

**THIS LEASE** is effective as of the **1<sup>st</sup> day of January, 2019**, and is made pursuant to the *Short Forms of Leases Act*, R.S.O. 1990, c. S-11.

**BETWEEN:**

**VALE CANADA LIMITED**  
(the “**Landlord**”)

-and-

**THE CORPORATION OF THE CITY OF PORT COLBORNE**  
(the “**Tenant**”)

**ARTICLE 1**  
**GRANT AND TERM**

**1.1 Leased Premises**

The Landlord demises and leases to the Tenant and the Tenant leases from the Landlord the surface rights only of the lands (the “**Lands**”), which form part of the lands more particularly described in Schedule “A” hereto, and which are shown in their entirety on the plan attached as Schedule “B” hereto, (herein called the “**Leased Premises**”) subject to the provisions of this Lease. The Leased Premises is comprised of approximately 23.84567 acres, and includes the playground area which is shown on the attached Schedule B, and includes the non-exclusive use of the access road identified on Schedule B hereto, which is used as the primary access to the Leased Premises and does not include the infrastructure used in the water delivery system, as further identified in Article 9 of this Lease.

**1.2 Term**

The Tenant shall have and to hold the Leased Premises for and during the term of **TWENTY (20)** years (the “**Term**”) commencing on **January 1<sup>st</sup>, 2019** the (the “**Commencement Date**”) and ending on **December 31, 2039** (the “**Termination Date**”), subject to the renewal and overholding provisions contained in this Lease.

**1.3 Overholding**

If the Tenant occupies any part of the Leased Premises after the expiration or earlier termination of this Lease, without the written consent of the Landlord, the Tenant shall be deemed to be a month-to-month Tenant at a basic rent equal to twice the Basic Rent payable in the last month prior to overholding plus Additional Rent as set out in this Lease and otherwise subject to all terms and conditions of this Lease, except as to duration and right to renew.

**ARTICLE 2**  
**RENT**

**2.1 Basic Rent**

The Tenant covenants to pay to the Landlord from and after the Commencement Date for the initial Term a Basic Rent (the “**Basic Rent**”) for the Leased Premises at **ONE (1) DOLLAR** per year.

The annual Basic Rent and applicable taxes shall be paid, in full, on the signing of this Lease (for Year 1), and, thereafter, on the 1<sup>st</sup> day of January for each year of the Term.

**2.2 Utility and Taxes**

In addition to Basic Rent, the Tenant shall pay directly to the appropriate authority when due during the Term: (a) Realty Taxes; (b) utilities, including gas, electricity, water and hydro, supplied to the Leased Premises; and (c) all such other costs, charges, expenses, penalties, administration charges and interest relating to the Tenant’s use of the Leased Premises. Any and all utilities shall be metered and charged separately to the Tenant. For the purpose of clarity the Landlord will not be responsible for the supply of potable water to the lands and the Tenant’s facilities located thereon rather the complete responsibility for the supply of potable water shall be that of the Tenant.

For the purpose of this Lease, “**Realty Taxes**” means all taxes, charges, levies, duties and assessments that may be levied, rated, charged or assessed against the Leased Premises or any part thereof and any taxes payable by the Landlord which are imposed in lieu of, or as a substitute for same and all taxes, duties, assessments and other charges that may be levied, rated, charged or assessed against or in respect of the Tenant’s improvements, equipment and facilities of the Tenant on or in the Leased Premises. The parties hereto acknowledge and agree that the Tenant shall pay its pro-rata share of such Realty Taxes, to the Landlord, within thirty (30) days of receipt of the invoice for such taxes.

### **2.3 Additional Rent**

The parties hereto agree that any money required to be paid under section 2.2 or in any other provision within the Lease deeming monies to be paid as “Additional Rent” shall be deemed to be Additional Rent (herein “**Additional Rent**”) and be collectible as rent. If such amounts or charges are not paid to the appropriate authority when due, they shall nevertheless, if not paid when due, be collectible as rent to the Landlord with the next installment of Basic Rent thereafter falling due hereunder, but nothing herein contained shall be deemed to suspend or delay the payment of any amount of money or charge at the time the same becomes due and payable or limit any other remedy of the Landlord.

### **2.4 Payment of HST**

The Tenant shall pay applicable Provincial Sales Tax and Goods and Services Tax (collectively, the Harmonized Sales Tax – HST) pursuant to the *Excise Tax Act* applicable to Basic Rent and Additional Rent to the Landlord at the same time as the amounts to which such HST apply are payable under the term of this Lease. If the Tenant fails to pay such HST when due, the Landlord shall have the right, but not the obligation, to make such payments to the relevant authorities and to collect the HST together with any penalties and interest costs imposed by such relevant authorities from the Tenant upon demand.

### **2.5 Assessment Notices, Proof of Payment**

The Landlord agrees to provide the Tenant with copies of all assessment notices forthwith after receipt. The Tenant further agrees to provide the Landlord with proof of payment of all Realty Taxes and utilities when requested to do by the Landlord.

### **2.6 Contesting of Assessment**

The Tenant may contest the amount or validity of any Realty Taxes to the fullest extent permitted by law so long as it diligently prosecutes any contest or appeal in respect thereof, and provided that the Landlord is not made liable for any penalty, interest or charge in respect thereof, and the Tenant shall indemnify and save the Landlord harmless in respect thereof. If any installment of Realty Taxes or other taxes should be payable during a period when the amount or liability thereof is being contested by the Tenant, the Tenant shall either pay the same to the taxing authority under protest or post the requisite security with the taxing authority.

If either the Landlord or the Tenant is contesting or appealing the amount or validity of any Realty Taxes or other taxes the parties shall co-operate to the extent reasonably necessary (but only to the extent the they are not adverse in interest).

### **2.7 Business Taxes**

In addition to Additional Rent, the Tenant shall, during the Term, pay, when due, all business Taxes to the lawful taxing authorities, or as Additional Rent to the Landlord if the Landlord is invoiced therefore, by the taxing authority having jurisdiction.

For the purposes of this Lease, “**Business Taxes**” means all taxes, duties, levies, assessments or licence fees levied, rated, charged or assessed against or in respect of any and every business carried on from the Leased Premises or in respect of the use or occupancy thereof by the Tenant.

### **2.8 No Right of Set-off**

The Tenant expressly waives the benefits of section 35 of the *Commercial Tenancies Act*, R.S.O. 1990, c. L.7 and any amendments thereto and any present or future enactment of the Province of Ontario permitting the Tenant to claim a set-off against Rent for any cause whatsoever.

### **2.9 Additional Rent Deemed Rent**

All Additional Rent shall be deemed to be rent and the Landlord shall have all rights against the Tenant for default in payment of Additional Rent as for default in the payment of Basic Rent.

### **2.10 Interest on Arrears**

If the Tenant fails to pay Basic Rent when due, the Tenant shall pay interest on the unpaid amount at the ScotiaBank’s prime lending rate from time to time plus five (5.0%) per annum, n compounded monthly from the date due until the date paid, without prejudice to and in addition to any other remedy available to the Landlord under this Lease or at law.

### **2.11 Net Lease to Landlord**

This Lease and the Basic Rent payable hereunder shall be absolutely net to the Landlord, except as expressly provided herein. Any obligation which is not stated to be that of the Landlord shall be deemed to be that of the Tenant.

**ARTICLE 3  
GENERAL COVENANTS**

**3.1 Tenant's Covenants**

The Tenant covenants with the Landlord:

- (a) to pay Basic Rent, Additional Rent, administration charges, interest and any and all other monies due and/or owing as provided under this Lease;
- (b) to observe and perform all the covenants and obligations of the Tenant herein;
- (c) to ensure that all buildings, structures, sheds, equipment (including playground equipment and any infrastructure) are maintained in good repair, and is safe at all times;
- (d) to ensure the road which is used to access the beach is maintained and necessary repairs are done and the road is safe at all times;
- (e) to ensure on a constant, regular basis that Lands and all of the activities carried on the Lands are policed by the police force of the Tenant to a standard consistent with good policing standards appropriate for such a facility;
- (f) to fence in the entire area of the Lands to ensure that all of the Tenant's activities and uses on the Lands are segregated from the Landlord's remaining property and facilities; and,
- (g) to provide to employees of the Landlord free admission to the Lands and the facilities located thereon.

**3.2 Landlord's Covenants**

The Landlord covenants with the Tenant:

- (a) for quiet enjoyment; and
- (b) to observe and perform all the covenants and obligations of the Landlord herein.

**ARTICLE 4  
LANDLORD'S WORK AND TENANT'S WORK**

**4.1 Landlord's Work – NONE**

**4.2 Tenant's Work**

The Tenant hereby covenants and agrees to perform or cause to be performed, at the Tenant's sole cost and expense, any work that is required to be completed in a good and workmanlike manner and in accordance with all applicable laws to the reasonable satisfaction of the Landlord .

**4.3 Construction Liens**

The Tenant covenants that it will not permit any construction or other liens for work, labour, services or materials supplied to or for the Tenant or for the cost of which the Tenant maybe liable to pay, to attach to the Leased Premises or any portion thereof or to any buildings and/or other improvements erected upon the same and that whenever and so often as any such liens shall be filed or attached the Tenants will within five (5) days after the Tenant has notice of the claim for lien either pay the same or procure the discharge thereof by giving security or in such other manner as is or may be required or permitted by law.

**ARTICLE 5  
RESERVATIONS TO LANDLORD**

**5.1 Reservation of Access**

The parties hereby agree that the Landlord, its employees, agents or representatives, shall have reasonable access to and over the Leased Premises for the purposes of:

- (a) exploring for and/or establishing facilities for the exploration for and/or mining and recovery of mines and minerals beneath the Leased Premises; or
- (b) formulating and executing plans for the decommissioning and/or the rehabilitation of the Leased Premises and/or other lands of the Landlord adjacent to and/or in the vicinity of the Leased Premises.

**5.2 Reservation of Use**

In the event that the Tenant's use of the Leased Premises materially interferes with the Landlord's continuance or development of its operations or business, the Landlord may terminate this Lease by giving one hundred and eighty (180) days prior written notice to the Tenant and shall refund *pro rata* the portion of rent, if any, accruing due after the date of the said termination and the Parties shall be released from any further obligations with respect to any matter under this Lease.

The Tenant hereby agrees that the Landlord, its employees, agents or representatives, shall have reasonable access to and over the Leased Premises for the purposes of:

- (i) exploring for and/or establishing facilities for the exploration for and/or mining and recovery of mines and minerals beneath the Leased Premises; or
- (ii) formulating and executing plans for the decommissioning and/or the rehabilitation of the Leased Premises and/or other lands of the Landlord adjacent to and/or in the vicinity of the Leased Premises.

## **ARTICLE 6 USE OF LEASED PREMISES**

### **6.1 Use of Leased Premises**

The Tenant covenants and agrees that the Leased Premises will be used solely for a summer-seasonal recreational community beach and playground, and the Tenant shall not use or permit to be all or any part of the Leased Premises for any other purpose. The Parties acknowledge and agree that the sale or use of alcohol or cannabis on the Leased Premises is prohibited. The Parties acknowledge and agree that only mobile commercial establishments will be permitted on the property and no permanent commercial establishments will be permitted without the Landlords consent. The Parties agree that there are no other representations, warranties or conditions between the Landlord and Tenant for the use or occupation of the Leased Premises. Furthermore, the Tenant agrees that this Lease is for the use of the surface rights only of the Leased Premises and the Landlord expressly saves, excepts and reserves unto itself, its successors and assigns, all metals and minerals on the said land, along with the right to enter upon the land to remove same.

### **6.2 Waste and Nuisance**

The Tenant shall not carry on any business or do or suffer any act or thing which in the Landlord's opinion may constitute or result in a nuisance to the Landlord or, if any, to other tenants in the local geographic area, or do or suffer any waste or damage to the Leased Premises or the local geographic area.

### **6.3 Applicable Laws**

The Tenant shall at its own expense comply with all laws, by-laws, rules, regulations, orders and instructions of any municipal, provincial, federal or other governmental authority which in any manner relates to or affects the Leased Premises and buildings thereon or the Tenant's use thereof. The Tenant shall indemnify and save harmless the Landlord from any loss or damage, expenses, costs, penalties, charges or fines to which the Landlord may be put or suffer by reason of the breach of any such law, by-law, rule, regulation or order.

### **6.4 Entry Prior to Expiry**

The Landlord and its agent may, at all reasonable times during the last four (4) months of the Term, or Renewal Term if applicable, of this Lease, enter the Leased Premises and improvements thereon to exhibit the same for purposes of sale or rent and may display the usual "**For Sale**" or "**To Let**" signs thereon.

### **6.5 Maintenance and Repair by the Tenant**

The Tenant shall maintain and repair or cause to be maintained and repaired as would a prudent tenant, all improvements on the Leased Premises, reasonable wear and tear only excepted.

### **6.6 Clean Condition**

The Tenant shall, at its own expense, keep the Leased Premises in good repair, and the Tenant covenants to properly care for the grass, trees, bushes, shrubs and plants now growing and which may at any time grow on the Leased Premises. The Tenant shall maintain the Leased Premises in a clean and orderly condition. The Tenant shall not allow any refuse, garbage or any loose or objectionable material to accumulate on or about the Leased Premises, and the Tenant agrees to keep the premises in a clean and wholesome condition and, on Termination, the Tenant agrees to leave the Leased Premises in good condition and to remove any waste or rubbish at his own expense. Specifically, the Tenant agrees to dispose of all garbage and waste in an applicable government approved waste disposal site.

The Tenant shall not cut down any trees nor sell or remove any wood or timber from the Leased Premises.

## **ARTICLE 7 ENVIRONMENTAL MATERIAL**

### **7.1 Initial Report –**

The Tenant within the first three (3) years at the Tenant's sole expense shall provide to the Landlord a Phase 1 Environmental Report relating to the Lands and, if recommended in such Phase 1 report a Phase 2 report, any clean-up required by such Report(s) for contraventions of Environmental Laws shall be undertaken and completed by the Tenant at the Tenant's sole expense. For greater certainty, the Tenant shall not be responsible for any remediation or clean-up under this Section 7.1 to the extent that the Landlord is responsible for those obligations according to the terms of Section 7.5 below. In particular the City shall include in such reports reference to the storage of any fuel on the Lands and the sewage holding tank associated with the washroom building and provision for the renewal of such sewage holding tank at the end of the Term.

### **7.2 Landlord Right to Audit**

The Landlord may at any time, at its cost, during the Term or any renewal(s) hereof conduct an environmental assessment of the Leased Premises. In conducting such an assessment, the Landlord shall not unreasonably interfere with the Tenant's operations on the Leased Premises. Should the assessment disclose any contravention of Environmental Laws attributable to or caused by the Tenant's use of the Leased Premises, then, upon notice of such contravention and subject to Section 7.5 below, the Tenant shall forthwith remedy such at its expense and compensate the Landlord for all costs associated with the assessment. Should the Tenant not proceed diligently to remedy any contravention, then the Landlord may do so for which the Tenant agrees to compensate the Landlord for all costs incurred for such remedy, which costs shall be considered to be Additional Rent payable within fifteen (15) days after demand.

### **7.3 Exit Report**

The Tenant hereby covenants and agrees to obtain a Phase 2 environmental assessment of the Leased Premises (the "**Exit Report**") by an independent and qualified environmental consultant within three (3) to six (6) months prior to the expiry of the Lease and provide a copy of the Exit Report to the Landlord forthwith upon receipt by the Tenant. If the Exit Report reveals contamination at the Leased Premises which are in contravention of Environmental Laws and at levels exceeding those set out in the Initial Report or attributable to or caused by the Tenant's use of the Leased Premises, then the consultant preparing the Exit Report shall also include in the Exit Report its recommendations for remediating the Leased Premises in order that the Leased Premises are returned to the same condition as set out in the Initial Report and/or removal of contamination resulting from the Tenant's use of the Leased Premises so that there is no longer any contravention of Environmental Laws (the "**Remediation**"). Subject to Section 7.5 below, the Tenant shall complete any Remediation which the Tenant is obligated to conduct at its sole expense prior to the expiry of the Lease. The Landlord hereby grants to the Tenant the right to extend the Lease on a month-to-month basis for so long as the Tenant reasonably requires in order to complete the Remediation. The Landlord and the Tenant shall continue to be subject to all terms and conditions of this Lease, except as to duration, in the absence of a written agreement between the Landlord and the Tenant to the contrary. The Tenant shall be required to compensate the Landlord, its successors and assigns for all demolition or destruction on, under or to the Leased Premises in order to complete the Remediation. The Tenant shall be required to rebuild or repair any demolished or destroyed property on, under or attached to the Leased Premises during or following the Remediation, or, if such is not possible in the circumstances, monetary compensation for the diminution in the fair market value of the Leased Premises due to the loss of the property.

### **7.4 Conduct of Assessments**

The Landlord hereby grants to the Tenant, its employees, servants, agents and consultants, the right to conduct the Phase 2 environmental assessments described in Section 7.

### **7.5 Prior Breaches**

Notwithstanding the foregoing or anything else contained in this Lease, the Landlord shall be solely responsible for promptly complying with and remedying at its sole expense any contraventions of Environmental Laws in respect of the Leased Premises existing prior to the Tenant's occupation of the Leased Premises (whether such occupation occurred under this Lease, or any other prior lease or legal arrangement involving the Tenant, or any of its corporate predecessors) or which have been caused by the Landlord, its corporate predecessors and predecessors-in-title to the Leased Premises (which include, without limiting the generality of the foregoing, Inco Limited and The International Nickel Company of Canada Limited) and all persons for whom they are, or were, responsible for. The Landlord hereby agrees to indemnify and save harmless the Tenant, and all of its servants, agents, employees, contractors and persons for whom the Tenant is in law responsible (the "**Tenant Indemnified Parties**"), against any cost, fines, suits, damages, claims, demands and causes of action which the Tenant Indemnified Parties may be subject to as a result of any such contraventions, which indemnity shall survive the termination or

expiration of this Lease. Provided, however, the Landlord shall not be responsible for any contraventions of Environmental Laws relating to the washrooms on the Leased Premises installed by the Tenant.

## 7.6 Environmental Material

- (c) As used herein:
  - (i) **“Environmental Laws”** means all statutes, laws ordinances, codes, rules, regulations, orders, notices and directives, nor or at any time hereafter in effect, made or used by any municipal, provincial or federal government, or by any department, agency, board or office thereof, or by any board of fire insurance underwriters or any other agency or source whatsoever, regulating, relating to or imposing liability or standards of conduct concerning any matter which may be relevant to the use or occupancy of the Leased Premises or any part thereof or the conduct of any business or activity in, on, under or about the Leased Premises or any part thereof, or any material, substance or thing which may at any time be in, on, under or about the Leased Premises or any part thereof or emanate therefrom; and
  - (ii) **“Hazardous Substance”** means any contaminant, pollutant, dangerous or potentially dangerous substance, noxious substance, toxic substance, hazardous waste or material, flammable or explosive substance, radioactive material, or any other waste, substance or material whatsoever, covered by or regulated under any Environmental Laws.
- (d) The Tenant covenants with the Landlord that:
  - (i) the Tenant shall not use or permit or suffer the use of the Leased Premises or any part thereof to generate, manufacture, refine, treat, transport, store, handle, dispose of, transfer, produce or process any Hazardous Substance except in strict compliance with all Environmental Laws including, without limitation, the *Environmental Protection Act* and all other Environmental Laws in respect of environmental, land use, occupation, or health and safety matters. If the Tenant fails to comply with any such Environmental Laws, the Landlord may, but shall not be obligated to, do such things as necessary to effect such compliance, and all costs and expenses incurred by the Landlord in so doing, together with an administration charge equal to 15% of such costs and expenses, shall be payable by the Tenant to the Landlord as Additional Rent within fifteen (15) days after demand;
  - (ii) the Tenant shall notify the Landlord within five (5) days after receipt of any order, directive, notice or other communication whatsoever received from any governmental or other authority relating to any Environmental Laws, which notice shall be accompanied by a copy of such order, directive, notice or other communication and the Tenant shall keep the Landlord advised on a weekly basis of the Tenant's progress in complying with same;
  - (iii) the Landlord shall be entitled at any time or times to inspect the Leased Premises and to conduct such other investigations as in its sole discretion it deems necessary for the purpose of satisfying itself as to compliance by the Tenant with all Environmental Laws and with all provisions of this Lease. Without limiting the generality of the foregoing, the Landlord shall have the right to conduct such physical inspections of the Leased Premises and examination of documentation relating to the Leased Premises and the conduct of business thereon by the Tenant as the Landlord may deem necessary and for such purpose the Tenant shall produce, at the offices of the Tenant, all of its relevant files, books, records, statements, plans and other written information in the Tenant's possession relating to the Leased Premises and the operations of the Tenant thereon, provided that all of such information shall be used by the Landlord solely for the purpose of ensuring compliance by the Tenant with the provisions of this Lease and shall otherwise be kept strictly confidential;
  - (iv) the Tenant will indemnify and save harmless the Landlord and all of its servants, agents, employees, contractors and persons for whom the Landlord is in law responsible, against any and all losses, liabilities, claims, damages, interest, penalties, fines, monetary sanctions, costs and expenses whatsoever, including without limitation costs of professional advisors and consultants and experts in respect of investigation, remedial action and clean-up costs and expenses, arising in any manner whatsoever out of: (A) any breach by the Tenant of any provisions of this Lease or any non-compliance with any Environmental Laws; (B) any act or omission of any persons on the Leased Premises or any use or occupancy of or any thing in, on, under or about the Leased Premises, including, without

limitation, the generating, manufacture, refinement, treatment transportation, storage, handling, disposal, transfer, production or processing of any Hazardous Substance by the Tenant or any other person in, or, under or about the Leased Premises, and any nuisance arising therefrom; (C) any act or omission of the Tenant or any of its servants, agents, employees, invitees, licensees, subtenants, concessionaries, contractors or persons for whom the Tenant is in law responsible on or about the Leased Premises or elsewhere; or (D) any illness, injury, or death of persons, or any loss or damage to property, on or about the Leased Premises; and

- (v) If at any time required by the Landlord, or by any governmental or other authority pursuant to any Environmental Laws, the Tenant will take all required remedial action in respect of any Hazardous Substances in, on, under or about the Leased Premises or emanating therefrom, including, without limitation, any repairs or replacements to the Leased Premises or any buildings or other leasehold improvements in or on the Leased Premises and the removal, treatment, disposal, restoration and replacements of the soil or any other part of the Leased Premises; and
- (vi) The Landlord shall not be liable to the Tenant from any Hazardous Substance activities conducted on the Leased Premises however caused, whether or not consented to by the Landlord and the Tenant shall indemnify, defend with counsel, and hold the Landlord harmless from and against any claims, damages, costs and liabilities arising out of any and all such Hazardous Substance activities.

### **7.7 Endangered Species**

The parties hereto acknowledge that the Leased Premises is a habitat for an and endangered species of wildlife, being the Fowler's Toad, and that this species of toad and its habitat are protected under Ontario's *Endangered Species Act*, 2007, S.O. 2007, c.6. The Tenant agrees to take all steps necessary to protect this and other wildlife that may inhabit the Leased Premises, and to adhere to all laws and regulations required in this regard, including participation in stewardships or reserach that may be available for these animals.

This section shall survive the expiration or earlier termination of this Lease.

## **ARTICLE 8 INSURANCE**

### **8.1 Tenant's Insurance**

The Tenant shall obtain and maintain at their sole costs and expense, throughout the term of this Lease Agreement the following insurance on a primary and non-contributory basis, with insurers deemed acceptable to the Landlord in its sole discretion:

- (a) "All Risks" Property insurance which shall insure the Leased Premises and Tenant's Property on a property every description basis on a full replacement cost basis without deduction for depreciation against direct physical loss or damage and/or mechanical breakdown caused by all perils, including but not limited to earthquake;
- (b) Third Party Liability Insurance, insuring against bodily injury, death and property damage with Policy Limits of TEN MILLION (\$10,000,000.00) DOLLARS per occurrence. Without limiting the foregoing subclause, this shall include the following extensions, commonly known as Occurrence Property Damage; Blanket Contractual Liability; Non Owned Automobile Liability; Cross Liability and Severability of Interests Clause; Personal Injury; Owners and Contractors Protective; Contingent Employers' Liability; and Sudden and Accidental Pollution coverage;
- (c) Workers Compensation coverage for all employees provided from the Workers' Compensation Board of the Province in which Tenant is resident;
- (d) such other coverage or increases as the Landlord may consider necessary.

### **8.2 Insurance**

All insurance required to be maintained by the Tenant in 8.1 shall be on terms and with insurers to which the Landlord has no reasonable objection. Each of policies required in 8.1 (a), (b) and (d) shall name the Landlord as an additional insured, Tenant shall provide the Landlord with Certificates of Insurance, evidencing all of the above stated insurance coverages, within 5 days of the effective date of this

Agreement. Such Certificates shall contain clauses stating that the Landlord shall receive thirty (30) days' advance notification of any material change and/or termination or cancellation of any and all of the insurance policies herein. It is agreed that the Tenant is not required to include a waiver of subrogation clause in any of its insurance policies.

### **8.3 Release of Landlord by Tenant**

The Tenant agrees that the Landlord shall not be liable to any extent for any personal injury or death of, or loss or damage to any property belonging to the Tenant or any other person in, on or about the Leased Premises unless resulting from the actual gross negligence of the Landlord (but only to the extent of such actual gross negligence) or unless resulting from a breach of the obligations of the Landlord under this Lease. In no event shall the Landlord be liable for any damage which is caused by steam, water, rain or snow which may leak into, issue or flow in the Leased Premises from any other place or quarter.

In addition, the Tenant releases the Landlord from all losses, damage, expenses, costs, claims or liabilities in respect of loss, damage or liabilities required to be insured against by the Tenant.

### **8.4 Indemnity of Landlord by Tenant**

The Tenant shall indemnify and save harmless the Landlord, its directors, officers, employees, servants and agents against and from any and all expenses, costs, damages, suits, actions or liabilities arising or growing out of any default by the Tenant hereunder, and from all claims and demands of every kind and nature made by any person or persons to or against the Landlord, for all and every manner of costs, damages suits, actions or liabilities or expenses incurred by or injury or damage to such person or persons or his, her or their property, which claims or demands may arise however out of the use and occupation of the Leased Premises by the Tenant or its business, or any subtenant or occupant, invitee or licensee authorized by the Tenant or by any assignee or sublessee thereof or other persons entering onto the Leased Premises, and from all costs, counsel fee, expenses and liabilities incurred in or about any such claim or any action or proceeding brought thereon. This provision survives the Termination of the Lease.

Specifically, the Tenant hereby acknowledges and agrees that the water levels in and around the Leased Premises are affected by fluctuating levels from time to time, and that the water levels are not controlled or managed by the Landlord in any way. The Tenant agrees that if any of the buildings, equipment, including but not limited to mobile equipment, structures and Tenant's Improvements or other property on, in or under the Leased Premises are lost or damaged by fluctuating water levels, the Tenant shall indemnify and save harmless the Landlord from all claims, actions, suits and demands of every kind and nature made by any person or persons to or against the Landlord as a result of such loss or damage.

### **8.5 Extended Meaning of "Landlord" and "Tenant"**

For the purposes of every provision of this Lease which includes a release or indemnity, "**Tenant**" shall mean the Tenant, its directors, officers, servants, agents, assistants, employees, invitees, licensees, contractors and subcontractors and all those for whom the Tenant is responsible for in law, and, "**Landlord**" shall mean the Landlord, its officers, directors, servants, agents, assistants, employees, invitees and contractors and all those for whom the Landlord is responsible for in law.

## **ARTICLE 9 BUILDINGS, EQUIPMENT, REPAIRS**

### **9.1 Tenant's Structures**

The parties hereto agree that the following structures and equipment are located on the Leased Premises and are owned by the Tenant (the "Tenant's Assets"):

LIST OF ALL BUILDINGS, STRUCTURES, PLAYGROUND EQUIPMENT

The parties hereto agree that the following structures and equipment are located on/serve the Leased Premises and are owned by the Landlord (the "Landlord's Assets"):

LIST OF ALL WATER DELIVERY INFRASTRUCTURE, BUILDINGS, STRUCTURES, EQUIPMENT OWNED BY VALE  
....

### **9.2 Repairs**

The Tenant shall, with reasonable dispatch and in a good and workmanlike manner and so as to keep the same in good condition and repair, at the Tenant's expense and throughout the Term of this Lease, keep



in good condition and repair the Leased Premises and all of the Tenant's Assets, as well as all electrical and telephone outlets and conduits, all signs, lights, fences and all mechanical and electrical equipment within the boundaries of the Leased Premises including those parts of the water delivery system that are buried or otherwise exist within the boundaries of the Leased Premises.

The Tenant will be responsible for the costs of any damages to roadways, culverts or other road infrastructure, beyond reasonable wear and tear.

The Tenant shall also make good any damage to the Leased Premises during the Lease and which is not Insured Damage, excluding any damage caused by the wilful misconduct or negligent act or omission of the Landlord.

The Landlord shall, with reasonable dispatch and in a good and workmanlike manner and so as to keep the same in good condition and repair, at its own expense and throughout the Term of this Lease, keep in good condition and repair the Landlord's Assets, and all mechanical and electrical equipment within the boundaries of the Leased Premises

#### **9.3 Entry by Landlord to View State of Repair**

The Landlord shall be entitled to enter and view the state of repair of the Leased Premises provided that nothing herein shall be construed so as to require repairs to be made by the Landlord except as expressly provided in this Lease. The Tenant will repair, according to notice, as specified in Section 9.2.

#### **9.4 Notice of Defects**

The Tenant shall give to the Landlord prompt notice of any problem with the Leased Premises or any damage to the Leased Premises or any part thereof howsoever caused; provided that nothing herein shall be construed as to require repairs to be made by the Landlord except as expressly provided in this Lease.

#### **9.5 Termination after Damage**

If the Leased Premises are destroyed or damaged by any cause to the extent that, in the Landlord's architect's reasonable opinion to be given in writing to the Tenant within thirty (30) days after the occurrence of such damage or destruction, they are unable to be repaired or rebuilt within one hundred and eighty (180) days after such destruction or damage, then either the Landlord or the Tenant may terminate this Lease by notice to the other, to be given within thirty (30) days after the giving of the Landlord's architect's reasonable opinion above referred to, and the Tenant shall immediately thereupon surrender the Leased Premises and this Lease to the Landlord and rent shall be apportioned to the date of such destruction or damage (subject to the payment of rent from the date of such destruction or damage to the date of surrender in the same proportion that the part of the Leased Premises fit for occupancy by the Tenant until such surrender of the total area of the Leased Premises).

#### **9.6 Abatement of Rent**

If the Leased Premises are destroyed or damaged, and the Tenant and Landlord receives insurance proceeds as a result by reason of any cause and this Lease shall not have been terminated, each of the Landlord and the Tenant shall, with all reasonable diligence and in compliance this Lease, make all repairs which were their respective obligations pursuant to the terms of this Lease. All Basic Rent payable hereunder shall abate until the Tenant is able to operate its business again on the Leased Premises.

### **ARTICLE 10 ASSIGNMENT AND SUBLETING**

#### **10.1 Consent of Landlord**

The Tenant shall not assign or sub-let or otherwise part with possession of all or any part of the Leased Premises without the prior written consent of the Landlord.

### **ARTICLE 11 TENANT IMPROVEMENTS**

#### **11.1 Tenant Improvements**

The Tenant shall not alter, enlarge or replace any buildings on the Leased Premises (an "Improvement") without first obtaining the Landlord's prior written consent, which consent shall not be unreasonably withheld. Any such Improvement shall be in compliance with all applicable laws, by-laws, regulations and orders of any municipal, provincial, federal governmental authority having jurisdiction over the Leased Premises.

### **11.2 Tenant's Removal of Fixtures and Leasehold Improvements**

The parties agree that all of the trade fixtures, equipment and machinery (not forming part of the Leased Premises) and all of the Tenant's other chattels and personal property in the Leased Premises (collectively, the "**Tenant's Property**") are and shall remain the property of the Tenant. The Tenant shall remove, at its cost, all of the Tenant's Property upon the expiration or other termination of this Lease. The Tenant has the right to remove the Tenant's Property in the ordinary course of its business, for the purpose of repair or replacement or if the same shall have become excess for the Tenant's purposes. The Tenant shall promptly repair at its own expense, any damage caused by removal of any Tenant's Property.

### **11.3 Signs**

The Tenant shall install in, upon or about the Leased Premises any signs connected with its operation in the Leased Premises which shall remain the property of the Tenant. These signs shall be clear and concise, posted at all entrances (including footpaths, roadways, sidewalks), and shall contain the hours of operation, appropriate warnings about trespass and unauthorized occupation or use. The Tenant shall remove such signs upon expiration or termination of the Term hereof, provided that the Tenant shall, at its own expense, make good any damage caused to the Leased Premises by any such installation or removal. All signs shall comply with all applicable municipal by-laws, ordinances and restrictions.

## **ARTICLE 12 EVENTS OF DEFAULT**

### **12.1 Events of Default**

Each of the following shall be an event of default of the Tenant:

- (a) whenever the Tenant defaults in the payment of any Basic Rent, Additional Rent or any other monies required under this Lease when due; or
- (b) whenever the Tenant defaults in the performance of any of its other obligations hereunder and such default can be remedied by the Tenant but is not remedied within 10 days after notice;
- (c) whenever the Tenant defaults in the performance of any of its other obligations hereunder and such default cannot be remedied by the Tenant; or
- (d) if the Tenant is adjudicated to be insolvent or makes an assignment for the benefit of creditors or in bankruptcy, or is declared bankrupt, or is in receivership, or takes the benefit of any legislation that may be in force for bankrupt or insolvent debtors or if any proceedings are taken by or against the Tenant under any winding-up or dissolution legislation, and such adjudication, assignment, declaration or proceedings are not set aside or revoked within 30 days after the making or taking of the same, or if the Tenant makes any sale of its assets under the *Bulk Sales Act* (Ontario), except to a successor in conjunction with a permitted assignment of this Lease; or
- (e) if the Leased Premises or a substantial part thereof are abandoned or become vacant or are not fully used or occupied while capable of use and occupancy, and remain so for a period of seven days (which does not include temporary vacancy or non-use for a longer period when necessary to accommodate the carrying out of renovations in the Leased Premises or a change in use of the Leased Premises); or
- (f) if the Leased Premises or any portion thereof is used by any other person or persons other than the Tenant or for any other purpose than that for which the same were let, in each case without the prior written consent of the Landlord.

### **12.2 Remedies by Landlord**

Upon any event of default of the Tenant, then the current month's Basic Rent and Basic Rent for the next ensuing 3 months shall thereupon become immediately due and payable to the Landlord on demand and, in addition to any remedy which the Landlord may have by this Lease or at law or in equity, the Landlord may, at its option:

- (a) terminate this Lease and re-enter and take possession of the Leased Premises; and/or
- (b) enter the Leased Premises as agent of the Tenant, either by force or otherwise, without being liable for any prosecution therefor, and without being deemed to have terminated this Lease, and relet the Leased Premises or any part thereof as the agent of the Tenant, and receive the rent therefor to be applied on account of the Rent; and/or
- (c) exercise its right of distress and the Tenant hereby waives any present or future limitation on the Landlord's right of distress; and/or
- (d) terminate this Lease and re-enter and take possession of the Leased Premises and provide, by notice to the Tenant, for an immediate payment by the Tenant of an amount equal to the remainder, as of the date of an event of default by the Tenant, of Rent due under this Lease from such date to the last day of the Term of this Lease. If any part of such Rent cannot be absolutely determined as of such date, the Landlord shall estimate same on a reasonable basis. After receipt by the Landlord of such payment and after the

Landlord relets the Leased Premises, the Landlord shall remit to the Tenant, as and when rent is received therefor, an amount equal to (i) the lesser of (1) the amount received by the Landlord for any period and (2) the amount that would have been payable by the Tenant under this Lease for the same period, less (ii) 10% of such sum in (i) as an administration fee to the Landlord; and/or

- (e) without terminating this Lease, demand immediate payment from the Tenant of an amount equal to the remainder, as of the date of an event of default by the Tenant, of Rent due under this Lease from such date to the last day of the Term of the Lease. If any part of such Rent cannot be absolutely determined, as of such date, the Landlord shall estimate same on a reasonable basis. Upon payment of such amount by the Tenant to the Landlord, the Tenant shall be entitled to occupancy of the Leased Premises for the remainder of the Term in accordance with this Lease; and/or
- (f) suspend the supply to the Leased Premises of any benefit, service, utility or Additional Service furnished by the Landlord until the default is cured; and/or
- (g) apply to the courts for an order of specific performance or mandamus or an injunction compelling the Tenant to perform its obligations under this Lease, the Tenant acknowledging that damages are not a sufficient remedy.

### **12.3 Additional Self-help Remedy of Landlord**

In addition to all other remedies the Landlord may have by this Lease, at law or in equity, if the Tenant does not perform any of its obligations hereunder, the Landlord, may at its option perform any of such obligations, after five days' notice to the Tenant or in the event of an emergency without notice, and in such event the cost of performing any of such obligations plus an administrative charge of 15% of such cost shall be payable by the Tenant to the Landlord forthwith on demand together with interest at a rate equal to the Prime Rate of the Bank of Canada plus five (5) percent from the date of the performance of any of such obligations by the Landlord to the date of payment by the Tenant.

### **12.4 Legal Costs**

The Tenant hereby agrees to pay to the Landlord, within five days after demand, all legal fees, on a solicitor and his own client basis, incurred by the Landlord for the enforcement of any rights of the Landlord under this Lease or in the enforcement of any of the provisions of this Lease or in the obtaining of possession of the Leased Premises or for the collection of any monies from the Tenant.

### **12.5 Remedies Cumulative**

The Landlord may from time to time resort to any or all of the rights and remedies available to it in the event of any default hereunder by the Tenant, either by any provision of this Lease, or by statute, or at law or in equity, all of which rights and remedies are intended to be cumulative and not alternative, and the express provisions hereunder as to certain rights and remedies are not to be interpreted as excluding any other or additional rights and remedies available to the Landlord at law or in equity.

### **12.6 Non-Waiver**

Any condoning, excusing or overlooking by either the Landlord or the Tenant of any default by the other at any time or times in respect of any obligation of the other herein shall not operate as a waiver of the non-defaulting party's rights hereunder in respect of such default or so as to defeat or affect in any way the rights of the non-defaulting party in respect of any such continuing or subsequent default by the defaulting party. No waiver shall be implied by anything done or omitted by a party. Any waiver of a particular default shall not operate as a waiver of any subsequent or continuing default.

## **ARTICLE 13 PROPERTY MANAGEMENT**

### **13.1 Property Management**

In addition to the Tenant's Covenants set out in Article 3 above and acknowledging that individuals are trespassing on the Lands/Leased Premises, the Tenant shall be responsible to ensure at all times during the Term that all trespassers are removed from the Lands/Leased Premises and, further, that any and all debris of any nature and/or kind is removed from the Lands/Leased Premises. In particular, and without limiting the generality of the foregoing, such debris shall include drug paraphernalia including but not limited to needles, all of which must be handled as a biohazardous waste.

## ARTICLE 14 OWNERSHIP AND RIGHTS

### 14.1 Landlord Ownership

Notwithstanding any other provision in this Lease, the Landlord retains absolutely any and all subsurface rights under law to the Leased Premises.

### 14.2 Tenant's Buildings

The Landlord and Tenant acknowledge and agree as follows:

- (a) that all buildings and structures situate on the Leased Premises are owned by the Tenant;
- (b) that, despite any improvements on the Leased Premises by the Tenant or prior Lessees, the Tenant agrees such will not confer upon the Tenant any right to use the Leased Premises other than within the terms of this Lease, nor will it give the Tenant any right to or expectation of any future renewal of this Lease or another lease;
- (c) the Tenant hereby agrees that there is no obligation whatsoever for the Landlord to pay compensation for any buildings or structures which currently exist on the Leased Premises or shall hereafter be erected on the Leased Premises, including upon termination of the Lease, whether erected with or without the consent of the Landlord;
- (d) if the Tenant wishes to sell any of its buildings or structures situate on the Leased Premises, the Tenant shall notify the Landlord, in writing, of such intention to sell, at least sixty (60) days before the proposed closing date, and no such sale shall be effective without the Landlord's consent, in writing, which consent may not be unreasonably withheld

## ARTICLE 15 GENERAL

### 15.1 Certain Rules of Interpretation

In this Agreement:

- (e) **Consent** – Whenever a provision of this Agreement requires an approval or consent and the approval or consent is not delivered within the applicable time limit, then, unless otherwise specified, the Party whose consent or approval is required shall be conclusively deemed to have withheld its approval or consent.
- (f) **Governing Law** – This Agreement is a contract made under and shall be governed by and construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable in the Province of Ontario.
- (g) **Headings** – Headings of Articles and Sections are inserted for convenience of reference only and do not affect the construction or interpretation of this Agreement.
- (h) **Including** – Where the word “including” or “includes” is used in this Agreement, it means “including (or includes) without limitation”.
- (i) **No Strict Construction** – The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.
- (j) **Severability** – If, in any jurisdiction, any provision of this Agreement or its application to any Party or circumstance is restricted, prohibited or unenforceable, the provision shall, as to that jurisdiction, be ineffective only to the extent of the restriction, prohibition or unenforceability without invalidating the remaining provisions of this Agreement and without affecting the validity or enforceability of such provision in any other jurisdiction, and without affecting its application to other Parties or circumstances.

### 15.2 Entire Agreement

This Agreement, and the agreements and other documents required to be delivered pursuant to this Agreement, constitute the entire agreement between the Parties and set out all the covenants, promises, warranties, representations, conditions and agreements between the Parties in connection with the subject matter of this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, pre-contractual or otherwise. There are no covenants, promises, warranties, representations, conditions or other agreements, whether oral or written, pre-contractual or otherwise, express, implied or collateral, whether statutory or otherwise, between the Parties in connection with the subject matter of this Agreement except as specifically set forth in this Agreement and any document required to be delivered pursuant to this Agreement.

### 15.3 No Partnership

Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto, it being understood and agreed that neither the method of computation of Rent nor any other provisions contained herein, nor in acts of the parties herein shall be deemed to create any relationship between the parties other than the relationship of landlord and tenant.

### 15.4 Force Majeure

In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labour troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Lease, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay, provided however that nothing herein shall be deemed to extend any specific date set out in this Lease. Notwithstanding anything herein contained, the provisions of this Section 15.4 shall not operate to excuse the Tenant from the prompt payment of Rent or any other payment required by the terms of this Lease nor shall the provisions of this Section 15.4 in any way extend the length of the Term. This Section 15.4 shall not operate when the delay or restriction is due to the lack of or unavailability of funds.

### 15.5 Time of the Essence

Time shall be of the essence of this Lease.

### 15.6 Waiver

Failure by either party hereto to require performance of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or of any other term, covenant or condition herein contained. The subsequent acceptance of Rent hereunder by the Landlord shall not be deemed to be a waiver of any preceding breach by the Tenant, as the case may be, of any term, covenant or condition of this Lease, other than the failure of the Tenant to pay the particular Rent so accepted, regardless of the Landlord's or Tenant's knowledge of such preceding breach at the time of acceptance or payment, as the case may be, of such Rent. No covenant, term or condition of this Lease shall be deemed to have been waived by the Landlord or the Tenant unless such waiver be in writing by the waiving party.

### 15.7 Compliance with the Planning Act

It is an express condition of the within Lease, and the Landlord and the Tenant so agree and declare, that the provisions of Section 50 of the *Planning Act* (Ontario) and amendments thereto, or replacements thereof, be complied with if applicable in law.

### 15.8 Registration

The Tenant shall not register this Lease in full on the title to the Leased Premises. If the Tenant wishes to register a notice of this Lease, the Tenant shall deliver the form of notice to the Landlord for its prior written approval and a photocopy of the registered notice of this Lease after registration.

In the event of any conflict between the terms of this Lease and the terms of such notice, the terms of this Lease shall prevail.

The Tenant agrees that it will, at its sole expense, discharge and withdraw from title and such registration within 30 days after the expiration or sooner termination of this Lease. If such registration is not discharged and withdrawn during the aforesaid time, the Landlord shall have the right and is hereby appointed by the Tenant as its agent and attorney to prepare, execute and register such documentation as is required to discharge and withdraw any such registration.

### 15.9 Notice

Any notice, consent or approval required or permitted to be given in connection with this Agreement (in this Section referred to as a "**Notice**") shall be in writing and shall be sufficiently given if delivered (whether in person, by courier service or other personal method of delivery), or if transmitted by facsimile or e-mail:

- (a) in the case of the Landlord, to:  
**Attention: Legal Department**  
**Vale Inco Limited**  
**18 Rink Street**  
**Copper Cliff, Ontario P0M 1N0**  
**Phone: (705) 682-8337**

Fax: (705) 682-6601  
E-mail: Syrina.Patterson@vale.com

(b) in the case of the Tenant, to:  
66 Charlotte Street  
Port Colborne, Ontario L3K 3C8

Any Notice delivered or transmitted to a Party as provided above shall be deemed to have been given and received on the day it is delivered or transmitted, provided that it is delivered or transmitted on a business day prior to 5:00 p.m. local time in the place of delivery or receipt. If the Notice is delivered or transmitted after 5:00 p.m. local time or if the day is not a business day, then the Notice shall be deemed to have been given and received on the next business day.

Any Party may, from time to time, change its address by giving Notice to the other Parties in accordance with the provisions of this Section.

**15.10 Amendments**

No amendment, supplement, modification or waiver or termination of this Agreement and, unless otherwise specified, no consent or approval by any Party, is binding unless executed in writing by the Party to be bound.

**15.11 Enurement**

This Agreement enures to the benefit of and is binding upon the Parties and their respective successors (including any successor by reason of amalgamation of any Party) and permitted assigns.

**15.12 Execution and Delivery**

This Agreement may be executed by the Parties in counterparts and may be executed and delivered by facsimile and or electronic mail format and all the counterparts and facsimiles or electronic mail formats together constitute one and the same agreement.

**IN WITNESS OF WHICH** the parties have duly executed this agreement under seal.

**VALE CANADA LIMITED**

Per: \_\_\_\_\_  
Name: Ricus Grimbeek  
Title: Director of Operations, Canada, U.K.  
and Asian Refineries  
\_\_\_\_\_  
*I have authority to bind the corporation.*

**THE CORPORATION OF THE CITY OF PORT  
COLBORNE**

Per: \_\_\_\_\_  
Name:  
Title:  
  
\_\_\_\_\_  
Name:  
Title:  
\_\_\_\_\_

**Schedule A – Legal Description**

The Leased Premises for part of the following lands described on PIN 64457-0155 (LT):

LT 1 W/S DAVIS ST, 2 W/S DAVIS ST, 3 W/S DAVIS ST, 4 W/S DAVIS ST, 1 E/S MITCHELL ST, 2 E/S MITCHELL ST, 3 E/S MITCHELL ST, 4 E/S MITCHELL ST, 6 N/S LAKE ST, 7 N/S LAKE ST PL 849; WATER LT IN FRONT OF LT 24 CON 1 HUMBERSTONE; PT PARKLT 1 S/S DURHAM ST, 2 S/S DURHAM ST, 3 S/S DURHAM ST, 4 S/S DURHAM ST, 5 S/S DURHAM ST PL 849; PT LT 24-26 CON 1 HUMBERSTONE AS IN HU9797 EXCEPT SRO PT 1, 2, 3, 4, 5, 6, 7, 8, 59R5789 AND SRO PARTS 1 & 2 59R16580; PT DAVIS ST, LAKE ST PL 849 CLOSED BY PC10991, PC10992, RO98484, RO349371, AKA LAKE RD CLOSED BY RO98484; PT WATER LT IN FRONT OF LT 25 CON 1 HUMBERSTONE; PT WATER LT IN FRONT OF LT 26 CON 1 HUMBERSTONE; PT RDAL BTN LOTS 24 AND 25 CON 1 HUMBERSTONE CLOSED BY HU9948 S OF DURHAM ST AS IN AA7582, HU10054, HU9797, HU9796, HU10122, PC8668, PC10990, RO98485, PT 1, 59R2975, HU9793 EXCEPT HU10055, S/T & T/W RO549364; S/T RO322910; PORT COLBORNE

Schedule B – Sketch

