) but less than the Closing Purchase Price (the amount of such difference, the "**Shortfall Amount**"), then the Purchase Price shall be decreased, dollar for dollar, by the Shortfall Amount, and the Seller shall, within three (3) Business Days of the determination of the Adjusted Purchase Price in accordance with this Section 2.6, pay in cash, to the Purchaser's Counsel in trust for the Purchaser, the amount of such difference; or
 - (ii) if the Adjusted Purchase Price is less than one dollar (\$1), the Seller shall return to the Business Entities reimbursement payments previously made by the Business Entities as contemplated by Section 4.1(b).

2.7 Purchase Price Allocation

The Purchase Price shall be allocated among the Purchased Securities *pro rata* in accordance with the final allocation of the Option Issuance Price pursuant to the Option Purchase Agreement among the Purchased Securities.

2.8 Expiry of Option Right

The Option Right shall expire on, December 29, 2017 unless, at such time, a Restraining Order is in effect or the Purchaser has delivered a Proposed Transferee Notice, in which case the Purchaser may, by written notice prior to December 29, 2017, extend the expiry to September 30, 2018 (such date of

expiry, as the same may be extended, (the "**Expiry Date**"). Should Purchaser deliver a notice to extend the expiry to September 30, 2018, the Extension Fee shall become payable by Purchaser.

2.9 Non-Competition Agreement

- (a) The Seller acknowledges and confirms that: (i) due to its ownership of the Purchased Securities, it will receive substantial financial benefit from the completion of the Transaction; (ii) any other consideration that would otherwise be paid in consideration for the Non-Competition Agreement has been paid to the Seller in connection with the purchase and sale of the Purchased Securities; and (iii) the Purchaser would not have completed the Transaction without the execution and delivery by the Seller of the Non-Competition Agreement.
- (b) The Parties intend that the conditions set out in subsection 56.4(7) of the Tax Act have been met such that subsection 56.4(5) of the Tax Act applies to any "restrictive covenants" (as defined in subsection 56.4(1) of the Tax Act) granted by the Seller pursuant to the Non-Competition Agreement. For greater certainty, the Parties agree and acknowledge that: (i) for the purposes of paragraph 56.4(7)(d) of the Tax Act, other than \$1, no proceeds shall be attributable, allocable, received or receivable by the Seller in respect of the Non-Competition Agreement; and (ii) the Non-Competition Agreement is integral to this Agreement and has been granted to maintain or preserve the Business and the fair market value of the Purchased Securities.

ARTICLE 3 REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of the Seller

The Seller represents and warrants to and in favor of the Purchaser that as of the date hereof and as of the Effective Time:

- (a) Authority Relative to this Agreement (Seller). The Seller has the requisite corporate power and authority to enter into this Agreement and any agreement ancillary hereto and to carry out its obligations hereunder and thereunder. The execution and delivery of this Agreement by the Seller and the consummation by the Seller of the Transaction have received all necessary organizational approval of, and no other corporate proceedings on its part are necessary to authorize the execution and delivery by it of this Agreement or any agreement ancillary hereto and the consummation by it of the Transaction. This Agreement has been duly executed and delivered by the Seller and constitutes a legal, valid and binding obligation of it enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws relating to or affecting creditors' rights generally and to general principles of equity. The Seller is not an insolvent person within the meaning of the *Bankruptcy and Insolvency Act* (Canada) and will not become an insolvent person as a result of the Closing.
- (b) Authorized and Issued Capital.
 - (i) The authorized and issued capital of each Business Entity is as set out in Exhibit A hereto.

- (ii) The Purchased Shares represent all the issued and outstanding shares in the capital of the Target Companies.
 - (iii) The Purchased Units represent 70% of the issued and outstanding units of Canwest Partnership. The Cal-Gas Units represent 27% of the issued and outstanding units of Canwest Partnership. The Canwest ULC Units represent 3% of the issued and outstanding units of Canwest Partnership. The Purchased Units, the Cal-Gas Units and the Canwest ULC Units collectively constitute all of the issued and outstanding units of Canwest Partnership.
 - (iv) The Stittco Subsidiary Shares represent all the issued and outstanding shares in the capital of the Stittco Subsidiaries.
 - (v) All of the Purchased Shares, Stittco Subsidiary Shares and Canwest Units have been duly authorized and issued in compliance with all applicable laws including, without limitation, applicable securities laws and in compliance with the articles of incorporation, by-laws or other constating documents of the applicable issuer or any Contract to which any Business Entity is a party, or by which it is bound.
 - (vi) The Target Entities have no subsidiaries, other than the Stittco Subsidiaries, and the Business Entities have no interest in any other partnership, corporation or other business organization.
- (c) Title to Shares. The Seller is the registered and beneficial owner of the Purchased Securities, free and clear of Encumbrances. Canwest ULC is the registered and beneficial owner, free and clear of Encumbrances, of the Cal-Gas Shares and the Canwest ULC Units. Cal-Gas is the registered and beneficial owner, free and clear of Encumbrances, of the Cal-Gas Units. Stittco is the registered and beneficial owner of all of the Stittco Subsidiary Shares, free and clear of Encumbrances.
- (d) Capitalization of the Business Entities. There are no options, warrants, purchase rights, subscription rights, conversion privileges, exchange rights or pre-emptive rights or other rights, agreements, arrangements or commitments of a similar nature to which the Seller or any Business Entity is bound relating to the outstanding or unissued share capital or partnership capital of such Business Entity, as applicable, or obligation to issue any shares or units of, or other equity interest in, any Business Entity or securities or obligations of any kind convertible into or exchangeable for any shares or units of any Business Entity, nor are there any outstanding stock appreciation rights, phantom equity or similar rights, agreements, arrangements or commitments based upon the book value, income or any other attribute of any Business Entity. There are no outstanding bonds, debentures or other evidences of Indebtedness of any Business Entity having the right to vote (or that are convertible for, exercisable into or exchangeable for securities having the right to vote) on any matter on which the holders of shares may vote.
- (e) Shareholder Agreements, etc. There are no investor rights agreements, shareholder agreements, pooling agreements, voting trusts or other similar agreements (other than the Canwest Partnership Agreement) with respect to the ownership or voting of any of the shares or units in the capital of the Business Entities and no person has the right, directly or indirectly, to acquire shares or units in the capital of the Business Entities.

- (f) Organization and Qualification. The Seller is an unlimited liability corporation duly organized, formed and validly existing under the laws of its jurisdiction of incorporation and has the requisite power and authority to own the Purchased Securities as set out in Exhibit A hereto.
- (g) Authority Relative to Ancillary Agreements (Business Entities). Each Business Entity has the requisite corporate power and authority to enter into the Non-Competition Agreement and the Transition Services Agreement, as applicable, and to carry out its obligations thereunder. The execution and delivery of such agreements by a Business Entity have been duly authorized by its board of directors or managing partners (as applicable), and no other corporate proceedings on the part of a Business Entity are necessary to authorize the execution and delivery by any Business Entity of any agreement ancillary hereto. No Business Entity is an insolvent person within the meaning of the *Bankruptcy and Insolvency Act* (Canada) and no Business Entity will become an insolvent person as a result of the Closing.
- (h) Ownership of Purchased Securities.
 - (i) The Seller is the registered and beneficial owner of the Purchased Securities, and it has the exclusive right to sell, assign and transfer such Purchased Securities as provided in this Agreement free of any restrictions of any kind (other than restrictions, if any, contained in the relevant constating documents).
 - (ii) The Purchased Shares are validly issued and outstanding as fully paid and non-assessable shares of the Target Companies and the Purchased Units are validly issued and outstanding units of Canwest Partnership.
 - (iii) Upon completion of the Transaction, the Purchaser shall have good and valid legal and beneficial title to the Purchased Securities, free and clear of all Encumbrances. Except for the Purchaser's rights under this Agreement, no person has any written or oral agreement, option or warrant or any right or privilege (whether by law, pre-emptive or contractual) for the purchase or acquisition of such Purchased Securities.
- (i) Residency. The Seller is not a non-resident of Canada for purposes of the Tax Act.

3.2 Representations and Warranties of the Purchaser

The Purchaser hereby represents and warrants to the Seller as follows that as of the date hereof and as of the Effective Time:

- (a) Organization and Qualification. The Purchaser is a limited partnership duly formed and validly existing under the laws of Ontario. Superior General Partner Inc. ("**Superior GP**") is a corporation duly incorporated and validly existing under the laws of Canada. The Purchaser and Superior GP have the requisite power and authority to own their respective assets as now owned and to carry on their respective businesses as now being conducted. The Purchaser and Superior GP are duly registered to do business and are in good standing in each jurisdiction in which the character of their respective properties and assets, owned, leased, licensed or otherwise held, or the nature of their respective activities makes such registration or authorization necessary.

- (b) Authority Relative to this Agreement. The Purchaser has the requisite power and authority to enter into this Agreement and any agreement ancillary hereto to which it is a party and to carry out its obligations hereunder and Superior GP has the requisite power and authority to execute this Agreement and any agreement ancillary hereto on behalf of the Purchaser. The execution and delivery of this Agreement by Superior GP on behalf of the Purchaser and the consummation by the Purchaser of the Transaction have been duly authorized by Superior GP, and no other proceedings on the Purchaser's part are necessary to authorize the execution and delivery by it of this Agreement or any agreement ancillary hereto and the consummation by it of the Transaction. This Agreement has been duly executed and delivered by Superior GP on behalf of the Purchaser and constitutes a legal, valid and binding obligation of the Purchaser enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws relating to or affecting creditors' rights generally and to general principles of equity. The Purchaser is not an insolvent person within the meaning of the *Bankruptcy and Insolvency Act* (Canada) and will not become an insolvent person as a result of the Closing.
- (c) Investment Canada Act. Neither the Purchaser nor Superior GP is a "non-Canadian" or a "state owned enterprise" within the meaning of the Investment Canada Act.
- (d) Anticipated Transfers. The Purchaser does not currently contemplate that an interest in Canwest Partnership will be acquired directly, or indirectly through a partnership or trust, by any Ineligible Person.
- (e) No Tax Exempt or Non-Resident Purchasers. The Purchaser is not an Ineligible Person or a partnership or trust described in class (ii) or (iii) below. The Purchaser is purchasing the Purchased Units as legal and beneficial owner and is not purchasing, and will not hold, the Purchased Units in the capacity of a trustee. The Purchaser covenants that it shall not, without the approval of the Seller, not to be unreasonably withheld, for a period of thirty (30) months following the Closing Date sell or transfer the Purchased Units to, or admit as a partner of Canwest Partnership or the Purchaser, any of the following persons: (i) an Ineligible Person, (ii) a partnership to the extent that the interest in Canwest Partnership can reasonably be considered to be held, at that time, indirectly through one or more partnerships, by an Ineligible Person or a trust resident in Canada (other than mutual fund trust within the meaning of the Tax Act), or (iii) a trust resident in Canada (other than a mutual fund trust within the meaning of the Tax Act).
- (f) Availability of Funds. The Purchaser has on the Issuance Date, and shall have at Closing sufficient available funds and/or Financing Commitment Letters to pay the Purchase Price and all other necessary fees, expenses and other amounts incurred by it in connection with the consummation of the Transaction.

ARTICLE 4
COVENANTS OF THE PARTIES

4.1 Interim Period Conduct of Business

- (a) Throughout the Interim Period except as is otherwise required by applicable law, the Seller shall provide the Business Entities with the Head Office Services and shall otherwise use reasonable efforts to cause the business of the Business Entities, in all material respects, to be conducted in the Ordinary Course of Business, and the Seller

shall cause the Business Entities to use commercially reasonable efforts to maintain and preserve the Business Entities' business organization, assets, properties, employees, goodwill and business relationships. In furtherance of the foregoing, the Seller shall maintain and cause the Business Entities to maintain, as applicable, the Employee Benefit Plans.

- (b) The Seller shall be permitted from time to time during the Interim Period, to cause the Business Entities to make distributions to or to otherwise pay or satisfy by reimbursement, all Interim Period Costs as they are incurred, and the amount of the Allocated Canwest Partnership Tax Liability, if any.
- (c) The Seller covenants and agrees that during the Interim Period, it shall not cause or permit the Business Entities to:
 - (i) other than as permitted by Section 4.1(b), authorize or pay any dividend or other distribution, or make any return of capital to the Seller, its affiliates, or any of them;
 - (ii) amend their respective formation and organizational documents;
 - (iii) reorganize, amalgamate or merge with any other person;
 - (iv) agree to amend the terms of the Supply Agreement or the Trucking Agreement or fail to enforce its rights under such agreements opposite any counterparty; or
 - (v) acquire (by merger, amalgamation, consolidation or acquisition of shares or assets or otherwise) any corporation, partnership or other business organization or division thereof or make any investment either by the purchase of securities or contributions of capital, if any of the foregoing would be material to the Business Entities, taken as a whole.
- (d) For greater certainty, nothing in this Agreement shall be construed to provide the Purchaser with a significant interest in or control of the whole or part of the Business Entities, within the meaning of the Merger Enforcement Guidelines established by the Commissioner, during the Interim Period.
- (e) Nothing in this Section 4.1 and nothing in Section 4.2 shall restrict or preclude the Seller from causing the Business Entities to carry out their obligations under the Trucking Agreement and the Supply Agreement.

4.2 Post-Exercise Period Conduct of Business

- (a) Throughout the Post-Exercise Period, the Seller shall take all actions reasonably requested by the Purchaser in order that the condition of the organization, assets, properties, employees, goodwill and business relationships of the Business will not be materially impaired during the Post-Exercise Period.
- (b) The Seller covenants and agrees that during the Post-Exercise Period, unless the Purchaser shall otherwise consent in writing, or except as is otherwise expressly permitted or contemplated by this Agreement, or as is otherwise required by applicable law:

- (i) none of the Business Entities shall directly or indirectly:
- (1) sell, pledge, lease, license, dispose of, mortgage, grant a security interest in or otherwise create an Encumbrance on any of its property or assets, except in the Ordinary Course of Business and in amount which, individually or in the aggregate, are not material to the financial condition of the Business Entities taken as a whole, or to the operation of the Business
 - (2) except in the Ordinary Course of Business, acquire any property or assets, or exercise an option to acquire, any property or assets of any other person;
 - (3) with the exception of those capital expenditures that have been made or otherwise committed to prior to the Issuance Date, all of which are set out in the Disclosure Letter (as defined in the Option Purchase Agreement), make any capital expenditures in excess of \$1,000,000 in the aggregate;
 - (4) issue any debt securities or assume, endorse or otherwise as an accommodation become responsible for the obligations of any other person, other than in the Ordinary Course of Business and in any case not, in the aggregate, in excess of \$500,000.
 - (5) except as contemplated by this Agreement, issue or sell any shares, units or other securities or issue, sell or grant any option, warrant or right to purchase any of its shares, units or other securities or issue any security convertible into its shares or units, grant any registration rights or otherwise make any change to its authorized or issued share or equity capital;
 - (6) incur any Indebtedness or make any loans or advances other than in the Ordinary Course of Business;
 - (7) pay, discharge or satisfy any Claims, Liabilities or obligations in excess of \$250,000;
 - (8) enter into any Contract which provides for gross revenues to, or gross payments by, the Business Entities, taken as a whole, in excess of \$2,000,000 per annum;
 - (9) pay any long-term Liability other than in the Ordinary Course of Business, or otherwise in accordance with the terms of that Liability or with applicable law;
 - (10) other than in the Ordinary Course of Business, increase, in any material manner, the compensation (including bonuses) or benefits of any of the employees, officers, Independent Contractors or directors of any Business Entity; or pay to any employee, officer, Independent Contractor or director of any Business Entity any pension, severance or termination amount or other benefit not required by any of the Employee Benefit Plans;

- (11) enter into any Contract or commitment to hire any officer or senior management employee, or terminate the services of (A) any Business Employee other than for cause or performance based issues; or (B) other than as has been agreed to by the Purchaser, any employee employed by the Seller who is utilized predominantly in respect of the Business;
 - (12) make any additional grants under the LTIP or any other incentive program to any employee, officer, Independent Contractor or director of any Business Entity (provided that the Business Entities shall be permitted to make short-term incentive and retention grants in the amounts and to the persons described in the Disclosure Letter); or
 - (13) otherwise take any action which would make the representations and warranties of the Seller in Section 3.1 incorrect as of the Closing Date;
 - (14) agree, commit or enter into any understanding to take any actions enumerated in paragraphs (1) to (13) of this Section 4.2(b)(i).
- (ii) the Purchaser shall have the right to have a third party audit the Business, at its own expense;
 - (iii) subject to applicable competition laws, the Purchaser shall have the right to appoint an employee to act as a financial auditor (the "**Financial Auditor**") who shall have access to all personnel, records, information, and facilities required to monitor the financial performance of the Business and Seller's compliance with this Agreement or for the Purchaser to meet its financial reporting obligations; and
 - (iv) subject to applicable competition laws, Seller shall respond to all requests from the Financial Auditor in a timely manner and shall provide all information the Financial Auditor may reasonably request including periodic reporting of the financial performance of the Business (provided that the Seller may require the Financial Auditor to sign an appropriate confidentiality agreement in a form satisfactory to the Purchaser and the Seller, acting reasonably).
- (c) For greater certainty, nothing in this Agreement shall be construed to provide the Purchaser with a significant interest in or control of the whole or part of the Business Entities, within the meaning of the Merger Enforcement Guidelines established by the Commissioner, during the Post-Exercise Period.

4.3 Covenants of the Seller

The Seller shall, and shall cause the Business Entities to, perform all obligations required or desirable to be performed by the Seller under this Agreement, co-operate with the Purchaser in connection therewith, and do all such other acts and things as may be necessary or desirable in order to consummate and make effective, as soon as reasonably practicable, the Transaction and, without limiting the generality of the foregoing, the Seller shall, and shall cause the Business Entities to:

- (a) provide reasonable assistance (and cause the Target Entities to provide reasonable assistance) to the Purchaser with the preparation of disclosure to be included in a business acquisition report required to be filed by the Purchaser pursuant to Part 8 of National Instrument 51-102 *Continuous Disclosure Obligations*, (in this Section 4.3, "**NI 51-**

102”) as may be modified by exemptive relief granted pursuant to applicable law, and with the preparation and filing by the Purchaser or one of its affiliates of a short-form prospectus and/or prospectus supplement (the “**Prospectus**”) to comply with the requirements of Part 8 of NI 51-102 pursuant to National Instrument 44-101 *Short Form Prospectus Distributions* and/or National Instrument 44-102 *Shelf Distributions* or an offering memorandum with similar level of disclosure, as applicable, as may be modified by exemptive relief granted pursuant to applicable law, with respect to one or more financing transactions undertaken by the Purchaser pursuant to, and required to comply with, applicable Canadian securities laws, including using commercially reasonable efforts to:

- (i) provide the Purchaser with comparative audited annual combined financial statements for the Business Entities prepared in accordance with IFRS as at the year ended December 31, 2016, required by the Purchaser to comply with Part 8 of National Instrument 51-102 *Continuous Disclosure Requirements* no later than 60 days following the Execution Date;
 - (ii) within 45 days of the completion of any interim quarterly period, or within 70 days of the completion of any annual period, (other than in respect of the year ended December 31, 2016), as applicable, of the Business Entities, provide to the Purchaser combined financial statements (which, for any annual period shall be audited in accordance with IFRS) for the Business Entities in respect of such period;
 - (iii) prior to the Closing Date, make available to the Purchaser, on reasonable notice, the material financial books and records related to the Business Entities;
 - (iv) make available to the Purchaser, on reasonable notice, financial personnel of the Seller and its affiliates;
 - (v) request the Business Entities’ auditor(s) to provide to the Purchaser an audit opinion with respect to the financial statements referred to in Sections 4.3(a)(i) and (ii) and customary comfort letters and consents to the underwriters with respect to financial information relating to the Business Entities included or incorporated by reference in a business acquisition report, a Prospectus, and/or offering memorandum as applicable; and
 - (vi) provide the Business Entities’ auditor(s) with customary and required management representation letters and other customary information and documents as may be reasonably requested by such auditor(s) in order to provide a customary auditor’s report and customary comfort letters to the underwriters;
- (b) use commercially reasonable efforts to obtain the Regulatory Approvals and to effect all necessary registrations, filings and submissions of information requested or required by Governmental Entities from the Business Entities, or any of their affiliates relating to the Transaction, provided that to the extent there is any inconsistency between this Section 4.4(a) and Section 4.6, Section 4.6 will take precedence.
- (c) The Seller shall from time to time, forthwith upon the request of the Purchaser, reimburse the Purchaser or the Business Entity, as applicable, in respect of 50% of the BAR Costs incurred following Closing by the Business Entities, and the Purchaser shall from time to

time, forthwith upon the request of the Seller, reimburse the Seller in respect of 50% of the BAR Costs incurred following Closing by the Seller.

- (d) provide to the Purchaser all assistance, cooperation and information required to assist the Purchaser, during the Interim Period, in planning for integration following the closing of the Final Transaction (provided neither the Seller nor Target Entities shall be required to provide information that is not in its possession or not otherwise reasonably available to it), in accordance with competition law.

4.4 Covenants of the Purchaser

The Purchaser shall perform all obligations required or desirable to be performed by it under this Agreement, co-operate with the Seller in connection therewith, and do all such other acts and things as may be necessary or desirable in order to consummate and make effective, as soon as reasonably practicable, the Transaction and, without limiting the generality of the foregoing, the Purchaser shall ensure that the Purchaser has available funds at the Closing Date to satisfy the Purchase Price and any adjustments thereto and take such actions as may be necessary to ensure that the Purchaser is able to pay such amounts in connection with Closing.

4.5 Mutual Covenants

Each of the Parties covenants and agrees that, except as contemplated in this Agreement, such Party shall, and shall cause its respective subsidiaries to, use commercially reasonable efforts to satisfy (or cause the satisfaction of) the conditions precedent to its obligations hereunder as set out in Article 5 and to take, or cause to be taken, all other action and to do, or cause to be done, all other things necessary, proper or advisable under all applicable laws to consummate the Transaction as expeditiously as possible, including using commercially reasonable efforts to: (a) oppose, lift or rescind any injunction or Restraining Order against it or other Order or action against it seeking to stop, or otherwise adversely affecting its ability to consummate the Transaction; and (b) co-operate with the other Party in connection with the performance by it and its respective subsidiaries of their obligations hereunder.

4.6 Regulatory Approvals

(a) Competition Act Clearance

- (i) The Parties (and Target Entities, as applicable) shall use reasonable best efforts to comply with any requests for information from the Commissioner as soon as practicable and in consultation with each other. The Parties (and Target Entities, as applicable) shall use reasonable best efforts to certify completeness of their responses to any supplementary information requests received under subsection 114(2) of the Competition Act as promptly as practicable and no later than two months after the date of such issuance.
- (ii) The Purchaser shall use reasonable best efforts to obtain the Competition Act Clearance as soon as reasonably practicable, and in any event, no later than the Outside Date.
- (iii) If the Commissioner makes an application to the Competition Tribunal pursuant to any of sections 92, 100, or 104 of the Competition Act for an order that could prevent or delay the Closing, Purchaser shall defend any such application and shall use its reasonable best efforts to consummate the Transaction.

- (iv) Notwithstanding anything to the contrary contained in this Agreement, the Purchaser shall not be obligated to, and the Seller (and Target Entities, as applicable) shall not, propose, negotiate, or agree to any Remedy with the Commissioner.
 - (v) The Seller shall and shall cause the Target Entities to provide to the Purchaser all assistance, cooperation and information required to obtain the Competition Act Clearance (provided neither the Seller nor Target Entities shall be required to provide information that is not in its possession or not otherwise reasonably available to it), and each Party shall (i) permit the other Party to review in advance any proposed communications of any nature with any Governmental Entity, (ii) give due consideration to any comments received from such other Party, (iii) promptly notify the other Party of all material written communications of any nature received from any Governmental Entity and provide the other Party with copies thereof, and respond, as soon as reasonably practical, to all requests for information from a Governmental Entity in connection with obtaining the Competition Act Clearance. If the Commissioner makes an application to the Competition Tribunal pursuant to sections 92, 100 or 104 of the Competition Act seeking a Remedy, the Seller and the Target Entities shall provide to the Purchaser all assistance, cooperation and information required to defend against the application (provided the Seller and the Target Entities shall not be required to provide information that is not in its possession or not otherwise reasonably available to it).
 - (vi) Neither Party (including the Target Entities, as applicable) shall participate in any material meeting or discussion (whether in person, by telephone or otherwise) with any Governmental Entity in respect of the Competition Act Clearance unless it consults with the other Party in advance and gives the other Party the opportunity to attend and participate thereat (except to the extent that in any such case the Governmental Entity expressly requests that such other Party not be present at such meeting or participate in such discussion, as applicable).
 - (vii) Notwithstanding anything to the contrary contained in this Agreement, in the case of a disagreement over the strategy, tactics or decisions relating to obtaining the Competition Act Clearance, the Purchaser shall have the final and ultimate authority over the appropriate strategy, tactics and decisions (including, for greater certainty, entering into any timing agreement with the Commissioner). Each Party (including the Target Entities, as applicable) shall use reasonable best efforts to ensure that all actions and communications regarding the Competition Act Clearance are consistent with such strategy, tactics and decisions.
 - (viii) The Purchaser shall be responsible for paying the filing fees in connection with the Competition Act Clearance.
- (b) BCUC Approval
- (i) The Seller shall, for greater certainty, continue to provide the Purchaser at its request with all information that the Seller has in its possession or under its direction or control which may be required or useful in connection with the BCUC Filings and any submissions in connection therewith. As promptly as practicable after the exercise of the Option Right, the Seller and the Purchaser

shall make all filings (or further filings), as are necessary to secure the BCUC Approval (in this Section 4.6, the "**BCUC Filings**"). All filing fees required to be paid in connection with the BCUC Filings shall be paid in full by the Purchaser. The Purchaser shall keep the Seller fully informed as to the status of the proceedings related to the BCUC Filings, but the Purchaser shall be under no obligation to deliver to the Seller copies of: (i) any notices or information supplied or filed by the Purchaser in support of the BCUC Filings or any correspondence with officials, or (ii) any information relating to the Purchaser or its activities whether of a confidential nature or in the public domain; provided, however, that the Purchaser shall provide the Seller with copies of the BCUC Filings, in draft form and containing only information relating to the Seller in order for the Seller to confirm that such information is consistent with information previously given to the Purchaser by the Seller and with copies of any confirmation or approval received. The Seller shall provide the Purchaser with any assistance requested by the Purchaser in support of the BCUC Filings.

- (ii) The Purchaser shall use its commercially reasonable efforts to obtain the BCUC Approval as soon as reasonably practicable but, in any event, no later than the Outside Date. For purposes of the foregoing, "commercially reasonable efforts" shall include, without limitation, proposing, negotiating, agreeing to and effecting, by any undertakings imposed in respect of the divestiture or BCUC regulated assets.
- (c) Prior to Closing, notwithstanding any requirement in this Section 4.6 or in the Option Purchase Agreement, where either Party is requested to provide information that it reasonably believes is competitively sensitive, it shall provide such information to the external legal counsel of the other Party on an external counsel only basis or to the other Party in accordance with competition law compliance protocols that have been established by the Parties.

4.7 Proposed Transferee(s)

- (a) Subject to the limitations set out below, the Purchaser shall be permitted on notice ("**Proposed Transferee Notice**") to the Seller, to assign all or a portion of (1) its interest in the Option Right, whether or not previously exercised, and/or (2) the Purchased Securities, to one or more arm's length persons (each, a "**Proposed Transferee**"), provided that each such Proposed Transferee shall have provided a binding written confirmation to the Seller (in a form satisfactory to the Seller, acting reasonably) that:
 - (i) it shall, subject to this Section 4.7, be bound by all obligations of the Purchaser hereunder, as the same apply to the Option Right (or, as applicable, the Purchased Securities) assigned or transferred to the Proposed Transferee;
 - (ii) the representations and warranties set out in Section 3.2 (other than Section 3.2(c) and (f)) are true and correct in respect of the Proposed Transferee (*mutatis mutandis*, in the case of Sections 3.2(a) and (b));
 - (iii) such Proposed Transferee shall use its reasonable best efforts to comply with the requirements of the Investment Canada Act, if applicable, in respect of the Transaction (as assigned to the Proposed Transferee); and

- (iv) other than as set forth in this Section 4.7, no rights or obligations of the Purchaser pursuant to the Option Purchase Agreement are assigned to, or assumed by, the Proposed Transferee in whole or in part, and the Proposed Transferee shall not have the benefit of any such rights, nor shall the Proposed Transferee have the benefit of or be entitled to enforce any rights of, or any of the obligations under, the Purchaser pursuant to Section 4.6, or the ability to assign all or a portion of any of the rights it acquires pursuant to this Section 4.7;
- (b) Each Proposed Transferee shall have the right to receive the benefit of all or any portion of the Supply Agreement and Trucking Agreement, as the same apply to the Option Right (or, as applicable, the Purchased Securities) assigned or transferred to the Proposed Transferee. For greater certainty, each Proposed Transferee shall also have the right to receive the benefit of each of the closing documents set out in Section 8.2(a) *mutatis mutandis*, as well as the obligation to deliver each of the closing documents set out in Section 8.2(b) *mutatis mutandis*.
- (c) Other than as set out in Sections 4.7 and 10.6, the Purchaser shall have no right to assign any of its rights or obligations under this Agreement, in whole or in part, without the prior written consent of the Seller.
- (d) Without affecting Sections 4.7(b) and 4.7(c), the Seller will use commercially reasonable efforts to assist the Purchaser, upon the Purchaser's request, to coordinate the sale of the Option Right and/or the Purchased Securities to one or more Proposed Transferee(s) (which assistance may include providing access to confidential information and considering commercial transition arrangements, financing arrangements, obtaining regulatory approvals) or to give effect to this Section 4.7, but the Purchaser shall be solely responsible to identify any prospective buyer(s) of all or any portion of the Option Right and/or the Purchased Securities and conduct and arrange any sale process. Prior to the Purchaser disclosing any confidential information to any prospective buyer of all or any portion of the Option Right and/or the Purchased Securities, such buyer shall have signed a confidentiality agreement between such buyer, Purchaser and Seller, the form of which shall be acceptable to Seller, acting reasonably.
- (e) The exercise of the Option Right shall not affect or derogate from the right of the Purchaser to assign all or any portion of its interest in the Option Right and/or the Purchased Securities to one or more parties pursuant to the terms of this Agreement.

4.8 Tax Returns

- (a) The Seller shall be responsible for preparing, on or before the statutory due date, on behalf of and in the name of the Business Entities, all income tax and information returns of the Business Entities required by applicable law to be filed in respect of any taxation year or fiscal period, as applicable, ending on or before the Closing Date (each a "**Pre-Closing Tax Period**"), (each such return being a "**Prior Period Return**"), provided that the Seller shall supply draft copies of the applicable Prior Period Returns to the Purchaser for its review not less than forty-five (45) days prior to the deadline for their filing, or, for any returns due to be filed within thirty (30) days after the Closing Date, as soon as practicable and in any event within ten (10) days before the deadline for their filing. The Seller shall consider in good faith all comments provided by the Purchaser. All Prior Period Returns shall be prepared in a manner consistent with applicable law and, to the

extent not inconsistent with applicable law, past practice. The Seller shall file or cause to be filed such Prior Period Returns on behalf of the applicable Business Entities.

- (b) The Purchaser shall be responsible for preparing, on or before the statutory due date, on behalf of and in the name of the Business Entities, all income tax and information returns of the Business Entities to be filed in respect of any period ending after the Closing Date, provided that the Purchaser shall supply draft copies of any such returns to the Seller that relate to an Option Purchase Agreement Straddle Period (each such return being a "**Post-Closing Return**") for its review not less than forty-five (45) days prior to the deadline for its filing, or for any returns due to be filed within thirty (30) days after the Closing Date, as soon as practicable and in any event within ten (10) days before the deadline for their filing. The Purchaser shall consider in good faith all comments provided by the Seller with respect to such Post-Closing Returns. All such Post-Closing Returns shall be prepared in a manner consistent with applicable law and, to the extent not inconsistent with applicable law, past practice. The Purchaser shall file or cause to be filed such Post-Closing Returns on behalf of the applicable Business Entities.
- (c) The Seller shall have no liability for, nor any obligation to pay any Taxes of the Business Entities other than as contemplated by Section 2.5, if applicable, or as contemplated by Section 2.5 or 5.7(b) of the Option Purchase Agreement or the indemnities contained in Section 10.1 of the Option Purchase Agreement.
- (d) The Purchaser and the Seller shall cooperate fully as and to the extent reasonably requested by the other Party, in connection with (i) the filing of any tax or information returns (including any Prior Period Returns or returns for any period ending after the Closing Date), (ii) any audit, litigation or other proceeding (each a "**Tax Proceeding**") with respect to Taxes imposed on or with respect to the assets, operations or activities of the Business Entities, the transactions contemplated by this Agreement, and (iii) any Claim for indemnification with respect to Taxes made pursuant to Article 10 of the Option Purchase Agreement. Such cooperation shall include the retention and (upon the other Party's request) the provision of records and information which are reasonably relevant to any such return or Tax Proceeding and making employees available on a mutually convenient basis to provide additional information with respect to any Tax Proceeding and explanation of any material provided hereunder.

4.9 Insurance

- (a) Throughout the Interim Period the Seller shall and shall cause the Business Entities to maintain for the benefit of and at the sole cost of the Business Entities, insurance policies having substantially the same terms as the insurance policies that are in effect for the benefit of the Business Entities as at the execution of this Agreement.
- (b) Throughout the Interim Period, the Seller shall ensure that the Business Entities use commercially reasonable efforts to notify the applicable insurers of any damage to or loss of a material asset of the Business (i) that occurs during the Interim Period, (ii) of which an officer of any Business Entity becomes aware during the Interim Period.

4.10 Employee Benefit Plans

- (a) Throughout the Interim Period, the Seller shall maintain all pension and other benefits provided under the Pension Plans in respect of all employees of the Business Entities (in

this Section 4.10, the "**Business Employees**") in accordance with the terms of the Pension Plans and applicable law based on service and pensionable earnings of such Business Employees up to the Closing Date. Effective as of the Closing Date, the Business Employees shall cease to accrue further benefits under the Pension Plans. Neither the Purchaser nor any Business Entity shall assume any Liability or obligation with respect to the Pension Plans.

- (b) Effective as of the Closing Date, Business Employees shall cease to participate in, and accrue further benefits under, all Employee Benefits Plans. All amounts directly payable by the Seller at any time (i) in carrying out its obligations under this Section 4.10, and (b) by reason of or in connection with any and all Claims incurred or benefits accrued under the Employee Benefit Plans by the Business Employees (and their eligible dependents) during the Interim Period, whether such Claims are reported or benefits become payable during or after the Closing Date; are collectively referred to as the "**Benefit Plan Costs**", which, for greater certainty, shall not include any costs or amounts paid or payable by the Business Entities.

4.11 Termination of Agreements with Related Persons

- (a) Immediately prior to the Closing Date, the Seller shall, and shall cause the Business Entities to:
 - (i) terminate, cancel, retire, payoff or otherwise extinguish all Contracts between any of the Business Entities, on the one hand, and the Seller, any affiliate of the Seller (other than the Business Entities) and each Related Person of the foregoing, on the other hand, with the exception of the Gibson Real Property Leases, the Trucking Agreement and the Supply Agreement (the "**Terminated Agreements**"); and
 - (ii) cancel, retire, payoff or otherwise extinguish (by way of capital contribution, cash settlement or as otherwise reasonably determined by the Seller) all payables and receivables under the Terminated Agreements, and all other intercompany advances, accounts, payables and receivables between any of the Business Entities, on the one hand, and the Seller, any affiliate of the Seller (other than the Business Entities) and each Related Person of the foregoing, on the other hand.
- (b) Each Party shall and shall cause its affiliates to execute and deliver all termination and other appropriate documentation at or after the Closing as is reasonably requested by any other Party to fully effectuate and document the provisions of this Section 4.11.

4.12 Replacement of Letter of Credit

Royal Bank of Canada issued an irrevocable stand-by letter of credit (in this Section 4.12, the "**Letter of Credit**") on or about [REDACTED] having a limit of [REDACTED] for the benefit of [REDACTED] which is owned by Canwest Partnership. The Letter of Credit, by its terms, is for terms of one year, which are automatically renewed by Royal Bank of Canada unless notified otherwise. The Letter of Credit was provided pursuant to the Gibson Energy Ltd. credit facility and any amounts drawn on the Letter of Credit are reimbursable to Royal Bank of Canada by the Seller. The Seller shall not take any action to terminate or prevent the automatic renewal of the Letter of Credit if Closing has not occurred. The Purchaser shall replace the Letter of Credit promptly following Closing.

4.13 Amendment to Tax Return

If Closing occurs after December 31, 2017, the Seller shall, as promptly as practicable, and in any event not more than ten (10) days following Closing, file an amended income tax return for its taxation year in which it received the Option Issuance Price pursuant to subsection 49(4) of the Tax Act excluding from its income for that taxation year the amount of the Option Issuance Price.

ARTICLE 5 **CONDITIONS**

5.1 Conditions Precedent

The obligations of the Parties to complete the Transaction following exercise of the Option Right are subject to the fulfillment of each of the following conditions precedent, which are for the mutual benefit of the Purchaser and the Seller and may be waived, in whole or in part, jointly by the Purchaser and the Seller at any time:

- (a) Regulatory Approvals. Without affecting the rights and obligations of the Parties in Section 4.6, the Competition Act Clearance and the BCUC Approval shall have been obtained.
- (b) Orders. No Order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal restraint or prohibition preventing the consummation of the Transaction shall be in effect.

5.2 Additional Conditions Precedent to Obligations of Purchaser

The obligations of the Purchaser to complete the Transaction shall also be subject to the fulfillment of each of the following conditions precedent, which are for the benefit of the Purchaser and may be waived, in whole or in part, by the Purchaser any time:

- (a) Seller's Covenants. All covenants of the Seller under this Agreement to be performed on or before the Closing Date shall have been duly performed by the Seller in all material respects, and the Purchaser shall have received a certificate of the Seller, addressed to the Purchaser and dated the Closing Date, signed on behalf of the Seller, by two (2) directors or executive officers of the Seller, confirming the same.
- (b) Representations and Warranties. The representations and warranties of the Seller set out in this Agreement shall be true and correct as of the date hereof and as of the Effective Time, as though made on and as of the Effective Time. The Purchaser shall have received a certificate of the Seller addressed to the Purchaser and dated the Closing Date, signed on behalf of the Seller by two (2) directors or executive officers of the Seller, confirming the same.

5.3 Additional Conditions Precedent to Obligations of the Seller

The obligations of the Seller to complete the Transaction shall also be subject to the fulfillment of each of the following condition precedent which is for the benefit of the Seller and may be waived, in whole or in part, by the Seller any time:

- (a) Payment. On the Closing Date, the Purchaser shall have paid the Purchase Price to the Seller in accordance with the provisions of Section 2.3.

5.4 Effect of Expiry

In the event that either condition set out in Section 5.1 is not satisfied at or prior to the Outside Date and at the Outside Date has not been waived in accordance with Section 5.1, unless otherwise agreed to by the Parties, the obligations of the Parties to proceed with Closing shall be terminated, and the Parties shall have no further obligations under this Agreement provided, however that no Party shall be released from any Liability on account of any breach of this Agreement arising prior to such termination, and provided further that the rights and remedies of the Parties shall be governed by and subject to Article 9. The Purchaser or the Seller, as the case may be, may waive in whole or in part any non-fulfilled or non-performed condition without prejudice to any other rights which such Party may have pursuant to the terms of this Agreement.

5.5 Outside Date

The "**Outside Date**" shall be December 29, 2017 unless, at such time, a Restraining Order is in effect or the Purchaser has delivered a Proposed Transferee Notice in which case the Purchaser may, by written notice on or before December 29, 2017, extend the Outside Date to September 30, 2018. Should Purchaser deliver a notice to extend the expiry to September 30, 2018, the Extension Fee shall become payable by Purchaser. For clarity, in the event that the Purchaser seeks to extend the Expiry Date pursuant to Section 2.8 and the Outside Date pursuant to this Section 5.5, the Extension Fee need only be paid once and shall suffice for both such extensions.

ARTICLE 6 **ADDITIONAL AGREEMENTS**

6.1 Public Disclosure

No Party shall make any public statement or issue any press release concerning this Agreement or the Transaction without the consent of the Purchaser and the Seller (such consent not to be unreasonably withheld) or as may be necessary, after consulting counsel to the Party making that disclosure, to comply with the requirements of applicable law. If any public statement or release is so required, the Party making the disclosure shall use commercially reasonable efforts to consult with the other Parties before making that statement or release, and the Purchaser and the Seller shall use all reasonable efforts, acting in good faith, to agree on a text for the statement or release that is satisfactory to the Purchaser and the Seller.

6.2 Insurance and Indemnification

The Parties agree that all rights to indemnification existing in favour of the present and former directors and officers of the Business Entities (each such present or former director or officer an "**Indemnified D&O Party**") as in effect as of the Effective Time will survive and will continue in full force and effect and without modification, and the Purchaser will cause each Business Entity to honour such rights of indemnification and indemnity in favour of the Indemnified D&O Parties pursuant thereto, with respect to actions or omissions of the Indemnified D&O Parties occurring prior to the Effective Time, for a period of not less than the limitation period under the statutes of limitation applicable to such matters.

6.3 Post-Closing Access

In connection with the preparation of Tax and financial reporting matters, audits, legal proceedings, governmental investigations after the Closing Date and upon reasonable notice, the Purchaser shall provide to the representatives, employees, counsel and accountants of the Seller, access,

during normal business hours, to examine the records of the Business Entities and the Business that relate to periods prior to the Closing Date and will permit such persons to examine and copy such records to the extent reasonably requested by the Seller in connection with the preparation of Tax and financial reporting matters, audits, legal proceedings or governmental investigations. The Purchaser agrees to, and shall cause the Business Entities to, retain and make available such records for a period of seven (7) years following the Closing Date.

6.4 Access to Information; Confidentiality

- (a) From the Exercise Date until the earlier of the Transaction and the termination of this Agreement, subject to compliance with applicable law and the terms of any existing Contracts (including the Confidentiality Agreement), the Seller shall cause the Business Entities and their respective officers, directors, Business Employees, independent auditors, advisers and agents to, afford to the Purchaser and to its respective officers, employees, agents and representatives such access as the Purchaser (or its designate) may reasonably require at all reasonable times, including for the purpose of facilitating integration business planning, to its officers, employees, agents, offices, properties, books, records and Contracts, and shall make available to the Purchaser (or its designate) all data and information as the Purchaser (or its designate) may reasonably request.
- (b) Each Party agrees to hold in confidence all, and not to disclose to others for any reason whatsoever any, non-public information received by it or its representatives from any other Party in connection with this Agreement, the Transaction except: (i) as required by law; (ii) for disclosure to officers, directors, employees and representatives of such Party as necessary in connection with the Transaction (and the applicable Party hereby agrees to cause such persons to so hold in confidence such information and to be responsible for any breach of this provision by such persons); and (iii) for information that becomes publicly available other than through such Party; provided, that (A) in the event a Party is requested pursuant to, or required by, applicable law to disclose non-public information, such Party shall, to the extent permitted by law, immediately notify the other Party in writing of the request or requirement so that the other Party may seek a protective order or other appropriate remedy. In the event that such protective order is not, or cannot be obtained or such prior notice is not permitted by law, then the disclosing Party may disclose only such portion of the non-public information which, in the opinion of its legal counsel, is required to be disclosed under or by applicable law, and shall use commercially reasonable efforts to obtain assurances that confidential treatment will be accorded to such non-public information; and (B) the Purchaser and its shareholders may disclose non-public information to their respective officers, directors, employees, agents, advisors, shareholders, limited partners and financing sources who agree to hold in confidence such information to the same extent as provided in this Section 6.4(b) (and the Purchaser hereby agrees to cause such persons to so hold in confidence such information and to be responsible for any breach of this provision by such persons). If the Transaction is not completed, each Party: (A) will return to the other Party or destroy all non-public documents obtained from such other Party, and all copies, summaries and extracts thereof, except to the extent such Party is required by law or its internal procedures to retain such documents, in which case such Party shall take appropriate measures to preserve their continuing confidentiality and provide a certificate to such other Party that such information has been returned or destroyed in accordance with this Section 6.4(b); and (B) agrees not to use for its own benefit or for the benefit of any other person any non-public information received by it or its representatives from the other Party in connection with the Transaction. If the Transaction is completed, (A) the

Purchaser (and/or its designate) and its representatives shall not be bound by this Section 6.4; and (B) the Seller shall, and shall cause its representatives to, transfer to the Purchaser or its designate all non-public documents pertaining to the Business, and all copies, summaries and extracts thereof, except to the extent the Seller is required by law or its internal procedures to retain such documents, in which case the Seller shall take appropriate measures to preserve their continuing confidentiality and provide a certificate to the Purchaser (and/or its designate) that such information has been returned or destroyed in accordance with this Section 6.4(b).

- (c) No Party shall make any public statement or issue any press release concerning this Agreement or the Transaction without the consent of the Purchaser and the Seller (such consent not to be unreasonably withheld) or as may be necessary, after consulting counsel to the Party making that disclosure, to comply with the requirements of applicable law. If any public statement or release is so required, the Party making the disclosure shall use commercially reasonable efforts to consult with the other Parties before making that statement or release, and the Purchaser and the Seller shall use all reasonable efforts, acting in good faith, to agree on a text for the statement or release that is satisfactory to the Purchaser and the Seller.

ARTICLE 7 **LIABILITIES**

7.1 Assumed Liabilities

- (a) It is acknowledged that, provided that Closing has occurred, the Purchaser will, as the owner of the Purchased Securities, have derived all economic benefit from the Business from and after the Option Right Effective Time, and other than as expressly provided in this Agreement, the Purchaser will have assumed the risk of all losses of the Business from and after the Option Right Effective Time. Therefore, if Closing has occurred, the Purchaser shall assume and be responsible for any and all Liabilities of the Seller which arise due to the Seller having been a shareholder of Canwest ULC and/or a partner of Canwest Partnership, excluding the Retained Liabilities, but including, without limitation, the following (collectively, the "**Assumed Liabilities**"):
 - (i) all accrued expenses and Accounts Payable of Canwest Partnership (other than any Accounts Payable owing to Related Persons of Canwest Partnership) which remain unpaid as of the Option Right Effective Time;
 - (ii) all Customer Account Surpluses of Canwest Partnership as of the Option Right Effective Time;
 - (iii) all Liabilities and obligations of Canwest Partnership in respect of Accrued Vacation Entitlements;
 - (iv) any Liability to any of the customers under warranties implied by law and any warranty agreements and indemnities given by Canwest Partnership for goods or services delivered or performed, whether prior to or after the Option Right Effective Time;
 - (v) all performance obligations of Canwest Partnership under all Contracts to which it is a party or by which it is bound, all Contracts and all Liabilities in respect of

such Contracts, whether arising before, on, or after the Option Right Effective Time;

- (vi) any Liability arising out of or relating to products manufactured, distributed, delivered or sold, or services performed by Canwest Partnership whether prior to or after the Option Right Effective Time;
 - (vii) the Assumed Retention Obligations; and
 - (viii) any other Liabilities expressly assumed by the Purchaser under this Agreement.
- (b) Nothing in this Section 7.1 shall diminish or have any effect on the rights and obligations of the parties to the Option Purchase Agreement in respect of the Assumed Liabilities. Further, in respect of Sections 7.1(a)(i) to (vii), the assumption by Purchaser of the Assumed Liabilities is not to be interpreted to preclude the Purchaser from making a Claim under the Option Purchase Agreement with respect to any matter that is specifically the subject of a representation and warranty in Sections 3.1 or 3.2 of the Option Purchase Agreement.

7.2 Retained Liabilities

Without limiting the generality of the foregoing, it is agreed that the Purchaser and the Business Entities shall have no Liability for any of the following obligations or Liabilities and that the Seller shall be responsible for same (collectively, the "**Retained Liabilities**"):

- (a) any Liability of the Seller for Taxes arising as a result of the Seller having been a partner of Canwest Partnership at any time prior to the Most Recent Tax Year End; and
- (b) any shareholder loans or other inter-company or related party Indebtedness owed by a Business Entity to a Related Person of such Business Entity on or prior to the Effective Time (other than another Business Entity).

ARTICLE 8 **CLOSING**

8.1 Closing Arrangements

Subject to the terms and conditions hereof, the Transaction shall be completed at 10:00 a.m. (Mountain Time) on the Closing Date at the offices of Seller's Counsel in Calgary, Alberta, Canada or at such other place or places as may be mutually agreed upon by the Parties.

8.2 Documents to be Delivered

On or before the Closing Date, the Seller shall execute, or cause to be executed, and shall deliver, or cause to be delivered, to the Purchaser, all agreements, instruments, notices, certificates and other documents which are to be delivered by the Seller pursuant to the provisions of this Agreement, in form satisfactory to the Purchaser, acting reasonably, and the Purchaser shall execute, or cause to be executed, and shall deliver, or cause to be delivered to the Seller, in form satisfactory to the Seller, acting reasonably, all cheques or bank drafts or funds flow directions, all agreements, instruments, notices, certificates and other documents which the Purchaser is to deliver or cause to be delivered pursuant to the provisions of this Agreement, including the following:

- (a) documents to be delivered by the Seller:
 - (i) the Transition Services Agreement, duly executed by the Seller;
 - (ii) the Non-Competition Agreement, duly executed by the Seller and Gibson Energy Inc.;
 - (iii) certified copies of all necessary corporate and shareholder resolutions, authorizations and proceedings of the Seller that are required to be taken or obtained to permit the due and valid transfer of the Purchased Securities to and in the name of the Purchaser and the completion of the Transaction;
 - (iv) a release in favour of each Business Entity from the Seller in the form set out in Exhibit D;
 - (v) share certificates representing the Purchased Shares, duly endorsed for transfer to the Purchaser;
 - (vi) unit certificates representing the Purchased Units, duly endorsed for transfer to the Purchaser;
 - (vii) duly executed share certificates representing the Purchased Shares registered in the name of the Purchaser;
 - (viii) duly executed unit certificates representing the Purchased Units registered in the name of the Purchaser;
 - (ix) duly executed certificates required by Sections 5.2(a) and 5.2(b)
 - (x) a certificate of status, compliance, good standing or like certificate with respect to each of the Business Entities issued by the appropriate government officials of the jurisdiction of such entity's incorporation;

- (b) documents to be delivered by the Purchaser:
 - (i) the Transition Services Agreement, duly executed by the Target Entities;
 - (ii) the Non-Competition Agreement, duly executed by the Purchaser;
 - (iii) evidence of payment of the Closing Proceeds in accordance with Section 2.3;
 - (iv) a certified copy of resolutions of the directors of the Purchaser as may be required in order to authorize the performance of this Agreement and the completion of the Transaction; and
 - (v) a certificate of status, compliance, good standing or like certificate with respect to each of the Purchaser and Superior GP issued by the appropriate government officials of the jurisdiction of such entity's incorporation or formation.

8.3 Resignations

The Target Entities shall obtain and deliver to the Purchaser at Closing evidence reasonably satisfactory to the Purchaser of the resignations effective as of the Effective Time, of any of the directors of the Business Entities requested by the Purchaser. Such resignations shall be received in consideration for the Purchaser and the Business Entities, as applicable, providing releases to such persons (in a form satisfactory to the Purchaser and such resigning person, each acting reasonably) (the "**Mutual Releases**"), which Mutual Releases shall contain exceptions for amounts or obligations owing to such directors for accrued but unpaid directors' fees or bonuses (which amounts or obligations shall have been accounted for in the determination of Current Liabilities (as defined in, and for the purposes of, the Option Purchase Agreement), benefits and other compensation or pursuant to indemnity or directors' and officers' insurance arrangements, and for any change of control payments that may be owing to them pursuant to the terms of their employment with the Business Entities, in each case if applicable.

ARTICLE 9 INDEMNIFICATION

9.1 Indemnity by the Seller

- (a) The Seller shall indemnify and save harmless the Purchaser Indemnified Parties from and against any Losses which may be incurred by any of the Purchaser Indemnified Parties or which any of the Purchaser Indemnified Parties may suffer, or any Claims to which any of the Purchaser Indemnified Parties may become a party, as a result of, in respect of or arising out of:
 - (i) any misrepresentation, inaccuracy, incorrectness or breach of any representation or warranty made in Sections 3.1;
 - (ii) any breach or non-performance or non-fulfillment of any covenant or agreement on the part of the Seller contained in this Agreement or any other agreement required to be executed and delivered hereunder by the Seller in order to carry out the Transaction;
 - (iii) the Retained Liabilities;
 - (iv) all costs and expenses including, without limitation, legal fees on a solicitor and his own client basis, incidental to or in respect of the foregoing Sections 9.1(a)(i) to (iii).

9.2 Indemnity by the Purchaser

- (a) The Purchaser shall indemnify and save harmless the Seller Indemnified Parties from and against any Losses which may be incurred by any of the Seller Indemnified Parties or which any of the Seller Indemnified Parties may suffer, or any Claims to which any of the Seller Indemnified Parties may become a party, as a result of, in respect of or arising out of:
 - (i) any misrepresentation, inaccuracy, incorrectness or breach of any representation or warranty made by the Purchaser in Section 3.2;
 - (ii) any breach or non-performance or non-fulfillment of any covenant or agreement on the part of the Purchaser contained in this Agreement or in any other

agreement required to be executed and delivered hereunder by the Purchaser in order to carry out the Transaction;

- (iii) any brokerage or finder's fees or commissions or similar payments based upon any agreement or understanding made, or alleged to have been made, by any person with the Purchaser (or an affiliate thereof) in connection with the Transaction;
 - (iv) the Assumed Liabilities; and
 - (v) all costs and expenses including, without limitation, legal fees on a solicitor and his own client basis, incidental to or in respect of the foregoing Sections 9.2(a)(i) to 9.2(a)(iv).
- (b) The Purchaser (i) releases and forever discharges the Seller Indemnified Parties in respect of any Losses which may be incurred or suffered by the Business Entities and/or the Purchaser, and (ii) indemnify and save harmless the Seller Indemnified Parties from and against any Losses which may be incurred by any of the Seller Indemnified Parties or which any of the Seller Indemnified Parties may suffer, or any Claims to which any of the Seller Indemnified Parties may become a party; as a result of, in respect of or arising out of the Interim Period Operations and/or in carrying out the obligations of the Seller under Section 4.8, provided however that:
- (i) no Seller Indemnified Party shall be entitled to indemnity in connection with any acts or omissions which constitute gross negligence or fraud; and
 - (ii) nothing in this Section 9.2(b) shall effect any remedy to which the Purchaser may be entitled directly as against the Seller for a breach of Section 4.1(c), 4.2, 4.3, 4.5 or 4.6.

9.3 Survival of Representations and Warranties

- (a) The representations and warranties made by either Party in this Agreement shall survive the Closing and, notwithstanding such Closing, shall continue in full force and effect for the maximum period permitted by law.
- (b) Nothing in this Section 9.3 shall be construed as an agreement pursuant to section 7(1) of the *Limitations Act* (Alberta) for the extension of a limitation period thereunder.

9.4 Provisions Relating to Indemnity Claims

The following provisions will apply to any Claim by the Purchaser for indemnification by the Seller pursuant to this Agreement or to any Claim by the Seller for indemnification by the Purchaser pursuant to this Agreement (hereinafter, in this Section, the Party making a Claim for indemnification shall be referred to as the "**Indemnified Party**", the Party against whom the Claim for indemnification is made shall be referred to as the "**Indemnifying Party**" and the Claim for indemnity shall be referred to as the "**Indemnity Claim**"):

- (a) promptly after becoming aware of any matter that may give rise to an Indemnity Claim, the Indemnified Party will provide to the Indemnifying Party written notice of the Indemnity Claim specifying (to the extent that information is available) the factual basis for the Indemnity Claim and the amount of the Indemnity Claim or, if an amount is not

then determinable, an estimate of the amount of the Indemnity Claim, if an estimate is feasible in the circumstances;

- (b) if an Indemnity Claim relates to an alleged Liability to any other person (hereinafter in this Section 9.4 called a "**Third Party Liability**"), including without limitation any Governmental Entity or regulatory body or any taxing authority, then the following additional terms and conditions shall apply:
- (i) the Indemnified Party will not negotiate, settle, compromise or pay (except in the case of payment of a judgment) any Third Party Liability as to which it proposes to assert an Indemnity Claim, except in accordance with the provisions hereof or with the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld, conditioned or delayed);
 - (ii) with respect to any Third Party Liability, provided the Indemnifying Party first admits the Indemnified Party's right to indemnification for the amount of such Third Party Liability which may at any time be determined or settled, then in any legal, administrative or other proceedings in connection with the matters forming the basis of the Third Party Liability, the following procedures will apply:
 - (1) except as contemplated by subparagraph (3) below, the Indemnifying Party will have the right to assume carriage of the compromise or settlement of the Third Party Liability and the conduct of any related legal, administrative or other proceedings, but the Indemnified Party will have the right and will be given the opportunity at its own cost (none of which will form part of an Indemnity Claim) to participate in the defence of the Third Party Liability, to consult with the Indemnifying Party in the settlement of the Third Party Liability and the conduct of related legal, administrative and other proceedings (including consultation with counsel) and to disagree on reasonable grounds with the selection and retention of counsel, in which case counsel satisfactory to the Indemnifying Party and the Indemnified Party, each acting reasonably, will be retained by the Indemnifying Party;
 - (2) the Indemnified Party will cooperate with the Indemnifying Party in relation to the Third Party Liability and will make available on a reasonable basis to the Indemnifying Party all witnesses, pertinent records, materials and information in its possession or under its control relating thereto as is reasonably required by the Indemnifying Party and at the Indemnifying Party's expense;
 - (3) the Indemnifying Party will cooperate with the Indemnified Party in relation to the Third Party Liability, will keep the Indemnified Party fully advised with respect thereto, will provide the Indemnified Party with copies of all relevant documentation as it becomes available, will provide the Indemnified Party with access to all records and files relating to the defence of the Third Party Liability and will meet with representatives of the Indemnified Party at all reasonable times to discuss the Third Party Liability; and

- (4) the Indemnifying Party will not negotiate, settle, compromise or pay (except in the case of a payment of a judgment) the Third Party Liability or conduct any legal, administrative or other proceedings in any manner that could, in the reasonable opinion of the Indemnified Party have a material adverse effect on the Indemnified Party, except with the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld or delayed); and
- (c) if, with respect to any Third Party Liability, the Indemnifying Party declines to assume carriage of the settlement or of any legal, administrative or other proceedings relating to the Third Party Liability, then the following provisions will apply:
 - (i) the Indemnified Party will not negotiate, settle, compromise or pay (except in the case of payment of a judgment) any Third Party Liability as to which it proposes to assert an Indemnity Claim, except with the prior consent of the Indemnifying Party (which consent shall not be unreasonably withheld, conditioned or delayed); and
 - (ii) any cost, Loss, damage or expense incurred or suffered by the Indemnified Party in the settlement of such Third Party Liability or the conduct of any legal, administrative or other proceedings shall be added to the amount of the Indemnity Claim.

9.5 Mitigation, Contribution and Insurance

The Indemnified Party shall in all cases take such actions that are commercially reasonable to: (a) mitigate any Losses which may be the subject matter of any Indemnity Claim against the Indemnifying Party; (b) properly defend any Claim made against the Indemnified Party, to the extent such Claim is not otherwise controlled by the Indemnifying Party in accordance with the terms hereof; (c) properly advance any Claim the Indemnified Party may have against any other third party for contribution or recovery from that third party, and to enforce any such Claims against such third parties, to the extent such Claim is not otherwise controlled by the Indemnifying Party in accordance with the terms hereof; and (d) properly advance any Claim which may be made against any insurance coverage available under any insurance policies held by the Business Entities or the Seller in respect of any Losses which may be the subject matter of any Indemnity Claim against an Indemnifying Party. Any Indemnity Claim for Losses shall be reduced by any and all recovery, settlement, or payment received by or to an Indemnified Party (whenever received) in respect of the foregoing.

9.6 No Liability for Certain Damages or Losses

Notwithstanding anything in this Agreement to the contrary (except Section 9.8), in no event shall either Party be liable for consequential, exemplary, indirect, punitive Losses, damages or Claims of any other Party hereto.

9.7 Compulsory Payments Prior to Settlement

- (a) In the case of any notice of a Claim for indemnification concerning an amount of Losses (i) required to be paid by an Indemnified Party under applicable law or any court or other binding order (an "**Order**"), or (ii) in respect of which any amount is garnished by a Governmental Entity (each such amount a "**Preliminary Compulsory Payment Amount**"), the Indemnifying Party shall, within ten (10) days of receipt of the notice of

such Claim (or notice of such garnishment), pay the Indemnified Party an amount equal to the Preliminary Compulsory Payment Amount.

- (b) Upon the occurrence of a Final Compulsory Payment Indemnification Event (if any), (i) if the aggregate of all Preliminary Compulsory Payment Amounts is less than the amount so determined under the Final Payment Determination to be the amount owing (the "**Final Compulsory Payment Amount**"), the Indemnifying Party shall, within ten (10) days of the time that the Indemnified Party notifies the Indemnifying Party of the occurrence of the Final Compulsory Payment Indemnification Event, pay to the Indemnified Party an amount equal to the difference between the aggregate for all Preliminary Compulsory Payment Amounts and the Final Compulsory Payment Amount, and (ii) if the aggregate of all Preliminary Compulsory Payment Amounts exceeds the Final Compulsory Payment Amount, the Indemnified Party shall within ten (10) days of the receipt of any related refund or credit, pay to the Indemnifying Party the amount of such refund or credit (including any interest paid or credited with respect thereto but net of any Taxes payable by the Indemnified Party in respect of such refund, credit or interest).

9.8 Liquidated Damages

Without limiting the indemnities and other obligations of the Seller to Purchaser under this Agreement, and notwithstanding section 9.1(a), in the event of any misrepresentation, inaccuracy, incorrectness or breach of any representation or warranty made in Section 3.1 that results in the Purchaser and the Seller being unable to complete the Transaction as contemplated in this Agreement (a "**Fundamental Breach**"), the Seller shall immediately pay the amount equal to: (A) the Purchase Price, as adjusted in accordance with Section 2.3; plus (B) the Extension Fee, if applicable, such amount being the "**Liquidated Damages Amount**" to Purchaser. The Seller and the Purchaser agree that the actual damages, costs or expenses resulting from the occurrence of any Fundamental Breach would be very difficult or impossible to determine, that the Liquidated Damages Amount is a fair and equitable amount to compensate Purchaser for such actual damages, costs and expenses, and that the obligation of the Seller to pay the Liquidated Damages Amount is not a penalty. The Seller acknowledges and agrees that the Liquidated Damages Amount represents the minimum amount of actual damages, costs and expenses that would be incurred by Purchaser as a result of the occurrence of a Fundamental Breach. Payment of the Liquidated Damages Amount shall not limit or otherwise affect the rights and obligations of Purchaser under this Agreement or its remedies at law and in equity.

ARTICLE 10 **GENERAL PROVISIONS**

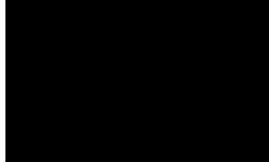
10.1 Notices

- (a) Any notice, direction or other instrument required or permitted to be given to either Party hereto shall be in writing and shall be sufficiently given if delivered personally, mailed or transmitted by email or other form of recorded communication tested prior to transmission to such Party, as follows:

(i) in the case of the Seller, at:

care of Gibson Energy ULC
Suite 1700, 440 2nd Avenue S.W.
Calgary, Alberta T2P 5E9

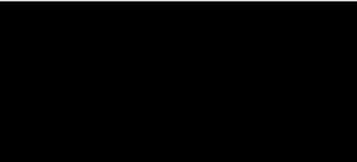
Attention:
Telephone:
Email:
Fax:



with a copy to:

Bennett Jones LLP
4500 Bankers Hall East
855 – 2nd Street S.W.
Calgary, AB T2P 4K7

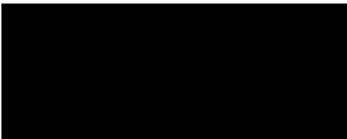
Attention:
Telephone:
Email:
Fax:



(ii) in the case of the Purchaser, at:

care of Superior Plus Corp
401, 200 Wellington Street West
Toronto, ON M5V 3C7

Attention:
Telephone:
Email:



with a copy to:

Blake, Cassels & Graydon LLP
199 Bay Street
Suite 4000, Commerce Court West
Toronto, ON M5L 1A9

Attention:
Telephone:
Email:



(b) Any such notice, direction or other instrument, if delivered personally, shall be deemed to have been given and received on the date on which it was delivered, provided that if such day is not a Business Day then the notice, direction or other instrument shall be deemed to have been given and received on the first Business Day next following such day; if mailed, shall be deemed to have been given and received on the third day after it was

mailed, provided that if such day is not a Business Day then the notice, direction or other instrument shall be deemed to have been given and received on the first Business Day next following such day; and if transmitted by fax or email, shall be deemed to have been given and received on the day of its transmission, provided that if such day is not a Business Day or if it is transmitted or received after the end of normal business hours then the notice, direction or other instrument shall be deemed to have been given and received on the first Business Day next following the day of such transmission.

Either Party hereto may change its address for service from time to time by notice given to the other parties hereto in accordance with the foregoing provisions.

10.2 Equitable Remedies

- (a) The Parties agree that irreparable harm would occur for which monetary damages would not be an adequate remedy at law in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Parties shall be entitled to equitable remedies, including an injunction or injunctions to prevent or cure breaches of the provisions of this Agreement and to specifically enforce the terms and provisions of this Agreement, this being in addition to any other remedy such Party may have in accordance with the terms of this Agreements.
- (b) Each Party further agrees that (i) such Party will not oppose the granting of an injunction, specific performance and other equitable relief as provided herein on the basis that the other party has an adequate remedy at law or an award of specific performance is not an appropriate remedy for any reason at law or equity; and (ii) no other Party or any other person shall be required to obtain, furnish or post any bond or similar instrument in connection with or as a condition to obtaining any remedy referred to in this Section 10.2, and each Party irrevocably waives any right it may have to require the obtaining, furnishing or posting of any such bond or similar instrument.

10.3 Amendment

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

10.4 Waiver

The Seller (on behalf of itself and, where applicable, the Business Entities), on the one hand, and the Purchaser, on the other hand, may:

- (a) extend the time for the performance of any of the obligations or acts of the other;
- (b) waive compliance with any of the other's agreements or the fulfillment of any conditions to its own obligations contained herein; or
- (c) waive inaccuracies in any of the other's representations or warranties contained herein or in any document delivered by the other;

provided, however, that any such extension or waiver shall be valid only if set out in an instrument in writing signed on behalf of such Parties and, unless otherwise provided in the written waiver, will be limited to the specific breach, covenant or condition waived.

10.5 Time of Essence

Time shall be of the essence in this Agreement.

10.6 Assignment and Binding Effect

- (a) Except as expressly permitted by Section 4.7, neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the Parties without the prior written consent of the other Parties hereto. Notwithstanding the foregoing, the Purchaser may assign or transfer all or any part of its rights, interests and obligations under this Agreement to one or more affiliates of the Purchaser without written consent, provided that no such assignment or transfer shall relieve the Purchaser of its obligations under this Agreement.
- (b) Except as set out in Section 4.7, this Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.
- (c) Notwithstanding anything to the contrary herein, the Seller hereby consents to the Purchaser's assignment of the rights, interests and obligations under this Agreement, including the Option Right granted pursuant to Section 2.1 and the right to acquire all or a portion of the Purchased Securities, in whole or in part, to Superior General Partner Inc. ("AcquisitionCo"), an affiliate of Purchaser, and/or any subsidiary of AcquisitionCo (provided that such assignment shall not relieve the Purchaser of its obligations under this Agreement). The Parties hereby agree to make any necessary adjustments to this Agreement to reflect the impact of any assignment permitted pursuant to this Section 10.6.

10.7 Further Assurances

Each Party shall, from time to time and at all times hereafter, at the request of the other Parties, but without further consideration, do all such further acts and things, and execute and deliver all such further documents and instruments and provide all such further assurances as may be reasonably required in order to fully perform and carry out the terms and intent hereof.

10.8 Severability

If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule or law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the Transaction is not affected in any manner materially adverse to either Party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, 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 an acceptable manner to the end that the Transaction is fulfilled to the fullest extent possible.

10.9 No Third Party Beneficiaries

This Agreement is not intended to confer any rights or remedies upon any person other than the Parties to this Agreement, other than the Indemnified Parties and the Indemnified D&O Parties.

10.10 Counterparts, Execution

This Agreement may be executed in counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The Parties shall be entitled to rely upon delivery of an executed facsimile or similar executed electronic copy of this Agreement, and such facsimile or similar executed electronic copy shall be legally effective to create a valid and binding agreement between the Parties.

10.11 Expenses of Parties

Each of the Parties shall bear all expenses incurred by it in connection with this Agreement including, without limitation, the charges of its respective counsel, accountants, financial advisors, environmental consultants and finders.

10.12 Brokerage and Finder's Fees

Other than fees owing to the Financial Advisor, which shall be paid in full in connection with Closing, no Party is aware of any Claim for any brokerage, agency, finder's fee or commission in connection with the Transaction payable by any of the Parties and the Seller and the Purchaser agree that if such a Claim should arise as a result of any action taken by it, such Party who has taken such action that has given rise to such Claim shall indemnify the other Party in respect thereof.

10.13 Solicitor-Client Privilege

- (a) Effective upon the consummation of the Transaction, the Target Entities (on behalf of themselves and the Business Entities) hereby irrevocably assign to the Seller all rights and interest to communications by or among the Seller and/or any of the Business Entities and counsel to any of the Business Entities in respect of, in connection with or related to, this Agreement or the Transaction (the "**Privileged Communications**").
- (b) The Parties hereby confirm and agree that, upon the consummation of the Transaction, all Privileged Communications shall be subject to a solicitor-client privilege of the Seller and the Seller alone, and that the Seller shall maintain the sole and exclusive rights over such privilege. Without limitation, upon the consummation of the Transaction: (i) all Privileged Communications shall remain the property of the Seller and the Seller alone; (ii) the Business Entities shall be deemed to have irrevocably waived any, and shall have no rights to such Privileged Communications; and (iii) any release of such Privileged Communications to the Business Entities following Closing shall be presumed to be inadvertent and shall in no way be taken by any of the Parties hereto as any waiver of privilege by the Seller or as evidence in support of any joint retainer by the Seller and the Business Entities with counsel.

10.14 Entire Agreement

This Agreement, the Confidentiality Agreement, and the Exhibits referred to herein constitute the entire agreement among the Parties and, except as otherwise stipulated herein, supersedes all prior agreements, representations, warranties, statements, promises, information, arrangements and understandings, whether oral or written, express or implied, with respect to the subject matter hereof.

10.15 Non-Merger

The covenants, representations and warranties shall not merge on and shall survive the Closing and shall continue in full force and effect. Closing shall not prejudice any right of one Party against the other Party in respect of anything done or omitted under this Agreement or in respect of any right to damages or other remedies.

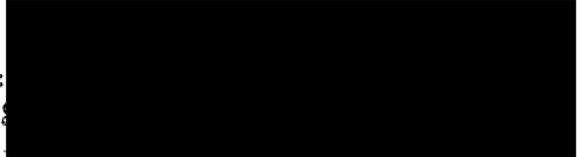
[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

BY THE PURCHASER:

**SUPERIOR PLUS LP by its sole general partner
SUPERIOR GENERAL PARTNER INC.**

Per:
Name:
Title:



BY THE SELLER:

GIBSON ENERGY ULC

Per: _____
Name:
Title:

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

BY THE PURCHASER:

**SUPERIOR PLUS LP by its sole general partner
SUPERIOR GENERAL PARTNER INC.**

Per: _____
Name:
Title:

BY THE SELLER:

GIBSON ENERGY ULC

Per: _____
Name:
Title:



EXHIBIT A

Share and Partnership Capital

I. Canwest Units

Partners	Units Held
Canwest ULC	462
Cal-Gas Inc.	4213
Gibson Energy ULC	11,058

II. Canwest Shares

Class	Number of Shares	Holder	Certificate Number
Common	10,100	Gibson Energy ULC	1C

III. Stittco Shares

Class	Number of Shares	Holder	Certificate Number
Class B Common	110,000	Gibson Energy ULC	BC-3
Class C Preferred	100	Gibson Energy ULC	CP-6

IV. Cal-Gas Shares

Class	Number of Shares	Holder	Certificate Number
Common	12,049	Canwest Propane ULC	C-4
Class A Preferred	9,315	Canwest Propane ULC	AP-3
Class B Preferred	14,344,759	Canwest Propane ULC	BP-5
Class C Preferred	2,959,487	Canwest Propane ULC	CP-4

V. Stittco Utilities Man Ltd. Shares

Class	Number of Shares	Holder	Certificate Number
Common	101	Stittco Energy Limited	4

VI. Stittco Utilities NWT Ltd. Shares

Class	Number of Shares	Holder	Certificate Number
Common	2,400,000	Stittco Energy Limited	3, 5, 7, 8

EXHIBIT B

Non-Competition Agreement

(See attached)

EXHIBIT C

Transition Services Agreement

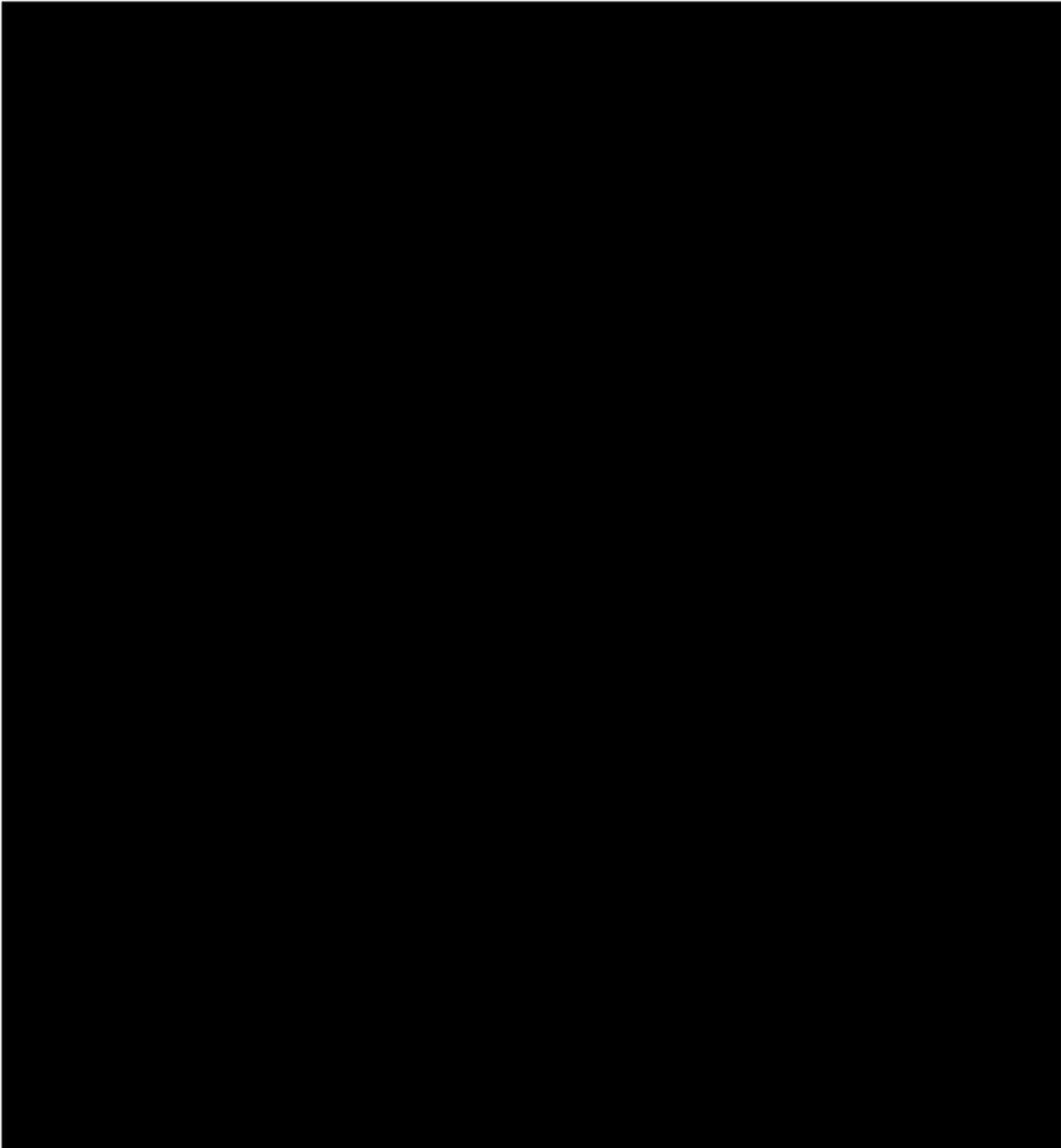
(See attached)

EXHIBIT D

Release

(See attached)

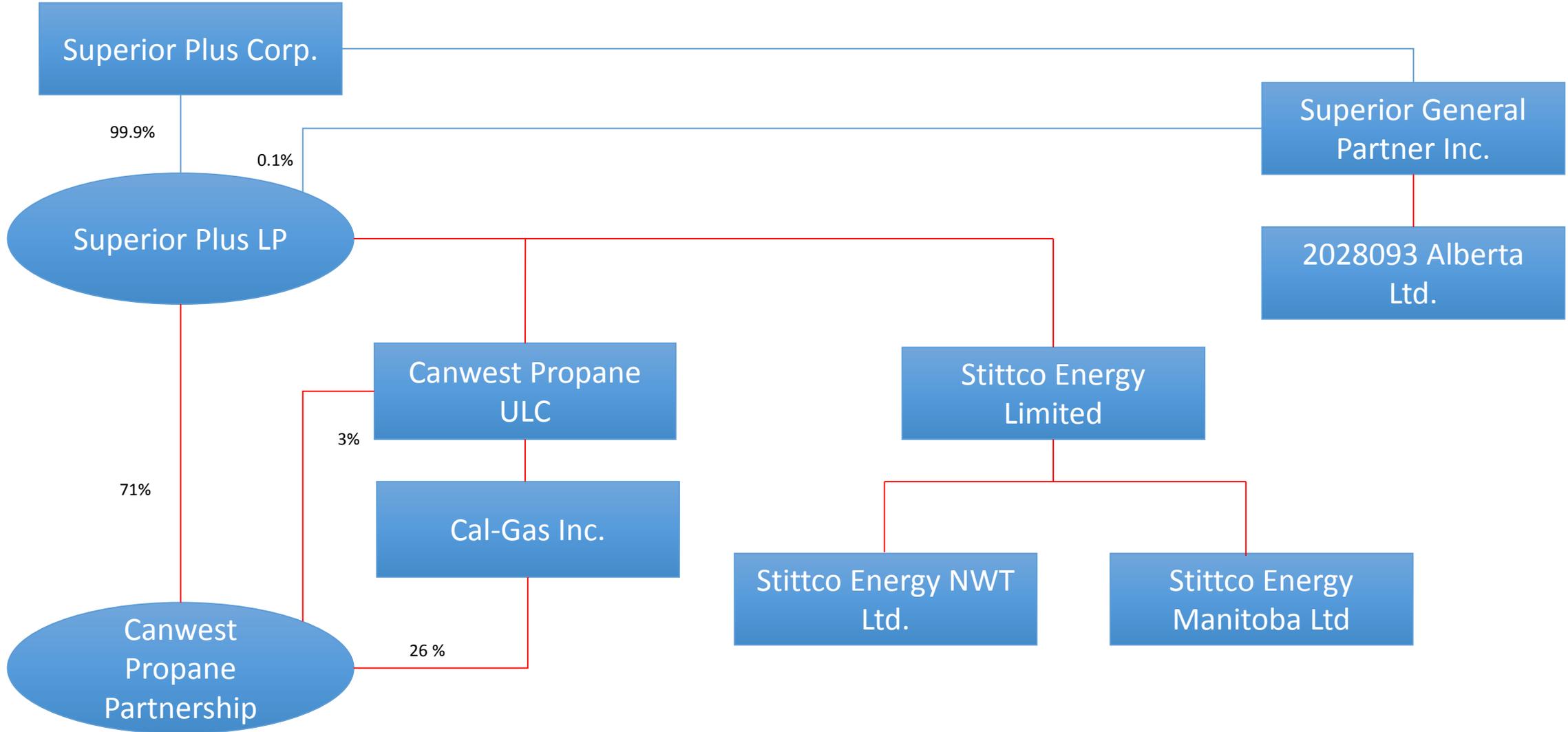
EXHIBIT E



STRUCTURE FOLLOWING INTERIM SALE

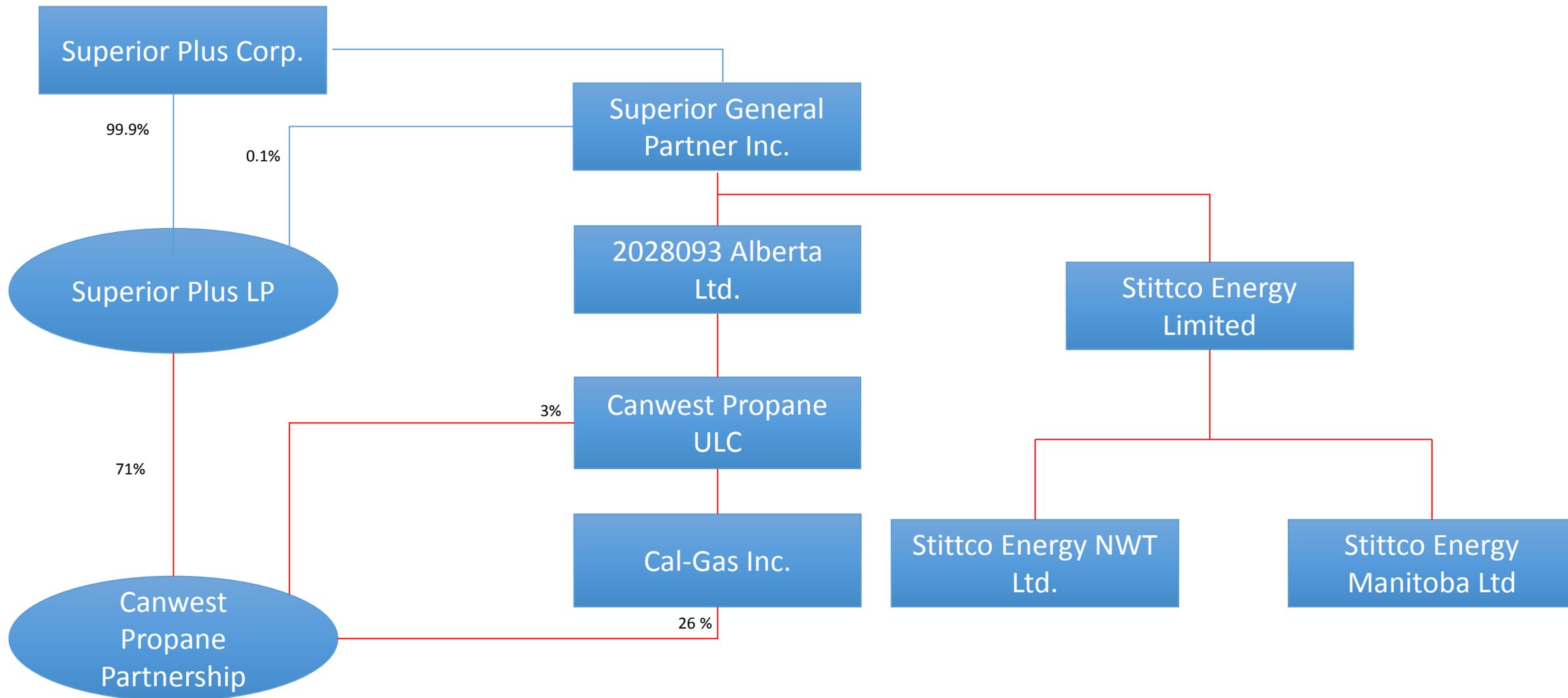
On exercise of the option Superior Plus LP acquires the following:

- 71% ownership of Canwest Propane Partnership
- shares of Canwest Propane ULC
- shares of Stittco Energy Limited from Gibson Energy ULC



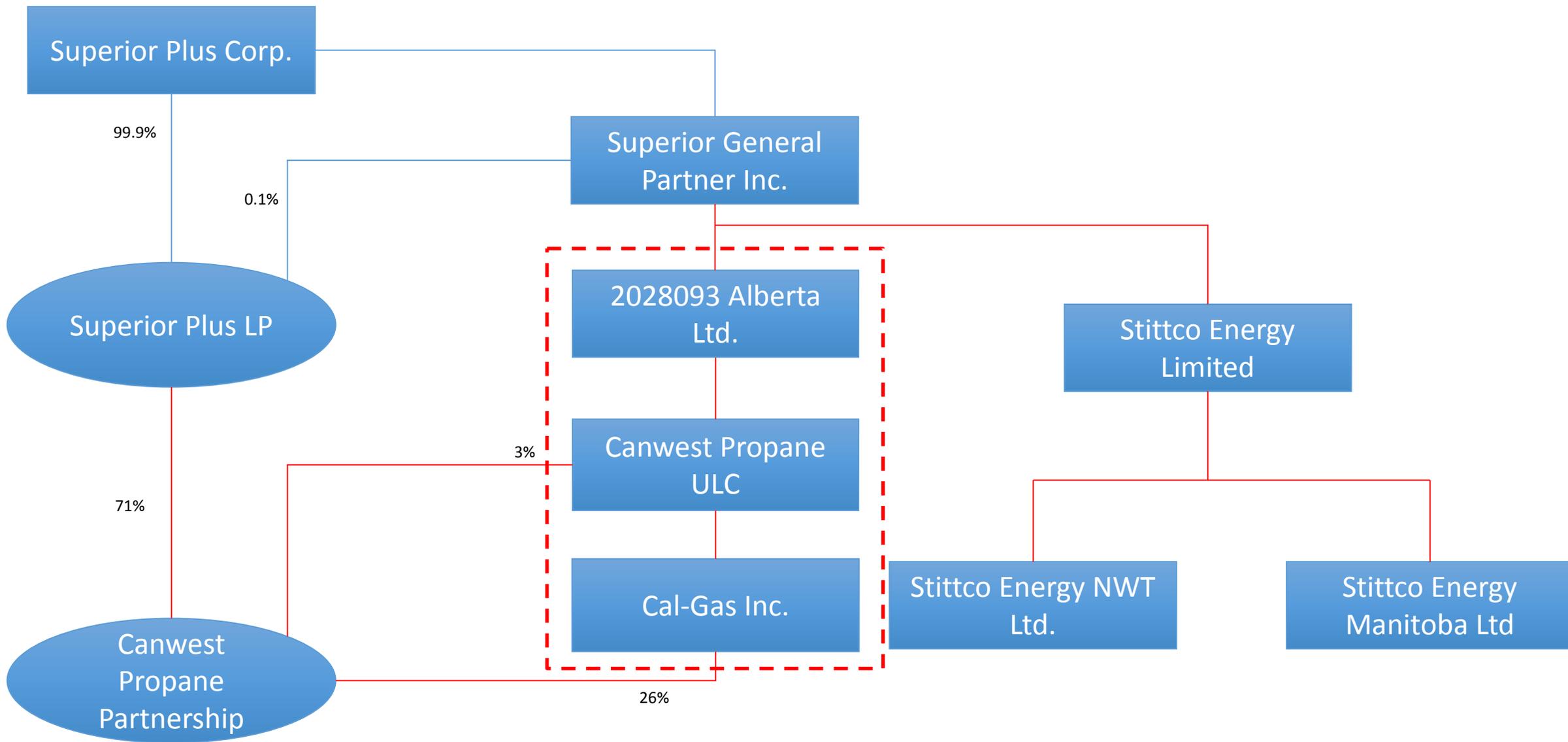
STRUCTURE FOLLOWING FINAL SALE

- 1) Superior Plus LP sells its interest in Canwest propane ULC to 2028093 Alberta Ltd.
- 2) Superior Plus LP sells its interest in Stittco Energy Limited to Superior General Partner Inc.

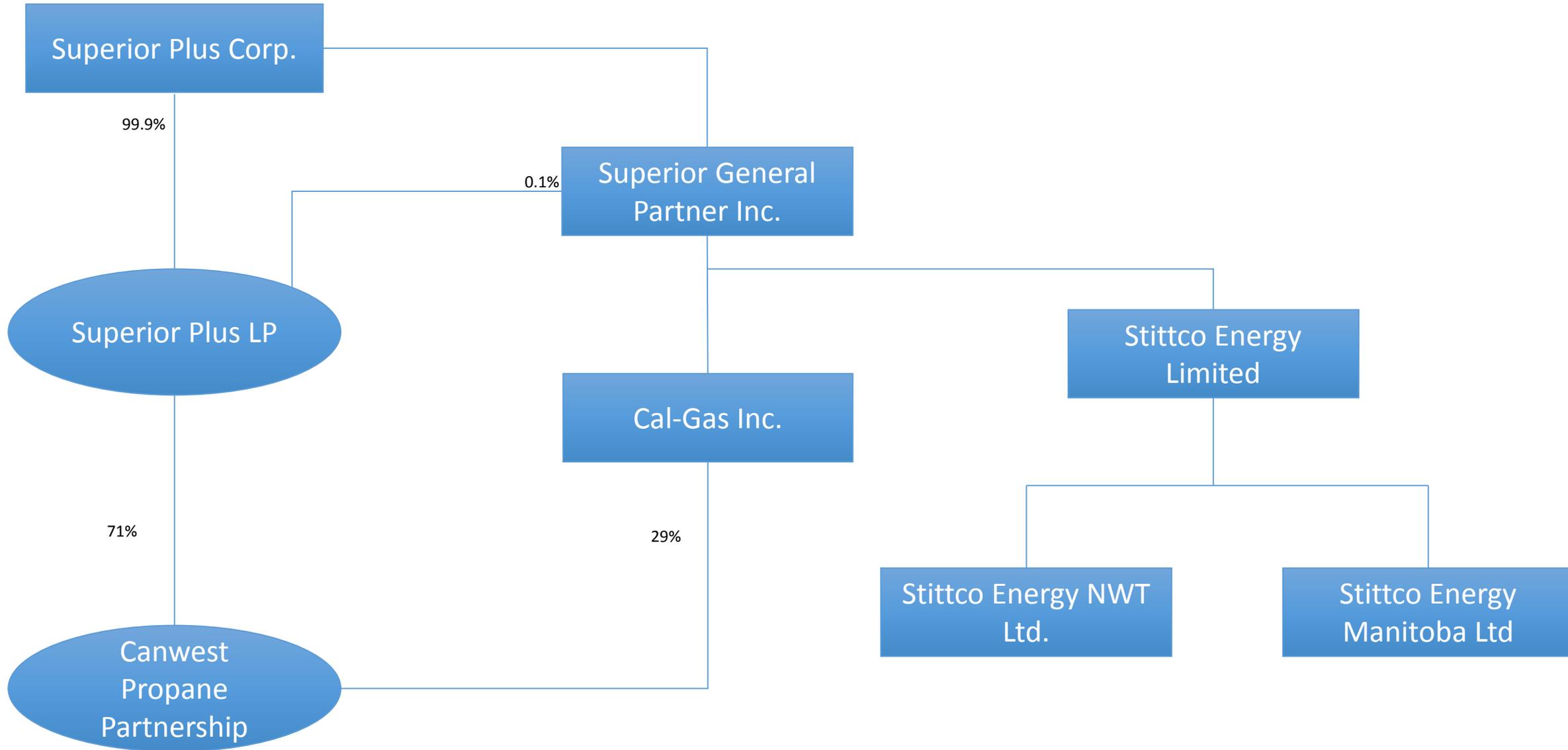


AMALGAMATION STEP

2028093 Alberta Ltd., Canwest Propane ULC and Cal-Gas Inc. amalgamate and continue as Cal-Gas Inc.

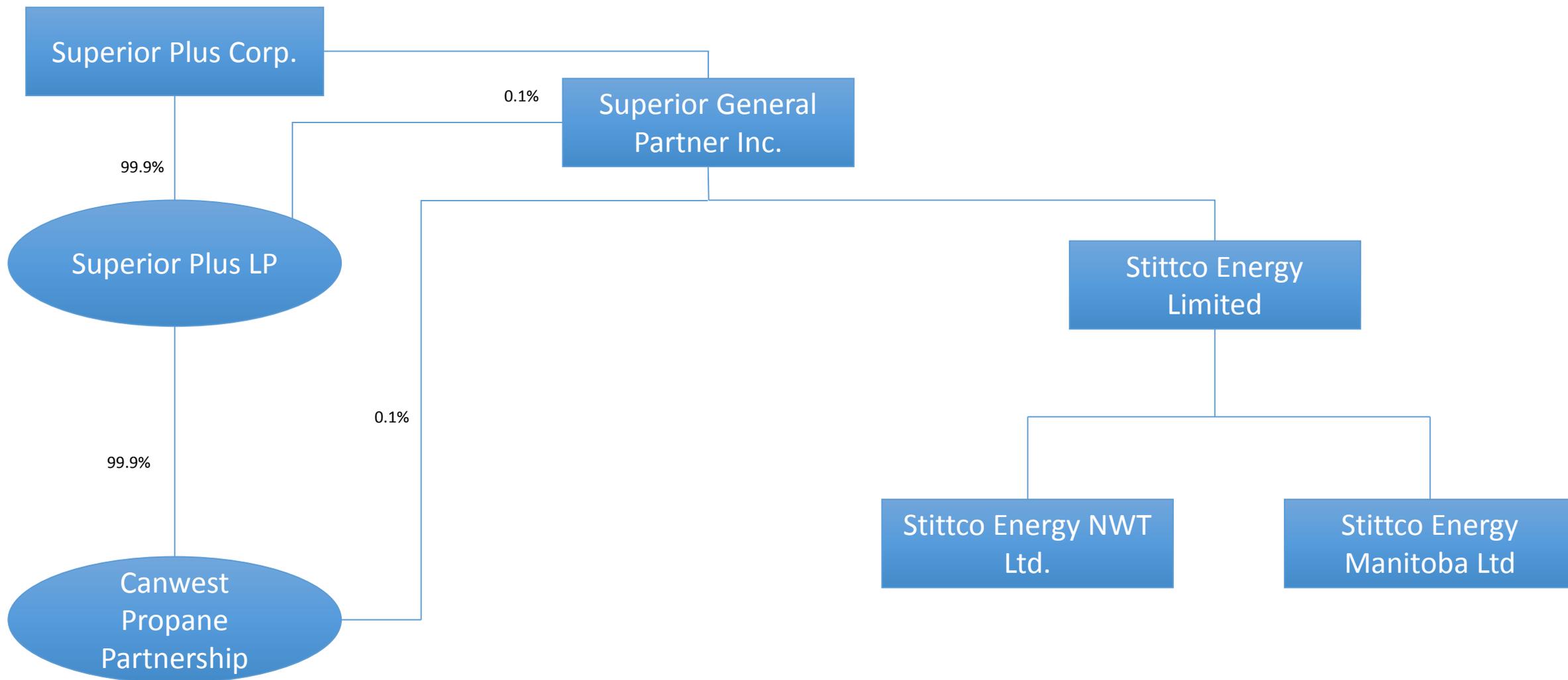


STRUCTURE FOLLOWING AMALGAMATION



STRUCTURE FOLLOWING TRANSFER

Cal-Gas Inc. transfers all of its assets to Superior Plus LP
 Cal-Gas Inc. retains a 0.1% GP interest in Canwest Propane Partnership
 Cal-Gas Inc. is amalgamated into Superior General Partner Inc.



IN THE MATTER OF
the *Utilities Commission Act*, RSBC 1996, Chapter 473
and
Gibson Energy ULC, Superior Plus LP and 2028093 Alberta Ltd.
Application for Approval to Sell and Acquire Cal-Gas Inc.

BEFORE: _____, Commissioner _____, 2017
_____, Commissioner
_____, Commissioner

ORDER

WHEREAS:

- A. Gibson Energy ULC (“Gibson”) is the legal and beneficial owner of all of the share capital of Stittco Energy Limited (“Stittco”), all of the share capital of Canwest Propane ULC (“Canwest ULC”), and an approximately 71% interest in Canwest Propane Partnership (“Canwest Partnership”);
- B. Canwest ULC is the legal and beneficial owner of all of the share capital of Cal-Gas Inc. (“Cal-Gas”), and an approximately 3% interest in Canwest Partnership;
- C. Cal-Gas is the legal and beneficial owner of an approximately 26% interest in Canwest Partnership;
- D. Canwest ULC and Cal-Gas are incorporated in the Province of Alberta;
- E. Cal-Gas is a public utility regulated by the British Columbia Utilities Commission (“Commission”) under the *Utilities Commission Act* (the “Act”), and provides propane service to residential customers in the Kicking Horse Mountain Resort area and Canyon Ridge Estates area near Golden, British Columbia;

- F. On February 13, 2017, Gibson, Stittco, Canwest ULC, Canwest Partnership and Cal-Gas entered into an Option Purchase Agreement with Superior Plus LP (“Superior”), under which Gibson agreed to enter into an Option Agreement with Superior.
- G. Superior is an Ontario limited partnership;
- H. 2028093 Alberta Ltd. (“2028093”) is an affiliate of Superior;
- I. Superior Plus Corp., a public company listed on the Toronto Stock Exchange, owns a 99.9% interest in Superior and Superior General Partner Inc., a direct, wholly-owned subsidiary of Superior Plus Corp., owns the remaining 0.1% interest;
- J. On March 1, 2017, Gibson entered into an Option Agreement with Superior, under which Gibson granted an irrevocable option requiring it sell to Superior, directly or indirectly through one or more affiliates, all of the share capital of Stittco and Canwest ULC, as well as all of its partnership interests in Canwest Partnership (the “Sale”);
- K. The Sale is subject to approval by the Commission pursuant to section 54 of the Act, because it would result in the transfer of a “reviewable interest” in Cal-Gas;
- L. On April 4, 2017, Gibson, Superior and 2028093 applied to the Commission under section 54 of the Act for approval of the Sale, which would result in Cal-Gas becoming an indirect wholly-owned subsidiary of Superior (the “Application”);
- M. The Sale has two steps as described in the Application
 - a. the sale of a reviewable ownership interest in Cal-Gas by Gibson to Superior, and
 - b. the sale of that reviewable interest in Cal-Gas by Superior to 2028093.
- N. Gibson, Superior and 2028093 filed information in the Application to explain why the sale of Cal-Gas will not result in adverse change or detrimental effect on Cal-Gas’ existing customers. Superior also confirmed that neither it, nor any affiliate, will seek to recover from Cal-Gas’ customers any acquisition premium or transaction costs associated with the acquisition of Cal-Gas; and

O. The Commission reviewed the Application as it relates to the Sale and has determined that it is beneficial in the public interest.

NOW THEREFORE the Commission orders that the Sale is approved under section 54 of the Act.

DATED at the City of Vancouver, in the Province of British Columbia, this __ day of _____ 2017.

BY ORDER

[Name]

Commissioner

IN THE MATTER OF
the *Utilities Commission Act*, RSBC 1996, Chapter 473
and
Superior Plus LP, 2028093 Alberta Ltd., Canwest Propane ULC and Cal-Gas Inc.
Application for Amalgamation

BEFORE: _____, Commissioner _____, 2017
_____, Commissioner
_____, Commissioner

ORDER

WHEREAS:

- A. In an Application dated April 4, 2017 (“Application”), Gibson Energy ULC (“Gibson”), Superior Plus LP (“Superior”) and 2028093 Alberta Ltd. (“2028093”) applied to the British Columbia Utilities Commission (“Commission”) under section 54 of the *Utilities Commission Act* (the “Act”) for approval of the sale and acquisition (the “Sale”) of Cal-Gas Inc. (“Cal-Gas”);
- B. The Sale has two steps as described in the Application
 - a. the sale of a reviewable ownership interest in Cal-Gas by Gibson to Superior, and
 - b. the sale of that reviewable interest in Cal-Gas by Superior to 2028093.
- C. Cal-Gas is a “public utility” regulated by the Commission under the Act and provides propane service to residential customers in the Kicking Horse Mountain Resort area and Canyon Ridge Estates area near Golden, British Columbia;

- D. By Order No. [NTD: **Order approving the Sale under section 54 of the Act**] dated [NTD: **date**], 2017, the Commission approved the Sale;
- E. In the Application, Superior, 2028093, Canwest Propane ULC (“Canwest ULC”) and Cal-Gas (collectively, the “Amalgamation Applicants”) also applied for the Commission’s approval under sections 52 and 53 of the Act of the amalgamation of 2028093, Canwest ULC and Cal-Gas (the “Amalgamation”), with the resulting amalgamated entity being Cal-Gas;
- F. Approval of the Sale is independent of approval of the Amalgamation;
- G. As explained in the Application, the Amalgamation will simplify Superior’s corporate structure and streamline its administration and will not adversely affect service to Cal-Gas customers. Any impact of the Amalgamation on the public, including Cal-Gas customers, will be positive as a result of increased efficiency;
- H. Because Cal-Gas is a “public utility” under the Act, the Amalgamation requires consent of the Lieutenant Governor in Council (“LGIC”), on receipt of a report from the Commission, in accordance with section 53 of the Act;
- I. The Amalgamation must also be approved by the Commission under section 52 of the Act; and
- J. The Commission reviewed the Application as it relates to the Amalgamation and has determined that it is beneficial in the public interest.

NOW THEREFORE, the Commission orders and directs as follows

1. The Commission determines that the Amalgamation is beneficial in the public interest and is approved, effective confirmation that the LGIC has, by order, consented to the Amalgamation.
2. The Commission will refer this determination and the accompanying Decision to the LGIC under section 53 of the Act for consideration.

DATED at the City of Vancouver, in the Province of British Columbia, this ____ day of _____, 2017.

BY ORDER

[Name]

Commissioner

IN THE MATTER OF
the *Utilities Commission Act*, RSBC 1996, Chapter 473
and
Superior Plus LP and Cal-Gas Inc.
Application for Approval of Transfer of Assets

BEFORE: _____, Commissioner _____, 2017
_____, Commissioner
_____, Commissioner

ORDER

WHEREAS:

- A. In an Application dated April 4, 2017 (“Application”), Gibson Energy ULC, Superior Plus LP (“Superior”), and 2028093 Alberta Ltd. (“2028093”) applied to the British Columbia Utilities Commission (“Commission”) under section 54 of the *Utilities Commission Act* (the “Act”) for approval of the sale and acquisition (the “Sale”) of Cal-Gas Inc. (“Cal-Gas”);
- B. Cal-Gas is a “public utility” regulated by the Commission under the Act and provides propane service to residential customers in the Kicking Horse Mountain Resort area and Canyon Ridge Estates area near Golden, British Columbia;
- C. By Order No. **[NTD: Order approving the Sale under section 54 of the Act]** dated **[NTD: date]**, 2017, the Commission approved the Sale;
- D. In the Application, Superior, 2028093, Canwest Propane ULC (“Canwest ULC”) and Cal-Gas also applied for the Commission’s approval under sections 52 and 53 of the Act of the amalgamation of 2028093, Canwest ULC and Cal-Gas (the “Amalgamation”), with the resulting amalgamated entity being Cal-Gas;
- E. By Order No. **[NTD: Order approving the Amalgamation under section 52 of the Act]** dated **[NTD: date]**, 2017, the Commission approved the Amalgamation;

- F. By Order No. [NTD: **Order approving the Amalgamation under section 53 of the Act**] dated [NTD: **date**], 2017, the Lieutenant Governor in Council consented to the Amalgamation under section 53 of the Act;
- G. In the Application, Superior and Cal-Gas (collectively, the “Transfer Applicants”) also applied for the Commission’s approval under section 52 of the Act of the transfer of substantially all of the assets of Cal-Gas to Superior (the “Transfer”);
- H. As explained in the Application, the Transfer will simplify Superior’s corporate structure and streamline its administration and will not adversely affect service to current Cal-Gas customers. Any impact of the Transfer on the public, including Cal-Gas customers, will be positive as a result of increased efficiency;
- I. The Transfer requires the approval of the Commission, because Cal-Gas is a “public utility” under the Act; and
- J. The Commission reviewed the Application as it relates to the Transfer and has determined that it is beneficial in the public interest.

NOW THEREFORE, the Commission orders as follows

1. The Commission approves the transfer from Cal-Gas to Superior of the public utility assets of Cal-Gas under section 52 of the Act.
2. The Commission approves the amendment of the following Certificates of Public Convenience and Necessity (“CPCN”) under section 46 of the Act to record Superior as the owner and operator of the applicable public utilities
 - a. the CPCN issued by Order No. C-16-01 on November 13, 2001, authorizing the Kicking Horse Mountain Resort public utility near Golden, British Columbia, and
 - b. the CPCN issued by Order No. C-3-05 on March 30, 2005, authorizing the Canyon Ridge Estates public utility near Golden, British Columbia.

3. The Commission approves consequential amendments to the approvals of Cal-Gas' rates and tariffs to reflect the transfer of the public utility assets from Cal-Gas to Superior.

DATED at the City of Vancouver, in the Province of British Columbia, this __ day of _____
2017.

BY ORDER

[Name]

Commissioner



SIXTH FLOOR, 900 HOWE STREET, BOX 250
VANCOUVER, B.C. V6Z 2N3 CANADA
web site: <http://www.bcuc.com>

BRITISH COLUMBIA
UTILITIES COMMISSION

ORDER
NUMBER C-16-01

TELEPHONE: (604) 660-4700
BC TOLL FREE: 1-800-663-1385
FACSIMILE: (604) 660-1102

IN THE MATTER OF
the Utilities Commission Act, R.S.B.C. 1996, Chapter 473

and

An Application by Cal-Gas Inc.
for Approval of a Certificate of Public Convenience and Necessity
for Propane Grid Systems at the Kicking Horse Mountain Resort

BEFORE: P. Ostergaard, Chair)
B.L. Clemenhagen, Commissioner)
R.D. Deane, Commissioner) November 8, 2001
K.L. Hall, Commissioner)
N.F. Nicholls, Commissioner)

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

WHEREAS:

- A. On August 31, 2001, Cal-Gas Inc. (“Cal-Gas”) applied for a Certificate of Public Convenience and Necessity (“CPCN”) to construct and operate two underground propane grid systems at Kicking Horse Mountain Resort (the “Resort”) near Golden, British Columbia; and
- B. The two systems are identified as “Whispering Pines”, a townhouse development and “Purcell Woods”, single family lot development; and
- C. Cal-Gas has entered into an agreement with respect to the provision of propane services at these developments with Kicking Horse Mountain Resort Limited Partnership (“KHMRLP”), the owner-developer of the property; and
- D. At the end of three years, if KHMRLP wishes to change the supplier of propane, Cal-Gas will sell the grid system to them at a sliding scale price; and
- E. Cal-Gas has described its emergency response plan and provided a 24-hour contact number for emergency calls; and
- F. Cal-Gas has filed proposed Rate Schedules and Terms and Conditions for service; and
- G. The variable propane rate to be charged to customers will be a variable-market rate determined on a monthly basis as the weighted monthly average of the contract price agreed between Cal-Gas and KHMRLP, and the contract price is based on posted market prices for propane supply; and
- H. The Commission has reviewed the Application and the supporting documentation received to date and has determined that the construction and operation of the two underground propane grid systems by Cal-Gas is necessary and properly conserves the public interest.

NOW THEREFORE pursuant to Section 45 of the Utilities Commission Act, the Commission orders as follows:

1. The Commission approves a Certificate of Public Convenience and Necessity for the construction and operation of two underground propane grid systems at the Whispering Pines and Purcell Woods developments at the Resort, with Cal-Gas being responsible for obtaining all other necessary licences, permits and agency approvals.
2. Cal-Gas must furnish the Commission with a copy of the approval of the Provincial Gas Inspector for the propane grid systems.
3. Cal-Gas must file a copy of the final agreement between Cal-Gas and KHMRLP.
4. The Commission approves the proposed Terms and Conditions of Service and Rate Schedules, subject to timely filing of signed Tariff pages.
5. Cal-Gas must maintain separate accounts, and must file Annual Reports which summarize the results of utility operations, in a form to be developed in consultation with Commission staff.
6. Cal-Gas must provide a copy of this Order, and the 24-hour emergency contact number to each new customer, and must maintain a copy of its approved Terms and Conditions of Service and Rate Schedules available for inspection by customers.

DATED at the City of Vancouver, in the Province of British Columbia, this 13th day of November, 2001.

BY ORDER

Original signed by:

Peter Ostergaard
Chair

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** C-3-05

SIXTH FLOOR, 900 HOWE STREET, BOX 250
VANCOUVER, B.C. V6Z 2N3 CANADA
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TELEPHONE: (604) 660-4700
BC TOLL FREE: 1-800-663-1385
FACSIMILE: (604) 660-1102

IN THE MATTER OF
the Utilities Commission Act, R.S.B.C. 1996, Chapter 473

and

An Application by Cal-Gas Inc.
for a Certificate of Public Convenience and Necessity
to Construct and Operate a Propane Grid System at Canyon Ridge Estates, Golden B.C.

BEFORE:

L.F. Kelsey, Commissioner
L.A. Boychuck, Commissioner March 17, 2005

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

WHEREAS:

- A. On April 21, 2004, Cal-Gas Inc. ("Cal-Gas") applied for a Certificate of Public Convenience and Necessity ("CPCN") to construct and operate an underground propane grid system at Canyon Ridge Estates near Golden, British Columbia ("the Application") which is owned and being developed by Canyon Ridge 382938 B.C. Ltd. ("Canyon Ridge"); and
- B. Cal-Gas has entered into an agreement dated January 23, 2004 with respect to the provision of propane services with Canyon Ridge for the sale of propane gas to various consumers at Canyon Ridge Estates ("the Agreement"); and
- C. The term of the Agreement is for a period of 10 years from the commencement date of service and Canyon Ridge can end the contract and pay the depreciated price of the grid system on a declining scale; and
- D. Cal-Gas accepts responsibility as a public utility pursuant to the Utilities Commission Act, while it is the owner and operator of the propane grid system at Canyon Ridge Estates; and
- E. Cal-Gas has described its emergency response plan and provided a 24-hour contact number for emergency calls; and
- F. The variable propane rate to be charged to customers will be a variable-market rate determined on a monthly basis as the weighted monthly average of the contract price agreed to between Cal-Gas and Canyon Ridge; and
- G. The contract price is based on the Shell Jumping Pound posted market prices for propane supply; and

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** C-3-05

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- H. The Commission has reviewed the Application and the supporting documentation received to date and has determined that the construction and operation of the underground propane grid system by Cal-Gas is necessary and properly conserves the public interest.

NOW THEREFORE pursuant to Section 45 of the Utilities Commission Act, the Commission orders as follows:

1. The Commission issues a Certificate of Public Convenience and Necessity for the construction and operation of the underground propane grid system at Canyon Ridge Estates owned by Canyon Ridge, with Cal-Gas being responsible for obtaining all other necessary licences, permits and agency approvals.
2. Cal-Gas must furnish the Commission with a copy of the approval from the Provincial Gas Inspector for the propane grid system.
3. Cal-Gas must file a signed executed copy of the final agreement between Cal-Gas and Canyon Ridge 382938 B.C. Ltd.
4. Cal-Gas must maintain separate accounts and must file Annual Reports and financial statements which summarize the results of utility operations within 60 days of its fiscal year-end, in a form to be developed in consultation with Commission staff. An annual statement of monthly propane costs identifying the cost by month is to be provided within 60 days of fiscal year-end as well.
5. The propane charges for consumers will be based on the monthly average posted propane price from the Shell Jumping Pound refinery plus freight cost from the refinery plus gross margin of \$.065 per liter. The gross margin of \$.065 per liter is to remain in place until justification can be provided by Cal-Gas that an amendment is justified and the Commission agrees. Cal-Gas will file a statement showing the propane rate that was billed to customers each month during the previous year within 60 days of the end of each fiscal year.
6. Cal-Gas will set up a deferral account called the Gas Cost Reconciliation Account (“GCRA”) which will track the variance in Shell Jumping Pound monthly average cost with the actual laid-in or landed cost of propane on an annual basis. The GCRA report is to be provided along with the financial statements that show the balance at the end of the year. The Annual report will include a recommendation to manage the GCRA balance, which may include a positive or negative rider on the propane charge.
7. Cal-Gas is to file a Propane Gas Tariff, which will include Terms and Conditions of Service and Rate Schedules that are consistent with this Order, in a timely fashion.
8. Cal-Gas must provide a copy of this Order and the 24-hour emergency contact number to each new customer, and must maintain a copy of its approved Terms and Conditions of Service and Rate Schedules available for inspection by customers.

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** C-3-05

3

DATED at the City of Vancouver, in the Province of British Columbia, this 30th day of March 2005.

BY ORDER

Original signed by:

L.F. Kelsey
Commissioner