

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS*  
*ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OR COMPROMISE OR  
ARRANGEMENT OF DISCOVERY AIR INC.

APPLICANT

**AFFIDAVIT OF STEPHEN CAMPBELL**

I, Stephen Campbell, of the City of Ottawa, MAKE OATH AND SAY:

1. I am a holder of unsecured subordinated convertible debentures issued by Discovery Air Inc. ("Discovery Air") pursuant to an indenture dated May 12, 2011, as amended in November 2014 ("the Debentures"). As such I have knowledge of the matters contained in this affidavit. Where I do not have direct knowledge of a matter, I set out the source of my information and I believe it to be true.

2. I am the organizer and executive member of an ad hoc committee of holders of the Debentures, who are interested in these proceedings (the "Ad Hoc Committee"). The Ad Hoc Committee currently represents holders of over 40% of the Debentures.

3. The Ad Hoc Committee is concerned that Discovery Air and the Clairvest Group Inc. and/or its affiliates (“Clairvest”) have engaged in a series of transactions that are unfairly prejudicial to the interests of the holders of Discovery Air’s unsecured debentures, and that these transactions have culminated in these CCAA proceedings, which are being used by Clairvest, as Discovery’s Air’s majority shareholder, pre-filing senior secured lender, DIP Lender and stalking horse bidder, to unjustly deprive the holders of the Debentures of the benefit of their bargain.

4. As explained more fully below, it appears to me that, through a series of equity transactions that took place between December 2016 and December 2017, Clairvest took \$148 million of value out of Discovery Air in exchange for the retirement of (at most) \$60 million in debt. Based on a retrospective valuation that assumes that certain credit facilities provided by Clairvest were fully advanced at all times, I estimate that the approximate annualized rate of return on those credit facilities was between 154% and 277%.

5. The Ad Hoc Committee would like to respond to these proceedings and take a more active role in them. However, because the Debentures are widely held, it has been unable, in the 14 days between the date of the making of the Initial Order and the comeback hearing, to organize itself for that purpose. Accordingly, the Ad Hoc Committee would like the date of the comeback hearing (and the other relief now being sought by Discovery Air) adjourned, briefly, to April 18, 2018, to permit it time to organize.

**A. Knowledge of Discovery Air**

6. I am currently retired. However, prior to my retirement in 2012, I was both a Chartered Accountant and a Chartered Financial Analyst and had significant involvement with Discovery Air and its former subsidiary, Top Aces.

7. I started my career as an auditor with Coopers and Lybrand in 1980. I qualified as a Chartered Accountant in 1983. I joined Algonquin College of Applied Arts and Technology in 1986, as Controller and then as Director of Finance. In 1990 I was appointed to the CAAT Pension Plan, initially as a member of the Sponsor's Committee, and after 2012 on the Board of Trustees.<sup>1</sup>

8. From February 1998 to September 2012 I served as the Director of Financial Services and ultimately as the Chief Financial Officer of the Canadian Medical Protective Association ("CMPA"), the mutual defense association which provides medico-legal assistance to more than 90,000 doctors across Canada. During that period I also obtained my Chartered Financial Analyst designation.

9. By virtue of my positions at the CMPA, I am and have been familiar with the business of Discovery Air, and more specifically Top Aces, for a considerable period of time. With an in-house investment team, I was responsible for managing various investments. As part of its allocation to Private Assets, the CMPA had acquired shares of Top Aces through a private debt fund and as a direct co-investment.

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<sup>1</sup> The CAAT Pension Plan was created in 1967, alongside the Ontario college system. It is a multi-employer pension plan, serving 38 employers across Ontario in the post-secondary education sector, along with the Royal Ontario Museum (ROM) and the ROM Foundation. It currently has \$9.6 billion of assets under management and serves 44,000 members.

10. Under my leadership, the CMPA first invested in Top Aces in 2005, and accordingly, I have been following Top Aces since that time, as it was a CMPA investment until its sale in 2007 to Discovery Air.

11. As part of the sale of Top Aces to Discovery Air, the CMPA received cash and Discovery Air common shares. The CMPA held these shares of Discovery Air as a direct holding until after my retirement.

12. More recently, I have invested my personal funds in Discovery Air. This investment was based on my long-standing interest and accumulated knowledge of the viability of Discovery's operations, particularly its subsidiary Top Aces.

13. Discovery Air is a corporation organized pursuant to the laws of Canada. Until it went private in May 2017, its common shares traded on the Toronto Stock Exchange (the "TSX") under the symbol DA-A-T.

#### **14. *The Debentures***

15. On May 12, 2011, Discovery Air entered into an Unsecured Debenture Indenture Agreement with Computershare Trust Company of Canada (the "Debenture Agreement"). A copy of this agreement is attached to my affidavit as **Exhibit "A"**.

16. The Debentures were issued by Discovery Air in the principal amount of \$34.5 million and, other than certain intercompany obligations, are the largest current outstanding unsecured obligation of Discovery.

17. The Debentures accrue interest at a rate of 8.375% per annum, payable on a semi-annual basis. The Debentures are direct, unsecured obligations of Discovery Air, subordinated to other indebtedness for borrowed money and rank equally with all other unsecured subordinated indebtedness.

18. The Debenture Agreement contains the following covenants, which apply to both Discovery Air and its subsidiaries:

**7.3 To Give Notice of Default**

The Corporation shall notify the Trustee immediately upon obtaining knowledge of any Event of Default hereunder.

**7.4 Preservation of Existence, Etc.**

Subject to the express provisions hereof, the Corporation will carry on and conduct its activities, and cause its Subsidiaries to carry on and conduct their businesses, in a proper, efficient and business-like manner and in accordance with good business practices; and, subject to the express provisions hereof, it will do or cause to be done all things necessary to preserve and keep in full force and effect its and its Subsidiaries' respective existences and rights.

**7.9 Maintain Listing**

The Corporation will use reasonable commercial efforts to maintain the listing of the Class A Shares and the Debentures on the Toronto Stock Exchange, and to maintain the Corporation's status as a "reporting issuer" not in default of the requirements of the Applicable Securities Legislation; provided that the foregoing covenant shall not prevent or restrict the Corporation from carrying out a transaction to which Article 11 would apply if carried out in compliance with Article 11 even if as a result of such transaction the Corporation ceases to be a "reporting issuer" in all or any of the provinces of Canada or the Class A Shares or Debentures cease to be listed on the Toronto Stock Exchange or any other stock exchange.

19. Article 11 of the Debenture Agreement requires that Discovery Air ensure that any consolidation occur on specific terms, including that the ultimate consolidated entity assumes the obligations under the Debenture Agreement, including the conversion rights.

20. Failure to observe or perform these covenants constitutes an Event of Default under the Debenture Agreement. Filing an Application such as this one for CCAA protection is also an Event of Default:

## 8.1 Events of Default

(a) Each of the following events constitutes, and is herein sometimes referred to as, an "Event of Default":

...

(iv) default in the observance or performance of any covenant or condition of the Indenture by the Corporation and the failure to cure (or obtain a waiver for) such default for a period of 30 days after notice in writing has been given by the Trustee or from holders of not less than 25% in aggregate principal amount of the Debentures to the Corporation specifying such default and requiring the Corporation to rectify such default or obtain a waiver for same;

...

(vi) if the Corporation institutes proceedings to be adjudicated a bankrupt or insolvent, or consents to the institution of bankruptcy or insolvency proceedings against it under the *Bankruptcy and Insolvency Act* (Canada) or any other bankruptcy, insolvency or analogous laws, or consents to the filing of any such petition or to the appointment of a receiver of, or of any substantial part of, the property of the Corporation or makes a general assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they become due;

21. Events of Default may result in the principal, interest, and premium, if any, on all debentures then outstanding to be due and payable.

8.1 (b) In the event of the occurrence of an Event of Default, the Trustee may, in its discretion, and shall, upon receipt of a request in writing signed by the holders of not less than 25% in principal amount of the Debentures then outstanding, subject to the provisions of Section 8.3, by notice in writing to the Corporation declare the principal of and interest and premium, if any, on all Debentures then outstanding and all other monies outstanding hereunder to be due and payable and the same shall thereupon forthwith become immediately due and payable to the Trustee, and (ii) on the occurrence of an Event of Default under Sections 8.1(a)(v), (f) or (viii), the principal of and interest and premium, if any, on all debentures then outstanding hereunder and all other monies outstanding hereunder, shall automatically without any declaration or other act on the part of the Trustee or any Debentureholder become immediately due and payable to the Trustee and, in either case, upon such amounts becoming due and payable in either (i) or (ii) above, the Corporation shall forthwith pay to the Trustee for the benefit of the Debentureholders such principal, accrued and unpaid interest and premium, if any, and interest on amounts in default on such Debenture and all other monies outstanding hereunder, together with subsequent interest at the rate borne by the Debentures on such principal, interest, premium and such other monies from the date of such declaration or event until payment is received by the Trustee, such subsequent interest to be payable at the times and places and in the manner mentioned in and according to the tenor of the Debentures. Such payment when made shall be deemed to have been made in discharge of the Corporation's obligations hereunder and any monies so received by the Trustee shall be applied in the manner provided in Section 8.6.

22. In November 2014, the holders of the Debentures were contacted by Jacob Shavit, the CEO, and Kenneth Rotman, the Board Chairman, of Discovery Air and encouraged to vote in favour of amendments to the Debenture Agreement which:

- (a) Extended the maturity date from June 30, 2016 to June 30, 2018; and
- (b) Amended the definition of “change in control” to permit Clairvest to obtain a majority interest in Discovery Air without triggering the change in control provisions of the Debenture Agreement.

23. The communication from Shavit and Rotman addressed the need to push out the maturity of the debentures to ensure the financial stability of Discovery Air while several key strategies involving Top Aces (referred to as “Discovery Air Defense Services” at that time) could be successfully completed, for the benefit of all stakeholders including the unsecured debenture holders. The voting holders of the debentures approved the amendment. A copy of the November 2014 Debenture Amendment Agreement is attached to my affidavit as **Exhibit “B”**.

***B. Discovery Air and Top Aces***

**1. Discovery Air and its Subsidiaries**

24. Today, Discovery Air is owned 95.5% by the Clairvest and 4.5% by current and former management of Discovery Air. Clairvest is also Discovery Air’s largest secured creditor. Kenneth Rotman controls the boards of Clairvest, where he is the CEO and managing director, and Discovery Air, where he has been a member of the board since 2013 and the Chairman since 2015.

25. Discovery Air is a holding company that currently has four wholly-owned operational subsidiaries. These subsidiaries are Great Slave Helicopters Ltd. (“GSH”), Air Tindi Ltd. (“ATL”), Discovery Mining Services Ltd. (“DSH”) and Discovery Air Technical Services Inc. (“DATS”) (collectively “Discovery’s Subsidiaries”).

26. Until recently, Discovery Air was also the 100% shareholder of Top Aces. As a result of a series of transactions, with which I take issue as described below, Discovery Air’s interest in Top Aces has been reduced to approximately 9.7%.

27. Discovery Air’s Subsidiaries provide a variety of flight and air support services to various communities. These operational subsidiaries have joint and/or several obligations with Discovery Air including maturing principal debt and other principal debt amounts and guaranteed debt amounts.

## **2. Top Aces**

28. Top Aces (at various times known as Discovery Air Defence Services, or “DADS”) is the exclusive supplier of combat airborne training services to the Canadian Armed Forces. It provides joint terminal attack controller training to Canadian special operations and ground forces, Red Air and electronic attack training to CF-18 aircrew and navy, as well as live-fire target practice to the Canadian military. Top Aces possesses the largest private fleet of fighter jets globally.

29. In 2005, Top Aces received its first Interim Contracted Airborne Training Services (“ICATS”) contract with the Canadian government. As a result, Top Aces acquired financing to double the size of its military aircraft fleet to provide these services, and saw its revenue grow in excess of 500% between 2005 and 2006.



30. On August 1, 2007, Discovery Air acquired 100% of Top Aces' outstanding common shares for the sum of \$35,000,000 in cash and the issuance of 20,000,000 common shares of Discovery Air (market value at the time of acquisition as \$1.40) for a total laid down cost of \$63,000,000. Top Aces became a wholly-owned subsidiary of Discovery Air.

31. This valuation was largely based on the value of the ICATS contract held by Top Aces. At that time, Top Aces had over \$30 million in revenue. I have attached a copy of a press release dated June 20, 2007, relating to this transaction to my affidavit as **Exhibit "C"**.

32. In August 2015, the Canadian government issued a request for proposals for the permanent CATS contract. Top Aces always had a significant advantage in, and was expected to win, this bid process for a variety of reasons:

- (a) Top Aces was already a significant provider of contracted airborne training service provider to the Canadian, German, and Australian armed forces, and, as such, the most experienced provider of turnkey tactical airborne training in the world;
- (b) Top Aces had proven its capabilities by delivering over 66,000 accident-free flight hours; and,
- (c) Top Aces had eight operating bases across three continents, operating the world's largest privately-owned fleet of aggressor and combat support aircraft.

33. As expected, in October 2017, Top Aces announced that the government of Canada had awarded it the long-term CATS contract. The contract term is 10 years with one two-year renewal option and a second 17-month renewal option.

34. Prior to being acquired by Clairvest in December 2017, Top Aces was the strongest and most valuable business held by Discovery Air. With the bulk of its revenue derived from exclusive government funded cost-plus contracts, and with a growing number of additional procurements from the Royal Air Force in the United Kingdom and the US Armed Forces, its enviable reputation makes it a leading candidate to secure a growing, predictable revenue stream.

**C. Recent Transactions Entered into by Discovery Air**

35. I have been concerned, since December 2016, that, Discovery Air has engaged in a series of related party transactions that are oppressive and unfairly prejudicial to the legitimate interests of the holders of its unsecured debentures, to the benefit of Clairvest, its majority shareholder and senior secured lender.

**1. December 2016 Credit Agreement between Clairvest and Top Aces**

36. On December 20, 2016, Top Aces entered into a credit agreement with Clairvest, in which Clairvest provided it with a revolving credit facility of up to \$25 million (the “December 2016 Credit Agreement”). I have attached a press release dated December 20, 2016, announcing to this transaction to my affidavit as **Exhibit “D”**, and a copy of the December 2016 Credit Agreement to my affidavit as **Exhibit “E”**.

37. The December 2016 Credit Agreement was guaranteed by certain other subsidiaries and secured by various assets owned by Top Aces and the guarantors.

38. The original term of the December 2016 Credit Agreement was from December 20, 2016, to June 30, 2017. The term was subsequently extended to October 31, 2017, and then extended again to February 28, 2018. It appears to me that, in each instance, the term of the agreement coincided with the expected date for the announcement of the award of the CATS contract.

39. Critically, unlike any previous operating credit agreement between these parties, section 3.01 of the December 2016 Credit Agreement included an optional conversion feature allowing Clairvest to convert its debt into equity of Top Aces. This conversion would occur at an undisclosed strike price, to be determined on the basis of the value of the Top Aces business, after the application of certain agreed upon adjustments between Clairvest and Discovery Air. No details concerning the methodology for valuation or agreed upon adjustments was disclosed. Without this information, there is no way for the holders of Debentures or other stakeholders in Discovery Air to understand or evaluate the impact of this related-party transaction or any future such transactions utilizing the same valuation methodology.

40. Section 3.03 of the December 2016 Credit Agreement did contemplate that the conversion option would comply with Multilateral Instrument 61-101—Protection of Minority Security Holders in Special Transactions (“MI 61-101”). Among other things, MI 61-101 establishes a regulatory framework intended to mitigate risks to minority security holders when a related party of the issuer, who may have superior access to information or significant influence, is involved in a material transaction. MI 61-101 implements these principles through procedural protections for minority security holders that include requirements for formal independent valuations, enhanced disclosure, and

approval by a majority of minority security holders. However, MI 61-101 also allows for exemptions from the formal valuation and minority approval requirements.

41. The December 2016 Credit Agreement was a “related party transaction” within the meaning of MI 61-101. However, Discovery Air claimed that it was not required under MI 61-101 to obtain a formal valuation in respect of the December 2016 Credit Agreement, and that it would be relying upon the exemption from the minority approval requirement in section 5.7(f) of MI 61-101. Specifically, Discovery Air claimed that it was exempted because (i) the December 2016 Credit Agreement was being provided on reasonable commercial terms that were not less advantageous to Discovery Air than if the December 2016 Credit Agreement had been obtained from an arm’s length party; and (ii) the December 2016 Credit Agreement did not contain an equity component, and the future exercise of the conversion option by Clairvest would be contingent on satisfying the requirements of MI 61-101 and the TSX Company Manual.

## **2. The Going Private Transaction**

42. On March 24, 2017, Discovery Air announced that it had agreed to enter into a definitive agreement with Clairvest to effect a plan of arrangement under the *Canadian Business Corporations Act*, pursuant to which Clairvest and certain senior officers and directors of Discovery Air would acquire all of the issued and outstanding shares in the capital of Discovery Air (the “Going Private Transaction”). I have attached a press release dated March 24, 2017, relating to this transaction to my affidavit as **Exhibit “F”**.

43. In the Going Private Transaction, public shareholders of Discovery Air received cash consideration of \$0.20 per share, and the Debentures remained outstanding/listed

and were to be treated in accordance with their terms. The total transaction cash consideration was approximately \$1.5 million. Discovery Air's common shareholders approved the Going-Private transaction at a special meeting of the shareholders held on May 23, 2017. The Ontario Superior Court of Justice approved the Going-Private Transaction on May 24, 2017 and it was implemented and closed on May 26, 2017. The shares of Discovery Air were de-listed from the TSX the same day.<sup>2</sup>

44. The Going Private Transaction appears to me to be inconsistent with Discovery Air's obligation under Article 7.9 of the Debenture Agreement to "use reasonable commercial efforts to maintain the listing of the Class A Shares... on the Toronto Stock Exchange". The holders of the unsecured debentures were not asked to waive their rights under the Debenture in connection with the Going Private Transaction.

### **3. June 5, 2017**

45. On June 5, 2017, Clairvest entered into three agreements with Discovery Air and Top Aces.

#### ***(a) Extension of December 2016 Credit Agreement***

46. First, Top Aces agreed to extend the December 2017 Credit Agreement, initially dated June 30, 2017, to October 31, 2017.

#### ***(b) New June 2017 Credit Agreement***

47. Second, Clairvest entered into a subordinated credit agreement with Top Aces, providing for a revolving subordinated credit facility of up to \$13 million (the "June 2017

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<sup>2</sup> I note that Discovery Air remained a reporting issuer subject to Ontario securities law, due to its publicly-held debt.

Credit Agreement”). This agreement also included a conversion feature allowing debt under the Subordinated Credit Agreement to be converted to equity of Top Aces.

48. The conversion feature allowed debt to be converted to equity at the same undisclosed strike price contained in the December 2016 Credit Agreement. The mechanism for determining the confidential strike price has never been disclosed.

49. The conversion option in the June 2017 Credit Agreement is subject to the prior satisfaction of the following condition (the “Conversion Condition”):

1) if required under Applicable Securities Law, the Borrower shall have obtained a “formal valuation” (as defined in MI61-101) of the Borrower in accordance with the applicable requirements of Applicable Securities Laws (including MI 61-101).

50. As with the December 2016 Credit Agreement, the June 2017 Credit Agreement was a “related party transaction” within the meaning of MI 61-101 and would typically have required Discovery Air to obtain a formal valuation. However, Discovery Air again claimed an exemption from the minority approval requirement in section 5.7(f) of MI 61-101 on the basis that (i) the Revolving Credit Facility was “being provided on reasonable commercial terms that are not less advantageous to the Corporation than if the Revolving Credit Facility was obtained from an arm’s length party”; and (ii) the Revolving Credit Facility did not contain an equity component, and the future exercise of the conversion option by Clairvest would be contingent on satisfying the requirements of MI 61-101 and the TSX Company Manual.

51. I have attached a press release dated June 5, 2017, relating to this transaction to my affidavit as **Exhibit “G”** and a copy of the June 2017 Credit Agreement to my affidavit as **Exhibit “H”**.

*(c) June 2017 Swap Agreement*

52. Third, Discovery Air entered into a letter agreement with Clairvest granting Clairvest the right to exchange up to \$18.4 million principal amount of Discovery Air's senior secured debentures for that number of common shares of Top Aces having an aggregate value equal to \$14.7 million, calculated using the value per common share of Top Aces determined in accordance with the same confidential strike price contained in the December 2016 Credit Agreement (the "June 2017 Swap Agreement").

53. I have attached a copy of the June 2017 Swap Agreement to my affidavit as **Exhibit "I"**.

**4. August 2017 Exemption**

54. On August 2, 2017, Discovery Air announced that, because it no longer had any public shareholders, it had received an exemption under MI 61-101 from any formal valuation requirement in connection with the December 2016 Credit Agreement, the June 2017 Credit Agreement, and the Swap Agreement. In essence, there was never going to be a valuation in connection with the exercise by Clairvest of the stock options arising under those agreements. I have attached a copy of the exemption decision of the Ontario Securities Commission dated August 1, 2017, to my affidavit as **Exhibit "J"**.

**5. October 2017: Top Aces Awarded CATS Contract**

55. On October 31, 2017, Top Aces announced it had been awarded the long-term CATS contract by the government of Canada. The term of the contract is ten years with one two-year renewal option and a second 17-month renewal option, and press reports suggest that it has a value of \$1.5 billion over 10 years.

## 6. December 2017: Top Aces Transactions

56. On December 14, 2017, Clairvest exercised its three previously arranged options to acquire and hold directly the majority ownership of the common shares of Top Aces, which it had previously owned and controlled indirectly through its 95.5% ownership of Discovery Air Inc. Prior to the Conversion Transaction Discovery Air owned 100% of Top Aces, since its acquisition in 2007. A news release was issued by Discovery Air the same day which included the following statement:

Following the completion of the Conversion Transaction, Discovery Air will have approximately \$60 million less of secured debt and will continue to own 26% of DA Defence. The future capital required to finance the upgrade of DA Defence's aircraft pursuant to its obligations on the recently awarded contract with the Canadian government will be raised at the DA Defence level and will not increase debt levels at Discovery Air.

57. A press release dated December 14, 2017, announcing the Top Aces Transaction is attached to my affidavit as **Exhibit "K"**.

58. As part of the Conversion Transaction noted above, and arising specifically from the June 5, 2017 Swap Letter, \$18.4 million of secured debenture debt on the Discovery Air balance sheet owing to Clairvest was eliminated in exchange for \$14.7 million of the Top Aces common shares. With this part of the Conversion Transaction completed, Clairvest now held 19.5% of the issued and outstanding common shares of Top Aces, and Discovery Air held the remaining 80.5%.

59. The Top Aces Transaction then exchanged \$41.2 million of secured revolving credit debt and accrued interest on the Top Aces balance sheet (under the December 2016 Credit Agreement and the June 2017 Credit Agreement respectively) for previously un-issued Top Aces treasury shares. This \$41.2 million transaction appears



to have had *no impact* on the remaining secured debt on the balance sheet of Discovery Air, nor did it affect any pre-existing guarantee as Discovery Air was not a party to, or guarantor of the Credit Agreements, However, it did effectively dilute the asset ownership percentage of the remaining Top Aces shares held by Discovery Air, dropping its net position from 80.5% to 26%, with Clairvest now holding directly 74% of the now issued and outstanding common shares of Top Aces.

60. I can find no evidence of the \$60 million reduction in Discovery Air's secured debt as stated in the December 14, 2017 news release, with only the \$18.4 million reduction noted above being affected by the Top Aces Transaction. Top Aces' secured debt position did improve by the \$41.2 million pay down of the December 2016 and June 2017 secured credit lines, but these were not on Discovery Air's books and were not secured by a guarantee from Discovery Air.

61. Accordingly, I believe the December 14, 2017, news release was disingenuous and misleading, and consisted of simply adding the \$18.4 million and the \$41.2 million and deeming this combined total of \$59.6 million to result in "Discovery Air [having] approximately \$60 million less of secured debt".

62. What I do assume to be true in the December 14, 2017, news release is the disclosure that Discovery Air had given up a 74% stake in Top Aces, in return for an \$18.4 million reduction in its secured debt. This infers that the 100% valuation of Top Aces under which this transfer took place between Clairvest and Discovery Air was only \$24,864,864 (\$18.4 million divided by 76%).

63. A subsequent transaction with JP Morgan suggests that the Top Aces Transaction was consummated at a significant discount to Top Aces' true market value, and, therefore, a very poor deal for Discovery Air and the holders of its unsecured Debentures.

#### **7. December 22, 2017: JP Morgan Transaction**

64. On December 22, 2017, approximately one week after the Top Aces Transaction, Discovery Air announced a new equity subscription for shares of Top Aces whereby (i) Discovery Air sold the majority of its remaining shares in Top Aces to a group of third-party investors led by JP Morgan for \$25 million, with Discovery Air retaining a 13.2% share of Top Aces, and (ii) Top Aces issued an additional \$25 million treasury shares to the investors, resulting in a net \$50 million investment to effectively acquire approximately 25.6% of Top Aces.

65. As a result of the issue of the new treasury shares, Discovery Air saw its 13.2% position diluted down to 9.7%. Following the completion of this transaction, the ownership of the equity of Top Aces is (i) Clairvest – 64.7%; (ii) JP Morgan Investors – 25.6%; and (iii) Discovery Air – 9.7%.

66. Following the JP Morgan Transaction, Discovery Air used \$24 million of the funds it received from JP Morgan to discharge a further portion of the outstanding balance of principle and accrued interest owing to Clairvest under the secured debenture.

67. JP Morgan's net \$50 million arms' length investment to acquire 25.6% of Top Aces places the enterprise value of Top Aces at approximately \$195.3 million. Based on this valuation, the 90.3% interest that Discovery Air disposed of in December 2017 via

the transactions above was in fact worth \$176 million. This valuation, as measured by an independent transaction with an unrelated third-party, arms' length purchaser, suggests the Board of Discovery Air transferred \$176 million of fair market valued assets to Clairvest, a related party, in return for the net reduction of \$42.4 million in secured liabilities of their Company.

68. It appears that this was an undervaluation of \$133.6 million in the completed transaction, which would have been, coincidentally, sufficient to pay off the \$72 million still owing to Clairvest, the other \$26.8 million of secured debt on the Discovery Air books, and the \$34.5 million in unsecured debentures, a total of \$133.3 million.

69. Moreover, even assuming that the facilities under the December 2016 Credit Agreement and the June 2017 Credit Agreement were fully advanced at all times, it appears to me that the effective annual rate of return (interest) on those loans was 154% and 277%, respectively. To the extent that the amounts available under the Credit Agreements were not entirely advanced, the effective annual rate of return (interest) would be even higher. This is considerably more than 60%, which I understand to be the maximum annual rate of interest legally payable on a loan in Canada.

***D. The CCAA Proceedings***

70. If Clairvest had paid fair value for the shares acquired in the Top Aces Transaction, or if the Top Aces Transaction had not occurred, I believe that there would be sufficient value in Discovery Air to repay all of its indebtedness to all creditors.

71. Having significantly eroded Discovery Air's interest in Top Aces by transferring shares at below fair value, and allowing treasury shares of Top Aces to be issued at

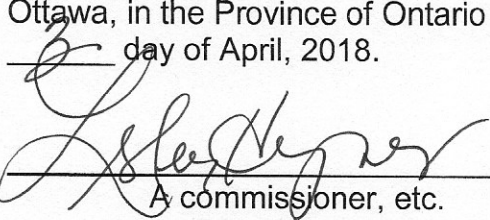
below market value, to its own account and benefit, Clairvest has now positioned itself to be able to foreclose on the remaining assets of Discovery Air using its outstanding secured debt of \$72 million and thereby fully deprive the holders of Debentures of the value of their investment.

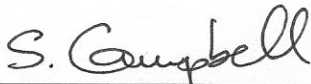
72. I am concerned that Clairvest is using its control over the board of Discovery Air, together with its position as a senior pre-filing secured lender to Discovery Air, the DIP Lender to Discovery Air, and the stalking horse bidder for Discovery Air, to drive the result that it wants in this process. I believe that it is essential that balance be restored to the process through the reallocation of some of these roles. If these proceedings continue, I believe that the fairness of the process would be enhanced by the appointment of an independent Chief Restructuring Officer to direct Discovery Air's restructuring efforts. I am informed by counsel to the Ad Hoc Committee that they have spoken with Kevin McElcheran, and that he is available to be retained in that role. Mr. McElcheran has been recognized as one of Canada's leading insolvency lawyers. I am informed by counsel to the Ad Hoc Committee that Mr. McElcheran has three decades of experience, including leading the restructuring practices of Blake, Cassels & Graydon LLP and McCarthy Tétrault LLP, and that he has played a significant role in most of Canada's largest and most complex restructuring and insolvency cases. Since his retirement from McCarthy Tétrault LLP, Mr. McElcheran has worked in interim management, and performed a similar role overseeing the restructuring in the FirstOnSite CCAA process throughout 2016-2017.

73. In addition, I have had a number of discussions with potential arms-length DIP Lenders and it appears to me that, if these proceedings continue, the market would be

interested in providing a DIP Loan to Discovery Air on the same terms as those contained in the existing term sheet. I believe that it would be to the advantage of Discovery Air and all of its stakeholders for it to have an independent source of financing for these proceedings, to ensure that the credit decisions made by its DIP Lender are not intended to seek an advantage in this process.

74. Unfortunately, the Ad Hoc Committee has not had sufficient opportunity, in the time available, to organize itself for the purpose of being able to provide instructions to counsel in connection with the matters raised above, and to respond to the Initial Application, much less the sales process now presented by Discovery Air. Accordingly, the Ad Hoc Committee asks that the relief that is presently before the court on April 4, 2018, be adjourned to afford the Ad Hoc Committee to organize itself and provide those instructions, if that is its decision.

SWORN BEFORE ME, at the City of )  
Ottawa, in the Province of Ontario this )  
2 day of April, 2018. )  
)  
 )  
\_\_\_\_\_)  
A commissioner, etc. )

  
\_\_\_\_\_  
Stephen Campbell

**Lesley Leigh Hynes, a Commissioner, etc.,  
Province of Ontario, for Wilson Law Partners LLP,  
Barristers and Solicitors. Expires July 18, 2019.**



**CONVERTIBLE DEBENTURE INDENTURE**

**DATED AS OF THE 12<sup>TH</sup> DAY OF MAY, 2011**

**DISCOVERY AIR INC.**

**AND**

**COMPUTERSHARE TRUST COMPANY OF CANADA**

**PROVIDING FOR THE ISSUE OF DEBENTURES**

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**THIS INDENTURE** made as of the 12<sup>th</sup> day of May, 2011,

BETWEEN:

**DISCOVERY AIR INC.**, a corporation continued under the federal laws of the Canada and having its head office in the City of Yellowknife, Northwest Territories (hereinafter called the “**Corporation**”)

AND

**COMPUTERSHARE TRUST COMPANY OF CANADA**, a trust company duly incorporated under the federal laws of Canada and having an office in the City of Toronto, in the Province of Ontario (hereinafter called the “**Trustee**”).

**WITNESSETH THAT:**

**WHEREAS** the Corporation wishes to create and issue the Debentures in the manner and subject to the terms and conditions of this Indenture;

**NOW THEREFORE THIS INDENTURE WITNESSES** that in consideration of the respective covenants and agreements contained herein and for other good and valuable consideration (the receipt and sufficiency of which are acknowledged), the Corporation and the Trustee covenant and agree, for the benefit of each other and for the equal and rateable benefit of the Debentureholders, as follows:

## **ARTICLE 1 INTERPRETATION**

### **1.1 Definitions**

In this Indenture and in the Debentures, unless there is something in the subject matter or context inconsistent therewith, the expressions following shall have the following meanings, namely:

- (a) “**90% Redemption Right**” has the meaning ascribed thereto in Section 2.4(j)(ii);
- (b) “**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 any and every instrument supplemental or ancillary hereto;
- (c) “**Additional Debentures**” means Debentures of any one or more series, other than the first series of Debentures, being the Initial Debentures, issued under this Indenture;
- (d) “**Applicable Procedures**” means, with respect to any transfer or exchange of beneficial ownership interests in, or any conversion, redemption, repayment or

repurchase of, a Global Debenture, the rules and procedures of the Depository as in effect from time to time, to the extent applicable;

- (e) “**Applicable Securities Legislation**” means applicable securities laws (including rules, regulations, policies and instruments) in each of the provinces and territories of Canada;
- (f) “**Articles of Continuance**” means the certificate and articles of continuance of the Corporation dated March 27, 2006;
- (g) “**Auditors of the Corporation**” means an independent firm of chartered accountants duly appointed as auditors of the Corporation;
- (h) “**Authorized Investments**” means short term interest bearing or discount debt obligations issued or guaranteed by the Government of Canada or a Province or a Canadian chartered bank (which may include an Affiliate or related party of the Trustee) provided that such obligation is rated at least R1 (middle) by DBRS Inc. or an equivalent rating service;
- (i) “**Base Shares**” has the meaning ascribed thereto in Section 2.4(k)(ii);
- (j) “**Beneficial Holder**” means any Person who holds a beneficial interest in a Global Debenture as shown on the books of the Depository or a Depository Participant;
- (k) “**Board of Directors**” means the board of directors of the Corporation or any committee thereof;
- (l) “**Business Day**” means any day other than a Saturday, Sunday or any other day that the Trustee in Toronto, Ontario is not generally open for business;
- (m) “**Cash Change of Control**” means a Change of Control in which 10% or more of the consideration for the Common Shares in the transaction or transactions constituting a Change of Control consists of: (i) cash (other than cash payments for fractional Common Shares or cash payments made in respect of dissenter’s appraisal rights); (ii) equity securities that are not traded or intended to be traded immediately following such transactions on a stock exchange; or (iii) other property that is not traded or intended to be traded immediately following such transactions on a stock exchange;
- (n) “**Cash Change of Control Conversion Period**” has the meaning ascribed thereto in Section 2.4(k)(i);
- (o) “**Change of Control**” means the acquisition by any Person, or group of Persons acting jointly or in concert (within the meaning of MI 62-104), of voting control or direction of an aggregate of 50% or more of the outstanding Common Shares, or (ii) more than 50% of the consolidated assets of the Corporation;



- (p) “**Change of Control Notice**” has the meaning ascribed thereto in Section 2.4(j)(i);
- (q) “**Change of Control Purchase Date**” has the meaning ascribed thereto in Section 2.4(j)(i);
- (r) “**Change of Control Purchase Offer**” has the meaning ascribed thereto in Section 2.4(j)(i);
- (s) “**Class A Shares**” means the Class A common voting shares in the capital of the Corporation, having the rights, privileges, restrictions and conditions set out in the Articles of Continuance;
- (t) “**Class B Shares**” means the Class B variable voting shares in the capital of the Corporation, having the rights, privileges, restrictions and conditions set out in the Corporation’s Articles of Continuance;
- (u) “**Common Shares**” means the Class A Shares and/or the Class B Shares, as the context may require, as such shares are constituted on the date of execution and delivery of this Indenture; provided that in the event of a change or a subdivision, revision, reduction, combination or consolidation thereof, any reclassification, capital reorganization, consolidation, amalgamation, arrangement, merger, sale or conveyance or liquidation, dissolution or winding-up, or such successive changes, subdivisions, redivisions, reductions, combinations or consolidations, reclassifications, capital reorganizations, consolidations, amalgamations, arrangements, mergers, sales or conveyances or liquidations, dissolutions or windings-up, then, subject to adjustments, if any, having been made in accordance with the provisions of Section 6.5, “Common Shares” shall mean the shares or other securities or property resulting from such change, subdivision, redivision, reduction, combination or consolidation, reclassification, capital reorganization, consolidation, amalgamation, arrangement, merger, sale or conveyance or liquidation, dissolution or winding-up;
- (v) “**Common Share Bid Request**” means a request for bids to purchase Class A Shares (to be issued by the Corporation on the Common Share Delivery Date) made by the Trustee in accordance with the Common Share Interest Payment Election Notice and which shall make the acceptance of any bid conditional upon the acceptance of sufficient bids to result in aggregate proceeds from such issue and sale of Class A Shares which, together with the cash payments by the Corporation in lieu of fractional Class A Shares, if any, equal the Interest Obligation;
- (w) “**Common Share Delivery Date**” means a date, not more than 90 days and not less than one Business Day prior to the applicable Interest Payment Date, upon which Class A Shares are issued by the Corporation and delivered to the Trustee for sale pursuant to Common Share Purchase Agreements;

- (x) **“Common Share Interest Payment Election”** means an election to satisfy an Interest Obligation on the applicable Interest Payment Date in the manner described in the Common Share Interest Payment Election Notice;
- (y) **“Common Share Interest Payment Election Amount”** means the sum of the amount of the aggregate proceeds resulting from the sale of Class A Shares on the Common Share Delivery Date pursuant to acceptable bids obtained pursuant to the Common Share Bid Requests, together with any amount paid by the Corporation in respect of fractional Class A Shares pursuant to Section 10.1(g), that is equal to the aggregate amount of the Interest Obligation in respect of which the Common Share Interest Payment Election Notice was delivered;
- (z) **“Common Share Interest Payment Election Notice”** means a written notice made by the Corporation to the Trustee specifying:
  - (i) the Interest Obligation to which the election relates;
  - (ii) the Common Share Interest Payment Election Amount;
  - (iii) the investment banks, brokers or dealers through which the Trustee shall seek bids to purchase the Class A Shares and the conditions of such bids, which may include the minimum number of Class A Shares, minimum price per Class A Share, timing for closing for bids and such other matters as the Corporation may specify; and
  - (iv) that the Trustee shall accept through the investment banks, brokers or dealers selected by the Corporation only those bids which comply with such notice;
- (aa) **“Common Share Proceeds Investment”** has the meaning attributed thereto in Section 10.1(h);
- (bb) **“Common Share Purchase Agreement”** means an agreement in customary form among the Corporation, the Trustee and the Persons making acceptable bids pursuant to a Common Share Bid Request, which complies with all applicable laws, including the Applicable Securities Legislation and the rules and regulations of any stock exchange on which the Debentures or Class A Shares are then listed;
- (cc) **“Common Share Redemption Right”** has the meaning attributed thereto in Section 4.6(a);
- (dd) **“Common Share Repayment Right”** has the meaning attributed thereto in Section 4.10(a);
- (ee) **“Conversion Price”** means the dollar amount for which each Common Share may be issued from time to time upon the conversion of Debentures or any series of Debentures which are by their terms convertible in accordance with the provisions of Article 6;

- (ff) “**Corporation**” means Discovery Air Inc. and includes any successor to or of the Corporation which shall have complied with the provisions of Article 11;
- (gg) “**Counsel**” means a barrister or solicitor or firm of barristers or solicitors retained or employed by the Trustee or retained or employed by the Corporation and acceptable to the Trustee;
- (hh) “**Current Market Price**” means, generally, the volume weighted average trading price of the Class A Shares on the Toronto Stock Exchange, if the Class A Shares are listed on the Toronto Stock Exchange, for the 20 consecutive trading days ending on the fifth trading day preceding the applicable date. If the Class A Shares are not listed on the Toronto Stock Exchange, reference shall be made for the purpose of the above calculation to the principal securities exchange or market on which the Class A Shares are listed or quoted or if not listed or quoted on any exchange or market, the fair value of a Class A Share as reasonably determined by the Board of Directors;
- (ii) “**Date of Conversion**” has the meaning ascribed thereto in Section 6.4(b);
- (jj) “**Debenture Liabilities**” has the meaning ascribed thereto in Section 5.1;
- (kk) “**Debentureholders**” or “**holders**” means the Persons for the time being entered in the register for Debentures as registered holders of Debentures or any transferees of such Persons by endorsement or delivery;
- (ll) “**Debentures**” means the debentures, notes or other evidence of indebtedness of the Corporation issued and certified hereunder, or deemed to be issued and certified hereunder, including the Initial Debentures, and for the time being outstanding, whether in definitive or interim form;
- (mm) “**Defeased Debentures**” has the meaning ascribed thereto in Section 9.6(b);
- (nn) “**Depository**” means, with respect to the Debentures of any series issuable or issued in the form of one or more Global Debentures, the Person designated as depository by the Corporation pursuant to Section 3.2 until a successor depository shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “Depository” shall mean each Person who is then a depository hereunder, and if at any time there is more than one such Person, “Depository” as used with respect to the Debentures of any series shall mean each depository with respect to the Global Debentures of such series;
- (oo) “**Depository Participant**” means a broker, dealer, bank, other financial institution or other Person for whom, from time to time, a Depository effects book entry for a Global Debenture deposited with the Depository;
- (pp) “**Dividends Paid in the Ordinary Course**” means dividends paid on the Common Shares after June 30, 2014;

- (qq) “**Effective Date**” has the meaning ascribed thereto in Section 2.4(k)(i);
- (rr) “**Event of Default**” has the meaning ascribed thereto in Section 8.1;
- (ss) “**Extraordinary Resolution**” has the meaning ascribed thereto in Section 13.12;
- (tt) “**Freely Tradeable**” means, in respect of shares of capital of any class of any corporation, shares which: (i) are issuable without the necessity of filing a prospectus or any other similar offering document (other than any prospectus or similar offering document that has already been filed) under Applicable Securities Legislation; and (ii) can be traded by the holder thereof without any restriction under Applicable Securities Legislation, such as hold periods, except in the case of a distribution by a control person;
- (uu) “**Fully Registered Debentures**” means Debentures registered as to both principal and interest;
- (vv) “**generally accepted accounting principles**” or “**GAAP**” means generally accepted accounting principles from time to time approved by the Canadian Institute of Chartered Accountants (including as further described in Section 1.16);
- (ww) “**Global Debenture**” means a Debenture that is issued to and registered in the name of the Depository, or its nominee, pursuant to Section 2.6 for purposes of being held by or on behalf of the Depository as custodian for participants in the Depository’s book-entry only registration system;
- (xx) “**Government Obligations**” means securities issued or guaranteed by the Government of Canada or any province thereof;
- (yy) “**Guarantees**” means any guarantee, undertaking to assume, endorse, contingently agree to purchase, or to provide funds for the payment of, or otherwise become liable in respect of, any indebtedness, liability or obligation of any Person;
- (zz) “**Initial Debentures**” means the Debentures designated as “8.375% Convertible Unsecured Subordinated Debentures” and described in Section 2.4;
- (aaa) “**Interest Account**” has the meaning ascribed thereto in Section 10.1(h);
- (bbb) “**Interest Obligation**” means the obligation of the Corporation to pay interest on the Debentures, as and when the same becomes due;
- (ccc) “**Interest Payment Date**” means a date specified in a Debenture as the date on which interest on such Debenture shall become due and payable;
- (ddd) “**Make Whole Premium**” has the meaning ascribed thereto in Section 2.4(k);

- (eee) “**Make Whole Premium Shares**” has the meaning ascribed thereto in Section 2.4(k)(ii);
- (fff) “**Maturity Account**” means an account or accounts required to be established by the Corporation (and which shall be maintained by and subject to the control of the Trustee) for each series of Debentures issued pursuant to and in accordance with this Indenture;
- (ggg) “**Maturity Date**” means the date specified for maturity of any Debentures;
- (hhh) “**Maturity Notice**” has the meaning ascribed thereto in Section 2.4(g);
- (iii) “**MI 62-104**” means Multilateral Instrument 62-104 - *Take-Over Bids and Issuer Bids*;
- (jjj) “**Offer Price**” has the meaning ascribed thereto in Section 2.4(j)(i);
- (kkk) “**Offeror’s Notice**” has the meaning ascribed thereto in Section 12.3;
- (lll) “**Offering**” means the public offering by short form prospectus dated May 5, 2011 of \$30,000,000 aggregate principal amount of Initial Debentures (\$34,500,000 in the event that the over-allotment option granted by the Corporation to the underwriters is exercised in full);
- (mmm) “**Officer’s Certificate**” means a certificate of the Corporation signed by any one authorized officer or director of the Corporation, in his or her capacity as an officer or director of the Corporation, as the case may be, and not in his or her personal capacity;
- (nnn) “**Periodic Offering**” means an offering of Debentures of a series from time to time, the specific terms of which Debentures, including the rate or rates of interest, if any, thereon, the stated maturity or maturities thereof and the redemption provisions, if any, with respect thereto, are to be determined by the Corporation upon the issuance of such Debentures from time to time;
- (ooo) “**Person**” includes an individual, corporation, company, partnership, joint venture, association, trust, trustee, unincorporated organization or government or any agency or political subdivision thereof (and for the purposes of the definition of “Change of Control”, in addition to the foregoing, “Person” shall include any syndicate or group that would be deemed to be a “Person” under MI 62-104);
- (ppp) “**Privacy Laws**” has the meaning ascribed thereto in Section 15.19;
- (qqq) “**Qualified Canadian**” means a Canadian for the purposes of the *Canada Transportation Act*;
- (rrr) “**Redemption Date**” has the meaning ascribed thereto in Section 4.3;

- (sss) “**Redemption Notice**” has the meaning ascribed thereto in Section 4.3;
- (ttt) “**Redemption Price**” means, in respect of a Debenture, the amount, including accrued and unpaid interest up to (but excluding) the Redemption Date fixed for such Debenture, payable on the Redemption Date, which amount, except as specifically provided herein, may be payable by the issuance of Freely Tradeable Common Shares as provided for in Section 4.6;
- (uuu) “**Redemption Principal Amount**” has the meaning ascribed thereto in Section 4.6(a)
- (vvv) “**Residency Declaration**” means a declaration substantially in the form attached hereto as Schedule F or such other form as is acceptable to the Corporation or the Trustee, by which a holder of Debentures certifies whether such holder is a Qualified Canadian;
- (www) “**Senior Creditor**” means a holder or holders of Senior Indebtedness and includes any representative or representatives, agent or agents or trustee or trustees of any such holder or holders;
- (xxx) “**Senior Indebtedness**” means all obligations, liabilities and indebtedness of the Corporation and its Subsidiaries which would, in accordance with GAAP, be classified upon a consolidated balance sheet of the Corporation as liabilities of the Corporation or its Subsidiaries and, whether or not so classified, shall include (without duplication): (a) indebtedness of the Corporation or its Subsidiaries for borrowed money; (b) obligations of the Corporation or its Subsidiaries evidenced by bonds, debentures, notes or other similar instruments; (c) obligations of the Corporation or its Subsidiaries arising pursuant or in relation to bankers’ acceptances, letters of credit and letters of guarantee (including payment and reimbursement obligations in respect thereof) or indemnities issued in connection therewith; (d) obligations of the Corporation or its Subsidiaries under any swap, hedging or other similar contracts or arrangements; (e) obligations of the Corporation or its Subsidiaries under Guarantees, indemnities, assurances, legally binding comfort letters or other contingent obligations relating to the Senior Indebtedness or other obligations of any other Person which would otherwise constitute Senior Indebtedness within the meaning of this definition; (f) all indebtedness of the Corporation or its Subsidiaries representing the deferred purchase price of any property, including purchase money mortgages; (g) accounts payable to trade creditors; (h) all renewals, extensions and refinancing of any of the foregoing; and (i) all costs and expenses incurred by or on behalf of the holder of any Senior Indebtedness in enforcing payment or collection of any such Senior Indebtedness, including enforcing any security interest securing the same; however, “Senior Indebtedness” shall not include any indebtedness that would otherwise be Senior Indebtedness if it is expressly stated to be subordinate to or rank *pari passu* with the Debentures;

- (yyy) “**Senior Security**” means all mortgages, liens, pledges, charges (whether fixed or floating), security interests or other encumbrances of any kind, contingent or absolute, held by or on behalf of any Senior Creditor and in any manner securing any Senior Indebtedness;
- (zzz) “**Serial Meeting**” has the meaning ascribed thereto in Section 13.2(b)(i);
- (aaaa) “**Subsidiary**” has the meaning ascribed thereto in the *Securities Act* (Ontario);
- (bbbb) “**Time of Expiry**” means the time of expiry of certain rights with respect to the conversion of Debentures under Article 6 which is to be set forth separately in the form and terms for each series of Debentures which by their terms are to be convertible;
- (cccc) “**Total Offer Price**” has the meaning ascribed thereto in Section 2.4(j)(i);
- (dddd) “**trading day**” means, with respect to the Toronto Stock Exchange or other market for securities, any day on which such exchange or market is open for trading or quotation;
- (eeee) “**Trustee**” means Computershare Trust Company of Canada, or its successor or successors for the time being as trustee hereunder;
- (ffff) “**United States**” means the United States of America, its territories and possessions, any state of the United States and the District of Columbia; and
- (gggg) “**Written Direction of the Corporation**” means an instrument in writing signed by any one officer or director of the Corporation.

## 1.2 Meaning of “Outstanding”

Every Debenture certified and delivered by the Trustee hereunder shall be deemed to be outstanding until it is cancelled, converted or redeemed or delivered to the Trustee for cancellation, conversion or redemption or monies and/or Common Shares, as the case may be, for the payment thereof shall have been set aside under Section 9.2, provided that:

- (a) Debentures which have been partially redeemed, purchased or converted shall be deemed to be outstanding only to the extent of the unredeemed, unpurchased or unconverted part of the principal amount thereof;
- (b) when a new Debenture has been issued in substitution for a Debenture which has been lost, stolen or destroyed, only one of such Debentures shall be counted for the purpose of determining the aggregate principal amount of Debentures outstanding; and
- (c) for the purposes of any provision of this Indenture entitling holders of outstanding Debentures to vote, sign consents, requisitions or other instruments or take any other action under this Indenture, or to constitute a quorum of any meeting of

Debentureholders, Debentures owned directly or indirectly, legally or equitably, by the Corporation shall be disregarded except that:

- (i) for the purpose of determining whether the Trustee shall be protected in relying on any such vote, consent, requisition or other instrument or action, or on the holders of Debentures present or represented at any meeting of Debentureholders, only the Debentures which the Trustee knows are so owned shall be so disregarded; and
- (ii) Debentures so owned which have been pledged in good faith other than to the Corporation shall not be so disregarded if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to vote such Debentures, sign consents, requisitions or other instruments or take such other actions in his discretion free from the control of the Corporation or a Subsidiary of the Corporation.

### **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 Schedules refer, unless otherwise specified, to articles of and schedules to this Indenture;
- (c) all references to Sections, subsections or clauses 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;
- (e) reference to any agreement or other instrument in writing means such agreement or other instrument in writing as amended, modified, replaced or supplemented from time to time;
- (f) unless otherwise indicated, reference to a statute shall be deemed to be a reference to such statute and any regulations thereunder as amended, re-enacted or replaced from time to time; and
- (g) unless otherwise indicated, time periods within which a payment is to be made or any other action is to be taken hereunder shall be calculated by including the day on which the period commences and excluding the day on which the period ends.



#### **1.4 Headings, Etc.**

The division of this Indenture into Articles and Sections, 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 or of the Debentures.

#### **1.5 Time of Essence**

Time shall be of the essence of this Indenture.

#### **1.6 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.

#### **1.7 Invalidity, Etc.**

Any provision hereof which is prohibited or unenforceable shall be ineffective only to the extent of such prohibition or unenforceability, without invalidating the remaining provisions hereof.

#### **1.8 Language**

Each of the parties hereto hereby acknowledges that it has consented to and requested that this Indenture and all documents relating thereto, including, without limiting the generality of the foregoing, the form of Initial Debenture attached hereto as Schedule A, be drawn up in the English language only.

#### **1.9 Successors and Assigns**

All covenants and agreements of the Corporation in this Indenture and the Debentures shall bind its successors and assigns, whether so expressed or not. All covenants and agreements of the Trustee in this Indenture shall bind its successors.

#### **1.10 Severability**

In case any provision in this Indenture or in the Debentures shall be invalid, illegal or unenforceable, such provision shall be deemed to be severed herefrom or therefrom and the validity, legality and enforceability of the remaining provisions shall not in any way be affected, prejudiced or impaired thereby.

#### **1.11 Entire Agreement**

This Indenture and all supplemental indentures and Schedules hereto and thereto, and the Debentures issued hereunder and thereunder, together constitute the entire agreement between the parties hereto with respect to the indebtedness created hereunder and thereunder and under the Debentures and supersedes as of the date hereof all prior memoranda, agreements, negotiations, discussions and term sheets, whether oral or written, with respect to the indebtedness created hereunder or thereunder and under the Debentures.

### **1.12 Benefits of Indenture**

Nothing in this Indenture or in the Debentures, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder, any paying agent, the holders of Debentures, the Senior Creditors (to the extent provided in Article 5 only), and (to the extent provided in Section 8.11) the holders of Common Shares, any benefit or any legal or equitable right, remedy or claim under this Indenture.

### **1.13 Applicable Law and Attornment**

This Indenture, any supplemental indenture and the Debentures shall be governed by and interpreted 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, any supplemental indenture or any Debenture, the Corporation, the Trustee and each holder irrevocably submit and attorn to the non-exclusive jurisdiction of the courts of the Province of Ontario.

### **1.14 Currency of Payment**

Unless otherwise indicated in a supplemental indenture with respect to any particular series of Debentures, all payments to be made under this Indenture or a supplemental indenture shall be made in Canadian dollars.

### **1.15 Non-Business Days**

Whenever any payment to be made hereunder shall be due, any period of time would begin or end, any calculation is to be made or any other action is to be taken on, or as of, or from a period ending on, a day other than a Business Day, such payment shall be made, such period of time shall begin or end, such calculation shall be made and such other action shall be taken, as the case may be, unless otherwise specifically provided herein, on or as of the next succeeding Business Day without any additional interest, cost or charge to the Corporation.

### **1.16 Accounting Terms**

Except as hereinafter provided or as otherwise indicated in this Indenture, all calculations required or permitted to be made hereunder pursuant to the terms of this Indenture shall be made in accordance with GAAP. For greater certainty, GAAP shall include any accounting standards, including International Financial Reporting Standards, that may from time to time be approved for general application by the Canadian Institute of Chartered Accountants.

### **1.17 Calculations**

The Corporation shall be responsible for making all calculations called for hereunder, including calculations of Current Market Price. The Corporation shall make such calculations in good faith and will provide a schedule of its calculations to the Trustee and the Trustee shall be entitled to rely conclusively on the accuracy of such calculations without independent verification.

## 1.18 Schedules

The following Schedules are incorporated into and form part of this Indenture:

- Schedule A – Form of Initial Debenture;
- Schedule B – Form of Redemption Notice;
- Schedule C – Form of Maturity Notice;
- Schedule D – Form of Notice of Conversion; and
- Schedule E – Residency Declaration Form

In the event of any inconsistency between the provisions of any Section of this Indenture and the provisions of the Schedules which form a part hereof, the provisions of this Indenture shall prevail to the extent of the inconsistency.

## ARTICLE 2 THE DEBENTURES

### 2.1 Limit of Debentures

Subject to the limitation in respect of the Initial Debentures set out in Section 2.4(a), the aggregate principal amount of Debentures authorized to be issued under this Indenture is unlimited, but Debentures may be issued only upon and subject to the conditions and limitations herein set forth.

### 2.2 Terms of Debentures of any Series

The Debentures may be issued in one or more series. There shall be established herein or in or pursuant to one or more indentures supplemental hereto, prior to the initial issuance of Debentures of any particular series:

- (a) the designation of the Debentures of the series (which need not include the term “**Debentures**”), which shall distinguish the Debentures of the series from the Debentures of all other series;
- (b) any limit upon the aggregate principal amount of the Debentures of the series that may be certified and delivered under this Indenture (except for Debentures certified and delivered upon registration of, transfer of, amendment of, or in exchange for, or in lieu of, other Debentures of the series pursuant to Sections 2.9, 2.10, 3.2, 3.3 and 3.6 and Article 4 and Article 6);
- (c) the date or dates on which the principal of the Debentures of the series is payable;
- (d) the rate or rates at which the Debentures of the series shall bear interest, if any, the date or dates from which such interest shall accrue, on which such interest shall be payable and on which record date, if any, shall be taken for the determination of holders to whom such interest shall be payable and/or the method or methods by which such rate or rates or date or dates shall be determined;

- (e) the place or places where the principal of and any interest on Debentures of the series shall be payable or where any Debentures of the series may be surrendered for registration of transfer or exchange;
- (f) the right, if any, of the Corporation to redeem Debentures of the series, in whole or in part, at its option and the period or periods within which, the price or prices at which and any terms and conditions upon which, Debentures of the series may be so redeemed;
- (g) the obligation, if any, of the Corporation to redeem, purchase or repay Debentures of the series pursuant to any mandatory redemption, sinking fund or analogous provisions or at the option of a holder thereof and the price or prices at which, the period or periods within which, the date or dates on which, and any terms and conditions upon which, Debentures of the series shall be redeemed, purchased or repaid, in whole or in part, pursuant to such obligations;
- (h) if other than denominations of \$1,000 and any integral multiple thereof, the denominations in which Debentures of the series shall be issuable;
- (i) subject to the provisions of this Indenture, any trustee, Depository, authenticating or paying agent, transfer agent or registrar or any other agent with respect to the Debentures of the series;
- (j) any other events of default or covenants with respect to the Debentures of the series;
- (k) whether and under what circumstances the Debentures of the series will be convertible into or exchangeable for securities of any Person;
- (l) the form and terms of the Debentures of the series;
- (m) if applicable, that the Debentures of the series shall be issuable in whole or in part as one or more Global Debentures and, in such case, the Depository or Depositories for such Global Debentures in whose name the Global Debentures will be registered, and any circumstances other than or in addition to those set forth in Section 2.9 or 3.2 or those applicable with respect to any specific series of Debentures, as the case may be, in which any such Global Debenture may be exchanged for Fully Registered Debentures, or transferred to and registered in the name of a Person other than the Depository for such Global Debentures or a nominee thereof;
- (n) if other than Canadian currency, the currency in which the Debentures of the series are issuable; and
- (o) any other terms of the Debentures of the series (which terms shall not be inconsistent with the provisions of this Indenture).

All Debentures of any one series shall be substantially identical, except as may otherwise be established herein or in an indenture supplemental hereto. All Debentures of any one series need not be issued at the same time and may be issued from time to time, including pursuant to a Periodic Offering, consistent with the terms of this Indenture, if so provided herein, by or pursuant to such resolution of the Board of Directors, Officer's Certificate or in an indenture supplemental hereto.

### 2.3 Form of Debentures

Except in respect of the Initial Debentures, the form of which is attached hereto as Schedule A, the Debentures of each series shall be substantially in such form or forms (not inconsistent with this Indenture) as shall be established herein or in one or more indentures supplemental hereto, in each case with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture, and may have imprinted or otherwise reproduced thereon such legend or legends or endorsements, not inconsistent with the provisions of this Indenture, as may be required to comply with any law or with any rules or regulations pursuant thereto or with any rules or regulations of any securities exchange or securities regulatory authority or to conform to general usage, all as may be determined by the directors or officers of the Corporation executing such Debentures on behalf of the Corporation, as conclusively evidenced by their execution of such Debentures.

### 2.4 Form and Terms of Initial Debentures

- (a) The first series of Debentures (the "**Initial Debentures**") authorized for issue immediately is limited to an aggregate principal amount of \$34,500,000 and shall be designated as "8.375% Convertible Unsecured Subordinated Debentures".
- (b) The Initial Debentures shall be dated as of the date of closing of the Offering and shall mature June 30, 2016 (the "**Maturity Date**" for the Initial Debentures).
- (c) The Initial Debentures shall bear interest from the date of issue at the rate of 8.375% per annum (based on a year of 365 days), payable in equal (with the exception of the first interest payment which will include interest from and including the date of closing of the Offering as set forth below) semi-annual payments in arrears on June 30 and December 31 in each year, the first such payment to fall due on December 31, 2011 and the last such payment (representing interest payable from the last Interest Payment Date to, but excluding, the Maturity Date of the Initial Debentures) to fall due on June 30, 2016, payable after as well as before maturity and after as well as before default, with interest on amounts in default at the same rate, compounded semi-annually. For certainty, the first interest payment will include interest accrued from and including the date of closing of the Offering to, but excluding December 31, 2011, which will be equal to \$53.23 for each \$1,000 principal amount of Initial Debentures. The record dates for the payment of interest on the Initial Debentures will be June 15 and December 15 in each year (or the first Business Day prior to such date if not a Business Day).

- (d) The Initial Debentures will be redeemable in accordance with the terms of Article 4, provided that the Initial Debentures will not be redeemable before June 30, 2014, except in the event of the satisfaction of certain conditions after a Change of Control has occurred as provided herein. On and after June 30, 2014 and prior to the Maturity Date, provided that the Current Market Price at the time of the Redemption Notice is at least 125% of the Conversion Price, the Initial Debentures may be redeemed at the option of the Corporation in whole or in part from time to time on notice as provided for in Section 4.3 at a Redemption Price equal to their principal amount plus accrued and unpaid interest thereon up to (but excluding) the Redemption Date. The Redemption Notice for the Initial Debentures shall be substantially in the form of Schedule B. In connection with the redemption of the Initial Debentures, the Corporation may, at its option and subject to the provisions of Section 4.6 and subject to regulatory approval, elect to satisfy its obligation to pay all or a portion of the aggregate Redemption Principal Amount of the Initial Debentures to be redeemed by issuing and delivering to the holders of such Initial Debentures, such number of Freely Tradeable Common Shares as is obtained by dividing the aggregate Redemption Principal Amount of the Initial Debentures to be redeemed by 95% of the Current Market Price in effect on the Redemption Date. Holders who are Qualified Canadians will receive Class A Shares and holders who are not Qualified Canadians will receive Class B Shares. Any accrued and unpaid interest thereon will be paid in cash. If the Corporation elects to exercise such option, it shall so specify and provide details in the Redemption Notice.
- (e) The Initial Debentures will be subordinated to the Senior Indebtedness of the Corporation in accordance with the provisions of Article 5. In accordance with Section 2.2, the Initial Debentures will rank *pari passu* with each other series of Debentures issued under this Indenture or under indentures supplemental to this Indenture (regardless of their actual date or terms of issue) and, except as prescribed by law, with all other existing and future unsecured indebtedness of the Corporation, other than Senior Indebtedness.
- (f) (i) Upon and subject to the provisions and conditions of Article 6 and Section 3.7, the holder of each Initial Debenture shall have the right at such holder's option, prior to the close of business on the earliest of: (i) the Business Day immediately preceding the Maturity Date of the Initial Debentures; (ii) if called for redemption, on the Business Day immediately preceding the date fixed by the Corporation for redemption of the Initial Debentures by notice to the holders of Initial Debentures in accordance with Sections 2.4(d) and 4.3; and (iii) if called for repurchase in connection with a Change of Control, on the Business Day immediately preceding the payment date, at the Conversion Price, (the earliest of which will be the "**Time of Expiry**" for the purposes of Article 6 in respect of the Initial Debentures), to convert any part, being \$1,000 or an integral multiple thereof, of the principal amount of a Debenture into Common Shares at the Conversion Price in effect on the Date of Conversion. To the extent a redemption is a redemption in part only of the Initial Debentures,

such right to convert, if not exercised prior to the applicable Time of Expiry, shall survive as to any Initial Debentures not redeemed or converted and be applicable to the next succeeding Time of Expiry.

- (ii) The Conversion Price in effect on the date hereof for each Common Share to be issued upon the conversion of Initial Debentures shall be equal to \$0.73 such that approximately 1,369.863 Common Shares shall be issued for each \$1,000 principal amount of Initial Debentures so converted. Except as provided below, no adjustment in the number of Common Shares to be issued upon conversion will be made for dividends or distributions on Common Shares issuable upon conversion, the record date for the payment of which precedes the date upon which the holder becomes a holder of Common Shares in accordance with Article 6. Holders who are Qualified Canadians will receive Class A Shares and holders who are not Qualified Canadians will receive Class B Shares. No fractional Common Shares will be issued, and holders will receive a cash payment in satisfaction of any fractional interest based on the Current Market Price as of the Date of Conversion. The Conversion Price applicable to and the Common Shares, securities or other property receivable on the conversion of the Initial Debentures is subject to adjustment pursuant to the provisions of Section 2.4(k) and Section 6.5.
- (iii) Holders converting their Initial Debentures will receive, in addition to the applicable number of Common Shares, accrued and unpaid interest (less any taxes required to be deducted) in respect of the Initial Debentures surrendered for conversion up to but excluding the Date of Conversion from, and including, the most recent Interest Payment Date in accordance with Section 6.4(e).
- (iv) Holders of Initial Debentures surrendered for conversion during the period from the close of business on any regular record date for the payment of interest on the Initial Debentures to the opening of business on the next succeeding Interest Payment Date will receive the semi-annual interest payable on such Initial Debentures on the corresponding Interest Payment Date notwithstanding the conversion. In the event that a holder of Initial Debentures exercises its conversion right following a Redemption Notice by the Corporation and during the period from the close of business on any regular record date for the payment of interest on the Initial Debentures to the opening of business on the next succeeding Interest Payment Date, such holder will be entitled to receive accrued and unpaid interest, in addition to the applicable number of Common Shares to be received on conversion, for the period from the last Interest Payment Date to (but excluding) the Date of Conversion. The Conversion Price will not be adjusted for accrued interest.
- (v) Notwithstanding any other provisions of this Indenture, if an Initial Debenture is surrendered for conversion on an Interest Payment Date or

during the five preceding Business Days, the Person or Persons entitled to receive Common Shares in respect of the Initial Debenture so surrendered for conversion shall not become the holder or holders of record of such Common Shares until the Business Day following such Interest Payment Date.

- (vi) An Initial Debenture in respect of which a holder has accepted a notice in respect of a Change of Control Purchase Offer pursuant to the provisions of Section 2.4(j) may be surrendered for conversion only if such notice is withdrawn in accordance with this Indenture.
- (g) On redemption or maturity of the Initial Debentures, the Corporation may, at its option and subject to the provisions of Section 4.6 and 4.10, as applicable, and subject to regulatory approval, elect to satisfy its obligation to pay all or a portion of the aggregate principal amount of the Initial Debentures due on redemption or maturity by issuing and delivering to such holders of Initial Debentures Freely Tradeable Common Shares pursuant to the provisions of Sections 4.6 and 4.10, as applicable. Holders who are Qualified Canadians will receive Class A Shares and holders who are not Qualified Canadians will receive Class B Shares. Any accrued and unpaid interest thereon will be paid in cash. If the Corporation elects to exercise such option, it shall provide details in the Redemption Notice or deliver a maturity notice (the “**Maturity Notice**”) to the holders of the Initial Debentures in substantially the form of Schedule C and provide the necessary details.
- (h) The Initial Debentures shall be issued in denominations of \$1,000 and integral multiples of \$1,000. Each Initial Debenture and the certificate of the Trustee endorsed thereon shall be issued in substantially the form set out in Schedule A, with such insertions, omissions, substitutions or other variations as shall be required or permitted by this Indenture, and may have imprinted or otherwise reproduced thereon such legend or legends or endorsements, not inconsistent with the provisions of this Indenture, as may be required to comply with any law or with any rules or regulations pursuant thereto or with any rules or regulations of any securities exchange or securities regulatory authority or to conform with general usage, all as may be determined by the directors or officers of the Corporation executing such Initial Debenture in accordance with Section 2.7 hereof, as conclusively evidenced by their execution of an Initial Debenture. Each Initial Debenture shall additionally bear such distinguishing letters and numbers as the Trustee shall approve. Notwithstanding the foregoing, an Initial Debenture may be in such other form or forms as may, from time to time, be, approved by a resolution of the Board of Directors, or as specified in an Officer’s Certificate. The Initial Debentures may be engraved, lithographed, printed, mimeographed or typewritten or partly in one form and partly in another.

The Initial Debentures shall be issued as one or more Global Debentures and the Global Debentures will be registered in the name of the Depository which, as of the date hereof, shall be CDS Clearing and Depository Services Inc. (or any



nominee of the Depository). No beneficial holder will receive definitive certificates representing its interest in Initial Debentures except as provided in this Section 2.4(h) and Section 3.2. A Global Debenture may be exchanged for Initial Debentures in registered form that are not Global Debentures, or transferred to and registered in the name of a Person other than the Depository for such Global Debentures or a nominee thereof, as provided in Section 3.2.

- (i) Upon and subject to the provisions of Article 10, the Corporation may elect, from time to time, to satisfy its Interest Obligation on the Initial Debentures on any Interest Payment Date (including, for greater certainty, following conversion or upon maturity or redemption) by delivering Common Shares to the Trustee pursuant to the Common Share Interest Payment Election.
- (j) Within 30 days following the occurrence of a Change of Control, and subject to the provisions and conditions of this Section 2.4(j), the Corporation shall be obligated to offer to purchase all of the Initial Debentures then outstanding. The terms and conditions of such obligation are set forth below:
  - (i) Within 30 days following the occurrence of a Change of Control, the Corporation shall deliver to the Trustee, and the Trustee shall promptly deliver to the holders of the Initial Debentures, a notice stating that there has been a Change of Control and specifying the date on which such Change of Control occurred and the circumstances or events giving rise to such Change of Control (a “**Change of Control Notice**”) together with an offer in writing (the “**Change of Control Purchase Offer**”) to purchase, on the Change of Control Purchase Date (as defined below), all (or any portion actually tendered to such offer) of the Initial Debentures then outstanding from the holders thereof made in accordance with the requirements of Applicable Securities Legislation at a price per Initial Debenture equal to 100% of the principal amount thereof (the “**Offer Price**”) plus accrued and unpaid interest on such Initial Debentures up to, but excluding, the Change of Control Purchase Date (collectively, the “**Total Offer Price**”). If such Change of Control Purchase Date is after a record date for the payment of interest on the Initial Debentures but on or prior to an Interest Payment Date, then the interest payable on such date will be paid to the holder of record of the Initial Debentures on the relevant record date. The “**Change of Control Purchase Date**” shall be the date that is 30 Business Days after the date that the Change of Control Notice and Change of Control Purchase Offer are delivered or mailed to holders of Initial Debentures.
  - (ii) If 90% or more in aggregate principal amount of Initial Debentures outstanding on the date the Corporation provides the Change of Control Notice and the Change of Control Purchase Offer to holders of the Initial Debentures have been tendered for purchase pursuant to the Change of Control Purchase Offer on the expiration thereof, the Corporation has the right upon written notice provided to the Trustee within 10 days following

the expiration of the Change of Control Purchase Offer, to redeem all the Initial Debentures remaining outstanding on the expiration of the Change of Control Purchase Offer at the Total Offer Price as at the Change of Control Purchase Date (the “**90% Redemption Right**”).

- (iii) Upon receipt of notice that the Corporation has exercised or is exercising the 90% Redemption Right and is acquiring the remaining Initial Debentures, the Trustee shall promptly provide written notice to each Debentureholder that did not previously accept the Change of Control Purchase Offer that:
  - (A) the Corporation has exercised the 90% Redemption Right and is purchasing all outstanding Initial Debentures effective on the expiry of the Change of Control Purchase Offer at the Total Offer Price, and shall include a calculation of the amount payable to such holder as payment of the Total Offer Price as at the Change of Control Purchase Date;
  - (B) each such holder must transfer its Initial Debentures to the Trustee on the same terms as those holders that accepted the Change of Control Purchase Offer and must send its respective Initial Debentures to the Trustee within 10 days after the sending of such notice; and
  - (C) the rights of such holder under the terms of the Initial Debentures and this Indenture cease to be effective as of the date of expiry of the Change of Control Purchase Offer provided the Corporation has, on or before the time of notifying the Trustee of the exercise of the 90% Redemption Right, paid the Total Offer Price to, or to the order of, the Trustee and thereafter the Initial Debentures shall not be considered to be outstanding and the holder shall not have any right except to receive such holder’s Total Offer Price upon surrender and delivery of such holder’s Initial Debentures in accordance with the Indenture.
- (iv) The Corporation shall, on or before 12:00 p.m. (Toronto Time) on the Business Day immediately prior to the Change of Control Purchase Date, deposit with the Trustee or any paying agent to the order of the Trustee, such sums of money or Common Shares (in respect of the aggregate principal amount of the Total Offer Price) as may be sufficient to pay the Total Offer Price of the Initial Debentures to be purchased or redeemed by the Corporation on the Change of Control Purchase Date (less any tax required by law to be deducted in respect of accrued and unpaid interest), provided the Corporation may elect to satisfy this requirement by providing the Trustee with a wire transfer or certified cheque for such amounts required under this Section 2.4(j)(iv) post-dated (in respect of a certified cheque) to the date of expiry of the Change of Control Purchase

Offer. The Corporation 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 purchase. Every such deposit shall be irrevocable, except as provided herein. From the sums so deposited, the Trustee shall pay or cause to be paid to the holders of such Initial Debentures, the Total Offer Price to which they are entitled (less any tax required by law to be deducted in respect of accrued and unpaid interest) on the Corporation's purchase.

- (v) In the event that one or more of such Initial Debentures being purchased in accordance with this Section 2.4(j) becomes subject to purchase in part only, upon surrender of such Initial Debentures for payment of the Total Offer Price, the Corporation shall execute and the Trustee shall certify and deliver without charge to the holder thereof or upon the holder's order, one or more new Initial Debentures for the portion of the principal amount of the Initial Debentures not purchased.
- (vi) Initial Debentures for which holders have accepted the Change of Control Purchase Offer and Initial Debentures which the Corporation has elected to redeem in accordance with this Section 2.4(j) shall become due and payable at the Total Offer Price on the Change of Control Purchase Date, in the same manner and with the same effect as if it were the date of maturity specified in such Initial Debentures, anything therein or herein to the contrary notwithstanding, and from and after the Change of Control Purchase Date, if the money necessary to purchase or redeem, or the Common Shares necessary to purchase or redeem, the Initial Debentures shall have been deposited as provided in this Section 2.4(j) and affidavits or other proofs satisfactory to the Trustee as to the publication and/or mailing of such notices shall have been lodged with it, interest on the Initial Debentures 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.
- (vii) In case the holder of any Initial Debenture to be purchased or redeemed in accordance with this Section 2.4(j) shall fail on or before the Change of Control Purchase Date so to surrender such holder's Initial Debenture or shall not within such time accept payment of the monies payable, to take delivery of certificates representing such Common Shares issuable in respect thereof, or give such receipt therefor, if any, as the Trustee may require, such monies may be set aside in trust, or such certificates may be held 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 Debentureholder of the sum or the Common Shares so set aside and the Debentureholder shall have no other right except to receive payment of the monies so paid and deposited, or take delivery of the certificates so deposited, or both, upon surrender and

delivery up of such holder's Initial Debenture. In the event that any money or certificates representing Common Shares required to be deposited hereunder with the Trustee or any depository or paying agent on account of principal, premium, if any, or interest, if any, on Initial Debentures issued hereunder shall remain so deposited for a period of six years from the Change of Control Purchase Date, then such monies, or certificates representing Common Shares, together with any distributions paid thereon, shall at the end of such period be paid over or delivered over by the Trustee or such depository or paying agent to the Corporation and the Trustee shall not be responsible to Debentureholders for any amounts owing to them. Notwithstanding the foregoing, the Trustee will pay any remaining funds deposited hereunder prior to the expiry of six years after the Change of Control Purchase Date to the Corporation upon receipt from the Corporation 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 Corporation prior to the expiry of six years after the Change of Control Purchase Date, the Corporation shall reimburse the Trustee for any amounts required to be paid by the Trustee to a holder of a Debenture pursuant to the Change of Control Purchase Offer after the date of such payment of the remaining funds to the Corporation but prior to six years after the Change of Control Purchase Date.

- (viii) Subject to the provisions above related to Initial Debentures purchased in part, all Initial Debentures redeemed and paid under this Section 2.4(j) shall forthwith be delivered to the Trustee and cancelled and no Initial Debentures shall be issued in substitution therefor.
- (k) Subject to the receipt of any required regulatory approval, the following provisions shall apply in respect of the conversion of Initial Debentures pursuant to this Indenture in connection with the occurrence of a Cash Change of Control:
  - (i) In the event of the occurrence of a Cash Change of Control, the Conversion Price in effect during the period (the "**Cash Change of Control Conversion Period**") beginning on the 10th trading day prior to the effective date of the Change of Control (the "**Effective Date**") and ending at the close of business on the date that is 30 days after the date on which the Change of Control Purchase Offer in respect of the Cash Change of Control is delivered or mailed to holders of Initial Debentures in accordance with Section 2.4(j) (the "**Cash Change of Control Conversion Price**") shall be calculated in accordance with the following formula (the "**Make Whole Premium**"):
    - (ii) 
$$CCOCCP = OCP / (1 + (CP \times (c/t)))$$

where:

CCOCCP = the Cash Change of Control Conversion Price;

OCP = the Conversion Price in effect on the Effective Date;

CP = means 46%;

c = means the number of days from and including the Effective Date to but excluding the Maturity Date; and

t = means the number of days from and including the date hereof to but excluding the Maturity Date.

In the event that the Cash Change of Control Conversion Price calculated in accordance with the formula above is less than any regulatory permitted discount to market price, the Cash Change of Control Conversion Price shall be deemed to be that implied by the maximum permitted discount to market price.

- (ii) Notwithstanding the foregoing, if the Date of Conversion of any Initial Debentures occurs during the period beginning on the 10th trading day prior to the Effective Date and ending at the close of business on the Effective Date, the holders of such Initial Debentures shall, on conversion of their Initial Debentures, only be entitled to that number of Common Shares resulting from the Cash Change of Control Conversion Price in excess of the number of Base Shares (as defined below) (such excess number of Common Shares being the “**Make Whole Premium Shares**”) only on the Business Day immediately following the Effective Date and, for greater certainty, only if the Change of Control occurs. “**Base Shares**” means the number of Common Shares to which the holders of Initial Debentures would have been entitled to at the Conversion Price that would have been in effect but for the Cash Change of Control. The Base Share will be issued in accordance with the terms of this Indenture applicable to a conversion of Initial Debentures otherwise than during the Cash Change of Control Conversion Period, including at the then applicable Conversion Price.
- (iii) The Make Whole Premium Shares shall be deemed to have been issued upon conversion of Initial Debentures on the Business Day immediately following the Effective Date. Section 6.5 shall apply to such conversion and, for greater certainty, the former holders of Initial Debentures in respect of which the Make Whole Premium Shares are issuable shall be entitled to receive and shall accept, in lieu of the Make Whole Premium Shares, the number of shares or other securities or cash or other property of the Corporation or of the Person or other entity resulting from the transaction that constitutes the Cash Change of Control that such holders would have been entitled to receive if such holders had been the registered

holders of the applicable number of Make Whole Premium Shares on the Effective Date.

- (iv) Except as otherwise provided in this Section 2.4(k), all other provisions of this Indenture applicable to a conversion of Initial Debentures shall apply to a conversion of Initial Debentures during the Cash Change of Control Conversion Period.
- (l) The Trustee shall be provided with the documents and instruments referred to in Sections 2.5(b), (c) and (d) with respect to the Initial Debentures prior to the issuance of the Initial Debentures.

## **2.5 Certification and Delivery of Additional Debentures**

The Corporation may from time to time request the Trustee to certify and deliver Additional Debentures of any series by delivering to the Trustee the documents referred to below in this Section 2.5 whereupon the Trustee shall certify such Debentures and cause the same to be delivered in accordance with the Written Direction of the Corporation referred to below or pursuant to such procedures acceptable to the Trustee as may be specified from time to time by a Written Direction of the Corporation. The maturity date, issue date, interest rate (if any) and any other terms of the Debentures of such series shall be set forth in or determined by or pursuant to such Written Direction of the Corporation and procedures. In certifying such Debentures, the Trustee shall be entitled to receive and shall be fully protected in relying upon, unless and until such documents have been superseded or revoked:

- (a) an executed supplemental indenture by or pursuant to which the form and terms of such Additional Debentures were established;
- (b) a Written Direction of the Corporation requesting certification and delivery of such Additional Debentures and setting forth delivery instructions, provided that, with respect to Debentures of a series subject to a Periodic Offering:
  - (i) such Written Direction of the Corporation may be delivered by the Corporation to the Trustee prior to the delivery to the Trustee of such Additional Debentures of such series for certification and delivery;
  - (ii) the Trustee shall certify and deliver Additional Debentures of such series for original issue from time to time, in an aggregate principal amount not exceeding the aggregate principal amount, if any, established for such series, pursuant to a Written Direction of the Corporation or pursuant to procedures acceptable to the Trustee as may be specified from time to time by a Written Direction of the Corporation;
  - (iii) the maturity date or dates, issue date or dates, interest rate or rates (if any) and any other terms of Additional Debentures of such series shall be determined by an executed supplemental indenture or by Written Direction of the Corporation or pursuant to such procedures; and

- (iv) if provided for in such procedures, such Written Direction of the Corporation may authorize certification and delivery pursuant to oral or electronic instructions from the Corporation which oral or electronic instructions shall be promptly confirmed in writing;
- (c) an opinion of Counsel, in form and substance satisfactory to the Trustee, acting reasonably, to the effect that all requirements imposed by this Indenture and by law in connection with the proposed issue of Additional Debentures have been complied with, subject to the delivery of certain documents or instruments specified in such opinion; and
- (d) an Officer's Certificate (which Officer's Certificate shall be in such form that satisfies all applicable laws) certifying that the Corporation is not in default under this Indenture, that the terms and conditions for the certification and delivery of Additional Debentures (including those set forth in Section 15.5), have been complied with subject to the delivery of any documents or instruments specified in such Officer's Certificate and that no Event of Default exists or will exist upon such certification and delivery.

## **2.6 Issue of Global Debentures**

- (a) The Corporation may specify that the Debentures of a series are to be issued in whole or in part as one or more Global Debentures registered in the name of a Depository, or its nominee, designated by the Corporation in the Written Direction of the Corporation delivered to the Trustee at the time of issue of such Debentures, and in such event the Corporation shall execute and the Trustee shall certify and deliver one or more Global Debentures that shall:
  - (i) represent an aggregate amount equal to the principal amount of the outstanding Debentures of such series to be represented by one or more Global Debentures;
  - (ii) be delivered by the Trustee to such Depository or pursuant to such Depository's instructions; and
  - (iii) bear a legend substantially to the following effect:

“This Debenture is a Global Debenture within the meaning of the Indenture herein referred to and is registered in the name of a Depository or a nominee thereof. This Debenture may not be transferred to or exchanged for Debentures 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 Debenture authenticated and delivered upon registration of, transfer of, or in exchange for, or in lieu of, this Debenture shall be a Global Debenture subject to the foregoing, except in such limited circumstances described in the Indenture.

”

Unless this certificate is presented by an authorized representative of CDS Clearing and Depository Services Inc. (“CDS”) to Discovery Air Inc. or its agent for registration of transfer, exchange or payment, and any certificate issued in respect thereof is registered in the name of CDS & CO., or in such other name as is requested by an authorized representative of CDS (and any payment is made to CDS & CO. or to such other entity as is requested by an authorized representative of CDS), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL since the registered holder hereof, CDS & CO., has a property interest in the securities represented by this certificate herein and it is a violation of its rights for another person to hold, transfer or deal with this certificate.”

- (b) Each Depository designated for a Global Debenture must, at the time of its designation and at all times while it serves as such Depository, be a clearing agency registered or designated under the securities legislation of the jurisdiction where the Depository has its principal offices.
- (c) If the Corporation decides, at any time to terminate the Global Debenture in respect of any Debentures and substitute Debentures in their registered and definitive forms for such Global Debenture, then the Corporation will provide written notice of such termination and substitution of Debentures to the Toronto Stock Exchange and to the Trustee no less than 30 days prior to such termination.

## **2.7 Execution of Debentures**

All Debentures shall be signed (either manually or by facsimile signature) by any one authorized director or officer of the Corporation holding office at the time of signing. A facsimile signature upon a Debenture shall for all purposes of this Indenture be deemed to be the signature of the person whose signature it purports to be. Notwithstanding that any person whose signature, either manual or in facsimile, appears on a Debenture as a director or officer may no longer hold such office at the date of the Debenture or at the date of the certification and delivery thereof, such Debenture shall be valid and binding upon the Corporation and entitled to the benefits of this Indenture.

## **2.8 Certification**

- (a) No Debenture shall be issued or, if issued, shall be obligatory or shall entitle the holder to the benefits of this Indenture, until it has been manually certified by or on behalf of the Trustee substantially in the form set out in this Indenture, in the relevant supplemental indenture, or in some other form approved by the Trustee. Such certification on any Debenture shall be conclusive evidence that such Debenture is duly issued, is a valid obligation of the Corporation and the holder is entitled to the benefits hereof.
- (b) The certificate of the Trustee signed on the Debentures, or interim Debentures hereinafter mentioned, shall not be construed as a representation or warranty by



the Trustee as to the validity of this Indenture or of the Debentures or interim Debentures or as to the issuance of the Debentures or interim Debentures and the Trustee shall in no respect be liable or answerable for the use made of the Debentures or interim Debentures or any of them or the proceeds thereof. The certificate of the Trustee on the Debentures or interim Debentures shall, however, be a representation and warranty by the Trustee that the Debentures or interim Debentures have been duly certified by or on behalf of the Trustee pursuant to the provisions of this Indenture.

## **2.9 Interim Debentures or Certificates**

Pending the delivery of definitive Debentures of any series to the Trustee, the Corporation may issue and the Trustee certify in lieu thereof interim Debentures in such forms and in such denominations and signed in such manner as provided herein, entitling the holders thereof to definitive Debentures of the series when the same are ready for delivery; or the Corporation may execute and the Trustee certify a temporary Debenture for the whole principal amount of Debentures of the series then authorized to be issued hereunder and deliver the same to the Trustee 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 Debenture so delivered to it, as the Corporation and the Trustee may approve entitling the holders thereof to definitive Debentures of the series when the same are ready for delivery; and, when so issued and certified, such interim or temporary Debentures or interim certificates shall, for all purposes but without duplication, rank in respect of this Indenture equally with Debentures duly issued hereunder and, pending the exchange thereof for definitive Debentures, the holders of the interim or temporary Debentures or interim certificates shall be deemed without duplication to be Debentureholders 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 Corporation shall have delivered the definitive Debentures to the Trustee, the Trustee shall cancel such temporary Debentures, if any, and shall call in for exchange all interim Debentures or certificates that shall have been issued and forthwith after such exchange shall cancel the same. No charge shall be made by the Corporation or the Trustee to the holders of such interim or temporary Debentures or interim certificates for the exchange thereof. All interest paid upon interim or temporary Debentures or interim certificates shall be noted thereon as a condition precedent to such payment unless paid by cheque to the registered holders thereof.

## **2.10 Mutilation, Loss, Theft or Destruction**

In case any of the Debentures issued hereunder shall become mutilated or be lost, stolen or destroyed, the Corporation, in its discretion, may issue, and thereupon the Trustee shall certify and deliver, a new Debenture upon surrender and cancellation of the mutilated Debenture, or in the case of a lost, stolen or destroyed Debenture, in lieu of and in substitution for the same, and the substituted Debenture shall be in a form approved by the Trustee and shall be entitled to the benefits of this Indenture and rank equally in accordance with its terms with all other Debentures issued or to be issued hereunder. In case of loss, theft or destruction the applicant for a substituted Debenture shall furnish to the Corporation and to the Trustee such evidence of the loss, theft or destruction of the Debenture as shall be satisfactory to the Trustee in its discretion and shall also furnish an indemnity and surety bond satisfactory to the Trustee in its discretion.

The applicant shall pay all reasonable expenses incidental to the issuance of any substituted Debenture.

### **2.11 Concerning Interest**

- (a) All Debentures issued hereunder, whether originally or upon exchange or in substitution for previously issued Debentures which are interest bearing, shall bear interest (i) from and including their issue date, or (ii) from and including the last Interest Payment Date to which interest shall have been paid or made available for payment on the outstanding Debentures of that series, whichever shall be the later, or, in respect of Debentures subject to a Periodic Offering, from and including their issue date or from and including the last Interest Payment Date to which interest shall have been paid or made available for payment on such Debentures, in all cases, to and excluding the next Interest Payment Date.
- (b) Unless otherwise specifically provided in the terms of the Debentures of any series, interest shall be computed on the basis of a year of 365 days. With respect to any series of Debentures, 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.

### **2.12 Debentures to Rank *Pari Passu***

The Debentures will be direct unsecured obligations of the Corporation. Each Debenture of the same series of Debentures will rank *pari passu* with each other Debenture of the same series (regardless of their actual date or terms of issue) and, subject to statutory preferred exceptions, with all other present and future subordinated and unsecured indebtedness of the Corporation, other than Senior Indebtedness.

### **2.13 Payments of Amounts Due on Maturity**

Except as may otherwise be provided herein or in any supplemental indenture in respect of any series of Debentures and subject to Section 4.10, payments of amounts due upon maturity of the Debentures will be made in the following manner. The Corporation will establish and maintain with the Trustee a Maturity Account for each series of Debentures. Each such Maturity Account shall be maintained by and be subject to the control of the Trustee for the purposes of this Indenture. On or before 12:00 p.m. (Toronto time) on the Business Day immediately prior to each Maturity Date for Debentures outstanding from time to time under this Indenture, the Corporation will deliver to the Trustee a certified cheque or wire transfer for deposit in the applicable Maturity Account in an amount sufficient to pay the cash amount payable in respect of such Debentures (including the principal amount together with any accrued and unpaid interest thereon less any tax required by law to be deducted), provided the Corporation may elect to satisfy this requirement by providing the Trustee with a cheque for such amounts required under this Section 2.13 post-dated to the applicable Maturity Date. The Trustee, on behalf of the

Corporation, will pay to each holder entitled to receive payment the principal amount of and premium (if any) and accrued and unpaid interest on the Debenture, upon surrender of the Debenture at any branch of the Trustee designated for such purpose from time to time by the Corporation and the Trustee. The delivery of such funds to the Trustee for deposit to the applicable Maturity Account will satisfy and discharge the liability of the Corporation for the Debentures to which the delivery of funds relates to the extent of the amount delivered (plus the amount of any tax deducted as aforesaid) and such Debentures will thereafter to that extent not be considered as outstanding under this Indenture and such holder will have no other right in regard thereto other than to receive out of the money so delivered or made available the amount to which it is entitled.

## **2.14 Payment of Interest**

The following provisions shall apply to Debentures, except as otherwise provided in Section 2.4(c) or specified in a supplemental indenture relating to a particular series of Additional Debentures:

- (a) As interest becomes due on each Debenture (except, subject to certain exceptions set forth herein including in Section 2.4(c), on conversion or on redemption, when interest may at the option of the Corporation be paid upon surrender of such Debenture) the Corporation, either directly or through the Trustee or any agent of the Trustee, shall send or forward by prepaid ordinary mail, electronic transfer of funds or such other means as may be agreed to by the Trustee, payment of such interest (less any tax required to be withheld therefrom) to the order of the registered holder of such Debenture appearing on the registers maintained by the Trustee at the close of business on the fifth Business Day prior to the applicable Interest Payment Date and addressed to the holder at the holder's last address appearing on the register, unless such holder otherwise directs. If payment is made by cheque, such cheque shall be forwarded at least three days prior to each date on which interest becomes due and if payment is made by other means (such as electronic transfer of funds, 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 date such interest on such Debenture becomes due. The mailing of such cheque or the making of such payment by other means shall, to the extent of the sum represented thereby, plus the amount of any tax withheld as aforesaid, satisfy and discharge all liability for interest on such Debenture, unless in the case of payment by cheque, such cheque is not paid at par on presentation. In the event of non-receipt of any cheque for or other payment of interest by the Person to whom it is so sent as aforesaid, the Trustee will issue to such Person a replacement cheque or other 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 Corporation is prevented by circumstances beyond its control (including any interruption in mail service) from making payment of any interest due on each Debenture in the manner provided above, the Corporation 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.

- (b) All payments of interest on a Global Debenture shall be made by electronic funds transfer or certified cheque made payable to the Depository or its nominee on the day interest is payable for subsequent payment to Beneficial Holders of the applicable Global Debenture, unless the Corporation and the Depository otherwise agree. None of the Corporation, the Trustee or any agent of the Trustee for any Debenture issued as a Global Debenture will be liable or responsible to any Person for any aspect of the records related to or payments made on account of beneficial interests in any Global Debenture or for maintaining, reviewing, or supervising any records relating to such beneficial interests.
- (c) On or before 12:00 p.m. (Toronto time) on the Business Day immediately prior to an Interest Payment Date, the Corporation will deliver to the Trustee by certified cheque or wire transfer sufficient funds to satisfy the Corporation's obligations pursuant to this Section 2.14.

### **ARTICLE 3 REGISTRATION, TRANSFER, EXCHANGE AND OWNERSHIP**

#### **3.1 Fully Registered Debentures**

- (a) With respect to each series of Debentures issuable as Fully Registered Debentures, the Corporation shall cause to be kept by and at the principal office of the Trustee in Toronto, Ontario and by the Trustee or such other registrar as the Corporation, with the approval of the Trustee, may appoint at such other place or places, if any, as may be specified in the Debentures of such series or as the Corporation may designate with the approval of the Trustee, a register in which shall be entered the names and addresses of the holders of Fully Registered Debentures and particulars of the Debentures held by them respectively and of all transfers of Fully Registered Debentures. Such registration shall be noted on the Debentures by the Trustee or other registrar unless a new Debenture shall be issued upon such transfer.
- (b) No transfer of a Fully Registered Debenture shall be valid unless made on such register referred to in Section 3.1(a) by the registered 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 Debentures together with a duly executed form of transfer acceptable to the Trustee and upon compliance with such other reasonable requirements as the Trustee or other registrar may prescribe, including the requirements of Section 3.2(e), or unless the name of the transferee shall have been noted on the Debenture by the Trustee or other registrar.

### 3.2 Global Debentures

- (a) With respect to each series of Debentures issuable in whole or in part as one or more Global Debentures, the Corporation shall cause to be kept by and at the principal offices of the Trustee in Toronto, Ontario and by the Trustee or such other registrar as the Corporation, with the approval of the Trustee, may appoint at such other place or places, if any, as the Corporation 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 Debenture (being the Depository, or its nominee, for such Global Debenture) as holder thereof and particulars of the Global Debenture held by it, and of all transfers thereof. If any Debentures of such series are at any time not Global Debentures, the provisions of Section 3.1 shall also apply with respect to registrations and transfers of such Debentures.
- (b) Notwithstanding any other provision of this Indenture, a Global Debenture may not be transferred by the registered holder thereof and accordingly, no Fully Registered Debentures represented by definitive certificates shall be issued to Beneficial Holders except in the following circumstances or, other than with respect to the Initial Debentures, as otherwise specified in a resolution of the Trustee, a resolution of the Board of Directors, Officer's Certificate or supplemental indenture relating to a particular series of Additional Debentures:
  - (i) Global Debentures 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;
  - (ii) Global Debentures may be transferred at any time after the Depository for such Global Debentures (A) has notified the Trustee, or the Corporation has notified the Trustee, that it is unwilling or unable to continue as Depository for such Global Debentures, or (B) ceases to be eligible to be a Depository under Section 2.6(b), provided that at the time of such transfer the Corporation has not appointed a successor Depository for such Global Debentures;
  - (iii) Global Debentures may be transferred at any time after the Corporation has determined, in its sole discretion, to terminate the book-entry only registration system in respect of such Global Debentures and has communicated such determination to the Trustee in writing;
  - (iv) Global Debentures may be transferred at any time after the Trustee has determined that an Event of Default has occurred and is continuing with respect to the Debentures of the series issued as a Global Debenture, provided that Beneficial Holders representing, in the aggregate, not less than 25% of the aggregate principal amount of the Debentures of such series advise the Depository in writing, through the Depository Participants, that the continuation of the book-entry only registration

system for such series of Debentures is no longer in their best interest and also provided that at the time of such transfer the Trustee has not waived the Event of Default pursuant to Section 8.3;

- (v) Global Debentures may be transferred if required by applicable law; or
  - (vi) Global Debentures may be transferred if the book-entry only registration system ceases to exist.
- (c) Notwithstanding any other provision of this Indenture, with respect to the Global Debentures, unless and until Fully Registered Debentures represented by definitive certificates have been issued to Beneficial Holders pursuant to subsection 3.2(b):
- (i) the Corporation and the Trustee may deal with the Depository for all purposes (including paying interest on the Debentures) as the sole holder of such series of Debentures and the authorized representative of the Beneficial Holders;
  - (ii) the rights of the Beneficial Holders shall be exercised only through the Depository and shall be limited to those established by law and agreements between such Beneficial Holders and the Depository or the Depository Participants;
  - (iii) the Depository will make book-entry transfers among the Depository Participants; and
  - (iv) whenever this Indenture requires or permits actions to be taken based upon instruction or directions of Debentureholders evidencing a specified percentage of the outstanding Debentures, the Depository shall be deemed to be counted in that percentage only to the extent that it has received instructions to such effect from the Beneficial Holders or the Depository Participant, and has delivered such instructions to the Trustee.
- (d) Whenever a notice or other communication is required to be provided to Debentureholders, unless and until Fully Registered Debentures represented by definitive certificates have been issued to Beneficial Holders pursuant to this Section 3.2, the Trustee shall provide all such notices and communications to the Depository and the Depository shall deliver such notices and communications to such Beneficial Holders in accordance with Applicable Securities Legislation. Upon the termination of the book-entry only registration system on the occurrence of one of the conditions specified in Section 3.2(b) with respect to a series of Debentures issued hereunder, the Trustee shall notify all applicable Depository Participants and Beneficial Holders, through the Depository, of the availability of Fully Registered Debentures represented by definitive certificates. Upon surrender by the Depository of the certificate(s) representing the Global Debentures and receipt of new registration instructions from the Depository, the Trustee shall deliver the definitive Debenture certificates for such Debentures to

the holders thereof in accordance with the new registration instructions and thereafter, the registration and transfer of such Debentures will be governed by Section 3.1 and the remaining Sections of this Article 3, provided that any Fully Registered Debentures represented by definitive certificates issued or exchanged for a Restricted Global Debenture shall be issued in the form of Restricted Physical Debentures.

- (e) Except as may be required by the Trustee or the Depository, no written orders or instructions shall be required to be delivered to the Trustee to effect a transfer of a beneficial interest in a Global Debenture to Persons who take delivery thereof in the form of a beneficial interest in the same or another Global Debenture.

### **3.3 Transferee Entitled to Registration**

The transferee of a Debenture shall be entitled, after the appropriate form of transfer is lodged with the Trustee or other registrar and upon compliance with all other conditions in that behalf required by this Indenture or by law, to be entered on the register as the owner of such Debenture free from all equities or rights of set-off or counterclaim between the Corporation and the transferor or any previous holder of such Debenture, save in respect of equities of which the Corporation is required to take notice by statute or by order of a court of competent jurisdiction.

### **3.4 No Notice of Trusts**

Neither the Corporation 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 Debenture, and may transfer the same on the direction of the Person registered as the holder thereof, whether named as trustee or otherwise, as though that Person were the beneficial owner thereof.

### **3.5 Registers Open for Inspection**

The registers referred to in Sections 3.1 and 3.2 shall be open for inspection by the Corporation, the Trustee or any Debentureholder during the regular business hours of the Trustee. Every registrar, including the Trustee, shall from time to time when requested so to do by the Corporation or by the Trustee, in writing, furnish the Corporation or the Trustee, as the case may be, with a list of names and addresses of holders of registered Debentures entered on the register kept by them and showing the principal amount and serial numbers of the Debentures 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 Debentures**

- (a) Subject to Section 3.2 and Section 3.7, Debentures in any authorized form or denomination, other than Global Debentures, may be exchanged for Debentures in any other authorized form or denomination, of the same series and date of maturity, bearing the same interest rate and of the same aggregate principal amount as the Debentures so exchanged.

- (b) In respect of exchanges of Debentures permitted by Section 3.6(a), Debentures of any series may be exchanged only at the principal office of the Trustee in Toronto, Ontario or at such other place or places, if any, as may be specified in the Debentures of such series and at such other place or places as may from time to time be designated by the Corporation with the approval of the Trustee. Any Debentures tendered for exchange shall be surrendered to the Trustee. The Corporation shall execute and the Trustee shall certify all Debentures necessary to carry out exchanges as aforesaid. All Debentures surrendered for exchange shall be cancelled.
- (c) Debentures issued in exchange for Debentures 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 and shall have noted thereon a statement to that effect.

### **3.7 Closing of Registers**

- (a) Neither the Corporation nor the Trustee nor any registrar shall be required to:
  - (i) make transfers or exchanges or convert any of Fully Registered Debentures on any Interest Payment Date for such Debentures or during the five preceding Business Days;
  - (ii) make transfers or exchanges of, or convert any Debentures on the day of any selection by the Trustee of Debentures to be redeemed or during the five preceding Business Days; or
  - (iii) make exchanges of any Debentures which will have been selected or called for redemption unless upon due presentation thereof for redemption such Debentures shall not be redeemed.
- (b) Subject to any restriction herein provided, the Corporation with the approval of the Trustee may at any time close any register for any series of Debentures, other than those kept at the principal office of the Trustee in Toronto, Ontario, and transfer the registration of any Debentures registered thereon to another register (which may be an existing register) and thereafter such Debentures shall be deemed to be registered on such other register. Notice of such transfer shall be given to the holders of such Debentures.

### **3.8 Charges for Registration, Transfer and Exchange**

For each Debenture 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 Debenture issued (such amounts to be agreed upon from time to time by the Trustee and the Corporation), 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 Debentureholder hereunder:

- (a) for any exchange, registration, transfer or discharge from registration of any Debenture applied for within a period of two months from the date of the first delivery of Debentures of that series or, with respect to Debentures subject to a Periodic Offering, within a period of two months from the date of delivery of any such Debenture, which amount will be paid by the Corporation;
- (b) for any exchange of any interim or temporary Debenture or interim certificate that has been issued under Section 2.9 for a definitive Debenture;
- (c) for any exchange of a Global Debenture as contemplated in Section 3.2; or
- (d) for any exchange of any Debenture resulting from a partial redemption under Section 4.2.

### **3.9 Ownership of Debentures**

- (a) Unless otherwise required by law, the Person in whose name any registered Debenture is registered 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 and premium, if any, on such Debenture and interest thereon shall be made to such registered holder.
- (b) The registered holder for the time being of any registered Debenture shall be entitled to the principal, premium, if any, and/or interest evidenced by such instruments, respectively, free from all equities or rights of set-off or counterclaim between the Corporation and the original or any intermediate holder thereof and all Persons may act accordingly and the receipt of any such registered holder for any such principal, premium or interest shall be a good discharge to the Trustee, any registrar and to the Corporation for the same and none shall be bound to inquire into the title of any such registered holder.
- (c) Where Debentures 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 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 Corporation.
- (d) In the case of the death of one or more joint holders of any Debenture the principal, premium, if any, and interest from time to time payable thereon may be paid to the order of the survivor or survivors of such registered holders and the receipt of any such survivor or survivors therefor shall be a valid discharge to the Trustee and any registrar and to the Corporation.

**ARTICLE 4**  
**REDEMPTION AND PURCHASE OF DEBENTURES**

**4.1 Right to Redeem**

- (a) Subject to regulatory approval, Section 2.4(d) and Article 5, the Corporation shall have the right at its option to redeem, either in whole at any time or in part from time to time before the Maturity Date of such Debentures, either by payment of money, by issuance of Freely Tradeable Common Shares as provided in Section 4.6 or any combination thereof, any Debentures issued hereunder of any series which by their terms are made so redeemable (subject, however, to any applicable restriction on the redemption of Debentures of such series) at such rate or rates of premium, if any, and on such date or dates and in accordance with such other provisions as shall have been determined at the time of issue of such Debentures and as shall have been expressed in this Indenture, in the Debentures, or in a supplemental indenture authorizing or providing for the issue thereof, or in the case of Additional Debentures issued pursuant to a Periodic Offering, in the Written Direction of the Corporation requesting the certification and delivery thereof.
- (b) Subject to regulatory approval and Article 5, the Corporation shall also have the right at its option to repay, either in whole or in part, on maturity, either by payment of money in accordance with Section 2.13, by issuance of Freely Tradeable Common Shares as provided in Section 4.10 or any combination thereof, any Debentures issued hereunder of any series which by their terms are made so repayable on maturity (subject however, to any applicable restriction on the repayment of the principal amount of the Debentures of such series) at such rate or rates of premium, if any, and on such date or dates and in accordance with such other provisions as shall have been determined at the time of issue of such Debenture and shall have been expressed in this Indenture, in the Debentures, in an Officer's Certificate, or in a supplemental indenture authorizing or providing for the issue thereof, or in the case of Additional Debentures issued pursuant to a Periodic Offering, in the Written Direction of the Corporation requesting the certification and delivery thereof.

**4.2 Partial Redemption**

If less than all the Debentures of any series for the time being outstanding are at any time to be redeemed, or if a portion of the Debentures being redeemed are being redeemed for cash and a portion of such Debentures are being redeemed by the payment of Freely Tradeable Common Shares pursuant to Section 4.6, the Debentures to be so redeemed shall be selected by the Trustee on a *pro rata* basis to the nearest multiple of \$1,000 in accordance with the principal amount of the Debentures registered in the name of each holder or in such other manner as the Trustee deems equitable, subject to the approval of the Toronto Stock Exchange or such other exchange on which the Debentures are then listed and posted for trading, as may be required from time to time. Unless otherwise specifically provided in the terms of any series of Debentures, no Debenture shall be redeemed in part unless the principal amount redeemed is \$1,000 or a

multiple thereof. For this purpose, the Trustee may make, and from time to time vary, regulations with respect to the manner in which such Debentures may be drawn for redemption and regulations so made shall be valid and binding upon all holders of such Debentures notwithstanding that as a result thereof one or more of such Debentures may become subject to redemption in part only or for cash only. In the event that one or more of such Debentures becomes subject to redemption in part only, upon surrender of any such Debentures for payment of the Redemption Price, the Corporation shall execute and the Trustee shall certify and deliver without charge to the holder thereof or upon the holder's order one or more new Debentures for the unredeemed part of the principal amount of the Debenture or Debentures so surrendered or, with respect to a Global Debenture, the Depository shall make notations on the Global Debenture of the principal amount thereof so redeemed. Unless the context otherwise requires, the terms "Debenture" or "Debentures" as used in this Article 4 shall be deemed to mean or include any part of the principal amount of any Debenture which in accordance with the foregoing provisions has become subject to redemption.

#### **4.3 Notice of Redemption**

Notice of redemption (the "**Redemption Notice**") of any series of Debentures shall be given to the holders of the Debentures so to be redeemed, with a copy sent at the same time to the Toronto Stock Exchange, not more than 60 days nor less than 30 days prior to the date fixed for redemption (the "**Redemption Date**") in the manner provided in Section 14.2. Every such notice shall specify the aggregate principal amount of Debentures called for redemption, the Redemption Date, the Redemption Price and the places of payment and shall state that interest upon the principal amount of Debentures called for redemption shall cease to be payable from and after the Redemption Date. In addition, unless all the outstanding Debentures are to be redeemed, the Redemption Notice shall specify:

- (a) the distinguishing letters and numbers of the registered Debentures which are to be redeemed (or of such thereof as are registered in the name of such Debentureholder);
- (b) in the case of a published notice, the distinguishing letters and numbers of the Debentures which are to be redeemed or, if such Debentures are selected by terminal digit or other similar system, such particulars as may be sufficient to identify the Debentures so selected;
- (c) in the case of a Global Debenture, that the redemption will take place in such manner as may be agreed upon the Depository, the Trustee and the Corporation; and
- (d) in all cases, the principal amounts of such Debentures or, if any such Debenture is to be redeemed in part only, the principal amount of such part.

#### **4.4 Debentures Due on Redemption Dates**

Notice having been given as aforesaid, all the Debentures so called for redemption shall thereupon be and become due and payable at the Redemption Price on the Redemption Date specified in such notice, in the same manner and with the same effect as if it were the date of

maturity specified in such Debentures, anything therein or herein to the contrary notwithstanding, and from and after such Redemption Date, if the monies necessary to redeem, or the Common Shares to be issued to redeem, such Debentures shall have been deposited as provided in Section 4.5 and affidavits or other proof satisfactory to the Trustee as to the publication and/or mailing of such notices shall have been lodged with it, interest upon the Debentures 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.

#### **4.5 Deposit of Redemption Monies or Common Shares**

Redemption of Debentures shall be provided for by the Corporation depositing with the Trustee or any paying agent to the order of the Trustee, on or before 12:00 p.m. (Toronto time) on the Business Day immediately prior to the Redemption Date specified in such notice, such sums of money, or certificates representing such Common Shares, or both as the case may be, as may be sufficient to pay the Redemption Price of the Debentures so called for redemption, provided the Corporation may elect to satisfy this requirement by providing the Trustee with a certified cheque or wire transfer for such amounts required under this Section 4.5 post-dated to the Redemption Date. The Corporation 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, or certificates so deposited, or both, the Trustee shall pay or cause to be paid, or issue or cause to be issued, to the holders of such Debentures so called for redemption, upon surrender of such Debentures, the principal, premium (if any) and interest (if any) to which they are respectively entitled on redemption.

#### **4.6 Right to Repay Redemption Principal Amount in Common Shares**

- (a) Subject to the receipt of any required regulatory approvals, the provisions governing any series of Debentures and the other provisions of this Section 4.6, the Corporation may, at its option, in exchange for or in lieu of paying the aggregate principal amount of Debentures (the “**Redemption Principal Amount**”) to be redeemed in money, elect to satisfy its obligation to pay all or any portion of the Redemption Principal Amount of Debentures to be redeemed by issuing and delivering to holders on the Redemption Date that number of Freely Tradeable Common Shares obtained by dividing the Redemption Principal Amount of the Debentures to be redeemed (or applicable portion thereof to be satisfied by the issuance and delivery of Freely Tradeable Common Shares) by 95% of the then Current Market Price of the Common Shares on the Redemption Date (the “**Common Share Redemption Right**”). Holders who are Qualified Canadians will receive Class A Shares and holders who are not Qualified Canadians will receive Class B Shares. Any accrued and unpaid interest on the Debentures to be redeemed will be paid to the holders of Debentures in cash in the manner contemplated in Section 4.5.
- (b) The Corporation shall exercise the Common Share Redemption Right by so specifying in the Redemption Notice, which shall be delivered to the Trustee and

the holders of Debentures not more than 60 days and not less than 40 days prior to the Redemption Date, and which shall also specify the aggregate principal amount of Debentures in respect of which it is exercising the Common Share Redemption Right in such notice.

- (c) Prior to the issuance of Common Shares pursuant to Section 4.6(a), the Trustee will provide the holders of Debentures with a Residency Declaration Form in substantially the form of Schedule F and instructions with respect to its completion and transmission to the Trustee. Each holder of Debentures who is a Qualified Canadian is entitled to receive Class A Shares upon the delivery to the Trustee of a duly completed Residency Declaration to the effect that such holder is a Qualified Canadian. Each holder of Debentures who is not a Qualified Canadian is entitled to receive Class B Shares upon the delivery to the Trustee of a duly completed Residency Declaration to the effect that such holder is not a Qualified Canadian. Notwithstanding any other provision of this Indenture, in the case of Global Securities, Residency Declarations may be delivered in accordance with the Applicable Procedures. Holders of Debentures will not be issued Common Shares until a Residency Declaration Form in a form acceptable to the Corporation is delivered.
- (d) The Corporation's right to exercise the Common Share Redemption Right shall be conditional upon the following conditions being met on the Business Day preceding the Redemption Date:
  - (i) the issuance of the Common Shares on the exercise of the Common Share Redemption Right shall be made in accordance with Applicable Securities Legislation and such Common Shares shall be issued as Freely Tradeable Common Shares;
  - (ii) such additional Freely Tradeable Class A Shares shall be listed on each stock exchange on which the Class A Shares are then listed, the Toronto Stock Exchange or a national securities exchange or quoted in an inter-dealer quotation system of any registered national securities association;
  - (iii) the Corporation shall be a reporting issuer in good standing under Applicable Securities Legislation where the distribution of such Freely Tradeable Common Shares occurs;
  - (iv) no Event of Default shall have occurred and be continuing;
  - (v) the Trustee shall have received an Officer's Certificate stating that conditions (i), (ii), (iii) and (iv) above have been satisfied and setting forth the number of Common Shares to be delivered for each \$1,000 principal amount of Debentures and the Current Market Price of the Common Shares on the Redemption Date; and
  - (vi) the Trustee shall have received an opinion of Counsel to the effect that such Common Shares have been duly authorized and, when issued and

delivered pursuant to the terms of this Indenture in payment of the Redemption Principal Amount, will be validly issued as fully paid and non-assessable, that conditions (i) and (ii) above have been satisfied and that, relying exclusively on certificates of good standing issued by the relevant securities authorities, condition (iii) above is satisfied, except that the opinion in respect of condition (iii) need not be expressed with respect to those provinces where certificates are not issued.

- (vii) If the foregoing conditions are not satisfied prior to the close of business on the Business Day preceding the Redemption Date, the Corporation shall pay the entire Redemption Price, including the Redemption Principal Amount, in cash in accordance with Section 4.5 unless the Debentureholder waives the conditions which are not satisfied. The Corporation may not change the form of components or percentage of consideration to be paid for the Debentures except as described in the preceding sentence. When the Corporation determines the actual number of the Common Shares to be issued pursuant to the Corporation's exercise of its Common Share Redemption Right, it will issue a press release on a national newswire disclosing the Current Market Price and such actual number of Common Shares.
- (e) In the event that the Corporation duly exercises its Common Share Redemption Right, upon presentation and surrender of the Debentures for payment on the Redemption Date, at any place where a register is maintained pursuant to Article 3 or any other place specified in the Redemption Notice, the Corporation shall on or before 12:00 p.m. (Toronto time) on the Business Day immediately prior to the Redemption Date make the delivery to the Trustee for delivery to and on account of the holders, of certificates representing the Freely Tradeable Common Shares to which such holders are entitled.
- (f) No fractional Freely Tradeable Common Shares shall be delivered upon the exercise of the Common Share Redemption Right but, in lieu thereof, the Corporation shall pay to the Trustee for the account of the holders, at the time contemplated in Section 4.6(e), the cash equivalent thereof determined on the basis of the Current Market Price of the Common Shares on the Redemption Date (less any tax required to be deducted, if any).
- (g) A holder shall be treated as the shareholder of record of the Freely Tradeable Common Shares issued on due exercise by the Corporation of its Common Share Redemption Right effective immediately after the close of business on the Redemption Date, and shall be entitled to all substitutions therefor, all income earned thereon or accretions thereto and all dividends or distributions (including distributions and dividends in kind) thereon and arising thereafter, and in the event that the Trustee receives the same, it shall hold the same in trust for the benefit of such holder.

- (h) The Corporation shall at all times reserve and keep available out of its authorized Common Shares (if the number thereof is or becomes limited), solely for the purpose of issue and delivery upon the exercise of the Common Share Redemption Right as provided herein, and shall issue to Debentureholders to whom Freely Tradeable Common Shares will be issued pursuant to exercise of the Common Share Redemption Right, such number of Freely Tradeable Common Shares as shall be issuable in such event. All Freely Tradeable Common Shares which shall be so issuable shall be duly and validly issued as fully paid and non-assessable.
- (i) The Corporation shall comply with all Applicable Securities Legislation regulating the issue and delivery of Freely Tradeable Common Shares upon exercise of the Common Share Redemption Right and shall cause to be listed and posted for trading such Class A Shares on each stock exchange on which the Class A Shares are then listed.
- (j) The Corporation shall from time to time promptly pay, or make provision satisfactory to the Trustee for the payment of, all taxes and charges which may be imposed by the laws of Canada or any province thereof (except income tax, withholding tax or security transfer tax, if any) which shall be payable with respect to the issuance or delivery of Freely Tradeable Common Shares to holders upon exercise of the Common Share Redemption Right pursuant to the terms of the Debentures and of this Indenture.
- (k) If the Corporation elects to satisfy its obligation to pay all or any portion of the Redemption Principal Amount by issuing Freely Tradeable Common Shares in accordance with this Section 4.6 and if the Redemption Principal Amount (or any portion thereof) to which a holder is entitled is subject to withholding taxes and the amount of the cash payment of the Redemption Principal Amount, if any, is insufficient to satisfy such withholding taxes, the Trustee, on the Written Direction of the Corporation but for the account of the holder, shall sell, through the investment banks, brokers or dealers selected by the Corporation, out of the Freely Tradeable Common Shares issued by the Corporation for this purpose, such number of Freely Tradeable Common Shares that together with the cash payment of the Redemption Principal Amount, if any, is sufficient to yield net proceeds (after payment of all costs) to cover the amount of taxes required to be withheld, and shall remit same on behalf of the Corporation to the proper tax authorities within the period of time prescribed for this purpose under applicable laws.

#### **4.7 Failure to Surrender Debentures Called for Redemption**

In case the holder of any Debenture so called for redemption shall fail on or before the Redemption Date so to surrender such holder's Debenture, or shall not within such time accept payment of the redemption monies payable, or take delivery of certificates representing such Common Shares issuable in respect thereof, or give such receipt therefor, if any, as the Trustee may require, such redemption monies may be set aside in trust, or such certificates may be held

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 Debentureholder of the sum or Common Shares so set aside and, to that extent, the Debenture shall thereafter not be considered as outstanding hereunder and the Debentureholder shall have no other right except to receive payment out of the monies so paid and deposited, or take delivery of the certificates so deposited, or both, upon surrender and delivery up of such holder's Debenture of the Redemption Price, as the case may be, of such Debenture. In the event that any money, or certificates representing Common Shares, required to be deposited hereunder with the Trustee or any depository or paying agent on account of principal, premium, if any, or interest, if any, on Debentures issued hereunder shall remain so deposited for a period of six years from the Redemption Date, then such monies or certificates representing Common Shares, together with any distribution paid thereon, shall at the end of such period be paid over or delivered over by the Trustee or such depository or paying agent to the Corporation on its demand, and thereupon the Trustee shall not be responsible to Debentureholders for any amounts owing to them and subject to applicable law, thereafter the holder of a Debenture in respect of which such money was so repaid to the Corporation shall have no rights in respect thereof except to obtain payment of the money or certificates due from the Corporation, 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 Corporation upon receipt from the Corporation, 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 Corporation prior to the expiry of six years after the Redemption Date, the Corporation shall reimburse the Trustee for any amounts required to be paid by the Trustee to a holder of a Debenture pursuant to the redemption after the date of such payment of the remaining funds to the Corporation but prior to six years after the redemption.

#### **4.8 Cancellation of Debentures Redeemed**

Subject to the provisions of Sections 4.2 and 4.9 as to Debentures redeemed or purchased in part, all Debentures redeemed and paid under this Article 4 shall forthwith be delivered to the Trustee and cancelled and no Debentures shall be issued in substitution for those redeemed.

#### **4.9 Purchase of Debentures by the Corporation**

- (a) Unless otherwise specifically provided with respect to a particular series of Debentures, the Corporation may, if it is not at the time in default hereunder, at any time and from time to time, purchase Debentures in the market (which shall include purchases from or through an investment dealer or a firm holding membership on a recognized stock exchange) or by tender or by contract, at any price. All Debentures so purchased will be delivered to the Trustee and shall be cancelled and no Debentures shall be issued in substitution therefor.
- (b) If, upon an invitation for tenders, more Debentures are tendered at the same lowest price that the Corporation is prepared to accept, the Debentures to be purchased by the Corporation shall be selected by the Trustee on a *pro rata* basis or in such other manner consented to by the Toronto Stock Exchange or such other exchange on which the Debentures are then listed and posted for trading



which the Trustee considers appropriate, from the Debentures tendered by each tendering Debentureholder who tendered at such lowest price. For this purpose the Trustee may make, and from time to time amend, regulations with respect to the manner in which Debentures may be so selected, and regulations so made shall be valid and binding upon all Debentureholders, notwithstanding the fact that as a result thereof one or more of such Debentures become subject to purchase in part only. The holder of a Debenture of which a part only is purchased, upon surrender of such Debenture for payment, shall be entitled to receive, without expense to such holder, one or more new Debentures for the unpurchased part so surrendered, and the Trustee shall certify and deliver such new Debenture or Debentures upon receipt of the Debenture so surrendered or, with respect to a Global Debenture, the Depository shall make notations on the Global Debenture of the principal amount thereof so purchased.

#### **4.10 Right to Repay Principal Amount in Common Shares**

- (a) Subject to the receipt of any required regulatory approvals, the provisions governing any series of Debentures and the other provisions of this Section 4.10, the Corporation may, at its option, in exchange for or in lieu of repaying the principal amount of the Debentures in money, elect to satisfy its obligation to repay all or any portion of the principal amount of the Debentures outstanding by issuing and delivering to holders on the Maturity Date of such Debentures that number of Freely Tradeable Common Shares obtained by dividing the principal amount of the Debentures (or applicable portion thereof to be satisfied by the issuance and delivery of Freely Tradeable Common Shares) by 95% of the then Current Market Price of the Common Shares on the Maturity Date (the “**Common Share Repayment Right**”). Holders who are Qualified Canadians will receive Class A Shares and holders who are not Qualified Canadians will receive Class B Shares. Any accrued and unpaid interest on the Debentures will be paid to the holders of Debentures in cash in the manner contemplated in Section 4.5.
- (b) The Corporation shall exercise the Common Share Repayment Right by so specifying in the Maturity Notice, which shall be delivered to the Trustee and the holders of Debentures not more than 60 days and not less than 40 days prior to the Maturity Date, and which shall also specify the aggregate principal amount of Debentures in respect of which it is exercising the Common Share Repayment Right on the Maturity Date.
- (c) Prior to the issuance of Common Shares pursuant to Section 4.10(a), the Trustee will provide the holders of Debentures with a Residency Declaration Form in substantially the form of Schedule F and instructions with respect to its completion and transmission to the Trustee. Each holder of Debentures who is a Qualified Canadian is entitled to receive Class A Shares upon the delivery to the Trustee of a duly completed Residency Declaration to the effect that such holder is a Qualified Canadian. Each holder of Debentures who is not a Qualified Canadian is entitled to receive Class B Shares upon the delivery to the Trustee of a duly completed Residency Declaration to the effect that such holder is not a

Qualified Canadian. Notwithstanding any other provision in this Indenture, in the case of Global Securities, Residency Declarations may be delivered in accordance with the Applicable Procedures. Holders of Debentures will not be issued Common Shares until a Residency Declaration Form in a form acceptable to the Corporation is delivered.

- (d) The Corporation's right to exercise the Common Share Repayment Right shall be conditional upon the following conditions being met on the Business Day preceding the Maturity Date:
- (i) the issuance of the Common Shares on the exercise of the Common Share Repayment Right shall be made in accordance with Applicable Securities Legislation and such Common Shares shall be issued as Freely Tradeable Common Shares;
  - (ii) such additional Freely Tradeable Class A Shares shall be listed on each stock exchange on which the Class A Shares are then listed, the Toronto Stock Exchange or a national securities exchange or quoted in an inter-dealer quotation system of any registered national securities association;
  - (iii) the Corporation shall be a reporting issuer in good standing under Applicable Securities Legislation where the distribution of such Freely Tradeable Common Shares occurs;
  - (iv) no Event of Default shall have occurred and be continuing;
  - (v) the Trustee shall have received an Officer's Certificate stating that conditions (i), (ii), (iii) and (iv) above have been satisfied and setting forth the number of Common Shares to be delivered for each \$1,000 principal amount of Debentures and the Current Market Price of the Common Shares on the Maturity Date; and
  - (vi) the Trustee shall have received an opinion of Counsel to the effect that such Common Shares have been duly authorized and, when issued and delivered pursuant to the terms of this Indenture in payment of the principal amount of the Debentures outstanding, will be validly issued as fully paid and non-assessable, that conditions (i) and (ii) above have been satisfied and that, relying exclusively on certificates of good standing issued by the relevant securities authorities, condition (iii) above is satisfied, except that the opinion in respect of condition (iii) need not be expressed with respect to those provinces where certificates are not issued.

If the foregoing conditions are not satisfied prior to the close of business on the Business Day preceding the Maturity Date, the Corporation shall pay the principal amount of the Debentures outstanding, together with all accrued and unpaid interest thereon, in cash in accordance with Section 2.13, unless the Debentureholder waives the conditions which are not satisfied. The Corporation may not change the form of components or

percentages of consideration to be paid for the Debentures once it has given the notice required to be given to Debentureholders hereunder, except as described in the preceding sentence. When the Corporation determines the actual number of Common Shares to be issued pursuant to the exercise of its Common Share Repayment Right, it will issue a press release on a national newswire disclosing the Current Market Price and such actual number of Common Shares.

- (e) In the event that the Corporation duly exercises its Common Share Repayment Right, upon presentation and surrender of the Debentures for payment on the Maturity Date, at any place where a register is maintained pursuant to Article 3 or any other place specified in the Maturity Notice, the Corporation shall on or before 12:00 p.m. (Toronto time) on the Business Day immediately prior to the Maturity Date make the delivery to the Trustee for delivery to and on account of the holders, of certificates representing the Freely Tradeable Common Shares to which such holders are entitled. The Corporation 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 the Common Share Repayment Right. Every such deposit shall be irrevocable. From the certificates so deposited in addition to amounts payable by the Trustee pursuant to Section 2.13, the Trustee shall pay or cause to be paid, to the holders of such Debentures, upon surrender of such Debentures, the principal amount of and premium (if any) on the Debentures to which they are respectively entitled on maturity and deliver to such holders the certificates to which such holders are entitled. The delivery of such certificates to the Trustee will satisfy and discharge the liability of the Corporation for the Debentures to which the delivery of certificates relates to the extent of the amount delivered (plus the amount of any certificates sold to pay applicable taxes in accordance with this Section 4.10) and such Debentures will thereafter to that extent not be considered as outstanding under this Indenture and such holder will have no other right in regard thereto other than to receive out of the certificates so delivered, the certificate(s) to which it is entitled.
- (f) No fractional Freely Tradeable Common Shares shall be delivered upon the exercise of the Common Share Repayment Right but, in lieu thereof, the Corporation shall pay to the Trustee for the account of the holders, at the time contemplated in Section 4.10(e), the cash equivalent thereof determined on the basis of the Current Market Price of the Common Shares on the Maturity Date (less any tax required to be deducted, if any).
- (g) A holder shall be treated as the shareholder of record of the Freely Tradeable Common Shares issued on due exercise by the Corporation of its Common Share Repayment Right effective immediately after the close of business on the Maturity Date, and shall be entitled to all substitutions therefor, all income earned thereon or accretions thereto and all dividends or distributions (including dividends and distributions in kind) thereon and arising thereafter, and in the event that the Trustee receives the same, it shall hold the same in trust for the benefit of such holder.

- (h) The Corporation shall at all times reserve and keep available out of its authorized Common Shares (if the number thereof is or becomes limited), solely for the purpose of issue and delivery upon the exercise of the Corporation's Common Share Repayment Right as provided herein, and shall issue to Debentureholders to whom Freely Tradeable Common Shares will be issued pursuant to exercise of the Common Share Repayment Right, such number of Freely Tradeable Common Shares as shall be issuable in such event. All Freely Tradeable Common Shares which shall be so issuable shall be duly and validly issued as fully paid and non-assessable.
- (i) The Corporation shall comply with all Applicable Securities Legislation regulating the issue and delivery of Freely Tradeable Common Shares upon exercise of the Common Share Repayment Right and shall cause to be listed and posted for trading such Freely Tradeable Class A Shares on each stock exchange on which the Class A Shares are then listed.
- (j) The Corporation shall from time to time promptly pay, or make provision satisfactory to the Trustee for the payment of, all taxes and charges which may be imposed by the laws of Canada or any province thereof (except income tax, withholding tax or security transfer tax, if any) which shall be payable with respect to the issuance or delivery of Freely Tradeable Common Shares to holders upon exercise of the Common Share Repayment Right pursuant to the terms of the Debentures and of this Indenture.
- (k) If the Corporation elects to satisfy its obligation to pay all or any portion of the principal amount of Debentures due on maturity by issuing Freely Tradeable Common Shares in accordance with this Section 4.10 and if the amount (or any portion thereof) to which a holder is entitled is subject to withholding taxes and the amount of the cash payment of the amount due on maturity, if any, is insufficient to satisfy such withholding taxes, the Trustee, on the Written Direction of the Corporation but for the account of the holder, shall sell, through the investment banks, brokers or dealers selected by the Corporation, out of the Freely Tradeable Common Shares issued by the Corporation for this purpose, such number of Freely Tradeable Common Shares that together with the cash component of the amount due on maturity, including any interest accrued thereon is sufficient to yield net proceeds (after payment of all costs) to cover the amount of taxes required to be withheld, and shall remit same on behalf of the Corporation to the proper tax authorities within the period of time prescribed for this purpose under applicable laws.
- (l) Interest accrued and unpaid on the Debentures on the Maturity Date will be paid to holders of Debentures, in cash, in the manner contemplated in Section 2.14.

## ARTICLE 5 SUBORDINATION OF DEBENTURES

### 5.1 Subordination

The indebtedness, liabilities and obligations of the Corporation hereunder (except as provided in Section 15.5) or under the Debentures, whether on account of principal, premium, if any, interest or otherwise, but excluding the issuance of Common Shares upon any conversion pursuant to Article 16, upon any redemption pursuant to Article 4, or at maturity pursuant to Article 4 (collectively, the “**Debenture Liabilities**”), shall be subordinated and postponed and subject in right of payment, to the extent and in the manner hereinafter set forth in the following Sections of this Article 5, to the full and final payment of all Senior Indebtedness, and each holder of any such Debenture by his acceptance thereof agrees to and shall be bound by the provisions of this Article 5.

### 5.2 Order of Payment

In the event of any insolvency or bankruptcy proceedings, or any receivership, liquidation, reorganization or other similar proceedings relative to the Corporation, or to its property or assets, or in the event of any proceedings for voluntary liquidation, dissolution or other winding-up of the Corporation, whether or not involving insolvency or bankruptcy, or any marshalling of the assets and liabilities of the Corporation:

- (a) all Senior Indebtedness shall first be paid in full, or provision made for such payment, before any payment is made on account of Debenture Liabilities;
- (b) any payment or distribution of assets of the Corporation, whether in cash, property or securities, to which the holders of the Debentures or the Trustee on behalf of such holders would be entitled except for the provisions of this Article 5, shall be paid or delivered by the trustee in bankruptcy, receiver, assignee for the benefit of creditors, or other liquidating agent making such payment or distribution, directly to the holders of Senior Indebtedness or their representative or representatives, or to the trustee or trustees under any indenture pursuant to which any instruments evidencing any of such Senior Indebtedness may have been issued, to the extent necessary to pay all Senior Indebtedness in full after giving effect to any concurrent payment or distribution, or provision therefor, to the holders of such Senior Indebtedness; and
- (c) the Senior Creditors or a receiver or a receiver-manager of the Corporation or of all or part of its assets or any other enforcement agent may sell, mortgage, or otherwise dispose of the Corporations assets in whole or in part, free and clear of all Debenture Liabilities and without the approval of the Debentureholders or the Trustee or any requirement to account to the Trustee or the Debentureholders.

The rights and priority of the Senior Indebtedness and the subordination pursuant hereto shall not be affected by:

- (a) whether or not the Senior Indebtedness is secured;

- (b) the time, sequence or order of creating, granting, executing, delivering of, or registering, perfecting or failing to register or perfect any security notice, caveat, financing statement or other notice in respect of the Senior Security;
- (c) the time or order of the attachment, perfection or crystallization of any security constituted by the Senior Security;
- (d) the taking of any collection, enforcement or realization proceedings pursuant to the Senior Security;
- (e) the date of obtaining of any judgment or order of any bankruptcy court or any court administering bankruptcy, insolvency or similar proceedings as to the entitlement of the Senior Creditors, or any of them or the Debentureholders or any of them to any money or property of the Corporation;
- (f) the failure to exercise any power or remedy reserved to the Senior Creditors under the Senior Security or to insist upon a strict compliance with any terms thereof;
- (g) whether any Senior Security is now perfected, hereafter ceases to be perfected, is avoidable by any trustee in bankruptcy or like official or is otherwise set aside, invalidated or lapses;
- (h) the date of giving or failing to give notice to or making demand upon the Corporation; or
- (i) any other matter whatsoever.

### **5.3 Subrogation to Rights of Holders of Senior Indebtedness**

- (a) Subject to the prior payment in full of all Senior Indebtedness, the holders of the Debentures shall be subrogated to the rights of the holders of Senior Indebtedness to receive payments or distributions of assets of the Corporation to the extent of the application thereto of such payments or other assets which would have been received by the holders of the Debentures but for the provisions hereof until the principal of, premium, if any, and interest on the Debentures shall be paid in full, and no such payments or distributions to the holders of the Debentures of cash, property or securities, which otherwise would be payable or distributable to the holders of the Senior Indebtedness, shall, as between the Corporation, its creditors other than the holders of Senior Indebtedness, and the holders of Debentures, be deemed to be a payment by the Corporation to the holders of the Senior Indebtedness or on account of the Senior Indebtedness, it being understood that the provisions of this Article 5 are and are intended solely for the purpose of defining the relative rights of the holders of the Debentures, on the one hand, and the holders of Senior Indebtedness, on the other hand.
- (b) The Trustee, for itself and on behalf of each of the Debentureholders, hereby waives any and all rights to require a Senior Creditor to pursue or exhaust any rights or remedies with respect to the Corporation or any property and assets

subject to any Senior Security or in any other manner to require the marshalling of property, assets or security in connection with the exercise by the Senior Creditors of any rights, remedies or recourses available to them.

#### **5.4 Obligation to Pay Not Impaired**

Nothing contained in this Article 5 or elsewhere in this Indenture or in the Debentures is intended to or shall impair, as between the Corporation, its creditors other than the holders of Senior Indebtedness, and the holders of the Debentures, the obligation of the Corporation, which is absolute and unconditional, to pay to the holders of the Debentures the principal of, premium, if any, and interest on the Debentures, as and when the same shall become due and payable in accordance with their terms, or affect the relative rights of the holders of the Debentures and creditors of the Corporation other than the holders of the Senior Indebtedness, nor shall anything herein or therein prevent the Trustee or the holder of any Debenture from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, subject to the rights, if any, under this Article 5 of the holders of Senior Indebtedness.

#### **5.5 No Payment if Senior Indebtedness in Default**

- (a) Upon the maturity of any Senior Indebtedness by lapse of time, acceleration or otherwise, or any other enforcement of any Senior Indebtedness, then, except as provided in Section 5.8, all such Senior Indebtedness shall first be paid in full, or shall first have been duly provided for, before any payment is made on account of the Debenture Liabilities.
- (b) In case of a circumstance constituting a default or event of default with respect to any Senior Indebtedness permitting (whether at that time or upon notice, lapse of time, or satisfaction of any other condition precedent) a Senior Creditor to demand payment or accelerate the maturity thereof where the notice of such default or event of default has been given by or on behalf of the holders of Senior Indebtedness to the Corporation or the Corporation otherwise has knowledge thereof, unless and until such default or event of default shall have been cured or waived or shall have ceased to exist, no payment (by purchase of Debentures or otherwise) shall be made by the Corporation (except as provided in Section 5.8) with respect to the Debenture Liabilities and neither the Trustee nor the holders of Debentures shall be entitled to demand, institute proceedings for the collection of (which shall, for certainty include proceedings related to an adjudication or declaration as to the insolvency or bankruptcy of the Corporation and other similar creditor proceedings), or receive any payment or benefit (including by set-off, combination of accounts or otherwise in any manner whatsoever) on account of the Debentures after the happening of such a default or event of default (except as provided in Section 5.8), and unless and until such default or event of default shall have been cured or waived or shall have ceased to exist, such payments shall be held in trust for the benefit of, and, if and when such Senior Indebtedness shall have become due and payable, shall be paid over to, the holders of the Senior Indebtedness or their representative or representatives or to the trustee or trustees under any indenture under which any instruments evidencing an amount of the

Senior Indebtedness remaining unpaid until all such Senior Indebtedness shall have been paid in full, after giving effect to any concurrent payment or distribution to the holders of such Senior Indebtedness.

- (c) The fact that any payment hereunder is prohibited by this Section 5.5 shall not prevent the failure to make such payment from being an Event of Default hereunder.

## **5.6 Payment on Debentures Permitted**

Nothing contained in this Article 5 or elsewhere in this Indenture, or in any of the Debentures, shall affect the obligation of the Corporation to make, or prevent the Corporation from making, at any time except as prohibited by Sections 5.2 or 5.5, any payment of principal of or, premium, if any, or interest on the Debentures. The fact that any such payment is prohibited by Sections 5.2 or 5.5 shall not prevent the failure to make such payment from being an Event of Default hereunder. Nothing contained in this Article 5 or elsewhere in this Indenture, or in any of the Debentures, shall prevent the conversion of the Debentures. or, except as prohibited by Sections 5.2 or 5.5, the application by the Trustee of any monies deposited with the Trustee hereunder for the purpose, to the payment of or on account of the Debenture Liabilities.

## **5.7 Confirmation of Subordination**

Each holder of Debentures by his acceptance thereof authorizes and directs the Trustee on his behalf to take such action as may be necessary or appropriate to effect the subordination as provided in this Article 5 and appoints the Trustee his attorney-in-fact for any and all such purposes. Upon request of the Corporation, and upon being furnished an Officer's Certificate stating that one or more named Persons are Senior Creditors and specifying the amount and nature of the Senior Indebtedness of such Senior Creditor, the Trustee shall enter into a written agreement or agreements with the Corporation and the Person or Persons named in such Officer's Certificate providing that such Person or Persons are entitled to all the rights and benefits of this Article 5 as a Senior Creditor and for such other matters, such as an agreement not to amend the provisions of this Article 5 and the definitions herein without the consent of such Senior Creditor, as the Senior Creditor may reasonably request. Such agreement shall be conclusive evidence that the indebtedness specified therein is Senior Indebtedness, however, nothing herein shall impair the rights of any Senior Creditor who has not entered into such an agreement.

## **5.8 Knowledge of Trustee**

Notwithstanding the provisions of this Article 5 or any provision in this Indenture or in the Debentures contained, the Trustee will not be charged with knowledge of any Senior Indebtedness or of any default in the payment thereof, or of the existence of any Event of Default or any other fact that would prohibit the making of any payment of monies to or by the Trustee, or the taking of any other action by the Trustee, unless and until the Trustee has received written notice thereof from the Corporation, any Debentureholder or any Senior Creditor. The Trustee may assume for all purposes that there has been no Event of Default unless it has received



notification in writing that an Event of Default has occurred, which notification shall give in reasonable detail the nature of the default in question.

### **5.9 Trustee May Hold Senior Indebtedness**

The Trustee is entitled to all the rights set forth in this Article 5 with respect to any Senior Indebtedness at the time held by it, to the same extent as any other holder of Senior Indebtedness, and nothing in this Indenture deprives the Trustee of any of its rights as such holder.

### **5.10 Rights of Holders of Senior Indebtedness Not Impaired**

No right of any present or future holder of any Senior Indebtedness to enforce the subordination herein will at any time or in any way be prejudiced or impaired by any act or failure to act on the part of the Corporation or by any non-compliance by the Corporation with the terms, provisions and covenants of this Indenture, regardless of any knowledge thereof which any such holder may have or be otherwise charged with.

### **5.11 Altering the Senior Indebtedness**

The holders of the Senior Indebtedness have the right to extend, renew, modify or amend the terms of the Senior Indebtedness or any security therefor and to release, sell or exchange such security and otherwise to deal freely with the Corporation, all without notice to or consent of the Debentureholders or the Trustee and without affecting the liabilities and obligations of the parties to this Indenture or the Debentureholders.

### **5.12 Additional Indebtedness**

This Indenture does not restrict the Corporation from incurring additional indebtedness for borrowed money or other obligations or liabilities (including Senior Indebtedness) or mortgaging, pledging or charging its properties to secure any indebtedness or obligations or liabilities.

### **5.13 Right of Debentureholder to Convert Not Impaired**

The subordination of the Debentures to the Senior Indebtedness and the provisions of this Article 5 do not impair in any way the right of a Debentureholder to convert its Debentures pursuant to Article 6.

### **5.14 Invalidated Payments**

In the event that any of the Senior Indebtedness shall be paid in full and subsequently, for whatever reason, such formerly paid or satisfied Senior Indebtedness becomes unpaid or unsatisfied, the terms and conditions of this Article 5 shall be reinstated and the provisions of this Article shall again be operative until all Senior Indebtedness is repaid in full, provided that such reinstatement shall not give the Senior Creditors any rights or recourses against the Trustee or the Debentureholders for amounts paid to the Debentureholders subsequent to such payment or satisfaction in full and prior to such reinstatement.

### **5.15 Contesting Security**

The Trustee, for itself and on behalf of the Debentureholders, agrees that it shall not contest or bring into question the validity, perfection or enforceability of any of the Senior Indebtedness, the Senior Security, or the relative priority of the Senior Security.

### **5.16 No Set Off**

Each of the Corporation and the Trustee agrees, and each holder of a Debenture, by his acceptance thereof, likewise agrees, that it shall have no right of set-off or counterclaim with respect to the principal of, premium, if any, and interest on the Debentures, at any time when any payment of, or in respect of, such amounts to the Trustee or the holder of a Debenture is prohibited by this Article 5 or is otherwise required to be paid to the holders of Senior Indebtedness.

## **ARTICLE 6 CONVERSION OF DEBENTURES**

### **6.1 Conversion Right**

- (a) Any Debentures issued hereunder of any series which by their terms are convertible (subject, however, to any applicable restriction of the conversion of Debentures of such series) will be convertible into Common Shares or other securities of the Corporation, at such conversion rate or rates, and on such date or dates and in accordance with such other provisions as shall have been determined at the time of issue of such Debentures and shall have been expressed in this Indenture (including Sections 2.4(f), 2.4(j)(viii) and 3.7), in such Debentures or in a supplemental indenture authorizing or providing for the issue thereof.
- (b) Such right of conversion shall extend only to the maximum number of whole Common Shares into which the aggregate principal amount of the Debenture or Debentures surrendered for conversion at any one time by the holder thereof may be converted. Subject to the conversion procedures set forth in Section 6.4, holders who are Qualified Canadians will receive Class A Shares and holders who are not Qualified Canadians will receive Class B Shares. Fractional interests in Common Shares shall be adjusted for in the manner provided in Section 6.6.

### **6.2 Notice of Expiry of Conversion Privilege**

Notice of the expiry of the conversion privileges of the Debentures shall be given by or on behalf of the Corporation, not more than 60 days and not less than 40 days prior to the date fixed for the Time of Expiry, in the manner provided in Section 14.2.

### **6.3 Revival of Right to Convert**

If the redemption of any Debenture called for redemption by the Corporation is not made or the payment of the purchase price of any Debenture which has been tendered in acceptance of an offer by the Corporation to purchase Debentures for cancellation is not made, in the case of a

redemption upon due surrender of such Debenture or in the case of a purchase on the date on which such purchase is required to be made, as the case may be, then, provided the Time of Expiry has not passed, the right to convert such Debentures shall revive and continue as if such Debenture had not been called for redemption or tendered in acceptance of the Corporation's offer, respectively.

#### **6.4 Manner of Exercise of Right to Convert**

- (a) The holder of a Debenture desiring to convert such Debenture in whole or in part into Common Shares shall surrender such Debenture to the Trustee at its principal office in Toronto, Ontario together with: (1) a conversion notice substantially in the form of Schedule D Schedule E or any other written notice in a form satisfactory to the Trustee; and (2) a Residency Declaration Form, substantially in the form of Schedule E, duly executed by the holder or his, her or its executors or administrators or other legal representatives or his, her or its attorney duly appointed by an instrument in writing in form and executed in a manner satisfactory to the Trustee, exercising such holder's right to convert such Debenture in accordance with the provisions of this Article; provided that with respect to a Global Debenture, the obligation to surrender a Debenture to the Trustee shall be satisfied if the Trustee makes notation on the Global Debenture of the principal amount thereof so converted and the Trustee is provided with all other documentation which it may request in accordance with the Applicable Procedures. Thereupon such Debentureholder or, subject to payment of all applicable stamp or security transfer taxes or other governmental charges and compliance with all reasonable requirements of the Trustee, his nominee(s) or assignee(s) shall be entitled to be entered in the books of the Corporation as at the Date of Conversion (or such later date as is specified in Section 6.4(b)) as the holder of the number of Class A Shares or Class B Shares into which such Debenture is convertible in accordance with the provisions of this Article and, as soon as practicable thereafter, the Corporation shall deliver to such Debentureholder or, subject as aforesaid, his nominee(s) or assignee(s), a certificate or certificates for such Class A Shares or Class B Shares, as applicable, and make or cause to be made any payment of interest to which such holder is entitled in accordance with Section 6.4(e).
  
- (b) For the purposes of this Article, a Debenture shall be deemed to be surrendered for conversion on the Business Day immediately after the date (herein called the "**Date of Conversion**") on which it is so surrendered when the register of the Trustee is open and in accordance with the provisions of this Article or, in the case of a Global Debenture which the Trustee received notice of and all necessary documentation in respect of the exercise of the conversion rights and, in the case of a Debenture so surrendered by post or other means of transmission, on the Business Day immediately after the date on which it is received by the Trustee at one of its offices specified in Section 6.4(a); provided that if a Debenture is surrendered for conversion on a day on which the register of Common Shares is closed, the Person or Persons entitled to receive Common Shares shall become the

holder or holders of record of such Common Shares as at the date on which such registers are next reopened.

- (c) Any part, being \$1,000 or an integral multiple thereof, of a Debenture in a denomination in excess of \$1,000 may be converted as provided in this Article and all references in this Indenture to conversion of Debentures shall be deemed to include conversion of such parts.
- (d) The holder of any Debenture of which only a part is converted shall, upon the exercise of his right of conversion surrender such Debenture to the Trustee in accordance with Section 6.4(a), and the Trustee shall cancel the same and shall without charge forthwith certify and deliver to the holder a new Debenture or Debentures in an aggregate principal amount equal to the unconverted part of the principal amount of the Debenture so surrendered or, with respect to a Global Debenture, the Depository shall make notations on the Global Debentures of the principal amount thereof so converted.
- (e) The holder of a Debenture surrendered for conversion in accordance with this Section 6.4 shall be entitled (subject to any applicable restriction on the right to receive interest on conversion of Debentures of any series) to receive accrued and unpaid interest in respect thereof, up to but excluding the Date of Conversion and the Common Shares issued upon such conversion shall rank only in respect of distributions or dividends declared in favour of shareholders of record on and after the Date of Conversion or such later date as such holder shall become the holder of record of such Common Shares pursuant to Section 6.4(b), from which applicable date they will for all purposes be and be deemed to be issued and outstanding as fully paid and non-assessable Common Shares.

## **6.5 Adjustment of Conversion Price**

The Conversion Price in effect at any date shall be subject to adjustment from time to time as set forth below.

- (a) If and whenever at any time prior to the Time of Expiry the Corporation shall (i) subdivide or redivide the outstanding Common Shares into a greater number of shares, (ii) reduce, combine or consolidate the outstanding Common Shares into a smaller number of shares, or (iii) issue Common Shares to the holders of all or substantially all of the outstanding Common Shares by way of a dividend or distribution (other than the issue of Common Shares to holders of Common Shares who have elected to receive dividends or distributions in the form of Common Shares in lieu of Dividends Paid in the Ordinary Course), the Conversion Price in effect on the effective date of such subdivision, redivision, reduction, combination or consolidation or on the record date for such issue of Common Shares by way of a dividend or distribution, as the case may be, shall be the product of the Conversion Price immediately prior to such effective date or record date and the quotient of the number of Common Shares outstanding immediately before such effective or record date divided by the number of

Common Shares outstanding on such effective date or record date after giving effect to the applicable transaction. Such adjustment shall be made successively whenever any event referred to in this Section 6.5(a) shall occur. Any such issue of Common Shares by way of a dividend or distribution shall be deemed to have been made on the record date for the dividend or distribution for the purpose of calculating the number of outstanding Common Shares under subsections (b) and (c) of this Section 6.5.

- (b) If and whenever at any time prior to the Time of Expiry the Corporation shall fix a record date for the issuance of options, rights or warrants to all or substantially all the holders of its outstanding Common Shares entitling them, for a period expiring not more than 45 days after such record date, to subscribe for or purchase Common Shares (or securities convertible into Common Shares) at a price per share (or having a conversion or exchange price per share) less than 95% of the Current Market Price of a Common Share on such record date, the Conversion Price shall be adjusted immediately after such record date so that it shall equal the price determined by multiplying the Conversion Price in effect on such record date by a fraction, of which the numerator shall be the total number of Common Shares outstanding on such record date plus a number of Common Shares equal to the quotient obtained by dividing the aggregate price of the total number of additional Common Shares offered for subscription, or purchase (or the aggregate conversion or exchange price of the convertible securities so offered) by such Current Market Price per Common Share, and of which the denominator shall be the total number of Common Shares outstanding on such record date plus the total number of additional Common Shares offered for subscription or purchase (or into which the convertible securities so offered are convertible). Such adjustment shall be made successively whenever such a record date is fixed. To the extent that any such options, rights or warrants are not so issued or any such options, rights or warrants are not exercised prior to the expiration thereof, the Conversion Price shall be re-adjusted to the Conversion Price which would then be in effect if such record date had not been fixed or to the Conversion Price which would then be in effect if only the number of Common Shares (or securities convertible into Common Shares) actually issued upon the exercise of such options, rights or warrants were included in such fraction, as the case may be.
- (c) If and whenever at any time prior to the Time of Expiry the Corporation shall fix a record date for the making of a distribution to all or substantially all the holders of its outstanding Common Shares of (i) shares or other securities of any class other than Common Shares and other than shares or other securities distributed to holders of Common Shares who have elected to receive dividends or distributions in the form of such shares or other securities in lieu of Dividends Paid in the Ordinary Course, (ii) rights, options or warrants (excluding rights, options or warrants entitling the holders thereof for a period of not more than 45 days to subscribe for or purchase Common Shares or securities convertible into Common Shares), (iii) evidences of its indebtedness, or (iv) assets (excluding Dividends Paid in the Ordinary Course) then, in each such case, the Conversion Price shall be adjusted immediately after such record date so that it shall equal the price

determined by multiplying the Conversion Price in effect on such record date by a fraction, of which the numerator shall be the total number of Common Shares outstanding on such record date multiplied by the Current Market Price per Common Share on such record date, less the fair market value (as determined by the Board of Directors with the approval of the Trustee, which determination shall be conclusive) of such shares or other securities or rights, options or warrants or evidences of indebtedness or assets so distributed, and of which the denominator shall be the total number of Common Shares outstanding on such record date multiplied by such Current Market Price per Common Share. Such adjustment shall be made successively whenever such a record date is fixed. To the extent that such distribution is not so made, the Conversion Price shall be re-adjusted to the Conversion Price which would then be in effect if such record date had not been fixed or to the Conversion Price which would then be in effect based upon such shares or other securities or rights, options or warrants or evidences of indebtedness or assets actually distributed, as the case may be. In clause (iv) of this subsection (c) the term "Dividends Paid in the Ordinary Course" shall include the value of any securities or other property or assets distributed in lieu of cash dividends or cash distributions paid in the ordinary course on the Common Shares at the option of shareholders.

- (d) If and whenever at any time prior to the Time of Expiry, there is a reclassification of the Common Shares or a capital reorganization of the Corporation other than as described in Section 6.5(a) or a consolidation, amalgamation, arrangement, merger or acquisition of the Corporation with or into or by any other Person or other entity or a sale or conveyance of the property and assets of the Corporation as an entirety or substantially as an entirety to any other Person or other entity or a liquidation, dissolution or winding-up of the Corporation, any holder of a Debenture who has not exercised its right of conversion prior to the effective date of such reclassification, capital reorganization, consolidation, amalgamation, arrangement, merger or acquisition, sale or conveyance or liquidation, dissolution or winding-up, upon the exercise of such right thereafter, shall be entitled to receive and shall accept, in lieu of the number of Common Shares then sought to be acquired by it, the number of shares or other securities or property of the Corporation or of the Person or other entity resulting from such reclassification, capital reorganization, consolidation, amalgamation, arrangement, merger or acquisition, or to which such sale or conveyance may be made or which holders of Common Shares receive pursuant to such liquidation, dissolution or winding-up, as the case may be, that such holder of a Debenture would have been entitled to receive on such reclassification, capital reorganization, consolidation, amalgamation, arrangement, merger or acquisition, sale or conveyance or liquidation, dissolution or winding-up, if, on the record date or the effective date thereof, as the case may be, the holder had been the registered holder of the number of Common Shares sought to be acquired by it and to which it was entitled to acquire upon the exercise of the conversion right. If determined appropriate by the Board of Directors, to give effect to or to evidence the provisions of this Section 6.5(d), the Corporation, its successor, or such purchasing Person or other entity, as the case may be, shall, prior to or

contemporaneously with any such reclassification, capital reorganization, consolidation, amalgamation, arrangement, merger, acquisition, sale or conveyance or liquidation, dissolution or winding-up, enter into an indenture which shall provide, to the extent reasonably possible, for the application of the provisions set forth in this Indenture with respect to the rights and interests thereafter of the holder of Debentures to the end that the provisions set forth in this Indenture shall thereafter correspondingly be made applicable, as nearly as reasonably possible, with respect to any shares, other securities or property to which a holder of Debentures is entitled on the exercise of its conversion rights thereafter. Any indenture entered into between the Corporation and the Trustee pursuant to the provisions of this Section 6.5(d) shall be a supplemental indenture entered into pursuant to the provisions of Article 16. Any indenture entered into between the Corporation, any successor to the Corporation or such purchasing Person or other entity and the Trustee shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided in this Section 6.5(d) and which shall apply to successive reclassifications, capital reorganizations, consolidations, amalgamations, mergers, acquisitions, sales or conveyances and to any successive liquidation, dissolution or winding up. For greater certainty, nothing in this Section 6.5(d) shall affect or reduce the requirement for any Person to make a Change of Control Purchase Offer or to pay the Make Whole Premium in accordance with Section 2.4, and notice of any transaction to which this Section 6.5(d) applies shall be given in accordance with Section 6.10.

- (e) If and whenever at any time prior to June 30, 2014, the Corporation shall fix a record date for the payment of a cash dividend or distribution to the holders of all or substantially all of the outstanding Common Shares, the Conversion Price shall be adjusted immediately after such record date so that it shall be reduced by the amount of such payment. Such adjustment shall be made successively whenever such a record date is fixed. To the extent that any such cash dividend or distribution is not paid, the Conversion Price shall be readjusted to the Conversion Price which would have been in effect if such record date had not been fixed.
- (f) In any case in which this Section 6.5 shall require that an adjustment shall become effective immediately after a record date for an event referred to herein, the Corporation may defer, until the occurrence of such event, issuing to the holder of any Debenture converted after such record date and before the occurrence of such event the additional Common Shares issuable upon such conversion by reason of the adjustment required by such event before giving effect to such adjustment; provided, however, that the Corporation shall deliver to such holder an appropriate instrument evidencing such holder's right to receive such additional Common Shares upon the occurrence of the event requiring such adjustment and the right to receive any distributions made on such additional Common Shares declared in favour of holders of record of Common Shares on and after the Date of Conversion or such later date as such holder would, but for the provisions of this Section 6.5(f), have become the holder of record of such additional Common Shares pursuant to Section 6.4(b).

- (g) The adjustments provided for in this Section 6.5 are cumulative and shall apply to successive subdivisions, redivisions, reductions, combinations, consolidations, distributions, issues or other events resulting in any adjustment under the provisions of this Section, provided that, notwithstanding any other provision of this Section, no adjustment of the Conversion Price shall be required unless such adjustment would require an increase or decrease of at least 1% in the Conversion Price then in effect; provided however, that any adjustments which by reason of this Section 6.5(g) are not required to be made shall be carried forward and taken into account in any subsequent adjustment.
- (h) For the purpose of calculating the number of Common Shares outstanding, Common Shares owned by or for the benefit of the Corporation shall not be counted.
- (i) In the event of any question arising with respect to the adjustments provided in this Section 6.5, such question shall be conclusively determined by a firm of nationally recognized chartered accountants appointed by the Corporation and acceptable to the Trustee (who may be the Auditors of the Corporation); such accountants shall have access to all necessary records of the Corporation and such determination shall be binding upon the Corporation, the Trustee, and the Debentureholders.
- (j) In case the Corporation shall take any action affecting the Common Shares other than action described in this Section 6.5, which in the opinion of the Board of Directors, would materially affect the rights of Debentureholders, the Conversion Price shall be adjusted in such manner and at such time, by action of the Board of Directors, subject to the prior written consent of the Toronto Stock Exchange or such other exchange on which the Debentures are then listed, as the Board of Directors, in its sole discretion may determine to be equitable in the circumstances. Failure of the directors to make such an adjustment shall be conclusive evidence that they have determined that it is equitable to make no adjustment in the circumstances.
- (k) Subject to the prior written consent of the Toronto Stock Exchange or such other exchange on which the Debentures are then listed, no adjustment in the Conversion Price shall be made in respect of any event described in Sections 6.5(a), 6.5(b) or 6.5(c) other than the events described in 6.5(a)(i) or 6.5(a)(ii) if the holders of the Debentures are entitled to participate in such event on the same terms *mutatis mutandis* as if they had converted their Debentures prior to the effective date or record date, as the case may be, of such event.
- (l) Except as stated above in this Section 6.5, no adjustment will be made in the Conversion Price for any Debentures as a result of the issuance of Common Shares at less than the Current Market Price for such Common Shares on the date of issuance or the then applicable Conversion Price.



## **6.6 No Requirement to Issue Fractional Common Shares**

The Corporation shall not be required to issue fractional Common Shares upon the conversion of Debentures pursuant to this Article. If more than one Debenture shall be surrendered for conversion at one time by the same holder, the number of whole Common Shares issuable upon conversion thereof shall be computed on the basis of the aggregate principal amount of such Debentures to be converted. If any fractional interest in a Common Share would, except for the provisions of this Section, be deliverable upon the conversion of any principal amount of Debentures, the Corporation shall, in lieu of delivering any certificate representing such fractional interest, make a cash payment to the holder of such Debenture of an amount equal to the fractional interest which would have been issuable multiplied by the Current Market Price.

## **6.7 Corporation to Reserve Common Shares**

The Corporation covenants with the Trustee that it will at all times reserve and keep available out of its authorized Common Shares (if the number thereof is or becomes limited), solely for the purpose of issue upon conversion of Debentures as in this Article provided, and conditionally allot to Debentureholders who may exercise their conversion rights hereunder, such number of Common Shares as shall then be issuable upon the conversion of all outstanding Debentures. The Corporation covenants with the Trustee that all Common Shares which shall be so issuable shall be duly and validly issued as fully-paid and non-assessable.

## **6.8 Cancellation of Converted Debentures**

Subject to the provisions of Section 6.4 as to Debentures converted in part, all Debentures converted in whole or in part under the provisions of this Article shall be forthwith delivered to and cancelled by the Trustee and no Debenture shall be issued in substitution for those converted.

## **6.9 Certificate as to Adjustment**

The Corporation shall from time to time immediately after the occurrence of any event which requires an adjustment or readjustment as provided in Section 6.5, deliver an Officer's Certificate to the Trustee specifying the nature of the event requiring the same and the amount of the adjustment necessitated thereby and setting forth in reasonable detail the method of calculation and the facts upon which such calculation is based, which certificate and the amount of the adjustment specified therein shall be verified by an opinion of a firm of nationally recognized chartered accountants appointed by the Corporation and acceptable to the Trustee (who may be the Auditors of the Corporation) and shall be conclusive and binding on all parties in interest. When so approved, the Corporation shall, except in respect of any subdivision, redivision, reduction, combination or consolidation of the Common Shares, forthwith give notice to the Debentureholders in the manner provided in Section 14.2 specifying the event requiring such adjustment or readjustment and the results thereof, including the resulting Conversion Price; provided that, if the Corporation has given notice under this Section 6.9 covering all the relevant facts in respect of such event and if the Trustee approves, no such notice need be given under this Section 6.9.

## **6.10 Notice of Special Matters**

- (a) The Corporation covenants with the Trustee that so long as any Debenture remains outstanding, it will give notice to the Trustee, and to the Debentureholders in the manner provided in Section 14.2, of its intention to fix a record date for any event referred to in Section 6.5(a), (b), (c), (d), (e), (f) or (g) other than the subdivision, redivision, reduction, combination or consolidation of its Common Shares) which may give rise to an adjustment in the Conversion Price, and, in each case, such notice shall specify the particulars of such event and the record date and the effective date for such event; provided that the Corporation shall only be required to specify in such notice such particulars of such event as shall have been fixed and determined on the date on which such notice is given. Such notice shall be given not less than fourteen (14) days in each case prior to such applicable record date.
- (b) In addition, the Corporation covenants with the Trustee that so long as any Debenture remains outstanding, it will give notice to the Trustee, and to the Debentureholders in the manner provided in Section 14.2, at least 30 days prior to the effective date of any transaction referred to in Section 6.5(d) stating the consideration into which the Debentures will be convertible after the effective date of such transaction.

## **6.11 Protection of Trustee**

Subject to Section 15.3, the Trustee:

- (a) shall not at any time be under any duty or responsibility to any Debentureholder to determine whether any facts exist which may require any adjustment in the Conversion Price, or with respect to the nature or extent of any such adjustment when made, or with respect to the method employed in making the same;
- (b) shall not be accountable with respect to the validity or value (or the kind or amount) of any Common Shares or of any shares or other securities or property which may at any time be issued or delivered upon the conversion of any Debenture; and
- (c) shall not be responsible for any failure of the Corporation to make any cash payment or to issue, transfer or deliver Common Shares or share certificates upon the surrender of any Debenture for the purpose of conversion, or to comply with any of the covenants contained in this Article.

## **ARTICLE 7 COVENANTS OF THE CORPORATION**

The Corporation hereby covenants and agrees with the Trustee for the benefit of the Trustee and the Debentureholders, that so long as any Debentures remain outstanding:

### **7.1 To Pay Principal, Premium (if any) and Interest**

The Corporation will duly and punctually pay or cause to be paid to every Debentureholder the principal of, premium (if any) and interest accrued on the Debentures of which it is the holder on the dates, at the places and in the manner mentioned herein and in the Debentures.

## **7.2 To Pay Trustee's Remuneration**

The Corporation will pay the Trustee reasonable remuneration for its services as Trustee hereunder and will repay to the Trustee on demand all monies which shall have been paid by the Trustee in connection with the execution of the trusts hereby created and such monies including the Trustee's remuneration, shall be payable out of any funds coming into the possession of the Trustee in priority to payment of any principal of the Debentures or interest or premium thereon. Such remuneration shall continue to be payable until the trusts hereof be finally wound up and whether or not the trusts of this Indenture shall be in the course of administration by or under the direction of a court of competent jurisdiction. Any amount due under this Section 7.2 and unpaid 30 days after request for such payment shall bear interest from the expiration of such 30 days at a rate per annum equal to the rate normally charged by the Trustee for similar accounts, payable on demand. Such remuneration shall continue to be payable until the duties hereof shall be finally wound up, whether or not the duties of the Trustee shall be in the course of administration by or under the direction of a court.

## **7.3 To Give Notice of Default**

The Corporation shall notify the Trustee immediately upon obtaining knowledge of any Event of Default hereunder.

## **7.4 Preservation of Existence, Etc.**

Subject to the express provisions hereof, the Corporation will carry on and conduct its activities, and cause its Subsidiaries to carry on and conduct their businesses, in a proper, efficient and business-like manner and in accordance with good business practices; and, subject to the express provisions hereof, it will do or cause to be done all things necessary to preserve and keep in full force and effect its and its Subsidiaries' respective existences and rights.

## **7.5 Keeping of Books**

The Corporation will keep or cause to be kept proper books of record and account, in which full and correct entries shall be made of all financial transactions and the assets and business of the Corporation in accordance with generally accepted accounting principles.

## **7.6 Annual Certificate of Compliance**

The Corporation shall deliver to the Trustee, within 120 days after the end of each calendar year, an Officer's Certificate as to the knowledge of such officers of the Corporation who executes the Officer's Certificate of the Corporation's compliance with all conditions and covenants in this Indenture certifying that after reasonable investigation and inquiry, the Corporation has complied with all covenants, conditions or other requirements contained in this Indenture, the non-compliance with which could, with the giving of notice, lapse of time or otherwise, constitute an Event of Default hereunder, or if such is not the case, setting forth with reasonable particulars the

circumstances of any failure to comply and steps taken or proposed to be taken to eliminate such circumstances and remedy such Event of Default, as the case may be.

### **7.7 Performance of Covenants by Trustee**

If the Corporation shall fail to perform any of its covenants contained in this Indenture, the Trustee may notify the Debentureholders of such failure on the part of the Corporation or may itself perform any of the covenants capable of being performed by it, but shall be under no obligation to do so or to notify the Debentureholders. All sums so expended or advanced by the Trustee shall be repayable as provided in Section 7.2. No such performance, expenditure or advance by the Trustee shall be deemed to relieve the Corporation of any default hereunder.

### **7.8 No Dividends on Common Shares if Event of Default**

The Corporation shall not declare or pay any dividend to the holders of its issued and outstanding Common Shares after the occurrence of an Event of Default unless and until such default shall have been cured or waived or shall have ceased to exist.

### **7.9 Maintain Listing**

The Corporation will use reasonable commercial efforts to maintain the listing of the Class A Shares and the Debentures on the Toronto Stock Exchange, and to maintain the Corporation's status as a "reporting issuer" not in default of the requirements of the Applicable Securities Legislation; provided that the foregoing covenant shall not prevent or restrict the Corporation from carrying out a transaction to which Article 11 would apply if carried out in compliance with Article 11 even if as a result of such transaction the Corporation ceases to be a "reporting issuer" in all or any of the provinces of Canada or the Class A Shares or Debentures cease to be listed on the Toronto Stock Exchange or any other stock exchange.

## **ARTICLE 8 DEFAULT**

### **8.1 Events of Default**

- (a) Each of the following events constitutes, and is herein sometimes referred to as, an "**Event of Default**":
  - (i) failure for ten days to pay interest on the Debentures when due;
  - (ii) failure to pay principal or premium (whether by way of payment of cash or delivery of Common Shares), if any, when due on the Debentures whether at maturity, upon redemption or a Change of Control, by declaration or otherwise;
  - (iii) default in the delivery, when due, of all cash and any Common Shares or other consideration, including any Make Whole Premium, payable on conversion with respect to the Debentures, which default continues for 15 days;

- (iv) default in the observance or performance of any covenant or condition of the Indenture by the Corporation and the failure to cure (or obtain a waiver for) such default for a period of 30 days after notice in writing has been given by the Trustee or from holders of not less than 25% in aggregate principal amount of the Debentures to the Corporation specifying such default and requiring the Corporation to rectify such default or obtain a waiver for same;
  - (v) if a decree or order of a Court having jurisdiction is entered adjudging the Corporation a bankrupt or insolvent under the *Bankruptcy and Insolvency Act* (Canada) or any other bankruptcy, insolvency or analogous laws, or issuing sequestration or process of execution against, or against any substantial part of, the property of the Corporation, or appointing a receiver of, or of any substantial part of, the property of the Corporation or ordering the winding-up or liquidation of its affairs, and any such decree or order continues unstayed and in effect for a period of 60 days;
  - (vi) if the Corporation institutes proceedings to be adjudicated a bankrupt or insolvent, or consents to the institution of bankruptcy or insolvency proceedings against it under the *Bankruptcy and Insolvency Act* (Canada) or any other bankruptcy, insolvency or analogous laws, or consents to the filing of any such petition or to the appointment of a receiver of, or of any substantial part of, the property of the Corporation or makes a general assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they become due;
  - (vii) if a resolution is passed for the winding-up or liquidation of the Corporation except in the course of carrying out or pursuant to a transaction in respect of which the conditions of Section 11.1 are duly observed and performed;
  - (viii) if, after the date of this Indenture, any proceedings with respect to the Corporation are taken with respect to a compromise or arrangement, with respect to creditors of the Corporation generally, under the applicable legislation of any jurisdiction; or
  - (ix) if any indebtedness of the Corporation in excess of \$100,000 is declared due and payable prior to the date on which it would otherwise become or be due and payable, unless such default is cured or waived pursuant to the terms of the indebtedness.
- (b) In the event of the occurrence of an Event of Default, the Trustee may, in its discretion, and shall, upon receipt of a request in writing signed by the holders of not less than 25% in principal amount of the Debentures then outstanding, subject to the provisions of Section 8.3, by notice in writing to the Corporation declare the principal of and interest and premium, if any, on all Debentures then outstanding and all other monies outstanding hereunder to be due and payable and

the same shall thereupon forthwith become immediately due and payable to the Trustee, and (ii) on the occurrence of an Event of Default under Sections 8.1(a)(v), (f) or (viii), the principal of and interest and premium, if any, on all Debentures then outstanding hereunder and all other monies outstanding hereunder, shall automatically without any declaration or other act on the part of the Trustee or any Debentureholder become immediately due and payable to the Trustee and, in either case, upon such amounts becoming due and payable in either (i) or (ii) above, the Corporation shall forthwith pay to the Trustee for the benefit of the Debentureholders such principal, accrued and unpaid interest and premium, if any, and interest on amounts in default on such Debenture and all other monies outstanding hereunder, together with subsequent interest at the rate borne by the Debentures on such principal, interest, premium and such other monies from the date of such declaration or event until payment is received by the Trustee, such subsequent interest to be payable at the times and places and in the manner mentioned in and according to the tenor of the Debentures. Such payment when made shall be deemed to have been made in discharge of the Corporation's obligations hereunder and any monies so received by the Trustee shall be applied in the manner provided in Section 8.6.

- (c) For greater certainty, for the purposes of this Section 8.1, a series of Debentures shall be in default in respect of an Event of Default if such Event of Default relates to a default in the payment of principal, premium, if any, or interest on the Debentures of such series in which case references to Debentures in this Section 8.1 refer to Debentures of that particular series.
- (d) For purposes of this Article 8, where the Event of Default refers to an Event of Default with respect to a particular series of Debentures as described in this Section 8.1, then this Article 8 shall apply *mutatis mutandis* to the Debentures of such series and references in this Article 8 to the Debentures shall mean Debentures of the particular series and references to the Debentureholders shall refer to the Debentureholders of the particular series, as applicable.

## **8.2 Notice of Events 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 Debentureholders in the manner provided in Section 14.2, 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 Debentures 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 Debentureholders and shall have so advised the Corporation in writing. The Trustee may assume for all purposes that there has been no Event of Default unless it has received notification in writing that an Event of Default has occurred, which notification shall give in reasonable detail the nature of the default in question.

### **8.3 Waiver of Default**

Upon the happening of any Event of Default hereunder:

- (a) the holders of the Debentures shall have the power (in addition to the powers exercisable by Extraordinary Resolution as hereinafter provided) by requisition in writing by the holders of more than 50% of the principal amount of Debentures then outstanding, to instruct the Trustee to waive any Event of Default and to cancel any declaration made by the Trustee pursuant to Section 8.1 and the Trustee shall thereupon waive the Event of Default and cancel such declaration, or either, upon such terms and conditions as shall be prescribed in such requisition; provided that notwithstanding the foregoing if the Event of Default has occurred by reason of the non-observance or non-performance by the Corporation of any covenant applicable only to one or more series of Debentures, then the holders of more than 50 % of the principal amount of the outstanding Debentures of that series shall be entitled to exercise the foregoing power and the Trustee shall so act and it shall not be necessary to obtain a waiver from the holders of any other series of Debentures; and
- (b) the Trustee, so long as it has not become bound to declare the principal and interest on the Debentures then outstanding to be due and payable, or to obtain or enforce payment of the same, shall have 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 cancel any such declaration theretofore made by the Trustee in the exercise of its discretion, upon such terms and conditions as the Trustee may deem advisable.

No such act or omission either of the Trustee or of the Debentureholders shall extend to or be taken in any manner whatsoever to affect any subsequent Event of Default or the rights resulting therefrom.

### **8.4 Enforcement by the Trustee**

- (a) Subject to the provisions of Section 8.3 and to the provisions of any Extraordinary Resolution that may be passed by the Debentureholders, if the Corporation shall fail to pay to the Trustee, forthwith after the same shall have been declared to be due and payable under Section 8.1, the principal of and premium (if any) and interest on all Debentures then outstanding, together with any other amounts due hereunder, the Trustee may in its discretion and shall upon receipt of a request in writing signed by the holders of not less than 25% in principal amount of the Debentures then outstanding and upon being funded and indemnified to its reasonable satisfaction against all costs, expenses and liabilities to be incurred, proceed in its name as trustee hereunder to obtain or enforce payment of such principal of and premium (if any) and interest on all the Debentures then outstanding together with any other amounts due hereunder by such proceedings authorized by this Indenture or by law or equity as the Trustee in such request shall have been directed to take, or if such request contains no such direction, or if

the Trustee shall act without such request, then by such proceedings authorized by this Indenture or by suit at law or in equity as the Trustee shall deem expedient.

- (b) The Trustee shall be entitled and empowered, either in its own name or as Trustee of an express trust, or as attorney-in-fact for the holders of the Debentures, or in any one or more of such capacities, to file such proof of debt, amendment of proof of debt, claim, petition or other document as may be necessary or advisable in order to have the claims of the Trustee and of the holders of the Debentures allowed in any insolvency, bankruptcy, liquidation or other judicial proceedings relative to the Corporation or its creditors or relative to or affecting its property. The Trustee is hereby irrevocably appointed (and the successive respective holders of the Debentures by taking and holding the same shall be conclusively deemed to have so appointed the Trustee) the true and lawful attorney-in-fact of the respective holders of the Debentures with authority to make and file in the respective names of the holders of the Debentures or on behalf of the holders of the Debentures as a class, subject to deduction from any such claims of the amounts of any claims filed by any of the holders of the Debentures themselves, any proof of debt, amendment of proof of debt, claim, petition or other document in any such proceedings and to receive payment of any sums becoming distributable on account thereof, and to execute any such other papers and documents and to do and perform any and all such acts and things for and on behalf of such holders of the Debentures, as may be necessary or advisable in the opinion of the Trustee, in order to have the respective claims of the Trustee and of the holders of the Debentures against the Corporation or its property allowed in any such proceeding, and to receive payment of or on account of such claims; provided, however, that subject to Section 8.3, nothing contained in this Indenture shall be deemed to give to the Trustee, unless so authorized by Extraordinary Resolution, any right to accept or consent to any plan of reorganization or otherwise by action of any character in such proceeding to waive or change in any way any right of any Debentureholder.
- (c) The Trustee shall also have the power at any time and from time to time to institute and to maintain such suits and proceedings as it may be advised shall be necessary or advisable to preserve and protect its interests and the interests of the Debentureholders.
- (d) All rights of action hereunder may be enforced by the Trustee without the possession of any of the Debentures or the production thereof on the trial or other proceedings relating thereto. Any such suit or proceeding instituted by the Trustee shall be brought in the name of the Trustee as trustee of an express trust, and any recovery of judgment shall be for the rateable benefit of the holders of the Debentures subject to the provisions of this Indenture. In any proceeding brought by the Trustee (and also any proceeding in which a declaratory judgment of a court may be sought as to the interpretation or construction of any provision of this Indenture, to which the Trustee shall be a party) the Trustee shall be held to represent all the holders of the Debentures, and it shall not be necessary to make any holders of the Debentures parties to any such proceeding.



## 8.5 No Suits by Debentureholders

No holder of any Debenture shall have any right to institute any action, suit or proceeding at law or in equity for the purpose of enforcing payment of the principal of or interest on the Debentures or for the execution of any trust or power hereunder or for the appointment of a liquidator or receiver or for a receiving order under the *Bankruptcy and Insolvency Act* (Canada) or to have the Corporation wound up or to file or prove a claim in any liquidation or bankruptcy proceeding or for any other remedy hereunder, unless:

- (a) such holder shall previously have given to the Trustee written notice of the happening of an Event of Default hereunder;
- (b) the Debentureholders by Extraordinary Resolution or by written instrument signed by the holders of at least 25% in principal amount of the Debentures then outstanding shall have made a request to the Trustee and the Trustee shall have been afforded reasonable opportunity either itself to proceed to exercise the powers hereinbefore granted or to institute an action, suit or proceeding in its name for such purpose;
- (c) the Debentureholders or any of them shall have furnished to the Trustee, 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; and
- (d) the Trustee shall have failed to act within a reasonable time after such notification, request and offer of indemnity and such notification, request and offer of indemnity are hereby declared in every such case, at the option of the Trustee, to be conditions precedent to any such proceeding or for any other remedy hereunder by or on behalf of the holder of any Debentures.

## 8.6 Application of Monies by Trustee

- (a) Except as herein otherwise expressly provided, any monies received by the Trustee from the Corporation pursuant to the foregoing provisions of this Article 8, or as a result of legal or other proceedings or from any trustee in bankruptcy or liquidator of the Corporation, shall be applied, together with any other monies in the hands of the Trustee available for such purpose, as follows:
  - (i) first, in payment or in reimbursement to the Trustee of its 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 8.6 provided, in payment, rateably and proportionately to the holders of Debentures, of the principal of and premium (if any) and accrued and unpaid interest and interest on amounts in default on the Debentures 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 Extraordinary Resolution and in that case in such order or priority as between principal, premium (if any) and interest as may be directed by such resolution; and

- (iii) third, in payment of the surplus, if any, of such monies to the Corporation or its assigns;

provided, however, that no payment shall be made pursuant to clause (ii) above in respect of the principal, premium or interest on any Debenture held, directly or indirectly, by or for the benefit of the Corporation or any Subsidiary (other than any Debenture pledged for value and in good faith to a Person other than the Corporation or any Subsidiary 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 Debentures 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 thereout such amount as the Trustee may think necessary to provide for the payments mentioned in Section 8.6(a) is insufficient to make a distribution of at least 2% of the aggregate principal amount of the outstanding Debentures, but it may retain the money so received by it and invest or deposit the same as provided in Section 15.9 until the money or the investments representing the same, with the income derived therefrom, together with any other monies for the time being under its control shall be sufficient for the said purpose or until it shall consider it advisable to apply the same in the manner hereinbefore set forth. The foregoing shall, however, not apply to a final payment in distribution hereunder.

### **8.7 Notice of Payment by Trustee**

Not less than 15 days notice shall be given in the manner provided in Section 14.2 by the Trustee to the Debentureholders of any payment to be made under this Article 8. 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 Debentureholders will be entitled to interest only on the balance (if any) of the principal monies, premium (if any) and interest due (if any) to them, respectively, on the Debentures, after deduction of the respective amounts payable in respect thereof on the day so fixed.

### **8.8 Trustee May Demand Production of Debentures**

The Trustee shall have the right to demand production of the Debentures in respect of which any payment of principal, interest or premium required by this Article 8 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 Corporation as the Trustee shall deem sufficient.

## **8.9 Remedies Cumulative**

No remedy herein conferred upon or reserved to the Trustee, or upon or to the holders of Debentures is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now existing or hereafter to exist by law or by statute.

## **8.10 Judgment Against the Corporation**

The Corporation covenants and agrees with the Trustee that, in case of any judicial or other proceedings to enforce the rights of the Debentureholders, judgment may be rendered against it in favour of the Debentureholders or in favour of the Trustee, as trustee for the Debentureholders, for any amount which may remain due in respect of the Debentures and premium (if any) and the interest thereon and any other monies owing hereunder.

## **8.11 Immunity of Directors, Officers and Others**

The Debentureholders 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 or employee of the Corporation or holder of Common Shares of the Corporation or of any successor for the payment of the principal of or premium or interest on any of the Debentures or on any covenant, agreement, representation or warranty by the Corporation contained herein or in the Debentures.

# **ARTICLE 9 SATISFACTION AND DISCHARGE**

## **9.1 Cancellation and Destruction**

All Debentures shall forthwith after payment thereof be delivered to the Trustee and cancelled by it. All Debentures 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 Corporation, the Trustee shall furnish to it a destruction certificate setting out the designating numbers of the Debentures so destroyed.

## **9.2 Non-Presentation of Debentures**

In case the holder of any Debenture shall fail to present the same for payment on the date on which the principal of, premium (if any) or the interest thereon or represented thereby becomes payable either at maturity or otherwise or shall not accept payment on account thereof and give such receipt therefor, if any, as the Trustee may require:

- (a) the Corporation shall be entitled to pay or deliver to the Trustee and direct it to set aside; or
- (b) in respect of monies or Common Shares in the hands of the Trustee which may or should be applied to the payment of the Debentures, the Corporation shall be entitled to direct the Trustee to set aside; or

- (c) if the redemption was pursuant to notice given by the Trustee, the Trustee may itself set aside;

the monies or Common Shares, as the case may be, in trust to be paid to the holder of such Debenture upon due presentation or surrender thereof in accordance with the provisions of this Indenture; and thereupon the principal of, premium (if any) or the interest payable on or represented by each Debenture in respect whereof such monies or Common Shares, if applicable, have been set aside shall be deemed to have been paid and the holder thereof shall thereafter have no right in respect thereof except that of receiving delivery and payment of the monies or Common Shares, if applicable, so set aside by the Trustee upon due presentation and surrender thereof, subject always to the provisions of Section 9.3.

### **9.3 Repayment of Unclaimed Monies or Common Shares**

Subject to applicable law, any monies or Common Shares, if applicable, set aside under Section 9.2 and not claimed by and paid to holders of Debentures as provided in Section 9.2 within six years after the date of such setting aside shall be repaid and delivered to the Corporation by the Trustee and thereupon the Trustee shall be released from all further liability with respect to such monies or Common Shares, if applicable, and thereafter the holders of the Debentures in respect of which such monies or Common Shares, if applicable, were so repaid to the Corporation shall have no rights in respect thereof except to obtain payment and delivery of the monies or Common Shares, if applicable, from the Corporation subject to any limitation provided by the laws of the Province of Ontario. Notwithstanding the foregoing, the Trustee will pay any remaining funds without interest prior to the expiry of six years after the setting aside described in Section 9.2 to the Corporation upon receipt from the Corporation, 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 Corporation prior to the expiry of six years after such setting aside, the Corporation shall reimburse the Trustee for any amounts so set aside which are required to be paid by the Trustee to a holder of a Debenture after the date of such payment of the remaining funds to the Corporation but prior to six years after such setting aside.

### **9.4 Discharge**

The Trustee shall at the written request of the Corporation release and discharge this Indenture and execute and deliver such instruments as it shall be advised by Counsel are requisite for that purpose and to release the Corporation from its covenants herein contained (other than the provisions relating to the indemnification of the Trustee), upon proof being given to the reasonable satisfaction of the Trustee that the principal of, premium (if any) and interest (including interest on amounts in default, if any), on all the Debentures and all other monies payable hereunder have been paid or satisfied or that all the Debentures having matured or having been duly called for redemption, payment of the principal of and interest (including interest on amounts in default, if any) on such Debentures and of all other monies payable hereunder has been duly and effectually provided for in accordance with the provisions hereof.

## 9.5 Satisfaction

- (a) The Corporation shall be deemed to have fully paid, satisfied and discharged all of the outstanding Debentures of any series and the Trustee, at the expense of the Corporation, shall execute and deliver proper instruments acknowledging the full payment, satisfaction and discharge of such Debentures, when, with respect to all of the outstanding Debentures or all of the outstanding Debentures of any series, as applicable:
- (i) the Corporation has deposited or caused to be deposited with the Trustee as trust funds or property in trust for the purpose of making payment on such Debentures, an amount in money or Common Shares, if applicable, sufficient to pay, satisfy and discharge the entire amount of principal of, premium, if any, and interest, if any, to maturity, or any repayment date or Redemption Dates, or any Change of Control Purchase Date, or upon conversion or otherwise as the case may be, of such Debentures (including the maximum amount that may be payable as a Make Whole Premium);
  - (ii) the Corporation has deposited or caused to be deposited with the Trustee as trust property in trust for the purpose of making payment on such Debentures:
    - (A) if the Debentures are issued in Canadian dollars, such amount in Canadian dollars of direct obligations of, or obligations the principal and interest of which are guaranteed by, the Government of Canada or Common Shares, if applicable; or
    - (B) if the Debentures are issued in a currency or currency unit other than Canadian dollars, cash in the currency or currency unit in which the Debentures are payable and/or such amount in such currency or currency unit of direct obligations of, or obligations the principal and interest of which are guaranteed by, the Government of Canada or the government that issued the currency or currency unit in which the Debentures are payable or Common Shares, if applicable;

as will, together with the income to accrue thereon and reinvestment thereof, be sufficient to pay and discharge the entire amount of principal of, premium, if any (including the maximum amount that may be payable as a Make Whole Premium) on, and accrued and unpaid interest to maturity or any repayment date, as the case may be, of all such Debentures; or
  - (iii) all Debentures authenticated and delivered (other than (A) Debentures which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 2.9 and 2.10 and (B) Debentures for whose payment has been deposited in trust and thereafter repaid to the

Corporation as provided in Section 9.3) have been delivered to the Trustee for cancellation;

so long as in any such event:

- (iv) the Corporation has paid, caused to be paid or made provisions to the satisfaction of the Trustee for the payment of all other sums payable or which may be payable (including the maximum amount that may be payable as a Make Whole Premium) with respect to all of such Debentures (together with all applicable expenses of the Trustee in connection with the payment of such Debentures); and
- (v) the Corporation has delivered to the Trustee an Officer's Certificate stating that all conditions precedent herein provided relating to the payment, satisfaction and discharge of all such Debentures have been complied with.

Any deposits with the Trustee referred to in this Section 9.5 shall be irrevocable, subject to Section 9.6, and shall be 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 Debentures being satisfied.

- (b) Upon the satisfaction of the conditions set forth in this Section 9.5 with respect to all the outstanding Debentures, or all the outstanding Debentures of any series, as applicable, the terms and conditions of the Debentures, including the terms and conditions with respect thereto set forth in this Indenture (other than those contained in Article 2 and Article 4 and the provisions of Article 1 pertaining to Article 2 and Article 4) shall no longer be binding upon or applicable to the Corporation.
- (c) Any funds or obligations deposited with the Trustee pursuant to this Section 9.5 shall be denominated in the currency or denomination of the Debentures in respect of which such deposit is made.
- (d) If the Trustee is unable to apply any money or securities in accordance with this Section 9.5 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 Corporation's obligations under this Indenture and the affected Debentures shall be revived and reinstated as though no money or securities had been deposited pursuant to this Section 9.5 until such time as the Trustee is permitted to apply all such money or securities in accordance with this Section 9.5, provided that if the Corporation has made any payment in respect of principal of, premium, if any, or interest on Debentures or, as applicable, other amounts because of the reinstatement of its obligations, the Corporation shall be subrogated to the rights of the holders of such Debentures to receive such payment from the money or securities held by the Trustee.

## 9.6 Continuance of Rights, Duties and Obligations

- (a) Where trust funds or trust property have been deposited pursuant to Section 9.5, the holders of Debentures and the Corporation 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 9.5 in respect of a series of Debentures (the “**Defeased Debentures**”), any holder of any of the Defeased Debentures from time to time converts its Debentures to Common Shares or other securities of the Corporation in accordance with Subsection 2.4(f) (in respect of Initial Debentures or the comparable provision of any other series of Debentures), Article 6 or any other provision of this Indenture, the Trustee shall upon receipt of a Written Direction of the Corporation return to the Corporation from time to time the proportionate amount of the trust funds or other trust property deposited with the Trustee pursuant to Section 9.5 in respect of the Defeased Debentures which is applicable to the Defeased Debentures so converted (which amount shall be based on the applicable principal amount of the Defeased Debentures being converted in relation to the aggregate outstanding principal amount of all the Defeased Debentures).
- (c) In the event that, after the deposit of trust funds or trust property pursuant to Section 9.5, the Corporation is required to make a Change of Control Purchase Offer to purchase any outstanding Debentures pursuant to Subsection 2.4(j) (in respect of Initial Debentures or the comparable provision of any other series of Debentures), in relation to Initial Debentures or to make an offer to purchase Debentures pursuant to any other similar provisions relating to any other series of Debentures, the Corporation shall be entitled to use any trust money or trust property deposited with the Trustee pursuant to Section 9.5 for the purpose of paying to any holders of Defeased Debentures who have accepted any such offer of the Corporation the Total Offer Price payable to such holders in respect of such Change of Control Purchase Offer in respect of Initial Debentures (or the total offer price payable in respect of an offer relating to any other series of Debentures). Upon receipt of a Written Direction from the Corporation, the Trustee shall be entitled to pay to such holder from such trust money or trust property deposited with the Trustee pursuant to Section 9.5 in respect of the Defeased Debentures which is applicable to the Defeased Debentures held by such holders who have accepted any such offer to the Corporation (which amount shall be based on the applicable principal amount of the Defeased Debentures held by accepting offerees in relation to the aggregate outstanding principal amount of all the Defeased Debentures).

**ARTICLE 10**  
**COMMON SHARE INTEREST PAYMENT ELECTION**

**10.1 Common Share Interest Payment Election**

- (a) Provided that the Corporation is not in default under this Indenture and that all applicable regulatory approvals have been obtained (including any required approval of any stock exchange on which the Debentures or Class A Shares are then listed), the Corporation shall have the right, from time to time, to make a Common Share Interest Payment Election in respect of any Interest Obligation by delivering a Common Share Interest Payment Election Notice to the Trustee no later than the earlier of (i) the date required by applicable law or the rules of any stock exchange on which the Debentures or Class A Shares are then listed, and (ii) the day which is 15 Business Days prior to the Interest Payment Date to which the Common Share Interest Payment Election relates.
  
- (b) Upon receipt of a Common Share Interest Payment Election Notice, the Trustee shall, in accordance with this Article 10 and such Common Share Interest Payment Election Notice, deliver Common Share Bid Requests to the investment banks, brokers or dealers identified by the Corporation, in its absolute discretion, in the Common Share Interest Payment Election Notice. In connection with the Common Share Interest Payment Election, the Trustee shall have the power to: (i) accept delivery of Class A Shares from the Corporation and process the Class A Shares in accordance with the Common Share Interest Payment Election Notice; (ii) accept bids with respect to, and consummate, sales of, such Class A Shares, each as the Corporation shall direct in its absolute discretion through the investment banks, brokers or dealers identified by the Corporation in the Common Share Interest Payment Election Notice; (iii) invest the proceeds of such sales on the direction of the Corporation in Government Obligations which mature prior to an applicable Interest Payment Date and use such proceeds to pay the Interest Obligation in respect of which the Common Share Interest Payment Election was made; and (iv) perform any other action necessarily incidental thereto as directed by the Corporation in its absolute discretion. The Common Share Interest Payment Election Notice shall direct the Trustee to solicit and accept only, and each Common Share Bid Request shall provide that the acceptance of any bid is conditional on the acceptance of, sufficient bids to result in aggregate proceeds from such issue and sale of Class A Shares which, together with the cash payments by the Corporation in lieu of fractional Class A Shares, if any, equal the Interest Obligation on the Common Share Delivery Date.
  
- (c) The Common Share Interest Payment Election Notice shall provide for, and all bids shall be subject to, the right of the Corporation, by delivering written notice to the Trustee at any time prior to the consummation of such delivery and sale of the Class A Shares on the Common Share Delivery Date, to withdraw the Common Share Interest Payment Election (which shall have the effect of withdrawing each related Common Share Bid Request), whereupon the



Corporation shall be obliged to pay in cash the Interest Obligation in respect of which the Common Share Interest Payment Election Notice has been delivered.

- (d) Any sale of Class A Shares pursuant to this Article 10 may be made to one or more Persons whose bids are solicited, but all such sales with respect to a particular Common Share Interest Payment Election shall take place concurrently on the Common Share Delivery Date.
- (e) The amount received by a holder of a Debenture in respect of the Interest Obligation or the entitlement thereto will not be affected by whether or not the Corporation elects to satisfy the Interest Obligation pursuant to a Common Share Interest Payment Election.
- (f) The Trustee shall inform the Corporation promptly following receipt of any bid or bids for Class A Shares solicited pursuant to the Common Share Bid Requests. The Trustee shall accept such bid or bids as the Corporation, in its absolute discretion, shall direct by Written Direction of the Corporation, provided that the aggregate proceeds of all sales of Class A Shares resulting from the acceptance of such bids, together with the amount of any cash payment by the Corporation in lieu of any fractional Class A Shares, on the Common Share Delivery Date, must be equal to the related Common Share Interest Payment Election Amount in connection with any bids so accepted, the Corporation, the Trustee (if required by the Corporation in its absolute discretion) and the applicable bidders shall, not later than the Common Share Delivery Date, enter into Common Share Purchase Agreements and shall comply with all Applicable Securities Legislation, including the securities rules and regulations of any stock exchange on which the Debentures or Class A Shares are then listed. The Corporation shall pay all fees and expenses in connection with the Common Share Purchase Agreements including the fees and commissions charged by the investment banks, brokers and dealers and the fees of the Trustee.
- (g) Provided that: (i) all conditions specified in each Common Share Purchase Agreement to the closing of all sales thereunder have been satisfied, other than the delivery of the Class A Shares to be sold thereunder against payment of the purchase price thereof; and (ii) the purchasers under each Common Share Purchase Agreement shall be ready, willing and able to perform thereunder, in each case on the Common Share Delivery Date, the Corporation shall, on the Common Share Delivery Date, deliver to the Trustee the Class A Shares to be sold on such date, an amount in cash equal to the value of any fractional Class A Shares and an Officer's Certificate to the effect that all conditions precedent to such sales, including those set forth in this Indenture and in each Common Share Purchase Agreement, have been satisfied. Upon such deliveries, the Trustee shall consummate such sales on such Common Share Delivery Date by the delivery of the Class A Shares to such purchasers against payment to the Trustee in immediately available funds of the purchase price therefor in an aggregate amount equal to the Common Share Interest Payment Election Amount (less any amount attributable to any fractional Class A Shares), whereupon the sole right of a holder

of Debentures to receive such holder's portion of the Common Share Interest Payment Election Amount will be to receive same from the Trustee out of the proceeds of such sales of Class A Shares plus any amount received by the Trustee from the Corporation attributable to any fractional Class A Shares in full satisfaction of the Interest Obligation and the holder will have no further recourse to the Corporation in respect of the Interest Obligation.

- (h) The Trustee shall, on the Common Share Delivery Date, use the sale proceeds of the Class A Shares (together with any cash received from the Corporation in lieu of any fractional Class A Shares) to purchase, on the direction of the Corporation in writing, Government Obligations which mature prior to the applicable Interest Payment Date and which the Trustee is required to hold until maturity (the "**Common Share Proceeds Investment**") and shall, on such date, deposit the balance, if any, of such sale proceeds in an account established by the Corporation (and which shall be maintained by and subject to the control of the Trustee) (the "**Interest Account**") for such Debentures. The Trustee shall hold such Common Share Proceeds Investment (but not income earned thereon) under its exclusive control in an irrevocable trust for the benefit of the holders of the Debentures. At least one Business Day prior to the Interest Payment Date, the Trustee shall deposit amounts from the proceeds of the Common Share Proceeds Investment in the Interest Account to bring the balance of the Interest Account to the Common Share Interest Payment Election Amount. On the Interest Payment Date, the Trustee shall pay the funds held in the Interest Account to the holders of record of the Debentures on the Interest Payment Date (less any tax required to be deducted, if any) and, provided that there is no Event of Default, shall remit amounts, if any, in respect of income earned on the Common Share Proceeds Investment or otherwise in excess of the Common Share Interest Payment Election Amount to the Corporation.
- (i) Neither the making of a Common Share Payment Election nor the consummation of sales of Class A Shares on a Common Share Delivery Date shall (i) result in the holders of the Debentures not being entitled to receive on the applicable Interest Payment Date cash in an aggregate amount equal to the Interest Obligation payable on such date or (ii) entitle such holders to receive any Class A Shares in satisfaction of such Interest Obligation.
- (j) No fractional Class A Shares will be issued in satisfaction of interest but in lieu thereof the Corporation will satisfy such fractional interest by a cash payment equal to the market price of such fractional interest (less any tax required to be deducted, if any).

## **10.2 Duties of Trustee**

Notwithstanding any other provision of this Article 10, the Trustee shall not be required to take any action set out in Article 10 until it has received a written direction of the Company, in form satisfactory to the Trustee, in respect of such action.

**ARTICLE 11  
SUCCESSORS**

**11.1 Corporation may Consolidate, Etc., Only on Certain Terms**

- (a) The Corporation may not, without the consent of the holders, consolidate with or amalgamate or merge with or into any Person (other than a directly or indirectly wholly-owned Subsidiary of the Corporation) or sell, convey, transfer or lease all or substantially all of the properties and assets of the Corporation to another Person (other than a directly or indirectly wholly-owned Subsidiary of the Corporation) unless:
- (i) the Person formed by such consolidation or into which the Corporation is amalgamated or merged, or the Person which acquires by sale, conveyance, transfer or lease all or substantially all of the properties and assets of the Corporation is a corporation, organized and existing under the laws of Canada or any province or territory thereof or the laws of the United States or any state thereof and such corporation (if other than the Corporation or the continuing corporation resulting from the amalgamation of the Corporation with another corporation under the laws of Canada or any province or territory thereof) expressly assumes, by an indenture supplemental hereto, executed and delivered to the Trustee, in form satisfactory to the Trustee, the obligations of the Corporation under the Debentures and this Indenture and the performance or observance of every covenant and provision of this Indenture and the Debentures required on the part of the Corporation to be performed or observed and the conversion rights shall be provided for in accordance with Article 4, by supplemental indenture satisfactory in form to the Trustee, executed and delivered to the Trustee, by the Person (if other than the Corporation or the continuing corporation resulting from the amalgamation of the Corporation with another corporation under the laws of Canada or any province or territory thereof) formed by such consolidation or into which the Corporation shall have been merged or by the Person which shall have acquired the Corporation's assets;
  - (ii) after giving effect to such transaction, no Event of Default, and no event which, after notice or lapse of time or both, would become an Event of Default, shall have occurred and be continuing; and
  - (iii) if the Corporation or the continuing corporation resulting from the amalgamation or merger of the Corporation with another Person under the laws of Canada or any province or territory thereof or the laws of the United States or any state thereof will not be the resulting, continuing or surviving corporation, the Corporation shall have, at or prior to the effective date of such consolidation, amalgamation, merger or sale, conveyance, transfer or lease, delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such

consolidation, merger or transfer complies with this Article and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture complies with this Article, and that all conditions precedent herein provided for relating to such transaction have been complied with.

- (b) For purposes of the foregoing, the sale, conveyance, transfer or lease (in a single transaction or a series of related transactions) of the properties or assets of one or more Subsidiaries of the Corporation (other than to the Corporation or another wholly-owned Subsidiary of the Corporation), which, if such properties or assets were directly owned by the Corporation, would constitute all or substantially all of the properties and assets of the Corporation and its Subsidiaries, taken as a whole, shall be deemed to be the sale, conveyance, transfer or lease of all or substantially all of the properties and assets of the Corporation.

## 11.2 Successor Substituted

Upon any consolidation of the Corporation with, or amalgamation or merger of the Corporation into, any other Person or any sale, conveyance, transfer or lease of all or substantially all of the properties and assets of the Corporation and its Subsidiaries, taken as a whole, in accordance with Section 11.1, the successor Person formed by such consolidation or into which the Corporation is amalgamated or merged or to which such sale, conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of, the Corporation under this Indenture with the same effect as if such successor Person had been named as the Corporation herein, and thereafter, except in the case of a lease, and except for obligations the predecessor Person may have under a supplemental indenture entered into pursuant to Section 11.1(a)(iii), the predecessor Person shall be relieved of all obligations and covenants under this Indenture and the Debentures.

## ARTICLE 12 COMPULSORY ACQUISITION

### 12.1 Compulsory Acquisition Definitions

For the purposes of this Article 12:

- (a) “**Affiliate**” and “**Associate**” shall have their respective meanings set forth in the *Securities Act* (Ontario);
- (b) “**Dissenting Debentureholders**” means a Debentureholder who does not accept an Offer referred to in Section 12.2 and includes any assignee of the Debenture of a Debentureholder to whom such an Offer is made, whether or not such assignee is recognized under this Indenture;
- (c) “**Offer**” means an offer to acquire outstanding Debentures, which is a takeover bid for Debentures within the meaning ascribed thereto in MI 62-104, whereas of the date of the offer to acquire, the Debentures that are subject to the offer to

acquire, together with the Offeror's Debentures, constitute in the aggregate 20% or more of the outstanding principal amount of the Debentures;

- (d) **“offer to acquire”** includes an acceptance of an offer to sell;
- (e) **“Offeror”** means a person, or two or more persons acting jointly or in concert, who make an Offer to acquire Debentures;
- (f) **“Offeror's Debentures”** means Debentures beneficially owned, or over which control or direction is exercised, on the date of an Offer by the Offeror, any Affiliate or Associate of the Offeror or any person or company acting jointly or in concert with the Offeror; and
- (g) **“Offeror's Notice”** means the notice described in Section 12.3.

## 12.2 Offer for Debentures

If an Offer for all of the outstanding Debentures (other than Debentures held by or on behalf of the Offeror or an Affiliate or Associate of the Offeror) is made and:

- (a) within the time provided in the Offer for its acceptance or within 120 days after the date the Offer is made, whichever period is the shorter, the Offer is accepted by Debentureholders representing at least 90% of the outstanding principal amount of the Debentures, other than the Offeror's Debentures;
- (b) the Offeror is bound to take up and pay for, or has taken up and paid for the Debentures of the Debentureholders who accepted the Offer;
- (c) the Offeror complies with Sections 12.3 and 12.5; and
- (d) the Offeror is entitled to acquire, and the Dissenting Debentureholders are required to sell to the Offeror, the Debentures held by the Dissenting Debentureholder for the same consideration per Debenture payable or paid, as the case may be, under the Offer.

## 12.3 Offeror's Notice to Dissenting Debentureholders

Where an Offeror is entitled to acquire Debentures held by Dissenting Debentureholders pursuant to Section 12.2 and the Offeror wishes to exercise such right, the Offeror shall send by registered mail within 30 days after the date of termination of the Offer a notice (the **“Offeror's Notice”**) to each Dissenting Debentureholder stating that:

- (a) Debentureholders holding at least 90% of the principal amount of all outstanding Debentures, other than Offeror's Debentures, have accepted the Offer;
- (b) the Offeror is bound to take up and pay for, or has taken up and paid for, the Debentures of the Debentureholders who accepted the Offer;

- (c) Dissenting Debentureholders must transfer their respective Debentures to the Offeror on the terms on which the Offeror acquired the Debentures of the Debentureholders who accepted the Offer within 21 days after the date of the sending of the Offeror's Notice; and
- (d) Dissenting Debentureholders must send their respective Debenture certificate(s) to the Trustee within 21 days after the date of the sending of the Offeror's Notice.

#### **12.4 Delivery of Debenture Certificates**

A Dissenting Debentureholder to whom an Offeror's Notice is sent pursuant to Section 12.3 shall, within 21 days after the sending of the Offeror's Notice, send his or her Debenture certificate(s) to the Trustee duly endorsed for transfer.

#### **12.5 Payment of Consideration to Trustee**

Within 21 days after the Offeror sends an Offeror's Notice pursuant to Section 12.3, the Offeror shall pay or transfer to the Trustee, or to such other Person as the Trustee may direct, the cash or other consideration that is payable to Dissenting Debentureholders pursuant to Section 12.2. The acquisition by the Offeror of all Debentures held by all Dissenting Debentureholders shall be effective as of the time of such payment or transfer.

#### **12.6 Consideration to be held in Trust**

The Trustee, or the Person directed by the Trustee, shall hold in trust for the Dissenting Debentureholders the cash or other consideration they or it receive(s) under Section 12.5. The Trustee, or such Persons, shall deposit cash in a separate account in a Canadian chartered bank, or other body corporate, any of whose deposits are insured by the Canada Deposit Insurance Corporation, and shall place other consideration in the custody of a Canadian chartered bank or such other body corporate.

#### **12.7 Completion of Transfer of Debentures to Offeror**

Within 30 days after the date of the sending of an Offeror's Notice pursuant to Section 12.3, the Trustee, if the Offeror has complied with Section 12.5, shall:

- (a) do all acts and things and execute and cause to be executed all instruments as in the Trustee's opinion may be necessary or desirable to cause the transfer of the Debentures of the Dissenting Debentureholders to the Offeror;
- (b) send to each Dissenting Debentureholder who has complied with Section 12.4 the consideration to which such Dissenting Debentureholder is entitled under this Article 12; and
- (c) send to each Dissenting Debentureholder who has not complied with Section 12.4 a notice stating that:
  - (i) his or her Debentures have been transferred to the Offeror;

- (ii) the Trustee or some other Person designated in such notice are holding in trust the consideration for such Debentures; and
- (iii) the Trustee, or such other Person, will send the consideration to such Dissenting Debentureholder as soon as possible after receiving such Dissenting Debentureholder's Debenture certificate(s) or such other documents as the Trustee or such other Person may require in lieu thereof;

and the Trustee is hereby appointed the agent and attorney of the Dissenting Debentureholders for the purposes of giving effect to the foregoing provisions.

### **12.8 Communication of Offer to Corporation**

An Offeror cannot make an Offer for Debentures unless, concurrent with the communication of the Offer to any Debentureholder, a copy of the Offer is provided to the Corporation.

## **ARTICLE 13 MEETINGS OF DEBENTUREHOLDERS**

### **13.1 Right to Convene Meeting**

The Trustee or the Corporation may at any time and from time to time, and the Trustee shall, on receipt of a Written Direction of the Corporation or a written request signed by the holders of not less than 25% of the principal amount of the Debentures then outstanding and upon receiving funding and being indemnified to its reasonable satisfaction by the Corporation or by the Debentureholders signing such request against the costs which may be incurred in connection with the calling and holding of such meeting, convene a meeting of the Debentureholders. In the event of the Trustee failing, within 30 days after receipt of any such request and such funding of indemnity, to give notice convening a meeting, the Corporation or such Debentureholders, as the case may be, may convene such meeting. Every such meeting shall be held in the City of Toronto in the Province of Ontario or at such other place as may be approved or determined by the Trustee.

### **13.2 Notice of Meetings**

- (a) At least 21 days notice of any meeting shall be given to the Debentureholders in the manner provided in Section 14.2 and a copy of such notice shall be sent by post to the Trustee, unless the 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. The accidental omission to give notice of a meeting to any holder of Debentures shall not invalidate any resolution passed at any such meeting. A holder may waive notice of a meeting either before or after the meeting.
- (b) If the business to be transacted at any meeting by Extraordinary Resolution or otherwise, or any action to be taken or power exercised by instrument in writing

under Section 13.15, especially affects the rights of holders of Debentures of one or more series in a manner or to an extent differing in any material way from that in or to which the rights of holders of Debentures of any other series are affected (determined as provided in Sections 13.2(c) and (d)), then:

- (i) a reference to such fact, indicating each series of Debentures in the opinion of the Trustee so especially affected (hereinafter referred to as the “**especially affected series**”) shall be made in the notice of such meeting, and in any such case the meeting shall be and be deemed to be and is herein referred to as a “**Serial Meeting**”; and
- (ii) the holders of Debentures of an especially affected series shall not be bound by any action taken at a Serial Meeting or by instrument in writing under Section 13.5 unless in addition to compliance with the other provisions of this Article 13:
  - (A) at such Serial Meeting: (1) there are Debentureholders present in person or by proxy and representing at least 25% in principal amount of the Debentures then outstanding of such series, subject to the provisions of this Article 13 as to quorum at adjourned meetings; and (II) the resolution is passed by the affirmative vote of the holders of more than 50% (or in the case of an Extraordinary Resolution not less than 66  $\frac{2}{3}$ %) of the principal amount of the Debentures of such series then outstanding voted on the resolution; or
  - (B) in the case of action taken or power exercised by instrument in writing under Section 13.5, such instrument is signed in one or more counterparts by the holders of not less than 66  $\frac{2}{3}$ % in principal amount of the Debentures of such series then outstanding.
- (c) Subject to Section 13.2(d), the determination as to whether any business to be transacted at a meeting of Debentureholders, or any action to be taken or power to be exercised by instrument in writing under Section 13.15, especially affects the rights of the Debentureholders of one or more series in a manner or to an extent differing in any material way from that in or to which it affects the rights of Debentureholders of any other series (and is therefore an especially affected series) shall be determined by an opinion of Counsel, which shall be binding on all Debentureholders, the Trustee and the Corporation for all purposes hereof.
- (d) A proposal:
  - (i) to extend the maturity of Debentures of any particular series or to reduce the principal amount thereof, the rate of interest or redemption premium thereon or to impair any conversion right thereof;



- (ii) to modify or terminate any covenant or agreement which by its terms is effective only so long as Debentures of a particular series are outstanding; or
- (iii) to reduce with respect to Debentureholders of any particular series any percentage stated in this Section 13.2 or Sections 13.4, 13.12 and 13.15;

shall be deemed to especially affect the rights of the Debentureholders of such series in a manner differing in a material way from that in which it affects the rights of holders of Debentures of any other series, whether or not a similar extension, reduction, modification or termination is proposed with respect to Debentures of any or all other series.

### **13.3 Chairman**

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

### **13.4 Quorum**

Subject to the provisions of Section 13.12, at any meeting of the Debentureholders a quorum shall consist of Debentureholders present in person or by proxy and representing at least 25% in principal amount of the outstanding Debentures and, if the meeting is a Serial Meeting, at least 25% of the Debentures then outstanding of each especially affected series. If a quorum of the Debentureholders shall not be present within 30 minutes after the time fixed for holding any meeting, the meeting, if summoned by the Debentureholders or pursuant to a request of the Debentureholders, 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, to the extent possible, and no notice shall be required to be given in respect of such adjourned meeting. At the adjourned meeting, the Debentureholders present in person or by proxy shall, subject to the provisions of Section 13.12, 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 Debentures or of the Debentures then outstanding of each especially affected series. 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.

### **13.5 Power to Adjourn**

The chairman of any meeting at which a quorum of the Debentureholders is present may, with the consent of the holders of a majority in principal amount of the Debentures 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.

### **13.6 Show of Hands**

Every question submitted to a meeting shall, subject to Section 13.7, be decided in the first place by a majority of the votes given on a show of hands except that votes on Extraordinary Resolutions shall be given in the manner hereinafter provided. At any such meeting, unless a poll is duly demanded as herein provided, a declaration by the chairman that a resolution has been carried or carried unanimously or by a particular majority or lost or not carried by a particular majority shall be conclusive evidence of the fact. The chairman of any meeting shall be entitled, both on a show of hands and on a poll, to vote in respect of the Debentures, if any, held by him.

### **13.7 Poll**

On every Extraordinary Resolution, and on any other question submitted to a meeting when demanded by the chairman or by one or more Debentureholders or proxies for Debentureholders, a poll shall be taken in such manner and either at once or after an adjournment as the chairman shall direct. Questions other than Extraordinary Resolutions shall, if a poll be taken, be decided by the votes of the holders of a majority in principal amount of the Debentures and of each especially affected series, if applicable, represented at the meeting and voted on the poll.

### **13.8 Voting**

On a show of hands every person who is present and entitled to vote, whether as a Debentureholder or as proxy for one or more Debentureholders or both, shall have one vote. On a poll each Debentureholder present in person or represented by a proxy duly appointed by an instrument in writing shall be entitled to one vote in respect of each \$1,000 principal amount of Debentures of which he shall then be the holder. In the case of any Debenture denominated in a currency or currency unit other than Canadian dollars, the principal amount thereof for these purposes shall be computed in Canadian dollars on the basis of the conversion of the principal amount thereof at the applicable spot buying rate of exchange for such other currency or currency unit as reported by the Bank of Canada at the close of business on the Business Day next preceding the meeting. Any fractional amounts resulting from such conversion shall be rounded to the nearest \$100. A proxy need not be a Debentureholder. In the case of joint holders of a Debenture, 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 Debentures of which they are joint holders.

### **13.9 Proxies**

A Debentureholder may be present and vote at any meeting of Debentureholders by an authorized representative. The Corporation (in case it convenes the meeting) or the Trustee (in any other case) for the purpose of enabling the Debentureholders to be present and vote at any meeting without producing their Debentures, and of enabling them to be present and vote at any such meeting by proxy and of lodging 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 Person signing on behalf of a Debentureholder;
- (b) the deposit of instruments appointing proxies at such place as the Trustee, the Corporation or the Debentureholder 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, cabled, telegraphed or sent by other electronic means before the meeting to the Corporation 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 Debentures, or as entitled to vote or be present at the meeting in respect thereof, shall be Debentureholders and persons whom Debentureholders have by instrument in writing duly appointed as their proxies.

### **13.10 Persons Entitled to Attend Meetings**

The Corporation and the Trustee, by their respective officers and directors, the Auditors of the Corporation and the legal advisors of the Corporation, the Trustee or any Debentureholder may attend any meeting of the Debentureholders, but shall have no vote as such.

### **13.11 Powers Exercisable by Extraordinary Resolution**

In addition to the powers conferred upon them by any other provisions of this Indenture or by law, a meeting of the Debentureholders shall have the following powers exercisable from time to time by Extraordinary Resolution, subject to receipt of the prior approval of the Toronto Stock Exchange or such other exchange on which the Debentures are then listed, where required:

- (a) power to authorize the Trustee to grant extensions of time for payment of any principal, premium or interest on the Debentures, whether or not the principal, premium, or interest, the payment of which is extended, is at the time due or overdue;
- (b) power to sanction any modification, abrogation, alteration, compromise or arrangement of the rights of the Debentureholders or the Trustee against the Corporation, or against its property, whether such rights arise under this Indenture or the Debentures or otherwise;
- (c) power to assent to any modification of or change in or addition to or omission from the provisions contained in this Indenture or any Debenture which shall be

agreed to by the Corporation and to authorize the Trustee to concur in and execute any indenture supplemental hereto embodying any modification, change, addition or omission;

- (d) power to sanction any scheme for the reconstruction, reorganization or recapitalization of the Corporation or for the consolidation, amalgamation, arrangement, combination or merger of the Corporation with any other Person or for the sale, leasing, transfer or other disposition of all or substantially all of the undertaking, property and assets of the Corporation or any part thereof, provided that no such sanction shall be necessary in respect of any such transaction if the provisions of Section 11.1 shall have been complied with;
- (e) power to direct or authorize the Trustee to exercise any power, right, remedy or authority given to it by this Indenture in any manner specified in any such Extraordinary Resolution or to refrain from exercising any such power, right, remedy or authority;
- (f) power to waive, and direct the Trustee to waive, any default hereunder and/or cancel any declaration made by the Trustee pursuant to Section 8.1 either unconditionally or upon any condition specified in such Extraordinary Resolution;
- (g) power to restrain any Debentureholder from taking or instituting any suit, action or proceeding for the purpose of enforcing payment of the principal, premium or interest on the Debentures, or for the execution of any trust or power hereunder;
- (h) power to direct any Debentureholder who, as such, has brought any action, suit or proceeding to stay or discontinue or otherwise deal with the same upon payment, if the taking of such suit, action or proceeding shall have been permitted by Section 8.5, of the costs, charges and expenses reasonably and properly incurred by such Debentureholder in connection therewith;
- (i) power to assent to any compromise or arrangement with any creditor or creditors or any class or classes of creditors, whether secured or otherwise, and with holders of any shares or other securities of the Corporation;
- (j) power to appoint a committee with power and authority (subject to such limitations, if any, as may be prescribed in the resolution) to exercise, and to direct the Trustee to exercise, on behalf of the Debentureholders, such of the powers of the Debentureholders as are exercisable by Extraordinary Resolution or other resolution as shall be included in the resolution appointing the committee. The resolution making such appointment may provide for payment of the expenses and disbursements of and compensation to such committee. Such committee shall consist of such number of persons as shall be prescribed in the resolution appointing it and the members need not be themselves Debentureholders. Every such committee may elect its chairman and may make regulations respecting its quorum, the calling of its meetings, the filling of vacancies occurring in its number and its procedure generally. Such regulations

may provide that the committee may act at a meeting at which a quorum is present or may act by minutes signed by the number of members thereof necessary to constitute a quorum. All acts of any such committee within the authority delegated to it shall be binding upon all Debentureholders. Neither the committee nor any member thereof shall be liable for any loss arising from or in connection with any action taken or omitted to be taken by them in good faith;

- (k) power to remove the Trustee from office and to appoint a new Trustee or Trustees provided that no such removal shall be effective unless and until a new Trustee or Trustees shall have become bound by this Indenture;
- (l) power to sanction the exchange of the Debentures for or the conversion thereof into shares, bonds, debentures or other securities or obligations of the Corporation or of any other Person formed or to be formed;
- (m) power to authorize the distribution in specie of any shares or securities received pursuant to a transaction authorized under the provisions of Section 13.11(a); and
- (n) power to amend, alter or repeal any Extraordinary Resolution previously passed or sanctioned by the Debentureholders or by any committee appointed pursuant to Section 13.11(j).

Notwithstanding the foregoing provisions of this Section 13.11, none of such provisions shall in any manner allow or permit any amendment, modification, abrogation or addition to the provisions of Article 5 which could reasonably be expected to detrimentally affect the rights, remedies or recourse of the priority of the Senior Creditors.

### **13.12 Meaning of “Extraordinary Resolution”**

- (a) The expression “**Extraordinary Resolution**” when used in this Indenture means, subject as hereinafter in this Article provided, a resolution proposed to be passed as an Extraordinary Resolution at a meeting of Debentureholders (including an adjourned meeting) duly convened for the purpose and held in accordance with the provisions of this Article at which the holders of not less than 25% of the principal amount of the Debentures then outstanding, and if the meeting is a Serial Meeting, at which holders of not less than 25% of the principal amount of the Debentures then outstanding of each especially affected series, are present in person or by proxy and passed by the favourable votes of the holders of not less than 66  $\frac{2}{3}$ % of the principal amount of the Debentures, and if the meeting is a Serial Meeting by the affirmative vote of the holders of not less than 66  $\frac{2}{3}$ % of each especially affected series, in each case present or represented by proxy at the meeting and voted upon on a poll on such resolution.
- (b) If, at any such meeting, the holders of not less than 25% of the principal amount of the Debentures then outstanding and, if the meeting is a Serial Meeting, 25% of the principal amount of the Debentures then outstanding of each especially affected series, in each case are not present in person or by proxy within 30 minutes after the time appointed for the meeting, then the meeting, if convened by

or on the requisition of Debentureholders, shall be dissolved but in any other case it shall stand adjourned to such date, being not less than 14 nor more than 60 days later, and to such place and time as may be appointed by the chairman. Not less than 10 days notice shall be given of the time and place of such adjourned meeting in the manner provided in Section 14.2. Such notice shall state that at the adjourned meeting the Debentureholders present in person or by proxy shall form a quorum. At the adjourned meeting the Debentureholders present in person or by proxy shall form a quorum and may transact the business for which the meeting was originally convened and a resolution proposed at such adjourned meeting and passed thereat by the affirmative vote of holders of not less than 66  $\frac{2}{3}$ % of the principal amount of the Debentures and, if the meeting is a Serial Meeting, by the affirmative vote of the holders of not less than 66  $\frac{2}{3}$ % of the principal amount of the Debentures of each especially affected series, in each case present or represented by proxy at the meeting and voted upon on a poll shall be an Extraordinary Resolution within the meaning of this Indenture, notwithstanding that the holders of not less than 25% in principal amount of the Debentures then outstanding, and if the meeting is a Serial Meeting, holders of not less than 25% of the principal amount of the Debentures then outstanding of each especially affected series, are not present in person or by proxy at such adjourned meeting.

- (c) Votes on an Extraordinary Resolution shall always be given on a poll and no demand for a poll on an Extraordinary Resolution shall be necessary.

### **13.13 Powers Cumulative**

Any one or more of the powers in this Indenture stated to be exercisable by the Debentureholders by Extraordinary Resolution or otherwise 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 Debentureholders to exercise the same or any other such power or powers thereafter from time to time.

### **13.14 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 Corporation, 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 Debentureholders, 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,

### **13.15 Instruments in Writing**

All actions which may be taken and all powers that may be exercised by the Debentureholders at a meeting held as hereinbefore in this Article provided may also be taken and exercised by the holders of 66  $\frac{2}{3}$ % of the principal amount of all the outstanding Debentures and, if the meeting at

which such actions might be taken would be a Serial Meeting, by the holders of 66  $\frac{2}{3}$ % of the principal amount of the Debentures then outstanding of each especially affected series, by an instrument in writing signed in one or more counterparts and the expression “**Extraordinary Resolution**” when used in this Indenture shall include an instrument so signed.

### **13.16 Binding Effect of Resolutions**

Every resolution and every Extraordinary Resolution passed in accordance with the provisions of this Article at a meeting of Debentureholders shall be binding upon all the Debentureholders, whether present at or absent from such meeting, and every instrument in writing signed by Debentureholders in accordance with Section 13.15 shall be binding upon all the Debentureholders, whether signatories thereto or not, and each and every Debentureholder and the Trustee (subject to the provisions for its indemnity herein contained) shall be bound to give effect accordingly to every such resolution, Extraordinary Resolution and instrument in writing.

### **13.17 Evidence of Rights of Debentureholders**

- (a) Any request, direction, notice, consent or other instrument which this Indenture may require or permit to be signed or executed by the Debentureholders may be in any number of concurrent instruments of similar tenor signed or executed by such Debentureholders.
- (b) 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.

### **13.18 Serial Meetings**

If in the opinion of Counsel any business to be transacted at any meeting, or any action to be taken or power to be exercised by instrument in writing under Section 13.15, does not adversely affect the rights of the holders of Debentures of one or more series, the provisions of this Article 13 shall apply as if the Debentures of such series were not outstanding and no notice of any such meeting need be given to the holders of Debentures of such series. Without limiting the generality of the foregoing, a proposal to modify or terminate any covenant or agreement which is effective only so long as Debentures of a particular series are outstanding shall be deemed not to adversely affect the rights of the holders of Debentures of any other series.

## **ARTICLE 14 NOTICES**

### **14.1 Notice to Corporation**

Any notice to the Corporation under the provisions of this Indenture shall be valid and effective if delivered to the Corporation at: P.O. Box 1530, 126 Bristol Avenue, Yellowknife, Northwest Territories, X1A 2P2, Attention: Corporate Secretary, and a copy delivered to Aird & Berlis LLP, Brookfield Place, Suite 1800, Box 754, 181 Bay Street, Toronto, ON M5J 2T9, Attention: Thomas Fenton, or if given by registered letter, postage prepaid, to such offices and so addressed and if mailed, shall be deemed to have been effectively given three days following the mailing thereof. The Corporation 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 Corporation for all purposes of this Indenture.

#### **14.2 Notice to Debentureholders**

- (a) All notices to be given hereunder with respect to the Debentures shall be deemed to be validly given to the holders thereof if: (i) if sent by first class mail, postage prepaid addressed to such holders at their addresses appearing in any of the registers hereinbefore mentioned and shall be deemed to have been effectively given three days following the day of mailing; and (ii) if sent by courier, addressed to such holders at their addresses appearing in any of the registers hereinbefore mentioned and shall be deemed to have been effectively given on the date of delivery by the courier. Accidental error or omission in giving notice or accidental failure to mail notice to any Debentureholder or the inability of the Corporation to give or mail any notice due to anything beyond the reasonable control of the Corporation shall not invalidate any action or proceeding founded thereon.
- (b) If any notice given in accordance with the foregoing paragraph would be unlikely to reach the Debentureholders 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 Corporation shall give such notice by publication at least once in the City of Toronto (or in such of those cities as, in the opinion of the Trustee, is sufficient in the particular circumstances), each such publication to be made in a daily newspaper of general circulation in the designated city.
- (c) Any notice given to Debentureholders 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.
- (d) All notices with respect to any Debenture 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 Debenture.

#### **14.3 Notice to Trustee**

Any notice to the Trustee under the provisions of this Indenture shall be valid and effective if delivered or sent by facsimile transmission to the Trustee at its principal office in Toronto, Ontario at 100 University Avenue, 11<sup>th</sup> Floor, North Tower, Toronto, Ontario, M5J 2Y1, Attention: Manager, Corporate Trust Department (facsimile: (416) 981-9777) 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 three days following the mailing thereof. The Trustee may from time to time notify the Corporation in writing of a change of address which thereafter, until changed by like notice, shall be the address of the Trustee for all purposes of this Indenture.



#### **14.4 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 14.3, such notice shall be valid and effective only if delivered at the appropriate address in accordance with Section 14.3.

### **ARTICLE 15 CONCERNING THE TRUSTEE**

#### **15.1 No Conflict of Interest**

The Trustee represents to the Corporation 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 15.1, such a material conflict of interest exists, or hereafter arises, the validity and enforceability of this Indenture, and the Debentures issued hereunder, shall not be affected in any manner whatsoever by reason only that such material conflict of interest exists or arises but the Trustee shall, within 30 days after ascertaining that it has a material conflict of interest, either eliminate such material conflict of interest or resign in the manner and with the effect specified in Section 15.2.

#### **15.2 Replacement of Trustee**

- (a) The Trustee may resign its trust and be discharged from all further duties and liabilities hereunder by giving to the Corporation 60 days notice in writing or such shorter notice as the Corporation 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 15.2. The validity and enforceability of this Indenture and of the Debentures 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 or otherwise becoming incapable of acting hereunder, the Corporation shall forthwith appoint a new Trustee unless a new Trustee has already been appointed by the Debentureholders. Failing such appointment by the Corporation, the retiring Trustee or any Debentureholder may apply to a Judge of the Superior Court of Justice of Ontario, on such notice as such Judge may direct at the Corporation's expense, for the appointment of a new Trustee but any new Trustee so appointed by the Corporation or by the Court shall be subject to removal as aforesaid by the Debentureholders 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 15.2 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.

- (b) Any company into which the Trustee may be merged or, with or to which it may be consolidated, amalgamated or sold, or any company resulting from any merger, consolidation, sale or amalgamation to which the Trustee shall be a party, or any company succeeding to all or substantially all of the corporate trust business of the Trustee 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 Corporation, 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 Trustee so ceasing to act, and upon payment to the Trustee of all fees and out-of-pocket expenses owing to it and remaining unpaid, 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 Corporation 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 Corporation.

### **15.3 Duties of Trustee**

In the exercise of the rights, duties and obligations prescribed or conferred by the terms of this Indenture, the Trustee shall act honestly and in good faith and exercise that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances.

### **15.4 Reliance Upon Declarations, Opinions, Etc.**

In the exercise of its rights, duties and obligations hereunder the Trustee may, if acting in good faith, rely, 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 15.5, if applicable, and with any other applicable requirements of this Indenture. 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 Corporation.

### **15.5 Evidence and Authority to Trustee, Opinions, Etc.**

- (a) The Corporation 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 Corporation or the Trustee under this

Indenture or as a result of any obligation imposed under this Indenture, including the certification and delivery of Debentures 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 Corporation, forthwith if and when (a) 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 15.5, or (b) the Trustee, in the exercise of its rights and duties under this Indenture, gives the Corporation 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) a certificate made by any two officers or directors of the Corporation, 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 compliance with 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 compliance with which is subject to review or examination by auditors or accountants, an opinion or report of the Auditors of the Corporation 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 certificates and delivery of Debentures 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 person whose qualifications give authority to a statement made by him, provided that if such report or opinion is furnished by a trustee, officer or employee of the Corporation it shall be in the form of a statutory declaration. Such evidence shall be, so far as appropriate, in accordance with the immediately preceding paragraph of this Section.
- (c) Each statutory declaration, certificate, opinion or report with respect to compliance with a condition precedent provided for in the Indenture shall include (a) a statement by the person giving the evidence that he has read and is familiar with those provisions of this Indenture relating to the condition precedent in question, (b) 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, (c) a statement that, in the belief of the person giving such evidence, he has made such examination or investigation as is necessary to enable him to make the statements or give the opinions contained or expressed therein, and (d) a statement whether in the opinion of such person the conditions precedent in question have been complied with or satisfied.

- (d) The Corporation shall furnish or cause to be furnished to the Trustee at any time if the Trustee reasonably so requires, its certificate that the Corporation has complied with all covenants, conditions or other requirements contained in this Indenture, the non-compliance with which would, with the giving of notice or the lapse of time, or both, or otherwise, constitute 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 Corporation 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 Corporation or as a result of any obligation imposed by this Indenture.

### **15.6 Officer's 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 Officer's Certificate.

### **15.7 Experts, Advisers and Agents**

The Trustee may:

- (a) employ or retain and act and rely on the opinion or advice of or information obtained from any solicitor, auditor, valuer, engineer, surveyor, appraiser or other expert, whether obtained by the Trustee or by the Corporation, 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
- (b) employ such agents and other assistants as it may reasonably require for the proper discharge of its duties hereunder, and may pay reasonable remuneration for all services performed for it (and shall be entitled to receive reasonable remuneration for all services performed by it) in the discharge of the trusts hereof and compensation for all disbursements, costs and expenses made or incurred by it in the discharge of its duties hereunder and in the management of the trusts hereof and any solicitors employed or consulted by the Trustee may, but need not be, solicitors for the Corporation.

### **15.8 Trustee May Deal in Debentures**

Subject to Sections 15.1 and 15.3, the Trustee may, in its personal or other capacity, buy, sell, lend upon and deal in the Debentures and generally contract and enter into financial transactions with the Corporation or otherwise, without being liable to account for any profits made thereby.

### **15.9 Investment of Monies Held by Trustee**

- (a) Unless otherwise provided in this Indenture, any monies held by the Trustee, which, under the trusts of this Indenture, may or ought to be invested or which may be on deposit with the Trustee or which may be in the hands of the Trustee, may be invested and reinvested in the name or under the control of the Trustee in Authorized Investments, provided that such securities are expressed to mature within two years or such shorter period selected to facilitate any payments expected to be made under this Indenture after their purchase by the Trustee, and unless and until the Trustee shall have declared the principal of and interest on the Debentures to be due and payable, the Trustee shall so invest such monies at the Written Direction of the Corporation given in a reasonably timely manner. Pending the investment of any monies as hereinbefore provided, such monies may be deposited in the name of the Trustee in any chartered bank of Canada or, with the consent of the Corporation, in the deposit department of the Trustee or any other loan or trust company authorized to accept deposits under the laws of Canada or any province thereof at the rate of interest, if any, then current on similar deposits. The Corporation shall receive the Trustee's prevailing rate for all monies held by it, as such rate may change from time to time.
- (b) Unless and until the Trustee shall have declared the principal of and interest on the Debentures to be due and payable, and except as otherwise expressly provided herein, the Trustee shall pay over to the Corporation all interest received by the Trustee in respect of any investments or deposits made pursuant to the provisions of this Section.

### **15.10 Trustee Not Ordinarily Bound**

Except as provided in Section 8.2 and as otherwise specifically provided herein, the Trustee shall not, subject to Section 15.3, 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 Corporation of any of the obligations herein imposed upon the Corporation or of the covenants on the part of the Corporation herein contained, nor in any way to supervise or interfere with the conduct of the Corporation'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 Debentures then outstanding or by any Extraordinary Resolution of the Debentureholders passed in accordance with the provisions contained in Article 13, 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.

### **15.11 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.

### **15.12 Trustee Not Bound to Act on the Corporation's Request**

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 Corporation 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.

### **15.13 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 Debentureholders hereunder shall be conditional upon the Debentureholders furnishing when required by notice in writing by the Trustee, funds sufficient to the Trustee 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 Debentureholders at whose instance it is acting to deposit with the Trustee the Debentures held by them for which Debentures the Trustee shall issue receipts.

### **15.14 Authority to Carry on Business**

The Trustee represents to the Corporation that at the date of execution and delivery by it of this Indenture it is authorized to carry on the business of a trust company in each of the provinces of Canada but if, notwithstanding the provisions of this Section 15.14, it 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 the Trustee shall, within 90 days after ceasing to be authorized to carry on the business of a trust company in any of the provinces of Canada, either become so authorized or resign in the manner and with the effect specified in Section 15.2.

### **15.15 Compensation and Indemnity**

- (a) The Corporation shall pay to the Trustee from time to time compensation for its services hereunder as agreed separately by the Corporation 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. Any amount due under this Section 15.5(a) and unpaid 30 days after request for such payment shall bear interest from the expiration of such 30 days at a rate per annum equal to the rate normally charged by the Trustee for similar accounts, payable on demand. Such remuneration shall continue to be payable until the duties hereof shall be finally wound up, whether or not the duties of the Trustee shall be in the course of administration by or under the direction of a court.

- (b) The Corporation hereby indemnifies and saves harmless the Trustee and its directors, officers, agents and employees 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 save only in the event of the grossly negligent failure to act, or the wilful misconduct or fraud of the Trustee. This indemnity will survive the termination or discharge of this Indenture and the resignation or removal of the Trustee. The Trustee shall notify the Corporation promptly of any claim for which it may seek indemnity. The Corporation shall defend the claim and the Trustee shall cooperate in the defence. The Trustee may have separate Counsel and the Corporation shall pay the reasonable fees and expenses of such Counsel. The Corporation 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 Corporation need not reimburse any expense or indemnify against any loss or liability incurred by the Trustee through gross negligence, wilful misconduct or fraud.

### **15.16 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 Debentureholders, subject to all the terms and conditions herein set forth.

### **15.17 Third Party Interests**

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

### **15.18 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 noncompliance 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 to resign on ten days' prior written notice sent to the Corporation provided that (i) the Trustee's written notice shall describe the circumstances of such non-compliance; and (ii) if such circumstances are rectified to the Trustee's satisfaction within such ten-day period, then such resignation shall not be effective.

### **15.19 Privacy Laws**

The parties acknowledge that federal and/or provincial legislation that addresses the protection of individuals' personal information (collectively, "**Privacy Laws**") applies to certain obligations and activities under this Indenture. Notwithstanding any other provision of this Indenture, neither party shall take or direct any action that would contravene, or cause the other to contravene, applicable Privacy Laws. The Corporation shall, prior to transferring or causing to be transferred personal information to the Trustee, obtain and retain required consents of the relevant individuals to the collection, use and disclosure of their personal information, or shall have determined that such consents either have previously been given upon which the parties can rely or are not required under the Privacy Laws. The Trustee shall use commercially reasonable efforts to ensure that its services hereunder comply with Privacy Laws. Specifically, the Trustee agrees: (a) to have a designated chief privacy officer; (b) to maintain policies and procedures to protect personal information and to receive and respond to any privacy complaint or inquiry; (c) to use personal information solely for the purposes of providing its services under or ancillary to this Indenture and to comply with applicable laws and not to use it for any other purpose except with the consent of or direction from the Corporation or the individual involved or as permitted by Privacy Laws; (d) not to sell or otherwise improperly disclose personal information to any third party; and (e) to employ administrative, physical and technological safeguards to reasonably secure and protect personal information against loss, theft, or unauthorized access, use or modification.

## **ARTICLE 16 SUPPLEMENTAL INDENTURES**

### **16.1 Supplemental Indentures**

From time to time the Trustee and, when authorized by a resolution of the directors of Corporation, the Corporation, may, and they shall when required by this Indenture, subject to the prior approval of the Toronto Stock Exchange, execute, acknowledge and deliver by their proper officers deeds or indentures supplemental hereto which thereafter shall form part hereof, for any one or more of the following purposes:



- (a) providing for the issuance of Additional Debentures under this Indenture;
- (b) adding to the covenants of the Corporation herein contained for the protection of the Debentureholders, or of the Debentures of any series, or providing for events of default, in addition to those herein specified;
- (c) making such provisions not inconsistent with this Indenture as may be necessary or desirable with respect to matters or questions arising hereunder, including the making of any modifications in the form of the Debentures which do not affect the substance thereof and which in the opinion of the Trustee relying on an opinion of Counsel will not be prejudicial to the interests of the Debentureholders;
- (d) evidencing the succession, or successive successions, of others to the Corporation and the covenants of and obligations assumed by any such successor in accordance with the provisions of this Indenture;
- (e) giving effect to any Extraordinary Resolution passed as provided in Article 13; and
- (f) for any other purpose not inconsistent with the terms of this Indenture.

Unless the supplemental indenture requires the consent or concurrence of Debentureholders or the holders of a particular series of Debentures, as the case may be, by Extraordinary Resolution, the consent or concurrence of Debentureholders or the holders of a particular series of Debentures, as the case may be, shall not be required in connection with the execution, acknowledgement or delivery of a supplemental indenture. The Corporation and the Trustee may amend any of the provisions of this Indenture related to matters of United States law or permit the issuance of Debentures into the United States in the future in order to ensure that such issuances can be made in accordance with applicable law in the United States without the consent or approval of the Debentureholders. Further, the Corporation and the Trustee may without the consent or concurrence of the Debentureholders or the holders of a particular series of Debentures, as the case may be, by supplemental indenture or otherwise, make any changes or corrections in this Indenture which it shall have been advised by Counsel are required for the purpose of curing or correcting any ambiguity or defective or inconsistent provisions or clerical omissions or mistakes or manifest errors contained herein or in any indenture supplemental hereto or any Written Direction of the Corporation provided for the issue of Debentures, providing that in the opinion of the Trustee (relying upon an opinion of Counsel) the rights of the Debentureholders are in no way prejudiced thereby.

## **ARTICLE 17**

### **EXECUTION AND FORMAL DATE**

#### **17.1 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.

**17.2 Formal Date**

For the purpose of convenience this Indenture may be referred to as bearing the formal date of May 12, 2011 irrespective of the actual date of execution hereof.

*\*\*\*Remainder of page left blank intentionally\*\*\**

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

**DISCOVERY AIR INC.**

By: “David Jennings”  
Name: David Jennings  
Title: President and Chief Executive Officer

**COMPUTERSHARE TRUST COMPANY OF  
CANADA**

By: “Daniel Marz”  
Authorized Signing Officer  
Corporate Trust Officer

By: “Lisa M. Kudo”  
Authorized Signing Officer  
Corporate Trust Officer

**SCHEDULE A  
FORM OF INITIAL DEBENTURE**

This Debenture is a Global Debenture within the meaning of the Indenture herein referred to and is registered in the name of a Depository or a nominee thereof. This Debenture may not be transferred to or exchanged for Debentures 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 Debenture authenticated and delivered upon registration of, transfer of, or in exchange for, or in lieu of, this Debenture shall be a Global Debenture subject to the foregoing, except in such limited circumstances described in the Indenture.

Unless this certificate is presented by an authorized representative of CDS Clearing and Depository Services Inc. ("CDS") to Discovery Air Inc. or its agent for registration of transfer, exchange or payment, and any certificate issued in respect thereof is registered in the name of CDS & CO., or in such other name as is requested by an authorized representative of CDS (and any payment is made to CDS & CO. or to such other entity as is requested by an authorized representative of CDS), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL since the registered holder hereof, CDS & CO., has a property interest in the securities represented by this certificate herein and it is a violation of its rights for another person to hold, transfer or deal with this certificate.

CUSIP 25470EAB3  
ISIN CA 25470EAB35

No. D-1-2011

**\$30,000,000**

**DISCOVERY AIR INC.**

**(A corporation continued under the federal laws of Canada)**

**8.375% CONVERTIBLE UNSECURED SUBORDINATED DEBENTURE  
due June 30, 2016**

**DISCOVERY AIR INC.** (the "**Corporation**" or the "**Issuer**") for value received hereby acknowledges itself indebted and, subject to the provisions of the convertible debenture indenture (the "**Indenture**") dated as of May 12, 2011 between the Corporation and Computershare Trust Company of Canada (the "**Trustee**"), promises to pay to the registered holder hereof on June 30, 2016 (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 Thirty Million Dollars (\$30,000,000) in lawful money of Canada on presentation and surrender of this Initial Debenture 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 from the date hereof, or from the last Interest Payment Date to which interest shall have been paid or made available for payment hereon, whichever is later, at the rate of 8.375% per annum (based on a year of 365 days), in like money, in arrears in equal (with the exception of the first interest payment which will include interest from May 12, 2011 as set forth below) semi-annual instalments (less any tax required by law to be deducted) on June 30 and December 31 in each year commencing on December 31, 2011 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 and, should the Corporation at any time make default in

the payment of any principal, premium, if any, or interest, to pay interest on the amount in default at the same rate, in like money and on the same dates. For certainty, the first interest payment will include interest accrued from May 12, 2011 to, but excluding December 31, 2011, which will be equal to \$53.23 for each \$1,000 principal amount of the Initial Debentures.

Interest hereon shall be payable by cheque mailed by prepaid ordinary mail or by electronic transfer of funds to the registered holder hereof and, subject to the provisions of the Indenture, the mailing of such cheque or electronic transfer of funds, as the case may be, shall, to the extent of the sum represented thereby (plus the amount of any tax withheld), satisfy and discharge all liability for interest on this Initial Debenture.

This Initial Debenture is one of the 8.375% Convertible Unsecured Subordinated Debentures (referred to herein as the “**Initial Debentures**”) of the Corporation issued or issuable in one or more series under the provisions of the Indenture. The Initial Debentures authorized for issue immediately are limited to an aggregate principal amount of \$34,500,000 in lawful money of Canada. Reference is hereby expressly made to the Indenture for a description of the terms and conditions upon which the Initial Debentures are or are to be issued and held and the rights and remedies of the holders of the Initial Debentures and of the Corporation 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 Initial Debenture by acceptance hereof assents.

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

Any part, being \$1,000 or an integral multiple thereof, of the principal of this Initial Debenture, provided that the principal amount of this Initial Debenture is in a denomination in excess of \$1,000, is convertible, at the option of the holder hereof, upon surrender of this Initial Debenture at the principal office of the Trustee in Toronto, Ontario, at any time prior to the close of business on the Business Day immediately preceding the Maturity Date or, if this Initial Debenture is called for redemption on or prior to such date, then, to the extent so called for redemption, any time prior to the close of business on the earliest of: (i) the Business Day immediately preceding the date specified for redemption of this Initial Debenture; (ii) if called for redemption, on the Business Day immediately preceding the date fixed for redemption; and (iii) if called for repurchase in connection with a Change of Control, on the Business Day immediately preceding the payment date, into Common Shares (without adjustment for interest accrued hereon or for dividends or distributions on Common Shares issuable upon conversion) at a conversion price of \$0.73 (the “**Conversion Price**”) per Common Share, being a rate of approximately 1,369.863 Common Shares for each \$1,000 principal amount of Initial Debentures, all subject to the terms and conditions and in the manner set forth in the Indenture. No Initial Debentures may be converted during the five Business Days preceding and including June 30 and December 31 in each year, commencing December 31, 2011, as the registers of the Trustee will be closed during such periods. The Indenture makes provision for the adjustment of the Conversion Price in the events therein specified. No fractional Common Shares will be issued on any conversion but in lieu thereof, the Corporation will satisfy such fractional interest by a cash payment equal to the market price of such fractional interest determined in accordance

with the Indenture. Holders converting their Initial Debentures will receive accrued and unpaid interest thereon. If an Initial Debenture is surrendered for conversion on an Interest Payment Date or during the five preceding Business Days, the Person or Persons entitled to receive Common Shares in respect of the Debentures so surrendered for conversion shall not become the holder or holders of record of such Common Shares until the Business Day following such Interest Payment Date.

This Initial Debenture may be redeemed at the option of the Corporation on the terms and conditions set out in the Indenture at the redemption price therein and herein set out provided that this Initial Debenture is not redeemable before June 30, 2014, except in the event of the satisfaction of certain conditions after a Change of Control has occurred. On and after June 30, 2014 and prior to the Maturity Date, and provided that the Current Market Price of the Common Shares is at least 125% of the Conversion Price of the Initial Debentures, the Initial Debentures are redeemable at the option of the Corporation at a price equal to \$1,000 per Initial Debenture plus accrued and unpaid interest and otherwise on the terms and conditions described in the Indenture. The Corporation may, on notice as provided in the Indenture, at its option and subject to any applicable regulatory approval, elect to satisfy its obligation to pay all or any portion of the aggregate principal amount of the Initial Debentures to be redeemed by the issue of that number of Common Shares obtained by dividing the aggregate principal amount of the Initial Debentures to be redeemed by 95% of the volume weighted average trading price of the Class A Shares on the Toronto Stock Exchange or other stock exchange on which the Class A Shares may be listed for the 20 consecutive trading days ending on the fifth trading day preceding the Redemption Date. Holders who are Qualified Canadians will receive Class A Shares and holders who are not Qualified Canadians will receive Class B Shares. Any accrued and unpaid interest thereon will be paid in cash.

Upon the occurrence of a Change of Control of the Corporation, the Corporation is required to make an offer to purchase all of the Initial Debentures at a price equal to 100% of the principal amount of such Initial Debentures plus accrued and unpaid interest (if any) up to, but excluding, the date the Initial Debentures are so repurchased (the “**Change of Control Purchase Offer**”). If 90% or more of the principal amount of all Initial Debentures outstanding on the date the Corporation provides notice of a Change of Control to the Trustee have been tendered for purchase pursuant to the Change of Control Purchase Offer, the Corporation has the right to redeem all the remaining outstanding Initial Debentures on the same date and at the same price.

In addition to the requirement for the Corporation to make a Change of Control Purchase Offer in the event of a Change of Control, if a Change of Control occurs in which 10% or more of the consideration for the Common Shares in the transaction or transactions constituting a Change of Control consists of: (i) cash (other than cash payments for fractional Common Shares and cash payments made in respect of dissenter’s appraisal rights); (ii) equity securities that are not traded or intended to be traded immediately following such transactions on a stock exchange, or other property that is not traded or intended to be traded immediately following such transactions on a stock exchange, then subject to regulatory approval, during the period beginning ten trading days before the anticipated effective date of the Change of Control and ending 30 days after the Change of Control Purchase Offer is delivered or mailed to holders of Initial Debentures, holders of Initial Debentures will be entitled to convert their Initial Debentures, in whole or in part, and receive, in addition to the number of Common Shares (or cash or other property or securities in

substitution therefor) that such holders are otherwise entitled to receive upon such conversion in accordance with the provisions of the Indenture, an additional number of Common Shares (or cash or other property or securities in substitution therefor) per \$1,000 principal amount of Initial Debentures calculated in accordance with the terms of the Indenture.

If an offer is made for the Initial Debentures which is a take-over bid for the Initial Debentures within the meaning of applicable Canadian securities laws and 90% or more of the principal amount of all the Initial Debentures (other than Initial Debentures held at the date of the offer by or on behalf of the Offeror, associates or affiliates of the Offeror or anyone acting jointly or in concert with the Offeror) are taken up and paid for by the Offeror, the Offeror will be entitled to acquire the Initial Debentures of those holders who did not accept the offer on the same terms as the Offeror acquired the first 90% of the principal amount of the Initial Debentures.

The Corporation may, on notice as provided in the Indenture, at its option and subject to any applicable regulatory approval, elect to satisfy the obligation to repay all or any portion of the principal amount of this Initial Debenture due on the Maturity Date by the issue of that number of Freely Tradeable Common Shares obtained by dividing the principal amount of this Initial Debenture (or that portion to be paid for in Common Shares pursuant to the exercise by the Corporation of the Common Share Repayment Right) by 95% of the volume weighted average trading price of the Common Shares on the Toronto Stock Exchange or other stock exchange on which the Debentures may be listed for the 20 consecutive trading days ending on the fifth trading day preceding the Maturity Date. Holders who are Qualified Canadians will receive Class A Shares and holders who are not Qualified Canadians will receive Class B Shares. Any accrued and unpaid interest thereon will be paid in cash.

The indebtedness evidenced by this Initial Debenture, and by all other Initial Debentures now or hereafter certified and delivered under the Indenture, is a direct unsecured obligation of the Corporation, and is subordinated in right of payment, to the extent and in the manner provided in the Indenture, to the prior payment in full of all Senior Indebtedness, whether outstanding at the date of the Indenture or thereafter created, incurred, assumed or guaranteed.

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.

The Indenture contains provisions making binding upon all holders of Debentures outstanding thereunder (or in certain circumstances specific series of Debentures) resolutions passed at meetings of such holders held in accordance with such provisions and instruments signed by the holders of a specified majority of Debentures outstanding (or specific series), which resolutions or instruments may have the effect of amending the terms of this Initial Debenture or the Indenture.

The Indenture contains provisions disclaiming any personal liability on the part of holders of Common Shares and officers, directors and employees of the Corporation in respect of any obligation or claim arising out of the Indenture or this Debenture.

This Initial Debenture 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

Toronto, Ontario and in such other place or places and/or by such other registrars (if any) as the Corporation with the approval of the Trustee may designate. No transfer of this Initial Debenture 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 Initial Debenture for cancellation. Thereupon a new Initial Debenture or Initial, Debentures in the same aggregate principal amount shall be issued to the transferee in exchange hereof.

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

Capitalized words or expressions used in this Initial Debenture shall, unless otherwise defined herein, have the meaning ascribed thereto in the Indenture.

**IN WITNESS WHEREOF DISCOVERY AIR INC.** has caused this Debenture to be signed by its authorized representative as of the 12<sup>th</sup> day of May, 2011.

**DISCOVERY AIR INC.**

---

Name:

Title:

Authorized Signing Officer



**(FORM OF TRUSTEE'S CERTIFICATE)**

This Initial Debenture is one of the 8.375% Convertible Unsecured Subordinated Debentures due June 30, 2016 referred to in the Indenture within mentioned.

**COMPUTERSHARE TRUST COMPANY OF  
CANADA**

By: \_\_\_\_\_  
Authorized Signing Officer

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

**(FORM OF REGISTRATION PANEL)  
(No Writing Hereon Except By Trustee Or Other Registrar)**

<b>Date of Registration</b>	<b>In Whose Name Registered</b>	<b>Signature of Debenture Trustee or Registrar</b>
May 12, 2011	CDS & CO.	



**SCHEDULE B  
FORM OF REDEMPTION NOTICE**

**DISCOVERY AIR INC.**

**8.375% CONVERTIBLE UNSECURED SUBORDINATED DEBENTURES**

**REDEMPTION NOTICE**

To: Holders of 8.375% Convertible Unsecured Subordinated Debentures (the “**Debentures**”) of Discovery Air Inc. (the “**Corporation**”)

Note: All capitalized terms used herein have the meaning ascribed thereto in the Indenture mentioned below, unless otherwise indicated.

Notice is hereby given pursuant to Section 4.3 of the convertible debenture indenture (the “**Indenture**”) dated as of May 12, 2011 among the Corporation and Computershare Trust Company of Canada (the “**Trustee**”), that the aggregate principal amount of \$<\*> of the \$<\*> of Debentures outstanding will be redeemed as of <\*> (the “**Redemption Date**”), upon payment of a redemption amount of \$<\*> for each \$1,000 principal amount of Debentures, being equal to the aggregate of (i) \$<\*> total principal amount, and (ii) all accrued and unpaid interest hereon to but excluding the Redemption Date (collectively, the “**Redemption Price**”).

The Redemption Price will be payable upon presentation and surrender of the Debentures called for redemption at the following corporate trust office:

**Computershare Trust Company of Canada  
100 University Ave, 9th Floor  
Toronto, ON M5J 2Y1  
Attention: Manager, Corporate Trust Department**

The interest upon the principal amount of Debentures called for redemption shall cease to be payable from and after the Redemption Date, unless payment of the Redemption Price shall not be made on presentation for surrender of such Debentures at the above-mentioned corporate trust office on or after the Redemption Date or prior to the setting aside of the Redemption Price pursuant to the Indenture.

**[Pursuant to Section 4.6 of the Indenture, the Corporation hereby irrevocably elects to satisfy its obligation to pay \$<\*> of the aggregate Redemption Principal Amount of Debentures to be redeemed payable to holders of Debentures in accordance with this notice by issuing and delivering to the holders that number of Freely Tradeable Common Shares obtained by dividing the aggregate Redemption Principal Amount of Debentures to be redeemed by 95% of the Current Market Price of the Class A Shares. Holders who are Qualified Canadians will receive Class A Shares and holders who are not Qualified Canadians will receive Class B Shares. Any accrued and unpaid interest thereon will be paid in cash as contemplated by the Indenture.]**

**[No fractional Common Shares shall be delivered upon the exercise by the Corporation of the above-mentioned redemption right but, in lieu thereof, the Corporation shall pay the cash equivalent thereof determined on the basis of the Current Market Price of Common Shares on the Redemption Date (less any tax required to be deducted, if any).]**

**[In this connection, upon presentation and surrender of the Debentures for payment on the Redemption Date, the Corporation shall, on the Redemption Date, make the delivery to the Trustee, at the above-mentioned corporate trust office, for delivery to and on account of the holders, of certificates representing the Freely Tradeable Common Shares to which holders are entitled together with any accrued and unpaid interest thereon, the cash equivalent in lieu of fractional Common Shares and, if only a portion of the Debentures are to be redeemed by issuing Freely Tradeable Common Shares, cash representing the balance of the aggregate Redemption. Principal Amount of Debentures to be redeemed.]**

DATED:

**DISCOVERY AIR INC.**

---

Name:

Title:

**SCHEDULE C  
FORM OF MATURITY NOTICE**

**DISCOVERY AIR INC.**

**8.375% CONVERTIBLE UNSECURED SUBORDINATED DEBENTURES**

**MATURITY NOTICE**

To: Holders of 8.375% Convertible Unsecured Subordinated Debentures (the “**Debentures**”) of Discovery Air Inc. (the “**Corporation**”)

Note: All capitalized terms used herein have the meaning ascribed thereto in the Indenture mentioned below, unless otherwise indicated.

Notice is hereby given pursuant to Section 4.10(b) of the convertible debenture indenture (the “**Indenture**”) dated as of May 12, 2011 among the Corporation and Computershare Trust Company of Canada, as trustee (the “**Trustee**”), that the Debentures are due and payable as of June 30, 2016 (the “**Maturity Date**”) and the Corporation elects to satisfy its obligation to repay to holders of Debentures the principal amount of all of the Debentures outstanding on the Maturity Date by issuing and delivering to the holders that number of Freely Tradeable Common Shares equal to the number obtained by dividing such principal amount of the Debentures by 95% of the Current Market Price of Common Shares on the Maturity Date. Holders who are Qualified Canadians will receive Class A Shares and holders who are not Qualified Canadians will receive Class B Shares. Any accrued and unpaid interest thereon will be paid in cash in accordance with the Indenture.

No fractional Common Shares shall be delivered on exercise by the Corporation of the above mentioned repayment right but, in lieu thereof, the Corporation shall pay the cash equivalent thereof determined on the basis of the Current Market Price of Common Shares on the Maturity Date (less any tax required to be deducted, if any).

In this connection, upon presentation and surrender of the Debentures for payment on the Maturity Date, the Corporation shall, on the Maturity Date, make delivery to the Trustee, at its principal trust office in Toronto, Ontario, for delivery to and on account of the holders, of certificates representing the Freely Tradeable Common Shares to which holders are entitled together with the cash equivalent in lieu of fractional Common Shares, and if only a portion of the Debentures are to be repaid by issuing Freely Tradeable Common Shares, cash representing the balance of the principal amount, premium (if any) and interest due on the Maturity Date.

DATED:

**DISCOVERY AIR INC.**

---

Name:  
Title:

**SCHEDULE D  
FORM OF NOTICE OF CONVERSION**

**CONVERSION NOTICE**

TO: DISCOVERY AIR INC.

Note: All capitalized terms used herein have the meaning ascribed thereto in the Indenture mentioned below, unless otherwise indicated.

The undersigned registered holder of 8.375% Convertible Unsecured Subordinated Debentures irrevocably elects to convert such Debentures (or \$<\*> principal amount thereof\*) in accordance with the terms of the Indenture referred to in such Debentures and tenders herewith the Debentures, has completed the Residency Declaration Form and, if applicable, directs that the Common Shares of Discovery Air Inc. issuable upon a conversion be issued and delivered to the person indicated below. (If Common Shares are to be issued in the name of a person other than the holder, all requisite transfer taxes must be tendered by the undersigned and a Residency Declaration Form must be completed and delivered in respect of such other person).

Dated: \_\_\_\_\_  
\_\_\_\_\_  
(Signature of Registered Holder)

\* If less than the full principal amount of the Debentures, indicate in the space provided the principal amount (which must be \$1,000 or integral multiples thereof).

NOTE: If Common Shares are to be issued in the name of a person other than the holder, the signature must be guaranteed by a member of an acceptable Medallion Guarantee Program. The Guarantor must affix a stamp bearing the actual words: “**SIGNATURE GUARANTEED**”.

(Print name in which Common Shares are to be issued, delivered and registered)

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

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

\_\_\_\_\_  
(City, Province and Postal Code)

Name of Guarantor: \_\_\_\_\_

Authorized signature: \_\_\_\_\_

**SCHEDULE E  
RESIDENCY DECLARATION FORM**

ALL STATEMENTS SET OUT IN THIS RESIDENCY DECLARATION FORM MUST BE COMPLETED TO THE SATISFACTION OF **DISCOVERY AIR INC.** BEFORE ANY SHARES OF **DISCOVERY AIR INC.** WILL BE ISSUED.

**TO:           Computershare Trust Company of Canada**

**AND TO:     Computershare Investor Services Inc.**

**AND TO:     Discovery Air Inc.**

With respect to the issuance of Class A variable voting shares or Class B voting shares of Discovery Air Inc. (the “**Company**”), the undersigned hereby certifies and declares that:

*[choose one of (a) and one of (b)] [Capitalized terms are defined below]*

- (a)      it will be the registered holder and the beneficial owner and will have Control of the shares to be issued; or
- it will either be the registered holder (including an agent or a nominee) or the beneficial owner or will have Control of the shares to be issued.
- (b)      the registered holder and the beneficial owner and the person who will have Control of the shares to be issued is a Canadian; or
- any one of the registered holder or the beneficial owner or the person who will have Control of the shares to be issued is not a Canadian.

For the purposes of this Residency Declaration Form:

- (a)   “**Control**” means control in any manner that results in control in fact, whether directly through the ownership of securities or indirectly through a trust, an agreement or arrangement, the ownership of any body corporate or otherwise, and, without limiting the generality of the foregoing,
  - (i)   a body corporate is deemed to be controlled by a person if
    - (1)   securities of the body corporate to which are attached more than 50% of the votes that may be cast to elect directors of the body corporate are held, otherwise than by way of security only, by or for the benefit of that person; and
    - (2)   the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the body corporate; and

- (ii) a partnership or unincorporated organization is deemed to be controlled by a person if an ownership interest therein representing more than 50% of the assets of the partnership or organization is held, otherwise than by way of security only, by or for the benefit of that person.

If the registered holder, the beneficial owner and the person who Controls shares of the Company are not the same person, all of them need to be Canadians in order to hold Class B voting shares of the Company. If one of them is a non-Canadian, they are only allowed to hold Class A variable voting shares of the Company.

- (b) “**Canadian**” shall have the meaning ascribed to it in the *Canada Transportation Act*, namely:

- (i) a Canadian citizen pursuant to subsection 3(1) of the *Citizenship Act* or a Permanent Resident within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act*;
- (ii) a government in Canada or an agent of such a government; or
- (iii) a corporation or other entity that is incorporated or formed under the laws of Canada or a province, that is controlled in fact by Canadians and of which at least 75%, or such lesser percentage as the Governor in Council may by regulation specify, of the voting interest are owned and controlled by Canadians.

- (c) “**Canadian citizen**” means, pursuant to subsection 3(1) of the *Citizenship Act*:

- (i) a person who was born in Canada after February 14, 1977;
- (ii) a person who was born outside of Canada after February 14, 1977 and at the time of his or her birth one of his or her parents, other than a parent who adopted him or her, was a Canadian citizen;
- (iii) a person who has been granted or has acquired citizenship and, in the case of a person who is 14 years of age or over on the day that he or she is granted citizenship, he or she has taken the oath of citizenship;
- (iv) an adopted person granted citizenship pursuant to the *Citizenship Act*;
- (v) a person who was a citizen immediately before February 15, 1977;
- (vi) a person who was entitled, immediately before February 15, 1977, to become a citizen under paragraph 5(1)(b) of the former *Canadian Citizenship Act*; and
- (vii) certain other persons as set out in the *Citizenship Act*.



- (d) **“Permanent Resident”** means, pursuant to subsection 2(1) of the *Immigration and Refugee Protection Act*, a person who has acquired permanent resident status and has not subsequently lost that status under section 46 of the *Immigration and Refugee Protection Act*.

DATED the \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
Name of the Declarant (please print)

\_\_\_\_\_  
Signature of the Declarant (please indicate title if applicable)

\_\_\_\_\_  
Address of the Declarant (please print)



**THIS FIRST SUPPLEMENTAL CONVERTIBLE DEBENTURE INDENTURE**  
dated this 27<sup>th</sup> day of November, 2014.

**BETWEEN:**

**DISCOVERY AIR INC.**, a corporation continued under the  
federal laws of Canada

(the “**Corporation**”)

- and -

**COMPUTERSHARE TRUST COMPANY OF CANADA**, a  
trust company established under the federal laws of Canada

(the “**Trustee**”)

**WHEREAS** the Corporation and the Trustee entered into a convertible debenture indenture dated as of the 12<sup>th</sup> day of May, 2011 (the “**Debenture Indenture**”), pursuant to which the Corporation issued 8.375% convertible unsecured subordinated debentures due June 30, 2016 (the “**Debentures**”) to the Debentureholders (as defined in the Debenture Indenture) subject to the terms of the Debenture Indenture;

**AND WHEREAS** the Debentureholders and the Corporation desire to amend certain terms of the Debenture Indenture as set forth herein;

**AND WHEREAS** pursuant to Subsection 16.1 of the Debenture Indenture, the Trustee is permitted to enter into supplemental indentures to the Debenture Indenture in order to give effect to any Extraordinary Resolution (as defined in the Debenture Indenture) passed as provided in Article 13 of the Debenture Indenture;

**AND WHEREAS** the parties intend to execute this first supplemental convertible Debenture Indenture (the “**First Supplemental Convertible Debenture Indenture**”) as a supplement to the Debenture Indenture;

**AND WHEREAS** all necessary resolutions of the Corporation, the Debentureholders and the Trustee have been duly passed or taken and other proceedings taken and conditions complied with, as the case may be, to make this First Supplemental Convertible Debenture Indenture and the execution thereof legal and valid and in accordance with the laws relating thereto;

**AND WHEREAS** the foregoing recitals are made as representations by the Corporation and not by the Trustee;

**NOW THEREFORE**, in consideration of the premises and the covenants of the parties it is hereby agreed and declared as follows:

## **ARTICLE 1 INTERPRETATION**

### **1.1 Definitions.**

In this First Supplemental Convertible Debenture Indenture all terms contained herein which are defined in the Debenture Indenture, as supplemented hereby, shall, for all purposes hereof, have the meanings given to such terms in the Debenture Indenture, as supplemented hereby, unless the context otherwise specifies or requires.

### **1.2 Interpretation.**

In this First Supplemental Convertible Debenture Indenture, “**this First Supplemental Convertible Debenture Indenture**”, “**hereof**”, “**hereby**” and similar expressions refer to this First Supplemental Convertible Debenture Indenture and not to any particular Article, Section or other portion hereof, and include any and every instrument supplemental or ancillary hereto or in implementation hereof.

### **1.3 Gender and Number.**

Unless herein otherwise expressly provided or unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.

### **1.4 Interpretation not Affected by Headings, etc.**

The division of this First Supplemental Convertible Debenture 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 First Supplemental Convertible Debenture Indenture.

### **1.5 Time of the Essence.**

Time shall be of the essence in all respects in this First Supplemental Convertible Debenture Indenture.

### **1.6 Severability.**

In the event that any provision hereof shall be determined to be invalid or unenforceable in any respect, such determination shall not affect such provision in any other respect or any other provision hereof, all of which shall remain in full force and effect.

### **1.7 Conflicts.**

In the event of any conflict between the provisions of this First Supplemental Convertible Debenture Indenture and the Debentures, the provisions of this First Supplemental Convertible Debenture Indenture will govern.

## 1.8 Applicable Law.

This Agreement shall be construed and enforced in accordance with the laws of the Province of Ontario and the federal laws applicable therein and shall be treated in all respects as an Ontario contract.

## ARTICLE 2 AMENDMENTS TO THE DEBENTURE INDENTURE

### 2.1 Definitions.

- (a) The definition of “**Change of Control**” in Section 1.1 of the Debenture Indenture is hereby deleted in its entirety and replaced with the following:

““**Change of Control**” means the acquisition by any Person, or group of Persons acting jointly or in concert (within the meaning of MI 62-104) who acquire voting control or direction of an aggregate of 50% or more of the outstanding Common Shares, but excluding acquisitions by any Person, or group of Persons acting jointly or in concert (within the meaning of MI 62-104) who acquire voting control or direction of an aggregate of 50% or more of the outstanding Common Shares; where such Person or Persons had voting control or direction of an aggregate of 10% or more of the outstanding Common Shares on September 30, 2014;”

### 2.2 Other Provisions.

- (a) The following amendments are subject to the completion by the Corporation prior to June 29, 2016 of an equity offering of Common Shares for minimum aggregate net proceeds of \$5,000,000 (the “**Financing**”), and such amendments shall become effective on the date of the Corporation’s press release confirming the closing of such Financing:
- (i) Section 2.4(b) of the Debenture Indenture is hereby deleted in its entirety and replaced with the following:
- The Initial Debentures shall be dated as of the date of closing of the Offering and shall mature June 30, 2018 (the “**Maturity Date**” for the Initial Debentures).
- (ii) The words “to fall due on June 30, 2016” in the sixth line of Section 2.4(c) of the Debenture Indenture are hereby deleted and replaced with the words “to fall due on June 30, 2018”.
- (iii) All other references in the Debenture Indenture and the Schedules thereto to a Maturity Date of June 30, 2016 are hereby deleted and replaced with the date of June 30, 2018.

**ARTICLE 3  
SUPPLEMENTAL INDENTURE**

**3.1 Supplemental Indenture.**

This First Supplemental Convertible Debenture Indenture is supplemental to the Debenture Indenture and the Debenture Indenture shall henceforth be read in conjunction with this First Supplemental Convertible Debenture Indenture and the Debenture Indenture and this First Supplemental Convertible Debenture Indenture shall henceforth have effect so far as practicable as if all the provisions of the Debenture Indenture and this First Supplemental Convertible Debenture Indenture were contained in the one instrument.

**3.2 No Other Amendments.**

Save and except as specifically provided herein, all of the other terms and conditions of the Debenture Indenture shall continue in full force and effect, unamended.

**ARTICLE 4  
ACCEPTANCE OF THE TRUSTEE**

**4.1 Acceptance.**

The Trustee hereby accepts this First Supplemental Convertible Debenture Indenture declared and provided and agrees to perform the same upon the terms and conditions set forth herein and in the Debenture Indenture, as supplemented and amended hereby.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]**

**IN WITNESS WHEREOF** the parties hereto have executed this First Supplemental Convertible Debenture Indenture on the date first set forth above.

**DISCOVERY AIR INC.**

By: “David Kleiman”  
Authorized Signing Officer

**COMPUTERSHARE TRUST COMPANY  
OF CANADA**

By: “Judith Sebald”  
Authorized Signing Officer

By: “Mohanie Shivprasad”  
Authorized Signing Officer





**DISCOVERY AIR INC.  
ANNOUNCES AGREEMENT TO  
PURCHASE SHARES OF TOP ACES INC.**

**LONDON, June 20, 2007/CNW/** - David Taylor, President & C.E.O. of Discovery Air Inc. (TSX: DA.A) is pleased to announce that Discovery Air has entered into Share Purchase Agreements that provide for the purchase of all issued and outstanding shares of Top Aces Inc. ("Top Aces"). Owners of over 76% of the shares of Top Aces have agreed to the transaction. Agreements with the remaining shareholders will be sought in the upcoming weeks, so that at closing Top Aces will become a wholly-owned subsidiary of Discovery Air.

Top Aces is an approved supplier to the Canadian federal government of airborne training services to the Department of National Defence.

Mr. Taylor stated, "This is a very exciting opportunity for Discovery Air. Didier Toussaint, Paul Bouchard and Dave Jennings, the founders of Top Aces, are experts in their field and have brought together a group of pilots and aviation professionals who join them as the best of the best in flying fighter jets and military aircraft, and who will all have options to become shareholders of Discovery Air."

When asked about the significance of the Top Aces acquisition for Discovery Air, Mr. Taylor said "Top Aces will serve to diversify our investment portfolio both geographically and by product line. The Top Aces business also reduces the seasonality of our revenues. They are a perfect fit for us."

Completion of the acquisition of Top Aces is subject to a number of conditions, including financing and receipt of all necessary regulatory and other approvals. The total purchase price being paid for Top Aces is \$35 million cash plus 20 million Class A common shares of Discovery Air. Closing is planned for the later of August 1, 2007 or 10 days after all necessary conditions have been met. Discovery Air intends to finance the cash portion of the purchase price with debt.

Discovery Air's mission is to build shareholder value by creating an alliance of profitable aviation businesses that can realize synergies, economies of scale and deliver safe, professional air services to clients in selected niche markets.

Discovery Air's Class A common shares trade on the Toronto Stock Exchange under the symbol DA.A.

Discovery Air's debentures trade on the Toronto Stock Exchange under the symbol DA.DB.

**FOR FURTHER INFORMATION PLEASE CONTACT:**

Wade MacBain  
Director of Investor Relations

Phone: 519-913-2204, ext. 358  
Toll-free: 866-903-3247, ext. 358  
E-mail: [wadem@discoveryair.com](mailto:wadem@discoveryair.com)



# DISCOVERY AIR

## Discovery Air Announces Revolving Credit Facility from Clairvest

Toronto, ON, December 20, 2016 – Discovery Air Inc. (D.A.A) (“**Discovery Air**” or the “**Corporation**”) announced today that its subsidiary, Discovery Air Defence Services Inc. (“**DA Defence**”), has entered into a credit agreement (the “**Credit Agreement**”) with certain funds or co-investors (such lenders, collectively “**Clairvest**”) of Clairvest Group Inc., the majority shareholder of the Corporation, providing for a revolving credit facility in the aggregate principal amount of up to \$25,000,000 (the “**Revolving Credit Facility**”). All borrowings under the Revolving Credit Facility are secured, bear interest at a rate of 12% per annum payable on February 15, 2017 and May 15, 2017 and mature on June 30, 2017 subject to acceleration in the event of certain refinancing transactions. DA Defence may repay and re-borrow the principal under the Revolving Credit Facility on customary conditions. Proceeds from the Revolving Credit Facility will be used to (i) refinance an existing equipment loan in favour of the Corporation pursuant to a credit agreement dated as of March 30, 2016 among the Corporation and Clairvest (including by way of repayment of certain existing intercompany indebtedness between DA Defence and the Corporation) and (ii) to re-leverage the German Aircraft (as defined in the Credit Agreement) in support of certain growth initiatives and for business development activities at certain affiliates.

The Revolving Credit Facility also contains an optional conversion feature (the “**Conversion Feature**”), which provides Clairvest with an option, subject to certain conditions described below, to convert the outstanding balance under the Revolving Credit Facility into common shares (“**DAD Shares**”) of DA Defence at a conversion price (the “**Conversion Price**”) to be determined on the basis of the value of the DA Defence business, after the application of certain agreed upon adjustments between Clairvest and the Corporation, as determined by an independent and qualified valuator pursuant to Multilateral Instrument 61-101 – *Protection of Minority Security Holders in Special Transactions* (“**MI 61-101**”). In the event Clairvest elects to exercise the Conversion Feature, its exercise is subject to the prior satisfaction of all of the following conditions (the “**Conversion Conditions**”): (i) if required under applicable securities law, approval of the Corporation’s shareholders of the Conversion Feature and a unanimous shareholders’ agreement (the “**Shareholders’ Agreement**”) in respect of DA Defence, in each case, in accordance with the requirements of applicable securities laws (including MI 61-101 and the TSX Company Manual); (ii) receipt of all necessary approvals in connection with the Conversion Feature and the Shareholders’ Agreement under applicable securities laws (including MI 61-101 and under the TSX Company Manual); (iii) the Shareholders’ Agreement shall be entered into on or immediately prior to the time of conversion. In the event Clairvest seeks to exercise the Conversion Feature and shareholder approval is required pursuant to applicable securities laws, the Corporation, acting at the direction of a special committee of independent directors, will retain a valuator to prepare a formal valuation in accordance with MI 61-101.

A material change report will be filed less than 21 days before the closing date of the transaction. This shorter period is reasonable and necessary in the circumstances to allow the Corporation to obtain financing for working capital.

The Revolving Credit Facility is a “related party transaction” within the meaning of MI 61-101. The Corporation is not required under MI 61-101 to obtain a formal valuation in respect of the Revolving Credit Facility and will be relying upon the exemption from the minority approval requirement in section 5.7(f) of MI 61-101 as a result of (i) the Revolving Credit Facility being provided on reasonable commercial terms that are not less advantageous to the Corporation than if the Revolving Credit Facility was obtained from an arm’s length party and (ii) the Revolving Credit Facility not containing any equity component; provided that, as described above, if the Conversion Feature is exercised by Clairvest such exercise is contingent on the Conversion Conditions which include, among other things, satisfying the requirements of MI 61-101 and the TSX Company Manual.

### **CAUTION REGARDING FORWARD-LOOKING STATEMENTS**

This news release includes forward-looking statements (as defined in applicable securities laws) regarding Discovery Air and/or its subsidiaries (including DA Defence) that relate to, among other things: the proposed use of proceeds of the Revolving Credit Facility; the Conversion Feature; the terms, conditions and timing of draws under the Revolving Credit Facility; and, the shareholder and regulatory approval process if the Conversion Feature is exercised. Forward-looking statements by definition are based on assumptions and, as a result, are subject to risks and uncertainties. As a result of such risks and uncertainties, actual results may differ materially from those discussed in forward-looking statements, and readers should not place undue reliance on such statements.

Forward-looking statements represent expectations as of the date they are made, and Discovery Air disclaims any intention or obligation to update or revise any forward-looking statements it may make, whether as a result of new information, future events or otherwise, except as required under applicable securities laws.

### **ABOUT DISCOVERY AIR AND ITS SUBSIDIARIES**

Discovery Air Inc. is a global leader in specialty aviation services. We deliver exceptional air combat training; medevac equipped aircraft services; airborne firefighting services; air charter services; helicopter operations; and transport and logistics support to ensure operational readiness, health, safety, and vital lifelines for our clients and the communities we serve.

Discovery Air's Class A common voting shares and unsecured convertible debentures trade on the Toronto Stock Exchange (symbols DA.A and DA.DB.A, respectively).

For further information, please contact:

Sheila Venman  
Investor Relations  
[sheila.venman@discoveryair.com](mailto:sheila.venman@discoveryair.com)  
866-903-3247



**DISCOVERY AIR DEFENCE SERVICES INC.**

as Borrower

-and-

**CLAIRVEST GP MANAGECO INC.**

as Administrative Agent

**CLAIRVEST EQUITY PARTNERS IV LIMITED PARTNERSHIP, CLAIRVEST  
EQUITY PARTNERS IV-A LIMITED PARTNERSHIP, CEP IV CO-INVESTMENT  
LIMITED PARTNERSHIP, DA HOLDINGS LIMITED PARTNERSHIP and G. JOHN  
KREDIET**

as Lenders

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**CREDIT AGREEMENT**

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Dated as of December 20, 2016

THIS AGREEMENT is dated as of December 20, 2016.

AMONG:

**DISCOVERY AIR DEFENCE SERVICES INC.**, as Borrower

OF THE FIRST PART

AND:

**CLAIRVEST GP MANAGECO INC.** , as Administrative Agent

OF THE SECOND PART

AND:

**CLAIRVEST EQUITY PARTNERS IV LIMITED PARTNERSHIP,  
CLAIRVEST EQUITY PARTNERS IV-A LIMITED PARTNERSHIP, CEP  
IV CO-INVESTMENT LIMITED PARTNERSHIP, DA HOLDINGS  
LIMITED PARTNERSHIP** and **G. JOHN KREDIET** as Lenders

OF THE THIRD PART

WHEREAS the Borrower has requested the Loan and the Lenders have agreed to provide the Loan to the Borrower upon and subject to the terms and conditions set out in this Agreement.

NOW THEREFORE in consideration of the mutual covenants and agreements herein set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

## **ARTICLE 1 INTERPRETATION**

### **1.01 Definitions**

For the purpose of this agreement, the following terms and phrases shall have the following meanings:

“**Administrative Agent**” means Clairvest GP Manageco Inc.

“**Affiliate**” means any Person that Controls, is Controlled by or is under common Control with a Person.

“**Aircraft Security Agreement**” means the aircraft security agreement dated as of the date hereof between Top Aces Corp. and Discovery Air Defence Services Inc., as debtors and the Administrative Agent on behalf of the Lenders.

“**Applicable Law**” means, at any time, with respect to any Person, property, transaction or event, all applicable laws, statutes, regulations, treaties, judgments and decrees and (to the extent having the force of law) all applicable official directives, rules, consents, approvals, by-laws, permits, authorizations, guidelines, orders and policies of any Governmental Authority or Persons having authority over that Person, property, transaction or event.

“**Applicable Securities Laws**” means (i) the securities laws, rules, regulations, instruments and orders applicable in the provinces and territories of Canada as interpreted and applied by the securities commissions or equivalent securities authorities of such provinces and territories and (ii) applicable stock exchange rules.

“**Borrower**” has the meaning ascribed thereto in Section 1.03.

“**Borrowing**” has the meaning ascribed thereto in Section 2.01.

“**Business Day**” means a day, excluding Saturday, Sunday and any other day which shall be a legal holiday or a day on which lending institutions are closed in the province of Ontario.

[Redacted – Industry specific regulatory definition.]

“**Capitalized Lease Obligation**” means, for any Person, any payment obligation of such Person under an agreement for the lease, license or rental of, or providing such Person with the right to use, property that, in accordance with GAAP, is required to be capitalized.

“**Closing Date**” means the date hereof.

“**Collateral**” has the meaning ascribed thereto in Section 6.02(2).

“**Commitment**” means, for a Lender in respect of the Loan, the amount in respect of the Loan set forth opposite such Lender’s name under the heading “Commitment” on Section 1 of the Disclosure Letter as it may be amended from time to time to the extent not permanently reduced, cancelled or terminated pursuant to this agreement by such Lender’s Proportionate Share.

“**Common Shares**” means common shares of the Borrower, or such classes of common shares of the Borrower as may be created, if and when necessary, to restrict foreign voting control in order to meet the requirement in the Canada Transportation Act (the “CTA”) that holders of licences to operate domestic Canadian air services be “Canadian”.

“**Control**” means the ownership or right to control through voting proxies of a minimum of 50.1% of the issued and outstanding voting shares, partnership interests or other instruments having the capacity to elect the directors or committees responsible for the control, management and direction of any Person or to otherwise control, management or direction of any Person and the words “**Controlled by**”, “**Controlling**” and similar words have corresponding meanings.

“**Controlled Borrowing**” has the meaning ascribed thereto in Section 2.08(a).

“**Controlled Borrowing Effective Date**” has the meaning ascribed thereto in Section 2.08(b).



“**Conversion Conditions**” has the meaning ascribed thereto in Section 3.03.

“**Conversion Notice**” has the meaning ascribed thereto in Section 3.01.

“**Conversion Price**” means an amount per Common Share as is determined (i) if Sections 3.03 - 3.06 do not apply, in accordance with Section 3.01 and in accordance with the calculation and adjustment principles set out in Section 3 of the Disclosure Letter or (ii) if Sections 3.03 - 3.06 apply, in accordance with Sections 3.03 and 3.04, in each case in respect of (i) and (ii) above, as further adjusted in accordance with Article 4, if applicable.

“**Corporate Reorganization**” has the meaning ascribed thereto in Section 4.03.

“**DA Circular**” means the notice of the DA Shareholders’ Meeting to be sent to DA Shareholders and the management information circular to be prepared in connection with the DA Shareholders’ Meeting together with any amendments thereto or supplements thereof.

“**DA Shareholders**” means the holders of Class A common voting shares and Class B common variable voting shares of Parent entitled to vote on Related Party Matters pursuant to Applicable Securities Laws.

“**DA Shareholders’ Meeting**” means such meeting or meetings of DA Shareholders, including any adjournment or postponement thereof, that is to be convened to consider, and if deemed advisable approve, the Related Party Matters.

“**DAD Shareholders’ Agreement**” means the unanimous shareholders agreement to be entered into among the Borrower, Parent and the Lenders relating to the holding of Common Shares of the Borrower on substantially the terms set forth in Section 2 of the Disclosure Letter.

“**DA Special Committee**” has the meaning ascribed thereto in Section 3.04.

“**Debt**” of a Person means, at any time and without duplication, calculated as at such time (i) all indebtedness for moneys borrowed (including interest and other charges in respect thereof) and moneys raised by the issue of notes, bonds, debentures or other evidences of moneys borrowed including the face amount of lenders’ acceptances and letters of credit or letters of guarantee; (ii) all indebtedness for the deferred purchase price of property or services represented by a note or other evidence of indebtedness; (iii) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by the Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property); (iv) all indebtedness of another person secured by a lien, charge, hypothec, mortgage or security interest on any assets or undertaking (real, personal, tangible or intangible) of the Person; (v) all obligations under leases which have been or should be, recorded as capital leases in respect of which the Person is liable as lessee; (vi) the aggregate amount at which any shares or equity interests in the capital of the Person which are redeemable at the option of the holder or retractable at the option of the holder, as the case may be, may be so retracted or redeemed for cash or debt provided all conditions precedent for such retraction or redemption have been satisfied; (vii) all current liabilities of a

Person represented by a note, bond, debenture or other evidence of indebtedness; and (viii) all Debt Guaranteed by the Person.

**“Debt Guaranteed”** by any Person means, without duplication, the amount outstanding at any time of all Debt of the kinds referred to in (i) through (viii) of the definition of Debt which is directly or indirectly guaranteed by the Person or which the Person has agreed (contingently or otherwise) to purchase or otherwise acquire, or in respect of which the Person has otherwise assured a creditor or other Person against loss.

**“Default”** means any event or condition that has occurred which, with notice, lapse of time, or both, would constitute an Event of Default.

**“Disclosure Letter”** means the confidential disclosure letter of the Borrower and the Lenders dated the date of this Agreement.

**“Equity Value”** has the meaning ascribed thereto in Section 3.04.

**“Event of Default”** has the meaning ascribed thereto in Section 6.05.

**“Existing Facilities”** means any Debt Guaranteed by the Borrower or any Debt obligations of the Borrower in favour of a working capital lender, existing on the date hereof.

**“Final Valuation”** has the meaning ascribed thereto in Section 3.04.

**“Force Majeure”** means acts of God, fire, flood or other catastrophe; government, legal or statutory restrictions on forms of commercial activity; an order of any Governmental Authority having authority over the relevant party; national emergencies, insurrections, riots or wars; strikes, lock-outs or work stoppages; or any other event or occurrence beyond the reasonable control of the applicable party.

**“GAAP”** means generally accepted accounting principles in effect from time to time in Canada applied in a consistent manner from period to period.

**“German Aircraft”** means the Aircraft (as defined in the Aircraft Security Agreement) together with the other Collateral (as defined in the Aircraft Security Agreement) related thereto.

**“Governmental Authority”** means any nation or government, any province, state, municipality, local or other political subdivision thereof and any agency, instrumentality or other entity thereof exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

**“Initial Drawdown Amount”** means \$20,000,000.

**“Initial Valuation”** means the enterprise value of the Borrower determined by the Borrower with input from the Borrower’s financial advisor as set out in paragraph 2 of the Disclosure Letter and referred to in Section 3 of the Disclosure Letter.

“**Intercreditor Agreement**” means the Fourth Amended and Restated Intercreditor Agreement dated as of May 26, 2015 among, *inter alios*, Roynat Inc., Element Financial Corporation, Textron Financial Corporation, Canadian Imperial Bank of Commerce, Clairvest GP Manageco Inc., Clairvest Group Inc. and Discovery Air Inc. and certain of its direct and indirect subsidiaries, as amended by an Amendment to Fourth Amended and Restated Intercreditor Agreement made as of December 1, 2015, as amended, restated, modified, supplemented or replaced from time to time.

“**Interest Rate**” has the meaning ascribed thereto in Section 2.07.

[Redacted – Industry specific regulatory definition.]

[Redacted – Industry specific regulatory definition.]

“**Lenders**” has the meaning ascribed thereto in Section 1.04.

“**Lien**” means any security interest, mortgage, pledge, hypothec, assignment, attachment, deposit arrangement, encumbrance, lien (statutory or other), charge against or interest in property to secure payment or performance of an obligation, preference, license, priority or other security agreement of any kind or nature whatsoever (including, without limitation, any conditional sale, hire purchase or other title retention agreement, any financing or similar statement or notice filed under the PPSA or any other similar recording or notice statute), and any lease having substantially the same effect as any of the foregoing.

“**Loan**” has the meaning ascribed thereto in Section 2.01.

“**Loan Documents**” means this agreement and all security instruments, agreements, documents and contracts made between any Obligor, and the Administrative Agent or Lenders or by any Obligor in favour of the Administrative Agent or Lenders and any ancillary documentation, in each case, relating to the Loan, including without limitation, any pledges, hypothecs, guarantees, indemnities, acknowledgements, confirmations or undertakings made by any Person.

“**Majority Lenders**” means, at any time prior to the occurrence of an Event of Default, Lenders whose respective individual Commitments aggregate at least 50% of the total Commitments of all Lenders under the Loan at such time and, at any time after the occurrence of an Event of Default, Lenders whose share of Principal Outstanding is in aggregate at least 50% of all Principal Outstanding.

“**Material Adverse Effect**” means any event, occurrence, fact, condition or change that has, or would reasonably be expected to have, individually or in the aggregate, a material adverse effect on (i) the business, property, assets, liabilities, operations, condition (financial or otherwise) or affairs of the Borrower (on a consolidated basis), or (ii) the ability of the Borrower (on a consolidated basis) to perform its obligations under, or the ability of the Lenders to enforce any of their rights and remedies under, any of the Loan Documents.

“**Material Contract**” means any right, interest, agreement, arrangement, lease, license, commitment or understanding entered into by the Borrower, whether written or oral, which

relates to and materially affects the business, property, operations, assets or condition (financial or otherwise) of the Borrower (on a consolidated basis).

“**Maturity Date**” has the meaning ascribed thereto in Section 5.01.

“**MI 61-101**” means Multilateral Instrument 61-101 – *Protection of Minority Security Holders in Special Transactions* of the Canadian securities administrators.

“**Obligor**” means any of the Borrower, Parent, Discovery Air Holdings (Delaware), Inc. and Top Aces Corp., collectively, the “**Obligors**”.

“**Parent**” means Discovery Air Inc.

“**Permitted Encumbrances**” means:

- (a) Security Interests granted by the Borrower or an Obligor in connection with the Existing Facilities;
- (b) In respect of an Obligor other than the Borrower, Security Interests granted in connection with any Debt Guaranteed by such Obligor, which guarantee exists on the date hereof;
- (c) Liens for taxes, assessments or government charges, including charges for workers' compensation and employment insurance, which are not due or delinquent;
- (d) Liens imposed or permitted by law such as carriers' liens, builders' liens, materialmens' liens and other liens, privileges or other charges of a similar nature, in respect of obligations not yet due or delinquent;
- (e) undetermined or inchoate Liens arising in the ordinary course of and incidental to construction or current operations which have not been filed pursuant to law and in respect of which no steps or proceedings to enforce such liens have been initiated, and which relate to obligations which are not due or delinquent;
- (f) Security Interests under the Loan Documents granted to the Administrative Agent on behalf of the Lenders;
- (g) Liens securing Purchase Money Obligations that are permitted hereunder provided such Liens charge only the asset subject to the Purchase Money Obligation and the proceeds thereof and no other asset;
- (h) Liens securing Capitalized Lease Obligations that are permitted hereunder;
- (i) Liens of judgments rendered or claims filed which are being contested in good faith by it by proper legal proceedings, provided that such proceedings effectively postpone enforcement of any such Lien and do not otherwise result in an Event of Default hereunder;

- (j) easements, rights-of-way, servitudes, zoning, and similar rights in or restrictions in respect of land (including rights-of-way and servitudes for railways, sewers, drains, gas and oil pipelines, gas and water mains, electric light and power and telephone or telegraph or cable television conduits, poles, wires and cables) granted to or reserved or taken by other Persons, which do not, individually or in the aggregate materially detract from the value of, or materially impair the use of, the property subject thereto or any significant part thereof;
- (k) the reservations, limitations, provisos and conditions in any original grants from the Crown of any land or interests therein and statutory exceptions, qualifications and reservations in respect of title; and
- (l) defects in title which are not general in application and which do not, individually or in the aggregate, materially detract from the value of, or materially impair the use of, the property or any significant part thereof.

“**Person**” includes an individual, a partnership, a joint venture, a trust, an unincorporated organization, a company, a corporation, an association, a government or any department or agency thereof, and any other incorporated or unincorporated entity.

“**Potential Prior-Ranking Claims**” means all amounts owing or required to be paid, where the failure to pay any such amount could give rise to a claim in favour of a Governmental Authority pursuant to any Applicable Law which ranks or is capable of ranking in priority to the security held by the Administrative Agent on behalf of the Lenders or otherwise in priority to any claim by any Lender for repayment of any amounts owing under this agreement.

“**PPSA**” means the *Personal Property Security Act* of the Province referred to in the “Governing Law” section of this Agreement, as such legislation may be amended, renamed or replaced from time to time, and includes all regulations from time to time made under such legislation.

“**Principal Outstanding**” means, at any time, the amount calculated and expressed in Canadian Dollars equal to:

- (a) when used in a context pertaining to Borrowings made by a single Lender under the Loan, the sum of the aggregate principal amount of all Borrowings then outstanding made by such Lender under the Loan; and
- (b) when used elsewhere in this agreement with reference to the Loan, the sum of the aggregate principal amount of all Borrowings then outstanding made by the Lenders under the Loan.

“**Proportionate Share**” means, with respect to any Lender, the percentage of the total Commitments represented by such Lender’s Commitment. If the Commitments have terminated or expired, the applicable percentages shall be the percentage of the total outstanding Borrowings represented by such Lender’s outstanding Borrowings.

“**Purchase Money Obligations**” means the outstanding balance of the purchase price of real and/or personal property, title to which has been acquired or will be acquired upon payment of such purchase price, or indebtedness to non-vendor third parties incurred to finance the acquisition of such new and not replacement real and/or personal property, or any refinancing of such indebtedness or outstanding balance.

“**Related Party Matters**” has the meaning ascribed thereto in Section 3.03.

“**Related Party Notice**” has the meaning ascribed thereto in Section 3.04.

“**Securities Authorities**” means (i) the securities commission or other securities regulatory authority of each province and territory of Canada and (ii) the TSX.

“**Security Interest**” means any lien, charge, hypothec, assignment, mortgage, title retention or security interest.

“**Share Reorganization**” has the meaning ascribed thereto in Section 4.02.

“**Tax**” and “**Taxes**” include all present and future income, corporation, capital gains, capital, value-added, goods and services taxes and other taxes, levies, imposts, stamp taxes, duties, charges to tax, fees, deductions, withholdings and all penalties, interest and other payments on or in respect thereof.

“**Total Number of Common Shares**” has the meaning ascribed thereto in Section 3.04.

“**TSX**” means the Toronto Stock Exchange.

“**U.S.**” means the United States of America.

“**Valuation**” has the meaning ascribed thereto in Section 3.04.

“**Valuator**” has the meaning ascribed thereto in Section 3.04.

## **1.02 Currency**

All sums of money that are referred to herein are expressed in Canadian Dollars which shall be deemed to be a reference to the lawful money of Canada.

## **1.03 Borrower**

Discovery Air Defence Services Inc. (the “**Borrower**”)

## **1.04 Lenders**

Clairvest Equity Partners IV Limited Partnership, Clairvest Equity Partners IV-A Limited Partnership, CEP IV Co-Investment Limited Partnership, DA Holdings Limited Partnership and G. John Krediet (the “**Lenders**”)

**ARTICLE 2  
CREDITS**

**2.01 Amount**

Subject to and in accordance with the terms and conditions of this Agreement, the Lenders establish a committed revolving credit facility in the aggregate amount of the Commitments (the “Loan” and each advance thereof, a “Borrowing”).

**2.02 Purpose**

To (i) re-finance an existing equipment loan in favour of the Parent pursuant to a credit agreement dated as of March 30, 2016 among the Parent, the Administrative Agent and the Lenders (including by way of repayment of certain existing intercompany indebtedness between the Borrower and the Parent) and (ii) to re-leverage the German Aircraft in support of certain growth initiatives and for business development activities at certain affiliates.

**2.03 Availability**

The Loan is available by Borrowings (including on the Closing Date) provided that (i) only two Borrowings shall be permitted per calendar month and (ii) a Default or an Event of Default (as defined in Section 6.05) shall not have occurred and be continuing at the time of the Borrowing or would result therefrom and the conditions in Section 2.09 continue to be satisfied.

**2.04 Cancellation or Reduction**

Upon at least three Business Days’ notice to the Administrative Agent, the Borrower may cancel or reduce the Commitments, provided that any cancellation or reduction of the Commitments shall be in the minimum amount of \$500,000 or an integral multiple thereof.

**2.05 Borrowings**

Provided that the conditions in Section 2.09 are fulfilled or waived on or prior to the date hereof, the Lenders shall advance the Initial Drawdown Amount on the Closing Date to the Borrower.

**2.06 Revolving Nature**

Subject to the other provisions hereof, the Borrower may, from time to time until the Maturity Date, decrease the drawn balance outstanding under the Loan by making repayments and, with the Majority Lenders’ prior written consent, increase the drawn balance outstanding under the Loan by making Controlled Borrowings. The Commitments shall be reduced to nil on the Maturity Date, and the Borrower shall repay to the Lenders on the Maturity Date all amounts then outstanding under the Loan. At no time shall the aggregate amount of Borrowings outstanding under this Agreement exceed the Commitments.

**2.07 Interest Rate**

The drawn balance outstanding under the Loan will accrue interest at a rate that is 12% per annum (the “**Interest Rate**”), compounded and payable quarterly in accordance with Section 5.06, which Interest Rate, without duplication of Section 5.07, shall be increased by 2% during the continuance of any Event of Default.

## **2.08 Use of Remaining Commitment**

- (a) Provided that no Default or Event of Default has occurred and is continuing or would result therefrom, the Borrower may request more Borrowings in increments of \$500,000 (each such additional Borrowing, a “**Controlled Borrowing**”) by notifying the Administrative Agent (and the Administrative Agent shall notify each Lender) of the amount of the proposed Controlled Borrowing, provided that the total of all such Controlled Borrowings together with the Initial Drawdown Amount shall not exceed the aggregate Commitments. The Majority Lenders shall determine if the Lenders wish to advance such Controlled Borrowings, which determination shall be in the sole discretion of such Lenders.
- (b) If any requested Controlled Borrowing is agreed to in accordance with Section 2.08(a), the Administrative Agent and the Borrower shall determine the effective date of such Controlled Borrowing (the “**Controlled Borrowing Effective Date**”). The Administrative Agent shall confirm in writing to the Lenders the Controlled Borrowing Effective Date. On the Controlled Borrowing Effective Date each Lender shall fund its Proportionate Share of such Controlled Borrowing up to its Commitment. The increase of the Loan in accordance with this Section 2.08 shall not require any further consent of any Person, and the Administrative Agent, the Borrower and the Lenders shall execute any amendments to give effect to the terms of this Section 2.08 if deemed necessary by the Administrative Agent, acting reasonably.

## **2.09 Conditions Precedent**

The obligation of the Lenders to make available the Loan (including each Borrowing) is conditional upon (each of which is acknowledged to be for the exclusive benefit of the Lenders):

- (1) **Agreement.** The receipt of a duly executed copy of this agreement.
- (2) **Guarantees and Security.** The following guarantees and security, duly executed and delivered, and all in form and substance satisfactory to the Administrative Agent:
  - (i) guarantee by each of the Obligor, other than the Borrower;
  - (ii) a first-ranking pledge of Discovery Air Holdings (Delaware), Inc.’s equity interests in Top Aces Corp.;



- (iii) each of the Aircraft Security Agreement and a hypothec granting Security Interests in the German Aircraft to the Administrative Agent for obligations under the Loan Documents from Top Aces Corp. and the Borrower; and
- (iv) such other documents and registrations as the Administrative Agent may reasonably require.

For greater certainty, registration of any security contemplated hereunder may be made within 10 Business Days of the date hereof and shall be made under the Uniform Commercial Code, the Civil Code of Québec and, from time to time, the personal property regulations of such other jurisdictions, as in the reasonable opinion of the Administrative Agent, shall be necessary or required in order to perfect and preserve the rights of the Administrative Agent under the Loan Documents. [Redacted – Legal determination made by the Administrative Agent as of the date hereof in respect of industry specific regulations.]

- (3) **Documentation.** The receipt of such ancillary documentation as the Administrative Agent may require to give effect hereto and such officer's and other certificates, authorizations and resolutions as the Administrative Agent may reasonably require.
- (4) **Representations and Warranties.** The representations and warranties made in this agreement being true and correct in all material respects and the receipt of a certificate of a senior officer of the Borrower confirming same.
- (5) **Material Adverse Effect.** The absence of any Material Adverse Effect.
- (6) **No Default or Event of Default.** No Default or Event of Default having occurred and the receipt of a certificate of a senior officer of the Borrower confirming same.
- (7) **No Litigation.** The absence of any material litigation or other claims against the Borrower.
- (8) **Consents.** The receipt of all approvals and consents from such Persons as may be required for the Loan to be made by the Lenders and incurred by the Borrower.
- (9) **Registrations.** The receipt of all such notifications and filings which the Administrative Agent may deem necessary or desirable.
- (10) **Board Approvals.** The Loan Documents and the transactions contemplated thereby shall have been approved by the Parent's board of directors.
- (11) **Other Approvals.** The Parent shall have obtained such regulatory and other third party approvals as may be necessary in respect of the Loan Documents and the transactions contemplated thereby.

- (12) **Other Information.** The receipt of such financial and other information or documents relating to the Borrower as the Administrative Agent may reasonably require.

Any of the foregoing conditions may be waived in whole or in part by the Lenders without prejudice to any claims they may have for breach of covenant, representation or warranty.

The Administrative Agent and the Lenders, in their respective capacities as collateral agent and debentureholders, respectively, under any secured debentures issued by the Borrower to the Lenders in their capacity as debentureholders, consent to the security contemplated hereunder.

### **ARTICLE 3 CONVERSION**

#### **3.01 Optional Conversion**

At the option of the Lenders, all of the outstanding principal balance of the Loan and all accrued and unpaid interest shall, subject to satisfaction of the Conversion Conditions, be convertible in whole (and not in part) into Common Shares at the Conversion Price at any time following the date hereof and on or prior to the repayment, in full, of the principal balance of the Loan and any accrued and unpaid interest. The option of the Lenders to convert the amounts pursuant to this Section 3.01 may be exercised by the delivery of a written notice (the “**Conversion Notice**”) by the Lenders to the Borrower no later than three (3) Business Days prior to the proposed date of conversion, which proposed date shall then become the date fixed for conversion. Any notice of conversion delivered by the Lenders pursuant to this Section 3.01 may be withdrawn by written notice by the Lenders to the Borrower at any time prior to the date fixed for conversion. For greater certainty, the Conversion Notice may only be delivered by the Lenders following satisfaction of Conversion Conditions in Sections 3.03(1) and 3.03(2), if applicable.

If Sections 3.03 - 3.06 do not apply, then the Conversion Price shall be based on the Initial Valuation as adjusted pursuant to the principles and calculations contained in Section 3 of the Disclosure Letter.

#### **3.02 Mechanics of Conversion**

At the date fixed for the conversion pursuant to Section 3.01, the Borrower shall deliver to the Administrative Agent on behalf of each of the Lenders certificates representing the number of Common Shares obtained by dividing the amounts being converted by the Conversion Price (rounded down to the nearest whole number of Common Shares) (provided that notwithstanding anything to the contrary herein, the number of Common Shares shall be increased in accordance with the principle set out in Section 3.04(6)(v)), as well as such other documentation as the Administrative Agent and the Lenders may reasonably require regarding the calculation of such number of Common Shares to be issued and to attest that the securities are duly and properly issued, as fully paid and non-assessable Common Shares. The Lenders will be treated as having become the holders of record of the Common Shares issuable upon the conversion on the date fixed for conversion. Notwithstanding the foregoing, if the Borrower fails to issue the aforesaid Common Shares to the Lenders, the Lenders shall retain all rights contained under this

Agreement until such Common Shares are issued. Upon the issuance of the Common Shares following the Conversion Notice, (i) all amounts hereunder and all other debts, liabilities and obligations of all Obligors hereunder and under all other Loan Documents shall be deemed to be paid and satisfied in full, (ii) all Obligors shall be released from all such debts, liabilities and obligations, (iii) all Loan Documents shall terminate, and (iv) the Administrative Agent shall proceed, at the cost to the Borrower, to discharge and release all Security forming part of the Loan Documents.

### **3.03 Conversion Conditions**

The conversion option in Section 3.01 is subject to the prior satisfaction of all of the following conditions (the “**Conversion Conditions**”):

- (1) if required under Applicable Securities Law, the Borrower shall have obtained the approval of the DA Shareholders in accordance with the applicable requirements of Applicable Securities Laws (including M1 61-101 and TSX rules) of (i) such conversion, and (ii) entering into the DAD Shareholders’ Agreement (collectively, the “**Related Party Matters**”); and
- (2) if required under Applicable Securities Law, the Borrower shall have obtained all necessary approvals from applicable Securities Authorities of the Related Party Matters under Applicable Securities Laws (including M1 61-101 and TSX rules).

For greater certainty, the Conversion Notice may only be delivered by the Lenders following satisfaction of Sections 3.03(1) and 3.03(2) above, if applicable.

### **3.04 Shareholder Approval**

If under Applicable Securities Laws, the approval of the DA Shareholders is required to permit the Lenders, or any of them, to exercise the conversion rights set forth in this Article 3, or for the Borrower and Parent to enter into the DAD Shareholders’ Agreement, then, by written notice (a “**Related Party Notice**”) to the DA Board to be provided before the Conversion Price is determined and the Conversion Notice is delivered, the Lenders may require that Parent take such steps as are necessary to obtain (i) the requisite shareholder approval required under Applicable Securities Laws from the DA Shareholders and (ii) all necessary TSX approvals required under Applicable Securities Laws. Such steps shall include, but not be limited to:

- (1) within seven (7) days of receipt of the Related Party Notice, if not already established, the DA Board shall form a special committee of directors who are “independent” for purposes of MI 61-101 (the “**DA Special Committee**”);
- (2) within seven (7) days of the formation of the DA Special Committee, the DA Special Committee shall retain an independent and qualified valuator (as defined in MI 61-101) (the “**Valuator**”);
- (3) the DA Special Committee shall then cause the Valuator to conduct and deliver to the DA Special Committee a valuation (the “**Final Valuation**”) of the enterprise

value of the Borrower in the same manner as the Initial Valuation was determined within forty-five (45) days of the engagement of the Valuator, provided that such period will be extended for a reasonable period (not to exceed sixty (60) days) if the DA Special Committee, in good faith (after consultation with its advisor(s) and outside counsel), determines that additional time is needed, including if the Special Committee determines it is necessary to retain a new or additional valuator, provided that in any event the Final Valuation shall be completed within such sixty-day period;

- (4) within two (2) Business Days of the delivery of the Final Valuation to the DA Special Committee, the DA Board shall provide a copy of the Final Valuation to the Administrative Agent, on behalf of the Lenders;
- (5) within seven (7) days of receiving the Final Valuation, the Lenders may, by written notice to the DA Board, withdraw the Related Party Notice (in which case, the Lenders shall not be permitted to deliver another Related Party Notice);
- (6) if the Lenders do not withdraw the Related Party Notice within seven (7) days of being provided the Final Valuation, then:
  - (i) if the mid-point of the range of enterprise values contained in the Final Valuation is greater than the Initial Valuation, then the Initial Valuation shall be increased to be equal to such mid-point;
  - (ii) if the mid-point of the range of enterprise values contained in the Final Valuation is less than the Initial Valuation, then the Initial Valuation will remain unchanged;
  - (iii) the valuation determined pursuant to Section 3.04(6)(i) or Section 3.04(6)(ii), as applicable, will be adjusted on the basis of a formal valuation of the Borrower's securities prepared by the Valuator in accordance with MI 61-101 and in a manner consistent with the illustrative calculation and adjustment principles set out in Section 3 of the Disclosure Letter as at the date the Conversion Price is determined (the "**Equity Value**");
  - (iv) the implied equity ownership percentage for the Lenders will be determined by dividing (ii) the total outstanding principal balance of the Loan, by (i) the Equity Value;
  - (v) the number of issued and outstanding Common Shares will be increased such that the Lenders will receive such number of additional issued and outstanding Common Shares equal to the implied equity percentage set out in Section 3.04(6)(iv) above as a percentage of the total issued and outstanding Common Shares, following the issuance of such additional Common Shares to the Lenders (the "**Total Number of Common Shares**"); and

- (vi) the Conversion Price will be determined by dividing the Equity Value by the Total Number of Common Shares

Following the determination of the Conversion Price, Parent shall take all action necessary in accordance with all Applicable Laws, including Applicable Securities Laws, to:

- (7) duly call, give notice of, convene and hold the DA Shareholders' Meeting as promptly as practicable and in any event not later than fifty (50) days following the determination of the Conversion Price, or on such other date as is mutually agreed to in writing by the parties hereto, to vote upon the Related Party Matters and any other matters as may be properly brought before the DA Shareholders' Meeting;
- (8) solicit proxies of DA Shareholders in favour of the Related Party Matters, and, if mutually agreed to in writing by the parties hereto, engage a proxy solicitation agent for such purpose, and cooperate with any such agent or other persons engaged by the Lenders to solicit proxies in favour of the Related Party Matters;
- (9) give notice to the Lenders of the DA Shareholders' Meeting and allow the Lenders' representatives and legal counsel to attend the DA Shareholders' Meeting.

### **3.05 DA Circular**

- (1) As promptly as reasonably practicable following determination of the Conversion Price, Parent shall: (i) prepare the DA Circular together with any other documents required by Applicable Securities Laws; (ii) file the DA Circular in all jurisdictions where the same is required to be filed; and (iii) mail the DA Circular as required under all Applicable Laws. On the date of mailing thereof, the DA Circular shall be complete and correct in all material respects, shall not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they are made, not misleading and shall comply in all material respects with all Applicable Law, and shall contain sufficient detail to permit the DA Shareholders to form a reasoned judgment concerning the matters to be placed before them at the DA Shareholders' Meeting. Subject to Section 3.07, the DA Circular shall state that the DA Board: (i) has unanimously determined that the Conversion Price and entry into the DAD Shareholders Agreement are in the best interests of Parent; and (ii) recommends that the DA Shareholders vote in favour of the Related Party Matters.
- (2) The Lenders and their legal counsel shall be given a reasonable opportunity to review and comment on the DA Circular and other related documents prior to the DA Circular and other related documents being printed and filed with the Governmental Authorities, and reasonable consideration shall be given to any comments made by the Lenders and their legal counsel; provided that all information relating solely to the Lenders included in the DA Circular shall be in

form and substance satisfactory to the Lenders, acting reasonably. On the date of mailing the DA Circular, such information provided by the Lenders in writing shall be complete and correct in all material respects, shall not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they are made, not misleading. Parent shall provide the Lenders with final copies of the DA Circular prior to its mailing to the DA Shareholders.

- (3) The Lenders and Parent shall each promptly notify each other if at any time before the DA Shareholders' Meeting either becomes aware that the DA Circular contains a misrepresentation, or that the DA Circular otherwise requires an amendment or supplement and the Parties shall co-operate in the preparation of any amendment or supplement to the DA Circular as required or appropriate, and Parent shall promptly mail or otherwise publicly disseminate any amendment or supplement to the DA Circular to the DA Shareholders.

### **3.06 Conduct of the DA Shareholders' Meeting**

- (1) Parent agrees to convene and conduct the DA Shareholders' Meeting, in accordance with its constating documents and Applicable Laws. Subject to the terms of this Agreement, Parent agrees not to propose to adjourn or postpone the DA Shareholders' Meeting without the prior consent of the Lenders:
  - (i) except as required for quorum purposes (in which case the meeting shall be adjourned and not cancelled) or by Applicable Law or by a Governmental Entity;
  - (ii) except for an adjournment for the purpose of attempting to obtain the requisite approval of the Related Party Matters; or
  - (iii) except as required (such adjournment or postponement not to exceed sixty (60) days) if the DA Special Committee, in good faith (after consultation with its advisor(s) and outside counsel) determines that additional time is needed.
- (2) Notwithstanding Section 3.07, unless otherwise agreed to in writing by the Lenders or except as required by Applicable Law or by a Governmental Authority, Parent shall continue to take all steps reasonably necessary to hold the DA Shareholders' Meeting and to cause the Related Party Matters to be voted on at such meeting and shall not propose to adjourn or postpone such meeting other than as contemplated by Section 3.06(1).
- (3) Parent shall not propose or submit for consideration at the DA Shareholders' Meeting any business other than the Related Party Matters without the Lenders' prior written consent, such consent not to be unreasonably withheld, conditioned or delayed.

### **3.07 Fiduciary Out**

- (1) Nothing contained in this Agreement shall prohibit the DA Board from withdrawing, modifying, qualifying or changing its recommendation to the DA Shareholders in respect of the transactions contemplated herein prior to the approval of the Related Party Matters by such shareholders, if the DA Board determines, in good faith (after consultation with its financial advisor(s) and after receiving advice of outside counsel), that the failure to make such withdrawal, modification, qualification or change would be inconsistent with its fiduciary duties under Applicable Laws; provided that: (i) such determination by the DA Board is based solely on a change in facts or circumstances relating to Parent or its business, operations or assets that arises after the delivery of the Valuation by the Valuator to the DA Special Committee; (ii) prior to making any such withdrawal, modification, qualification or change of recommendation, Parent shall give to the Lenders not less than 48 hours' notice of its intention thereof; and (iii) the foregoing shall not relieve Parent from its obligation to proceed to call and hold the DA Shareholders' Meeting (provided that, except as required under Applicable Laws, Parent shall be relieved from its obligations to actively solicit proxies in favour of the Related Party Matters in such circumstances).
- (2) If the DA Board withdraws, modifies, qualifies or changes its recommendation in accordance with this Section 3.07, the Lenders shall be permitted to deliver another Related Party Notice at a subsequent date not earlier than sixty (60) days after such determination by the DA Board.

### **3.08 DAD Shareholders' Agreement**

Upon delivery of a Related Party Notice, the Borrower, Parent and the Administrative Agent, on behalf of the Lenders, will promptly, and acting reasonably and in good faith, prepare, negotiate and finalize the DAD Shareholders' Agreement on substantially the terms set forth in Section 2 of the Disclosure Letter such that the DA Circular contains the required disclosure of the form of DAD Shareholders' Agreement in connection with the Related Party Matters to be considered at the DA Shareholders' Meeting. The Parent, Borrower and the Administrative Agent shall enter into the DAD Shareholders' Agreement on or immediately prior to the time of conversion pursuant to this Article 3. The parties acknowledge that, given the related party nature of the negotiation of the DAD Shareholders' Agreement, the Parent will be guided by and take instruction from the DA Special Committee.

## **ARTICLE 4 ADJUSTMENT PROVISIONS**

### **4.01 Adjustment of Conversion Price**

The Conversion Price shall be subject to adjustment from time to time upon the occurrence of the events and in the manner provided for in this Article 4.

#### **4.02 Share Reorganization**

Whenever the Borrower after the date of this Agreement (and subject to this Agreement):

- (a) issues Common Shares or securities exchangeable for or convertible into Common Shares to holders of all or substantially all Common Shares by way of a stock dividend or other distribution (other than pursuant to a Rights Offering) or in settlement or payment of any Debt owing to any shareholders;
- (b) subdivides the outstanding Common Shares into a greater number of shares; or
- (c) combines or consolidates the outstanding Common Shares into a lesser number of shares,

(each of such events being herein called a “**Share Reorganization**”), then the Conversion Price shall be adjusted effective immediately after the record date for such dividend or other distribution or, in the case of a subdivision, combination or consolidation, effective immediately after the record date or the effective date thereof if no record date is fixed, as the case may be, by multiplying the Conversion Price in effect immediately before the record date or effective date, as applicable, by a fraction of which:

- (i) the numerator is the number of Common Shares outstanding on that record date or effective date before giving effect to the Share Reorganization; and
- (ii) the denominator is the number of Common Shares that are or would be outstanding immediately after giving effect to the Share Reorganization (including, in the case where securities exchangeable for or convertible into Common Shares are distributed in the Share Reorganization, the number of Common Shares that would have been outstanding had such securities been exchanged for or converted into Common Shares on such record date or effective date).

To the extent that convertible or exchangeable securities issued pursuant to a Share Reorganization are not converted into or exchanged for Common Shares before the expiration of the right to do so, the Conversion Price will be readjusted to the Conversion Price which would then be in effect based upon the number of additional Common Shares actually delivered upon the conversion or exchange of such convertible or exchangeable securities, but subject to any other adjustment required hereunder by reason of any event arising after the record date for such Share Reorganization.

#### **4.03 Corporate Reorganization**

Whenever there is after the date of this Agreement (and subject to this Agreement):

- (a) a reclassification of the Common Shares, a change of Common Shares into other shares or securities, or any other capital reorganization of the Borrower affecting Common Shares, to which Section 4.02 does not apply;



- (b) a consolidation, merger or amalgamation of the Borrower with or into another body corporate or entity (other than any such event which does not result in a reclassification of the Common Shares or a change of Common Shares into other shares or securities); or
- (c) a transaction whereby all or substantially all of the Borrower's undertaking and assets become the property of another corporation or entity,

(any such event being herein called a “**Corporate Reorganization**”), the Lenders, if they thereafter exercise their right of conversion under this Agreement, will acquire and will accept, for the same aggregate consideration, in lieu of the Common Shares to which the Lenders would otherwise have been entitled upon such conversion, the number or amount and class, series or kind of shares or other securities, cash or other property that the Lenders would have been entitled to receive as a result of the Corporate Reorganization if, on the effective date thereof, the Lenders had been the holders of the number of Common Shares that the Lenders would have acquired upon such conversion immediately before the Corporate Reorganization. As a condition precedent to taking any action that would constitute a Corporate Reorganization, the Borrower shall take all action that is necessary in order that the Borrower, any successor to the Borrower, or any successor to its assets and undertaking, may validly and legally issue as fully paid and non-assessable such shares, securities, cash or other property to which the Lenders are entitled under this Section 4.03 and that the Lenders shall thereafter be entitled to receive such shares, securities, cash or other property, subject to adjustment thereafter in accordance with provisions the same, as nearly as may be possible, as those contained in this Article 4. If necessary as a result of any Corporate Reorganization, appropriate alterations (subject to the prior approval of the TSX) shall be made to the provisions set forth in this Article 4 with respect to the rights and interests of the Lenders to the end that such provisions will thereafter correspondingly be made applicable as nearly as may reasonably be in relation to any shares, securities, cash or other property thereafter deliverable on the exercise of the Lenders' rights of conversion under this Agreement, and any such adjustment will be made by and set forth in an amendment hereto.

#### **4.04 Conversion Rights Adjustment Rules**

The following rules and procedures are applicable to adjustments made pursuant to this Article 4:

- (a) any Common Shares owned by or held for the account of the Borrower shall be deemed not to be outstanding for the purpose of any computation pursuant to this Article 4;
- (b) the adjustments and readjustments provided for in this Article 4 are cumulative and, subject to Section 4.04(a), will apply (without duplication) to successive issues, subdivisions, combinations, consolidations, distributions and other events that require adjustment of the Conversion Price or the number or kind of shares, securities, cash or other property issuable hereunder;
- (c) no adjustment in the Conversion Price shall be made in respect of the issue of Common Shares or securities convertible into Common Shares pursuant to: (i) this Agreement; (ii) upon conversion, exchange or exercise of securities of the

Borrower existing as of the date of this Agreement or issued pursuant to clause (iii); or (iii) any equity incentive plan for officers, employees or directors of the Borrower;

- (d) any dispute that arises at any time with respect to any adjustment or determination made pursuant to this Article 4 (including, without limiting the generality of the foregoing, a determination under Section 4.05 as to whether any action taken by the Borrower requires that an adjustment be made) shall be conclusively determined by such Canadian nationally recognized independent investment banking or accounting firm selected by the Parent and the Administrative Agent, each acting reasonably. The matters in dispute shall be determined by the investment banking or accounting firm so appointed within 10 days of its appointment. The determination of the matters in dispute by the investment banking or accounting firm so appointed shall be final and binding on the Borrower and the Lenders, absent manifest error;
- (e) in the absence of a resolution of the directors of the Borrower fixing the record date for an event referred to in Sections 4.02 and 4.03 and except as otherwise required by law, the Borrower will be deemed to have fixed as the record date therefor the date on which the event is effected; and
- (f) if the Borrower sets a record date to determine the holders of Common Shares for the purpose of entitling them to receive any dividend or distribution or any subscription or purchase rights and shall thereafter legally abandon its plans to pay or deliver such dividend, distribution or subscription or purchase rights, then no adjustment in the Conversion Price shall be required by reason of the setting of such record date.

#### **4.05 Other Actions**

If the Borrower shall take any action of the nature of those described in Sections 4.02 or 4.03 affecting the Common Shares, other than actions described in those Sections, which would affect the rights of the Lenders to acquire Common Shares hereunder or the Conversion Price, the Common Shares and/or the Conversion Price will be adjusted, in such manner, and at such time, acceptable to the Administrative Agent, acting reasonably, as the board of the Parent determines, acting reasonably and in good faith, will result in an adjustment to the rights of the Lenders to receive Common Shares and/or an adjustment to the Conversion Price that is consistent with the principles governing the basis on which such adjustment is to be made in the event that the Borrower takes one or more of the actions specifically referred to in Sections 4.02 or 4.03.

#### **4.06 Postponement of Issuance of Common Shares**

In any case in which this Article 4 results in a decrease of the Conversion Price taking effect immediately after the record date for an event, if any amount is converted pursuant to Section 4.01 after that date and before the consummation of the event, the Borrower may postpone until such consummation:

- (a) issuing to the Lenders such of the Common Shares to which the Lenders are entitled pursuant to such exercise as exceeds those to which the Lenders would have been entitled if such conversion had taken place immediately before that date; and
- (b) delivering to the Administrative Agent on behalf of the Lenders any distributions declared with respect to such additional Common Shares,

but such Common Shares and any such distributions shall be so issued and delivered to the Administrative Agent on behalf of the Lenders upon consummation of that event with the number of such Common Shares and amount of any such distributions calculated on the basis of the Conversion Price on the exercise date adjusted for consummation of that event. The Borrower shall deliver to the Administrative Agent an appropriate instrument evidencing the Lenders' right to receive such Common Shares and any such distributions upon consummation of that event.

#### **4.07 No Requirement to Issue Fractional Shares**

The Borrower shall not be required to issue fractional shares upon conversion of any amount under this Agreement. If any fractional interest in a share would, except for the provisions of this Section 4.07, be deliverable upon the conversion, the Borrower shall, in lieu of delivering any certificate representing such fractional interest, satisfy such fractional interest by paying to the Lenders an amount of lawful money of Canada equal to the total amount tendered for conversion remaining after so much of the amount tendered for conversion as may be converted into a whole number of Common Shares has been so converted.

#### **4.08 Certificate as to Adjustment**

The Borrower shall immediately after the occurrence of any event which requires an adjustment or readjustment as provided for in this Article 4, deliver a certificate signed by an officer of the Borrower to the Administrative Agent and the Lenders specifying the nature of the event requiring such adjustment and setting forth in reasonable detail the method of calculation and the facts upon which such calculation is based, which certificate and the adjustment specified therein shall, if so requested by the Administrative Agent, be verified by an opinion of an investment banking or accounting firm in accordance with Section 4.04(d).

#### **4.09 Notice of Certain Events**

At least 14 days (or, if such period is not practicable, as soon as is practicable) before the effective date of or record date for an event referred to in Sections 4.02 or 4.03 that requires or might require an adjustment to the Conversion Price or the Common Shares which the Lenders are entitled to acquire on the exercise of their conversion rights, the Borrower shall give notice to the Administrative Agent and the Lenders of the particulars of the event and, to the extent determinable, any adjustment required. If any adjustment for which a notice pursuant to this Section 4.09 is given is not then determinable, the Borrower shall, promptly after the adjustment is determinable, give notice to the Administrative Agent and the Lenders of the adjustment.

**ARTICLE 5  
LOAN MATTERS**

**5.01 Maturity Date**

The Loan will mature on the earlier of (a) June 30, 2017 or (b) the date on which the Borrower completes any third party financing in excess of the amount outstanding hereunder at the relevant time (the “**Maturity Date**”), as extended by the Administrative Agent and the Lenders, from time to time. All indebtedness, liabilities and obligations owing under the Loan, including without limitation unpaid interest, are repayable in full on the Maturity Date.

**5.02 Principal Payments and Loan Amortization**

The Loan shall be repayable by the Borrower on the Maturity Date.

**5.03 Loan Payment Allocation**

Any payment hereunder shall be applied in the following order: (i) to any outstanding interest, (ii) to any principal payment due, and (iii) to the repayment of any other amounts outstanding under the Loan.

**5.04 Repayment**

The Borrower may, in accordance with Section 2.06, voluntarily repay the Loan in whole or in part without penalty upon 5 Business Days’ written notice to the Administrative Agent in integral multiples of \$500,000, subject to a limit of two repayments in any calendar month; provided that no such prepayment may be made during the period commencing on the earlier of delivery of (a) a Conversion Notice or (b) a Related Party Notice and concluding 30 days after all of the Conversion Conditions have been satisfied.

**5.05 Mandatory Repayments**

Any funds received or receivable by the Borrower on account of disposition (excluding for greater certainty, any lease thereof) of the German Aircraft shall be used to mandatorily repay the Loan and will be applied as provided in Section 5.03.

Subject to the terms and conditions of the applicable agreements, any funds raised by the issuance of equity to a third-party or the incurrence of Debt for general corporate purposes (which, for greater certainty, excludes any Debt incurred to finance the acquisition of any aircraft or equipment) by the Borrower or any Obligor shall be used to mandatorily repay the Loan. Upon the occurrence of any such event, the funds raised or received by the Borrower, as the case may be, will be applied as provided in Section 5.03.

**5.06 Interest Payments**

The Borrower shall pay interest on the fifteenth (15<sup>th</sup>) day of each of February, May, August and November on the average daily outstanding drawn balance of the Loan during the calendar quarter (or portion thereof) prior to such date.

**5.07 Overdue Payments**

Any amount that is not paid when due hereunder shall bear interest until paid at a rate equal to the applicable Interest Rate plus 2% per annum.

**5.08 Equivalent Yearly Rates**

The annual rates of interest to which the rates calculated in accordance with this agreement are equivalent, are the rates so calculated multiplied by the actual number of days in the calendar year in which such calculation is made and divided by 365 or 366, as the case may be.

**5.09 Time and Place of Payment**

Amounts payable by the Borrower hereunder shall be paid in Canadian Dollars. Amounts due on a day other than a Business Day shall be deemed to be due on the Business Day next following such day. Interest payable under this agreement are payable both before and after any or all of default, demand and judgement.

**5.10 Evidence Of Indebtedness**

The Administrative Agent shall open and maintain accounts and records evidencing the Borrowings made available to the Borrower by the Lenders under this agreement. The Administrative Agent shall record the principal amount of each Borrowing (including any increases thereto as provided herein), the payment of principal and interest and all other amounts becoming due to the Lenders under this agreement.

The Administrative Agent's accounts and records constitute, in the absence of manifest error, *prima facie* evidence of the indebtedness of the Borrower to the Lenders pursuant to this agreement.

**ARTICLE 6  
REPRESENTATIONS, COVENANTS AND EVENTS OF DEFAULT**

**6.01 Representations And Warranties**

The Borrower represents and warrants to the Administrative Agent and the Lenders that, and acknowledges that the Administrative Agent and the Lenders are relying on the following representations and warranties in connection with entering into this agreement:

- (1) **Due Incorporation.** The Borrower is a corporation duly incorporated and organized and is validly subsisting under the laws of Canada. The Borrower holds all necessary permits, consents and registrations and has all necessary corporate power and authority to own, operate or lease its properties and assets and to carry on its business as now conducted, and is duly licensed or registered or otherwise qualified to do business in all jurisdictions wherein the nature of its assets or the business transacted by it makes such licensing, registration or qualification necessary.

- (2) **Power.** The Borrower has all necessary corporate power and authority to enter into, deliver and perform its obligations under each of the Loan Documents to which the Borrower is a party and to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby.
- (3) **Due Authorization and No Conflict.** The execution, delivery and performance by the Borrower of the Loan Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby:
- (i) have been duly authorized by all necessary corporate action on the part of the Borrower;
  - (ii) do not and will not conflict with, result in any breach or violation of, or constitute a default under the constating documents or by-laws of the Borrower or any Applicable Laws, or (b) any determination, award or governmental order presently in effect and applicable to the Borrower, or (c) of any commitment, permit, agreement (including any Material Contract) or any other instrument to which the Borrower is now a party or is otherwise bound;
  - (iii) do not result in or require the creation of any Security Interest upon or with respect to any of the properties or assets of the Borrower other than in favour of the Administrative Agent; and
  - (iv) do not require the consent or approval (other than those consents or approvals already obtained or contemplated under the last paragraph in Section 2.09(2) and (certified, if requested by the Administrative Agent) copies of which have been delivered to the Administrative Agent) of, registration or filing with, or notice to any other party (including shareholders of the Borrower).
- (4) **Valid and Enforceable Obligations.** This agreement has been duly executed and delivered by the Borrower and the Loan Documents to which Borrower is a party are, or when executed and delivered to the Administrative Agent on behalf of the Lenders will be, legal, valid and binding obligations of the Borrower, enforceable in accordance with their respective terms, subject to the usual exceptions as to bankruptcy and the availability of equitable remedies.
- (5) **No Actions or Unsatisfied Judgements.** There is no outstanding governmental order or unsatisfied judgement, penalty or award against or affecting the Borrower or any of its assets in excess of \$100,000.
- (6) **No Defaults or Events of Default.** No Default or Event of Default (as defined below) has occurred and is continuing which would affect the financial condition, property, assets, operations or business of the Borrower (on a consolidated basis).

- (7) **Compliance with Law.** The Borrower is not in violation of any terms of its constating documents or by-laws or Applicable Laws (where such violation of Applicable Laws would have a material effect on the Borrower), judgment, writ, injunction, decree, determination or award presently in effect and applicable to it.
- (8) **Taxes.** The Borrower has filed all federal, provincial, state and local tax returns which are required to be filed, if any, and such tax returns are true, complete and correct in all material respects. The Borrower has paid all Taxes due, if any, pursuant to such returns or pursuant to any assessment received by it except such Taxes, if any, as are being contested in good faith and as to which adequate reserves have been provided.
- (9) **Solvency.** The Borrower is solvent and will not become insolvent after giving effect to the transactions contemplated in the Loan Documents.
- (10) **Insurance.** The Borrower maintains insurance policies on its properties, assets and business placed with such insurers and with such coverage and against such loss or damage to the extent insured against by comparable entities engaged in comparable businesses. The Borrower has paid all premiums necessary to maintain any such insurance policies in good standing.

## **6.02 Positive Covenants**

From the date hereof and until all indebtedness, liabilities and obligations due to the Lenders hereunder are finally repaid in full, the Borrower will observe and perform, or will cause the observance and performance of, each of the following covenants, unless compliance therewith shall have been waived in writing by the Majority Lenders:

- (1) **Existence.** The Borrower will do or cause to be done all such things as are necessary to maintain its existence in good standing, to ensure that it has at all times the right and is duly qualified to conduct its businesses and to obtain and maintain all rights, privileges and franchises necessary for the conduct of its business.
- (2) **As to Collateral.** The Borrower will defend, or cause the relevant Obligor(s) to defend all of the collateral in which a Security Interest under any Loan Document is granted to the Administrative Agent (collectively, “**Collateral**”) against the claims and demands of all other parties claiming the same or an interest therein other than Permitted Encumbrances and will keep the Collateral free from all encumbrances other than Permitted Encumbrances. The Borrower will keep the Collateral in good order, condition and repair ordinary wear and tear excepted and will not use the Collateral in violation of the provisions of any agreements granting a Security Interest under any Loan Document or this agreement or any insurance policy insuring the Collateral or in violation of any Applicable Laws.
- (3) **Payment of Principal, Interest and Expenses.** The Borrower will duly and punctually pay or cause to be paid to the Lenders all indebtedness, liabilities and

obligations owed by it to the Lenders under the Loan Documents at the times and places and in the manner provided for herein.

- (4) **Payment of Taxes and Claims.** The Borrower will pay and discharge promptly when due all Taxes, assessments and other governmental charges or levies imposed upon it or upon its properties or assets or upon any part thereof, as well as all claims of any kind (including claims for labour, materials and supplies) which, if unpaid, would by Applicable Law become a lien, charge, trust or other claim upon any such properties or assets; provided that the Borrower shall not be required to pay any such Tax, assessment, charge, levy or claim if the amount, applicability or validity thereof shall currently be contested in good faith by appropriate proceedings and if the Borrower shall have set aside on its books a reserve to the extent required by GAAP in an amount which is reasonably adequate with respect thereto.
- (5) **Use of Proceeds.** The Borrower shall use the proceeds of the Loan solely for the purposes contemplated in this agreement.
- (6) **Books and Records.** The Borrower will at all times maintain proper records and books of account and therein make true and correct entries of all dealings and transactions relating to its business and, if requested by the Administrative Agent, will make the same available for inspection by the Administrative Agent or any agent of the Administrative Agent at all reasonable times.
- (7) **Notice of Material Adverse Effect.** The Borrower will give to the Administrative Agent prompt written notice of any Material Adverse Effect.
- (8) **Representations and Warranties.** The Borrower will take all commercially reasonable steps to ensure that the representations and warranties provided hereunder remain true and correct until all indebtedness, liabilities and obligations due to the Lenders under the Loan Documents are finally paid in full. The Borrower shall promptly notify the Administrative Agent in writing of any event, occurrence, fact, condition or change that results in, or would reasonably be expected to result in, any representation or warrantee herein not being true or correct.
- (9) **Notice of Default.** The Borrower shall give to the Administrative Agent notice of any Default or Event of Default or any default under any Debt entitling any other party thereto to accelerate the maturity of amounts of principal owing thereunder, as soon as practicable after it becomes aware of same.
- (10) **Compliance with Laws.** The Borrower shall comply with all Applicable Laws.
- (11) **Cooperate With Administrative Agent.** The Borrower shall cooperate fully with the Administrative Agent with respect to any proceedings before any court, board or other Governmental Authority which may in any way adversely affect the



rights of the Administrative Agent or the Lenders under any of the Loan Documents.

- (12) **Title.** The Borrower has good and valid marketable title to the Collateral free and clear of any encumbrances other than Permitted Encumbrances.
- (13) **Registration of Security.** Subject to the last paragraph in Section 2.09(2), the Borrower shall provide the Administrative Agent with such assistance and do such things as the Administrative Agent may from time to time reasonably request so that the Security Interests under any Loan Document granted by it to the Administrative Agent and any other instruments of conveyance or assignment effected pursuant to this agreement or otherwise will be and remain registered, recorded or filed from time to time in such manner and in such places as may in the reasonable opinion of the Administrative Agent be necessary or required in perfecting such Security Interests.
- (14) **New Locations and Names.** The Borrower shall advise the Administrative Agent in writing at least ten (10) Business Days prior to the occurrence of the (i) change of location of its “chief executive office”, “place of business”, “registered office”, “chief place of business”, “principal place of business” or the location of its records; or (ii) change of its corporate name. The Borrower shall provide the Administrative Agent with any additional security or registrations which the Administrative Agent may reasonably deem necessary or advisable to maintain or continue the effectiveness of its Security Interest as a result of any such change.
- (15) **Common Shares Issuable upon Conversion.** The Borrower shall:
  - (i) at all times reserve and keep available out of its authorized Common Shares solely for the purpose of issue and delivery upon the conversion of any amounts under this Agreement, and conditionally allot to the Lenders, such number of Common Shares as shall then be issuable upon the conversion of any amounts under this Agreement which may be converted into Common Shares. The Borrower covenants with the Lenders that all Common Shares which shall be so issuable shall be duly and validly issued as fully-paid and non-assessable; and
  - (ii) comply with all Applicable Securities Laws relating to the issue and delivery of Common Shares upon the conversion of any amounts under this Agreement, obtain any regulatory approval in respect thereof as may be required pursuant to such laws and rules, prior to the issuance thereof.
- (16) **Debt Conversion.** Upon the earlier of (a) the date on which the Borrower completes any third party financing and (b) the date on which the Administrative Agent delivers a written request to the Borrower, the Borrower shall cause any Affiliates owing intercompany Debt to the Borrower, to make a capital contribution to the Borrower in the amount of any such intercompany Debt owing. Unless otherwise consented to by the Administrative Agent, acting

reasonably, such capital contribution shall be in full satisfaction of such intercompany Debt owing and the contributing Affiliates shall not be entitled to any additional Common Shares of, or other equity interests in, the Borrower on account of such capital contribution.

- (17) **Voting Agreements.** Within thirty (30) days of the date hereof, the Borrower shall cause each of Jacob Shavit, Paul Bernards, David Kleiman, Paul Bouchard and Didier Toussaint to enter into a voting agreement to vote in favour of the Related Party Matters, if any, contemplated by Article 3.

### **6.03 Negative Covenants**

From the date hereof and until all indebtedness, liabilities and obligations due to the Lenders hereunder are finally paid in full, the Borrower shall adhere to the following covenants unless waived in writing by the Majority Lenders:

- (1) **Not to Amalgamate, etc.** The Borrower shall not enter into any transaction or series of related transactions (whether by way of amalgamation, merger, winding-up, consolidation, reorganization, reconstruction, continuance, transfer, sale, lease or otherwise) whereby all or substantially all of its undertaking, properties, rights or assets would become the property of any other Person or, in the case of amalgamation or continuance, of the continuing corporation resulting therefrom, other than the amalgamation of the Borrower with Discovery Air Innovations Inc.
- (2) **Change in Articles.** The Borrower shall not amend or terminate (or permit the same) its articles or other constating documents without the prior written consent of the Administrative Agent, other than as is necessary to create different classes of shares prior to the exercise of a conversion hereunder in order to comply with the CTA.
- (3) **Sale of Assets.** The Borrower will not and shall ensure that no other Obligor shall sell, transfer, convey, lease (other than a lease of any of the German Aircraft to any Obligor) or otherwise dispose of any German Aircraft or other Collateral, unless it obtains the prior written consent of the Administrative Agent and, subject to the Intercreditor Agreement and the Borrower's obligations under any approvals granted by the US Department of State, all of the proceeds thereof are utilized to pay the indebtedness, liabilities and obligations due to the Lenders hereunder.
- (4) **German Aircraft.** The Borrower will not, except as may be requested by the Administrative Agent, (i) de-register or permit the de-registration of any German Aircraft from the aircraft register where such aircraft are registered as of the date hereof, and (ii) do or permit any action or thing which would reduce, diminish, jeopardize or otherwise negatively affect the validity, perfection or priority of the Administrative Agent's security interest in the German Aircraft (including the granting of any security interest in the German Aircraft to any other Person).

#### **6.04 Indemnity**

The Borrower hereby indemnifies and holds harmless the Lenders, the Administrative Agent, their Affiliates and their respective directors, officers and employees for any or all loss, cost, liability, judgment, claim, damage or expense sustained, suffered or incurred thereby (including, without limitation, attorneys' fees and costs) arising out of or attributable or relating to:

- (1) any inaccuracy in or breach of any of the representations and warranties of the Borrower herein;
- (2) any fraud or misrepresentation by Borrower in connection with the Loan; or
- (3) the breach or non-fulfilment of any covenant, agreement or obligation to be performed by the Borrower pursuant to the Loan Documents.

#### **6.05 Events Of Default**

Without limiting any other rights of the Lenders under this agreement, if any one or more of the following events (herein an "**Event of Default**") has occurred and, except in the case of Section 6.05(1) for which a cure period has been provided therein, has not been cured within 20 days after written notice thereof has been provided by the Administrative Agent to the Borrower:

- (1) the Borrower fails to pay (a) within one (1) Business Day of the due date or acceleration thereof, any principal, or (b) within three (3) Business Days of the due date or acceleration thereof, any interest or other amounts due under this agreement;
- (2) other than as set out in Section 6.05(1), the Borrower breaches any covenant or other provision of the Loan Documents;
- (3) the Borrower defaults in its obligations under any material Debt obligations of the Borrower;
- (4) any representation or warranty made herein or in any Loan Document or other document delivered pursuant hereto shall be or shall become false or inaccurate in any material respect;
- (5) a Material Adverse Effect occurs;
- (6) the Borrower is unable to pay its debts as such debts become due, or is, or is adjudged or declared to be, or admits to being, bankrupt or insolvent;
- (7) any notice of intention is filed or any voluntary or involuntary case or proceeding is filed or commenced for (i) the bankruptcy, liquidation, winding-up, dissolution or suspension of general operations of the Borrower, or (ii) the composition, re-scheduling, reorganization, arrangement or readjustment of, or other relief from, or stay of proceedings to enforce, some or all of the debts of the Borrower, or (iii) the appointment of a trustee, receiver, receiver and manager, liquidator,

administrator, custodian or other official for, all or any significant part of the assets of the Borrower, or (iv) the possession, foreclosure or retention, or sale or other disposition of, or other proceedings to enforce security over, all or any significant part of the assets of the Borrower; or

- (8) any secured creditor, encumbrancer or lienor, or any trustee, receiver, receiver and manager, agent, bailiff or other similar official appointed by or acting for any secured creditor, encumbrancer or lienor, takes possession of, or forecloses or retains, or sells or otherwise disposes of, or otherwise proceeds to enforce security over all or any significant part of the assets of the Borrower, or gives notice of its intention to do any of the foregoing;

then, in such event, the ability of the Borrower to make further Borrowings under this agreement shall immediately terminate and the Administrative Agent may, by written notice to the Borrower, declare all amounts outstanding under this agreement to be immediately due and payable. Upon receipt of such written notice, but subject to the provisions of the Intercreditor Agreement, the Borrower shall immediately pay to the Administrative Agent on behalf of the Lenders the full amount outstanding under this agreement, including all outstanding interest accrued thereon and all other obligations of the Borrower to the Lenders in connection with the Loan Documents. Subject to the Intercreditor Agreement, the Administrative Agent may, enforce its rights to realize upon its security in whole or in part and retain an amount sufficient to fully repay all of the Borrower's obligations to the Lenders under the Loan Documents. [Redacted – Particulars of covenant to obtain certain industry specific regulatory authorizations if required.]

In addition to the restrictions on the disposition of the assets in Section 6.03(3), the Administrative Agent and Lenders agree to abide by all US regulatory requirements that apply to any of the Collateral including, but not limited to, any registration, licensing, recordkeeping, reporting and related obligations. The Administrative Agent and Lenders warrant, certify and covenant that, to the best of their knowledge, they are and will be at all relevant times in compliance with US export laws and regulations, specifically the International Traffic in Arms Regulations and the Export Administration Regulations as they may relate to such Collateral.

## **ARTICLE 7 THE ADMINISTRATIVE AGENT AND THE LENDERS**

### **7.01 Authorization and Action**

Each of the Lenders hereby appoints and authorizes the Administrative Agent to take such action as Administrative Agent on its behalf and to exercise such powers under this agreement and the other Loan Documents as are delegated to the Administrative Agent by the terms hereof and thereof, together with such actions and powers as are reasonably incidental thereto. Each Lender further designates and appoints the Administrative Agent to hold the Collateral and the Security Interests granted under any Loan Document on behalf of and for the benefit of the Lenders and as hypothecary representative, as such term is used in Article 2692 of the Civil Code of Quebec. As to any matters not expressly provided for by this agreement or such other Loan Documents, the Administrative Agent shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be

fully indemnified and protected in so acting or refraining from acting) upon the instructions of the Majority Lenders and such instructions shall be binding upon all Lenders; provided that the Administrative Agent shall not be required to take any action which exposes the Administrative Agent to personal liability or which is contrary to this agreement or such other Loan Documents or Applicable Law. Without limitation of the foregoing, the Administrative Agent may grant releases and postponements of the Security Interests, to the extent in each case the Security Interest extends to assets which are disposed of in accordance with this agreement. The provisions of this Article 7 are solely for the benefit of the Administrative Agent, the Lenders and the Borrower shall not have any rights as a third party beneficiary of any such provisions.

#### **7.02 Reliance by Administrative Agent**

The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of Borrowings and that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Borrowings. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

#### **7.03 Exculpatory Provisions**

- (a) The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Administrative Agent:
  - (i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;
  - (ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Majority Lenders (or such other number or percentage of the Lenders as shall be expressly provided for in the Loan Documents), but the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or Applicable Law; and

- (iii) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the person serving as the Administrative Agent or any of its Affiliates in any capacity.
- (b) The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Majority Lenders (or such other number or percentage of the Lenders as is necessary, or as the Administrative Agent believes in good faith is necessary, under the provisions of the Loan Documents) or (ii) in the absence of its own gross negligence or wilful misconduct. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing the Default is given to the Administrative Agent by the Borrower or a Lender.
- (c) Except as otherwise expressly specified in this agreement, the Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition specified in this agreement, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

#### **7.04 Non-Reliance on Administrative Agent and Other Lenders**

Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

#### **7.05 Administrative Agent a Lender**

The Administrative Agent, which is also a Lender, shall have the same rights and powers in its capacity as a Lender under this agreement and every other Loan Document as any other Lender and may exercise the same as though it were not the Administrative Agent; and the terms “Lender” and “Lenders” shall, unless otherwise expressly indicated, include the Administrative Agent in its capacity as Lender.

#### **7.06 Collective Action of the Lenders**

Each of the Lenders hereby acknowledges that to the extent permitted by Applicable Law, any collateral security and the remedies provided under the Loan Documents to the Lenders are for the benefit of the Lenders collectively and acting together and not severally and further acknowledges that its rights hereunder and under any collateral security are to be exercised not severally, but by the Administrative Agent upon the decision of the Majority Lenders (or such other number or percentage of the Lenders as shall be expressly provided for in the Loan Documents). Accordingly, notwithstanding any of the provisions contained herein or in any collateral security, each of the Lenders hereby covenants and agrees that it shall not be entitled to take any action hereunder or thereunder including, without limitation, any declaration of default hereunder or thereunder but that any such action shall be taken only by the Administrative Agent with the prior written agreement of the Majority Lenders (or such other number or percentage of the Lenders as shall be expressly provided for in the Loan Documents). For greater certainty, no Lender shall have any right individually to enforce any of the Collateral, it being understood that all such enforcement shall be taken by the Administrative Agent for the benefit of the Lenders upon the terms of this agreement. Each of the Lenders hereby further covenants and agrees that upon any such written agreement being given, it shall co-operate fully with the Administrative Agent to the extent requested by the Administrative Agent. Notwithstanding the foregoing, in the absence of instructions from the Lenders and where in the sole opinion of the Administrative Agent, acting reasonably and in good faith, the exigencies of the situation warrant such action, the Administrative Agent may without notice to or consent of the Lenders take such action on behalf of the Lenders as it deems appropriate or desirable in the interest of the Lenders.

#### **7.07 Proceeds of Realization received by a Lender**

In the event that, following an Event of Default which is continuing, any non-cash proceeds of realization are delivered to or received by a Lender, the Lender shall hold such non-cash proceeds of realization in trust for the Administrative Agent and shall forthwith deliver such non-cash proceeds of realization (subject to the Administrative Agent's acceptance of such delivery) to the Administrative Agent to be disposed of, or realized upon, by the Administrative Agent in a commercially reasonable manner so as to produce cash proceeds of realization for application to the payment of the obligations hereunder and under the other Loan Documents in accordance with this agreement.

#### **7.08 Indemnification of Administrative Agent**

Each Lender agrees to indemnify the Administrative Agent and hold it harmless (to the extent not reimbursed by the Borrower), rateably according to its Proportionate Share (and not jointly or jointly and severally) from and against any and all losses, claims, damages, liabilities and related expenses, including the fees, charges and disbursements of any counsel, which may be incurred by or asserted against the Administrative Agent in any way relating to or arising out of the Loan Documents or the transactions therein contemplated. However, no Lender shall be liable for any portion of such losses, claims, damages, liabilities and related expenses resulting from the Administrative Agent's gross negligence or wilful misconduct.

**ARTICLE 8  
GENERAL**

**8.01 Successors And Assigns**

This agreement shall be binding upon and enure to the benefit of the parties and their respective successors and permitted assigns.

The Lenders may assign all or any part of their rights and obligations under this agreement to any other Person. The rights and obligations of the Borrower under this agreement may not be assigned without the prior written consent of the Majority Lenders.

The Lenders may disclose to potential or actual assignees confidential information regarding the Borrower and, provided that the Lenders shall have obtained from any such potential or actual assignee a confidentiality agreement in customary form and which benefits the Borrower and its Affiliates, shall not be liable for any such disclosure.

**8.02 Review**

The Administrative Agent may conduct periodical reviews of the affairs of the Borrower, as and when determined by the Administrative Agent, for the purpose of evaluating the financial condition of the Borrower. The Borrower shall make available to the Administrative Agent such financial statements and other information and documentation as the Administrative Agent may reasonably require and shall do all things reasonably necessary to facilitate such review by the Administrative Agent.

**8.03 Consent to Disclosure**

The Borrower hereby grants its consent (such grant to remain in force as long as this agreement is in effect or the Loan is outstanding) to any Person having information relating to any Potential Prior-Ranking Claim to release such information to the Administrative Agent at any time upon the Administrative Agent's written request for the purpose of assisting the Administrative Agent to evaluate the financial condition of the Borrower.

**8.04 Non-Merger**

The provisions of this agreement shall not merge with any security provided to the Administrative Agent, but shall continue in full force for the benefit of the parties hereto.

**8.05 Amendments and Waivers**

No amendment or waiver of any provision of this agreement will be effective unless it is in writing signed by the Borrower, the Administrative Agent and the Majority Lenders (other than in respect of the Maturity Date, Commitments, Interest Rate and this Section 8.05, where all Lenders must sign). No failure or delay on the part of the Administrative Agent in exercising any right or power hereunder shall operate as a waiver thereof.



**8.06 Severability**

If any provision of this agreement is or becomes prohibited or unenforceable in any jurisdiction, such prohibition or unenforceability shall not invalidate or render unenforceable the provision concerned in any other jurisdiction nor invalidate, affect or impair any of the remaining provisions of this agreement.

**8.07 Governing Law**

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

**8.08 Entire Agreement**

This Agreement, the Disclosure Letter, the Loan Documents, the security and any other written agreement delivered pursuant to the Loan Documents constitute the entire agreement between the parties in respect of the Loan, and supersede all prior and contemporaneous representations, warranties, understandings and agreements, both written and verbal, in connection with the Loan.

**8.09 Disclosure Letter**

- (a) The Disclosure Letter forms an integral part of this Agreement for all purposes of it.
- (b) The purpose of the Disclosure Letter is to set out the qualifications, exceptions and other information called for in this Agreement. The Parties acknowledge and agree that the Disclosure Letter and the information and disclosures contained in it do not constitute or imply, and will not be construed as:
  - (i) any representation, warranty, covenant or agreement which is not expressly set out in this Agreement;
  - (ii) an admission of any liability or obligation of the Borrower or the Lenders;
  - (iii) an admission that the information is material;
  - (iv) a standard of materiality, a standard for what is or is not in the ordinary course of business, or any other standard contrary to the standards contained in the Agreement; or
  - (v) an expansion of the scope of effect of any of the representations, warranties and covenants set out in the Agreement.
- (a) The Disclosure Letter itself is confidential information and may not be disclosed unless (i) it is required to be disclosed pursuant to Applicable Law, unless such Applicable Law permits the Parties to refrain from disclosing the information for confidentiality or other purposes or (ii) a party hereto needs to disclose it in order to enforce or exercise its rights under this Agreement.

**8.10 Notices**

Any notice or demand hereunder shall be given in writing and shall be given by prepaid mail, by facsimile or other means of electronic communication or by hand-delivery, in each case addressed as specified below. Any such notice or demand, if mailed by prepaid mail, shall be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, shall be deemed to have been received on the date of transmission provided the appropriate confirmation of receipt has been received before 3:00 p.m. on a Business Day, and otherwise on the next Business Day. A letter shall be deemed received when hand-delivered to the receiving party at the address shown herein or at such other address as the receiving party may notify the others from time to time. Each party shall be bound by any notice given hereunder and entitled to act in accordance therewith, unless otherwise agreed. The addresses of the parties for the purpose hereof shall be:

as to the Borrower:

Discovery Air Defence Services Inc.  
170 Attwell Drive

Suite 370  
Toronto, ON M9W 5Z5

Attention: Paul Bernards  
Facsimile: (416) 679-0410

as to the Administrative Agent:

Clairvest GP Manageco Inc.  
c/o Clairvest Group Inc.  
22 St. Clair Avenue East  
Suite 1700  
Toronto, ON M4T 2S3

Attention: James Miller  
Facsimile: (416) 925-5753

or such other address for delivery as each party from time to time may notify the other as aforesaid.

**8.11 Further Assurances**

The Borrower shall from time to time promptly upon the request of the Administrative Agent take such action and execute and deliver such further documents, as shall be reasonably required in order to fully perform the terms of, and to carry out the intention of, this agreement.

**8.12 Counterparts**

This agreement may be executed in one or more counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed

signature page to this agreement by either party by facsimile or other electronic transmission will be as effective as delivery of a manually executed copy of the agreement by such party.

**8.13 Time**

Time shall be of the essence in all provisions of this agreement.

*-remainder of this page intentionally left blank-*

**IN WITNESS WHEREOF** the parties have caused this agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

**BORROWER:**

**DISCOVERY AIR DEFENCE SERVICES INC.**

Per: “David Kleiman”  
David Kleiman  
Corporate Secretary

*[Discovery Air – Signature Page to DADI Credit Agreement]*

**ADMINISTRATIVE AGENT:**

**CLAIRVEST GP MANAGECO INC.**

Per: \_\_\_\_\_ *“Michael Wagman”*  
Michael Wagman  
Managing Director

Per: \_\_\_\_\_ *“Daniel Cheng”*  
Daniel Cheng  
Chief Financial Officer

**LENDERS:**

**CLAIRVEST EQUITY PARTNERS IV LIMITED PARTNERSHIP**, by its general partner, **CLAIRVEST GP MANAGECO INC.**

Per:                                 "Michael Wagman"

Michael Wagman  
Managing Director

Per:                                 "Michael Wagman"

Michael Wagman  
Managing Director

**CLAIRVEST EQUITY PARTNERS IV-A LIMITED PARTNERSHIP**, by its general partner, **CLAIRVEST GENERAL PARTNER IV LIMITED PARTNERSHIP**, by its general partner, **CLAIRVEST GP (GPLP) INC.**

Per:                                 "Michael Wagman"

Michael Wagman  
Managing Director

Per:                                 "Michael Wagman"

Michael Wagman  
Managing Director

**CEP IV CO-INVESTMENT LIMITED PARTNERSHIP**, by its general partner, **CLAIRVEST GENERAL PARTNER IV LIMITED PARTNERSHIP**, by its general partner, **CLAIRVEST GP (GPLP) INC.**

Per:                                 "Michael Wagman"

Michael Wagman  
Managing Director

Per:                                 "Michael Wagman"

Michael Wagman  
Managing Director







## Discovery Air and Clairvest Enter Into Definitive Agreement for Going Private Transaction

- Equity privatization transaction unanimously recommended by a Special Committee of the Board of Directors of Discovery Air Inc. comprised of four independent directors, and unanimously approved by Discovery Air Inc.'s board of directors, excluding directors not eligible to vote;
- Cash consideration of \$0.20 per share to be paid to public shareholders of Discovery Air Inc.;
- Transaction will provide liquidity to public shareholders;
- Unsecured convertible debentures to remain outstanding/listed and treated in accordance with their terms;
- Following closing, Discovery Air Inc. will be wholly-owned by certain funds and affiliates of Clairvest Group Inc. and certain management shareholders of Discovery Air Inc.; and
- Over 90% of the shareholders of Discovery Air Inc. have indicated their intent to vote in favour of the equity privatization transaction at the special meeting of shareholders held to consider such transaction, the implication of which is (i) minority approval under securities laws is not required and (ii) the result of the special meeting of shareholders is assured.

**Toronto, ON** - March 24, 2017 - Discovery Air Inc. ("**Discovery Air**" or the "**Corporation**") (TSX: DA.A) and Clairvest Group Inc. (TSX: CVG) announced today that the Corporation and certain funds managed by Clairvest Group Inc. (collectively "**Clairvest**") have entered into a definitive agreement (the "**Arrangement Agreement**") which will result in Clairvest, along with certain management shareholders of the Corporation (the "**Rolling Shareholders**" and, together with Clairvest, the "**Purchaser Group**"), acquiring all the issued and outstanding shares in the capital of the Corporation by way of a plan of arrangement (the "**Arrangement**") pursuant to the *Canada Business Corporations Act*.

Pursuant to the terms of the Arrangement, Clairvest will indirectly acquire from the shareholders of the Corporation (the "**Corporation Shareholders**") all of the issued and outstanding Class A shares (the "**Class A Shares**") and Class B shares (the "**Class B Shares**", and together with the Class A Shares, the "**Corporation Shares**") of Discovery Air not already held by the Purchaser Group for \$0.20 per Corporation Share (the "**Cash Consideration**"). The total transaction Cash Consideration is approximately \$1.5 million.

Jacob (Koby) Shavit, the President and CEO of Discovery Air Inc. stated "the proposed transaction is a logical evolution for Discovery Air given our current ownership structure. Our management team and employees look forward to continuing to work with Clairvest as we maintain our ongoing focus on delivering skillful and efficient specialty aviation and logistics services to our customers".

The members of the Purchaser Group, acting jointly and in concert, currently own over 90% of the Corporation Shares and have indicated their intent to vote in favour of the Arrangement at the special meeting of Corporation Shareholders held to consider the Arrangement, as further described below.

The Arrangement will provide holders of the Corporation Shares (other than the Purchaser Group and their affiliates) (the “**Public Shareholders**”) with liquidity and the opportunity to realize immediate and certain value for their Corporation Shares. On the basis of, among other things, the valuation and fairness opinion provided by the special committee’s financial advisor, Capital Canada Limited, the special committee and disinterested members of the Corporation’s board of directors (the “**Board**”) believe that the Cash Consideration to be received by the Public Shareholders pursuant to the Arrangement is fair, from a financial point of view, and that the Arrangement is in the best interests of the Corporation.

The Arrangement will enhance the Corporation’s ability to meet future financing needs in an efficient and timely manner, which will allow the Corporation to reduce the risks associated with its business, improving the operations and future prospects of the Corporation.

The special committee also determined that it is unlikely that a competing offer for equal or greater consideration could emerge given the Corporation’s ownership structure together with the fact that Clairvest advised the Corporation, and subsequently publicly announced, that it has no interest in selling its holdings in the Corporation. The Arrangement will not result in a change in the effective control of the Corporation, which would have resulted had any third party acquirer effected a similar transaction, including associated implications for and potential costs arising from the Corporation’s contractual commitments.

### **Transaction Details**

Unanimously recommended to the Corporation Shareholders by all of the independent directors of the Corporation, the Arrangement will be completed by way of a plan of arrangement pursuant to the *Canada Business Corporations Act* through which Public Shareholders will receive the Cash Consideration.

#### *Fairness Opinion and Formal Valuation*

The special committee of the Board has unanimously recommended that Corporation Shareholders approve the Arrangement. The special committee received a formal valuation from its financial advisor, Capital Canada Limited, valuing the Corporation Shares at a range of nil to \$0.07. The special committee also received a fairness opinion from Capital Canada Limited that the Cash Consideration to be received by the Public Shareholders pursuant to the Arrangement is fair, from a financial point of view, to the Public Shareholders.

#### *Process of Approval*

The Arrangement is subject to, among other things, the approval by 66 2/3% of the votes cast by Corporation Shareholders at a special meeting of Corporation Shareholders to be held to approve the Arrangement. As the Purchaser Group holds over 90% of the Corporation Shares and have indicated their intent to vote in favour of the Arrangement at the special meeting, minority approval under securities laws is not required. The Arrangement is also subject to receipt of court and any necessary regulatory approvals. On closing of the Arrangement, it is anticipated that the Corporation Shares will be de-listed from the Toronto Stock Exchange (“**TSX**”).

The Arrangement is expected to close once all of the approvals have been obtained, which is expected to occur no later than June 2017. Certain holders of Corporation Shares who are directors, officers or employees of the Corporation have entered into voting and support agreements (the “**Voting and Support Agreements**”) pursuant to which they have agreed, among other things, to vote in favour of

the Arrangement and, in lieu of receiving the Cash Consideration, to exchange their Corporation Shares on a one-for-one basis for shares in, and continue as shareholders of, the successor entity to the Corporation.

#### *Secured and Unsecured Debentures*

Discovery Air's outstanding senior secured convertible debentures in an initial aggregate principal amount of \$70,000,005 issued by the Corporation on September 23, 2011, and the 8.375% convertible unsecured subordinated debentures issued by the Corporation pursuant to a convertible debenture indenture dated as of May 12, 2011, as amended by a first supplemental convertible debenture indenture dated as of November 27, 2014 (the "**Listed Debentures**", and together, the "**Debentures**"), will be treated in accordance with their terms. The Listed Debentures will not be de-listed from the TSX and, as such, the Corporation will remain a reporting issuer subsequent to the completion of the Arrangement. The Debentures will remain outstanding in accordance with their terms and will not be included in the Arrangement.

Corporation Shareholders and other interested parties are advised to read the materials relating to the proposed Arrangement that will be filed with or furnished to securities regulatory authorities in Canada when they become available, as they will contain important information. Additional details regarding the Arrangement will be disclosed in the Management Information Circular to be mailed to Corporation Shareholders and filed in due course. Anyone may obtain copies of these documents when available free of charge under the Corporation's profile on the System for Electronic Document Analysis and Retrieval at [www.sedar.com](http://www.sedar.com).

This announcement is for informational purposes only and does not constitute an offer to purchase, a solicitation of an offer to sell the shares of the Corporation or a solicitation of a proxy.

#### *Early Warning Report Filed for Clairvest*

Clairvest has filed an updated early warning report in connection with entering into the Voting and Support Agreements and the Arrangement Agreement. A copy of the report can be obtained under the Corporation's profile at [www.sedar.com](http://www.sedar.com), or by contacting the Director, Investor Relations and Marketing for Clairvest at (416) 925-9270.

#### **Cautionary Statement Regarding Forward-Looking Statements**

Certain statements made in this press release are forward-looking statements. These statements include, without limitation, statements relating to the proposed equity privatization of the Corporation pursuant to the Arrangement, approval of the Arrangement by shareholders and regulatory authorities and the timing thereof, the subsequent ownership structure of the Corporation, the Cash Consideration, the expected timing and impact of the Arrangement, certain strategic, operational and financial benefits expected to result from the Arrangement, the Corporation's business outlook, objectives, plans and strategic priorities, and other statements that are not historical facts.

Forward-looking statements, by their very nature, are subject to inherent risks and uncertainties and are based on assumptions, both general and specific, which give rise to the possibility that actual results or events could differ materially from our expectations expressed in or implied by such forward-looking statements. As a result, we cannot guarantee that any forward-looking statement will materialize and we caution you against relying on any of these forward-looking statements. For a description of relevant assumptions and risks, please consult the Corporation's 2016 Annual

Information Form dated April 28, 2016 and the Corporation's 2016 Third Quarter MD&A dated December 7, 2016, all filed with the Canadian provincial securities regulatory authorities (available at [sedar.com](http://sedar.com)) and which are also available on the Corporation's website at [www.discoveryair.com](http://www.discoveryair.com). Additional details regarding the Arrangement will be disclosed in the Management Information Circular to be filed in due course.

The forward-looking statements contained in this press release describe our expectations at March 24, 2017, and, accordingly, are subject to change after such date. Except as may be required by Canadian securities laws, we do not undertake any obligation to update or revise any forward-looking statements contained in this press release, whether as a result of new information, future events or otherwise.

### **About Discovery Air**

Discovery Air is a global leader in specialty aviation services. We deliver exceptional air combat training, medevac equipped aircraft services, air charter services, helicopter operations, and transport and logistics support to ensure operational readiness, health, safety and vital lifelines for our clients and the communities we serve.

Discovery Air's Class A common voting shares and unsecured convertible debentures trade on the Toronto Stock Exchange (symbols DA.A and DA.DB.A, respectively).

For further information, please contact:

Sheila Venman  
Investor Relations  
[Sheila.venman@discoveryair.com](mailto:Sheila.venman@discoveryair.com)  
866-903-3247

### **About Clairvest**

Clairvest Group Inc. is a private equity investor which invests its own capital, and that of third parties through the Clairvest Equity Partners ("CEP") limited partnerships, in businesses that have the potential to generate superior returns. In addition to providing financing, Clairvest contributes strategic expertise and execution ability to support the growth and development of its investee partners. Clairvest realizes value through investment returns and the eventual disposition of its investments.

For further information, please contact:

Maria Klyuev  
Director, Investor Relations and Marketing  
Clairvest Group Inc.  
Tel: (416) 925-9270  
Fax: (416) 925-5753



# DISCOVERY AIR

## Discovery Air Announces New Revolving Credit Facility from Clairvest

Toronto, ON, June 5, 2017 – Discovery Air Inc. (“**Discovery Air**” or the “**Corporation**”) announced today that its subsidiary, Discovery Air Defence Services Inc. (“**DA Defence**”), has entered into a subordinated credit agreement with certain funds or co-investors (such lenders, collectively “**Clairvest**”) of Clairvest Group Inc., the controlling shareholder of the Corporation, providing for a revolving subordinated credit facility in the aggregate principal amount of up to \$13,000,000 (the “**Revolving Credit Facility**”). All borrowings under the Revolving Credit Facility are secured on a subordinated basis, bear interest at a rate of 12% per annum, compounded, payable quarterly, and maturing on July 31, 2017, subject to acceleration in the event of certain refinancing transactions and extensions by Clairvest, acting reasonably. Proceeds from the Revolving Credit Facility will be used for general corporate purposes, including, without limitation, support of certain growth initiatives and for business development activities at certain affiliates.

The Revolving Credit Facility is in addition to an existing credit facility between DA Defence and Clairvest for a principal amount of \$25,000,000, originally to come due on June 30, 2017 (the “**Original DADS Credit Facility**” and, together with the Revolving Credit Facility, the “**DADS Credit Facilities**”). A copy of the credit agreement for each of the DADS Credit Facilities will be available on the system for electronic document analysis and retrieval (SEDAR).

The Revolving Credit Facility also contains an optional conversion feature (the “**Conversion Feature**”), which provides Clairvest with an option, subject to the condition described below, to convert the outstanding balance (or a portion thereof) under the DADS Credit Facilities, together with up to \$18,400,000 principal amount of the Corporation’s senior secured convertible debentures, into common shares of DA Defence at a conversion price to be determined on the basis of the value of the DA Defence business, after the application of certain agreed upon adjustments between Clairvest and the Corporation. In the event Clairvest elects to exercise the Conversion Feature, its exercise is subject to the prior satisfaction of certain conditions, including the following condition (the “**Conversion Condition**”): if required under Applicable Securities Law (as defined in the Revolving Credit Facility), the Corporation shall have obtained a “formal valuation” (as defined in Multilateral Instrument 61-101 – *Protection of Minority Security Holders in Special Transactions* (“**MI 61-101**”)) of DA Defence in accordance with the applicable requirements of Applicable Securities Laws (including MI 61-101). In the event Clairvest seeks to exercise the Conversion Feature, and a “formal valuation” is required under Applicable Securities Laws, the Corporation, acting at the direction of a special committee (the “**Special Committee**”) of the board of directors of the Corporation (the “**Board**”), will retain a valuator to prepare a formal valuation in accordance with MI 61-101. The Conversion Condition is in addition to the conversion conditions in the Original DADS Credit Facility, as more fully described in the press release of the Corporation dated December 20, 2016, announcing the Original DADS Credit Facility.

A material change report will be filed less than 21 days before the closing date of the transaction. This shorter period is reasonable and necessary in the circumstances to allow the Corporation to obtain financing for working capital.

The Revolving Credit Facility is a “related party transaction” within the meaning of MI 61-101. The Corporation is not required under MI 61-101 to obtain a formal valuation in respect of the Revolving Credit Facility and will be relying upon the exemption from the minority approval requirement in section 5.7(f) of MI 61-101 as a result of (i) the Revolving Credit Facility being provided on reasonable commercial terms that are not less advantageous to the Corporation than if the Revolving Credit Facility was obtained from an arm’s length party; and (ii) the Revolving Credit Facility not containing any equity component; provided that, as described above, if the Conversion Feature is exercised by Clairvest, such exercise is contingent on the Conversion Condition satisfying the requirements of MI 61-101.

### **CAUTION REGARDING FORWARD-LOOKING STATEMENTS**

This news release includes forward-looking statements (as defined in applicable securities laws) regarding Discovery Air and/or its subsidiaries (including DA Defence) that relate to, among other things: the proposed use of proceeds of the Revolving Credit Facility; the Conversion Feature; the terms, conditions and timing of draws under the Revolving Credit Facility; and, the regulatory approval process if the Conversion Feature is exercised. Forward-looking statements by definition are based on assumptions and, as a result, are subject to risks and uncertainties. As a result of such risks and uncertainties, actual results may differ materially from those discussed in forward-looking statements, and readers should not place undue reliance on such statements.

Forward-looking statements represent expectations as of the date they are made, and Discovery Air disclaims any intention or obligation to update or revise any forward-looking statements it may make, whether as a result of new information, future events or otherwise, except as required under applicable securities laws.

### **ABOUT DISCOVERY AIR AND ITS SUBSIDIARIES**

Discovery Air is a global leader in specialty aviation services. We deliver exceptional air combat training, medevac equipped aircraft services, air charter services, helicopter operations, and transport and logistics support to ensure operational readiness, health, safety and vital lifelines for our clients and the communities we serve.

Discovery Air’s unsecured convertible debentures trade on the Toronto Stock Exchange (symbol DA.DB.A).

For further information, please contact:

Paul Bernards Chief Financial Officer

[Paul.bernards@discoveryair.com](mailto:Paul.bernards@discoveryair.com)

866-903-3247





**DISCOVERY AIR DEFENCE SERVICES INC.**

as Borrower

-and-

**CLAIRVEST GP MANAGECO INC.**

as Administrative Agent

**CLAIRVEST EQUITY PARTNERS IV LIMITED PARTNERSHIP, CLAIRVEST  
EQUITY PARTNERS IV-A LIMITED PARTNERSHIP and CEP IV CO-INVESTMENT  
LIMITED PARTNERSHIP,**

as Lenders

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**SUBORDINATED CREDIT AGREEMENT**

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Dated as of June 5, 2017

THIS AGREEMENT is dated as of June 5, 2017.

AMONG:

**DISCOVERY AIR DEFENCE SERVICES INC.,** as Borrower

OF THE FIRST PART

AND:

**CLAIRVEST GP MANAGECO INC.,** as Administrative Agent

OF THE SECOND PART

AND:

**CLAIRVEST EQUITY PARTNERS IV LIMITED PARTNERSHIP,  
CLAIRVEST EQUITY PARTNERS IV-A LIMITED PARTNERSHIP and  
CEP IV CO-INVESTMENT LIMITED PARTNERSHIP,** as Lenders

OF THE THIRD PART

WHEREAS the Borrower has requested the Loan and the Lenders have agreed to provide the Loan to the Borrower upon and subject to the terms and conditions set out in this Agreement.

NOW THEREFORE in consideration of the mutual covenants and agreements herein set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

## **ARTICLE 1 INTERPRETATION**

### **1.01 Definitions**

For the purpose of this agreement, the following terms and phrases shall have the following meanings:

**“Administrative Agent”** means Clairvest GP Manageco Inc.

**“Affiliate”** means any Person that Controls, is Controlled by or is under common Control with a Person.

**“Aircraft Security Agreement”** means the subordinated aircraft security agreement dated as of the date hereof between Top Aces Corp. and Discovery Air Defence Services Inc., as debtors and the Administrative Agent on behalf of the Lenders.

**“Applicable Law”** means, at any time, with respect to any Person, property, transaction or event, all applicable laws, statutes, regulations, treaties, judgments and decrees and (to the extent

having the force of law) all applicable official directives, rules, consents, approvals, by-laws, permits, authorizations, guidelines, orders and policies of any Governmental Authority or Persons having authority over that Person, property, transaction or event.

“**Applicable Securities Laws**” means (i) the securities laws, rules, regulations, instruments and orders applicable in the provinces and territories of Canada as interpreted and applied by the securities commissions or equivalent securities authorities of such provinces and territories and (ii) applicable stock exchange rules.

“**Borrower**” has the meaning ascribed thereto in Section 1.03.

“**Borrowing**” has the meaning ascribed thereto in Section 2.01.

“**Business Day**” means a day, excluding Saturday, Sunday and any other day which shall be a legal holiday or a day on which lending institutions are closed in the province of Ontario.

*[Redacted – Industry specific regulatory definition.]*

“**Capitalized Lease Obligation**” means, for any Person, any payment obligation of such Person under an agreement for the lease, license or rental of, or providing such Person with the right to use, property that, in accordance with GAAP, is required to be capitalized.

“**Closing Date**” means the date hereof.

“**Collateral**” has the meaning ascribed thereto in Section 5.02(2).

“**Commitment**” means, for a Lender in respect of the Loan, the amount in respect of the Loan set forth opposite such Lender’s name under the heading “Initial \$6MM Amount” or “Remaining Amount”, as the case may be, on Schedule A hereto, as it may be amended from time to time to the extent not permanently reduced, cancelled or terminated pursuant to this agreement by such Lender’s Proportionate Share.

“**Common Shares**” means common shares of the Borrower, or such classes of common shares of the Borrower as may be created, if and when necessary, to restrict foreign voting control in order to meet the requirement in the Canada Transportation Act (the “CTA”) that holders of licences to operate domestic Canadian air services be “Canadian”.

“**Control**” means the ownership or right to control through voting proxies of a minimum of 50.1% of the issued and outstanding voting shares, partnership interests or other instruments having the capacity to elect the directors or committees responsible for the control, management and direction of any Person or to otherwise control, management or direction of any Person and the words “**Controlled by**”, “**Controlling**” and similar words have corresponding meanings.

“**Controlled Borrowing**” has the meaning ascribed thereto in Section 2.08(a).

“**Controlled Borrowing Effective Date**” has the meaning ascribed thereto in Section 2.08(b).

“**Conversion Condition**” has the meaning ascribed thereto in Section 3.03.

“**Conversion Notice**” has the meaning ascribed thereto in Section 3.01.

“**Conversion Price**” means an amount per Common Share as is determined under, and in accordance with, the Original DADS Loan, as may be adjusted thereunder from time to time, and for greater certainty, in respect of the aggregate obligations under the Original DADS Loan and the Loan.

“**Debt**” of a Person means, at any time and without duplication, calculated as at such time (i) all indebtedness for moneys borrowed (including interest and other charges in respect thereof) and moneys raised by the issue of notes, bonds, debentures or other evidences of moneys borrowed including the face amount of lenders’ acceptances and letters of credit or letters of guarantee; (ii) all indebtedness for the deferred purchase price of property or services represented by a note or other evidence of indebtedness; (iii) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by the Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property); (iv) all indebtedness of another person secured by a lien, charge, hypothec, mortgage or security interest on any assets or undertaking (real, personal, tangible or intangible) of the Person; (v) all obligations under leases which have been or should be, recorded as capital leases in respect of which the Person is liable as lessee; (vi) the aggregate amount at which any shares or equity interests in the capital of the Person which are redeemable at the option of the holder or retractable at the option of the holder, as the case may be, may be so retracted or redeemed for cash or debt provided all conditions precedent for such retraction or redemption have been satisfied; (vii) all current liabilities of a Person represented by a note, bond, debenture or other evidence of indebtedness; and (viii) all Debt Guaranteed by the Person.

“**Debt Guaranteed**” by any Person means, without duplication, the amount outstanding at any time of all Debt of the kinds referred to in (i) through (viii) of the definition of Debt which is directly or indirectly guaranteed by the Person or which the Person has agreed (contingently or otherwise) to purchase or otherwise acquire, or in respect of which the Person has otherwise assured a creditor or other Person against loss.

“**Default**” means any event or condition that has occurred which, with notice, lapse of time, or both, would constitute an Event of Default.

“**Event of Default**” has the meaning ascribed thereto in Section 5.05.

“**Existing Facilities**” means any Debt Guaranteed by the Borrower or any Debt obligations of the Borrower in favour of a working capital or other lender, existing on the date hereof.

“**Force Majeure**” means acts of God, fire, flood or other catastrophe; government, legal or statutory restrictions on forms of commercial activity; an order of any Governmental Authority having authority over the relevant party; national emergencies, insurrections, riots or wars; strikes, lock-outs or work stoppages; or any other event or occurrence beyond the reasonable control of the applicable party.

“**GAAP**” means generally accepted accounting principles in effect from time to time in Canada applied in a consistent manner from period to period.

“**German Aircraft**” means the Aircraft (as defined in the Aircraft Security Agreement) together with the other Collateral (as defined in the Aircraft Security Agreement) related thereto.

“**Governmental Authority**” means any nation or government, any province, state, municipality, local or other political subdivision thereof and any agency, instrumentality or other entity thereof exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

“**Initial Drawdown Amount**” means \$6,000,000.

“**Intercreditor Agreement**” means the Fourth Amended and Restated Intercreditor Agreement dated as of May 26, 2015 among, *inter alios*, Roynat Inc., Element Financial Corporation, Textron Financial Corporation, Canadian Imperial Bank of Commerce, Clairvest GP Manageco Inc., Clairvest Group Inc. and Discovery Air Inc. and certain of its direct and indirect subsidiaries, as amended by an Amendment to Fourth Amended and Restated Intercreditor Agreement made as of December 1, 2015, as amended, restated, modified, supplemented or replaced from time to time.

“**Interest Rate**” has the meaning ascribed thereto in Section 2.07.

*[Redacted – Industry specific regulatory definition.]*

*[Redacted – Industry specific regulatory definition.]*

“**Lenders**” has the meaning ascribed thereto in Section 1.04.

“**Lien**” means any security interest, mortgage, pledge, hypothec, assignment, attachment, deposit arrangement, encumbrance, lien (statutory or other), charge against or interest in property to secure payment or performance of an obligation, preference, license, priority or other security agreement of any kind or nature whatsoever (including, without limitation, any conditional sale, hire purchase or other title retention agreement, any financing or similar statement or notice filed under the PPSA or any other similar recording or notice statute), and any lease having substantially the same effect as any of the foregoing.

“**Loan**” has the meaning ascribed thereto in Section 2.01.

“**Loan Documents**” means this agreement and all security instruments, agreements, documents and contracts made between any Obligor, and the Administrative Agent or Lenders or by any Obligor in favour of the Administrative Agent or Lenders and any ancillary documentation, in each case, relating to the Loan, including without limitation, any pledges, hypothecs, guarantees, indemnities, acknowledgements, confirmations or undertakings made by any Person.

“**Majority Lenders**” means, at any time prior to the occurrence of an Event of Default, Lenders whose respective individual Commitments aggregate at least 50% of the total Commitments of all Lenders under the Loan at such time and, at any time after the occurrence of an Event of

Default, Lenders whose share of Principal Outstanding is in aggregate at least 50% of all Principal Outstanding.

“**Material Adverse Effect**” means any event, occurrence, fact, condition or change that has, or would reasonably be expected to have, individually or in the aggregate, a material adverse effect on (i) the business, property, assets, liabilities, operations, condition (financial or otherwise) or affairs of the Borrower (on a consolidated basis), or (ii) the ability of the Borrower (on a consolidated basis) to perform its obligations under, or the ability of the Lenders to enforce any of their rights and remedies under, any of the Loan Documents.

“**Material Contract**” means any right, interest, agreement, arrangement, lease, license, commitment or understanding entered into by the Borrower, whether written or oral, which relates to and materially affects the business, property, operations, assets or condition (financial or otherwise) of the Borrower (on a consolidated basis).

“**Maturity Date**” has the meaning ascribed thereto in Section 4.01.

“**MI 61-101**” means Multilateral Instrument 61-101 – *Protection of Minority Security Holders in Special Transactions* of the Canadian securities administrators.

“**Obligor**” means any of the Borrower, Parent, Discovery Air Holdings (Delaware), Inc. and Top Aces Corp., collectively, the “**Obligors**”.

“**Original DADS Loan**” means that certain credit facility available under that certain credit agreement among Clairvest Equity Partners IV Limited Partnership, Clairvest Equity Partners IV-A Limited Partnership, CEP IV Co-Investment Limited Partnership, DA Holdings Limited Partnership and G. John Krediet, as lenders, the Administrative Agent, as administrative agent, and the Borrower, as borrower, dated as of December 20, 2016, as amended, restated, modified, supplemented or replaced from time to time.

“**Parent**” means Discovery Air Inc.

“**Permitted Encumbrances**” means:

- (a) Security Interests granted by the Borrower or an Obligor in connection with the Existing Facilities;
- (b) In respect of an Obligor other than the Borrower, Security Interests granted in connection with any Debt Guaranteed by such Obligor, which guarantee exists on the date hereof;
- (c) Liens for taxes, assessments or government charges, including charges for workers’ compensation and employment insurance, which are not due or delinquent;
- (d) Liens imposed or permitted by law such as carriers’ liens, builders’ liens, materialmens’ liens and other liens, privileges or other charges of a similar nature, in respect of obligations not yet due or delinquent;

- (e) undetermined or inchoate Liens arising in the ordinary course of and incidental to construction or current operations which have not been filed pursuant to law and in respect of which no steps or proceedings to enforce such liens have been initiated, and which relate to obligations which are not due or delinquent;
- (f) Security Interests under the Loan Documents granted to the Administrative Agent on behalf of the Lenders;
- (g) Liens securing Purchase Money Obligations that are permitted hereunder provided such Liens charge only the asset subject to the Purchase Money Obligation and the proceeds thereof and no other asset;
- (h) Liens securing Capitalized Lease Obligations that are permitted hereunder;
- (i) Liens of judgments rendered or claims filed which are being contested in good faith by it by proper legal proceedings, provided that such proceedings effectively postpone enforcement of any such Lien and do not otherwise result in an Event of Default hereunder;
- (j) easements, rights-of-way, servitudes, zoning, and similar rights in or restrictions in respect of land (including rights-of-way and servitudes for railways, sewers, drains, gas and oil pipelines, gas and water mains, electric light and power and telephone or telegraph or cable television conduits, poles, wires and cables) granted to or reserved or taken by other Persons, which do not, individually or in the aggregate materially detract from the value of, or materially impair the use of, the property subject thereto or any significant part thereof;
- (k) the reservations, limitations, provisos and conditions in any original grants from the Crown of any land or interests therein and statutory exceptions, qualifications and reservations in respect of title;
- (l) defects in title which are not general in application and which do not, individually or in the aggregate, materially detract from the value of, or materially impair the use of, the property or any significant part thereof; and
- (m) encumbrances in favour of any third party secured lender to any Obligor on any assets of any Obligor.

“**Person**” includes an individual, a partnership, a joint venture, a trust, an unincorporated organization, a company, a corporation, an association, a government or any department or agency thereof, and any other incorporated or unincorporated entity.

“**Potential Prior-Ranking Claims**” means all amounts owing or required to be paid, where the failure to pay any such amount could give rise to a claim in favour of a Governmental Authority pursuant to any Applicable Law which ranks or is capable of ranking in priority to the security held by the Administrative Agent on behalf of the Lenders or otherwise in priority to any claim by any Lender for repayment of any amounts owing under this agreement.

“**PPSA**” means the *Personal Property Security Act* of the Province referred to in the “Governing Law” section of this Agreement, as such legislation may be amended, renamed or replaced from time to time, and includes all regulations from time to time made under such legislation.

“**Principal Outstanding**” means, at any time, the amount calculated and expressed in Canadian Dollars equal to:

- (a) when used in a context pertaining to Borrowings made by a single Lender under the Loan, the sum of the aggregate principal amount of all Borrowings then outstanding made by such Lender under the Loan together with any capitalized interest; and
- (b) when used elsewhere in this agreement with reference to the Loan, the sum of the aggregate principal amount of all Borrowings then outstanding made by the Lenders under the Loan together with any capitalized interest.

“**Proportionate Share**” means, with respect to any Lender, the percentage of the total Commitments represented by such Lender’s Commitment. If the Commitments have terminated or expired, the applicable percentages shall be the percentage of the total outstanding Borrowings represented by such Lender’s outstanding Borrowings.

“**Purchase Money Obligations**” means the outstanding balance of the purchase price of real and/or personal property, title to which has been acquired or will be acquired upon payment of such purchase price, or indebtedness to non-vendor third parties incurred to finance the acquisition of such new and not replacement real and/or personal property, or any refinancing of such indebtedness or outstanding balance.

“**Security Interest**” means any lien, charge, hypothec, assignment, mortgage, title retention or security interest.

“**Tax**” and “**Taxes**” include all present and future income, corporation, capital gains, capital, value-added, goods and services taxes and other taxes, levies, imposts, stamp taxes, duties, charges to tax, fees, deductions, withholdings and all penalties, interest and other payments on or in respect thereof.

“**TSX**” means the Toronto Stock Exchange.

“**U.S.**” means the United States of America.

## **1.02 Currency**

All sums of money that are referred to herein are expressed in Canadian Dollars which shall be deemed to be a reference to the lawful money of Canada.

## **1.03 Borrower**

Discovery Air Defence Services Inc. (the “**Borrower**”).



#### **1.04 Lenders**

Clairvest Equity Partners IV Limited Partnership, Clairvest Equity Partners IV-A Limited Partnership and CEP IV Co-Investment Limited Partnership (the “**Lenders**”). Each of the Lenders represents, warrants and covenants that it is and will be, at all times during the term of this Agreement, an affiliate (as such term is used in the Intercreditor Agreement) of Clairvest Group Inc. in order to qualify, at all times, as a Clairvest Subordinated Lender under the Intercreditor Agreement. Each Lender shall, concurrently with its execution hereof, cause the Administrative Agent to execute and deliver to the other lenders under the Intercreditor Agreement a Clairvest Subordinated Lender Accession Agreement, as contemplated under the Intercreditor Agreement.

### **ARTICLE 2 CREDITS**

#### **2.01 Amount**

Subject to and in accordance with the terms and conditions of this Agreement, the Lenders establish a committed revolving credit facility in the aggregate amount of the Commitments (the “**Loan**” and each advance thereof, a “**Borrowing**”).

#### **2.02 Purpose**

For general corporate purposes, including, without limitation, support of certain growth initiatives and for business development activities at certain affiliates.

#### **2.03 Availability**

The Loan is available by Borrowings (including on the Closing Date) provided that (i) only two Borrowings shall be permitted per calendar month and (ii) a Default or an Event of Default (as defined in Section 5.05) shall not have occurred and be continuing at the time of the Borrowing or would result therefrom and the conditions in Section 2.09 continue to be satisfied.

#### **2.04 Cancellation or Reduction**

Upon at least three Business Days’ notice to the Administrative Agent, the Borrower may cancel or reduce the Commitments, provided that any cancellation or reduction of the Commitments shall be in the minimum amount of \$500,000 or an integral multiple thereof.

#### **2.05 Borrowings**

Provided that the conditions in Section 2.09 are fulfilled or waived on or prior to the date hereof, the Lenders shall advance the Initial Drawdown Amount on the Closing Date to the Borrower.

#### **2.06 Revolving Nature**

Subject to the other provisions hereof, the Borrower may, from time to time until the Maturity Date, decrease the drawn balance outstanding under the Loan by making repayments and, with

the Majority Lenders' prior written consent, increase the drawn balance outstanding under the Loan by making Controlled Borrowings. The Commitments shall be reduced to nil on the Maturity Date, and the Borrower shall repay to the Lenders on the Maturity Date all amounts then outstanding under the Loan. At no time shall the aggregate amount of Borrowings outstanding under this Agreement exceed the Commitments, other than for capitalized interest hereunder.

## **2.07 Interest Rate**

The drawn balance outstanding under the Loan will accrue interest at a rate that is 12% per annum (the "**Interest Rate**"), compounded and payable quarterly in accordance with Section 4.06, which Interest Rate, without duplication of Section 4.07, shall be increased by 2% during the continuance of any Event of Default.

## **2.08 Use of Remaining Commitment**

- (a) Provided that no Default or Event of Default has occurred and is continuing or would result therefrom, the Borrower may request more Borrowings in increments of \$500,000 (each such additional Borrowing, a "**Controlled Borrowing**") by notifying the Administrative Agent (and the Administrative Agent shall notify each Lender) of the amount of the proposed Controlled Borrowing, provided that the total of all such Controlled Borrowings together with the Initial Drawdown Amount shall not exceed the aggregate Commitments. The Majority Lenders shall determine if the Lenders wish to advance such Controlled Borrowings, which determination shall be in the sole discretion of such Lenders.
- (b) If any requested Controlled Borrowing is agreed to in accordance with Section 2.08(a), the Administrative Agent and the Borrower shall determine the effective date of such Controlled Borrowing (the "**Controlled Borrowing Effective Date**"). The Administrative Agent shall confirm in writing to the Lenders the Controlled Borrowing Effective Date. On the Controlled Borrowing Effective Date each Lender shall fund its Proportionate Share of such Controlled Borrowing up to its Commitment. The increase of the Loan in accordance with this Section 2.08 shall not require any further consent of any Person, and the Administrative Agent, the Borrower and the Lenders shall execute any amendments to give effect to the terms of this Section 2.08 if deemed necessary by the Administrative Agent, acting reasonably.

## **2.09 Conditions Precedent**

The obligation of the Lenders to make available the Loan (including each Borrowing) is conditional upon (each of which is acknowledged to be for the exclusive benefit of the Lenders):

- (1) **Agreement.** The receipt of a duly executed copy of this agreement.

- (2) **Guarantees and Security.** The following guarantees and security, duly executed and delivered, and all in form and substance satisfactory to the Administrative Agent:
- (i) guarantee by each of the Obligors, other than the Borrower;
  - (ii) each of the Aircraft Security Agreement and a hypothec granting Security Interests in the German Aircraft to the Administrative Agent for obligations under the Loan Documents from Top Aces Corp. and the Borrower; and
  - (iii) such other documents and registrations as the Administrative Agent may reasonably require.

For greater certainty, registration of any security contemplated hereunder may be made within 10 Business Days of the date hereof and shall be made under the Uniform Commercial Code, the Civil Code of Québec and, from time to time, the personal property regulations of such other jurisdictions, as in the reasonable opinion of the Administrative Agent, shall be necessary or required in order to perfect and preserve the rights of the Administrative Agent under the Loan Documents. *[Redacted – Legal determination made by the Administrative Agent as of the date hereof in respect of industry specific regulations.]*

- (3) **Documentation.** The receipt of such ancillary documentation as the Administrative Agent may require to give effect hereto and such officer's and other certificates, authorizations and resolutions as the Administrative Agent may reasonably require.
- (4) **Representations and Warranties.** The representations and warranties made in this agreement being true and correct in all material respects and the receipt of a certificate of a senior officer of the Borrower confirming same.
- (5) **Material Adverse Effect.** The absence of any Material Adverse Effect.
- (6) **No Default or Event of Default.** No Default or Event of Default having occurred and the receipt of a certificate of a senior officer of the Borrower confirming same.
- (7) **No Litigation.** The absence of any material litigation or other claims against the Borrower.
- (8) **Consents.** The receipt of all approvals and consents from such Persons as may be required for the Loan to be made by the Lenders and incurred by the Borrower.
- (9) **Registrations.** The receipt of all such notifications and filings which the Administrative Agent may deem necessary or desirable.

- (10) **Board Approvals.** The Loan Documents and the transactions contemplated thereby shall have been approved by the Parent's board of directors.
- (11) **Other Approvals.** The Parent shall have obtained such regulatory and other third party approvals as may be necessary in respect of the Loan Documents and the transactions contemplated thereby.
- (12) **Other Information.** The receipt of such financial and other information or documents relating to the Borrower as the Administrative Agent may reasonably require.

Any of the foregoing conditions may be waived in whole or in part by the Lenders without prejudice to any claims they may have for breach of covenant, representation or warranty.

The Administrative Agent and the Lenders, in their respective capacities as (x) collateral agent and debentureholders, respectively, under any secured debentures issued by the Parent to the Lenders in their capacity as debentureholders, and (y) administrative agent and majority lenders in connection with the Original DADS Loan, consent to the security contemplated hereunder and, to the extent necessary, in connection with the Original DADS Loan.

### **ARTICLE 3 CONVERSION**

#### **3.01 Optional Conversion**

At the option of the Lenders, all of the outstanding principal balance of the Loan and all accrued and unpaid interest shall, subject to satisfaction of the Conversion Condition, be convertible from time to time, in whole or in part, into Common Shares at the Conversion Price at any time following the date hereof and on or prior to the repayment, in full, of the principal balance of the Loan and any accrued and unpaid interest. The option of the Lenders to convert the amounts pursuant to this Section 3.01 may be exercised by the delivery of a written notice (the "**Conversion Notice**") by the Lenders to the Borrower no later than three (3) Business Days prior to the proposed date of conversion, which proposed date shall then become the date fixed for conversion. Any notice of conversion delivered by the Lenders pursuant to this Section 3.01 may be withdrawn by written notice by the Lenders to the Borrower at any time prior to the date fixed for conversion. For greater certainty, the Conversion Notice may only be delivered by the Lenders following satisfaction of the Conversion Condition in Section 3.03(1), if applicable.

#### **3.02 Mechanics of Conversion**

At the date fixed for the conversion pursuant to Section 3.01, the Borrower shall deliver to the Administrative Agent on behalf of each of the Lenders certificates representing the number of Common Shares obtained by dividing the amounts being converted by the Conversion Price (rounded down to the nearest whole number of Common Shares), as well as such other documentation as the Administrative Agent and the Lenders may reasonably require regarding the calculation of such number of Common Shares to be issued and to attest that the securities are duly and properly issued, as fully paid and non-assessable Common Shares. The Lenders will

be treated as having become the holders of record of the Common Shares issuable upon the conversion on the date fixed for conversion. Notwithstanding the foregoing, if the Borrower fails to issue the aforesaid Common Shares to the Lenders, the Lenders shall retain all rights contained under this Agreement until such Common Shares are issued. Upon the issuance of the Common Shares following the Conversion Notice, (i) all amounts hereunder and all other debts, liabilities and obligations of all Obligors hereunder and under all other Loan Documents shall be deemed to be paid and satisfied in full, (ii) all Obligors shall be released from all such debts, liabilities and obligations, (iii) all Loan Documents shall terminate, and (iv) the Administrative Agent shall proceed, at the cost to the Borrower, to discharge and release all Security forming part of the Loan Documents.

### **3.03 Conversion Condition**

The conversion option in Section 3.01 is subject to the prior satisfaction of the following condition (the “**Conversion Condition**”):

- (1) if required under Applicable Securities Law, the Borrower shall have obtained a “formal valuation” (as defined in MI61-101) of the Borrower in accordance with the applicable requirements of Applicable Securities Laws (including MI 61-101);

however, notwithstanding the satisfaction of the Conversion Condition, the Lenders shall not exercise the conversion option to the extent that, in the reasonable judgment of the Majority Lenders, the exercise of the conversion option or the issuance of Common Shares pursuant thereto would conflict with, result in any breach or violation of, or constitute a default under, any applicable law or any material commitment, permit, agreement or any other instrument to which any Obligor is a party or is otherwise bound. For greater certainty, the Conversion Notice may only be delivered by the Lenders following satisfaction of Section 3.03(1), if applicable.

### **3.04 No Requirement to Issue Fractional Shares**

The Borrower shall not be required to issue fractional shares upon conversion of any amount under this Agreement. If any fractional interest in a share would, except for the provisions of this Section 3.04, be deliverable upon the conversion, the Borrower shall, in lieu of delivering any certificate representing such fractional interest, satisfy such fractional interest by paying to the Lenders an amount of lawful money of Canada equal to the total amount tendered for conversion remaining after so much of the amount tendered for conversion as may be converted into a whole number of Common Shares has been so converted.

## **ARTICLE 4 LOAN MATTERS**

### **4.01 Maturity Date**

The Loan will mature on the earlier of (a) July 31, 2017 or (b) the date on which the Borrower completes any third party financing in excess of the aggregate amount outstanding hereunder and under the Original DADS Loan, at the relevant time (the “**Maturity Date**”), as extended by the Administrative Agent and the Lenders (acting reasonably), from time to time. In the case of such

extension, if any, the Borrower shall not be required to pay any fee or other consideration. All indebtedness, liabilities and obligations owing under the Loan, including without limitation unpaid interest, are repayable in full on the Maturity Date.

#### **4.02 Principal Payments and Loan Amortization**

The Loan shall be repayable by the Borrower on the Maturity Date.

#### **4.03 Loan Payment Allocation**

Any payment hereunder shall be applied in the following order: (i) to any outstanding interest, (ii) to any principal payment due, and (iii) to the repayment of any other amounts outstanding under the Loan.

#### **4.04 Repayment**

The Borrower may, in accordance with Section 2.06, voluntarily repay the Loan in whole or in part without penalty upon 5 Business Days' written notice to the Administrative Agent in integral multiples of \$500,000, subject to a limit of two repayments in any calendar month; provided that no such prepayment may be made during the period commencing on the earlier of delivery of (a) a Conversion Notice or (b) a Related Party Notice (as defined in the Original DADS Loan documentation) and concluding 30 days after the Conversion Condition has been satisfied.

#### **4.05 Mandatory Repayments**

Subject to the terms and conditions of the applicable agreements, including, without limitation, the Intercreditor Agreement and each subordination agreement executed pursuant to Section 4.11 hereof, any funds raised by the issuance of equity to a third-party or the incurrence of Debt for general corporate purposes (which, for greater certainty, excludes any Debt incurred to finance the acquisition of any aircraft or equipment) by the Borrower or any Obligor shall be used to mandatorily repay the Original DADS Loan and then the Loan hereunder. Upon the occurrence of any such event, the funds raised or received by the Borrower, as the case may be, will be applied as provided in Section 4.03.

The Lenders, in their capacity as majority lenders under the Original DADS Loan, hereby waive any requirement thereunder that any amount advanced hereunder be used to repay any part of the Original DADS Loan.

#### **4.06 Interest Payments**

The Borrower shall pay interest on the fifteenth (15<sup>th</sup>) day of each of February, May, August and November on the average daily outstanding drawn balance of the Loan during the calendar quarter (or portion thereof) prior to such date.

At its option, by written request to the Administrative Agent delivered at least five (5) Business Days prior to such payment date, the Borrower may request that any interest owing be added to

the Principal Outstanding and, as of such payment date, interest shall accrue on the drawn balance outstanding under the Loan as increased by such amount of interest owing.

Notwithstanding anything else herein to the contrary, interest shall be paid in cash on the Maturity Date or upon the occurrence of an Event of Default, which is continuing, in each case as a component of the Principal Outstanding unless otherwise provided herein.

#### **4.07 Overdue Payments**

Any amount that is not paid when due hereunder shall bear interest until paid at a rate equal to the applicable Interest Rate plus 2% per annum.

#### **4.08 Equivalent Yearly Rates**

The annual rates of interest to which the rates calculated in accordance with this agreement are equivalent, are the rates so calculated multiplied by the actual number of days in the calendar year in which such calculation is made and divided by 365 or 366, as the case may be.

#### **4.09 Time and Place of Payment**

Amounts payable by the Borrower hereunder shall be paid in Canadian Dollars. Amounts due on a day other than a Business Day shall be deemed to be due on the Business Day next following such day. Interest payable under this agreement are payable both before and after any or all of default, demand and judgement.

#### **4.10 Evidence Of Indebtedness**

The Administrative Agent shall open and maintain accounts and records evidencing the Borrowings made available to the Borrower by the Lenders under this agreement. The Administrative Agent shall record the principal amount of each Borrowing (including any increases thereto as provided herein), the payment of principal and interest and all other amounts becoming due to the Lenders under this agreement.

The Administrative Agent's accounts and records constitute, in the absence of manifest error, *prima facie* evidence of the indebtedness of the Borrower to the Lenders pursuant to this agreement.

#### **4.11 Subordination re Senior Debt**

The Administrative Agent, and to the extent applicable, the Lenders agree, from time to time, to enter into such subordination, priority or inter-creditor agreements, in a form prepared by the Borrower, as are necessary to provide secured lenders to any Obligor a security interest in priority to the Administrative Agent (only in its capacity as the agent for the Lenders) in respect of any of the Obligors' assets.

**ARTICLE 5**  
**REPRESENTATIONS, COVENANTS AND EVENTS OF DEFAULT**

**5.01 Representations And Warranties**

The Borrower represents and warrants to the Administrative Agent and the Lenders that, and acknowledges that the Administrative Agent and the Lenders are relying on the following representations and warranties in connection with entering into this agreement:

- (1) **Due Incorporation.** The Borrower is a corporation duly incorporated and organized and is validly subsisting under the laws of Canada. The Borrower holds all necessary permits, consents and registrations and has all necessary corporate power and authority to own, operate or lease its properties and assets and to carry on its business as now conducted, and is duly licensed or registered or otherwise qualified to do business in all jurisdictions wherein the nature of its assets or the business transacted by it makes such licensing, registration or qualification necessary.
- (2) **Power.** The Borrower has all necessary corporate power and authority to enter into, deliver and perform its obligations under each of the Loan Documents to which the Borrower is a party and to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby.
- (3) **Due Authorization and No Conflict.** The execution, delivery and performance by the Borrower of the Loan Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby:
  - (i) have been duly authorized by all necessary corporate action on the part of the Borrower;
  - (ii) do not and will not conflict with, result in any breach or violation of, or constitute a default under the constating documents or by-laws of the Borrower or any Applicable Laws, or (b) any determination, award or governmental order presently in effect and applicable to the Borrower, or (c) of any commitment, permit, agreement (including any Material Contract) or any other instrument to which the Borrower is now a party or is otherwise bound;
  - (iii) do not result in or require the creation of any Security Interest upon or with respect to any of the properties or assets of the Borrower other than in favour of the Administrative Agent; and
  - (iv) do not require the consent or approval (other than those consents or approvals already obtained or contemplated under the last paragraph in Section 2.09(2) and (certified, if requested by the Administrative Agent) copies of which have been delivered to the Administrative Agent) of,



registration or filing with, or notice to any other party (including shareholders of the Borrower).

- (4) **Valid and Enforceable Obligations.** This agreement has been duly executed and delivered by the Borrower and the Loan Documents to which Borrower is a party are, or when executed and delivered to the Administrative Agent on behalf of the Lenders will be, legal, valid and binding obligations of the Borrower, enforceable in accordance with their respective terms, subject to the usual exceptions as to bankruptcy and the availability of equitable remedies.
- (5) **No Actions or Unsatisfied Judgements.** There is no outstanding governmental order or unsatisfied judgement, penalty or award against or affecting the Borrower or any of its assets in excess of \$100,000.
- (6) **No Defaults or Events of Default.** No Default or Event of Default (as defined below) has occurred and is continuing which would affect the financial condition, property, assets, operations or business of the Borrower (on a consolidated basis).
- (7) **Compliance with Law.** The Borrower is not in violation of any terms of its constating documents or by-laws or Applicable Laws (where such violation of Applicable Laws would have a material effect on the Borrower), judgment, writ, injunction, decree, determination or award presently in effect and applicable to it.
- (8) **Taxes.** The Borrower has filed all federal, provincial, state and local tax returns which are required to be filed, if any, and such tax returns are true, complete and correct in all material respects. The Borrower has paid all Taxes due, if any, pursuant to such returns or pursuant to any assessment received by it except such Taxes, if any, as are being contested in good faith and as to which adequate reserves have been provided.
- (9) **Solvency.** The Borrower is solvent and will not become insolvent after giving effect to the transactions contemplated in the Loan Documents.
- (10) **Insurance.** The Borrower maintains insurance policies on its properties, assets and business placed with such insurers and with such coverage and against such loss or damage to the extent insured against by comparable entities engaged in comparable businesses. The Borrower has paid all premiums necessary to maintain any such insurance policies in good standing.

## 5.02 **Positive Covenants**

From the date hereof and until all indebtedness, liabilities and obligations due to the Lenders hereunder are finally repaid in full, the Borrower will observe and perform, or will cause the observance and performance of, each of the following covenants, unless compliance therewith shall have been waived in writing by the Majority Lenders:

- (1) **Existence.** The Borrower will do or cause to be done all such things as are necessary to maintain its existence in good standing, to ensure that it has at all times the right and is duly qualified to conduct its businesses and to obtain and maintain all rights, privileges and franchises necessary for the conduct of its business.
- (2) **As to Collateral.** The Borrower will defend, or cause the relevant Obligor(s) to defend all of the collateral in which a Security Interest under any Loan Document is granted to the Administrative Agent (collectively, “**Collateral**”) against the claims and demands of all other parties claiming the same or an interest therein other than Permitted Encumbrances and will keep the Collateral free from all encumbrances other than Permitted Encumbrances. The Borrower will keep the Collateral in good order, condition and repair ordinary wear and tear excepted and will not use the Collateral in violation of the provisions of any agreements granting a Security Interest under any Loan Document or this agreement or any insurance policy insuring the Collateral or in violation of any Applicable Laws.
- (3) **Payment of Principal, Interest and Expenses.** The Borrower will duly and punctually pay or cause to be paid to the Lenders all indebtedness, liabilities and obligations owed by it to the Lenders under the Loan Documents at the times and places and in the manner provided for herein.
- (4) **Payment of Taxes and Claims.** The Borrower will pay and discharge promptly when due all Taxes, assessments and other governmental charges or levies imposed upon it or upon its properties or assets or upon any part thereof, as well as all claims of any kind (including claims for labour, materials and supplies) which, if unpaid, would by Applicable Law become a lien, charge, trust or other claim upon any such properties or assets; provided that the Borrower shall not be required to pay any such Tax, assessment, charge, levy or claim if the amount, applicability or validity thereof shall currently be contested in good faith by appropriate proceedings and if the Borrower shall have set aside on its books a reserve to the extent required by GAAP in an amount which is reasonably adequate with respect thereto.
- (5) **Use of Proceeds.** The Borrower shall use the proceeds of the Loan solely for the purposes contemplated in this agreement.
- (6) **Books and Records.** The Borrower will at all times maintain proper records and books of account and therein make true and correct entries of all dealings and transactions relating to its business and, if requested by the Administrative Agent, will make the same available for inspection by the Administrative Agent or any agent of the Administrative Agent at all reasonable times.
- (7) **Notice of Material Adverse Effect.** The Borrower will give to the Administrative Agent prompt written notice of any Material Adverse Effect.

- (8) **Representations and Warranties.** The Borrower will take all commercially reasonable steps to ensure that the representations and warranties provided hereunder remain true and correct until all indebtedness, liabilities and obligations due to the Lenders under the Loan Documents are finally paid in full. The Borrower shall promptly notify the Administrative Agent in writing of any event, occurrence, fact, condition or change that results in, or would reasonably be expected to result in, any representation or warranty herein not being true or correct.
- (9) **Notice of Default.** The Borrower shall give to the Administrative Agent notice of any Default or Event of Default or any default under any Debt entitling any other party thereto to accelerate the maturity of amounts of principal owing thereunder, as soon as practicable after it becomes aware of same.
- (10) **Compliance with Laws.** The Borrower shall comply with all Applicable Laws.
- (11) **Cooperate With Administrative Agent.** The Borrower shall cooperate fully with the Administrative Agent with respect to any proceedings before any court, board or other Governmental Authority which may in any way adversely affect the rights of the Administrative Agent or the Lenders under any of the Loan Documents.
- (12) **Title.** The Borrower has good and valid marketable title to the Collateral free and clear of any encumbrances other than Permitted Encumbrances.
- (13) **Registration of Security.** Subject to the last paragraph in Section 2.09(2), the Borrower shall provide the Administrative Agent with such assistance and do such things as the Administrative Agent may from time to time reasonably request so that the Security Interests under any Loan Document granted by it to the Administrative Agent and any other instruments of conveyance or assignment effected pursuant to this agreement or otherwise will be and remain registered, recorded or filed from time to time in such manner and in such places as may in the reasonable opinion of the Administrative Agent be necessary or required in perfecting such Security Interests.
- (14) **New Locations and Names.** The Borrower shall advise the Administrative Agent in writing at least ten (10) Business Days prior to the occurrence of the (i) change of location of its “chief executive office”, “place of business”, “registered office”, “chief place of business”, “principal place of business” or the location of its records; or (ii) change of its corporate name. The Borrower shall provide the Administrative Agent with any additional security or registrations which the Administrative Agent may reasonably deem necessary or advisable to maintain or continue the effectiveness of its Security Interest as a result of any such change.
- (15) **Common Shares Issuable upon Conversion.** The Borrower shall:

- (i) at all times reserve and keep available out of its authorized Common Shares solely for the purpose of issue and delivery upon the conversion of any amounts under this Agreement, and conditionally allot to the Lenders, such number of Common Shares as shall then be issuable upon the conversion of any amounts under this Agreement which may be converted into Common Shares. The Borrower covenants with the Lenders that all Common Shares which shall be so issuable shall be duly and validly issued as fully-paid and non-assessable; and
  - (ii) comply with all Applicable Securities Laws relating to the issue and delivery of Common Shares upon the conversion of any amounts under this Agreement, obtain any regulatory approval in respect thereof as may be required pursuant to such laws and rules, prior to the issuance thereof.
- (16) **Debt Conversion.** Upon the earlier of (a) the date on which the Borrower completes any third party financing and (b) the date on which the Administrative Agent delivers a written request to the Borrower, the Borrower shall cause any Affiliates owing intercompany Debt to the Borrower, to make a capital contribution to the Borrower in the amount of any such intercompany Debt owing. Unless otherwise consented to by the Administrative Agent, acting reasonably, such capital contribution shall be in full satisfaction of such intercompany Debt owing and the contributing Affiliates shall not be entitled to any additional Common Shares of, or other equity interests in, the Borrower on account of such capital contribution.

### 5.03 Negative Covenants

From the date hereof and until all indebtedness, liabilities and obligations due to the Lenders hereunder are finally paid in full, the Borrower shall adhere to the following covenants unless waived in writing by the Majority Lenders:

- (1) **Not to Amalgamate, etc.** The Borrower shall not enter into any transaction or series of related transactions (whether by way of amalgamation, merger, winding-up, consolidation, reorganization, reconstruction, continuance, transfer, sale, lease or otherwise) whereby all or substantially all of its undertaking, properties, rights or assets would become the property of any other Person or, in the case of amalgamation or continuance, of the continuing corporation resulting therefrom.
- (2) **Change in Articles.** The Borrower shall not amend or terminate (or permit the same) its articles or other constituting documents without the prior written consent of the Administrative Agent, other than as is necessary to create different classes of shares prior to the exercise of a conversion hereunder in order to comply with the CTA.
- (3) **Sale of Assets.** The Borrower will not and shall ensure that no other Obligor shall sell, transfer, convey, lease (other than a lease of any of the German Aircraft to any Obligor) or otherwise dispose of any German Aircraft or other Collateral,

unless it obtains the prior written consent of the Administrative Agent and as required under the Intercreditor Agreement or by the US Department of State.

- (4) **German Aircraft.** The Borrower will not, except as may be requested by the Administrative Agent, (i) de-register or permit the de-registration of any German Aircraft from the aircraft register where such aircraft are registered as of the date hereof, and (ii) subject to the provisions of Section 4.11 and of the Intercreditor Agreement, do or permit any action or thing which would reduce, diminish, jeopardize or otherwise negatively affect the validity or perfection of the Administrative Agent's security interest in the German Aircraft.

#### **5.04 Indemnity**

The Borrower hereby indemnifies and holds harmless the Lenders, the Administrative Agent, their Affiliates and their respective directors, officers and employees for any or all loss, cost, liability, judgment, claim, damage or expense sustained, suffered or incurred thereby (including, without limitation, attorneys' fees and costs) arising out of or attributable or relating to:

- (1) any inaccuracy in or breach of any of the representations and warranties of the Borrower herein;
- (2) any fraud or misrepresentation by Borrower in connection with the Loan; or
- (3) the breach or non-fulfilment of any covenant, agreement or obligation to be performed by the Borrower pursuant to the Loan Documents.

#### **5.05 Events Of Default**

Without limiting any other rights of the Lenders under this agreement, if any one or more of the following events (herein an "**Event of Default**") has occurred and, except in the case of Section 5.05(1) for which a cure period has been provided therein, has not been cured within 20 days after written notice thereof has been provided by the Administrative Agent to the Borrower:

- (1) the Borrower fails to pay (a) within one (1) Business Day of the due date or acceleration thereof, any principal, or (b) within three (3) Business Days of the due date or acceleration thereof, any interest or other amounts due under this agreement;
- (2) other than as set out in Section 5.05(1), the Borrower breaches any covenant or other provision of the Loan Documents;
- (3) the Borrower defaults in its obligations under any material Debt obligations of the Borrower;
- (4) any representation or warranty made herein or in any Loan Document or other document delivered pursuant hereto shall be or shall become false or inaccurate in any material respect;

- (5) a Material Adverse Effect occurs;
- (6) the Borrower is unable to pay its debts as such debts become due, or is, or is adjudged or declared to be, or admits to being, bankrupt or insolvent;
- (7) any notice of intention is filed or any voluntary or involuntary case or proceeding is filed or commenced for (i) the bankruptcy, liquidation, winding-up, dissolution or suspension of general operations of the Borrower, or (ii) the composition, re-scheduling, reorganization, arrangement or readjustment of, or other relief from, or stay of proceedings to enforce, some or all of the debts of the Borrower, or (iii) the appointment of a trustee, receiver, receiver and manager, liquidator, administrator, custodian or other official for, all or any significant part of the assets of the Borrower, or (iv) the possession, foreclosure or retention, or sale or other disposition of, or other proceedings to enforce security over, all or any significant part of the assets of the Borrower; or
- (8) any secured creditor, encumbrancer or lienor, or any trustee, receiver, receiver and manager, agent, bailiff or other similar official appointed by or acting for any secured creditor, encumbrancer or lienor, takes possession of, or forecloses or retains, or sells or otherwise disposes of, or otherwise proceeds to enforce security over all or any significant part of the assets of the Borrower, or gives notice of its intention to do any of the foregoing;

then, in such event, the ability of the Borrower to make further Borrowings under this agreement shall immediately terminate and the Administrative Agent may, by written notice to the Borrower, declare all amounts outstanding under this agreement to be immediately due and payable. Upon receipt of such written notice, but subject to the provisions of the Intercreditor Agreement, the Borrower shall immediately pay to the Administrative Agent on behalf of the Lenders the full amount outstanding under this agreement, including all outstanding interest accrued thereon and all other obligations of the Borrower to the Lenders in connection with the Loan Documents. Subject to the Intercreditor Agreement, the Administrative Agent may, enforce its rights to realize upon its security in whole or in part and retain an amount sufficient to fully repay all of the Borrower's obligations to the Lenders under the Loan Documents. *[Redacted – Particulars of covenant to obtain certain industry specific regulatory authorizations if required.]*

In addition to the restrictions on the disposition of the assets in Section 5.03(3), the Administrative Agent and Lenders agree to abide by all US regulatory requirements that apply to any of the Collateral including, but not limited to, any registration, licensing, recordkeeping, reporting and related obligations. The Administrative Agent and Lenders warrant, certify and covenant that, to the best of their knowledge, they are and will be at all relevant times in compliance with US export laws and regulations, specifically the International Traffic in Arms Regulations and the Export Administration Regulations as they may relate to such Collateral.

**ARTICLE 6**  
**THE ADMINISTRATIVE AGENT AND THE LENDERS**

**6.01 Authorization and Action**

Each of the Lenders hereby appoints and authorizes the Administrative Agent to take such action as Administrative Agent on its behalf and to exercise such powers under this agreement and the other Loan Documents as are delegated to the Administrative Agent by the terms hereof and thereof, together with such actions and powers as are reasonably incidental thereto. Each Lender further designates and appoints the Administrative Agent to hold the Collateral and the Security Interests granted under any Loan Document on behalf of and for the benefit of the Lenders and as hypothecary representative, as such term is used in Article 2692 of the Civil Code of Quebec. As to any matters not expressly provided for by this agreement or such other Loan Documents, the Administrative Agent shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully indemnified and protected in so acting or refraining from acting) upon the instructions of the Majority Lenders and such instructions shall be binding upon all Lenders; provided that the Administrative Agent shall not be required to take any action which exposes the Administrative Agent to personal liability or which is contrary to this agreement or such other Loan Documents or Applicable Law. Without limitation of the foregoing, the Administrative Agent may grant releases and postponements of the Security Interests, to the extent in each case the Security Interest extends to assets which are disposed of in accordance with this agreement. The provisions of this Article 6 are solely for the benefit of the Administrative Agent, the Lenders and the Borrower shall not have any rights as a third party beneficiary of any such provisions.

**6.02 Reliance by Administrative Agent**

The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of Borrowings and that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Borrowings. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

**6.03 Exculpatory Provisions**

- (a) The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Administrative Agent:

- (i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;
  - (ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Majority Lenders (or such other number or percentage of the Lenders as shall be expressly provided for in the Loan Documents), but the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or Applicable Law; and
  - (iii) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the person serving as the Administrative Agent or any of its Affiliates in any capacity.
- (b) The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Majority Lenders (or such other number or percentage of the Lenders as is necessary, or as the Administrative Agent believes in good faith is necessary, under the provisions of the Loan Documents) or (ii) in the absence of its own gross negligence or willful misconduct. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing the Default is given to the Administrative Agent by the Borrower or a Lender.
- (c) Except as otherwise expressly specified in this agreement, the Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition specified in this agreement, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

#### **6.04 Non-Reliance on Administrative Agent and Other Lenders**

Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this agreement.



Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

**6.05 Administrative Agent a Lender**

The Administrative Agent, which is also a Lender, shall have the same rights and powers in its capacity as a Lender under this agreement and every other Loan Document as any other Lender and may exercise the same as though it were not the Administrative Agent; and the terms “Lender” and “Lenders” shall, unless otherwise expressly indicated, include the Administrative Agent in its capacity as Lender.

**6.06 Collective Action of the Lenders**

Each of the Lenders hereby acknowledges that to the extent permitted by Applicable Law, any collateral security and the remedies provided under the Loan Documents to the Lenders are for the benefit of the Lenders collectively and acting together and not severally and further acknowledges that its rights hereunder and under any collateral security are to be exercised not severally, but by the Administrative Agent upon the decision of the Majority Lenders (or such other number or percentage of the Lenders as shall be expressly provided for in the Loan Documents). Accordingly, notwithstanding any of the provisions contained herein or in any collateral security, each of the Lenders hereby covenants and agrees that it shall not be entitled to take any action hereunder or thereunder including, without limitation, any declaration of default hereunder or thereunder but that any such action shall be taken only by the Administrative Agent with the prior written agreement of the Majority Lenders (or such other number or percentage of the Lenders as shall be expressly provided for in the Loan Documents). For greater certainty, no Lender shall have any right individually to enforce any of the Collateral, it being understood that all such enforcement shall be taken by the Administrative Agent for the benefit of the Lenders upon the terms of this agreement. Each of the Lenders hereby further covenants and agrees that upon any such written agreement being given, it shall co-operate fully with the Administrative Agent to the extent requested by the Administrative Agent. Notwithstanding the foregoing, in the absence of instructions from the Lenders and where in the sole opinion of the Administrative Agent, acting reasonably and in good faith, the exigencies of the situation warrant such action, the Administrative Agent may without notice to or consent of the Lenders take such action on behalf of the Lenders as it deems appropriate or desirable in the interest of the Lenders.

**6.07 Proceeds of Realization received by a Lender**

In the event that, following an Event of Default which is continuing, any non-cash proceeds of realization are delivered to or received by a Lender, the Lender shall hold such non-cash proceeds of realization in trust for the Administrative Agent and shall forthwith deliver such non-cash proceeds of realization (subject to the Administrative Agent’s acceptance of such delivery) to the Administrative Agent to be disposed of, or realized upon, by the Administrative Agent in a commercially reasonable manner so as to produce cash proceeds of realization for application to

the payment of the obligations hereunder and under the other Loan Documents in accordance with this agreement.

#### **6.08 Indemnification of Administrative Agent**

Each Lender agrees to indemnify the Administrative Agent and hold it harmless (to the extent not reimbursed by the Borrower), ratably according to its Proportionate Share (and not jointly or jointly and severally) from and against any and all losses, claims, damages, liabilities and related expenses, including the fees, charges and disbursements of any counsel, which may be incurred by or asserted against the Administrative Agent in any way relating to or arising out of the Loan Documents or the transactions therein contemplated. However, no Lender shall be liable for any portion of such losses, claims, damages, liabilities and related expenses resulting from the Administrative Agent's gross negligence or willful misconduct.

### **ARTICLE 7 GENERAL**

#### **7.01 Successors And Assigns**

This agreement shall be binding upon and enure to the benefit of the parties and their respective successors and permitted assigns.

The Lenders may assign all or any part of their rights and obligations under this agreement to any other Person. The rights and obligations of the Borrower under this agreement may not be assigned without the prior written consent of the Majority Lenders.

The Lenders may disclose to potential or actual assignees confidential information regarding the Borrower and, provided that the Lenders shall have obtained from any such potential or actual assignee a confidentiality agreement in customary form and which benefits the Borrower and its Affiliates, shall not be liable for any such disclosure.

#### **7.02 Review**

The Administrative Agent may conduct periodical reviews of the affairs of the Borrower, as and when determined by the Administrative Agent, for the purpose of evaluating the financial condition of the Borrower. The Borrower shall make available to the Administrative Agent such financial statements and other information and documentation as the Administrative Agent may reasonably require and shall do all things reasonably necessary to facilitate such review by the Administrative Agent.

#### **7.03 Consent to Disclosure**

The Borrower hereby grants its consent (such grant to remain in force as long as this agreement is in effect or the Loan is outstanding) to any Person having information relating to any Potential Prior-Ranking Claim to release such information to the Administrative Agent at any time upon the Administrative Agent's written request for the purpose of assisting the Administrative Agent to evaluate the financial condition of the Borrower.

**7.04 Non-Merger**

The provisions of this agreement shall not merge with any security provided to the Administrative Agent, but shall continue in full force for the benefit of the parties hereto.

**7.05 Amendments and Waivers**

No amendment or waiver of any provision of this agreement will be effective unless it is in writing signed by the Borrower, the Administrative Agent and the Majority Lenders (other than in respect of the Maturity Date, Commitments, Interest Rate and this Section 7.05, where all Lenders must sign). No failure or delay on the part of the Administrative Agent in exercising any right or power hereunder shall operate as a waiver thereof.

**7.06 Severability**

If any provision of this agreement is or becomes prohibited or unenforceable in any jurisdiction, such prohibition or unenforceability shall not invalidate or render unenforceable the provision concerned in any other jurisdiction nor invalidate, affect or impair any of the remaining provisions of this agreement.

**7.07 Governing Law**

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

**7.08 Entire Agreement**

This Agreement, the Loan Documents, the security and any other written agreement delivered pursuant to the Loan Documents constitute the entire agreement between the parties in respect of the Loan, and supersede all prior and contemporaneous representations, warranties, understandings and agreements, both written and verbal, in connection with the Loan.

**7.09 Notices**

Any notice or demand hereunder shall be given in writing and shall be given by prepaid mail, by facsimile or other means of electronic communication or by hand-delivery, in each case addressed as specified below. Any such notice or demand, if mailed by prepaid mail, shall be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, shall be deemed to have been received on the date of transmission provided the appropriate confirmation of receipt has been received before 3:00 p.m. on a Business Day, and otherwise on the next Business Day. A letter shall be deemed received when hand-delivered to the receiving party at the address shown herein or at such other address as the receiving party may notify the others from time to time. Each party shall be bound by any notice given hereunder and entitled to act in accordance therewith, unless otherwise agreed. The addresses of the parties for the purpose hereof shall be:

as to the Borrower:                      Discovery Air Defence Services Inc.  
170 Attwell Drive  
Suite 370  
Toronto, ON M9W 5Z5  
Attention:       Paul Bernards  
Facsimile:       (416) 679-0410

as to the Administrative Agent:        Clairvest GP Manageco Inc.  
c/o Clairvest Group Inc.  
22 St. Clair Avenue East  
Suite 1700  
Toronto, ON M4T 2S3  
  
Attention:       James Miller  
Facsimile:       (416) 925-5753

or such other address for delivery as each party from time to time may notify the other as aforesaid.

**7.10 Further Assurances**

The Borrower shall from time to time promptly upon the request of the Administrative Agent take such action and execute and deliver such further documents, as shall be reasonably required in order to fully perform the terms of, and to carry out the intention of, this agreement.

**7.11 Counterparts**

This agreement may be executed in one or more counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed signature page to this agreement by either party by facsimile or other electronic transmission will be as effective as delivery of a manually executed copy of the agreement by such party.

**7.12 Time**

Time shall be of the essence in all provisions of this agreement.

*-remainder of this page intentionally left blank-*

**IN WITNESS WHEREOF** the parties have caused this agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

**BORROWER:**

**DISCOVERY AIR DEFENCE SERVICES INC.**

Per: (signed) David Kleiman  
Name: David Kleiman  
Title: Corporate Secretary

**ADMINISTRATIVE AGENT:**

**CLAIRVEST GP MANAGECO INC.**

Per: *(signed) Michael Wagman*

---

Name: Michael Wagman  
Title: Managing Director

Per: *(signed) Daniel Cheng*

---

Name: Daniel Cheng  
Title: Chief Financial Officer

**LENDERS:**

**CLAIRVEST EQUITY PARTNERS IV LIMITED PARTNERSHIP**, by its general partner, **CLAIRVEST GP MANAGECO INC.**

Per: *(signed) Michael Wagman*

---

Name: Michael Wagman

Title: Managing Director

Per: *(signed) Daniel Cheng*

---

Name: Daniel Cheng

Title: Chief Financial Officer

**CLAIRVEST EQUITY PARTNERS IV-A LIMITED PARTNERSHIP**, by its general partner, **CLAIRVEST GENERAL PARTNER IV LIMITED PARTNERSHIP**, by its general partner, **CLAIRVEST GP (GPLP) INC.**

Per: *(signed) Michael Wagman*

---

Name: Michael Wagman

Title: Managing Director

Per: *(signed) Daniel Cheng*

---

Name: Daniel Cheng

Title: Chief Financial Officer

**CEP IV CO-INVESTMENT LIMITED  
PARTNERSHIP, by its general partner, CLAIRVEST  
GENERAL PARTNER IV LIMITED  
PARTNERSHIP, by its general partner, CLAIRVEST  
GP (GPLP) INC.**

Per: *(signed) Michael Wagman*

---

Name: Michael Wagman

Title: Managing Director

Per: *(signed) Daniel Cheng*

---

Name: Daniel Cheng

Title: Chief Financial Officer



**Schedule A**  
**Commitments**

<b>Lender</b>	<b>Initial \$6MM Amount</b>	<b>Remaining Amount</b>
Clairvest Equity Partners IV Limited Partnership	\$3,790,149.89	\$1,302,704.61
Clairvest Equity Partners IV-A Limited Partnership	\$ 603,854.39	\$207,552.71
CEP IV Co-Investment Limited Partnership	\$1,605,995.72	\$5,489,742.68
<b>Total:</b>	<b>\$6,000,000</b>	<b>\$7,000,000.00</b>



June 5, 2017

Clairvest Equity Partners IV Limited Partnership  
Clairvest Equity Partners IV-A Limited Partnership  
CEP IV Co-Investment Limited Partnership  
DA Holdings Limited Partnership  
G. John Krediet  
(collectively, the “Clairvest Parties”)  
c/o Clairvest Group Inc.  
22 St. Clair Avenue East, Suite 1700  
Toronto, Ontario M4T 2S3

Dear Sirs:

**Re: Debt for Equity Exchange**

Reference is made to:

- (i) the senior secured convertible debentures of Discovery Air Inc. (“**DA**”) in the initial principal amount of \$70,000,005 (as at May 31, 2017, having an aggregate principal amount of \$108,299,995.24), issued by DA to the Clairvest Parties on September 23, 2011 (the “**DA Debentures**”);
- (ii) that certain credit facility dated December 20, 2016 between Discovery Air Defence Services Inc. (“**DADS**”), as borrower, and the Clairvest Parties, as lenders, providing for borrowings by DADS of up to \$25,000,000, and the principal amount of which is convertible into common shares of DADS at the option of the Clairvest Parties (the “**First DADS Facility**”); and
- (iii) that certain credit facility dated June 2, 2017 between DADS, as borrower, and Clairvest Equity Partners IV Limited Partnership (“**CEP IV**”), Clairvest Equity Partners IV-A Limited Partnership (“**CEP IV-A**”) and CEP IV Co-Investment Limited Partnership (“**CEP IV Co-Invest**” and together with CEP IV and CEP IV-A, the “**CEP Lenders**”), as lenders, providing for borrowings by DADS of up to \$13,000,000, and the principal amount of which is convertible into common shares of DADS at the option of the CEP Lenders (the “**Second DADS Facility**”).

In consideration for the CEP Lenders making available the Second DADS Facility and the continued financial and operational support provided to DA and DADS by the Clairvest Parties, the undersigned hereby agree as follows:

1. DA and DADS hereby grant to the Clairvest Parties, subject to the terms and conditions of this letter agreement, the right (the “**Swap Option**”) to exchange up to \$18,400,000 principal amount of the DA Debentures for that number of common shares of DADS having an aggregate value equal to \$14,700,000 (pro rated to the amount of principal amount of the DA Debentures to be exchanged), calculated using the value per common share of DADS determined in accordance with the conversion of the First DADS Facility (such common shares of DADS being the “**Swap Shares**”).

2. Subject to paragraph 3 below, the Swap Option may be exercised by the Clairvest Parties by delivery of written notice of such exercise (the “**Exercise Notice**”) to DA and DADS on or before June 30, 2018. The Swap Option will be exercised by the Clairvest Parties proportionately to their holdings of the DA Debentures.
3. The Swap Option may be exercised at any time and in whole or in part and need not be exercised concurrently with the conversion of the First DADS Facility or the Second DADS Facility into common shares of DADS. Exercise of the Swap Option shall be subject to DA complying with those requirements of Multilateral Instrument 61-101 (Protection of Minority Security Holders in Special Transactions) of the Canadian Securities Administrators, if any, applicable to such exercise.
4. The Clairvest Parties agree that they shall not exercise the Swap Option to the extent that, in the reasonable judgment of the Clairvest Parties, the exercise of the Swap Option or the issuance of common shares pursuant thereto would conflict with, result in any breach or violation of, or constitute a default under, any applicable law or any material commitment, permit, agreement or any other instrument to which any of DA or DADS is a party or is otherwise bound.
5. On exercise of the Swap Option in accordance with the provisions hereof, DADS hereby agrees to issue to the Clairvest Parties, in such proportions as they direct in the Exercise Notice, the Swap Shares.
6. Upon issuance of the Swap Shares to the Clairvest Parties pursuant to paragraph 5 and notwithstanding any restriction in respect of repayment or prepayment of any of the DA Debentures, the aggregate Principal Amount, as defined under each of the DA Debentures held by the Clairvest Parties, shall be reduced as set out in the Exercise Notice.
7. The exchange of DA Debentures for common shares of DADS provided for herein shall be structured in such a manner as to be tax effective for DA, DADS and the Clairvest Parties, provided that, without the prior written agreement of the parties hereto, such requirement shall not prevent or otherwise delay the exchange of DA Debentures for DADS common shares in accordance with the terms of this letter agreement.
8. Other than as specifically set out herein, the terms of the DA Debentures remain in full force and effect, unamended by this letter agreement.
9. This letter agreement and the Swap Option granted hereunder shall not be assignable or otherwise transferable, in whole or in part, by the Clairvest Parties.
10. This letter agreement shall be governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein.

Please confirm your agreement with the foregoing by signing below.

Dated this 5<sup>th</sup> day of June, 2017.

**DISCOVERY AIR INC.**

By:                     (signed) David Kleiman

**DISCOVERY AIR DEFENCE SERVICES INC.**

By: \_\_\_\_\_ *(signed) David Kleiman*

Acknowledged and agreed to this 5<sup>th</sup> day of June, 2017.

**CLAIRVEST EQUITY PARTNERS IV  
LIMITED PARTNERSHIP**, by its general  
partner, **CLAIRVEST GP MANAGECO INC.**

by:

*(signed) B. Jeffrey Parr*

\_\_\_\_\_  
Name: B. Jeffrey Parr

Title: Co-CEO and Managing Director

*(signed) Daniel Cheng*

by:

\_\_\_\_\_  
Name: Daniel Cheng

Title: Chief Financial Officer

**CLAIRVEST EQUITY PARTNERS IV-A  
LIMITED PARTNERSHIP**, by its general  
partner, **CLAIRVEST GENERAL PARTNER  
IV LIMITED PARTNERSHIP**, by its general  
partner, **CLAIRVEST GP (GPLP) INC.**

by:

*(signed) B. Jeffrey Parr*

\_\_\_\_\_  
Name: B. Jeffrey Parr

Title: Co-CEO and Managing Director

*(signed) Daniel Cheng*

by:

\_\_\_\_\_  
Name: Daniel Cheng

Title: Chief Financial Officer

**CEP IV CO-INVESTMENT LIMITED PARTNERSHIP**, by its general partner, **CLAIRVEST GENERAL PARTNER IV LIMITED PARTNERSHIP**, by its general partner, **CLAIRVEST GP (GPLP) INC.**

by: *(signed) B. Jeffrey Parr*

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Name: B. Jeffrey Parr  
Title: Co-CEO and Managing Director

*(signed) Daniel Cheng*

by:

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Name: Daniel Cheng  
Title: Chief Financial Officer

**DA HOLDINGS LIMITED PARTNERSHIP**, by its general partner, **CLAIRVEST GP MANAGECO INC.**

by: *(signed) B. Jeffrey Parr*

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Name: B. Jeffrey Parr  
Title: Co-CEO and Managing Director

*(signed) Daniel Cheng*

by:

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Name: Daniel Cheng  
Title: Chief Financial Officer

*(signed) Valerie Moussignac*

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Witness

*(signed) G. John Krediet*

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**G. JOHN KREDIET**





40 O.S.C.B. 6925  
Ontario Securities Commission

Discovery Air Inc., Re

40 O.S.C.B. 6925

**In the Matter of the Securities Legislation of Ontario (The "Jurisdiction")  
and In the Matter of the Process for Exemptive Relief Applications in  
Multiple Jurisdictions and In the Matter of Discovery Air Inc. (The "Filer")**

Naizam Kanji

Date: August 1, 2017

Reference: None

Subject: Securities

**Background**

The principal regulator in the Jurisdiction has received an application (the "*Application*") from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the "*Legislation*") exempting the Filer, pursuant to section 9.1 of Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* ("*MI 61-101*"), from the formal valuation requirement in section 5.4 of MI 61-101 in connection with: (a) the conversion, by certain funds managed by Clairvest Group Inc. (together with such funds, "*Clairvest*") and certain co-investors of Clairvest, namely DA Holdings Limited Partnership and G. John Krediet (Clairvest, together with such co-investors, the "*Clairvest Group*"), of \$25,000,000, being the outstanding balance under a revolving credit facility dated December 20, 2016 between Discovery Air Defence Services Inc. ("*DADS*"), a wholly-owned subsidiary of the Filer, as borrower, and the Clairvest Group, as lenders, in the aggregate principal amount of up to \$25,000,000 (the "*First DADS Facility*"), into common shares of DADS ("*DADS Shares*") (the "*Clairvest Group Conversion*"); (b) the conversion, by Clairvest, of \$6,000,000, being the outstanding balance under a revolving credit facility dated June 5, 2017 between DADS, as borrower, and Clairvest, as lenders, in the aggregate principal amount of up to \$13,000,000 (the "*Second DADS Facility*"), into DADS Shares (the "*Clairvest Conversion*" and, together with the Clairvest Group Conversion, the "*Conversions*"); and (c) the exchange, by the Clairvest Group, of up to \$18,400,000 principal amount of senior secured convertible debentures of the Filer (the "*DA Debentures*") pursuant to a letter agreement between the Filer, DADS and the Clairvest Group dated June 5, 2017, for DADS Shares having an aggregate value equal to \$14,700,000 (the "*Swap Option*" and, together with the Conversions, the "*Transactions*") (the "*Requested Relief*").

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

- (a) the Ontario Securities Commission is the principal regulator for this Application; and
- (b) the Filer has provided notice that it intends to rely on subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* ("*MI 11-102*") in Quebec, Alberta, Manitoba and New Brunswick.

**Interpretation**

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102 and MI 61-101 have the same meaning if used in this decision, unless otherwise defined.

**Representations**

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

1. The Filer is a corporation governed by the *Canada Business Corporations Act*.
2. The Filer's registered office and head office are located at 170 Attwell Drive, Suite 370, Toronto, Ontario, M9W 5Z5.
3. The Filer is a reporting issuer (or the equivalent thereof) under the securities legislation of each of the provinces and territories of Canada. The Filer is not in default of any requirements of the securities legislation in the jurisdictions in which it is a reporting issuer.
4. The authorized share capital of the Filer consists of an unlimited number of Common Voting Shares (the "*Class A Shares*") and an unlimited number of Variable Voting Shares (the "*Class B Shares*" and, together with the Class A Shares, the "*Common Shares*"). As at the date hereof, the Filer has 79,286,721 Class A Shares and 2,710,750 Class B Shares issued and outstanding.
5. The business of the Filer and its subsidiaries is specialty aviation, including military airborne training services, helicopter services, medevac equipped aircraft services, airborne fire services, fixed-wing air charter services and expediting and logistics support.
6. On May 26, 2017, pursuant to a plan of arrangement, Clairvest acquired all of the Common Shares of the Filer not owned by the Clairvest Group and certain members of the Filer's management (the "*Privatization*"). The consideration per Common Share under the Privatization was \$0.20 in cash and the aggregate consideration paid for the Common Shares acquired under the Privatization was approximately \$1.5 million. On May 29, 2017, the Common Shares of the Filer were de-listed from the Toronto Stock Exchange (the "*TSX*"). As a result of the Privatization, the Clairvest Group, together with management of the Filer, owns 100% of the outstanding Common Shares. The Filer and its shareholders are party to a unanimous shareholders agreement dated May 26, 2017 (the "*DA USA*").
7. The Filer's 8.375% convertible unsecured subordinated debentures, which were issued pursuant to a convertible debenture indenture dated May 12, 2011, as amended by a first supplemental convertible debenture indenture dated November 27, 2014 and by a second supplemental convertible debenture indenture dated May 26, 2017 (the "*Debenture Indenture*"), continue to be listed and posted for trading on the TSX under the trading symbol "DA.DB.A" (the "*Public Debentures*"). The Public Debentures have customary covenants and reporting requirements for instruments of this nature. As a result of the continued listing of the Public Debentures on the TSX, the Filer is not able to apply to cease to be a reporting issuer. However, pursuant to the terms of the Debenture Indenture, following the completion of the Privatization, there is no circumstance in which holders of Public Debentures can receive Common Shares in exchange for their Public Debentures. Specifically: (a) the Public Debentures are no longer convertible into Common Shares of the Filer; instead, upon exercise of the conversion right thereunder, holders of the Public Debentures are entitled to receive only what they would have received if they had exercised the conversion right immediately prior to the closing of the Privatization and then had those Common Shares acquired pursuant to the Privatization at \$0.20 per Common Share; and (b) the Filer does not have the right to redeem or repay the holders of the Public Debentures in Common Shares.
8. The Clairvest Group holds approximately 95% of the outstanding Common Shares of the Filer and members of the Filer's management hold approximately 5% of the outstanding Common Shares of the Filer. The Clairvest Group also holds approximately \$110 million (inclusive of accrued interest) of DA Debentures (but none of the Public Debentures) convertible into Common Shares of the Filer, and has made available an aggregate of \$38 million to DADS pursuant to the First DADS Facility and the Second DADS Facility.

9. The First DADS Facility and the Second DADS Facility contain optional conversion features (collectively, the "*Conversion Features*"), which provide the Clairvest Group and Clairvest, respectively, with an option, subject to certain conditions described below, to effect the Conversions at a conversion price (the "*Conversion Price*") determined with reference to an agreed upon valuation methodology.

10. The Swap Option grants the Clairvest Group the right to exchange up to \$18,400,000 principal amount of DA Debentures for that number of DADS Shares having an aggregate value equal to \$14,700,000 based on the same valuation methodology used in determining the Conversion Price with respect to the Conversions. Exercise of the Swap Option is subject to substantially the same conditions as the exercise of the Conversion Features, as described below.

11. The exercise of the Conversion Features and the Swap Option are each subject to the prior satisfaction of certain conditions, including, if required under applicable securities law: (a) approval of the Filer's shareholders in accordance with the requirements of applicable securities laws (including MI 61-101 and the TSX Company Manual); and (b) completion of a formal valuation in accordance with MI 61-101.

12. In order to support the Filer's anticipated financing requirements in connection with various initiatives, the Filer has been advised that the current intention of the Clairvest Group is to be in a position to exercise the Conversion Features and the Swap Option as soon as possible to maximize financing alternatives available to the Filer.

13. If Part 5 of MI 61-101 applies to a related party transaction by an issuer and the transaction is not otherwise exempt, the issuer must obtain: (a) approval for the transaction from a majority of disinterested holders of the affected securities of the issuer (the "*Minority Approval Requirement*"); and (b) a formal valuation for the transaction in a form satisfying the requirements of MI 61-101 by an independent valuator (the "*Formal Valuation Requirement*"). The Transactions are "related party transactions" to which Part 5 of MI 61-101 would apply.

14. Pursuant to subsection 5.7(1)(g) of MI 61-101, a related party transaction that is subject to MI 61-101 is exempt from the Minority Approval Requirement if one or more persons that are interested parties within the meaning of subparagraph (d)(i) of the definition of interested party beneficially own, in the aggregate, 90% or more of the outstanding securities of a class of affected securities at the time the transaction is agreed to and an appraisal remedy, or the equivalent thereof, is available to holders of the class of affected securities (the "*90% Exemption*"). Since the Clairvest Group beneficially owns, in the aggregate, approximately 95% of the outstanding Common Shares of the Filer, and 100% of the outstanding Common Shares of the Filer are subject to the DA USA, the Transactions are exempt from the Minority Approval Requirement.

15. In connection with the Privatization, Capital Canada Limited, the Filer's financial advisor, completed a formal valuation of the Filer on March 24, 2017 in accordance with the requirements set out in MI 61-101 ("*Filer Valuation*"). Although the Filer Valuation was not a formal valuation of DADS itself, the Filer Valuation included an analysis of DADS and the value attributed to it. A special committee of the board of directors of the Filer received the Filer Valuation in connection with the Privatization and unanimously recommended the Privatization based on, among other things, the value attributed to the Filer in accordance with the Filer Valuation. The Filer Valuation was disclosed to shareholders in connection with the Privatization and is accessible on the System for Electronic Document Analysis and Retrieval ("*SEDAR*").

16. In connection with entering into the First DADS Facility in December 2016, RSPartners, LLC conducted financial analysis on DADS to advise the Company's special committee of independent directors in connection with the negotiation of the formula for the Conversion Feature under the First DADS Facility. The value attributed to DADS through this process was consistent with the valuation later attributed to DADS in connection with the Filer Valuation. The methodology for determining the Conversion Price under the Second DADS Facility is the same

as that under the First DADS Facility. As well, the value at which DADS Shares would be issued pursuant to the Swap Option would be determined on the same basis.

17. No Common Shares will be beneficially owned by persons other than the Clairvest Group and members of the Filer's management prior to the completion of the Transactions.

18. Pursuant to subsection 5.1(d) of MI 61-101, Part 5 of MI 61-101 would not apply to the Transactions but for the facts that: (a) members of the Filer's management own approximately 5% of the outstanding Common Shares; and (b) G. John Krediet, a member of the Clairvest Group and a director of the Filer, owns approximately 2% of the outstanding Common Shares.

## Decision

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Requested Relief is granted, provided that:

1. the Transactions would qualify for the 90% Exemption;
2. the Filer issues and files a news release on SEDAR promptly following the issuance of this decision document disclosing that the Requested Relief has been granted; and
3. the Filer discloses in any material change report required to be filed on SEDAR in connection with the Transactions that the Requested Relief has been granted.

"Naizam Kanji"

Director, Office of Mergers & Acquisitions

Ontario Securities Commission



## **Discovery Air Inc. Announces Securities Conversion**

**Toronto, ON** – December 14, 2017 – Discovery Air Inc. (“**Discovery Air**”) (TSX: DA.DB.A) and Clairvest Group Inc. (“**Clairvest**”) (TSX: CVG) announced today that affiliates of Clairvest have exercised (i) the pre-existing optional conversion feature pursuant to the terms of outstanding credit facilities between, among others, affiliates of Clairvest, Discovery Air and Discovery Air Defence Services Inc. (“**DA Defence**”) to convert amounts outstanding under such credit facilities to common shares of DA Defence and (ii) the swap option pursuant to a letter agreement between Discovery Air, DA Defence and affiliates of Clairvest, to exchange senior secured convertible debentures of Discovery Air for common shares of DA Defence (collectively, the “**Conversion Transaction**”).

Following the completion of the Conversion Transaction, Discovery Air will have approximately \$60 million less of secured debt and will continue to own 26% of DA Defence. The future capital required to finance the upgrade of DA Defence’s aircraft pursuant to its obligations on the recently awarded contract with the Canadian government will be raised at the DA Defence level and will not increase debt levels at Discovery Air.

For more information regarding the Conversion Transaction, please refer to previous disclosures from Discovery Air, all of which can be found on SEDAR at [www.sedar.com](http://www.sedar.com).

### **About Discovery Air**

Discovery Air is a global leader in specialty aviation services including medevac equipped aircraft services, air charter services, helicopter operations, and transport and logistics support to ensure operational readiness, health, safety and vital lifelines for our clients and the communities we serve. Discovery Air’s unsecured convertible debentures trade on the Toronto Stock Exchange (symbol DA.DB.A).

For further information, please contact Investor Relations at 866-903-3247.

### **About Discovery Air Defence Services Inc.**

DA Defence and its U.S. subsidiary, Top Aces Corp., have the world’s largest privately-held operating fleet of fighter aircraft. The training provided supports the operational readiness of both current and future generation fighter aircraft. Discover more on how DA Defence is changing the face of air combat training at [experiencematters.ca](http://experiencematters.ca).

### **About Clairvest**

Clairvest Group Inc. is a private equity investor which invests its own capital, and that of third parties through the Clairvest Equity Partners limited partnerships, in businesses that have the potential to generate superior returns. In addition to providing financing, Clairvest contributes strategic expertise and execution ability to support the growth and development of its investee partners. Clairvest realizes value through investment returns and the eventual disposition of its investments.

For further information, please contact:

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