

MASTER AGREEMENT

This Master Agreement (this "Agreement") is entered into on February 10, 2010 (the "Execution Date"), among (i) CAP S.A., a corporation organized and existing under the laws of Chile, with its principal office at Avenida Gertrudis Echeñique 220, Las Condes, Santiago, Chile ("CAP"); (ii) Compañía Minera del Pacífico S.A., a corporation organized and existing under the laws of Chile, with its principal office at Av. Pedro Pablo Muñoz 675, La Serena, Chile ("CMP"); (iii) Compañía Minera Huasco S.A., a corporation organized and existing under the laws of Chile, with its principal office at Serrano 1755, casa 1, Vallenar, Chile ("CMH"); and (iv) M.C. Inversiones Limitada, a company organized as a *sociedad de responsabilidad limitada* and existing under the laws of Chile, with its principal office at Avenida Apoquindo 4499, Floor 14, Las Condes, Santiago, Chile ("MCI" and together with CAP, CMP and CMH and their respective successors and assigns, the "Parties"). Certain capitalized terms used in this Agreement are defined in Exhibit A and other capitalized terms used in this Agreement are defined in the Sections of this Agreement where they first appear.

WITNESSETH:

WHEREAS, CAP owns three million, five hundred twenty-one thousand, one hundred eight (3,521,108) of the outstanding shares of CMP and certain other Persons ("Minority Shareholders") own eighteen (18) of the outstanding shares of CMP, representing ninety-nine and nine thousand nine hundred ninety-five millionths percent (99.9995%) and five millionths (0.0005%) of such shares respectively;

WHEREAS, MCI is owned, directly or indirectly, by Mitsubishi Corporation, a Japanese corporation ("MC");

WHEREAS, each of CMP and MCI owns one million, fifty thousand (1,050,000) shares of the outstanding shares of CMH, representing one hundred percent (100%) of the total outstanding shares;

WHEREAS, on this date the Parties, as applicable, have agreed, subject to certain conditions, to (i) the acquisition by MCI of an ownership interest in CMP equivalent to fifteen and eight thousand eight hundred ten millionth percent (15.8810%) of CMP through a Statutory Merger under Chilean Applicable Law between CMH and CMP (the "Merger"), with CMP being the surviving entity (the "Surviving Corporation") and (ii) subsequent to the completion of the Merger, the implementation of a Capital Increase in the Surviving Corporation, to take place on the Capital Increase Closing Date;

WHEREAS, subject to the satisfaction of the various conditions precedent and to the other terms and conditions set forth in this Agreement, including the approval or ratification of this Agreement and the Contemplated Transactions by the shareholders of CAP at a CAP Shareholders Meeting, and all other Required Corporate Actions, the Parties intend to consummate the Merger by not later than September 30, 2010, and to consummate the Capital Increase by not later than December 31, 2010;



WHEREAS, upon completion of the Capital Increase, MCI will hold twenty-five percent (25%) of the issued and outstanding capital stock of the Surviving Corporation, CAP will hold seventy-four and nine thousand nine hundred ninety-five millionth percent (74.9995%) of the issued and outstanding stock of the Surviving Corporation and Minority Shareholders will hold the remaining five millionth percent (0.0005%) of the issued and outstanding stock of the Surviving Corporation;

WHEREAS, the execution of this Agreement and the Merger have been approved by the (i) MC BOD on January 22, 2010; (ii) CAP BOD on February 9, 2010; (iii) CMP BOD on February 9, 2010; and (iv) CMH BOD on February 9, 2010;

WHEREAS, the Capital Increase has been approved by the (i) MC BOD on January 22, 2010; (ii) CAP BOD on February 9, 2010; and (iii) CMP BOD on February 9, 2010;

WHEREAS, a shareholders agreement in the form of Exhibit B attached hereto between CAP and MCI regarding the Surviving Corporation (the "**Shareholders Agreement**") has been approved by the (i) CAP BOD on February 9, 2010; and (ii) the MCI BOD on February 7, 2010;

WHEREAS, based on such approvals, the Parties, as applicable, hereby agree to enter into this Agreement in order to provide for certain actions that need to take place at the level of CAP, CMP, CMH and MCI to realize and consummate the Merger, including certain of the Required Corporate Actions;

WHEREAS, the Parties, as applicable, have agreed that, in order to materialize and complete the Capital Increase and to implement the Shareholders Agreement, certain actions need to take place at the level of CAP, CMP, CMH and MCI, including certain of the Required Corporate Actions;

WHEREAS, MCI has conducted and completed for its own and exclusive benefit a due diligence review of certain information that CAP and CMP have made available relating to CMP, CMH, *Compañía Minera La Jaula Sociedad Contractual Minera, Sociedad de Ingeniería y Movimientos de Tierra del Pacífico Ltda., Minera Hierro Atacama S.A., Manganesos Atacama S.A., Puerto Las Losas S.A., Pacific Ores and Trading B.V., Pacific Ores and Trading Curacao N.V. and Compañía Distribuidora de Petróleos del Pacífico Ltda.*; and

WHEREAS, the Parties desire to set forth the terms and conditions under which the Merger, the Capital Increase and the other Contemplated Transactions shall take place.

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

1. MERGER AND CAPITAL INCREASE

The Parties agree to and, to the extent necessary, shall cause the following to occur:



- 1.1 Merger of CMH into CMP. This Agreement is effective as of the Execution Date. Subject to the terms and conditions set forth in this Agreement, CAP and MCI agree and bind themselves to execute the Merger and declare that the Merger shall be effective as of the Merger Closing Date. As a result of the Merger, CMP will absorb CMH, CMP being the Surviving Corporation, and the separate existence of CMH shall cease without the need to liquidate the same.
- 1.2 Merger Closing. CAP shall take all action necessary under Chilean Applicable Law to call and give notice of, and cause to be held a CAP Shareholders Meeting no later than forty-five (45) days after the Execution Date in order to ratify this Agreement and the Shareholders Agreement, as well as approve the Merger, the Capital Increase and the other Contemplated Transactions.
- 1.2.1 CMH and CMP Action. If the Merger is approved at a CAP Shareholders Meeting, the Merger shall be then approved at shareholders meetings of each of CMH and CMP on the day that shall be not later than eighteen (18) calendar days (or the next succeeding Business Day if such date is not a Business Day) immediately following the date on which (i) all of the other conditions precedent set forth in Section 2.1 have been satisfied or waived by CAP (other than those conditions that are expressly required to be satisfied at the closing of the Merger) and CAP has given MCI notice thereof, and (ii) all of the other conditions precedent set forth in Section 2.2 have been satisfied or waived by MCI (other than those conditions that are expressly required to be satisfied at the closing of the Merger) and MCI has given CAP notice thereof (the "**Merger Closing Date**") and CAP and MCI shall take all necessary actions to that effect in accordance with Sections 4.1.4 and 4.1.5, as applicable, and to record the CMH Merger Minutes (as defined below) and the CMP Merger Minutes (as defined below) into public deeds on the Merger Closing Date and to promptly complete the legalization formalities required under Chilean Applicable Law and as set forth in Section 1.2.1. The date and time that all such legalization formalities are completed is referred to in this Agreement as the "**Merger Completion Date**".
- 1.2.2 Counterparts of Shareholders Agreement. CAP shall deliver to MCI a counterpart of the Shareholders Agreement executed by CAP within one (1) day (or the next succeeding Business Day if such date is not a Business Day) after the Execution Date. MCI shall deliver to CAP a counterpart of the Shareholders Agreement executed by MCI within one (1) day (or the next succeeding Business Day if such date is not a Business Day) after the Execution Date.
- 1.2.3 Deliveries by CAP and CMP. Subject to the satisfaction or waiver by CAP of the conditions set forth in Section 2.1, CAP and/or CMP, as applicable, shall take the following actions:



- (a) Within one (1) Business Days after the approval of this Agreement, the Shareholders Agreement and the Contemplated Transactions by the shareholders of CAP at a CAP Shareholders Meeting, CAP shall deliver to MCI evidence of such approval reasonably satisfactory to MCI.
- (b) On the Merger Closing Date:
- (i) CAP shall sign the minutes of the CMP Merger Shareholders Meeting (which shall be held in accordance with Section 1.8.1) substantially in the form of Exhibit E attached hereto (the "CMP Merger Minutes") and the attendance sheet included in the CMP Merger Minutes and shall cause the CMP Merger Minutes to be signed concurrently by the individuals acting as Chairman and Secretary at the CMP Merger Shareholders Meeting;
 - (ii) CMP shall sign the minutes of the CMH Merger Shareholders Meeting (which shall be held in accordance with Section 1.8.2) substantially in the form of Exhibit F attached hereto (the "CMH Merger Minutes") and the attendance sheet included in the CMH Merger Minutes and shall cause the CMH Merger Minutes to be signed concurrently by the individuals acting as Chairman and Secretary at the CMH Merger Shareholders Meeting;
 - (iii) CAP shall cause CMP to cause the corresponding Notary Public attending the CMP Merger Shareholders Meeting and the CMH Merger Shareholders Meeting to sign the certificate included in the CMP Merger Minutes and in the CMH Merger Minutes, respectively, immediately succeeding the signing of such minutes by all of the shareholders that attended such shareholders meetings;
 - (iv) CAP shall cause each of the CMP Merger Minutes and the CMH Merger Minutes to be recorded into public deed at the office of the applicable Notary Public referred to in Section 1.2.3(b)(iii);
 - (v) CMP shall, and CAP shall cause CMP to, have at least three (3) excerpts of each public deed referred to Section 1.2.3(b)(iv) be authorized by the abovementioned corresponding Notary Public; and
 - (vi) CAP shall cause CMP to, and CMP shall, register MCI in CMP's shareholder registry as a shareholder of CMP as of such date.



- (c) On the Business Day immediately after the Merger Closing Date, CAP shall cause the CMP BOD to, and the CMP BOD shall, pass the following resolutions: (i) issue the shares of the Surviving Corporation to be exchanged for shares of CMH as provided in Section 1.5.2, (ii) agree for the share exchange to take place on the second Business Day immediately following the Merger Closing Date, and (iii) agree to publish on the second Business Day immediately following the abovementioned CMP BOD a notice informing the date on which the share exchange will commence.
 - (d) Within two (2) Business Days immediately following the Merger Closing Date, CAP shall cause an authorized excerpt of (i) the public deed containing the CMP Merger Minutes to be filed for publication in the Official Gazette and registration with the Registry of Commerce of La Serena, and (ii) the public deed containing the CMH Merger Minutes to be filed for publication in the Official Gazette and registration with the Registry of Commerce of Vallenar.
 - (e) On the second Business Day immediately following the Merger Closing Date, CAP shall cause CMP to, and CMP shall, exchange the shares of the Surviving Corporation for shares of CMH as provided in Section 1.5.2.
 - (f) On the second Business Day immediately following the Merger Closing Date, CAP shall cause CMP to deliver to MCI evidence of the registration of the Shareholders Agreement in the shareholder registry of the Surviving Corporation.
- 1.2.4 Deliveries by MCI. Subject to the satisfaction or waiver by MCI of the conditions set forth in Section 2.2, MCI shall:

- (a) sign on the Merger Closing Date the CMH Merger Minutes and the attendance sheet included therein, and
- (b) on the second Business Day after the Merger Closing Date, deliver its CMH shares in exchange for the shares of the Surviving Corporation as provided in Section 1.5.2.

1.3 Organizational Effects of the Merger. The Merger shall have the effects provided under Chilean Applicable Law and shall be implemented as set forth in this Agreement. Upon the Merger Completion Date:

- 1.3.1 Surviving Corporation Capitalization. The total authorized capital stock of the Surviving Corporation shall consist of four million, one hundred eighty-five thousand, eight hundred eighty-six (4,185,886) shares.

1.3.2 Surviving Corporation Bylaws. The bylaws of the Surviving Corporation shall be amended and restated to read in their entirety as set forth in Exhibit C.

1.3.3 Surviving Corporation Directors. Not later than three (3) days prior to the CMP Merger Shareholders Meeting, each of CAP and MCI shall, by notice to the other Parties, designate the names of the individuals to be elected as directors of the Surviving Corporation and each such director shall serve until such director's earlier death, resignation, retirement, disqualification or removal (or as otherwise provided under Sections 4.1.9 and 4.5.7), in which case a successor shall be elected in accordance with the Shareholders Agreement and Chilean Applicable Law.

1.4 Payment of Dividends.

1.4.1 Pre-Merger CMP Dividend. Prior to the Merger, CAP shall take all necessary actions to cause CMP to distribute cash dividends as follows:

<u>Total Amount of Dividend Payment</u>	<u>Date of Dividend Distribution</u>
US\$23,750,000	Promptly following divestiture of PLL

1.4.2 CMH Dividend. Except as provided in this Section 1.4, CAP, CMP and MCI agree that CMH shall not distribute any dividends to its shareholders at any time after the Execution Date.

1.4.3 Further Discussions. MCI and CAP agree that, after the Execution Date, the Parties will discuss and analyze in good faith the possibility of allowing for the payment of additional dividends and the consequences of paying such dividends by CMP and CMH prior to the Merger Closing Date, taking into account all the legal, corporate, tax and financial situations of both CAP and MCI. Any eventual agreement in this respect should not affect the economics of the Contemplated Transactions for the Parties.

1.5 Conversion of Shares. Without any further action on the part of CAP, the Minority Shareholders or MCI, on the Merger Closing Date (or on the second Business Day following the Merger Closing Date in the case of Section 1.5.2):

1.5.1 Termination of Existing CMH Shares. The Existing CMH Shares shall cease to exist and no consideration shall be delivered in exchange therefor, other than the shares issued by the Surviving Corporation to MCI as a result of the Merger;

1.5.2 Exchange of Shares. CAP shall cause one million, fifty thousand (1,050,000) Existing CMH Shares that are held by MCI to be exchanged for



six hundred sixty-four thousand seven hundred sixty (664,760) fully paid, non-par value shares of the Surviving Corporation;

- 1.5.3 No Surviving Corporation Shares to CMP. CMP, as shareholder of CMH, shall not receive any shares of the Surviving Corporation as a consequence of the Merger; and
- 1.5.4 Surviving Corporation Share. The Surviving Corporation shall exchange each existing CMP Share that is held by CAP or each of the Minority Shareholders for one (1) fully paid, non-par value share of the Surviving Corporation evidencing the new capital of the Surviving Corporation and the number of shares in which it is divided.
- 1.6 [Reserved.]
- 1.7 Declaration of Dissolution. As a result of the Merger, CMH shall be dissolved without the need to liquidate same.
- 1.8 Facilitation of Merger. In order to implement the Merger, following the delivery of the notices of satisfaction of certain conditions precedent referred to in Section 2.1:
 - 1.8.1 CMP Merger Shareholders Meeting. On the Merger Closing Date, CAP shall cause to be held a CMP shareholders meeting (the "**CMP Merger Shareholders Meeting**") for CMP to approve the Merger in accordance with the terms and conditions and for the consideration set forth herein and to approve the following, among others: (i) the Financial Statements of both CMP and CMH; (ii) the economic valuation of both CMP and CMH agreed to by CAP and MCI; (iii) the expert report (*informe pericial*), including the share exchange ratio report and their respective conclusions, as required by Chilean Applicable Law; and (iv) the amendment of the bylaws of CMP, as the Surviving Corporation, as a consequence of the Merger.
 - 1.8.2 CMH Merger Shareholders Meeting. On the Merger Closing Date, CMP and MCI, as the shareholders of CMH, shall hold a CMH shareholders meeting (the "**CMH Merger Shareholders Meeting**") for CMH to approve the Merger in accordance with the terms and conditions and for the consideration set forth herein and to approve the following, among others: (i) the Financial Statements of both CMP and CMH; (ii) the economic valuation of both CMP and CMH agreed to by CMP and MCI; (iii) the expert report (*informe pericial*), including the share exchange ratio report and their respective conclusions, as required by Chilean Applicable Law; and (iv) the bylaws of CMP.
 - 1.8.3 Surviving Corporation Share Issuance. CAP shall cause the Surviving Corporation to perform all legal necessary actions to issue six hundred sixty-four thousand seven hundred sixty (664,760) shares of the Surviving Corporation to MCI not later than two (2) Business Days immediately following the Merger Closing Date.



- 1.9 Tax Consequences. It is essential for MCI that the Merger is implemented in such a manner as to be considered a Statutory Merger, and the Parties commit to adopt and to take all necessary resolutions and actions in that regard.
- 1.10 Capital Increase Closing. The Capital Increase shall be approved at a shareholders meeting of the Surviving Corporation (the "**Surviving Corporation Capital Increase Shareholders Meeting**") to be held after the Merger Completion Date and not later than eighteen (18) calendar days (or the next succeeding Business Day if such date is not a Business Day) after the date on which all of the conditions precedent set forth in Section 2.3 have been satisfied or waived by MCI (the "**Capital Increase Closing Date**").
- 1.10.1 Deliveries by CAP and the Surviving Corporation. CAP shall and shall cause the Surviving Corporation to take the following actions:
- (a) On the Capital Increase Closing Date:
 - (i) CAP shall sign the minutes of the Surviving Corporation Capital Increase Shareholders Meeting substantially in the form of Exhibit G attached hereto (the "**Surviving Corporation Capital Increase Minutes**") and the attendance sheet included therein and shall cause such Surviving Corporation Capital Increase Minutes to be signed concurrently by the individuals acting as Chairman and Secretary at the Surviving Corporation Capital Increase Shareholders Meeting;
 - (ii) CAP shall cause the Surviving Corporation to cause the Notary Public attending the Surviving Corporation Capital Increase Shareholders Meeting to sign the certificate included in the **Surviving Corporation Capital Increase Minutes**, immediately succeeding the signing of such minutes by all of the shareholders that attended the Capital Increase Shareholders Meeting;
 - (iii) CAP shall cause the Surviving Corporation to cause the recording of the Surviving Corporation Capital Increase Minutes into public deed at the office of the Notary Public referred to in Section 1.10.1(a)(ii); and
 - (iv) CAP shall cause the Surviving Corporation to have at least three (3) excerpts of the public deed referred to in Section 1.10.1(a)(iii) authorized by the abovementioned Notary Public.
 - (b) On the Business Day immediately after the Capital Increase Closing Date, CAP shall cause the Surviving Corporation BOD to, and the Surviving Corporation BOD shall, pass the following resolutions: (i)



issue the shares of Surviving Corporation representing the Capital Increase, (ii) agree to the date for commencement of the applicable preemptive rights period (the "**Preemptive Rights Period**"), which shall not be later than the seventh Business Day immediately following the Capital Increase Closing Date, and (iii) agree to publish the notices required by articles 29 and 104 of the Regulation (*Reglamento de Sociedades Anónimas*) of the Chilean Corporations Act (*Ley sobre Sociedades Anónimas*) to that effect.

- (c) Within two (2) Business Days immediately following the Capital Increase Closing Date, CAP shall cause the Surviving Corporation to cause an authorized excerpt of the public deed containing the Surviving Corporation Capital Increase Minutes to be filed for publication in the Official Gazette and registration with the Registry of Commerce of La Serena.
- (d) On the first day of the Preemptive Rights Period, (i) CAP shall execute a preemptive rights assignment agreement regarding all of its preemptive rights related to the Capital Increase, substantially in the form of Exhibit H attached hereto (the "**Preemptive Rights Assignment Agreement**"), (ii) CAP shall cause the Surviving Corporation to, and the Surviving Corporation shall, execute with MCI a share subscription agreement substantially in the form of Exhibit I attached hereto (the "**Share Subscription Agreement**") regarding all the shares issued by the Surviving Corporation as part of the Capital Increase (other than those corresponding to the Minority Shareholders), and (iii) CAP shall cause the Surviving Corporation to, and the Surviving Corporation shall, register those shares in the name of MCI in the Surviving Corporation's shareholder registry as of such date, as fully paid (as long as MCI has complied with Section 1.10.2(b)(iii)).

1.10.2 Deliveries by MCI. MCI shall take the following actions:

- (a) On the Capital Increase Closing Date, MCI shall sign the Surviving Corporation Capital Increase Minutes and the attendance sheet included therein.
- (b) On the first day of the Preemptive Rights Period, MCI shall (i) execute the Preemptive Rights Assignment Agreement, (ii) execute the Share Subscription Agreement, and (iii) pay the Subscription Price (as defined in, and in accordance with the terms of, the Share Subscription Agreement), being an amount equal to Four Hundred One Million U.S. Dollars (US\$401,000,000). The date on which the Subscription Price is paid to the Surviving Corporation is called the "**Capital Increase Payment Date.**"



2. CONDITIONS PRECEDENT

2.1 CAP's and CMP's Conditions to Merger. The obligations of CAP and CMP to effect the Merger and the transactions related to the Merger contemplated by this Agreement are subject to the satisfaction or waiver by CAP on or before the date of the Merger Closing Date of each of the following conditions:

2.1.1 Accuracy of Representations. Each of the representations and warranties of MCI set forth in this Agreement shall have been accurate (disregarding any qualifications as to materiality or MAE on MCI) as of the Execution Date and shall be accurate (disregarding any qualifications as to materiality or MAE on MCI) as of the date of the Merger Closing Date as if made on and as of the date of such meeting (other than representations and warranties that address matters only as of a particular date that shall have been accurate as of such particular date), except in each case for any failures of such representations and warranties to be accurate that, individually or in the aggregate, do not have and would not reasonably be expected to have or cause a MAE on MCI, and MCI shall have provided CAP with a certificate from an Executive Officer of MCI to this effect.

2.1.2 Performance of Covenants. Each of the covenants and obligations that MCI is required to perform or comply with at or prior to the date of the Merger Closing Date shall have been performed or complied with in all material respects and MCI shall have provided CAP with a certificate from an Executive Officer of MCI to this effect.

2.1.3 Execution of Shareholders Agreement. MCI shall have executed and delivered the Shareholders Agreement.

2.1.4 Consents. All necessary Consents required to be obtained, made or given in connection with the Contemplated Transactions shall have been obtained, made or given and shall be in full force and effect, including, without limitation, all Consents set forth in Schedule 2.1.4, and all other Consents under Applicable Law in jurisdictions other than Chile that require the issuance of a merger clearance notice or other Consent in connection with the Contemplated Transactions, except for any failure to obtain such Consents that, individually or in the aggregate, do not have or cause a material adverse effect on the ability of CAP or CMP to consummate the Merger, other than those necessary Consents that are not obtained and such failure to obtain such necessary Consents is attributable to a failure on the part of CAP, CMP or CMH to perform any material obligation required to be performed by such party at or prior to the Merger Closing Date.

2.1.5 No Restraints. No temporary restraining order, preliminary or permanent injunction or other order preventing the consummation of the Contemplated Transactions shall have been issued by any court of competent jurisdiction or any other Governmental Body and be in effect and there shall not be any

Applicable Law enacted, promulgated or adopted that makes consummation of the Contemplated Transactions illegal or otherwise prohibits or interferes with the consummation of the Contemplated Transactions as contemplated herein.

- 2.1.6 No Legal Proceedings. There shall not be pending or threatened any Legal Proceeding (other than those initiated by or under the control of CAP or any CMP Company): (i) challenging or seeking to restrain or prohibit the consummation of the Contemplated Transactions; (ii) relating to the Contemplated Transactions and seeking to obtain from any of the Parties or any of their Subsidiaries any damages that may be material to CMP or CMH; (iii) seeking to prohibit or limit in any material respect CAP's ability to vote, receive dividends with respect to or otherwise exercise ownership rights with respect to the stock of the Surviving Corporation; (iv) which would materially and adversely affect the right of the Surviving Corporation to own the assets or operate the business of CMH; or (v) seeking to compel any of the CMP Companies to dispose of or hold separate any material assets as a result of the Contemplated Transactions.
- 2.1.7 CAP Shareholder Approval. The shareholders of CAP, at a CAP Shareholders Meeting, shall have approved or ratified the execution and delivery of this Agreement and the Shareholders Agreement, and shall have approved the Merger, the Capital Increase and the other Contemplated Transactions, all by the favorable vote of two-thirds of the issued shares entitled to vote at such CAP Shareholders Meeting.
- 2.1.8 Execution and Delivery of Promise Agreement related to Capital Increase. MCI shall have validly executed and delivered in connection with the Capital Increase a promise agreement by and between CAP and MCI, substantially in the form of Exhibit J attached hereto (the "**Preemptive Rights Assignment Promise**"), with the Preemptive Rights Assignment Agreement, and the Share Subscription Agreement.
- 2.2 MCI's Conditions to Merger. The obligations of MCI to effect the Merger and the transactions related to the Merger contemplated by this Agreement are subject to the satisfaction or waiver by MCI on or before the Merger Closing Date of each of the following conditions:
 - 2.2.1 Accuracy of Representations. Each of the representations and warranties of CAP and CMP set forth in this Agreement shall have been accurate (disregarding any qualifications as to materiality or Material Adverse Effect on CMP) as of the Execution Date and shall be accurate (disregarding any qualifications as to materiality or Material Adverse Effect on CMP) as of the date of the Merger Closing Date as if made on and as of the date of such meeting (other than representations and warranties that address matters only as of a particular date that shall have been accurate as of such particular date), except in each case for any failures of such representations and



warranties to be accurate that, individually or in the aggregate, do not have and would not reasonably be expected to have or cause a Material Adverse Effect on CMP, and each of CAP and CMP shall have provided MCI with a certificate from an Executive Officer of such Entity to this effect.

- 2.2.2 Performance of Covenants. Each of the covenants and obligations that CAP and CMP are required to perform or comply with at or prior to the date of the Merger Closing Date shall have been performed or complied with in all material respects and each of CAP and CMP shall have provided MCI with a certificate from an Executive Officer of such Entity to this effect.
- 2.2.3 Execution of Shareholders Agreement. CAP shall have executed and delivered the Shareholders Agreement.
- 2.2.4 Consents. All necessary Consents required to be obtained, made or given in connection with the Merger and transactions related to the Merger shall have been obtained, made or given and shall be in full force and effect, including, without limitation, all Consents set forth in Schedule 2.2.4, and all other Consents under any Applicable Law in jurisdictions other than Chile that require the issuance of a merger clearance notice or other Consent in connection with the Contemplated Transactions, except for any failure to obtain such Consents that, individually or in the aggregate, do not have or cause a material adverse effect on the ability of MCI to consummate the Merger, other than those necessary Consents that are not obtained and such failure to obtain such necessary Consents is attributable to a failure on the part of MCI to perform any material obligation required to be performed by MCI at or prior to the Merger Closing Date.
- 2.2.5 No Material Adverse Effect. Since the Execution Date, there shall not have occurred any event that would reasonably be expected to result in a Material Adverse Effect on CMP.
- 2.2.6 No Restraints. No temporary restraining order, preliminary or permanent injunction or other order preventing the consummation of the Contemplated Transactions shall have been issued by any court of competent jurisdiction or any other Governmental Body and shall be in effect and there shall not be any Applicable Law enacted, promulgated or adopted that makes consummation of the Contemplated Transactions illegal or otherwise prohibits or interferes with the consummation of the Contemplated Transactions as contemplated herein.
- 2.2.7 No Legal Proceedings. There shall not be pending or threatened any Legal Proceeding (other than those initiated by or under the control of MC or its Subsidiaries): (i) challenging or seeking to restrain or prohibit the consummation of any of the Contemplated Transactions; (ii) relating to the Contemplated Transactions and seeking to obtain from any of the Parties or any of their Subsidiaries any damages that may be material to CMP or



CMH; (iii) seeking to prohibit or limit in any material respect MCI's ability to vote, receive dividends with respect to or otherwise exercise ownership rights with respect to the stock of the Surviving Corporation; (iv) which would materially and adversely affect the right of the Surviving Corporation to own the assets or operate the business of CMH; (v) seeking to compel any of the CMP Companies to dispose of or hold separate any material assets as a result of the Contemplated Transactions; or (vi) which, if adversely determined, could have a Material Adverse Effect on CMP or CMH.

2.2.8 CAP Shareholder Approval. The shareholders of CAP, at a CAP Shareholders Meeting, shall have approved or ratified the execution and delivery of this Agreement and the Shareholders Agreement, and shall have approved the Merger, the Capital Increase and the other Contemplated Transactions, all by the favorable vote of two-thirds of the issued shares entitled to vote at such CAP Shareholders Meeting.

2.2.9 Execution and Delivery of Promise Agreement related to Capital Increase. CAP shall have validly executed and delivered in connection with the Capital Increase the Preemptive Rights Assignment Promise.

2.3 Condition to Capital Increase. The obligation of MCI to effect the Capital Increase and the transactions related to the Capital Increase contemplated by this Agreement is subject to the satisfaction or waiver by MCI, on or before the Capital Increase Closing Date of the following:

2.3.1 Consent. MCI shall have obtained, made or given the Consent required to be obtained, made or given in connection with the Capital Increase from the Japan Fair Trade Commission, which shall be in full force and effect on the Capital Increase Closing Date.

3. REPRESENTATION AND WARRANTIES

3.1 Representations and Warranties of CAP and CMP. CAP and CMP jointly and severally represent and warrant to MCI as follows:

3.1.1 Due Incorporation and Good Standing.

- (a) CAP is duly incorporated and organized, validly existing and in good standing under the Chilean Applicable Law, has the corporate capacity and is duly authorized and licensed to own its assets and carry on its business as presently owned and carried on by it.
- (b) The CMP Companies: (i) are duly incorporated or organized and validly existing in good standing under the Applicable Law of the jurisdiction of their incorporation or organization; (ii) have the full corporate capacity to conduct their respective businesses as now being conducted; (iii) are duly authorized and licensed to own their respective assets; (iv) have the full corporate capacity to perform all



of their respective obligations under Contracts in which any of CMP Companies is a party; and (v) are duly qualified to do business as a foreign corporation or other Entity, and are in good standing under the laws of each jurisdiction in which either the ownership or use of the properties owned or used by each of them or the nature of the activities conducted by each of them requires such qualification, except where the failure to be so qualified could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect on the CMP Companies taken as a whole.

- (c) Schedule 3.1.1(c) lists all of the CMP Companies and specifies, as to each Entity, its jurisdiction of organization, its shareholders or other equity holders and the corresponding Equity Interests of each such equity holder. CMP has delivered to MCI copies of the Organizational Documents of each CMP Company, as currently in effect. CMP has good and valid title to all of the shares or Equity Interests owned by it in the other CMP Companies, free and clear of any Encumbrances.

3.1.2 Authority, No Conflict.

- (a) CAP and CMP have all necessary corporate power and authority to execute and deliver this Agreement and the Contemplated Transactions, to perform each of their respective obligations hereunder and thereunder and to consummate the Contemplated Transactions. The execution and delivery of this Agreement by CAP and CMP and the consummation by each of them of the same, as applicable, have been duly and validly authorized by all necessary corporate action and no other corporate proceedings on the part of any of them is necessary to authorize this Agreement or to consummate the Contemplated Transactions (other than the Required Corporate Actions).
- (b) Except as set forth in Schedule 3.1.2(b), neither the execution and delivery of this Agreement nor the consummation of any of the other Contemplated Transactions does or will, directly or indirectly (with or without notice or lapse of time or both): (i) contravene, conflict with, or result in a violation of (A) any provision of the Organizational Documents of CAP or any other CMP Company; or (B) any resolution adopted by the BOD or shareholders of CAP or CMP; (ii) contravene, conflict with, or result in a violation of, or give any Governmental Body or other Person the right to challenge any of the Contemplated Transactions, revoke, withdraw, suspend, cancel, terminate, or modify any Governmental Authorization that is held by any CMP Company or to exercise any remedy or obtain any relief under, any Chilean Applicable Law or any order to which CAP or CMP Companies, or any Applicable Law or any order to which any



CMP Companies, or of the assets owned or used by any CMP Company, is or may be subject; (iii) cause any CMP Company to become subject to, or to become liable for the payment of, any Tax, other than those payable by CMP arising as a consequence of CMP becoming the Surviving Corporation; (iv) cause any of the assets owned by any CMP Company to be reassessed or revalued by any Taxing Authority or other Governmental Body; (v) contravene, conflict with, or result in a violation or breach of any provision of, give any Person the right to declare a default or exercise any remedy under, accelerate the maturity or performance of, or cancel, terminate or modify any Contract to which any CMP Company is a party; (vi) require a Consent from any Person (other than Consents reflected in the Required Corporate Actions); or (vii) result in the imposition or creation of any Encumbrance upon or with respect to any of the assets owned or used by any CMP Company except, in the case of clauses (ii) through (vii), for any such conflicts, violations, breaches, defaults or other occurrences that would not prevent or delay consummation of the Merger in any material respect or otherwise prevent CMP or CAP from performing its obligations under this Agreement in any material respect, and could not reasonably be expected to, individually or in the aggregate, have a Material Adverse Effect on CMP.

- 3.1.3 Enforceability of the Contemplated Transactions. Upon the occurrence of all the Required Corporate Actions, the agreements that are part of the Contemplated Transactions will have been duly executed and delivered by CAP and CMP, as appropriate, and will constitute valid and binding obligations, enforceable against each of them in accordance with the respective terms of such actions and agreements, except as enforceability may be limited by bankruptcy, insolvency, reorganization or other similar law affecting the rights of creditors generally.
- 3.1.4 Enforceability of the Agreement. This Agreement is duly executed and delivered by CAP and CMP and constitutes valid and binding obligations enforceable against each of them in accordance with its terms.
- 3.1.5 Capital. The authorized capital stock of CMP is divided exclusively into three million, five hundred twenty-one thousand, one hundred twenty-six (3,521,126) shares of a single series with non-par value, fully subscribed and paid-up, that have been issued in accordance with Chilean Applicable Law (the "Existing CMP Shares"). CAP owns beneficially and of record and has good and valid title to three million, five hundred twenty-one thousand, one hundred eight (3,521,108) of the Existing CMP Shares, free and clear of any Encumbrances. The authorized capital stock of CMH is divided exclusively into two million, one hundred thousand (2,100,000) shares of a single series with non-par value, fully subscribed and paid-up, that have been issued in accordance with Chilean Applicable Law (the "Existing

CMH Shares"). CMP owns beneficially and of record and has good and valid title to one million, fifty thousand (1,050,000) of the Existing CMH Shares, free and clear of any Encumbrances. There are no bonds, debentures, notes or other indebtedness or securities of CMP having the right to vote (or are convertible into or exchangeable for securities having the right to vote) on any matters on which shareholders of CMP respectively, may vote. As of the Execution Date, no shares of capital stock or other voting securities of CMP are issued, reserved for issuance or outstanding and no corporate actions have been taken to issue shares of capital stock or other voting securities of CMP. There are no Options relating to the issued or unissued capital stock of CMP or obligating CMP to issue, grant or sell any shares of capital stock of, other Equity Interests in or securities convertible into Equity Interests in CMP or any other CMP Company. None of CMP or any other CMP Company has any Contract or other obligation to repurchase, redeem or otherwise acquire any Existing CMP Shares, or any other security of any of the CMP Companies or to make any investment (in the form of a loan, capital contribution or otherwise) in any CMP Company.

3.1.6 Capital of the Surviving Corporation. The authorized capital stock of the Surviving Corporation shall be divided exclusively into four million, one hundred eighty-five thousand, eight hundred eighty-six (4,185,886) shares of a single series with non-par value, shall be fully subscribed and paid-up, and shall be issued in accordance with Chilean Applicable Law. At all times prior to the Capital Increase Closing Date, there will be no bonds, debentures, notes or other indebtedness or securities of the Surviving Corporation having the right to vote (or that will be convertible into or exchangeable for securities having the right to vote) on any matters on which shareholders of the Surviving Corporation may vote. There will be no Options relating to the issued capital stock of the Surviving Corporation or obligating the Surviving Corporation to issue, grant or sell any shares of capital stock of the Surviving Corporation.

3.1.7 Financial Statements.

- (a) Complete and accurate copies of the Financial Statements have been provided to MCI by CAP. The Financial Statements have been prepared according to Chilean GAAP, consistently applied, and present in all material respects the results of operations of the CMP Companies for the period indicated and their respective financial positions as of the date thereof and are true, accurate and complete representations of the assets, liabilities, financial position, state of affairs and the results of their respective operations for the period ending on that date. The CMP Companies have never been nor are they currently engaged in any Off-Balance Sheet Arrangements. The books of accounts and all other records of the CMP Companies are up-to-date, complete and correct in all material respects in



accordance with the Applicable Law of the jurisdiction in which the corresponding CMP Company is incorporated or conducts its business and Chilean GAAP, as applicable.

- (b) (i) Each of the CMP Companies has established and maintains internal controls and procedures over financial reporting that provide reasonable assurance regarding the reliability of financial reporting and the preparation of Financial Statements for external purposes in accordance with Chilean GAAP, and (ii) the Financial Statements of each of the CMP Companies: (A) were prepared in accordance with Chilean GAAP; and (B) reflect receipts and expenditures made only in accordance with the authorization of both its management or its BOD and with Applicable Law.
- (c) Since September 30, 2009, no CMP Company or, to the Knowledge of CMP, any Representative of any CMP Company, has received or has otherwise had or obtained knowledge of any complaint, allegation, assertion or claim (whether written or oral) regarding the accounting or auditing practices, procedures, methodologies or methods of any CMP Company or its internal control over financial reporting, including any complaint, allegation, assertion or claim that any CMP Company has engaged in questionable accounting or auditing practices.

3.1.8 No Undisclosed Liabilities. Except as set forth in Schedule 3.1.8, none of the CMP Companies has any liabilities or obligations of any nature (whether absolute, accrued, contingent, determined, determinable, clear, inchoate or otherwise), including liabilities of any kind associated with or derived from any CMP Company's ownership interest in any other CMP Company, other than (i) those reflected or reserved in its Financial Statements, or (ii) current liabilities incurred in the ordinary course of business, consistent with past practice, since the date of such accounting information or documentation, Contracts or accounting books that, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect on CMP.

3.1.9 Legal Proceedings.

- (a) Except for the actions disclosed in Schedule 3.1.9(a), there is no pending Legal Proceeding (i) that has been commenced by or against any CMP Company or that otherwise relates to or may affect the business of, or any of the assets owned or used by any CMP Company, except for such Legal Proceedings as are normally incident to the business carried on by such CMP Company and that could not reasonably be expected to, individually or in the aggregate, result in a Material Adverse Effect on CMP; (ii) that challenges or may have the effect of preventing, delaying, making illegal or otherwise interfering with any of the Contemplated Transactions;



- (iii) against any director or officer of any CMP Company; or (iv) asserting that any CMP Company has committed an unfair labor practice or seeking to compel any CMP Company to bargain with any labor organization as to wages or conditions of employment.
- (b) To the Knowledge of CMP and except as set forth in Schedule 3.1.19(b): (i) no Legal Proceeding has been threatened against any CMP Company that, if pending, would be required to be disclosed under the preceding paragraph; and (ii) no event has occurred or circumstance exists that may give rise to or serve as a basis for the commencement of such Legal Proceeding.
- (c) All CMP Companies have paid to their employees the mandatory annual profit-sharing required by Applicable Law and thus no Legal Proceeding may be pursued by any employee in that regard.

3.1.10 Contracts; No Defaults.

- (a) Schedule 3.1.10 lists the Material Contracts to which any CMP Company is a party.
- (b) Each Material Contract is in full force and effect and is enforceable in accordance with its terms.
- (c) (i) No CMP Company has violated or breached, or committed any default under, any Material Contract, except for violations, breaches and defaults that have not had and would not reasonably be expected to give rise to (with or without notice or lapse of time) a Material Adverse Effect on CMP and, to the Knowledge of CMP, no other Person has violated or breached or committed any default under any Material Contract, except for violations, breaches and defaults that have not given rise to and would not reasonably be expected to give rise to a Material Adverse Effect on CMP; (ii) to the Knowledge of CMP, no event has occurred, and no circumstance or condition exists, that (with or without notice or lapse of time) will or would reasonably be expected to have a Material Adverse Effect on CMP; and (iii) no CMP Company has received any notice or other communication regarding any actual or possible violation or breach of or default under any Material Contract, except in each such case for defaults, acceleration rights, termination rights and other rights that have not given rise to and would not reasonably be expected to give rise to a Material Adverse Effect on CMP.

- 3.1.11 Personal Property. Each CMP Company has good and marketable title to all personal property and other assets as reflected on its books and Financial Statements that are necessary for the operation of CMP business as currently conducted, other than personal property or other assets which have been disposed of in the ordinary course of business, and personal property and



other assets, the failure of which to have good title to would not, individually or in the aggregate, have a Material Adverse Effect on its business or financial results. All such personal property and assets are in good and safe condition and good repair (ordinary wear and tear excepted) and are adequate for the conduct of the business of such CMP Company in the manner in which such business is currently being conducted.

3.1.12 Environmental Matters. Except as set forth in Schedule 3.1.12, each CMP Company is, and at all times during the last five (5) years has been, in compliance in all material respects with, and has not been and is not in material violation of or subject to any material liability under, any Environmental Law. To the Knowledge of CMP, no CMP Company has received any actual or threatened order, notice or other communication from any Person of any actual or potential material violation of or failure to comply with any Environmental Law or of any actual or threatened material obligation to undertake or bear the cost of any EHS Liabilities with respect to any of the Facilities or any other properties or assets (whether real, personal, or mixed) in which any CMP Company has or has had an interest, or with respect to any property or Facility at or to which Hazardous Materials were generated, manufactured, refined, transferred, imported, used, or processed by CMP, any CMP Company or any other Person for whose conduct CMP or such CMP Company is or may be held responsible, or from which Hazardous Materials have been transported, treated, stored, handled, transferred, disposed, recycled, or received.

3.1.13 Proprietary Rights.

- (a) Each CMP Company has sufficient right, title and interest in accordance with Applicable Law applicable to such CMP Company to all Proprietary Rights necessary for operating its business as currently conducted, free and clear of all Encumbrances.
- (b) Schedule 3.1.13 contains an accurate and complete list of the following: (i) all of the Registered Trademarks owned by each CMP Company; (ii) all of the Registered Copyrights owned by each CMP Company; and (iii) all oral and written contracts, agreements, licenses and other arrangements relating to any CMP Proprietary Rights, all of which are valid and in full force and effect.
- (c) No CMP Company is subject to any proceeding or outstanding decree, order, judgment or stipulation restricting in any manner the use, transfer or licensing by such CMP Company of any of its Proprietary Rights and no Proprietary Rights of any CMP Company have been infringed or misappropriated by any Person.
- (d) There are no Patents in which any CMP Company has any right, title or interest.



- (e) None of the CMP Companies has granted any right, license, or interest in, to or under the Proprietary Rights or any portion thereof.
- (f) No Person has asserted or threatened any claim, investigation or Legal Proceeding nor are there any facts which could give rise to a claim, investigation or Legal Proceeding that any CMP Product (or any CMP Proprietary Right embodied in any CMP Product) infringes or misappropriates any Third Party Proprietary Rights.
- (g) Each CMP Company has taken all commercially reasonable and customary measures and precautions necessary to protect and maintain the confidentiality of all Trade Secrets in which any CMP Company has any right, title or interest and otherwise to maintain and protect the full value of all such Trade Secrets.

3.1.14 Employee Benefits.

- (a) Except as set forth in Schedule 3.1.14(a), there is no labor strike, dispute, slowdown, stoppage or lockout actually pending, or, to the Knowledge of CMP, threatened against or affecting any CMP Company and during the past year there has not been any such action. All CMP Companies are in compliance in all material respects with all Applicable Law of the jurisdiction in which the corresponding CMP Company is incorporated or conducts business, with respect to employment and employment practices, terms and conditions of employment, wages, overtime, vacations, severance benefits, profit-sharing, voluntary and mandatory health contributions and any other applicable labor and social security law. Schedule 3.1.14(a) lists and describes the Benefit Plans established and agreed upon for the benefit of the employees of the CMP Companies with which each CMP Company has complied in all material respects.
- (b) Other than as disclosed in the Financial Statements or as set forth in Schedule 3.1.14(b): (i) there are no Benefit Plans for or affecting any executive of any CMP Company or other employees or former employees or advisors of any CMP Company that entitle any of them to receive compensations or severances in excess of the amount legally required under Applicable Law and (ii) there are no debts owing to directors of any CMP Company for allowances or profit-sharing or any other reason.
- (c) Each CMP Company has taken all necessary measures to avoid becoming directly liable for any and all labor and social security obligations involved in a labor relationship (including, without limitation, wages and salaries, taxes, bonuses, overtime, vacation and severance payments) between contractors retained by such CMP



Company and its employees by taking such actions as supervising and requiring the fulfillment by the contractors of their labor obligations to such contractor's employees assigned to provide services to such CMP Company through any of the means indicated below, in which case such CMP Company will be only secondarily liable: (i) by asking for the certificates of the labor compliance issued by the Labor Board and any other applicable Governmental Body in order to determine if the contractors are truly fulfilling the labor obligations related to rendering services to such CMP Company; and (ii) by deducting from all amounts owed by such CMP Company to the contractors in the event that any contractor does not fulfill all of its labor obligations.

3.1.15 Compliance with Applicable Law; Governmental Authorizations.

- (a) (i) Except as set forth in Schedule 3.1.15(a), each CMP Company has been in compliance in all material respects with each Applicable Law applicable to such CMP Company; (ii) no event has occurred or circumstance exists that (with or without notice or lapse of time or both) (A) may constitute or result in a violation by any CMP Company of, or a failure on the part of such CMP Company to comply with, any Applicable Law applicable to such CMP Company; or (B) may give rise to any obligation on the part of any CMP Company to undertake, or to bear all or any portion of the cost of, any remedial action of any nature that, individually or collectively with any other event described in this subsection (ii), could result in a Material Adverse Effect on CMP; and (iii) no CMP Company has received at any time since January 1, 2005, any notice or other communication (whether oral or written) from any Governmental Body or any other Person regarding (A) any actual, alleged, possible, or potential violation of, or failure to comply with, any Applicable Law applicable to such CMP Company; or (B) any actual, alleged, possible, or potential obligation on the part of any CMP Company to undertake, or to bear all or any portion of the cost of, any remedial action of any nature that, individually or collectively with any other notice describe in this subsection (iii), could result in a Material Adverse Effect on CMP.
- (b) Each CMP Company has all material Governmental Authorizations and has made all necessary payments (such as payment for *patentes mineras*) necessary to own, lease and operate its properties and assets and to conduct its business as currently owned, leased, operated and conducted, including, without limitation, all municipal licenses necessary to conduct its operations as it currently does. All such Governmental Authorizations are in full force and effect. No CMP Company has received any notice of proceedings relating to the revocation, cancellation, expropriation or modification of any such



Governmental Authorizations and, to the Knowledge of CMP, no such proceedings are reasonably expected to occur.

3.1.16 Insurance Coverage. (i) Schedule 3.1.16 lists all insurance policies of the CMP Companies, all of which have terms that are customary for companies of a similar size and financial condition; (ii) all such policies are in full force and effect and all actions have been taken for them (or replacements thereof) to continue in full force and effect; (iii) the CMP Companies have paid all premiums and no CMP Company has been notified by any insurance company of any potential termination of any policy; (iv) the CMP Companies have not been advised of any defense to coverage in connection with any claim to coverage asserted or noticed by any CMP Company under or in connection with any existing insurance policies; (v) no CMP Company has received any written notice from or on behalf of any insurance carrier issuing policies relating to or covering any CMP Company that (A) there will be a cancellation or non-renewal of any existing policies; or (B) the alteration of any equipment, any improvements to real estate occupied by or leased to or by any CMP Company, the purchase of additional equipment, or the material modification of any of the methods of doing business will be required, in each case, in order to maintain current coverage; and (vi) the CMP Companies are not in default under the terms of any such policies and have not failed to give timely notice of any loss thereunder.

3.1.17 Mining Property and other Real Estate.

- (a) (i) Schedule 3.1.17(a)(i) includes a list of all of the real estate, including, without limitation, commercial real estate and mining property, owned by the CMP Companies and the details of registrations in the records and registries required by statute, such mining property and real estate is free and clear of any material Encumbrances; (ii) the CMP Companies have good and marketable title to all of the mining property and real estate indicated in Schedule 3.1.17(a)(i); (iii) Schedule 3.1.17(a)(iii) contains a list of the material real estate that the CMP Companies lease to another CMP Company, to an Affiliate or to Third Parties (and identifies each such lessee by its legal name); and (iv) Schedule 3.1.17(a)(iv) contains a list of the material real estate relevant for the operation of the corresponding project that the CMP Companies lease from another CMP Company, an Affiliate or Third Parties (and identifies each such lessor by its legal name).
- (b) the CMP Companies (i) have valid leasehold interests in all the above-mentioned leased properties; (ii) have not received any notice of default on their obligations under the respective leases; (iii) neither they nor, to the Knowledge of CMP, any other party to the respective leases are in default under any of their obligations; and



(iv) the execution of this Agreement shall not result in the termination or amendment of the current terms of any such leases.

3.1.18 Water Rights. (a) Schedule 3.1.18(a) includes a list of all of the water rights owned by the CMP Companies, including registrations in the records and registries required by statute; (b) such water rights are free and clear of any Encumbrances; and (c) the CMP Companies have good and marketable title to all of the water rights indicated in Schedule 3.1.18(a).

3.1.19 Sufficiency of Assets. (a) The real estate and water rights owned or leased by each CMP Company listed in Schedule 3.1.17(a)(i), Schedule 3.1.17(a)(iv) and Schedule 3.1.18(a) are adequate and sufficient to allow each of the CMP Companies to continue conducting its current operations as presently being conducted, including without limitation, such operations at Los Colorados, El Algarrobo, Romeral and El Tofo and MHA I – Candelaria projects and are adequate and sufficient to allow CMP to construct and operate the expansions approved by CMP at the Romeral and MHA I – Candelaria projects; and (b) all properties and assets material to the business of the CMP Companies presently owned, leased or licensed by them, are in reasonable operating condition and in a state of good maintenance and repair, except for normal maintenance and repair requirements and normal wear and tear.

3.1.20 Taxes.

- (a) Each of the CMP Companies has timely filed or will timely file all Tax Returns required to be filed by it, and has paid or will pay all Taxes shown to be due on such Tax Returns with respect to all Tax periods ending prior to the Merger Closing Date.
- (b) Each of the CMP Companies' Tax Returns completely, accurately and correctly reflect or will reflect the facts regarding the income, properties, operations and status of any entity required to be shown thereon and were prepared in compliance with Applicable Law.
- (c) The charges, accruals, and reserves for Taxes due, or accrued but not yet due, relating to the income, properties or operations of the CMP Companies for any period prior to the Merger Closing Date as reflected on the books of the CMP Companies (including, without limitation, the Financial Statements) are adequate to cover such Taxes.
- (d) There are no agreements or consents currently in effect for the extension or waiver of the time (i) to file any Tax Return or (ii) for assessment or collection of any Taxes relating to the CMP Companies for any period prior to the Merger Closing Date, and no Person has been requested to enter into any such agreement or consent.



- (e) All Tax Returns with respect to taxable years ending on or prior to 2004 have been examined and closed or are Tax Returns with respect to which the applicable statute of limitations, after giving effect to any extensions and waivers, has expired.
- (f) Except as set forth in Schedule 3.1.20(f) there is no action, suit, proceeding, investigation, audit or claim currently pending or, to the Knowledge of CMP, threatened, and, to the Knowledge of CMP, there is no reasonable basis for any such action, suit, proceeding, investigation, audit or claim, regarding any Taxes on any of the CMP Companies for any period prior to the Merger Closing Date. The CMP Companies have not received from any Chilean or foreign Taxing Authority (including jurisdictions where the CMP Companies have not filed Tax Returns) any (i) written notice indicating an intent to open an audit or other review, (ii) request for information related to Tax matters, or (iii) notice of deficiency or proposed adjustment for any amount of Tax proposed, asserted, or assessed by any Taxing Authority against the CMP Companies. CAP has delivered to MCI correct and complete copies of all income Tax Returns, examination reports, and statements of deficiencies assessed against or agreed to by any of the CMP Companies filed or received since December 31, 2005.
- (g) Except as set forth in Schedule 3.1.20(f), all Tax deficiencies which have been claimed, proposed or asserted against the CMP Companies have been fully paid or finally settled.
- (h) There are no material liens for any Tax on the assets of the CMP Companies, except for which there has been established an adequate accrual for payment of liabilities resulting therefrom on the Financial Statements.
- (i) The CMP Companies have withheld and paid all Taxes required to have been withheld and paid in connection with any material amounts paid or owing to any employee, independent contractor, creditor, stockholder or other Third Party.
- (j) No CMP Company has waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to Tax assessment or deficiency.
- (k) Unless required by IFRS (but not required by Chilean GAAP), the CMP Companies will not be required to include any item of income in, or exclude any item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Merger Closing Date as a result of any change in method of accounting for a taxable period ending on or prior to the Merger Closing Date.



3.1.21 Absence of Certain Changes and Events. As of the date of the Financial Statements, each CMP Company has conducted its business only in the ordinary course of business, consistent with past practices. Since the date of the Financial Statements, there has not been any Material Adverse Effect on CMP and no event has occurred, no action has been adopted and no circumstance exists that would reasonably be expected to result in a Material Adverse Effect on CMP. Further, since the date of the Financial Statements, no action or event of the type described below has occurred or taken place:

- (a) (i) any declaration, accrual, set-aside or payment of any dividend or any other distribution in respect of any Existing CMP Shares; or (ii) any repurchase, redemption or other acquisition by CMP of any Existing CMP Shares or other securities;
- (b) Any capital expenditure by any CMP Company that, when added to all other capital expenditures made on behalf of any such CMP Company since the date of the Financial Statements, exceeds US\$50,000,000 in the aggregate;
- (c) Except in the ordinary course of business and consistent with past practice, any action by any CMP Company to (i) enter into or suffer any of the assets owned or used by it to become bound by any Material Contract; or (ii) amend, terminate or waive any material right or remedy under any Material Contract;
- (d) Any payment of any bonus or any profit-sharing or similar payment not considered in the labor benefits described in Schedule 3.1.14 or any material increase in the amount of the wages, salary, commissions, fringe benefits or other compensation or remuneration payable to any of the directors, officers or employees of any CMP Company;
- (e) Any change to the methods of accounting or accounting practices of any CMP Company in any material respect that is different from the IFRS rules;
- (f) Except as disclosed in Schedule 3.1.21(f), any commencement or settlement of any Legal Proceeding by any CMP Company in an amount over US\$1,000,000; and
- (g) Any agreement or commitment to take any of the actions referred to in clauses (a) through (f) above.

3.1.22 Brokers. No broker, finder, investment banker or other Person is entitled to any brokerage, finder's or other fee or commission for which CMP or MCI is responsible in connection with the Merger or the Contemplated Transactions based upon arrangements made by or on behalf of CAP or CMP.



- 3.1.23 Improper Payments. (a) No funds, assets or properties of any CMP Company have been used or offered for illegal purposes under Applicable Law; or (b) no CMP Company, nor Representative of any CMP Company, has used (i) any corporate funds for any contribution, gift, entertainment or payment of anything of value relating to political activity not permitted under Applicable Law; (ii) made any direct or indirect payment to any employee, agent, officer, director, representative or shareholder of a Governmental Authority or political party, or official or candidate thereof, or any immediate family member of the foregoing, not permitted under Applicable Law; or (iii) made any bribe, rebate, payoff, influence payment, kickback or other payment in connection with the conduct of any CMP Company businesses not permitted under Applicable Law; (c) no CMP Company or any agent of any CMP Company has received any bribe, kickbacks or other improper payments from vendors, suppliers or other Persons; and (d) to the Knowledge of CMP, no payment made to a Person would be or has thereafter been offered, given or provided to any foreign official, political party or official thereof or to any candidate for public office.
- 3.1.24 Transactions with Related Parties. All transactions by CMP Companies with any Related Party are listed in Schedule 3.1.24 and have been in compliance with Chilean Applicable Law.
- 3.1.25 Board Level Approvals. As of or prior to the Execution Date, by resolutions duly adopted at meetings duly called and held: (a) the CAP BOD has (i) determined that the Merger is advisable and in the best interests of CAP and CMP; (ii) approved the Merger and this Agreement; (iii) taken all action necessary under Chilean Applicable Law to call and given notice of, and cause to be held a meeting of CAP shareholders no later than forty-five (45) days after the Execution Date to approve or ratify this Agreement and the Shareholders Agreement, and approve the Merger, the Capital Increase and the other Contemplated Transactions.
- 3.1.26 Filings with Governmental Authorities.
- (a) The CMP Companies have filed on a timely basis all forms, reports and documents required to be filed by it with any Governmental Authority. As used in this Section 3.1.26, the term "file" shall be broadly construed to include any manner in which a document or information is furnished, transmitted or otherwise made available to the applicable Governmental Authority, in accordance with Applicable Law.
 - (b) Each of the filings of CMP with any Governmental Authority, as of the date of such filing, (i) complied with the requirements of Applicable Law and (ii) (or, if amended or superseded by a subsequent filing prior to the Execution Date, on the date of such



later filing), did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or otherwise necessary in order to make the statements made therein not misleading in light of the circumstances under which they were made.

- (c) (i) All information required to be disclosed by CMP is recorded, processed, summarized and reported within the time periods specified in the Applicable Law; and (ii) all such information is accumulated and communicated to CMP's management, including its chief executive officer and chief financial officer, as appropriate, prior to disclosure to allow timely decisions regarding required disclosure.

3.1.27 Guayacán Port. On or before December 31, 2009, CMP filed for the renewal of the maritime concession of Guayacán Port or an extension to renew its maritime concession of Guayacán Port.

3.2 Representations and Warranties of MCI. MCI represents and warrants to CAP and CMP as follows:

3.2.1 Due Incorporation and Good Standing. (a) MCI is an Affiliate of MC, duly organized as a *sociedad de responsabilidad limitada* and validly existing in good standing under the laws of the Republic of Chile; (b) has the full corporate capacity to conduct its business as now being conducted; (c) is duly authorized and licensed to own its assets and to carry on its business as presently owned and carried on by it; and (d) has the full corporate capacity to perform all of its respective obligations under the Contracts to which it is a party. MCI's compliance with this Agreement is within its business purpose and the contractual restrictions of MCI are not contravened.

3.2.2 Authority, No Conflict.

- (a) MCI has all necessary corporate power and authority to execute and deliver this Agreement and all other documentation to be executed and delivered by it in connection with the Contemplated Transactions, to perform its obligations hereunder and thereunder and to consummate the Contemplated Transactions. The execution and delivery of this Agreement by MCI and the consummation by MCI of the Contemplated Transactions have been duly and validly authorized by all necessary corporate action and no other corporate proceedings on the part of MCI are necessary to authorize this Agreement or to consummate the Contemplated Transactions. This Agreement and the Contemplated Transactions constitute the legal, valid and binding obligations of MCI, enforceable against MCI in accordance with its terms.



- (b) Except as set forth in Schedule 3.2.2(b), neither the execution and delivery of this Agreement nor the consummation of any of the Contemplated Transactions do or will, directly or indirectly (with or without notice or lapse of time or both): (i) contravene, conflict with, or result in a violation of (A) any provision of the Organizational Documents of MCI; or (B) any resolution adopted by the managing partner or other governing Entity of MCI according to its Organizational Documents; (ii) give any Governmental Body or other Person the right to challenge any of the Contemplated Transactions or to exercise any remedy or obtain any relief under any Applicable Law or any order to which MCI, or any of the assets owned or used by MCI, is or may be subject; (iii) contravene, conflict with, or result in a violation of any of the terms or requirements of, or give any Governmental Body the right to revoke, withdraw, suspend, cancel, terminate, or modify, any Governmental Authorization that is held by MCI, or that otherwise relates to the business of, or any of the assets owned or used by, MCI; (iv) contravene, conflict with, result in a violation or breach of any provision of, give any Person the right to declare a default or exercise any remedy under, accelerate the maturity or performance of, cancel, terminate, or modify any MCI Contract; or (v) require a Consent from any Person, except in the case of all the above sub-clauses, for any such conflicts, violations, breaches, defaults or other occurrences that would not prevent or delay consummation of the Merger or could not reasonably be expected to, individually or in the aggregate, have a MAE on MCI.
- 3.2.3 Enforceability of the Contemplated Transactions. Upon the occurrence of all the Required Corporate Actions, the agreements that are part of the Contemplated Transactions will be duly executed and delivered by MCI and will constitute valid and binding obligations enforceable against it in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization or other similar law affecting the rights of creditors generally.
- 3.2.4 Enforceability of this Agreement. This Agreement is duly executed and delivered by and constitutes valid and binding obligations enforceable against MCI in accordance with its terms.
- 3.2.5 Brokers. No broker, finder, investment banker or other Person is entitled to any brokerage, finder's or other fee or commission for which any of CAP, CMP or CMH is responsible in connection with the Merger or the Contemplated Transactions based upon arrangements made by or on behalf of MCI.



- 3.2.6 Ownership of Shares. MCI owns beneficially and of record and has good and valid title to one million, fifty thousand (1,050,000) shares of CMH, free and clear of any Encumbrances.

4. COVENANTS

- 4.1 Pre-Merger Closing Period Affirmative Covenants of CAP and CMP. Each of CAP, and CMP covenants and agrees, as applicable, that, during the period from the Execution Date and until the Merger Completion Date (the "**Pre-Merger Closing Period**"), each shall do the following, as applicable:

- 4.1.1 Access to Information. CMP shall provide MCI and MCI's Representatives with reasonable access to, or afford MCI the right to make copies of, any and all documentation, information and resources related to the Contemplated Transactions as MCI may reasonably request.

- 4.1.2 Conduct of Business in Normal Course. CAP shall cause CMP and CMP shall ensure that all CMP Companies shall: (a) carry on their business activities in substantially the same manner as heretofore conducted, in compliance with Applicable Law thereof, and shall not make or institute any unusual or novel methods of service, sale, purchase, lease, management, accounting or operation that vary materially from those methods used by it or them as of the Execution Date without, in each instance, obtaining the prior written consent of MCI, which shall not be unreasonably withheld; (b) use its and their best efforts to comply with Applicable Law and all Material Contracts (which, for the purpose of this Section 4.1.2, shall include any Contract that would be a Material Contract if existing on the Execution Date); (c) without making or incurring any unusual material commitments or expenditures and to the extent commercially reasonable other than those described in Section 3.1.21(b): (i) preserve its and their business organizations intact and preserve its and their present relationships and goodwill with referral sources, clients, customers, suppliers, landlords, licensors, licensees and other Persons having business relationships with them; and (ii) keep and retain the services of its and their current Executive Officers, directors and key employees to the extent reasonably possible; (d) maintain all of the CMP Companies' assets in good operating condition and in a state of good maintenance and repair; and (e) keep in full force and effect all insurance policies referred to in Section 3.1.16.

- 4.1.3 Taxes. CAP shall cause CMP and CMP shall ensure that each CMP Company shall: (a) properly prepare and duly and validly file all Tax Returns required to be filed prior to the Merger Completion Date with the appropriate Taxing Authority; (b) duly and fully pay all Taxes which are due with respect to the periods covered by such Tax Returns or otherwise levied or assessed upon such Entity or any of its assets or properties; and (c) provide MCI with copies of all Tax Returns as soon as practicable after the filing thereof.



4.1.4 CMH Merger Shareholders Meeting.

- (a) CMP shall cause the CMH BOD to, and the CMH BOD shall, take all action necessary under Chilean Applicable Law to call and give notice of, not later than eighteen (18) days prior to the Merger Closing Date and cause to be held, the CMH Merger Shareholders Meeting.
- (b) Subject to the satisfaction or waiver as of the Merger Closing Date of all conditions set forth in Section 2.1, CAP shall cause CMP to vote its Existing CMH Shares in favor of the different actions in support of the Merger to be adopted at the CMH Merger Shareholders Meeting, which shall be held on the same date as the CMP Merger Shareholders Meeting.

4.1.5 CMP Merger Shareholders Meeting.

- (a) CAP shall cause the CMP BOD to, and the CMP BOD shall, take all action necessary under Chilean Applicable Law to call and give notice of, and cause to be held, the CMP Merger Shareholders Meeting not later than eighteen (18) days prior to the Merger Closing Date.
- (b) Subject to the satisfaction or waiver as of the Merger Closing Date of all conditions set forth in Section 2.1, CAP shall vote its Existing CMP Shares in favor of the different actions in support of the Merger to be adopted at the CMP Merger Shareholders Meeting, which shall be held as soon as practicable on a date to be agreed to by CAP and MCI, and which shall be the same date of the CMH Merger Shareholders Meeting.

4.1.6 Regulatory Approvals.

- (a) Subject to Section 4.1.6(b), CAP and CMP shall cause CMP and CMH, as applicable, to, use commercially reasonable efforts to take, or cause to be taken, all actions necessary to consummate the Contemplated Transactions. Without limiting the generality of the foregoing, but subject to Section 4.1.6(b), the relevant Party shall (i) make all filings (including the Required Corporate Actions) and give all notices (if any) required to be made and given by such Party in connection with the Contemplated Transactions as soon as practicable after the Execution Date and submit promptly any additional information requested in connection with such filings and notices; (ii) use commercially reasonable efforts to obtain any Consent required to be obtained (pursuant to any Chilean Applicable Law, Contract or otherwise) by CMP or CMH, as the case may be, in connection with the Contemplated Transactions, including, without limitation, those set forth in Schedule 3.1.2(b) and any other



Governmental Authorizations in jurisdictions other than Chile that require the issuance of a merger clearance notice or other Consent in connection with the Contemplated Transactions; and (iii) use commercially reasonable efforts to oppose or to lift, as the case may be, any restraint, injunction or other legal bar to the Contemplated Transactions. CMP shall promptly deliver to MCI a copy of each such filing made, each such notice given and each such Consent obtained.

- (b) Notwithstanding anything expressly provided to the contrary in this Agreement, CMP shall have no obligation under this Agreement to: (i) dispose, transfer or hold separate, or cause any CMP Company to dispose, transfer or hold separate, any assets or operations, other than the divestiture by CMP of one of the CMP Companies as set forth in Section 4.1.11 hereof; (ii) discontinue or cause any CMP Company to discontinue offering any product or service; or (iii) make or cause any CMP Company to make any commitment (to any Governmental Body or otherwise) regarding its future operations or the future operations of the business of CMP (excluding any commitments regarding future operations as contemplated by the Contemplated Transactions).

- 4.1.7 Publicity. CAP, CMP and CMH will not issue any press release or make any other public announcement relating to the existence of this Agreement or the Contemplated Transactions without the prior approval of MCI unless required by Applicable Law, in which case CAP, CMP and CMH, as the case may be, shall, to the extent possible, consult with MCI and offer MCI the opportunity to comment on such announcement prior to its issuance.
- 4.1.8 Tax Matters. CAP and CMP shall use commercially reasonable efforts prior to the Merger Completion Date to cause the Merger to qualify as Statutory Merger.
- 4.1.9 CMP BOD. At the CMP Merger Shareholders Meeting, the bylaws of CMP will be amended to increase the number of members of the CMP BOD to seven (7) and the five (5) directors designated by CAP not later than three (3) days prior to the CMP Merger Shareholders Meeting, by notice to the other Parties, shall be elected as directors of CMP. If any such person appointed by CAP is not able or willing to serve as a director of CMP as of the date of the CMP Merger Shareholders Meeting, then CAP shall select a replacement for such named director and take all actions necessary to elect such replacement as a director of CMP at the CMP Merger Shareholders Meeting.
- 4.1.10 Accuracy of Representations. CAP shall use all commercially reasonable efforts to ensure that each of the representations and warranties of CAP and CMP set forth in this Agreement are accurate in all material respects as if



made on and as of the date of the Merger Completion Date (other than representations and warranties that address matters only as of a particular date that shall have been accurate in all material respects as of such particular date).

- 4.1.11 Divestiture of PLL. Prior to the Merger Closing Date, CMP shall have completed the divestiture or dissolution of Puerto Las Losas S.A. ("PLL"). Such divestiture or dissolution shall have been implemented in a manner that (i) permits CMP to continue using the facilities of PLL at the same price and under current terms and conditions and (ii) results in no MAE on CMP.
- 4.1.12 Delivery of Closing Documents, etc. At or before the Merger Closing, CAP and CMP shall execute and deliver the documents and agreements required pursuant to Section 1.2.1.
- 4.1.13 CAP Shareholders Meeting. CAP shall take all action necessary under Chilean Applicable Law to call and give notice of, and cause to be held a CAP Shareholders Meeting no later than forty-five (45) days after the Execution Date in order to approve or ratify this Agreement and the Shareholders Agreement and to approve the Merger, the Capital Increase and the other Contemplated Transactions.
- 4.2 Pre-Merger Closing Period Negative Covenants of CAP and CMP. Each of CAP and CMP covenants and agrees, as applicable (unless otherwise permitted by MCI, as evidenced by its written consent, which shall not be unreasonably withheld) that CMP shall not, and shall not permit any other CMP Company to (to the extent applicable), do any of the following during the Pre-Merger Closing Period:
 - 4.2.1 Distributions. Except as provided herein, (a) declare, set aside or pay any dividends on, or make any other distributions (whether in cash, stock or property) in respect of, any of its capital stock or other Equity Interests or Voting Interests; (b) split, combine or reclassify any of its capital stock or other Equity Interests or Voting Interests, issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock or other Equity Interests or Voting Interests; (c) purchase, redeem or otherwise acquire any shares of capital stock or any other securities of any CMP Company or any options, warrants, calls or rights to acquire any such shares or other securities; or (d) take any action that would result in any change of any term (including any conversion price thereof) of any debt security of any CMP Company.
 - 4.2.2 Encumbrance of Securities. Issue, deliver, sell, pledge or otherwise encumber any shares of its capital stock, any other Equity Interests or Voting Interests or any securities convertible into, or exchangeable for, any options, warrants, calls or rights to acquire or receive any such shares, interests or securities or any stock appreciation rights, phantom stock awards



or other rights that are linked in any way to the Existing CMP Shares or any part thereof.

- 4.2.3 Changes to Organization. Amend or propose to amend its Organizational Documents or become a party to any merger, consolidation, share exchange, business combination, recapitalization or similar transaction.
- 4.2.4 Business Acquisition. Except as set forth in Schedule 4.2.4, acquire by merger, consolidation or purchase of all or a substantial portion of the assets of or a substantial Equity Interest or Voting Interest in, or by any other manner, any business or any corporation, partnership, limited liability company, joint venture, association or other Entity or division thereof.
- 4.2.5 Asset Acquisitions. Acquire any material assets or a license therefor, other than in the ordinary course of business, consistent with past practices, or incur any capital expenditures, or any obligations or liabilities in connection therewith, except pursuant to existing Contracts or that, in the aggregate, would not exceed US\$50,000,000 during any fiscal quarter.
- 4.2.6 Changes to Leased Real Property. Enter into any lease or sublease of real property (whether as a lessor, sublessor, lessee or sublessee) or change, terminate or fail to exercise any right to renew any lease or sublease of real property, other than in the ordinary course of business and consistent with past practices.
- 4.2.7 Changes to Owned Real Property. Sell, grant a license in, mortgage or otherwise encumber or subject to any Encumbrance or otherwise dispose of any of its material properties or assets, other than the sale of inventory and the granting of licenses in the ordinary course of business consistent with past practices, except for (a) Encumbrances for Taxes not yet due and payable, due but not delinquent, or being contested in good faith and, in each case, for which adequate reserves have been established; (b) Encumbrances for assessments and other governmental charges or Encumbrances of landlords, carriers, warehousemen, mechanics and repairmen incurred in the ordinary course of business, consistent with past practices, for sums not yet due and payable, due but not delinquent or being contested in good faith and, in each case, for which adequate reserves have been established; (c) Encumbrances incurred in the ordinary course of business, consistent with past practices, in connection with workers' compensation, unemployment insurance and other types of social security or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, government contracts, performance and return of money bonds and similar obligations and, in each case, for which adequate reasons have been established; and (d) Encumbrances that do not materially interfere with the conduct of any CMP Company's business and do not materially affect the use or value of any CMP Company's assets, except for (i) Encumbrances for Taxes not yet due and payable or due but not delinquent; and (ii)



Encumbrances for assessments and other governmental charges or Encumbrances of landlords, carriers, warehousemen, mechanics and repairmen incurred in the ordinary course of business, consistent with past practices, for sums not yet due and payable or due but not delinquent.

- 4.2.8 Indebtedness. (a) Repurchase, prepay or incur any material indebtedness or guarantee of any indebtedness of another Person; (b) issue or sell any debt securities or options, warrants, calls or other rights to acquire any debt securities of any CMP Company, other than debt for money borrowed from CAP in the ordinary course of business and consistent with past practices as part of the cash management system utilized by CAP for its Subsidiaries; (c) guarantee any debt securities of another Person; (d) enter into a "keep well" or other agreement to maintain any financial statement condition of another Person; or (e) enter into any arrangement having the economic effect of any of the foregoing, other than routine borrowings by CMP Companies in the ordinary course of business, consistent with past practices, or pursuant to Contracts existing on the Execution Date that have been duly disclosed in writing to MCI.
- 4.2.9 Investments. Make any material loans, advances or capital contributions to, or investments in, any other Person, provided that: (a) CMP or CAP may make any loans, advances or capital contributions to or investments in any direct or indirect wholly-owned Subsidiary of CMP; (b) CMP may continue to make loans to its employees, consistent with past practices, as part of the benefits described in Schedule 3.1.14 hereunder; and (c) CMP or CAP may make any other loan in the ordinary course of business, consistent with past practices.
- 4.2.10 Settlements and Legal Proceedings. Except as set forth in Schedule 4.2.10, pay, discharge, settle or satisfy any material claims (including claims of shareholders and any shareholder litigation relating to this Agreement, the Contemplated Transactions or otherwise), liabilities or obligations (whether absolute, accrued, asserted or unasserted, contingent or otherwise), other than (i) the payment, discharge, settlement or satisfaction in the ordinary course of business, consistent with past practices, or as required by Contracts, in each case, in effect on the Execution Date of claims, liabilities or obligations reflected or reserved against in the Financial Statements (or the notes thereto) of CMP for amounts not in excess of such reserves, (ii) incurred since the date of such Financial Statements in the ordinary course of business, consistent with past practices or (iii) the payment of any amount not exceeding in the aggregate US\$500,000.
- 4.2.11 Material Contracts. Enter into any Material Contract, except in the ordinary course of business, consistent with past practices; provided, however, that (a) if consummation of the Contemplated Transactions or compliance by CMP or CMH with the provisions of this Agreement will (i) conflict with; (ii) result in any violation or breach of; (iii) result in a default (with or

without notice or lapse of time or both) under; (iv) give rise to a right of, or result in termination, cancellation or acceleration of any obligation or result in a loss of a material benefit under; (v) result in the creation of any Encumbrance in or upon any of the properties or assets of any CMP Company that are necessary for the operation of CMP business as currently conducted; or (vi) give rise to any increased, additional, accelerated or guaranteed rights or entitlements under, in each case, any provision of such Material Contract; or (b) if such Material Contract contains any restriction on the ability of any CMP Company to assign all or any portion of its rights, interests or obligations thereunder (unless such restriction expressly excludes any assignment to any CMP Companies in connection with or following the consummation of any of the Contemplated Transactions), then, in each such case, such CMP Company may not enter into such Material Contract without the prior consent of MCI, which shall not be unreasonably withheld.

4.2.12 Contracts Generally. Change or terminate any Material Contract to which any CMP Company is a party or waive, release or assign any rights or claims thereunder, in each case in a manner that could have a Material Adverse Effect on any CMP Company.

4.2.13 Benefit Plans. Except as required by Applicable Law or done in the ordinary course of business, consistent with past practices:

- (a) Except as set forth in Schedule 4.2.13(a), adopt, enter into or substantially amend any Benefit Plan applicable to the employees of any CMP Company;
- (b) Pay to any employee, officer, director or independent contractor of any CMP Company any material benefit not provided for under any Contract or Benefit Plan in effect on the Execution Date; or
- (c) Take any action to accelerate the vesting or payment of any material compensation or material benefit under any Contract or Benefit Plan, if any.

4.2.14 Taxes. (a) Fail to accrue a reserve in its books, records and Financial Statements in accordance with past practice for Taxes payable by any CMP Company; (b) settle or compromise any Legal Proceeding relating to any material Tax; (c) revoke, make, or amend any material Tax election; (d) waive the statute of limitations in respect of any Taxes; (e) except for the adoption of IFRS in lieu of Chilean GAAP, change any method of Tax accounting or Tax procedure or practice; or (f) file or cause to be filed any amended Tax Return with respect to any CMP Company or file or cause to be filed any claim for refund of Taxes or amend or cause to be amended any payment of Taxes paid by or on behalf of any CMP Company, each of which may reasonably have a MAE on CMP.

- 4.2.15 Accounting Practices. Except as required by Chilean GAAP, Applicable Law or the application of IFRS to the accounting practices of CMP, change its fiscal year, revalue any of its material assets or make any other material changes in financial accounting methods, principles or practices.
- 4.2.16 Representations and Warranties. Except as required by Applicable Law: (a) take any action or omit to take any action if such action or omission would, or would be reasonably likely to result in (i) any representation and warranty set forth in Section 3.1 of this Agreement that is qualified as to materiality becoming untrue (as so qualified); or (ii) any representation or warranty that is not qualified as to materiality becoming untrue in any material respect; or (b) authorize any of, or commit, resolve or agree to take any of, the foregoing actions.
- 4.2.17 Acceleration of Credits and Postponement of Expenses. Engage in (a) any trade loading practices or any other promotional sales or discount activity with any customers or distributors with the effect of accelerating to prior fiscal quarters (including the current fiscal quarter) sales to the trade that would otherwise be expected (based on past practices) to occur in subsequent fiscal quarters; (b) any practice which would have the effect of accelerating to prior fiscal quarters (including the current fiscal quarter) collections of receivables that would otherwise be expected (based on past practices) to be made in subsequent fiscal quarters; or (c) any practice which would have the effect of postponing to subsequent fiscal quarters expenses by any CMP Company that would otherwise be expected (based on past practices) to be accrued in prior fiscal quarters (including the current fiscal quarter).
- 4.2.18 Policies. Substantially change any of its pricing policies, product return policies, personnel policies or other business policies in any material respect.
- 4.3 Pre-Capital Increase Closing Period Affirmative Covenants of CAP and CMP. Each of CAP and CMP covenants and agrees, as applicable (unless otherwise permitted by MCI, as evidenced by its written consent which shall not be unreasonably withheld) that it shall, and shall cause each other CMP Company to (to the extent applicable), do the following during the Pre-Capital Increase Closing Period do the following:
- 4.3.1 Cause Capital Increase. CMP shall, and CAP shall cause CMP and the Surviving Corporation to, do everything required to effect the Capital Increase in accordance with the terms hereof.
- 4.3.2 Delivery of Closing Documents, etc. At or before the Capital Increase Closing, CAP and CMP shall execute and deliver the documents and agreements required pursuant to Section 1.10.1.
- 4.4 Pre-Capital Increase Closing Period Negative Covenants of CAP and CMP. Each of CAP and CMP covenants and agrees, as applicable (unless otherwise permitted



by MCI, as evidenced by its written consent which shall not be unreasonably withheld), that it shall not, and shall not permit any other CMP Company to (to the extent applicable) do any of the following during the Pre-Capital Increase Closing Period:

- 4.4.1 No Solicitation. Except for those discussions that are disclosed in Schedule 4.4.1, neither CAP nor CMP shall directly or indirectly, and shall not authorize or permit any CMP Company or any Representative of any CMP Company directly or indirectly to: (i) solicit, initiate, encourage, induce or facilitate the making, submission or announcement of any Acquisition Proposal or take any action that could reasonably be expected to lead to an Acquisition Proposal; (ii) furnish any information regarding any CMP Company to any Person in connection with or in response to an Acquisition Proposal; (iii) except as provided in Section 4.4.3, engage in discussions or negotiations with any Person with respect to any Acquisition Proposal; or (iv) approve, endorse or recommend any Acquisition Proposal or enter into any agreement pertaining thereto. Without limiting the generality of the foregoing, CMP and CAP acknowledge and agree that any violation of or the taking of any action inconsistent with any of the restrictions set forth in the preceding sentence by any Representative of any CMP Company, whether or not such Representative is purporting to act on behalf of any CMP Company, shall be deemed to constitute a breach of this Section 4.4.1.
- 4.4.2 Notice of Solicitation. CMP or CAP shall promptly (and in no event later than forty-eight (48) hours after receipt) advise MCI of any Acquisition Proposal, any inquiry or indication of interest that could lead to an Acquisition Proposal or any request for nonpublic information relating to any CMP Company (including the identity of the Person making or submitting such Acquisition Proposal, inquiry, indication of interest or request, and the terms thereof). CMP or CAP shall keep MCI fully informed with respect to the status of any such Acquisition Proposal, inquiry, indication of interest or request and any modification or proposed modification thereto.
- 4.4.3 Status of Certain Existing Discussions. Except as provided in this Section 4.4.3, CMP shall immediately cease and cause to be terminated any existing discussions with any Person that relate to any Acquisition Proposal. With respect to the discussions described on Schedule 4.4.1, and with respect to any inquiry or Acquisition Proposal made by any Third Party, MCI and CMP agree that CAP and CMP shall be permitted to respond to discussions initiated by Third Parties during the term of this Agreement; provided that (a) neither CAP nor any CMP Company shall enter into any memorandum of understanding, letter of intent, or any agreement of any kind, whether oral or written, concerning such matters with any Person listed in Schedule 4.4.1 or any other Third Party without the prior written consent of MCI, and (b) promptly following any meeting or other contact concerning such discussions or the resumption of such discussions, CAP and CMP shall

advise MCI of the occurrence of such discussions and a summary of the content of such discussions.

4.5 Pre-Merger Closing Period Affirmative Covenants of MCI. MCI covenants and agrees to, during the Pre-Merger Closing Period, do the following:

4.5.1 CMH Merger Shareholders Meeting.

- (a) MCI shall cause the CMH BOD to, and the CMH BOD shall, take all action necessary under Chilean Applicable Law to call and give notice, not later than eighteen (18) days prior to the Merger Closing Date, of, and cause to be held, the CMH Merger Shareholders Meeting fifteen days prior to the Merger Closing Date.
- (b) Subject to the satisfaction or waiver as of the Merger Closing Date of all conditions set forth in Section 2.2, MCI shall vote its Existing CMH Shares in favor of the different actions in support of the Merger to be adopted at the CMH Merger Shareholders Meeting, which shall be held as soon as practicable on a date to be agreed to by CMP and MCI and which shall be held on the same date as the CMP Merger Shareholders Meeting.

4.5.2 Regulatory Approvals.

- (a) Subject to Section 4.5.2(b), MCI shall, and shall cause CMH, as applicable, to, use commercially reasonable efforts to take, or cause to be taken, all actions necessary to consummate the Contemplated Transactions. Without limiting the generality of the foregoing, but subject to Section 4.5.2(b), the relevant Party shall (i) make all filings (including the Required Corporate Actions) and give all notices (if any) required to be made and given by such Party in connection with the Contemplated Transactions as soon as practicable after the Execution Date and submit promptly any additional information requested in connection with such filings and notices; (ii) use commercially reasonable efforts to obtain any Consent required to be obtained (pursuant to any Applicable Law, Contract or otherwise) by MCI or CMH, as the case may be, in connection with the Contemplated Transactions including, without limitation, those set forth in Schedule 3.2.2(b), and any other Governmental Authorizations in jurisdictions other than Chile that require the issuance of a merger clearance notice or other Consent in connection with the Contemplated Transactions; and (iii) use commercially reasonable efforts to oppose or to lift, as the case may be, any restraint, injunction or other legal bar to the Contemplated Transactions. MCI shall promptly deliver to CAP a copy of each such filing made, each such notice given and each such Consent obtained.

- (b) Notwithstanding anything to the contrary contained in this Agreement, MCI shall have no obligation under this Agreement to: (i) dispose, transfer or hold separate, or cause any Affiliate to dispose, transfer or hold separate, any assets or operations; (ii) discontinue or cause any Affiliate of MCI to discontinue offering any product or service; or (iii) make or cause any Affiliate of MCI to make any commitment (to any Governmental Body or otherwise) regarding its future operations or the future operations of the business of CMH (excluding any commitments regarding future operations as contemplated by the Contemplated Transactions).
- 4.5.3 Publicity. MCI will not issue any press release or make any other public announcement relating to the existence of this Agreement or the Contemplated Transactions without the prior approval of CAP unless required by Applicable Law, in which case, MCI shall, to the extent possible, consult with CAP and offer CAP the opportunity to comment on such announcement prior to its issuance.
- 4.5.4 Tax Matters. MCI shall use commercially reasonable efforts prior to the Merger Completion Date to cause the Merger to qualify as Statutory Merger.
- 4.5.5 Accuracy of Representations. MCI shall use all commercially reasonable efforts to ensure that each of the representations and warranties of MCI set forth in this Agreement are accurate in all material respects as if made on and as of the date of the Merger Completion Date (other than representations and warranties that address matters only as of a particular date that shall have been accurate in all material respects as of such particular date).
- 4.5.6 Delivery of Closing Documents, etc. At or before the Merger Closing, MCI shall execute and deliver the documents and agreements required pursuant to Section 1.2.2.
- 4.5.7 CMP BOD. At the CMP Merger Shareholders Meeting, CAP shall cause the bylaws of CMP will be amended to increase the number of members of the CMP BOD to seven (7) and the two (2) directors designated by MCI not later than three (3) days prior to the CMP Merger Shareholders Meeting, by notice to the other Parties, shall be elected as directors of CMP. If any such Person to be appointed by MCI is not able or willing to serve as a director of CMP as of the date of the CMP Merger Shareholders Meeting, then MCI shall select a replacement for such named director and take all actions necessary to elect such replacement as a director of CMP at the CMP Merger Shareholders Meeting.
- 4.6 Pre-Capital Increase Closing Period Affirmative Covenants of MCI. MCI covenants and agrees, as applicable (unless otherwise permitted by CAP, as evidenced by its written consent which shall not be unreasonably withheld) that it



shall, and shall cause each other to (to the extent applicable), do the following during the Pre-Capital Increase Closing Period:

- 4.6.1 Cause Capital Increase. MCI shall use all commercially reasonable efforts to do everything required to effect the Capital Increase within ten (10) Business Days immediately following the date on which the condition precedent to the obligation of MCI to pay to the Company the amount of the Capital Increase has been satisfied or waived by MCI.
- 4.6.2 Delivery of Closing Documents, etc. At or before the Capital Increase Closing, MCI shall execute and deliver the documents and agreements required pursuant to Section 1.10.2.
- 4.7 Application of Capital Increase Proceeds. MCI and CAP agree that a portion of the proceeds of the Capital Increase shall be used for the full payment of the amount owed by CMP to CAP in connection with the mercantile current account between the two companies, which shall be repaid on or before the third (3rd) Business Day immediately following the payment by MCI of the Subscription Price pursuant to Section 1.10.2 for the shares issued to it in the Capital Increase. The Parties agree that the payable amount shall be comprised of eighty-nine million three hundred thousand U.S. Dollars (US\$89,300,000), plus interest accrued at the rate established in such mercantile current account on any amount due since December 31, 2009, until the date of final payment pursuant to this Section 4.7.

5. SURVIVAL AND INDEMNITIES

5.1 Survival.

- (a) Except for those representations and warranties contained in Sections 3.1.5 (Capital), 3.1.12 (Environmental Matters), 3.1.20 (Taxes), 3.1.23 (Improper Payments) and 3.2.6 (Ownership of Shares), the representations in Section 3 shall remain in effect until 5:00 p.m., Santiago time on the date that is twelve (12) months after the Merger Closing Date;
- (b) With respect to the representations and warranties contained in Section 3.1.5 (Capital), Section 3.1.12 (Environmental Matters), Section 3.1.23 (Improper Payments), and Section 3.2.6 (Ownership of Shares), such representations and warranties shall remain in effect until the full running of the respective statute of limitations applicable thereto, on the relevant representation; and
- (c) The representations contained in Section 3.1.20 (Taxes) shall remain in effect through six (6) months after the full running of the statute of limitations on the relevant representation for any Third Party Claim relating thereto.

- (d) Each period described in Sections 5.1(a), 5.1(b), and 5.1(c) shall be an applicable **"Survival Period"**. Upon expiration of the applicable Survival Period, no Party shall file any claim or bring any suit or action or institute any proceedings against any other Party for any breach of the aforesaid representations, regardless of the cause, nature or effects thereof. Any claims of a breach of any representation made in good faith prior to such termination date will survive such termination date to the extent of the facts alleged in such claim and the Loss resulting therefrom, and shall be resolved pursuant to the terms of this Agreement, including Section 7.3. The covenants and agreements in this Agreement to be performed or complied with after the Merger Closing Date will survive the execution and delivery of this Agreement and the consummation of the Contemplated Transactions.

5.2 Indemnification by CAP and CMP.

- (a) Subject to Section 5.1 and Section 5.4, from and after the Merger Closing Date, MCI and its respective Affiliates and Representatives of each (collectively, the **"MCI Indemnitees"**) shall be indemnified and held harmless by CAP and CMP, jointly and severally, from and against and in respect of any and all Losses incurred by, resulting from, arising out of, relating to, imposed upon or incurred by MCI or any CMP Company or any other MCI Indemnitee by reason of any inaccuracy in or breach of any of the representations, warranties or covenants of CAP or CMP, as the case may be, contained in this Agreement.
- (b) The Parties acknowledge and agree that for purposes of paragraph second of article 1522 of the Chilean Civil Code and this Section 5.2, CMP will not be considered an interested party or main obligor and shall solely be considered as a surety (*fianzor*), notwithstanding being jointly and severally liable with CAP as provided in this Section 5.2.
- (c) Notwithstanding Sections 5.1 or 5.4 and in addition to any other representation, warranty, covenant or indemnity set forth in this Agreement (but without duplication of any recovery for Loss in respect of any other provision of this Agreement), CAP shall indemnify, defend and hold harmless MCI from any Loss arising from or relating to PLL and the ownership of Manganesos Atacama S.A., Pacific Ores and Trading B.V. and Pacific Ores and Trading Curacao N.V., to the extent any such Loss arises from or is attributable to a cause, event or fact that existed prior to the Merger Closing Date. All claims of Loss under this Section 5.2(c) (i) shall be made in good faith, (ii) shall be made prior to the date that is thirty-six (36) months after the Merger Closing Date, (iii) shall survive such termination date to the extent of the facts alleged in

such claim and the Loss resulting therefrom, and (iv) shall be resolved pursuant to the terms of this Agreement, including Section 7.3.

5.3 Indemnification by MCI. Subject to Sections 5.1 and 5.4, from and after the Merger Completion Date, CAP and CMP and their respective Representatives (collectively, the "CAP Indemnitees") shall be indemnified and held harmless by MCI from and against and in respect of any and all Losses incurred by, resulting from, arising out of, relating to, imposed upon or incurred by CAP or CMP, as the case may be, or any other CAP Indemnitee by reason of any material inaccuracy in or breach of any of the representations, warranties, covenants or agreements of MCI contained in this Agreement.

5.4 Limitations on Indemnification.

5.4.1 Indemnification Threshold. No Indemnitee shall be entitled to indemnification for any Losses arising from the breach of any representations or warranties contained in this Agreement until (i) the individual amount of each Loss therefrom for which indemnity is sought equals or exceeds One Hundred Thousand U.S. Dollars (US\$100,000), and (ii) the aggregate amount of all such Losses under all claims of all indemnitees shall equal or exceed in the aggregate Five Million U.S. Dollars (US\$5,000,000) (the "Threshold"), at which time all Losses incurred, including those below the Threshold, shall be subject to indemnification hereunder in full.

5.4.2 Indemnification Ceiling. The total indemnity obligations of MCI pursuant to Section 5.3 and the total indemnity obligations of CAP and CMP pursuant to Section 5.2 shall not exceed in the aggregate, in each case, an amount equal to One Hundred Million U.S. Dollars (US\$100,000,000) (the "Ceiling"); provided, however, that the Ceiling shall not apply with respect to breaches of:

- (a) Any affirmative covenant contained in (i) Section 4.1.3 (Taxes); (ii) Sections 4.1.4 and 4.5.1 (CMH Merger Shareholder Meeting); (iii) Section 4.1.5 (CMP Merger Shareholder Meeting); (iv) Sections 4.1.6 and 4.5.2 (Regulatory Approvals); (v) Sections 4.1.12 and 4.5.6 (Delivery of Closing Documents); (vi) Section 4.1.3 (Cause Capital Increase); and (vii) Sections 4.1.4 and 4.5.1 (CMH Merger Shareholder Meeting);
- (b) Any of the representations and warranties contained in: (i) Section 3.1.5 (Capital); (ii) Section 3.1.14 (Employee Benefits); (iii) Section 3.1.23 (Improper Payments); and (iv) Section 3.2.6 (Ownership of Shares); or
- (c) Any matter described in Section 5.2(c).



5.4.3 Contribution Related to CMH Matters.

- (a) Reimbursement for Third Party Claims. In the event that any Loss is suffered by the Surviving Corporation arising from liabilities or obligations of CMH (other than those arising from the Royalty Minero, which shall be borne by the Surviving Corporation without adjustment of any kind from or to the Parties), and the Surviving Corporation is obligated to pay to a Third Party, an amount in respect of such Loss greater than One Million U.S. Dollars (\$1,000,000), then, when such claim is actually paid by CMP (i) CAP shall reimburse the Surviving Corporation an amount equal to fifty percent (50%) of such Loss, and (ii) MCI shall reimburse the Surviving Corporation an amount equal to fifty percent (50%) of such Loss. All claims of Loss under this Section 5.4.3(a) (i) shall be made in good faith; (ii) shall be made prior to the date that is three (3) years from and after the Merger Closing Date; (iii) shall survive such termination to the extent of the facts alleged in such claim and the Loss resulting therefrom, and (iv) shall be resolved pursuant to the terms of this Agreement, including Section 7.3.
- (b) Process for Requesting and Receiving Reimbursement. Upon suffering any Loss for which it is entitled to reimbursement from CAP and MCI pursuant to Section 5.4.3(a), the Surviving Corporation shall provide notice of such Loss within forty-five (45) calendar days to each of CAP and MCI and shall set forth in such notice in reasonable detail the circumstances surrounding the Loss, including the nature of the Loss, the date on which the claim was made, the identity of the claimant and its relationship to CMH and the final amount paid by the Surviving Corporation to the claimant. Each of CAP and MCI shall have fifteen (15) days immediately following receipt of such notice to respond and ask questions regarding the claim. Within fifteen (15) days following receipt by the Surviving Corporation of any such response from CAP and MCI or either of them, as applicable, the Surviving Corporation shall, in good faith, deliver to the appropriate Party a responsive reply to such Party's response. If CAP and MCI agree that such reimbursement is due to the Surviving Corporation, each of them shall reimburse the Surviving Corporation as provided in Section 5.4.3(a) within ten (10) Business Days after they so agree. If a Dispute arises in connection with any reimbursement, the Parties shall resolve such Dispute as provided in Section 7.3.

- 5.5 Specific Performance in Respect of the Capital Increase. With respect to any affirmative or negative covenant in Sections 4.3, 4.4, 4.5 and 4.6, the Parties hereby agree that irreparable damage would occur and that the Parties would not have an adequate remedy at law in the event that the Capital Increase were not effected and any provision of such Sections were not performed in accordance with its specific



terms or otherwise breached. It is accordingly hereby agreed that any Party shall be entitled to an injunction or injunctions to prevent breaches of and enforce specifically the terms and provisions of Sections 4.3, 4.4, 4.5 and 4.6, either in accordance with Section 7.3 or in any applicable court of law in Chile, at its sole discretion. All remedies herein expressly conferred upon a Party shall be deemed cumulative with, and not exclusive of, any other remedy conferred hereby or by law on such Party and the remedy of specific performance or injunctive relief is in addition to any other remedy to which such Party is entitled at law or in equity.

5.6 Procedures for Indemnification

5.6.1 Any Indemnitee seeking indemnification under this Section 5 will give each Party from whom indemnification is being sought (each, an **"Indemnifying Party"**) notice of any matter for which such Indemnitee is seeking indemnification, stating the amount of the Losses, if known, and method of computation thereof, and containing a reference to the provisions of this Agreement in respect of which such right of indemnification is claimed or arises. The obligations of an Indemnifying Party under this Section 5 with respect to Losses arising from any claims of any Person that is not party to this Agreement or an Affiliate of CAP or MC (a **"Third Party"**) which are subject to the indemnification provided for in this Section 5 (collectively, **"Third Party Claims"**) will be governed by and contingent upon the following additional terms and conditions: if an Indemnitee receives, after the Merger Closing Date, initial notice of any Third Party Claim, the Indemnitee will give the Indemnifying Party notice of such Third Party Claim within such time frame as necessary to allow for a timely response and in any event within thirty (30) calendar days of the receipt by the Indemnitee of such notice; provided, however, that the failure to provide such timely notice will not release the Indemnifying Party from any of its obligations under this Section 5, except to the extent the Indemnifying Party is prejudiced by such failure.

5.6.2 The Indemnifying Party will be entitled to assume and control the defense of such Third Party Claim at its expense and through counsel of its choice if it gives notice of its intention to do so to the Indemnitee within forty-five (45) calendar days of the receipt of such notice from the Indemnitee; provided, however, that if there exists a conflict of interest (including the availability of one or more legal defenses to the Indemnitee which are not available to the Indemnifying Party) that would make it inappropriate in the reasonable judgment of the Indemnitee (upon and in conformity with advice of counsel) for the same counsel to represent both the Indemnitee and the Indemnifying Party, then the Indemnitee will be entitled to retain one counsel (plus one local counsel, if necessary), reasonably acceptable to the Indemnifying Party, at the expense of the Indemnifying Party, provided that the Indemnitee and such counsel will contest such Third Party Claims in good faith. In the event the Indemnifying Party exercises the right to undertake any such defense against any such Third Party Claim as provided above, the

Indemnatee will cooperate with the Indemnifying Party in such defense and make available to the Indemnifying Party, at the Indemnifying Party's expense, all witnesses, pertinent records, materials and information in the Indemnatee's possession or under the Indemnatee's control relating thereto as is reasonably required by the Indemnifying Party. Similarly, in the event the Indemnatee is, directly or indirectly, conducting the defense against any such Third Party Claim, the Indemnifying Party will cooperate with the Indemnatee in such defense and make available to the Indemnatee, at the Indemnifying Party's expense, all such witnesses, records, materials and information in the Indemnifying Party's possession or under the Indemnifying Party's control relating thereto as is reasonably required by the Indemnatee.

- 5.6.3 The Indemnifying Party will not, without the written consent of the Indemnatee (which shall not be unreasonably withheld), settle or compromise any Third Party Claim or consent to the entry of any judgment which does not include as an unconditional term thereof the delivery by the Claimant or plaintiff to Indemnatee of a written release from all liability in respect of such Third Party Claim. No Third Party Claim which is being defended in good faith by the Indemnifying Party or which is being defended by the Indemnatee as provided above in this Section 5.6 will be settled by the Indemnatee without the written consent of the Indemnifying Party (which shall not be unreasonably withheld), unless (x) there is no finding or admission of any violation of Applicable Law or any violation of the rights of any Person and no adverse effect on any other claims that may be made against the Indemnatee and (y) the sole relief provided is monetary damages that are paid in full by the Indemnifying Party.

- 5.7 Payment of Indemnification. Any amounts that are finally determined pursuant to this Section 5 to be payable by any Indemnifying Party to any Indemnatee shall be (i) converted from Chilean Pesos to U.S. Dollars using the "Dólar Observado" exchange rate published by the Chilean Central Bank on the day of its payment, and (ii) paid in U.S. Dollars.

6. TERMINATION

- 6.1 Termination. This Agreement may be terminated at any time prior to the Merger Closing:

6.1.1 Mutual Consent. By mutual written consent of CAP and MCI;

6.1.2 Failure to Close. By either CAP or MCI if, for any reason, the Merger Closing Date has not occurred by 5:00 p.m. Santiago time on September 30, 2010, unless such terminating Party is in material breach of its obligations pursuant to this Agreement;

6.1.3 Governmental Body Action. By either CAP or MCI if a court of competent jurisdiction or other Governmental Body shall have issued a final and



nonappealable order, decree or ruling, or shall have taken any other action having the effect of permanently restraining, enjoining or otherwise prohibiting the Contemplated Transactions;

- 6.1.4 Material Adverse Effect. By MCI if, since the Execution Date, there shall have occurred any event that has a Material Adverse Effect on CMP or there shall have occurred any event or circumstance that, in combination with any other events or circumstances, could reasonably be expected to have a Material Adverse Effect on CMP;
- 6.1.5 CAP's Additional Rights to Terminate. By CAP (i) if any of MCI's representations and warranties shall have been inaccurate as of the Execution Date, such that the condition set forth in Section 2.1.1 would not be satisfied; or (ii) if (A) any of the MCI's representations and warranties become inaccurate as of a date subsequent to the Execution Date (as if made on such subsequent date), such that the condition set forth in Section 2.1.1 would not be satisfied; and (B) such inaccuracy has not been cured by MCI within ten (10) Business Days after its receipt of written notice thereof and remains uncured at the time notice of termination is given; or (iii) any of MCI's covenants contained in this Agreement shall have been breached, such that the condition set forth in Section 2.1.2 would not be satisfied;
- 6.1.6 MCI's Additional Rights to Terminate. By MCI (i) if any of CAP or CMP's representations and warranties shall have been inaccurate as of the Execution Date, such that the condition set forth in Section 2.2.1 would not be satisfied; (ii) if (A) any of CAP's or CMP's representations and warranties shall have become inaccurate as of a date subsequent to the Execution Date (as if made on such subsequent date), such that the condition set forth in Section 2.2.1 would not be satisfied; and (B) such inaccuracy has not been cured by CAP or CMP, as the case may be, within ten (10) Business Days after its receipt of written notice thereof and remains uncured at the time notice of termination is given; or (iii) if any of CAP's or CMP's covenants contained in this Agreement shall have been breached such that the condition set forth in Section 2.2.2 would not be satisfied; or
- 6.1.7 Failure to Receive CAP Shareholder Approval. By either MCI or CAP if the approval or ratification, from the shareholders of CAP of this Agreement, the Shareholders Agreement, the Merger, the Capital Increase and the other Contemplated Transactions shall not have been obtained by the favorable vote of two-thirds of the issued shares entitled to vote at a CAP Shareholders Meeting by the date that is sixty (60) days after the Execution Date, unless such terminating Party is in material breach of its obligations pursuant to this Agreement; provided, however, that neither CAP nor MCI may exercise its rights under this Section 6.1.7 until the earlier of (a) the occurrence of a CAP Shareholders Meeting at which the shareholders of CAP have voted on such matters; and (b) September 30, 2010.

- 6.2 Effect of Termination. In the event of the termination of this Agreement as provided in Section 6.1, this Agreement shall be of no further force or effect; provided, however, that (i) this Section 6.2, Section 6.3, and Section 7 shall survive the termination of this Agreement and shall remain in full force and effect; and (ii) the termination of this Agreement shall not relieve any party from any liability for any material inaccuracy in or breach of any representation or any material breach of any warranty, covenant or other provision contained in this Agreement. If this Agreement is terminated in accordance with Section 6.1 prior to the Merger Closing, the Parties shall use their best efforts to adopt all necessary actions needed to implement such termination (without closing the Merger or the Capital Increase), in accordance with Applicable Law.
- 6.3 Expenses; Termination Fees. Except as set forth in this Section 6.3, all fees and expenses incurred in connection with this Agreement and the transactions contemplated by this Agreement shall be paid by the Party incurring such expenses, whether or not the Merger is consummated; provided however, that nothing in this Section 6.3 shall limit or impair any claim for Loss by any Party in the event of a breach or default by any other Party with respect to its obligations under this Agreement.
- 6.4 Capital Increase. If the Capital Increase Payment Date has not occurred by 5:00 p.m. Santiago time on December 31, 2010, then either CAP or MCI, by notice to the other Parties, may terminate all of the obligations of all Parties pursuant to Sections 1.10, 2.3, 4.3, 4.4, 4.6, 4.7 and 5.5 pertaining to the Capital Increase, and thereafter, no Party shall have any right or obligation with respect to the Capital Increase; provided, however, that no Party may elect to terminate such provisions if such Party is in material breach of its obligations pursuant to this Agreement.

7. MISCELLANEOUS

- 7.1 Notices. All notices, Consents, waivers and other communications required or permitted by this Agreement shall be in writing and shall be deemed given to a party when (a) delivered to the appropriate address by hand or by a nationally recognized overnight courier service (costs prepaid); or (b) sent by facsimile or e-mail with confirmation of transmission by the transmitting equipment confirmed with a copy delivered as provided in clause (a), in each case to the following addresses, facsimile numbers or e-mail addresses and marked to the attention of the person (by name or title) designated below (or to such other address, facsimile number, e-mail address or person as a party may designate by notice to the other Parties):

MCI: Apoquindo 4499, Piso 14, Las Condes, Santiago, Chile
Attention: Takeaki Doi, Sub-Gerente General
Fax no.: (562) 340-1189
E-mail address: takeaki.doi@mitsubishicorp.com



with a copy to: Carey y Cia, Ltda., Miraflores 222, piso 24, 832-0198 Santiago, Chile

Attention: Francisco Ugarte

Fax no.: (56) 2 633.1980

E-mail address: Fugarte@carey.cl

CAP: Avenida Gertrudis Echeñique 220, Las Condes, Santiago, Chile

Attention: Chief Operating Officer, Mr. Sergio Verdugo

Fax no.: +(562)818.6146

E-mail address: sverdugo@cap.cl

with a copy to: Chief Legal Officer, Mr. Eduardo Frei

E-mail address: efrei@cap.cl

CMH: (before the Merger): Serrano 1755, casa 1, Vallenar, Chile

Attention: Chief Executive Officer, Mr. Carlos Pineda

Fax no.:

E-mail address: cpineda@cmh.cl

with a copy to:

CMP Attention: Chief Legal Officer, Mr. John Patrick McNab

Fax no.:

E-mail address: jmcnab@cmp.cl

CMP: Avenida Pedro Pablo Muñoz 675, La Serena, Chile

Attention: Chief Executive Officer, Mr. Erick Weber

Fax no.: +(5651)208130

E-mail address: eweber@cmp.cl

with a copy to:

Attention: Chief Legal Officer, Mr. John Patrick McNab

E-mail address: jmcnab@cmp.cl

- 7.2 Governing Law. The Applicable Law of Chile, without giving effect to any choice of law or conflicts of law provision or rule that would cause the application of the domestic substantive laws of any other jurisdiction, shall govern the formation, validity, interpretation, performance, execution, amendment and settlement of disputes under this Agreement.

7.3 Dispute Resolution.

- 7.3.1 Upon the occurrence of any difficulty, dispute, controversy or claim among the Parties, arising out of or relating to the Agreement, or the formation, validity, performance, interpretation, breach or termination thereof (a "Dispute"), the Parties shall first attempt to resolve the Dispute in a mutually satisfactory manner through negotiation. If, within twenty (20) days after written notice by either Party of the existence of a Dispute, the Parties have not entered into an agreement in writing resolving such



Dispute, then the Dispute shall be referred to the respective chairmen of the boards of directors or chief executive officers of the Parties.

- 7.3.2 If the Parties do not resolve their Dispute within thirty (30) days of the initial written notice by either Party of the existence of a Dispute, then such Dispute shall be resolved through arbitration pursuant to the Rules of Arbitration Procedure of the Santiago Arbitration and Mediation Center of the Santiago Chamber of Commerce or any successor organization (the "Rules").
- 7.3.3 The arbitration shall be conducted before an arbitral tribunal (the "**Arbitral Tribunal**") composed of three (3) arbitrators (*árbitros mixtos*). Each of the Parties shall appoint an arbitrator within a period of thirty (30) days from the date of the notice of arbitration. The third arbitrator shall be appointed by mutual consent of the other two arbitrators within thirty (30) days as from the date of appointment of the last of the arbitrators appointed by the Parties. Each arbitrator must be (i) a Chilean lawyer, (ii) fluent in English and Spanish, and (iii) experienced in international commercial transactions (the "**Qualifications**"). All arbitrators selected will be subject to disqualification (*implicancia*) or recusal (*recusación*) recognized under Applicable Law in Chile or the Rules.
- 7.3.4 If one or both Parties does or do not appoint an arbitrator pursuant to the foregoing clause, or if the two (2) arbitrators appointed by the Parties do not agree on the appointment of the third arbitrator within the thirty (30)-day period in Section 7.3.3, then the remaining members of the Arbitral Tribunal shall be appointed by the Santiago Chamber of Commerce. The Parties hereby confer an irrevocable special power of attorney upon such Chamber of Commerce so that it may, following the expiration of the above thirty (30) day period and at the written request of any thereof, appoint the third arbitrator from among members of the arbitration corps of the Santiago Arbitration and Mediation Center, which comply with the Qualifications.
- 7.3.5 The arbitration shall be conducted in the city of Santiago, Chile, or such other place as it is unanimously agreed in writing by the parties to the arbitration. Except as otherwise provided herein, the arbitration shall be conducted in accordance with the procedures set forth in the Rules. In determining any question, matter or dispute before them, the Arbitral Tribunal shall apply the provisions of this Agreement. The official language of the arbitration will be English but (i) any Party may elect to submit documents or other information to the arbitral tribunal in English or Spanish, (ii) any witness whose native language is not English may elect to give testimony in his or her native language (with simultaneous translation into English if the Parties and the Arbitral Tribunal deem appropriate and feasible), and (iii) the Arbitral Tribunal must communicate awards, orders, and other written communications to the Parties to the arbitration in both English and Spanish. If simultaneous translation is required, the translator



will be appointed by the Arbitral Tribunal. Each Party may also hire a translator at the Party's own expense, and may participate in the examination and cross-examination of witnesses at any hearing. Each Party will bear its own costs and expenses, including attorneys' fees, in connection with such arbitration, unless otherwise determined by the Arbitral Tribunal.

- 7.3.6 The Parties specifically agree that any legal action, including the filing of any precautionary actions (*medidas precautorias*) or pre-judicial actions (*medidas prejudiciales*) will be recognized and resolved by the Arbitral Tribunal; provided, however, that, at any time before or after an Arbitral Tribunal is effectively in place, any Party may file precautionary actions (*medidas precautorias*) or pre-judicial actions (*medidas prejudiciales*) before a court of competent jurisdiction to the extent necessary to preserve the status quo, pending the final outcome of an arbitration proceeding under this Section 7.3.
- 7.3.7 Any decision or award of the Arbitral Tribunal shall be final and binding upon the parties to the arbitration proceeding. Any rights to appeal or to review of such award by any court or tribunal are hereby waived by the Parties, to the extent permitted by law. The Arbitral Tribunal is especially empowered to resolve any matter relating to its competence and/or jurisdiction. The arbitral award may be enforced against the parties to the arbitration proceeding or their assets wherever they may be found and judgment upon the arbitral award may be entered in any court having jurisdiction thereof.
- 7.4 Financing. The Parties agree that from the Execution Date and until the Merger Completion Date, CMP and CMH will fund any cash requirements using their available sources including cash generated by both CMP and CMH during such period as well as existing or new working capital financing facilities, and will generate intercompany transactions between CMH and CMP to transfer funds among them when and if necessary.
- 7.5 Amendments and Waiver. No modification of or amendment to this Agreement shall be valid or binding unless set forth in writing and duly executed by the Parties and no waiver of any breach of any term or provision of this Agreement shall be effective or binding unless made in writing and signed by the Party purporting to give the same and, unless otherwise provided, shall be limited to the specific breach waived. This Agreement may be so amended at any time by the Parties, by action taken or authorized by their respective BOD or managing bodies, whether before or after adoption of this Agreement by the shareholders of CMP or CMH or the ratification of this Agreement by the shareholders of CAP; provided, however, that after any such shareholder approval of this Agreement, no amendment shall be made to this Agreement that by Chilean Applicable Law requires further approval, ratification or authorization by the shareholders of CAP, CMP or CMH without such further approval, ratification or authorization.



7.6 Remedies Cumulative; Waiver.

7.6.1 Remedies Cumulative. The rights and remedies of the parties to this Agreement are cumulative and not alternative. Neither any failure nor any delay by any Party in exercising any right, power or privilege under this Agreement or any of the documents referred to in this Agreement will operate as a waiver of such right, power or privilege and no single or partial exercise of any such right, power or privilege will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by Chilean Applicable Law: (i) no waiver that may be given by a Party will be applicable except in the specific instance for which it is given; and (ii) no notice to or demand on one Party will be deemed to be a waiver of any obligation of that Party or of the right of the Party giving such notice or demand to take further action without notice or demand as provided in this Agreement or the documents referred to in this Agreement.

7.6.2 Waiver. At any time prior to the Merger Completion Date, CAP or CMP (with respect to MCI) and MCI (with respect to CAP or CMP), may, to the extent legally allowed: (i) extend the time for the performance of any of the obligations or other acts of such Party to this Agreement; (ii) waive any inaccuracies in the representation and warranties contained in this Agreement or any document delivered pursuant to this Agreement; and (iii) waive compliance with any covenants, obligations or conditions contained in this Agreement. Any agreement on the part of a Party to any such extension or waiver shall be valid only if set forth in a written instrument signed on behalf of such Party.

7.7 Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. No assignment of this Agreement or of any rights or obligations hereunder may be made by any Party without the prior written consent of each of the other Parties hereto, provided, however, that MCI may assign any of its respective rights or obligations hereunder to any Affiliate that is wholly-owned, directly or indirectly, by MC. Any attempted assignment of this Agreement in violation of this Section 7.7 shall be void and of no effect.

7.8 No Third Party Rights. Nothing in this Agreement, express or implied, is intended to or shall confer upon any Person (other than the Parties hereto) any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement; provided, however, that after the Merger Completion Date, the Indemnified Persons shall be Third Party beneficiaries of and entitled to enforce Section 5.4.

7.9 Entire Agreement. This Agreement and the documents relating to the Merger and the Capital Increase referred to in this Agreement (including all ancillary and supplemental agreements among some or all of the Parties executed on or around the Execution Date) constitute the entire agreement among the Parties in relation to

the subject matter hereof and thereof and supersede any prior understanding, act, communication, information or contract among the same Parties regarding such subject matters.

7.10 Execution of Agreement; Counterparts.

7.10.1 Execution of Agreement. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute the one and same instrument, and shall become effective when counterparts have been signed by each of the Parties and delivered to the other Parties; it being understood that all Parties need not sign the same counterpart.

7.10.2 Counterparts. The exchange of copies of this Agreement and of signature pages by facsimile transmission (whether directly from one facsimile device to another by means of a dial-up connection or whether mediated by the worldwide web), by electronic mail in "portable document format" ("pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, or by a combination of such means, shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of an original Agreement for all purposes. Signatures of the Parties transmitted by facsimile shall be deemed to be their original signatures for all purposes.

7.11 Headings. The headings or titles of each Section have been included for reference only are not a part of their content and shall not affect the interpretation of this Agreement.

7.12 Construction; Usage.

7.12.1 Interpretation. In this Agreement, unless a clear contrary intention appears:

- (a) The singular number includes the plural number and vice versa;
- (b) Reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are not prohibited by this Agreement and reference to a Person in a particular capacity excludes such Person in any other capacity or individually;
- (c) Reference to either gender includes the other gender;
- (d) Reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof;
- (e) Reference to any Applicable Law means such Applicable Law as amended, modified, codified, replaced or reenacted, in whole or in



part, and in effect from time to time, including rules and regulations promulgated thereunder, and reference to any section or other provision of any Applicable Law means that provision of such legal requirement from time to time in effect and constituting the substantive amendment, modification, codification, replacement or reenactment of such section or other provision;

- (f) "Hereunder," "hereof," "hereto," and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article, Section or other provision hereof;
- (g) "Including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term;
- (h) "Or" is used in the inclusive sense of "and/or";
- (i) With respect to the determination of any period of time, "from" means "from and including" and "to" means "to but excluding"; and
- (j) References to documents, instruments or agreements shall be deemed to refer as well to all addenda, exhibits, schedules or amendments thereto.

- 7.13 Severability. If any provision hereof is declared void or ineffective, said declaration shall not affect the validity and effectiveness of the remaining clauses of this Agreement unless this Agreement is consequently rendered unenforceable.
- 7.14 Schedules. The Exhibits and Schedules to this Agreement, duly signed by the Parties, are an integral part hereof for all legal purposes.
- 7.15 Further Assurances. Each of the Parties hereto agrees to cooperate fully and to execute such documents and other papers and perform such further acts as may be reasonably required to carry out the provisions hereof and the transaction contemplated in this Agreement.
- 7.16 Agreement Controls. If there is any inconsistency between the statements in this Agreement and those in the Schedules (other than an exception set forth as such in such Schedule), the statements in this Agreement will control.
- 7.17 Legal Representation of the Parties. This Agreement was negotiated by the Parties with the benefit of legal representation and any rule of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any Party shall not apply to any construction or interpretation hereof.
- 7.18 Time of Essence. With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.



[Remainder of page intentionally left blank.]

A handwritten signature in dark ink, consisting of stylized, cursive letters, likely representing the initials 'M' and 'W'.

IN WITNESS WHEREOF, the Parties have executed this Agreement.

**COMPAÑÍA MINERA DEL
PACÍFICO S.A.**

M.C. INVERSIONES LIMITADA

By: _____
Name: _____
Title: _____

By: 大井 博
Name: Takeaki Doi
Title: Sub-Gerente General

CAP S.A.

COMPAÑÍA MINERA HUASCO S.A.

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

mm

IN WITNESS WHEREOF, the Parties have executed this Agreement.

**COMPAÑÍA MINERA DEL
PACÍFICO S.A.**

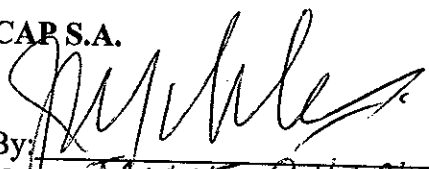
M.C. INVERSIONES LIMITADA

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

CAP S.A.

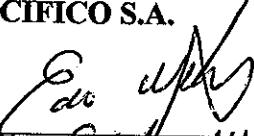
COMPAÑÍA MINERA HUASCO S.A.

By: 
Name: JAIME CHARLES
Title: Chief Executive Officer

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the Parties have executed this Agreement.

**COMPAÑÍA MINERA DEL
PACÍFICO S.A.**

By: 
Name: Eric Weber P
Title: CEO

CAP S.A.

By: _____
Name: _____
Title: _____

M.C. INVERSIONES LIMITADA

By: _____
Name: _____
Title: _____

COMPAÑÍA MINERA HUASCO S.A.

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the Parties have executed this Agreement.

**COMPAÑÍA MINERA DEL
PACÍFICO S.A.**

M.C. INVERSIONES LIMITADA

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

CAP S.A.

COMPAÑÍA MINERA HUASCO S.A.

By: _____
Name: _____
Title: _____

By: _____
Name: Carlos Pineda
Title: General Manager

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Exhibit D	[Reserved]
Exhibit E	CMP Merger Minutes
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Exhibit H	Form of Preemptive Rights Assignment
Exhibit I	Form of Share Subscription Agreement
Exhibit J	Form of Preemptive Rights Assignment Promise

