

FINNING INTERNATIONAL INC.

and

COMPUTERSHARE TRUST COMPANY OF CANADA

TRUST INDENTURE
providing for the issue of Senior Unsecured Notes

DATED AS OF SEPTEMBER 29, 2017

TABLE OF CONTENTS

ARTICLE 1 INTERPRETATION

1.1	Definitions.....	1
1.2	Meaning of “outstanding”.....	10
1.3	Interpretation Not Affected by Headings.....	11
1.4	Extended Meanings.....	11
1.5	Day Not a Business Day	11
1.6	Currency.....	11
1.7	Other Currencies	11
1.8	Governing Law	11
1.9	Choice of Language	12
1.10	Certificates and Opinions.....	12
1.11	Severability	12
1.12	Benefits of Indenture.....	12
1.13	GAAP.....	13
1.14	Calculations.....	13

ARTICLE 2 THE NOTES

2.1	No Fixed Limitation.....	13
2.2	Issuance in Series	13
2.3	Form of Notes	14
2.4	Denomination of Notes	15
2.5	Ranking of Notes	15
2.6	Book-Entry Only Notes	15
2.7	Signatures on Notes	16
2.8	Certification	16
2.9	Payments of Principal, Interest and Premium.....	16
2.10	Issue of Replacement Notes.....	20
2.11	Place of Payment.....	20
2.12	Record of Payments	20
2.13	Right to Receive Indenture	21
2.14	Notes to Govern	21

ARTICLE 3 REGISTRATION, TRANSFER, EXCHANGE AND OWNERSHIP OF NOTES

3.1	Registration of Notes	21
3.2	Transfer of Notes	21
3.3	Closing of Registers	21
3.4	Restrictions on the Transfer of Global Notes	22
3.5	Transferee Entitled to Registration	23

3.6	Exchange of Notes	23
3.7	Charges for Registration, Transfer and Exchange	24
3.8	Register Open for Inspection	25
3.9	Ownership of Notes	25
3.10	Evidence of Ownership.....	25
3.11	No Notice of Trusts.....	26
3.12	Joint Noteholders	26
3.13	Issuer Not Liable in Respect of Depository or Participants.....	26

**ARTICLE 4
ISSUANCE OF NOTES**

4.1	Issuance of Notes	27
4.2	No Notes to Be Issued During Default	28

**ARTICLE 5
PURCHASE FOR CANCELLATION AND REDEMPTION**

5.1	Purchase	28
5.2	Redemption.....	28
5.3	Partial Redemption and Selection for Redemption.....	28
5.4	Notice of Redemption	29
5.5	Payment of Redemption Price	30
5.6	Cancellation of Notes.....	30

**ARTICLE 6
COVENANTS OF THE ISSUER**

6.1	Positive Covenants.....	30
6.2	Office for Notices, Payments and Registration of Transfer, Etc.	31
6.3	Not to Extend Time for Payment of Interest.....	32
6.4	Negative Pledge	32
6.5	Securitization Transactions.....	33
6.6	Performance of Covenants by Trustee.....	33
6.7	Withholding Matters	33

**ARTICLE 7
DEFAULT AND ENFORCEMENT**

7.1	Events of Default	34
7.2	Notice of Event of Default.....	35
7.3	Acceleration on Default	36
7.4	Waiver of Default	36
7.5	Enforcement by the Trustee	37
7.6	Suits by Noteholders.....	38
7.7	Application of Money.....	39

7.8	Distribution of Proceeds	40
7.9	Immunity of Shareholders, Directors and Officers	40
7.10	Remedies Cumulative	40
7.11	Restoration of Rights and Remedies.....	40

**ARTICLE 8
CANCELLATION, DISCHARGE AND DEFEASANCE**

8.1	Cancellation and Destruction.....	41
8.2	Non-Presentation of Notes	41
8.3	Paying Agent and Trustee to Repay Monies Held.....	41
8.4	Repayment of Unclaimed Monies to the Issuer	42
8.5	Discharge	42
8.6	Defeasance	42

**ARTICLE 9
SUCCESSORS**

9.1	Requirements for Successors	44
9.2	Vesting of Powers in Successor	45

**ARTICLE 10
MEETINGS OF NOTEHOLDERS**

10.1	Right to Convene Meetings	45
10.2	Notices of Meetings	45
10.3	Chairman.....	46
10.4	Quorum	46
10.5	Power to Adjourn.....	46
10.6	Show of Hands	46
10.7	Poll	46
10.8	Voting	46
10.9	Regulations	47
10.10	Issuer and Trustee May Be Represented.....	48
10.11	Powers Exercisable by Noteholders by Extraordinary Resolution	48
10.12	Meaning of Ordinary Resolution	49
10.13	Meaning of Extraordinary Resolution	49
10.14	Powers Cumulative	50
10.15	Minutes	50
10.16	Instruments in Writing	51
10.17	Binding Effect of Resolutions.....	51
10.18	Serial Meetings	51
10.19	Record Dates.....	52
10.20	Expenses of Trustee	52

**ARTICLE 11
NOTICES**

11.1	Notice to the Issuer	53
11.2	Notice to Noteholders	53
11.3	Notice to the Trustee.....	53
11.4	When Publication Not Required	54
11.5	Waiver of Notice.....	54

**ARTICLE 12
CONCERNING THE TRUSTEE**

12.1	Indenture Legislation	54
12.2	Corporate Trustee Required Eligibility.....	54
12.3	Certain Duties and Responsibilities of Trustee.....	54
12.4	No Conflict of Interest	55
12.5	Conditions Precedent to Trustee’s Obligation to Act	55
12.6	Replacement of Trustee	56
12.7	Acceptance of Appointment by Successor	57
12.8	Trustee May Deal in Notes	57
12.9	No Person Dealing with Trustee Need Inquire	57
12.10	Trustee Not Required to Give Security.....	58
12.11	Trustee Not Required to Possess Notes	58
12.12	Financial Statements	58
12.13	Evidence of Compliance	58
12.14	Form of Evidence.....	59
12.15	Certain Rights of Trustee	59
12.16	Merger, Conversion, Consolidation or Succession to Business	61
12.17	Action by Trustee to Protect Interests.....	61
12.18	Protection of Trustee.....	61
12.19	Authority to Carry on Business.....	61
12.20	Trustee Not Liable in Respect of Depository	62
12.21	Global Notes	62
12.22	Acceptance of Trusts.....	62
12.23	No Liability for Certain Deposited Monies	63
12.24	Third Party Interests.....	63
12.25	Power of Attorney.....	63
12.26	Anti-Money Laundering	64
12.27	Currently Not Filing.....	64
12.28	Privacy Laws.....	65
12.29	Force Majeure	65

ARTICLE 13
SUPPLEMENTAL INDENTURES AND CORRECTIONS

13.1	Supplemental Indentures.....	66
13.2	Corrections.....	66
13.3	Effect of Supplemental Indentures.....	67
13.4	Execution of Supplemental Indentures.....	67
13.5	Reference in Securities to Supplemental Indentures	67

ARTICLE 14
EXECUTION

14.1	Counterparts and Formal Date.....	67
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THIS INDENTURE dated as of the 29th day of September, 2017.

BETWEEN:

FINNING INTERNATIONAL INC., a corporation incorporated under the laws of Canada (the “**Issuer**”)

- and -

COMPUTERSHARE TRUST COMPANY OF CANADA, a trust company existing under the laws of Canada (the “**Trustee**”)

RECITALS:

- A. The Issuer wishes to create and issue Notes in the manner provided in this Indenture.
- B. The Issuer, under the laws relating thereto, is duly authorized to create and issue the Notes to be issued as herein provided.
- C. All necessary resolutions of the directors of the Issuer have been duly passed and other proceedings taken and conditions complied with to make the creation and issue of the Notes proposed to be issued hereunder and this Indenture and the execution thereof legal, valid and binding on the Issuer in accordance with the laws relating to the Issuer.
- D. The foregoing recitals are made as representations and statements of fact by the Issuer and not by the Trustee.

NOW THEREFORE THIS TRUST INDENTURE WITNESSES and it is hereby covenanted, agreed and declared as follows:

**ARTICLE 1
INTERPRETATION**

1.1 Definitions

In this Indenture and in the Notes, unless there is something in the subject matter or context inconsistent therewith, the following terms shall have the meanings ascribed thereto below:

“**Affiliate**” means, with respect to any Person, any other Person which, whether directly or indirectly through one or more Persons, Controls, is Controlled by, or is under common Control with, such Person;

“**Approved Bank**” has the meaning ascribed thereto in Section 12.9;

“**Auditor**” means an independent firm of chartered professional accountants duly appointed as independent auditor or auditors of the Issuer and acceptable to the Trustee;

“**Authorized Officer**” means any individual who holds one or more of the offices of Chief Executive Officer, Chairman of the Board of Directors, Chief Financial Officer, any Vice President, Corporate Secretary, General Counsel, Assistant Corporate Secretary, or Treasurer of the Issuer, or any other director or officer of the Issuer authorized by the Directors and evidenced in a Certified Resolution;

“**Book-Entry Only Notes**” means Notes of a Series which, in accordance with the terms applicable to such Series, are to be held only by or on behalf of the Depository;

“**Business Day**” means, with respect to a particular location, any day which is not a Saturday or a Sunday or a civic or statutory holiday at such location and on which chartered banks in Vancouver, British Columbia are open for the transaction of regular business;

“**Central Register**” has the meaning ascribed thereto in Section 3.3;

“**Certified Resolution**” means a copy of a resolution certified by an Authorized Officer to have been duly passed by the Directors and to be in full force and effect on the date of such certification;

“**Chief Financial Officer**” means the chief financial officer of the Issuer;

“**Consolidated Shareholders’ Equity**” means, as of any particular time, the shareholders’ equity of the Issuer at that time determined on a consolidated basis in accordance with GAAP;

“**Control**”, “**Controlled**” and similar expressions mean a relationship between two Persons wherein one of such Persons has the power, through the ownership of Securities, by contract or otherwise, to direct the management and policies of the other Person, and includes, in the case of a corporation, the ownership, either directly or indirectly through one or more Persons, of Securities of such corporation carrying more than 50% of the votes that may be cast to elect the directors of such corporation (other than Securities held as collateral for a *bona fide* debt where the holder thereof is not entitled to exercise the voting rights attached thereto), provided that such votes, if exercised, are sufficient to elect a majority of the directors of such corporation;

“**Corporation**” means the Issuer and its Subsidiaries;

“**Counsel**” means legal counsel to the Issuer acceptable to the Trustee, acting reasonably;

“**Credit Facility**” means the Issuer’s 2015 amended and restated credit agreement dated for reference October 30, 2015, as such agreement may be further amended, restated, modified or replaced (as the principal credit facility between the Issuer and its bank lenders) from time to time;

“**DBRS**” means DBRS Limited and its successors;

“**Default**” means an event or circumstance, the occurrence or non-occurrence of which would, with the giving of a notice, lapse of time or combination thereof, constitute an Event of Default provided that any such event or circumstance shall cease to be a Default upon being remedied within the prescribed delays or waived in accordance with Section 7.4;

“**defeasance option**” has the meaning ascribed thereto in Section 8.6;

“**Definitive Notes**” means Notes in definitive form;

“**Depository**” means CDS Clearing and Depository Services Inc. or such other Person as is designated in writing by the Issuer and acceptable to the Trustee to act as depository in respect of any Series of Book-Entry Only Notes;

“**Derivative Financial Instrument Agreement**” means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Corporation shall be a Derivative Financial Instrument Agreement;

“**Directors**” means a director of the Issuer or, whenever duly empowered by a resolution of the directors of the Issuer in accordance with applicable law, a committee of the directors of the Issuer, and reference to action by the Directors means action by the directors of the Issuer or action by any such committee;

“**Event of Default**” means, with respect to the Notes of any Series, any of the events set forth in Section 7.1;

“**Extraordinary Resolution**” has the meaning ascribed to such term in Section 10.13;

“**Fiscal Year**” means any fiscal year of the Issuer, which ends on December 31 of each year;

“**GAAP**” means generally accepted accounting principles in Canada as in effect from time to time and consistently applied, as adopted by the Accounting Standards Board (or any successor entity) and released in Part I of the Handbook of the Canadian Institute of Chartered Accountants - Accounting, which incorporates International Financial Reporting Standards as issued by the International Accounting Standards Board (or any successor entity);

“**Global Note**” means a Note representing the aggregate principal amount of a Series of Notes;

“**Indebtedness**” means, with respect to any Person, without duplication: (a) its liabilities for borrowed money, including liabilities for borrowed money evidenced by bonds, debentures, notes or similar instruments, bankers’ acceptances, and its redemption obligations in respect of mandatorily redeemable preferred stock; (b) its liabilities for the deferred purchase price of services or property acquired by such Person (excluding accounts payable arising in the ordinary course of business, but including all liabilities created or arising under any conditional sale or other title retention agreement with respect to any such property); (c) all liabilities appearing on its balance sheet in accordance with GAAP in respect of finance leases; (d) all liabilities for borrowed money secured by any Lien with respect to any property owned by such Person (whether or not it has assumed or otherwise become liable for such liabilities); (e) all of its liabilities in respect of letters of credit or instruments serving a similar function issued or

accepted for its account by banks and other financial institutions (whether or not representing obligations for borrowed money); (f) the net marked-to-market liability of such Person under Derivative Financial Instrument Agreements; (g) any direct or indirect obligation of such Person guaranteeing or agreeing or intended to guarantee any Indebtedness of any other Person in any manner, provided that Indebtedness shall not include trade payables and accrued expenses, in each case, arising in the ordinary course of business; and (h) any guarantee by such Person with respect to liabilities of another Person of a type described in any of clauses (a) through (f) hereof;

“Indenture Legislation” means the provisions, if any, of any statute of Canada or a province thereof, and the respective regulations thereunder, relating to trust indentures and/or to the rights, duties and obligations of trustees under trust indentures and of companies issuing debt obligations under trust indentures, to the extent that such provisions are at the time in force and applicable to this Indenture;

“Interest Payment Date” means, for each Series of interest-bearing Notes, a date on which interest is due and payable in accordance with the terms pertaining to such Series;

“Issuer” means Finning International Inc. and, subject to Article 9, its successors and permitted assigns;

“Joint Venture” means a joint operation required to be consolidated or a joint venture required to be accounted for using the equity method, on the Issuer’s financial statements, in accordance with the GAAP applicable to each particular arrangement;

“Lien” means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothec, hypothecation, encumbrance, charge, security interest, royalty interest, adverse claim, defect of title or right of compensation (set-off) in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, finance lease, title retention agreement or consignment agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to any asset, (c) any purchase option, call or similar right of a Third Party with respect to such assets, (d) any netting arrangement, defeasance arrangement or reciprocal fee arrangement (other than customary netting arrangements pursuant to any Derivative Financial Instrument Agreement), and (e) any other arrangement having the effect of providing security;

“Material Subsidiary” means, at any time, any Subsidiary whose total assets determined (on a consolidated basis if such Subsidiary itself has subsidiaries) in accordance with GAAP, represent more than 3½% of the then Consolidated Shareholders’ Equity;

“Maturity Date” means, with respect to any Series of Notes, the date on which the principal of such Notes becomes due and payable as therein or herein provided, whether at the Stated Maturity thereof or by acceleration, redemption or otherwise;

“Nominee” means a nominee of the Depository;

“Noteholders” or **“Holders”** means the Persons from time to time entered in the Registers as the holders of any Notes;

“Noteholders’ Request” means an instrument signed in one or more counterparts by Holders of not less than 10% of the aggregate principal amount of Notes outstanding requesting or directing the Trustee to take or refrain from taking the action or proceeding specified therein;

“Notes” means senior unsecured notes of the Issuer created and issued or to be issued pursuant to the terms of this Indenture and executed and delivered by the Trustee;

“Officer’s Certificate” means a certificate in writing signed in the name of the Issuer by an Authorized Officer;

“Ordinary Resolution” has the meaning ascribed thereto in Section 10.12;

“Participant” has the meaning ascribed thereto in Section 3.4(c);

“Paying Agent” means a Person, its successors or assigns, authorized by the Issuer to pay the principal, interest or any Premium in respect of any Notes on behalf of the Issuer, and may include the Issuer and the Trustee;

“Permitted Liens” means:

- (a) Liens for taxes, assessments or governmental charges or levies on a Person’s property if the same shall not at the time be due and payable or, if due and payable, are being contested diligently and in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books;
- (b) Liens imposed by law, such as landlords’, carriers’, materialmen’s, processors’, repairmen’s, construction contractors’, subcontractors’, architects’, engineers’, craftsmen’s, workmen’s, suppliers’, warehousemen’s and mechanics’ liens and other similar liens arising in the ordinary course of business of a Person which secure payment of obligations not due and payable, or if due and payable, are being contested diligently and in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books;
- (c) Liens arising out of pledges or deposits under worker’s compensation laws, unemployment insurance, old age pensions, or other social security or retirement benefits, or similar legislation arising in the ordinary course of business of a Person which secure payment of obligations not due and payable, or if due and payable, are being contested diligently and in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books;
- (d) deposits to secure the performance of bids, tenders, letters of intent or purchase agreements, trade contracts, government contracts and leases (other than for Indebtedness), statutory obligations, surety, reimbursement and indemnity obligations (including in respect of letters of credit and bank guarantees), appeal and release bonds, performance bonds and other obligations of a like nature

arising in the ordinary course of business of a Person which secure payment of obligations not due and payable, or if due and payable, are being contested diligently and in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books;

- (e) easements, reservations, rights-of-way, restrictions, survey exceptions, encroachments, covenants, minor defects, irregularities and other similar encumbrances as to immovable (real) property of a Person which customarily exist on properties of corporations engaged in similar activities and similarly situated and which do not materially detract from the value of the property subject thereto or interfere with the conduct of the business of the Person conducted at the property subject thereto;
- (f) undetermined or inchoate liens, rights of distress and charges incidental to current operations which relate to obligations not due and payable or, if due and payable, are being contested diligently and in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books;
- (g) the right reserved to or vested in any municipality or governmental or other public authority by the terms of any licence, franchise, grant or permit acquired or by any statutory provision to terminate any such licence, franchise, grant or permit, or to require annual or other payments as a condition to the continuance thereof;
- (h) security given to a public utility, a gas or electricity retailer or any municipality or governmental authority when required by such utility, retailer or authority in connection with the operations of that Person in the ordinary course of its business;
- (i) Liens existing on property or assets at the time of acquisition thereof after the date of this Indenture by the Issuer, provided that (a) such Liens existed at the time of such acquisition and were not created in anticipation thereof, provided that any extension, renewal or replacement (or successive extensions, renewal or replacements) in whole or in part of any such Liens not in excess of the outstanding principal amount as at the date of such extension, renewal or replacement shall be deemed to fall within the scope of this subparagraph (a), and (b) any such Lien does not encumber any other property or assets (other than additions thereto and property in replacement or substitution thereof);
- (j) Liens arising by reason of any judgment, decree or order of any court or other governmental authority or in connection with arbitration proceedings, if appropriate legal proceedings are being diligently prosecuted and shall not have been finally terminated or the period within which such proceedings may be initiated shall not have expired, in an aggregate amount not to exceed, when taken together with all Liens securing bonds to stay judgments or in connection with appeals as permitted by (d) above, \$50,000,000 at any time outstanding;

- (k) any Liens in favour of the Trustee on funds or securities deposited with the Trustee in connection with any defeasance under this Indenture;
- (l) any Lien payment of which has been provided for by deposit with the Trustee of an amount in cash sufficient to pay the same in principal and interest until the date of its maturity;
- (m) Liens on the fee interest or ownership right or equivalent interest in any land and building held by a landlord under any applicable lease of immovable (real) property and all rights of the landlord under the applicable lease and all superior, underlying and ground leases;
- (n) customary rights of compensation (set-off), revocation, refund or chargeback under deposit agreements or under applicable law of banks or other financial institutions where the Issuer maintains deposits in the ordinary course of business;
- (o) Liens arising in favour of customs or revenue authorities arising as a matter of law to secure payment of custom duties in connection with the importation of goods in the ordinary course of business, provided such Liens secure obligations not due and payable, or if due and payable, are being contested diligently and in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books;
- (p) rights of a supplier of unpaid goods to have access and repossess such goods under the *Bankruptcy and Insolvency Act* (Canada) and under analogous provisions in the legislation of other jurisdictions;
- (q) Liens arising by operation of law on insurance policies and proceeds thereof to secure premiums thereunder;
- (r) Liens arising in connection with the Credit Facility;
- (s) any Purchase Money Obligation; and
- (t) such other Lien as is agreed to in writing by the Trustee from time to time, acting reasonably;

“**Person**” means an individual, a corporation, a partnership, a joint venture, a firm, a trust, a trustee or an unincorporated organization; and pronouns have a similarly extended meaning;

“**Premium**” means, with respect to any Note at a particular time, the excess, if any, of the then-applicable Redemption Price of such Note over the principal amount of such Note;

“**Prime Rate**” means the rate of interest expressed as a rate per annum which a Canadian chartered bank, selected by the Issuer, designates as its prime rate and which establishes from time to time the reference rate of interest such bank will use to determine the rate of interest, expressed as its prime rate of interest, that it will charge for demand loans in Canadian dollars made in Canada, as such rate may be adjusted from time to time;

“**Privacy Laws**” has the meaning ascribed to such term in Section 12.28;

“**Property**” means all or any portion of a Person’s property and assets, both immovable (real) and movable (personal), including for greater certainty any share in the capital of any corporation or ownership interest in any other Person;

“**Purchase Money Obligation**” means any Indebtedness for money borrowed incurred in respect of the cost of acquisition of any Property or of the cost of construction or improvement of any Property acquired, constructed or improved after the date hereof, which Indebtedness was created, incurred or assumed contemporaneously with the acquisition, construction or improvement or within 180 days after the completion thereof;

“**Redemption Date**” has the meaning ascribed to such term in Section 5.4;

“**Redemption Price**” means, in respect of a Note, unless otherwise provided in a Terms Schedule, a Global Note, a Definitive Note or Supplemental Indenture in respect of a particular Series of Notes, the principal amount of the Note being redeemed together with interest on the principal amount of such Note so redeemed accrued and unpaid to the Redemption Date and payable on the Redemption Date fixed for such Note, if any;

“**Redemption Price Calculation Date**” has the meaning ascribed to such term in Section 5.4;

“**Register**” has the meaning ascribed to such term in Section 3.1 and includes the Central Register;

“**Registrar**” means a Trustee or a Person other than a Trustee designated by the Issuer, as approved by the Trustee, to keep a Register;

“**S&P**” means S&P Global Ratings and its successors;

“**Schedule**” means all schedules attached hereto and forming part of this Indenture;

“**Securities**” means any stock, shares, units, instalment receipts, voting trust certificates, bonds, debentures, notes, other evidences of indebtedness, or other documents or instruments commonly known as securities or any certificates of interest, shares or participations in temporary or interim certificates for, receipts for, guarantees of, or warrants, options or rights to subscribe for, purchase or acquire any of the foregoing;

“**Securitization Transaction**”, unless otherwise defined in a Terms Schedule, Definitive Note, Global Note or Supplemental Indenture, means any sale, assignment or other absolute transfer, by the Issuer or any Subsidiary of any of the accounts receivable, instalment notes receivable or lessor’s interest in equipment leased to customers which is:

- (a) for a price exceeding an amount equal to 5% of the sum of its accounts receivable, instalment notes receivable and equipment leased to customers as shown on the latest audited financial statements of the Issuer and its Subsidiaries, whether in one or a series of related transactions; and

- (b) accompanied by or organized in connection with a related and contemporaneous financing by way of an issue of securities by the purchaser to fund all or substantially all the price payable upon such sale, assignment or other absolute transfer,

but shall not include any such transaction between the Issuer and one or more wholly owned Subsidiaries or among any number of wholly owned Subsidiaries;

“**SEC**” has the meaning ascribed thereto in Section 12.27;

“**SEDAR**” means the Canadian Securities Administrators’ System for Electronic Document Analysis and Retrieval, the website of which is accessible at www.sedar.com;

“**serial meeting**” has the meaning ascribed thereto in Section 10.18;

“**Series**” means a series of Notes which, unless otherwise specified in a Supplemental Indenture, a Global Note, a Definitive Note or a Terms Schedule, consists of those Notes which have identical terms and were or are to be issued at the same time, regardless of whether such Notes are designated as a series;

“**Stated Maturity**” means the date specified in a Note as the date on which the principal of such Note is due and payable;

“**Subsidiary**” means any firm, partnership, corporation or other legal entity in which the Issuer, the Issuer and one or more Subsidiaries, or one or more Subsidiaries owns, directly or indirectly, a majority of the voting shares or other ownership interests or has, directly or indirectly, the right to elect a majority of the board of directors, if it is a corporation, or the right to make or control its management decisions, if it is some other Person, but excluding any Joint Venture;

“**Successor**” has the meaning ascribed to such term in Section 9.1;

“**Successor Transaction**” has the meaning ascribed to such term in Section 9.1;

“**Supplemental Indenture**” means an indenture supplemental to this Indenture pursuant to which, among other things, Notes may be authorized for issuance or the provisions of this Indenture may be amended;

“**Terms Schedule**” has the meaning ascribed to such term in Section 4.1(b);

“**Third Party**” means any Person other than the Issuer, a Subsidiary or a Joint Venture;

“**Transfer Agent**” has the meaning ascribed to such term in Section 2.9;

“**Trustee**” means Computershare Trust Company of Canada or a duly appointed successor;

“**U.S. Securities Exchange Act**” has the meaning ascribed to such term in Section 12.27; and

“**Withholding Taxes**” has the meaning ascribed to such term in Section 6.7.

1.2 Meaning of “outstanding”

Every Note certified and delivered by the Trustee hereunder shall be deemed to be outstanding until it is cancelled or delivered to the Trustee for cancellation or money for the payment thereof is set aside under Article 8, provided that:

- (a) Notes that have been partially redeemed shall be deemed to be outstanding only to the extent of the unredeemed part of the principal amount;
- (b) where a new Note has been issued under Section 2.10 in substitution for a Note that has been mutilated, lost, stolen or destroyed, only one of the said Notes shall be counted for the purpose of determining the aggregate principal amount of Notes outstanding; and
- (c) for the purpose of any provision of this Indenture entitling Noteholders of outstanding Notes to vote, sign consents, requisitions or other instruments or take any other action under this Indenture, Notes owned legally or beneficially by the Issuer or any Affiliate shall be disregarded except that:
 - (i) for the purpose of determining whether the Trustee shall be protected in relying on any such vote, consent, requisition, instrument or other action only the Notes which are certified by an Authorized Officer to the Trustee as being so owned shall be disregarded;
 - (ii) Notes so owned that have been pledged in good faith other than to the Issuer or any Affiliate shall not be so disregarded if the pledgee shall establish to the satisfaction of the Trustee the pledgee’s right to vote such Notes in such pledgee’s discretion free from the control of the Issuer or any Affiliate; and
 - (iii) for the purposes of disregarding any Notes owned legally or beneficially by the Issuer or any Affiliate, the Issuer shall provide to the Trustee, at the request of the Trustee, from time to time, a certificate of the Issuer setting forth as at the date of such certificate:
 - (A) the names of the registered Holders of Notes which, to the knowledge of the Issuer, are owned, directly or indirectly, legally or beneficially by the Issuer or any Affiliate; and
 - (B) the principal amount of Notes owned legally and beneficially by each of such Holders;

and the Trustee in making such determination shall be entitled to rely upon such certificate.

1.3 Interpretation Not Affected by Headings

The division of this Indenture into Articles, Sections, and other sub-divisions and the provision of headings and of a table of contents are for convenience of reference only and shall not affect the construction or interpretation of this Indenture.

1.4 Extended Meanings

In this Indenture, unless otherwise expressly provided herein or unless the context otherwise requires, words importing the singular number include the plural and vice versa; words importing gender include the masculine, feminine and neuter genders; references to “**Indenture**”, “**Trust Indenture**”, “**this Indenture**”, “**hereto**”, “**herein**”, “**hereof**”, “**hereby**”, “**hereunder**” and similar expressions refer to this Indenture, and not to any particular Article, Section, clause or other portion hereof, and include all Schedules and amendments hereto, modifications or restatements hereof, and any and every Supplemental Indenture, a Global Note, a Definitive Note and Terms Schedule; and the expressions “**Article**”, “**Section**”, “**clause**” and “**Schedule**” followed by a number, letter, or combination of numbers and letters refer to the specified Article, Section or clause of or Schedule to this Indenture. The words “**include**”, “**includes**” and “**including**” shall be deemed to be followed by the phrase “**without limitation**”.

1.5 Day Not a Business Day

If any day on which an amount is to be determined or an action is to be taken hereunder at a particular location is not a Business Day at such location, then such amount shall be determined or such action shall be taken at or before the requisite time on the next succeeding day that is a Business Day at such location.

1.6 Currency

Except as otherwise provided herein, all references in this Indenture to “**Cdn\$**”, “**Canadian dollars**”, “**dollars**” and “**\$**” are to lawful money of Canada.

1.7 Other Currencies

For the purpose of making any computation under this Indenture, any currency other than Canadian dollars shall be converted into Canadian dollars at the applicable Bank of Canada noon rate of exchange for purchases or sales of Canadian dollars as applicable in the circumstances on the date on which such computation is to be made.

1.8 Governing Law

This Indenture, the Notes and all documents associated with it shall be governed and construed in accordance with the laws of the Province of British Columbia and the federal laws of Canada applicable therein and shall be treated in all respects as British Columbia contracts. The parties hereto hereby waive any right they may have to require a trial by jury of any proceeding commenced in connection herewith.

1.9 Choice of Language

The parties hereby acknowledge that they have expressly required this Indenture and all notices, statements of account and other documents required or permitted to be given or entered into pursuant hereto to be drawn up in the English language only. *Les parties reconnaissent avoir expressément demandé que la présente convention ainsi que tout avis, tout état de compte et tout autre document à être ou pouvant être donnés ou conclus en vertu des dispositions des présentes, soient rédigés en anglais seulement.*

1.10 Certificates and Opinions

Any certificate made or given under or for the purpose of satisfying any provision of this Indenture or evidencing the compliance with any provision of this Indenture by one or more Authorized Officers or Directors of the Issuer may be based, in so far as it relates to legal matters, upon an opinion of Counsel, unless such Person or Persons signing the certificate knows, or with the exercise of reasonable care should have known, that the opinion with respect to the matters upon which his or their certificate is based as aforesaid is or are erroneous. Any opinion made or given by Counsel may be based, in so far as it relates to factual matters and information which is in the possession of the Issuer, upon the certificate of an officer or officers of the Issuer, unless such Counsel knows, or in the exercise of reasonable care should have known, that the certificate with respect to the matters upon which its opinion is based as aforesaid is or are erroneous. Any such certificate or opinion, as the case may be, made or given by an Authorized Officer, Authorized Officers, Director or Directors of the Issuer or by Counsel may be based, in so far as it relates to accounting matters, upon the certificate or opinion of an auditor or accountant, including the Auditors, unless such Authorized Officer, Director or Counsel, as the case may be, knows, or in the exercise of reasonable care should have known, that the certificate or opinion with respect to the matters upon which his certificate or opinion is based as aforesaid is or are erroneous.

1.11 Severability

If, in any jurisdiction, any provision of this Indenture 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 Indenture and without affecting the validity or enforceability of such provision in any other jurisdiction or without affecting its application to any other party or circumstances.

1.12 Benefits of Indenture

Nothing in this Indenture or in the Notes, express or implied, shall, except as may be required by any applicable law, give to any Person, other than the parties hereto and their successors hereunder and the Holders of Notes, any benefit or any legal or equitable right, remedy or claim under this Indenture. In the case of Notes registered in the form of Book Entry Only Notes, any reference in this Indenture to a “**Holder**” of a Note shall be construed as a reference to the Depository.

1.13 GAAP

As of the date of this Indenture, the Issuer prepares its financial statements in accordance with GAAP. Except as otherwise expressly provided in this Indenture, a Terms Schedule, a Global Note, a Definitive Note or Supplemental Indenture, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time.

1.14 Calculations

The Issuer shall be responsible for making all calculations called for hereunder including, without limitation, calculating any Redemption Price. The Issuer shall make such calculations in good faith and, absent manifest error, the Issuer's calculations shall be final and binding on holders and the Trustee. The Issuer will provide to the Trustee an Officer's Certificate with a schedule of its calculations, or with other evidence of its calculations and the Trustee shall be entitled to rely conclusively on the accuracy of such calculations without independent verification.

ARTICLE 2 THE NOTES

2.1 No Fixed Limitation

The aggregate principal amount of Notes that may be issued under this Indenture is unlimited, but Notes may be issued hereunder only upon the terms and subject to the conditions herein provided.

2.2 Issuance in Series

Notes may be issued in one or more Series. The Notes of each Series shall be designated in such manner, shall bear such date or dates and mature on such date or dates, shall bear interest, if any, at such rate or rates accruing from and payable on such date or dates, may be issued at such times and in such denominations, may be redeemable before maturity in such manner and subject to payment of such Premium, may be payable as to principal, interest and Premium at such place or places and in such currency or currencies, may be payable as to principal, interest and Premium in Securities of the Issuer or any other Person; may provide for such mandatory redemption, sinking fund or other analogous repayment obligations; may contain such provisions for the exchange or transfer of Notes of different denominations and forms; may have attached thereto or issued therewith Securities entitling the Holders to subscribe for, purchase or acquire Securities of the Issuer or any other Person upon such terms; may give the Holders thereof the right to convert Notes into Securities of the Issuer or any other Person upon such terms; may be defeasible at the option of the Issuer; and, may contain such other provisions, not inconsistent with the provisions of this Indenture, as may be determined by the Directors by a resolution passed at or prior to the time of issue of the Notes of such Series and set forth in a Terms Schedule, a Global Note, a Definitive Note or, to such extent as the Directors may deem appropriate, in a Supplemental Indenture pertaining to the Notes of such Series. At the option of the Issuer, the maximum principal amount of Notes of any Series may be limited, such limitation to be expressed in the Terms Schedule, a Global Note, a Definitive Note or Supplemental

Indenture providing for the issuance of the Notes of such Series, and any such limitation may be increased at any time by the Issuer by means of a resolution of the Directors.

2.3 Form of Notes

The Notes of any Series may be of different denominations and forms and may contain such variations of tenor and effect, not inconsistent with the provisions of this Indenture, as are incidental to such differences of denomination and form, including variations in the provisions for the exchange of Notes of different denominations or forms and in the provisions for the registration or transfer of Notes, and any Series of Notes may consist of Notes having different dates of issue, different dates of maturity, different rates of interest, different redemption prices, different sinking fund provisions, and partly of Notes carrying the benefit of a sinking fund and partly of Notes with no sinking fund provided therefor.

Subject to the foregoing provisions and subject to any limitation as to the maximum principal amount of Notes of any particular Series, any Note may be issued as part of any Series of Notes.

The Notes and the registration panel and certificate of the Trustee endorsed thereon may be in the forms (which may include legends as specified in a Terms Schedule, Global Note or Definitive Note and pursuant to the written order of the Issuer) as the Directors shall by resolution determine prior to the time of issue thereof and the Authorized Officers executing such Notes on behalf of the Issuer shall approve (such approval conclusively evidenced by their execution of such Notes) and as shall be approved by the Trustee based on an opinion of Counsel (pursuant to Section 4.1(c)), whose approval shall be conclusively evidenced by its certification thereof.

The Notes of any series may be engraved, lithographed, printed or typewritten, or partly in one form and partly in another as the Issuer may determine.

Unless otherwise specified in the Terms Schedule, a Global Note, a Definitive Note or Supplemental Indenture authorizing a Series of Notes, every Global Note of such Series authenticated and delivered by the Trustee shall bear a legend in substantially the following form:

“UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF CDS CLEARING AND DEPOSITORY SERVICES INC. (“CDS”) TO FINNING INTERNATIONAL INC. (THE “ISSUER”) OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IN RESPECT THEREOF IS REGISTERED IN THE NAME OF CDS & CO., OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF CDS (AND ANY PAYMENT IS MADE TO CDS & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF CDS), ANY

TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL SINCE THE REGISTERED HOLDER HEREOF, CDS & CO., HAS A PROPERTY INTEREST IN THE SECURITIES REPRESENTED BY THIS CERTIFICATE HEREIN AND IT IS A VIOLATION OF ITS RIGHTS FOR ANOTHER PERSON TO HOLD, TRANSFER OR DEAL WITH THIS CERTIFICATE.”

2.4 Denomination of Notes

Notes shall be issuable in such denominations as shall be specified as contemplated by Section 2.2, and unless otherwise specified in a Terms Schedule, a Global Note, a Definitive Note or Supplemental Indenture, the Notes shall be issuable in Canadian dollars in a minimum denomination of \$1,000 and thereafter in integral multiples of \$1,000.

2.5 Ranking of Notes

The Notes shall be direct unsecured obligations of the Issuer and will rank equally and *pari passu* with each other (regardless of their Series or actual dates or terms of issue) and with all other existing and future unsecured and unsubordinated Indebtedness of the Issuer. The Notes will be effectively subordinated to all of the Issuer’s existing and future secured Indebtedness to the extent of the value of the assets securing such Indebtedness. The Notes will rank senior in right of payment to all future obligations of the Issuer that are, by their terms, expressly subordinated in right of payment to the Notes and equal in right of payment with all existing and future obligations of the Issuer that are not so subordinated.

2.6 Book-Entry Only Notes

Except as otherwise provided in a Terms Schedule, a Global Note, a Definitive Note or Supplemental Indenture applicable to a Series of Notes, each Series of Notes shall be issued as Book-Entry Only Notes represented by a Global Note. Each Global Note authenticated in accordance with any Terms Schedule, a Global Note, a Definitive Note or Supplemental Indenture shall be registered in the name of the Depository designated for such Global Note or a Nominee thereof and delivered to such Depository or a Nominee thereof or custodian therefor, and each such Global Note shall constitute a single Note for all purposes of this Indenture and all Terms Schedules, Global Notes, Definitive Notes or Supplemental Indentures. None of the Issuer, the Trustee, Registrar or any other Paying Agent shall have any responsibility or liability for any aspects of the records relating to or payments made by any Depository on account of the beneficial interests in any Global Note or for maintaining, reviewing or supervising any records relating to such beneficial interests. Except as provided in this Section 2.6 or Section 3.4, owners of beneficial interests in any Global Note shall not be entitled to have Notes registered in their names, shall not receive or be entitled to receive Definitive Notes and shall not be considered owners or holders thereof under this Indenture, any Terms Schedule, Global Note, Definitive Note or any Supplemental Indenture. Nothing herein or in a Terms Schedule, a Global Note, a Definitive Note or Supplemental Indenture shall prevent the beneficial owners in Global Notes from voting such Notes using duly executed proxies.

Every Note authenticated and delivered upon registration of transfer of a Global Note, or in exchange for or in lieu of a Global Note or any portion thereof, shall be authenticated and delivered in the form of, and shall be, a Global Note, unless such Note is registered in the name of a Person other than the Depository for such Global Note or a Nominee thereof.

If the Depository ceases to be a clearing agency or otherwise ceases to be eligible to be a depository, and the Issuer is unable to locate a qualified successor, the Issuer and the Trustee, acting reasonably, will each exercise commercially reasonable efforts to agree upon alternative arrangements whereby the Notes can be issued or traded through an alternative book-entry system, otherwise Definitive Notes in respect thereof are to be issued pursuant to Section 3.4.

2.7 Signatures on Notes

All Notes shall be signed (either manually or by facsimile signature) by any two Authorized Officers of the Issuer. A facsimile signature on any Note shall for all purposes of this Indenture be deemed to be the signature of the individual whose signature it purports to be and to have been signed at the time such facsimile signature was reproduced, and each Note so signed by any two Authorized Officers shall be valid and binding upon the Issuer notwithstanding that any individual whose signature (either manual or facsimile) appears on a Note is not an Authorized Officer at the date of this Indenture or at the date of the Note or at the date of the certification and delivery thereof.

2.8 Certification

No Note shall be issued or, if issued, shall be obligatory or entitle the Holder thereof to the benefit thereof until it has been manually certified by or on behalf of the Trustee in the form of the certificate set out in the Notes or in some other form approved by the Issuer (as reasonably agreed to by the Trustee) and such certification by the Trustee upon any Note shall be conclusive evidence against the Issuer that such Note has been duly issued hereunder and is a valid obligation of the Issuer and that the Holder is entitled to the benefit hereof.

The certificate of the Trustee signed on a Note shall not be construed as a representation or warranty by the Trustee as to the validity of this Indenture or of such Note or its issuance, and the Trustee shall not be liable for the use made of such Note or the proceeds of issuance thereof. The certificate of the Trustee signed on any Note shall, however, be a representation and warranty by the Trustee that such Note has been duly certified by or on behalf of the Trustee pursuant to the provisions of this Indenture.

2.9 Payments of Principal, Interest and Premium

Except as otherwise provided in a Terms Schedule, a Global Note, a Definitive Note or Supplemental Indenture applicable to a Series of Notes:

- (a) payment of interest, principal or Premium, as applicable will be made in the currency in which the Note is denominated;
- (b) each Note of a Series, whether issued originally or in exchange or in substitution for previously issued Notes, shall bear interest from and including the later of:

- (i) its date of issue; and
 - (ii) the last Interest Payment Date on which interest shall have been paid or made available for payment on the outstanding Notes of such Series;
- (c) fixed rate Notes will bear interest at the rate per annum set out on the face thereof until the principal amount is paid or made available for payment, interest will be calculated and payable monthly, quarterly, semi-annually or annually in arrears in equal instalments on the date specified or as may be agreed to between the Issuer and the purchaser of a Note and at maturity or redemption;
- (d) floating rate Notes will bear interest from the original issue date thereof at rates set out on the face thereof, the rate of interest on floating rate Notes will be reset and payable monthly or quarterly and the Issuer shall act as pricing agent of floating rate Notes;
- (e) interest for any period less than six months shall be computed on the basis of a year of 365 days; and
- (f) whenever interest is computed on the basis of a year (the “**deemed year**”) that contains fewer days than the actual number of days in the calendar year of calculation, such rate of interest shall be expressed as a yearly rate for purposes of the *Interest Act* (Canada) by multiplying such rate of interest by the actual number of days in the calendar year of calculation and dividing such product by the number of days in the deemed year.

Subject to accrual of any interest on unpaid interest from time to time, interest on each Note shall cease to accrue from the earlier of the Maturity Date of such Note and, if such Note is called for redemption, the Redemption Date fixed for such Note, unless, in each case, upon due presentation and surrender of such Note for payment on or after such Maturity Date or Redemption Date, as the case may be, such payment is improperly withheld or refused.

Wherever in this Indenture or a Note there is mention, in any context, of the payment of interest, such mention is deemed to include the payment of interest on amounts in default to the extent that, in such context, such interest is, was or would be payable pursuant to this Indenture or such Note, and express mention of interest on amounts in default in any of the provisions of this Indenture shall not be construed as excluding such interest in those provisions of this Indenture in which such express mention is not made.

If the date for payment of any amount of interest, principal or Premium in respect of a Note is not a Business Day at the place of payment, then payment shall be made on the next Business Day at such place and the Holder of such Note shall not be entitled to any additional interest or other payment in respect of the delay.

Except as otherwise provided in a Terms Schedule, a Global Note, a Definitive Note or Supplemental Indenture applicable to a Series of Notes, the Issuer shall pay, or cause to be paid, the interest, principal and Premium:

- (i) on each Definitive Note, at the places and in the manner specified in the applicable Terms Schedule, Supplemental Indenture or Definitive Note. Payments of interest on each interest bearing Definitive Note (except interest payable on maturity or redemption of such Note which, at the option of the Issuer, may be paid only upon surrender of such Note to the Trustee for payment) will be made by cheque dated the Interest Payment Date and mailed (by ordinary mail) to the address of the Holder, or if so agreed by the Trustee and the Issuer, funds representing the interest payable will be forwarded by electronic funds transfer or wire transfer on the Interest Payment Date to the account of, the Holder appearing on the Register maintained by Computershare Trust Company of Canada, as Registrar and transfer agent (the “**Transfer Agent**”, which term shall include such other registrar or transfer agent as may, from time to time, be appointed by the Issuer, with the consent of the Trustee) at the close of business in the City of Vancouver, British Columbia on the tenth Business Day prior to the Interest Payment Date. Principal payments and Premium, if any, on Definitive Notes will be paid by cheque (or other payment method as agreed by the Trustee and Issuer) at maturity against surrender to the Trustee of the Definitive Note. The forwarding of such cheque or electronic funds transfer or wire transfer, as the case may be, shall satisfy and discharge the liability for the payment of interest, principal, or Premium, if any, on such Note to the extent of the sum represented thereby (plus the amount of any tax, assessment or other government charge required by law to be deducted or withheld) unless, in the case of payment made by cheque, such cheque is not paid on presentation at any of the places at which such payment is payable. In the event of the non-receipt of such cheque by the applicable Noteholder or the loss, theft or destruction thereof, the Issuer, upon being furnished with evidence of such non-receipt, loss, theft or destruction and indemnity reasonably satisfactory to it, shall issue or cause to be issued to such Noteholder a replacement cheque for the amount of such cheque; or
- (ii) on each Global Note, to the Depository or the Nominee, as the case may be, as the registered holder of the Global Note. Interest payments on Global Notes will be made by electronic funds transfer or wire transfer (or other payment method as agreed by the Trustee and the Issuer) on the Interest Payment Date and delivered to the Depository or the Nominee, as the case may be, on the Interest Payment Date. Principal payments on Global Notes will be made by electronic funds transfer or wire transfer (or other payment method as agreed by the Trustee and the Issuer) delivered to the Depository or the Nominee, as the case may be, at maturity against surrender to the Trustee of the Global Note. As long as the Depository or the Nominee is the registered owner of a Global Note, the Depository or the Nominee, as the case may be, will be considered the sole owner of the Global Note for the purposes of receiving payments of interest, principal and Premium, if any, on the Note and for all other purposes under the Trust Indenture and the Note, except as required by law. The record date

in respect of the payment of interest on a Global Note will be that day which is the tenth Business Day prior to the applicable Interest Payment Date. The forwarding of any such payments of interest, principal or Premium, if any, to the Depository or the Nominee shall satisfy and discharge the liability in respect of such amounts on such Note to the extent of the sum represented thereby (plus the amount of any tax, assessment or other government charge required by law to be deducted or withheld).

Upon receipt of any payment of principal, interest or Premium, if any, in respect of a Global Note, the Depository or the Nominee, as the case may be, will credit Participants' accounts, on the date principal, interest or Premium, if any, is payable, with payments in amounts proportionate to their respective beneficial interests in the principal amount of such Global Note as shown on the records of the Depository or the Nominee. Such payments of principal, interest or Premium, if any, by Participants to the owners of beneficial interests in such Global Notes held through such Participants will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name" and will be the responsibility of such Participants. The responsibility and liability of the Issuer and the Trustee in respect of Notes represented by Global Notes is limited to making payment of any principal, interest or Premium, if any, due on such Global Notes to the Depository or the Nominee. The forwarding of such payment to the Depository or Nominee, as the case may be, shall satisfy and discharge the liability for the payment of interest, principal, or Premium, if any, on such Note to the extent of the sum represented thereby (plus the amount of any tax, assessment or other government charge required by law to be deducted or withheld). The Issuer and the Trustee shall not be responsible or liable for any payment(s) made or required to be made by the Depository or any Participant on account of any beneficial interest in any Global Note and shall not be responsible for maintaining, reviewing or supervising any records relating to any such payment or requirement.

If payment of interest is made by cheque, such cheque shall be forwarded or caused to be forwarded by the Issuer to the recipient at least three (3) Business Days prior to the applicable Interest Payment Date, and if payment is made in any other manner, such payment shall be made in a manner whereby the recipient receives credit for such payment on the applicable Interest Payment Date, provided the Trustee and the Paying Agents shall only forward such cheques upon receipt from the Issuer of the full amount of interest being paid in immediately available funds, and, in the case of mailing of cheques, such funds must be received at least one (1) Business Day prior to the required mailout date noted above. If the Issuer wishes the Trustee to be act as Paying Agent for any particular payment, the Issuer must wire the applicable funds to the Trustee by no later than 11:00 a.m. (Toronto time) on the Business Day prior to the day interest is payable.

Except as may otherwise be provided herein, or in any Supplemental Indenture, Terms Schedule, Global Note or Definitive Note, in respect of any series of Notes, payments of amounts due upon maturity of the Notes will be made in the following manner:

- (a) payment on maturity of Notes shall be the responsibility of the Issuer, to be provided to the Trustee, on or before 11:00 a.m. (Toronto time) not less than one

Business Day immediately prior to each Maturity Date for Notes outstanding from time to time under this Indenture; and

- (b) the Issuer will deliver to the Trustee by wire transfer an amount sufficient to pay the cash amount payable in respect of such Notes (including the principal amount, Premium, if any, together with any accrued and unpaid interest thereon less any tax required by law to be deducted). The Issuer shall also deposit with the Trustee a sum of money sufficient to pay any charges or expenses which may be incurred by the Trustee in connection therewith. Every such deposit shall be irrevocable. From the sums so deposited, the Trustee, on behalf of the Issuer, will pay to each Holder entitled on the Maturity Date to receive payment the principal amount of and Premium, if any, and accrued and unpaid interest on the Notes, upon surrender of the Notes at any branch of the Trustee designated for such purpose from time to time by the Issuer and the Trustee.

2.10 Issue of Replacement Notes

If any Note issued and certified hereunder becomes mutilated or is lost, destroyed or stolen, the Issuer, in its discretion, may issue, and thereupon the Trustee shall certify and deliver, a replacement Note of like date and tenor as the one mutilated, lost, destroyed or stolen in exchange for and in place of and upon cancellation of such mutilated Note or in lieu of and in substitution for such lost, destroyed or stolen Note. The substituted Note shall be in a form reasonably approved by the Trustee and shall be entitled to the benefit hereof and rank equally in accordance with its terms with all other Notes. The applicant for a replacement Note shall bear the cost of the issue thereof and in case of loss, destruction or theft shall, as a condition precedent to the issue thereof, furnish to the Issuer and to the Trustee such evidence of ownership and of the loss, destruction or theft of the Note so lost, destroyed or stolen as shall be satisfactory to the Issuer and to the Trustee in their sole discretion, and such applicant shall also furnish an indemnity and surety bond, in amount and form satisfactory to the Issuer and the Trustee in their sole discretion, and shall pay the reasonable charges and expenses of the Issuer and the Trustee in connection therewith.

2.11 Place of Payment

Except as otherwise provided herein or in a Terms Schedule, a Global Note, a Definitive Note or Supplemental Indenture, all amounts that at any time become payable on account of any Note shall be payable at the principal office of the Trustee.

2.12 Record of Payments

The Trustee shall maintain accounts and records evidencing each payment of principal, interest and Premium on the Notes, which accounts and records shall constitute, in the absence of manifest error, *prima facie* evidence thereof.

2.13 Right to Receive Indenture

Each Noteholder is entitled to receive from the Trustee a copy of this Indenture and any applicable Terms Schedule, Global Note, Definitive Note or Supplemental Indenture on written request and upon payment of a reasonable copying charge.

2.14 Notes to Govern

Notwithstanding anything else in this Indenture, any Terms Schedule or any Supplemental Indenture to the contrary, the terms of the Notes, or any Series thereof, may be set out in the form of Global Note or Definitive Note, which terms, for greater certainty, may differ from those set out herein and in the case of any such differences, the terms set out in the Global Note or Definitive Note shall govern.

ARTICLE 3 REGISTRATION, TRANSFER, EXCHANGE AND OWNERSHIP OF NOTES

3.1 Registration of Notes

The Issuer shall cause to be kept by the Trustee a register or an electronic database that shall contain the names and addresses of the Noteholders of each Series and particulars of the Notes held by them respectively (the “**Register**”). Unless otherwise provided in this Indenture or in any Terms Schedule, Global Note, Definitive Note or Supplemental Indenture, the Issuer shall also, with respect to each Series of Notes, cause to be provided by and at the principal office of the Trustee, facilities for the exchange and transfer of Notes, or at such other place or places (if any) as may be specified in such Notes, facilities for the registration, exchange and transfer of such Notes. The Issuer may, from time to time, provide additional facilities for such registration, exchange and transfer at other offices of the Trustee or other Registrar, with the consent of the Trustee.

3.2 Transfer of Notes

A Noteholder may at any time and from time to time have a Note transferred at any one of the places at which a Register is kept pursuant to the provisions of this Section 3.2 provided that no transfer of a Note shall be valid unless made at one of such offices or other agencies by the registered Noteholder or his executors, administrators or other legal representatives or his or their attorney duly appointed by an instrument in writing in form and execution satisfactory to the Trustee or Registrar, upon surrender of the applicable Note and upon compliance with applicable law, such reasonable requirements as the Trustee or Registrar may prescribe and upon payment of a reasonable fee to be fixed by the Trustee. Upon surrender of the Note for registration of transfer, the Issuer shall issue and thereupon the Trustee shall certify and deliver a new Note certificate in the name of the designated transferee and register such transfer on one of the appropriate Registers maintained by the Trustee or other Registrar.

3.3 Closing of Registers

Except in the case of the Register maintained by Trustee at its principal office in Vancouver, British Columbia (the “**Central Register**”), the Issuer shall have the power at any

time to close any Register. The Issuer shall transfer the registration of any Notes registered on a Register which the Issuer closes to another existing Register or to a new Register and thereafter such Notes shall be deemed to be registered on such existing or new Register, as the case may be. If the Register in any place is closed and the records are transferred to a Register in another place, notice of such change shall be given to each Noteholder registered in the Register so closed and the particulars of such change shall be recorded in the Central Register.

None of the Issuer, the Trustee or any Registrar shall be required to:

- (a) effect transfers or exchanges of Notes of any Series on any Interest Payment Date for Notes of that Series or the date fixed for payment of the principal or Premium, if any, for Notes of that Series or, in each case, during the 10 preceding Business Days; or
- (b) effect exchanges of Notes of any Series on the Redemption Date for Notes of that Series to be redeemed or during the 10 preceding Business Days.

3.4 Restrictions on the Transfer of Global Notes

- (a) Notwithstanding any other provision of this Indenture, a Global Note registered in the name of the Depository or a Nominee of the Depository may not be transferred by the Depository or such Nominee except in the following circumstances or as otherwise specified in a Terms Schedule, a Global Note, a Definitive Note or Supplemental Indenture relating to such Note:
 - (i) the Depository ceases to be a clearing agency or otherwise ceases to be eligible to be a depository and the Issuer is unable to locate a qualified successor;
 - (ii) the Depository for such Global Note has notified the Issuer that it is unwilling or unable or no longer eligible to continue as depository for such Global Note and the Issuer is unable to locate a qualified successor;
 - (iii) the Issuer has determined, in its sole discretion, that the Notes represented by such Global Note shall no longer be held as Book-Entry Only Notes; or
 - (iv) such transfer is required by applicable law, as determined by the Issuer and its Counsel.

Following any of the events described above, subject to the Issuer and the Trustee agreeing upon an alternative book-entry arrangement as provided in Section 2.6, Definitive Notes will be issued to beneficial owners of such Notes or their nominee. The Depository shall provide the Trustee with instructions for registration of Notes in the names and in the amounts specified by the Depository, and the Issuer shall issue and the Trustee shall certify the aggregate number of Notes then outstanding in the form of Definitive Note certificates representing such Notes.

- (b) Subject to Section 2.6, transfers and registrations of Global Notes will only be made to another Nominee of the Depository or to a successor Depository or a Nominee of such successor Depository.
- (c) It is expressly acknowledged that transfer of beneficial ownership in any Note represented by a Global Note certificate will be effected only (a) with respect to the interests of Depository participants (each, a “**Participant**”), through records maintained by the Depository or its Nominee for the Global Note certificate, and (b) with respect to interests of Persons other than Participants, through records maintained by Participants. Beneficial owners of Notes who are not Participants, but who desire to purchase, sell or otherwise transfer ownership of or other interest in Notes represented by a Global Note certificate, may do so only through a Participant. Neither the Issuer nor the Trustee is responsible or liable in any manner whatsoever for or in connection with any registration, tracking, administration or transfer of any beneficial ownership in any Note represented by the Global Note certificate.
- (d) The rights of beneficial owners of Notes who hold securities entitlements in respect of the Notes through the system administered by the Depository shall be limited to those established by applicable law and agreements between the Depository and the Participants and between such Participants and the beneficial holders who hold securities entitlements in respect of the Notes through the system administered by the Depository, and such rights must be exercised through a Participant in accordance with the rules and procedures of the Depository.

3.5 Transferee Entitled to Registration

The transferee of a Note shall be entitled, after the appropriate form of transfer is lodged with the Trustee or other Registrar and upon compliance with all other conditions in that regard required by this Indenture or by law, to be entered on a Register as the Holder of such Note free from all equities or rights of compensation (set-off) or counterclaim between the Issuer and the transferor or any previous Noteholder; except in respect of equities of which the Issuer is required to take notice by statute or by order of a court of competent jurisdiction.

3.6 Exchange of Notes

- (a) Subject to Sections 2.6, 3.3 and 3.4, Notes in any authorized form or denomination may be exchanged upon reasonable notice for Notes in any other authorized form or denomination representing the same underlying indebtedness, of the same Series and Maturity Date, carrying the same interest rate and of the same aggregate principal amount as the Notes so exchanged.
- (b) Notes of any Series may be exchanged only at the principal office of the Trustee at Vancouver, British Columbia, or at such other place or places (if any) as may be specified in the Notes of such Series and at such other place or places (if any) as may from time to time be designated by the Issuer with the approval of the Trustee. Any Notes tendered for exchange shall be surrendered to the Trustee.

The Issuer shall execute and the Trustee shall certify all Notes necessary to carry out exchanges as aforesaid. All Notes surrendered for exchange shall be cancelled.

- (c) Notes issued in exchange for Notes that at the time of such issue have been selected or called for redemption at a later date shall be deemed to have been selected or called for redemption in the same manner and shall have noted thereon, by the Trustee, a statement to that effect, provided that:
 - (i) Notes that have been selected or called for redemption may not be exchanged for Notes of larger denominations; and
 - (ii) if a Note that has been selected or called for redemption in part is presented for exchange into Notes of smaller denominations, the Trustee shall designate, according to such method as the Trustee shall deem equitable, acting reasonably, particular Notes of those issued in exchange, which shall be deemed to have been selected or called for redemption, in whole or in part, and the Trustee shall note thereon a statement to that effect.

3.7 Charges for Registration, Transfer and Exchange

Unless otherwise provided in any Supplemental Indenture, a Global Note, a Definitive Note or Terms Schedule, for each Note exchanged, registered or transferred, the Trustee or other Registrar may charge a Noteholder a reasonable fee for its services and, in addition, may charge a Noteholder a reasonable amount for each new Note issued (such amounts to be agreed upon by the Trustee and the Issuer from time to time), and payment of such charges and reimbursement of the Trustee for any transfer taxes or similar governmental charges required to be paid by the Person requesting such exchange or transfer as a condition precedent thereto, provided that no charge to a Noteholder shall be made hereunder:

- (a) for any exchange or transfer of any Note applied for within the period of 45 days from and including the date of the original issue of such Note;
- (b) for any exchange of Notes in denominations in excess of \$5,000 for Notes of lesser denominations, provided that the Notes surrendered for exchange shall not have been issued as a result of any previous exchange other than an exchange pursuant to subsection (a) above; or
- (c) for any exchange of any Note resulting from a partial redemption pursuant to Section 5.3.

Payment of any such charges and reimbursement of the Trustee or other Registrar for any transfer taxes or similar governmental charges required to be paid shall be made by the party requesting such exchange, registration, transfer or discharge from registration as a condition precedent thereto.

3.8 Register Open for Inspection

The Registers referred to herein shall be open for inspection by the Issuer and the Trustee and, at such reasonable cost as may be established by the Trustee, shall be open for inspection by any Noteholder at all reasonable times upon prior written notice. The Trustee and every Registrar shall, from time to time when requested to do so by the Issuer or by the Trustee, furnish the Issuer or the Trustee, as the case may be, with a list of names and addresses of Noteholders entered on the Registers, and the principal amount and serial numbers of the Notes held by each Noteholder.

3.9 Ownership of Notes

Subject to Section 12.21, the Person in whose name a Note is registered shall be deemed to be the beneficial owner thereof for all purposes of this Indenture (except as otherwise required by law) and payment of or on account of the principal of and Premium and interest on such Note shall be made only to or upon the order in writing of such Person, and each such payment shall be a good and sufficient discharge to the Issuer, the Trustee, any Registrar and any Paying Agent for the amount so paid.

If a Note is registered in the name of more than one Person, the principal, Premium and interest from time to time payable in respect thereof may be paid to the order of all such Persons, failing written instructions from them to the contrary, and each such payment shall be a good and sufficient discharge to the Issuer, the Trustee, any Registrar and any Paying Agent for the amount so paid.

Notwithstanding any other provision of this Indenture, all payments in respect of Notes represented by a Global Note shall be made to the Depository or its Nominee for subsequent payment by the Depository or its Nominee to holders of interests in such Global Note. Each such payment shall be a good and sufficient discharge to the Issuer, the Trustee, any Registrar and any Paying Agent for the amount so paid.

The registered Holder for the time being of a Note shall be entitled to the principal, interest and Premium evidenced by such Note, free from all equities or rights of compensation (set-off) or counterclaim between the Issuer and the original or any intermediate Holder thereof; except in respect of equities of which the Issuer is required to take notice by statute or by order of a court of competent jurisdiction, and all Persons may act accordingly.

The receipt by any Holder of any principal, interest or Premium shall be a good and sufficient discharge to the Issuer, the Trustee, any Registrar and any Paying Agent for the amount so paid, and none of the Issuer, the Trustee, any Registrar nor any Paying Agent shall be bound to inquire into the title of any such Holder.

3.10 Evidence of Ownership

The Issuer and the Trustee may treat the registered Holder of a Note as the beneficial owner thereof without actual production of such Note for the purpose of any Noteholders' Request, requisition, direction, consent, instrument or other document to be made, signed or given by the Holder of such Note.

3.11 No Notice of Trusts

None of the Issuer, the Trustee, any Registrar or any Paying Agent shall be bound to take notice of or see to the performance or observance of any duty owed to a third party (whether under a trust in respect of any Note or otherwise) by the beneficial owner or the Holder of a Note or any Person whom the Issuer or the Trustee treats, as permitted or required by law or hereunder, as the beneficial owner or the Holder of such Note, and the Issuer, the Trustee or any Registrar may transfer such Note on the direction of the Person so treated or registered as the Holder thereof, whether named as trustee or otherwise, as though that Person was the absolute owner of such Note.

3.12 Joint Noteholders

In the case of the death of one or more joint registered Noteholders, and receipt by the Trustee of satisfactory documentation evidencing same, the principal, interest and Premium, and interest on Notes so registered may be paid by cheque to the survivor or survivors of such registered Noteholders whose receipt therefor shall constitute a valid discharge to the Trustee and any Registrar and to the Issuer, unless such cheque shall not be paid on presentation at any one of the places where such principal, interest and Premium is payable pursuant to the terms of such Note.

3.13 Issuer Not Liable in Respect of Depository or Participants

Notwithstanding any other provision in this Indenture or anything that may be construed or inferred herein to the contrary, and in addition to any other limitation on liability of the Issuer contained herein, the Issuer shall not have any liability in any manner whatsoever for any of the following:

- (a) any aspect of the records relating to or payments made on account of beneficial ownership interests in the Notes held by and registered in the name of the Depository or successor thereto;
- (b) maintaining, supervising or reviewing (or failure to maintain, supervise or review) any records relating to such beneficial ownership interests registered in the name of or in support of the Depository (or any successor thereto) or any Participant;
- (c) any transfer (including any improper, inaccurate or inappropriate transfer) of beneficial ownership or interest in any Note; or
- (d) any advice or representation made or given by or with respect to the Depository (or any successor thereto) or any Participant and made or given herein with respect to rules or procedures of such Depository (or any successor thereto) or any action to be taken by the Depository (or any successor thereto) or at the direction of a Participant.

ARTICLE 4 ISSUANCE OF NOTES

4.1 Issuance of Notes

The Issuer may issue, and the Trustee, subject to Section 2.8 and this Section 4.1, shall certify and deliver to or to the order of the Issuer, Notes issuable under this Indenture, but only upon receipt by the Trustee of the following:

- (a) an Officer's Certificate stating that, to the knowledge of the relevant Authorized Officer after due enquiry, no Default or Event of Default exists, or, if any such Default or Event of Default exists or would exist as a result of the issuance of Notes, setting forth the particulars of the nature thereof and the action, if any, being taken by the Issuer to remedy such Default or Event of Default, and stating that it has complied with all the requirements of the Indenture in connection with the issue, certification and delivery of the Notes for which issuance, certification, and delivery is requested;
- (b) a written order of the Issuer signed by any one or more Authorized Officers or Directors of the Issuer requesting the certification and delivery of such Notes specifying the principal amount requested to be certified and delivered and having attached a schedule (a "**Terms Schedule**") specifying the date, principal amount, Maturity Date, interest rate, if any, the manner of calculation of interest, if any, Interest Payment Dates, and place of delivery for each Note requested to be certified and delivered, and any other terms related to such Notes that may vary from the terms set out in this Indenture (including, among other things, in respect of redemptions or repurchases) or, at the option of the Issuer, a Supplemental Indenture providing for the issue of such Notes, and in either case shall include the form of Global Note or Definitive Note to be issued in connection therewith;
- (c) an opinion of Counsel in form and substance satisfactory to the Trustee, acting reasonably, to the effect that all legal requirements and all requirements imposed by this Indenture in respect of the proposed issue of such Notes have been satisfied; and
- (d) a certified resolution of the directors authorizing the issue, certification and delivery of a specified principal amount of Notes; and
- (e) such other documentation as may be reasonably requested by the Trustee.

Upon receipt by the Trustee of the documents and instruments required pursuant to this Section 4.1, the Trustee shall certify the Notes and cause the delivery of the Notes in accordance with the written order.

Upon the certification and delivery by the Trustee of Notes in accordance with an order of the Issuer, the Terms Schedule, Global Note, Definitive Note or Supplemental Indenture attached to such order of the Issuer shall be deemed to be a Schedule to and form part of this Indenture.

4.2 No Notes to Be Issued During Default

The Trustee shall not certify or deliver Notes if, at the time of such certification and delivery, the Issuer is in default under this Indenture. The Trustee may rely on the Officer's Certificate delivered pursuant to Section 4.1(a) without further investigation.

ARTICLE 5 PURCHASE FOR CANCELLATION AND REDEMPTION

5.1 Purchase

- (a) Subject to the provisions of any Series of Notes as set out in a Terms Schedule, Definitive Note, Global Note or Supplemental Indenture (which may, for greater certainty, include other rights of or obligations on the Issuer to purchase the Notes), the Issuer will have the right, at its option, at any time and from time to time, to purchase all or any of the Notes (which shall include purchases from or through an investment dealer or a firm holding membership on a recognized stock exchange or by tender, open market purchases, or by private contract, in each case, at any price), provided that immediately before and after giving effect to such purchase, no Default or Event of Default shall have occurred and be continuing.
- (b) If the Issuer elects to purchase all or any part of the Notes by way of tender pursuant to subsection (a) above and, upon an invitation for tenders, more Notes are tendered at the same lowest price than the Issuer is prepared to accept, the Notes to be purchased by the Issuer will be selected by the Trustee on a *pro rata* basis in such manner as the Trustee may deem equitable, from the Notes tendered by each tendering Noteholder who tendered at such lowest price. For this purpose, the Trustee may make, and from time to time amend, regulations with respect to the manner in which Notes may be so selected, and regulations so made shall be valid and binding upon all Noteholders, notwithstanding the fact that, as a result thereof, one or more of such Notes becomes subject to purchase in part only.

5.2 Redemption

The Issuer shall have the right, at its option, to redeem, in whole or in part, at any time and from time to time before the Stated Maturity, Notes of any Series that, by their terms, are made so redeemable, at such rate or rates of Premium (if any), on such date or dates and on such terms and conditions as shall have been determined at the time of issue of such Notes and as shall be expressed in such Notes or in the Terms Schedule, Global Note, Definitive Note or Supplemental Indenture authorizing or providing for the issue thereof, provided that immediately before and after giving effect to such redemption, no Default or Event of Default shall have occurred and be continuing.

5.3 Partial Redemption and Selection for Redemption

In the event that less than all of the Notes of any Series for the time being outstanding are at any time to be redeemed, the Trustee shall select the Notes so to be redeemed on a *pro rata*

basis in such manner as the Trustee shall deem equitable. For this purpose, the Trustee may make regulations with regard to the manner in which such Notes may be so selected and regulations so made shall be valid and binding on all Noteholders. In the event of a partial redemption of Notes pursuant to the provisions of this Section 5.3, but subject to the provisions of Section 5.6, upon surrender of any Note for payment of the Redemption Price, the Issuer shall execute and the Trustee shall certify and deliver without charge to the Holder or upon his or her order one or more new Notes of the same Series, maturity and rate of interest for the unredeemed part of the principal amount of the Note or Notes so surrendered. Unless the context otherwise requires, the terms “**Note**” or “**Notes**” as used in this Article 5 shall be deemed to mean or include any part of the principal amount of any Note that, in accordance with the foregoing provisions, has become subject to redemption.

5.4 Notice of Redemption

Notice of intention to redeem any Notes shall be given by or on behalf of the Issuer to the Holders of the Notes that are to be redeemed not more than 60 days and not less than 30 days prior to the date fixed for redemption (the “**Redemption Date**”), in the manner provided in Section 11.2. Every notice of redemption shall specify the Series and the Stated Maturity of the Notes called for redemption, the Redemption Date, the Redemption Price or, where applicable only, the date upon which the Redemption Price shall be calculated in connection with the Notes called for redemption (“**Redemption Price Calculation Date**”) and the place or places of payment, and shall state that all interest thereon shall cease from and after the Redemption Date. In addition, unless all the outstanding Notes of a Series are to be redeemed, the notice of redemption shall specify:

- (a) in the case of a notice mailed to a Holder, the distinguishing letters and numbers of the Notes that are to be redeemed (or of such Notes as are registered in the name of such Holder);
- (b) in the case of a published notice, the distinguishing letters and numbers of the Notes which are to be redeemed or, if such Notes are selected by terminal digit or other similar system, such particulars as may be sufficient to identify the Notes so selected;
- (c) in the case of Book-Entry Only Notes, that the redemption shall take place in such manner as may be agreed by the Depository, the Trustee and the Issuer; and
- (d) in all cases, the principal amount of each Note to be redeemed or, if any such Note is to be redeemed in part only, the principal amount of such part.

If a notice of redemption specifies a Redemption Price Calculation Date for any Notes, the Issuer shall deliver to the Trustee, not later than the third Business Day prior to the Redemption Date for such Notes, a certificate of the Issuer signed by any one or more Authorized Officers or Directors of the Issuer that specifies the Redemption Price of such Notes.

5.5 Payment of Redemption Price

Upon notice of redemption having been given as specified in Section 5.4, all the Notes so called for redemption shall thereupon be and become due and payable at the Redemption Price and on the Redemption Date specified in such notice, in the same manner and with the same effect as if such date was the Stated Maturity specified in such Notes, anything therein or herein to the contrary notwithstanding, and from and after such Redemption Date, if the money necessary to redeem such Notes shall have been paid or deposited with the Trustee in trust and proof satisfactory to the Trustee as to the publication or mailing of such notice shall have been lodged with the Trustee, such Notes shall not be considered as outstanding hereunder and interest upon such Notes shall cease.

If any question shall arise as to whether any notice has been given as required or any deposit has been made, such question shall be decided by the Trustee, whose decision shall be final and binding upon all parties in interest.

5.6 Cancellation of Notes

Subject to the provisions of Section 5.1 and 5.3 as to Notes purchased or redeemed in part, all Notes redeemed or purchased in whole or in part by the Issuer under the provisions of this Article shall be forthwith delivered to and cancelled by the Trustee at the principal office of the Trustee in Vancouver, British Columbia and no Notes shall be issued in substitution therefor.

ARTICLE 6 COVENANTS OF THE ISSUER

6.1 Positive Covenants

So long as any Notes are outstanding and except as otherwise permitted by the terms hereof, the Issuer covenants and agrees with the Trustee for the benefit of the Noteholders:

- (a) to duly and punctually pay or cause to be paid to every Noteholder the principal, interest or Premium, if any, on the dates and at the places and in the manner specified herein and in such Notes;
- (b) to carry on and conduct its business in a proper and efficient manner, and, subject to the express provisions hereof, it will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence;
- (c) to pay to the Trustee such reasonable remuneration for its services as trustee hereunder as shall have been agreed to by the Trustee and the Issuer from time to time and will repay to the Trustee on demand all monies which shall have been paid by the Trustee in and about the execution of the trusts hereby created (including the reasonable compensation and disbursements of its Counsel and all other advisers and assistants not regularly in its employ), both before any default hereunder and thereafter until all duties of the Trustee under this Indenture shall be finally and fully performed, with interest at a rate equal to the Prime Rate or such other rate as shall have been agreed to by the Trustee from time to time,

from the date of expenditure until repayment, and such monies and there interest thereon, including the Trustee's remuneration, shall be payable out of any funds coming into the possession of the Trustee in priority to the payment of any principal of, Premium, if any, or interest on any of the Notes. The said remuneration shall continue to be payable until the trusts hereof are finally wound up and whether or not the trusts of this indenture shall be in course of administration by or under the direction of the court;

- (d) on becoming aware, at any time, of any Event of Default, to promptly notify the Trustee in writing;
- (e) to furnish to the Trustee copies of consolidated financial statements, whether annual or quarterly, of the Issuer and any report of the Auditors thereon at the same time as such financial statements are filed with securities regulatory authorities (provided that the filing of the Issuer's financial statements, whether annual or quarterly and any report of the Auditors thereon on SEDAR in accordance with applicable securities laws shall satisfy the Issuer's obligation to furnish the Trustee with copies of same). Unless the Issuer advises the Trustee in writing otherwise, the Trustee shall assume that the Issuer is filing the documents on SEDAR pursuant to this Section; and
- (f) within 120 days after the end of each Fiscal Year of the Issuer, and at any other time upon reasonable request by the Trustee, to furnish the Trustee with an Officer's Certificate of the Chief Financial Officer of the Issuer stating that, to the knowledge of the Chief Financial Officer, the Issuer has complied with all covenants, conditions or other requirements contained in this Indenture, the non-compliance with which would constitute a Default or an Event of Default hereunder, or, if such is not the case, setting forth with reasonable particulars the circumstances of any failure to comply.

6.2 Office for Notices, Payments and Registration of Transfer, Etc.

The Issuer will maintain in Vancouver, British Columbia, and in such other places as the Directors shall designate from time to time, an office or agency where the Notes may be presented for payment, transfer or exchange and for exercise of conversion rights (if any) and where notices and demands to the Issuer in respect of the Notes and this Indenture may be served. The principal office of the Trustee in Vancouver, British Columbia, shall be such office or agency of the Issuer unless the Issuer shall designate and maintain some other office or agency for one or more such purposes. The Issuer will give to the Trustee written notice of the location of any such office or agency and of any change of location thereof. In case the Issuer shall fail to maintain any such office or agency or shall fail to give such notice of the location or of any change in the location thereof, presentations and demands may be made and notices may be served at the principal office of the Trustee at Vancouver, British Columbia.

6.3 Not to Extend Time for Payment of Interest

Subject to the provisions of Section 10.11, in order to prevent any accumulation after maturity of unpaid interest on the Notes, the Issuer will not directly or indirectly extend or assent to the extension of time for payment of interest upon any Notes or directly or indirectly be or become a party to or approve any such arrangement by purchasing or funding interest on the Notes or in any other manner.

If the time for the payment of any interest shall be so extended, whether or not such extension is by or with the consent of the Issuer, notwithstanding anything herein or in the Notes contained, such interest shall not be entitled in case of default hereunder to the benefit of this Indenture until such time as payment in full has been made of the principal of all the Notes and of all interest on such Notes the payment of which has not been so extended.

6.4 Negative Pledge

The Issuer covenants that so long as any of the Notes are outstanding the Corporation will not create, incur or assume or permit to subsist, any Lien upon any part of its Property, whether now owned or hereafter acquired, to secure any Indebtedness, unless at the same time, or as soon as reasonably practicable thereafter, the Issuer secures all the Notes then outstanding on an equal basis, provided that for greater certainty, and notwithstanding the foregoing, this covenant shall not apply to:

- (a) any Lien created, incurred or assumed to secure any Purchase Money Obligation, provided that the Lien does not extend to:
 - (i) Inventories of equipment for sale or lease or accounts or notes receivable of the Corporation; or
 - (ii) Any other Property of the Corporation other than the Property so acquired, constructed or improved;
- (b) any Lien in favour of the Corporation;
- (c) any Permitted Liens;
- (d) any Lien on the Property of an entity at the time such entity becomes a Subsidiary;
- (e) any Lien on any Property existing at the time such Property is acquired;
- (f) any Lien on the Property of an entity at the time such entity is consolidated or amalgamated with or merged into the Issuer or any Subsidiary;
- (g) any extension, renewal, replacement or refunding of any of the foregoing, provided that the Indebtedness secured thereby outstanding immediately before such extension, renewal, replacement or refunding is not thereby increased;

- (h) the creation or assumption of Liens not otherwise permitted to be incurred pursuant to the provisions in Sections 6.4(a) through 6.4(f) (inclusive) above and not exceeding 25%, in the aggregate, of Consolidated Shareholders' Equity.

Notwithstanding the foregoing, upon the request of the Issuer to the Noteholders, the Noteholders may direct the Trustee to grant permission for the Issuer to create, issue or assume any Lien without providing to the Trustee (for the benefit of the Noteholders) a Lien of a substantially similar nature, and ranking rateably and *pari passu* therewith, provided such direction is first approved by Extraordinary Resolution.

6.5 Securitization Transactions

Subject to the provisions of any Series of Notes as set out in a Terms Schedule, Global Note, Definitive Note or Supplemental Indenture, the Issuer will not and will not permit any Subsidiary to enter into a Securitization Transaction unless an amount equal to the proceeds of such Securitization Transaction (less all taxes and expenses related thereto) is applied to repay indebtedness of any Subsidiary or indebtedness of the Issuer ranking equally with (or prior to) the Notes.

6.6 Performance of Covenants by Trustee

If the Issuer fails to perform any covenant on its part herein contained, the Trustee may, upon fifteen (15) days' notice to the Issuer specifying the covenant which the Issuer has failed to perform and the action the Trustee proposes to take to perform such covenant on the Issuer's behalf, perform any of such covenants capable of being performed by it, and if any such covenant requires the payment or expenditure of money, the Trustee may make such payment or expenditure with its own funds or with money borrowed by or advanced to it for such purpose, but shall be under no obligation to do so or to notify the holder of Notes, and all sums so expended or advanced shall be repayable by the Issuer in the manner provided in Section 6.1(c), but no such performance or payment shall be deemed to relieve the Issuer from any default or continuing obligation hereunder.

6.7 Withholding Matters

All payments made by or on behalf of the Issuer under or with respect to the Notes (including, without limitation, any penalties, interest and other liabilities related thereto) will be made free and clear of and without withholding, or deduction for, or on account of, any present or future tax, duty, levy, impost, assessment or other governmental charge (including, without limitation, penalties, interest and other liabilities related hereto) imposed or levied by or on behalf of the Government of Canada or the United States or elsewhere, or of any province or territory thereof or by any authority or agency therein or thereof having power to tax ("Withholding Taxes"), unless the Issuer is required by law or the interpretation or administration thereof, to withhold or deduct any amounts for, or on account of Withholding Taxes. If the Issuer is so required to withhold or deduct any amount for, or on account of, Withholding Taxes from any payment made under or with respect to the Notes, the Issuer shall deduct and withhold such Withholding Taxes from any payment to be made or with respect to

the Notes and the Issuer shall forthwith remit such amount to the relevant governmental authority or agency.

ARTICLE 7 DEFAULT AND ENFORCEMENT

7.1 Events of Default

Except as otherwise provided in any Terms Schedule, Global Note, Definitive Note or Supplemental Indenture, each of the following events shall be an Event of Default in respect of each Series of Notes:

- (a) if the Issuer fails to pay any principal or Premium, if any, on any Notes when due, at maturity, upon redemption, purchase or otherwise, and such default continues for a period of three Business Days after notice in writing has been given to the Issuer by the Trustee or to the Issuer and to the Trustee by the holders of not less than 25% of the principal amount of the Notes;
- (b) if the Issuer defaults in the due and punctual payment of any instalment of interest on any Note when due and any such default shall have continued for a period of 30 days;
- (c) if the Issuer defaults in the performance or observance of any other covenant, agreement or condition in this Indenture, any Terms Schedule, Global Note, Definitive Note or any Supplemental Indenture or in the Notes and, after written notice to the Issuer by the Trustee specifying such default and requiring it to be remedied and stating that such a notice is a “**Notice of Default**” under this Indenture, which Notice of Default may be given by the Trustee, in its discretion, and shall be given by the Trustee upon receipt of written notice by the Issuer and by the Trustee from the Holders of not less than 25% in aggregate principal amount of Notes at the time outstanding (except that in respect of such notice, Notes not entitled to the benefits of such covenant, agreement or condition shall be excluded), the Issuer shall fail to remedy such default within a period of 30 days;
- (d) if the Issuer or any Subsidiary is at any one time in default in respect of any indebtedness for money borrowed on which there is then outstanding a principal amount in excess of \$50,000,000 (when all such Indebtedness in default is aggregated), and either:
 - (i) such default consists of a failure to make any payment of principal when due and such default continues after the applicable grace period, if any, specified in the instrument relating to the Indebtedness or, if there is no grace period, if the default continues for a period of three Business Days; or
 - (ii) such default results in the acceleration of the Indebtedness so that it becomes due and payable prior to its stated maturity,

provided, however, that if such default shall have been remedied or cured by the Issuer or any Subsidiary or waived by the holders of such Indebtedness for money borrowed then, notwithstanding anything to the contrary contained herein, the Event of Default hereunder by reason thereof shall be deemed likewise to have been thereupon remedied, cured or waived without further action upon the part of the Trustee or any of the Noteholders;

- (e) if the Issuer or a Material Subsidiary makes an assignment for the benefit of creditors, or files a petition in bankruptcy, or if the Issuer or a Material Subsidiary be adjudicated insolvent or bankrupt, or petitions or applies to any court having jurisdiction in the premises for the appointment of a receiver, trustee, liquidator or sequestrator or a receiver and manager or any other officer with similar powers shall be appointed, or an encumbrancer takes possession of the Property of the Issuer or a Material Subsidiary or any substantial part thereof, and any such decree or order continues unstayed and in effect for a period of 60 days; or
- (f) if a resolution be passed for the dissolution, winding up or liquidation of the Issuer or a Material Subsidiary, except in the course of carrying out or pursuant to a transaction in respect of which the conditions of this Indenture are duly observed and performed, or if the Issuer or a Material Subsidiary institutes proceedings to be adjudicated bankrupt or insolvent, or consents to the institution of bankruptcy or insolvency proceedings against it under the *Bankruptcy and Insolvency Act* (Canada) or the *Companies' Creditors Arrangement Act* (Canada) or any other laws or statutes of any jurisdiction relating to bankruptcy, insolvency, reorganization, arrangement, adjustment of debt, dissolution, liquidation, winding-up or compromise or moratorium of debt or analogous laws, or consents to the filing of any petition under any such laws or to the appointment of a receiver of the Property or any substantial part of the Property of the Issuer or a Material Subsidiary or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they become due or declares a moratorium on the payment of creditors generally, or is adjudicated insolvent or bankrupt or takes any corporate action in furtherance of any of the aforesaid purposes.

7.2 Notice of Event of Default

If an Event of Default shall occur and is continuing, the Trustee shall, within 45 days after it receives written notice of the occurrence of such Event of Default, give notice of such Event of Default to the Noteholders in the manner provided in Section 11.2 provided that, notwithstanding the foregoing, unless the Trustee shall have been requested in writing to do so by the holders of at least 25% of the principal amount of Notes then outstanding, the Trustee shall not be required to give such notice if the Trustee in good faith shall have decided that the withholding of such notice is in the best interests of the Noteholders and shall have so advised the Issuer in writing.

7.3 Acceleration on Default

Subject to Section 7.4, if an Event of Default has occurred, the Trustee may in its discretion and shall, upon prior funding and indemnity and receipt of a requisition in writing made by Holders of at least 25% in aggregate principal amount of the Notes then outstanding, or if the Event of Default shall be made only in respect of one or more Series of the Notes then outstanding, then the Trustee may in its discretion and shall, upon prior funding and indemnity and receipt of a requisition in writing of the holders of at least 25% in principal amount of the Notes of such Series then outstanding, declare the principal of and interest accrued on all the Notes, and all other amounts, if any, owing under the provisions of this Indenture, to be due and payable to the Trustee on demand, and the same shall forthwith become immediately due and payable to the Trustee on demand, anything therein or herein contained to the contrary notwithstanding, and the Issuer shall, on such demand, forthwith pay to the Trustee, for the benefit of the Noteholders, the principal (and, where such a declaration is based upon a voluntary winding-up or liquidation of the Issuer, the Premium, if any, on the Notes then outstanding which would have been payable upon the redemption thereof by the Issuer, other than through sinking fund operations, on the date of such declaration) and unpaid interest, if any, then accrued upon all such Notes (including interest on amounts in default), and all other amounts owing under the provisions of this Indenture, together with interest at the respective rates borne by the Notes from the date of such declaration to the date payment is received by the Trustee, subject to such funds necessary to pay such amounts being available in a sinking fund, if any, in respect of the Notes, in which case the Trustee will first have recourse to payment of such amounts from any such sinking fund prior to making demand for payment from the Issuer and will only seek demand for payment from the Issuer once all funds in such sinking fund are exhausted. Such payments, when received, shall be deemed to have been in discharge of the Issuer's obligations under this Indenture and any amounts so received by the Trustee shall be applied in the manner specified in Section 7.7.

7.4 Waiver of Default

If an Event of Default has occurred otherwise than by default in payment of the principal amount at the Maturity Date:

- (a) the Holders of the Notes then outstanding shall have power by Extraordinary Resolution pursuant to Section 10.11 to require the Trustee to waive the Event of Default or to cancel any declaration or demand made by the Trustee and the Trustee shall thereupon waive the Event of Default or cancel such declaration or demand upon such terms and conditions as such resolution shall prescribe; provided that, notwithstanding the foregoing, if the Event of Default has occurred by reason of the non-observance or non-performance by the Issuer of any covenant applicable only to one or more particular Series of Notes, then the Noteholders of the outstanding Notes of that Series or those Series, as the case may be, shall be entitled by Extraordinary Resolution (or by separate Extraordinary Resolutions if more than one Series of Notes is so affected) to exercise the foregoing power as if the Notes of that Series or those Series, as the case may be, were the only Notes outstanding hereunder and the Trustee shall so

act and it shall not be necessary to obtain a waiver from the Noteholders of any other Series of Notes; and

- (b) the Trustee, so long as it has not become bound to institute any proceedings hereunder, shall have power to waive the default as the Trustee shall determine, in its discretion, if, in the Trustee's opinion, the same shall have been cured or adequate satisfaction made therefor, and in such event to cancel any such declaration or demand theretofore made by the Trustee in the exercise of its discretion, upon such terms and conditions as the Trustee may deem advisable.

No delay or omission of the Trustee or of the Noteholders in exercising any right or power accruing upon the occurrence of an Event of Default shall impair any such right or power or shall be construed to be a waiver of such Event of Default or acquiescence therein, and no act or omission of the Trustee or of the Noteholders shall extend to or be taken in any manner whatsoever to affect any subsequent Event of Default or the rights resulting therefrom. Every right and remedy given by this Article 7 or by applicable law to the Trustee or to the Holders of Notes may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders of Notes, as the case may be.

7.5 Enforcement by the Trustee

Upon the occurrence of an Event of Default, the Trustee shall exercise the rights and powers vested in it under this Indenture.

Upon the occurrence of an Event of Default and subject to the provisions of Section 7.4 and to the provisions of any Extraordinary Resolution, if the Issuer fails to pay to the Trustee, forthwith after the same shall have been declared to be due and payable under Section 7.3, the principal, interest and Premium on all Notes then outstanding together with any other amounts due hereunder, the Trustee may in its discretion and shall, upon receipt of a Noteholders' Request and upon being sufficiently funded and indemnified to its reasonable satisfaction against all costs, expenses and liabilities to be incurred, proceed in its own name on behalf of all the Holders of Notes and as the power of attorney of the Holders of the Notes to obtain or enforce payment of such principal of and Premium and interest on all the Notes then outstanding together with any other amounts due hereunder by such proceedings authorized by this Indenture or by law or equity as the Trustee in such request has been directed to take, or if such request contains no such direction, then by such proceedings authorized by this Indenture or by suit at law or in equity as the Trustee shall deem expedient.

The Trustee shall be entitled and empowered, in its own name on behalf of all the Holders of Notes and as the power of attorney of the Holders of the Notes, to file such proof of debt, amendment of proof of debt, claim, petition or other document as may be necessary or advisable in order to have the claims of the Trustee and of the Holders allowed in any insolvency, bankruptcy, liquidation or other judicial proceedings relative to the Issuer, or its creditors or relative to or affecting their respective Property, irrespective of whether the principal of the Notes shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand on the Issuer for the payment of overdue principal or interest, by intervention in such proceeding or otherwise. The Trustee is

hereby irrevocably appointed (and the successive respective Noteholders by taking and holding Notes shall be conclusively deemed to have so appointed the Trustee), exclusively in relation to any of the aforesaid proceedings, the power of attorney of the respective Holders with authority to make and file in the respective names of the Holders or on behalf of the Holders as a class, subject to deduction from any such claims of the amounts of any claims filed by any of the Holders themselves, any proof of debt, amendment of proof of debt, claim, petition or other document in any such proceedings and to receive payment of any sums becoming distributable on account thereof, and to execute any such other documents and to do and perform any and all such acts and things, for and on behalf of such Holders, as may be necessary or advisable, in the opinion of the Trustee acting on the advice of the Trustee's counsel, in order to have the respective claims of the Trustee and of the Holders against the Issuer or its Property allowed in any such proceeding, and to receive payment of or on account of such claims, provided that nothing contained in this Indenture shall be deemed to give to the Trustee, unless expressly so authorized by Extraordinary Resolution, any right to accept or consent to any plan of reorganization, arrangement, adjustment or otherwise by action of any character in such proceeding to waive or change in any way any right of any Noteholder or to vote in respect of the claim of any Holder in any such proceeding.

The Trustee shall also have power at any time and from time to time to institute and to maintain such suits and proceedings as it may be advised shall be necessary or advisable to preserve and protect its interests and the interests of the Noteholders.

All rights of action and claims hereunder may be prosecuted and enforced by the Trustee without the possession of any of the Notes or the production thereof on the trial or other proceedings relative thereto. Any such suit or proceeding instituted by the Trustee shall be brought in the name of the Trustee on behalf of all the Holders of Notes and as the power of attorney of the Holders of the Notes, and any recovery of judgment shall be for the rateable benefit of the Noteholders subject to the provisions of this Indenture. In any proceeding brought by the Trustee (and also in any proceeding in which a declaratory judgment of a court may be sought as to the interpretation or construction of any provision of this Indenture to which the Trustee shall be a party), the Trustee shall be held to represent all the Noteholders, and it shall not be necessary to make any Noteholders party to any such proceeding.

7.6 Suits by Noteholders

No Holder of any Note shall have the right to institute any action or proceeding or to exercise any other remedy authorized by this Indenture for the purpose of enforcing any rights on behalf of the Noteholders or for the execution of any trust or power hereunder or for the appointment of a liquidator or receiver or for a receiving order under bankruptcy legislation or to have the Issuer wound up or to file or prove a claim in any liquidation or bankruptcy proceedings, unless:

- (a) the Noteholders of such Series, by Extraordinary Resolution or by Noteholders' Request, shall have made a request to the Trustee and the Trustee shall have been afforded 60 days to proceed to exercise the powers conferred upon it or to institute an action, suit or proceeding in its name for such purpose;

- (b) the Noteholders of such Series or any of them shall have furnished to the Trustee, when so requested by the Trustee, sufficient funds and security and a reasonable indemnity satisfactory to the Trustee with respect to the costs, expenses and liabilities to be incurred therein or thereby;
- (c) the Trustee shall have failed to act within 60 days after such notification, request and provision of indemnity; and
- (d) no direction inconsistent with such Extraordinary Resolution or Noteholders' Request has been received by the Trustee from Holders of at least 51% in principal amount of the outstanding Notes of such Series.

In such case, but not otherwise, any Noteholder acting on behalf of such Person and all other Noteholders shall be entitled to take proceedings in any court of competent jurisdiction such as the Trustee might have taken under Section 7.5; but in no event shall any Noteholder or combination of Noteholders have any right to seek any other remedy or institute proceedings out of court. No one or more Noteholders shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture or any Note to affect, disturb or prejudice the rights of any other Holder of Notes, or to obtain or to seek to obtain priority or preference over any other such Holder or to enforce any right under this Indenture or under any Note, except in accordance with the conditions and in the manner provided in this Indenture and for the equal and rateable benefit of all the Holders of the Notes.

7.7 Application of Money

Except as herein otherwise expressly provided, any money received by the Trustee or a Noteholder pursuant to the provisions of this Article 7 or as a result of legal or other proceedings against the Issuer pursuant hereto, or from any trustee in bankruptcy or liquidator of the Issuer, shall be applied, together with other money available to the Trustee for such purpose, as follows:

- (a) first, in payment or in reimbursement to the Trustee of its fee, costs, charges, expenses, borrowings, disbursements, advances or other amounts furnished or provided by or at the request of the Trustee in or about the administration and execution of its trusts under, or otherwise in relation to, this Indenture, with interest thereon as herein provided;
- (b) second, subject to the provisions of Section 6.3 and this Section 7.7, in payment of the principal of and Premium and accrued and unpaid interest and interest on amounts in default on the Notes which shall then be outstanding in the priority of principal first and then Premium and then accrued and unpaid interest and interest on amounts in default unless otherwise directed by an Extraordinary Resolution, and in that case in such order or priority as between principal, Premium and interest as may be directed by such resolution; and
- (c) third, in payment of the surplus, if any, of such money to the Issuer or its assigns;

provided, however, that no payment shall be made pursuant to Section 7.7(b) in respect of the principal of or Premium or interest on any Note which the Trustee knows is held, directly or

indirectly, by or for the benefit of the Issuer or any Affiliate of the Issuer (other than any Note pledged for value and in good faith to a Person other than the Issuer or any Affiliate of the Issuer, but only to the extent of such Person's interest therein) until the prior payment in full of the principal of and Premium and interest on all Notes which are not so held.

7.8 Distribution of Proceeds

Payment to Noteholders pursuant to Section 7.7(b) shall be made as follows:

- (a) at least 15 days' notice of every such payment shall be given in the manner provided in Article 11, specifying the time and place or places where the Notes are to be presented and the amount of the payment and the application thereof as between principal, interest and Premium;
- (b) payment in respect of any Note shall be made upon presentation thereof at any one of the places specified in such notice and any such Note thereby paid in full shall be surrendered, otherwise a memorandum of such payment shall be endorsed thereon; but the Trustee may in its discretion dispense with presentation and surrender or endorsement in any special case upon such indemnity being given to it and the Issuer as the Trustee shall deem sufficient; and
- (c) from and after the date of payment specified in the notice, interest shall accrue only on the amount owing on each Note after giving credit for the amount of the payment specified in such notice unless it be duly presented on or after the date so specified and payment of such amount has not been made.

7.9 Immunity of Shareholders, Directors and Officers

The Noteholders and the Trustee hereby waive and release any right, cause of action or remedy now or hereafter existing in any jurisdiction against any past, present or future incorporator, shareholder, director or officer of the Issuer or of any Successor for the payment of the principal of or Premium or interest on any of the Notes or on any covenant, agreement, representation or warranty by the Issuer herein or in the Notes.

7.10 Remedies Cumulative

No remedy herein conferred upon or reserved to the Trustee or upon or to the Noteholders is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now existing or hereafter to exist by law. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

7.11 Restoration of Rights and Remedies

If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture or under any Note and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder then and in

every such case the Issuer, the Trustee and the Holders shall, subject to any determination in such proceeding, be restored jointly (severally) and respectively to their former positions hereunder.

ARTICLE 8 CANCELLATION, DISCHARGE AND DEFEASANCE

8.1 Cancellation and Destruction

All Notes surrendered to the Issuer, a Registrar or a Paying Agent for any purpose shall be delivered to the Trustee forthwith. Each such Note and each Note surrendered to the Trustee shall be cancelled by the Trustee forthwith after all payments required in respect thereof to the date of surrender have been made. Subject to applicable law, all Notes cancelled or required to be cancelled under this or any other provision of this Indenture shall be destroyed by the Trustee in accordance with the Trustee's ordinary practice when requested in writing, and the Trustee shall furnish to the Issuer a cancellation or destruction certificate in respect of the Notes so cancelled or destroyed.

8.2 Non-Presentation of Notes

If a Noteholder shall fail to present a Note for payment prior to or on the date on which the principal, interest and Premium thereon or represented thereby becomes payable either on the Maturity Date or on redemption, purchase or otherwise, either:

- (a) (i) the Issuer shall be entitled to pay to the Trustee and direct it to set aside for payment as described above; and (ii) in respect of money in the hands of the Trustee that may or should be applied to the payment or redemption of the Notes, the Issuer shall be entitled to direct the Trustee to set aside the principal, interest and Premium, as the case may be, in trust to be paid to such Noteholder upon due presentation or surrender thereof in accordance with the provisions of this Indenture; or
- (b) the Issuer may otherwise make provision in form satisfactory to the Trustee in its reasonable discretion for the payment of such amounts,

and thereupon the principal, interest and Premium payable on or represented by each Note in respect whereof such amounts have been set aside shall be deemed to have been paid and the Noteholder thereof shall thereafter have no right in respect thereof except that of receiving payment of such amounts so set aside by the Trustee (without interest on such money, any such interest being the Property of the Issuer) or provided for by the Issuer upon due presentation and surrender thereof, subject always to the provisions of Section 8.4.

8.3 Paying Agent and Trustee to Repay Monies Held

Upon the satisfaction and discharge of this Indenture all money then held by any Paying Agent of the Notes (other than the Trustee) shall, upon demand by the Issuer, be repaid to it or paid to the Trustee, and thereupon such Paying Agent shall be released from all further liability with respect to such monies. Upon satisfaction and discharge of this Indenture all money then

held by the Trustee in respect of the Notes shall, upon demand by the Issuer, be repaid to it, and thereupon the Trustee shall be released from all further liability with respect to such monies.

8.4 Repayment of Unclaimed Monies to the Issuer

Subject to applicable law, any monies set aside under Section 8.2 in respect of any Note and not claimed by and paid to the Noteholder thereof, as provided in Section 8.2, within six years after the date of such setting aside, shall be repaid to the Issuer by the Trustee, and thereupon the Trustee shall be released from all further liability with respect to such money, and thereafter, such Noteholder shall have no rights in respect of such Note except to obtain payment of such money (without interest thereon) from the Issuer.

8.5 Discharge

Upon proof being given to the Trustee that the principal, interest and Premium on all of the Notes (including interest on amounts in default) and other amounts payable hereunder have been paid or satisfied, or that all of the outstanding Notes have matured or have been duly called for redemption, or the Trustee having been given irrevocable instructions by the Issuer to publish within 90 days of receipt of such instructions a notice of redemption of all the outstanding Notes, such payment or redemption has been duly and effectually provided for by payment to the Trustee or otherwise, and upon payment of all costs, charges and expenses properly incurred by the Trustee under this Indenture, or upon provision satisfactory to the Trustee being made therefor, the Trustee shall, at the request and at the expense of the Issuer, execute and deliver to the Issuer such deeds or other instruments as shall be advised by Counsel are required to evidence the satisfaction and discharge of this Indenture and to release the Issuer from its covenants herein contained.

8.6 Defeasance

The Issuer shall have the right (the “**defeasance option**”) to be released from the terms of this Indenture relating to the outstanding Notes of a Series specified by the Issuer in a written notice to the Trustee, and upon receipt of such notice the Trustee shall, at the request and expense of the Issuer, execute and deliver to the Issuer such deeds and other instruments as shall be necessary to release the Issuer from the terms of this Indenture relating to the Notes of the Series specified in such notice, subject to the following:

- (a) the Issuer shall have delivered to the Trustee evidence that the Issuer has:
 - (i) deposited sufficient funds for payment of all principal, interest and Premium and other amounts due or to become due on the Notes of such Series to the Stated Maturity thereof;
 - (ii) deposited funds or made provision for the payment of all remuneration and expenses of the Trustee as provided for hereunder to carry out its duties under this Indenture in respect of the Notes of such Series; and
 - (iii) deposited funds for the payment of taxes arising with respect to all deposited funds or other provision for payment in respect of the Notes of

such Series in each case irrevocably, pursuant to the terms of a trust agreement in form and substance satisfactory to the Issuer and the Trustee, provided that any such taxes are solely a result of the Issuer exercising the defeasance option;

- (b) no Event of Default shall result from the Issuer's exercise of the defeasance option;
- (c) such release does not result in a breach or violation of, or constitute a default under, any material agreement or instrument to which the Issuer is a party or by which the Issuer is bound;
- (d) the Issuer shall have delivered to the Trustee an Officer's Certificate stating that the deposit referred to in Section 8.6(a) was not made by the Issuer with the intent of preferring the Noteholders over the other creditors of the Issuer or with the intent of defeating, hindering, delaying or defrauding creditors of the Issuer or others; and
- (e) the Issuer shall have delivered to the Trustee an Officer's Certificate and an opinion of Counsel as required pursuant to Sections 12.13 and 12.14 stating that all conditions precedent provided for or relating to the exercise of such defeasance option have been complied with, and stating that all conditions precedent herein provided relating to the payment, satisfaction and discharge of all such Notes, have been complied with.

The Issuer shall be deemed to have made due provision for the depositing of funds if it deposits or causes to be deposited with the Trustee under the terms of an irrevocable trust agreement in form and substance satisfactory to the Issuer and the Trustee (each acting reasonably), solely for the benefit of the Noteholders, money or Securities denominated in the currency in which principal is payable constituting direct obligations of Canada or an agency or instrumentality of Canada or a province of Canada whose securities are rated at least AA(low) by DBRS or AA- by S&P or Authorized Investments, as directed by Issuer, which will be sufficient, in the opinion of a firm of independent chartered accountants or an investment dealer acting reasonably and acceptable to the Issuer and the Trustee, to provide for payment in full of the Notes and all other amounts from time to time due and owing under this Indenture which pertain to the Notes.

The Trustee shall hold in trust all money or Securities deposited with it pursuant to this Section 8.6 and shall apply the deposited money and the money derived from such Securities in accordance with this Indenture to the payment of principal, interest and Premium on the Notes and, as applicable, other amounts.

If the Trustee is unable to apply any money or Securities in accordance with this Section 8.6 by reason of any legal proceeding or any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Issuer's obligations under this Indenture and the Notes shall be revived and reinstated as though no money or Securities had been deposited pursuant to this Section 8.6 until such time as the

Trustee is permitted to apply all such money or Securities in accordance with this Section 8.6, provided that if the Issuer has made any payment in respect of principal, interest or Premium on Notes or, as applicable, other amounts because of the reinstatement of its obligations, the Issuer shall be subrogated to the rights of the Noteholders to receive such payment from the money or Securities held by the Trustee.

ARTICLE 9 SUCCESSORS

9.1 Requirements for Successors

So long as any Notes issued under the Trust Indenture remain outstanding, the Issuer will not enter into any transaction (each, a “**Successor Transaction**”) in which all or substantially all of the aggregate Property of the Issuer and the Subsidiaries, considered as a whole, would become the property of any other Person (any such Person being referred to herein as a “**Successor**”), whether by way of reorganization, consolidation, amalgamation, arrangement, merger, transfer, sale or otherwise, unless:

- (a) the Issuer or a Subsidiary, as the case may be, shall be the Successor; or
- (b) the Successor formed by the reorganization, consolidation, amalgamation, or arrangement or into which the Issuer is merged or that acquires by disposition all or substantially all of the Property of the Issuer and the Subsidiaries, considered as a whole, is a Third Party that is organized and validly existing under the federal laws of Canada or any of its provinces or territories and expressly assumes, by a supplemental indenture executed and delivered to the Trustee in form satisfactory to the Trustee, all of the obligations under the Trust Indenture of the Issuer; and
- (c) immediately before and after giving effect to the transaction contemplated in (a) or (b) above, (i) no Default or Event of Default shall have occurred and be continuing, and (ii) the Trustee shall be satisfied that the transaction is on terms which substantially preserve and do not impair in any material respects any of the rights and powers of the Trustee or the Holders of the Notes under the Trust Indenture, based on the opinion of Counsel.

Upon satisfaction of the foregoing, and receipt by the Trustee of an Officer’s Certificate and an opinion of Counsel with respect to the matters described in paragraph (a), (b) or (c) above and confirming that such Successor Transaction and Supplemental Indenture complies with this Article, and that all conditions precedent herein provided for relating to such Successor Transaction have been complied with, with such opinion of Counsel also confirming, pursuant to Section 10.11(c), if applicable, that the provision of Section 10.11(c) has been met providing for no Extraordinary Resolution to sanction the Successor Transaction, the Trustee shall facilitate the same in all respects, and may give such consents and sign, execute or join in such documents and do such acts which it may be advised by Counsel is or are necessary in order that such reorganization, consolidation, amalgamation, arrangement, merger, transfer, sale or other similar transaction may be carried out, and thereupon the Issuer may be released and discharged from liability under this Indenture and the Trustee may also execute any document or documents

which it may be advised is or are necessary or advisable for effecting or evidencing such release and discharge and the opinion of Counsel as hereinafter mentioned shall be full warrant and authority to the Trustee for so doing. As a condition precedent to any reorganization, consolidation, amalgamation, arrangement, merger, transfer, sale or other similar transaction proposed to be carried out pursuant to this Section 9.1, the Issuer shall furnish to the Trustee an opinion of Counsel, in form and substance satisfactory to the Trustee, as to the legality of any action proposed to be taken under applicable law, and as to the validity of any action taken pursuant to the provisions contained in this Section 9.1, and the Trustee shall incur no liability by reason of reliance thereon.

9.2 Vesting of Powers in Successor

Whenever the conditions of Section 9.1 have been duly observed and performed, the Successor shall possess and from time to time may exercise each and every right and power of the Issuer under this Indenture, in the name of the Issuer or otherwise, and any act or proceeding required by any provision of this Indenture to be done or performed by any Directors or officers of the Issuer may be done and performed with like force and effect by the directors or officers of the Successor.

ARTICLE 10 MEETINGS OF NOTEHOLDERS

10.1 Right to Convene Meetings

The Trustee or the Issuer may at any time and from time to time convene a meeting of Noteholders, and the Trustee shall convene a meeting of Noteholders upon receipt of a request of the Issuer or a Noteholders' Request and upon receiving funding and being indemnified to its reasonable satisfaction by the Issuer or by the Noteholders signing such request against the reasonable costs which may be incurred in connection with the calling and holding of such meeting. If the Trustee fails within 30 days after receipt of any such request and such indemnity to give notice convening a meeting, the Issuer or such Noteholders, as the case may be, may convene such meeting. Every such meeting shall be held in Vancouver, British Columbia, or at such other place as may be approved or determined by the Trustee, the Issuer or the Noteholders, as applicable, as convened in accordance with this Section 10.1.

10.2 Notices of Meetings

Notice of a meeting of Noteholders shall be given to the Noteholders in the manner specified in Section 11.2 at least 21 days prior to the date of the meeting, and a copy of any notice sent by mail to Noteholders shall be sent by mail to the Trustee (unless the meeting has been called by it) and to the Issuer (unless the meeting has been called by it). A notice of a meeting of Noteholders shall state the time and place at which the meeting is to be held and shall state briefly the general nature of the business to be transacted thereat, but it shall not be necessary for any such notice to set out the terms of any resolution to be proposed or any of the provisions of this Article 10.

10.3 Chairman

The Noteholders present in person or represented by proxy shall choose an individual present to be the Chairman of the meeting who need not be a Noteholder.

10.4 Quorum

Subject to the provisions of Section 10.13, the quorum for a meeting of Noteholders shall be Noteholders present in person or represented by proxy and owning or representing at least 50% of the aggregate principal amount of the Notes then outstanding. If a quorum is not present within 30 minutes from the time fixed for the holding of a meeting, the meeting, if convened by the Noteholders, shall be dissolved, but in any other case the meeting shall be adjourned to the same day in the next week (unless such day is not a Business Day, in which case it shall be adjourned to the next following Business Day thereafter) at the same time and place, and no notice shall be required to be given in respect of such adjourned meeting. At the adjourned meeting, subject, in the case of an Extraordinary Resolution, to Section 10.13, the Noteholders present in person or represented by proxy shall constitute a quorum and may transact the business for which the meeting was originally convened notwithstanding that they may not represent at least 50% of the aggregate principal amount of the Notes then outstanding.

10.5 Power to Adjourn

The Chairman of a meeting at which a quorum of Noteholders is present may, with the consent of the Holders of a majority of the aggregate principal amount of the Notes present or represented by proxy thereat, adjourn such meeting, and no notice of such adjournment need be given except such notice, if any, as the meeting may prescribe.

10.6 Show of Hands

Except as otherwise provided in this Indenture, every resolution submitted to a meeting shall be decided by a majority of the votes cast on a show of hands, and unless a poll is duly demanded as herein provided, a declaration by the Chairman that a resolution has been carried or carried unanimously or by a particular majority or lost or not carried by a particular majority shall be conclusive evidence of the fact. The Chairman of any meeting shall be entitled, both on a show of hands and on a poll, to vote in respect of the Notes, if any, held by them.

10.7 Poll

On every resolution proposed to be passed as an Extraordinary Resolution and on any other resolution submitted to a meeting in respect of which the Chairman of the meeting or one or more Noteholders or proxyholders for Noteholders holding at least \$10,000 principal amount of Notes after a vote by show of hands, demands a poll, a poll shall be taken in such manner and either at once or after an adjournment as the Chairman of the meeting shall direct.

10.8 Voting

On a show of hands, every Person who is present and entitled to vote, whether as a Noteholder or as proxyholder for one or more Noteholders or both, shall have one vote. On a

poll, each Noteholder present in person or represented by a proxyholder duly appointed by an instrument in writing shall be entitled to one vote in respect of each \$1.00 principal amount of Notes held by such Noteholder on the record date fixed for the meeting. A proxyholder need not be a Noteholder. In the case of joint Holders of a Note, any one of them present in person or represented by proxy at the meeting may vote in the absence of the other or others, but if more than one of them is present in person or represented by proxy, they shall vote together in respect of the Notes of which they are joint Holders.

In the case of a Global Note, the Depository may appoint or cause to be appointed a Person or Persons as proxies and shall designate the number of votes entitled to be cast by each such Person, and each such Person shall be entitled to be present at any meeting of Noteholders and shall be the Persons entitled to vote at such meeting in accordance with the number of votes set out in the Depository's designation.

10.9 Regulations

The Trustee, or the Issuer with the approval of the Trustee, may from time to time make and from time to time vary such regulations as it shall from time to time think fit providing for or governing the following:

- (a) voting by proxy by Noteholders, the form of the instrument appointing a proxyholder (which shall be in writing) and the manner in which it may be executed, and the authority to be provided by any Person signing a proxy on behalf of a Noteholder;
- (b) the deposit of instruments appointing proxyholders at such place as the Trustee, the Issuer or the Noteholders convening the meeting, as the case may be, may, in the notice convening the meeting, direct and the time, if any, before the holding of the meeting or any adjournment thereof by which the same shall be deposited;
- (c) the deposit of instruments appointing proxyholders at an approved place or places other than the place at which the meeting is to be held and enabling particulars of such instruments appointing proxyholders to be provided before the meeting to the Issuer or to the Trustee at the place at which the meeting is to be held and for the voting of proxies so deposited as though the instruments themselves were produced at the meeting; and
- (d) generally for the calling of a meeting of Noteholders and the conduct of business thereat.

Any regulations so made shall be binding and effective and the votes given in accordance therewith shall be valid and shall be counted. Except as such regulations may provide, the only Persons who shall be recognized at a meeting as the Holders of any Notes, or as entitled to vote or be present at the meeting in respect thereof, shall be registered Noteholders and Persons whom registered Noteholders have by instrument in writing duly appointed as their proxyholders.

10.10 Issuer and Trustee May Be Represented

The Issuer and the Trustee, by their respective officers, directors and employees, and the legal advisers of the Issuer and the Trustee may attend any meeting of the Noteholders, but shall have no voting rights in such capacities.

10.11 Powers Exercisable by Noteholders by Extraordinary Resolution

In addition to all other powers conferred upon the Noteholders by any other provision of this Indenture, the following powers of the Noteholders shall be exercisable from time to time only by Extraordinary Resolution:

- (a) power to sanction any modification, abrogation, alteration, compromise or arrangement of the rights of the Noteholders or any of them or the Trustee (with its consent) against the Issuer or against its Property;
- (b) power to assent to any modification of or change in or addition to or omission from the provisions contained in this Indenture which shall be agreed to by the Issuer in writing and to authorize the Trustee to concur in and execute any Supplemental Indenture embodying any modification, change, addition or omission;
- (c) power to sanction any scheme for the reconstruction or reorganization of the Issuer or for the consolidation, amalgamation, arrangement or merger of the Issuer with or into any other Person or for the sale, leasing, transfer or other disposition of the business and Property of the Issuer or any part thereof, provided that no such sanction shall be necessary in respect of any transaction which is not subject to the restriction with respect to Successor Transactions in Section 9.1 or which is subject to such restriction with respect to Successor Transactions and is completed in compliance with the provisions of Section 9.1 as confirmed by an opinion of Counsel;
- (d) power to direct or authorize the Trustee to exercise any power, right, remedy or authority given to it by this Indenture or the Notes in any manner specified in any such Extraordinary Resolution or to refrain from exercising any such power, right, remedy or authority;
- (e) pursuant to Section 7.4, power to waive and direct the Trustee to waive any Event of Default and to cancel any declaration made by the Trustee either unconditionally or upon any condition specified in such Extraordinary Resolution;
- (f) power to restrain any Noteholder from taking or instituting any suit, action or proceeding for the purpose of enforcing payment of the principal of or interest or Premium on any Notes or for the purpose of executing any trust or power hereunder or for the appointment of a liquidator or a receiver or a trustee in bankruptcy or for any other remedy hereunder;

- (g) power to direct any Noteholder who, as such, has brought any action, suit or proceeding to stay or discontinue or otherwise deal with the same upon payment, if the taking of such suit, action or proceeding shall have been permitted by Section 7.6, of the costs, charges and expenses reasonably and properly incurred by such Noteholder in connection therewith;
- (h) power to assent to any compromise or arrangement with any creditor or creditors or any class or classes of creditors, whether secured or otherwise, and with holders of any shares or other Securities of the Issuer;
- (i) power to amend, alter or repeal any Extraordinary Resolution previously passed or sanctioned by the Noteholders; and
- (j) power to appoint and remove a committee with power and authority (subject to such limitations, if any, as may be prescribed in the resolution) to exercise, and to direct the Trustee to exercise, on behalf of the Noteholders, such of the powers of the Noteholders as are exercisable by Extraordinary Resolution or otherwise as shall be included in the resolution appointing the committee. The resolution making such appointment may provide for payment of the expenses and disbursements of and compensation to such committee and the Trustee. Such committee shall consist of such number of individuals as shall be prescribed in the Extraordinary Resolution appointing it and the members need not be Noteholders. Subject to the Extraordinary Resolution appointing it, every such committee may elect its Chairman and may make regulations respecting its quorum, the calling of its meetings, the filling of vacancies occurring in its number and its procedure generally. Such regulations may provide that the committee may act at a meeting at which a quorum is present or may act by minutes signed by the number of members thereof necessary to constitute a quorum. All acts of any such committee within the authority delegated to it shall be binding upon all Noteholders.

Except as otherwise provided in this Indenture, all other powers of and matters to be determined by the Noteholders may be exercised or determined from time to time by Ordinary Resolution.

10.12 Meaning of Ordinary Resolution

The expression “**Ordinary Resolution**” when used in this Indenture means, except as otherwise provided in this Indenture, a resolution proposed to be passed as an ordinary resolution at a meeting of Noteholders duly convened for the purpose and held in accordance with the provisions of this Article 10 at which a quorum of the Noteholders is present and passed by the affirmative votes of Noteholders present in person or represented by proxy at the meeting who hold more than 50% of the aggregate principal amount of the Notes voted in respect of such resolution.

10.13 Meaning of Extraordinary Resolution

The expression “**Extraordinary Resolution**” when used in this Indenture means, except as otherwise provided in this Indenture, a resolution proposed to be passed as an extraordinary

resolution at a meeting of Noteholders duly convened for the purpose and held in accordance with the provisions of this Article 10 at which the Holders of at least 50% of the aggregate principal amount of the Notes then outstanding are present in person or represented by proxy and passed by the affirmative votes of Noteholders present in person or represented by proxy at the meeting who hold not less than 66 2/3% of the aggregate principal amount of the Notes voted in respect of such resolution.

If, at any such meeting, the Holders of at least 50% of the aggregate principal amount of the Notes then outstanding are not present in person or represented by proxy within 30 minutes after the time appointed for the meeting, then the meeting, if convened by or on the requisition of Noteholders, shall be dissolved, but in any other case the meeting shall stand adjourned to such date, being not less than 21 nor more than 60 days thereafter, and to such place and time as may be appointed by the Chairman of the meeting. Notice of the time and place of such adjourned meeting shall be given to the Noteholders in the manner specified in Section 11.2 at least 10 days prior to the date of the adjourned meeting. Such notice shall state that at the adjourned meeting the Noteholders present in person or represented by proxy shall constitute a quorum, but it shall not be necessary to set forth the purposes for which the meeting was originally called or any other particulars. At the adjourned meeting, the Noteholders present in person or represented by proxy shall constitute a quorum and may transact the business for which the meeting was originally convened, and a resolution proposed to be passed as an Extraordinary Resolution at such adjourned meeting and passed by the requisite vote as provided in this Section 10.13 shall be an Extraordinary Resolution within the meaning of this Indenture, notwithstanding that the Holders of at least 50% of the aggregate principal amount of the Notes then outstanding are not present in person or represented by proxy at such adjourned meeting.

10.14 Powers Cumulative

Any one or more of the powers or any combination of the powers in this Indenture stated to be exercisable by the Noteholders or Issuer may be exercised from time to time, and the exercise of any one or more of such powers or any combination of powers from time to time shall not be deemed to exhaust the rights of the Noteholders or Issuer to exercise the same or any other such power or powers or combination of powers thereafter from time to time. No powers exercisable by the Noteholders or Issuer shall derogate in any way from the rights of the other under or pursuant to this Indenture or any Notes.

10.15 Minutes

Minutes of all resolutions and proceedings at every meeting of Noteholders shall be made and duly entered in books to be provided from time to time for that purpose by the Trustee, and any such minutes, if signed by the Chairman of the meeting at which such resolutions were passed or proceedings had, or by the Chairman of the next succeeding meeting of the Noteholders, shall be *prima facie* evidence of the matters therein stated and, unless the contrary is proved, every such meeting, in respect of the proceedings of which minutes shall have been made, shall be deemed to have been duly held and convened, and all resolutions passed thereat or proceedings had shall be deemed to have been duly passed and had.

10.16 Instruments in Writing

All actions that may be taken and all powers that may be exercised by the Noteholders at a meeting held as provided in this Article 10 may also be taken and exercised by an instrument in writing signed in one or more counterparts by the Holders of more than 50%, in the case of an Ordinary Resolution, or not less than 66 2/3%, in the case of an Extraordinary Resolution, of the aggregate principal amount of the outstanding Notes, and the expressions “**Ordinary Resolution**” and “**Extraordinary Resolution**” when used in this Indenture shall include any instrument so signed.

10.17 Binding Effect of Resolutions

Subject to Section 10.18, every resolution passed in accordance with the provisions of this Article 10 at a meeting of Noteholders shall be binding upon all the Noteholders, whether present at or absent from such meeting, and every instrument in writing signed by Noteholders in accordance with Section 10.16 shall be binding upon all the Noteholders, whether signatories thereto or not, and each and every Noteholder and the Trustee (subject to the provisions for its remuneration, indemnification and protection herein contained) shall be bound to give effect accordingly to every such resolution and instrument in writing.

10.18 Serial Meetings

If any business to be transacted at a meeting of Noteholders or any action to be taken or power to be exercised by instrument in writing pursuant to Section 10.16 especially affects the rights of the Noteholders of one or more Series in a manner or to an extent substantially differing from that in which it affects the rights of the Noteholders of any other Series (as to which an opinion of Counsel shall be binding on the Issuer, Trustee and Noteholder), then:

- (a) in the case of a serial meeting, reference to such fact, indicating the Notes of each Series so especially affected, shall be made in the notice of such meeting and the meeting shall be and is herein called a “**serial meeting**”; and
- (b) in the case of a serial meeting, the Noteholders of a Series so especially affected shall not be bound by any action taken or power exercised at a serial meeting unless, in addition to the other provisions of this Article 10,
 - (i) there are present in person or represented by proxy at such meeting Holders of at least 50% (in the case of an Ordinary Resolution or Extraordinary Resolution) of the aggregate principal amount of the Notes of such Series then outstanding, subject to the provisions of this Article 10 as to adjourned meetings, and
 - (ii) the resolution is passed by the favourable votes of the Holders of more than 50% (or, in the case of an Extraordinary Resolution, not less than 66 2/3%) of the aggregate principal amount of Notes of such Series voted on the resolution; or

- (c) in the case of a serial meeting, the Holders of Notes of a Series so especially affected shall not be bound by any action taken or power exercised by instrument in writing under Section 10.16 unless, in addition to the other provisions of this Article 10, such instrument is signed in one or more counterparts by the Holders of more than 50%, in the case of an Ordinary Resolution, or not less than 66 2/3%, in the case of an Extraordinary Resolution, of the aggregate principal amount of the Notes of such Series then outstanding.

Notwithstanding anything herein contained, any covenant or other provision contained herein that is expressed to be effective only so long as any Notes of a particular Series remain outstanding may be modified by the required resolution or consent of the Holders of such Series in the same manner as if the Notes of such Series were the only Notes outstanding hereunder. In addition, if any business to be transacted at any meeting or any action to be taken or power to be exercised by instrument in writing does not adversely affect the rights of the Noteholders of one or more particular Series, the provisions of this Article 10 shall apply as if the Notes of such Series were not outstanding and no notice of any such meeting need be given to the Noteholders of such Series.

10.19 Record Dates

If the Issuer shall solicit from the Holders any request, demand, authorization, direction, notice, consent, waiver or other action, the Issuer may, at its option, by or pursuant to a Certified Resolution, fix in advance a record date for the determination of such Holders entitled to provide such request, demand, authorization, direction, notice, consent, waiver or other action, but the Issuer shall have no obligation to do so. Any such record date shall be the record date specified in or pursuant to such Certified Resolution.

If such a record date is fixed, such request, demand, authorization, direction, notice, consent, waiver or other action may be given before or after such record date, but only the Holders of record at the close of business on such record date shall be deemed to be Holders for the purposes of determining whether Holders of the requisite proportion of Notes then outstanding have authorized or agreed or consented to such request, demand, authorization, direction, notice, consent, waiver or other act, and for this purpose the Notes then outstanding shall be computed as of such record date.

10.20 Expenses of Trustee

When the Trustee incurs expenses or renders services after an Event of Default specified in Section 7.1(e) or (f) occurs, the expenses and the compensation for the services (including the fees and expenses of its agents and counsel) are intended to constitute expenses of administration under the *Bankruptcy and Insolvency Act* (Canada) or the *Companies' Creditors Arrangement Act* (Canada) or any other law or statute of any jurisdiction relating to bankruptcy, insolvency, reorganization, arrangement, adjustment of debt, dissolution, liquidation, winding-up or compromise or moratorium of debt or analogous law.

ARTICLE 11 NOTICES

11.1 Notice to the Issuer

Any notice to the Issuer under the provisions hereof shall be valid and effective if delivered to the Chief Financial Officer of the Issuer at Suite 1000, 666 Burrard Street, Vancouver, British Columbia, V6C 2X8, or if sent by electronic mail to the attention of the Corporate Secretary at jane.murdoch@finning.com, and shall be deemed to have been validly given at the time of delivery or electronic transmission if it is received prior to 4:00 p.m. (Vancouver time) on a Business Day, failing which it shall be deemed to have been given on the next Business Day. The Issuer may from time to time notify the Trustee of a change in address, electronic mail address or other applicable address of notice which thereafter, until changed by like notice, shall be the address, electronic mail address or other applicable address of notice of the Issuer for all purposes of this Indenture.

11.2 Notice to Noteholders

Unless otherwise expressly provided in this Indenture, any notice to Noteholders under the provisions hereof shall be valid and effective if in the case of Holders of registered Notes or a Global Note, it is delivered, sent by electronic communication or mailed postage prepaid, addressed to such Noteholders, at their addresses or electronic communication numbers, if any, appearing in any of the Registers hereinbefore mentioned and shall be deemed to have been received at the time of delivery or sending by electronic communication or on the first Business Day after mailing. Any notice made by delivery or sent by electronic communication on a day other than a Business Day, or after 4:00 p.m. (Vancouver time) on a Business Day, shall be deemed to be received on the next following Business Day. In the event of a postal disruption, notice to Noteholders shall be given or sent by other appropriate means and shall be valid and effective and deemed to have been received by all such holders if published once in a newspaper of general circulation published in Vancouver, British Columbia, and such other cities, if any, at which Registers in respect of such Notes are required to be kept.

11.3 Notice to the Trustee

Any notice to the Trustee under the provisions hereof shall be valid and effective if delivered to an officer of the Trustee at Computershare Trust Company of Canada, 510 Burrard Street, 3rd Floor, Vancouver, British Columbia, Canada, V6C 3B9, Attention: Manager, Corporate Trust Department, or if sent by electronic mail to corporatetrust.vancouver@computershare.com, shall be deemed to have been validly given at the time of delivery or electronic transmission if it is received prior to 4:00 p.m. (Vancouver time) on a Business Day, failing which it shall be deemed to have been given on the next Business Day. The Trustee may from time to time notify the Issuer of a change in address, electronic mail address or other applicable address of notice which thereafter, until changed by like notice, shall be the address, electronic mail address or other applicable address of notice of the Trustee for all purposes of this Indenture.

11.4 When Publication Not Required

If at any time a notice is required by this Indenture to be published in a particular city and no newspaper of general circulation is then being published and circulated on a daily basis in that city, the Issuer shall not be required to publish such notice in that city.

11.5 Waiver of Notice

Any notice provided for in this Indenture may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Noteholders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waivers.

ARTICLE 12 CONCERNING THE TRUSTEE

12.1 Indenture Legislation

If and to the extent that any provision of this Indenture limits, qualifies or conflicts with a mandatory requirement of the Indenture Legislation, such mandatory requirement shall prevail.

The Issuer agrees that it will at all times in relation to this Indenture and any action to be taken hereunder observe and comply with and be entitled to the benefits of the Indenture Legislation. The Trustee agrees that it will at all times in relation to this Indenture and any action to be taken hereunder observe and comply with and be entitled to the benefits of the Indenture Legislation.

12.2 Corporate Trustee Required Eligibility

For so long as required by applicable Canadian law, there shall be a Trustee under this Indenture. The Trustee shall at all times be a corporation organized under the laws of Canada or any province thereof and authorized under such laws and the laws of the Province of British Columbia to carry on trust business therein. If at any time the Trustee shall cease to be eligible in accordance with this Section 12.1, it shall resign immediately in the manner and with the effect hereinafter specified in this Article 12.

12.3 Certain Duties and Responsibilities of Trustee

In the exercise of the rights, powers and duties prescribed or conferred by the terms of this Indenture, the Trustee shall act honestly and in good faith and exercise that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances, shall act in a commercially reasonable manner, and shall duly observe and comply with the provisions of any legislation and regulations which relate to the functions or role of the Trustee as a fiduciary hereunder.

Without limiting the effect of the foregoing paragraph of this Section 12.3 but subject to any applicable provision of law, no provision of this Indenture shall be construed to relieve the

Trustee from liability for its own fault as a result of its own gross negligence, wilful misconduct or bad faith.

None of the provisions of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers nor shall the Trustee be so compelled pursuant to any provisions contained in this Indenture unless the Trustee is indemnified and funded as required in this Indenture.

The Trustee, upon the occurrence or at any time during the continuance of any act, action or proceeding, may require the Noteholders at whose instance it is acting to deposit with it Notes held by them, for which Notes the Trustee shall issue receipts.

Notwithstanding any other provisions of this Indenture to the contrary, every provision of this Indenture that by its terms relieves the Trustee of liability or entitles the Trustee to rely or act upon any evidence submitted to it is subject to the provisions of this Section 12.3 and Section 12.4.

No provision of this Indenture shall operate to confer any obligation, duty or power on the Trustee in any jurisdiction in which it does not have the legal capacity required to assume, hold or carry out such obligation, duty or power. For the purposes of this Section 12.3, legal capacity includes the capacity to act as a fiduciary in such jurisdiction.

12.4 No Conflict of Interest

The Trustee represents to the Issuer that, to the best of its knowledge, at the date of the execution and delivery of this Indenture there exists no material conflict of interest in the Trustee's role as a fiduciary hereunder. If at any time a material conflict of interest comes into existence in respect of the Trustee's role as a fiduciary under this Indenture that is not eliminated within 90 days after the Trustee becomes aware that such a material conflict of interest exists, the Trustee shall resign as Trustee under this Indenture by giving notice in writing of such resignation and the nature of such conflict to the Issuer at least 21 days prior to the date upon which such resignation is to take effect. The validity and enforceability of this Indenture and any Notes shall not be affected in any manner whatsoever by reason only of the existence of a material conflict of interest of the Trustee.

12.5 Conditions Precedent to Trustee's Obligation to Act

The Trustee shall not be bound to give any notice or take any action or proceeding unless it is required to do so under the terms of this Indenture. The Trustee shall not be required to take notice of an Event of Default under this Indenture, other than in respect of payment of any money required by any provision of this Indenture to be paid to it, unless and until the Trustee is notified in writing of such Event of Default by any Noteholder or the Issuer. In the absence of such notice, the Trustee may for all purposes of this Indenture assume that no Event of Default has occurred.

The Issuer shall provide to the Trustee an incumbency certificate setting out the names and sample signatures of the Authorized Officers, from time to time. The Trustee shall be

entitled to rely on such certificate until a revised certificate is provided to it. The Trustee shall be entitled to refuse to act upon any instructions given by a party which are signed by any person other than a person described in the incumbency certificate provided to it pursuant to this Section 12.5.

The obligation of the Trustee to commence or continue any act, action or proceeding under this Indenture shall be conditional upon its receipt of the following:

- (a) an Extraordinary Resolution, Ordinary Resolution, Noteholders' Request, requisition in writing, or such other notice or direction as is required pursuant to this Indenture, depending upon the particular matter at issue, specifying the action or proceeding which the Trustee is requested, directed or authorized to take;
- (b) sufficient funds to commence or continue such act, action or proceeding; and
- (c) an indemnity satisfactory to the Trustee to protect and hold harmless the Trustee against the costs, charges, expenses and liabilities to be incurred thereby and any loss and damages it may suffer by reason thereof (except to the extent of the Trustee's own gross negligence, wilful misconduct or bad faith).

12.6 Replacement of Trustee

No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Section 12.6 shall become effective until the acceptance of appointment by the successor Trustee under Section 12.7.

The Trustee may resign its trust, and be discharged from all duties and liabilities arising hereunder after the date that a successor trustee has been appointed, by giving to the Issuer two months' notice in writing or such shorter notice as the Issuer may accept as sufficient. The Noteholders, by Extraordinary Resolution, shall have the power at any time to remove the Trustee and appoint a new Trustee, provided that the engagement of such new Trustee is on terms no less favourable to the Issuer than the terms under the then current engagement of the removed Trustee and such new Trustee shall be bound by and subject to the terms of this Trust Indenture, all Terms Schedules, Global Notes, Definitive Notes and all Supplemental Indentures. The Issuer may remove the Trustee on two months' notice in writing to the Trustee or on such shorter notice as the Trustee may accept as sufficient. In the event of the Trustee resigning or being removed as aforesaid or being dissolved, becoming bankrupt, going into liquidation or otherwise becoming incapable of acting hereunder, the Issuer shall forthwith appoint a new trustee unless a new Trustee has already been appointed by Noteholders; failing such appointment by the Issuer, the retiring Trustee, at the Issuer's expense, or any of the Noteholders may apply to any court of competent jurisdiction on such notice as such court may direct, for the appointment of a new trustee. Any new trustee appointed under any provision of this Section 12.6 shall be a corporation authorized to carry on the business of a trust company in the Province of British Columbia and every other jurisdiction where such authorization is necessary to enable it to act as Trustee hereunder. On any new appointment the new trustee shall be vested with the same property powers, rights, duties and responsibilities as if it had been originally named herein as Trustee without any further assurance, conveyance, act or deed provided,

however, that the new Trustee will assume no liabilities relating to acts or omissions of any prior Trustee or otherwise under this Indenture prior to the date of appointment of the new Trustee. For greater certainty, there shall be immediately executed at the expense of the Issuer, all such conveyances or other instruments as may, in the opinion of Counsel, be necessary or advisable for the purpose of assuring the same to the new trustee.

12.7 Acceptance of Appointment by Successor

Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to the Issuer, the Noteholders and to the retiring Trustee an instrument accepting such appointment and agreeing to be bound by and subject to the terms of this Trust Indenture, all Terms Schedules, Global Notes, Definitive Notes and all Supplemental Indentures, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee under this Trust Indenture, all Terms Schedules, Global Notes, Definitive Notes and all Supplemental Indentures, provided, however, that the new Trustee will assume no liabilities relating to acts or omissions of any prior Trustee, or otherwise, under this Indenture prior to the date of appointment of the new Trustee. For greater certainty, on request of the Issuer or the successor Trustee, such retiring Trustee shall, upon payment of all amounts due it under Section 6.1(c), execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee, and shall duly assign, transfer and deliver to such successor Trustee all property and money held hereunder by such retiring Trustee subject to the claim provided for in Section 6.1(c). Upon request of any such successor Trustee, the Issuer shall execute any and all instruments for more fully and certainly vesting in and conforming to such rights, powers and trusts.

No successor Trustee shall accept its appointment unless at the time of such acceptance such successor Trustee shall be qualified and eligible under this Article 12.

12.8 Trustee May Deal in Notes

Subject to Sections 12.3 and 12.4, the Trustee may buy, sell, lend upon and deal in the Notes and generally contract and enter into financial transactions with the Issuer or otherwise, without being liable to account for any profits made thereby.

12.9 No Person Dealing with Trustee Need Inquire

No Person dealing with the Trustee shall be required to inquire as to whether the powers that the Trustee is purporting to exercise have become exercisable, or whether any amount remains due upon the Notes or to see to the application of any amount paid to the Trustee.

Unless otherwise provided in this Indenture, a Terms Schedule, Global Note, Definitive Note or Supplemental Indenture, until released in accordance with this Indenture, monies held by Trustee shall be kept segregated in the records of the Trustee and shall be deposited in one or more interest-bearing trust accounts to be maintained by the Trustee in the name of the Trustee at one or more banks having a S&P Global Ratings rating of AA- or above (an “**Approved Bank**”). All amounts held by the Trustee pursuant to this Indenture shall be held by the Trustee pursuant to the term of this Indenture and shall not give rise to a debtor-creditor or other similar

relationship. Alternatively monies held by the Trustee, which, under the trusts of this Indenture may be invested and reinvested in the name or under the control of the Trustee in securities in which, under the laws of the Province of British Columbia, trustees are authorized to invest trust monies, provided that such securities are expressed to mature within two years or such shorter period selected to facilitate any payments expected to be made under this Indenture, after their purchase by the Trustee, and unless and until the Trustee shall have declared the principal of and Premium, if any, and interest on the Notes to be due and payable, the Trustee shall so invest such monies at the written direction of the Issuer given in a reasonably timely manner. The amounts held by the Trustee pursuant to this Indenture or invested are at the sole risk of Issuer and, without limiting the generality of the foregoing, the Trustee shall have no responsibility or liability for any diminution of the monies which may result from any deposit made with an Approved Bank or invested pursuant to this Section 12.9, including any losses resulting from a default by the Approved Bank or other credit losses (whether or not resulting from such a default) and any credit or other losses on any deposit liquidated or sold prior to maturity. The parties hereto acknowledge and agree that the Trustee will have acted prudently in depositing the monies at any Approved Bank. Pending instructions to investment of any monies as hereinbefore provided, such monies may be deposited in the name of the Trustee at Approved Bank and with interest payable at the usual rate of interest provided by the Trustee, if any, then current on similar deposits.

12.10 Trustee Not Required to Give Security

The Trustee shall not be required to give any bond or security in respect of the execution of the trusts and powers of this Indenture or otherwise in respect of this Indenture.

12.11 Trustee Not Required to Possess Notes

Subject to the Trustee's compliance with this Indenture, all rights of action under this Indenture may be enforced by the Trustee without the possession of any of the Notes or the production thereof on any trial or other proceedings relative thereto.

12.12 Financial Statements

No obligation shall rest with the Trustee to analyse the Issuer's financial statements, or evaluate the performance of the Issuer as indicated by such financial statements, in any manner whatsoever.

12.13 Evidence of Compliance

The Issuer shall furnish to the Trustee, upon the Trustee's reasonable request therefor, evidence of the Issuer's compliance with the conditions specified in this Indenture relating to (i) the issue, certification, authentication and delivery of Notes hereunder, (ii) the satisfaction and discharge of this Indenture or (iii) the taking of any other action to be taken by the Issuer or the Trustee. Such evidence shall consist of the following:

- (a) an Officer's Certificate stating that such conditions have been complied with in accordance with the terms of this Indenture; and

- (b) in the case of conditions, compliance with which are by this Indenture subject to review or examination by Counsel, an opinion of such Counsel that such conditions have been complied with in accordance with the terms of this Indenture, including any statements required by the applicable laws.

12.14 Form of Evidence

Evidence furnished to the Trustee which relates to a matter other than the issue, certification and delivery of Notes or the satisfaction and discharge of this Indenture may consist of or otherwise be in accordance with a report or opinion of any solicitor, auditor, accountant, engineer or appraiser or any other Person whose qualifications give authority to a statement made by such Person, but if such report or opinion is furnished by a director, officer or employee of the Issuer it shall be in the form of a statutory declaration or a certificate.

Evidence furnished to the Trustee pursuant to Section 12.13 or this Section 12.14 shall include:

- (a) a statement by the Person giving the evidence declaring that such Person has read and understands the provisions hereof relating to the conditions precedent with respect to compliance with which such evidence is being given; and
- (b) a statement declaring that, in the belief of the Person giving the evidence, such Person has made commercially reasonable examination or investigation to enable such Person to make the statements or give the opinions contained or expressed therein.

12.15 Certain Rights of Trustee

Subject to the provisions of Sections 12.13 and 12.14 and the other terms of this Indenture,

- (a) the Trustee may conclusively act and rely as to the truth of the statements and correctness of the opinions expressed in, shall not be bound to make any investigation into the facts or matters of, and shall be fully protected in acting or relying or refraining from acting upon, any resolution, certificate, statement, statutory declaration, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;
- (b) any request or direction of the Issuer shall be sufficiently evidenced by a request of an Authorized Officer or order of an Authorized Officer and any resolution of the Directors shall be sufficiently evidenced by a Certified Resolution;
- (c) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence is herein

specifically prescribed) if acting in good faith may, rely and act upon an Officer's Certificate;

- (d) The Trustee may:
 - (i) employ or retain and act and rely on the opinion or advice of or information obtained from any solicitor, auditor, valuer, engineer, surveyor, appraiser or other expert, whether obtained by the Trustee or by the Issuer, or otherwise, and shall not be liable for acting, or refusing to act, in good faith on any such opinion or advice and may pay proper and reasonable compensation for all such legal and other advice or assistance as aforesaid. The reasonable costs of such services shall be added to and become part of the Trustee's remuneration hereunder; and
 - (ii) employ such agents and other assistants as it may reasonably require for the proper discharge of its duties hereunder, and may pay reasonable remuneration for all services performed for it (and shall be entitled to receive reasonable remuneration for all services performed by it) in the discharge of the trusts hereof and compensation for all disbursements, costs and expenses made or incurred by it in the discharge of its duties hereunder and in the management of the trusts hereof and any solicitors employed or consulted by the Trustee may, but need not be, solicitors for the Issuer;
- (e) the Trustee shall not be under any obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Noteholders pursuant to this Indenture unless such Noteholders shall have offered to the Trustee sufficient funding, security and indemnity against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction, and provisions of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 12.15(e) and the other terms of this Indenture; and
- (f) Except as provided in Section 7.2 and as otherwise specifically provided herein, the Trustee shall not, subject to Section 12.5, be bound to give notice to any person of the execution hereof, nor to do, observe or perform, or see to the observance or performance by the Issuer of, any of the obligations herein imposed upon the Issuer or the covenants on the part of the Issuer herein contained, nor in any way to supervise or interfere with the conduct of the Issuer's business, unless the Trustee shall have been required to do so in writing by the holders of not less than 25% of the aggregate principal amount of the Notes then outstanding or by any Extraordinary Resolution of the holders of Notes passed in accordance with the provisions contained in Article 10, and then only after it shall have been funded and indemnified to its satisfaction against all actions, proceedings, claims and demands to which it may render itself liable and all costs, charges, damages and expenses which it may incur by so doing.

12.16 Merger, Conversion, Consolidation or Succession to Business

Any corporation into which the Trustee may be merged or with which it may be amalgamated or consolidated, or any corporation resulting from any merger, amalgamation or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such corporation shall be otherwise qualified and eligible under this Article 12, without the execution or filing of any instrument or any further act on the part of any of the parties hereto.

12.17 Action by Trustee to Protect Interests

The Trustee shall have power to institute and maintain such actions and proceedings as it may consider necessary or expedient to preserve, protect or enforce its interests and the interests of the Noteholders which shall be at the cost of the Noteholders unless such actions or proceedings shall be consequent upon an Event of Default.

12.18 Protection of Trustee

The Issuer shall indemnify and agrees to hold the Trustee and its affiliates, their successors and assigns, as well as its respective directors, officers employees and agents, harmless from and against any and all taxes, charges, costs, expenses, damages, claims, actions, proceedings, interest, penalties, assessments, demands, losses, costs and expenses and liabilities, including without limiting the foregoing, expert, consultant and counsel fees, and disbursement on a solicitor and client basis, to which they, or any of them, may become subject, including reasonable legal and accounting costs, for or in respect of anything done or omitted by the Trustee to be done in connection with this Indenture, including the costs and expenses of enforcing this Indenture against the Issuer, except to the extent such as may arise from the gross negligence, wilful misconduct or bad faith of the Trustee, such indemnification to survive the resignation or removal of the Trustee and the termination or discharge of this Indenture.

Notwithstanding any other provision of this Indenture, the Trustee shall not be liable for any (i) breach by any other party of applicable securities legislation, (ii) lost profits (iii) special, indirect, incidental, punitive, consequential, exemplary, aggravated or punitive losses or damages.

12.19 Authority to Carry on Business

The Trustee represents to the Issuer that, at the date of execution and delivery by it of this Indenture, it is authorized to carry on the business of a trust company in each of the provinces of Canada. If the Trustee ceases to be authorized to carry on such business in any province of Canada, the validity and enforceability of this Indenture and the Notes issued under this Indenture shall not be affected in any manner whatsoever by reason only of such event, but within 90 days after ceasing to be authorized to carry on the business of a trust company in any province of Canada, the Trustee either shall become so authorized or shall resign in the manner and with the effect specified in Section 12.6.

12.20 Trustee Not Liable in Respect of Depository

Without limitation of its duties and obligations hereunder in respect of the Notes and dealings with the registered Holders thereof, the Trustee shall not have any liability whatsoever for the following:

- (a) any aspect of the records relating to or payments made on account of beneficial ownership interests in the Notes held by and registered in the name of a Depository;
- (b) maintaining, supervising or reviewing any records relating to such beneficial ownership interests; or
- (c) any advice or representation made or given by or with respect to a Depository and made or given herein with respect to rules of such Depository or any action to be taken by a Depository or at the direction of a Participant of a Depository.

12.21 Global Notes

Notes issued to a Depository in the form of a Global Note shall be subject to the following:

- (a) the Trustee may deal with such Depository as the authorized representative of the beneficial owners of such Notes;
- (b) the rights of the beneficial owners of such Notes shall be exercised only through such Depository and the rights of beneficial owners shall be limited to those established by applicable law and agreements between the Depository and the Participants and between such Participants and beneficial owners, and must be exercised through a Participant in accordance with the rules and procedures of the Depository;
- (c) such Depository will make book-entry transfers among the Participants of such Depository and will receive and transmit distributions of the principal of, and Premium and interest on, the Notes to such direct Participants; and
- (d) the Participants of such Depository shall have no rights under this Indenture or under or with respect to any of the Notes held on their behalf by such Depository, and such Depository may be treated by the Issuer, the Trustee and their agents, employees, officers and directors as the absolute owner of the Notes represented by such Global Note for all purposes whatsoever.

12.22 Acceptance of Trusts

The Trustee hereby accepts any and all trusts hereby created and agrees to perform the same upon the terms and conditions set forth in this Indenture and in trust for the Noteholders from time to time, subject to the terms and conditions of this Indenture.

12.23 No Liability for Certain Deposited Monies

The Trustee will bear no liability for monies deposited other than with the Trustee. The Trustee will disburse monies according to this Indenture only to the extent that monies have been deposited with it.

12.24 Third Party Interests

The Issuer hereby represents to the Trustee that any account to be opened by the Trustee in connection with this Indenture, for or to the credit of the Issuer, either (i) is not intended to be used by or on behalf of any third party, or (ii) is intended to be used by or on behalf of a third party, in which case the Issuer hereby agrees to complete, execute and deliver forthwith to the Trustee, a declaration, in the Trustee's prescribed form or in such other form as may be satisfactory to it, as to the particulars of such third party.

12.25 Power of Attorney

The Trustee hereby agrees to act as the attorney for the Holders of the Notes to the extent necessary or desirable for the purposes of this Indenture and each Holder by receiving and holding the Notes accepts and confirms the appointment of the Trustee as attorney of such Holder to the extent necessary for the purposes hereof and in accordance with and subject to the provisions hereof.

To the extent necessary and for greater certainty (but without in any way detracting from custom and usage applicable with regards to the relationship between the Issuer, the Trustee and the Holders hereunder) and subject to any applicable law of public order, the Trustee and the Issuer hereby agree with regards to the Trustee so acting as attorney of the Holders hereunder and each Holder by receiving and holding same agrees with the Issuer and the Trustee that:

- (a) notwithstanding any other provision hereof and except as may be otherwise set forth in any request, demand, authorization, direction, notice, consent, waiver or other action given or taken by Holders of Notes pursuant to this Indenture, relating thereto, no Holder shall be liable to third parties for acts performed by the Trustee (or any other person appointed by the Trustee to perform all or any of its rights, powers, trusts or duties hereunder) during the exercise of its rights, powers and trusts and the performance of its duties under this Indenture or for injury caused to such parties by the fault of the Trustee (or any such person), or for contracts entered into in favour of such parties, during such performance;
- (b) except as otherwise expressly provided herein or in any request, demand, authorization, direction, notice, consent, waiver or other action given or taken by Holders of Notes pursuant to this Indenture, the Trustee shall not be entitled to receive from the Holders any remuneration or compensation for any services rendered by the Trustee hereunder or reimbursement of any costs, expenses, liabilities, disbursements or advances incurred or made by the Trustee in accordance with any provision of this Indenture or interest thereon;

- (c) notwithstanding any other provision hereof and except as may be otherwise set forth in any request, demand, authorization, direction, notice, consent, waiver or other action given or taken by Holders of Notes pursuant to this Indenture, relating thereto, no Holder shall be liable to compensate the Trustee for any injury suffered by it by reason of the performance of its rights, powers, trusts or duties hereunder subject to any rights or recourses which the Trustee may have hereunder or under any applicable law against the Issuer or any other person (other than a Holder) in connection with such injury;
- (d) neither the death nor bankruptcy of a Holder shall terminate the Trustee's rights, powers, trusts or duties hereunder with respect to the Notes held by such Holder which shall continue to apply in favour of the Holder or Holders who have acquired such Notes from such deceased or bankrupt Holder;
- (e) the bankruptcy of the Trustee shall not terminate its rights, powers, trusts or duties hereunder provided that such rights, powers, trusts or duties are assumed by a successor Trustee appointed in accordance with the provisions of Section 12.6;
- (f) so long as any Notes remain outstanding, (i) each Holder hereby renounces its right to revoke any mandate relationship created between such Holder and the Trustee hereunder and (ii) the Trustee hereby agrees that it will not revoke any such mandate relationship except through a resignation pursuant to and in compliance with the provisions of Section 12.6; and
- (g) the Trustee shall not be obliged to render any account to the Holders nor return to the Holders any amounts which it has received in the performance of its duties hereunder nor pay any interest to the Holders on such amounts.

12.26 Anti-Money Laundering

The Trustee retains the right not to act and will not be liable for refusing to act if, due to a lack of information or for any other reason whatsoever, the Trustee, in its sole judgment and acting reasonably, determines that such act might cause it to be in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline. Further, should the Trustee, in its sole judgment and acting reasonably, determine at any time that its acting under this Indenture has resulted in its being in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline, then it will have the right to resign on 10 days' written notice to the Issuer or any shorter period of time as agreed to by the Issuer; provided that (a) the Trustee's written notice must describe the circumstances of such non-compliance, and (b) if such circumstances are rectified to the Trustee's satisfaction within such 10 day period, then such resignation shall not be effective.

12.27 Currently Not Filing

The Issuer confirms that, as at the date of execution of this Indenture, it does not have a class of securities registered pursuant to Section 12 of the *Securities Exchange Act of 1934* (the "**U.S. Securities Exchange Act**") or have a reporting obligation pursuant to Section 15(d) of the U.S. Securities Exchange Act.

The Issuer covenants that in the event that (i) any class of its securities shall become registered pursuant to Section 12 of the U.S. Securities Exchange Act or such Issuer shall incur a reporting obligation pursuant to Section 15(d) of the U.S. Securities Exchange Act, or (ii) any such registration or reporting obligation shall be terminated by such Issuer in accordance with the U.S. Securities Exchange Act, such Issuer shall promptly deliver to the Trustee an Officers' Certificate (in a form provided by the Trustee) notifying the Trustee of such registration or termination and such other information as the Trustee may require at the time. The Issuer acknowledges that the Trustee is relying upon the foregoing representation and covenants in order to meet certain U.S. Securities and Exchange Commission (“SEC”) obligations with respect to those clients who are filing with the SEC.

12.28 Privacy Laws

- (a) The parties acknowledge that federal and provincial legislation that addresses the protection of individuals' personal information (collectively, the “**Privacy Laws**”) applies to obligations and activities under this Indenture. Despite any other provision of this Indenture, neither the Issuer nor the Trustee shall take or direct any action that would contravene, or cause the other to contravene, applicable Privacy Laws.
- (b) The Issuer shall, prior to transferring or causing to be transferred personal information to the Trustee, obtain and retain required consents of the relevant individuals to the collection, use and disclosure of their personal information, or shall have determined that such consents either have previously been given upon which the parties can rely or are not required under the Privacy Laws.
- (c) The Trustee shall use commercially reasonable efforts to ensure that its services hereunder comply with Privacy Laws. Specifically, the Trustee agrees: (a) to have a designated chief privacy officer; (b) to maintain policies and procedures to protect personal information and to receive and respond to any privacy complaint or inquiry; (c) to use personal information solely for the purposes of providing its services under or ancillary to this Indenture and not to use it for any other purpose except with the consent of or direction from the Issuer or the individual involved; (d) not to sell or otherwise improperly disclose personal information to any third party; and (e) to employ administrative, physical and technological safeguards to reasonably secure

12.29 Force Majeure

Neither party shall be liable to the other, or held in breach of this Indenture, if prevented, hindered, or delayed in the performance or observance of any provision contained herein by reason of act of God, riots, terrorism, acts of war, epidemics, governmental action or judicial order, earthquakes, or any other similar causes (including, but not limited to, mechanical, electronic or communication interruptions, disruptions or failures). Performance times under this Indenture shall be extended for a period of time equivalent to the time lost because of any delay that is excusable under this Section 12.29.

ARTICLE 13 SUPPLEMENTAL INDENTURES AND CORRECTIONS

13.1 Supplemental Indentures

From time to time, the Issuer (when authorized by a resolution of its Directors) and the Trustee may, subject to the provisions of this Indenture, execute and deliver Supplemental Indentures, which thereafter shall form part hereof, or may take any other action for any one or more of the following purposes:

- (a) creating any Notes and establishing the terms of any Notes and the terms and denominations in which they be issued as provided in Article 2;
- (b) adding to the covenants of the Issuer or otherwise amending the terms hereof if in the opinion of the Trustee, on the opinion of Counsel, such addition or amendment will not be prejudicial to the interests of the Noteholders generally;
- (c) evidencing the succession (or successive successions) of another corporation to the Issuer and the obligations assumed by such Successor in accordance with the provisions of this Indenture;
- (d) making such provisions not inconsistent with this Indenture as may be necessary or desirable with respect to matters or questions arising hereunder including the making of any modification in the forms of the Notes, that do not affect the substance thereof and which in the opinion of the Trustee, acting on the basis of an opinion of Counsel, such provisions or modification will not be prejudicial to the interests of the Noteholders generally;
- (e) providing for the issue, as permitted hereby, of Notes of one or more Series;
- (f) providing for the alternative arrangements whereby the Notes can be traded through an alternative book-entry system as contemplated in Section 2.6; and
- (g) giving effect to any Ordinary Resolution or Extraordinary Resolution.

13.2 Corrections

The Trustee may also, without the consent or concurrence of the Noteholders, by Supplemental Indenture or otherwise, concur with the Issuer in making any changes or corrections in this Indenture that it shall have been advised by Counsel are required for the purpose of curing or correcting any ambiguity or defective or inconsistent provision or clerical omission or mistake or manifest error contained herein or in any Supplemental Indenture, provided that the rights of the Noteholders, in the opinion of Counsel, are not adversely affected thereby.

13.3 Effect of Supplemental Indentures

Upon the execution of any Supplemental Indenture, this Indenture shall be modified in accordance therewith, such Supplemental Indenture shall form a part of this Indenture for all purposes, and every Noteholder shall be bound thereby. Any Supplemental Indenture may contain terms which add to, modify or negate any of the terms contained in this Indenture, and to the extent that there is any difference between the terms of this Indenture and the terms contained in a Supplemental Indenture, the terms contained in the Supplemental Indenture shall be applicable to the Notes to which such Supplemental Indenture relates and the corresponding terms contained in this Indenture shall not be applicable unless otherwise indicated in such Supplemental Indenture.

13.4 Execution of Supplemental Indentures

In executing or accepting the additional trusts created by any Supplemental Indenture permitted by this Indenture or the modifications thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, and shall be fully protected in relying upon, an opinion of Counsel stating that the execution of such Supplemental Indenture is authorized or permitted by this Indenture. The Trustee may, but shall not be obligated to, enter into any such Supplemental Indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

13.5 Reference in Securities to Supplemental Indentures

Notes of any Series authenticated and delivered after the execution of any Supplemental Indenture pursuant to this Article may, and shall if required by the Trustee, or if requested by the Issuer, bear a notation in form approved by the Issuer (as reasonably agreed to by the Trustee) as to any matter provided for in such Supplemental Indenture.

ARTICLE 14 EXECUTION

14.1 Counterparts and Formal Date

This Indenture may be executed in several counterparts, each of which, when so executed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument and notwithstanding their date of execution shall be deemed to bear date as of September 29, 2017.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Indenture.

FINNING INTERNATIONAL INC.

By: (signed) Steven M. Nielsen
Name: Steven M. Nielsen
Title: Executive Vice President and
Chief Financial Officer

By: (signed) Anna Marks
Name: Anna Marks
Title: Senior Vice President, Corporate
Controller and Treasurer

**COMPUTERSHARE TRUST COMPANY OF
CANADA**

By: (signed) Alice Kollen
Name: Alice Kollen
Title: Corporate Trust Officer

By: (signed) Jill Dunn
Name: Jill Dunn
Title: Manager, Corporate Trust