

**SUSTAINCO INC.**

and

**EQUITY FINANCIAL TRUST COMPANY**

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**TRUST INDENTURE  
PROVIDING FOR THE ISSUE OF SECURED DEBENTURES**

**JUNE 10, 2014**

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**ADDENDA**

EXHIBIT A  
EXHIBIT B

FORM OF DEBENTURE  
FORM OF DECLARATION FOR REMOVAL OF LEGEND

**THIS INDENTURE** made as of the 10<sup>th</sup> day of June, 2014.

BETWEEN:

**SUSTAINCO INC.**, a corporation existing under the laws of Canada (the "**Company**")

AND

**EQUITY FINANCIAL TRUST COMPANY**, a trust company organized and existing under the laws of Canada and registered to carry on business in the Province of Ontario, as trustee (the "**Trustee**")

WITNESSETH THAT:

**WHEREAS** the Company deems it necessary for its corporate purposes to create and issue the Debentures (as defined herein) to be created and issued in the manner hereinafter appearing;

**AND WHEREAS** the Company is duly authorized to create and issue the Debentures to be issued as herein provided;

**AND WHEREAS**, when Authenticated (as defined herein) by the Trustee and issued as provided in this Indenture, all necessary steps in relation to the Company have been duly enacted, passed and/or confirmed and other proceedings taken and conditions complied with to make the creation and issue of the Debentures proposed to be issued hereunder legal, valid and binding on the Company in accordance with the laws relating to the Company;

**AND WHEREAS** the foregoing recitals are made as representations and statements of fact by the Company and not by the Trustee;

**NOW THEREFORE** it is hereby covenanted, agreed and declared as follows:

## **ARTICLE 1 DEFINITIONS AND INCORPORATION BY REFERENCE**

### **1.1 Definitions**

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

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

"**Affiliate**" when used to indicate a relationship with a person or company, has the same meaning as set forth in the *Securities Act* (Ontario).

"**Agent**" means any Registrar or Paying Agent.



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

"**Authenticated**" means (a) with respect to a Certificated Debenture, one which has been authenticated by manual signature of an authorized officer of the Trustee, (b) with respect to the issuance of an Uncertificated Debenture, one in respect of which the Trustee has completed all Internal Procedures. "**Authenticate**", "**Authenticating**" and "**Authentication**" have the appropriate correlative meanings.

"**Bankruptcy Law**" has the meaning ascribed thereto in Section 9.1(a)ix.

"**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, as applicable, or whose beneficial interest is represented by a Book-Based Debenture.

"**Book-Based Debenture**" means any Debenture that has been issued under this Indenture and deposited with CDS to be held in a non-certificated form and held on a book-based (electronic) register maintained by CDS.

"**Board of Directors**" means either the board of directors of the Company or any committee of the Board of Directors authorized to act for it with respect to this Indenture.

"**Business Day**" means any day other than a Saturday or a Sunday or a statutory holiday on which chartered banks are not open for business in Toronto, Ontario.

"**Canadian Private Placement Legend**" has the meaning ascribed thereto in Section 2.5(c).

"**Capital Lease**" means a capital lease or a lease which should be treated as a capital lease under IFRS.

"**Cash**" or "**cash**" means such coin or currency of Canada as at any time of payment is legal tender for the payment of public and private debts.

"**CDS**" or "**CDS&Co**" means the CDS Clearing and Depository Services Inc. and its successors.

"**Certificated Debenture**" means a Debenture that is in substantially the form attached as Exhibit A.

"**Collateral**" means the Company's Property, but shall not include the Excluded Property.

"**Collateral Documents**" means the Security Agreement and any other agreements, instruments and documents delivered from time to time to the Trustee by the Company for the purpose of establishing, perfecting, preserving or protecting any Liens granted to the Trustee over the Collateral as security for the obligations of the Company with respect to this Indenture and the Debentures.

"**Company**" means SustainCo Inc. and any successor thereto.

"**Corporate Trust Office**" means the office of the Trustee at which at any particular time the trust created by this Indenture shall be administered, which office at the date of the execution of this Indenture is located at 200 University Avenue, Suite 300, Toronto, Ontario M5H 4H1; Attention: Trust Services, facsimile no.: (416) 361-0470, or at any other time at such other address as the Trustee may designate from time to time by notice to the Company.

"**Counsel**" means a barrister or solicitor or a firm of barristers or solicitors (who may be counsel for the Company) acceptable to the Trustee, acting reasonably.

"**CUSIP**" means Committee on Uniform Security Identification Procedures.

"**Debentures**" means the debentures of the Company designated as "12.00% Secured Redeemable Debentures due June 10, 2019" and described in Section 2.3, issued and Authenticated hereunder, or deemed to be issued and Authenticated hereunder, and for the time being outstanding, whether as Certificated Debentures, Uncertificated Debentures, Global Debentures or Book-Based Debentures.

"**Default**" means, when used with respect to the Debentures, any event that is or, after notice or passage of time, or both, would be, an Event of Default.

"**Depository**" means, initially, CDS or such other Person recognized as a "**clearing agency**" pursuant to Applicable Securities Legislation, as is designated in writing by the Company and acceptable to the Trustee to act as depository in respect of any Global Debenture.

"**Depository Participant**" means, for any Debentures, a broker, dealer, bank, other financial institution or other Person who participates directly in the book-entry registration and book-based securities transfer system administered by the Depository for such Debentures.

"**Event of Default**" has the meaning ascribed thereto in Section 9.1(a).

"**Exchange**" means the Canadian National Stock Exchange (or such other exchange on which the Company shall list the Debentures and which shall form the primary trading market for the Debentures).

"**Excluded Property**" means: (i) any real property owned by the Company or any leasehold interest in real property with respect to which the Company is a tenant; and (ii) the issued and outstanding shares held by the Company in the Subsidiaries.

"**Extraordinary Resolution**" has the meaning ascribed thereto in Section 15.9.

"**Global Debenture**" means a global book-entry position evidencing a Debenture representing all or a portion of the aggregate principal amount of Debentures issued in the name of the Depository represented by an Uncertificated Debenture, or if requested by the Depository, by a Certificated Debenture.

"**Holder**", "**Holder of a Debenture**" or "**Holder of Debentures**" means the person in whose name a Debenture is registered on the Registrar's books.



"**IFRS**" means the international financial reporting standards adopted by the International Accounting Standards Board, as amended from time to time.

"**Indenture**" means this Indenture as amended or supplemented from time to time pursuant to the terms of this Indenture.

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

"**Interest Payment Date**" means a date specified in this Indenture as the date on which an instalment of interest on such Debentures shall become due and payable, which shall fall on August 31, November 30, February 28 and May 31 of each year until and including the Maturity Date, or if any such day is not a Business Day, the next succeeding Business Day.

"**Internal Procedures**" means in respect of the making of any one or more entries to, changes in or deletions or any one or more entries in the register at any time (including without limitation, original issuance or registration of transfer of ownership) the minimum number of the Trustee's internal procedures customary at such time for the entry, change or deletion made to be complete under the operating procedures followed at the time by the Trustee.

"**ISIN**" means an International Securities Identification Number.

"**Issue Date**" means the date on which the Debentures are issued by the Company pursuant to this Indenture, being June 10, 2014.

"**Lien**" means, in respect of any Person, any mortgage, debenture, pledge, hypothec, lien, charge, assignment by way of security, hypothecation or security interest granted or permitted by such Person or arising by operation of law, in respect of any of such Person's Property, or any consignment or Capital Lease of Property by such Person as consignee or lessee or any other security agreement, trust or arrangement having the effect of security for the payment of any debt, liability or obligation, and "**Liens**" shall have corresponding meanings.

"**Material Adverse Effect**" shall mean (a) a material adverse effect on the business, operations, properties, assets, condition (financial or otherwise) or prospects of the Company and its Subsidiaries taken as a whole, (b)(i) an adverse effect on the legality, validity or enforceability of the Indenture, or (ii) an adverse effect on the validity, enforceability, perfection or priority of any Lien created under any of the Collateral Documents which could reasonably be considered material having regard to the Collateral Documents taken as a whole, (c) an adverse effect on the right, entitlement or ability of the Company or its Subsidiaries to pay or perform any of their debts, liabilities or obligations under any the Indenture, the Debentures or the Collateral Documents, as applicable, which could reasonably be considered material having regard to the Company and its Subsidiaries taken as a whole, or (d) an adverse effect on the right, entitlement or ability of the Trustee to enforce its rights or remedies under the Indenture.



**"Material Contracts"** means, collectively, each written agreement, arrangement or understanding entered into by the Company or any of its Subsidiaries which, if terminated or expired could reasonably be expected to have a Material Adverse Effect.

**"Material Licences"** means, collectively, each licence, permit or approval issued by any governmental authority, or any applicable stock exchange or securities commission, to the Company or any of its Subsidiaries, the breach or loss of which could reasonably be expected to result in a Material Adverse Effect.

**"Maturity Account"** means an account or accounts required to be established in the name of the Company (and which shall be maintained by and subject to the control of the Trustee) for Debentures pursuant to and in accordance with this Indenture.

**"Maturity Date"** means June 10, 2019.

**"Notice of Default"** has the meaning ascribed thereto in Section 9.2.

**"Officer"** means the Chairman of the Board of Directors, the Chief Executive Officer, the President, the Chief Financial Officer or the Secretary of the Company.

**"Officers' Certificate"** means a certificate signed on behalf of the Company by two Officers.

**"Opinion of Counsel"** means a written opinion from legal counsel reasonably acceptable to the Trustee.

**"Paying Agent"** has the meaning ascribed thereto in Section 2.9(a).

**"Person"** or **"person"** means any individual, partnership, limited partnership, association, body corporate, trust, trustee, executor, administrator, legal representative, government, regulatory authority, or other entity or any syndicate or group that would be deemed to be a **"person"** under the *Securities Act* (Ontario).

**"Permitted Liens"** means, with respect to any Person, the following:

- (a) Liens arising in the ordinary course of business or for Taxes, in each case not yet due or for which installments have been paid based on reasonable estimates pending final assessments, or if due, the validity of which is being contested diligently and in good faith by appropriate proceedings by that Person for which reasonable reserves under IFRS are maintained;
- (b) undetermined or inchoate Liens, rights of distress and charges incidental to current operations which have not at such time been filed or exercised and of which the Company has not been given notice, or which relate to obligations not due or payable, or if due, the validity of which is being contested diligently and in good faith by appropriate proceedings by that Person;
- (c) reservations, limitations, provisos and conditions expressed in any original grants from the Crown or other grants of real or immovable property, or interests therein,

which do not materially affect the use of the affected land for the purpose for which it is used by that Person;

- (d) zoning, land use and building restrictions, by-laws, regulations and ordinances of federal, provincial, state, municipal and other governmental authorities, licences, easements, rights-of-way, servitudes and rights in the nature of easements (including, without limiting the generality of the foregoing, licences, easements, rights-of-way and rights in the nature of easements for railways, sidewalks, public ways, sewers, drains, gas, steam and water mains or electric light and power, or telephone and telegraph conduits, poles, wires and cables) which do not materially impair the use of the affected land for the purpose for which it is used by that Person;
- (e) title defects, encroachments or irregularities or other matters relating to title which are of a minor nature and which in the aggregate do not materially impair the use of the affected property for the purpose for which it is used by that Person;
- (f) the right reserved to or vested in any municipality or governmental or other public authority by the terms of any lease, licence, franchise, grant or permit acquired by that Person or by any statutory provision to terminate any such lease, licence, franchise, grant or permit, or to require annual or other payments as a condition to the continuance thereof;
- (g) the Lien resulting from the deposit of cash or securities in connection with contracts, tenders or expropriation proceedings, or to secure workmen's compensation, employment insurance, surety or appeal bonds, costs of litigation when required by law, Liens and claims incidental to current construction, mechanics', warehousemen's, carriers' and other similar Liens, and public, statutory and other like obligations incurred in the ordinary course of business;
- (h) security given to a public utility or any municipality or governmental authority when required by such utility or authority in connection with the operations of that Person in the ordinary course of its business;
- (i) servicing agreements, development agreements, site plan agreements, and other agreements with governmental authorities pertaining to the use or development of any of the assets of the Person, provided that same do not reduce the value of the assets of the Person or materially interfere with the use of such assets in the operation of the business of the Person including, without limitation, any obligations to deliver letters of credit and other security as required;
- (j) applicable municipal and other governmental restrictions, including municipal by-laws and regulations, affecting the use of land or the nature of any structures which may be erected thereon, provided that such restrictions do not reduce the value of the assets of the Person or materially interfere with the use of such assets in the operation of the business of the Person;



- (k) the Lien created by a judgment of a court of competent jurisdiction, as long as the judgment is being contested diligently and in good faith by appropriate proceedings by that Person and does not result in an Event of Default;
- (l) Liens existing on the Issue Date;
- (m) the Collateral Documents;
- (n) any Liens incurred pursuant to the express terms of this Indenture (including Section 8.11 hereof);
- (o) Liens or any rights of distress that are either (i) requirements of applicable law, or (ii) reserved in or exercisable under any lease or sublease to which it is a lessee which secure the payment of rent or compliance with the terms of such lease or sublease, provided that such Liens do not extend to assets other than those at the relevant leased location; and
- (p) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods in the ordinary course of business.

"**Privacy Laws**" has the meaning ascribed thereto in Section 11.13.

"**Property**" means, with respect to any Person, all or any portion of its present and after-acquired undertaking, property and assets, both real and personal, including for greater certainty, any and all intellectual property rights, any proceeds from the sale or disposition thereof and any share in the capital of a corporation or equity interests in any other Person.

"**Receiver**" has the meaning ascribed thereto in Section 9.1(a)ix.

"**Redemption Date**" has the meaning given to that term in Section 4.6.

"**Redemption Notice**" has the meaning given to that term in Section 4.6.

"**Redemption Price**" has the meaning given to that term in Section 4.1.

"**Registrar**" has the meaning ascribed thereto in Section 2.9(a).

"**Regular Record Date**" means, the 10<sup>th</sup> day prior to each Interest Payment Date (or on the next Business Day, if such date is not a Business Day).

"**Regulation S**" means Regulation S adopted by the United States Securities and Exchange Commission under the 1933 Act.

"**Security**" means the grants, assignments, transfers, mortgages, charges, pledges and security interests granted to and in favour of the Trustee in this Indenture.

"**Security Agreement**" means the general security agreement dated the date hereof, pursuant to which the Company has granted and from time to time may grant Liens on the Collateral to the



Trustee, as originally executed or as it may from time to time be supplemented, amended, restated, or otherwise modified in accordance with the terms thereof.

"**Shares**" means one or more common shares in the capital of the Company and "**Share**" means a common share in the capital of the Company.

"**Specified Priority Encumbrance**" has the meaning ascribed thereto in Section 8.11.

"**Subsidiary**" means, in relation to the Company, any entity, including a corporation, trust, partnership or limited partnership, which is controlled, directly or indirectly, by the Company and which on the date hereof, consists of Clean Energy Developments Corp and upon final approval from the TSX Venture Exchange of the VCI Acquisition, will also include VCI Controls Inc.

"**Successor**" has the meaning ascribed thereto in Section 13.1(a).

"**Tax Act**" means the *Income Tax Act* (Canada) and the regulations enacted thereunder.

"**Tax**" or "**Taxes**" means all taxes, charges, fees, levies, imposts and other assessments, including all income, sales, use, goods and services, value added, capital, capital gains, withholding, payroll, employer health, excise, franchise, real property and personal property taxes, and any other taxes, customs duties, fees, assessments, royalties, duties, deductions, or similar charges in the nature of a tax, including Canada Pension Plan and provincial pension plan contributions, employment insurance payments and workers compensation premiums, together with any instalments, and any interest, fines and penalties, imposed by any governmental authority in relation to the foregoing.

"**Trading Day**" means a day during which the principal securities market on which the applicable securities are traded is open for trading and at least one board lot of the securities is traded on such market. A "**Trading Day**" only includes those days that have a scheduled closing time of 4:00 p.m. (Toronto time) or the then standard closing time for regular trading on such market.

"**Trustee**" means the party named as such in the first paragraph of this Indenture until a successor replaces it in accordance with the provisions of this Indenture, and thereafter means the successor.

"**U.S. Legend**" has the meaning ascribed thereto in Section 2.5(a).

"**U.S. Legended Debentures**" means Debentures bearing the U.S. Legend.

"**U.S. Person**" means a "**U.S. person**" as that term is defined in Regulation S.

"**Uncertificated Debenture**" means any Debenture which is not a Certificated Debenture.

"**United States**" means the United States of America, its territories and possessions, any State of the United States, and the District of Columbia.

“**VCI Acquisition**” means the acquisition by the Company of all of the issued and outstanding subordinate voting and multiple voting shares in the capital of VCI Controls Inc., pursuant to which VCI Controls Inc. will become a Subsidiary and which acquisition has been substantially completed as of the date hereof remaining subject only to the final approval of the TSX Venture Exchange.

“**Warrants**” means the warrants issued to the Holders of Debentures on the date hereof (on the basis of 100 Warrants for each \$1,000 aggregate principal amount of Debentures), which will (subject to any amendment thereto) entitle the holders thereof to purchase one common share of the Company at a purchase price of \$0.25 per Share for a period of 36 months from the Issue Date.

“**Warrant Indenture**” means the warrant indenture in respect of the issuance of the Warrants dated the date hereof between the Company and Equity Financial Trust Company, as warrant agent.

“**Withholding Taxes**” has the meaning ascribed thereto in Section 8.6.

“**Written Direction**” or “**written request**” means an instrument in writing signed by any one Officer of the Company.

## **1.2 Rules of Construction.**

(a) Unless the context otherwise requires:

- i. a term has the meaning assigned to it;
- ii. an accounting term not otherwise defined has the meaning assigned to it in accordance with IFRS;
- iii. words in the singular include the plural, and words in the plural include the singular;
- iv. all references to "dollars" and "\$" are to the lawful money of Canada;
- v. provisions apply to successive events and transactions;
- vi. the term "merger" includes a statutory share exchange and the term "merged" has a correlative meaning;
- vii. the masculine gender includes the feminine and the neuter;
- viii. references to agreements and other instruments include subsequent amendments thereto; and
- ix. all "Article", "Exhibit" and "Section" references are to Articles, Exhibits and Sections, respectively, of or to this Indenture unless otherwise specified herein, and the terms "herein," "hereof" and other words of



similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision.

## **ARTICLE 2 THE DEBENTURES**

### **2.1 Limit of Debentures; Detachable from Warrants**

- (a) The aggregate principal amount of Debentures authorized to be issued under this Indenture is limited to \$10,000,000, but Debentures may be issued only upon and subject to the conditions and limitations herein set forth.
- (b) Debentures issued under this Indenture and Warrants issued under the Warrant Indenture will be issued separately and will be detachable.

### **2.2 Form of Debentures**

The form of the Debentures shall be issued in fully registered form substantially in such form set forth in Exhibit "A" of this Indenture or, to the extent permitted herein, such 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 (including Applicable Securities Legislation) 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 Company executing such Debentures, as conclusively evidenced by its execution of such Debentures.

### **2.3 Terms of Debentures**

- (a) The Debentures authorized for issue are limited to an aggregate principal amount of \$10,000,000 and shall be designated as "12.00% Secured Redeemable Debentures" of the Company, and shall be issued in denominations of \$1,000.
- (b) The Debentures shall be dated as of the Issue Date. The Debentures shall mature on the Maturity Date and shall bear interest as set forth in Sections 2.3(c).
- (c) The Debentures shall bear interest from, and including, the Issue Date at the rate equal to 12.00% percent per annum, calculated and payable as set forth in Sections 2.16 and 2.18, in arrears in equal quarterly payments (with the exception of the first interest payment and the last interest payment) on each Interest Payment Date, the first such payment to fall due on August 31, 2014 and the last such payment to fall due on the Maturity Date. Interest shall be payable after as well as before maturity and Default, with interest on overdue amounts and amounts in Default payable at the same rate.
- (d) The Debentures will be direct secured obligations of the Company in accordance with the provisions of Article 5. In accordance with Section 2.8, the Debentures will rank equally with one another.



- (e) The Holder of each Debenture shall have no right of conversion at any time, either prior to or following the Maturity Date.
- (f) Subject to any supplemental indenture that may be executed pursuant to Article 14, the Debentures issued hereunder shall initially be issued as Certificated Debentures in denominations of \$1,000 and integral multiples of \$1,000. Notwithstanding the foregoing, a Debenture may be issued in electronic or non-certificated form as a Book-Based Debenture as may, from time to time, be approved by a resolution of the Board of Directors, or as specified in an Officers' Certificate. In addition, any Holder of Debentures that have been issued under this Indenture may arrange for the deposit of such Debenture(s) with the Depository as Book-Based Debentures, as such Holder deems necessary or advisable.
- (g) In the event that all of the outstanding Debentures are registered in the name of the Depository, the Trustee may issue, in replacement of the Debentures, one or more Global Debentures Authenticated in accordance with this Indenture, and in the case of a Global Debenture that is a Certificated Debenture, the Trustee shall deliver such Debenture to such Depository or a nominee thereof as custodian therefore. Beneficial interest in a Global Debenture or a Book-Based Debenture will not be shown on the records maintained by the Depository but will be represented through book-entry accounts of Depository Participants on behalf of the beneficial owners of such Global Debenture or Book-Based Debenture. None of the Company, the Trustee and any other Paying Agent shall have any responsibility or liability for any aspects of the records relating to or payments made by any Depository or any Depository Participant on account of the beneficial interest in any Global Debenture or Book-Based Debenture. Notwithstanding the foregoing, Debentures sold to persons who are (i) accredited investors in the United States pursuant to Section 2.5 shall be issued Certificated Debentures bearing the U.S. Legend; or (ii) resident in neither Canada nor the United States may be issued Certified Debentures in the discretion of the Company.

## **2.4 Issue of Global Debentures**

- (a) The Company may specify that the Debentures are to be issued in whole or in part, as one or more Global Debentures, as an Uncertificated Debenture, or a Certificated Debenture, registered in the name of a Depository, or its nominee, designated by the Company in the Written Direction of the Company delivered to the Trustee at the time of issue of such Debentures. In the event the Company specifies that the Debentures are to be issued as a Global Debenture, the Company 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 to be represented by one or more Global Debentures;
  - ii. be delivered by the Trustee as directed in the Written Direction of the Company; and

- iii. if in the form of a Certificated Debenture, bear a legend substantially to the following effect:

"UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF CDS CLEARING AND DEPOSITORY SERVICES INC. ("CDS") TO SUSTAINCO INC. (THE "ISSUER") OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IN RESPECT THEREOF IS REGISTERED IN THE NAME OF CDS & CO., OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF CDS (AND ANY PAYMENT IS MADE TO CDS & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF CDS), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL SINCE THE REGISTERED HOLDER HEREOF, CDS & CO., HAS A PROPERTY INTEREST IN THE SECURITIES REPRESENTED BY THIS CERTIFICATE HEREIN AND IT IS A VIOLATION OF ITS RIGHTS FOR ANOTHER PERSON TO HOLD, TRANSFER OR DEAL WITH THIS CERTIFICATE".

- (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.

## **2.5 Legends on Debentures**

- (a) Unless otherwise provided in the Debentures, Debentures will not be registered under any United States federal or state securities laws, and each Certificated Debenture issued, sold or transferred in the United States, if applicable, or issued, sold or transferred to, or for the account or benefit of, a U.S. Person or a person in the United States shall bear the following additional legend until such time as the legend is no longer required under applicable requirements of the 1933 Act or applicable state securities laws (the "**U.S. Legend**"):

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR STATE SECURITIES LAWS. THE HOLDER HEREOF, BY PURCHASING SUCH SECURITIES, AGREES FOR THE BENEFIT OF SUSTAINCO INC. THAT SUCH SECURITIES MAY BE OFFERED, SOLD OR OTHERWISE TRANSFERRED ONLY (A) TO SUSTAINCO INC., (B) OUTSIDE THE UNITED STATES IN ACCORDANCE WITH RULE 904 OF REGULATION S UNDER THE SECURITIES ACT, (C) PURSUANT TO THE EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER, OR (D) PURSUANT TO ANOTHER EXEMPTION FROM REGISTRATION AFTER PROVIDING A LEGAL OPINION OR OTHER EVIDENCE SATISFACTORY TO SUSTAINCO INC.



DELIVERY OF THIS CERTIFICATE MAY NOT CONSTITUTE GOOD DELIVERY IN SETTLEMENT OF TRANSACTIONS ON STOCK EXCHANGES IN CANADA.

A NEW CERTIFICATE BEARING NO LEGEND MAY BE OBTAINED FROM EQUITY FINANCIAL TRUST COMPANY UPON DELIVERY OF THIS CERTIFICATE AND A DULY EXECUTED DECLARATION, IN A FORM SATISFACTORY TO EQUITY FINANCIAL TRUST COMPANY AND SUSTAINCO INC., TO THE EFFECT THAT THE SALE OF THE SECURITIES REPRESENTED HEREBY IS BEING MADE IN COMPLIANCE WITH RULE 904 OF REGULATION S UNDER THE SECURITIES ACT;

provided that, if any Debentures are being sold in accordance with Rule 904 of Regulation S, and if the Company is a "foreign issuer" within the meaning of Regulation S at the time of sale, the legend may be removed by providing a declaration to the Trustee, substantially in the form of the declaration included as Exhibit "B" hereto; and

provided further that, if any Debentures are being sold under Rule 144, the legend may be removed by delivering to the Trustee an Opinion of Counsel of recognized standing reasonably satisfactory to the Company, that the legend is no longer required under applicable requirements of the 1933 Act (as that term is defined in the U.S. Legend) or state securities laws.

- (b) The Company shall specify, in the Written Direction, which Certificated Debentures are to bear the U.S. Legend. The Trustee will thereafter maintain a list of all Holders from time to time of U.S. Legended Debentures.
- (c) The Trustee acknowledges and understands that the Debentures have not been and will not be qualified for sale to the public under Applicable Securities Legislation. The Trustee acknowledges and understands that Certificated Debentures will bear a legend in substantially the following form (the "**Canadian Private Placement Legend**") until the legend is no longer required under Applicable Securities Legislation:

"UNLESS PERMITTED UNDER APPLICABLE SECURITIES LEGISLATION IN CANADA, THE HOLDER OF THIS DEBENTURE MUST NOT TRADE THIS DEBENTURE IN CANADA BEFORE OCTOBER 11, 2014"

## 2.6 Execution and Authentication

- (a) All Certificated Debentures shall be signed (either manually, by manual signature that is sent by portable document format or by facsimile signature) by any one director or Officer of the Company, 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 of the Company 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 Company and entitled to the benefits of this Indenture.



- (b) No Certificated Debentures shall be issued or, if issued, shall be obligatory or shall entitle the Holder to the benefits of this Indenture, until it has been Authenticated by or on behalf of the Trustee in accordance with a Written Direction 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 Company and the Holder is entitled to the benefits described herein and therein.
- (c) The certificate of the Trustee signed on the Certificated Debenture, or interim Debentures hereinafter mentioned, or the Authentication of any Uncertificated Debentures, 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 signed on the Debentures, interim Debentures or the Authentication of Uncertificated 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.
- (d) The Trustee shall Authenticate Uncertificated Debentures (whether upon original issuance, exchange, registration of transfer, partial payment, redemption or otherwise) in accordance with a Written Direction by completing its Internal Procedures and the Company shall, and hereby acknowledges that it shall, thereupon be deemed to have duly and validly issued such Uncertificated Debentures under this Indenture. Such Authentication shall be conclusive evidence that such Uncertificated Debenture has been duly issued hereunder and that the Holder is entitled to the benefits of this Indenture.

## **2.7 Interim Debentures or Certificates**

Pending the delivery of Certificated Debentures to the Trustee, the Company 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 Certificated Debentures when the same are ready for delivery; or the Company may execute and the Trustee certify a temporary Debenture for the whole principal amount of Debentures 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 Company, and the Trustee may approve entitling the Holders thereof to receive Certificated Debentures 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 Holders and entitled to the benefit of this Indenture to the same extent and in the same manner as though the said exchange had actually been made. Forthwith after the Company 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 Company 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.

## **2.8 Rank**

The indebtedness, liabilities and obligations of the Company under this Indenture, under the Debentures, and under all other Debentures now or hereafter Authenticated and delivered under the Indenture, are or will be, as the case may be, direct secured obligations of the Company, but will rank equally with one another.

## **2.9 Registrar and Paying Agent**

- (a) The Company shall maintain one or more offices or agencies where Debentures may be presented for registration of transfer or for exchange (each, a "**Registrar**"), one or more offices or agencies where Debentures may be presented for payment (each, a "**Paying Agent**") and one or more offices or agencies where notices and demands to or upon the Company in respect of the Debentures and this Indenture may be served. The Company will at all times maintain a Registrar, Paying Agent and offices or agencies where notices and demands to or upon the Company in respect of the Debentures and this Indenture may be served in the City of Toronto. Until such change is made, the Registrar and the Paying Agent will be the Trustee.
- (b) The Company shall enter into an appropriate agreement with any Agent not a party to this Indenture, provided that the Agent may be an Affiliate of the Trustee. The agreement shall implement the provisions of this Indenture that relate to such agent. The Company shall notify the Trustee in writing of the name and address of any Agent not a party to this Indenture. If the Company fails to maintain a Registrar, Paying Agent or Agent in any place required by this Indenture, or fails to give the foregoing notice, the Trustee shall act as such.
- (c) The Company hereby initially designates the Trustee as Paying Agent and Registrar Agent and designates the Corporate Trust Office of the Trustee and the offices of the Trustee in the City of Toronto, Ontario which office at the date of the execution of this Indenture is located at the Corporate Trust Office.

## **2.10 Paying Agent to Hold Money in Trust**

- (a) Prior to 11:00 a.m., Toronto time, three Business Days preceding the Interest Payment Date (or any other date on which payment is required for the principal of, or interest on, any Debentures), the Company shall deposit with the Paying Agent a sum in immediately available funds sufficient to pay such principal or interest so becoming due. A Paying Agent shall hold in trust for the benefit of Holders of Debentures or the Trustee all money held by the Paying Agent for the payment of principal of, or interest on, the Debentures, and shall notify the Trustee in writing of any failure by the Company (or any other obligor on the Debentures) to make any such payment.



- (b) The Company at any time may require a Paying Agent to pay all money held by it to the Trustee, and the Trustee may at any time during the continuance of any Default, upon written request to a Paying Agent, require such Paying Agent to pay forthwith to the Trustee all sums so held in trust by such Paying Agent. Upon doing so, the Paying Agent shall have no further liability for the money.

## **2.11 Replacement Debentures**

- (a) If any Certificated Debentures issued and Authenticated hereunder becomes destroyed, lost or stolen and is surrendered to the Company, a Registrar or the Trustee, and the Company, a Registrar and the Trustee receive evidence to their satisfaction of the ownership, destruction, loss or theft of any Debenture, and there is delivered to the Company and the Trustee a surety bond and indemnity as will be required by each of them to save each of them harmless, then, in the absence of notice to the Company, such Registrar or the Trustee that such Debenture has been acquired by a bona fide purchaser, the Company shall execute, and upon its Written Direction the Trustee shall Authenticate and deliver, in exchange for any such mutilated Debenture or in lieu of any such destroyed, lost or stolen Debenture, a new Debenture of like tenor and principal amount, bearing a number not contemporaneously outstanding. The applicant shall pay all reasonable expenses incidental to the issuance of any substituted Debenture.
- (b) If any such destroyed, lost or stolen Debenture has become or is about to become due and payable, or is about to be purchased or redeemed pursuant to Article 4, the Company in its discretion may, instead of issuing a new Debenture, pay, redeem or purchase such Debenture, as the case may be, upon the conditions in Section 2.11(a) being satisfied.
- (c) Upon the issuance of any new Debentures under this Section 2.11, the Company or the Trustee may require the Holder to provide payment of a sum sufficient to cover any Tax or other governmental charge that may be imposed in relation thereto and any other reasonable expenses (including the reasonable fees and expenses of the Trustee or the Registrar) in connection therewith.
- (d) Every new Debenture issued pursuant to this Section 2.11 in lieu of any mutilated, destroyed, lost or stolen Debenture shall constitute an original additional contractual obligation of the Company, whether or not the mutilated, destroyed, lost or stolen Debenture shall be at any time enforceable by anyone, and shall be entitled to all benefits of this Indenture equally and proportionately with any and all other Debentures duly issued hereunder.
- (e) The provisions of this Section 2.11 are (to the extent lawful) exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Debentures.

## **2.12 Outstanding Debentures**

- (a) Debentures outstanding at any time are all Debentures Authenticated by the Trustee, except for those cancelled by it, those redeemed pursuant to Article 4, those delivered to

the Trustee for cancellation or surrendered for transfer or exchange and those described in this Section 2.12 as not outstanding.

- (b) If a Debenture is replaced pursuant to Section 2.11, it ceases to be outstanding.
- (c) If a Paying Agent holds in respect of the outstanding Debentures on the Maturity Date money sufficient to pay the principal of (including premium, if any) and accrued interest on Debentures (or portions thereof, as the case may be) payable on that date, then on and after such Maturity Date such Debentures (or portions thereof, as the case may be) shall cease to be outstanding and interest on them shall cease to accrue.
- (d) Any Debentures issued pursuant to this Indenture shall be cancelled by the Trustee upon their purchase.

### **2.13 Concurrence in any Notice, Direction, Waiver or Consent**

In determining whether the Holders of the required principal amount of Debentures have concurred in any notice, direction, waiver or consent, Debentures owned by the Company or any other obligor on the Debentures or by any Affiliate of the Company or of such other obligor shall be disregarded, except that, for purposes of determining whether the Trustee shall be protected in relying on any such notice, direction, waiver or consent, only Debentures which the Trustee, relying conclusively on an Officers' Certificate, actually knows are so owned shall be so disregarded. Debentures so owned which have been pledged in good faith shall not be disregarded if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to the Debentures and that the pledgee is not the Company or any other obligor on the Debentures or any Affiliate of the Company or of such other obligor.

### **2.14 Cancellation**

The Company, at any time, may deliver Debentures to the Trustee for cancellation. The Registrar and the Paying Agent shall forward to the Trustee or its agent any Debentures surrendered to them for transfer, exchange, purchase or payment. The Trustee and no one else shall cancel, in accordance with its standard procedures, all Debentures surrendered for transfer, exchange, purchase, payment or cancellation and shall dispose of the cancelled Debentures in accordance with its customary procedures. All Debentures which are purchased, redeemed or otherwise acquired by the Company prior to the Maturity Date pursuant to Article 4 shall be delivered to the Trustee for cancellation, and the Company may not hold or resell such Debentures or issue any new Debentures to replace any such Debentures.

### **2.15 CUSIP and/or ISIN Numbers**

The Company in issuing the Debentures may use one or more CUSIP and/or ISIN numbers (if then generally in use), and, if so, the Trustee shall use CUSIP and/or ISIN numbers in notices of purchase as a convenience to Holders; provided that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Debentures or as contained in any notice of purchase and that reliance may be placed only on the other identification numbers printed on the Debentures, and any such purchase shall not be affected by



any defect in or omission of such numbers. The Company will promptly notify the Trustee of any change in the CUSIP and/ or ISIN numbers.

## **2.16 Computation of 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 the 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, whichever shall be the later, in all cases, to and excluding the earlier of: (A) the next Interest Payment Date; (B) if purchased in accordance with Article 4, the date of payment; and (C) the Maturity Date (in each case an “**Interest Period**”).
- (b) The interest payable per \$1,000 principal amount of Debentures in respect of an Interest Period other than an Interest Period that ends on an Interest Payment Date shall be calculated by multiplying \$1,000 by the interest rate of 12.00% per annum, dividing the product so obtained by 365 days (or 366 days as applicable) and multiplying the quotient by the actual number of days in the said Interest Period. The first Interest Payment Date shall be August 31, 2014 and the interest payable per \$1,000 principal amount of Debentures shall be calculated by multiplying \$1,000 by the interest rate of 12.00% per annum, dividing the product so obtained by 365 days (or 366 days as applicable) and multiplying the quotient by the actual number of days from the Issue Date up to and excluding August 31, 2014.
- (c) Unless otherwise specifically provided in the terms of the Debentures, interest for any period of less than three months shall be computed on the basis of a year of 365 days, or 366 days, as applicable. Whenever interest is computed on a 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 (in accordance with Section 2.16(b) above).

## **2.17 Payment of Amounts Due on Maturity**

- (a) Except as may otherwise be provided herein or in any supplemental indenture, payments of amounts due upon maturity of the Debentures will be made in the following manner. The Company will establish and maintain with the Trustee a Maturity Account for the Debentures. The Maturity Account shall be maintained by and be subject to the control of the Trustee for the purposes of this Indenture. On or before 11:00 a.m. (Toronto time) three Business Days immediately prior to the Maturity Date for Debentures outstanding from time to time under this Indenture, the Company will deliver to the Trustee immediately available funds for deposit in the 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 withheld or deducted therefrom). The Trustee, on behalf of the Company, 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 (less any Tax required to be withheld or deducted therefrom), upon surrender of the Debenture at the Corporate Trust Office. The delivery of such funds to the Trustee for deposit to the Maturity Account will satisfy and discharge the liability of the Company for the Debentures to the extent of the amount delivered (plus the amount of any Tax withheld or 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.

- (b) Payment of funds to the Trustee upon maturity of the Debentures shall be made by electronic transfer or pursuant to such other arrangements for the provision of funds as may be agreeable between the Company and the Trustee in order to effect such maturity payment hereunder. The Trustee shall have no obligation to disburse funds pursuant to this Section 2.17 until it has received written confirmation satisfactory to it that the funds have been deposited with it in sufficient amount to pay in full all amounts due and payable on the Maturity Date.

## **2.18 Payment of Interest**

- (a) The following provisions shall apply to the Debentures, except as otherwise permitted by this Indenture:
  - i. As interest becomes due on each Debenture (except at redemption or maturity, when interest may at the option of the Company be paid upon surrender of such Debenture) the Company, either directly or through the Trustee or any agent of the Trustee, shall send or forward by prepaid ordinary mail, electronic transfer of funds in the case of the Depository or such other means as may be agreed to by the Trustee, payment of such interest (less any Withholding Taxes required or permitted to be withheld therefrom) to the order of the registered Holder of such Debenture appearing on the register maintained by the Trustee on the applicable Regular Record 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 Business Days prior to the Interest Payment Date and if payment is made by other means (such as electronic transfer of funds), such payment shall be made in a manner whereby the Holder receives credit for such payment on the Interest Payment Date. 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 Withholding Tax withheld as aforesaid, satisfy and discharge all liability for interest on such Debenture. In the event of non-receipt of any cheque for payment of interest by the person to whom it is so sent as aforesaid, the Company or 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 Company is prevented by circumstances beyond its control (including, without limitation, any interruption in mail service) from making payment of any interest due on each Debenture in the manner provided above, the Company may make payment of such interest or make such interest available for payment (less any Withholding Taxes required or permitted to be withheld therefrom) in any other manner acceptable to the Trustee with the same effect as though payment had been made in the manner provided above.

- ii. Notwithstanding Section 2.18(a)i, if a Debenture is a Global Debenture, then all payments of interest on the Global Debenture or a Book-Based Debenture shall be made by electronic funds transfer to the Depository or its nominee for subsequent payment (less applicable Withholding Taxes, if any) to Beneficial Holders of interests in the applicable Global Debenture or a Book-Based Debenture, unless the Company and the Depository otherwise agree. None of the Company, the Trustee or any agent of the Trustee for any Debenture issued as a Global Debenture or a Book-Based 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 Book-Based Debenture or for maintaining, reviewing, or supervising any records relating to such beneficial interests.

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

#### **3.1 Certificated Debenture**

- (a) With respect to the Debentures, the Company 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 Company, with the approval of the Trustee, may appoint at such other place or places, if any, as may be specified in the Debentures or as the Company may designate with the approval of the Trustee, a register in which shall be entered the names and addresses of the Holders of Debentures and particulars of the Debentures held by them respectively and of all transfers of 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 Debenture shall be valid unless made on such register referred to in Section 3.1(a) by the registered Holder of such Debenture or such Holder's executors, administrators or other legal representatives or an attorney duly appointed by an instrument in writing in form and substance and execution satisfactory to the Trustee or other registrar upon surrender of the Debenture, 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.

### 3.2 Global Debentures

- (a) Notwithstanding any other provision of this Indenture, any Global Debenture that may be issued hereunder may not be transferred by the registered Holder thereof and accordingly, no security certificates shall be issued to Beneficial Holders of interests in such Global Debenture except in the following circumstances or as otherwise specified in a resolution of the directors of the Company, an Officers' Certificate or supplemental indenture relating to the 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 to another nominee or 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 by the Depository for such Global Debentures in the event that: (A) the Depository has notified the Company that it is unwilling or unable to continue as Depository for such Global Debenture, (B) such Depository has ceased to be a clearing agency or otherwise ceases to be eligible to be a depository, and a successor Depository is not appointed by the Company within 90 days after receiving such notice or becoming aware that the Depository has ceased to be a clearing agency or otherwise ceases to be eligible to be a depository, (C) the Company has determined, in its sole discretion, to terminate the book-entry only registration system in respect of such Global Debenture and has communicated such determination to the Trustee in writing or, (D) an Event of Default has occurred and is continuing with respect to the Debentures, provided that Depository Participants acting on behalf of Beneficial Holders holding more than 25% of the aggregate principal amount of the Debentures then outstanding advise the Depository in writing that the continuation of a book-entry only system through the Depository is no longer in their best interest and provided further that the Trustee has not waived the Event of Default in accordance with the terms of this Indenture. Any Global Debenture exchanged pursuant to subclause (A), (B) or (C) above shall be so exchanged in whole and not in part, and any Global Debenture exchanged pursuant to subclause (D) above may be exchanged in whole or from time to time in part as directed by the Depository. Any Debenture issued in exchange for a Global Debenture or any portion thereof shall be a Global Debenture; provided further that any such Debenture so issued that is registered in the name of a Person other than the Depository or a nominee thereof shall not be a Global Debenture; or
  - iii. Global Debentures may be transferred if required by applicable law.

Certificated Debentures issued pursuant to this Section 3.2(a) shall be registered in such names and in such denominations as the Depository, pursuant to instructions from its



Depository Participants or otherwise shall instruct the Trustee provided that the aggregate principal amount of Certificated Debentures is equal to the principal amount of the Global Debenture so exchanged. The Trustee shall deliver such Certificated Debentures to or as directed by the Depository. Upon exchange of a Global Debenture for Certificated Debentures such Global Debentures shall be cancelled by the Trustee.

- (b) With respect to the Global Debentures, unless and until definitive certificates have been issued to Beneficial Holders of interests in such Global Debentures pursuant to Section 3.2(a):
- i. the Company and the Trustee may deal with the Depository for all purposes (including paying interest on the Debentures) as the Holder of the 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 instructions or directions of Holders 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 Participants, and has delivered such instructions to the Trustee.
- (c) Whenever a notice or other communication is required to be provided to Holders, unless and until definitive certificate(s) 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 surrender by the Depository of the certificate(s) representing the Global Debentures, or with respect to Global Debentures represented by an Uncertificated Debenture, upon notice required pursuant to Internal Procedures, and receipt of new registration instructions from the Depository, the Trustee shall deliver the Certificated Debentures 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.
- (d) Notwithstanding anything herein or in the terms of the Debentures to the contrary, neither the Company nor the Trustee nor any agent thereof shall have any responsibility or liability for (i) any aspect of the records maintained by any Depository relating to any

securities entitlements or any other interests in the Debentures or to the depository system maintained by such Depository, or payment made on account of any securities entitlements or any other interest of any Person in any Global Debenture (other than the applicable Depository or its nominee), (ii) for maintaining, supervising or reviewing any records of any Depository or any Depository Participant relating to any Debentures, or (iii) any advice or representation made by or with respect to any Depository and relating to the rules governing any Depository or any action to be taken by any Depository on its own direction or at the discretion of any of its Depository Participants.

### **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 regard 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 Company and the transferor or any previous Holder of such Debenture, save in respect of equities of which the Company is required to take notice by statute or by order of a court of competent jurisdiction.

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

Neither the Company nor the Trustee nor any Registrar or Paying Agent shall be bound to take notice of or see to the execution of any trust (other than the trust created by this Indenture) whether express, implied or constructive, in respect of any Debenture, and subject to Section 3.2(a) in respect of a Global Debenture, 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 Holder thereof.

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

The register referred to in Sections 3.1 and 3.2 shall during regular business hours be open for inspection by the Company, the Trustee or any Holder. Every Registrar, including the Trustee, shall from time to time when requested so to do by the Company or by the Trustee, in writing, furnish the Company 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 3.7, Debentures in any authorized form or denomination, other than Global Debentures, may be exchanged for Debentures in any other authorized form or denomination.
- (b) In respect of exchanges of Debentures permitted by Section 3.6(a), Debentures may be exchanged only at the principal offices of the Trustee in the city of Toronto, Ontario or at such other place or places, if any, as may be specified in the Debentures and at such other place or places as may from time to time be designated by the Company with the approval of the Trustee. Any Debentures tendered for exchange shall be surrendered to



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

### **3.7 Closing of Registers**

- (a) Neither the Company nor the Trustee nor any other Registrar shall be required to:
- i. make transfers or exchanges of any Debentures on any Interest Payment Date or during the five Business Days preceding the relevant Interest Payment Date;
  - ii. in the case of any proposed redemption of the Debentures, make transfers or exchanges of Debentures for a period of five Business Days preceding any selection of Debentures to be redeemed or thereafter until the mailing of any Redemption Notice to Holders thereof; or
  - iii. make transfers or exchanges of Debentures which have been selected or called for redemption unless upon due presentation thereof for redemption such Debentures are not redeemed.
- (b) Subject to any restriction herein provided, the Company with the approval of the Trustee may at any time close any register for the Debentures, other than those kept at the principal offices 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**

- (a) For each Debenture exchanged, registered, transferred or cancelled, 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 Company), and payment of such charges and reimbursement of the Trustee or other Registrar for any stamp taxes or governmental or other charges required to be paid shall be made by the party requesting such exchange, registration, transfer or discharge from registration as a condition precedent thereto. Notwithstanding the foregoing provisions, no charge shall be made to a Holder hereunder:
- i. 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;
  - ii. for any exchange of any interim or temporary Debenture or interim certificate that has been issued under Section 2.7 for a Certificated Debenture;

- iii. for any exchange of a Global Debenture as contemplated in Section 3.2(a); or
- iv. for any exchange of any Debenture resulting from a partial redemption under Section 4.5.

### **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 (including any Global Debenture or Book-Based Debenture) 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 Debenture free from all equities or rights of set-off or counterclaim between the Company and the original or any intermediate Holder thereof and all Persons may act accordingly and the receipt of any such registered Holder (including by the Depository or its nominee in the case of a Global Debenture or Book-Based Debenture) for any such principal, premium or interest shall be a good discharge to the Company and/or the Trustee and any Registrar for the same and none of the Company, the Trustee nor any other Registrar 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, and the receipt by any one of such Holders therefor shall be a valid discharge, to the Trustee, any Registrar and to the Company.
- (d) In the case of the death of one or more joint Holders of any Certificated Debenture, the principal, premium, if any, and interest from time to time payable thereon may upon satisfaction of such reasonable requirements as the Trustee may prescribe, 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 Company.

## **ARTICLE 4 REDEMPTION AND PURCHASE**

### **4.1 Redemption of Debentures**

Debentures may be redeemed before the Maturity Date, in whole at any time or in part from time to time, at the option of the Company and in accordance with and subject to the provisions set out in this Indenture, including those relating to the payment of any required redemption price (“**Redemption Price**”).



## 4.2 Optional Redemption

- (a) The Debentures will not be redeemable at the Company's option prior to June 10, 2016.
- (b) On or after June 10, 2016, the Company may on any one or more occasions, redeem all or a part of the Debentures upon not less than 30 nor more than 60 days' notice, at a Redemption Price equal to par (representing 100% of the principal amount) plus accrued and unpaid interest, if any, on the Debentures redeemed, to the applicable Redemption Date.
- (c) Nothing herein shall nor shall be deemed to relieve the Company from the obligation to pay interest on any date interest is due that is occurring after the giving of notice of redemption and before the Redemption Date (as defined below).

## 4.3 Mandatory Redemption

The Company is not required to make mandatory redemption or sinking fund payments with respect to the Debentures.

## 4.4 Places of Payment

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

## 4.5 Partial Redemption

- (a) If less than all of the Debentures are to be redeemed at any time, the Trustee will select Debentures for redemption on a *pro rata* basis, or based on a method that most nearly approximates a *pro rata* selection as the Trustee deems fair and appropriate in accordance with standard industry practice, subject to the approval of the Exchange. Subject to the foregoing, Debentures or portions of Debentures the Trustee selects for redemption shall be in amounts of \$1,000 or a multiple of \$1,000 in excess thereof.
- (b) If Debentures are to be redeemed in part only, the Redemption Notice that relates to such Debentures will state the portion of the principal amount of such Debentures that is to be redeemed. 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, together with interest accrued to but excluding the Redemption Date (as defined below), the Company shall execute and the Trustee shall Authenticate and deliver without charge to the Holder thereof or upon the Holder's order one or more new Debentures for the unredeemed part of the principal amount of the Debentures so surrendered or, with respect to Global Debentures, the Trustee shall make notations on the Global Debentures 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.

#### 4.6 Notice of Redemption

Notice of redemption (the “**Redemption Notice**”) of any Debentures shall be given to the Holders of the Debentures so to be redeemed 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 16.2; provided that Redemption Notices in respect of optional redemptions of Debentures may be mailed more than 60 days prior to a Redemption Date if the Redemption Notice is issued in connection with a defeasance of the relevant Debentures or a satisfaction and discharge of this Indenture. Every such Redemption 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 which are to be redeemed shall cease to be payable from and after payment on 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 Debentures which are to be redeemed (as are registered in the name of such Holder);
- (b) 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 Global Debentures, that the redemption will take place in such manner as may be agreed upon by the Depository, the Trustee and the Company; 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.

Notwithstanding Section 16.2, in the event that all Debentures to be redeemed are Global Debentures, publication of the Redemption Notice shall not be required.

#### 4.7 Debentures Due on Redemption Dates

Upon a Redemption Notice having been given as provided in Section 4.6, all the Debentures so called for redemption or the principal amount to be redeemed of the Debentures called for redemption, as the case may be, shall thereupon be and become due and payable at the Redemption Price, together with accrued interest to but excluding the Redemption Date, on the Redemption Date specified in such notice, in the same manner and with the same effect as if it were the Maturity Date specified in such Debentures, anything therein or herein to the contrary notwithstanding. From and after such Redemption Date, if the monies necessary to redeem such Debentures shall have been deposited as provided in Section 4.8 and affidavits or other proof satisfactory to the Trustee as to the publication and/or mailing of such Redemption Notices shall have been lodged with it, interest upon the Debentures shall cease to accrue. 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.



#### **4.8 Deposit of Redemption Monies**

- (a) Upon Debentures being called for redemption, the Company shall deposit with the Trustee or any Paying Agent to the order of the Trustee, on or before 11:00 a.m. (Toronto time) on the Business Day immediately prior to the Redemption Date specified in the Redemption Notice, such sums of money in immediately available funds as may be sufficient to pay the Redemption Price of the Debentures so called for redemption, plus accrued and unpaid interest thereon up to but excluding the Redemption Date, less any taxes required by law to be deducted or withheld therefrom. The Company shall also deposit with the Trustee a sum of money sufficient to pay any charges or expenses which may be incurred by the Trustee in connection with such redemption. Every such deposit shall be irrevocable. From the sums so deposited, the Trustee shall pay or cause to be paid, to the Holders of such 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.
- (b) Payment of funds to the Trustee upon redemption of Debentures shall be made by electronic transfer or certified cheque or pursuant to such other arrangements for the provision of funds as may be agreed between the Company and the Trustee in order to effect such payment hereunder.

#### **4.9 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 specified on the Redemption Notice accept payment of the redemption monies payable, or give such receipt therefor, if any, as the Trustee may require, such redemption monies may be set aside in trust, without interest, either in the deposit department of the Trustee or in a chartered bank, and such setting aside shall for all purposes be deemed a payment to the Holder of the sum so set aside and, to that extent, such Debenture shall thereafter not be considered as outstanding hereunder and the Holder thereof shall have no other right except to receive payment of the Redemption Price of such Debenture, plus any accrued but unpaid interest thereon to but excluding the Redemption Date, less any taxes required by law to be deducted or withheld, out of the monies so paid and deposited, upon surrender and delivery of such Holder's relevant Debenture. Subject to any applicable law regarding unclaimed property, in the event that any money required to be deposited hereunder with the Trustee or any Paying Agent on account of principal, premium, if any, or interest, if any, on Debentures issued hereunder shall remain so deposited for a period of six (6) years from the Redemption Date, then such monies, together with any accumulated interest thereon, shall at the end of such period be paid over or delivered over by the Trustee or such Paying Agent to the Company on its written demand, and thereupon the Trustee shall not be responsible to Holders of such Debentures for any amounts owing to them and subject to applicable law, thereafter the Holders of Debentures in respect of which such money was so repaid to the Company shall have no rights in respect thereof except to obtain payment of the money due from the Company, 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 (6) years after the Redemption Date to the Company upon receipt from the Company, or one of its Subsidiaries, of an unconditional letter of credit from a Canadian



chartered bank in an amount equal to or in excess of the amount of the remaining funds. If the remaining funds are paid to the Company prior to the expiry of six (6) years after the Redemption Date, and such funds or any portion thereof are claimed after the date of such payment of the remaining funds to the Company but prior to six (6) years after the Redemption Date, then the Trustee shall immediately provide to the Company written notice of such claim and the Company shall promptly deposit with the Trustee funds in the amount necessary to satisfy such claim.

#### **4.10 Cancellation of Debentures Redeemed**

Subject to the provisions of Sections 4.5 and 4.11 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.

#### **4.11 Purchase of Debentures by the Company**

- (a) Unless otherwise specifically provided, the Company may purchase Debentures in the market or by tender or by private contract, at any price; provided that, if an Event of Default has occurred and is continuing, the Company will not have the right to purchase the Debentures by private contract. All Debentures so purchased shall be delivered to the Trustee and 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 Company is prepared to accept, the Debentures to be purchased by the Company shall be selected by the Trustee on a *pro rata* basis which the Trustee considers appropriate (in denominations of \$1,000 and any integral multiple thereof), from the Debentures tendered by each tendering Holder 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 Holders, 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 or Debentures so surrendered or, with respect to a Global Debenture, the Trustee shall make notations on the Global Debenture of the principal amount thereof so purchased.

### **ARTICLE 5 SECURITY AND RANKING OF DEBENTURES**

#### **5.1 Charge**

In consideration of the premises herein contained and one (\$1.00) dollar paid by the Trustee to the Company (the receipt and sufficiency of which is hereby acknowledged), and to secure the due payment of the principal and interest and all other moneys from time to time owing pursuant to the Debentures or on the security of this Indenture, and the performance by the Company of the obligations contained herein, the Company hereby mortgages, assigns, pledges, transfers, and



charges in favour of the Trustee, for and on behalf of each Holder, a continuing security interest in and to the Collateral. The Company and the Trustee hereby acknowledge that: (i) value has been given; (ii) the Company has rights in the Collateral; and (iii) they have not agreed to postpone the time of attachment of the security interest granted hereunder.

## **5.2 Exceptions re Leaseholds and Contractual Rights**

The last day of the term of any lease, sublease or agreement therefor is specifically excepted from the Lien created by this Indenture, but the Company agrees to stand possessed of such last day in trust for such person as the Trustee may direct and the Company shall assign and dispose thereof in accordance with such direction. To the extent that the Lien created by this Indenture in any contractual rights would constitute a breach or cause the acceleration of such contract, said Lien shall not be granted hereunder but the Company shall hold its interest therein in trust for the Trustee, shall use its best efforts to obtain the appropriate consents to the attachment of said Lien and shall grant a Lien in such contractual rights to the Trustee forthwith upon obtaining the appropriate consents to the attachment of said Lien.

## **5.3 Security**

The Holders, by acceptance of the Debentures, authorize the Trustee to enter into the Collateral Documents and to take such action as may be necessary or appropriate to effectuate the security as provided therein, and hereby appoint the Trustee as the Holders' attorney-in-fact for any and all such purposes.

## **5.4 Priority of Security**

Subject to any Specified Priority Encumbrances that may be incurred during the term of this Indenture and the Debentures, the Lien granted pursuant to the terms of this Indenture will be a first ranking Lien over the Collateral. The Collateral Documents are for the equal and rateable benefit and security of all Holders of Debentures and the Trustee. For greater certainty, in the event that the Company should incur any additional indebtedness pursuant to a Specified Priority Encumbrance, the subordination provisions of Section 5.16 shall apply.

## **5.5 Supplemental Documents**

The Company shall, at the Company's cost and expense from time to time, execute and do or cause to be executed and done all deeds, documents, and such further agreements supplemental hereto, which shall thereafter form part hereof, which, in the opinion of Counsel, are necessary or advisable for giving the Trustee a valid mortgage, charge, pledge and security in favour of the Trustee upon any Property now owned or hereafter acquired by the Company and falling within the description of the Collateral, for correcting or amplifying the description of any Collateral hereby charged or secured or intended so to be, for curing any defect in the execution or delivery of this Indenture, or for any other purpose not inconsistent with the terms of this Indenture.

## **5.6 Continuing Security**

Any and all payments made at any time in respect of the obligations under the Debentures or secured by this Indenture and the proceeds realized from any securities held therefor (including

monies realized from the enforcement of this Indenture or the Debentures) may be applied (and reapplied from time to time notwithstanding any previous application) to such part or parts of the obligations under the Debentures or as may be secured by this Indenture as the Trustee sees fit. The Company shall be accountable for any deficiency and the Trustee shall be accountable for any surplus.

### **5.7 Additional Security**

The Company shall deliver to the Trustee any other security documentation, including any and all estoppels, acknowledgements, consents, subordinations, postponements or priority or inter-creditor agreements, which Counsel has advised the Trustee are necessary.

### **5.8 Negative Pledge**

The Company shall not be at liberty to and shall not, except in respect of the Permitted Liens, and subject to Section 8.11, create or incur any security of any kind whatsoever upon the Collateral without granting to the Holders then outstanding additional security so that the Holders shall remain in the same position as if no further security had been created or incurred.

### **5.9 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 Company, its creditors and the Holders of the Debentures, the obligation of the Company, 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 Company, other than the holders of the Specified Priority Encumbrance, nor shall anything herein or therein prevent the Trustee or the Holder of any Debenture from exercising all remedies otherwise permitted by applicable law or under the Indenture upon Default under this Indenture, subject to the rights, if any, of the holders of Specified Priority Encumbrance.

### **5.10 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 Company to make any payment of principal of, premium, if any, or interest on the Debentures.

### **5.11 Knowledge of Trustee**

Notwithstanding the provisions of this Article 5 or any provision in this Indenture or in the Debentures, the Trustee will not be charged with knowledge of any Specified Priority Encumbrance or of any default in the payment thereof, or of the existence of 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 Company or any Holder.



## **5.12 Registration and Counsel's Opinion**

The Company shall, from time to time, at the expense of the Company:

- (a) record, file, enter or register or cause to be recorded, filed, entered or registered, this Indenture, all other Collateral Documents, financing statements and all other instruments without delay, where necessary or advisable as determined by Counsel, in perfecting the Liens and the rights of the Holders of Debentures and the Trustee hereunder or thereunder for such action to be taken, including without limitation, under the provisions of all applicable personal property security statutes;
- (b) renew or cause to be renewed the recordings, filings or registrations made in respect of the Collateral Documents from time to time as and when required to maintain the perfection and priority of the Liens granted hereunder and pursuant to the Collateral Documents. The Company agrees that the Holders shall have the right to require the form of this Indenture be amended to reflect any changes in laws, whether arising as a result of statutory amendments, court decisions or otherwise, in order to confer upon the Holders or the Trustee, the Liens intended to be created hereby; and
- (c) deliver or exhibit to the Trustee, on demand, certificates or other forms of confirmation acceptable to the Trustee establishing such registration or recording, and renew the same from time to time, if such renewal is necessary in Counsel's opinion to preserve or protect the Liens created pursuant to the Collateral Documents.

If the Company fails to perform its obligations under this Section 5.12, the Trustee may, in its discretion, perform any such obligation capable of being performed by it at the expense of the Company.

## **5.13 Appointment in the Event of Default**

The Company hereby irrevocably appoints, upon the occurrence of any Event of Default, which has not been waived, the Trustee or the Receiver, as the case may be, with full power of substitution, to be the attorney of the Company for and in the name of the Company to sign, endorse or execute under seal or otherwise any deeds, documents, transfers, cheques, instruments, demands, assignments, assurances or consents that the Company is obliged to sign, endorse or execute and generally to use the name of the Company and to do all things as may be necessary or incidental to the exercise of all or any of the powers conferred on the Trustee or a Receiver, as the case may be, pursuant to this Indenture. This power of attorney, being coupled with an interest, is irrevocable.

## **5.14 Defeasance**

Upon payment by the Company to the Holders of all amounts owing under the Debentures, including but not limited to principal and interest, and all other money secured by this Indenture and provided the Security granted herein constituted shall not have become enforceable, then the Trustee shall, at the cost of the Company, within thirty (30) days of being requested in writing by the Company, execute, acknowledge or deliver to the Company a full release and reconveyance

of the Collateral or such parts thereof as shall not have been disposed under the powers herein contained and such further and other documents reasonably requested by the Company.

### **5.15 Notification**

Before or after an Event of Default has occurred, the Trustee may notify any debtor of the Company on an intangible, chattel paper, or account, or any obligor on an instrument (“**Account Company**”) of the security interest created hereby, and at any time after an Event of Default has occurred and is continuing, the Trustee may notify any Account Company to make all payments on the Collateral to the Trustee. The Company acknowledges that, after an Event of Default has occurred and is continuing (provided such Event of Default has not been waived), the proceeds of all sales, or any payments on or other proceeds of the Collateral, including but not limited to payments on, or other proceeds of, the Collateral received by the Company from any Account Company, whether before or after notification to such Account Company and whether before or after Default under this Indenture will, subject to the provisions of Section 5.16 and any Specified Property Encumbrance that may at such time have priority over the Debentures, be received and held by the Company in trust for the Trustee and will be turned over to the Trustee upon request, and the Company will not commingle any proceeds of or payments on the Collateral with any of the Company’s funds or property, but will hold them separate and apart.

### **5.16 Subordination**

In the event that any of the Company or its Subsidiaries should incur any additional indebtedness pursuant to a Specified Priority Encumbrance under Section 8.11, the following provisions shall apply:

- (a) The indebtedness evidenced by any Debentures issued hereunder, including the principal thereof and interest thereon, shall be subordinate and subject in right of payment, to the extent and in the manner hereinafter set forth, to the prior payment in full, of all Specified Priority Encumbrances and each Holder of Debentures by its acceptance hereof agrees to and shall be bound by the provisions of this Section 5.16.
- (b) Subject to the prior payment in full in cash of any Specified Priority Encumbrances, as applicable, the Holders of the Debentures shall be subrogated to the rights of the holders of all Specified Priority Encumbrances to receive payments or distributions of assets of the Company.
- (c) The Trustee, for itself and on behalf of each of the Holders of Debentures, hereby waives any and all rights to require holders of Specified Priority Encumbrances to pursue or exhaust any rights, remedies or recourses with respect to the Company or any property or assets constituting security for any Specified Priority Encumbrances or in any other manner to require the marshalling of property, assets or security in connection with the exercise by holders of Specified Priority Encumbrances of any rights, remedies or recourses available to them.
- (d) Nothing contained in this Section 5.16 or elsewhere in this Indenture or in the Debentures is intended to or shall impair, as between the Company and the Holders of the



Debentures, the obligation of the Company, which is absolute and unconditional, to pay to the Holders of the Debentures the principal of 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, 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 Section 5.16 of the holders of Specified Priority Encumbrances.

- (e) Upon any Specified Priority Encumbrances becoming due, whether at maturity or by lapse of time, acceleration or otherwise, all principal of and interest on all such Specified Priority Encumbrances shall first be paid in full in cash, or shall first have been duly provided for in cash, before any payment or distribution is made on account of principal of or interest on the Debentures.
- (f) In case of default with respect to any Specified Priority Encumbrances, no payment (by purchase or redemption of Debentures or otherwise) shall be made by the Company or the Trustee (with respect to any monies deposited with the Trustee for the purpose of payment of or on account of the Debentures) with respect to the principal of or interest on the Debentures and neither the Trustee nor the Holders of Debentures shall be entitled to demand, accelerate, institute proceedings for the collection of, or receive any payment or benefit on account of the Debentures after the happening of such a default and unless and until such default shall have been cured or waived or shall have ceased to exist, such payments shall be held in trust for the benefit of the holders of the Specified Priority Encumbrances or their representatives until all such Specified Priority Encumbrances shall have been paid in full.
- (g) 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 Section 5.16 and appoints the Trustee his attorney-in-fact for any and all such purposes. Upon the request of the Company, and upon being furnished an Officers' Certificate stating that one or more named Persons are holders of Specified Priority Encumbrances, or the representatives of such holders, and specifying the amount and nature of such Specified Priority Encumbrances, the Trustee shall enter into a written agreement or agreements with the Company and the Person or Persons named in such Officers' Certificate providing that (i) such Person or Persons are entitled to all the rights and benefits of this Section 5.16; and (ii) the provisions of this Section 5.16 shall not be amended without the consent of such holder of Specified Priority Encumbrances. Such agreement shall be conclusive evidence that the indebtedness specified therein is a Specified Priority Encumbrance; however, nothing herein shall impair the rights of any holder of a Specified Priority Encumbrance who has not entered into such an agreement.
- (h) No right of any present or future holder of any Specified Priority Encumbrances 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 Company or by any non-compliance by the Company 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.



**ARTICLE 6**  
**POSSESSION, USE AND RELEASE OF COLLATERAL**

**6.1 Possession Until Default**

Until the Security hereby constituted shall have become enforceable and the Trustee shall have determined or become bound to enforce the same, the Company shall be permitted in the same manner and to the same extent as if this Indenture had not been executed, but subject to the express terms hereof, to possess, operate, manage, use and enjoy its Property and to take and use the rents, income, profits and issues thereof fully and without let or hindrance on the part of the Trustee.

**6.2 Collection of Rents and Payments**

It is hereby expressly agreed that until the Security hereby constituted shall have become enforceable and the Trustee shall have determined or become bound to enforce the same, the Company shall be permitted to collect and receive the rents or payments payable under any of its leases or agreements, if any, as and when the same shall become due and payable according to the terms of such lease or agreements, unless and until the Trustee shall have given a written direction to the contrary to the lessee thereunder, its successors or assigns; provided that until the Security hereby constituted shall have become enforceable and the Trustee shall have determined or become bound to enforce the same, the Trustee shall give such a direction only when, and shall direct the payment of rents and payments only to the extent that the Trustee in its discretion considers it necessary so to do in order to assure the payment and satisfaction of interest and principal repayment obligations upon the Debentures outstanding; and the balance, if any, of the rents or payments received by the Trustee but not required for such purpose shall be paid to the Company. Any such direction given by the Trustee may be withdrawn or revoked and thereafter a new direction may be given pursuant to the provisions of this Section 6.2.

**6.3 Discretion of Trustee as to Dealing with Collateral**

Whether or not the Security hereby constituted shall have become enforceable and the Trustee shall have determined or become bound to enforce the same, the Trustee may at any time and from time to time upon the application (evidenced by certified resolution of the directors of the Company) and at the cost of the Company, but only if and so far as in the opinion of the Trustee, relying on the Opinion of Counsel the interests of the Holders will not be prejudiced thereby, do or concur in doing all or any of the following things:

- (a) sell or grant options to purchase or exchange or surrender or grant easements or rights in the nature of easements in respect of any part or parts of the Collateral for such amount and type of consideration and on such terms as the Trustee may approve;
- (b) lease any of the Collateral for any term and either in possession or reversion or on any conditions and either with or without payment of a premium;



- (c) assent to any modification of or change in any lease or in any other agreements, licenses, privileges, franchises, concessions and contracts forming, or which may be subsisting in respect of, any part of the Collateral;
- (d) permit the Company to receive any of the Collateral or the documents of title thereto or an undertaking to deal with the same in a specified manner;
- (e) settle, adjust, refer to arbitration, compromise and arrange all accounts, reckonings, controversies, questions, claims and demands whatsoever in relation to any of the Collateral;
- (f) execute and do all such contracts, deeds, documents and things and bring, defend and abandon all such actions, suits and proceedings in relation to any of the Collateral for purposes not inconsistent with the provisions of this Indenture as may seem expedient; and
- (g) generally act in relation to the Collateral in such manner and on such terms as Counsel has advised the Trustee are expedient in the interests of the Holders.

#### **6.4 Generally as to Releases**

The powers, rights and discretions conferred upon the Trustee and the Company by this Article 6 shall be deemed to be several and not dependent on each other and each such power, right or discretion shall accordingly be construed as complete in itself and not by reference to any other such right, power or discretion; and the exercise of any one or more of such powers, rights and discretions, or any combination of them, from time to time shall not be deemed to exhaust the right of the Trustee or the Company to exercise such powers, rights or discretions, or combination of them, thereafter from time to time.

#### **6.5 Protection of Purchasers**

It is hereby declared and agreed that no purchaser or purchasers from, or other persons having dealings with the Company or the Trustee or their successors or assigns shall be obliged to enquire into the necessity, expediency, authority or regularity of or for any action or concurrence on the part of the Trustee or any release or other instrument taken or given under the provisions of this Article 6 nor be obliged to enquire into the sufficiency of the performance by the Company of any of the conditions upon which it is or may be entitled to any such action or concurrence or release or other instrument.

#### **6.6 Liability of Trustee**

Neither the Trustee nor any Receiver shall: (i) be responsible or liable for any debts contracted by it, for damages to persons or property, for salaries or for non-fulfilment of contracts during any period when the Trustee or any Receiver shall manage or be in possession of the Collateral; (ii) be liable to account as mortgagee in possession or for anything except actual receipts or be liable for any loss on realization or for any default or omission for which a mortgagee in possession may be liable; (iii) be bound to do, observe or perform or to see to the observance or performance by the Company of any obligations or covenants imposed upon the Company; or

(iv) in the case of any chattel paper, security or instrument, be obligated to preserve rights against any other persons. The Company hereby waives any provision of applicable law permitted to be waived by it which imposes higher or greater obligations upon the Trustee or any Receiver than aforesaid.

#### **6.7 Mandatory Provisions of Applicable Law**

Subject to Section 6.8, all rights, remedies and powers provided herein may be exercised only to the extent that the exercise thereof does not violate any mandatory provision of applicable law and all provisions of this Indenture are intended to be subject to all mandatory provisions of applicable law which may be controlling in the premises and to be limited to the extent necessary so that they will not render this Indenture invalid, unenforceable or not entitled to be recorded, registered or filed under any mandatory provisions of applicable law. Subject to Section 6.8, if any mandatory provision of applicable law shall provide for different or additional requirements than or to those specified herein as prerequisites to or incidental to the realization, sale or foreclosure of the Collateral or any part thereof, then, to that extent, such laws shall be deemed to have been set forth herein at length, and any conflicting provisions hereof shall be disregarded, and the method of realization, sale or foreclosure of the Collateral required by any such laws shall, insofar as may be necessary, be substituted herein as the method of realization, sale or foreclosure in lieu of that set forth above. Any provision hereof contrary to mandatory provisions of applicable law shall be deemed to be ineffective and shall be severable from and not invalidate any other provision of this Indenture.

#### **6.8 Waivers of Applicable Laws**

To the extent not prohibited by applicable law, the Company hereby waives its rights, if any, under all provisions of applicable law that would in any manner, limit, restrict or otherwise affect the Trustee's rights and remedies hereunder or impose any additional obligations on the Trustee. The Company waives the right to receive any financing statement or any verification statement issued by any registry that confirms registration of a financing statement relating to this Indenture.

#### **6.9 Further Assurances**

The Company hereby covenants and agrees that it will at all times do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, deeds, mortgages, transfers, assignments and assurances as the Trustee may reasonably require for the better accomplishing and effectuating the purpose of this Indenture, including the execution and delivery of indentures supplemental hereto more particularly describing the Collateral or to correct or amplify the description of the Collateral or to better assure, convey and confirm unto the Trustee any of the Collateral. Upon the execution of any supplemental indenture under this Section 6.9, this Indenture shall be modified in accordance therewith, and each such supplemental indenture shall form part of this Indenture for all purposes.



## **ARTICLE 7 REPRESENTATIONS AND WARRANTIES**

The Company represents and warrants to the Trustee for the benefit of the Trustee and the Holders of Debentures that as of the date hereof:

### **7.1 Existence and Qualification**

The Company (i) has been duly formed, incorporated, amalgamated, merged, created or continued, as the case may be, and is validly subsisting and in good standing as a corporation under the laws of its jurisdiction of formation, amalgamation, merger or continuance, as the case may be, and (ii) except as could not reasonably be expected to have a Material Adverse Effect, is duly qualified and has all required Material Licenses to carry on its business in each jurisdiction in which the nature of its business requires qualification.

### **7.2 Power and Authority**

The Company has the corporate power and authority to enter into, and to exercise its rights and perform its obligations under, this Indenture, the Debentures and the Collateral Documents. The Company has the corporate power and authority to own its Property and carry on its business as currently conducted and as currently proposed to be conducted by it.

### **7.3 Execution, Delivery, Performance and Enforceability of Documents**

The execution, delivery and performance of the Indenture has been duly authorized by all corporate actions required, and has been duly executed and delivered. The Indenture constitutes the legal, valid and binding obligation of the Company, enforceable against it in accordance with its terms (except, in any case, as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally and by principles of equity).

### **7.4 Indenture Documents Comply with Applicable Laws, Organizational Documents and Contractual Obligations**

None of the execution or delivery of, the consummation of the transactions contemplated in, or compliance with the terms, conditions and provisions of the Indenture or related documents by the Company, conflicts with or results in any breach of, or constitutes a default under or contravention of, any organizational documents of the Company, any applicable law, or any Material Contract or Material License, except for any conflict, breach, default or contravention which could not reasonably be expected to have a Material Adverse Effect, or results or will result in the creation or imposition of any Lien upon any of its Property except for Permitted Liens.

### **7.5 Consent Respecting Indenture Documents**

The Company has obtained, made or taken all consents, approvals, authorizations, declarations, registrations, filings, notices and other actions whatsoever required by any governmental authority (except for registrations or filings which may be required in respect of the Collateral

Documents) to enable it to execute and deliver the Indenture and related documents to which it is a party and to consummate the transactions contemplated in the Indenture, save and except for the final approval of the Exchange in respect of the listing of the Debentures thereupon.

#### **7.6 Taxes**

The Company has paid or made adequate provision for the payment of all Taxes which are due and payable by it, including interest and penalties, or has accrued such amounts in its financial statements for the payment of such Taxes except for charges, fees or dues which are not material in amount, not delinquent or if delinquent are being contested in good faith and by appropriate proceedings satisfactory to the Trustee, and in respect of which non-payment would not, individually or in the aggregate, have or reasonably be expected to have a Material Adverse Effect.

#### **7.7 Absence of Litigation**

There are no actions, suits or proceedings pending or, to its knowledge, threatened against or affecting the Company which could reasonably be expected to have a Material Adverse Effect.

#### **7.8 Title to Assets**

The Company has good title to, or the right to use, its assets, free and clear of all Liens except Permitted Liens.

#### **7.9 Insurance**

The Company has maintained and maintains insurance which is in full force and effect and complies with all of the requirements of this Indenture.

#### **7.10 Compliance with Laws**

The Company is not in default under any applicable law, including any enacted or adopted for the regulation, protection and conservation of the natural environment except where default thereunder, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

#### **7.11 No Default or Event of Default**

No Default or Event of Default has occurred which is continuing.

#### **7.12 Financial Statements**

All of the quarterly and annual financial statements which have been issued by the Company prior to the date hereof are complete in all material respects and such financial statements fairly present the results of operations and financial position of the Company and its Subsidiaries as of the dates referred to therein and have been prepared in accordance with IFRS or, where applicable, Canadian generally accepted accounting principles. The Company does not have any liabilities (contingent or other) or other obligations of the type required to be disclosed in



accordance with IFRS which are not fully disclosed on the financial statements issued by the Company prior to the date hereof, other than liabilities and obligations incurred in the ordinary course of its business.

### **7.13 No Material Adverse Effect**

Since the date of the Company's most recent annual audited financial statements and its most recent unaudited financial statements, there has been no condition (financial or otherwise), event or change in its business, liabilities, operations, results of operations, assets or prospects which constitutes or has, or could reasonably be expected to constitute or have, a Material Adverse Effect.

### **7.14 Debt**

The Company does not have any debt as of the date of this Indenture, except: (i) trade payables in the ordinary course of business; (ii) the Debentures being issued under this Indenture; and (iii) certain indebtedness assumed in connection with the VCI Acquisition, which debt will be cancelled immediately upon the closing of the VCI Acquisition.

### **7.15 Collateral Documents**

The Collateral Documents, upon execution and delivery thereof by the parties thereto, will create in favour of the Trustee, for the ratable benefit of the Holders of Debentures, a legal, valid and enforceable Lien in the Collateral and (i) if and when any Collateral which is a security for the purposes of the *Securities Transfer Act* (Ontario) is required to be and is delivered to the Trustee in Ontario, together with an effective endorsement, the Trustee shall have a fully perfected first priority Lien on and in, all right, title and interest of the Company, any obligor in any such security, in each case prior and superior in right to any Liens on such security to which the *Personal Property Security Act* (Ontario) applies, and (ii) when financing statements in appropriate form have been duly filed in the offices where such filing is required to perfect such Liens created under the Collateral Documents (other than with respect to any security as specified in subsection (i)) will constitute a fully perfected Lien on and in, all right, title and interest of the Company to the extent perfection can be obtained by filing *Personal Property Security Act* (Ontario) or similar financing statements, in each case prior and superior in right to any other Person, other than with respect to Permitted Liens.

## **ARTICLE 8 COVENANTS**

### **8.1 Payment of Debentures**

The Company shall promptly make all payments in respect of the Debentures on the dates and in the manner provided in the Debentures and this Indenture. The Company shall, to the fullest extent permitted by law, pay interest in immediately available funds on overdue principal amount and interest at the annual rate borne by the Debentures, which interest shall accrue from the date such overdue amount was originally due to the date payment of such amount, including interest thereon, has been made or duly provided for. All such interest shall be payable on demand.

## **8.2 Further Instruments and Acts**

Upon request of the Trustee, the Company will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of this Indenture.

## **8.3 Maintenance of Corporate Existence**

The Company will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence.

## **8.4 Subsidiaries**

The Company will directly maintain ownership of all issued and outstanding securities of all of Subsidiaries currently owned by it and will use commercially reasonable efforts to close as expeditiously as possible the VCI Acquisition.

## **8.5 Maintenance of Office or Agency**

The Company will maintain an office or agency of the Trustee, Registrar and Paying Agent where Debentures may be presented or surrendered for payment and where Debentures may be surrendered for registration of transfer, purchase or redemption. The Corporate Trust Office shall be the office or agency for all of the aforesaid purposes. The Company shall give prompt written notice to the Trustee of the location, and of any change in the location, of any such office or agency (other than a change in the location of the office of the Trustee). If at any time the Company fails to maintain any such required office or agency or fails to furnish the Trustee with the address thereof, such presentations and surrenders may be made or served at the address of the Trustee set forth in Section 16.1. The Company may also from time to time designate one or more other offices or agencies where the Debentures may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; provided, however, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency.

## **8.6 Withholding Matters**

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



behalf of the Company, forthwith remits such withheld amount to the relevant governmental authority or agency, the amount of any such deduction or withholding will be considered an amount paid in satisfaction of the Company's obligations under the Debentures. There is no obligation on the Company to gross-up or pay additional amounts to a Holder in respect of such deductions or withholdings. The Trustee shall provide the Company with copies of receipts or other communications relating to the remittance of such withheld amount or the filing of any forms received from such government authority or agency promptly after receipt thereof.

#### **8.7 Notice to Trustee of Default**

The Company will deliver to the Trustee, within five (5) Business Days after becoming aware of the occurrence of a Default or Event of Default, written notice thereof.

#### **8.8 Obtain Exchange Listing**

The Company will use commercially reasonable efforts to effect a public listing of the Debentures on the Exchange no later than 120 days after the Issue Date, subject to satisfactory receipt of all consents, approvals and other requirements as may be imposed by the applicable stock exchange or regulator.

#### **8.9 Compliance Certificates**

The Company shall deliver to the Trustee, within 120 days after the end of each fiscal year of the Company (beginning with the fiscal year ending August 31, 2014), an Officers' Certificate as to the signers' knowledge of the Company's compliance with all conditions and covenants on its part contained in this Indenture and stating whether or not the signers know of any Default or Event of Default. If such signers know of such a Default or Event of Default, the Officers' Certificate shall describe the Default or Event of Default and the efforts to remedy the same. For the purposes of this Section 8.9, compliance shall be determined without regard to any grace period or requirement of notice provided pursuant to the terms of this Indenture.

#### **8.10 Provision of Reports and Financial Statements**

The Company will provide the Trustee and the Holders, a copy of all financial statements, whether annual or quarterly, of the Company and the report of the Company's auditors thereon (in the case of annual financial statements) and the associated "Management's Discussion and Analysis" (collectively, "**Financial Reports**") at the same time as they are required to be filed under Applicable Securities Legislation. Any such obligation to provide such Financial Reports shall continue in the event that the Company ceases to be a "reporting issuer" (or its equivalent) as if it had continued to be a "reporting issuer" (or its equivalent). Notwithstanding the foregoing, all Financial Reports will be deemed to have been provided to the Trustee and the Holders once filed on the System for Electronic Document Analysis and Retrieval (SEDAR) or any successor system thereto. For greater certainty, the Trustee shall have no obligation to participate in the preparation of, or to review or analyze, any such Financial Reports.

#### **8.11 Additional Indebtedness**

The Company may not and will cause its Subsidiaries not to incur any additional indebtedness that may rank equally or in priority to the indebtedness, liabilities and obligations of the Company under the Debentures and this Indenture unless:

- (a) The Company or the Subsidiaries, as applicable, has obtained the prior written consent of the Holders pursuant to Section 15.9;
- (b) Such indebtedness is incurred solely for the purpose of the acquisition of real property; or
- (c) Such indebtedness is incurred in connection with (A) any operating facility or any other similar facility used in the ordinary course of business or (B) any surety or other bonding arrangements to which the Company or the Subsidiaries may be a party (collectively, subsections 8.11(a), 8.11(b) and 8.11(c) are referred to as the “**Specified Priority Encumbrance**”).

## ARTICLE 9 DEFAULT AND REMEDIES

### 9.1 Events of Default

- (a) An "**Event of Default**" shall occur:
  - i. if the Company shall fail to pay when due the principal on the Debentures when the same becomes due and payable whether at the Maturity Date, upon redemption, acceleration or otherwise; or
  - ii. if the Company shall fail to pay an instalment of interest on any of the Debentures, which failure continues for five (5) Business Days after receipt by the Company of a notice specifying such failure; or
  - iii. if the Company shall fail to perform or observe any other term, covenant or agreement contained in the Debentures, this Indenture or the Collateral Documents for a period of thirty (30) days after the receipt by the Company of a Notice of Default specifying such failure; or
  - iv. if the Company directly, or through its Subsidiaries, ceases to operate or sells all or substantially all of its business and operation; or
  - v. upon the occurrence of an event of default under one or more mortgage, bond, indenture, loan agreement or other document evidencing indebtedness of the Company and such default (i) results in the acceleration of such indebtedness prior to its stated maturity; or (ii) constitutes a failure to make any payment with respect to any such indebtedness when due and payable after expiration of any applicable grace period; or



- vi. if the Company fails to pay one or more final judgement or judgements in an aggregate amount of \$100,000 or more and which judgements are not paid, discharged or stayed for a period of 60 days; or
- vii. if a writ of execution or attachment or similar process in respect of any judgment which, together with all other such writs of execution or attachment or similar process is, in the aggregate, in excess of \$100,000, is issued or levied against all or a substantial portion of the property of the Company in connection with any judgment against the Company and such writ, execution, attachment or similar process is not released, bonded, satisfied, discharged, vacated or stayed within 60 days after its entry, commencement or levy;
- viii. the Company pursuant to or within the meaning of any Bankruptcy Law:
  - (A) commences as a debtor a voluntary case or proceeding; or
  - (B) consents to the entry of an order for relief against it in an involuntary case or proceeding or the commencement of any case against it; or
  - (C) consents to the appointment of a Receiver of it or for all or substantially all of its Property; or
  - (D) makes a general assignment for the benefit of its creditors; or
  - (E) files a petition in bankruptcy or answer or consent seeking reorganization or relief; or
  - (F) consents to the filing of such a petition or the appointment of or taking possession by a Receiver; or
- ix. a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:
  - (A) grants relief against the Company in an involuntary case or proceeding or adjudicates the Company insolvent or bankrupt; or
  - (B) appoints a Receiver of the Company or for all or substantially all of the Property of the Company; or
  - (C) orders the winding up or liquidation of the Company;

and in each case the order or decree remains unstayed and in effect for 60 consecutive days. The term "**Bankruptcy Law**" means the *Bankruptcy and Insolvency Act* (Canada) (or any successor thereto) or the *Companies' Creditors Arrangement Act* (Canada) (or any successor thereto), or any similar Canadian federal or provincial, United States or foreign law for the relief of debtors, including without limitation any corporate statute providing for reorganization or similar matters. The term "**Receiver**" means any receiver

(interim or otherwise), trustee, assignee, liquidator, sequestrator or similar official under any Bankruptcy Law.

- (b) The Trustee shall not be charged with knowledge of any Event of Default unless written notice thereof shall have been given to the Trustee by the Company, a Paying Agent (if other than the Trustee), any Holder or any agent of any Holder.

## **9.2 Acceleration**

If an Event of Default (other than an Event of Default specified in clause (viii) or (ix) of Section 9.1(a)) occurs and is continuing with respect to the Company, the Trustee may, by notice to the Company in writing, or the Holders of at least 25% in aggregate principal amount of the Debentures then outstanding may, by notice in writing to the Company and the Trustee (in each case, a “**Notice of Default**”), declare the principal amount and accrued and unpaid interest, if any, through the date of declaration on all the Debentures to be immediately due and payable. Upon such a declaration, such principal amount and such accrued and unpaid interest, if any, shall be due and payable immediately. If an Event of Default specified in Sections 9.1(a)viii) or (ix) occurs in respect of the Company and is continuing, the principal amount and accrued but unpaid interest, if any, on all the Debentures shall become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holders of Debentures. The Holders of a majority in aggregate principal amount of the Debentures then outstanding by notice to the Trustee may rescind an acceleration and its consequences. No such rescission shall affect any subsequent Default or impair any right consequent thereto.

## **9.3 Other Remedies**

- (a) If an Event of Default occurs and is continuing, the Trustee may, but shall not be obligated to, pursue any available remedy under this Indenture, or by proceeding at law or in equity to collect payment of the principal amount and accrued and unpaid interest, if any, on the Debentures or to enforce the performance of any provision of the Debentures and this Indenture.
- (b) The Trustee may maintain a proceeding even if it does not possess any of the Debentures or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. No remedy is exclusive of any other remedy. All available remedies are cumulative to the extent permitted by applicable law.

## **9.4 Waiver of Defaults and Events of Default**

The Holders of 66 2/3% in aggregate principal amount of the Debentures then outstanding by notice to the Trustee may waive an existing Default or Event of Default and its consequences. When a Default or Event of Default is waived, it is cured and ceases.



## **9.5 Control by Majority**

The Holders of a majority in aggregate principal amount of the Debentures then outstanding may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on it. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture, that the Trustee relying on the advice of Counsel determines may be unduly prejudicial to the rights of another Holder or the Trustee, or that may involve the Trustee in personal liability unless the Trustee is offered funding and indemnity satisfactory to it; provided, however, that the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction.

## **9.6 Limitations on Suits**

- (a) A Holder may not pursue any remedy with respect to this Indenture or the Debentures (except actions for payment of overdue principal), unless:
- i. the Holder gives to the Trustee written notice of a continuing Event of Default;
  - ii. the Holders of at least 25% in aggregate principal amount of the then outstanding Debentures make a written request to the Trustee to pursue the remedy;
  - iii. such Holder or Holders offer to the Trustee reasonable funding and indemnity to the Trustee against any loss, liability or expense;
  - iv. the Trustee does not comply with the request within 60 days after receipt of the request and the offer of funding and indemnity; and
  - v. no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Holders of a majority in aggregate principal amount of the Debentures then outstanding.
- (b) No Holder of a Debenture shall have any right under any provision of this Indenture or the Debentures to affect, disturb, or prejudice the rights of another Holder of a Debenture or to obtain a preference or priority over another Holder of a Debenture.

## **9.7 Rights of Holders to Receive Payment**

Notwithstanding any other provision of this Indenture, the right of any Holder of a Debenture to receive payment of the principal amount, interest, and premium, if any, in respect of the Debentures held by such Holder, on or after the respective due dates expressed in the Debentures and this Indenture (whether upon redemption, repurchase, or otherwise), and to bring suit for the enforcement of any such payment on or after such respective due dates, is absolute and unconditional and shall not be impaired or affected without the consent of the Holders of the majority of the aggregate principal amount of Debentures then outstanding.

## **9.8 Collection Suit by Trustee**

If an Event of Default described in Sections 9.1(a)i to 9.1(a)vii occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Company or another obligor on the Debentures for the whole amount owing with respect to the Debentures and such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

## **9.9 Trustee may File Proofs of Claim**

The Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and the Holders allowed in any judicial proceedings relative to the Company (or any other obligor on the Debentures), its creditors or its property and shall be entitled and empowered to collect and receive any money or other property payable or deliverable on any such claims and to distribute the same, and any Receiver in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 11.8, and to the extent that such payment of the reasonable compensation, expenses, disbursements and advances in any such proceedings shall be denied for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other property which the Holders may be entitled to receive in such proceedings, whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to, or, on behalf of any Holder, to authorize, accept or adopt any plan of reorganization, arrangement, adjustment or composition affecting the Debentures or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

## **9.10 Priorities**

- (a) If the Trustee collects any money pursuant to the provisions of this Article 9, such money shall be applied, together with any other monies in the hands of the Trustee available for such purpose, as follows:
- i. first, to the Trustee for amounts due under Section 11.8;
  - ii. second, to the holders of any indebtedness that constitutes a Specified Priority Encumbrance, if applicable;
  - iii. third, to Holders for amounts due and unpaid on the Debentures for the principal amount, premium (if any) and interest, as applicable, rateably, without preference or priority of any kind, according to such respective amounts due and payable on the Holders' Debentures;



- iv. fourth, to such other Person or Persons, if any, to the extent entitled thereto; and
  - v. fifth, the balance, if any, to the Company.
- (b) The Trustee may fix a record date and payment date for any payment to Holders pursuant to this Section 9.10.

### **9.11 Distribution of Proceeds**

Payments to holders of Debentures pursuant to Section 9.10(a)ii shall be made as follows:

- (a) at least 15 days' notice of every such payment shall be given in the applicable manner provided in Section 16.2 specifying the time when and the place or places where the Debentures are to be presented and the amount of the payment and the application thereof as between principal and interest;
- (b) payment of any Debenture shall be made upon presentation thereof at any one of the places specified in such notice and any such Debenture thereby paid in full shall be surrendered, otherwise a memorandum of such payment shall be endorsed thereon; but the Trustee may in its discretion dispense with presentation and surrender for endorsement in any special case upon such indemnity being given as it shall deem sufficient;
- (c) from and after the date of payment specified in the notice, interest shall accrue only on the amount owing on each Debenture after giving credit for the amount of the payment specified in such notice unless the Debenture in respect of which such amount is owing be duly presented on or after the date so specified and payment of such amount not be made; and
- (d) the Trustee shall not be bound to apply or make any partial or interim payment of any moneys 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 9.10(a)i, 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 it deems fit until the money or the investments representing the same, with the income derived therefrom, together with any other moneys 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.

### **9.12 Judgment Against the Company**

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

### **9.13 Trustee Appointed Attorney**

The Company hereby irrevocably appoints the Trustee to be the attorney of the Company in the name and on behalf of the Company to execute any instruments and do any acts and things which the Company ought to execute and do, and has not executed or done following reasonable request, under the covenants and provisions contained in this Indenture and generally to use the name of the Company in the exercise of all or any of the powers hereby conferred on the Trustee, with full powers of substitution and revocation.

## **ARTICLE 10 ENFORCEMENT OF SECURITY**

### **10.1 Enforcement**

Any time after the Security has become enforceable the Trustee shall have the following rights and powers:

- (a) to enter, take possession of, inspect, collect, get in, manage or use all or any part of the Collateral with the power to exclude the Company therefrom and for such purpose to take any proceedings in the name of the Company or otherwise;
- (b) to preserve, maintain and repair the Collateral and make such replacements thereof and additions thereto as it deems advisable;
- (c) to collect any proceeds arising in respect of the Collateral;
- (d) to collect, realize upon or sell, dispose, lease the Collateral, either as a whole or in part;
- (e) to institute proceedings in any court of competent jurisdiction for the appointment of a receiver of the Collateral;
- (f) to institute proceedings in any court of competent jurisdiction for sale or foreclosure of the Collateral;
- (g) to file proofs of claim and other documents to establish claims in any proceeding relating to the Company;
- (h) to undertake any other remedy or proceeding authorized or permitted under the *Personal Property Security Act* (Ontario) or otherwise by law or equity;
- (i) to pay or otherwise satisfy in whole or in part any encumbrances which rank in priority to the security hereof; and
- (j) by instrument in writing, to appoint any person or persons (whether an officer or officers of the Trustee or not) as a receiver of the Collateral and to remove any receiver so appointed and appoint another or others in its stead.



The Security may be realized and the rights enforced by any remedy or in any manner permitted by this Indenture or by law or equity and no remedy for the realization of the Security hereof shall be exclusive of or dependent upon any other remedy and all or any remedies may from time to time be exercised independently or in any combination.

In addition to the remedies of the Trustee set forth above, the Trustee may, anytime after the Security has become enforceable:

- (k) require the Company, by notice in writing given by the Trustee to the Company, to disclose to the Trustee the location or locations of the Collateral;
- (l) repair, process, modify, complete or otherwise deal with the Collateral and prepare for the disposition of the Collateral, whether on the premises of the Company or otherwise;
- (m) carry on all or any part of the business of the Company and, to the exclusion of all others including the Company, enter upon, occupy and use all or any of the premises of the Company, buildings, plant, undertaking and other property of or used by the Company for such time as the Trustee sees fit, free of charge, and the Trustee shall not be liable for any act, omission or negligence in so doing or for any rent, charges, depreciation or damages incurred in connection therewith or resulting therefrom;
- (n) borrow for the purpose of carrying on the business of the Company or for the maintenance, preservation or protection of the Collateral and mortgage, charge, pledge or grant a security interest in the Collateral, whether or not in priority to the Lien granted hereunder, to secure repayment;
- (o) advance the Trustee's own money to the Company, in any case upon such terms as the Trustee may deem reasonable and upon the security hereof; and
- (p) demand, commence, continue or defend any judicial or administrative proceedings for the purpose of protecting, seizing, collecting, realizing or obtaining possession or payment of the Collateral, and give valid and effectual receipts and discharges therefor and compromise or give time for the payment or performance of all or any part of the accounts or any other obligation of any third party to the Company.

## **10.2 Disposition**

Without limiting the generality of the foregoing in connection with the exercise of remedies under this Article 10, anytime after the Security has become enforceable, it shall be lawful for the Trustee:

- (a) to make any sale, lease or other disposition of the Collateral either for cash or upon credit or partly for one and partly for the other upon such conditions as to terms of payment as are commercially reasonable;
- (b) to rescind or vary any contract for sale, lease or other disposition that the Trustee may have entered into pursuant hereto and resell, release or redispense of the Collateral with or under any of the powers conferred herein; and

- (c) to stop, suspend or adjourn any sale, lease or other disposition from time to time and to hold the same adjourned without further notice, provided same is done in a commercially reasonable manner.

Upon any such sale, lease or other disposition, the obligations of the Company under the Debentures or otherwise secured by this Indenture shall only be discharged to the extent of any money or other proceeds of realization actually collected or received by the Trustee or any receiver. The Company shall be accountable for any deficiency and the Trustee shall be accountable for any surplus. The Trustee may deliver to the purchaser or purchasers of the Collateral or any part thereof good and sufficient conveyances or deeds for the same free and clear of any claim by the Company. Provided that the terms of this Indenture have been complied with, the purchaser or lessee receiving any disposition of the Collateral or any part thereof need not inquire whether Default under this Indenture has actually occurred but may as to this and all other matters rely upon a statutory declaration of an officer of the Company, which declaration shall be conclusive evidence as between the Company and any such purchaser or lessee, and the purchaser or lessee need not look to the application of the purchase money, rent or other consideration given upon such sale, lease or other disposition, which shall not be affected by any irregularity of any nature or kind relating to the crystallizing or enforcing of the security hereof or the taking of possession of the Collateral or the sale, lease or other disposition thereof.

### **10.3 Powers of Receiver**

Any receiver appointed as aforesaid shall have the power without legal process:

- (a) to take possession of and to collect and get in and use the Collateral and for those purposes to enter the Collateral and to act whether by action, distress, or otherwise, in the name of the Company or otherwise as the receiver considers necessary;
- (b) to carry on or concur in carrying on the business of the Company and to employ and discharge any Persons upon the terms and at the remuneration the receiver considers proper;
- (c) to keep in repair the Collateral and to do all necessary things to carry on the business of the Company and to protect the Collateral;
- (d) to make any arrangement or compromise which the receiver considers expedient in the interests of the Trustee and to exchange any part or parts of the Collateral for any other property suitable for the purposes of the Company upon such terms as the receiver considers expedient, either with or without payment of money for equality of exchange or otherwise;
- (e) to borrow money to carry on the business of the Company or to maintain the whole or any part of the Collateral;
- (f) to sell or lease or concur in the selling or leasing of the whole or any part of the Collateral and in exercising the receiver's foregoing power to sell, or lease the Collateral the receiver may in his absolute discretion:



- i. sell or lease the whole or any part of the Collateral by public or private tender or by private contract;
- ii. grant options to purchase, lease or sublease;
- iii. grant rights of first refusal to purchase, lease or sublease;
- iv. complete any contract for sale, lease, sublease, option or right of first refusal;
- v. grant exclusive and multiple listing contracts for sale, lease or sublease;
- vi. sign and file subdivision, condominium, strata, consolidation or other plans;
- vii. effect a sale, lease or sublease by conveying in the name of or on behalf of the Company or otherwise;
- viii. make any stipulation as to title or conveyance or commencement of title;
- ix. rescind or vary any contract of sale, lease, sublease, option or right of first refusal;
- x. resell, release or sublease without being answerable for any loss occasioned thereby;
- xi. sell, lease or sublease on terms as to credit as shall appear to be most advantageous to the receiver and if a sale, lease or sublease is on credit the receiver shall not be accountable for any moneys until actually received; and
- xii. make any arrangements or compromises which the receiver shall think expedient;

(g) to exercise on behalf of the Trustee all of the rights and remedies herein granted to the Trustee;

and for the purposes aforesaid the Company hereby irrevocably empowers the receiver so appointed as its attorney to execute deeds, transfers, leases, subleases, contracts, agreements or other documents on its behalf and in its place under the receiver's seal and the same shall bind the Company and have the same effect as if such deeds were under the Company's common seal or to affix the Company's common seal or a duplicate thereof to any of the same.

#### **10.4 Validity of Sale**

The Company covenants and agrees with the Trustee that no purchaser, lessee or sublessee at any sale, lease or sublease purporting to be made by the receiver pursuant to the aforesaid power shall be bound to enquire whether any notice required hereunder has been given, or as to the

necessity or expediency of the sale or lease or the stipulations subject to which it is made, or otherwise as to the propriety of the sale, lease or sublease or regularity of its proceedings, or be affected by notice that no default has been made or continues, or notice that the sale or lease is otherwise unnecessary, improper or irregular, and despite any impropriety or irregularity, or notice thereof to any purchaser, the sale or lease as regards that purchaser, lessee or sublessor shall be deemed to be within the aforesaid powers and be valid accordingly and the remedy, if any, of the Company in respect of any impropriety or irregularity whatsoever in any sale, lease or sublease by the receiver shall be in damages only.

### **10.5 Receiver Agent of Company**

Any receiver appointed by the Trustee shall act as agent for the Trustee for the purposes of taking possession of the Collateral, but otherwise and for all other purposes (except as provided below), as agent for the Company. The receiver may sell, lease, or otherwise dispose of the Collateral as agent for the Company or as agent for the Trustee, as the Trustee may determine in its discretion. Provided that the Trustee has complied with this Indenture, the Company agrees to ratify and confirm all actions of the receiver acting as their agent, and to release and indemnify the receiver in respect of all such actions. Provided that the Trustee has complied with this Indenture, the Trustee, in appointing or refraining from appointing any receiver shall not incur liability to the receiver, the Company or otherwise and shall not be responsible for any misconduct or negligence of such receiver or for any loss resulting therefrom. The receiver shall be considered to be the agent of the Company and the Company shall be responsible for the receiver's acts, defaults and remuneration.

### **10.6 Care and Custody of Collateral**

Provided the same is commercially reasonable, the Trustee shall not be bound to collect, dispose of, realize or enforce any of the Company's right, title and interest in and to the Collateral or to institute proceedings for the purpose thereof and, without limiting the generality of the foregoing, the Trustee shall not be required to take any steps necessary to preserve rights against prior parties in respect of any negotiable Collateral. The Trustee may, after the Security becomes enforceable: (i) notify any Person obligated on an account or on chattel paper or any obligor on an instrument to make payment thereunder to the Trustee whether or not the Company was theretofore making collections thereon; and (ii) assume control of any proceeds arising from the Collateral.

### **10.7 Dealing with the Collateral**

The Trustee shall not be obliged to exhaust its recourse against the Company or any other Person or Persons or against any other security it may hold in respect of the obligations under the Debentures or secured by this Indenture before realizing upon or otherwise dealing with the Collateral in such manner as the Trustee may consider desirable. Provided it acts in a commercially reasonable manner, the Trustee shall not be: (i) liable or accountable for any failure to collect, realize or obtain payment in respect of the Collateral; (ii) bound to institute proceedings for the purpose of collecting, enforcing, realizing or obtaining payment of the Collateral or for the purpose of preserving any rights of the Trustee, the Company or any other parties in respect thereof; (iii) responsible for any loss occasioned by any sale or other dealing



with the Collateral or by the retention of or failure to sell or otherwise deal therewith; or (iv) bound to protect the Collateral from depreciating in value or becoming worthless.

### **10.8 Standards of Sale**

Without prejudice to the ability of the Trustee to sell, consign, lease or otherwise dispose of the Collateral in any manner so long as every aspect of the disposition is commercially reasonable, the Company acknowledges that a disposition of Collateral by the Trustee which takes place substantially in accordance with the following provisions shall be deemed to be commercially reasonable:

- (a) Collateral may be disposed of in whole or in part;
- (b) Collateral may be disposed of by public auction, public tender or private contract, with or without advertising and without any other formality;
- (c) any purchaser or lessee of such Collateral may be a customer of the Trustee or a Holder;
- (d) a disposition of Collateral may provide time for payment on credit; and
- (e) the Trustee may establish an upset or reserve bid or price in respect of Collateral.

### **10.9 Remedies**

The Company acknowledges that the types and periods of restrictions and notices in this Indenture are fair and reasonable. The Company recognizes that a breach or a threatened breach of any provisions of this Indenture or the Debentures will result in the Trustee and the Holders suffering irreparable harm which cannot be calculated or fully or adequately compensated by recovery of damages, agrees that the Trustee is entitled to both temporary and permanent injunctive relief or other equitable relief in addition to any other rights or remedies it may have and hereby waives any defences thereto.

### **10.10 Distrain**

The Company covenants and agrees with the Trustee that at any time after the Security hereby constituted has become enforceable, the Trustee shall have the right and power to distrain for costs or charges secured hereby or arrears of interest or principal outstanding on the Debentures.

## **ARTICLE 11 TRUSTEE**

### **11.1 Indenture Legislation**

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

- (b) The Company and the Trustee agree that they will at all times, in relation to this Indenture and any action to be taken hereunder observe and comply with and be entitled to the benefits of Indenture Legislation.

### **11.2 Corporate Trustee Required Eligibility**

The Trustee shall at all times be a corporation organized under the laws of Canada, or any province thereof, and represents to the Company that at the date of execution and delivery by it of this Indenture, it is duly authorized and qualified to carry on the business of a trust company in the Province of Ontario. If at any time the Trustee shall cease to be eligible in accordance with this Article 11, it shall resign immediately in the manner and with the effect hereinafter specified in this Article 11.

### **11.3 Obligations of Trustee**

- (a) The Trustee shall exercise such of the rights and powers vested in it by this Indenture and use the same degree of care and skill in its exercise as a prudent corporate trustee would exercise or use in respect of corporate debt instruments.
- (b) The Trustee shall not be bound to give any notice or do or take any act, action or proceeding by virtue of the powers conferred on it hereby unless and until it shall have been required to do so under the terms hereof; nor shall the Trustee be required to take notice of any Default hereunder, unless and until notified in writing of such Default, which notice shall distinctly specify the Default desired to be brought to the attention of the Trustee and in the absence of any such notice the Trustee may for all purposes of this Indenture conclusively assume that no Default has been made in the observance or performance of any of the representations, warranties, covenants, agreements or conditions contained herein. Any such notice shall in no way limit any discretion herein given to the Trustee to determine whether or not the Trustee shall take action with respect to any Default.
- (c) The Trustee may not be relieved from liability for its own grossly negligent action, its own grossly negligent failure to act, or its own wilful misconduct, except that:
  - i. this paragraph does not limit the effect of Section 11.1(b);
  - ii. the Trustee shall not be liable for any error of judgment made in good faith; and
  - iii. the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it hereunder, including, without limitation, pursuant to Section 9.4.
- (d) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers unless the Trustee shall have received adequate funding and indemnity in its opinion against potential costs and liabilities incurred by it relating thereto.



- (e) Every provision of this Indenture that in any way relates to the Trustee is subject to subsections (a), (b) and (c) of this Section 11.3.
- (f) The Trustee shall not be liable to account for interest earned on any money received by it except as the Trustee may agree in writing with the Company. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.
- (g) The Trustee will not incur any liability or responsibility whatsoever or be in any way responsible for the consequence of any breach on the part of the Company of any obligation obtained in this Indenture or of any acts of the directors, officers, employees or agents of the Company.
- (h) The Trustee shall not be liable for or by reason of any statements of fact or recitals in this Indenture or the Debentures (except the representation contained in Section 11.14 or in the certificate of the Trustee on the Debentures or be required to verify the same), but all such statements or recitals are and shall be deemed to be made by the Company.
- (i) The Trustee shall not have any obligation to see to or to require evidence of the registration or filing (or renewal thereof) of this Indenture or any instrument ancillary or supplementary thereto.
- (j) The Trustee is under no duty to determine compliance of the transferor or transferee in respect of any Debentures transferred hereunder with Applicable Securities Legislation. The Trustee shall be entitled to assume that all transfers are legal and proper.
- (k) The Trustee shall not be required to give any bond or security in respect of the execution of the duties, obligations and powers of this Indenture or otherwise in respect of the premises.

#### **11.4 Rights of Trustee**

- (a) Subject to Section 11.1:
  - i. The Trustee may act and rely conclusively on any document received by it which it believes to be genuine and to have been signed or presented by the proper person entitled to execute and deliver to the Trustee any such documents in connection with this Indenture, not only as to its due execution and the validity and effectiveness of its provisions, but also as to the truth and accuracy of any information contained therein. The Trustee need not investigate any fact, or matter stated in the document, but may require reasonable evidence of the due execution of any such document.
  - ii. Proof of the execution of an instrument in writing, including a request by a Holder, by any Holder may be made by the certificate of a notary, solicitor or commissioner for oaths, or other officer with similar powers, that the person signing such instrument acknowledged to him the execution thereof, or by an affidavit of a witness to such execution or in

- any other manner which the Trustee may consider adequate and in respect of a corporate Holder, shall include a certificate of incumbency of such Holder together with a certified resolution authorizing the person who signs such instrument to sign such instrument.
- iii. Before the Trustee acts or refrains from acting, it may require an Officers' Certificate or an Opinion of Counsel, which shall conform to Section 16.4(b). The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such Officers' Certificate or Opinion of Counsel.
  - iv. In addition to the reports, certificates, opinions and other evidence required by this Indenture, the Company will furnish to the Trustee such additional evidence of compliance with any provision of this Indenture, and in such form, as is prescribed by applicable Indenture Legislation or as the Trustee reasonably requires by written notice to the Company.
  - v. Whenever the applicable Indenture Legislation requires that evidence referred to in Section 11.4(a)iv be in the form of a statutory declaration, the Trustee may accept the statutory declaration in lieu of a certificate of the Company required by any provision of this Indenture and any such statutory declaration may be made by one or more of the officers of the Company.
  - vi. The Trustee may act through its agents and shall not be responsible for the misconduct or negligence of any agent appointed with due care.
  - vii. The Trustee shall not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers.
  - viii. The Trustee may employ or retain such counsel, accountant, appraisers, engineers or other experts or advisors as it reasonably requires for the purpose of determining and discharging its duties and administering the trusts hereunder and may pay reasonable remuneration for all services so performed by any of them, without taxation of costs of any counsel or advisor, and shall not be responsible for any misconduct on the part of any of them. Any reasonable remuneration so paid by the Trustee shall be repaid to the Trustee in accordance with Section 11.8.
  - ix. The Trustee may act and rely and shall be protected in acting and relying in good faith on the opinion or advice of or information obtained from any counsel, accountant, appraiser, engineer or other expert or advisor, whether retained or employed by the Company or by the Trustee, in relation to any matter arising in the administration of the trusts hereof.
  - x. The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of



the Holders pursuant to this Indenture, unless such Holders shall have provided funding and indemnity satisfactory to the Trustee against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction and, if required by the Trustee, such Holders deposit with the Trustee the Certificated Debenture held by them, for which the Trustee shall issue receipts upon receiving.

- xi. The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, Debenture, note, other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney at the sole cost of the Company, and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation.
- xii. The Trustee shall not be deemed to have notice of any Default or Event of Default unless written notice of any event which is in fact such a Default is received by the Trustee at the Corporate Trust Office, and such notice references the Debentures and this Indenture.
- xiii. The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, including, without limitation as Paying Agent and Registrar, and to each agent, custodian and other Person employed to act hereunder.
- xiv. The Trustee shall not be required to exercise any powers and shall not have any responsibilities except as expressly provided in this Indenture and shall have no obligation to recognize nor have any liability or responsibility arising under any other document or agreement to which the Trustee is not a party, notwithstanding that reference thereto may be made herein.
- xv. The Trustee shall not be appointed as receiver or receiver-manager of the assets of the Company.
- xvi. The Trustee shall not be bound to give notice to any Person or Persons of the execution hereof.
- xvii. If at any time the name of the Trustee is changed and at such time any of the Certificated Debentures have been Authenticated but not delivered,

the Trustee may adopt the Authentication under its prior name and deliver the Certificated Debentures so Authenticated; and in case at that time any of the Certificated Debentures have not been Authenticated, the Trustee may Authenticate such Certificated Debentures either in its prior name or in its changed name; and in all such cases such Certificated Debentures will have the full force provided in the Certificated Debentures and in this Indenture.

### **11.5 Individual Rights of Trustee**

The Trustee in its individual or any other capacity may become the owner or pledgee of securities of the Company and may otherwise deal with the Company or an Affiliate of the Company with the same rights it would have if it were not Trustee.

### **11.6 Trustee's Disclaimer**

The Trustee makes no representation as to the validity or adequacy of this Indenture or the Debentures or of any recitals or statements of fact herein. It shall not be accountable for the Company's use of the Debentures or any proceeds from the Debentures and it shall not be responsible for any statement in the Debentures other than its certificate of Authentication.

### **11.7 Notice of Default or Events of Default**

If a Default or an Event of Default occurs and is continuing and if it is known to the Trustee, the Trustee shall mail to each Holder of a Debenture notice of all uncured Defaults or Events of Default known to it within 30 days after it becomes known to the Trustee. However, the Trustee may withhold the notice if and for so long as it in good faith determines that withholding notice is in the interests of Holders of Debentures, provided the Trustee gives notice to the Company in writing, and except in the case of a Default or an Event of Default in payment of the principal of, or premium, if any, or interest on any Debenture when due or in the payment of any redemption or purchase obligation.

### **11.8 Compensation and Indemnity**

- (a) The Company shall pay the Trustee reasonable remuneration for its services as trustee hereunder 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 the trusts hereby created (including the reasonable compensation and the disbursements of Counsel and all other advisers and assistants not regularly in its employ who have been retained by the Trustee) both before any Default hereunder and thereafter until all the duties of the Trustee shall be firmly and fully performed, except any such expense, disbursement or advance as may arise from the gross negligence, wilful misconduct or bad faith of the Trustee. Any amount due under this Section 11.8 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 then current rate charged by the Trustee from time to time, payable on demand. After Default, all amounts so payable and the interest thereon shall be payable out of any funds coming into the possession of the Trustee or its successors in the trusts hereunder in priority to any



payment of the principal of, or interest or premium, if any, on, the Debentures. Such remuneration shall continue to be payable until the trusts hereof shall be finally wound up, whether or not the trusts of this Indenture shall be in course of administration by or under the direction of a court.

- (b) The Company shall indemnify the Trustee (which for purposes of this Section 11.8 shall include its officers, directors, employees and agents) for, and hold it harmless against, any and all loss, liability or expense including Taxes (other than Taxes based upon, measured by or determined by the income of the Trustee), incurred by it in connection with the acceptance or administration of its duties under this Indenture or any action or failure to act as authorized or within the discretion or rights or powers conferred upon the Trustee hereunder including the reasonable costs and expenses of the Trustee and its counsel in defending (including reasonable legal fees and expenses) itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder. The Trustee shall notify the Company promptly of any claim asserted against the Trustee for which it may seek indemnity. The Company need not pay for any settlement effected without its prior written consent, which shall not be unreasonably withheld.
- (c) The Company need not reimburse the Trustee for any expense or indemnify it against any loss or liability incurred by it resulting from its gross negligence, wilful misconduct or bad faith.
- (d) The obligations of the Company under this Section 11.8 shall survive the satisfaction and discharge or termination of this Indenture or the resignation or removal of the Trustee.
- (e) When the Trustee incurs expenses or renders services after an Event of Default specified in Section 9.1(a)viii occurs, the expenses and the compensation for the services are intended to constitute expenses of administration under any Bankruptcy Law. The provisions of this Section shall survive the termination of this Indenture.

### **11.9 Replacement of Trustee**

- (a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Section 11.9 shall become effective until the acceptance of appointment by the successor Trustee under this Section 11.9.
- (b) The Trustee may resign at any time by giving to the Company 60 days' written notice thereof or such shorter notice as the Company may accept. If an instrument of acceptance by a successor Trustee shall not have been delivered to the resigning Trustee within 30 days after the giving of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee.
- (c) The Trustee may be removed at any time by consent of the Holders of not less than 66 $\frac{2}{3}$ % of the aggregate principal amount of Debentures then outstanding.

- (d) The Company may remove the Trustee at any time, so long as no Default or Event of Default has occurred and is continuing, and appoint a successor Trustee in accordance with this Section 11.9.
- (e) If a successor Trustee does not take office within 45 days after the retiring Trustee is removed under Section 11.9(d), the retiring Trustee, the Company or the Holders of 10% in principal amount of the Debentures then outstanding may petition any court of competent jurisdiction for the appointment of a successor Trustee at the expense of the Company.
- (f) If at any time:
  - i. the Trustee fails to comply with the provisions of Section 11.3; or
  - ii. the Trustee shall cease to be eligible under Section 11.10 and shall fail to resign after written request therefor by the Company or by any Holder; or
  - iii. the Trustee shall become incapable of acting or shall be adjudged as bankrupt or insolvent, or a Receiver of the Trustee or of its property shall be appointed or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any case,

- iv. the Company may remove the Trustee; or
  - v. in the case of Section 11.9(f)i above, a Holder and any other interested party, and in the case of Sections 11.9(f)ii and 11.9(f)iii above, any Holder may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.
- (g) A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Immediately after that and following the payment of all outstanding fees and expenses owed to the Trustee under this Indenture, the retiring Trustee shall transfer all property held by it as Trustee to the successor Trustee and be released from its obligations (exclusive of any liabilities that the retiring Trustee may have incurred while acting as Trustee) hereunder, the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. A successor Trustee shall mail notice of its succession to each Holder.
- (h) A retiring Trustee shall not be liable for the acts or omissions of any successor Trustee after its succession.



- (i) Notwithstanding replacement of the Trustee pursuant to this Section 11.9, the Company's obligations under Section 11.8 shall continue for the benefit of the retiring Trustee.

#### **11.10 Successor Trustee by Merger, Etc.**

If the Trustee consolidates with, merges or converts into, or sells or transfers all or substantially all of its corporate trust business (including the administration of this Indenture) to, another corporation, the resulting, surviving or transferee corporation, without any further act, shall be the successor Trustee; provided such transferee corporation shall qualify and be eligible under Section 11.2. Such successor Trustee shall promptly mail notice of its succession to the Company and each Holder.

#### **11.11 Third Party Interests**

Each party to this Indenture hereby represents to the Trustee that any account to be opened by, or interest to be held by, the Trustee in connection with this Indenture, for or to the credit of such 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 party hereto agrees to complete and execute forthwith a declaration in the Trustee's prescribed form as to the particulars of such third party.

#### **11.12 Trustee Not Bound to Act**

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, determines that such act might cause it to be in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline. Further, should the Trustee, in its sole judgment, 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 10 days' written notice to the other parties to this Indenture, provided (i) that the Trustee's written notice shall describe the circumstances of such non-compliance; and (ii) that if such circumstances are rectified to the Trustee's satisfaction within such 10 day period, then such resignation shall not be effective.

Anti-money laundering and terrorist financing legislation requires the Trustee to implement reasonable procedures to verify the identity of any person that opens a new account with it. Accordingly, the Company acknowledges that the Trustee's identity verification procedures require the Trustee to obtain information which may be used to confirm the Company's identity including without limitation name, address and organizational documents ("**identifying information**"). The Company agrees to provide the Trustee with and consent to the Trustee obtaining from third parties any such identifying information required as a condition of opening an account with or using any service provided by the Trustee.

#### **11.13 Privacy Laws**

The parties acknowledge that federal and/or provincial legislation that addresses the protection of individuals' personal information (collectively, "**Privacy Laws**") applies to obligations and activities under this Indenture. Despite 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 Company 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.

#### **11.14 No Conflict of Interest**

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

### **ARTICLE 12 SATISFACTION AND DISCHARGE OF INDENTURE**

#### **12.1 Satisfaction and Discharge of Indenture**

- (a) This Indenture shall cease to be of further force and effect (except as to any surviving rights of registration of transfer or exchange of Debentures herein expressly provided for and except as further provided below), and the Trustee, on written demand of and at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture when either:
- i. all Debentures theretofore Authenticated and delivered (other than (i) Debentures which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 2.11; and (ii) Debentures for whose payment has theretofore been deposited in trust and thereafter repaid to the Company as provided in Section 12.3) have been delivered to the Trustee for cancellation; or
  - ii. all such Debentures not theretofore delivered to the Trustee for cancellation, (A) have become due and payable, or (B) will become due and payable at the Maturity Date within one year, provided that
- (A) the Company has deposited with the Trustee or a Paying Agent as trust funds in trust for the purpose of and in an amount of money sufficient to pay and discharge the entire indebtedness on such Debentures not theretofore delivered to the Trustee for cancellation, for principal and interest to the date of such deposit (in the case of



Debentures which have become due and payable) or to the Maturity Date;

- (B) the Company has paid or caused to be paid all other sums payable hereunder by the Company in cash including payment of all remuneration and expenses of the Trustee to carry out its duties under this Indenture; and
- (C) Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent herein relating to the satisfaction and discharge of this Indenture have been complied with.

- (b) Notwithstanding the satisfaction and discharge of this Indenture, if money shall have been deposited with the Trustee pursuant to clause i of Section 12.1(a), the provisions of Sections 2.2, 2.5, 2.6, 2.8, 2.10, 3.3, 3.6, 3.8, 8.1 and 15.4 and this Section 12.1(b), shall survive until the Debentures have been paid in full, provided that the indemnity in Section 11.8 shall not be extinguished by the payment of the Debentures.

## **12.2 Application of Trust Money**

- (a) Subject to the provisions of Section 12.3, the Trustee or a Paying Agent shall hold in trust, for the benefit of the Holders, all money deposited with it pursuant to Section 12.1 and shall apply the deposited money in accordance with this Indenture and the Debentures to the payment of the principal of and interest on the Debentures.
- (b) The Trustee may hold cash balances constituting part or all of the proceeds or funds and may, but need not, invest same in its deposit department or the deposit department of one of its Affiliates; but the Trustee and its Affiliates shall not be liable to account for any profit to any parties to this Indenture or to any other person or entity other than at a rate, if any, established from time to time by the Trustee or one of its Affiliates.

## **12.3 Repayment to Company**

- (a) The Trustee and each Paying Agent shall promptly pay to the Company upon written request any excess money deposited with them pursuant to Section 12.1(a) held by them at any time.
- (b) The Trustee and each Paying Agent shall, subject to applicable abandonment property laws, remit to the Company upon written request any money held by them for the payment of principal or interest that remains unclaimed for six years after a right to such money has matured. After remittance to the Company, Holders entitled to money must look to the Company for payment as general creditors unless an applicable abandoned property law designates another person.

## 12.4 Reinstatement

- (a) If the Trustee or any Paying Agent is unable to apply any money in accordance with Section 12.2 by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the Company's obligations under this Indenture and the Debentures shall be revived and reinstated as though no deposit had occurred pursuant to Section 12.1 until such time as the Trustee or such Paying Agent is permitted to apply all such money in accordance with Section 12.2; provided, however, that if the Company has made any payment of the principal of or interest on any Debentures because of the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Debentures to receive any such payment from the money held by the Trustee or such Paying Agent.

## ARTICLE 13 SUCCESSORS

### 13.1 Company may Consolidate Etc. Only on Certain Terms

- (a) The Company shall not consolidate, amalgamate, merge or combine itself with any other Person (herein called a "**Successor**") unless:
- i. Prior to or contemporaneously with the consummation of such transaction the Company and the Successor shall have executed such instruments and done such things as are necessary or advisable to establish that upon consummation of such transaction:
    - (A) the Successor will have assumed all the covenants and obligations of the Company under this Indenture and in respect of all Debentures;
    - (B) the securities of the Successor will meet all requirements of this Indenture;
    - (C) the Debentures will be valid and binding obligations of the Successor entitling the holders thereof, as against the Successor, to all the rights of Holders under this Indenture; and
    - (D) the Successor shall be organized under the laws of Canada or a province thereof, and in the case of an entity organized otherwise than under the laws of the Province of Ontario, the Successor shall attorn to the jurisdiction of the courts of the Province of Ontario;
  - ii. such transaction, in the Opinion of Counsel, shall be on such terms as to substantially preserve and not impair any of the rights and powers of the Trustee and the Holders hereunder; and



- iii. no condition or event shall exist with respect to the Company or the Successor that would result, with the giving of notice or lapse of time or both, in an Event of Default.

## ARTICLE 14 AMENDMENTS, SUPPLEMENTS AND WAIVERS

### 14.1 Without Consent of Holders

- (a) The Company (when authorized by the Board of Directors) and the Trustee may amend or supplement this Indenture or the Debentures without notice to or consent of any Holder of a Debenture for the purpose of:
  - i. evidencing a successor to the Company and the assumption by that successor of the Company's obligations under this Indenture and the Debentures;
  - ii. adding to the Company's covenants for the benefit of the Holders or surrendering any right or power conferred upon the Company;
  - iii. securing the Company's obligations in respect of the Debentures;
  - iv. evidencing and providing for the acceptance of the appointment of a successor Trustee in accordance with Article 11;
  - v. complying with any requirements in order to effect or maintain the qualification of this Indenture under Indenture Legislation;
  - vi. curing any ambiguity, omission, inconsistency or correcting or supplementing any defective provision contained in this Indenture; or
  - vii. modifying any other provisions of this Indenture in any manner that will not adversely affect the interests of the Holders in any material respect.

### 14.2 With Consent of Holders

- (a) Subject to Section 14.1 and the following provisions of this Section 14.2, the Company (when authorized by the Board of Directors) and the Trustee may amend or supplement this Indenture or the Debentures or adopt a resolution with the written consent of the Holders of greater than 50% in aggregate principal amount of the Debentures then outstanding or by the adoption of a resolution at a meeting of Holders by greater than 50% in aggregate principal amount of the Debentures then outstanding voted on the resolution. Notwithstanding the foregoing, the following amendments or supplements by the Company and the Trustee under this Section 14.2 require the adoption of an Extraordinary Resolution passed by the Holders of the Debentures:
  - i. waive a redemption or repurchase payment with respect to any Debenture;

- ii. a change to the provisions of this Indenture that has effect of adversely impacting the ranking of the Debentures; and
  - iii. a change to this Article 14.
- (b) The Company shall not without the consent of each Holder reduce the principal amount of the Debentures, decrease the interest payable on the Debentures or make any change to the time for payment thereof (including any change to the Maturity Date).
- (c) Without limiting the provisions of Section 14.2(a) and subject to Section 9.4, the Holders may, with the adoption of an Extraordinary Resolution passed by the Holders of the Debentures, waive compliance by the Company with the restrictive provisions of this Indenture.
- (d) After an amendment, supplement or waiver under this Section 14.2 becomes effective, the Company shall promptly mail to Holders a notice briefly describing the amendment, supplement or waiver. Any failure of the Company to mail such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such amendment, supplement or waiver.

#### **14.3 Revocation and Effect of Consents**

- (a) Until an amendment, supplement or waiver becomes effective, a consent to it by a Holder is a continuing consent by the Holder and every subsequent Holder of a Debenture or portion of a Debenture that evidences the same debt as the consenting Holder's Debenture, even if notation of the consent is not made on any Debenture. However, any such Holder or subsequent Holder may revoke the consent as to its Debenture or portion of a Debenture if the Trustee receives the notice of revocation before the date the amendment, supplement or waiver becomes effective.
- (b) After an amendment, supplement or waiver becomes effective in accordance with the approvals required by this Indenture, it shall bind every Holder and every subsequent Holder of a Debenture or portion of a Debenture that evidences the same debt as the consenting Holder's Debenture.

#### **14.4 Notation on or Exchange of Debentures**

If an amendment, supplement or waiver changes the terms of a Debenture, the Trustee may require the Holder to deliver it to the Trustee. The Trustee may place an appropriate notation on the Debenture about the changed terms and return it to the Holder. Alternatively, if the Company or the Trustee so determines, the Company in exchange for the Debenture shall issue and the Trustee shall Authenticate a new Debenture that reflects the changed terms.

#### **14.5 Trustee to Sign Amendments, Etc.**

The Trustee shall sign any amendment or supplemental indenture authorized pursuant to this Article 14 if the amendment or supplemental indenture does not adversely affect the rights, duties, liabilities or immunities of the Trustee. If it does, the Trustee may sign the amendment or



supplemental indenture, in its sole discretion, but need not sign it. In signing or refusing to sign any amendment or supplemental indenture, the Trustee shall be entitled to receive and, subject to Section 11.1, shall be fully protected in relying upon, an Opinion of Counsel stating that such amendment or supplemental indenture is authorized or permitted by this Indenture.

#### **14.6 Effect of Supplemental Indentures**

Upon the execution of any supplemental indenture under this Article 14, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Debentures theretofore or thereafter Authenticated and delivered hereunder shall be bound thereby.

### **ARTICLE 15 MEETINGS OF HOLDERS**

#### **15.1 Right to Convene Meetings**

The Trustee or the Company may at any time and from time to time, and the Trustee shall, on receipt of a written request of the Company 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 Company or by the Holders 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 Holders. In the event of the Trustee failing, within 30 days after receipt of any such request and such funding and indemnity, to give notice convening a meeting, the Company or such Holders, as the case may be, may convene such meeting. Every such meeting shall be held in the City of Toronto, Ontario or at such other place as may be approved or determined by the Trustee.

#### **15.2 Notice of Meetings**

At least 21 days' and not more than 60 days' notice of any meeting shall be given to the Holders in the manner provided in Section 16.2 and a copy of such notice shall be sent by post to the Trustee and the Company in the manner provided by Section 16.1, unless the meeting has been called by the Trustee or the Company, as applicable. 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 15. 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.

#### **15.3 Chairman**

The Holders present in person or represented by proxy shall choose an individual present to be the chairman of the meeting who need not be a Holder.

#### **15.4 Quorum**

Subject to the provisions of Section 15.9, at any meeting of the Holders a quorum shall consist of one or more Holders present in person or by proxy and representing at least 50% in principal amount of the outstanding Debentures. If a quorum of the Holders shall not be present within 30 minutes from the time fixed for holding any meeting, the meeting, if summoned by the Holders or pursuant to a request of the Holders, shall be dissolved, but in any other case the meeting shall be adjourned and reconvened on the same day in the next week (unless such day is not a Business Day in which case it shall be adjourned and reconvened on the next following Business Day thereafter) at the same time and place and no notice shall be required to be given in respect of such adjourned meeting. At the reconvened meeting, the Holders present in person or by proxy shall, subject to the provisions of Section 15.9, constitute a quorum and may transact the business for which the meeting was originally convened notwithstanding that they may not represent 50% of the principal amount of the outstanding Debentures. Any business may be brought before or dealt with at a reconvened 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.

#### **15.5 Power to Adjourn**

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

#### **15.6 Votes to Govern and Show of Hands**

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

#### **15.7 Poll**

On every Extraordinary Resolution, and on any other question submitted to a meeting when demanded by the chairman or by one or more Holders or proxies for Holders, 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 represented at the meeting and voted on the poll.

#### **15.8 Voting**

- (a) On a show of hands, every Person who is present and entitled to vote, whether as a Holder or as proxyholder for one or more Holders or both, shall have one vote. On a poll,



each Holder 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 held by such Holder on the record date fixed for the meeting. A proxyholder need not be a Holder. In the case of joint Holders of a Debenture, any one of them present in person or represented by proxy at the meeting may vote in the absence of the other or others, but if more than one of them are present in person or represented by proxy, they shall vote together in respect of the Debentures of which they are joint Holders.

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

### 15.9 Meaning of "Extraordinary Resolution"

- (a) The expression "**Extraordinary Resolution**" when used in this Indenture means, subject as hereinafter in this Article 15 provided, a resolution proposed to be passed as an Extraordinary Resolution at a meeting of Holders (including a reconvened meeting) duly convened for the purpose and held in accordance with the provisions of this Article 15 at which the Holders of not less than 66 $\frac{2}{3}$ % of the principal amount of the Debentures then outstanding are present in person or by proxy and passed by the affirmative votes of the Holders of not less than 66 $\frac{2}{3}$ % of the principal amount of the Debentures then outstanding voted on the resolution.
- (b) If, at any such meeting, the Holders of not less than 66 $\frac{2}{3}$ % of the principal amount of the Debentures then outstanding 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 Holders, shall be dissolved but in any other case it shall stand adjourned and shall be reconvened to such date, being not less than 14 nor more than 60 days later, and at 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 reconvened meeting in the manner provided in Section 16.2. Such notice shall state that at the reconvened meeting the Holders present in person or by proxy shall form a quorum. At the reconvened meeting the Holders 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 reconvened 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 then outstanding voted on the resolution shall be an Extraordinary Resolution within the meaning of this Indenture, notwithstanding that the Holders of not less than 66 $\frac{2}{3}$ % in principal amount of the Debentures then outstanding 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.

### **15.10 Company and Trustee May Be Represented**

The Company and the Trustee, by their respective officers, directors and employees, and the legal advisers of the Company and the Trustee may attend any meeting of the Holders, but shall have no voting rights.

### **15.11 Minutes**

Minutes of all resolutions and proceedings at every meeting of Holders 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 Company, and any such minutes, if signed by the chairman of the meeting at which such resolutions were passed or proceedings had, or by the chairman of the next succeeding meeting of the Holders, shall be *prima facie* evidence of the matters therein stated and, unless the contrary is proved, every such meeting, in respect of the proceedings of which minutes shall have been made, shall be deemed to have been duly held and convened, and all resolutions passed thereat or proceedings had shall be deemed to have been duly passed and had.

### **15.12 Instruments in Writing**

All actions which may be taken and all powers that may be exercised by the Holders at a meeting held as hereinbefore in this Article 15 provided may also be taken and exercised by the Holders of 66 $\frac{2}{3}$ % of the principal amount of Debentures then outstanding 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.

### **15.13 Binding Effect of Resolutions**

Every resolution passed in accordance with the provisions of this Article 15 at a meeting of Holders shall be binding upon all the Holders, whether present at or absent from such meeting, and every instrument in writing signed by Holders in accordance with Section 15.12 shall be binding upon all the Holders, whether signatories thereto or not, and each and every Holder and the Trustee (subject to the provisions for its remuneration, indemnification and protection herein contained) shall be bound to give effect accordingly to every such resolution and instrument in writing.

### **15.14 Record Date for Vote or Consent of Holders of Debentures**

The Company may set a record date for purposes of determining the identity of Holders entitled to vote or consent to any action by vote or consent authorized or permitted under this Indenture, which record date shall not be more than 30 days prior to the date of the commencement of solicitation of such action. Notwithstanding the provisions of Section 14.3, if a record date is fixed, those persons who were Holders of Debentures at the close of business on such record date (or their duly designated proxies), and only those persons, shall be entitled to take such action by vote or consent or to revoke any vote or consent previously given, whether or not such persons continue to be Holders after such record date.



### **15.15 Powers Cumulative**

Any one or more of the powers in this Indenture stated to be exercisable by the Holders by 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 Holders to exercise the same or any other such power or powers thereafter from time to time. No powers exercisable by resolution will derogate in any way from the rights of the Company pursuant to this Indenture.

### **15.16 Evidence of Rights of Holders**

- (a) Any request, direction, notice, consent or other instrument which this Indenture may require or permit to be signed or executed by the Holders may be in any number of concurrent instruments of similar tenor signed or executed by such Holders. Proof of the execution of any such request, direction, notice, consent or other instrument or of a writing appointing any such attorney will be sufficient for any purpose of this Indenture if the fact and date of the execution by any Person of such request, direction, notice, consent or other instrument or writing may be proved by the certificate of any notary public, or other officer authorized to take acknowledgements of deeds to be recorded at the place where such certificate is made, that the Person signing such request, direction, notice, consent or other instrument or writing acknowledged to such notary public or other officer the execution thereof, or by an affidavit of a witness of such execution or in any other manner which the Trustee may consider adequate.
- (b) Notwithstanding Section 15.16(a), the Trustee may, in its discretion, require proof of execution in cases where it deems proof desirable and may accept such proof as it shall consider proper.

### **15.17 Rules by Trustee, Paying Agent and Registrar Agent**

The Trustee, or the Company with the approval of the Trustee, may from time to time make such other reasonable rules (not inconsistent with the terms of this Indenture) for action by or at a meeting of Holders. Any Registrar or Paying Agent may make reasonable rules for its functions.

## **ARTICLE 16 MISCELLANEOUS**

### **16.1 Notices**

- (a) Any demand, authorization notice, request, consent or communication shall be given in writing and delivered in person or mailed by first-class mail, postage prepaid, addressed as follows (confirmed by delivery in person or mail by first-class mail, postage prepaid, or by guaranteed overnight courier) or transmitted by facsimile transmission to the following facsimile numbers, as applicable:

If to the Company, to:

SustainCo Inc.  
151 Bloor Street West, Suite 1100  
Toronto, Ontario M5S 1S4  
Attention: Emlyn J. David, CEO  
Email: ejdavid@sustainco.ca

if to the Trustee, to:

Equity Financial Trust Company  
200 University Avenue, Suite 300  
Toronto, Ontario M5H 4H1  
Attention: Manager, Corporate Trust Services  
Facsimile No: (416) 361-0470

and any such notice or communication delivered in accordance with the foregoing shall be deemed to have been received on the date of delivery or, if transmitted by facsimile transmission the day of transmission or, if such day is not a Business Day, on the first Business Day following the day of transmission; provided that if such notice or communication is delivered or transmitted by facsimile transmission after 4:00 p.m. (Toronto time), such notice will be deemed to be received on the next Business Day.

## **16.2 Notice to Holder**

- (a) All notices to be given hereunder with respect to the Debentures shall be deemed to be validly given to the Holders thereof if sent by first class mail, postage prepaid, by letter or circular addressed to such Holders at their post office 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. Accidental error or omission in giving notice or accidental failure to mail notice to any Holder 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 Holders to whom it is addressed in the ordinary course of post by reason of an interruption in mail service, whether at the place of dispatch or receipt or both, the Company 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 Holders by publication shall be deemed to have been given on the day on which publication shall have been effected at least once in each of the newspapers in which publication was required.



### **16.3 Mail Service Interruption**

If by reason of any interruption of mail service, actual or threatened, any notice or communication to be given to the Trustee would reasonably be unlikely to reach its destination by the time notice or communication by mail is deemed to have been given pursuant to Section 16.1, such notice or communication shall be valid and effective only if delivered at the appropriate address in accordance with Section 16.1.

### **16.4 Certificate and Opinion as to Conditions Precedent**

- (a) Upon any request or application by the Company to the Trustee to take any action under this Indenture, the Company shall furnish to the Trustee at the request of the Trustee:
  - i. an Officers' Certificate stating that, in the opinion of the signers, all conditions precedent (including any covenants, compliance with which constitutes a condition precedent), if any, provided for in this Indenture relating to the proposed action have been complied with; and
  - ii. an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent (including any covenants, compliance with which constitutes a condition precedent) have been complied with.
- (b) Each Officers' Certificate and Opinion of Counsel with respect to compliance with a condition or covenant provided for in this Indenture shall include:
  - i. a statement that the person making such certificate or opinion has read such covenant or condition;
  - ii. a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;
  - iii. a statement that, in the opinion of such person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been complied with; and
  - iv. a statement as to whether or not, in the opinion of such person, such condition or covenant has been complied with;

provided, however, that with respect to matters of fact an Opinion of Counsel may rely on an Officers' Certificate or certificates of public officials.

### **16.5 Day not a Business Day**

In the event that any day on or before which any action required to be taken hereunder is not a Business Day, then such action shall be required to be taken on or before the requisite time on the next day that is a Business Day.

## **16.6 Governing Law**

This Indenture and the Debentures shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the laws of Canada applicable therein. The Company has submitted to the non-exclusive jurisdiction of any court of the Province of Ontario for purposes of all legal actions and proceedings instituted in connection with the Indenture and the Debentures.

## **16.7 No Adverse Interpretation of Other Agreements**

This Indenture may not be used to interpret another indenture, loan or debt agreement of the Company or a Subsidiary of the Company. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

## **16.8 No Recourse Against Others**

All liability described in the Debentures of any director, officer, employee or shareholder, as such, of the Company hereby is waived and released by each of the Holders.

## **16.9 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 (and each such person who becomes a Holder of Debentures) and the Trustee, the holders of Shares, any benefit or any legal or equitable right, remedy or claim under this Indenture.

## **16.10 US Securities Exchange Act**

The Company confirms that as at the date of execution of this Indenture, it does not have a class of securities registered pursuant to Section 12 of the 1934 Act or have a reporting obligation pursuant to Section 15(d) of the 1934 Act. The Company covenants that in the event that (i) any class of its securities becomes registered pursuant to Section 12 of the 1934 Act or the Company incurs a reporting obligation pursuant to Section 15(d) of the 1934 Act, or (ii) any such registration or reporting obligation shall be terminated by the Company in accordance with the 1934 Act, the Company shall promptly deliver to the Trustee an Officers' Certificate notifying the Trustee of such registration or termination and such other information as the Trustee may reasonably require at the time. The Company acknowledges that the Trustee is relying upon the foregoing representation and covenants in order to meet certain Securities Exchange Commission (United States) obligations with respect to those clients who are filing with the Securities Exchange Commission (United States).

## **16.11 Successors**

All agreements of the Company in this Indenture and the Debentures shall bind its successor. All agreements of the Trustee in this Indenture shall bind its successor.



### **16.12 Table of Contents, Headings, Etc.**

The table of contents, cross-reference sheet and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

### **16.13 Severability**

If, in any jurisdiction, any provision of this Indenture or its application to any party or circumstance is restricted, prohibited or unenforceable, such provision shall, as to such jurisdiction, be ineffective only to the extent of such restriction, prohibition or unenforceability without invalidating the remaining provisions of this Indenture and without affecting the validity or enforceability of such provision in any other jurisdiction or without affecting its application to other party or circumstances.

### **16.14 Acceptance of Trusts**

The Trustee hereby accepts the trusts in this Indenture declared and provided for and agrees to perform the same upon the terms and conditions set forth in this Indenture and in trust for the Holders from time to time, subject to the terms and conditions of this Indenture.

### **16.15 Counterparts and Formal Date**

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

### **16.16 Force Majeure**

Except for the payment obligations of the Company contained herein, neither party shall be liable to the other, or held in breach of this Indenture, if prevented, hindered, or delayed in the performance or observance of any provision contained herein by reason of act of God, riots, terrorism, acts of war, epidemics, governmental action or judicial order, earthquakes, or any other similar causes (including, but not limited to, mechanical, electronic or communication interruptions, disruptions or failures). Performance times under this Indenture shall be extended for a period of time equivalent to the time lost because of any delay that is excusable under this Section 16.16.

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands as of the date and year first above written.

**SUSTAINCO INC.**

Per: \_\_\_\_\_  
Name: Emlyn J. David  
Title: CEO

**EQUITY FINANCIAL TRUST COMPANY**


Per:  \_\_\_\_\_  
Name: **SHELLEY MARTIN**  
Authorized Signing Officer

Per:  \_\_\_\_\_  
Name: \_\_\_\_\_  
Authorized Signing Officer **DERRICE RICHARDS**  
SENIOR ADVISOR TRUST SERVICES



**IN WITNESS WHEREOF**, the parties hereto have hereunto set their hands as of the date and year first above written.

**SUSTAINCO INC.**

Per:   
Name: Emlyn J. David  
Title: CEO

**EQUITY FINANCIAL TRUST COMPANY**

Per: \_\_\_\_\_  
Name:  
Authorized Signing Officer

Per: \_\_\_\_\_  
Name:  
Authorized Signing Officer

**EXHIBIT A  
FORM OF DEBENTURE**

UNLESS PERMITTED UNDER APPLICABLE SECURITIES LEGISLATION IN CANADA, THE HOLDER OF THIS DEBENTURE MUST NOT TRADE THIS DEBENTURE IN CANADA BEFORE OCTOBER 11, 2014.

*Include on Global Debenture:*

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF CDS CLEARING AND DEPOSITORY SERVICES INC. ("CDS") TO SUSTAINCO INC. (THE "ISSUER") OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IN RESPECT THEREOF IS REGISTERED IN THE NAME OF CDS & CO., OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF CDS (AND ANY PAYMENT IS MADE TO CDS & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF CDS), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL SINCE THE REGISTERED HOLDER HEREOF, CDS & CO., HAS A PROPERTY INTEREST IN THE SECURITIES REPRESENTED BY THIS CERTIFICATE HEREIN AND IT IS A VIOLATION OF ITS RIGHTS FOR ANOTHER PERSON TO HOLD, TRANSFER OR DEAL WITH THIS CERTIFICATE.

*Include on certificates issued to U.S. purchasers only:*

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR STATE SECURITIES LAWS. THE HOLDER HEREOF, BY PURCHASING SUCH SECURITIES, AGREES FOR THE BENEFIT OF SUSTAINCO INC. THAT SUCH SECURITIES MAY BE OFFERED, SOLD OR OTHERWISE TRANSFERRED ONLY (A) TO SUSTAINCO INC., (B) OUTSIDE THE UNITED STATES IN ACCORDANCE WITH RULE 904 OF REGULATION S UNDER THE SECURITIES ACT, (C) PURSUANT TO THE EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER, OR (D) PURSUANT TO ANOTHER EXEMPTION FROM REGISTRATION AFTER PROVIDING A LEGAL OPINION OR OTHER EVIDENCE SATISFACTORY TO SUSTAINCO INC.

DELIVERY OF THIS CERTIFICATE MAY NOT CONSTITUTE GOOD DELIVERY IN SETTLEMENT OF TRANSACTIONS ON STOCK EXCHANGES IN CANADA.

A NEW CERTIFICATE BEARING NO LEGEND MAY BE OBTAINED FROM EQUITY FINANCIAL TRUST COMPANY UPON DELIVERY OF THIS CERTIFICATE AND A DULY EXECUTED DECLARATION, IN A FORM SATISFACTORY TO EQUITY FINANCIAL TRUST COMPANY AND SUSTAINCO INC., TO THE EFFECT THAT THE SALE OF THE SECURITIES REPRESENTED HEREBY IS BEING MADE IN COMPLIANCE WITH RULE 904 OF REGULATION S UNDER THE SECURITIES ACT.



**SUSTAINCO INC.**  
**(Existing under the laws of Canada)**  
**12.00% Secured Redeemable Debentures due June 10, 2019**

No. \_\_\_\_\_ CUSIP: ISIN:  
Principal Amount \$ \_\_\_\_\_  
Fixed Rate Per Annum 12.00% fixed rate payable quarterly in arrears on August 31, November 30, February 28, and May 31 in each year

SustainCo Inc., a corporation existing under the laws of the Canada (the "**Company**"), promises to pay to \_\_\_\_\_ or registered assigns the principal amount set forth above.

The Company, for value received hereby acknowledges itself indebted and subject to the provisions of the trust indenture (the "**Indenture**") dated as of June 10, 2014 between the Company and Equity Financial Trust Company (the "**Trustee**"), promises to pay to the registered Holder of this security (the "**Debenture**") on June 10, 2019 (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 amount set forth above, in lawful money of Canada on presentation and surrender of this Debenture at the main branch of the Trustee in Toronto, Ontario in accordance with the terms of the Indenture.

Subject as hereinafter provided, the Company further promises to pay interest on the principal amount of this Debenture from the date of issue or from the most recent Interest Payment Date (defined below) to which interest has been paid or made available for payment on the Debentures then outstanding, whichever is later, the rate equal to 12.00% percent per annum in arrears in equal quarterly payments on August 31, November 30, February 28, and May 31 (each such date an "**Interest Payment Date**") in each year, the first such payment to fall due on August 31, 2014 in accordance with the provisions of the Indenture.

The Holder must surrender this Debenture to a Paying Agent to collect payment of principal. The Company will pay principal and interest in the lawful currency of Canada. The Company may pay principal and interest in respect of any Certificated Debenture in accordance with the procedures set forth in the Indenture. Notwithstanding the foregoing, so long as this Debenture is registered in the name of a Depository or its nominee, all payments hereon shall be made by wire transfer of immediately available funds to the account of the Depository or its nominee in accordance with the procedures set forth in the Indenture.

This Debenture is one of a duly authorized issue of Debentures of the Company designated as its 12.00% secured redeemable debentures due on the Maturity Date (the "**Debentures**"), issued under the Indenture. The terms of this Debenture include those stated in the Indenture and those required by or made part of the Indenture by reference to Indenture Legislation 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 Debenture by acceptance hereof assents. This Debenture is subject to all such terms, and the Holder of this Debenture is referred to the Indenture and said legislation for a statement of them. In the event of any contradiction or inconsistency between the provisions of the Indenture and this Debenture, the provisions of the Indenture shall prevail.

The indebtedness evidenced by this Debenture, and by all other Debentures now or hereafter Authenticated and delivered under the Indenture, is a direct secured obligation of the Company, which is secured by a first ranking Lien over the Collateral, except as may otherwise be provided for pursuant to the terms of the Indenture.

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.

Subject to certain amendments which require an Extraordinary Resolution passed by the Holders of Debentures, the Indenture or the Debentures may be amended or supplemented in certain circumstances with the consent of the Holders of greater than 50% in aggregate principal amount of the Debentures then outstanding voted on the resolution. Without the consent of or notice to any Holder, the Company and the Trustee may amend or supplement the Indenture or the Debentures to, among other things, cure any ambiguity or inconsistency or make any other change that does not adversely affect the rights of the Holders in any material respect.

This Debenture shall not be valid until the Trustee manually signs the certificate of Authentication on this Debenture.

All terms defined in the Indenture and used in this Debenture but not specifically defined herein are defined in the Indenture and are used herein as so defined.

In the case of any conflict between the provisions of this Debenture and the Indenture, the provisions of the Indenture shall control. This Indenture and the Debentures shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the laws of Canada applicable therein. The Company has submitted to the non-exclusive jurisdiction of any court of the Province of Ontario for purposes of all legal actions and proceedings instituted in connection with the Indenture and the Debentures.

The Company will furnish to any Holder, upon written request and without charge, a copy of the Indenture. Requests may be made to: SustainCo Inc., 151 Bloor Street West, Suite 1100, Toronto, Ontario, M5S 1S4 Attention: Corporate Secretary.

[signature page follows]



IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed.

**SUSTAINCO INC.**

Per: \_\_\_\_\_  
Name:  
Title:

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

Trustee's Certificate of authentication: This is one of the Debentures referred to in the within mentioned Indenture.

**EQUITY FINANCIAL TRUST  
COMPANY, as Trustee**

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

**SCHEDULE 1 TO FORM OF DEBENTURE  
TRANSFER FORM**

THE DEBENTURES REPRESENTED BY THIS CERTIFICATE MAY NOT BE TRANSFERRED TO A U.S. PERSON OR TO ANY PERSON IN THE UNITED STATES OR TO ANY PERSON FOR THE ACCOUNT OR BENEFIT OF A U.S. PERSON OR A PERSON IN THE UNITED STATES.

**FOR VALUE RECEIVED**, the undersigned transferor hereby sells, assigns and transfers unto

\_\_\_\_\_  
(Transferee)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Social Insurance Number)

\$ \_\_\_\_\_ principal amount of the Debentures registered in the name of the undersigned transferor represented by this certificate and does hereby appoint \_\_\_\_\_ as its attorney with full power of a substitution to transfer the Debentures on the appropriate register of the Registrar.

The undersigned hereby certifies that the transfer of these securities is not being made to, and the offer of these securities was not made to, and the person named above is not, a person in the United States or a U.S. person (as such terms are defined in Regulation S under the United States Securities Act of 1933, as amended).

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Signature of Holder

\_\_\_\_\_  
Signature of Guarantee

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Address



\* The signature(s) to this form must correspond with the name(s) as written upon the face of this Debenture in every particular without alteration or any change whatsoever. The signature(s) on this form must be guaranteed by one of the following methods:

Canada and the United States: A Medallion Signature Guarantee obtained from a member of an acceptable Medallion Signature Guarantee Program (STAMP, SEMP, MSP). Many commercial banks, savings banks, credit unions, and all broker dealers participate in a Medallion Signature Guarantee Program. The Guarantor must affix a stamp bearing the actual words "Medallion Guaranteed".

Canada: A Signature Guarantee obtained from a Canadian Schedule I chartered bank. The Guarantor must affix a stamp bearing the actual words "Signature Guaranteed". Signature Guarantees are not accepted from Treasury Branches, Credit Unions or Caisses Populaires unless they are members of a Medallion Signature Guarantee Program.

Outside North America: For Holders located outside North America, present the certificate(s) and/or document(s) that require a guarantee to a local financial institution that has a corresponding Canadian or American Affiliate which is a member of an acceptable Medallion Signature Guarantee Program. The corresponding Affiliate will arrange for the signature to be over-guaranteed.

**EXHIBIT B**  
**FORM OF DECLARATION FOR REMOVAL OF LEGEND**

TO: Equity Financial Trust Company  
200 University Avenue, Suite 300  
Toronto, Ontario M5H 4H1  
Attention: Manager, Corporate Trust Services  
as trustee for the securities of SustainCo Inc.

The undersigned (a) acknowledges that the sale of the securities to which this declaration relates represented by certificate no. ●, is being made in reliance on Rule 904 of Regulation S (“**Regulation S**”) under the U.S. Securities Act of 1933, as amended (the “**Securities Act**”) and (b) certifies that (1) it is not an “affiliate” (as defined in Rule 405 under the Securities Act) of SustainCo Inc. (2) the offer of such securities was not made to a person in the United States and either (A) at the time the buy order was originated, the buyer was outside the United States, or the undersigned and any person acting on its behalf reasonably believe that the buyer was outside the United States, or (B) the transaction was executed on or through the facilities of the TSX Venture Exchange or the Toronto Stock Exchange (or any other designated offshore securities market as defined in Regulation S under the Securities Act) and neither the undersigned nor any person acting on its or their behalf knows that the transaction has been pre-arranged with a buyer in the United States, (3) neither the undersigned nor any of its affiliates, nor any person acting on its or their behalf has engaged or will engage in any directed selling efforts in connection with the offer and sale of such securities, (4) the sale is bona fide and not for the purpose of “washing off” the resale restrictions imposed because the securities are “restricted securities” (as that term is defined in Rule 144(a)(3) under the Securities Act), (5) the undersigned does not intend to replace the securities sold in reliance on Rule 904 of Regulation S with fungible unrestricted securities, and (6) the contemplated sale is not a transaction, or part of a series of transactions that, although in technical compliance with Regulation S, is part of a plan or scheme to evade the registration requirements of the Securities Act. Terms used herein have the meanings given to them by Regulation S.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Name of Seller

By: \_\_\_\_\_  
Name:  
Title: