

April 23, 2009

In the Matter of
the Securities Legislation of
Manitoba and Ontario (the "**Jurisdictions**")

and

In the Matter of
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of
Ag Growth Income Fund ("**Ag Growth**") and Benachee Resources Inc. ("**Benachee**", and together with Ag
Growth, the "**Filers**")

Decision

Background

The securities regulatory authority or regulator in each of the Jurisdictions ("**Decision Maker**") has received an application (the "**Application**") from the Filers for a decision under the securities legislation of the Jurisdictions (the "**Legislation**"):

(a) exempting the Filers from the requirement under the Legislation to provide financial statement disclosure with respect to Benachee for the years ended December 31, 2008, December 31, 2007 and December 31, 2006 (the "**Financial Statements**") in the management information circular (the "**Circular**") to be prepared by the Filers and delivered to the holders ("**Ag Growth Unitholders**") of trust units ("**Ag Growth Units**") in connection with a special meeting ("**Special Meeting**") of Ag Growth Unitholders expected to be held in late May 2009; (the "**Exemption Sought**") and

(b) that the Application and this Decision be kept confidential and not be made public (the "**Confidentiality Request**").

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a dual application):

- (a) the Manitoba Securities Commission is the principal regulator for the application;
- (b) the Filers have provided notice that Subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* ("**MI 11-102**") is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland; and
- (c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

Representations

This decision is based on the following facts represented by the Filers:

1. **AG GROWTH**

- 1.1 Ag Growth is an unincorporated open-ended limited purpose trust established under the laws of the Province of Ontario pursuant to a Declaration of Trust dated March 24, 2004. The principal office of Ag Growth is located in Winnipeg, Manitoba.
- 1.2 Ag Growth was created to hold, indirectly, securities and assets of Ag Growth Industries Inc. and other investments in entities conducting business in the grain handling, storage and conditioning equipment market.
- 1.3 Ag Growth is a reporting issuer or the equivalent under the securities legislation of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland. To its knowledge, Ag Growth is not in default of securities legislation in any jurisdiction of Canada.
- 1.4 The Ag Growth Units are listed on the Toronto Stock Exchange ("TSX") under the symbol "AFN.UN".
- 1.5 Ag Growth has filed an "AIF" and has "current annual financial statements" (as such terms are defined in National Instrument 44-101 – *Short Form Prospectus Distributions* ("NI 44-101")) for the financial year ended December 31, 2008.

2. **BENACHEE**

- 2.1 Benachee is a corporation incorporated under the *Canada Business Corporations Act* ("CBCA"). The principal office of Benachee is located in Toronto, Ontario.
- 2.2 Benachee is engaged in the business of the exploration for and the mining of diamonds, primarily in the territory of Nunavut, Canada.
- 2.3 Benachee is a wholly-owned subsidiary of Tahera Diamond Corporation ("**Tahera**") and is not a reporting issuer in any jurisdiction. To its knowledge, Benachee is not in default of applicable securities legislation in any jurisdiction of Canada.
- 2.4 The common shares of Benachee (the "**Benachee Shares**") are not listed or posted for trading on any exchange or quotation and trade reporting system.
- 2.5 Benachee's liabilities substantially exceed its assets, which are comprised principally of mineral and mineral exploration assets.

3. **TAHERA**

- 3.1 Tahera is a corporation incorporated under the CBCA. The principal office of Tahera is located in Toronto, Ontario.
- 3.2 Tahera is engaged in the business of the exploration for and the mining of diamonds, primarily in the territory of Nunavut, Canada.
- 3.3 Tahera is a reporting issuer in each of the provinces of Canada and its common shares are currently suspended from trading on the TSX.

3.4 Tahera's liabilities substantially exceed its assets, which are comprised principally of securities of Benachee and mineral and mineral exploration assets.

4. **CCAA Proceedings**

4.1 Pursuant to an initial order granted by the Ontario Superior Court of Justice on January 16, 2008, Tahera and Benachee were granted protection from their creditors pursuant to the provisions of the CCAA by way of a stay of proceedings. The stay of proceedings has been extended on a number of occasions since the date of the initial order and currently expires on May 29, 2009.

5. **Possible Business Combination**

5.1 On March 3, 2009, Ag Growth entered into a letter of intent (the "LOI") with Tahera and Benachee which contemplates the potential business combination (the "**Business Combination**") pursuant to which: (i) all of the Ag Growth Units would be exchanged for Benachee Shares on a one for one basis, such Benachee Shares representing substantially all of the outstanding common shares of Benachee; (ii) in connection with and immediately prior to the share-for-unit exchange in (i) through a series of transactions (A) all of Benachee's assets would be transferred to a new wholly-owned subsidiary of Tahera ("Newco"), and (B) all of Benachee's liabilities would be assumed by Newco and/or extinguished with respect to Benachee by way of a court order ("**CCAA Order**") under the *Companies' Creditor Arrangement Act* ("**CCAA**"); and (iii) certain intercompany indebtedness aggregating \$13,000,000 owing by Benachee to Tahera would be repaid as to \$5,000,000 in cash to be advanced by Ag Growth, as to \$4,000,000 by the issue of Benachee Shares and as to \$4,000,000 by the issue of preferred shares of Benachee, and all of such cash and shares would be paid or assigned, directly or indirectly, to Caz Petroleum Inc., the principal secured creditor of Tahera and Benachee. On completion of the Business Combination, the capital structure of Ag Growth would be "converted" from an income trust to a corporation (Benachee, after completion of the Business Combination, is hereinafter referred to as "**Ag Growth Corp.**").

5.2 Following the completion of the Business Combination: (i) the sole business of Ag Growth Corp. would be the current business of Ag Growth; (ii) Ag Growth Corp. would be a reporting issuer or the equivalent under the securities legislation in all of the provinces of Canada; and (iii) the common shares of Ag Growth Corp. would, subject to approval by the TSX, be listed on the TSX.

5.3 The proposed Business Combination is expected to constitute a "restructuring transaction" for Ag Growth under the Legislation.

5.4 Pursuant to Ag Growth's constating documents, the Business Combination must be approved by two-thirds of the votes cast by the Ag Growth Unitholders entitled to vote in person or by proxy at the Ag Growth Meeting. The Ag Growth Meeting is anticipated to take place in late May 2009 and the Circular is expected to be mailed in early May 2009 subject to receipt of the Exemption Sought.

6. **Financial Statement and Tax Disclosure in the Circular**

6.1 Pursuant to Section 14.2 of Form NI 51-102F5 *Information Circular* (the "**Circular Form**") of National Instrument 51-102 *Continuous Disclosure Obligations*, Ag Growth is required to include financial statement disclosure in respect of Benachee, including audited income statements, statements of retained earnings and cash flow statements for the financial years ended December 31, 2008, December 31, 2007 and December 31, 2006 and audited balance sheets as at the end of December 31, 2008 and December 31, 2007.

6.2 Upon the CCAA Order becoming effective, Benachee would no longer carry on the mining or mining exploration business and would have no assets or liabilities associated with that business. Following the Business Combination, Ag Growth Corp. would carry on the manufacturing business currently

conducted by Ag Growth and all of the directors and officers of Benachee will have changed. Historical financial statements that would reflect only Benachee's former mining operations would not assist Ag Growth Unitholders or any other potential unitholders with their assessment of the business that would be carried on by Ag Growth Corp. on completion of the Business Combination.

- 6.3 The Filers propose to include in the Circular a pro forma balance sheet as at March 31, 2009 for Benachee after giving effect to the Business Combination.
- 6.4 In addition, the Circular will:
- (a) contain disclosure in accordance with the Circular Form and in respect of Benachee, in accordance with National Instrument 41-101 *General Prospectus Requirements* ("**NI 41-101**");
 - (b) include or incorporate by reference, among other things, financial statement disclosure in respect of Ag Growth in compliance with NI 44-101 and the pro forma financial statements of Ag Growth and Benachee in compliance with Form NI 41-101F1 *Information Required in a Prospectus*;
 - (c) contain qualitative disclosure on how the tax position of Ag Growth Corp. following the completion of the Business Combination will differ from the existing tax position of Ag Growth; and
 - (d) contain disclosure on how the retained cash flows of Ag Growth Corp. following the completion of the Business Combination will differ from the existing cash flows of Ag Growth.

Decision

Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that:

- (a) The Exemption Sought is granted provided that the Filers include in the Circular a pro forma balance sheet as at March 31, 2009 for Benachee after giving effect to the Business Combination.
- (b) The Confidentiality Request is granted until the earliest to occur of: (i) the date on which the Filers publicly announce that they have entered into the definitive agreement in respect of the Business Combination; (ii) the date the Filers advise the Decision Maker that there is no longer any need for the Application and this Decision to remain confidential; and (iii) 90 days from the date of this Decision.

Per: _____



Chris Besko
Deputy Director - Legal
The Manitoba Securities Commission