

TRUST INDENTURE

DATED AS OF THE 27TH DAY OF OCTOBER, 2020

BETWEEN

RUSSEL METALS INC., AS ISSUER

AND

THE GUARANTORS

AND

BNY TRUST COMPANY OF CANADA, AS TRUSTEE

PROVIDING FOR THE ISSUE OF

5.75% SENIOR UNSECURED NOTES DUE OCTOBER 27, 2025

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THIS INDENTURE made as of the 27th day of October, 2020

BETWEEN:

RUSSEL METALS INC.,
a corporation existing under the laws of Canada

(hereinafter called the "Issuer"),

- and -

**THE GUARANTORS PARTY TO THIS
INDENTURE,**

- and -

BNY TRUST COMPANY OF CANADA,
a trust company subsisting under the laws of
Canada

(hereinafter called the "Trustee").

WITNESSETH THAT:

WHEREAS the Issuer considers it desirable for its business purposes to create and issue 5.75% Senior Unsecured Notes due October 27, 2025 from time to time in the manner and subject to the terms and conditions set forth in this Indenture;

AND WHEREAS each Guarantor (as that term is defined herein) has agreed to guarantee the punctual payment and performance when due of all Indenture Obligations (as that term is defined herein) of the Issuer in accordance with the terms of Article 13.

NOW THEREFORE it is hereby covenanted, agreed and declared as set forth herein:

ARTICLE 1 **INTERPRETATION**

1.1 **Definitions**

In this Indenture (including the recitals hereto) and in the Notes, unless there is something in the subject matter or context inconsistent therewith, the following expressions shall have the meanings set forth below:

"**1933 Act**" means the United States Securities Act of 1933, as amended.

"**1934 Act**" means the United States Securities Exchange Act of 1934, as amended.

"**Accounting Change**" has the meaning given to that term in Section 1.14(b).

"**Accounting Change Notice**" has the meaning given to that term in Section 1.14(b).

"**Accounts Receivable**" of a Person means the Receivables of such Person arising in the ordinary course of business from the sale of products or the provision of services by such Person.

"**Acquired Indebtedness**" means, with respect to the Issuer or any Restricted Subsidiary, Indebtedness of any other Person existing at the time such other Person is merged, consolidated or amalgamated with or into or becomes a Subsidiary of the Issuer or any Restricted Subsidiary, as applicable, provided that such Indebtedness is not Incurred by such other Person in contemplation of such Person merging, consolidating or amalgamating with or into, or becoming a Subsidiary of, the Issuer or any Restricted Subsidiary.

"**Additional Notes**" means any Notes (other than the Notes issued on the Issue Date and any Notes issued in exchange or in replacement (in whole or in part) for such initial Notes) issued under this Indenture in accordance with Section 2.2.

"**Affiliate**" of any Person means any other Person directly or indirectly Controlling or Controlled by or under direct or indirect common Control with such Person.

"**Affiliate Transaction**" has the meaning given to that term in Section 5.15(a).

"**Alternate Offer**" has the meaning given to that term in Section 5.18(i).

"**Applicable Premium**" means, with respect to any Note on any Redemption Date, the greater of:

- (a) 1.0% of the Called Principal of the Note; and
- (b) the excess of:
 - (i) the Discounted Value at such Redemption Date of the Remaining Scheduled Payments of the Note; over
 - (ii) the Called Principal of the Note.

"**Applicable Securities Legislation**" means, at any time, applicable securities laws (including rules, regulations, policies and instruments) in each of the Provinces and Territories of Canada.

"**Asset Disposition**" means any of the foregoing:

- (a) the sale, lease, conveyance or other disposition by the Issuer or any Restricted Subsidiary to any Person other than the Issuer or any Restricted Subsidiary (including by means of a Sale-Leaseback Transaction or a merger, amalgamation

or consolidation) (collectively, for purposes of this definition, a "**transfer**"), in one transaction or a series of related transactions, of any assets of the Issuer or any of its Restricted Subsidiaries (including the sale by the Issuer or any Restricted Subsidiary of Equity Interests in any of the Issuer's Subsidiaries, but excluding the sale of directors' qualifying shares or shares required to be owned by other Persons pursuant to applicable law) other than in the ordinary course of business; and

- (b) the issuance of Equity Interests by any of the Issuer's Restricted Subsidiaries (but, for greater certainty, excluding any issuance of Equity Interests by the Issuer).

Notwithstanding the preceding, the following items will be deemed not to be an Asset Disposition:

- (a) any transfer (or issuance) or series of related transfers (or issuances) that, but for this clause, would be Asset Dispositions, if after giving effect to such transfers (or issuances), the aggregate Fair Market Value of the assets transferred (or issued) in such transaction or any such series of related transactions does not exceed \$10.0 million;
- (b) any transfer of assets between or among the Issuer and its Restricted Subsidiaries;
- (c) any issuance or transfer of Equity Interests by a Restricted Subsidiary to the Issuer or to another Restricted Subsidiary;
- (d) any transfer of worn-out, obsolete, retired or otherwise unsuitable or excess assets or equipment or facilities or of assets or equipment that, in the judgement of the Issuer, are no longer used or useful (including intellectual property) in the business of the Issuer or its Restricted Subsidiaries;
- (e) the sale or lease of equipment, inventory, Accounts Receivable or other assets in the ordinary course of business (including transfers of assets, revenues or liabilities between or among the Issuer and its Restricted Subsidiaries in the ordinary course of business for the Fair Market Value thereof);
- (f) any transfer of cash or Cash Equivalents;
- (g) any transfer of assets (including Equity Interests) that are governed by, and made in accordance with Section 5.14;
- (h) any Restricted Payment that is permitted by Section 5.12 and any Permitted Investment (but excluding, for certainty, any sale or other disposition of a Permitted Investment unless such sale or other disposition would constitute a Permitted Investment or a Restricted Payment permitted by 5.12);
- (i) the creation, granting, perfection or existence of, or realization on, a Lien (but not the sale or other disposition of any asset subject to such Lien);

- (j) the surrender or waiver of contract rights or the settlement, release or surrender of contract, tort or other claims of any kind;
- (k) dispositions of receivables owing to the Issuer or any of its Restricted Subsidiaries in connection with the compromise, settlement or collection thereof in the ordinary course of business or in bankruptcy or similar proceedings of the account debtor and exclusive of factoring or similar arrangements;
- (l) the licensing or sub-licensing of intellectual property or other general intangibles and licenses, leases or subleases of other property in the ordinary course of business, other than exclusive licenses or sub-licenses or assignments of intellectual property that preclude the Issuer and the Restricted Subsidiaries from using such intellectual property for a period equal to the life of the intellectual property less a day;
- (m) foreclosures, condemnation or any similar action on assets of the Issuer or any of its Restricted Subsidiaries;
- (n) any transfer of assets received by the Issuer or any of its Restricted Subsidiaries upon foreclosure of a Lien;
- (o) any sale, issuance or other disposition of Equity Interests in, or Indebtedness or other securities of, an Unrestricted Subsidiary;
- (p) any transfer of assets by the Issuer or any of its Restricted Subsidiaries in connection with a corporate reorganization that is carried out as a step transaction if:
 - (i) the step transaction is completed within three Business Days; and
 - (ii) at the completion of the step transaction, such assets are owned by the Issuer or any of its Restricted Subsidiaries;
- (q) any transfer of improvements, additions or alterations in connection with the termination of any lease of real property in the ordinary course of business, as required by terms of such lease;
- (r) any issuance or transfer of Disqualified Stock of a Restricted Subsidiary in compliance with Section 5.13; and
- (s) any transfer of Investments in joint ventures to the extent required by, or made pursuant to, customary buy/sell or put/call arrangements between the joint venture parties set forth in joint venture arrangements or similar binding arrangements.

"Asset Sale Offer" has the meaning given to that term in Section 5.17(e)(i).

"Attributable Debt" means, with respect to any Sale-Leaseback Transaction, to the extent not otherwise included in the definition of Indebtedness, as at the time of

determination thereof, the present value (discounted at the interest rate borne by the Notes, compounded semi-annually) of the total obligations of the lessee for rental payments during the remaining term of the lesser of:

- (a) the Notes; and
- (b) the greater of (i) the lease included in the Sale-Leaseback Transaction, and (ii) any other existing lease previously included in a Sale-Leaseback Transaction pursuant to which the Issuer or a Restricted Subsidiary is the lessee thereunder and, in the case of either the preceding clause (i) or (ii), including any period for which any such lease has been extended.

"**Authentication Order**" has the meaning given to that term in Section 2.9(d).

"**Bankruptcy Law**" means the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada), the *Winding-Up and Restructuring Act* (Canada), and Title 11, U.S. Code, each as now and hereafter in effect, any successors to such statutes, and any other federal, state or provincial law for the relief of debtors that are insolvent or bankrupt.

"**Beneficial Holder**" means any person who holds a beneficial interest in Global Certificates as shown on the books of the Depository or a Participant.

"**Board of Directors**" means:

- (a) with respect to a corporation, the board of directors of the corporation (or any duly authorized committee thereof);
- (b) with respect to a partnership, the board of directors of the corporation (or any duly authorized committee thereof) that is the general partner (in the case of a limited partnership) of the partnership or the managing partner of the partnership; and
- (c) with respect to any other Person, the board or committee of such Person serving a similar function.

"**Board Resolution**" means a copy of a resolution certified by any officer of the Issuer to have been duly adopted by the Board of Directors of the Issuer and to be in full force and effect on the date of such certification, and delivered to the Trustee.

"**Borrowing Base**" of any Person means an amount equal to the sum of:

- (a) 85% of (i) the net book value (after allowance for doubtful accounts) of the Accounts Receivable of such Person, less (ii) the value of any Accounts Receivable of such Person pledged, contributed, sold or otherwise transferred or encumbered pursuant to any Receivables Sale; and

- (b) 60% of the net book value (after applicable write down for obsolescence, quality problems and the like) of inventories of such Person held in the ordinary course of business,

in each case (a) and (b) determined in accordance with generally accepted accounting principles.

"Business Day" means any day other than a Saturday or Sunday or any other day on which the Trustee's office in Toronto, Ontario is not generally open for business, or any other day on which Canadian chartered banks are closed in Toronto, Ontario.

"Called Principal" means, with respect to any Note, the principal of such Note that is to be prepaid pursuant to an optional redemption.

"Capital Lease Obligation" of any Person means the obligation to pay rent or other payment amounts under a lease of (or other Indebtedness arrangements conveying the right to use) real or personal property of such Person that would have been required to be classified and accounted for as a finance lease for financial reporting purposes in accordance with GAAP as in effect on December 31, 2018. The stated maturity of such obligation shall be the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be terminated by the lessee without payment of a penalty. The principal amount of such obligation shall be the capitalized amount thereof that would appear on the face of a balance sheet of such Person in accordance with generally accepted accounting principles.

"Capital Stock" of any Person means any and all shares, interests, participations or other equivalents (however designated) of corporate stock or other equity participations, including partnership interests, whether general or limited, of such Person.

"Cash Equivalents" means:

- (a) Canadian dollars or United States dollars;
- (b) securities issued or directly and fully Guaranteed or insured by the Canadian or United States government or any agency or instrumentality of the Canadian or United States government (provided that the full faith and credit of Canada or the United States is pledged in support of those securities) having Stated Maturities of not more than 12 months from the date of acquisition;
- (c) term deposits or money market accounts or certificates of deposit and eurodollar time deposits with Stated Maturities of 12 months or less from the date of acquisition, bankers' acceptances with Stated Maturities not exceeding 12 months, and overnight bank deposits, in each case, with any bank referred to in Schedule I, Schedule II or Schedule III of the Bank Act (Canada) or rated at least A-1 or the equivalent thereof by S&P, at least P-1 or the equivalent thereof by Moody's, or at least R-1 or the equivalent thereof by DBRS;

- (d) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clauses (b) and (c) above entered into with any financial institution meeting the qualifications specified in clause (c) above;
- (e) commercial paper having one of the two highest ratings obtainable from Moody's or S&P or, with respect to Canadian commercial paper, having one of the two highest ratings obtainable from DBRS, and, in each case, having a Stated Maturity of not more than 12 months from the date of acquisition; and
- (f) money market funds at least 95% of the assets of which constitute Cash Equivalents of the kinds described in clauses (a) through (e) of this definition.

"Cash Management Obligations" means obligations in respect of cash management services, including automated clearing house transactions, controlled disbursement services, treasury, depository, overdraft and electronic funds transfer services, foreign exchange facilities, currency exchange transactions or agreements and options with respect thereto, credit card processing services, credit or debit cards and purchase cards, and any indemnity given in connection with any of the foregoing.

"CDS" means CDS Clearing and Depository Services Inc.

"CDS Nominee" means the nominee of CDS in whose name the Global Certificates are registered.

"Change of Control" means the occurrence of any one of the following:

- (a) the direct or indirect sale, lease, transfer, conveyance or other disposition (other than by way of merger, consolidation or amalgamation), in one or a series of related transactions, of all or substantially all of the properties or assets of the Issuer and its Subsidiaries taken as a whole to any Person, which occurrence is followed by a Ratings Decline related to such transaction or series of related transactions within 60 days of the consummation thereof;
- (b) the adoption by the shareholders of the Issuer of a plan relating to the liquidation or dissolution of the Issuer; or
- (c) the consummation of any transaction (including, without limitation, any merger, consolidation or amalgamation), the result of which is that any Person becomes the beneficial owner, directly or indirectly, of more than 50% of the Voting Stock of the Issuer, measured by voting power rather than number of shares, which occurrence is followed by a Ratings Decline related to such transaction within 60 days of the consummation thereof.

"Change of Control Offer" has the meaning given to that term in Section 5.18.

"Change of Control Payment" has the meaning given to that term in Section 5.18.

"Change of Control Payment Date" has the meaning given to that term in Section 5.18.

"Common Stock" of any Person means Capital Stock of such Person that does not rank prior, as to the payment of dividends or as to the distribution of assets upon any voluntary or involuntary liquidation, dissolution or winding-up of such Person, to shares of Capital Stock of any other class of such Person.

"Consolidated Cash Flow" for any period means the Consolidated Net Income of the Issuer and its Restricted Subsidiaries for such period increased by the sum of:

- (a) Consolidated Interest Expense of the Issuer and its Restricted Subsidiaries for such period; plus
- (b) Consolidated Income Tax Expense of the Issuer and its Restricted Subsidiaries for such period; plus
- (c) the consolidated depreciation and amortization expense included in the income statement of the Issuer and its Restricted Subsidiaries for such period; plus
- (d) other non-cash charges of the Issuer and its Restricted Subsidiaries reducing Consolidated Net Income for such period; plus
- (e) to the extent not otherwise included in clauses (a) to (d), (A) any costs deducted in computing Consolidated Net Income for such period associated with the sale of the Notes and the application of the proceeds thereof and (B) any expenses or charges related to any issuance or offering of Equity Interests, Permitted Investment, merger, amalgamation, consolidation, arrangement, acquisition, disposition, recapitalization or the incurrence of Indebtedness permitted to be incurred by this Indenture (including a refinancing thereof) (whether or not successful), including (i) fees, expenses or charges related to the offering of the Notes and the redemption of any Existing Indebtedness using the proceeds thereof and (ii) any amendment or other modification of the Notes; minus
- (f) other non-cash items of the Issuer and its Restricted Subsidiaries for such period increasing Consolidated Net Income for such period.

"Consolidated Cash Flow Coverage Ratio", as of any date of determination, means the ratio of:

- (a) Consolidated Cash Flow of the Issuer and its Restricted Subsidiaries for the period of the most recently completed four consecutive fiscal quarters for which quarterly or annual financial statements are available, to
- (b) Consolidated Fixed Charges of the Issuer and its Restricted Subsidiaries for such period;

provided, however, that:

- (a) Consolidated Fixed Charges shall be adjusted to give effect on a pro forma basis to any Indebtedness (other than Indebtedness Incurred under a revolving credit

facility for working capital purposes in the ordinary course of business) that has been Incurred by the Issuer or any Restricted Subsidiary since the first day of such period that remains outstanding and to any Indebtedness that is proposed to be Incurred by the Issuer or any Restricted Subsidiary as if in each case such Indebtedness had been Incurred on the first day of such period and as if the application or proposed application of the proceeds of such Indebtedness had occurred on the first day of such period and as if any Indebtedness that has been redeemed, repaid or retired since the first day of such period was redeemed, repaid or retired as of the first day of such period;

- (b) in making such computation, the Consolidated Interest Expense of the Issuer and its Restricted Subsidiaries attributable to interest on any proposed Indebtedness bearing a floating interest rate shall be computed on a pro forma basis as if the rate in effect on the date of computation had been the applicable rate for the entire period; and
- (c) in the event the Issuer or any of its Restricted Subsidiaries has made Asset Dispositions or acquisitions of assets not in the ordinary course of business (including acquisitions of other Persons by merger, consolidation or purchase of Capital Stock) during or after such period, such computation shall be made on a pro forma basis as if the Asset Dispositions or acquisitions had taken place on the first day of such period.

"Consolidated Debt" means, as of any date of determination, the aggregate principal amount of Indebtedness of the Issuer and its Restricted Subsidiaries outstanding on such date, determined on a consolidated basis in accordance with GAAP.

"Consolidated Fixed Charges" for any period means the sum of (i) Consolidated Interest Expense and (ii) the consolidated amount of interest capitalized by the Issuer and its Restricted Subsidiaries during such period calculated in accordance with generally accepted accounting principles.

"Consolidated Income Tax Expense" for any period means the consolidated provision for income taxes of the Issuer and its Restricted Subsidiaries for such period calculated on a consolidated basis in accordance with generally accepted accounting principles.

"Consolidated Interest Expense" means, for any period, the consolidated interest expense (net of any interest income) included in a consolidated income statement of the Issuer and its Restricted Subsidiaries for such period calculated on a consolidated basis in accordance with generally accepted accounting principles, including without limitation or duplication (or, to the extent not so included, with the addition of):

- (a) the amortization of Indebtedness discounts;
- (b) fees with respect to interest rate swap or similar agreements or foreign currency hedge, exchange or similar agreements;

- (c) Preferred Stock dividends of the Issuer and its Restricted Subsidiaries (other than with respect to Disqualified Stock) declared and paid or payable;
- (d) accrued Disqualified Stock dividends of the Issuer and its Restricted Subsidiaries, whether or not declared or paid;
- (e) interest on Indebtedness Guaranteed by the Issuer and its Restricted Subsidiaries;
- (f) interest expense attributable to Capital Lease Obligations;
- (g) the face amount of interest payable on any outstanding convertible securities of the Issuer or its Restricted Subsidiaries; and
- (h) the amount of all payments charged to shareholders' equity on any "compound financial instrument" (as described under generally accepted accounting principles) paid, accrued or scheduled to be paid or accrued during such period, but excluding any dividends paid on Preferred Stock repaid, repurchased or retired from the proceeds of the sale of the Notes.

"Consolidated Leverage Ratio" means, as of any date of determination, the ratio of Consolidated Debt at such date to Consolidated Cash Flow for the four consecutive fiscal quarters ending with the Issuer's most recent fiscal quarter for which financial statements prepared on a consolidated basis in accordance with GAAP are available, in each case calculated in accordance with the pro forma adjustment provisions set forth in the definition of "Consolidated Cash Flow Coverage Ratio".

"Consolidated Net Income" for any period means the consolidated net income (or loss) of the Issuer and its Restricted Subsidiaries for such period determined on a consolidated basis in accordance with generally accepted accounting principles; provided that there shall be excluded therefrom:

- (a) the net income (or loss) of any Person acquired by the Issuer or a Restricted Subsidiary in a pooling-of-interests transaction for any period prior to the date of such transaction;
- (b) the net income (or loss) of any Person that is not a Restricted Subsidiary except to the extent of the amount of dividends or other distributions actually paid to the Issuer or a Restricted Subsidiary by such Person during such period;
- (c) gains or losses on Asset Dispositions by the Issuer or its Restricted Subsidiaries;
- (d) all extraordinary gains and extraordinary losses;
- (e) the cumulative effect of changes in accounting principles;
- (f) non-cash gains or losses resulting from fluctuations in currency exchange rates; and

(g) the tax effect of any of the items described in clauses (a) through (f) above;

provided, however, that solely for the purposes of calculating the Consolidated Cash Flow Coverage Ratio (and in each case, except to the extent already included pursuant to clause (b) above) "Consolidated Net Income" of the Issuer shall include the amount of all cash dividends received by the Issuer or any Restricted Subsidiary from an Unrestricted Subsidiary.

"Consolidated Tangible Assets" of any Person means the sum of the Tangible Assets of such Person after eliminating inter-company items, determined on a consolidated basis in accordance with generally accepted accounting principles, including appropriate deductions for any minority interest in Tangible Assets of such Person's Restricted Subsidiaries; provided, however that, with respect to the Issuer, adjustments following the Issue Date to the accounting books and records of the Issuer in accordance with generally accepted accounting principles resulting from the acquisition of control of the Issuer by another Person shall not be given effect to.

"Consolidated Total Assets" means, as of any date of determination, the total amount of assets which would appear on a consolidated balance sheet of the Issuer and its Restricted Subsidiaries as determined on a consolidated basis in accordance with GAAP.

"Control", when used with respect to any Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms **"Controlling"** and **"Controlled"** have meanings correlative to the foregoing.

"Counsel" means a barrister or solicitor or firm of barristers or solicitors retained or employed by the Issuer.

"Covenant Defeasance" has the meaning given to that term in Section 7.4.

"Credit Facility" or **"Credit Facilities"** means one or more credit or debt facilities including, without limitation, the Senior Credit Facility, commercial paper facilities or Debt Issuances, in each case with banks, investment banks, insurance companies, mutual or other institutional lenders or investors providing for, among other things, revolving credit loans, term loans, Securitization Programs (including through the sale of receivables to such lenders or to special purpose entities formed to borrow from such lenders against such receivables), letters of credit or letter of credit guarantees or Debt Issuances, in each case, as amended, restated, modified, renewed, refunded, replaced or refinanced in whole or in part from time to time.

"Custodian" means any receiver, receiver-manager, trustee, assignee, liquidator, monitor, or similar official under any Bankruptcy Law.

"DBRS" means DBRS Limited or any successors to the rating agency business thereof.

"Debt Issuances" means, with respect to the Issuer or any of its Restricted Subsidiaries, one or more issuances after the Issue Date of Indebtedness evidenced by notes, debentures, bonds or other similar securities or instruments.

"Deemed Year" has the meaning given to that term in 2.16(f).

"Default" means any occurrence that is, or with the giving of notice or the lapse of time or both would become, an Event of Default.

"Defeased Covenant" has the meaning given to that term in Section 7.4.

"Depository" means CDS and such other Person as is designated in writing by the Issuer and acceptable to the Trustee to act as depository in respect of any Global Certificates.

"Designated Non-cash Consideration" means any non-cash consideration received by the Issuer or one of its Restricted Subsidiaries in connection with an Asset Disposition that is designated as Designated Non-cash Consideration pursuant to an Officers' Certificate. Such Officers' Certificate shall state the basis of such valuation. A particular item of Designated Non-cash Consideration shall no longer be considered to be outstanding to the extent it has been sold or liquidated for cash or readily marketable Cash Equivalents (but only to the extent of the cash or readily marketable Cash Equivalents received).

"Discounted Value" means, with respect to the Called Principal of any Notes, the amount obtained by discounting, on a semi-annual basis, all Remaining Scheduled Payments with respect to such Called Principal from their respective scheduled due dates to the date of calculation of the Redemption Price with respect to such Called Principal, in accordance with accepted financial practice and at a discount factor (applied on the same periodic basis as that on which interest on the Notes is payable) equal to the Reinvestment Yield with respect to such Called Principal.

"Disqualified Stock" means, with respect to any Person, any Capital Stock that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case at the option of the holder of the Capital Stock), or upon the happening of any event (other than any event solely within the control of the issuer thereof), matures or is mandatorily redeemable pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder of the Capital Stock, in whole or in part, on or prior to the date that is 91 days after the Stated Maturity of the Notes. Notwithstanding the preceding sentence, any Capital Stock that would constitute Disqualified Stock solely because the holders of the Capital Stock (or the holders of any security into or for which such Capital Stock is convertible, exchangeable or exercisable) have the right to require the issuer thereof to repurchase such Capital Stock upon the occurrence of a Change of Control or an Asset Disposition occurring on or prior to the 91st day after the Stated Maturity of the Notes will not constitute Disqualified Stock if the provisions applicable to such Capital Stock either (i) are no more favourable to the holders of such Capital Stock than the provisions contained in Sections 5.17 and 5.18 and such Capital Stock specifically provides that the issuer will not repurchase or redeem any

of such Capital Stock pursuant to such provisions prior to the Issuer's repurchase of such of the Notes as are required to be repurchased pursuant to Sections 5.17 and 5.18, or (ii) provide that the issuer thereof may not repurchase or redeem any such Capital Stock pursuant to such provisions unless such repurchase or redemption is permitted by Section 5.12. The amount of Disqualified Stock deemed to be outstanding at any time for purposes of this Indenture will be the maximum amount that the Issuer and its Restricted Subsidiaries may become obligated to pay upon the maturity of, or pursuant to any mandatory redemption provisions of, such Disqualified Stock, exclusive of accrued dividends.

"Electronic Methods" has the meaning given to that term in Section 12.3.

"Equity Interests" means Capital Stock and all warrants, options or other rights to acquire Capital Stock (but excluding any debt security including debt security that is convertible into, or exchangeable for, Capital Stock).

"Event of Default" has the meaning given to that term in Section 6.1.

"Excess Proceeds" has the meaning given to that term in Section 5.17(e).

"Existing Indebtedness" means Indebtedness of the Issuer or its Restricted Subsidiaries outstanding on the Issue Date.

"Fair Market Value" means, with respect to any asset or liability, the price (after taking into account any liabilities relating to such asset) that would be negotiated in an arm's-length transaction between a willing seller and a willing and able buyer, neither of which is under any compulsion to complete the transaction, as determined in good faith by any one of the chief executive officer or the chief financial officer of the Issuer; provided that if the Fair Market Value exceeds \$25.0 million, such determination shall be made by the Board of Directors of the Issuer.

"Financial Reports" has the meaning given to that term in Section 5.6(a).

"Financial Term" has the meaning given to that term in Section 1.14(b).

"Funding Guarantor" has the meaning given to that term in Section 13.2(c).

"generally accepted accounting principles" or **"GAAP"** means generally accepted accounting principles in effect in Canada from time to time consistently applied, which for greater certainty shall include International Financial Reporting Standards, provided that any determination under the provisions of this Indenture as to whether a lease shall be classified as an operating lease or a finance lease shall be made in accordance with GAAP as in effect on December 31, 2018.

"Global Certificate" means a certificate representing the Notes issued on any date registered in the name of the CDS Nominee or CDS (or any replacement Depository or its nominee) for purposes of being held by such depository on behalf of Beneficial Holders of the Notes.

"Government Securities" means direct non-callable obligations of, or obligations Guaranteed by, the Government of Canada for the payment of which obligations or guarantee the full faith and credit of the Government of Canada is pledged.

"Guarantee" by any Person means, where the context indicates any obligation, contingent or otherwise, of such Person guarantying, or having the economic effect of guarantying, any Indebtedness of any other Person (the "primary obligor") in any manner, whether directly or indirectly, and including, without limitation, any obligation of such Person, (A) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or to purchase (or to advance or supply funds for the purchase of) any security for the payment of such Indebtedness, (B) to purchase property, securities or services for the purpose of assuring the holder of such Indebtedness of the payment of such Indebtedness, or (C) to maintain working capital, equity capital or other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness (and "Guaranteed" and "Guarantying" shall have meanings correlative to the foregoing); provided, however, that the Guarantee by any Person shall not include endorsements by such Person for collection or deposit, in either case, in the ordinary course of business.

"Guarantor" means each Restricted Subsidiary that provides a Note Guarantee pursuant to Article 13 of this Indenture unless and until such Note Guarantee is released in accordance with the terms of this Indenture.

"Holder" means a Person in whose name a Note is registered in the Note Register.

"Holders' Request" means an instrument signed in one or more counterparts by the Holder or Holders of not less than 25% in aggregate principal amount of the outstanding Note requesting the Trustee to take an action or proceeding permitted by this Indenture.

"Incur" or **"incur"** means, with respect to any Indebtedness or other obligation of any Person, to create, issue, incur (by conversion, exchange or otherwise), assume, Guarantee or otherwise become liable in respect of such Indebtedness or other obligation, including by acquisition of Restricted Subsidiaries or the recording, as required pursuant to generally accepted accounting principles or otherwise, of any such Indebtedness or other obligation on the balance sheet of such Person (and "Incurrence", "incurrence", "Incurred" and "incurred" shall have meanings correlative to the foregoing); provided, however, that a change in generally accepted accounting principles that results in an obligation of such Person that exists at such time becoming Indebtedness shall not be deemed an Incurrence of such Indebtedness.

"Indebtedness" with respect to any specified Person means, without duplication:

- (a) the principal of and premium (if any) in respect of indebtedness of such Person for borrowed money;
- (b) the principal of and premium (if any) in respect of obligations of such Person evidenced by bonds, notes, debentures or similar instruments;

- (c) the principal component (including any capitalized interest) of reimbursement obligations of such Person in respect of letters of credit, letters of guaranty, bankers' acceptances and similar credit transactions (other than obligations with respect to other letters of credit securing obligations (other than obligations described in clauses (a) and (b) above) entered into in the ordinary course of business of such Person, in each case, to the extent such letters of credit are not drawn upon or, if and to the extent drawn upon, such drawing is reimbursed no later than the fifth business day following payment on the letter of credit);
- (d) Capital Lease Obligations of such Person and all Attributable Debt in respect of Sale-Leaseback Transactions entered into by such Person;
- (e) the principal component (including any capitalized interest) of all obligations of such Person representing the balance of the deferred and unpaid of the purchase price of any property or services that would be included on a balance sheet as a liability in accordance with GAAP, and which purchase price is due after the date of placing such property in service or taking delivery and title thereto, except (i) any such balance that constitutes an accrued expense or trade payable or similar obligation to a trade creditor and (ii) any earn-out obligation until the amount of such obligation becomes a liability on the balance sheet of such Person in accordance with GAAP;
- (f) net obligations of such Person under Interest Rate, Currency or Commodity Price Agreements;
- (g) obligations of such Person under an agreement or arrangement that in substance provides financing pursuant to the factoring of Accounts Receivable;
- (h) the principal component or liquidation preference of all obligations of such Person with respect to the redemption, repayment or other repurchase of (i) any Disqualified Stock, or (ii) Preferred Stock issued by any such Person if such Person is a Restricted Subsidiary of the Issuer but not a Guarantor, but excluding, in each case, any accrued dividends; and
- (i) all Indebtedness of others secured by a Lien on any asset of the specified Person (whether or not such Indebtedness is assumed by the specified Person) and, to the extent not otherwise included, a guarantee by the specified Person of any Indebtedness of any other Person, excluding in each case trade payables and accrued expenses incurred by such Person in the ordinary course of business in connection with obtaining goods, materials or services.

The amount of any Indebtedness issued at a price that is less than the principal amount thereof shall be the amount of the liability thereof determined in accordance with GAAP. For the purposes of clause (f), the amount of Indebtedness shall be the net amount payable by such Person if such Interest Rate, Currency or Commodity Price Agreements were terminated at the time. For purposes of clause (h), the principal amount associated with any such Disqualified Stock or Preferred Stock will be equal to the greater of the

maximum mandatory redemption or repurchase price (not including, in either case, any redemption or repurchase premium) or the liquidation preference thereof. The amount of any Indebtedness of another Person secured by a Lien on the assets of the specified Person shall be the lesser of: (i) the Fair Market Value of such assets at the date of determination, and (ii) the principal amount of such Indebtedness of such other Person.

For the avoidance of doubt, "Indebtedness" of any Person shall not include:

- (a) trade payables or accrued liabilities incurred in the ordinary course of business and payable in accordance with customary practice;
- (b) any liability for national, regional, federal, state, provincial, local or other taxes not yet delinquent or being contested in good faith and for which adequate reserves have been established to the extent required by GAAP;
- (c) minority interests;
- (d) uncanceled interest;
- (e) in connection with a purchase by the Issuer or any Restricted Subsidiary of any business or assets, any earn-out or other post-closing payment adjustment to which the seller may become entitled to the extent such adjustment is determined by a final closing balance sheet or such adjustment depends on the performance of such business or assets after the closing; provided, however, that, at the time of closing, the amount of any such payment is not determinable and, to the extent such payment thereafter becomes fixed and determined, the amount is paid in a timely manner;
- (f) any obligations in respect of workers' compensation, health, disability, employee benefits or other claims arising under similar legislation, early retirement or termination obligations, pension fund obligations or contributions or similar claims, obligations or contributions, or pursuant to self-insurance obligations and not in connection with the borrowing of money or the obtaining of advances or credit;
- (g) money borrowed and set aside at the time of the Incurrence of any Indebtedness in order to pre-fund the payment of interest on such Indebtedness shall not be deemed to be "Indebtedness"; provided that such money is held to secure the payment of such interest;
- (h) any customer deposits or advance payments received or account credits given in the ordinary course of business; or
- (i) any Cash Management Obligation incurred in the ordinary course of business so long as such Cash Management Obligation is repaid in full (x) no later than five business days following the date on which it was incurred or, (y) in the case of a Cash Management Obligation in respect of credit or purchase cards, no later than 60 days following the date on which it was incurred.

"Indenture" means this trust indenture (including, for the avoidance of any doubt, the preamble and recitals hereto), as originally executed or as it may from time to time be supplemented, amended, restated, or otherwise modified in accordance with the terms hereof.

"Indenture Obligations" means all Obligations of the Issuer and the Guarantors due or to become due under or in connection with this Indenture (including, for certainty, the Note Guarantees) and the Notes owed to the Trustee and/or the Holders according to the terms hereof and thereof.

"Independent Financial Advisor" means an accounting, appraisal or investment banking firm of national standing in Canada or the United States that is, in the reasonable judgment of the Issuer, qualified to perform the task for which it has been engaged and disinterested and independent with respect to the Issuer and its Affiliates.

"Intercompany Indebtedness" means all Indebtedness between the Issuer and any Restricted Subsidiary or between Restricted Subsidiaries.

"Interest Payment Date" means October 27 and April 27 of each year that the Notes are outstanding and (except in respect of any Additional Notes) commencing on April 27, 2021.

"Interest Period" means the period commencing on the later of (a) the date of issue of the Notes and (b) the immediately preceding Interest Payment Date on which interest has been paid, and ending on the day immediately preceding the Interest Payment Date in respect of which interest is payable.

"Interest Rate, Currency or Commodity Price Agreement" of any Person means any forward contract, futures contract, swap, option or other financial agreement or arrangement (including, without limitation, caps, floors, collars, puts and similar agreements) relating to, or the value of which is dependent upon, interest rates, currency exchange rates or commodity prices or indices (excluding contracts for the purchase or sale of goods in the ordinary course of business).

"Investment" by any Person means any direct or indirect loan, advance or other extension of credit or capital contribution (by means of transfers of cash or other property to others or payments for property or services for the account or use of others, or otherwise) to, or purchase or acquisition of Capital Stock, bonds, notes, debentures or other securities or evidence of Indebtedness issued by, any other Person, including any payment on a Guarantee of any obligation of such other Person, but shall not include trade Accounts Receivable in the ordinary course of business on credit terms made generally available to the customers of such Person. If the Issuer or any Restricted Subsidiary sells or otherwise disposes of any Capital Stock of any direct or indirect Restricted Subsidiary such that, after giving effect to any such sale or disposition, such Person is no longer a Restricted Subsidiary, the Issuer shall be deemed to have made an Investment on the date of any such sale or disposition equal to the Fair Market Value of the Investment in such Restricted Subsidiary not sold or disposed of.

"Issue Date" means October 27, 2020, being the date on which the Notes are originally issued under this Indenture.

"Issuer" has the meaning given to that term in the preamble.

"Issuer Order" means an order or direction in writing signed by any one officer or director of the Issuer.

"Issuer's Auditors" means a nationally recognized independent firm of chartered accountants duly appointed as auditors of the Issuer.

"Legal Defeasance" has the meaning given to that term in Section 7.3.

"Lien" means, with respect to any property or assets, any mortgage or deed of trust, pledge, hypothecation, assignment, Receivables Sale, deposit arrangement, security interest, lien, charge, easement (other than any easement not materially impairing usefulness or marketability), encumbrance, preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever on or with respect to such property or assets (including, without limitation, any conditional sale or other title retention agreement having substantially the same economic effect as any of the foregoing).

"LVTS" means the large value electronic money transfer system operated by the Canadian Payments Association and any successor thereto.

"Maturity" means, when used with respect to any Note, the date on which the principal of such Note or an instalment of principal becomes due and payable as therein or herein provided, whether at the Stated Maturity or by declaration of acceleration, notice of redemption, notice of option to elect repayment or otherwise.

"Maturity Account" means an account or accounts required to be established by the Issuer (and which shall be maintained by and subject to the control of the Paying Agent) for the Notes issued pursuant to and in accordance with this Indenture.

"Moody's" means Moody's Investors Service Inc. or any successors to the rating agency business thereof.

"Net Available Proceeds" from any Asset Disposition by any Person means cash or Cash Equivalents received (including by way of sale or discounting of a note, installment receivable or other receivable, but excluding any other consideration received in the form of assumption by the acquiror of Indebtedness or other obligations relating to such properties or assets) therefrom by such Person, net of:

- (a) all legal, title and recording tax expenses, commissions and other fees and expenses (including brokerage fees and commissions and fees and expenses of legal counsel, accountants and investment banks) incurred and all federal, state, provincial, foreign and local taxes required to be accrued as a liability as a consequence of such Asset Disposition;

- (b) all payments made by such Person or its Restricted Subsidiaries on any Indebtedness which is secured by such assets in accordance with the terms of any Lien upon or with respect to such assets or which must by the terms of such Lien, or in order to obtain a necessary consent to such Asset Disposition or by applicable law, be repaid out of the proceeds from such Asset Disposition;
- (c) all distributions and other payments made to minority interest holders in Restricted Subsidiaries of such Person or joint ventures as a result of such Asset Disposition; and
- (d) appropriate amounts to be provided by such Person or any Restricted Subsidiary thereof, as the case may be, as a reserve in accordance with generally accepted accounting principles against any liabilities associated with such assets and retained by such Person or any Restricted Subsidiary thereof, as the case may be, after such Asset Disposition, including, without limitation, liabilities under any indemnification obligations and severance and other employee termination costs associated with such Asset Disposition, in each case as determined by the Board of Directors, in its reasonable good faith judgment evidenced by a resolution of the Board of Directors filed with the Trustee;

provided, however, that any reduction in such reserve within twelve months following the consummation of such Asset Disposition will be treated for all purposes of this Indenture and the Notes as a new Asset Disposition at the time of such reduction with Net Available Proceeds equal to the amount of such reduction.

"Note Guarantee" means a Guarantee on the terms set forth in Article 13 by a Guarantor of the Indenture Obligations of the Issuer.

"Notes" means the 5.75% Senior Unsecured Notes due October 27, 2025 issued under this Indenture (including, unless the context otherwise requires, any Additional Notes).

"Note Register" has the meaning given to that term in Section 2.10.

"Obligations" means any principal, interest, penalties, fees, indemnifications, reimbursements, damages and other liabilities payable under the documentation governing any Indebtedness.

"Officers' Certificate" means a certificate signed by the Chairman of the Board of Directors, a Vice Chairman of the Board of Directors, the President or a Vice President (including, for greater certainty, any Executive Vice President), and by the Treasurer, an Assistant Treasurer, the Corporate Controller, the Secretary or an Assistant Secretary, of the Issuer and delivered to the Trustee.

"Opinion of Counsel" means a written opinion (which may contain customary exceptions and qualifications) of Counsel.

"Pari Passu Indebtedness" means Indebtedness of the Issuer and any Restricted Subsidiary that ranks equally in right of payment to the Notes and the Note Guarantees, as applicable.

"Participant" has the meaning given to that term in Section 3.2(e).

"Paying Agent" has the meaning given to that term in Section 2.10.

"Permitted Assets" means any and all properties or assets that are used or useful in a Permitted Business (including Capital Stock in a Person that is a Restricted Subsidiary and Capital Stock in a Person whose primary business is a Permitted Business that shall become a Restricted Subsidiary immediately upon the acquisition of such Capital Stock by the Issuer or by a Restricted Subsidiary, but excluding any other securities).

"Permitted Business" means any business conducted by the Issuer and the Restricted Subsidiaries on the Issue Date, and other businesses reasonably related or ancillary thereto or that are a reasonable extension or development thereof.

"Permitted Indebtedness" means:

- (a) Indebtedness Incurred by the Issuer or any Restricted Subsidiary under the Credit Facilities in an aggregate principal amount at any one time outstanding pursuant to this clause (a) that does not exceed the greater of (i) \$475 million, and (ii) the Borrowing Base of the Issuer and its Restricted Subsidiaries on a consolidated basis as of the end of the most recently completed fiscal quarter for which quarterly or annual financial statements are available;
- (b) Indebtedness consisting of Guarantees by the Issuer or any Restricted Subsidiary of Indebtedness Incurred by the Issuer or a Restricted Subsidiary otherwise permitted under this Indenture;
- (c) Indebtedness that is Existing Indebtedness (other than Indebtedness under the Senior Credit Facility and Indebtedness described under clause (h) of this definition);
- (d) Indebtedness owed by the Issuer to any Restricted Subsidiary for which fair value has been received or Indebtedness owed by a Restricted Subsidiary to the Issuer or a Restricted Subsidiary; provided, however, that (i) any such Indebtedness owing by the Issuer to a Restricted Subsidiary shall be Subordinated Indebtedness evidenced by an inter-company promissory note, and (ii) upon either (1) the transfer or other disposition by such Restricted Subsidiary or the Issuer of any Indebtedness so permitted to a Person other than the Issuer or another Restricted Subsidiary, or (2) in the case of Indebtedness owed to a Restricted Subsidiary, such Restricted Subsidiary ceases to be a Restricted Subsidiary, the provisions of this clause (d) shall no longer be applicable to such Indebtedness and such Indebtedness shall be deemed to have been Incurred at the time of such transfer or other disposition or the date such Subsidiary ceased to be a Restricted Subsidiary;

- (e) the incurrence by the Issuer or any of its Restricted Subsidiaries of Attributable Debt or Indebtedness and obligations represented by Capital Lease Obligations or Purchase Money Indebtedness, in each case, incurred for the purpose of financing or refinancing all or any part of the purchase price for or cost of any acquisition, leasing, design, construction, installation, development, improvement repair or addition of property or assets (other than assets classified as current assets under GAAP) used or useful in the business of the Issuer or any of its Restricted Subsidiaries, in an aggregate principal amount at any one time outstanding, including all Permitted Refinancing Indebtedness incurred pursuant to clause (j) below to renew, refund, refinance, replace, defease or discharge any Indebtedness incurred pursuant to this clause (e), not to exceed the greater of (i) \$100 million at any time outstanding, and (ii) 5.0% of the Issuer's Consolidated Tangible Assets determined as of the date of such Incurrence; provided, however, that in the case of any Capital Lease Obligation, the principal amount of such Capital Lease Obligation does not, at the time of Incurrence, exceed the Fair Market Value of the property acquired in connection with such Capital Lease Obligation;
- (f) Acquired Indebtedness; provided that, after giving effect to such Acquired Indebtedness and the related acquisition, merger, amalgamation or consolidation, as applicable, either:
 - (i) the Issuer would be permitted to incur at least \$1.00 of additional Indebtedness pursuant to the Consolidated Cash Flow Coverage Ratio test set forth in Section 5.13(a)(i); or
 - (ii) the Consolidated Cash Flow Coverage Ratio would have been equal to or greater than such ratio immediately prior to the applicable acquisition, merger, amalgamation or consolidation;
- (g) Indebtedness Incurred by the Issuer or any Restricted Subsidiaries consisting of Permitted Interest Rate, Currency or Commodity Price Agreements;
- (h) Indebtedness of the Issuer evidenced by the Notes (not including any Additional Notes) issued on the Issue Date and any Note Guarantees thereof;
- (i) Indebtedness (i) in respect of bid, performance, surety or appeal bonds provided in the ordinary course of business, including letters of credit or letters of guarantee securing obligations of the Issuer or Restricted Subsidiaries relating to the closure, reclamation or remediation of current or past operations, (ii) in respect of letters of credit provided in the ordinary course of business, and (iii) arising from agreements providing for indemnification, adjustment of purchase price or similar obligations, or from Guarantees or letters of credit, surety bonds or performance bonds securing any obligations of the Issuer or any of its Restricted Subsidiaries pursuant to such agreements, in any case Incurred in connection with the disposition of any business, assets or Restricted Subsidiary or any of its Restricted Subsidiaries and not exceeding the gross proceeds therefrom, other than Guarantees of Indebtedness Incurred by any Person acquiring all or any

portion of such business or assets of the Issuer or any of its Restricted Subsidiaries for the purpose of financing such acquisition;

- (j) Indebtedness Incurred by the Issuer or any Restricted Subsidiary consisting of Permitted Refinancing Indebtedness with respect to Indebtedness that was incurred in reliance on any of clauses (c), (e), (f), (h), (j) or (n);
- (k) the issuance by any of the Issuer's Restricted Subsidiaries to the Issuer or to any of its Restricted Subsidiaries of shares of Disqualified Stock; provided, however, that:
 - (i) any subsequent issuance or transfer of Equity Interests that results in any such Disqualified Stock being held by a Person other than the Issuer or a Restricted Subsidiary; and
 - (ii) any sale or other transfer of any such Disqualified Stock to a Person that is not either the Issuer or a Restricted Subsidiary,

will be deemed, in each case, to constitute an issuance of such Disqualified Stock by such Restricted Subsidiary that was not permitted by this clause (k);

- (l) Indebtedness represented by daylight borrowings which are repaid on the same day such Indebtedness is Incurred;
- (m) Indebtedness of the Issuer or any Restricted Subsidiary, to the extent the net proceeds thereof are promptly (i) used to purchase Notes properly tendered (and not withdrawn) in connection with a Change of Control Offer or (ii) deposited to defease the Notes pursuant to Section 7.3 or 7.4 or to satisfy and discharge the Notes pursuant to Section 7.1; and
- (n) the Incurrence by the Issuer or any of its Restricted Subsidiaries of additional Indebtedness in an aggregate principal amount (or accreted value, as applicable) at any one time outstanding, including all Permitted Refinancing Indebtedness incurred to renew, refund, refinance, replace, defease or discharge any Indebtedness incurred pursuant to this clause (n), not to exceed the greater of (i) \$100 million and (ii) 5.0% of Consolidated Tangible Assets (calculated as at the time of the incurrence of such Indebtedness).

"Permitted Interest Rate, Currency or Commodity Price Agreement" of any Person means any Interest Rate, Currency or Commodity Price Agreement entered into with one or more financial institutions in the ordinary course of business that is designed to protect such Person against fluctuations in interest rates or currency exchange rates with respect to Indebtedness Incurred and which shall have a notional amount no greater than the payments due with respect to the Indebtedness being hedged thereby, or in the case of currency or commodity protection agreements, against currency exchange rate or commodity price fluctuations in the ordinary course of business relating to then existing financial obligations or then existing or sold production and not for purposes of speculation.

"Permitted Investments" means:

- (a) Investments in cash or Cash Equivalents;
- (b) Intercompany Indebtedness;
- (c) Investments in:
 - (i) a Restricted Subsidiary; or
 - (ii) another Person in a Permitted Business as a result of which such other Person becomes a Restricted Subsidiary or such other Person merges, amalgamates or consolidates with or into, or transfers or conveys all or substantially all of its assets to, the Issuer or a Restricted Subsidiary;
- (d) any Investment that the Issuer or any Subsidiary of the Issuer holds on the Issue Date and any extension, modification or renewal of such Investment;
- (e) Investments represented by Interest Rate, Currency or Commodity Price Agreements;
- (f) any Investment made as a result of the receipt of non-cash consideration in connection with a sale or other disposition of assets, including from an Asset Disposition that was made pursuant to and in compliance with Section 5.17;
- (g) loans or advances made to executive officers, directors or employees of the Issuer or any of its Restricted Subsidiaries in the ordinary course of business and consistent with the past practice of the Issuer or any Restricted Subsidiary, as the case may be; provided that the aggregate principal amount outstanding at any time under this clause (g) shall not exceed \$3.0 million;
- (h) Investments of a Restricted Subsidiary acquired after the Issue Date or of an entity merged into, amalgamated with, or consolidated with the Issuer or a Restricted Subsidiary in a transaction that is not prohibited by Section 5.14 after the Issue Date to the extent that such Investments were not made in contemplation of such acquisition, merger, amalgamation or consolidation and were in existence on the date of such acquisition, merger, amalgamation or consolidation and do not constitute a material portion of the assets of the entity so acquired;
- (i) loans or advances to dealers and receivables owing to the Issuer or any Restricted Subsidiary, in each case if created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary trade terms; provided, however, that such trade terms may include such concessionary trade terms as the Issuer or any such Restricted Subsidiary, as applicable, deems reasonable under the circumstances;

- (j) Investments in securities of trade creditors or customers received pursuant to any plan of compromise or arrangement or reorganization or similar arrangement, including upon the bankruptcy or insolvency of such trade creditors or customers;
- (k) guarantees of Indebtedness otherwise permitted under Section 5.13;
- (l) pledges or deposits with respect to financings, leases or utilities and other similar deposits, in the ordinary course of business or Liens otherwise described in the definition of "Permitted Liens";
- (m) Investments made by the Issuer or a Restricted Subsidiary for consideration consisting only of Qualified Equity Interests of the Issuer or any direct or indirect parent company of the Issuer;
- (n) stock, obligations or securities received (i) in settlement of debts created in the ordinary course of business and owing to the Issuer or any Restricted Subsidiary, (ii) in satisfaction of judgments, or (iii) as a result of foreclosure, perfection or enforcement of any Lien or otherwise with respect to any other transfer of title with respect to any secured Investment in default;
- (o) Investments in prepaid expenses, negotiable instruments held for collection and lease, utility and workers' compensation, performance and similar deposits entered into as a result of the operations of the business in the ordinary course of business; and
- (p) Investments in Permitted Joint Ventures and Unrestricted Subsidiaries in an aggregate amount not to exceed the greater of (i) \$100 million, and (ii) 7% of Consolidated Tangible Assets determined as of the date of such Investment.

The amount of Investments outstanding at any time pursuant to clause (p) above shall be deemed to be reduced: (i) by the aggregate amount returned in cash and the Fair Market Value of any asset other than cash received on or with respect to such Investment (to the extent not included in the computation of Consolidated Net Income) resulting from repurchases, repayments or redemptions of such Investment, proceeds realized on the sale of such Investment and proceeds representing the return of capital with respect to such Investment, whether through interest payments, principal payments, dividends or other distributions or similar payments, in each case received by the Issuer or any Restricted Subsidiary, less the cost of the disposition of such Investment and net of taxes; and (ii) upon a designation of an Unrestricted Subsidiary as a Restricted Subsidiary, by an amount equal to the lesser of (x) the Fair Market Value of the Issuer's proportionate interest in such Subsidiary immediately following such Redesignation, and (y) the aggregate amount of Investments in such Subsidiary that increased (and did not previously decrease) the amount of Investments outstanding pursuant to clause (p) above.

"Permitted Joint Venture" means any arrangement with another Person or Persons structured as an unincorporated joint venture, partnership, association or limited liability company (i) in which the Issuer and its Restricted Subsidiaries own at least 25% of the ownership interest thereof and (ii) which engages only in a business of the type

conducted by the Issuer and its Restricted Subsidiaries on the Issue Date or any reasonable extensions or expansions thereof or any business ancillary thereto or supportive thereof.

"Permitted Liens" means, with respect to any Person, any Lien arising by means of:

- (a) any attachment, judgment, decree or order of any court, so long as such Lien is being contested in good faith and is either adequately bonded or execution thereon has been stayed pending appeal or review and any appropriate legal proceedings which may have been duly initiated for the review of such attachment, judgment, decree or order shall not have been finally terminated or the period within which such proceedings may be initiated shall not have expired;
- (b) taxes, assessments or governmental charges not yet delinquent or which are being contested in good faith;
- (c) security for payment of workers' compensation, unemployment insurance, old-age pension and similar benefits;
- (d) security for the performance of tenders, bids, leases and contracts (other than contracts for the payment of money);
- (e) deposits to secure public or statutory obligations or in lieu of security or appeal bonds or to secure permitted contracts for the purchase or sale of any currency entered into in the ordinary course of business;
- (f) operation of law in favor of carriers, warehouses, landlords, mechanics, materialmen, laborers, employees or suppliers and similar liens arising by operation of law, incurred in the ordinary course of business for sums which are not yet delinquent or are being contested in good faith by negotiations or by appropriate proceedings which suspend the collection thereof;
- (g) any interest or title of a lessor under any lease;
- (h) security for security or appeal bonds;
- (i) easements, rights-of-way, zoning and similar covenants and restrictions and other similar encumbrances or title defects which, in the aggregate, are not substantial in amount and which do not in any case materially interfere with the ordinary conduct of the business of the Issuer or any of its Restricted Subsidiaries;
- (j) the ownership by a third party of property leased to the Issuer or a Restricted Subsidiary;
- (k) Liens created solely in favour of the Issuer or a Wholly Owned Restricted Subsidiary;

- (l) reservations and exceptions contained in or implied by statute in the original disposition from the Crown, and grants made by the Crown of interests so reserved or excepted;
- (m) security for payment of trade letters of credit or letters of guarantee incurred in the ordinary course of business;
- (n) security given by the Issuer or any Restricted Subsidiary in the ordinary course of business and consistent with past business practice to a public utility or any municipality or governmental or public authority in connection with operations of the Issuer or any Restricted Subsidiary other than in connection with Indebtedness for borrowed money; and
- (o) Liens securing Cash Management Obligations incurred in the ordinary course of business.

"Permitted Refinancing Indebtedness" means any Indebtedness that renews, refunds, refinances, replaces, defeases or discharges from time to time any Permitted Indebtedness, Existing Indebtedness or any Indebtedness of which, at the time of its initial issuance, the Issuer or its Restricted Subsidiaries were able to Incur pursuant to Section 5.13; provided that:

- (a) the principal amount (or accreted value, if applicable) of such Permitted Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness renewed, refunded, refinanced, replaced, defeased or discharged (plus all accrued interest on the Indebtedness, and the amount of all fees and expenses, including premiums, incurred in connection therewith);
- (b) the Stated Maturity of such Permitted Refinancing Indebtedness is (i) later than the Stated Maturity of the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged, or (ii) more than 90 days after the Stated Maturity of the Notes;
- (c) if the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged is subordinated in right of payment to the Notes, such Indebtedness is subordinated in right of payment to the Notes on terms at least as favourable to the holders of Notes as those contained in the documentation governing the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged;
- (d) (i) if the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged is Secured Indebtedness, no material additional security is granted in respect thereof, and (ii) if such Indebtedness is unsecured Indebtedness, no security is granted in respect thereof;
- (e) such Permitted Refinancing Indebtedness is Incurred either by the Issuer or by the Restricted Subsidiary that was the obligor on the Indebtedness being renewed,

refunded, refinanced, replaced, defeased or discharged and is Guaranteed only by Persons who were obligors on the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged; and

- (f) in the case of any refinancing of Preferred Stock of a Restricted Subsidiary, such Preferred Stock may be refinanced only with Preferred Stock of a Restricted Subsidiary or the Issuer.

"Person" means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, limited liability company or government, government body or agency or other entity.

"Preferred Stock" of any Person means Capital Stock of such Person of any classes (however designated) that ranks prior, as to the payment of dividends or as to the distribution of assets upon any voluntary or involuntary liquidation, dissolution or winding-up of such Person, to shares of Capital Stock of any other class of such Person.

"Premium" means, at any time with reference to any Note and without duplication, the excess of the applicable Redemption Price of such Note at such time over the principal amount of such Note.

"Public Equity Offering" means a public offering of Common Stock of the Issuer pursuant to applicable Canadian securities laws or the 1933 Act.

"Purchase Money Indebtedness" means Indebtedness, including Capital Lease Obligations and Attributable Indebtedness, of the Issuer or any Restricted Subsidiary incurred to finance or refinance the acquisition, leasing, design, construction, installation, development, improvement, repair or addition of assets (including real or personal property or Equity Interests) that may be used or useful in the business of the Issuer or any of its Restricted Subsidiaries, and whether acquired through the direct acquisition of such assets or the acquisition of the Equity Interests of any Person owning such assets, or otherwise.

"Qualifying Equity Interests" means Equity Interests of the Issuer other than Disqualified Stock.

"Rating Categories" mean:

- (a) with respect to S&P, any of the following categories: AAA, AA, A, BBB, BB, B, CCC, CC, C and D (or equivalent successor categories); and
- (b) with respect to Moody's, any of the following categories: Aaa, Aa, A, Baa, Ba, B, Caa, Ca, C and D (or equivalent successor categories).

"Ratings Decline" means a decrease in the rating of the Notes by each of Moody's and S&P by one or more gradations (including gradations within Rating Categories as well as between Rating Categories). In determining whether the rating of the Notes has decreased by one or more gradations, gradations within Rating Categories, namely + or for S&P,

and 1, 2, and 3 for Moody's, will be taken into account; for example, in the case of S&P, a rating decline either from BB+ to BB or BB- to B+ will constitute a decrease of one gradation.

"Receivables" means receivables, chattel paper, instruments, documents or intangibles evidencing or relating to the right to payment of money.

"Receivables Sale" of any Person means any sale of Receivables of such Person (pursuant to a purchase facility or otherwise), other than in connection with a disposition of the business operations of such Person relating thereto or a disposition of defaulted Receivables for purposes of collection and not as a financing arrangement.

"Record Date" means (i) with respect to any Interest Payment Date falling on October 27 of a given year, October 15 of that year, and with respect to any Interest Payment Date falling on April 27 of a given year, April 15 of that year or, (ii) in the case of defaulted interest, the record date established by the Issuer for the payment of such defaulted interest pursuant to Section 2.16(d).

"Redemption Date" means the date fixed for the redemption of Notes in accordance with Article 4.

"Redemption Notice" has the meaning given to that term in Section 4.7(a).

"Redemption Price" when used with respect to any Note to be redeemed, means the price at which it is to be redeemed pursuant to this Indenture.

"Registrar" has the meaning given to that term in Section 2.10(a).

"Reinvestment Yield" means, with respect to the Called Principal of any Note, the sum of (i) 1.0% per annum, plus (ii) the bid yield to maturity on such date compounded semi-annually which a non-callable non-amortizing Government of Canada nominal bond would be expected to carry if issued, in Canadian dollars in Canada, at 100% of its principal amount on such date with a term to maturity which most closely approximates the remaining term to October 27, 2022 of the Notes on such date, as determined by the Issuer based on a linear interpolation of the yields represented by the arithmetic average of bids observed in the market place at or about 10:00 a.m. (Toronto time), on the relevant date for each of the two outstanding non-callable non-amortizing Government of Canada nominal bonds which have the terms to maturity which most closely span the remaining term to October 27, 2022 of the Notes on such date, where such arithmetic average is based in each case on the bids quoted to an independent investment dealer acting as agent of the Issuer by two independent registered members of the Investment Industry Regulatory Organization of Canada selected by the Issuer, calculated in accordance with standard practice in the industry.

"Remaining Scheduled Payments" means, with respect to the Called Principal of any Note, (i) the Redemption Price of such Called Principal at October 27, 2022 (such Redemption Price being set forth in the table appearing in Section 4.2(c)), and (ii) all required payments of interest on such Called Principal that would be due after the date of

calculation of the Redemption Price with respect to such Called Principal through and including October 27, 2022 if no payment of such Called Principal were made prior to its scheduled due date, provided that if such date of calculation of the Redemption Price is not a date on which interest payments are due to be made under the terms of such Notes, then the amount of the next succeeding interest payment will be reduced by the amount of interest accrued to such date of calculation of the Redemption Price and required to be paid on such date.

"Restricted Payment" means:

- (a) the declaration or payment of dividends by the Issuer or any Restricted Subsidiary on any of its Capital Stock to the extent that any such dividend is paid to any Person other than the Issuer or a Restricted Subsidiary, other than a dividend or distribution paid in Capital Stock of the Issuer (other than Disqualified Stock);
- (b) the purchase, redemption, or other retirement or cancellation by the Issuer or any Restricted Subsidiary of any of its issued Capital Stock or of any options, warrants, or other rights to acquire any of such Capital Stock, to the extent that any amount payable upon such purchase, redemption, or other retirement or cancellation is paid to any Person other than the Issuer or a Restricted Subsidiary;
- (c) any Investments (other than Permitted Investments) in any Person; and
- (d) any payment of principal on any Indebtedness that is subordinated in right of payment to the Notes prior to the Stated Maturity of such Indebtedness (excluding any Subordinated Indebtedness between or among the Issuer and any one or more of its Restricted Subsidiaries).

"Restricted Subsidiary" means any Subsidiary of the Issuer, whether existing on or after the date of this Indenture, unless such Subsidiary is an Unrestricted Subsidiary.

"S&P" means S&P Global Ratings, a division of S&P Global Inc., or any successor to the rating agency business thereof.

"Sale-Leaseback Transaction" of any Person means an arrangement with any lender or investor or to which such lender or investor is a party providing for the leasing by such Person of any property or asset of such Person which has been or is being sold or transferred by such Person more than 270 days after the acquisition thereof or the completion of construction or commencement of operation thereof to such lender or investor or to any Person to whom funds have been or are to be advanced by such lender or investor on the security of such property or asset. The stated maturity of such arrangement shall be the date of the last payment of rent or any other amount due under such arrangement prior to the first date on which such arrangement may be terminated by the lessee without payment of a penalty.

"Secured Indebtedness" means any Indebtedness of the Issuer and its Restricted Subsidiaries secured by a Lien, including Indebtedness secured by first ranking Liens and second ranking Liens.

"Securitization Programs" means any existing or future programs entered into by the Issuer or a Restricted Subsidiary involving the limited recourse sale of trade accounts receivables.

"Senior Credit Facility" means the Second Amended and Restated Credit Agreement dated August 1, 2013 (as amended on September 21, 2015, as further amended on October 13, 2016, February 6, 2018, August 31, 2018 and September 29, 2020) between the Issuer and the lenders named therein, as the same may be amended, renewed, extended, substituted, restated, refinanced, restructured, supplemented or otherwise modified in whole or in part from time to time.

"Significant Subsidiary" means: (1) any Restricted Subsidiary of the Issuer: (a) whose proportionate share of the Consolidated Tangible Assets of the Issuer and all of its Restricted Subsidiaries (after intercompany eliminations) exceeds 10.0% as of the end of the most recently completed fiscal quarter for which quarterly or annual financial statements of the Issuer are available; or (b) who contributed in excess of 10.0% of Consolidated Cash Flow for the most recently completed four consecutive fiscal quarters for which quarterly or annual financial statements of the Issuer are available; and (2) any Restricted Subsidiary that, when aggregated with all other Restricted Subsidiaries that are not otherwise Significant Subsidiaries and as to which any event described in clause (h), (i) or (j) of Section 6.1 has occurred and is continuing, would constitute a Significant Subsidiary under clause (1) of this definition.

"Stated Maturity" means, with respect to any security, the date specified in such security as the fixed date on which the payment of principal of such security is due and payable, including pursuant to any mandatory redemption provision (but excluding any provision providing for the repurchase of such security at the option of the Holder thereof upon the happening of any contingency beyond the control of the issuer of such security unless such contingency has occurred).

"Subordinated Indebtedness" means Indebtedness of the Issuer or a Guarantor as to which the payment of principal of (and Premium, if any) and interest and other payment obligations in respect of such Indebtedness shall be subordinate to the prior payment in full of the Notes or such Note Guarantee to at least the following extent:

- (a) no payments of principal of (or Premium, if any) or interest on or otherwise due in respect of such Indebtedness may be permitted for so long as any default in the payment of principal (or Premium, if any) or Interest on the Notes exists;
- (b) in the event that any other default that with the passing of time or the giving of notice, or both, would constitute an event of default exists with respect to the Notes, upon notice by 25% or more in principal amount of the Notes to the Trustee, the Trustee shall have the right to give notice to the Issuer, the Guarantor, if applicable, and the Holders of such Indebtedness (or trustees or agents therefor) of a payment blockage, and thereafter no payments of principal of (or Premium, if any) or interest on or otherwise due in respect of such Indebtedness may be made for a period of 179 days from the date of such notice; and

- (c) such Indebtedness may not:
- (i) provide for payments of principal of such Indebtedness at the Stated Maturity thereof or by way of a sinking fund applicable thereto or by way of any mandatory redemption, defeasance, retirement or repurchase thereof by the Issuer (including any redemption, retirement or repurchase which is contingent upon events or circumstances, but excluding any retirement required by virtue of acceleration of such Indebtedness upon an event of default thereunder), in each case prior to the final Stated Maturity of the Notes; or
 - (ii) permit redemption or other retirement (including pursuant to an offer to purchase made by the Issuer) of such other Indebtedness at the option of the Holder thereof prior to the final Stated Maturity of the Notes, other than a redemption or other retirement at the option of the Holder of such Indebtedness (including pursuant to an offer to purchase made by the Issuer) which is conditioned upon a change of control of the Issuer pursuant to provisions substantially similar to those described under Section 5.18 (and which shall provide that such Indebtedness will not be repurchased pursuant to such provisions prior to the Issuer's repurchase of the Notes required to be repurchased by the Issuer pursuant to Section 5.18).

"Subsidiary" of any Person means:

- (a) a corporation more than 50% of the combined voting power of the outstanding Voting Stock of which is owned, directly or indirectly, by such Person or by one or more other Subsidiaries of such Person or by such Person and one or more Subsidiaries thereof;
- (b) any other Person (other than a corporation) in which such Person, or one or more other Subsidiaries of such Person or such Person and one or more other Subsidiaries thereof, directly or indirectly, has at least a majority ownership and power to direct the policies, management and affairs thereof; or
- (c) any other Person not described in clauses (a) and (b) above in which such Person, or one or more other Subsidiaries of such Person or such Person and one or more other Subsidiaries thereof, directly or indirectly, has a 50% ownership and the power, pursuant to a written contract or agreement, to direct the policies and management or the financial and other affairs thereof.

"Successor Person" means, for purposes of Sections 5.14 and 9.1, the Person formed by or surviving any such amalgamation, merger or consolidation (if other than the Issuer) or to which such sale, assignment, transfer, conveyance, lease or other disposition has been made.

"Supplemental Indenture" means an indenture supplemental to this Indenture which may be executed, acknowledged and delivered for any of the purposes set out in Section 11.5.

"Tangible Assets" of any Person means, at any date, the gross book value as shown by the accounting books and records of such Person of all its property, both real and personal, less:

- (a) the net book value of all its licenses, patents, patent applications, copyrights, trademarks, trade names, goodwill, non-compete agreements or organizational expenses and other like intangibles;
- (b) unamortized debt discount and expense;
- (c) all reserves for depreciation, obsolescence, depletion and amortization of its properties; and
- (d) all other proper reserves which in accordance with generally accepted accounting principles should be provided in connection with the business conducted by such Person;

provided, however, that, with respect to the Issuer and its Restricted Subsidiaries, adjustments following the date of this Indenture to the accounting books and records of the Issuer and its Subsidiaries in accordance with generally accepted accounting principles resulting from the acquisition of control of the Issuer by another Person shall not be given effect to.

"Term Sheet" means the final term sheet of the Issuer dated October 13, 2020, pursuant to which the Notes issued on the date hereof were offered for sale on a private placement basis under Applicable Securities Legislation.

"Trustee" has the meaning given to that term in the preamble.

"Unrestricted Subsidiary" means (a) any Subsidiary designated as such by the Board of Directors in the manner set forth in Section 5.10(a); and (b) any Subsidiary of any such designated Unrestricted Subsidiary.

"Voting Stock" of any Person means Capital Stock of such Person which ordinarily has voting power for the election of directors (or Persons performing similar functions) of such Person, whether at all times or only so long as no senior class of securities has such voting power by reason of any contingency.

"Wholly Owned Restricted Subsidiary" of any Person means a Restricted Subsidiary of such Person all of the outstanding Capital Stock or other ownership interests of which (other than directors' qualifying shares) shall at the time be owned by such Person or by one or more Wholly Owned Restricted Subsidiaries of such Person or by such Person and one or more Wholly Owned Restricted Subsidiaries of such Person.

1.2 Meaning of "Outstanding"

Every Note issued, certified and delivered in accordance with this Indenture shall be deemed to be outstanding until it is cancelled, converted, redeemed or delivered to the Trustee for cancellation or redemption for monies, except (i) any Note for which a new Note is issued in substitution pursuant to Section 2.15 and (ii) any Note, or any portion thereof, for whose payment, redemption or purchase funds in the necessary form and amount has been theretofore deposited (x) with the Trustee or any related Paying Agent (other than the Issuer or any other obligor upon the Notes) in trust for the Holders of such Notes or (ii) set aside and segregated in trust by the Issuer or any other obligor upon the Notes (if the Issuer or any other obligor upon the Notes shall act as its own Paying Agent) for the Holders of such Notes; *provided, however*, that, if such Note or any portions thereof is to be redeemed, notice of such redemption has been duly given pursuant to this Indenture, or provision therefor satisfactory to such Trustee has been made; provided further that:

- (a) when a new Note has been issued in substitution for a Note which has been lost, stolen or destroyed, only one of such Notes shall be counted for the purpose of determining the aggregate principal amount of Notes outstanding;
- (b) Notes which have been partially redeemed or purchased shall be deemed to be outstanding only to the extent of the unredeemed or unpurchased part of the principal amount thereof; and
- (c) for the purposes of any provision of this Indenture entitling Holders of outstanding Notes to vote, sign consents, resolutions, requisitions or other instruments or take any other action under this Indenture, or to constitute a quorum of any meeting of Holders, Notes owned directly or indirectly, legally or equitably, by the Issuer or any of its Subsidiaries shall be disregarded (unless the Issuer and/or one or more of its Subsidiaries are the only Holders (or Beneficial Holders) of the outstanding aggregate principal amount of Notes at the time outstanding in which case they shall not be disregarded) except that:
 - (i) for the purpose of determining (A) whether the Trustee shall be protected in relying on any such vote, consent, requisition or other instrument or action, or (B) the Holders present or represented at any meeting of Holders, only the Notes in respect of which the Trustee has received an Officers' Certificate confirming that the Issuer and/or one or more of its Subsidiaries are the only Holders shall be so disregarded; and
 - (ii) Notes so owned which have been pledged in good faith other than to the Issuer or any of its Subsidiaries shall not be so disregarded if the pledgee shall establish, to the satisfaction of the Trustee, the pledgee's right to vote such Notes, sign consents, requisitions or other instruments or take such other actions in his discretion free from the control of the Issuer or any of its Subsidiaries.

1.3 Interpretation

In this Indenture:

- (a) words importing the singular number or masculine gender shall include the plural number or the feminine or neuter genders, and vice versa;
- (b) all references to Articles and Appendices refer, unless otherwise specified, to articles of and appendices to this Indenture;
- (c) all references to Sections refer, unless otherwise specified, to sections, subsections or clauses of this Indenture;
- (d) words and terms denoting inclusiveness (such as "include" or "includes" or "including"), whether or not so stated, are not limited by and do not imply limitation of their context or the words or phrases which precede or succeed them; and
- (e) "this Indenture", "hereto", "herein", "hereby", "hereunder", "hereof" and similar expressions refer to this Indenture and not to any particular Article, Section, subsection, clause, subdivision or other portion hereof and include the Note Guarantees, as applicable, and any and every Supplemental Indenture;

1.4 Headings, Etc.

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

1.5 Statute Reference

Any reference in this Indenture to a statute is deemed to be a reference to such statute as amended, re-enacted or replaced from time to time.

1.6 Day not a Business Day

In the event that any day (other than a Record Date) on or before which any action required to be taken hereunder is not a Business Day, then such action shall be required to be taken on or before the requisite time on the first Business Day thereafter and, in any event, if the date for payment of any amount of principal or interest on any Notes is not a Business Day, then payment will be made on the next Business Day and the Holder of such Notes will not be entitled to any further interest or other payment in respect of the delay.

1.7 Applicable Law

This Indenture and the Notes shall be construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein and shall be treated in all respects as Ontario contracts. With respect to any suit, action or proceedings relating to this

Indenture or any Note, the Issuer, the Trustee and each Holder irrevocably submit and attorn to the non-exclusive jurisdiction of the courts of the Province of Ontario.

1.8 Waiver of Jury Trial

The Issuer, the Trustee and each Holder irrevocably and unconditionally waive any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Indenture or any Note.

1.9 Monetary References

Whenever any amounts of money are referred to herein, such amounts shall be deemed to be in lawful money of Canada unless otherwise expressed.

1.10 Invalidity, Etc.

Each provision in this Indenture or in a Note is distinct and severable and a declaration of invalidity or unenforceability of any such provision by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof or thereof.

1.11 Language

Each of the parties hereto hereby acknowledges that it has consented to and requested that this Indenture be drawn up in the English language only. *Chacune des parties aux présentes reconnaît avoir consenti et demandé que le présent document soit rédigé en langue anglaise seulement.*

1.12 Successors and Assigns

All covenants and agreements in this Indenture by the Issuer and its Restricted Subsidiaries shall bind their successors and assigns, as applicable, whether expressed or not.

1.13 Benefits of Indenture

Nothing in this Indenture or in the Notes, express or implied, shall give to any Person, other than the parties hereto and their successors or assigns hereunder, any Paying Agent, the Holders and the Trustee, any benefit or any legal or equitable right, remedy or claim under this Indenture.

1.14 Accounting Terms; Changes in Generally Accepted Accounting Principles

(a) Each accounting term used in this Indenture, unless otherwise defined herein, has the meaning assigned to it under GAAP applied consistently throughout the relevant period and relevant prior periods.

(b) If there occurs a material change in GAAP, and such change would require disclosure under GAAP in the financial statements of the Issuer and would cause an amount required to be determined for the purposes of any of the financial calculations or financial terms

under this Indenture (each a "**Financial Term**") to be materially different than the amount that would be determined without giving effects to such change, the Issuer shall notify the Trustee of such change (an "**Accounting Change**"). Such notice (an "**Accounting Change Notice**") shall describe the nature of the Accounting Change, its effect on the Issuer's current and immediately prior year's financial statements in accordance with GAAP and state whether the Issuer desires to revise the method of calculating the applicable Financial Term (including the revision of any of the defined terms used in the determination of such Financial Term) in order that amounts determined after giving effect to such Accounting Change and the revised method of calculating such Financial Term will approximate the amount that would be determined without giving effect to such Accounting Change and without giving effect to the revised method of calculating such Financial Term. The Accounting Change Notice shall be delivered to the Trustee within 90 days of the end of the fiscal quarter in which the Accounting Change is implemented or, if such Accounting Change is implemented in the fourth fiscal quarter or in respect of an entire fiscal year, within 120 days of the end of such period. Promptly after receipt from the Issuer of an Accounting Change Notice the Trustee shall deliver to each Holder a copy of such notice.

(c) If the Issuer so indicates that it wishes to revise the method of calculating the Financial Term, the Issuer shall in good faith provide to the Trustee the revised method of calculating the Financial Term within 90 days of the Accounting Change Notice and such revised method shall take effect from the date of the Accounting Change Notice. For certainty, if no notice of a desire to revise the method of calculating the Financial Term in respect of an Accounting Change is given by the Issuer within the applicable time period described above, (i) the method of calculating the Financial Term shall not be revised in response to such Accounting Change and all amounts to be determined pursuant to the Financial Term shall be determined after giving effect to such Accounting Change and (ii) the failure to give such notice shall not constitute a Default or an Event of Default under this Indenture.

ARTICLE 2 **THE NOTES**

2.1 Issue and Designation of Notes

In accordance with this Indenture, the Issuer is authorized to issue a series of Notes designated "5.75% Senior Unsecured Notes due October 27, 2025". The Notes may be issued from time to time, subject to the conditions and limitations set out in this Indenture, shall be dated on the date of issue thereof, and shall be issued in fully registered form without coupons, in denominations of \$1,000 and integral multiples of \$1,000 in excess thereof. The Notes will become due and payable, together with accrued interest and unpaid interest thereon, on October 27, 2025, unless earlier redeemed or repurchased in accordance herewith.

2.2 Additional Notes

The aggregate principal amount of Notes which may be issued under this Indenture on the Issue Date will consist of and initially be limited to \$150,000,000 in lawful money of Canada. The Issuer shall be entitled, subject to Section 5.13, to issue an unlimited aggregate principal amount of Additional Notes under this Indenture which shall be identical in all respects to the Notes issued on the Issue Date, except that Notes issued in the future shall

have different dates of issuance and may have different issuance prices and first Interest Payment Dates, and which shall bear the same designation and designating letters as those applied to such previous issue and will be numbered consecutively upwards in respect of such denominations of Notes in like manner and following the numbers of the Notes of such previous issue. The Notes issued on the date hereof, and any Additional Notes shall be treated as a single series for all purposes under this Indenture (including, waivers, amendments, redemptions and offers to purchase). With respect to any Additional Notes, the Issuer shall set forth in an Officer's Certificate, a copy of each of which shall be delivered to the Trustee, the aggregate principal amount of such Additional Notes to be authenticated and delivered pursuant to this Indenture, and the Holder(s), issue date and first Interest Payment Date of such Additional Notes.

2.3 Interest

Interest on the Notes will accrue on the unpaid principal amount thereof at the rate of 5.75% per annum from their date of issue or, if interest has already been paid, from the date it was most recently paid, to, but excluding, the Maturity thereof, payable semi-annually in arrears, equally, in respect of each Interest Period (after, as well as before, Maturity, default and judgment, with overdue interest at the same rate) on each Interest Payment Date in accordance with Section 2.16 and Section 2.19. The first Interest Payment Date will be April 27, 2021.

2.4 Ranking

(a) Notes

The Indebtedness evidenced by the Notes will be unsecured Indebtedness of the Issuer, Guaranteed on a senior unsecured basis by the Guarantors. The Notes will rank senior in right of payment to all existing and future Subordinated Indebtedness of the Issuer. The Notes will rank *pari passu* with all other unsecured and unsubordinated Indebtedness of the Issuer, other than any Indebtedness that ranks senior to the Notes by operation of law.

(b) Note Guarantees

The Indebtedness evidenced by the Note Guarantees will be unsecured Indebtedness of the applicable Guarantor. The Note Guarantees will rank senior in right of payment to all existing and future Subordinated Indebtedness of such Guarantor. The Note Guarantees will rank *pari passu* with all other unsecured and unsubordinated Indebtedness of such Guarantor, other than any Indebtedness that ranks senior to the Note Guarantees by operation of law.

2.5 Currency of Payment

The principal of, and interest and Premium (if any) on, the Notes will be payable in Canadian dollars.

2.6 **[Reserved]**

2.7 **Appointment of Trustee and Depository**

- (a) The Trustee will be the trustee for the Notes, subject to Article 10.
- (b) The Issuer initially appoints CDS to act as Depository with respect to the Notes.

2.8 **Form of Notes**

(a) Each certificate representing Notes and the Trustee's certificate of authentication therefor shall be substantially in the form set out in Appendix "A" hereto, together with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture. Notes may have notations, legends or endorsements required by law, stock exchange rule or usage.

(b) The terms and provisions contained in the Notes shall constitute, and are hereby expressly made, a part of this Indenture and the Issuer and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby. However, to the extent any provision of any Note conflicts with the express provisions of this Indenture, the provisions of this Indenture shall govern and be controlling.

(c) Notes may be typed, engraved, printed, lithographed or reproduced in a different form, or partly in one form and partly in another, as the Issuer may determine. The execution of any such Notes by the Issuer and the authentication by the Trustee in accordance with Section 2.9 of any such Notes will be conclusive evidence that such Notes are Notes authorized by this Indenture.

(d) Each certificate representing Notes (and all Notes issued in exchange therefor or substitution thereof) shall bear the legend in substantially the following form, subject to such modification as required by the Depository:

[Note: Insert only if not a Global Certificate – "UNLESS PERMITTED UNDER APPLICABLE SECURITIES LEGISLATION, THE HOLDER OF THIS NOTE MUST NOT TRADE THIS NOTE BEFORE ●, ●.] [Note: Insert February 28, 2021 for Notes issued on the Issue Date. For any Additional Notes, insert date that is 4 months and one day after the "distribution date" (within the meaning of National Instrument 45-102 Resale of Securities) for the Notes represented by the certificate.]

[Note: Insert if Global Certificate – THIS NOTE IS A GLOBAL CERTIFICATE WITHIN THE MEANING OF THE INDENTURE HEREIN REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITORY OR A NOMINEE THEREOF. THIS NOTE MAY NOT BE TRANSFERRED TO OR EXCHANGED FOR NOTES REGISTERED IN THE NAME OF ANY PERSON OTHER THAN THE DEPOSITORY OR A NOMINEE THEREOF AND NO SUCH TRANSFER MAY BE REGISTERED EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE. EVERY NOTE

AUTHENTICATED AND DELIVERED UPON REGISTRATION OF, TRANSFER OF, OR IN EXCHANGE FOR, OR IN LIEU OF, THIS NOTE SHALL BE A GLOBAL CERTIFICATE SUBJECT TO THE FOREGOING, EXCEPT IN SUCH LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE.]

[Note: Insert if CDS is Depository – UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF CDS CLEARING AND DEPOSITORY SERVICES INC. ("CDS") TO RUSSEL METALS 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 IS RIGHTS FOR ANOTHER PERSONS TO HOLD, TRANSFER OR DEAL WITH THIS CERTIFICATE.]"

2.9 Execution, Authentication and Delivery of Notes

(a) The words "execution," "signed," "signature," "delivery," and words of like import in or relating to this Indenture or any document to be signed in connection with this Indenture (including, without limitation, the Notes, the Note Guarantees and any Officers' Certificate) shall be deemed to include electronic signatures, including without limitation, digital signature provided by DocuSign (or such other digital signature provider as specified in writing to Trustee by the Issuer), each of which shall be of the same legal effect, validity or enforceability as a manually executed signature. The Issuer agrees to assume all risks arising out of the use of using digital signatures and electronic methods to submit communications to Trustee, including without limitation the risk of Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

(b) All Notes shall be signed (either manually or by electronic or facsimile signature) by any two authorized directors or officers of the Issuer, holding office at the time of signing. An electronic or facsimile signature upon a Note shall for all purposes of this Indenture be deemed to be the signature of the individual whose signature it purports to be. Notwithstanding that any individual whose signature, either manual or in facsimile or other electronic means, appears on a Note as a director or officer may no longer hold such office at the date of the Note or at the date of the authentication and delivery thereof, such Note shall be valid and binding upon the Issuer and the Holder thereof shall be entitled to the benefits of this Indenture.

(c) No Notes will be valid or obligatory for any purpose unless such Notes have been authenticated by or on behalf of the Trustee substantially in the form provided for herein. Such

authentication upon any Notes will be conclusive evidence, and the only evidence, that such Notes have been duly authenticated, issued and delivered and that the Holder thereof is entitled to the benefits hereof.

(d) Subject to the terms of this Indenture, the Trustee shall from time to time authenticate one or more Notes (including Global Certificates) for original issue on the issue date for such Notes upon and in accordance with an Issuer Order signed by an executive officer of the Issuer (an "**Authentication Order**"), without the Trustee receiving any consideration therefor. Each such Authentication Order shall specify the principal amount of such Notes to be authenticated and the date on which such Notes are to be authenticated. The aggregate principal amount of Notes outstanding at any time may not exceed the aggregate principal amount specified in the Authentication Orders except as provided in Section 2.15. Except as provided in Section 5.13, there is no limit on the amount of Notes that may be issued hereunder.

(e) The certificate by or on behalf of the Trustee authenticating Notes will not be construed as a representation or warranty of the Trustee as to the validity of this Indenture or of any Notes or their issuance (except the due authentication thereof by the Trustee) or as to the performance by the Issuer of its obligations under this Indenture or any Notes and the Trustee will be in no respect liable or answerable for the use made of the proceeds of such Notes. The certificate by or on behalf of the Trustee authenticating Notes issued under this Indenture will constitute a representation and warranty by the Trustee that such Notes have been duly authenticated by and on behalf of the Trustee pursuant to the provisions of this Indenture.

2.10 Registrar and Paying Agent

(a) The Issuer shall maintain for the Notes an office or agency where such Notes may be presented for registration of transfer or for exchange (the "**Registrar**") and an office or agency where such Notes may be surrendered for payment (the "**Paying Agent**"). The Registrar shall keep a register of such Notes (the "**Note Register**") and of their transfer and exchange.

(b) The Issuer may appoint one or more co-Registrars and one or more additional Paying Agents for the Notes in such other locations as it shall determine. The term "Registrar" includes any co-Registrar and the term "Paying Agent" includes any additional Paying Agent. The Issuer may change any Paying Agent or Registrar without notice to any Holder. The Issuer will notify the Trustee in writing of the name and address of any Registrar or Paying Agent which is not a party to this Indenture. The Issuer or any of its Subsidiaries may act as Paying Agent or Registrar for the Notes. The Issuer initially appoints the Trustee at its corporate office in Toronto, Ontario to act as the Registrar, transfer agent, authentication agent and Paying Agent with respect to the Notes.

2.11 Paying Agent to Hold Money in Trust

The Issuer shall require each Paying Agent, other than the Trustee, to agree in writing that the Paying Agent will, and the Trustee when acting as Paying Agent agrees that it will, hold in trust, for the benefit of the Holders or the Trustee all money held by the Paying Agent for the payment of principal, Premium, if any, and interest on the Notes and shall notify the Trustee of any default by the Issuer in making any such payment. While any such default

continues, the Trustee may require a Paying Agent to pay all money held by it to the Trustee and to account for any money disbursed by it. The Issuer at any time may require a Paying Agent to pay all money held by it to the Trustee. Upon payment over to the Trustee, the Paying Agent (if other than the Issuer or a Subsidiary) shall have no further liability for the money. If the Issuer or a Subsidiary acts as Paying Agent, it shall segregate and hold in a separate trust fund for the benefit of Holders all money held by it as Paying Agent. Upon any bankruptcy or reorganization proceedings relating to the Issuer, the Trustee shall serve as Paying Agent for the Notes.

2.12 Book Entry Only Notes

(a) Except as otherwise provided in Section 3.2(b), the provisions of the Notes or any Supplemental Indenture providing for the issuance thereof, Notes shall be issued as book-entry only Notes represented by a Global Certificate. Each Global Certificate authenticated in accordance with this Indenture and any Supplemental Indenture shall be registered in the name of the Depository designated for such Global Certificate or a nominee thereof and delivered to such Depository or a nominee thereof or custodian therefor, and each such Global Certificate shall constitute a single Note for all purposes of this Indenture and all Supplemental Indentures. Beneficial interests in a Global Certificate will not be shown on the register or the records maintained by the Depository but will be represented through book-entry accounts of Participants on behalf of the Beneficial Holders of such Note in accordance with the rules and procedures of the Depository. None of the Issuer or the Trustee 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 interest in any Global Certificates or for maintaining, reviewing or supervising any records relating to such beneficial interests therein. Except as otherwise provided in this Indenture, Beneficial Holders 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 or any Supplemental Indenture. Nothing herein shall prevent Beneficial Holders from voting such Notes using duly executed proxies.

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

2.13 Global Certificates

Notes issued to a Depository in the form of Global Certificates shall be subject to the following in addition to the provisions of Section 3.2, unless and until definitive Notes have been issued to Beneficial Holders pursuant to Section 3.2(b):

- (a) the Trustee may deal with such Depository for all purposes as the sole Holder of the Notes and the authorized representative of the Beneficial Holders of such Notes;

- (b) the rights of the Beneficial Holders of such Notes shall be exercised only through such Depository and the rights of Beneficial Holders shall be limited to those established by applicable law and agreements between the Depository and the Participants and between such Participants and Beneficial Holders, and must be exercised through a Participant in accordance with the rules and procedures of the Depository;
- (c) whenever this Indenture requires or permits actions to be taken based upon instructions or directions of Holders evidencing a specified percentage of the outstanding Notes, the Depository shall be deemed to be counted in that percentage to the extent that it has received instructions to such effect from Beneficial Holders or Participants;
- (d) such Depository will make book-entry transfers among the direct Participants of such Depository and will receive and transmit distributions of principal, Premium and interest on the Notes to such direct Participants;
- (e) the direct 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 Trustee and its agents, employees, officers and directors as the absolute owner of the Notes represented by such Global Certificates for all purposes whatsoever;
- (f) whenever a notice or other communication is required to be provided to Holders, the Trustee shall provide all such notices and communications to the Depository and the Depository shall deliver such notices and communications to the Beneficial Holders in accordance with Applicable Securities Legislation; and
- (g) notwithstanding any other provision of this Indenture, all payments in respect of Notes issuable in the form of or represented by a Global Certificate shall be made to the Depository or its nominee for subsequent payment by the Depository or its nominee to the Beneficial Holders thereof.

2.14 Interim or Temporary Notes

Pending the delivery of definitive Notes to the Trustee, the Issuer may issue and the Trustee authenticate in lieu thereof (but subject to the same provisions, conditions and limitations as set forth in this Indenture) interim printed, mimeographed or typewriter Notes in such forms and in such denominations and signed in such manner as provided herein, entitling the holders thereof to definitive Notes when the same are ready for delivery; or the Issuer may execute and deliver to the Trustee and the Trustee authenticate a temporary Note for the whole principal amount of Notes then authorized to be issued hereunder and thereupon the Trustee may issue its own interim certificates in such form and in such amounts, not exceeding in the aggregate the principal amount of the temporary Note so delivered to it, as the Issuer and the Trustee may approve entitling the holders thereof to definitive Notes when the same are ready for delivery; and, when so issued and certified, such interim or temporary Notes or interim certificates shall, for all purposes but without duplication, rank in respect of this Indenture

equally with Notes duly issued hereunder and, pending the exchange thereof for definitive Notes, the holders of the interim or temporary Notes or interim certificates shall be deemed without duplication to be Holders and entitled to the benefit of this Indenture to the same extent and in the same manner as though the said exchange had actually been made. Forthwith after the Issuer shall have delivered the definitive Notes to the Trustee, the Trustee shall call in for exchange all temporary or interim Notes or certificates that shall have been issued and forthwith after such exchange shall cancel the same. No charge shall be made by the Issuer or the Trustee to the holders of such interim or temporary Notes or interim certificates for the exchange thereof.

2.15 Mutilation, Loss, Theft or Destruction

In case any of the Notes issued hereunder shall become mutilated or be lost, stolen or destroyed, the Issuer, in its discretion, may issue, and thereupon the Trustee shall authenticate and deliver, a replacement Note upon surrender and cancellation of the mutilated Note, or in the case of a lost, stolen or destroyed Note, in lieu of and in substitution for the same, and the substituted Note shall be in a form approved by the Trustee and shall entitle the Holder thereof to the benefits of this Indenture and shall rank equally in accordance with its terms with all other Notes issued or to be issued hereunder. In case of loss, theft or destruction the applicant for a substituted Note shall furnish to the Issuer and to the Trustee such evidence of the loss, theft or destruction of the Note as shall be satisfactory to them in their discretion and shall also furnish an indemnity and surety bond satisfactory to them in their discretion. The applicant shall pay all reasonable expenses incidental to the issuance of any substituted Note.

2.16 Concerning Interest

(a) All Notes issued hereunder, whether originally or upon exchange or in substitution for previously issued Notes (including for certainty Notes issued under Sections 2.14 and 2.15), which are interest bearing, shall bear interest (I) from and including their respective issue date, or (II) from and including the last Interest Payment Date therefor to which interest shall have been paid or made available for payment on such outstanding Notes, whichever shall be the later, in all cases, to and excluding the next Interest Payment Date therefor.

(b) Subject to accrual of any interest on unpaid interest from time to time, interest on a Note will cease to accrue from the Maturity of such Note unless, upon due presentation and surrender of such Note for payment on or after the Maturity thereof, such payment is improperly withheld or refused.

(c) If the date for payment of any amount of principal, Premium or interest in respect of a Note is not a Business Day at the place of payment, then payment thereof will be made on the next Business Day and the Holder of such Note will not be entitled to any further interest on such principal, or to any interest on such interest, Premium or other amount so payable, in respect of the period from the date for payment to such next Business Day.

(d) The Holder of any Note at the close of business on any Record Date with respect to any Interest Payment Date shall be entitled to receive the interest, if any, payable on such Interest Payment Date notwithstanding any transfer or exchange of such Note subsequent to such Record Date and prior to such Interest Payment Date, except if and to the extent the Issuer shall

default in the payment of the interest due on such Interest Payment Date, in which case such defaulted interest shall be paid to the Persons in whose names such Note is registered in the Note Register at the close of business on a subsequent Record Date (which shall be not less than two Business Days prior to the date of payment of such defaulted interest) established by notice given (in the manner provided in Section 12.2) by or on behalf of the Issuer to the Holders of all affected Notes not less than 15 days preceding such subsequent Record Date.

(e) Wherever in this Indenture or any 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 the Note, and express mention of interest on amounts in default in any of the provisions of this Indenture will not be construed as excluding such interest in those provisions of this Indenture where such express mention is not made.

(f) In the case of any interest period that is shorter than a full semi-annual interest period due to the redemption or repurchase of Notes pursuant to the terms of this Indenture, interest on such Notes shall be computed on the basis of a year of 365 days (or 366 days in the case of a leap year) based on the actual number of days elapsed and will accrue from day to day. Whenever interest is computed on the basis of a year (the "**Deemed Year**") which 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 it by the number of days in the Deemed Year.

2.17 **[Reserved]**

2.18 **Payments of Amounts Due on Maturity**

- (a) Subject to Section 2.18(b), the following provisions shall apply to all Notes:
- (i) in the case of fully registered Notes, the Issuer will establish and maintain with the Paying Agent a Maturity Account for the Notes. On or before 11:00 a.m. (Eastern Standard Time) on the Business Day before the Maturity date for the Notes, the Issuer will deposit in the applicable Maturity Account by wire transfer an amount sufficient to pay all amounts payable in respect of the outstanding Notes (less any taxes required by law to be deducted or withheld therefrom). The Paying Agent will pay to each Holder of such Notes entitled to receive payment, the principal amount of, and Premium (if any) on, such Notes, upon surrender of such Notes to the Paying Agent. The deposit or making available of such amounts into the applicable Maturity Account will satisfy and discharge the liability of the Issuer for the Notes to which the deposit or making available of funds relates to the extent of the amount deposited or made available (plus the amount of any taxes deducted or withheld as aforesaid) and such Notes will thereafter not be considered as outstanding under this Indenture to such extent and such Holder shall have no other right than to receive out of the money so deposited or made available the amount to which it is

entitled. Failure to make a deposit or make funds available as required to be made pursuant to this Section 2.18(a)(i) will constitute Default in payment on the Notes in respect of which the deposit or making available of funds was required to have been made; and

- (ii) in the case of any Notes issued and outstanding in the form of or represented by Global Certificates, on or before 11:00 a.m. (Eastern Standard Time) on Maturity date for such Notes, the Issuer will deliver to the Depository by electronic funds or wire transfer an amount sufficient to pay the amount payable in respect of such Global Certificates (less any taxes required by law to be deducted or withheld therefrom). The Issuer will pay to the Depository the principal amount of, and Premium (if any) on, such Global Certificates, against receipt of the relevant Global Certificates. The delivery of such electronic funds or wire transfer to the Depository will satisfy and discharge the liability of the Issuer for the Notes to which the electronic funds or wire transfer relates to the extent of the amount deposited or made available (plus the amount of any taxes deducted or withheld as aforesaid) and such Notes will thereafter not be considered as outstanding under this Indenture unless such electronic funds or wire transfer is not received. Failure to make delivery of funds available as required pursuant to this Section 2.18(a)(ii) will constitute Default in payment on the Notes in respect of which the delivery or making available of funds was required to have been made.

(b) Notwithstanding Section 2.18(a), all payments in excess of \$25,000,000 (or such other amount as determined from time to time by the Canadian Payments Association or any successor thereto) shall be made by the use of the LVTS. The Paying Agent shall have no obligation to disburse funds pursuant to Section 2.18(a)(i) unless it has received written confirmation satisfactory to it that the funds have been deposited with it in sufficient amount to pay in full all amounts due and payable on the applicable date of Maturity.

2.19 Payment of Interest

(a) As interest becomes due on each fully registered Note (except on redemption thereof, when interest may at the option of the Issuer be paid upon surrender of such Note), the Issuer, either directly or through the Trustee or any agent of the Trustee, shall send or forward by electronic funds or wire transfer or such other means as may be agreed to by the Trustee, payment of such interest (less any taxes required by law to be deducted or withheld therefrom) to the order of the Holder of such Note at the close of business on the Record Date prior to the applicable Interest Payment Date and addressed to the Holder at the Holder's last address appearing on the register (or in the case of joint Holders, to such address of one of the joint Holders), unless such Holder otherwise directs. If payment is made by electronic funds or wire transfer or other means (provided the Trustee must receive confirmation of receipt of funds prior to being able to wire funds to Holders), such payment shall be made in a manner whereby the Holder receives credit for such payment on the Interest Payment Date. The making of such payment by electronic funds or wire transfer, or other means, shall, to the extent of the sum represented thereby, plus the amount of any taxes deducted or withheld as aforesaid, satisfy and

discharge all liability for interest on such Note to such extent. In the event of non-receipt of payment of interest by the Person to whom it is so sent as aforesaid, the Issuer will send to such Person a replacement payment for a like amount upon being furnished with such evidence of non-receipt as it shall reasonably require and upon being indemnified to its satisfaction. Notwithstanding the foregoing, if the Issuer is prevented by circumstances beyond its control from making payment of any interest due on any Note in the manner provided above, the Issuer may make payment of such interest or make such interest available for payment in any other manner acceptable to the Trustee with the same effect as though payment had been made in the manner provided above. If payment is made through the Trustee, by 11:00 a.m. (Eastern Standard Time) at least one Business Day prior to the related Interest Payment Date for a Note the Issuer shall deliver sufficient funds to the Trustee by electronic funds or wire transfer or make such other arrangements for the provision of funds as may be agreeable between the Trustee and the Issuer in order to effect such interest payment hereunder.

(b) So long as the Notes or any portion thereof are issued in the form of or represented by a Global Certificate, then all payments of interest on such Global Certificate shall be made by 11:00 a.m. (Eastern Standard Time) on the related Interest Payment Date by electronic funds or wire transfer made payable to the Depository or its nominee for subsequent payment to Beneficial Holders of the applicable interests in that Global Certificate, unless the Issuer and the Depository otherwise agree; *provided*, that in the event that the Paying Agent is to be responsible for such payment to the Depository or its nominee on behalf of the Issuer, the Issuer shall send or forward by electronic funds or wire transfer such payments of interest on such Global Certificate made payable to the Paying Agent by 11:00 a.m. (Eastern Standard Time) on the related Interest Payment Date, and the Paying Agent shall make such payment to the Depository on the related Interest Payment Date, unless the Issuer, the Depository and the Paying Agent otherwise agree. The delivery of such electronic funds to the Depository or Paying Agent, as applicable, shall, to the extent of the amount deposited or made available (plus the amount of any taxes deducted or withheld), satisfy and discharge all liability for interest on the Notes to which such electronic funds relates.

(c) Notwithstanding Sections 2.19(a) and 2.19(b), all payments in excess of \$25,000,000 (or such other amount as determined from time to time by the Canadian Payments Association or any successor thereto) shall be made by the use of the LVTS. The Trustee or Paying Agent, as applicable, shall have no obligation to disburse funds in respect of any Note pursuant to Section 2.19(a) unless it has received written confirmation satisfactory to it that the funds have been deposited with it in sufficient amount to pay in full all amounts due and payable with respect to such Interest Payment Date for such Note.

2.20 Record of Payment

The Trustee will maintain accounts and records evidencing any payment, by it on behalf of the Issuer, of principal, Premium (if any) and interest in respect of Notes, which accounts and records will constitute, in the absence of manifest error, *prima facie* evidence of such payment.

2.21 Representation Regarding Third Party Interest

The Issuer hereby represents to the Trustee that any account to be opened by, or interest to be held by, the Trustee in connection with this Indenture, for or to the credit of the Issuer, either (a) is not intended to be used by or on behalf of any third party; or (b) 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 reasonably satisfactory to it, as to the particulars of such third party.

2.22 CUSIP or ISIN Numbers

The Issuer in issuing the Notes may use "CUSIP" or "ISIN" numbers (if then generally in use), and, if so, the Issuer shall use "CUSIP" or "ISIN" numbers in notices of redemption as a convenience to Holders; provided, however, that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or as contained in any notice of a redemption or notice of an offer to purchase and that reliance may be placed only on the other identification numbers printed on the Notes, and any such redemption or offer to purchase shall not be affected by any defect in or omission of such numbers. The Issuer shall promptly notify the Trustee of any change in the "CUSIP" or "ISIN" numbers.

ARTICLE 3

REGISTRATION, TRANSFER, EXCHANGE AND OWNERSHIP

3.1 Register of Certificated Notes

(a) With respect to Notes issuable in whole or in part as fully registered Notes, the Issuer shall cause to be kept by and at the principal office of the Trustee in Toronto, Ontario or by such other Registrar as the Issuer, with the approval of the Trustee, may appoint at such other place or places, if any, as may be specified in the Notes or as the Issuer may designate with the approval of the Trustee, a register in which shall be entered the names and addresses of the Holders and particulars of the Notes held by them respectively and of all transfers of Notes. Such registration shall be noted on the relevant Notes by the Trustee or other Registrar unless a new Note shall be issued upon such transfer.

(b) No transfer of a registered Note shall be valid unless made on such register referred to in Section 3.1(a) by the Holder or such Holder's executors, administrators or other legal representatives or an attorney duly appointed by an instrument in writing in form and executed in a manner satisfactory to the Trustee or other Registrar upon surrender of the Notes together with a duly executed form of transfer acceptable to the Trustee or other Registrar and upon compliance with such other reasonable requirements as the Trustee or other Registrar may prescribe, and unless the name of the transferee shall have been noted on the Note by the Trustee or other Registrar.

3.2 Global Certificates

(a) With respect to Notes issuable as or represented by, in whole or in part, one or more Global Certificates, the Issuer shall cause to be kept by and at the principal office of the

Trustee in Toronto, Ontario or by such other Registrar as the Issuer, with the approval of the Trustee, may appoint at such other place or places, if any, as the Issuer may designate with the approval of the Trustee, a register in which shall be entered the name and address of the Holder of each such Global Certificate (being the Depository, or its nominee, for such Global Certificate) as Holder thereof and particulars of the Global Certificate held by it, and of all transfers thereof. If any Notes are at any time not Global Certificates, the provisions of Section 3.1 shall govern with respect to registrations and transfers of such Notes.

(b) Notwithstanding any other provision of this Indenture but subject to Section 3.2(c), a Global Certificate may not be transferred by the Holder thereof and, accordingly, no definitive Notes shall be issued to Beneficial Holders except in the following circumstances or as otherwise specified by the Trustee, a Board Resolution or an Officers' Certificate:

- (i) CDS advises the Trustee that it is no longer willing or able to discharge properly its responsibilities as depository with respect to the Notes, and the Issuer cannot locate a qualified successor to its reasonable satisfaction;
- (ii) CDS ceases to be a recognized clearing agency under Applicable Securities Legislation, or otherwise ceases to be eligible to be a Depository, and the Issuer is unable to locate a qualified successor to its reasonable satisfaction;
- (iii) the Issuer has determined, in its sole discretion, or is required by law, to terminate the book-entry only registration system in respect of such Global Certificates and has communicated such determination or requirement to the Trustee in writing, or the book-entry system ceases to exist or is no longer available to the Issuer; or
- (iv) the Trustee has determined that an Event of Default has occurred and is continuing with respect to Notes issued as Global Certificates, provided that Beneficial Holders representing, in the aggregate, not less than 50% of the aggregate outstanding principal amount of the Notes advise the Depository in writing, through the Participants, that the continuation of the book-entry only registration system for the Notes is no longer in their best interests.

(c) Global Certificates may be transferred by a Depository to a nominee of such Depository, or by a nominee of a Depository to such Depository, or to another nominee of such Depository, or by a Depository or its nominee to a successor Depository or its nominee.

(d) Upon the termination of the book-entry only registration system on the occurrence of one of the conditions specified in Section 3.2(b), the Trustee shall notify all Beneficial Holders, through the Depository, of the availability of definitive Notes. Upon surrender by the Depository of the Global Certificates and receipt of new registration instructions from the Depository, the Trustee shall make available at its office in Toronto the definitive Notes to the Beneficial Holders thereof in accordance with the new registration instructions and thereafter,

the registration and transfer of such Notes will be governed by Section 3.1 and the remaining provisions of this Article 3.

(e) It is expressly acknowledged that transfer of beneficial interests in any Note issuable in the form of or represented by a Global Certificate will be effected only (i) with respect to the interests of participants in the Depository (collectively, the "**Participants**", and individually, a "**Participant**"), through records maintained by the Depository or its nominee for the Global Certificate, and (ii) with respect to interests of Persons other than Participants, through records maintained by Participants. Beneficial Holders who are not Participants but who desire to purchase, sell or otherwise transfer ownership of or other interest in Notes represented by a Global Certificate may do so only through a Participant.

3.3 Transferee Entitled to Registration

The transferee of a Note shall be entitled, after a form of transfer in writing in form and execution satisfactory to the Trustee or other Registrar is deposited with the Trustee or other Registrar and upon compliance with all other conditions for such transfer required by this Indenture or by law, to be entered on the register as the owner of such Note free from all equities or rights of set-off or counterclaim between the Issuer and the transferor or any previous Holder of such Note, save in respect of equities of which the Issuer is required to take notice by law (including any statute or order of a court of competent jurisdiction).

3.4 No Notice of Trusts

Neither the Issuer nor the Trustee nor any Registrar shall be bound to take notice of or see to the execution of any trust (other than that created by this Indenture) whether express, implied or constructive, in respect of any Note, and the Trustee may transfer such Note on the direction of the Person registered as the Holder thereof, whether named as Trustee or otherwise, as though that Person were the Beneficial Holder thereof.

3.5 Registers Open for Inspection

The registers referred to in Sections 3.1 and 3.2 shall, subject to applicable law, at all reasonable times be open for inspection by the Issuer, the Trustee or any Holder. Every Registrar, including the Trustee, shall from time to time when requested so to do by the Issuer or by the Trustee, in writing, furnish the Issuer or the Trustee, as the case may be, with a list of names and addresses of Holders entered on the registers kept by them and showing the principal amount and serial numbers of the Notes held by each such Holder, provided the Trustee shall be entitled to charge a reasonable fee to provide such a list.

3.6 Exchanges of Notes

(a) Subject to Section 3.7, Notes in any authorized form or denomination, other than Global Certificates, may be exchanged, upon reasonable notice, for Notes in any other authorized form or denomination.

(b) In respect of exchanges of Notes permitted by Section 3.6(a), Notes may be exchanged only at the principal offices of the Trustee in Toronto, Ontario or at such other place

or places, if any, as may be specified in such Notes and at such other place or places 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 authenticate all Notes necessary to carry out exchanges as aforesaid. All Notes surrendered for exchange shall be cancelled.

(c) Notes issued in exchange for previously issued Notes which 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 as the previously issued Notes and shall have noted thereon a statement to that effect, provided that:

- (i) Notes which 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 for newly issued Notes of smaller denominations, the Trustee will designate, as it may deem equitable, particular Notes of those issued in exchange, which will be deemed to have been selected or called for redemption, in whole or in part, and the Trustee will note on such Notes a statement to that effect.

3.7 Closing of Registers

(a) Neither the Issuer nor the Trustee nor any Registrar shall be required to:

- (i) make transfers or exchanges of Notes on any Interest Payment Date for such Notes or
 - (A) while the Notes are in the form of one or more Global Certificates, during the period commencing on any Record Date and ending on the Interest Payment Date related thereto; and
 - (B) if the Notes cease to be represented by a Global Certificate, during the ten Business Days preceding the relevant Interest Payment Date;
- (ii) make transfers or exchanges of Notes between the date of any selection of any Notes represented by fully registered Notes to be redeemed (as applicable) and the deemed mailing of a Redemption Notice to Holders thereof; or
- (iii) make exchanges of Notes which have been selected or called for redemption unless upon due presentation thereof for redemption such Notes are not redeemed.

(b) Subject to any restriction provided in this Indenture, the Issuer with the approval of the Trustee may at any time close any register for the Notes (other than those kept at the principal office of the Trustee in Toronto, Ontario) and transfer the registration of any Notes

registered thereon to another register (which may be an existing register) and thereafter such Notes shall be deemed to be registered on such other register. Notice of such transfer shall be given to the Holders of such Notes.

3.8 Charges for Registration, Transfer and Exchange

For each Note exchanged, registered, transferred or discharged from registration, the Trustee or other Registrar, except as otherwise herein provided, may make a reasonable charge for its services and in addition may charge a reasonable sum for each new Note issued (such amounts to be agreed upon from time to time by the Trustee and the Issuer), and payment of such charges and reimbursement of the Trustee or other Registrar for any stamp taxes or governmental or other 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. Notwithstanding the foregoing provisions, no charge shall be made to a Holder hereunder:

- (a) for any exchange, registration, transfer or discharge from registration of any Note applied for within a period of two months from the date of the first delivery thereof;
- (b) for any exchange of any interim or temporary Note or interim certificate that has been issued under Section 2.14 for a definitive Note;
- (c) for any exchange of a Global Certificate as contemplated in Section 3.2; or
- (d) for any exchange of any Note resulting from a partial redemption under Section 4.6.

3.9 Ownership of Notes

(a) The Holder for the time being of any Note shall be entitled to the principal, Premium, if any, and/or interest evidenced by such Note, free from all equities or rights of 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 law) and all Persons may act accordingly and the receipt of any such Holder for any such principal, Premium, if any, or interest shall be a valid discharge to the Trustee, any Registrar and to the Issuer for the same and none shall be bound to inquire into the title of any such Holder.

(b) Where Notes are registered in more than one name, the principal, Premium, if any, and interest from time to time payable in respect thereof may be paid to the order of all or any of such Holders, failing written instructions from them to the contrary, and the receipt of any one of such Holders therefor shall be a valid discharge, to the Trustee, any Registrar and to the Issuer.

(c) In the case of the death of one or more joint Holders, the principal, Premium, if any, and interest from time to time payable on the Notes registered in the name of such Holders may be paid to the order of the survivor or survivors of such Holders and/or to the estate of the deceased, and the receipt thereof by such survivor or survivors and/or the estate of the deceased shall be a valid discharge by the Trustee, any Registrar and the Issuer.

(d) Unless otherwise required by law, the Holder shall for all the purposes of this Indenture be and be deemed to be the owner thereof and payment of or on account of the principal of, Premium, if any, and interest on such Note shall be made only to or upon the order in writing of such Holder.

(e) Notwithstanding any other provision of this Indenture, all payments in respect of Notes issuable in the form of or represented by a Global Certificate shall be made to the Depository or its nominee for subsequent payment by the Depository or its nominee to the Beneficial Holders thereof.

(f) None of the Issuer, the Trustee and any Registrar or Paying Agent will be bound to take notice of or see to the performance or observance of any duty owed to a third Person, whether under a trust, express, implied, resulting or constructive, in respect of any Note by the Holder or any Person whom the Issuer or the Trustee treats, as permitted or required by law, as the owner or the Holder of such Note, and the Trustee may transfer the same on the direction of the Person so treated as the owner or Holder of the Note, whether named as Trustee or otherwise, as though that Person were the Beneficial Holder thereof.

3.10 Cancellation and Destruction

All matured Notes shall forthwith after payment of all Obligations thereunder be delivered to the Trustee or to a Person appointed by it or by the Issuer with the approval of the Trustee and cancelled by the Trustee. All Notes which are cancelled or required to be cancelled under this or any other provision of this Indenture shall be destroyed by the Trustee and, if required by the Issuer, the Trustee shall furnish to it a destruction certificate setting out the designating numbers of the Notes so destroyed.

ARTICLE 4

REDEMPTION AND PURCHASE OF NOTES

4.1 Redemption of Notes

Notes may be redeemed before the Stated Maturity thereof, in whole at any time or in part from time to time, at the Redemption Price and otherwise in accordance with and subject to the provisions set out in this Indenture. Any such redemption may, in the Issuer's discretion, be subject to one or more conditions precedent including, without limitation, the completion of a Public Equity Offering, other offering, issuance of Indebtedness, Change of Control or other corporate transaction or event, and the Redemption Date may be delayed until such time as any or all such conditions shall be satisfied or waived (provided that in no event shall such Redemption Date be delayed to a date later than 60 days after the initial Redemption Date), or such redemption may not occur and the associated Redemption Notice may be rescinded in the event that any or all such conditions shall not have been satisfied or waived by the Redemption Date, or by the Redemption Date as so delayed.

4.2 Optional Redemption

(a) At any time and from time to time prior to October 27, 2022, the Issuer may, at its option, on any one or more occasions redeem up to an aggregate of 40% of the aggregate

principal amount of Notes (including Additional Notes) at a Redemption Price of 105.75% of the principal amount thereof, plus accrued and unpaid interest, if any, up to but excluding the Redemption Date, with the net cash proceeds received by the Issuer from one or more Public Equity Offerings or cash contributions to its Common Stock capital; provided that

- (i) at least 60% of the aggregate principal amount of Notes issued on the Issue Date would remain outstanding immediately after the proposed redemption; and
- (ii) the redemption occurs within 90 days after, as applicable, (A) the date of the closing of the applicable Public Equity Offering, or (B) the making of the applicable cash contribution to the Issuer's Common Stock capital.

(b) At any time and from time to time prior to October 27, 2022, the Issuer may, at its option, on any one or more occasions redeem all or part of the Notes at a Redemption Price equal to 100% of the principal amount of the Notes redeemed, plus the Applicable Premium as of, and accrued and unpaid interest, if any, to, but excluding, the applicable Redemption Date.

(c) At any time and from time to time on or after October 27, 2022, and prior to the Stated Maturity of the Notes, the Issuer may, at its option, on any one or more occasions redeem all or part of the Notes, at the Redemption Prices (expressed as percentages of the principal amount) set forth below, plus accrued and unpaid interest, if any, on the Notes redeemed, to, but excluding, the applicable Redemption Date, if redeemed during the 12-month period beginning with October 27 of the year indicated below:

<u>Year</u>	<u>Percentage</u>
2022	102.875%
2023	101.438%
2024 and thereafter	100.00%

4.3 Payment of Interest upon Optional Redemption

If the Redemption Date for any optional redemption made pursuant to Section 4.2 (or Section 5.18(j)) is on or after an interest Record Date and on or before the related Interest Payment Date, the accrued and unpaid interest, if any, on a redeemed Note, will be paid to the Holder of such Note as at the close of business on such Record Date, and no additional interest will be payable to Holders whose Notes shall be subject to such redemption.

4.4 Mandatory Redemption, Mandatory Purchases and Market Purchases

(a) The Issuer is not required to make mandatory redemption or sinking fund payments with respect to the Notes; provided, however, that the Issuer may be required to offer to purchase the Notes pursuant to Sections 5.17 (with respect to Asset Dispositions) and 5.18 (with respect to Change of Control Offers).

(b) The Issuer may at any time and from time to time purchase or otherwise acquire Notes by means other than redemption, whether pursuant to a tender offer, in open market transactions, pursuant to privately negotiated purchases or otherwise, and at any price, so long as such acquisition does not otherwise violate the terms of this Indenture.

4.5 Places of Payment

The Redemption Price will be payable upon presentation and surrender of the Notes called for redemption at any of the places where the principal of such Notes is expressed to be payable and at any other places specified in the Redemption Notice.

4.6 Partial Redemption

(a) If less than all of the Notes are to be redeemed at any time, the Trustee will select Notes for redemption as follows:

- (i) if the Notes are listed on any national securities exchange, in compliance with the requirements of the principal national securities exchange on which such Notes are listed; or
- (ii) if the Notes are not listed on any national securities exchange, on a *pro rata* basis, by lot or by such method that most nearly approximates a *pro rata* selection as the Trustee deems fair and appropriate.

and, in each case where applicable, in accordance with the procedures of the Depository. Subject to the foregoing, Notes or portions of Notes the Trustee selects for redemption shall be in minimum amounts of \$1,000 or a multiple of \$1,000 in excess thereof.

(b) If Notes are to be redeemed in part only, the Redemption Notice that relates to such Notes will state the portion of the principal amount of such Notes that is to be redeemed. In the event that one or more of such Notes becomes subject to redemption in part only, upon surrender of any such Notes for payment of the Redemption Price, together with interest accrued to but excluding the Redemption Date, the Issuer shall execute and the Trustee shall authenticate and deliver without charge to the Holder thereof or upon the Holder's order one or more new Notes for the unredeemed part of the principal amount of the Notes so surrendered or, with respect to Global Certificates, the Trustee shall make notations on the Global Certificates of the principal amount thereof so redeemed. Unless the context otherwise requires, the terms "**Note**" or "**Notes**" as used in this Article 4 shall be deemed to mean or include any part of the principal amount of any Note which in accordance with the foregoing provisions has become subject to redemption.

4.7 Notice of Redemption

(a) Notice of redemption (the "**Redemption Notice**") of any Notes shall be given to the Holders of the Notes so to be redeemed not more than 60 days nor less than 15 days prior to the Redemption Date in the manner provided in Section 12.2; provided, however, that Redemption Notices in respect of optional redemptions of Notes may be given more than

60 days prior to a Redemption Date if the Redemption Notice is issued in connection with a defeasance of the relevant Notes or a satisfaction and discharge of this Indenture.

(b) Every such Redemption Notice shall specify the aggregate principal amount of Notes called for redemption, the Redemption Date, the Redemption Price and the places of payment and shall state that interest upon the principal amount of Notes called for redemption shall cease to be payable from and after the Redemption Date. Redemption Notices, including without limitation, upon a Public Equity Offering, may, at the Issuer's discretion, be subject to one or more conditions precedent, including, but not limited to, completion of the related Public Equity Offering, other offering, issuance of Indebtedness, Change of Control or other corporate transaction or event. In addition, unless all the outstanding Notes are to be redeemed, the Redemption Notice shall specify:

- (i) the distinguishing letters and numbers of the Notes which are to be redeemed (as are registered in the name of such Holder);
- (ii) if such Notes are selected by terminal digit or other similar system, such particulars as may be sufficient to identify the Notes so selected;
- (iii) in the case of Global Certificates, that the redemption will take place in such manner as may be agreed upon by the Depository, the Trustee and the Issuer; and
- (iv) in all cases, the principal amounts of such Notes or, if any such Note is to be redeemed in part only, the principal amount of such part.

In addition, in the case of a redemption that is subject to the satisfaction of one or more conditions precedent, the related Redemption Notice shall describe each such condition, and if applicable, shall state that, in the Issuer's discretion, the Redemption Date may be delayed until such time as any or all such conditions shall be satisfied or waived (provided that in no event shall such Redemption Date be delayed to a date later than 60 days after the initial Redemption Date), or such redemption may not occur and such Redemption Notice may be rescinded in the event that any or all such conditions shall not have been satisfied or waived by the Redemption Date, or by the Redemption Date as so delayed. In addition, the Issuer may provide in such Redemption Notice that payment of the Redemption Price and other amounts owing for the redemption of any Notes and performance of the Issuer's obligations with respect to such redemption may be performed by another Person.

(c) In the event that all Notes to be redeemed are Global Certificates, publication of the Redemption Notice shall not be required.

(d) Redemption Notices shall be given by the Issuer or, at the Issuer's written request, by the Trustee in the name and at the expense of the Issuer.

(e) Any inadvertent defect in a Redemption Notice, including an inadvertent failure to deliver such Redemption Notice, to any Holder whose Notes are selected for redemption will not impair or affect the validity of the redemption of any the Notes of any other Holder that are to be redeemed.

4.8 Notes Due on Redemption Dates

Upon Redemption Notice having been given as provided in Section 4.7, all the Notes so called for redemption or the principal amount to be redeemed of the Notes called for redemption, as the case may be, shall thereupon be and become due and payable at the Redemption Price, together with accrued interest to but excluding the Redemption Date, on the Redemption Date specified in such notice, in the same manner and with the same effect as if it were the Stated Maturity specified in such Notes, anything therein or herein to the contrary notwithstanding. From and after such Redemption Date, if the monies necessary to redeem such Notes shall have been deposited as provided in Section 4.9, interest upon the Notes shall cease. If any question shall arise as to whether any notice has been given as above provided and such deposit made, such question shall be decided by the Trustee whose decision shall be final and binding upon all parties in interest.

4.9 Deposit of Redemption Monies

(a) Upon Notes being called for redemption, the Issuer will deposit with the Trustee or any Paying Agent to the order of the Trustee such sums of money as may be sufficient to pay the Redemption Price of the Notes so called for redemption, plus accrued and unpaid interest thereon up to but excluding the Redemption Date; in each case on or before 11:00 a.m. (Eastern Standard Time) on the Redemption Date specified in the applicable Redemption Notice and less any taxes required by law to be deducted or withheld therefrom. 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 with such redemption. Every such deposit shall be irrevocable. From the sums so deposited, the Trustee shall pay or cause to be paid, to the Holders of such Notes so called for redemption, upon surrender of such Notes, the principal, Premium (if any) and interest (if any) to which they are respectively entitled on redemption.

(b) Payment of funds to the Trustee upon redemption of Notes shall be made by electronic funds or wire transfer or pursuant to such other arrangements for the provision of funds as may be agreed between the Issuer and the Trustee in order to effect such payment hereunder. Notwithstanding the foregoing, (i) all payments in excess of \$25,000,000 (or such other amount as determined from time to time by the Canadian Payments Association) shall be made by the use of the LVTS; and (ii) in the event that payment must be made to the Depository, the Issuer shall remit payment to the Trustee by LVTS. The Trustee shall have no obligation to disburse funds pursuant to this Section 4.9 unless it has received written confirmation satisfactory to it that the funds have been deposited with it in sufficient amount to pay in full all amounts due and payable on the applicable Redemption Date.

4.10 Failure to Surrender Notes Called for Redemption

In case the Holder of any Note so called for redemption shall fail on or before the Redemption Date so to surrender such Holder's Note, or shall not within such time specified on the Redemption Notice accept payment of the redemption monies payable, or give such receipt therefor, if any, as the Trustee may require, such redemption monies may be set aside in trust, without interest, either in the deposit department of the Trustee or in a chartered bank, and such setting aside shall for all purposes be deemed a payment to the Holder of the sum so set aside

and, to that extent, such Note shall thereafter not be considered as outstanding hereunder and the Holder thereof shall have no other right except to receive payment of the Redemption Price of such Note, plus any accrued but unpaid interest thereon to but excluding the Redemption Date, less any taxes required by law to be deducted or withheld, out of the monies so paid and deposited, upon surrender and delivery up of such Holder's relevant Note. In the event that any money required to be deposited hereunder with the Trustee or any Paying Agent on account of principal, Premium, if any, or interest, if any, on Notes issued hereunder shall remain so deposited for a period of six years from the Redemption Date, then such monies, together with any accumulated interest thereon, shall at the end of such period be paid over or delivered over by the Trustee or such Paying Agent to the Issuer on its demand, and thereupon the Trustee shall not be responsible to Holders of such Notes for any amounts owing to them and subject to applicable law, thereafter the Holders of Notes in respect of which such money was so repaid to the Issuer shall have no rights in respect thereof except to obtain payment of the money due from the Issuer, subject to any limitation period provided by the laws of Ontario. Notwithstanding the foregoing, the Trustee will pay any remaining funds prior to the expiry of six years after the Redemption Date to the Issuer upon receipt from the Issuer, or one of its Subsidiaries, of an unconditional letter of credit from a Canadian chartered bank in an amount equal to or in excess of the amount of the remaining funds. If the remaining funds are paid to the Issuer prior to the expiry of six years after the Redemption Date, and such funds or any portion thereof are claimed after the date of such payment of the remaining funds to the Issuer but prior to six years after the redemption, then the Trustee shall immediately provide to the Issuer written notice of such claim and the Issuer shall promptly deposit with the Trustee funds in the amount necessary to satisfy such claim.

4.11 Cancellation of Notes Redeemed

Subject to the provisions of Sections 4.6, as to Notes redeemed or purchased in part, all Notes redeemed and paid under this Article 4 shall forthwith be delivered to the Trustee and cancelled and no Notes shall be issued in substitution for those redeemed.

ARTICLE 5 **COVENANTS OF THE ISSUER**

As long as any Notes remain outstanding, the Issuer and each Restricted Subsidiary hereby covenant and agree with the Trustee for the benefit of the Trustee and the Holders as follows (unless and for so long as the Issuer and/or one or more of its Subsidiaries are the only Holders (or Beneficial Holders) of the outstanding Notes, in which case the following provisions of this Article 5 shall not apply):

5.1 Payment of Principal, Premium, and Interest

(a) The Issuer covenants and agrees for the benefit of the Holders that it will duly and punctually pay the principal of, Premium, if any, and interest on the Notes in accordance with the terms of the Notes and this Indenture. Principal, Premium and interest shall be considered paid on the date due if on such date the Trustee holds in accordance with this Indenture money sufficient to pay all principal, Premium and interest then due and the Trustee is not prohibited from paying such money to the Holders on that date pursuant to the terms of this Indenture.

(b) The Issuer will pay interest on overdue principal and Premium, if any, at the rate specified therefor in the Notes, and it will pay interest on overdue instalments of interest at the same rate to the extent lawful.

5.2 Existence

Subject to Section 5.14, Article 9 and any other applicable provisions of this Indenture, for so long as any Notes issued under this Indenture remain outstanding, the Issuer and each of the Guarantors shall at all times maintain its respective corporate, partnership or other legal existence, as applicable; provided, however, that nothing in this Indenture shall require the Issuer or any Guarantor to maintain such corporate, partnership or other legal existence if the Issuer determines in good faith that maintenance thereof is no longer desirable in the conduct of the business of the Issuer and its Subsidiaries taken as a whole.

5.3 Payment of Taxes

The Issuer and each of the Restricted Subsidiaries shall pay or discharge, or cause to be paid or discharged, before the same shall become delinquent, all material taxes, assessments and governmental levies imposed or levied upon the Issuer or any Restricted Subsidiary; *provided, however*, that neither the Issuer nor any Restricted Subsidiary shall be required to pay or discharge, or cause to be paid or discharged, any such tax, assessment or governmental levy if (i) the amount, applicability or validity of such tax, assessment or governmental levy is being contested in good faith by appropriate proceedings and appropriate reserves, if necessary (in the good faith judgment of management of the Issuer), are being maintained to the extent required by GAAP or (ii) the failure to pay or discharge all such taxes, assessments and governmental levies in the aggregate (excluding those accounted for in clause (i)) would not reasonably be expected to have a material adverse effect on the business, affairs or financial condition of the Issuer and the Restricted Subsidiaries, taken as a whole.

5.4 [Reserved]

5.5 Statement by Officers

(a) The Issuer will deliver to the Trustee, within 120 days after the end of each of its fiscal years ending after the Issue Date, a brief certificate from the principal executive officer, principal financial officer or principal accounting officer as to his or her knowledge of compliance by the Issuer and the Restricted Subsidiaries with all conditions and covenants in this Indenture. For purposes of this Section 5.5(a), such compliance shall be determined without regard to any period of grace or requirement of notice under this Indenture.

(b) Upon becoming aware of any Default or Event of Default that has occurred and is continuing, the Issuer will promptly, and in any event within five Business Days thereafter, deliver to the Trustee by registered or certified mail or by e-mail an Officers' Certificate or a certificate of an officer of the Restricted Subsidiary, as applicable, specifying such event, notice or other action giving rise to such Default or Event of Default and the action that the Issuer or the Restricted Subsidiary, as applicable, is taking or proposes to take with respect thereto.

5.6 Provision of Financial Information

(a) The Issuer will provide the Trustee at the same time as they are required to be filed under Applicable Securities Legislation (after giving effect to any extension of time required for such filing granted by the applicable Canadian securities regulatory authority), a copy of all annual financial statements and interim financial reports of the Issuer (including, in the case of annual financial statements, the report of the Issuer's Auditors thereon) and the associated "Management's Discussion and Analysis" that the Issuer is required to file for a fiscal year or interim period, as applicable, as a "reporting issuer" under Applicable Securities Legislation (collectively, "**Financial Reports**"). Any such obligation to provide such Financial Reports shall continue in the event that the Issuer ceases to be a Canadian Reporting Issuer as if it had continued to be a Canadian Reporting Issuer. For purposes of this Section 5.6, "**Canadian Reporting Issuer**" means an issuer that is a "reporting issuer" (or its equivalent) under Applicable Securities Laws.

(b) Notwithstanding Section 5.6(a), all Financial Reports will be deemed to have been provided to the Trustee:

- (i) once filed on the System for Electronic Document Analysis and Retrieval (SEDAR) or any successor system thereto; or
- (ii) at any time the Issuer is not a Canadian Reporting Issuer, once posted on a website maintained by the Issuer (which may be a secure, password protected website accessible only to Holders and Beneficial Holders of Notes, prospective investors in the Notes and the Trustee, for whom the password or other login information shall be readily available by request to the investor relations office of the Issuer) or by any foreign securities regulator.

(c) The Issuer will, within 15 Business Days after providing to the Trustee any Financial Report pursuant to Section 5.6(a), hold a conference call to discuss such Financial Report and the results of operations for the applicable reporting period; provided, however, that at any time that the Issuer is not a Canadian Reporting Issuer, the Issuer may limit access to such conference call to Holders and Beneficial Holders of the Notes and the Trustee.

(d) If the Issuer's Unrestricted Subsidiaries hold more than in the aggregate 10% of Consolidated Tangible Assets, then the annual and quarterly Financial Reports will include a reasonably detailed presentation of the financial condition and results of operations of the Issuer and its Restricted Subsidiaries separate from the financial condition and results of operations of the Unrestricted Subsidiaries of the Issuer in accordance with and to the extent required by GAAP.

5.7 Guarantors

(a) The Issuer will cause any Subsidiary acquired or created after the Issue Date that becomes a guarantor under the Senior Credit Facility to execute and deliver to the Trustee a Supplemental Indenture pursuant to which such Subsidiary will provide a Note Guarantee. If at such time there is no Senior Credit Facility, the Issuer will cause any Subsidiary acquired or

created after the Issue Date (other than a Subsidiary designated as an Unrestricted Subsidiary), and any Unrestricted Subsidiary that is designated as a Restricted Subsidiary, to execute and deliver to the Trustee a Supplemental Indenture pursuant to which such Subsidiary will provide a Note Guarantee.

(b) The obligations of each Guarantor will be limited to the maximum amount that will, after giving effect to all other contingent and fixed liabilities of such Guarantor (including, without limitation, any Guarantees under the Senior Credit Facility) and after giving effect to any collections from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under its Note Guarantee or pursuant to its contribution obligations under this Indenture, result in the obligations of such Guarantor under its Note Guarantee not constituting a fraudulent conveyance or fraudulent transfer under applicable law.

(c) Note Guarantees shall be released in accordance with Section 13.9.

5.8 Limitation on Business Activities

The Issuer will not, and will not permit any of its Restricted Subsidiaries to, engage in any business other than Permitted Businesses, except to such extent as would not be material to the Issuer and its Restricted Subsidiaries taken as a whole.

5.9 Termination of Covenants if Notes Rated Investment Grade

(a) If on any date following the Issue Date:

- (i) the Notes are rated "Baa3" or better by Moody's or "BBB-" or better by S&P (or, if either such entity ceases to rate the Notes for reasons outside of the control of the Issuer, the equivalent investment grade credit rating from any other "designated rating organization" within the meaning of Applicable Securities Legislation, selected by the Issuer as a replacement agency); and
- (ii) no Default or Event of Default shall have occurred and be continuing;

then, upon the Issuer's delivery of notice of such events to the Trustee, the covenants contained within Sections 5.10, 5.12, 5.13, 5.14(a)(iii), 5.15, 5.16 and 5.17 will terminate and no longer be applicable to the Notes at all times thereafter, regardless of any subsequent changes in the ratings of the Notes, as applicable.

(b) After the Issuer's delivery of such notice provided in Section 5.9(a), the Issuer's Board of Directors may not designate any of its Subsidiaries as Unrestricted Subsidiaries pursuant to Section 5.10.

5.10 Limitation on Designation of Restricted and Unrestricted Subsidiaries

(a) The Board of Directors may designate any Subsidiary of the Issuer to be an Unrestricted Subsidiary as provided below, in which event such Subsidiary and each other

Person that is then or thereafter becomes a Subsidiary of such Subsidiary will be deemed to be an Unrestricted Subsidiary.

(b) The Board of Directors of the Issuer may designate any Subsidiary of the Issuer (including any newly acquired or newly formed Subsidiary) as an Unrestricted Subsidiary provided that:

- (i) immediately after and giving effect to such designation, no Default or Event of Default shall have occurred and be continuing;
- (ii) such Subsidiary does not own any Capital Stock of, or own or hold any Lien on any property of, any other Subsidiary of the Issuer which is not a Subsidiary of the Subsidiary to be so designated or otherwise an Unrestricted Subsidiary;
- (iii) either (x) the Subsidiary to be so designated has total assets of \$1,000 or less or (y) immediately after giving effect to such designation, the Issuer could Incur at least \$1.00 of additional Indebtedness pursuant to Section 5.13(a); and
- (iv) at the time of such designation, the Issuer could make a Restricted Payment pursuant to Section 5.12 in an amount equal to the greater of the Fair Market Value or book value of such Subsidiary, and after giving effect to such designation and for so long as such Subsidiary remains designated as an Unrestricted Subsidiary such amount is treated as a Restricted Payment for the purpose of calculating the aggregate amount available for Restricted Payments thereunder.

(c) The Board of Directors may designate any Unrestricted Subsidiary to be a Restricted Subsidiary provided that, immediately after giving effect to such designation:

- (i) no Event of Default or event that with the passing of time or the giving of notice, or both, would constitute an Event of Default shall have occurred and be continuing;
- (ii) the Issuer could Incur at least \$1.00 of additional Indebtedness pursuant to Section 5.13(a);
- (iii) the aggregate Fair Market Value of all outstanding Investments owned by the Unrestricted Subsidiary so designated will be deemed to be an Investment made as of the time of the designation and any such designation will only be permitted if the Investment would be permitted at that time in compliance with Section 5.12; and
- (iv) all Liens of such Subsidiary outstanding immediately following such designation would, if incurred as a result of such designation, have been permitted to be Incurred for all purposes of this Indenture.

(d) Any designation of a Subsidiary of the Issuer as an Unrestricted Subsidiary or a Restricted Subsidiary by the Board of Directors shall be evidenced by filing with the Trustee a certified copy of the resolution of the Board of Directors giving effect to such designation and an Officers' Certificate certifying that such designation complies with the foregoing conditions.

5.11 Limitation on Liens

The Issuer may not, and may not permit any Restricted Subsidiary to, directly or indirectly, incur or suffer to exist any Lien upon any of its property or assets, now owned or hereafter acquired, to secure Indebtedness, without making, or causing such Restricted Subsidiary to make, effective provision for all of the Notes and all other amounts due under this Indenture to be directly secured equally and rateably with (or prior to) the Indebtedness secured by such Lien for so long as such Lien affects such property or assets (and, at such time as such Lien no longer affects such property or assets, the Lien created for the benefit of Holders of Notes pursuant to this covenant shall be automatically and unconditionally released and discharged). The foregoing restrictions will not apply to Liens in respect of:

- (a) Liens existing on the Issue Date;
- (b) Permitted Liens;
- (c) Liens on the Accounts Receivable and inventory of the Issuer and its Restricted Subsidiaries (and the proceeds thereof) securing the obligations of the Issuer and its Restricted Subsidiaries;
- (d) Liens on assets or property of a Person (i) existing at the time such Person becomes a Restricted Subsidiary and not Incurred in anticipation of becoming a Restricted Subsidiary or (ii) existing immediately prior to the time such Person is merged with or into or amalgamated or consolidated with the Issuer or any Restricted Subsidiary and not incurred in anticipation of such merger, amalgamation or consolidation;
- (e) Liens securing Acquired Indebtedness on assets or property existing immediately prior to the time of acquisition thereof and not Incurred in anticipation of the financing of such acquisition provided that such Liens do not extend to or cover any property or assets of the Issuer or any Restricted Subsidiary (other than the assets or property acquired);
- (f) any interest or title of a lessor to any property subject to a Capital Lease Obligation which is permitted to be Incurred under this Indenture;
- (g) Liens to secure Indebtedness under any Credit Facility, including any letters of credit or bankers' acceptances issued or created thereunder, that was incurred in reliance on clause (1) of the definition of "Permitted Indebtedness";
- (h) Liens to secure Purchase Money Indebtedness that is permitted to be Incurred under this Indenture provided that such Liens shall not extend to any asset other than the asset whose acquisition, design, construction, installation, development,

improvement, repair, addition or lease is being financed or refinanced with such Purchase Money Indebtedness or any contractual rights relating thereto (plus additions, improvements, accessions, proceeds or dividends and distributions with respect thereof);

- (i) Liens to secure (and Liens in favor of any central clearing agency in connection with) Permitted Interest Rate, Currency or Commodity Price Agreements permitted to be Incurred under this Indenture;
- (j) Liens securing the Notes and any Note Guarantees;
- (k) Liens securing Permitted Refinancing Indebtedness incurred to refinance, refund, replace, amend, extend or modify, as a whole or in part, Indebtedness that was previously secured by Permitted Liens; provided that any such Lien is limited to all or part of the same property or assets (plus improvements, accessions, proceeds or dividends or distributions in respect thereof) that secured (or, under the written arrangements under which the original Lien arose, could secure) the Indebtedness being refinanced or is in respect of property that is the security for a Permitted Lien hereunder;
- (l) Liens granted in connection with Attributable Debt under Sale-Leaseback Transactions of the Issuer or any Restricted Subsidiary in each case specifically encumbering the asset subject to the relevant obligation and further provided such Liens are not extended to any other assets of the Issuer or any Restricted Subsidiary; or
- (m) Other Liens securing Indebtedness and related obligations in an aggregate principal amount not to exceed, at any one time outstanding, the greater of (i) \$100 million, and (ii) 5.0% the Issuer's Consolidated Tangible Assets (calculated as at the time of the incurrence of such Liens).

5.12 Limitation on Restricted Payments

(a) Subject to Section 5.12(b), neither the Issuer nor any of its Restricted Subsidiaries shall make, directly or indirectly, any Restricted Payment unless at the time of, and after giving effect to, such Restricted Payment:

- (i) no Default or Event of Default shall have occurred and be continuing or would occur as a consequence thereof;
- (ii) the Issuer could, at the time of such Restricted Payment and after giving pro forma effect thereto as if such Restricted Payment had been made at the beginning of the applicable four-quarter period, Incur at least \$1.00 of additional Indebtedness pursuant to the Consolidated Cash Flow Coverage Ratio test set forth in Section 5.13(a)(i); and
- (iii) such Restricted Payment, together with the aggregate amount of all other Restricted Payments made by the Issuer and its Restricted Subsidiaries

after the Issue Date pursuant to (1) this paragraph, and (2) clauses (i), (vi), (xiii) or (xiv) of Section 5.12(b), is less than the sum, without duplication, of:

- (A) 50% of Consolidated Net Income of the Issuer for the period (taken as one accounting period) from July 1, 2020 to the end of the Issuer's most recently ended fiscal quarter for which financial statements are available at the time of such Restricted Payment (or, if Consolidated Net Income for the relevant period is a deficit, minus 100% of the deficit); plus
- (B) 100% of the aggregate net cash proceeds or Fair Market Value of any assets (other than cash) received by the Issuer since the Issue Date as a contribution to its common equity capital, or from the issue or sale of Qualifying Equity Interests of the Issuer, or from the issue or sale of convertible or exchangeable Disqualified Stock of the Issuer or convertible or exchangeable debt securities of the Issuer, in each case that have been converted or exchanged into Qualifying Equity Interests of the Issuer, other than net cash proceeds received from the issue or sale of such Qualifying Equity Interests or convertible or exchangeable Disqualified Stock or debt securities to a Subsidiary of the Issuer or to an employee stock ownership plan, option plan or similar trust to the extent such sale to an employee stock ownership plan or similar trust is financed by loans from, or Guaranteed by, the Issuer or any Restricted Subsidiary, unless such loans have been repaid with cash on or prior to the date of determination; plus
- (C) to the extent that any Investment (other than Permitted Investments) that was made after the Issue Date is sold for cash or otherwise liquidated or repaid, the lesser of (x) the cash return of capital with respect to such Investment (less the cost of disposition, if any), and (y) the initial amount of such Investment; plus
- (D) to the extent that any Unrestricted Subsidiary designated as such after the Issue Date is redesignated as a Restricted Subsidiary, the lesser of (x) the Fair Market Value of the Issuer's Investments in such Subsidiary as of the date of such redesignation, and (y) such Fair Market Value as of the date on which such Subsidiary was originally designated as an Unrestricted Subsidiary; plus
- (E) 100% of any dividends or distributions received in cash by the Issuer or a Restricted Subsidiary from an Unrestricted Subsidiary after the Issue Date, to the extent not already included in Consolidated Net Income of the Issuer for the applicable period.

(b) Notwithstanding the provisions of Section 5.12(a):

- (i) the Issuer or any Restricted Subsidiary shall not be prohibited from paying any dividend or distribution on or in respect of any of its Capital Stock, or consummating any redemption, repurchase or other retirement of any Subordinated Indebtedness, within 60 days after the date of declaration of such dividend or distribution or the giving irrevocable notice of such redemption, repurchase or retirement, as the case may be, if, on the date of declaration or notice, payment of the dividend or distribution or redemption, repurchase or retirement, as applicable, would have complied with the provisions of this Indenture;
- (ii) the Issuer or a Guarantor may refinance any Subordinated Indebtedness of the Issuer or any Restricted Subsidiary (a) in exchange for, or out of the proceeds of the substantially concurrent issuance and sale (other than from or to a Restricted Subsidiary) of, Qualified Equity Interests of the Issuer, or (b) in exchange for or out of the proceeds of the same or a substantially concurrent incurrence of, Subordinated Indebtedness permitted to be incurred under Section 5.13 or otherwise under this Indenture;
- (iii) the Issuer may make any Restricted Payment in exchange for, or out of the net proceeds of the substantially concurrent sale (other than from or to a Restricted Subsidiary) of, shares of Qualified Equity Interests of the Issuer;
- (iv) the Issuer may purchase or redeem any Indebtedness from Net Available Proceeds to the extent permitted under Section 5.17;
- (v) a Restricted Subsidiary that is not a Wholly Owned Restricted Subsidiary of the Issuer may declare and make payment of any dividend (or, in the case of any partnership or limited liability company, any similar distribution) to the holders of its Equity Interests on a *pro rata* basis;
- (vi) the Issuer may declare and pay dividends on its Common Stock; provided that (i) the total amount of dividends declared pursuant to this clause (vi) shall not exceed \$1.60 per share in any fiscal year and (ii) in the event that the outstanding shares of the Issuer's Common Stock shall be subdivided, combined or consolidated, by reclassification, stock split or otherwise, into a greater or lesser number of shares of Common Stock, the amount of the dividend that the Issuer may declare and pay pursuant to this clause (vi) shall, concurrently with the effectiveness of such subdivision, combination or consolidation, be proportionately decreased or increased, as appropriate;
- (vii) the Issuer or any Restricted Subsidiary may effect the payment, purchase, repurchase, redemption, defeasance, acquisition or other retirement for value of Subordinated Indebtedness of the Issuer or any Restricted Subsidiary (a) in the event of a change of control, at a purchase or redemption price no greater than 101% of the principal amount of such

Subordinated Indebtedness, plus any accrued but unpaid interest thereon, pursuant to Section 5.18, or (b) in the event of an asset sale, at a purchase or redemption price no greater than 100% of the principal amount of such Subordinated Indebtedness, plus any accrued but unpaid interest thereon; provided, however, that, prior to or simultaneously with such payment, purchase, repurchase, redemption, defeasance, acquisition or retirement, the Issuer (or a third party, as applicable) has made the Change of Control Offer or Asset Sale Offer, if required by this Indenture, with respect to the Notes and has repurchased all Notes validly tendered for payment and not withdrawn in connection with such Change of Control Offer or Asset Sale Offer;

- (viii) the Issuer or any Restricted Subsidiary may repurchase, redeem or otherwise acquire, cancel or retire for value any Equity Interests or equity appreciation rights of the Issuer or any of its Restricted Subsidiaries held by any current or former officer, director, employee or consultant (or their transferees, estates or beneficiaries) of the Issuer or any of its Restricted Subsidiaries, in each case upon their death, disability, retirement, severance or termination of employment or service or in connection with the provisions of any employment agreement, stock option plan, equity incentive or other plan or similar agreement; provided that the amount of cash consideration paid for all repurchases, redemptions and other acquisitions, cancellations or retirements pursuant to this clause (viii) shall not exceed \$5.0 million in the aggregate during any calendar year of the Issuer (with any unused amounts in any calendar year being carried over to the immediately succeeding calendar year but not to any subsequent calendar year);
- (ix) the Issuer may make certain purchases, redemptions, acquisitions, cancellations or other retirements for a nominal value per right of any rights granted pursuant to any shareholders' rights plan (i.e., a "poison pill");
- (x) the Issuer or any Restricted Subsidiary may make cash payments in lieu of the issuance by the Issuer of fractional shares of Capital Stock in connection with share dividends, splits or business combinations or the exercise of warrants, options or other securities convertible or exchangeable for Capital Stock or other Equity Interests (provided they are not derivative securities) of the Issuer;
- (xi) the Issuer or any Restricted Subsidiary may declare and make payments of dividends to any holders of any class or series of such Person's Disqualified Stock or Preferred Stock that was issued or incurred in accordance with the terms of this Indenture, in each case to the extent such dividends are included in the Consolidated Interest Expense;

- (xii) the Issuer may purchase, repurchase, redeem or otherwise acquire or retire for value Equity Interests of the Issuer deemed to occur upon the exercise or exchange of options, warrants or other convertible or exchangeable securities, to the extent such Equity Interests represent all or a portion of the exercise, conversion or exchange price thereof, together with any withholding to pay for the taxes payable in connection therewith;
- (xiii) Issuer or any Restricted Subsidiary may make payments to dissenting holders of Equity Interests (a) pursuant to applicable law, or (b) in connection with the settlement or other satisfaction of legal claims made pursuant to or in connection with a consolidation, merger or transfer of assets in connection with a transaction that is not prohibited by this Indenture;
- (xiv) in addition to the Restricted Payments permitted by the preceding clauses, the Issuer or any Restricted Subsidiary may make other Restricted Payments in an aggregate amount which, on the date of the Restricted Payment when taken together with all Restricted Payments made pursuant to this clause (14), do not exceed the greater of (a) \$80 million, and (ii) 4.0% of Consolidated Tangible Assets (calculated as at the time of making any such Restricted Payment); or
- (xv) in addition to the Restricted Payments permitted by the preceding clauses, the Issuer or any Restricted Subsidiary may make any other Restricted Payments so long as, immediately after giving effect to the making of such Restricted Payment and the consummation of all other related transactions, the Issuer's Consolidated Leverage Ratio would not exceed 2.75: 1.0.

(c) Notwithstanding Section 5.12(b), no Restricted Payment shall be permitted pursuant to clause (ii)(b), (vi), (xiv) or (xv) of such immediately foregoing paragraph if a Default shall have occurred and be continuing, or if a Default would occur as a consequence thereof. For the avoidance of doubt, the amount of the net proceeds from any exchange, conversion or sale of Capital Stock of the Issuer pursuant to clauses (ii), (iii) or (xii) of Section 5.12(b), to the extent that it is used for the purposes set forth in clause (ii), (iii) or (xii) of Section 5.12(b), shall be excluded from the calculation of the amount available for Restricted Payments pursuant to Section 5.12(a)(iii)(B).

(d) For purposes of determining compliance with this Section 5.12, if a Restricted Payment meets the criteria of more than one of the types of Restricted Payments described in clauses (i) through (xv) of Section 5.12(b), the Issuer may, in its sole discretion, divide and classify (or later reclassify in whole or in part, from time to time in its sole discretion) such transaction in any manner that complies with this Section 5.12.

(e) The amount of all Restricted Payments (other than cash) shall be the Fair Market Value on the date of the Restricted Payment of the asset(s) or securities proposed to be transferred or issued by the Issuer or such Restricted Subsidiary, as the case may be, pursuant to the Restricted Payment.

5.13 Incurrence of Indebtedness and Issuance of Disqualified Stock

(a) The Issuer shall not, and shall not permit any of its Restricted Subsidiaries to (i) Incur any Indebtedness other than Permitted Indebtedness, or (ii) issue any Disqualified Stock that is not Permitted Indebtedness; provided, however, that the Issuer and any Guarantor may Incur Indebtedness or issue Disqualified Stock (in each case, including Acquired Indebtedness) if immediately after and giving effect thereto:

- (i) the Consolidated Cash Flow Coverage Ratio would have been at least 2.0 to 1.0, determined on a pro forma basis (including a pro forma application of the net proceeds therefrom), as if the additional Indebtedness had been Incurred or the Disqualified Stock had been issued, as the case may be, at the beginning of the applicable four-quarter period; and
- (ii) no Default or Event of Default shall have occurred and be continuing.

(b) For purposes of determining compliance with, and any particular amount of Indebtedness under, this Section 5.13:

- (i) in the event that an item of proposed Indebtedness meets the criteria of more than one of the categories of Permitted Indebtedness, or is entitled to be Incurred pursuant to Section 5.13(a)(i), whether in whole or in part, the Issuer, in its sole discretion, will be permitted to divide and classify (and may from time to time later redivide or reclassify, as applicable) such item of Indebtedness in whole or in part in any manner that complies with this Section 5.13, including by allocating all or any part of such Indebtedness to more than one of the categories of Permitted Indebtedness or pursuant to Section 5.13(a), except that Indebtedness under the Senior Credit Facility that is outstanding on the Issue Date will be deemed to have been incurred on such date under clause (1) of the definition of "Permitted Indebtedness";
- (ii) the outstanding principal amount of any particular Indebtedness shall be counted only once, and any obligations arising under any guarantee, Lien, letter of credit or similar instrument supporting such Indebtedness shall not be double counted;
- (iii) in the case of any refinancing of any Indebtedness, such Indebtedness shall not include the aggregate amount of fees, underwriting discounts, premiums and other costs and expenses incurred in connection with such refinancing;
- (iv) guarantees of, or obligations in respect of letters of credit, bankers' acceptances or other similar instruments relating to, or Liens securing, Indebtedness that is otherwise included in the determination of a particular amount of Indebtedness shall not be included so long as incurred by a Person that could have incurred such Indebtedness;

- (v) (A) Indebtedness or Disqualified Stock of any Person (i) existing at the time such Person becomes a Restricted Subsidiary of the Issuer or is merged into, amalgamated with or consolidated with the Issuer or any of its Restricted Subsidiaries or (ii) assumed in connection with the acquisition of assets from such Person, or (B) Indebtedness secured by a Lien encumbering any asset acquired by such Person shall be deemed to have been incurred or issued by a Restricted Subsidiary at the time such Person becomes a Restricted Subsidiary; provided that any such Indebtedness or Disqualified Stock that is redeemed, defeased, retired or otherwise repaid at the time of or immediately upon the consummation of the transaction by which such Person becomes a Restricted Subsidiary of the Issuer (or is merged into, amalgamated with or consolidated with the Issuer or any of its Restricted Subsidiaries, as the case may be) will be deemed not to have been incurred or issued for the purposes of this Section 5.13; and
- (vi) the accrual of interest or Preferred Stock dividends, the accretion or amortization of original issue discount, the payment of interest on any Indebtedness in the form of additional Indebtedness with the same terms, the reclassification of Preferred Stock as Indebtedness due to a change in accounting principles, and the payment of dividends or the making of any distribution on Preferred Stock or Disqualified Stock in the form of additional shares of the same class of Preferred Stock or Disqualified Stock shall not be deemed to be an Incurrence of Indebtedness or an issuance of Preferred Stock or Disqualified Stock for purposes of this Section 5.13; provided, in each such case, that the amount thereof is included in the Consolidated Interest Expense of the Issuer as accrued.

(c) For purposes of determining compliance with any Canadian dollar-denominated restriction on the Incurrence of Indebtedness, the Canadian dollar-equivalent principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the Business Day immediately prior to the date such Indebtedness was Incurred, in the case of term Indebtedness, or first committed, in the case of revolving credit Indebtedness; provided that if such Indebtedness is Incurred to refinance other Indebtedness denominated in a foreign currency, and such refinancing would cause the applicable Canadian dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the Business Day immediately prior to the date of such refinancing, such Canadian dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being refinanced (plus interest thereon and any premiums, defeasance costs and fees and expenses incurred in connection therewith). Notwithstanding any other provision of this Section 5.13, any increase in the Canadian dollar equivalent of outstanding Indebtedness of the Issuer or any of its Restricted Subsidiaries denominated in a currency other than Canadian dollars resulting from fluctuations in the exchange values of currencies shall not be considered to be an Incurrence of Indebtedness for purposes of this Section 5.13.

(d) Neither the Issuer nor any Guarantor will incur any additional Indebtedness (including Permitted Indebtedness) that is contractually subordinated in right of payment to any other Indebtedness of such Person unless such additional Indebtedness is also contractually subordinated in right of payment to the Notes or the applicable Note Guarantee, as the case may be, on substantially identical terms; provided, however, that no Indebtedness will be deemed to be contractually subordinated in right of payment to any other Indebtedness solely by virtue of being unsecured or by virtue of being secured on a junior priority basis.

5.14 Mergers, Consolidations and Certain Sales and Purchases of Assets

1. The Issuer

- (a) The Issuer shall not, in a single transaction or a series of related transactions, (i) amalgamate, consolidate or merge with or into any other Person or permit any other Person to amalgamate, consolidate or merge with or into the Issuer, or (ii) directly or indirectly, transfer, sell, assign, lease, convey or otherwise dispose of all or substantially all of the assets of the Issuer and its Restricted Subsidiaries taken as a whole, unless:
- (i) in a transaction in which the Issuer does not survive or in which the Issuer sells, leases or otherwise disposes of all or substantially all of the assets of the Issuer and its Restricted Subsidiaries taken as a whole, the Successor Person to the Issuer shall expressly assume, by a supplemental indenture executed and delivered to the Trustee in form satisfactory to the Trustee, all of the Issuer's obligations under this Indenture;
 - (ii) immediately before and after giving effect to such transaction (and giving pro forma effect to any related financing transactions, including the use of any proceeds therefrom) and treating any Indebtedness which becomes an obligation of the Issuer or a Restricted Subsidiary as a result of such transaction as having been Incurred by the Issuer or such Restricted Subsidiary at the time of the transaction, no Event of Default or event that with the passing of time or the giving of notice, or both, would constitute an Event of Default shall have occurred and be continuing;
 - (iii) on the date of such transaction after giving pro forma effect thereto and any related financing transactions as if the same had occurred at the beginning of the applicable four-quarter period, the Issuer or the Successor Person would:
 - (A) be permitted to Incur at least \$1.00 of additional Indebtedness pursuant to the Consolidated Cash Flow Coverage Ratio test set forth in Section 5.13(a)(i); or
 - (B) have a Consolidated Cash Flow Coverage Ratio immediately after such transaction greater than or equal to the actual Consolidated Cash Flow Coverage Ratio for the Issuer or the Successor Person for such four-quarter period;

- (iv) if, as a result of any such transaction, property or assets of the Issuer would become subject to a Lien prohibited by the provisions of this Indenture described under Section 5.11, the Issuer or the Successor Person to the Issuer shall have secured the Notes as required by said covenant; and
 - (v) the Issuer delivers, or causes to be delivered, to the Trustee, (A) an Opinion of Counsel to the effect that such transaction is in compliance with all conditions in clauses (i) and (ii) of this Section 5.14(1)(a) (in so far as such conditions related to legal matters) and (B) an Officers' Certificate stating that all conditions set forth in this Section 5.14(1)(a) have been satisfied.
- (b) For purposes of clauses (ii) and (iii) of Section 5.14(1)(a), any Indebtedness that becomes, or is anticipated to become, an obligation of such Person or the succeeding Person as a result of such transaction or related transactions shall be treated as having been Incurred by such other Person or the succeeding Person at the time of such transaction or series of transactions.
 - (c) Upon consummation of any transaction effected in accordance with Section 5.14(1)(a), if the Issuer is not the succeeding Person, the other Person or the succeeding Person, as applicable, will succeed to, and be substituted for, and may exercise every right and power of the Issuer under this Indenture. Upon such substitution, except in the case of a lease of all or substantially all of its assets, the Issuer will be released from its obligations under this Indenture and the Notes.
 - (d) This Section 5.14(1) shall not prevent the Issuer from consolidating or amalgamating with, merging into, or transferring all or part of its property or assets to any Restricted Subsidiary.

2. The Guarantors

- (e) The Issuer shall not permit any Guarantor to (i) amalgamate or consolidate with or merge with or into any Person or (ii) sell, assign, transfer, convey or otherwise dispose of all or substantially all of its assets, in one or more related transactions, to any Person unless:
 - (i) the other Person is the Issuer or any Wholly Owned Restricted Subsidiary that is a Guarantor or becomes a Guarantor concurrently with the transaction;
 - (ii) (A) either (x) the Guarantor shall be the surviving Person, or (y) the entity formed by such amalgamation, consolidation or into which the Guarantor is merged or the Person acquiring the property in such sale or other disposition, expressly assumes the Guarantor's Note Guarantee and all the obligations of such Guarantor under the Notes, this Indenture and the Note Guarantee, and (B) immediately after giving effect to the transaction (and giving pro forma effect to any related financing transactions) and any

related Incurrence of Indebtedness, no Default or Event of Default shall have occurred and be continuing; or

- (iii) the transaction constitutes a sale or other disposition (including by way of amalgamation, consolidation or merger) of the Guarantor or the sale or disposition of all or substantially all the assets of the Guarantor (in each case other than to another Guarantor) and at the time of such transaction after giving pro forma effect thereto, the provisions of Section 5.14(1)(a)(ii) would be satisfied and the transaction is otherwise permitted by this Indenture;
- (f) For purposes of Section 5.14(2)(a)(iii), any Indebtedness that becomes, or is anticipated to become, an obligation of such Person or the succeeding Person as a result of such transaction or related transactions shall be treated as having been Incurred by such other Person or the succeeding Person at the time of such transaction or series of transactions.
- (g) This Section 5.14(2) shall not prohibit any Restricted Subsidiary from consolidating or amalgamating with, merging into, or transferring all or part of its assets to the Issuer or any other Restricted Subsidiary.

5.15 Transactions with Affiliates

(a) The Issuer shall not, and shall not permit any Restricted Subsidiary to, enter into any transaction (or series of related transactions) with an Affiliate of the Issuer (other than the Issuer or a Restricted Subsidiary), including any Investment, either directly or indirectly, involving annual aggregate payments or other property with a Fair Market Value in excess of \$5.0 million (an "**Affiliate Transaction**") unless such Affiliate Transaction is on terms no less favorable to the Issuer or such Restricted Subsidiary, than those that could be obtained in a comparable arm's length transaction with an entity that is not an Affiliate of the Issuer or that Restricted Subsidiary and is in the best interests of the Issuer or such Restricted Subsidiary. For any transaction that involves in excess of \$10 million, the Issuer shall provide to the Trustee an Officers' Certificate certifying that such transaction or series of related transactions with an Affiliate complies with this Section 5.15(a). For any transaction that involves in excess of \$25 million, the Issuer shall also deliver to the Trustee a resolution of the Board of Directors of the Issuer set forth in an Officers' Certificate certifying that such transaction or series of related transaction with an Affiliate satisfies the above criteria and has been approved by a majority of the disinterested members of the Board of Directors of the Issuer.

(b) The following items will be deemed not to be Affiliate Transactions and therefore shall not be subject to the provisions of Section 5.15(a):

- (i) any compensation or employment or indemnification arrangement (including stock options) entered into by the Issuer or any Restricted Subsidiary in the ordinary course of business and consistent with the past practice of the Issuer or such Restricted Subsidiary;

- (ii) customary and reasonable compensation (including bonuses) and other benefits (including retirement, health, stock option and other benefit plans) and indemnification arrangements paid or provided to or on behalf of any director, officer, employee or consultant of the Issuer or any Restricted Subsidiary;
- (iii) any metals transactions or financing thereof in the ordinary course of business;
- (iv) any transaction with an Affiliate where the consideration paid by the Issuer is Qualified Equity Interests of the Issuer;
- (v) transactions with Affiliates that are acting in the capacity of customer, client, supplier or purchaser or seller of goods or services, in each case in the ordinary course of the business of the Issuer and its Restricted Subsidiaries and otherwise in compliance with the terms hereof; provided that, as determined in good faith by the Issuer, such transactions are on terms that, taken as a whole, are not materially less favorable to the Issuer or the relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Issuer or such Restricted Subsidiary with an unrelated Person;
- (vi) any agreement between any Person and an Affiliate of such Person existing at the time such Person is acquired by or merged, amalgamated or consolidated into the Issuer or a Restricted Subsidiary; provided that such agreement was not entered into in contemplation of such acquisition, merger, amalgamation or consolidation, or as thereafter amended, modified, supplemented or replaced in any manner, that, taken as a whole, is no less favorable to the Issuer in any material respect than such agreement or instrument as it was in effect on the date of such acquisition, merger, amalgamation or consolidation;
- (vii) any Restricted Payments permitted by the covenant described under Section 5.12 and any Permitted Investment; or
- (viii) transactions with a Person that is an Affiliate of the Issuer (other than an Unrestricted Subsidiary) that is an Affiliate solely because the Issuer has, directly or through a Restricted Subsidiary, an equity interest in, or controls, such Person.

5.16 Limitation on Dividend and Other Payment Restrictions Affecting Restricted Subsidiaries

(a) Subject to Section 5.16(b), the Issuer may not, and may not permit any Restricted Subsidiary to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction on the ability of any Restricted Subsidiary to:

- (i) pay dividends (in cash or otherwise) or make any other distributions in respect of its Capital Stock owned by the Issuer or any Restricted Subsidiary or pay any Indebtedness owed to the Issuer or any Restricted Subsidiary (provided that (A) the priority of any Preferred Stock over Common Stock in receiving dividends or distributions (upon a liquidation or otherwise) shall not be deemed a restriction on the ability to make distributions on Capital Stock, and (B) the subordination of loans or advances made to the Issuer or any of its Restricted Subsidiaries to other Indebtedness incurred by the Issuer or any of its Restricted Subsidiaries shall not be deemed a restriction on the ability to pay any Indebtedness);
 - (ii) make loans or advances to, or pay any Indebtedness owed to, the Issuer or any Restricted Subsidiary (provided that the subordination of loans or advances made to the Issuer or any of its Restricted Subsidiaries to other Indebtedness incurred by the Issuer or any of its Restricted Subsidiaries shall not be deemed a restriction on the ability to make loans or advances);
or
 - (iii) sell, lease or transfer any of its property or assets to the Issuer or any Restricted Subsidiary.
- (b) Notwithstanding Section 5.16(a), the Issuer may, and may permit any Restricted Subsidiary to, suffer to exist any such encumbrance or restriction:
- (i) pursuant to any agreement in effect on the Issue Date;
 - (ii) pursuant to an agreement relating to any Indebtedness Incurred by a Person (other than a Restricted Subsidiary existing on the Issue Date or any Restricted Subsidiary carrying on any of the businesses of any such Restricted Subsidiary) prior to the date on which such Person became a Restricted Subsidiary and outstanding on such date and not Incurred in anticipation of becoming a Restricted Subsidiary, which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person so acquired;
 - (iii) pursuant to an agreement effecting a renewal, extension, refunding or refinancing of Indebtedness Incurred pursuant to an agreement referred to in clause (i) or (ii) above; provided, however, that the provisions contained in such renewal, extension, refunding or refinancing agreement relating to such encumbrance or restriction are not materially less favorable in the aggregate than the provisions contained in the agreement the subject thereof, as determined in good faith by the Board of Directors and evidenced by a resolution of the Board of Directors filed with the Trustee;
 - (iv) pursuant to this Indenture, the Notes and any Note Guarantees or any other instrument governing debt securities of the Issuer Incurred in compliance

with Section 5.13 that are no more restrictive, taken as a whole, than those contained in this Indenture, the Notes and the Note Guarantees;

- (v) in the case of Section 5.16(a)(iii), pursuant to restrictions contained in any security agreement (including a capital lease) securing Indebtedness of a Restricted Subsidiary otherwise permitted under this Indenture, but only to the extent such restrictions restrict the transfer of the property or assets subject to such security agreement;
- (vi) in the case of Section 5.16(a)(iii), pursuant to customary non-assignment provisions entered into in the ordinary course of business in leases and other contracts to the extent such provisions restrict the transfer or subletting of any such lease or the assignment of rights under any such contract;
- (vii) with respect to a Restricted Subsidiary, imposed pursuant to any agreement which has been entered into for the sale or disposition of all or substantially all of the Capital Stock or assets of such Restricted Subsidiary, provided that consummation of such transaction would not result in an Event of Default or an event that, with the passing of time or the giving of notice or both, would constitute an Event of Default, that such restriction terminates if such transaction is closed or abandoned and that the closing or abandonment of such transaction occurs within one year of the date such agreement was entered into;
- (viii) which is the result of applicable law, rule, order or regulation;
- (ix) pursuant to Purchase Money Indebtedness and Capital Lease Obligations that impose restrictions on the property or assets purchased or leased of the nature described under Section 5.16(a)(iii);
- (x) pursuant to agreements relating to Sale-Leaseback Transactions that impose restrictions on the property or assets purchased or leased of the nature described under Section 5.16(a)(iii);
- (xi) any instrument governing Acquired Indebtedness or Capital Stock of a Person acquired by the Issuer or any of its Restricted Subsidiaries as in effect at the time of such acquisition (except to the extent such Indebtedness or Capital Stock was incurred or issued in connection with or in contemplation of such acquisition), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person, or the property or assets of the Person, so acquired, provided that, in the case of Indebtedness or Disqualified Stock, such Indebtedness or Disqualified Stock was permitted by the terms of this Indenture to be incurred or issued, as the case may be;
- (xii) customary provisions in partnership agreements, limited liability company organizational governance documents, joint venture agreements, and other

similar agreements entered into in the ordinary course of business or consistent with past practice that restrict the transfer of ownership interests in such partnership, limited liability company, joint venture, or similar Person;

- (xiii) contracts entered into in the ordinary course of business, not relating to Indebtedness, and that do not, individually or in the aggregate, (A) in the good faith judgment of the Board of Directors of the Issuer, impose encumbrances or restrictions of the nature described under Sections 5.16(a)(i), (ii) or (iii), taken as a whole, that are more restrictive in any material respect than those in the contracts in effect on the Issue Date, (B) materially adversely impact the ability of the Issuer to make required principal and interest payments on the Notes, or (C) detract from the value of, or from the ability of the Issuer and any of its Restricted Subsidiaries to realize the value of, property or assets of the Issuer or any Restricted Subsidiary in any manner material to the Issuer or any Restricted Subsidiary;
- (xiv) restrictions on cash or other deposits or net worth imposed by customers, suppliers, or landlords under contracts entered into in the ordinary course of business;
- (xv) agreements encumbering or restricting cash or marketable securities to secure any Interest Rate, Currency or Commodity Price Agreement;
- (xvi) Permitted Refinancing Indebtedness; *provided* that any encumbrances and restrictions of the nature described under Sections 5.16(a)(i), (ii) or (iii) contained in the agreement governing such Permitted Refinancing Indebtedness are not, in the good faith judgment of the Board of Directors of the Issuer, materially more restrictive, taken as a whole, than those contained in the agreement governing the Indebtedness being refinanced; and
- (xvii) any amendments, restatements, renewals, supplements, replacements or refinancings of the contracts, instruments or obligations referred to in Sections 5.16(b)(i) to (xvi) above; *provided* that any encumbrances and restrictions of the nature described under Sections 5.16(a)(i), (ii) or (iii) in such amendments, restatements, renewals, supplements, replacements or refinancings are, in the good faith judgment of the Board of Directors of the Issuer, not materially more restrictive, taken as a whole, than those in effect prior to such amendments, renewals, supplements or refinancings.

5.17 Limitation on Asset Dispositions

(a) The Issuer shall not, and shall not permit any Restricted Subsidiary to, make any Asset Disposition in one or more related transactions unless:

- (i) the Issuer or the Restricted Subsidiary, as the case may be, receives consideration for such disposition at least equal to the Fair Market Value (measured as of the date of the definitive agreement relating to such Asset Disposition) for the assets sold or disposed of; and
- (ii) at least 75% of the consideration received in the Asset Disposition by the Issuer and its Restricted Subsidiaries in the manner referred to in subclause (i) above is in the form of cash, Cash Equivalents or Permitted Assets. For purposes of this provision, each of the following will be deemed to be cash:
 - (A) any liabilities of the Issuer or any Restricted Subsidiary (other than contingent liabilities and liabilities that are by their terms subordinated to the Notes or any Note Guarantee), as shown on the Issuer's most recent internally available annual or quarterly balance sheet, that are assumed by the transferee of any such assets and from which the Issuer or such Restricted Subsidiary has been unconditionally released by all applicable creditors in writing;
 - (B) any securities, notes or other obligations received by the Issuer or any such Restricted Subsidiary from such transferee that are, within 180 days following the closing of the applicable Asset Disposition (or 210 days, if the Issuer or such Restricted Subsidiary is prevented by a lock-up or similar agreement from so converting such securities, notes or other obligations during such 180 day period), converted by the Issuer or such Restricted Subsidiary into cash or Cash Equivalents, to the extent of the cash or Cash Equivalents received in that conversion;
 - (C) Accounts Receivable of a business retained by the Issuer or any Restricted Subsidiary, as the case may be, following the sale of such business, provided that such Accounts Receivable are not (i) past due more than 90 days and (ii) are reasonably expected to be collected within 120 days from the date of the invoice creating such Accounts Receivable; and
 - (D) any Designated Non-cash Consideration received by the Issuer or any such Restricted Subsidiary in such Asset Disposition having an aggregate Fair Market Value, taken together with all other Designated Non-cash Consideration received pursuant to this clause (D) (other than items received and not yet liquidated pursuant to clause (B) that are at the time outstanding), not to exceed the greater of (i) \$25 million and (ii) 2.5% of Consolidated Tangible Assets at the time of the receipt of such Designated Non-cash Consideration, with the Fair Market Value of each item of Designated Non-cash Consideration being measured at the time received and without giving effect to subsequent changes in value.

(b) Within 365 days of the receipt of the Net Available Proceeds (or any portion thereof) from Asset Dispositions such Net Available Proceeds may be applied by the Issuer or a Restricted Subsidiary to the extent the Issuer or such Restricted Subsidiary elects (or is required to by the terms of any Indebtedness):

- (i) to permanently repay, prepay, redeem or repurchase any Indebtedness of the Issuer or a Restricted Subsidiary (a) Incurred under any Credit Facilities pursuant to clause (1) of the definition of "Permitted Indebtedness", or (b) that is secured by a Lien (other than any such Indebtedness that is subordinate in right of payment to the Notes or any Note Guarantee), and if the Indebtedness repaid is revolving credit Indebtedness, to correspondingly permanently reduce commitments with respect thereto;
- (ii) to repay, prepay, redeem, purchase or repurchase any other Indebtedness that is not Subordinated Indebtedness (and correspondingly permanently reduce commitments, if any, with respect thereto); provided, however, that the Issuer shall also (a) equally and rateably reduce the aggregate principal amount of Notes outstanding through open market purchases of the Notes, or (b) offer to equally and rateably reduce Obligations under the Notes by making an offer (in accordance with the procedures set forth below for an Asset Sale Offer) to all holders to purchase a pro rata principal amount of Notes at a price at least equal to 100% of the principal amount of Notes tendered to such offer, plus accrued and unpaid interest, if any, to the date of purchase;
- (iii) to acquire all or substantially all of the assets of, or to acquire Capital Stock of, a Person that is engaged in a Permitted Business and that, in the case of an acquisition of Capital Stock, is or becomes a Restricted Subsidiary of the Issuer;
- (iv) to make a capital expenditure or expenditures for maintenance, repair or improvement of existing properties and assets (other than assets classified as current assets under GAAP); or
- (v) to acquire other assets that are not classified as current assets under GAAP and that are used or useful in a Permitted Business; provided that such assets are owned by the Issuer or a Restricted Subsidiary.

(c) Notwithstanding the foregoing, in the event the Issuer or any Restricted Subsidiary enters into a binding agreement committing to make an acquisition, expenditure or investment in compliance with any of Section 5.17(b)(iii) to 5.17(b)(v) above within 365 days after the receipt of any Net Available Proceeds from an Asset Disposition, such commitment will be treated as a permitted application of the Net Available Proceeds from the date of the execution of such agreement until the earlier of (i) the date on which such acquisition or investment is consummated or such expenditure made or such agreement is terminated, and (ii) the 180th day after the expiration of the aforementioned 365 day period.

(d) Pending the final application of any Net Available Proceeds, in accordance with any of Sections 5.17(b)(i) to (v) above, the Issuer and its Restricted Subsidiaries may temporarily reduce revolving credit borrowings or otherwise invest the Net Available Proceeds in any manner that is not prohibited by this Indenture.

(e) Any Net Available Proceeds from an Asset Disposition not applied in accordance with the preceding paragraphs shall constitute "**Excess Proceeds**". Excess Proceeds of less than \$25 million will be carried forward and accumulated. When accumulated Excess Proceeds equals or exceeds \$25 million, the Issuer will be required to apply such Excess Proceeds as follows:

- (i) first, to make an offer to purchase (the "**Asset Sale Offer**") on a pro rata basis:
 - (A) the outstanding Notes, at a purchase price equal to not less than 100% of the principal amount thereof, plus accrued and unpaid interest thereon to the purchase date (subject to the right of Holders of record on the relevant Record Date to receive interest due on the relevant Interest Payment Date), in accordance with the procedures set forth in this Indenture; and
 - (B) to the extent required by the terms thereof, any other Pari Passu Indebtedness of the Issuer or a Restricted Subsidiary at a price no greater than the purchase price offered for the outstanding Notes pursuant to sub-clause (i) above plus accrued interest to the date of purchase; and
- (ii) second, to the extent that any portion of the Excess Proceeds remains after compliance with Section 5.17(e)(i), and provided that all Holders have been given the opportunity to tender their Notes for purchase in accordance with this Indenture, the Issuer or such Restricted Subsidiary may use such remaining amount for any purpose not otherwise prohibited by this Indenture and the amount of Excess Proceeds will be reset to zero.

(f) If the aggregate principal amount of Notes and other Pari Passu Indebtedness tendered into such Asset Sale Offer exceeds the amount of Excess Proceeds, the Trustee will select the Notes and the applicable agent of such Pari Passu Indebtedness shall select such other Pari Passu Indebtedness to be purchased on a pro rata basis based on the aggregate principal amount of Notes and such other Pari Passu Indebtedness tendered by the Holders thereof.

(g) Within five Business Days after the Issuer is obligated to make an Asset Sale Offer pursuant to Section 5.17(e), the Issuer will give notice to the Holders of Notes in the manner provided in Section 12.2 accompanied by such information regarding the Issuer and its Subsidiaries as the Issuer in good faith believes will enable such Holders to make an informed decision with respect to such Asset Sale Offer. Such notice shall state, among other things, the purchase price and the purchase date, which shall be, subject to any contrary requirements of applicable law, a Business Day no earlier than 30 days nor later than 60 days from the date such notice is given.

(h) If the Asset Sale Offer purchase date is on or after a Record Date and on or before the related Interest Payment Date, any accrued and unpaid interest will be paid to the Person in whose name a Note is registered at the close of business on such Record Date, and no additional interest will be payable to Holders who tender Notes pursuant to the Asset Sale Offer.

(i) The Issuer will comply, to the extent applicable, with the requirements of Applicable Securities Legislation in connection with any repurchase of Notes pursuant to this Section 5.17. To the extent that the provisions of any Applicable Securities Legislation conflict with provisions of this Section 5.17, the Issuer will comply with the Applicable Securities Legislation and shall not be deemed to have breached its obligations under this Section 5.17 by virtue thereof.

(j) Notwithstanding the foregoing, any sale, assignment, transfer, conveyance, lease or other disposition of all or substantially all of the properties or assets of the Issuer and its Restricted Subsidiaries taken as a whole, in one or more related transactions, to another Person, will be governed by the provisions described under Section 5.14 and shall not be subject to the provisions described in this Section 5.17.

5.18 Purchase of Notes upon a Change of Control

(a) Subject to Sections 5.18(h) and 5.18(i), upon the occurrence of a Change of Control, the Issuer will be required to offer each Holder to repurchase all or any part (equal to \$1,000 or an integral multiple of \$1,000 in excess thereof) of such Holder's Notes as described below (the "**Change of Control Offer**"). Pursuant to the Change of Control Offer, the Issuer shall offer a payment (the "**Change of Control Payment**") in cash equal to 101% of the aggregate principal amount of Notes repurchased, plus accrued and unpaid interest thereon, if any, to, but excluding, the purchase date (the "**Change of Control Payment Date**") (subject to the right of Holders of record on the relevant Record Date to receive interest due on the relevant Interest Payment Date).

(b) Within 30 days following the date on which any Change of Control occurs, the Issuer shall give notice to each Holder in the manner provided in Section 12.2, with a copy to the Trustee:

- (i) describing the circumstances and relevant facts regarding the Change of Control;
- (ii) offering to purchase, pursuant to the Change of Control Offer, on the Change of Control Payment Date (which shall be, subject to any contrary requirements of applicable law, a Business Day no earlier than 15 days nor later than 60 days from the date such notice is given), all Notes properly tendered pursuant to such Change of Control Offer;
- (iii) notifying such Holder that any Note accepted for payment will cease to accrue interest after the Change of Control Payment Date unless the Issuer defaults on the payment of the Change of Control Payment; and

- (iv) describing the procedures that Holders must follow in order (i) to tender their Notes (or portions thereof) for payment, and (ii) to withdraw an election to tender Notes (or portions thereof) for payment.

(c) The Change of Control Offer is required to remain open for at least 20 Business Days or such longer period as is required by law. On the Change of Control Payment Date, the Issuer will, to the extent lawful:

- (i) accept for payment all Notes properly tendered pursuant to the Change of Control Offer;
- (ii) deposit with the Trustee an amount equal to the Change of Control Payment in respect of all the Notes properly tendered; and
- (iii) deliver or cause to be delivered to the Trustee the Notes properly accepted, as applicable, together with an Officers' Certificate stating the aggregate principal amount of Notes being purchased by the Issuer.

(d) The Trustee will promptly mail or wire, to an account as instructed by the applicable Holder, to each Holder of Notes properly tendered the Change of Control Payment for such Notes and will promptly authenticate and mail (or cause to be transferred by book-entry) to each Holder a new Note equal in principal amount to the unpurchased portion of the Notes surrendered, if any. The Issuer will publicly announce the results of the Change of Control Offer on or as soon as practicable after the Change of Control Payment Date.

(e) If the Change of Control Payment Date is on or after an interest Record Date and on or before the related Interest Payment Date, accrued and unpaid interest, if any, will be paid to the Person in whose name a Note is registered at the close of business on such Record Date, and no additional interest will be payable pursuant to the Change of Control Offer.

(f) The obligation of the Issuer to make a Change of Control Offer following a Change of Control pursuant to this Section 5.18 will be applicable regardless of whether any other provisions of this Indenture are applicable to the transaction giving rise to the Change of Control.

(g) The Issuer's obligation to make an offer to repurchase the Notes as a result of a Change of Control may be waived or modified at any time prior to the occurrence of such Change of Control with the written consent of the Holders of at least a majority in aggregate principal amount of the Notes.

(h) The Issuer shall not be required to make a Change of Control Offer upon a Change of Control and no Holder shall have the right to require the Issuer to repurchase any Notes pursuant to a Change of Control Offer if a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Section 5.18 and any other requirements in this Indenture applicable to a Change of Control Offer (in which case, such third party offer will be deemed a "Change of Control Offer") and purchases all Notes properly validly and not withdrawn under such Change of Control Offer, or a Redemption Notice has been given pursuant to this Indenture as described under Section 4.7,

unless and until there is a default in payment of the applicable Redemption Price. Notwithstanding anything to the contrary contained herein, a Change of Control Offer by the Issuer or a third party may be made in advance of a Change of Control, conditioned upon the consummation of such Change of Control, if a definitive agreement is in place for the Change of Control at the time the Change of Control Offer is made.

(i) The Issuer shall not be required to make a Change of Control Offer if, in connection with or in contemplation of any Change of Control, it has made an offer to purchase (an "**Alternate Offer**") any and all Notes validly tendered at a cash price equal to or higher than the Change of Control Payment and has purchased all Notes properly tendered in accordance with the terms of such Alternate Offer.

(j) In the event that Holders of not less than 90% of the aggregate principal amount of the outstanding Notes accept a Change of Control Offer or an Alternate Offer and the Issuer (or any third party making the Change of Control Offer in lieu of the Issuer) purchases all of the Notes held by such Holders, the Issuer or third party offeror, as applicable, shall have the right, upon not less than 15 nor more than 60 days' prior notice, given not more than 30 days following the purchase pursuant to the Change of Control Offer described above or an Alternate Offer, to redeem (in the case of the Issuer) or purchase (in the case of a third party offeror) all of the Notes that remain outstanding following such purchase at a Redemption Price or purchase price, as the case may be, equal to the Change of Control Payment plus, to the extent not included in the Change of Control Payment, accrued and unpaid interest on the Notes that remain outstanding, to, but excluding, the applicable Redemption Date (subject to the right of Holders on the relevant Record Date to receive interest due on an Interest Payment Date that is on or prior to the Redemption Date).

(k) The Issuer will comply, to the extent applicable, with the requirements of any securities laws and regulations to the extent such laws and regulations are applicable in connection with any repurchase of Notes pursuant to a Change of Control Offer. To the extent that the provisions of any securities laws or regulations conflict with provisions of this Section 5.18, the Issuer shall comply with such securities laws or regulations and shall not be deemed to have breached its obligations under this Section 5.18 by virtue thereof.

(l) Notwithstanding any other provision of this Indenture, the obligations of the Issuer to make a Change of Control Offer may be waived or modified with the written consent of the holders of a majority in principal amount of the outstanding Notes.

ARTICLE 6

DEFAULT AND ENFORCEMENT

6.1 Events of Default

The occurrence of any one or more of the following events shall constitute an "**Event of Default**" under this Indenture:

- (a) failure to pay any principal of or Premium, if any, on any Note when the same becomes due and payable at its Stated Maturity, upon acceleration, redemption, optional redemption, required repurchase, or otherwise;

- (b) failure to pay any interest on any Note when the same becomes due and payable and such failure continues for a period of 30 days;
- (c) failure to make an Asset Sale Offer as required by Section 5.17, or default in the payment of principal and interest on Notes required to be purchased pursuant to an Asset Sale Offer made under Section 5.17 when due and payable;
- (d) failure to perform or comply with the provisions of Sections 5.14 and 5.18;
- (e) failure to perform any other covenant or agreement of the Issuer under this Indenture or the Notes, which failure continues for 60 days after written notice thereof to the Issuer by the Trustee or Holders of at least 25% in aggregate principal amount of outstanding Notes;
- (f) the occurrence of a default under the terms of any instrument evidencing or securing Indebtedness for money borrowed by the Issuer or any Restricted Subsidiary having an outstanding principal amount of \$50 million individually or in the aggregate, which default results in the acceleration of the payment of all or any portion of such Indebtedness or constitutes the failure to pay all or any portion of such Indebtedness when due;
- (g) the rendering of a final judgment or judgments (not subject to appeal) against the Issuer or any Restricted Subsidiary in an amount in excess of \$50 million not adequately covered by insurance which remains undischarged or unstayed for a period of 60 days after the date on which the right to appeal has expired;
- (h) a Note Guarantee of a Significant Subsidiary ceases to be in full force and effect or is declared null and void or a Guarantor that is a Significant Subsidiary denies that it has any further liability under its Note Guarantee, or gives notice to such effect (other than by reason of the termination of this Indenture or the release of the Note Guarantee in accordance with the terms of this Indenture);
- (i) the Issuer or any of its Significant Subsidiaries pursuant to or within the meaning of any Bankruptcy Law:
 - (i) commences a voluntary case or proceeding under any Bankruptcy Law;
 - (ii) applies for or consents to the entry of an order for relief against it in an involuntary case or proceeding under any Bankruptcy Law;
 - (iii) consents to the appointment of a Custodian of it or for all or substantially all of its assets; or
 - (iv) makes a general assignment for the benefit of its creditors pursuant to any Bankruptcy Law; or
- (j) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

- (i) is for relief against the Issuer or any of its Significant Subsidiaries as debtor in an involuntary case or proceeding under any Bankruptcy Law;
- (ii) appoints a Custodian of the Issuer or any of its Significant Subsidiaries or a Custodian for all or substantially all of the assets of the Issuer or any Restricted Subsidiary; or
- (iii) orders the liquidation of the Issuer or any of its Significant Subsidiaries,

and, in the case of each of subclauses (i), (ii) and (iii) of this Section 6.1(j), the order or decree remains unstayed and in effect for 60 days consecutive days and, in the case of the insolvency of a Significant Subsidiary, such Significant Subsidiary remains a Restricted Subsidiary on such 60th day;

6.2 Acceleration of Maturity; Rescission, Annulment and Waiver

(a) If an Event of Default (other than an Event of Default specified in clauses (i) or (j) of Section 6.1 with respect to the Issuer) shall occur and be continuing, either the Trustee or the Holders of not less than 25% in aggregate principal amount of the outstanding Notes may, and the Trustee at the request of such Holders shall, declare by notice in writing to the Issuer and (if given by the Holders) to the Trustee, the principal of, and accrued and unpaid interest to the date of acceleration on, all of the outstanding Notes immediately due and payable and, upon any such declaration, all such amounts shall become due and payable immediately. If an Event of Default specified in clauses (i) or (j) of Section 6.1 occurs and is continuing, then the principal of, and accrued and unpaid interest on, all of the outstanding Notes shall thereupon become and be immediately due and payable without any declaration, notice or other action on the part of either the Trustee or any Holder. The Issuer shall deliver to the Trustee, within 10 days after the occurrence thereof, notice of any default or acceleration referred to in Section 6.1(f).

(b) At any time after a declaration of acceleration, but before a judgment or decree for payment of the money due has been obtained by the Trustee:

- (i) the Holders of a majority in aggregate principal amount of the outstanding Notes, by written notice to the Issuer, the Holders and the Trustee, may rescind and annul such declaration and its consequences if:
 - (A) all Events of Default, other than the non-payment of amounts of principal of and Premium, if any, or interest on the Notes that have become due solely by such declaration of acceleration, have been cured or waived; and
 - (B) such rescission would not conflict with any judgment or decree of a court of competent jurisdiction; and
- (ii) the Trustee, so long as it has not become bound to declare the principal and interest on the Notes (or any of them) to be due and payable, or to obtain or enforce payment of the same, shall have the power to waive any Event of Default if, in the Trustee's opinion, the same shall have been

cured or adequate satisfaction made therefor, and in such event to rescind and annul such declaration and its consequences,

provided that no such rescission shall affect any subsequent Default or impair any right consequent thereon.

(c) Notwithstanding Section 6.2(a), in the event of a declaration of acceleration in respect of the Notes because an Event of Default specified in Section 6.1(f) shall have occurred and be continuing, such declaration of acceleration shall be automatically annulled if the Indebtedness that is the subject of such Event of Default has been discharged or the holders thereof have rescinded their declaration of acceleration in respect of such Indebtedness, and written notice of such discharge or rescission, as the case may be, shall have been given to the Trustee by the Issuer and countersigned by the holders of such Indebtedness or a trustee, fiduciary or agent for such holders, within 30 days after such declaration of acceleration in respect of the Notes, and no other Event of Default has occurred during such 30 day period which has not been cured or waived during such period.

(d) The Holders of a majority in aggregate principal amount of the outstanding Notes, by written notice to the Trustee, may on behalf of the Holders of all Notes waive any existing Default or Event of Default and its consequences under this Indenture, except a Default or Event of Default in the payment of interest on, or principal of (or Premium, if any, on), the Notes.

6.3 Collection of Indebtedness and Suits for Enforcement by Trustee

- (a) The Issuer covenants that if:
- (i) Default is made in the payment of any instalment of interest on any Note when such interest becomes due and payable and such default continues for a period of 30 days, or
 - (ii) Default is made in the payment of the principal of (or Premium, if any, on) any Note at the Maturity thereof,

the Issuer will, upon demand of the Trustee, pay to the Trustee for the benefit of the Holders, the whole amount then due and payable on such Notes for principal (and Premium, if any) and interest, and interest on any overdue principal (and Premium, if any) and, to the extent that payment of such interest shall be legally enforceable, upon any overdue instalment of interest, at the rate borne by the Notes, and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

(b) If the Issuer fails to pay such amounts forthwith upon such demand, the Trustee, in its own name as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid, may prosecute such proceeding to judgment or final decree and may enforce the same against the Issuer or any other obligor (including the Guarantors, if any) upon the Notes and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Issuer or any other obligor upon the Notes, wherever situated.

(c) If an Event of Default occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders by such appropriate judicial proceedings as the Trustee shall deem most effective to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy.

6.4 Trustee May File Proofs of Claim

(a) In case of any pending receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Issuer and its debts or any other obligor upon the Notes (including the Guarantors, if any), and their debts or the property of the Issuer or of such other obligor or their creditors, the Trustee (irrespective of whether the principal of the Notes shall then be due and payable as therein 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 (and Premium, if any) or interest) shall be entitled and empowered, by intervention in such proceeding or otherwise:

- (i) to file and prove a claim for the whole amount of principal (and Premium, if any) and interest owing and unpaid in respect of the Notes and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and of the Holders allowed in such judicial proceeding; and
- (ii) to collect and receive any moneys or other securities or property payable or deliverable upon the conversion or exchange of such securities or upon any such claims and to distribute the same,

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or similar official in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due to the Trustee hereunder.

(b) Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

6.5 Trustee May Enforce Claims Without Possession of Notes

All rights of action and claims under this Indenture or the Notes may be prosecuted and enforced by the Trustee without the possession of any of the Notes or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses,

disbursements and advances of the Trustee, its agents and counsel, be for the rateable benefit of the Holders of the Notes in respect of which such judgment has been recovered.

6.6 Application of Monies by Trustee

(a) Except as herein otherwise expressly provided, any money collected by the Trustee pursuant to this Article 6 shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal (or Premium, if any) or interest, upon presentation of the Notes and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

- (i) first, in payment or in reimbursement to the Trustee of its reasonable compensation, costs, charges, expenses, borrowings, advances or other monies furnished or provided by or at the instance of the Trustee in or about the execution of its trusts under, or otherwise in relation to, this Indenture, with interest thereon as herein provided;
- (ii) second, but subject as hereinafter in this Section 6.6 provided, in payment, rateably and proportionately to the Holders, of the principal of and Premium (if any) 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 resolution of the Holders and in that case in such order or priority as between principal, Premium (if any) and interest as may be directed by such resolution of the Holders; and
- (iii) third, in payment of the surplus, if any, of such monies to the Issuer or its assigns and/or the Guarantors, as the case may be;

provided, *however*, that no payment shall be made pursuant to clause (ii) above in respect of the principal, Premium or interest on any Notes held, directly or indirectly, by or for the benefit of the Issuer or any Subsidiary of the Issuer (other than any Notes pledged for value and in good faith to a Person other than the Issuer or any Subsidiary of the Issuer but only to the extent of such Person's interest therein), except subject to the prior payment in full of the principal, Premium (if any) and interest (if any) on all Notes which are not so held.

(b) The Trustee shall not be bound to apply or make any partial or interim payment of any monies coming into its hands if the amount so received by it, after reserving out therefrom such amount as the Trustee may think necessary to provide for the payments mentioned in Section 6.6(a), is insufficient to make a distribution of at least 2% of the aggregate principal amount of the outstanding Notes. The foregoing shall, however, not apply to a final payment or distribution hereunder.

6.7 No Suits by Holders

Except to enforce payment of the principal of, and Premium (if any) or interest on any Note (after giving effect to the grace period specified in Section 6.1(b)), a Holder shall not

have any right to institute any proceeding with respect to this Indenture, or for the appointment of a receiver or trustee, or for any remedy thereunder, unless the Trustee:

- (a) shall have failed to act for a period of 60 days after receiving written notice of a continuing Event of Default from such Holder and a written request to act from Holders of at least 25% in aggregate principal amount of the Notes then outstanding;
- (b) shall have received, when so requested by the Trustee, sufficient funds and security and indemnity satisfactory to it against the costs, expenses and liabilities to be incurred therein or thereby in its reasonable judgment; and
- (c) shall not have received, during such 60 day period, from the Holders of a majority in aggregate principal amount of the Notes then outstanding, a direction inconsistent with such request,

it being understood and intended that no one or more Holders shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the rights of any other Holders, or to obtain or to seek to obtain priority or preference over any other Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and rateable benefit of all the Holders.

6.8 Unconditional Right of Holders to Receive Principal, Premium and Interest

Notwithstanding any other provision in this Indenture, a Holder shall have the right, which is absolute and unconditional, to receive payment, as provided herein of the principal of (and Premium, if any) and interest on the Notes held by such Holder on the applicable Maturity date and to institute suit for the enforcement of any such payment, and such rights shall not be impaired without the consent of such Holder.

6.9 Restoration of Rights and Remedies

If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture 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, subject to any determination in such proceeding, the Issuer, the Guarantors (if any), the Trustee and the Holders shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee and the Holders shall continue as though no such proceeding had been instituted.

6.10 Rights and Remedies Cumulative

Except as otherwise expressly provided herein, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. 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.

6.11 Delay or Omission Not Waiver

No delay or omission of the Trustee or of any Holder to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article 6 or by law to the Trustee or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders, as the case may be.

6.12 Control by Holders

The Holders of not less than a majority in principal amount of the outstanding Notes shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee, provided that:

- (a) such direction shall not be in conflict with any rule of law or with this Indenture;
- (b) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction; and
- (c) the Trustee shall have the right to not take any action which might involve it in personal liability or be unjustly prejudicial to the Holders not consenting.

6.13 Notice of Event of Default

If an Event of Default shall occur and be continuing the Trustee shall, within 30 days after it receives written notice of the occurrence of such Event of Default, give notice of such Event of Default to the Holders in the manner provided in Section 12.2, provided that, notwithstanding the foregoing, unless the Trustee shall have been requested to do so by the Holders of at least 25% of the principal amount of the Notes then outstanding, the Trustee shall not be required to give such notice if the Trustee in good faith shall have determined that the withholding of such notice is in the best interests of the Holders and shall have so advised the Issuer in writing.

6.14 Waiver of Stay or Extension Laws

The Issuer covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Issuer (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law and covenants that it shall not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

6.15 Undertaking for Costs

All parties to this Indenture agree, and each Holder of any Note by such Holder's acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken, suffered or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorney's fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant.

6.16 Judgment Against the Issuer and the Guarantors

The Issuer and each of the Guarantors covenants and agrees with the Trustee that, in case of any judicial or other proceedings to enforce the rights of the Holders, judgment may be rendered against it in favour of the Holders or in favour of the Trustee, as trustee for the Holders, for any amount which may remain due in respect of the principal, Premium (if any) and the interest on the Notes and any other monies owing hereunder.

6.17 Immunity of Officers and Others

The Holders, the Beneficial Holders 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 officer, director, employee, incorporator or holder of Capital Stock of either of (i) the Issuer or (ii) any Guarantor, or of any of their respective successors, 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 or a Guarantor contained herein or in the Notes or the Note Guarantees. Each Holder and Beneficial Holder, by accepting its interest in a Note, waives and releases all such claims against, and liability of, such Persons. The waiver and release provided for in this Section 6.17 are part of the consideration for issuance of the Notes. For greater certainty, the Persons waived and released by virtue of this Section 6.17 do not include the Issuer or any Guarantor.

6.18 Notice of Payment by Trustee

Not less than 15 days notice shall be given in the manner provided in Section 12.2 by the Trustee to the Holders of any payment to be made under this Article 6. Such notice shall state the time when and place where such payment is to be made and also the liability under this Indenture to which it is to be applied. After the day so fixed, unless payment shall have been duly demanded and have been refused, the Holders will be entitled to interest only on the balance (if any) of the principal, Premium (if any) and interest (if any) due to them, respectively, on the relevant Notes, after deduction of the respective amounts payable in respect thereof on the day so fixed.

6.19 Trustee May Demand Production of Notes

The Trustee shall have the right to demand production of the Notes in respect of which any payment of principal, interest or Premium (if any) required by this Article 6 is made

and may cause to be endorsed on the same a memorandum of the amount so paid and the date of payment, but the Trustee may, in its discretion, dispense with such production and endorsement, upon such indemnity being given to it and to the Issuer as the Trustee shall deem sufficient.

ARTICLE 7
DISCHARGE AND DEFEASANCE

7.1 Satisfaction and Discharge

This Indenture will cease to be of further effect as to all Notes issued hereunder, when:

- (a) either:
 - (i) all Notes that have been authenticated, except lost, stolen or destroyed Notes that have been replaced or paid and Notes for whose payment money has been deposited in trust and thereafter repaid to the Issuer, have been delivered to the Trustee for cancellation; or
 - (ii) all Notes that have not been delivered to the Trustee for cancellation have become due and payable by reason of the delivery of a Redemption Notice or otherwise or will become due and payable within one year and the Issuer has irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust solely for the benefit of the Holders thereof, cash in Canadian dollars, non-callable Government Securities, or a combination of cash in Canadian dollars and non-callable Government Securities, in amounts as will be sufficient to pay and discharge the principal, Premium, if any, and accrued interest to Maturity (together with all applicable fees and expenses of the Trustee in connection with such payment);
- (b) no Default or Event of Default has occurred and is continuing on the date of the deposit or will occur as a result of the deposit other than a Default or Event of Default resulting from the borrowing of funds to be applied to such deposit and the deposit will not result in a breach or violation of, or constitute a default under, any other instrument to which the Issuer or any Restricted Subsidiary is a party or by which the Issuer or any Restricted Subsidiary is bound;
- (c) the Issuer or any Guarantor has paid or caused to be paid all sums payable by the Issuer under this Indenture;
- (d) the Issuer has delivered irrevocable instructions to the Trustee under this Indenture to apply the deposited money toward the payment of such Notes at Maturity; and
- (e) the Issuer has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all of the foregoing conditions have been satisfied.

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Issuer to the Trustee under Section 10.16 and, if money has been deposited with the Trustee pursuant to Section 7.1(a)(ii), the provisions of Sections 7.7 and 7.8 will survive.

7.2 Option to Effect Legal Defeasance or Covenant Defeasance

The Issuer may, at the option of the Board of Directors of the Issuer evidenced by a resolution set forth in an Officers' Certificate, at any time, elect to have either Section 7.3 or 7.4 applied to all outstanding Notes upon compliance with the conditions set forth in this Article 7.

7.3 Legal Defeasance and Discharge

(a) Upon the Issuer's exercise under Section 7.2 of the option applicable to this Section 7.3 in respect of the Notes, the Issuer and each of the Guarantors shall, subject to the satisfaction of the conditions set forth in Section 7.5, be deemed to have been discharged from their obligations (including the Note Guarantees), other than the provisions contemplated to survive as set forth below, with respect to all outstanding Notes on the date the conditions set forth below are satisfied (hereinafter, "**Legal Defeasance**") in respect of such Notes. For this purpose, Legal Defeasance means that the Issuer and the Guarantors shall be deemed to have paid and discharged the entire Indebtedness represented by the outstanding Notes (including the Note Guarantees), which shall thereafter be deemed to be "outstanding" only for the purposes of Sections 7.6 and 7.8 and the other Sections of this Indenture referred to in paragraphs (i) and (ii) below, and to have satisfied all their other obligations under such Notes and, to the extent applicable to such Notes, this Indenture (including, for certainty, the Note Guarantees) (and the Trustee, on demand of and at the expense of the Issuer, shall execute proper instruments acknowledging the same), except for the following provisions which shall survive until otherwise terminated or discharged hereunder:

- (i) the rights of Holders of such Notes to receive payments in respect of the principal of, Premium, if any, and interest on such Notes when such payments are due solely out of the trust referred to in Section 7.6;
- (ii) the Issuer's obligations under Sections 2.10, 2.11, 2.14 and 2.15;
- (iii) the rights, powers, trusts, duties and immunities of the Trustee, and the Issuer's obligations in connection therewith under Article 10; and
- (iv) this Section 7.3.

(b) Subject to compliance with Section 7.2, the Issuer may exercise its option under this Section 7.3 notwithstanding the prior exercise of its option under Section 7.4.

7.4 Covenant Defeasance

Upon the Issuer's exercise under Section 7.2 of the option applicable to this Section 7.4, the Issuer and each of the Guarantors shall, subject to the satisfaction of the conditions set forth in Section 7.5, be released from each of their obligations under the covenants contained in Sections 5.6, 5.7, 5.8, 5.10, 5.11, 5.12, 5.13, 5.14(1)(a)(iii), 5.15, 5.16, 5.17 and

5.18, (collectively, the "**Defeased Covenants**") with respect to the outstanding Notes on and after the date the conditions set forth in Section 7.5 are satisfied (hereinafter, "**Covenant Defeasance**"), and such Notes shall thereafter be deemed not "outstanding" for the purposes of any direction, waiver, consent or declaration or act of Holders thereof (and the consequences of any thereof) in connection with the Defeased Covenants, but shall continue to be deemed "outstanding" for all other purposes hereunder (it being understood that such Notes shall not be deemed outstanding for accounting purposes). For this purpose, Covenant Defeasance means that, with respect to the outstanding Notes, the Issuer and the Guarantors may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any Defeased Covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any other document and such omission to comply shall not constitute a Default or an Event of Default hereunder, but, except as specified above, the remainder of this Indenture (including, for certainty, the Note Guarantees) and such Notes shall be unaffected thereby. In addition, upon the Issuer's exercise under Section 7.2 of the option applicable to this Section 7.4, and subject to the satisfaction of the conditions set forth in Section 7.5, payment of the Notes may not be accelerated because of an Event of Default specified in Sections 6.1(c), 6.1(d) (but only in respect of Sections 5.17, 5.18 and 5.14(1)(a)(iii)), 6.1(e), 6.1(f), 6.1(g) and 6.1(h).

7.5 Conditions to Legal or Covenant Defeasance

(a) In order to exercise either Legal Defeasance under Section 7.3 or Covenant Defeasance under Section 7.4 with respect to the Notes:

- (i) the Issuer must irrevocably transfer to and deposit with the Trustee, in trust, for the benefit of the Holders and free and clear of any Liens or adverse claims, cash in Canadian dollars, Government Securities, or a combination of cash in Canadian dollars and Government Securities, in amounts as will be sufficient, in the opinion of a nationally recognized investment bank, appraisal firm or firm of independent public accountants in Canada selected by the Issuer, to pay, satisfy and discharge the entire amount of principal of, Premium, if any, accrued and unpaid interest, if any, to Maturity and all other amounts due in respect of all such Notes;
- (ii) no Default or Event of Default shall have occurred and be continuing on the date of such deposit (other than a Default or Event of Default resulting from the borrowing of funds to be applied to such deposit and the granting of Liens to secure such borrowing);
- (iii) the Issuer must have received from the Canada Revenue Agency (or successor agency) an advance tax ruling or the Issuer has delivered to the Trustee an Opinion of Counsel qualified to practice in Canada, with such advance tax ruling or Opinion of Counsel providing that Holders will not recognize gain or loss for Canadian income tax purposes as a result of such Legal Defeasance and will be subject to Canadian income tax on the same amount, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred;

- (iv) the Legal Defeasance or Covenant Defeasance shall not result in a breach or violation of, or constitute a default under, any agreement or instrument (other than this Indenture) to which the Issuer or any of its Subsidiaries is a party or by which the Issuer or any of its Subsidiaries is bound;
- (v) the Issuer must deliver to the Trustee an Officers' Certificate stating that the deposit was not made by the Issuer with the intent of preferring the Holders over its other creditors or with the intent of defeating, hindering, delaying, or defrauding any of its other creditors or others;
- (vi) the Issuer must deliver to the Trustee an Opinion of Counsel to the effect that, as of the date of such opinion, the trust funds will not be subject to the effect of any Bankruptcy Law and that the Trustee has a perfected security interest in such trust funds for the rateable benefit of the Holders of the outstanding Notes;
- (vii) the Issuer must satisfy the Trustee that it has paid, caused to be paid or made provisions for the payment of all applicable expenses of the Trustee; and
- (viii) the Issuer must deliver to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided relating to the Legal Defeasance or the Covenant Defeasance have been satisfied.

(b) Subject to Section 7.7, any funds deposited with the Trustee pursuant to Section 7.5(a) in respect of the outstanding Notes shall be (i) irrevocable, subject to certain exceptions, and (ii) made under the terms of an escrow and/or trust agreement in form and substance satisfactory to the Trustee and which provides for the due and punctual payment of the principal of, Premium, if any, and interest on the Notes being satisfied.

7.6 Application of Trust Funds

(a) Subject to Section 7.7, any funds or Government Securities deposited with the Trustee pursuant to Section 7.1 or 7.5 in respect of Notes shall be held by the Trustee in trust and applied by it, in accordance with the provisions of the applicable Notes and this Indenture, to the payment, either directly or through any Paying Agent as the Trustee may determine, to the Persons entitled thereto, of the principal (and Premium, if any) and interest for whose payment such funds or Government Securities have been deposited with the Trustee; provided that such funds or Government Securities need not be segregated from other funds or obligations except to the extent required by law.

(b) If the Trustee or Paying Agent is unable to apply any funds or Government Securities in accordance with Section 7.1 or 7.5 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 affected Notes shall be revived and reinstated as though no funds or Government Securities had been deposited pursuant to Section 7.1 or 7.5, as applicable, until such time as the Trustee is permitted to apply

all such funds or Government Securities in accordance with such provisions; provided that if the Issuer or any Guarantor has made any payment in respect of principal of, Premium, if any, or interest on any Notes or, as applicable, other amounts because of the reinstatement of its obligations, the Issuer and such Guarantor, as applicable, shall be subrogated to the rights of the Holders of such Notes to receive such payment from the funds or Government Securities held by the Trustee.

(c) The Trustee shall have no liability to the Issuer or any party for interest earned on funds deposited with the Trustee absent written instruction received in advance by the Trustee with respect to the investment of such funds and the agreed rate of interest to be earned thereon

7.7 Repayment to the Issuer

Notwithstanding anything in this Article 7 to the contrary, the Trustee will deliver or pay to the Issuer from time to time upon the request of the Issuer any funds or Government Securities held by it as provided in Section 7.1 or 7.5 which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof, delivered to the Trustee (which may be the opinion delivered under Section 7.5(a)(i)), are in excess of the amount thereof that would then be required to be deposited to fully satisfy the obligations of the Issuer under Section 7.1 or to effect an equivalent Legal Defeasance or Covenant Defeasance.

7.8 Continuance of Rights, Duties and Obligations

(a) Where trust funds or trust property have been deposited pursuant to Section 7.1 or 7.5, the Holders and the Issuer shall continue to have and be subject to their respective rights, duties and obligations under Article 2 and Article 4.

(b) In the event that, after the deposit of trust funds or trust property pursuant to Section 7.1 or 7.5, the Issuer is required to make an offer to purchase any outstanding Notes pursuant to the terms hereof, the Issuer shall be entitled to use any trust funds or trust property deposited with the Trustee pursuant to Section 7.1 or 7.5 for the purpose of paying to any Holders of such Notes who have accepted any such offer the offer price payable in respect of such offer relating to any such Notes. Upon receipt of an Issuer Order, the Trustee shall be entitled to pay to such Holder from such trust funds or trust property deposited with the Trustee pursuant to Section 7.1 or 7.5 in respect of such Notes which is applicable to the Notes held by such Holders who have accepted any such offer of the Issuer (which amount shall be based on the applicable principal amount of the Notes held by accepting offerees in relation to the aggregate outstanding principal amount of all the Notes).

ARTICLE 8 MEETINGS OF HOLDERS

8.1 Purpose, Effect and Convention of Meetings

(a) Subject to Section 11.2, wherever in this Indenture a consent, waiver, notice, authorization or resolution of the Holders (or any of them) is required, a meeting may be convened in accordance with this Article 8 to consider and resolve whether such consent, waiver,

notice, authorization or resolution should be approved by such Holders. A resolution passed by the affirmative votes of the Holders of at least a majority of the outstanding principal amount of the Notes represented and voting on a poll at a meeting of Holders duly convened for the purpose and held in accordance with the provisions of this Indenture shall constitute conclusively such consent, waiver, notice, authorization or resolution.

(b) At any time and from time to time, the Trustee on behalf of the Issuer may and, on receipt of an Issuer Order or a Holders' Request and upon being indemnified and funded for the costs thereof to the reasonable satisfaction of the Trustee by the Issuer or the Holders signing such Holders' Request, will, convene a meeting of all Holders.

(c) If the Trustee fails to convene a meeting after being duly requested as aforesaid (and indemnified and funded as aforesaid), the Issuer or such Holders may themselves convene such meeting and the notice calling such meeting may be signed by such Person as the Issuer or those Holders designate, as applicable. Every such meeting will be held in Toronto, Ontario or such other place as the Trustee may in any case determine or approve.

8.2 Notice of Meetings

Not more than 60 days' nor less than 21 days' notice of any meeting of the Holders shall be given to the Holders, in the manner provided in Section 12.2 and a copy of such notice shall be sent by post to the Trustee, unless the meeting has been called by it, and to the Issuer, unless such meeting has been called by it. Such notice shall state the time when and the place where the meeting is to be held and shall state briefly the general nature of the business to be transacted thereat and 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 8. The accidental omission to give notice of a meeting to any Holder shall not invalidate any resolution passed at any such meeting. A Holder may waive notice of a meeting either before or after the meeting.

8.3 Chairman

Some individual, who need not be a Holder, nominated in writing by the Trustee shall be chairman of the meeting and if no individual is so nominated, or if the individual so nominated is not present within 15 minutes from the time fixed for the holding of the meeting, a majority of the Holders present in person or by proxy shall choose some individual present to be chairman.

8.4 Quorum

Subject to this Indenture, at any meeting of the Holders, a quorum shall consist of Holders present in person or by proxy and representing at least 25% of the principal amount of the outstanding Notes. If a quorum of the Holders shall not be present within 30 minutes from the time fixed for holding any meeting, the meeting, if convened by the Holders or pursuant to a Holders' Request, 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, the Holders present in person or by proxy shall constitute a quorum and may transact

the business for which the meeting was originally convened notwithstanding that they may not represent 25% of the principal amount of the outstanding Notes. Any business may be brought before or dealt with at an adjourned meeting which might have been brought before or dealt with at the original meeting in accordance with the notice calling the same. No business shall be transacted at any meeting unless the required quorum be present at the commencement of business.

8.5 **Power to Adjourn**

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

8.6 **Voting**

On a poll each Holder present in person or represented by a duly appointed proxy shall be entitled to one vote in respect of each \$1,000 principal amount of the Notes of which it is the Holder. A proxyholder need not be a Holder. In the case of joint registered Holders of a Note, any one of them present in person or by proxy at the meeting may vote in the absence of the other or others; but in case more than one of them be present in person or by proxy, they shall vote together in respect of the Notes of which they are joint Holders.

8.7 **Poll**

A poll will be taken on every resolution submitted for approval at a meeting of Holders, in such manner as the chairman directs, and the results of such polls shall be binding on all Holders. Every resolution will be decided by a majority of the votes cast on the poll for that resolution.

8.8 **Proxies**

A Holder may be present and vote at any meeting of Holders by an authorized representative. The Issuer (in case it convenes the meeting) or the Trustee (in any other case) for the purpose of enabling the Holders to be present and vote at any meeting without producing their Notes, and of enabling them to be present and vote at any such meeting by proxy and of depositing instruments appointing such proxies at some place other than the place where the meeting is to be held, may from time to time make and vary such regulations as it shall think fit providing for and governing any or all of the following matters:

- (a) the form of the instrument appointing a proxy, which shall be in writing, and the manner in which the same shall be executed and the production of the authority of any individual signing on behalf of a Holder;
- (b) the deposit of instruments appointing proxies at such place as the Trustee, the Issuer or the Holder 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 must be deposited; and

- (c) the deposit of instruments appointing proxies at some approved place or places other than the place at which the meeting is to be held and enabling particulars of such instruments appointing proxies to be mailed, faxed or sent by other electronic means before the meeting to the Issuer or to the Trustee at the place where the same is to be held and for the voting of proxies so deposited as though the instruments themselves were produced at the meeting.

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

8.9 Persons Entitled to Attend Meetings; Rules

The Issuer and the Trustee, by their respective directors, officers and employees and the respective legal advisors of the Issuer, the Trustee or any Holder may attend any meeting of the Holders, but shall have no vote as such. The Trustee may make reasonable rules for action by or at a meeting of Holders.

8.10 Powers Cumulative

Any one or more of the powers in this Indenture stated to be exercisable by the Holders may be exercised from time to time and the exercise of any one or more of such powers from time to time shall not be deemed to exhaust the rights of the Holders to exercise the same or any other such power or powers thereafter from time to time.

8.11 Minutes

Minutes of all resolutions and proceedings at every meeting as aforesaid shall be made and duly entered in books to be from time to time provided for that purpose by the Trustee at the expense of the Issuer, and any such minutes as aforesaid, 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 Holders, shall be *prima facie* evidence of the matters therein stated and, until 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 taken thereat to have been duly passed and taken.

8.12 Instruments in Writing

Any consent, waiver, notice, authorization or resolution of the Holders which may be given by resolution at a meeting of the Holders pursuant to this Article 8 may also be given by the Holders of not less than 50% of the aggregate principal amount of the outstanding Notes by a signed instrument in one or more counterparts, and the expression "resolution" when used in this Indenture will include instruments so signed. Notice of any resolution passed in accordance with this Section 8.12 will be given by the Trustee to the affected Holders within 30 days of the date on which such resolution was passed.

8.13 Binding Effect of Resolutions

Every resolution passed in accordance with the provisions of this Article 8 at a meeting of Holders shall be binding upon all the Holders, whether present at or absent from such meeting, and every instrument in writing signed by Holders in accordance with Section 8.12 shall be binding upon all the Holders, whether signatories thereto or not, and each and every Holder and the Trustee (subject to the provisions for its indemnity herein contained) shall, subject to applicable law, be bound to give effect accordingly to every such resolution and instrument in writing.

8.14 Evidence of Rights of Holders

(a) Any request, direction, notice, consent or other instrument which this Indenture may require or permit to be signed or executed by the Holders may be in any number of concurrent instruments of similar tenor signed or executed by such Holders. Proof of the execution of any such request, direction, notice, consent or other instrument or of a writing appointing any such attorney will be sufficient for any purpose of this Indenture if the fact and date of the execution by any Person of such request, direction, notice, consent or other instrument or writing may be proved by the certificate of any notary public, or other officer authorized to take acknowledgements of deeds to be recorded at the place where such certificate is made, that the Person signing such request, direction, notice, consent or other instrument or writing acknowledged to such notary public or other officer the execution thereof, or by an affidavit of a witness of such execution or in any other manner which the Trustee may consider adequate.

(b) Notwithstanding Section 8.14(a), the Trustee may, in its discretion, require proof of execution in cases where it deems proof desirable and may accept such proof as it shall consider proper.

ARTICLE 9
SUCCESSORS TO THE ISSUER AND THE RESTRICTED SUBSIDIARIES

9.1 Vesting of Powers in Successor

Whenever the conditions of Section 5.14 have been duly observed and performed, the Trustee will execute and deliver a Supplemental Indenture as provided for in Section 11.5 and then:

- (a) the Successor Person to the Issuer or the successor of the Restricted Subsidiary, as the case may be, will possess, and from time to time may exercise, each and every right and power of the Issuer or Restricted Subsidiary, as applicable, under this Indenture in the name of the Issuer or Restricted Subsidiary, as applicable, or otherwise, and any act or proceeding by any provision of this Indenture required to be done or performed by any directors or officers of the Issuer or Restricted Subsidiary, as the case may be, may be done and performed with like force and effect by the like directors or officers of such successor; and

- (b) the Issuer or Restricted Subsidiary, as applicable, will be released and discharged from liability under this Indenture and the Trustee will execute any documents which it may be advised are necessary or advisable for effecting or evidencing such release and discharge.

ARTICLE 10

CONCERNING THE TRUSTEE

10.1 No Conflict of Interest

The Trustee represents to the Issuer that at the date of execution and delivery by it of this Indenture there exists no material conflict of interest in the role of the Trustee as a fiduciary hereunder but if, notwithstanding the provisions of this Section 10.1, such a material conflict of interest exists, or hereafter arises, the validity and enforceability of this Indenture and the Notes shall not be affected in any manner whatsoever by reason only that such material conflict of interest exists or arises.

10.2 Replacement of Trustee

(a) The Trustee may resign its trust and be discharged from all further duties and liabilities hereunder by giving to the Issuer 90 days notice in writing or such shorter notice as the Issuer may accept as sufficient. If at any time a material conflict of interest exists in the Trustee's role as a fiduciary hereunder the Trustee shall, within 30 days after ascertaining that such a material conflict of interest exists, either eliminate such material conflict of interest or resign in the manner and with the effect specified in this Section 10.2. The validity and enforceability of this Indenture and of the Notes issued hereunder shall not be affected in any manner whatsoever by reason only that such a material conflict of interest exists. In the event of the Trustee resigning or being removed or being dissolved, becoming bankrupt, going into liquidation, failing to comply with the obligations set out in Section 10.15 or otherwise becoming incapable of acting hereunder, the Issuer shall forthwith appoint a new Trustee unless a new Trustee has already been appointed by the Holders in accordance with the provisions hereof. Failing such appointment by the Issuer, the retiring Trustee or any Holder may apply to a Judge of the Ontario Superior Court of Justice, on such notice as such Judge may direct at the Issuer's expense, for the appointment of a new Trustee but any new Trustee so appointed by the Issuer or by the Court shall be subject to removal as aforesaid by the Holders and the appointment of such new Trustee shall be effective only upon such new Trustee becoming bound by this Indenture. Any new Trustee appointed under any provision of this Section 10.2 shall be a corporation authorized to carry on the business of a trust company in all of the Provinces of Canada. On any new appointment the new Trustee shall be vested with the same powers, rights, duties and responsibilities as if it had been originally named herein as Trustee. The successor Trustee shall mail a notice of its succession to Holders in accordance with Section 12.2.

(b) Any entity into which the Trustee may be merged or, with or to which it may be consolidated, amalgamated or sold, any entity resulting from any merger, consolidation, sale or amalgamation to which the Trustee shall be a party, and any entity to whom the Trustee transfers all or substantially all of its corporate trust business, shall be the successor Trustee under this Indenture without the execution of any instrument or any further act. Nevertheless, upon the

written request of the successor Trustee or of the Issuer, the Trustee ceasing to act shall execute and deliver an instrument assigning and transferring to such successor Trustee, upon the trusts herein expressed, all the rights, powers and trusts of the retiring Trustee so ceasing to act, and shall duly assign, transfer and deliver all property and money held by such Trustee to the successor Trustee so appointed in its place. Should any deed, conveyance or instrument in writing from the Issuer or any Guarantor be required by any new Trustee for more fully and certainly vesting in and confirming to it such estates, properties, rights, powers and trusts, then any and all such deeds, conveyances and instruments in writing shall on request of said new Trustee, be made, executed, acknowledged and delivered by the Issuer or such Guarantor, as applicable.

10.3 Duties of Trustee

The Trustee will perform only such duties as are specifically set forth in this Indenture and no implied covenants or obligations will be read into this Indenture against the Trustee. The Trustee will exercise such of the rights and powers vested in it under this Indenture and use the same degree of care and skill in its exercise as a prudent trustee would exercise under the reasonably comparable circumstances.

10.4 Trustee's Disclaimer

The Trustee shall not be responsible for and makes no representation as to the validity or adequacy of this Indenture or the Notes, it shall not be accountable for the Issuer's use of the proceeds from the Notes or any money paid to or to the direction of the Issuer, it shall not be responsible for the use or application of any money received by any Paying Agent other than the Trustee, and it shall not be responsible for any statement or recital herein or any statement in the Notes or any other document in connection with the sale of the Notes or pursuant to this Indenture other than its certification and authentication of the Notes.

10.5 Reliance Upon Declarations, Opinions, etc.

(a) In the exercise of its rights, duties and obligations hereunder the Trustee may, if acting in good faith and subject to Section 10.8, rely without liability, as to the truth of the statements and accuracy of the opinions expressed therein, upon statutory declarations, opinions, reports or certificates furnished pursuant to any covenant, condition or requirement of this Indenture or required by the Trustee to be furnished to it in the exercise of its rights and duties hereunder, if the Trustee examines such statutory declarations, opinions, reports or certificates and determines that they comply with Section 10.6, if applicable. The Trustee may nevertheless, in its discretion, require further proof in cases where it deems further proof desirable. Without restricting the foregoing, the Trustee may rely on an Opinion of Counsel satisfactory to the Trustee notwithstanding that it is delivered by a solicitor or firm which acts as solicitors for the Issuer.

(b) The Trustee shall have no obligation to ensure or verify compliance with any applicable laws or regulatory requirements on the issue or transfer of any Notes provided such issue or transfer is effected in accordance with the terms of this Indenture. The Trustee shall be entitled to process all transfers and redemptions upon the presumption that such transfer and

redemption is permissible pursuant to all applicable laws and regulatory requirements if such transfer and redemption is effected in accordance with the terms of this Indenture. The Trustee shall have no obligation, other than to confer with the Issuer and its Counsel, to ensure that legends appearing on the Notes comply with regulatory requirements or securities laws of any applicable jurisdiction.

10.6 Evidence and Authority to Trustee, Opinions, etc.

(a) The Issuer shall furnish to the Trustee evidence of compliance with the conditions precedent provided for in this Indenture relating to any action or step required or permitted to be taken by the Issuer or the Trustee under this Indenture or as a result of any obligation imposed under this Indenture, including without limitation, the authentication and delivery of Notes hereunder, the satisfaction and discharge of this Indenture and the taking of any other action to be taken by the Trustee at the request of or on the application of the Issuer, forthwith if and when (i) such evidence is required by any other Section of this Indenture to be furnished to the Trustee in accordance with the terms of this Section 10.6, or (ii) the Trustee, in the exercise of its rights and duties under this Indenture, gives the Issuer written notice requiring it to furnish such evidence in relation to any particular action or obligation specified in such notice. Such evidence shall consist of:

- (i) an Officers' Certificate, stating that any such condition precedent has been complied with in accordance with the terms of this Indenture;
- (ii) in the case of a condition precedent the satisfaction of which is, by the terms of this Indenture, made subject to review or examination by a solicitor, an Opinion of Counsel that such condition precedent has been complied with in accordance with the terms of this Indenture; and
- (iii) in the case of any such condition precedent the satisfaction of which is subject to review or examination by auditors or accountants, an opinion or report of the Issuer's Auditors whom the Trustee for such purposes hereby approves, that such condition precedent has been complied with in accordance with the terms of this Indenture.

(b) Whenever such evidence relates to a matter other than the authentication and delivery of Notes and the satisfaction and discharge of this Indenture, and except as otherwise specifically provided herein, such evidence may consist of a report or opinion of any solicitor, auditor, accountant, engineer or appraiser or any other individual whose qualifications give authority to a statement made by such individual, provided that 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. Such evidence shall be, so far as appropriate, in accordance with Section 10.6(a).

(c) Each statutory declaration, certificate, opinion or report with respect to compliance with a condition precedent provided for in this Indenture shall include (i) a statement by the individual giving the evidence that he or she has read and is familiar with those provisions of this Indenture relating to the condition precedent in question, (ii) a brief statement of the nature and scope of the examination or investigation upon which the statements or opinions

contained in such evidence are based, (iii) a statement that, in the belief of the individual giving such evidence, he or she has made such examination or investigation as is necessary to enable him or her to make the statements or give the opinions contained or expressed therein, and (iv) a statement whether in the opinion of such individual the conditions precedent in question have been complied with or satisfied.

(d) In addition to its obligations under Section 5.5, the Issuer shall furnish or cause to be furnished to the Trustee at any time if the Trustee reasonably so requires, an Officers' Certificate certifying that 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, or if such is not the case, specifying the covenant, condition or other requirement which has not been complied with and giving particulars of such non-compliance. The Issuer shall, whenever the Trustee so requires, furnish the Trustee with evidence by way of statutory declaration, opinion, report or certificate as specified by the Trustee as to any action or step required or permitted to be taken by the Issuer or as a result of any obligation imposed by this Indenture.

10.7 Officers' Certificates Evidence

Except as otherwise specifically provided or prescribed by this Indenture, whenever in the administration of the provisions of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or omitting any action hereunder, the Trustee, if acting in good faith, may rely upon an Officers' Certificate.

10.8 Experts, Advisers and Agents

- (a) Subject to Section 10.5, the Trustee may:
- (i) employ or retain and act and rely on the opinion or advice of or information obtained from any solicitor, auditor, valuator, 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; and
 - (ii) employ such agents and other assistants as it may reasonably require for the proper determination and 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.

- (b) The Trustee shall not be liable for the acts of any agent or assistants employed pursuant to Section 10.8(a)(ii) provided that the Trustee has satisfied its standard of care in selecting such agents or assistants.

10.9 Trustee May Deal in Notes

Subject to Sections 10.1 and 10.3, the Trustee may, in its personal or other capacity, buy, sell, lend upon and deal in Notes and generally contract and enter into financial transactions with the Issuer or otherwise, without being liable to account for any profits made thereby. However, in the event that the Trustee acquires any conflicting interest it must eliminate such conflict within 90 days, apply at its costs to a Judge of the Ontario Superior Court of Justice for permission to continue as Trustee hereunder or resign.

10.10 [Reserved]

10.11 Trustee Not Ordinarily Bound

Except as provided in Section 6.2 and as otherwise specifically provided herein, the Trustee shall not, subject to Section 10.3, 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 of 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, 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. The Trustee shall not be liable with respect to any action it takes or omits to take in accordance with the direction of the Holders of at least a majority of the aggregate principal amount of the Notes (including Additional Notes, if any) then outstanding; provided, however, that the Trustee's conduct is not in bad faith and does not constitute wilful misconduct or gross negligence.

10.12 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 the premises.

10.13 Trustee Not Bound to Act on Issuer's Request or Holder's Request

(a) Except as in this Indenture otherwise specifically provided, the Trustee shall not be bound to act in accordance with any direction or request of the Issuer until a duly authenticated copy of the instrument or resolution containing such direction or request shall have been delivered to the Trustee, and the Trustee shall be empowered to act upon any such copy purporting to be authenticated and believed by the Trustee to be genuine.

(b) Except as in this Indenture otherwise specifically provided, if an Event of Default occurs and is continuing, the Trustee will be under no obligation to exercise any of its rights or

powers under this Indenture at the request or direction of any of the Holders unless such Holders shall have offered to the Trustee indemnity satisfactory to the Trustee in its reasonable judgment.

10.14 Conditions Precedent to Trustee's Obligations to Act Hereunder

(a) The obligation of the Trustee to commence or continue any act, action or proceeding for the purpose of enforcing the rights of the Trustee and of the Holders hereunder shall be conditional upon any one or more Holders furnishing when required by notice in writing by the Trustee, sufficient funds to commence or continue such act, action or proceeding and indemnity reasonably satisfactory to the Trustee to protect and hold harmless the Trustee against the costs, charges and expenses and liabilities to be incurred thereby and any loss and damage it may suffer by reason thereof.

(b) None of the provisions contained in 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 unless indemnified as aforesaid.

(c) The Trustee may, before commencing or at any time during the continuance of any such act, action or proceeding require the Holders at whose instance it is acting to deposit with the Trustee such Notes held by them for which Notes the Trustee shall issue receipts.

10.15 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 all provinces of Canada but if, notwithstanding the provisions of this Section 10.15, the Trustee (or any successor Trustee appointed pursuant to Section 10.2) ceases to be so authorized to carry on business, the validity and enforceability of this Indenture and the securities issued hereunder shall not be affected in any manner whatsoever by reason only of such event but such Trustee shall, within 90 days after ceasing to be authorized to carry on the business of a trust company in any province of Canada, either become so authorized or resign in the manner and with the effect specified in Section 10.2.

10.16 Compensation and Indemnity

(a) The Issuer shall pay to the Trustee from time to time compensation for its services hereunder as agreed separately by the Issuer and the Trustee, and shall pay or reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in the administration or execution of its duties under this Indenture (including the reasonable and documented 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. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust.

(b) Subject to Section 10.16(c), the Issuer hereby indemnifies and saves harmless the Trustee and its directors, officers, employees and shareholders from and against any and all loss, damages, charges, expenses, claims, demands, actions or liability whatsoever which may be

brought against the Trustee or which it may suffer or incur as a result of or arising out of the performance of its duties and obligations hereunder. This indemnity will survive the termination or discharge of this Indenture and the resignation or removal of the Trustee. The Trustee shall notify the Issuer promptly of any claim for which it may seek indemnity. The Issuer shall defend the claim and the Trustee shall cooperate in the defence. The Trustee may have separate Counsel and the Issuer shall pay the reasonable fees and expenses of such Counsel. The Issuer need not pay for any settlement made without its consent, which consent must not be unreasonably withheld. This indemnity shall survive the resignation or removal of the Trustee or the discharge of this Indenture.

(c) The Issuer need not reimburse any expense or indemnify against any loss or liability incurred by the Trustee through gross negligence, wilful misconduct or bad faith on the part of the Trustee.

10.17 Acceptance of Trust

The Trustee hereby accepts the trusts in this Indenture declared and provided for and agrees to perform the same upon the terms and conditions herein set forth and to hold all rights, privileges and benefits conferred hereby and by law in trust for the various Persons who shall from time to time be Holders, subject to all the terms and conditions herein set forth.

10.18 Anti-Money Laundering

The Trustee shall retain the right not to act and shall 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, 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, 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 shall have the right, notwithstanding Section 10.2(a), to resign on 10 days' prior written notice sent to all parties hereto; provided that (i) the written notice shall describe the circumstances of such non-compliance; and (ii) if such circumstances are rectified to the Trustee's satisfaction within such 10 day period, then such resignation shall not be effective.

10.19 Privacy

(a) The parties hereto acknowledge that the Trustee may, in the course of providing services hereunder, collect or receive financial and other personal information about such parties and/or their representatives, as individuals, or about other individuals related to the subject matter hereof, and use such information for the following purposes:

- (i) to provide the services required under this Indenture and other services that may be requested from time to time;
- (ii) to help the Trustee manage its servicing relationships with such individuals;

- (iii) to meet the Trustee's legal and regulatory requirements; and
- (iv) if social insurance numbers are collected by the Trustee, to perform tax reporting and to assist in verification of an individual's identity for security purposes.

(b) Each party acknowledges and agrees that the Trustee may receive, collect, use and disclose personal information provided to it or acquired by it in the course of providing services under this Indenture for the purposes described above and, generally in accordance with applicable laws. Further, each party agrees that it shall not provide or cause to be provided to the Trustee any personal information relating to an individual who is not a party to this Indenture unless that party has assured itself that such individual understands and has consented to the aforementioned uses and disclosures.

10.20 Protection of the Trustee

(a) The Trustee shall not be bound to give any notice or to do or take any act, action or proceeding by virtue of the powers conferred on it hereby unless and until it shall be required so to do under the terms hereof or any applicable laws; nor shall the Trustee be required to take notice of any Event of Default hereunder, unless and until notified in writing of such Event of Default, which notice shall distinctly specify the Event of Default desired to be brought to the attention of the Trustee, and in the absence of such notice, the Trustee may for all purposes of this Indenture conclusively assume that the Issuer is not in default hereunder and that no default has been made with respect to the payment of principal of, Premium, if any, or interest on the Notes or in the observance or performance of any of the covenants, agreements or conditions contained herein. Any such notice shall in no way limit any discretion herein given to the Trustee to determine whether or not the Trustee shall take action with respect to any Event of Default.

(b) The Corporation shall provide to the Trustee an incumbency certificate setting out the names and sample signatures of persons authorized to give instructions to the Trustee hereunder. The Trustee shall be entitled to rely on such certificate until a revised certificate is provided to it hereunder. 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 10.20(b).

(c) The Trustee shall not be liable for any consequential, punitive or special damages arising in connection with this Indenture or the transactions contemplated hereby. The Trustee shall not incur any liability for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the reasonable control of the Trustee (including, but not limited to, any act or provision of any present or future law or regulation or governmental authority, any act of God or war, any epidemic or pandemic).

(d) The Trustee shall not be liable for any error in judgment *provided* it was not negligent in ascertaining the pertinent facts.

ARTICLE 11
AMENDMENT, SUPPLEMENT AND WAIVER

11.1 **Ordinary Consent**

Except as provided in Sections 11.2 and 11.3, the Issuer, the Guarantors and the Trustee may, from time to time, with the consent of the Holders of at least a majority of the aggregate principal amount of the Notes (including Additional Notes, if any) then outstanding, present or represented by proxy at a meeting of the Holders or by the Holders of at least a majority of the aggregate principal amount of the Notes (including Additional Notes, if any) then outstanding by a resolution in writing:

- (a) amend or supplement this Indenture, the Notes or the Note Guarantees;
- (b) waive any existing Default or Event of Default (other than a Default or Event of Default in the payment of the principal or, Premium (if any) or interest on the Notes, except such Default or Event of Default resulting from an acceleration that has been rescinded); and
- (c) waive compliance with any provision of this Indenture or the Notes or the Note Guarantees.

11.2 **Special Consent**

Notwithstanding Section 11.1, without the consent of each Holder of an outstanding Note affected, no amendment, supplement or waiver may (with respect to any Notes held by a non-consenting Holder):

- (a) reduce the principal amount of any Note;
- (b) reduce the rate of, or change or have the effect of changing the time for payment of, interest, including defaulted interest, on any Note;
- (c) change or have the effect of changing the Stated Maturity of any Note, or change the date on which any Notes may be subject to redemption or the Redemption Price;
- (d) except as provided in Section 5.18(I), in the event of a Change of Control that has occurred, amend, modify, or change the terms of the Change of Control Offer delivered in accordance with Section 5.18 or modify any of the provisions or definitions with respect to any such offer;
- (e) make any Note payable in a currency other than Canadian dollars;
- (f) waive a Default or Event of Default in the payment of principal of, Premium (if any) or interest on, the Notes (except a rescission of acceleration of the Notes by the Holders of at least a majority in aggregate principal amount of the Notes then

outstanding and a waiver of such Default or Event of Default that resulted from such acceleration);

- (g) make any change in the provisions of this Indenture relating to waiver of past Defaults or the rights of Holders of Notes to receive payment of principal of, Premium (if any) and interest on the Notes
- (h) impair the right of any Holder of Notes to demand payment of principal of, Premium (if any) and interest on the Notes on or after the due dates therefor, or to institute suit for the enforcement of any payment on or with respect to the Notes;
- (i) modify or change any provision of this Indenture or the related definitions affecting the ranking of the Notes or any Note Guarantee in a manner that adversely affects the Holders of Notes;
- (j) release a Guarantor from its obligations under its Note Guarantee or make any change in any Note Guarantee that would adversely affect the rights of Holders of Notes to receive payments under the Note Guarantee, other than in accordance with the provisions of this Indenture; or
- (k) make any change in the amending provisions in this Article 11 or in any provisions of this Indenture that require the consent of each Holder affected.

11.3 Without Consent

Notwithstanding Sections 11.1 and 11.2, without the consent of any Holder, the Issuer, the Guarantors and the Trustee may amend or supplement this Indenture, the Notes or the Note Guarantees to:

- (a) cure any ambiguity, omission, defect or inconsistency;
- (b) provide for uncertificated Notes in addition to or in place of certificated Notes;
- (c) provide for the assumption of the Issuer's or a Guarantor's obligations to the Holders in the case of a consolidation, merger, amalgamation or sale of all or substantially all of the Issuer's or a Guarantor's assets, as applicable, or otherwise to comply with Section 5.14;
- (d) release any Guarantor from its Obligations under its Note Guarantee or this Indenture (to the extent permitted by this Indenture);
- (e) make any change that would provide any additional rights or benefits to the Holders or that does not materially adversely affect the rights of any such Holder under this Indenture;
- (f) conform the text of this Indenture, the Note Guarantees or the Notes to any provision of the "Description of Notes" section of the Term Sheet to the extent that such provision in such "Description of Notes" section was intended to be a

verbatim recitation of a provision of this Indenture, the Note Guarantees, or the Notes;

- (g) provide for the issuance of Additional Notes in accordance with the limitations set forth in this Indenture;
- (h) allow any Guarantor to execute a Supplemental Indenture pursuant to which such Guarantor will provide a Note Guarantee; or
- (i) evidence or provide for the acceptance of the appointment of a successor Trustee; *provided* that the successor Trustee is otherwise qualified and eligible to act as such under the terms of this Indenture.

11.4 Form of Consent

It is not necessary for the consent of the Holders under Section 11.1 or 11.2 to approve the particular form of any proposed amendment, supplement or waiver, but it shall be sufficient if such consent approves the substance thereof.

11.5 Supplemental Indentures

(a) Subject to the provisions of this Indenture, the Issuer, the Guarantors and the Trustee may from time to time execute, acknowledge and deliver Supplemental Indentures which thereafter shall form part of this Indenture, for any one or more of the following purposes:

- (i) making such amendments not inconsistent with this Indenture as may be necessary or desirable with respect to matters or questions arising hereunder, including the making of any modifications in the form of the Notes which do not affect the substance thereof and which in the opinion of the Trustee relying on an Opinion of Counsel will not be materially prejudicial to the interests of Holders;
- (ii) rectifying typographical, clerical or other manifest errors contained in this Indenture or any Supplemental Indenture, or making any modification to this Indenture or any Supplemental Indenture which, in the opinion of Counsel, are of a formal, minor or technical nature and that are not materially prejudicial to the interests of the Holders;
- (iii) to give effect to any amendment or supplement to this Indenture (including, for certainty, the Note Guarantees) or the Notes made in accordance with Section 11.1, 11.2 or 11.3;
- (iv) evidencing the succession, or successive successions, of others to the Issuer or any Guarantor and the covenants of and obligations assumed by any such successor in accordance with the provisions of this Indenture; or
- (v) for any other purpose not inconsistent with the terms of this Indenture, provided that in the opinion of the Trustee (relying on an Opinion of

Counsel) the rights of neither the Holders nor the Trustee are materially prejudiced thereby.

(b) Unless this Indenture expressly requires the consent or concurrence of Holders, the consent or concurrence of Holders shall not be required in connection with the execution, acknowledgement or delivery of a Supplemental Indenture contemplated by this Indenture.

(c) Upon receipt by the Trustee of an Officers' Certificate stating that such amended or Supplemental Indenture complies with this Section 11.5, the Trustee shall join with the Issuer and the Guarantors in the execution of any amended or Supplemental Indenture authorized or permitted by the terms of this Indenture and to make any further appropriate agreements and stipulations that may be therein contained.

ARTICLE 12 **NOTICES**

12.1 Notice to Issuer

Any notice to the Issuer under the provisions of this Indenture shall be valid and effective if delivered to the Issuer at 6600 Financial Drive, Mississauga, Ontario, L5N 7J6, Attention: Chief Financial Officer, or if given by registered letter, postage prepaid, to such office and so addressed and if mailed, shall be deemed to have been effectively given five days following the mailing thereof. The Issuer may from time to time notify the Trustee in writing of a change of address which thereafter, until changed by like notice, shall be the address of the Issuer for all purposes of this Indenture.

12.2 Notice to Holders

(a) All notices to be given hereunder with respect to the Notes shall be deemed to be validly given to the Holders thereof if sent (i) by electronic communication or (ii) by mail (postage prepaid) or courier to such Holder at its address appearing in any of the registers hereinbefore mentioned or (iii) otherwise in accordance with the procedures of the Depository. Any notice delivered to a Holder in the aforesaid manner shall be conclusively deemed to have been validly delivered, given and received at the time it is sent, whether or not actually received by such Holder. In any case where notice to Holders is delivered, neither the failure to deliver such notice, nor any defect in any notice so delivered, to any particular Holder shall impair or affect the validity or sufficiency of such notice with respect to other Holders. In addition, accidental error or omission in giving notice or accidental failure to mail notice to any Holder or the inability of the Issuer to give or mail any notice due to anything beyond the reasonable control of the Issuer shall not invalidate any action or proceeding founded thereon.

(b) Any notice to the Beneficial Holders which are not registered Notes shall be valid and effective and deemed to have been received by all such Beneficial Holders if published once in a newspaper of general circulation published in Toronto, Ontario, and such other cities, if any, at which Note Registers in respect of such Notes are required to be kept. In addition, if any notice given in accordance with Section 12.2(a) would be unlikely to reach the Holders to whom it is addressed in the ordinary course of post by reason of an interruption in mail service, whether at the place of dispatch or receipt or both, the Issuer shall give such notice by publication at least

once in the cities of Montreal and Toronto, each such publication to be made in a daily newspaper of general circulation in the designated city. Any notice given to Holders by publication shall be deemed to have been given on the day on which publication shall have been effected at least once in each of the newspapers in which publication was required.

(c) All notices with respect to any Note may be given to whichever one of the Holders thereof (if more than one) is named first in the registers hereinbefore mentioned, and any notice so given shall be sufficient notice to all Holders of any Persons interested in such Note.

(d) In case by reason of the suspension of regular mail service or by reason of any other cause, it shall be impracticable to deliver notice of any event as required by any provision of this Indenture, then any method of giving such notice as shall be satisfactory to the Trustee shall be deemed to be a sufficient giving of such notice.

12.3 Notice to Trustee

Any notice to the Trustee under the provisions of this Indenture shall be valid and effective if delivered to the Trustee at its principal office in Toronto, Ontario, at 1 York Street, 6th Floor, M5J 0B6, Attention: Corporate Trust Administration, or if given by registered letter, postage prepaid, to such office and so addressed and, if mailed, shall be deemed to have been effectively given five days following the mailing thereof. In addition, the Trustee shall be entitled to treat a facsimile, .pdf or e-mail communication or communication by other similar electronic means (including the CDSX system) in a form satisfactory to the Trustee ("**Electronic Methods**") from a person purporting to be (and whom the Trustee, acting reasonably, believes in good faith to be) the authorized representative of the Issuer, a Guarantor or a Holder, as sufficient instructions and authority of the Issuer, such Guarantor or such Holder, as applicable, for the Trustee to act and the Trustee shall have no duty to verify or confirm that such person is so authorized. The Trustee shall have no liability for any losses, liabilities, costs or expenses incurred by it as a result of such reliance upon or compliance with such instructions or directions. Each of the Issuer, each Guarantor and each Holder agrees: (i) to assume all risks arising out of the use of such Electronic Methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various Electronic Methods of transmitting instructions to the Trustee and that there may be more secure methods of transmitting instructions than the Electronic Method(s) selected by the Issuer; and (iii) that the security procedures (if any) to be followed in connection with its transmission of instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances.

12.4 Mail Service Interruption

If by reason of any interruption of mail service, actual or threatened, any notice to be given to the Trustee would reasonably be unlikely to reach its destination by the time notice by mail is deemed to have been given pursuant to Section 12.3, such notice shall be valid and effective only if delivered at the appropriate address in accordance with Section 12.3.

ARTICLE 13
NOTE GUARANTEES

13.1 **Application**

The provisions of this Guarantee shall apply to each Subsidiary that is a party to this Indenture as at the Issue Date, and to each Subsidiary that, pursuant to Section 5.7, executes and delivers to the Trustee a Supplemental Indenture pursuant to which such Subsidiary provides a Note Guarantee, and shall not apply in any other circumstance. Each Subsidiary that is required pursuant to Section 5.7 to issue a Note Guarantee shall satisfy such requirement by executing a Supplemental Indenture pursuant to which such Subsidiary shall become bound by the Guarantee in this Article 13.

13.2 **Note Guarantees**

(a) Each Guarantor and, by its acceptance hereof, the Trustee (in its individual capacity and on behalf of each Holder), and each Holder, hereby confirms that it is the intention of all such parties that the Guarantee by such Guarantor pursuant to its Note Guarantee not constitute a fraudulent transfer or conveyance for purposes of any Bankruptcy Law or any federal, provincial or state law or the provisions of local law relating to fraudulent transfer or conveyance. To effect the foregoing intention, the Trustee (in its individual capacity and on behalf of each Holder), the Holders, and each Guarantor hereby irrevocably agree that the obligations of such Guarantor under its Note Guarantee shall be limited to the maximum amount as shall, after giving effect to all other contingent and fixed liabilities of such Guarantor (including, without limitation, any Guarantees under the Credit Facilities or any refinancing or replacement thereof permitted under this Indenture) and after giving effect to any collections from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under its Note Guarantee or pursuant to Section 13.2(c), result in the obligations of such Guarantor under its Note Guarantee not constituting a fraudulent conveyance or fraudulent transfer under any Bankruptcy Law or any such federal, provincial or state law or the provisions of such local law.

(b) Each Guarantor hereby, jointly and severally, fully, absolutely, unconditionally and irrevocably guarantees, to each Holder, and to the Trustee (in its individual capacity and on behalf of each Holder), the punctual payment and performance when due of all present and future Indenture Obligations of the Issuer which, for purposes of its Note Guarantee, shall also be deemed to include (to the extent not otherwise included) all commissions, fees, charges, costs, liabilities and other expenses (including reasonable legal fees and disbursements of counsel) arising out of or incurred by the Trustee or the Holders in connection with the enforcement of any Note Guarantee, and agrees to indemnify and hold harmless each Holder and the Trustee from all losses, damages, costs, expenses and liabilities suffered or incurred by the Holders and the Trustee resulting or arising from or relating to any failure by the Issuer to unconditionally and irrevocably pay in full or fully perform its Indenture Obligations as and when due; provided that the amount of such indemnification shall not exceed the amount of such Indenture Obligations. Without limiting the generality of the foregoing, each Guarantor's liability shall extend to all amounts that constitute part of the Indenture Obligations and would be owed by the Issuer to such Holder or the Trustee under the Notes or this Indenture but for the fact that they

are unenforceable, reduced, limited, suspended or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving the Issuer.

(c) In order to provide for just and equitable contribution among the Guarantors, the Guarantors agree, among themselves and not for the purpose of limiting the full, absolute, unconditional and irrevocable nature of their Guarantee, that in the event any payment or distribution is made by any Guarantor (a "**Funding Guarantor**") under its Note Guarantee, such Funding Guarantor shall be entitled to a contribution from each other Guarantor (if any) in a *pro rata* amount based on the portion of the Consolidated Total Assets that is attributable to each Guarantor (including the Funding Guarantor) for all payments, damages and expenses incurred by the Funding Guarantor in discharging its obligations pursuant to its Note Guarantee.

13.3 Guarantee Absolute

Each Guarantor guarantees that the Notes shall be paid or performed strictly in accordance with the terms of the Notes and this Indenture, regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of any Holder with respect thereto. The obligations of each Guarantor under its Note Guarantee are independent of the obligations of the Issuer under the Notes and this Indenture, and a separate action or actions may be brought and prosecuted against such Guarantor to enforce its Note Guarantee, irrespective of whether any action is brought against the Issuer or any other Guarantor or whether the Issuer or any other Guarantor is joined in any such action or actions. The liability of each Guarantor under its Note Guarantee shall be absolute and unconditional and the liability and obligations of such Guarantor hereunder shall not be released, discharged, mitigated, waived, impaired or affected in whole or in part by:

- (a) any lack of validity or enforceability of this Indenture or the Notes with respect to the Issuer or any Guarantor or any agreement or instrument relating thereto;
- (b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Indenture Obligations, or any other amendment or waiver of or any consent to departure from this Indenture, including any increase in the Indenture Obligations resulting from the extension of additional credit to the Issuer or otherwise;
- (c) the failure to give notice to the Guarantor of the occurrence of a Default or an Event of Default under the provisions of this Indenture or the Notes;
- (d) any taking, release or amendment or waiver of or consent to departure from any other Note Guarantee, for all or any of the Indenture Obligations;
- (e) any failure, omission, delay by or inability on the part of the Trustee or the Holders to assert or exercise any right, power or remedy conferred on the Trustee or the Holders in this Indenture or the Notes;
- (f) any change in the corporate structure or other legal structure, or termination, dissolution, amalgamation, consolidation or merger of the Issuer or any Guarantor with or into any other Person, the voluntary or involuntary liquidation,

dissolution, sale or other disposition of all or substantially all the assets of the Issuer or any Guarantor, the marshalling of the assets and liabilities of the Issuer or any Guarantor, the receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition with the creditors, or readjustment of, or other similar proceedings affecting the Issuer or any Guarantor, or any of the assets of any of them;

- (g) the assignment of any right, title or interest of the Trustee or any Holder in this Indenture or the Notes to any other Person; or
- (h) any other event or circumstance (including any statute of limitations), whether foreseen or unforeseen and whether similar or dissimilar to any of the foregoing, that might otherwise constitute a defence available to, or a discharge of, the Issuer or a Guarantor, other than payment in full of the Indenture Obligations of the Issuer; it being the intent of each Guarantor that its obligations hereunder shall not be discharged except by payment and performance of all such Indenture Obligations.

The Note Guarantee of each Guarantor shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Indenture Obligations of the Issuer is rescinded or must otherwise be returned by any Holder or the Trustee upon the insolvency, bankruptcy or reorganization of the Issuer or otherwise, all as though such payment had not been made. Each Guarantor further agrees, to the fullest extent that it may lawfully do so, that, as between such Guarantor, on the one hand, and the Holders and the Trustee, on the other hand: (i) the Maturity of the obligations guaranteed hereby may be accelerated as provided in Article 6 of this Indenture for the purposes of this Note Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby; and (ii) in the event of any acceleration of such obligations as provided in Article 6, such obligations (whether or not due and payable) shall forthwith become due and payable by the Guarantor for the purpose of this Note Guarantee.

13.4 Waivers

(a) Each Guarantor hereby expressly waives (to the extent permitted by applicable law) notice of the acceptance of its Note Guarantee and notice of the existence, renewal, extension or the non-performance, non-payment, or non-observance on the part of the Issuer of any of the terms, covenants, conditions and provisions of this Indenture or the Notes or any other notice whatsoever to or upon the Issuer or such Guarantor with respect to the Indenture Obligations. Each Guarantor hereby acknowledges communication to it of the terms of this Indenture and the Notes and all of the provisions herein and therein contained and consents to and approves the same. Each Guarantor hereby expressly waives (to the extent permitted by law) diligence, presentment and protest.

(b) Without prejudice to any of the rights or recourse which the Trustee or the Holders may have against the Issuer, each Guarantor hereby expressly waives (to the extent permitted by law) any right to require the Trustee or the Holders to:

- (i) initiate or exhaust any rights, remedies or recourse against the Issuer, any Guarantor or any other Person;
- (ii) value, realize upon, or dispose of any security of the Issuer or any other Person held by the Trustee or the Holders; or
- (iii) initiate or exhaust any other remedy which the Trustee or the Holders may have in law or equity,

before requiring, becoming entitled to or demanding payment from such Guarantor under this Note Guarantee.

13.5 Subrogation

Each Guarantor shall not exercise any rights that it may acquire by way of subrogation under this Note Guarantee, by any payment made hereunder or otherwise, until all the Indenture Obligations of the Issuer shall have been paid in full in cash. If any amount shall be paid to any Guarantor on account of any such subrogation rights at any time when all such Indenture Obligations shall not have been paid in full in cash, such amount shall be held in trust for the benefit of the Holders and the Trustee and shall forthwith be paid to the Trustee, on behalf of the Holders, to be credited and applied to such Indenture Obligations, whether matured or unmatured.

13.6 No Waiver; Remedies

No failure on the part of any Holder or the Trustee to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

13.7 Continuing Guarantee; No Right of Set-Off; Independent Obligation

(a) This Note Guarantee is a continuing guarantee of the payment and performance of all of Indenture Obligations of the Issuer and shall remain in full force and effect until the payment in full in cash of all such Indenture Obligations and shall apply to and secure any ultimate balance due or remaining unpaid to the Trustee or the Holders under this Indenture or the Notes; and this Note Guarantee shall not be considered as wholly or partially satisfied by the payment or liquidation at any time or from time to time of any sum of money for the time being due or remaining unpaid to the Trustee or the Holders.

(b) Each Guarantor hereby guarantees that the Indenture Obligations shall be paid to the Trustee without set-off or counterclaim or other reduction whatsoever (whether for taxes, withholding or otherwise), in lawful currency of Canada.

(c) Each Guarantor guarantees that the Indenture Obligations shall be paid strictly in accordance with their terms regardless of any lack of validity or enforceability of any of such terms or the rights of the Holders with respect thereto.

(d) Each Guarantor's liability to pay or perform or cause the performance of the Indenture Obligations under this Note Guarantee shall arise forthwith after demand for payment or performance by the Trustee has been given to such Guarantor in the manner prescribed in this Indenture.

13.8 Guarantors May Consolidate, Etc., on Certain Terms

Nothing contained in this Indenture or in any of the Notes shall prevent any amalgamation, consolidation, or merger of a Guarantor with or into the Issuer or another Guarantor or shall prevent any sale or conveyance of the assets or property of a Guarantor as an entirety or substantially as an entirety to the Issuer or another Guarantor, which amalgamation, consolidation, merger, sale, or conveyance is otherwise not prohibited by this Indenture.

13.9 Releases

(a) Notwithstanding anything to the contrary in this Indenture, each Guarantor shall automatically be released from all of its obligations under its Note Guarantee without any further action required on the part of the Trustee or any Holder upon the occurrence of any of the following events:

- (i) the sale or other disposition, by way of merger, consolidation or otherwise, of all the Capital Stock of such Guarantor to any Person (other than the Issuer or a Restricted Subsidiary);
- (ii) such Guarantor being designated as an Unrestricted Subsidiary, or ceasing to be a Subsidiary of the Issuer, in accordance with the terms of this Indenture;
- (iii) such Guarantor ceasing to be an obligor (whether as a primary debtor or as a guarantor) under the Senior Credit Facility, provided that such Guarantor would not then otherwise be required to guarantee the Notes pursuant to Section 5.7(a);
- (iv) the merger, consolidation, amalgamation of such Guarantor with or into (x) the Issuer, or (y) another Guarantor that, immediately following such release, remains a Guarantor;
- (v) payment in full in cash of the principal of, accrued and unpaid interest and Premium (if any) on, the Notes; or
- (vi) the defeasance of the Notes or release and discharge of this Indenture pursuant to Article 7.

(b) The Issuer shall promptly notify the Trustee of the occurrence of any of the events set forth in 13.9(a). The Trustee shall, if so requested by the Issuer, deliver such releases (substantially in the form set out in Appendix "B"), documents and instruments to the Issuer as the Issuer may request to evidence the termination of the applicable Note Guarantee in accordance with this Section 13.9, upon receipt by the Trustee of an Officers' Certificate

certifying that the conditions to release of the applicable Note Guarantee pursuant to this Section 13.9 or otherwise pursuant to this Indenture have been met.

13.10 Severability

In case any provision of this Note Guarantee shall be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**ARTICLE 14
MISCELLANEOUS**

14.1 Copies of Indenture

Any Holder may obtain a copy of this Indenture without charge by writing to Russel Metals Inc., 6600 Financial Drive, Mississauga, Ontario, L5N 7J6, Attention: Assistant Secretary.

14.2 Payments for Consents

The Issuer shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, pay or cause to be paid any consideration to or for the benefit of any Holder or Beneficial Holder for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of this Indenture or the Notes unless such consideration is offered to be paid and is paid to all Holders that consent, waive or agree to amend in the time frame set forth in the solicitation documents relating to such consent, waiver or agreement.

14.3 No Adverse Interpretation of Other Agreements

This Indenture may not be used to interpret any other indenture, loan or debt agreement of the Issuer or its Subsidiaries (including the Credit Facilities) or of any other Person. Any such indenture, loan or debt agreement (including the Credit Facilities) may not be used to interpret this Indenture.

14.4 US Securities Exchange Act

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 1934 Act or have a reporting obligation pursuant to Section 15(d) of the 1934 Act. The Issuer covenants that in the event that (i) any class of its securities becomes registered pursuant to Section 12 of the 1934 Act or the Issuer incurs a reporting obligation pursuant to Section 15(d) of the 1934 Act, or (ii) any such registration or reporting obligation shall be terminated by the Issuer in accordance with the 1934 Act, the 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 reasonably require at the time. The Issuer acknowledges that the Trustee is relying upon the foregoing representation and covenants in order to meet certain Securities Exchange Commission (United States) obligations with respect to those clients who are filing with the Securities Exchange Commission (United States).

ARTICLE 15
EXECUTION AND FORMAL DATE

15.1 **Execution**

This Indenture may be simultaneously 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. Delivery of an executed signature page to this Indenture by any party hereto by facsimile or electronic transmission or PDF shall be as effective as delivery of a manually executed copy of this Indenture by such party.

15.2 **Formal Date**

For the purpose of convenience, this Indenture may be referred to as bearing the formal date of the 27th day of October, 2020 irrespective of the actual date of execution hereof.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS whereof the parties hereto have executed these presents under the hands of their proper officers in that behalf.

Issuer

RUSSEL METALS INC.

By: (signed) Martin Juravsky
Name: Martin Juravsky
Title: Executive Vice President,
Chief Financial Officer and
Secretary

(signed) Ryan MacDermid
Name: Ryan MacDermid
Title: Vice President, Risk
Management & Legal

Guarantors

APEX DISTRIBUTION INC.

By: (signed) Martin Juravsky
Name: Martin Juravsky
Title: Vice President

(signed) Ryan MacDermid
Name: Ryan MacDermid
Title: Vice President

APEX MONARCH INC.

By: (signed) Martin Juravsky
Name: Martin Juravsky
Title: Vice President

(signed) Ryan MacDermid
Name: Ryan MacDermid
Title: Vice President

APEX WESTERN FIBERGLASS INC.

By: (signed) Martin Juravsky
Name: Martin Juravsky
Title: Vice President

(signed) Ryan MacDermid
Name: Ryan MacDermid
Title: Vice President

ELITE SUPPLY PARTNERS INC.

By: (signed) Martin Juravsky
Name: Martin Juravsky
Title: Vice President and Secretary

(signed) Ryan MacDermid
Name: Ryan MacDermid
Title: Vice President

**FEDMET ENTERPRISES
CORPORATION**

By: (signed) Martin Juravsky
Name: Martin Juravsky
Title: President and Secretary

(signed) Ryan MacDermid
Name: Ryan MacDermid
Title: Vice President

**FEDMET INTERNATIONAL
CORPORATION**

By: (signed) Martin Juravsky
Name: Martin Juravsky
Title: President and Secretary

(signed) Ryan MacDermid
Name: Ryan MacDermid
Title: Vice President

FIL (US) INC.

By: (signed) Martin Juravsky
Name: Martin Juravsky
Title: President

(signed) Ryan MacDermid
Name: Ryan MacDermid
Title: Vice President

JMS RUSSEL METALS CORP.

By: (signed) Martin Juravsky
Name: Martin Juravsky
Title: Vice President and Secretary

(signed) Ryan MacDermid
Name: Ryan MacDermid
Title: Vice President

PIONEER STEEL & TUBE CORP.

By: (signed) Martin Juravsky
Name: Martin Juravsky
Title: Vice President and Secretary

(signed) Ryan MacDermid
Name: Ryan MacDermid
Title: Vice President

**RUSSEL METALS WILLIAMS
BAHCALL INC.**

By: (signed) Martin Juravsky
Name: Martin Juravsky
Title: President and Secretary

(signed) Ryan MacDermid
Name: Ryan MacDermid
Title: Vice President

SUNBELT GROUP L.P.,
by its general partner, **SUNBELT**
TRADING LLC

By: (signed) Martin Juravsky
Name: Martin Juravsky
Title: Vice President and Secretary

(signed) Ryan MacDermid
Name: Ryan MacDermid
Title: Vice President

SUNBELT TRADING LLC

By: (signed) Martin Juravsky
Name: Martin Juravsky
Title: Vice President and Secretary

(signed) Ryan MacDermid
Name: Ryan MacDermid
Title: Vice President

SPARTAN STEEL PRODUCTS, INC.

By: (signed) Martin Juravsky
Name: Martin Juravsky
Title: President and Secretary

(signed) Ryan MacDermid
Name: Ryan MacDermid
Title: Vice President

TRIUMPH TUBULAR & SUPPLY
LTD.

By: (signed) Martin Juravsky
Name: Martin Juravsky
Title: Vice President

(signed) Ryan MacDermid
Name: Ryan MacDermid
Title: Vice President

**WIRTH STEEL, A GENERAL
PARTNERSHIP**

By: (signed) Martin Juravsky

Name: Martin Juravsky

Title: Vice President

(signed) Ryan MacDermid

Name: Ryan MacDermid

Title: Vice President

Trustee

BNY TRUST COMPANY OF CANADA

By: *(signed) Bhawna Dhayal*

Name: Bhawna Dhayal

Title: Vice-President

APPENDIX "A"
FORM OF CERTIFICATE REPRESENTING NOTES

[Note: Insert only if not a Global Certificate – UNLESS PERMITTED UNDER APPLICABLE SECURITIES LEGISLATION, THE HOLDER OF THIS NOTE MUST NOT TRADE THIS NOTE BEFORE [●, ●].] [Note: Insert February 28, 2021 for Notes issued on the Issue Date. For any Additional Notes, insert date that is 4 months and one day after the "distribution date" (within the meaning of National Instrument 45-102 Resale of Securities) for the Notes represented by the certificate.]

[Note: Insert if Global Certificate – THIS NOTE IS A GLOBAL CERTIFICATE WITHIN THE MEANING OF THE INDENTURE HEREIN REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITORY OR A NOMINEE THEREOF. THIS NOTE MAY NOT BE TRANSFERRED TO OR EXCHANGED FOR NOTES REGISTERED IN THE NAME OF ANY PERSON OTHER THAN THE DEPOSITORY OR A NOMINEE THEREOF AND NO SUCH TRANSFER MAY BE REGISTERED EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE. EVERY NOTE AUTHENTICATED AND DELIVERED UPON REGISTRATION OF, TRANSFER OF, OR IN EXCHANGE FOR, OR IN LIEU OF, THIS NOTE SHALL BE A GLOBAL CERTIFICATE SUBJECT TO THE FOREGOING, EXCEPT IN SUCH LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE.]

[Note: Insert if CDS is Depository – UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF CDS CLEARING AND DEPOSITORY SERVICES INC. ("CDS") TO RUSSEL METALS 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 PERSONS TO HOLD, TRANSFER OR DEAL WITH THIS CERTIFICATE.]

No. [●]

CUSIP [●]

Cdn\$[●] *[Note: Insert if Global Certificate - as revised by the Adjustments* ISIN [●]
Panel attached hereto]

RUSSEL METALS INC.

(A corporation formed under the laws of Canada)

5.75% SENIOR UNSECURED NOTE DUE OCTOBER 27, 2025

Russel Metals Inc. a corporation existing under the laws of Canada (herein called the "**Issuer**", which term includes any successor entity under the Indenture hereinafter referred to), for value received hereby acknowledges itself indebted and, subject to the provisions of the trust indenture dated as of October 27, 2020 (the "**Indenture**") between the Issuer, the Guarantors (as defined in the Indenture) party thereto and BNY Trust Company of Canada (the "**Trustee**"), promises to pay to **[CDS & Co. or registered assigns][the registered holder hereof]**, on October 27, 2025 (the "**Maturity Date**") or on such earlier date as the principal amount hereof may become due in accordance with the provisions of the Indenture, the principal sum of [●] (\$[●]) in lawful money of Canada, **as revised by the Adjustments Panel attached hereto,** on presentation and surrender of this Note (the "**Note**") at the main branch of the Trustee in Toronto, Ontario, in accordance with the terms of the Indenture and, subject as hereinafter provided, to pay interest on the principal amount hereof (i) from and including the date hereof, or (ii) from and including the last Interest Payment Date to which interest shall have been paid or made available for payment hereon, whichever shall be the later, in all cases, to and excluding the next Interest Payment Date, at the rate of 5.75% per annum, in like money, calculated and payable semi-annually in arrears in equal installments on October 27 and April 27 in each year commencing on April 27, 2021 and the last payment (representing interest payable from the last Interest Payment Date to, but excluding, the Maturity Date) to fall due on the Maturity Date; provided, however, that if the date for payment of any amount of principal, Premium or interest is not a Business Day at the place of payment, then payment will be made on the next Business Day and the holder hereof will not be entitled to any further interest on such principal, or to any interest on such interest, Premium or other amount so payable, in respect of the period from the date for payment to such next Business Day. Should the Issuer at any time make default in the payment of any principal or interest, to pay interest on the amount in default at the same rate, in like money and on the same dates.

In the case of any interest period that is shorter than a full semi-annual interest period due to redemption or repurchase of this Note pursuant to the terms of the Indenture, interest on this Note will be computed on the basis of a year of 365 days or 366 days, as applicable, based on the actual number of days elapsed and will accrue from day to day.

Interest hereon shall be payable by electronic funds or wire transfer to the registered holder hereof net of any withholding or deduction for or on account of any taxes and, subject to the provisions of the Indenture, the electronic transfer of such funds shall, to the extent of the sum represented thereby (plus the amount of any taxes deducted or withheld), satisfy and discharge all liability for interest on this Note.

This Note is one of the Notes of the Issuer issued under the provisions of the Indenture. Reference is hereby expressly made to the Indenture for a description of the terms and conditions upon which this Note and other Notes of the Issuer are or are to be issued and held and the rights and remedies of the holder of this Note and other Notes and of the Issuer and of the Trustee, all to the same effect as if the provisions of the Indenture were herein set forth to all of which provisions the holder of this Note by acceptance hereof assents.

Notes are issuable only in denominations of \$1,000 and integral multiples thereof. Upon compliance with the provisions of the Indenture, Notes of any denomination may be exchanged for an equal aggregate principal amount of Notes in any other authorized denomination or denominations.

The indebtedness evidenced by this Note, and by all other Notes now or hereafter certified and delivered under the Indenture, is a direct senior unsecured obligation of the Issuer. The obligations of the Issuer under this Note are guaranteed by the Guarantors.

The principal hereof may become or be declared due and payable before the stated maturity in the events, in the manner, with the effect and at the times provided in the Indenture.

This Note may be redeemed by the Issuer on the terms and conditions set out in the Indenture at the Redemption Price set out therein. The right is reserved to the Issuer to purchase Notes (including this Note) for cancellation in accordance with the provisions of the Indenture.

If a Change of Control occurs while this Note is outstanding, the Issuer shall be required to offer to repurchase this Note at a purchase price in cash equal to 101% of the principal amount of this Note, plus accrued and unpaid interest thereon, if any, to, but excluding, the date of purchase.

The Indenture contains provisions making binding upon all Holders of Notes outstanding thereunder resolutions passed at meetings of such Holders held in accordance with such provisions and instruments signed by the Holders of a specified majority of Notes outstanding, which resolutions or instruments may have the effect of amending the terms of this Note or the Indenture.

This Note may only be transferred, upon compliance with the conditions prescribed in the Indenture, in one of the registers to be kept at the principal office of the Trustee in the City of Toronto and in such other place or places and/or by such other Registrars (if any) as the Issuer with the approval of the Trustee may designate. No transfer of this Note shall be valid unless made on the register by the registered holder hereof or his executors or administrators or other legal representatives, or his or their attorney duly appointed by an instrument in form and substance satisfactory to the Trustee or other Registrar, and upon compliance with such reasonable requirements as the Trustee and/or other Registrar may prescribe and upon surrender of this Note for cancellation. Thereupon a new Note or Notes in the same aggregate principal amount shall be issued to the transferee in exchange herefor.

This Note shall not become obligatory for any purpose until it shall have been certified by the Trustee under the Indenture.

This Note and the Indenture are governed by, and are to be construed and enforced in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein.

Capitalized words or expressions used in this Notes shall, unless otherwise defined herein, have the meaning ascribed thereto in the Indenture. In the event of a conflict between the terms of this Note and the terms of the Indenture, the terms of the Indenture shall prevail.

IN WITNESS WHEREOF RUSSEL METALS INC. has caused this Note to be signed by its authorized representatives as of the [●] day of [●], [●].

RUSSEL METALS INC.

By:

Name:

Title:

By:

Name:

Title:

(FORM OF TRUSTEE'S CERTIFICATE OF AUTHENTICATION)

This Note is one of the 5.75% Senior Unsecured Notes due October 27, 2025 referred to in the Indenture within mentioned.

BNY TRUST COMPANY OF CANADA

By: _____
(Authorized Officer)

APPENDIX "B"
FORM OF NOTE GUARANTEE RELEASE

RELEASE OF NOTE GUARANTEE

THIS RELEASE (the "**Release**") dated as of [●], among Russel Metals Inc. (the "**Issuer**"), [●] (the "**Guaranteeing Subsidiary**"), and BNY Trust Company of Canada, as trustee under the Indenture referred to below (the "**Trustee**").

WITNESSETH:

WHEREAS the Issuer has heretofore executed and delivered to the Trustee an indenture (as amended, restated, supplemented and replaced from time to time, as the case may be, the "**Indenture**") dated as of October 27, 2020 providing for the issuance from time to time by the Issuer of Notes;

AND WHEREAS [the **Guaranteeing Subsidiary** is party to the Indenture whereby the **Guaranteeing Subsidiary** guaranteed all of the Issuer's obligations under the Notes and the Indenture] OR [pursuant to Section 5.7 of the Indenture, the **Guaranteeing Subsidiary** has executed and delivered to the Trustee a supplemental indenture dated [●] under which the **Guaranteeing Subsidiary** guaranteed all of the Issuer's obligations under the Notes and the Indenture] (the "**Guarantee**");

AND WHEREAS pursuant to Section 13.9(b) of the Indenture, the Trustee is required to execute such releases, documents and instruments as the Issuer or the **Guaranteeing Subsidiary** may request to evidence the termination of the **Guarantee** with respect to the **Guaranteeing Subsidiary** if the conditions to release of the **Guarantee** in Section 13.9 of the Indenture or otherwise pursuant to the Indenture are met, without further obligation by the **Guaranteeing Subsidiary**;

AND WHEREAS the conditions to release of the **Guarantee** in respect of the **Guaranteeing Subsidiary** in Section 13.9 of the Indenture have been met.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Trustee (on its own behalf and on behalf of the Holders from time to time), the **Guaranteeing Subsidiary** and the Issuer mutually covenant and agree as follows:

1. **Capitalized Terms.** Capitalized terms used herein without definition shall have the meanings assigned to them in the Indenture.
2. **Release of Guaranteeing Subsidiary.** The **Guaranteeing Subsidiary** is hereby fully and irrevocably released from its liabilities and obligations under the **Guarantee** effective as of the date hereof.
3. **Governing Law.** This Release shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract.
4. **Counterparts.** This Release may be simultaneously 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. Delivery of an executed signature page to this Release by any party hereto by facsimile or electronic transmission or PDF shall be as effective as delivery of a manually executed copy of this Release by such party.

5. **Effect of Headings.** The Section headings herein are for convenience only and shall not affect the construction hereof.

6. **The Trustee.** The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Release.

IN WITNESS WHEREOF, the parties hereto have caused this Release to be duly executed and attested, all as of the date first above written.

Dated: [●]

[GUARANTEEING SUBSIDIARY]

RUSSEL METALS INC.

By: _____
Name: _____
Title: _____

BNY TRUST COMPANY OF CANADA, as
Trustee

By: _____
Name: _____
Title: _____