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**EXCHANGE AND INVESTMENT AGREEMENT**

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**April 25, 2014**

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## EXCHANGE AND INVESTMENT AGREEMENT

THIS AGREEMENT is made as of the 25<sup>th</sup> day of April, 2014,

### BETWEEN:

**PACIFIC ROAD RESOURCES FUND A,**  
a trust governed by the laws of Australia (“**Fund A**”)

- and -

**PACIFIC ROAD RESOURCES FUND B,**  
a trust governed by the laws of Australia (“**Fund B**”)

- and -

**PACIFIC ROAD HOLDINGS NV,**  
a company governed by the laws of Belgium (“**PRNV**”)

- and -

**PACIFIC ROAD RESOURCES FUND L.P.,**  
a partnership governed by the laws of England (“**PR LP**”)

(each of Fund A, Fund B, PRNV and PR LP, a “**Pacific Road Fund**”, and collectively, “**Pacific Road**”)

- and -

**MINCO PLC,**  
a company governed by the laws of England (“**Minco**”)

- and -

**XTIERRA INC.,**  
a corporation governed by the laws of the Province of British Columbia  
 (“**Xtierra**”)

- and -

**ORCA MINERALS LIMITED,**  
a corporation governed by the laws of the Province of Ontario  
 (“**Orca**”).

### RECITALS

- A. On April 14, 2009, Fund A, Fund B and PRNV entered into the Note Purchase Agreement with Xtierra, Orca and Bilbao, pursuant to which Orca issued the PR Convertible Notes.

- B. On December 30, 2013, Fund A, Fund B, PR LP, Minco and Xtierra entered into the Purchase Agreement, pursuant to which Xtierra issued the Minco 2014 Notes and PR 2014 Notes.
- C. On March 28, 2014, Fund A, Fund B, PR LP, Minco and Xtierra agreed to extend the maturity dates of the Minco 2014 Notes and PR 2014 Notes from March 31, 2014 to April 28, 2014, being the maturity date of the PR Convertible Notes.
- D. Fund A, Fund B and PRNV have agreed to convert US\$1,075,000 aggregate principal amount of PR Convertible Notes into Orca Common Shares, in accordance with the terms of the PR Convertible Notes and the Note Purchase Agreement. Fund A, Fund B, PRNV, Xtierra and Orca have agreed to exchange the US\$175,000 unconverted principal amount of PR Convertible Notes into 5% interest-bearing secured promissory notes of Xtierra, having a maturity date of April 30, 2015 (the “**New Maturity Date**”) and being substantially in the form attached as Exhibit A (the “**PR Balance Notes**”).
- E. Fund A, Fund B and PR LP have agreed to extend the maturity dates of the PR 2014 Notes to the New Maturity Date by exchanging such PR 2014 Notes for the PR 2014 Replacement Notes.
- F. Minco has agreed to extend the maturity dates of the Minco 2014 Notes to the New Maturity Date by exchanging such Minco 2014 Notes for the Minco 2014 Replacement Notes.
- G. Fund A, Fund B and PR LP have agreed to advance the aggregate amount of US\$125,000 to Xtierra in consideration for the issuance by Xtierra of the PR New Notes.
- H. Minco has agreed to advance the aggregate amount of US\$125,000 to Xtierra in consideration for the issuance by Xtierra of the Minco New Note.
- I. Fund A, Fund B and PRNV have agreed to the termination of certain conversion and investment rights they have under the Option Agreement.
- J. The PR Convertible Notes, the Minco 2014 Notes and the PR 2014 Notes mature on April 28, 2014 at which date Orca and Xtierra, respectively, would be required to repay the aggregate amounts outstanding thereunder to Pacific Road and Minco. However, Pacific Road and Minco have agreed not to seek immediate repayment of such amounts provided that Xtierra and Orca enter into the transactions contemplated by this Agreement, including Xtierra agreeing to enter into the Pledge Agreements to secure the Obligations.
- K. As security for the fulfilment of all of the Obligations and further as consideration for Pacific Road and Minco agreeing to forbear from seeking repayment of the outstanding indebtedness, Xtierra has agreed to grant a security interest in and pledge the Pledged Securities in favour of the Pacific Road and Minco on a proportionate basis in accordance with their respective holdings of obligations.

**NOW THEREFORE** in consideration of the mutual covenants and agreements contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**ARTICLE 1**  
**DEFINITIONS AND PRINCIPLES OF INTERPRETATION**

**1.1 Definitions**

Whenever used in this Agreement, the following terms shall have the meanings set out below:

“**Additional Securities**” has the meaning given in Section 7.2;

“**Affiliate**” and “**Affiliated**” means, with respect to any Person, any Person Controlled by, Controlling, or under common Control with, such Person;

“**Agreement**” means this Agreement, including all schedules, and all amendments or restatements as permitted, and references to “**Article**” or “**Section**” mean the specified Article or Section of this Agreement;

“**Bilbao**” means Bilbao Resources, S.A. de C.V.

“**Board**” means the board of directors of Xtierra;

“**Business Day**” means any day, other than a Saturday or Sunday, on which the main branch of the Royal Bank of Canada in Toronto, Ontario is open for commercial banking business during normal banking hours;

“**Canadian Demand Distribution Right**” has the meaning given in Section 7.8(a);

“**Canadian Offering**” has the meaning given in Section 7.9(a);

“**Canadian Securities Commissions**” means the securities commissions or other similar regulatory bodies of any applicable province or territory of Canada;

“**Control**” means:

- (a) in relation to a corporation, the beneficial ownership at the relevant time of shares of such corporation carrying more than 50% of the voting rights ordinarily exercisable at meetings of shareholders of the corporation where such voting rights are sufficient to elect a majority of the directors of the corporation or, with respect to a corporation without share capital, the sole control of such corporation;
- (b) in relation to a Person that is a partnership, limited liability company or joint venture, the beneficial ownership at the relevant time of more than 50% of the ownership interests of the partnership, limited liability company or joint venture in circumstances where it can reasonably be expected that the Person can direct the affairs of the partnership, limited liability company or joint venture; and

- (c) in relation to a trust, the beneficial ownership at the relevant time of more than 50% of the property settled under the trust;

and the words “**Controlled by**”, “**Controlling**” and similar words have corresponding meanings; the Person who Controls a Controlled Entity shall be deemed to Control a corporation, partnership, limited liability company, joint venture or trust which is Controlled by the Controlled Entity, and so on;

“**Demand Prospectus Shares**” has the meaning given in Section 7.8(a);

“**Distribution**”, “**Distribute**” and “**Distributed**” means the qualification of the distribution of securities of Xtierra in one or more of the provinces and territories of Canada by way of a public offering on a bought-deal or fully-marketed basis pursuant to a prospectus prepared in accordance with Securities Laws;

“**Disclosure Record**” means the disclosure by Xtierra in all prospectuses, financial statements, information circulars, AIF, press releases and material change reports filed in the past 12 months on SEDAR;

“**Exchange Date**” has the meaning given in Section **Error! Reference source not found.**;

“**Exchange Rate**” means agreed exchange rate for the conversion of US Dollars into Canadian Dollars for purposes of the exchange of Orca Common Shares into Xtierra Common Shares in accordance with the terms of the Note Purchase Agreement, being the Bank of Canada noon-day exchange rate between Canadian dollars and U.S. dollars on the last Business Day prior to the closing date for the issuance of the PR Convertible Notes, being April 27, 2009, such amount being equal to US\$1.00 = CAD\$1.2107 (CAD\$1.00 = US\$0.8260);

“**Fully Diluted Basis**” at any time means that all Xtierra Common Shares and all rights of any kind to acquire Xtierra Common Shares and all securities convertible or exchangeable (directly or indirectly) into Xtierra Common Shares outstanding at that time shall be deemed to have been fully exercised, converted or exchanged, as the case may be, (including into Xtierra Underlying Shares) (provided that Out-of-the-Money options granted under Xtierra stock option plan and any outstanding Out-of-the-Money warrants to acquire Xtierra Common Shares shall be excluded) and the Xtierra Common Shares issuable as a result thereof shall be deemed to have been fully issued and to form part of the holdings of the Persons entitled to receive such Xtierra Common Shares;

“**Indemnitees**” has the meaning given in Section 8.2;

“**Law**” or “**Laws**” means all laws (including common law), by-laws, statutes, rules, regulations, principles of law and equity, orders, rulings, ordinances, judgements, injunctions, determinations, awards, decrees or other requirements, whether domestic or foreign, and the terms and conditions of any permit of or from any governmental entity or self-regulatory authority (including the TSXV), and the term “**applicable**” with respect to such Laws and in a context that refers to a Party, means such Laws as are applicable to such Party and/or its Subsidiaries or their business, undertaking, property or securities and emanate from a Person having jurisdiction over the Party and/or its Subsidiaries or its or their business, undertaking, property or securities;

“**Minco 2014 Notes**” means the US\$250,000 aggregate principal amount of 5% interest bearing unsecured promissory notes issued to Minco on December 16 and January 10, 2014, as amended;

“**Minco 2014 Replacement Note**” means the 5% interest-bearing secured promissory note in the aggregate principal amount of US\$250,000 substantially in the form of the Note to be issued to Minco pursuant to this Agreement, in exchange for the Minco 2014 Notes;

“**Minco New Notes**” means the US\$125,000 aggregate principal amount of 5% interest-bearing secured promissory notes issued to Minco pursuant to this Agreement;

“**New Maturity Date**” has the meaning given in the recitals to this Agreement;

“**Note**” means a promissory note, substantially in the form attached as Schedule A, issuable by Xtierra to a Pacific Road Fund or Minco in accordance with this Agreement and denominated in U.S. dollars, and consists of the Minco 2014 Replacement Note, Minco New Notes, the PR Balance Notes, the PR 2014 Replacement Notes and the PR New Notes;

“**Note Purchase Agreement**” means the note purchase agreement dated April 14, 2009, between Fund A, Fund B, PRNV, Xtierra, Orca and Bilbao, pursuant to which Pacific Road acquired the PR Convertible Notes;

“**Notice of Exchange**” has the meaning given in Section **Error! Reference source not found.**;

“**Obligations**” means, collectively, the obligations represented by the PR Balance Notes, the PR 2014 Replacement Notes, the PR New Notes, the Minco 2014 Replacement Notes and the Minco New Note;

“**Option Agreement**” has the meaning given in Section 7.5;

“**Orca Common Share**” means a common share in the capital of Orca;

“**Out-of-the-Money**” means, with respect to options or warrants to acquire Xtierra Common Shares, that the exercise price of such option or warrant on the date of calculation of the number of Xtierra Common Shares on a Fully Diluted Basis is greater than or equal to the closing price for the Xtierra Common Shares on the TSXV on the last trading day prior to the calculation date; provided that if on such calculation date the Xtierra Common Shares are not then trading on the TSXV then any outstanding options or warrants to acquire common shares will be deemed Out-of-the-Money;

“**Parties**” means Pacific Road, Minco, Xtierra and Orca collectively, and “**Party**” means any one of them;

“**Person**” means any individual, sole proprietorship, partnership, firm, entity, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate, limited liability company, unlimited liability company, government, government regulatory authority, governmental department, agency, commission, board, tribunal, dispute settlement panel or body, bureau, court and, where the context requires, any of the foregoing when they are acting as trustee, executor, administrator or other legal representative;

“**Piggyback Notice**” has the meaning given in Section 7.9(a);

“**Pledge Agreements**” means the securities pledge agreements in the form attached as Schedule D, entered into by Xtierra in favour of each holder of Notes;

“**PR 2014 Notes**” means the US\$250,000 aggregate principal amount of 5% interest bearing promissory notes issued to Fund A (US\$24,825 principal amount), Fund B (US\$24,825 principal amount) and PR LP (US\$200,350) on January 10, 2014, as amended;

“**PR Balance Notes**” has the meaning given in the recitals to this Agreement;

“**PR Convertible Notes**” means the US\$1,250,000 aggregate principal amount of notes issued by Orca to Pacific Road pursuant to the Note Purchase Agreement;

“**PR New Notes**” means the US\$125,000 aggregate principal amount of 5% interest bearing promissory notes issued to Fund A, Fund B and PR LP pursuant to this Agreement;

“**PR 2014 Replacement Notes**” means the 5% interest-bearing secured promissory notes in the aggregate principal amount of US\$250,000 substantially in the form of the Note to be issued to Pacific Road (US\$200,350 to PRLP, US\$24,825 to each of Fund A and Fund B) pursuant to this Agreement, in exchange for the PR 2014 Notes;

“**PRCM**” means Pacific Road Capital Management Pty. Limited;

“**Projects**” means Xtierra’s mineral projects located in the Central Silver Belt in the State of Zacatecas in Mexico;

“**Prospectus**” has the meaning given in Section 7.8(a);

“**Prospectus Request**” has the meaning given in Section 7.8(a);

“**Purchase Agreement**” means the purchase agreement dated December 30, 2013, between Fund A, Fund B, PR LP, Minco and Xtierra, pursuant to which Fund A, Fund B and PR LP acquired the PR 2014 Notes and Minco acquired the Minco 2014 Note;

“**Qualification Expenses**” means all expenses incurred by Xtierra, Minco and Pacific Road, as applicable, to comply with the provisions of Sections 7.8 and 7.9, including all filing fees, printing expenses, fees and disbursements of counsel to Xtierra, reasonable fees and disbursements of counsel for Minco and Pacific Road, as applicable, and the expense of any special auditors or reports, including technical reports, incident to or required in connection with any prospectus under applicable Securities Laws;

“**Securities Laws**” means all applicable securities laws in each of the provinces and territories of Canada and the respective regulations, rules and forms thereunder together with applicable orders, rulings and published policy statements of the Canadian Securities Administrators and the Canadian Securities Commissions in each of the provinces and territories of Canada and includes the rules of any applicable self-regulatory authority (including the TSXV);

“**Shares**” means Xtierra Common Shares and any other shares in the capital of Xtierra and any securities convertible or exchangeable into any such Xtierra Common Shares or other shares;

“**Subsidiary**” of any Person, means a Person Controlled directly or indirectly by the first-named Person;

“**TSXV**” means the TSX Venture Exchange;

“**US\$**” means United States dollars;

“**Xtierra**” means Xtierra Inc., a corporation governed by the laws of British Columbia and includes any successor corporation to Xtierra Inc.; and

“**Xtierra Common Shares**” means the common shares in the capital of Xtierra.

## 1.2 Certain Rules of Interpretation

In this Agreement:

- (a) **Consent** – Whenever a provision of this Agreement requires an approval or consent and the approval or consent is not delivered within the applicable time limit, then, unless otherwise specified, the Party whose consent or approval is required shall be conclusively deemed to have withheld its approval or consent.
- (b) **Headings** – Headings of Articles and Sections are inserted for convenience of reference only and do not affect the construction or interpretation of this Agreement.
- (c) **Including** – Where the word “including” or “includes” is used in this Agreement, it means “including (or includes) without limitation”.
- (d) **No Strict Construction** – The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.
- (e) **Number and Gender** – Unless the context otherwise requires, words importing the singular include the plural and *vice versa* and words importing gender include all genders.
- (f) **Severability** – If, in any jurisdiction, any provision of this Agreement or its application to any Party or circumstance is restricted, prohibited or unenforceable, such provision shall, as to such jurisdiction, be ineffective only to the extent of such restriction, prohibition or unenforceability without invalidating the remaining provisions of this Agreement and without affecting the validity or enforceability of such provision in any other jurisdiction or without affecting its application to other Parties or circumstances.
- (g) **Statutory References** – A reference to a statute includes all regulations and rules made pursuant to the statute and, unless otherwise specified, the provisions of any statute, regulation or rule which amends, supplements or supersedes any such statute, regulation or rule.

- (h) **Time** – Time is of the essence in the performance of the Parties’ respective obligations.
- (i) **Time Periods** – Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done, shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next Business Day following if the last day of the period is not a Business Day.

### **1.3 Knowledge**

Any reference to the knowledge of any Party means to the best of the knowledge, information and belief of the Party after reviewing all relevant records and making due inquiries regarding the relevant matter of all relevant directors, officers, senior managers and employees of such Party.

### **1.4 Entire Agreement**

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

### **1.5 Schedules**

The following schedules form an integral part of this Agreement:

- Schedule A – Form of Note
- Schedule B – Xtierra and Orca Representations and Warranties
- Schedule C – Xtierra Business Plan and Budget
- Schedule D – Form of Pledge Agreement

## **ARTICLE 2 EXCHANGE OF PR CONVERTIBLE NOTES**

### **2.1 Amendment and Waiver to Note Purchase Agreement**

The parties agree that Bilbao is released as a party to the Note Purchase Agreement. The Note Purchase Agreement is hereby amended to permit Fund A, Fund B and PRNV to exercise the Put Right under Section 2.10 of the Note Purchase Agreement for less than all of the PR Convertible Notes held by them and, accordingly, where Section 2.10(a) of the Note Purchase Agreement states “the Equity Amount for purposes of this calculation shall equal the Principal Amount”, in

the case of a partial put of PR Convertible Notes, the “Principal Amount” shall mean and refer to the principal amount of the PR Convertible Notes in respect of which the Put Right is being exercised. The parties further agree that notwithstanding Section 2.10(c) of the Note Purchase Agreement, the acquisition of the PR Convertible Notes and issuance of the Xtierra Common Shares in consideration therefor, pursuant to Section 2.2 below, will occur on the date hereof and not the Business Day following the date of receipt of the Put Notice by Xtierra.

## 2.2 Exchange of PR Convertible Notes

- (a) Fund A, Fund B and PRNV have provided an irrevocable Put Notice to exchange an aggregate of US\$1,075,000 principal amount of PR Convertible Notes into Xtierra Common Shares in accordance with the terms of the Note Purchase Agreement.
- (b) In connection with such put, Xtierra and Pacific Road Orca hereby waive the requirement under Section 2.10(c) of the Note Purchase Agreement that the exchange of Notes for Xtierra Common Shares occur on the next following Business Day following receipt of the Put Notice by Xtierra.
- (c) Fund A, Fund B and PRNV hereby transfer and assign to Xtierra all right, title and interest they have in and to the PR Convertible Notes as to the principal amount of the PR Convertible Notes exchanged as set out below:

<u>Holder</u>	<u>Principal Amount Exchanged</u>	<u>Principal Amount of PR Balance Note</u>	<u>Resulting # of Xtierra Common Shares to be issued</u>
Fund A	US\$106,747.50	US\$17,377.50	1,186,083
Fund B	US\$106,747.50	US\$17,377.50	1,186,083
PRNV	US\$861,505.00	US\$140,245.00	9,572,278
<b>Total</b>	<b>US\$1,075,000</b>	<b>US\$175,000</b>	<b>11,944,444</b>

- (d) Fund A, Fund B, PRNV and Xtierra acknowledge and agree that for purposes of the calculation in Section 2.7 of the Note Purchase Agreement:
  - (i) the “**Equity Amount**” referred in section 2.7(c) of the Note Purchase Agreement is US\$1,075,000;
  - (ii) the 30-day volume-weighted average price of Xtierra Common Shares equals CAD\$0.1098 per Xtierra Common Share multiplied by the Exchange Rate equals US\$0.09 per Xtierra Common Share (which is not less than \$0.10 per Xtierra Common Share); and

- (iii) accordingly, the number of Xtierra Common Shares issuable on such exchange to Fund A, Fund B and PRNV equals 11,944,444, as set out in the table above, such Xtierra Common Shares to be promptly issued to Fund A, Fund B and PRNV as fully paid and non-assessable Xtierra Common Shares and be freely tradeable as required by the Note Purchase Agreement.
- (e) Xtierra and Orca acknowledge and agree that the remaining debt owing under the PR Convertible Notes after the exchange contemplated under this Section 2.2 (being a remaining debt obligation of US\$175,000 in the aggregate) is hereby assigned from Fund A, Fund B and PRNV to Xtierra in consideration for which Xtierra agrees to issue to Fund A, Fund B and PRNV the PR Balance Notes (in the principal amounts of US\$17,377.50, US\$17,377.50 and US\$140,245 respectively), in each case substantially in the form of Note having a maturity date extended from April 28, 2014 to the New Maturity Date.

**ARTICLE 3  
EXTENSION OF 2014 NOTES**

**3.1 Extension**

- (a) Fund A, Fund B and PR LP hereby agree that the maturity dates of the PR 2014 Notes shall be extended from April 28, 2014 to the New Maturity Date, and, in connection with such extension, Xtierra hereby agrees to issue the PR 2014 Replacement Notes in exchange for the surrender of the PR 2014 Notes by Fund A, Fund B and PR LP to Xtierra.
- (b) Minco hereby agree that the maturity dates of the Minco 2014 Notes shall be extended from April 28, 2014 to the New Maturity Date, and, in connection with such extension, Xtierra hereby agrees to issue the Minco 2014 Replacement Notes in exchange for the surrender of the Minco 2014 Notes to Xtierra.

**ARTICLE 4  
PURCHASE AND SALE OF NOTES**

**4.1 Purchase of PR New Notes**

Fund A, Fund B and PR LP hereby severally agree to purchase from Xtierra, and Xtierra hereby agrees to sell Notes to Fund A, Fund B and PR LP in the aggregate principal amount of US\$125,000, for an aggregate purchase price equal to such amount, as follows:

<u>Holder</u>	<u>Principal Amount of PR New Notes Acquired</u>
Fund A	US\$12,412.50
Fund B	US\$12,412.50
PR LP	US\$100,175

<b>Total:</b>	US\$125,000
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#### **4.2 Purchase of Minco New Notes**

Minco hereby agree to purchase from Xtierra, and Xtierra hereby agrees to sell to Minco, Notes in the aggregate principal amount of US\$125,000, for an aggregate purchase price equal to such amount.

#### **4.3 Payment**

Concurrently with the execution of this Agreement, each of Fund A, Fund B, PR LP and Minco agrees to pay by cash or wire transfer of immediately available funds the amount payable by such Party in accordance with Sections 4.1 and 4.2.

#### **4.4 Notes**

Xtierra hereby agrees to deliver a Note to Fund A, Fund B, PR LP and Minco representing the PR New Notes and the Minco New Note, respectively, substantially in the form attached as Schedule A to this Agreement, with the only changes being with respect to the Notes (a) the completion of the names of the Note holders (or their permitted assignees/designees), and (b) the completion of the principal amount of each such Note. If Xtierra determines to make payment in respect of any Note, it will (to the extent of the proceeds available to it to make payment) make payment on each Note on a proportional basis according to the amount of the Obligations represented by each such Note and, for certainty, before the payment of any debt ranking subordinate to the Notes.

#### **4.5 Use of Proceeds**

Xtierra acknowledges and agrees that the proceeds from the issuance and sale of Notes (the “**Net Proceeds**”) are to be used exclusively in accordance with the budget attached as Schedule C to this Agreement.

### **ARTICLE 5 REPRESENTATION AND WARRANTIES**

#### **5.1 Representations and Warranties of Xtierra and Orca**

By executing this Agreement, Xtierra and Orca jointly and severally represent and warrant to Pacific Road and Minco each of the matters contained in Schedule B hereto, and acknowledge that Pacific Road and Minco are relying on such representations and warranties in connection with entering into this Agreement and the transactions contemplated herein.

## **ARTICLE 6 CLOSING**

### **6.1 Closing Deliverables**

Concurrent with the execution of this Agreement, Xtierra and Orca shall execute and deliver, as applicable, the following documents:

- (a) a certificate of an officer of each of Xtierra and Orca, attaching the constating documents and authorizing resolutions of such entities and a certificate of incumbency;
- (b) a certificate of status (or equivalent) for Xtierra, Orca and Bilbao dated not more than two Business Days prior to the date of the Agreement;
- (c) the PR Balance Notes;
- (d) certificates representing the Xtierra Common Shares pursuant to Section 2.3;
- (e) the PR 2014 Replacement Notes;
- (f) the Minco 2014 Replacement Notes;
- (g) the PR New Notes;
- (h) the Minco New Note;
- (i) the Pledge Agreements accompanied by share transfer powers duly endorsed in blank and certificates representing the Pledged Securities;
- (j) an opinion from counsel to Xtierra and Orca dated the date of the Agreement as to, among other things, the authorized and issued share capital of Orca, the valid issuance of the securities contemplated by this Agreement, the enforceability of this Agreement, the notes contemplated by this Agreement, the Pledge Agreements and as to the capacity, authority and approvals of Xtierra and Orca, such opinion to be in form and substance acceptable to Pacific Road and Minco acting reasonably; and
- (k) receipts of Xtierra for the payments contemplated by Article 4.

## **ARTICLE 7 POST-CLOSING COVENANTS**

### **7.1 Board Representation**

Xtierra agrees and acknowledges that:

- (a) from and after the date of this Agreement, each of Pacific Road and Minco shall have the right to have appointed or elected to the Board a number of nominees (the “**Nominees**”) for so long as Pacific Road or Minco, as applicable, holds at

least 15% of the issued and outstanding Xtierra Common Shares, a number of Nominees which results in representation of each of Pacific Road and Minco on the Board which is at least proportionate to the proportion of the total number of Xtierra Common Shares held by each of Pacific Road and Minco and otherwise calculated on the basis of the number of the Xtierra Common Shares issued and outstanding, rounded to the nearest whole number (but in any case not less than one Nominee); in each case, subject to TSXV approval of the Nominees, Xtierra will ensure that such Nominees are appointed to the Board as soon as possible after the date of this Agreement and upon request of Pacific Road or Minco, as the case may be, and in any event within 20 days of such date (by way of resignation and replacement of existing Board member(s) by the Nominee(s)), provided that if the Nominee(s) are not so appointed or elected within 20 days then Xtierra shall cause a shareholder meeting to be held as soon as possible for the purposes of seeking approval to effect same;

- (b) Xtierra shall ensure that the Nominees of each of Pacific Road and Minco are included in the group of individuals which are nominated by Xtierra (or the Board or management of Xtierra) at each shareholder meeting of Xtierra during the term hereof which is held, provided that such Nominees are eligible to be directors of Xtierra under applicable Law;
- (c) subject to Section 7.1(g), should a Nominee of Pacific Road or Minco be put forward for election as a director to the Board by Xtierra, or be appointed to the Board by the Board, in either case at a time when each of Pacific Road and/or Minco is not entitled to such appointment or election under this Section 7.1, such appointment or election shall nevertheless be valid and such director need not resign;
- (d) the number of directors on the Board shall not be increased without the consent of Pacific Road and Minco;
- (e) for so long as Pacific Road and Minco have the rights hereunder to the appointment or election of one or more Nominees to the Board, Xtierra shall ensure that at least one Nominee is appointed to each committee of the Board and each other committee formed by Xtierra (or the Board or management of Xtierra), provided that such Nominees are qualified to be on such committee pursuant to applicable Law; For certainty, the parties agree that such Nominees shall be “qualified” for purposes of this Agreement if such Nominees are qualified for purposes of applicable corporate Laws and Securities Laws and shall not be disqualified as a result of such Nominees not being “independent” for purposes of applicable Securities Laws;
- (f) each of Pacific Road and Minco shall be entitled to replace Nominees upon notice to Xtierra, and upon such notice or upon the death, inability to act or resignation of any Nominee, Xtierra shall ensure that one or more different Nominees nominated by Pacific Road or Minco, as the case may be, shall be appointed as a director by filling the vacancy created by the resignation of such Nominee to be replaced;

- (g) Xtierra shall maintain reasonable and customary directors' and officers' liability insurance coverage for any Nominees as directors of Xtierra and shall ensure that the indemnification arrangements in place for other Board members apply equally to the Nominees.
- (h) Notwithstanding the above, Pacific Road has determined that it will have only one Nominee to the Board and one member of the audit committee at the present time, being Lee Graber, without limiting the ability for Pacific Road to elect to exercise its rights to greater representation on the Board or such committee at any time.

## 7.2 Issue of Additional Securities

- (a) Except as provided in Section 7.2(d), if at any time after the date hereof, Xtierra completes an issuance of any additional shares or securities exchangeable for or convertible directly or indirectly into shares, debt securities, hybrid securities, royalties or gold-linked securities (collectively referred to in this Section as "**Additional Securities**") Pacific Road and Minco shall have the right to purchase Additional Securities as follows. In the case of an issuance of Xtierra Common Shares or securities convertible into or exchangeable for Xtierra Common Shares Pacific Road and Minco shall have the right (the "**Non-Dilution Right**") to purchase such number of such Additional Securities as will result in Pacific Road or Minco, as applicable, owning or having the right to purchase, in the aggregate, the percentage of the issued and outstanding Xtierra Common Shares held by Pacific Road or Minco, as applicable, immediately prior to the completed issuance, in each case following the issuance of the Additional Securities (to third parties, Persons having similar rights in respect of the Additional Securities issuance and Pacific Road and Minco under this Section 7.2(a)) and assuming the conversion or exercise of all convertible securities forming part of the Additional Securities. In the case of an issuance of Additional Securities other than Xtierra Common Shares or securities convertible into or exchangeable for Xtierra Common Shares, Pacific Road and Minco shall have the right (the "**Participation Right**") to purchase such number of such Additional Securities such that after such issuance Pacific Road or Minco, as applicable, will own or have the right to purchase, in the aggregate, the percentage of the issued and outstanding Additional Securities equal to the proportionate of issued and outstanding Xtierra Common Shares held by Pacific Road or Minco, as applicable, immediately prior to the completed issuance. Xtierra will provide written notice (the "**Issuance Notice**") to Pacific Road and Minco following completion of the issuance of Additional Securities, which Issuance Notice shall specify the maximum number of Additional Securities that Pacific Road and Minco may purchase and the purchase price therefor. Pacific Road and Minco shall have 10 Business Days from the date of receipt of such Issuance Notice to give a notice to Xtierra of their respective intentions to purchase all or any of the Additional Securities to which they are entitled. In respect of Pacific Road, such Additional Securities may be allocated among the Pacific Road entities as Pacific Road may decide. Xtierra shall not complete the issuance of Additional Securities unless any applicable regulatory approvals are first obtained which will permit each of Pacific Road and

Minco to exercise their rights under this Section 7.2. The Parties will use commercially reasonable efforts to obtain any such approvals.

- (b) The transaction of purchase and sale by Xtierra of Additional Securities to each of Pacific Road and Minco shall be completed on the date specified by the Board.
- (c) In respect of any proposed sale or issuance of Additional Securities, to the extent that such offering includes a combination of equity securities, securities convertible into equity securities, debt securities, hybrid securities, royalties or gold-linked securities, each of Pacific Road and Minco shall have the right to select the type of securities that they wish to purchase, respectively.
- (d) Subject to approval of the board of directors of Xtierra, Xtierra shall be entitled to issue Additional Securities, without complying with the provisions of Section 7.2(a), when such Additional Securities are being issued, (i) upon the exercise of conversion or exchange rights attached to other securities issued by Xtierra in compliance with Section 7.2(a) above; or (ii) pursuant to the approved option plan of Xtierra then in effect.
- (e) Notwithstanding Section 7.2(a) above, (i) in the event of a private placement of Additional Securities where Xtierra engages a selling agent, Xtierra will ensure that the selling agent does not receive a fee (including by way of cash, warrants or other securities issued by Xtierra) in respect of the portion of the Additional Securities purchased by either Pacific Road or Minco, and (ii) in the event of a public offering of Additional Securities, Xtierra will ensure that each of Pacific Road and Minco may purchase its Additional Securities on a non-brokered private placement basis concurrent with the public offering (or in the public offering, at the election of Pacific Road and Minco and that the underwriter of such public offering does not receive a fee (including by way of cash, warrants or other securities issued by Xtierra) in respect of the portion of the Additional Securities purchased by Pacific Road and Minco. Any fee that otherwise would be payable to the agents in respect of Pacific Road's participation in such financing (including cash, warrants or other securities issued by Xtierra, other than broker's warrants) will be payable to PRCM at the same rate as would be payable to the agents, provided that Pacific Road elected to exercise the rights granted by this Section 7.2.
- (f) The rights granted to each of Pacific Road and Minco by this Section 7.2 shall not apply to any acquisition, amalgamation or other form of business combination, provided that such transaction receives the approval of the board of directors of Xtierra and the shareholders of Xtierra.

### **7.3 Information Rights and Reporting Obligations**

- (a) Xtierra shall keep each of Pacific Road and Minco informed about Xtierra's efforts with respect to the exploration, evaluation and future development of the Projects and with respect to Xtierra's other properties including, without limitation, the status of any preliminary economic assessment, prefeasibility study, feasibility study, work programme and/or budget for any other property of

Xtierra and shall, at the request of either of Pacific Road or Minco, provide copies of all technical and financial information and each such prefeasibility study, feasibility study, work programme and/or budget and supporting documents for same and other relevant documents relating to the Projects and each such other properties. For certainty, these information and reporting rights apply to Xtierra and its Subsidiaries. Without limiting the foregoing:

- (b) Each of Pacific Road and Minco shall have the right to review the books, records and accounts related thereto and of Xtierra generally, upon reasonable notice and during normal business hours.
- (c) Within 21 days after the end of each calendar quarter, Xtierra shall provide monthly summary reports on the status of the Projects, in form acceptable to each of Pacific Road and Minco, acting reasonably.
- (d) Within 45 days after the end of each calendar quarter, Xtierra shall provide quarterly project management reports and financial accounts for the Projects in form acceptable to each of Pacific Road and Minco, acting reasonably.
- (e) Xtierra shall deliver, within 120 days of each financial year end of Xtierra, one copy of its annual audited financial statements, including the balance sheet and statements of income, retained earnings and changes in financial position, together with all supporting schedules, together with the report thereon by Xtierra's auditor.
- (f) Prior to the end of each financial year end of Xtierra, Xtierra shall deliver to each of Pacific Road and Minco a copy of Xtierra's business plan for the following fiscal year.
- (g) Promptly after initiation thereof or receipt of notice with respect thereto, Xtierra shall provide notice of any claims, proceedings, litigation or material disputes by, against, or otherwise involving Xtierra or any Subsidiary, or any Project, or other litigation which could reasonably be expected to have a material adverse effect on Xtierra or any Subsidiary, together with copies of the court filings or other documents associated therewith.
- (h) Xtierra shall provide such other financial, business and other information as either of Pacific Road or Minco may reasonably request from time to time.
- (i) Each of Pacific Road and Minco shall have the right from time to time on reasonable notice to enter any property of Xtierra during normal business hours and also have the right to consult, acting reasonably, with key personnel of Xtierra and its Subsidiaries and with any consultants or advisors to Xtierra and its Subsidiaries from time to time, in each case at the expense of Pacific Road and Minco, as the case may be. At the request of either of Pacific Road or Minco, representatives of such requesting Party may conduct one or more site visits at the Projects, or any other property held (directly or indirectly) by Xtierra, which visit will provide an update with respect to, among other things:

- (i) project drilling results and scope of the relevant resource statements, assessments and studies;
- (ii) the status of required permits for drilling and plan to procure permits (including environmental, explosives, water rights and access, land use, construction/operating) to implement project development/construction/operation;
- (iii) project power consumption, access to local grid and alternatives; and
- (iv) any other project related technical, environmental, government and public relations information and updates,

provided that Pacific Road or Minco, as applicable, shall bear all of their costs and expenses associated with such site visits.

- (j) In addition, each of Pacific Road and Minco shall have the following rights throughout the term of this Agreement with respect to the Projects:
  - (i) active participation in the assessment of the business and its strategies and risks;
  - (ii) consultation and input into any feasibility study and FEED (front end engineering design) scope by representation on a Project operating committee;
  - (iii) appropriate feedback on progress and key issues;
  - (iv) access to all due diligence, technical and commercial, legal and environmental reports; and
  - (v) input into the organisation and structure of any feasibility study and/or FEED team.

#### **7.4 DELETED**

#### **7.5 Option Agreement**

Orca, Pacific Road and Minco confirm that the Option Agreement dated November 16, 2007 among such Parties, as amended and supplemented (the “**Option Agreement**”), including the investment and conversion rights thereunder, is terminated.

#### **7.6 Other Covenants**

Xtierra shall, and shall cause each Subsidiary, to, unless the consented to in writing by each of Pacific Road and Minco (in each case provided such holder continues to be the holders of any outstanding Obligations), comply with each of the following covenants:

- (a) Preservation of Existence, Etc. – Xtierra shall use commercially reasonable efforts to preserve and maintain, and shall cause each of its Subsidiaries to preserve and

maintain, its respective corporate (or, as applicable, other) existence, rights, franchises and privileges in the jurisdiction of their incorporation or formation; and Xtierra will qualify and remain qualified, and will cause each of its Subsidiaries to qualify and remain qualified, as a foreign entity in each jurisdiction in which such qualification is necessary or desirable in view of their business and operations or the ownership of their properties. Xtierra will not sell, lease, assign, transfer, or otherwise dispose of all or substantially all of the material consolidated assets of Xtierra or any Project.

- (b) **Conduct of Business** - Xtierra shall engage solely, and will cause each of its Subsidiaries to engage solely, in the business of developing and operating the Projects, and other activities incident thereto, in accordance with generally accepted industry practices. Xtierra shall use commercially reasonable efforts, and shall cause each of its Subsidiaries to develop, manage, operate and use the Projects in accordance with prudent industry practices and with the work program and budget then in effect as approved by the Board.
- (c) **Compliance with Laws, Etc.** - Xtierra shall comply, and shall cause each of its Subsidiaries to comply, in all material respects, with all applicable Laws and requirements of any governmental entity, including environmental Laws, and Xtierra shall own, operate and manage, and shall cause each of its Subsidiaries to own, operate and manage, the Projects in compliance in all material respects with all applicable Laws and requirements of any governmental entity, including environmental Laws.
- (d) **Project Permits** - Xtierra shall comply, and shall cause each of its Subsidiaries to comply, in all material respects with all Project permits. Xtierra shall own, operate and use, and shall cause each of its Subsidiaries to own, operate and use, each Project in compliance with the Project permits in all material respects. Xtierra shall use commercially reasonable efforts, and shall cause each of its Subsidiaries to use commercially reasonable efforts, to obtain all Project permits required by it after the date hereof, and Xtierra shall maintain, and shall cause each of its Subsidiaries to maintain, all Project permits in full force and effect.
- (e) **Reporting Issuer and Stock Exchange Listing** - Xtierra will remain a reporting issuer in good standing in each of the Provinces of British Columbia, Alberta and Ontario and will remain listed on the TSXV.
- (f) **Defense of Title and Rights** - Xtierra shall preserve and defend, and shall cause each of its Subsidiaries to preserve and defend, its respective ownership of all right, title and interest in and to the Projects, and its other material assets, property and rights as such title is represented and warranted in this Agreement.
- (g) **Material Agreements** - Xtierra shall comply in all material respects with, and shall cause each Subsidiary to comply in all material respects with, the terms and conditions of each of their respective the material agreements and instruments, including all outstanding indebtedness and any agreements providing for the conversion of securities into Shares, including, for certainty, this Agreement, the Obligations and the Pledge Agreements.

- (h) Maintenance of Unissued Shares; Compliance with Securities Laws; TSXV Listing and Compliance -
- (i) Xtierra shall, and shall cause each Subsidiary, to comply with all applicable Securities Laws. Forthwith after the date of this Agreement, if applicable, Xtierra shall file such forms and documents as may be required by Securities Laws and the TSXV relating to the issuance of any Shares or other securities.
  - (ii) no Subsidiary of Xtierra will issue any shares (or securities convertible into or exercisable for shares) in the capital of such Subsidiary other than to Xtierra or its parent company such that Xtierra remains the 100% direct or indirect holder of each Subsidiary.
  - (iii) Xtierra shall, and shall cause each Subsidiary, to comply with all applicable TSXV rules and policies, including TSXV quantitative and qualitative continued listing requirements, and Xtierra shall maintain its listing on the TSXV in good standing, subject to Section 7.6(e).
- (i) Representations and Warranties – Xtierra shall use commercially reasonable efforts to ensure that the representations and warranties made pursuant to this Agreement shall remain true and correct in all material respects (except as such representations and warranties made as of the date of this Agreement may be affected by the occurrence of events or transactions expressly contemplated and permitted by this Agreement or as shall occur in the ordinary course of business) and if at any time an event or change occurs outside of the ordinary course of business that is not contemplated by this Agreement and such event or change results in or could reasonably be expected to result in one or more of the representations and warranties of Xtierra made pursuant to this Agreement becoming untrue or containing a misrepresentation in any material respect (assuming such representations and warranties are given as of the date of such event or change), Xtierra shall use commercially reasonable efforts to address such event or change such that Xtierra's representations and warranties made in this Agreement remain true and correct in all material respects or do not contain a misrepresentation.
- (j) Taxes –
- (i) Xtierra shall pay, and shall cause each Subsidiary to pay, all Taxes, assessments, and governmental charges imposed upon them or their respective property before the same become delinquent, except to the extent contested in good faith and adequately reserved for in accordance with generally accepted accounting principles.
  - (ii) Xtierra and each of its Subsidiaries shall:
    - (A) duly and timely file all tax returns required to be filed by it on or after the date hereof and all such tax returns will be true, complete and correct in all material respects; and

- (B) timely withhold, collect, remit and pay all taxes which are to be withheld, collected, remitted or paid by it to the extent due and payable.
- (k) Indebtedness, Liens – Xtierra and its Subsidiaries will not directly or indirectly undertake any additional borrowing which ranks in priority of payment equally or ahead of the Notes issued pursuant to this Agreement. Xtierra and its Subsidiaries will not create or permit to be created any lien, charge, encumbrance or any security interest on the assets of Xtierra or any Subsidiary of Xtierra.
- (l) Investment Banker – Xtierra will engage on a success fee basis as soon as possible and in any event no later than May 15, 2014 an investment banker acceptable to Pacific Road and to Minco to canvass the market for a possible sale or merger opportunity for Xtierra or its Bilbao Project; such investment banker shall be instructed to communicate directly to Pacific Road and to Minco upon such Party's request.
- (m) PEA – Xtierra will as soon as practicable after the date hereof, file the preliminary economic assessment dated April, 2014 prepared by Runge Pincock Minanco.

## 7.7 Exit

The Parties acknowledge that Pacific Road is a ten year closed-end investment fund with (i) restrictions in its constating documents (and any amendments thereto), and (ii) obligations to its investors with respect to termination and redemption of the fund. Xtierra agrees that it will cooperate and use commercially reasonable efforts to assist Pacific Road in structuring an exit transaction acceptable to Pacific Road.

## 7.8 Registration Rights – Demand Rights

- (a) Subject to Section 7.8(b) below, each of Pacific Road and Minco shall have the right at any time after the date of this Agreement to make a written request (a “**Prospectus Request**”) that Xtierra effect the filing of a preliminary prospectus and a final prospectus (collectively, a “**Prospectus**”) with any of the Canadian Securities Commissions other than in the Province of Quebec (which request shall specify the Canadian Securities Commissions with which the Prospectus shall be filed) to qualify for Distribution any or all Xtierra Common Shares (including Xtierra Common Shares issuable on conversion or exchange of securities held by such Party) beneficially owned by Pacific Road or Minco, as the case may be (the securities so requested to be qualified are the “**Demand Prospectus Shares**”, and the right of each of Pacific Road and Minco to make such a request under this Section 7.8(a) is the “**Canadian Demand Distribution Right**”), provided, however, that such request shall specify the intended method of disposition of securities (which may include an offering by way of an underwritten public offering) by the requesting Party.
- (b) Xtierra shall not be obligated to effect, or to take any action to effect, any such registration pursuant to this Section 7.8 if Xtierra furnishes to Pacific Road and Minco, as the case may be, a certificate signed by the President of Xtierra stating

that in the good faith judgment of the Board, either: (i) the effect of the filing would materially impede the ability of Xtierra to consummate a significant transaction which is underway or under consideration by the Board; or (ii) there exists at the time material non-public information relating to Xtierra the disclosure of which would be seriously detrimental to Xtierra, and that, in each case, it is on that basis alone, in the best interests of Xtierra to defer the filing of such prospectus at such time, then Xtierra's obligation to use its reasonable best efforts to register, qualify or comply under this Section 7.8 shall be deferred for a period of not more than 90 days from the date of receipt of the request of Pacific Road and Minco, as applicable, in accordance with Section 7.8(a).

- (c) Each of Pacific Road and Minco are entitled to exercise their rights under Section 7.8(a) one time. If, following a Prospectus Request the Distribution of Demand Prospectus Shares is not completed, such Prospectus Request shall be considered to have been withdrawn and shall not be considered to be the Prospectus Request to which Pacific Road and Minco are entitled pursuant to Section 7.8(a) in the event that such non-completion is due to the withdrawal of the request by Pacific Road and Minco, and provided that Pacific Road or Minco, as the case may be, agrees to bear the Qualification Expenses in respect thereof.
- (d) Subject to Section 7.8(a) and 7.8(c), in the event that the Canadian Demand Distribution Right is exercised, Xtierra shall in a timely manner, use commercially reasonable efforts to cause the Demand Prospectus Shares to be qualified for Distribution pursuant to a Prospectus filed with the Canadian Securities Commissions identified in the Prospectus Request (other than the Province of Quebec) and to effect and to comply with all such regulatory qualifications, compliances and requirements as may be necessary to permit the offer and sale or other transfer of the Demand Prospectus Shares in the manner described in the Prospectus Request, provided, however, that if, at the time the Canadian Demand Distribution Right is exercised, the Demand Prospectus Shares may be sold immediately without complying with the prospectus and registration requirements under applicable Securities Laws or the rules thereunder with respect to "control distributions" (as defined in National Instrument 45-102 promulgated under the *Securities Act* (Ontario) or any successor or replacement thereof), and counsel to Xtierra delivers a legal opinion to such effect, addressed and reasonably acceptable to Pacific Road or Minco, as the case may be, and Xtierra's transfer agent, then Xtierra shall not be required to take any action with respect to such Prospectus Request or other steps contemplated hereby with respect to such Demand Prospectus Shares. Xtierra hereby agrees to indemnify Pacific Road and Minco against, and hold them harmless from, all damages, losses, liabilities (including liability for rescission), costs and expenses that are directly and solely attributable to the sale of such Demand Prospectus Shares by it in reliance upon such opinion as a result of such opinion being incorrect.
- (e) In the event that the Canadian Demand Distribution Right is exercised and, in connection therewith, Pacific Road and/or Minco make a distribution of securities to any of its investors, partners or Affiliates, any Prospectus previously filed in connection therewith shall, subject to applicable Securities Laws, be

supplemented or amended, as applicable, to provide for the resale by such investors, partners or Affiliates, if so requested by Pacific Road and/or Minco within 30 days after such distribution.

- (f) If Pacific Road and/or Minco intend to effect the Distribution of the Demand Prospectus Shares by means of an underwritten offering, they shall so advise Xtierra in the Prospectus Request, as applicable. In such event, Xtierra and the Pacific Road and/or Minco, as the case may be, shall enter into an underwriting agreement in customary form with the representative of the underwriter or underwriters selected for such underwriting by Pacific Road and/or Minco, as the case may be, which underwriter or underwriters shall be reasonably acceptable to Xtierra.
- (g) No additional shareholders of Xtierra shall be permitted to sell any Shares or other securities of Xtierra as part of any Distribution to which this Section 7.8 applies unless, and only to the extent that, Pacific Road and/or Minco, as the case may be, consent in writing.
- (h) Pacific Road and Minco, as the case may be, agree to use commercially reasonable efforts to assist Xtierra with such Distribution to the extent reasonably necessary for the completion of such Distribution.
- (i) All Qualification Expenses incurred in connection with any Distribution pursuant to this Section 7.8 shall be borne *pro rata* by Pacific Road and Minco. Underwriting commissions payable in respect of the sale of Demand Prospectus Shares shall be borne by Pacific Road and/or Minco, as the case may be. For certainty, in no event shall Pacific Road or Minco be responsible for any underwriting commissions in respect of Shares or other securities sold by Persons other than Pacific Road or Minco, as applicable. In the event that Xtierra distributes previously unissued Xtierra Common Shares or securities convertible into or exchangeable for Xtierra Common Shares contemporaneously with any Distribution pursuant to this Section 7.8, Xtierra shall then bear its proportionate share of any Qualification Expenses.
- (j) The right to exercise the Canadian Demand Distribution Right under this Section 7.8 shall apply from the date of this Agreement and shall continue to apply for so long Pacific Road (in the case of rights granted to Pacific Road under this Section 7.8) or Minco (in the case of rights granted to Minco under this Section 7.8) or any permitted transferee(s) hold Xtierra Common Shares (including securities convertible into or exercisable for Xtierra Common Shares) that represent less than 10% of the Xtierra Common Shares then outstanding. After such time, the Canadian Demand Distribution Right under this Section 7.8 shall cease to apply.

## 7.9 Registration Rights - Piggyback Rights

- (a) If, at any time, Xtierra proposes to file a Prospectus with the Canadian Securities Commissions to qualify the Distribution of any Shares to be issued by Xtierra (a “**Canadian Offering**”), then Xtierra shall give to Pacific Road and Minco at least 15 days written notice or, in the case of a “bought deal” offering, at least one

Business Day's written notice prior to the public announcement of such a transaction (a "**Piggyback Notice**") prior to the filing of any Prospectus with any of the Canadian Securities Commissions to be used in connection with a Canadian Offering and specifying the date, which shall not be less than three Business Days from the date of the Piggyback Notice, by which the Supplemental Prospectus Notice referred to in Section 7.9(b) below must be returned to Xtierra.

- (b) In the event that a Piggyback Notice shall have been so given, Pacific Road and/or Minco, at their election, may give to Xtierra a written notice (a "**Supplemental Prospectus Notice**"):
  - (i) specifying the number of securities ("**Supplemental Prospectus Shares**") proposed to be sold or otherwise transferred by Pacific Road or Minco, as applicable; and
  - (ii) requesting the inclusion thereof for Distribution under such Prospectus, as applicable;

provided, however, that such Supplemental Prospectus Notice shall be so given by Pacific Road and/or Minco, as applicable, not later than the date specified in the Piggyback Notice.

- (c) From and after receipt of a Supplemental Prospectus Notice given by Pacific Road and/or Minco, as applicable, in connection with a Canadian Offering, Xtierra shall in a timely manner cause the Supplemental Prospectus Shares of Pacific Road and/or Minco, as applicable, to be qualified for Distribution pursuant to the Prospectus filed with the Canadian Securities Commissions in connection with such Canadian Offering and to effect and to comply with all such regulatory qualifications, compliances and requirements as may be necessary to permit the offer and sale or other transfer of the Supplemental Prospectus Shares, including pursuant to any underwriting of the Canadian Offering.
- (d) If Pacific Road and/or Minco, as applicable, exercise their rights pursuant to this Section 7.9 in connection with an underwritten Canadian Offering, Xtierra and Pacific Road and/or Minco, as applicable, shall enter into an underwriting agreement in customary form with the representative of the underwriter or underwriters selected for such underwriting by Xtierra or another shareholder, as the case may be.
- (e) If the lead underwriter of such offering advises Xtierra, Pacific Road and/or Minco, as applicable, that the inclusion of some or all of the Supplemental Prospectus Shares would, in such lead underwriter's judgment, materially interfere with the proposed Canadian Offering or:
  - (i) in the case of a Canadian Offering initiated by Xtierra, the number of Shares that may be included shall be allocated (A) first to Xtierra, (B) second to Pacific Road and/or Minco, as applicable, on a pro rata basis where each of them has made a Supplemental Prospectus Notice, and (C) third to any other shareholder with piggyback rights; and

- (ii) in the case of a Canadian Offering initiated by Pacific Road and/or Minco, as applicable, or another shareholder, if any, with demand registration rights,

then the number of Shares that may be included shall be allocated first to Pacific Road and/or Minco, as applicable, on a pro rata basis where each of them has made a Supplemental Prospectus Notice or the shareholder making the demand, as the case may be, then allocated to Pacific Road, Minco, Xtierra and the other shareholder with piggyback rights, as the case may be, *pro rata* based on the number of Shares requested to be included by such Person, as the case may be.

- (f) Notwithstanding any of the provisions contained in this Section 7.9, Xtierra shall have the right to delay or abandon any Canadian Offering proposed by it pursuant to Section 7.9(a) at any time in the event that the Board determines in good faith that such delay or abandonment is in the best interest of Xtierra, and Xtierra shall have no obligations or liabilities hereunder upon any such determination.
- (g) Pacific Road and/or Minco may withdraw all or part of their Supplemental Prospectus Shares at any time.
- (h) All Qualification Expenses incurred in connection with any Distribution pursuant to this Section 7.9 shall be borne by Xtierra subject to any requirement of Securities Laws. Underwriting commissions payable in respect of the sale of Supplemental Prospectus Shares shall be borne by Pacific Road and/or Minco, as applicable. For certainty, in no event shall Pacific Road and/or Minco, as applicable, be responsible for any underwriting commissions in respect of Shares or other securities sold by Persons other than Pacific Road and/or Minco, as applicable.
- (i) The right to exercise piggyback rights under this Section 7.9 shall apply from the date of this Agreement and shall continue to apply for so long as Pacific Road (in the case of rights granted to Pacific Road under this Section 7.9) or Minco (in the case of rights granted to Minco under this Section 7.9) or any permitted transferee(s) hold Xtierra Common Shares (including securities convertible into or exercisable for Xtierra Common Shares) that represent more than 10% of the Xtierra Common Shares then outstanding. After such time, the right to exercise piggyback rights under this Section 7.9 shall cease to apply.

## **7.10 Protection of Rights**

After the date hereof, Xtierra shall not grant to any Person registration rights more favourable than those in effect in favour of Pacific Road and Minco under this Agreement at the relevant time nor shall it reduce the Shares Pacific Road and/or Minco, as applicable can include in a Canadian Offering without the prior written consent of Pacific Road and/or Minco, as applicable.

### 7.11 Rights as Secured Parties

Each of Minco and the Pacific Road Funds that hold Notes (collectively, “**Secured Parties**”) agree in favour of the other Secured Parties as follows:

- (a) Such Secured Party shall give notice to the other Secured Parties upon becoming aware of an Event of Default under the Note(s) held by such Secured Party;
- (b) Such Secured Party will not agree to an amendment to the Note(s) held by such Secured Party or the Pledge Agreement related thereto that would entitle such Secured Party to rights greater than those enjoyed by the other Secured Parties under the Notes held by them or the Pledge Agreement related thereto;
- (c) Such Secured Party will not exercise any remedies under the Note(s) held by it or the Pledge Agreement related thereto or enforce the security interest contained therein, without providing the other Secured Parties with two Business Days prior notice;
- (d) The holders of Notes representing a majority of the aggregate principal amount of all Notes (the “**Majority Secured Parties**”) may, if they determine to exercise remedies under the Notes held by such Majority Secured Parties or the Pledge Agreement related thereto, by written notice to the remaining Secured Parties, (the “**Remaining Secured Parties**”) require that such Remaining Secured Parties exercise the same remedies under the Notes held by such Secured Parties or the Pledge Agreements related thereto in the same manner as the remedies being exercised by the Majority Secured Parties. The Remaining Secured Parties will not challenge, object to, compete with or impede in any manner any act taken or proceeding commenced by the Majority Secured Parties in connection with the enforcement by the Majority Secured Parties of their security interests under their Notes and the Pledge Agreements related thereto.
- (e) Each Remaining Secured Party irrevocably constitutes and appoints the Majority Secured Parties as the true and lawful attorney of such Remaining Secured Party, with power of substitution in the name of the Remaining Secured Party, respectively, to do any and all acts and things, complete any endorsements or registrations and execute and deliver all agreements, documents and instruments as the Majority Secured Parties, in their sole discretion, consider necessary or desirable to carry out the provisions and purposes of the preceding paragraph (d) and agrees to ratify all acts of any attorney taken or done in accordance with this paragraph (e). This power of attorney being coupled with an interest shall not be revoked or terminated by any act and shall remain in full force and effect until this Agreement has been terminated.

## **ARTICLE 8 INDEMNIFICATION**

### **8.1 General Indemnification**

Xtierra shall indemnify and save harmless Pacific Road, Minco, their directors, officers, agents, Nominees, employees and shareholders (collectively referred to as the “**Purchaser Indemnified Parties**”) from and against all claims, liabilities, damages, losses or demands, whether or not arising due to third party claims, which may be made or brought against the Purchaser Indemnified Parties, or which they may suffer or incur, directly or indirectly, as a result of or in connection with or relating to:

- (a) any non-fulfilment or breach of any covenant or agreement on the part of Xtierra contained in this Agreement or in any certificate or other document furnished by or on behalf of Xtierra pursuant to this Agreement; and
- (b) any misrepresentation or any incorrectness in or breach of any representation or warranty of Xtierra contained in this Agreement or in any certificate or other document furnished by or on behalf of Xtierra pursuant to this Agreement.

### **8.2 Indemnification by Xtierra**

In the event of any Prospectus filed pursuant to Sections 7.8 or 7.9 covering securities beneficially owned by Pacific Road and/or Minco, Xtierra will indemnify and hold harmless Pacific Road and/or Minco, each of their officers, directors, partners and each Person, if any, who controls Pacific Road and/or Minco within the meaning of the Securities Laws, as the case may be, (collectively, the “**Indemnitees**”) against any losses, claims, damages, costs, expenses (including legal fees reasonably incurred, as incurred) or liabilities (or actions, proceedings or settlements in respect thereof) to which such Indemnitees become subject, under the Securities Laws or otherwise, insofar as such losses, claims, damages, costs, expenses or liabilities (or actions, proceedings or settlements in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in the related Prospectus or any related document incidental thereto, or any amendment or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances in which they were made or any violation by Xtierra of the Securities Laws or any other applicable securities laws and relating to action or inaction required of Xtierra in connection with any qualification or compliance contemplated hereby; provided, however, that Xtierra will not be liable in any such case to an Indemnitee to the extent that any such loss, claim, damage, cost, expense, liability or action arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission made in such Prospectus or amendment or supplement thereto, in reliance upon and in conformity with written information furnished by such Indemnitee specifically for use therein. Xtierra also agrees to reimburse each Indemnitee for any legal or other expenses reasonably incurred by such Indemnitee in connection with investigating or defending any such loss, claim, damage, liability or action.

### **8.3 Indemnification Procedure**

- (a) Promptly after receipt by an indemnified party under Section 8.1 or 8.2 of notice of the commencement of any action, such indemnified party shall, if a claim in respect thereof is to be made against any indemnifying party under Section 8.1 or 8.2, notify the indemnifying party of the commencement thereof; provided, however, that failure to so notify the indemnifying party shall not affect an indemnifying party's obligations hereunder, except to the extent that the indemnifying party is materially prejudiced by such failure. The indemnifying party shall be entitled to appoint counsel of the indemnifying party's choice at the indemnifying party's expense to represent the indemnified party in any action for which indemnification is sought (in which case the indemnifying party shall not thereafter be responsible for the fees and expenses of any separate counsel retained by the indemnified party or parties except as set forth below); provided, however, that such counsel shall be reasonably satisfactory to the indemnified party. Notwithstanding the indemnifying party's election to appoint counsel to represent the indemnified party in an action, the indemnified party shall have the right to employ separate counsel (including local counsel), and the indemnifying party shall bear the reasonable fees, costs and expenses of such separate counsel if (i) the use of counsel chosen by the indemnifying party to represent the indemnified party would present such counsel with a conflict of interest, (ii) the actual or potential defendants in, or targets of, any such action include both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded that there may be legal defences available to it and/or other indemnified parties which are different from or additional to those available to the indemnifying party, (iii) the indemnifying party shall not have employed counsel reasonably satisfactory to the indemnified party to represent the indemnified party within a reasonable time after notice of the institution of such action, or (iv) the indemnifying party shall authorize the indemnified party to employ separate counsel at the expense of the indemnifying party.
- (b) No indemnifying party shall, without the prior express written consent of the indemnified party, consent to any judgment or effect any settlement of any pending or threatened action, suit or proceeding in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party, unless such settlement includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such action, suit or proceeding.

### **8.4 Contribution**

If the indemnification provided for in Section 8.2 is held by a court of competent jurisdiction to be unavailable to an indemnified party with respect to any losses, claims, damages, costs, expenses or liabilities referred to herein, the indemnifying party, in lieu of indemnifying such indemnified party hereunder, shall contribute to the amount paid or payable by such indemnified party as a result of such loss, claim, damage, cost, expense, liability or action in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand and of the indemnified party on the other in connection with matters that resulted in such loss, claim, damage, cost, expense, liability or action, as well as any other relevant

equitable considerations. The relative fault of the indemnifying party and of the indemnified party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the indemnifying party or by the indemnified party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

## **ARTICLE 9 GENERAL**

### **9.1 Assignment**

This Agreement shall not be assignable by Xtierra or Orca without the prior written consent of Pacific Road and Minco. Each of Pacific Road and Minco may assign this Agreement to any Affiliate or other designee of such Party without the prior written consent of Xtierra or Orca, but shall notify Xtierra and Orca in advance of any such assignment. Any such assignment of this Agreement shall not relieve the assignor from any liability for its obligations under this Agreement. For certainty, two or more Pacific Road Funds may assign their rights hereunder to a common vehicle.

### **9.2 Survival**

Each Party hereto acknowledges that the representations, warranties and agreements made by it herein are made with the intention that they may be relied upon by the other Parties. The Parties further agree that the representations, warranties and agreements shall survive the closing of the transactions under this Agreement and shall continue in full force and effect notwithstanding any subsequent disposition by any holder of the Notes or any repayment of the Obligations or any termination of this Agreement. This Agreement shall be binding upon and shall enure to the benefit of the Parties hereto, their respective successors, assigns and legal representatives.

### **9.3 Currency**

All references to dollars in this Agreement are references to Canadian currency, except where indicated to be in U.S. dollars or US\$.

### **9.4 Further Assurances**

Each of the Parties shall promptly do, make, execute, deliver, or cause to be done, made, executed or delivered, all such further acts, documents and things as the other Parties may reasonably require from time to time for the purpose of giving effect to this Agreement and shall use reasonable efforts and take all such steps as may be reasonably within its power to implement to their full extent the provisions of this Agreement.

### **9.5 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable in Ontario.

## 9.6 Public Notices/Press Releases

All public notices to third parties and all other publicity concerning the transactions contemplated by this Agreement shall be jointly planned by the Parties and no Party shall act unilaterally in this regard without the prior written approval of the other Parties, such approval not to be unreasonably withheld, except where disclosure is required by law or by the applicable regulations or policies of any regulatory agency of competent jurisdiction or any stock exchange in circumstances where prior consultation with the other Parties is not practicable.

## 9.7 Notices

All notices, requests, demands and other communications under this Agreement (in this Section referred to as “**Notice**”) shall be deemed to have been duly given and made if in writing and if served by personal delivery upon the Party for whom it is intended or delivered, or if sent by facsimile transmission or E-mail, upon confirmation that such transmission has been properly effected, to the Person at the address set forth below, or such other address as may be designated in writing hereafter, in the same manner, by such Person. The date of receipt of any such notice or other communication if delivered personally shall be deemed to be the date of delivery thereof, or if sent by facsimile transmission or E-mail, the date of such transmission if sent on a business day, failing which it shall be deemed to have been received on the next business day.

(a) in the case of a Notice to Xtierra at:

Xtierra Inc.  
Suite 700  
220 Bay Street  
Toronto, ON M5J 2W4  
Canada

Attention: Chairman  
Fax: (416) 368-5344  
E-mail: [jfkearney@xtierra.ca](mailto:jfkearney@xtierra.ca)

(b) in the case of a Notice to Orca at:

c/o Xtierra Inc.  
Suite 700  
220 Bay Street  
Toronto, ON M5J 2W4  
Canada

Attention: Chairman  
Fax: (416) 368-5344  
E-mail: [jfkearney@xtierra.ca](mailto:jfkearney@xtierra.ca)

With a copy (whcih shall not constitute Notice) in the case of Notice to Xtierra or Orca to:

Steenberglaw Professional Corporation  
Suite 700  
220 Bay Street  
Toronto, ON M5J 2W4  
Canada

Attention: Neil J.F. Steenberg  
Fax: (416) 941-9417  
E-mail: neil@steenberglaw.ca

- (c) in the case of a Notice to Fund A or Fund B at:

Level 23  
Goldfields House  
1 Alfred Street  
Sydney, NSW 2000  
Australia

Attention: Company Secretary  
Facsimile: +612 9241 2255

- (d) in the case of a Notice to PRNV at:

Avenue Louise 331  
1050 Brussels  
Belgium

Attention: Company Secretary  
Facsimile: +32 2 642 8650

- (e) in the case of a Notice to Minco at:

Suite 700  
220 Bay Street  
Toronto, ON M5J 2W4  
Canada

Attention: Chairman  
Fax: (416) 368-5344  
E-mail: jfkearney@minco.ie

## **9.8 Execution and Delivery**

This Agreement may be executed by the Parties in counterparts and the counterparts may be executed and delivered by electronic means, with all counterparts together constituting one agreement.

*[Remainder of the page intentionally left blank]*

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

**PACIFIC ROAD CAPITAL A PTY LTD.,  
as trustee for  
PACIFIC ROAD RESOURCES FUND A**

By: "Greg Dick"

Name: Greg Dick

Title: Director

By: "Michael H. Stirzaker"

Name: Michael H. Stirzaker

Title: Director

**PACIFIC ROAD CAPITAL B PTY LTD.,  
as trustee for  
PACIFIC ROAD RESOURCES FUND B**

By: "Louis I. Rozman"

Name: Louis I. Rozman

Title: Secretary

By: "Greg Dick"

Name: Greg Dick

Title: Director

**PACIFIC ROAD HOLDINGS NV**

By: “*Caroline Hoogsteys*”

Name: Caroline Hoogsteys

Title: Director

By: “*Vinh Nguyen*”

Name: Vinh Nguyen

Title: Director

**PACIFIC ROAD CAPITAL  
MANAGEMENT GP LIMITED as general  
partner of PACIFIC ROAD RESOURCES  
FUND L.P**

By: “*Evan Burtton*”

Name: Evan Burtton

Title: Director

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

Name:

Title:

**MINCO PLC**

By: "John F. Kearney"

Name John F. Kearney

Title: Chairman

By: "Danesh Varma"

Name: Danesh Varma

Title:

**XTIERRA INC.**

By: "Danesh Varma"

Name Danesh Varma

Title:

By: "John F. Kearney"

Name: John F. Kearney

Title: Chairman

**ORCA MINERALS LIMITED**

By: "John F. Kearney"

Name: John F. Kearney

Title: Chairman

By: "Danesh Varma"

Name Danesh Varma

Title:

**SCHEDULE A  
FORM OF NOTE**

*(See attached)*

**Date of Issue: April 25, 2014**  
**Interest Rate: 5%**

**Principal Amount: US\$●**  
**Certificate Number: 2014-●**

## **NOTE**

### **XTIERRA INC.**

a corporation incorporated under the laws of the Province of Ontario  
(hereinafter called the “**Corporation**”)

**WHEREAS** the Corporation, under the laws relating thereto, is duly authorized to create and issue this Note as herein provided;

**NOW THEREFORE** it is hereby covenanted, agreed and declared as follows:

## **ARTICLE ONE**

### **INTERPRETATION**

**Section 1.01**      **Definitions**: In this Note, unless there is something in the subject matter or context inconsistent therewith, the expressions following have the following meanings, namely:

- (a)      “**2015 Notes**” means the US\$932,730.39 aggregate principal amount of promissory notes of the Corporation dated the date hereof of which this Note forms a part which 2015 Notes were issued to the Holder and others pursuant to the Exchange and Investment Agreement;
- (b)      “**Assignment Form**” means the form of assignment set out in Schedule B hereto;
- (c)      “**this Note**”, “**the Note**”, “**hereto**”, “**herein**”, “**hereby**”, “**hereunder**”, “**hereof**” and similar expressions refer to this Note and not to any particular Article, Section, subsection, clause, subdivision or other portion hereof and include any and every instrument supplemental or ancillary hereto;
- (d)      “**Corporation**” means Xtierra Inc. and includes any successor corporation to or of the Corporation which shall have complied with the provisions of Article Six;
- (e)      “**Date of Issue**” means the date upon which the Note is issued;
- (f)      “**Event of Default**” shall have the meaning specified in Section 4.03 hereof;
- (g)      “**Exchange and Investment Agreement**” means the conversion and investment agreement among the Corporation, Orca, the Holder and other parties who have acquired 2015 Notes thereunder dated April 25, 2014, as the same may be amended or restated from time to time;

- (h) **“Governmental Authorities”** means governments, regulatory authorities, governmental departments, agencies, commissions, bureaus, officials, ministers, Crown corporations, courts, bodies, boards, tribunals or dispute settlement panels or other law, rule or regulation-making organizations or entities:
  - (i) having or purporting to have jurisdiction on behalf of any nation, province, territory or state or any other geographic or political subdivision of any of them; or
  - (ii) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power;
- (i) **“Holder”** means the registered holder of this Note on the books of the Corporation and as evidenced on the registration table set out in Schedule A hereof;
- (j) **“Liquidity Event”** means, in respect of a person:
  - (i) the consummation of a merger, amalgamation, plan of arrangement or other transaction or series of related transactions resulting in the combination of the person with or into another entity, where the shareholders of the person immediately prior to such transaction or series of related transactions, directly or indirectly do not continue to hold more than a 50% voting interest in the continuing or surviving entity immediately following such transaction or series of related transactions and no shareholder who held less than a 50% voting interest in the person before such event holds directly or indirectly more than a 50% voting interest in the continuing or surviving entity immediately following such event;
  - (ii) a sale or transfer of all or substantially all of the person’s assets; or
  - (iii) a sale or transfer of more than 50% of the outstanding shares in the capital of the person;and in respect of the Corporation and Orca, includes for certainty a sale of the Bilbao project or all or substantially all the assets thereof, by way of share sale or asset sale or otherwise;
- (k) **“Liquidity Event Closing”** shall have the meaning specified in Section 3.01 hereof;
- (l) **“Liquidity Event Closing Date”** shall have the meaning specified in Section 3.01 hereof;

- (m) “**Liquidity Event Payment**” shall have the meaning specified in Section 3.01 hereof;
- (n) “**Maturity Date**” means April 30, 2015;
- (o) “**Note**” means this Note and any note issued in replacement, substitution or exchange, in whole or in part, of this Note;
- (p) “**Orca**” means Orca Minerals Limited, a corporation incorporated under the laws of Ontario, and any successor corporation thereto;
- (q) “**person**” means any individual, corporation, company, partnership, joint venture, association, trust or other organization or entity;
- (r) “**Pledge Agreement**” has the meaning given in the Exchange and Investment Agreement;
- (s) “**Principal Amount**” means the amount set out on the face page hereof;
- (t) “**Securities Laws**” means, as applicable, the securities laws, regulations, rules, rulings and orders in the provinces of Alberta, British Columbia and Ontario and the applicable policy statements issued by the securities regulators in each of the provinces of Alberta, British Columbia and Ontario;
- (u) “**Subsidiary**” means a “Subsidiary” (as defined in the Purchase Agreement) of Xtierra;
- (v) “**Total Borrowings**” means the total US\$932,730.39 principal amount of promissory notes of the Corporation (including this Note) outstanding on the date hereof; and
- (w) “**U.S. Securities Act**” shall have the meaning specified in Section 2.05 hereof.

**Section 1.02**     **Number and Gender**: Words importing the singular number only shall include the plural and vice versa and words importing the masculine gender shall include the feminine gender and words importing persons shall include firms and corporations and vice versa.

**Section 1.03**     **Headings**: The division of this Note into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Note.

**Section 1.04**     **Applicable Law**: This Note shall be construed in accordance with, and governed by, the laws of Ontario and the laws of Canada applicable therein without reference to conflict of laws principles. The Corporation and the Holder irrevocably attorn to the exclusive jurisdiction of the courts of Ontario with respect to any matters arising out of this Note.

**Section 1.05**     **Time of Essence**: Time is of the essence in the performance of this Note.

**Section 1.06** **Currency:** All references to currency herein are to lawful money of the United States of America (US\$) unless otherwise specified herein.

## ARTICLE TWO

### THE NOTE

**Section 2.01** **Terms of the Note:**

- (a) The Corporation hereby acknowledges itself indebted and promises to pay the Principal Amount and accrued interest to the Holder on the earlier of:
  - (i) the Maturity Date; and
  - (ii) such other date as contemplated by Section 3.01.
- (b) The Principal Amount outstanding at any time, and from time to time shall bear interest before maturity, demand, default, and judgment at a rate of 5% per annum. Such interest shall be calculated daily, compounded annually and payable at the Maturity Date. The Principal Amount and any unpaid interest outstanding at any time, and from time to time, from and after the Maturity Date shall bear interest from and after maturity, demand, default, and judgment at a rate of 25% per annum.
- (c) Interest which is calculated under this Note on any basis other than a full calendar year (the “**deemed interest period**”) is, for the purposes of the *Interest Act* (Canada), equivalent to a yearly rate calculated by dividing such interest rate by the actual number of days in the deemed interest period, then multiplying such result by the actual number of days in the calendar year (365 or 366).
- (d) Any payments in respect of amounts due under this Note shall be applied first in satisfaction of any accrued and unpaid interest, and then to the Principal Amount outstanding.
- (e) The Borrower waives presentment for payment, notice of non-payment, notice of dishonour, and notice of protest of this Note. The Borrower also waives the benefits of division and discussion and the right to assert in any action or proceeding with regard to this Note any set-offs or counterclaims which the Borrower may have.
- (f) Neither the extension of time for making any payment which is due and payable under this Note at any time or times, nor the failure, delay, or omission of the Holder to exercise or enforce any of its rights or remedies under this Note, shall constitute a waiver by the Holder of its right to enforce any such rights and remedies subsequently. The single or partial exercise of any such right or remedy shall not preclude the Holder’s further exercise of such right or remedy or any other right or remedy.

**Section 2.02**      **Person Entitled to Payment:** The Holder shall be entitled to the principal moneys and interest evidenced by this Note. Delivery to the Holder by the Corporation or the receipt by the Holder of the principal moneys and interest evidenced by this Note shall be a good discharge to the Corporation of its obligations hereunder, and the Corporation shall not be bound to enquire into the title of the Holder, save as ordered by a court of competent jurisdiction or as required by statute. The Corporation shall not be bound to see to the execution of any trust affecting the ownership of this Note nor be affected by notice of any equity that may be subsisting in respect hereof or thereof. The Holder of this Note shall be entitled to payment of all amounts due hereunder free from all equities or rights of set-off or counterclaim between the Corporation and the original or any intermediate Holder hereof and all persons may act accordingly and a transferee of this Note shall, after the Assignment Form is delivered to the Corporation and upon compliance with all other conditions required by this Note or by law, become the Holder of this Note free from all equities or rights of set-off or counterclaim between the Corporation and the transferor or any previous Holder hereof, save in respect of equities of which the Corporation is required to take notice by statute or by order of a court of competent jurisdiction.

**Section 2.03**      **Mutilation, Loss, Theft or Destruction:** In case this Note shall become mutilated or be lost, stolen or destroyed, the Corporation shall execute and deliver a new Note having the same Date of Issue upon surrender and cancellation of the mutilated Note, or in case this Note is lost, stolen or destroyed, in lieu of and in substitution for the same. In case of loss, theft or destruction the person applying for a substituted Note shall furnish to the Corporation such evidence of such loss, theft or destruction as shall be satisfactory to the Corporation, shall furnish indemnity satisfactory to the Corporation and shall pay all reasonable expenses incidental to the issuance of any substituted Note.

**Section 2.04**      **Transfer**

- (a) This Note, including all rights and obligations associated hereunder, shall be transferable at the Holder's option, in whole or in part, subject to applicable securities law to (i) an affiliate (as such term is defined in National Instrument 45-106 – *Prospectus and Registration Exemptions*) or associate (as such term is defined in the *Securities Act* (Ontario)) of the Holder, (ii) to a direct or indirect investor or partner in the Holder, or (iii) another holder of convertible notes of the Corporation; provided that the Corporation shall not be liable for any additional costs that may be associated or incurred in connection with the transfer, including without limitation any withholding taxes. Any transfer other than to a party contemplated by this Section 2.04 shall require the consent of the Corporation.
- (b) Within a reasonable time after notice to the Corporation from such holder of its intention to make such transfer or exchange and without expense to such holder, except for any transfer or similar tax which may be imposed on the transfer or exchange, the Corporation shall issue in exchange therefor another note or notes for the same aggregate principal amount as the unpaid principal amount of this Note so surrendered, having the same maturity and rate of interest, containing the same provisions and subject to the same terms and conditions as this Note so

surrendered. If the Holder proposes to transfer this Note in part, the Corporation shall issue a note or notes for the aggregate principal amount to be transferred, on the same basis noted in the preceding sentence, and issue a replacement note for the part not transferred to the Holder. Each new Note shall be made payable to such person or persons, or transferees, as the holder of such surrendered Note may designate, and such transfer or exchange shall be made in such a manner that no gain or loss of principal or interest shall result therefrom. The Corporation may elect not to permit a transfer of this Note if it has not obtained reasonable assurances that such transfer is exempt from the prospectus and registration requirements under applicable Canadian securities law.

**Section 2.05**      **Restrictions on Transfers:** The Corporation shall not register any transfers of the Note:

- (a) to a United States person, any person in the United States or any person for the account or benefit of a United States person or a person in the United States except pursuant to Rule 144 under the *United States Securities Act of 1993*, as amended (the “**U.S. Securities Act**”), if available; and
- (b) in connection with any transfers which are otherwise not in compliance with the U.S. Securities Act and the regulations thereunder if applicable, or the Securities Laws and the rules and regulations thereunder, and applicable securities laws and regulations of other relevant jurisdictions.

**Section 2.06**      **Representations of the Holder:** The Holder, by its acceptance of this Note, represents, acknowledges and agrees that:

- (a) this Note has not been, and will not be, qualified for sale under securities laws and regulations of any province or territory of Canada or any other jurisdiction or the U.S. Securities Act; and
- (b) compliance with the applicable securities laws and regulations of any jurisdiction is the responsibility of the Holder or its transferee.

### ARTICLE THREE

#### ACCELERATION OF NOTE

**Section 3.01**      **Liquidity Events:** Notwithstanding any other provision of this Note, contemporaneously with the closing or completion of a Liquidity Event with respect to the Corporation or Orca (a “Liquidity Event Closing”), the Corporation shall pay to the Holder the outstanding Principal Amount and all accrued interest (the “Liquidity Event Payment”) as at the date of the Liquidity Event Closing (the “Liquidity Event Closing Date”) if requested by the Holder. The Holder and the Corporation shall work together in good faith to determine the final structure of the Liquidity Event Payment prior to the Liquidity Event Closing Date in order for

the Liquidity Event Payment to be made on a tax-efficient basis for both the Corporation and the Holder.

## ARTICLE FOUR

### COVENANTS OF THE COMPANY AND DEFAULT

**Section 4.01** **Covenants**: The Corporation hereby covenants and agrees that so long as any amounts remain unpaid pursuant to this Note it will observe and perform the following covenants:

- (a) The Corporation will furnish to the Holder a copy of all financial statements, whether annual or interim, of the Corporation and the report of the Corporation's auditors thereon and of all annual and other periodic reports of the Corporation furnished to its shareholders at the same time as they are furnished to such shareholders.
- (b) The Corporation shall not, without the prior consent of the Holders holding a majority of the Notes then outstanding:
  - (i) sell, lease, assign, transfer or otherwise dispose of all or substantially all of the material consolidated assets of the Corporation; or
  - (ii) directly or indirectly, undertake any additional borrowing (other than, for certainty, the Total Borrowings) which ranks in priority equal with or ahead of this Note.

**Section 4.02** **Acceleration on Event of Default**: If an Event of Default shall occur and be continuing, this Note may be declared by the Holder on written notice to the Corporation to be, and upon such notice the unpaid balance of the Principal Amount, accrued interest and all other amounts payable hereunder shall become immediately due and payable, without presentment, demand, protest or notice of presentment or demand, all of which are hereby waived by the Corporation.

**Section 4.03** **Events of Default**: Any of the following conditions or events which shall occur and be continuing shall constitute events of default ("**Events of Default**") under this Note:

- (a) if the Corporation shall default in the payment of any of the Principal Amount and/or accrued interest when the same becomes due and payable, whether at the Maturity Date or otherwise;
- (b) if the Corporation shall default in the performance of or compliance with any term, condition or covenant contained in this Note (other than a default in the payment of principal) and such default shall not have been remedied or the Corporation shall not have taken timely steps diligently to remedy such default within a period of 15 business days after such default shall first have become

known to any officer of the Corporation or written notice thereof shall have been received by the Corporation from the Holder;

- (c) if the Corporation, Orca or any Subsidiary shall (i) be generally not paying its debts as they become due, (ii) file, or consent by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy, for liquidation or otherwise take advantage of any bankruptcy or insolvency law of any jurisdiction (including for certainty a filing under the *Companies' Creditors Arrangement Act* (Canada), (iii) make an assignment, an arrangement or a compromise for the benefit of its creditors, (iv) consent to the appointment of a custodian, receiver, trustee or other officer with similar powers of itself or of any substantial part of its property, (v) cease to carry on business, or (vi) take corporate action for the purpose of any of the foregoing;
- (d) if a court or Governmental Authority of competent jurisdiction shall enter an order appointing, without the consent of the Corporation, Orca or any Subsidiary, as the case may be, a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of the property of the Corporation, Orca or any Subsidiary, or if an order for relief shall be entered in any case or proceeding for liquidation or reorganization or otherwise to take advantage of any bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding-up or liquidation of the Corporation, Orca or any Subsidiary, or if any petition for any such relief shall be filed against the Corporation, Orca or any Subsidiary and such petition shall not be dismissed within 90 days; or
- (e) if the Corporation, Orca or any Subsidiary shall fail to pay the principal of or premium or interest on, or suffer an event of default under, any secured indebtedness or liability of the Corporation, Orca or any Subsidiary which ranks prior to the indebtedness of the Corporation, Orca or any Subsidiary hereunder when the same becomes due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) and such failure shall continue after the expiration of any applicable grace or remedial period;
- (f) if the Corporation or Orca shall default or be in breach of any term or provision in any of the Exchange and Investment Agreement (including for certainty any covenant or obligation listed under "Covenants" therein), this Note or the Pledge Agreement issued to the Holder by the Corporation or any representation or warranty made by the Corporation or Orca in the Exchange and Investment Agreement shall have been untrue in any material respect (or, in the case of any representation subject to a materiality qualifier, untrue in any respect) when made, and such default or breach is not cured within seven days after receipt of notice of the default or breach by the Corporation or Orca (if capable of cure);
- (g) if one or more final judgment or decree for the payment of money due shall have been obtained or entered against the Corporation, Orca or any Subsidiary,

provided such judgment or decree shall not have been and remain vacated, discharged or stayed pending appeal within the applicable appeal period;

- (h) if a Liquidity Event shall have been consummated without payment of the Liquidity Event Payment;
- (i) if the Corporation or Orca shall be subject of the enforcement of a workman's or contractor's lien against any property or asset of the Corporation or Orca and such lien has been determined by a court of competent jurisdiction to be applicable and enforceable such that assets of the Corporation or Orca, as the case may be (other than assets which are not significant to the Corporation or Orca or their respective operations), are subject to seizure by the courts or the lienholder, and such lien has not been repaid or otherwise redeemed;
- (j) if any holder of any security interest, mortgage, lien, charge, claim or encumbrance enforces against, delivers any notices relating to its rights or its intention to enforce against, or becomes entitled to enforce against or otherwise takes possession, management or control of secured property or the interest of any of the Corporation, Orca or any Subsidiary in such secured property, or any part of such secured property or interest; or
- (k) if a distress, execution, warrant, garnishment, attachment, sequestration, levy, writ, or any similar process is issued or enforced upon or against the secured property or any part of such secured property, or any third party demand is issued by the Crown, Governmental Authority, administrative body or any taxation authority in respect of any of the Corporation, Orca or any Subsidiary, or any of the secured property, or any other seizure is made by any such authorities on any part of the secured property.

## ARTICLE FIVE

### SATISFACTION AND DISCHARGE

**Section 5.01**      **Discharge:** The Holder shall at the request of the Corporation release and discharge this Note and execute and deliver such instruments as are requisite for the purpose and to release the Corporation from its covenants herein contained, upon the Principal Amount of this Note, accrued interest and all other moneys payable hereunder having been paid or satisfied.

**Section 5.02**      **Immunity of Shareholders and Others:** The Holder hereby waives and releases any right, cause of action or remedy, other than for fraud, now or hereafter existing in any jurisdiction against any past, present or future director or officer of the Corporation or of any person in like relationship to any successor company for the payment of the Principal Amount of or interest on this Note or on any covenant, agreement, representation or warranty by the Corporation herein contained.

## ARTICLE SIX

### SUCCESSOR CORPORATIONS

**Section 6.01** **Certain Requirements**: The Corporation shall not, directly or indirectly, sell, lease, transfer or otherwise dispose of all or substantially all of its property and assets as an entirety to any other entity, and shall not consolidate, amalgamate, or merge with or into any other corporation (any such other entity or corporation being herein referred to as a “**successor corporation**”) unless the successor corporation shall execute, prior to or contemporaneously with the consummation of any such transaction, an instrument to evidence the assumption by the successor corporation of the due and punctual payment of all the Principal Amount of this Note and the interest thereon and all other moneys payable hereunder and the covenant of the successor corporation to pay the same and its agreement to observe and perform all the covenants and obligations of the Corporation under this Note.

**Section 6.02** **Vesting of Powers in Successor**: Whenever the conditions of Section 6.01 have been fully observed and performed the successor corporation shall possess and from time to time may exercise each and every right and power of the Corporation under this Note in the name of the Corporation or otherwise and any act or proceeding by any provision of this Note required to be done or performed by the Corporation or its officers may be done and performed with like force and effect by the successor corporation or its officers.

## ARTICLE SEVEN

### GENERAL

**Section 7.01** **Notice to Corporation**: Any notice to the Corporation under the provisions of this Note shall be valid and effective if delivered by prepaid courier or telecopied to the Corporation at its offices in Toronto at Suite 700, 220 Bay Street, Toronto, Ontario, Canada, M5J 2W4 Attention: President, telecopier no.: (416) 368-5344, with a copy to Neil J. F. Steenberg, Barrister & Solicitor, Suite 700, 220 Bay Street, Toronto, Ontario, M5J 2W4, telecopier no.: (416) 941-9417, and shall be deemed to have been effectively given on the date of delivery or transmission. The Corporation may from time to time notify the Holder in writing of a change of address which thereafter, until changed by like notice, shall be the address of the Corporation for all purposes of this Note.

**Section 7.02** **Notice to Holder**: Any notice to the Holder under the provisions of this Note shall be valid and effective if delivered by prepaid courier or telecopied to the Holder at the address set out in the registration table set out on Schedule A hereto, and shall be deemed to have been effectively given on the date of delivery or transmission. The Holder may from time to time notify the Corporation in writing of a change of address which thereafter, until changed by like notice, shall be the address of the Holder for all purposes of this Note.

**Section 7.03** **Severability**: In the event that any provision or any part of any provision hereof is deemed to be invalid by reason of the operation of any law or by reason of the interpretation placed thereon by a court, this Note shall be construed as not containing such

provision or such part and such provision or such part shall not affect the validity of any other provision or the remainder of such provision hereof, and all other provisions hereof which are otherwise lawful and valid shall remain in full force and effect.

**Section 7.04**      **Binding Effect:** This Note and all of its provisions shall enure to the benefit of the Holder, its successors and assigns and shall be binding upon the Corporation, its successors and assigns, as the case may be.

**IN WITNESS WHEREOF** the Corporation has executed these presents under the hand of its proper officer in that behalf as of the date first above written.

**XTIERRA INC.**

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

**SCHEDULE A**

**REGISTERED HOLDER PARTICULARS**

**Date:**

**Registration Particulars:**

**Certified by:  
(Officer of the Corporation)**

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

Title:

**SCHEDULE B**  
**ASSIGNMENT FORM**

**TO: XTIERRA INC.**

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers to the following person all rights of the undersigned pursuant to a Note issued by the represented by Certificate Number: \_\_\_\_\_.

Name of Assignee: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

and the undersigned hereby irrevocably constitutes and appoints such assignee to be the lawful attorney of the undersigned to transfer such rights to the Note on the books of Xtierra Inc., with full power of substitution.

Date: \_\_\_\_\_

\_\_\_\_\_

Name:  
Title (if applicable):  
Address:

**SCHEDULE B**  
**REPRESENTATIONS AND WARRANTIES OF XTIERRA AND ORCA**

Xtierra and Orca hereby jointly and severally represent and warrant to, and covenant with Pacific Road and Minco as follows and acknowledge that Pacific Road and/or Minco are relying on such representations and warranties in connection with the transactions contemplated herein:

- (a) Incorporation and Organization: Xtierra has been incorporated and organized and is a valid and subsisting corporation under the laws of its jurisdiction of incorporation and has all requisite corporate power and authority to carry on its business as now conducted and to own or lease and operate the property and assets thereof and Xtierra has all requisite corporate power and authority to enter into, execute and deliver this Agreement and to carry out the obligations thereof hereunder;
- (b) Subsidiaries: Each of Xtierra's direct and indirect subsidiaries (i) has been incorporated and organized and is a valid and subsisting corporation under the laws of its jurisdiction of incorporation and has all requisite corporate power and authority to carry on its business as now conducted and to own or lease and operate the property and assets thereof, and (ii) is a direct or indirect wholly-owned subsidiary of Xtierra with all of the issued and outstanding shares in the capital of each such subsidiary being owned by Xtierra or a subsidiary of Xtierra; There are 2,250,000 common shares of Orca Minerals Limited issued and outstanding which are registered in the name of and beneficially owned by Xtierra and there are no other shares in the capital of Orca Minerals Limited, or any options, warrants or other securities which are exercisable for or convertible or exchangeable into shares of Orca Minerals Limited, which are outstanding and no person, firm or corporation has any agreement, option, right or privilege (whether pre-emptive, contractual or otherwise) capable of becoming an agreement, for the purchase, acquisition, subscription for or issue of any of the unissued shares or other securities of Orca Minerals Limited;
- (c) Extra-provincial Registration: Xtierra and each of its Subsidiaries is licensed, registered or qualified as an extra-provincial or foreign corporation in all jurisdictions where the character of the property or assets thereof owned or leased or the nature of the activities conducted by it make licensing, registration or qualification necessary and is carrying on the business thereof in material compliance with all applicable laws, rules and regulations of each such jurisdiction;
- (d) Authorized Capital: Xtierra is authorized to issue an unlimited number of Xtierra Common Shares of which, as of the date hereof (prior to the transactions contemplated by this Agreement), 103,425,892 Xtierra Common Shares are issued and outstanding as fully paid and non-assessable shares;
- (e) Certain Securities Law Matters: (i) The Xtierra Common Shares are listed only on the TSX Venture Exchange, (ii) Xtierra is a reporting issuer or the equivalent only in the Provinces of British Columbia, Alberta and Ontario and is not in default of any requirement of the Securities Legislation of any of such provinces

and (iii) the Xtierra Common Shares are not registered under the *Securities Exchange Act of 1934* (United States), as amended;

- (f) **Options and Warrants:** No person, firm or corporation has any agreement, option, right or privilege (whether pre-emptive, contractual or otherwise) capable of becoming an agreement, for the purchase, acquisition, subscription for or issue of any of the unissued shares or other securities of Xtierra except for (i) no warrants to purchase Xtierra Common Shares, and (ii) 6,576,000 options to purchase Xtierra Common Shares issued to officers, directors, consultants and employees of Xtierra;
- (g) **Subsidiaries:** Xtierra does not have any material subsidiaries within the meaning of the *Securities Act* (Ontario) other than:

<b>Name of Subsidiary</b>	<b>Jurisdiction of Incorporation</b>	<b>Percentage Ownership</b>	<b>Principal Activity</b>
Orca Minerals Limited	Canada	100%	Holding company for Orca Gold International
Orca Gold International Limited	Bahamas	100%	Holding company for Mexican subsidiaries
Bilbao Resources S.A. de C.V.	Mexico	100%	Exploration
Golden Dust S.A. de C.V.	Mexico	100%	Exploration
Minera Orca S.A. de C.V.	Mexico	100%	Exploration
Orca Mining Exploration S.A. de C.V.	Mexico	100%	Exploration
Bilbao Mining S.A. de C.V.	Mexico	100%	Exploration

Orca Minerals Limited is a direct wholly-owned Subsidiary of Xtierra and owns substantially all of the assets of Xtierra (on a consolidated basis) directly or indirectly through other Subsidiaries wholly-owned by it.

- (h) **Issue of Securities:** All necessary corporate action has been taken to authorize the issue and sale of, and the delivery of the securities contemplated by this Agreement;
- (i) **Consents, Approvals and Conflicts:** None of the execution and delivery of the Agreement, the compliance by Xtierra with the provisions of the Agreement or the consummation of the transactions contemplated herein and therein do or will (i) require the consent, approval, or authorization, order or agreement of, or registration or qualification with, any governmental agency, body or authority, court, stock exchange, securities regulatory authority or other Person, except (A)

such as have been obtained, or (B) such as may be required under applicable Securities Laws and will be obtained by Closing, or (ii) conflict with or result in any breach or violation of any of the provisions of, or constitute a default under, any indenture, mortgage, deed of trust, lease or other agreement or instrument to which Xtierra or any of its Subsidiaries is a party or by which they or any of their properties or assets is bound, or (iii) conflict with or result in any breach or violation of any provisions of, or constitute a default under the articles or by-laws of Xtierra or any Subsidiary or any resolution passed by the directors (or any committee thereof) or shareholders of Xtierra or any Subsidiary, or any statute or any judgment, decree, order, rule, policy or regulation of any court, governmental authority, any arbitrator, stock exchange or securities regulatory authority applicable to Xtierra or any Subsidiary or any of the properties or assets thereof which could have a material adverse effect on the condition (financial or otherwise), business, properties or results of operations of Xtierra or any Subsidiary;

- (j) Authority and Authorization: Xtierra and Orca have full corporate power and authority to enter into the Agreement and to do all acts and things and execute and deliver all documents as are required hereunder to be done, observed, performed or executed and delivered by it in accordance with the terms hereof, including issuance of the Xtierra Common Shares or any Notes representing Obligations, and each of Xtierra and Orca has taken all necessary corporate action to authorize the creation, execution, delivery and performance of the Agreement and to observe and perform the provisions of the Agreement in accordance with the provisions thereof;
- (k) Validity and Enforceability: The Agreement and the Notes representing the Obligations have been duly authorized, the Agreement and such Notes have been duly executed and delivered by Xtierra (and, in the case of the Agreement, Orca), and this Agreement and the Notes constitute valid and legally binding obligations of Xtierra (and in the case of the Agreement, Orca) enforceable against Xtierra and Orca in accordance with their terms, except as enforcement thereof may be limited by bankruptcy, insolvency, reorganization moratorium and other laws relating to or affecting the rights of creditors generally and except as limited by the application of equitable principles when equitable remedies are sought, and by the fact that rights to indemnity, contribution and waiver, and the ability to sever unenforceable terms, may be limited by applicable law;
- (l) No Contemplated Changes: Except as disclosed to Pacific Road and Minco, neither Xtierra nor any of its Subsidiaries has approved, is not contemplating, has not entered into any agreement in respect of, or has no knowledge of:
  - (i) the purchase of any property or assets or any interest therein or the sale, transfer or other disposition of any property or assets or any interest therein currently owned, directly or indirectly, by Xtierra whether by asset sale, transfer of shares or otherwise;

- (ii) a change of control (including by sale or transfer of shares or sale of all or substantially all of the property and assets of Xtierra or otherwise) of Xtierra; or
  - (iii) a proposed or planned disposition of shares by any shareholder who owns, directly or indirectly, 10% or more of the outstanding shares of Xtierra;
- (m) Compliance with Laws, Licenses and Permits: Except as disclosed to Pacific Road and Minco, Xtierra and its Subsidiaries have conducted and are conducting their business in compliance in all material respects with all applicable laws, rules, regulations, tariffs, orders and directives of each jurisdiction in which it carries on business and possesses all material approvals, consents, certificates, registrations, authorizations, permits and licenses issued by the appropriate provincial, state, municipal, federal or other regulatory agency or body necessary to carry on the business currently carried on by it, is in compliance in all material respects with the terms and conditions of all such approvals, consents, certificates, authorizations, permits and licenses and with all laws, regulations, tariffs, rules, orders and directives material to the operations, and none of Xtierra or its Subsidiaries has received any notice of the modification, revocation or cancellation of, any intention to modify, revoke or cancel or any proceeding relating to the modification, revocation or cancellation of any such approval, consent, certificate, authorization, permit or license which, singly or in the aggregate, if the subject of an unfavourable decision, order, ruling or finding, would materially and adversely affect the conduct of the business or operations of, or the assets, liabilities (contingent or otherwise), condition (financial or otherwise) or prospects of, Xtierra and its Subsidiaries, taken as a whole, except that on October 25, 2013, Conagua, the Mexican water authority, advised Xtierra of their decision to rescind Xtierra's December 10, 2003, twenty year extraction licence for Xtierra's La Laguna Pedernalillo on the basis that no extraction had been done for at least three years. Xtierra has instructed its counsel in Mexico to commence appeal proceedings in court against the decision of Conagua to rescind the licence.
- (n) Agreements and Actions: None of Xtierra or any of its Subsidiaries is in violation of any term of the articles or by-laws or any equivalent constating documents thereof. None of Xtierra or any of its Subsidiaries is in violation of any term or provision of any agreement, indenture or other instrument applicable to it which would, or could, result in any material adverse effect on the business, condition (financial or otherwise), affairs or operations of Xtierra and its Subsidiaries taken as a whole, none of Xtierra or any of its Subsidiaries is in default in the payment of any obligation owed which is now due and there is no action, suit, proceeding or investigation commenced, pending or, to the knowledge of Xtierra after due inquiry, threatened which, either in any case or in the aggregate, might result in any material adverse effect on the business, condition (financial or otherwise), affairs, prospects or operations of Xtierra and its Subsidiaries taken as a whole or in any material liability on the part of Xtierra or which places, or could place, in question the validity or enforceability of this Agreement, or any document or instrument delivered, or to be delivered, by Xtierra or Orca pursuant hereto;

- (o) Property Agreements: Any and all of the agreements and other documents and instruments pursuant to which Xtierra and its Subsidiaries hold the property and assets thereof are valid and subsisting agreements, documents or instruments in full force and effect, enforceable in accordance with terms thereof, except as enforcement thereof may be limited by bankruptcy, insolvency, reorganization moratorium and other laws relating to or affecting the rights of creditors generally and except as limited by the application of equitable principles when equitable remedies are sought, and by the fact that rights to indemnity, contribution and waiver, and the ability to sever unenforceable terms, may be limited by applicable law and none of Xtierra or any of its Subsidiaries is in default of any of the material provisions of any such agreements, documents or instruments nor has any such default been alleged;
- (p) No Defaults: None of Xtierra or any of its Subsidiaries is in default of any material term, covenant or condition under or in respect of any judgment, order, agreement or instrument to which it is a party or to which it or any of the property or assets thereof are or may be subject, and no event has occurred and is continuing, and no circumstance exists which has not been waived, which constitutes a default in respect of any commitment, agreement, document or other instrument to which Xtierra or any Subsidiary is a party or by which it is otherwise bound entitling any other party thereto to accelerate the maturity of any amount owing thereunder or which could have a material adverse effect upon the condition (financial or otherwise), property, assets, operations or business of Xtierra and its Subsidiaries taken as a whole;
- (q) No Litigation: Subject to subparagraph (n) above, there are no actions, suits, proceedings, inquiries or investigations existing, pending or, to the knowledge of Xtierra after due inquiry, threatened against or adversely affecting Xtierra or any of its Subsidiaries or to which any of the property or assets thereof is subject, at law or equity, or before or by any court, federal, provincial, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, which may in any way materially adversely affect the condition (financial or otherwise), property, assets, operations or business of Xtierra and its Subsidiaries taken as a whole or the ability of Xtierra and its Subsidiaries to perform the obligations thereof and none of Xtierra or any of its Subsidiaries is subject to any judgment, order, writ, injunction, decree, award, rule, policy or regulation of any governmental entity, which, either separately or in the aggregate, may result in a material adverse effect on the condition (financial or otherwise), property, assets, operations or business of Xtierra and its Subsidiaries taken as a whole or the ability of Xtierra and/or Orca to perform its obligations pursuant hereto;
- (r) Mining Title: Applying customary standards in the Canadian mining industry, Xtierra and each of its Subsidiaries has sufficient title, clear of any title defect or encumbrance, to its operating properties and properties with estimated proven and probable mineral reserves and/or estimated mineral resources (other than property to which it is lessee, in which case it has a valid leasehold interest) and has good and sufficient title to the real property interests including, without limitation, fee

simple estate of and in real property, leases, easements, rights of way, permits or licences from landowners or authorities permitting the use of land by Xtierra or any of its subsidiaries necessary to permit the operation of its business as presently owned and conducted. Subject to subparagraph (q) above, Xtierra and each of its subsidiaries holds all mineral rights required to continue its business and operations as currently conducted and as proposed to be conducted as set forth in the disclosure record. All mineral rights held by Xtierra and each of its subsidiaries are free and clear of all encumbrances and royalty burdens, and none of such mineral rights are subject to reduction by reference to mine payout or otherwise except for those created in the ordinary course of business;

- (s) Royalty Obligations: There are no royalty obligations or any other rights to Xtierra's mineral projects or any other properties of Xtierra or any of its subsidiaries other than a 1.5% net smelter return royalty relating to Xtierra's Bilbao project in Zacatecas, Mexico, in favour of former owners;
- (t) Disclosure: All information relating to the business, assets, liabilities, properties, capitalization or financial condition of Xtierra or any of its subsidiaries or any member thereof provided by Xtierra or any of its advisers to Pacific Road and Minco is true, accurate and complete in all material respects;
- (u) Assets: Xtierra, or its subsidiary or subsidiaries as the case may be, has the exclusive right to possess, use and occupy, and has good and marketable title to all of its assets, including its mining and development real properties (collectively, the “**Assets**”). None of the Assets has been taken or expropriated by any governmental authority nor has any notice or proceeding in respect thereof been given or commenced and to the best of Xtierra's knowledge, there is no intent or proposal to give any such notice or commence any such proceeding
- (v) Options and Warrants: No person, firm or corporation has any agreement, option, right or privilege (whether pre-emptive, contractual or otherwise) capable of becoming an agreement, for the purchase, acquisition, subscription for or issue of any of the unissued shares or other securities of any Subsidiary;
- (w) First Trade: The issue of the Xtierra Common Shares and Notes required to be issued pursuant to the Agreement will be exempt from the prospectus requirements of the applicable securities laws and no document will be required to be filed and no proceeding taken or approval, permit, consent, order or authorization obtained under the securities laws in connection with such first trade, provided that:
  - (i) at least four months have elapsed from the date of issue of the PR Convertible Notes;
  - (ii) such trade is not a control distribution (as such term is defined in Multilateral Instrument 45-102);
  - (iii) no unusual effort is made to prepare the market to create a demand for the securities that are the subject of the trade;

- (iv) no extraordinary commission or consideration is paid to a person or company in respect of the trade; and
  - (v) if the shareholder is an insider, the selling security holder has no reasonable grounds to believe Xtierra is in default of securities legislation.
- (x) Reporting Issuer: Xtierra is a “reporting issuer” in the provinces of British Columbia, Alberta and Ontario, is not in default in any material respect under any securities laws applicable in such provinces and is in compliance, in all material respects, with the by-laws, rules and regulations of the TSXV;
- (a) Cease Trading: No order or suspending trading in securities of Xtierra nor prohibiting the sale of such securities has been issued to and is outstanding against Xtierra or its directors, officers or promoters or against any other companies that have common directors, officers or promoters and no investigations or proceedings for such purposes have been threatened or, to the best of Xtierra’s knowledge, are pending or contemplated;
- (b) Financial Statements: The financial statements of Xtierra contained in the Disclosure Record, filed with any applicable securities regulatory authorities, have all been prepared in accordance with Canadian generally accepted accounting principles, accurately reflecting the financial position and all material liabilities (accrued, absolute, contingent or otherwise) of Xtierra as of the date thereof, and no adverse material changes in the financial position of Xtierra have taken place since the date thereof;
- (c) Disclosure Record: No portion of Xtierra’s Disclosure Record contains an untrue statement of a material fact as of the date thereof nor do they omit to state a material fact which, at the date thereof, was required to have been stated or was necessary to prevent a statement that was made from being false or misleading in the circumstances in which it was made; and
- (d) Environmental: (i) Neither Xtierra nor any of the Subsidiaries is in violation of any applicable laws relating to pollution, occupational health and safety or the environment (including ambient air, surface water, ground water, land surface or sub-surface strata), including laws relating to the release or threatened release of chemicals, pollutants, contaminants, wastes, toxic substances, hazardous substances, petroleum or petroleum by-products (collectively, “**Hazardous Materials**”) or the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials (collectively, “**Environmental Laws**”); (ii) Xtierra and each of the Subsidiaries have all permits, authorizations and approvals required under any applicable Environmental Laws and Xtierra and each of the Subsidiaries is in material compliance with such permits, authorizations and approvals; (iii) there are no pending or threatened administrative, regulatory or judicial actions, suits, demands, claims, liens, notices of non-compliance or violation, investigation or proceedings relating to any Environmental Laws against Xtierra or any of the Subsidiaries; and (iv) there are no events or circumstances that would reasonably be expected to form the basis of an order for clean-up or remediation, or an

action, suit or proceeding by any private party or governmental body or agency, against or affecting Xtierra or any of the Subsidiaries relating to any Environmental Laws.

**SCHEDULE C**  
**XTIERRA BUSINESS PLAN AND BUDGET**

*Deleted for confidentiality reasons*

**SCHEDULE D**  
**FORM OF PLEDGE AGREEMENT**

**SECURITIES PLEDGE AGREEMENT**

THIS AGREEMENT is made April ●, 2014

**BY:**

**INCLUDE NAME OF PLEDGEE FROM THE BELOW AND DEFINE AS THE "SECURED PARTY"**

**[PACIFIC ROAD RESOURCES FUND A,  
a trust governed by the Laws of Australia ("Fund A")**

- and -

**PACIFIC ROAD RESOURCES FUND B,  
a trust governed by the Laws of Australia ("Fund B")**

- and -

**PACIFIC ROAD HOLDINGS NV,  
a company governed by the Laws of Belgium ("PRNV")**

- and -

**PACIFIC ROAD RESOURCES FUND L.P.,  
a partnership governed by the Laws of England ("PR LP")**

- and -

**MINCO PLC,  
a company governed by the Laws of Ireland ("Minco")]**

- and -

**XTIERRA INC.,  
a corporation governed by the laws of the Province of Ontario  
(the "Pledgor")**

**RECITALS:**

- A. [Note: Substitute "Secured Party" for applicable entity below] Pursuant to a Exchange and Investment Agreement dated April \_\_, 2014, Pacific Road Resources Fund A ("Fund A"), Pacific Road Resources Fund B ("Fund B") and Pacific Road Holdings NV ("PRNV" and together with Fund A and Fund B, "PRRF"), Pacific Road Resources

Fund L.P. (“**PR L.P.**”, and together with PRRF, “**Pacific Road**”), Minco PLC, Orca Minerals Limited (“**Orca**”) and the Pledgor (the “**Exchange and Investment Agreement**”), the Pledgor agreed to pledge certain shares in the capital of Orca in favour of the Secured Party (the “**Pledge Requirement**”).

- B. In order to satisfy the Pledge Requirement, and as security for the fulfilment of all of its obligations in favour of the Secured Party under the Exchange and Investment Agreement and the Notes issued to the Secured Party thereunder, the Pledgor has agreed to grant a security interest in and pledge the Pledged Securities in favour of the Secured Party.

**NOW THEREFORE**, for good and valid consideration the sufficiency of which is hereby acknowledged and agreed, the Parties agree as follows:

## **ARTICLE 1 DEFINITIONS AND PRINCIPLES OF INTERPRETATION**

### **1.1 Defined Statutory Terms**

Unless the context otherwise requires or unless otherwise specified, all the terms used in this Agreement without initial capitals, which are defined in the PPSA or the STA, have the same meanings in this Agreement as in the PPSA or the STA, as applicable.

### **1.2 Definitions**

Whenever used in this Agreement, all capitalized terms used and not otherwise defined have the meanings ascribed to them in the Investment Agreement, and the following words and terms have the meanings set out below:

“**Agreement**” means this pledge agreement, including all schedules, and all amendments or restatements as permitted, and references to “**Article**” or “**Section**” mean the specified Article or Section of this Agreement;

“**Business Day**” means any day, other than a Saturday or Sunday, on which Royal Bank of Canada is open for commercial banking business during normal banking hours in Toronto;

“**Event of Default**” means the occurrence of any event listed in Section 5.1 of this Agreement;

“**Liens**” means mortgages, pledges, liens, hypothecs, charges, security agreements or other encumbrances or other arrangements that in substance secure payment or performance of an obligation, statutory and other non-consensual liens or encumbrances and include leases, title retention agreements, restrictions, developments or similar agreements, rights-of-way, title defect, adverse claims or interests (including any adverse claim as defined in the STA), trusts or deemed trusts, options to acquire or the interests of

a vendor or lessor under any conditional sale agreement or capital lease, and “**Lien**” means any one of such Liens;

“**Notes**” means the promissory notes held by the Secured Party as set out opposite its name on Schedule A hereto;

“**Obligations**” means all loans, advances, debts, liabilities and obligations or the performance of covenants, tasks or duties or the payment of monetary amounts (whether or not such performance is then required or contingent, and whether such amounts are liquidated or determinable), and all covenants and duties regarding such amounts, of any kind or nature, present or future, whether or not evidenced by any note, agreement or other instrument, arising under this Agreement or the Exchange and Investment Agreement, including, for certainty, the outstanding Notes plus accrued but unpaid interest. This term includes all principal, interest (including all interest that accrues after the commencement of any proceeding in bankruptcy or the insolvency of, or for the reorganization of the Pledgor, whether or not allowed in such proceeding), fees, charges, expenses, legal fees and any other sum chargeable to the Pledgor under this Agreement or the Exchange and Investment Agreement;

“**PPSA**” means the *Personal Property Security Act*, R.S.O. 1990, c. P. 10;

“**Person**” means any individual, sole proprietorship, partnership, firm, company, entity, unincorporated association (including a limited liability company), unincorporated syndicate, unincorporated organization, trust (including a business trust), body corporate, government, government regulatory authority, governmental department, municipality agency, commission, board, tribunal, dispute settlement panel or body, bureau, court, and where the context requires, any of them when they are acting as trustee, executor, administrator or other legal representative;

“**Pledged Securities**” means the securities set out on Schedule A opposite the name of the Secured Party under the column “Pledged Securities”, as such schedule may be amended or replaced from time to time, including all warrants and options relating to such shares and any substitutions, additions and proceeds arising out of any consolidation, subdivision, reclassification, conversion, stock dividend or similar increase or decrease in or alteration of the capital of such corporations or any other event and any securities acquired pursuant to the exercise of a right or offer granted or made by the Pledgor to the extent that any such right or offer arises out of the ownership of any shares in the capital of such corporation; and

“**STA**” means the *Securities Transfer Act, 2006*, S.O. 2006, c.8.

### **1.3 Certain Rules of Interpretation**

In this Agreement:

- (a) **Governing Law** – This Agreement is made under and shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable in the Province of Ontario without prejudice to or limitation of any other rights or remedies available under the laws of any jurisdiction where property or assets of the Pledgor may be found.
- (b) **Headings** – Headings of Articles and Sections are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- (c) **Including** – Where the word “including” or “includes” is used in this Agreement, it means “including (or includes) without limitation”.
- (d) **No Strict Construction** – The language used in this Agreement is the language chosen by the parties to express their mutual intent, and no rule of strict construction shall be applied against any party.
- (e) **Number and Gender** – Unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.
- (f) **Paramountcy** – If there is a conflict, inconsistency, ambiguity or difference between any provision of this Agreement and the Exchange and Investment Agreement, the provisions of the Exchange and Investment Agreement shall prevail, and such provision of this Agreement be amended to the extent only to eliminate any such conflict, inconsistency, ambiguity or difference. Any right or remedy in this Agreement which may be in addition to the rights and remedies contained in the Exchange and Investment Agreement shall not constitute a conflict, inconsistency, ambiguity or difference.
- (g) **References to Agreements** – The term “this Agreement” refers to this agreement including all schedules, amendments, supplements, extensions, renewals, replacements, novations or restatements from time to time, in each case as permitted, and references to “Articles” or “Sections” means the specified Articles or Sections of this Agreement.
- (h) **Severability** – If, in any jurisdiction, any provision of this Agreement or its application to any party or circumstance is restricted, prohibited or unenforceable, such provision shall, as to such jurisdiction, be ineffective only to the extent of such restriction, prohibition or unenforceability without invalidating the remaining provisions of this Agreement and without affecting the validity or enforceability of such provision in any other jurisdiction or without affecting its application to other parties or circumstances.
- (i) **Statutory references** – A reference to a statute includes all regulations made pursuant to such statute and, unless otherwise specified, the provisions of any

statute or regulation which amends, revises, restates, supplements or supersedes any such statute or any such regulation.

- (j) **Time** – Time is of the essence in the performance of the parties' respective obligations.

## **ARTICLE 2 PLEDGE AND SECURITY INTEREST**

### **2.1 Pledge**

As continuing security for the due and timely payment and performance by the Pledgor of the Obligations, the Pledgor grants to and in favour of the Secured Party, a first continuing, fixed and specific security interest in the Pledged Securities. The Pledgor delivers to and deposits with the Secured Party all security certificates evidencing the Pledged Securities together with all other necessary documents and effective endorsements to enable the Secured Party or its agent or nominee, as the Secured Party may direct, to be registered as the owner of and to transfer or sell or cause to be transferred or sold the Pledged Securities upon any enforcement of the Secured Party's rights and remedies. If the Pledgor acquires any security certificates evidencing the Pledged Securities after the date of this Agreement, the Pledgor shall immediately deliver and deposit all such security certificates to the Secured Party, its agent or nominee, together with all other necessary documents and effective endorsements to enable the Secured Party or its agent or nominee to be registered as the owner of and to transfer or sell or cause to be transferred or sold such Pledged Securities upon any enforcement of the Secured Party's rights and remedies.

### **2.2 Attachment and Value**

The Pledgor acknowledges:

- (a) receipt of a copy of this Agreement;
- (b) that value has been given;
- (c) that the security interest created by this Agreement is intended to attach, as to the Pledged Securities, upon the execution by the Pledgor of this Agreement and operates as a present, fixed and specific charge of the Pledged Securities.

## **ARTICLE 3 REPRESENTATIONS, WARRANTIES AND COVENANTS**

### **3.1 Representations and Warranties**

The Pledgor represents and warrants to the Secured Party as follows and acknowledges that the Secured Party is relying on the representations and warranties:

(a) **Ownership of Pledged Securities –**

- (i) The Pledgor is the registered and beneficial owner of, and has good title to, the Pledged Securities subject only to the security interest created by this Agreement or any other security agreement made by the Pledgor in favour of the Secured Party;
- (ii) The Pledged Securities have been duly issued and are outstanding as fully paid and non-assessable securities;
- (iii) The Pledgor has not granted nor has it agreed to grant a Lien in or any right to acquire an interest in any of the Pledged Securities;
- (iv) None of the rights of the Pledgor arising as the legal and beneficial owner of the Pledged Securities have been surrendered, cancelled or terminated;
- (v) There is no default or dispute existing in respect of the Pledged Securities; and
- (vi) There are no Liens or other adverse claims affecting the Pledged Securities;

(b) **Authority** – The Pledgor has full corporate power, authority and capacity to enter this Agreement and to pledge the Pledged Securities and to grant to the Secured Party the security interest created by this Agreement;

(c) **Due Execution** – This Agreement has been duly executed and delivered by it and constitutes an enforceable obligation against the Pledgor in accordance with its terms;

(d) **Status** – The Pledgor is a corporation duly incorporated and validly existing under the laws of Ontario; and

(e) **Place of Business of Pledgor** – The following is the Pledgor's place of business, chief executive, registered and head office:

Suite 700  
220 Bay Street  
Toronto, ON  
M5J 2W4

### 3.2 Covenants

The Pledgor covenants that:

- (a) **Additional Certificates** – If the Pledgor shall become entitled to receive or shall receive any security certificate, option or right in respect of the Pledged Securities, the Pledgor shall accept as the Secured Party's agent, hold such security certificates in trust for the Secured Party and immediately deliver them to the Secured Party (or to the Secured Party's agent or nominee, as the Secured Party may direct) in the exact form received, together with the documents and effective endorsements to enable the Secured Party or its nominee to be registered as owner, to be held by the Secured Party as additional security for the Obligations. Upon the occurrence of an Event of Default which is continuing, any sums paid in respect of the Pledged Securities upon the liquidation or dissolution of Orca or the Pledgor shall be paid to the Secured Party to be held by it as part of the Pledged Securities. In case any distribution of capital shall be made in respect of the Pledged Securities or any property shall be distributed with respect to the Pledged Securities pursuant to the recapitalization, reclassification or reorganization of the capital of Orca or the Pledgor, the property so distributed shall be delivered to the Secured Party or its agent or nominee as the Secured Party may direct to be held by it as part of the Pledged Securities. Upon the occurrence of an Event of Default which is continuing, if any money or property paid or distributed in respect of the Pledged Securities shall be received by the Pledgor, the Pledgor shall, until such money or property is paid or delivered to the Secured Party, hold the money or property in trust for the Secured Party, segregated from other funds of the Pledgor, as part of the Pledged Securities;
- (b) **Defend** – The Pledgor shall promptly notify the Secured Party of any Lien or other claim made or asserted against any of the Pledged Securities and shall defend the Secured Party's security interest in the Pledged Securities against any and all claims and demands whatsoever including any adverse claim as defined in the STA and, at the request of the Secured Party, the Pledgor shall allow the Secured Party to participate in such defense;
- (c) **No Other Grant of Security Interest** – The Pledgor shall not grant a security interest or any other Lien in the Pledged Securities to any Person other than the Secured Party;
- (d) **Change of Jurisdiction** – The Pledgor shall forthwith notify the Secured Party of any change of jurisdiction (including a change in the jurisdiction of incorporation or organization), name, registered office, head office, chief executive office or principal place of business of the Pledgor; and
- (e) **No Transfer** – The Pledgor shall not sell, dispose of, assign, convey or otherwise transfer any of the Pledged Securities, or any rights thereunder.

## ARTICLE 4 RIGHTS RELATING TO THE PLEDGED SHARES

### 4.1 Voting Rights

- (a) Until the occurrence of an Event of Default which is continuing, the Pledgor shall be entitled to exercise all voting rights in respect of the Pledged Securities. No votes shall be cast or action taken which would:
  - (i) be prejudicial to the Secured Party's security interest;
  - (ii) impair or reduce the value of or restrict the transferability of the Pledged Securities; or
  - (iii) be inconsistent with or violate any provisions of this Agreement, the Exchange and Investment Agreement or any other agreement.
- (b) Until the occurrence of an Event of Default which is continuing, if any of the Pledged Securities are registered in the Secured Party's, its agent's or nominee's name, the Secured Party, on the Pledgor's written request, shall execute and deliver or cause its agent or nominee to execute and deliver to the Pledgor suitable proxies, voting powers or powers of attorney in favour of the Pledgor or its nominee or nominees for voting or taking any other action the Pledgor is permitted to take in respect of the Pledged Securities.

### 4.2 Dividends and Distributions

Until the occurrence of an Event of Default which is continuing, the Pledgor shall be entitled to receive and deal with (except as restricted by this Agreement) any interest and regular cash dividends at any time payable on or with respect to the Pledged Securities, and the Secured Party shall immediately deliver to the Pledgor the interest or regular cash dividends by the Secured Party.

### 4.3 Rights and Duties of the Secured Party

- (a) Upon the occurrence of an Event of Default which is continuing, all of the Pledgor's rights pursuant to Sections 4.1 and 4.2 shall cease and the Secured Party may at any time enforce any of the Pledgor's rights with respect to the Pledged Securities.
- (b) In the case of Section **Error! Reference source not found.**, the Secured Party and its nominee shall not have any duty of care with respect to the Pledged Securities other than to use the same care in the custody and preservation of the Pledged Securities as it would with its own property. The Secured Party or its nominee may take no steps to defend or preserve the Pledgor's rights against the

claims or demands of others. The Secured Party or its nominee, however, shall use its reasonable best efforts to give the Pledgor notice of any claim or demand of which it becomes aware to permit the Pledgor to have a reasonable opportunity to defend or contest the claim or demand.

## **ARTICLE 5 DEFAULT AND REMEDIES**

### **5.1 Default**

The Pledgor shall be in default under this Agreement upon the occurrence of any of the following events (each, an “**Event of Default**”):

- (a) **Default** – The Pledgor or Orca commits a breach of, or fails or neglects to observe, perform, or comply with any covenant, representation, warranty or any other provision in favour of the Secured Party under the Exchange and Investment Agreement, any Note, or this Agreement;
- (b) **Cease to Carry on Business** – The Pledgor or Orca ceases or threatens to cease to carry on business;
- (c) **Event of Insolvency** – The occurrence or threat of any one of the following events:
  - (i) **Dissolution** – The Pledgor or Orca is wound up, dissolved or liquidated under any law or otherwise has its existence terminated or passes any resolution or becomes subject to any order in connection with any of the above, including, without limitation, under to the provisions of the *Winding-Up and Restructuring Act* (Canada) or any similar law of any jurisdiction;
  - (ii) **Insolvency** – The Pledgor or Orca makes a general assignment for the benefit of its creditors, acknowledges its insolvency or is declared or becomes bankrupt or insolvent, or ceases to carry on or fails in its business;
  - (iii) **Act of Bankruptcy** – The Pledgor or Orca commits an act of bankruptcy under the *Bankruptcy and Insolvency Act* (Canada) or any similar law of any jurisdiction;
  - (iv) **Bankruptcy Proposal** – Any filing of a proposal or notice of intention to make a proposal is made or a notice of intention to enforce security is issued in respect of the Pledgor or Orca under the *Bankruptcy and Insolvency Act* (Canada) or any similar law of any jurisdiction;

- (v) **Protection from Creditors** – Any filing is made or a proceeding is commenced in respect of the Pledgor or Orca (whether voluntary or involuntary) seeking any stay of proceedings, protection from creditors, moratorium, reorganization, arrangement, composition, re-adjustment, or any other relief under any present or future law of any jurisdiction relative to bankruptcy, insolvency, reorganization or other relief for debtors or affecting creditors' rights, including, without limitation, the *Companies' Creditors Arrangement Act* (Canada);
  - (vi) **Appointment of Trustee or Receiver** – Any trustee in bankruptcy, interim receiver, receiver, receiver and manager, agent, custodian, sequestrator, administrator, monitor or liquidator or any other Person with similar powers shall be appointed in respect of the Pledgor or Orca, or all or any part of the Pledged Securities, or any filing is made or proceeding is commenced in respect of the Pledgor or Orca seeking the entry of an order for the appointment or relief in respect of any of the above;
  - (vii) **Enforcement Against Secured Property** – Any holder of any Lien enforces against, delivers any notices relating to its rights or its intention to enforce against, or becomes entitled to enforce against, or otherwise takes possession, delivery or control of the Pledged Securities or the interest of the Pledgor in such Pledged Securities, or any part of such Pledged Securities or interest; or
  - (viii) **Seizure** – A distress, execution, warrant, garnishment, attachment, sequestration, levy, writ, or any similar process is issued or enforced upon or against all or any part of the Pledged Securities, or any third party demand is issued by the Crown, administrative body or any taxation authority in respect of the Pledgor or Orca or all or any part of the Pledged Securities, or any other seizure is made in respect of all or any part of the Pledged Securities.
- (d) **Disposition** –
- (i) The Pledgor transfers, assigns, sells, leases or otherwise disposes of all or any part of the Pledged Securities or any interest in such Pledged Securities, or attempts or agrees to do so; or
  - (ii) Orca transfers, assigns, sells, leases or otherwise disposes of all or any part of its securities of any Subsidiary of Orca, or attempts or agrees to do so.
- (e) **Priority of Security** – The security interest of the Secured Party in the Pledged Securities shall cease to be a valid and perfected first priority security interest;
- (f) **Other Default** – The Pledgor or Orca defaults under any agreement with respect to any indebtedness or other obligation to any Person other than the Secured Party

if such default has resulted in, or may result, with notice or lapse of time or both, in, the acceleration of any such indebtedness or obligation or the right of such person to realize upon all or any part of the Pledged Securities; or

- (g) **Performance Impaired** – The Secured Party in good faith believes the prospect of payment or performance of the Obligations under this Agreement is impaired.

## 5.2 Remedies

Upon the occurrence of an Event of Default, the security interest created by this Agreement shall immediately become enforceable, and the Secured Party may take any one or more of the following actions:

- (a) **Sale** – Realize upon or dispose of all or part of the Pledged Securities by private sale, public sale or otherwise upon such terms and conditions as the Secured Party may determine (whether commercially reasonable or not), and apply and allocate any proceeds arising from the realization of the Pledged Securities to the Obligations in any manner as the Secured Party, in its absolute discretion, shall deem appropriate;
- (b) **Retain** – Irrevocably elect to retain all or part of the Pledged Securities by giving notice to the Pledgor;
- (c) **Rights as Owners** – Exercise any or all of the rights and privileges attaching to the Pledged Securities and deal with the Pledged Securities as if the Secured Party were the absolute owner of the Pledged Securities (including causing the Pledged Securities to be registered in the name of the Secured Party or its agent or nominee as the Secured Party may direct) and collect, draw upon, receive, appropriate and sell all or any part of the Pledged Securities;
- (d) **Bankruptcy Claims** – File proofs of claims or other documents as may be necessary or desirable to have its claim lodged in any bankruptcy, winding-up, liquidation, arrangement, dissolution or other proceedings (voluntary or otherwise) relating to the Pledgor or Orca;
- (e) **Legal Action** – Commence legal action against the Pledgor for the difference (the “**Deficiency**”), if any, between (i) all amounts owing by the Pledgor in respect of the Obligations and (ii) the proceeds received by the Secured Party on a disposition of the Pledged Securities;
- (f) **Enforcing Third Party Obligations** – In the Pledgor’s name, perform, at the Pledgor’s expense, any and all of the Pledgor’s obligations or covenants relating to the Pledged Securities and enforce performance by any other parties of their obligations in relation to the Pledged Securities and settle any disputes with other parties upon terms that the Secured Party deems appropriate, in its discretion;

- (g) **Appointment of Receiver** – Appoint any Person to be a receiver (which term shall include a receiver and manager) of all or part of the Pledged Securities and remove any receiver and appoint another receiver (any receiver shall have the authority to do any of the acts specified in Subsections 5.2(c), (d), (f) and (h) and to take possession of and collect dividends, interest, distributions and other payments payable to the Pledgor in respect of the Pledged Securities and pay all charges in respect of the Pledged Securities);
- (h) **Application to Debt** – Apply any dividends, interest, distributions and other payments payable to the Pledgor in respect of the Pledged Securities to the Obligations, in any manner as the Secured Party, in its absolute discretion, shall deem appropriate; or
- (i) **All Other Action** – Take any other action permitted by this Agreement, by law or in equity.

### **5.3 Sale of Pledged Securities**

The Secured Party shall give to the Pledgor notice of any sale pursuant to Subsection 5.2(a). Any sale pursuant to this Section 5.3 may be made, whether commercially reasonable or not, with or without any special condition as to the upset price, reserve bid, title or evidence of title or other matter and may be made from time to time as the Secured Party in its sole discretion deems fit, with power to vary or rescind any sale or buy in at any public sale and resell without being answerable for any loss. The Secured Party may sell the Pledged Securities for a consideration payable by instalments either with or without taking security for the payment of the instalments and may make and deliver to any purchaser good and sufficient conveyances of the Pledged Securities and give receipts for the purchase money, and the sale shall be a perpetual bar, both at law and in equity, against the Pledgor and all those claiming an interest by, from, through or under the Pledgor. If there is a sale pursuant to this Section 5.3, the Pledgor agrees to provide all information, certificates and consents required under applicable securities laws or under the rules, by-laws or policies of the exchange(s) on which any of the Pledged Securities may be listed and posted for trading to permit the sale of the Pledged Securities in compliance with the applicable laws, rules, by-laws or policies.

### **5.4 Deficiency**

Where the Secured Party has disposed of the Pledged Securities, the Deficiency shall be paid by the Pledgor to the Secured Party immediately after demand shall have been made by the Secured Party to the Pledgor.

### **5.5 Secured Party's Obligations**

The Secured Party shall not be under any obligation, or be liable or accountable for any failure, to:

- (a) enforce payment or performance of the Obligations;
- (b) seize, collect, realize or obtain payment with respect to the Pledged Securities;
- (c) preserve any rights of the Secured Party, Orca, the Pledgor or any other Person in respect of the Pledged Securities;
- (d) exercise or exhaust any of its rights and remedies under this Agreement or with respect to the Pledged Securities;
- (e) protect the Pledged Securities from depreciating in value or becoming worthless; and
- (f) institute proceedings for any of the purposes listed above.

The Secured Party shall not be responsible for any loss occasioned by:

- (a) any sale or other dealing with the Pledged Securities (whether on commercially reasonable terms or not); or
- (b) the retention of, or failure to sell or otherwise deal with the Pledged Securities.

## **5.6 Rights and Remedies Cumulative**

The Secured Party's rights and remedies shall be cumulative and not in substitution for any of the Secured Party's rights or remedies under this Agreement, the Exchange and Investment Agreement or the Notes, at law or in equity, whether or not the Secured Party has pursued or is pursuing any other rights or remedies.

## **ARTICLE 6 PLEDGOR WAIVER**

### **6.1 Waiver**

The Pledgor agree not to assert against the Secured Party or any assignee of the Secured Party, and acknowledges that the Secured Party's or any assignee's rights shall not be subject to any claim, defense, demand, set-off or other right, whether at law or in equity, that the Pledgor has or may have against the Secured Party or any assignee.

**ARTICLE 7  
SECURED PARTY WAIVER**

**7.1 Secured Party Waiver**

The Secured Party may, at any time by notice to the Pledgor:

- (a) waive in whole or in part any breach of this Agreement, any Event of Default or any of the Secured Party's rights and remedies;
- (b) grant releases and discharges to the Pledgor in respect of the collateral; or
- (c) otherwise deal with Orca, the Pledgor or with the Pledged Securities and any security held by the Secured Party,

all as the Secured Party may see fit without prejudice to the liability of Orca and the Pledgor to the Secured Party or the Secured Party's rights under this Agreement, the Exchange and Investment Agreement and the Notes. The Pledgor agrees that any waiver shall not be a waiver of any other or subsequent breach of this Agreement or Event of Default and that any failure by the Secured Party to exercise any of its rights or remedies shall in no way affect or impair the Secured Party's security interest or the Secured Party's rights and remedies.

**ARTICLE 8  
TERMINATION**

**8.1 Termination**

This Agreement may be terminated by written agreement made between the Pledgor and the Secured Party at any time when all of the Obligations have been fully paid or satisfied.

**ARTICLE 9  
POWER OF ATTORNEY**

**9.1 Grant**

The Pledgor irrevocably constitutes and appoints the Secured Party as the true and lawful attorney of the Pledgor, respectively, with power of substitution in the name of the Pledgor, respectively, to do any and all acts and things, complete any endorsements or registrations and execute and deliver all agreements, documents and instruments as the Secured Party, in its sole discretion, considers necessary or desirable to carry out the provisions and purposes of this Agreement or to exercise its rights and remedies. The Pledgor ratifies and agrees to ratify all acts of any attorney taken or done in accordance with this Section 9.1. This power of attorney being coupled with an interest shall not be revoked or terminated by any act and shall remain in full force and effect until this Agreement has been terminated.

## **ARTICLE 10 GENERAL**

### **10.1 Costs**

The Pledgor shall pay all costs and expenses (including the fees and disbursements of legal counsel and other advisors) incurred by the Secured Party in connection with the perfection, protection of and enforcement of the rights of the Secured Party under this Agreement and those arising in connection with the realization, disposition, retention, protection or collection of any Secured Property and the protection or enforcement of the rights, remedies and powers of the Secured Party or any receiver and those incurred for perpetual registration of any financing statement registered in connection with the Security Interests. All amounts for which the Pledgor is required under this Agreement to reimburse the Secured Party or any receiver shall, from the date of disbursement until the date the Secured Party or the receiver receives reimbursement, be deemed advanced to the Pledgor by the Secured Party, shall be deemed to be Obligations and shall bear interest at the highest rate per annum charged by the Secured Party on any of the other Obligations.

In particular, the Pledgor agrees to indemnify and save the Secured Party harmless from all legal fees and disbursements incurred by the Secured Party in connection with any enforcement of rights and remedies under this Agreement. This indemnity is independent of and in addition to any right which the Secured Party may have to seek recovery of costs in any litigation which results in respect of this Agreement and is intended to ensure that the Secured Party is fully reimbursed for one-hundred percent (100%) of the fees and disbursements which may be incurred as by it and its legal counsel.

### **10.2 Notice**

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

- (a) in the case of a Notice to the Pledgor at:

Suite 700  
220 Bay Street  
Toronto, Ontario  
M5J 2W4

Attention: Chairman  
Fax: 416-368-5344  
E-mail: jfkearney@xtierra.ca

(b) in the case of a Notice to the Secured Party at:

c/o Pacific Road Capital Management Pty Limited  
Level 23  
Goldfields House  
1 Alfred Street  
Sydney, NSW 2000  
Australia

Attention: Company Secretary  
Facsimile: +612 9241 2255  
E-mail: greg.dick@pacroad.com.au

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

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

### **10.3 Continuing Security**

The security constituted by this Agreement is not in substitution for any other security for the Obligations or for any other agreement between the parties creating a security interest in all or part of the Pledged Securities, whether made before or after this Agreement, and such security and such agreements shall be deemed to be continuing and not affected by this Agreement unless the Secured Party and the Pledgor expressly provide to the contrary in writing.

### **10.4 Further Assurances**

The Pledgor shall at all times do all such things and provide all such reasonable assurances as may be required to consummate the transactions contemplated by this Agreement, and shall provide such further documents or instruments required by the Secured Party as may be reasonably necessary or desirable to effect the purpose of this Agreement and carry out its provisions, and for the better granting, transferring, assigning, charging, setting over, assuring, confirming or perfecting the security interest created under this Agreement and the priority accorded to them by law or under this Agreement.

### **10.5 Filings**

The Pledgor will promptly effect all registrations, filings, recordings and all re-registrations, re-filings and re-recordings of or in respect of this Agreement and the security interests created

under this Agreement in all offices in all jurisdictions and at such times as may be necessary or of advantage in perfecting, maintaining and protecting the validity, effectiveness and priority of such security interests. The Secured Party is, however, authorized, at its option, to make such registrations, filings or recordings or such re-registrations, re-filings or re-recordings against the Pledgor as it may deem necessary or appropriate to perfect, maintain or protect the security interest created under this Agreement.

#### **10.6 Amendments and Waivers**

No amendment, supplement, modification or waiver or termination of this Agreement and, unless otherwise specified, no consent or approval by any party, shall be binding unless executed in writing by the party to be bound. To be effective, any amendment, supplement, modification or waiver by the Secured Party of any provision of this Agreement or any of the Secured Party's rights or remedies shall be in writing and signed by the Secured Party. Any waiver shall extend only to the particular circumstances described in the waiver.

#### **10.7 Assignment and Enurement**

This Agreement may be assigned by the Secured Party and any such assignee shall be entitled to exercise any and all discretions, powers and rights of the Secured Party under this Agreement. The Pledgor may not assign this Agreement or any of its rights or obligations under this Agreement. All of the Secured Party's rights under this Agreement shall enure to the benefit of its successors and assigns and all of the Pledgor's obligations under this Agreement shall bind the Pledgor and their respective heirs, executors, administrators, legal personal representatives, successors and assigns.

#### **10.8 Counterparts and Delivery**

This Agreement, or any amendment to it, may be executed in multiple counterparts, each of which shall be deemed to be an original agreement. All counterparts shall be construed together and shall constitute one and the same agreement. Any delivery of an executed copy of this Agreement by way of telecopy or facsimile shall constitute delivery. Any party delivering by way of telecopy or facsimile shall, as soon as reasonably practicable, deliver the original executed copy to the other parties.

**[Intentionally Left Blank]**

The Pledgor has duly executed this Agreement.

**XTIERRA INC.**

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

**SCHEDULE A  
PLEDGED SECURITIES**

<b>PLEDGEE</b>	<b>NOTES HELD (US\$)</b>	<b>PLEDGED ORCA SHARES</b>
PRNV	\$140,245	338,309
PR LP	\$303,455.21 (\$200,350 + \$2,930.21+\$100,175)	732,017
FUND A	\$54,978.08 (\$17,377.50+\$24,825+\$363.08+\$12,412.50)	132,622
FUND B	\$54,978.08 (\$17,377.50+\$24,825+\$363.08+\$12,412.50)	132,622
MINCO	\$379,074.02 (\$250,000+\$4,074.02+\$125,000)	914,430
<b>TOTAL</b>	<b>\$932,730.39</b>	<b>2,250,000</b>