<u>Northern Dynasty Securities Class Action</u>

<u>Summary Rationale for Settlement</u>

The following is a brief summary of some of the factors considered by the Plaintiffs and Class Counsel in concluding that the Settlement is fair and reasonable. These factors will be explained in greater detail in the application materials to be filed in support of Court approval of the Settlement, which will be posted at https://www.siskinds.com/class-action/northern-dynasty-minerals-ltd/ no later than February 13, 2024.

1. The risk that the Defendants would be unable to pay

There is a risk that Northern Dynasty would be unable to satisfy a substantial judgment against them. The Pebble Project is Northern Dynasty's only material asset and the permit application for the Project was denied by the United States Army Corps of Engineers. The EPA also issued a final determination that would block the Project from being developed even if the Corps' decision is overturned. In Northern Dynasty's financial statements filed closest to the mediation that led to the Settlement Agreement, its total stated cash was CAD$24.5 million remaining with CAD$7.7 million in liabilities.

2. Secondary market damages against the Defendants were capped

For misrepresentation claims advanced under Part 16.1 of the *Securities Act* such as those advanced in this case, there is a cap on damages (called "liability limits") that applies unless a plaintiff can prove that a Defendant authorized, permitted, or acquiesced in making a misrepresentation while knowing that it was a misrepresentation. The liability limit <u>cannot</u> be lifted as against the issuer (i.e. Northern Dynasty) even where it has knowledge of the misrepresentation.

For Northern Dynasty, the liability limit is 5% of its pre-misrepresentation market capitalization. Class Counsel calculated Northern Dynasty's liability limit to be as low as CAD$12,000,000 depending on when the Court determines misrepresentations began. For the individual Defendants, the limit is the greater of 50% of the aggregate of their compensation over a defined period or $25,000.

3. Risk that the claim would fail on its merits

To succeed at trial, the Plaintiff will need to establish a misrepresentation within the meaning of Ontario's *Securities Act.* To do so, the Canadian Plaintiffs have to prove: (i) that Northern Dynasty had substantial plans to expand the Pebble Project significantly, which it failed to disclose; and (ii) that Northern Dynasty failed to disclose the USACE's compensatory mitigation requirements which would majorly impede the Pebble Project's development.

There was a risk that at trial the Court would find that there was no misrepresentation. For example, it was anticipated that the Defendants would argue that there was no misrepresentation because the plans to expand the Pebble Project was publicly known and had been previously disclosed in an investor presentation published on Northern Dynasty's website.

Even if the Plaintiffs were successful in establishing liability at trial, there was a risk that the Defendants would prove that investor losses were unrelated to the misrepresentations. It was anticipated that the Defendants would argue that the decline in Northern Dynasty's share price in August 2020 was attributable to a news article published ahead of when the USACE's letter was made public, which claimed that the Pebble Project was being blocked by the federal administration, and not the USACE's letter revealing it required a compensatory mitigation plan. If this argument was accepted, then the trial Court could have substantially reduced damages or ordered that no damages were payable by the Defendants.