Clerk's Stamp:

COURT FILE NUMBER	2001-05630
COURT	COURT OF QUEEN'S BENCH OF ALBERTA IN BANKRUPTCY AND INSOLVENCY
JUDICIAL CENTRE	CALGARY
APPLICANTS	IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF DOMINION DIAMOND MINES ULC, DOMINION DIAMOND DELAWARE COMPANY LLC, DOMINION DIAMOND CANADA ULC, WASHINGTON DIAMOND INVESTMENTS, LLC, DOMINION DIAMOND HOLDINGS, LLC AND DOMINION FINCO INC.
DOCUMENT	**AFFIDAVIT**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**DENTONS CANADA LLP** 77 King Street West, Suite 400 Toronto, ON M5K 0A1 Solicitors: John Salmas / Mark Freake Telephone: 416-863-4737 / 416-863-4456 Facsimile: 416-863-4592 File Number:

COM
May 15, 2020
Justice Eidsvik

AFFIDAVIT OF MARK FREAKE
Sworn May 12, 2020

I, **MARK FREAKE**, of the City of Toronto, in the Province of Ontario, **SWEAR AND SAY THAT**:

1. I am a Senior Associate with Dentons Canada LLP, counsel to Wilmington Trust, National Association, in its capacity as Trustee, Notes Collateral Agent, Paying Agent, Transfer Agent and Registrar (collectively, the "**Trustee**") under an indenture dated October 23, 2017 (as amended, supplemented or restated, the "**Trust Indenture**"), pursuant to which Northwest Acquisitions ULC (as predecessor-in-interest to Dominion Diamond Mines ULC), as Issuer ("**DDM**"), and Dominion Finco Inc.,

MF

as Co-Issuer, issued certain 7.125% Senior Secured Second Lien Notes Due 2022 (the "**Notes**"), and, as such, I have personal knowledge of the matters to which I hereinafter depose.

2. Capitalized terms used but not otherwise defined in this affidavit have the meanings given to them in the affidavit of Kristal Kaye sworn April 21, 2020 in these proceedings.

3. The Notes are subject to the terms of the Trust Indenture. Attached hereto as **Exhibit "A"** is a copy of the Trust Indenture.

4. The priority of security interests and enforcement rights under the Credit Agreement Security and the Trust Indenture Security are set out in an Intercreditor Agreement dated November 1, 2017, among Dominion Diamond (as successor to Northwest Acquisition ULC), Dominion Delaware, the Administrative Agent, in its capacity as agent for the Credit Agreement Lenders, and the Trustee in its capacity as trustee for the noteholders under the Trust Indenture (the "**Intercreditor Agreement**"). Attached hereto as **Exhibit "B"** is a copy of the Intercreditor Agreement.

5. Due to the circumstances of the COVID-19 pandemic, I am unable to be physically present to swear this Affidavit. I, however, was linked by way of video technology to the Notary Pubic notarizing this document.

6. I make this affidavit in support of the within Application and for no other or improper purpose.

SWORN before me at the City of Toronto, in the Province of Ontario, this 12th day of May, 2020.		
	}	
A Notary Public in and for Ontario		**MARK FREAKE**

Clerk's Stamp:

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6. I make this affidavit in support of the within Application and for no other or improper purpose.

SWORN before me at the City of Toronto, in the Province of Ontario, this 12th day of May, 2020. A Notary Public in and for Ontario	**MARK FREAKE**

This is Exhibit "A" referred to in the
Affidavit of Mark Freake sworn before me
this 12th day of May, 2020

____

A Notary Public in and for Ontario

EXECUTION VERSION

Dated October 23, 2017

Indenture

related to
7.125% Senior Secured Second Lien Notes due 2022

between

Northwest Acquisitions ULC,
as Issuer,

Dominion Finco Inc.,
as Co-Issuer

the Guarantors named herein,

and

Wilmington Trust, National Association,
as Trustee, Notes Collateral Agent, Paying Agent, Transfer Agent and Registrar

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EXHIBITS

Exhibit 1	Form of Note
Exhibit 2	Form of Certificate of Transfer
Exhibit 3	Form of Certificate of Exchange
Exhibit 4	Form of Supplemental Indenture to be Delivered by Subsequent Guarantors

Indenture dated as of October 23, 2017

Between:

(1) **Northwest Acquisitions ULC**, an unlimited liability company formed under the laws of British Columbia (the "**Escrow Issuer**");

(2) **Dominion Finco Inc.,** a Delaware corporation (the "**Co-Issuer**");

(3) the Guarantors (as defined herein) party hereto from time to time; and

(4) **Wilmington Trust, National Association** as Trustee, Notes Collateral Agent, Paying Agent, Transfer Agent and Registrar.

Recitals of the Issuers and the Guarantors:

The Issuers are delivering this Indenture to provide for the issuance of (i) $550.0 million aggregate principal amount of their 7.125% Senior Secured Second Lien Notes due 2022 issued on the date hereof (whether represented by a Global Note (as defined below) or a Definitive Registered Note (as defined below) from time to time, together with any Replacement Notes (as defined below) issued therefor in accordance with the terms of this Indenture, the "**Original Notes**") and (ii) any Additional Notes (whether represented by a Global Note (as defined below) or a Definitive Registered Note (as defined below), together with the Original Notes, the "**Notes**"). The Guarantors are hereunder providing for the issuance of their respective Guarantee of the Notes.

Now, Therefore, this Indenture Witnesseth:

For and in consideration of the premises and the purchase of the Notes by the Holders thereof, it is mutually covenanted and agreed, for the equal and proportionate benefit of all Holders, as follows:

1. Definitions

1.1 Definitions

"**144A Global Note**" means a Global Note bearing the Global Note Legend and the Private Placement Legend deposited with the Custodian and registered in the name of Cede & Co., as nominee for DTC, that will be issued in an initial amount equal to the principal amount of the Notes resold by the Initial Purchasers in reliance on Rule 144A.

"**Acquired Debt**" means, with respect to any specified Person:

(a) Indebtedness of any other Person existing at the time such other Person is merged with or into or became a Subsidiary of such specified Person, whether or not such Indebtedness is incurred in connection with, or in contemplation of, such other Person merging with or into, or becoming a Restricted Subsidiary of, such specified Person; and

(b) Indebtedness secured by a Lien encumbering any asset acquired by such specified Person.

"**Acquisition**" means the acquisition of the Company by the Escrow Issuer, as more fully described in the Offering Circular under "Summary—Transactions."

"**Additional Assets**" means:

(a) any property, plant, equipment or assets used or useful in a Permitted Business;

(b) any Permitted Business Investments;

(c) the Capital Stock of a Person that becomes a Restricted Subsidiary as a result of the acquisition of such Capital Stock by the Parent or any of its Restricted Subsidiaries; or

(d) Capital Stock constituting a Minority Interest in any Person that at such time is a Restricted Subsidiary,

provided, *however*, that any such Restricted Subsidiary set forth in Clauses (c) or (d) of this definition is primarily engaged in a Permitted Business.

"**Additional Intercreditor Agreement**" means an intercreditor agreement among the Trustee, the Notes Collateral Agent and one or more Additional Junior Agents for holders of Additional Junior Debt providing that, inter alia, the Liens on the Collateral in favor of the Notes Collateral Agent shall be pari passu to such Liens in favor of such Additional Junior Agent (for the benefit of the holders of Additional Junior Debt), as such intercreditor agreement may be amended, amended and restated, modified or supplemented from time to time in accordance with the terms hereof and thereof. The Additional Intercreditor Agreement shall be in a form customary for transactions of the type contemplated thereby, on market terms and otherwise reasonably satisfactory to the Trustee, the Notes Collateral Agent and the Issuers.

"**Additional Junior Agent**" means the collateral agent, administrative agent and/or trustee (as applicable) or any other similar agent or Person under any Additional Junior Debt Documents, in each case, together with its successors in such capacity.

"**Additional Junior Debt**" means any Indebtedness of Obligors (other than Indebtedness constituting Notes Obligations), which Indebtedness is secured by the Junior Collateral (or a portion thereof) on a pari passu basis (but without regard to control of remedies) with the Notes Obligations (and not secured by Liens on any other assets of Obligors); *provided, however*, that (i) such Indebtedness is permitted to be incurred, secured and guaranteed on such basis by each Senior Debt Document and Junior Debt Document and (ii) the Representative for the holders of such Indebtedness shall have become party to the Intercreditor Agreement and an Additional Intercreditor Agreement pursuant thereto and by satisfying the conditions set forth therein. Additional Junior Debt shall include any Registered Equivalent Notes and guarantees thereof by the Obligors issued in exchange therefor.

"**Additional Junior Debt Documents**" means, with respect to any series of Additional Junior Debt Obligations, the notes, credit agreements, indentures, security documents and other operative agreements evidencing or governing such Additional Junior Debt Obligations and each other agreement entered into for the purpose of securing such Additional Junior Debt Obligations.

"**Additional Junior Debt Facility**" means each debt facility, credit agreement, indenture or other governing agreement with respect to any Additional Junior Debt.

"**Additional Junior Debt Obligations**" means, with respect to any series of Additional Junior Debt, (a) all principal of, and interest, fees and other amounts (including, without limitation, any interest, fees, and expenses which accrue after the commencement of any Insolvency or Liquidation Proceeding, whether or not allowed or allowable as a claim in any such proceeding) payable with respect to, such Additional Junior Debt, (b) all other amounts payable to the related Additional Junior Secured Parties under the related Additional Junior Debt Documents and (c) any refinancing of the foregoing.

"**Additional Junior Secured Parties**" means, with respect to any series of Additional Junior Debt Obligations, the holders of such Additional Junior Debt Obligations, the Representative with respect thereto, any trustee or agent therefor under any related Additional Junior Debt Documents and the beneficiaries of each indemnification obligation undertaken by the Obligors under any related Additional Junior Debt Documents.

"**Additional Senior Agent**" means the collateral agent, administrative agent and/or trustee (as applicable) under any Additional Senior Debt Documents, in each case, together with its successors in such capacity.

"**Additional Senior Debt**" means any Indebtedness of the Obligors (other than Indebtedness constituting Revolving Credit Facility Obligations), which Indebtedness is secured by the Senior Collateral (or a portion thereof) on a pari passu basis (but without regard to control of remedies) with the Revolving Credit Facility Obligations (and not secured by Liens on any other assets of the Parent or any Subsidiary of the Parent); *provided, however*, that, (i) such Indebtedness is permitted to be incurred, secured and guaranteed on such basis by each Senior Debt Document and Junior Debt Document and (ii) the Representative for the holders of such Indebtedness shall have become party to the Intercreditor Agreement pursuant thereto, and by satisfying the conditions set forth therein. Additional Senior Debt shall include any Registered Equivalent Notes and guarantees thereof by the Obligors issued in exchange therefor.

"**Additional Senior Debt Documents**" means, with respect to any series of Additional Senior Debt Obligations, the notes, credit agreements, indentures, security documents and other operative agreements evidencing or governing such Additional Senior Debt Obligations and each other agreement entered into for the purpose of securing such Additional Senior Debt Obligations.

"**Additional Senior Debt Facility**" means each debt facility, credit agreement, indenture or other governing agreement with respect to any Additional Senior Debt.

"**Additional Senior Debt Obligations**" means, with respect to any series of Additional Senior Debt, (a) all principal of, and interest, fees and other amounts (including, without limitation, any interest, fees, and expenses which accrue after the commencement of any Insolvency or Liquidation Proceeding, whether or not allowed or allowable as a claim in any such proceeding) payable with respect to, such Additional Senior Debt, (b) all other amounts payable to the related Additional Senior Secured Parties under the related Additional Senior Debt Documents and (c) any refinancing of the foregoing.

"**Additional Senior Secured Parties**" means, with respect to any series of Additional Senior Debt Obligations, the holders of such Additional Senior Debt Obligations, the Representative with respect thereto, any trustee or agent therefor under any related Additional Senior Debt Documents and the beneficiaries of each indemnification obligation undertaken by any Obligor under any related Additional Senior Debt Documents.

"**Affiliate**" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, "control," as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise. For purposes of this definition, the terms "controlling," "controlled by" and "under common control with" have correlative meanings.

"**Agents**" means the Paying Agent, the Notes Collateral Agent, the Transfer Agent and the Registrar.

"**AHYDO Payment**" means any mandatory prepayment or redemption pursuant to the terms of any Indebtedness that is intended or designed to cause such Indebtedness not to be treated as an "applicable high yield discount obligation" within the meaning of Code Section 163(i).

"**Amalgamated ULC**" means the entity resulting from the First Amalgamation, which is expected to be an unlimited liability company formed under the laws of British Columbia called Dominion Diamond ULC.

"**Ancillary Business Subsidiaries**" means DDMC, Dominion Diamond (India) Private Limited and Dominion Diamond Marketing N.V.

"**Applicable Premium**" means, with respect to any Note on any redemption date, the greater of (a) 1% of the principal amount of such Note and (b) the excess of:

(i) the present value at such redemption date of (i) the redemption price of the Note as set out in Section 3.8 of this Indenture on November 1, 2019, *plus* (ii) all required interest payments due on the Note through November 1, 2019 (excluding accrued but unpaid interest to the redemption date) discounted

back to the redemption date on a semi-annual basis (assuming a 360-day year consisting of twelve 30-day months) at a rate equal to the Treasury Rate as of such redemption date *plus* 50 basis points; over

(ii) the then outstanding principal amount of the Note.

For the avoidance of doubt, calculation of the Applicable Premium shall not be an obligation of the Trustee, the Paying Agent or the Registrar.

"**Applicable Procedures**" means, with respect of any transfer or exchange of or for beneficial interests in any Global Note, the rules and procedures of DTC that apply to such transfer or exchange.

"**Arrangement Agreement**" means that certain Arrangement Agreement, dated as of July 15, 2017, by and between the Escrow Issuer and the Company.

"**Asset Sale**" means:

(a) the sale, lease, conveyance or other disposition of any assets or rights by the Parent or any of its Restricted Subsidiaries; *provided* that the sale, lease, conveyance or other disposition of all or substantially all of the assets of the Parent and its Restricted Subsidiaries taken as a whole will be governed by Section 4.11 and/or Section 5.1 and not by Section 4.9; and

(b) the issuance of Equity Interests in any of the Parent's Restricted Subsidiaries or the sale by the Parent or its Subsidiaries of Equity Interests in any Restricted Subsidiaries (other than directors' qualifying shares or shares required by applicable law to be held by a Person other than the Parent or a Restricted Subsidiary).

Notwithstanding the preceding, none of the following items will be deemed to be an Asset Sale:

(i) any single transaction or series of related transactions that involves assets having a Fair Market Value of less than $20.0 million in the aggregate;

(ii) a transfer of assets or Equity Interests between or among the Parent and its Restricted Subsidiaries;

(iii) an issuance of Equity Interests by a Restricted Subsidiary of the Parent to the Parent or to a Restricted Subsidiary of the Parent;

(iv) the sale or lease of products, services or diamond or gemstone products inventory or accounts receivable or other assets in the ordinary course of business;

(v) the abandonment, farm in, farm out, lease or sublease of any mining properties, licenses or rights or surface rights or the forfeiture or other disposition of such properties, licenses or rights, in each case in the ordinary course of business;

(vi) dispositions of assets that do not constitute Collateral having a fair market value of not more than $10.0 million for all such dispositions in any Fiscal Year;

(vii) any sale or other disposition of damaged, unserviceable, worn-out or obsolete assets;

(viii) the sale or other disposition of cash or Cash Equivalents or other financial assets;

(ix) a Restricted Payment or Permitted Investment that is permitted by Section 4.8 or any transaction specifically excluded from the definition of "Restricted Payments";

(x) granting of Liens not prohibited by Section 4.7;

(xi) the licensing or sublicensing of intellectual property or other general intangibles and licenses, leases or subleases of other property, which do not materially interfere with the business of the Parent and its Restricted Subsidiaries taken as a whole;

(xii) a surrender or waiver of contract rights, mining licenses or rights, or surface rights or the settlement, release or surrender of contract, tort or other claims of any kind;

(xiii) transactions permitted under Section 5.1;

(xiv) dispositions of receivables in connection with the compromise, settlement or collection thereof in the ordinary course of business or in bankruptcy, insolvency, receivership or similar proceedings and exclusive of factoring or similar arrangements;

(xv) foreclosure, condemnation, expropriation, nationalization, eminent domain or any similar action with respect to any property or other assets;

(xvi) dispositions constituting any part of a Permitted Reorganization or IPO Reorganization Transaction;

(xvii) the sale or other disposition of non-core assets to the business of the Parent or its Restricted Subsidiaries acquired in connection with an acquisition permitted by this Indenture or other Permitted Investment or made to obtain the approval of an antitrust authority and any dispositions made to comply with an order of any agency, state authority or other regulatory body or any applicable law or regulation;

(xviii) any farm-out, lease or sublease of developed or undeveloped mining properties, licenses or rights, or surface rights owned or held by Parent or any of its Restricted Subsidiaries in exchange (within 180 days) for mining properties, licenses or rights, or surface rights owned or held by another Person;

(xix) any trade or exchange by Parent or any of its Restricted Subsidiaries of mining properties, licenses or rights, or surface rights or other properties or assets for mining properties, licenses or rights, or surface rights or other properties or assets owned or held by another Person; *provided* that any net cash received must be applied in accordance with Section 4.9;

(xx) sale or transfer (whether or not in the ordinary course of business) of mining properties, licenses or rights, or surface rights, or direct or indirect interests in real property; *provided* that, at the time of such sale or transfer, such properties, licenses or rights do not have associated with them any more than *de minimis* probable reserves;

(xxi) any substantially contemporaneous (and in any event occurring within 180 days of each other) purchase and sale or exchange of assets (including a combination of assets or properties or interests therein (which assets, properties or interests may include Capital Stock or any securities convertible into, or exercisable or exchangeable for, Capital Stock, but which assets may not include any Indebtedness) and Cash Equivalents) related to a Permitted Business of reasonably equivalent or greater market value or usefulness to the business of the Parent and its Restricted Subsidiaries, taken as a whole, which in the event of an exchange of assets with a Fair Market Value in excess of $10.0 million (or the U.S. dollar equivalent thereof) shall be evidenced by an Officer's Certificate; *provided* that the Parent shall apply any cash or Cash Equivalents received in any such exchange of assets in accordance with Section 4.9(b);

(xxii) Sale/Leaseback Transactions having a Fair Market Value of less than $30.0 million in the aggregate;

(xxiii) sales, transfers and other dispositions of Investments in joint ventures made in the ordinary course of business or to the extent required by, or made pursuant to, customary buy/sell arrangements between the joint venture parties set forth in joint venture arrangements and similar binding arrangements, which for the avoidance of doubt include a Diavik Sale;

(xxiv) any surrender or waiver of contract rights or the settlement, release or surrender of contract rights or other litigation claims;

(xxv) the unwinding of any Hedging Obligations;

(xxvi) any issuance or sale of Capital Stock in, or Indebtedness or other securities of, an Unrestricted Subsidiary; and

(xxvii) any sale, transfers, leases and other dispositions made in order to effect the Transactions.

"**Assumed Tax Rate**" means the maximum combined U.S. federal, state and local income tax rate applicable to an individual resident of New York City, New York, for the relevant taxable year, taking into account the deductibility of state and local income taxes for U.S. federal income tax purposes (and any limitations thereon), the alternative minimum tax, applicable surtaxes and the character of the relevant taxable income.

"**Attributable Indebtedness**" in respect of a Sale/Leaseback Transaction means, as at the time of determination, the present value (discounted at the interest rate implicit in the transaction) of the total obligations of the lessee for rental payments during the remaining term of the lease included in such Sale/Leaseback Transaction (including any period for which such lease has been extended), determined in accordance with IFRS; *provided*, *however*, that if such Sale/Leaseback Transaction results in a Capital Lease Obligation, the amount of Indebtedness represented thereby will be determined in accordance with the definition of "Capital Lease Obligations."

"**Available Cash Transactions**" means either (a) cash available at the Company and its Subsidiaries will be loaned to the Escrow Issuer (either directly by each applicable entity or by the Company after receipt of distributions of cash from its Subsidiaries) to satisfy payments to be made under the Arrangement Agreement and the First Amalgamation (with such loan being extinguished upon the First Amalgamation) or (b) cash (excluding the cash contributions made by the Investors to Holdings on the Escrow Release Date) in an amount not to exceed the amount of cash available at the Company and its Subsidiaries immediately prior to the Escrow Release Date will be loaned to the Escrow Issuer by the Sponsor or its affiliates (which loan shall not bear any interest or fees other than nominal interest), to be applied in the Transactions, and within five Business Days following the Escrow Release Date, the Escrow Issuer will make a distribution to the Sponsor or its Affiliates from cash available at the Escrow Release Date at the Company or its Subsidiaries to repay such loan.

"**Bankruptcy Code**" means Title 11 of the United States Code, as amended.

"**Bankruptcy Law**" means the Bankruptcy Code and any other federal, state, provincial or foreign law for the relief of debtors, or any arrangement, reorganization, insolvency, moratorium, assignment for the benefit of creditors, any other marshalling of the assets or liabilities of the Parent or any of its Subsidiaries, or similar law affecting creditors' rights generally.

"**beneficial owner**" has the meaning assigned to such term in Rule 13d-3 and Rule 13d-5 under the Exchange Act, except that in calculating the beneficial ownership of any particular "person" (as that term is used in Section 13(d)(3) of the Exchange Act), such "person" will be deemed to have beneficial ownership of all securities that such "person" has the right to acquire by conversion or exercise of other securities, whether such right is currently exercisable or is exercisable only after the passage of time. The terms "**beneficial ownership**," "**beneficially owns**" and "**beneficially owned**" have a corresponding meaning.

"**BIA**" means the Bankruptcy and Insolvency Act (Canada) as now and hereafter in effect, or any successor statute.

"**Board of Directors**" means:

(a) with respect to a corporation, the board of directors of the corporation or any committee thereof duly authorized to act on behalf of such board;

(b) with respect to a partnership, the board of directors of the general partner of the partnership;

(c) with respect to a limited liability company, the managing member or members or any controlling committee of managing members thereof; and

(d) with respect to any other Person, the board or committee of such Person serving a similar function.

"**Book-Entry Interest**" means a beneficial interest in a Global Note held by or through a Participant.

"**Business Day**" means each day that is not a Saturday, Sunday or other day on which banking institutions in New York or place of payment under this Indenture are authorized or required by law to close.

"**Calculation Date**" has the meaning given in the definitions of "Total Net Leverage Ratio" and "Fixed Charge Coverage Ratio."

"**Capital Lease Obligation**" means, at the time any determination is to be made, the amount of the liability in respect of a capital lease that would at that time be required to be capitalized on a balance sheet prepared in accordance with IFRS, and the Stated Maturity thereof shall be the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be prepaid by the lessee without payment of a penalty; *provided* that, for the avoidance of doubt, the amount of obligations attributable to any Capital Lease Obligations shall be the amount thereof accounted for as a liability in accordance with IFRS; *provided* that any lease or other such arrangement that is accounted for by any Person as an operating lease as of the Escrow Release Date and any amendment thereto (other than an amendment that would result in such operating lease becoming a capital or financing lease under IFRS as in effect on the Escrow Release Date) or any similar lease entered into after the Escrow Release Date by any Person may, in the sole discretion of the Parent, be deemed to be accounted for as an operating lease and not as a capital lease, even if, as a result of a change in IFRS, such leases are required to be accounted for as a capital lease.

"**Capital Stock**" means:

(a) in the case of a corporation, corporate stock;

(b) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;

(c) in the case of a partnership or limited liability company, partnership interests (whether general or limited) or, membership interests; and

(d) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person, but excluding from all of the foregoing any debt securities convertible into Capital Stock, whether or not such debt securities include any right of participation with Capital Stock.

"**Cash Equivalents**" means:

(a) securities issued or directly and fully guaranteed or insured by the government of the United States of America, a member state of the European Union on January 1, 2003 (excluding Greece), Switzerland or Canada, (including, in each case, any agency or instrumentality thereof), as the case may be the payment of which is backed by the full faith and credit of the United States of America, the relevant member state of the European Union, Switzerland or Canada, as the case may be, having maturities of not more than fifteen months from the date of acquisition;

(b) certificates of deposit, time deposits, eurodollar time deposits, money market deposits, overnight bank deposits or bankers' acceptances (and similar instruments) having maturities of not more than fifteen months from the date of acquisition thereof issued by any commercial bank the long term indebtedness of which is rated at the time of acquisition thereof at least "BBB-" or the equivalent thereof by Standard & Poor's Ratings Services, or "Baa3" or the equivalent thereof by Moody's Investors Service, Inc. or the equivalent rating category of another internationally recognized Rating Agency, and having combined capital and surplus in excess of $500.0 million;

(c) repurchase obligations with a term of not more than 30 days for underlying securities of the types set forth in Clauses (a) and (b) of this definition entered into with any financial institution meeting the qualifications specified in Clause (b) of this definition;

(d) commercial paper rated at the time of acquisition thereof at least "A-2" or the equivalent thereof by Standard & Poor's Ratings Services or at least "P-2" or the equivalent thereof by Moody's Investors Service, Inc., or carrying an equivalent rating by an internationally recognized Rating Agency, if both of the two named Rating Agencies cease publishing ratings of investments, and in any case maturing within one year after the date of acquisition thereof;

(e) any substantially similar investment to the kinds set forth in Clauses (b) and (c) of this definition obtained in any country in which the Parent or a Restricted Subsidiary conducts its business or is organized, in each case, (i) with the highest ranking obtainable in the applicable jurisdiction or (ii) with any bank, trust company or similar entity, which would rank, in terms of combined capital and surplus and undivided profits or the ratings on its long-term-debt, among the top five largest banks (measured by reserve capital) in such jurisdiction, in an amount not to exceed cash generated in or reasonably required for operation in such jurisdiction; and

(f) interests in any investment company or money market fund that invests 95% or more of its assets in instruments of the type specified in Clauses (a) through (d) of this definition.

"**CFC**" means a direct or indirect subsidiary of the Parent that is a "controlled foreign corporation" within the meaning of Section 957(a) of the Code.

"**CFC Holdco**" means a direct or indirect subsidiary of the Parent that owns no material assets other than the capital stock or debt of one or more subsidiaries that are CFCs.

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

(a) prior to a Qualifying IPO, the Permitted Holders cease to be the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Exchange Act), directly or indirectly, of a majority in the aggregate of the total voting power of the Voting Stock of the Parent, whether as a result of the issuance of securities of the Parent, any merger, consolidation, liquidation or dissolution of the Parent, any direct or indirect transfer of securities by any Permitted Holder or otherwise (for purposes of this clause (1) and clause (2) below, the Permitted Holders shall be deemed to beneficially own any Voting Stock of an entity (the "specified entity") held by any other entity (the "parent entity") so long as the Permitted Holders beneficially own (as so defined), directly or indirectly, in the aggregate a majority of the voting power of the Voting Stock of the parent entity); or

(b) on the date of or after a Qualifying IPO, (A) the Parent becomes aware of (by way of a report or any other filing pursuant to Section 13(d) of the Exchange Act, proxy, vote, written notice or otherwise) the acquisition by any "person" or "group" of related persons (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act as in effect on the Issue Date), other than one or more Permitted Holders, in one or in a series of related transactions by way of merger, amalgamation, consolidation or other business combination or purchase of beneficial ownership (as defined in Rules 13d-3 and 13d-5 under the Exchange Act), directly or indirectly, of more than 50% of the total voting power of the Voting Stock of the Parent; and (B) the Permitted Holders "beneficially own" (as defined in Rules 13d-3 and 13d-5 of the

Exchange Act), directly or indirectly, in the aggregate a lesser percentage of the total voting power of the Voting Stock of the Parent (or its successor by merger, consolidation or purchase of all or substantially all of its assets) than such other person or group and do not have the right or ability by voting power, contract or otherwise to elect or designate for election a majority of the board of directors of the Parent or such successor; or

(c) the sale, lease, transfer, conveyance or other disposition (other than by way of merger, consolidation, amalgamation or other business combination transaction), in one or a series of related transactions, of all or substantially all of the assets of the Parent and its Restricted Subsidiaries, taken as a whole, to a Person other than the Parent, a Restricted Subsidiary or one or more Permitted Holders; or

(d) Parent ceasing to own, directly or indirectly, all of the Capital Stock of the Issuers; provided that the Diavik Sale shall not constitute a Change of Control.

Notwithstanding the foregoing, the consummation of any transaction in which the Parent becomes a Subsidiary of another Person (the "**Ultimate Parent**") shall not constitute a Change of Control, so long as immediately following such transaction, (a) one or more Persons who beneficially owned a majority of the Voting Stock of the Parent immediately prior to such transaction, if any, continue to beneficially own at least a majority of Voting Stock of such Ultimate Parent immediately after such transaction and (b) no Person (other than the Permitted Holders, the Ultimate Parent, the Parent or another Guarantor that is a Restricted Subsidiary of the Parent) becomes the beneficial owner, directly or indirectly, of more than 50% of the Voting Stock of the Parent, measured by voting power rather than number of shares.

"**Clearstream**" means Clearstream Banking, société anonyme, and its successors.

"**Closing Date Distributions**" means the payment of fees to the Investors on the Escrow Release Date in connection with the Transactions.

"**Collateral**" means all rights, property and assets from time to time over which a Lien has been granted (or purported to be granted) to, directly or indirectly, secure the Obligations of the Issuers and the Guarantors under the Notes, the Note Guarantees, the Security Documents and this Indenture.

"**Company**" means Dominion Diamond Corporation, a corporation existing under the laws of Canada.

"**Consolidated EBITDA**" means, as to any Person for any period, an amount determined for such Person and its Restricted Subsidiaries (and, in the case of the Parent, the Ekati Core Zone Joint Venture) on a consolidated basis equal to the total of (a) Consolidated Net Income for such period, *plus* (b) the sum, without duplication, of (to the extent deducted in calculating Consolidated Net Income, other than in respect of clause (viii) below) the amounts of:

(i) Consolidated Interest Expense (including (A) fees and expenses paid to the Trustee in connection with its services under this Indenture, (B) other bank, administrative agency (or trustee) and financing fees (including rating agency fees), (C) costs of surety bonds (whether amortized or immediately expensed) and (D) commissions, discounts and other fees and charges owed with respect to letters of credit, bank guarantees, bankers' acceptances or any similar facilities or financing and hedging agreements);

(ii) Taxes paid and any provision for Taxes, including income, capital, federal, state, local, franchise and similar Taxes, property Taxes, foreign withholding Taxes and foreign unreimbursed value added Taxes (including penalties and interest related to any such Tax or arising from any Tax examination, and including pursuant to any Tax sharing arrangement or as a result of any Tax distribution) of such Person and its Restricted Subsidiaries (and, in the case of the Parent, the Ekati Core Zone Joint Venture) paid or accrued during the relevant period;

(iii) (A) depreciation, (B) amortization (including amortization of goodwill, software and other intangible assets), (C) any impairment charge (including any bad debt expense) and (D) any asset write-off and/or write-down;

(iv) any non-cash charge (provided that if any such non-cash charge represents an accrual or reserve for potential cash items in any future period, such Person may determine not to add back such non-cash charge in the then-current period);

(v) the amount of management, monitoring, consulting, transaction, advisory and similar fees and related indemnities and expenses (including reimbursements) and payments made to any Investor (and/or its Affiliates or management companies) for any financial advisory, financing, underwriting or placement services or in respect of other investment banking activities and other transaction fees, and payments to outside directors of the Issuer or Parent or a direct or indirect parent of Parent actually paid by or on behalf of, or accrued by, such Person or any of its subsidiaries (and, in the case of the Parent, the Ekati Core Zone Joint Venture); provided that, in each case, such payment is permitted under this Indenture;

(vi) the amount of any charge incurred or accrued in connection with any single or one-time event (as determined by the Issuers in good faith), including in connection with (A) the Transactions and/or any acquisition consummated after the Escrow Release Date (including legal, accounting and other professional fees and expenses incurred in connection with acquisitions and other Investments made prior to the Escrow Release Date) or (B) the closing, consolidation or reconfiguration of any facility during such period;

(vii) the amount of earn-out and other contingent consideration obligations (including to the extent accounted for as bonuses, compensation or otherwise) incurred in connection with (A) the Transactions, (B) acquisitions and Investments completed prior to the Escrow Release Date and (C) any acquisition or other Investment permitted by this Indenture, in each case, which is paid or accrued during the applicable period;

(viii) the pro forma "run rate" cost savings, operating expense reductions, operational improvements and other cost synergies (net of actual amounts realized) related to (A) the Transactions that are (x) reasonably identifiable and projected by the Issuer in good faith to result from actions that have been taken or with respect to which steps have been taken or are expected to be taken (in the good faith determination of the Issuer) (this clause (A)(x), the "Transactions Expected Cost Savings Addback") or (y) contemplated by the Arrangement Agreement or disclosed in the Offering Circular (including in respect of any action taken on or prior to the Escrow Release Date) or (B) any acquisition (including the commencement of activities constituting a business), Asset Sale (including the termination or discontinuance of activities constituting a business) or other specified Investment or transaction, or related to any restructuring initiative, cost savings initiative or other initiative (including the effect of increased pricing in customer contracts or the renegotiation of contracts or other arrangements), that are reasonably identifiable and projected by the Issuer in good faith to result from actions that have been taken or with respect to which steps have been taken or are expected to be taken (this clause (B), the "Other Transactions Expected Cost Savings Addback"); *provided* that Transaction Expected Cost Savings Addback and Other Transactions Expected Cost Savings Addback in the aggregate shall not exceed 25% of Consolidated EBITDA for any four fiscal quarter period, after giving effect to Transaction Expected Cost Savings Addback and Other Transactions Expected Cost Savings Addback, and shall only be given effect to the extent such Transaction Expected Cost Savings Addback or Other Transactions Expected Cost Savings Addback are expected to be realized within 18 months after the Escrow Release Date or the date of consummation of such acquisition (or commencement of activities), Asset Sale (or termination on discontinuation) or other specified transaction or the initiation of such initiative, as applicable;

(ix) any charge attributable to restructuring costs (including in connection with any tax related restructuring), integration costs, retention, recruiting, relocation and signing or completion bonuses and expenses, stock option and other equity-based compensation expenses and the amount of payments made to option holders in connection with, or as a result of, any distribution being made to shareholders, severance costs, systems establishment costs, costs relating to entry into a new market or to exiting a market, costs as-

sociated with office and facility openings, pre-openings, closings, expansions and consolidations (including but not limited to termination costs, moving costs and legal costs), new operation costs, unused warehouse space costs, new contract or corporate development costs, software and other intellectual property development costs, project start-up costs, costs relating to early termination of rights fee arrangements, consulting fees, curtailments or modifications to pension and post-retirement employee benefits and any costs attributable to the undertaking and/or implementation of new initiatives, business optimization activities, cost savings initiatives, cost rationalization programs, operating expense reductions, and/or similar initiatives or programs (including, without limitation, in connection with any inventory optimization program, integration, restructuring or transition, any reconstruction, decommissioning, recommissioning or reconfiguration of fixed assets for alternative uses, any facility opening and/or pre-opening, or any implementation of operational and reporting systems and technology initiatives (including any expense relating to the implementation of enhanced accounting or IT functions or new system designs));

(x) any charge with respect to any liability or casualty event, business interruption or any product recall, (i) so long as such Person has submitted in good faith, and reasonably expects to receive payment in connection with, a claim for reimbursement of such amounts under an insurance policy within the next four fiscal quarters (with a deduction in the applicable future period for any amount so added back to the extent not so reimbursed within the next four fiscal quarters) or (ii) without duplication of amounts included in a prior period under the preceding clause (i), to the extent such charge is covered by insurance proceeds received in cash during such period (it being understood that if the amount received in cash under any such agreement in any period exceeds the amount of expense paid during such period, any excess amount received may be carried forward and applied against any expense in any future period);

(xi) unrealized net losses in the fair market value of any arrangements under hedging agreements;

(xii) the amount of any cash actually received by such Person and its Restricted Subsidiaries and, in the case of the Parent, the Ekati Core Zone Joint Venture (or the amount of the benefit of any netting arrangement resulting in reduced cash expenditures) during such period, and not included in Consolidated Net Income in any period, to the extent that any non-cash gain relating to such cash receipt or netting arrangement was deducted in the calculation of Consolidated EBITDA pursuant to clause (c)(i) below for any previous period and not added back;

(xiii) the amount of any "bad debt" expense related to revenue earned prior to the Escrow Release Date;

(xiv) any non-cash compensation charge and/or any other non-cash charge arising from the granting of any stock option or similar arrangement (including any profits interest), the granting of any stock appreciation right and/or similar arrangement (including any repricing, amendment, modification, substitution or change of any such stock option, stock appreciation right, profits interest or similar arrangement);

(xv) any add backs and other adjustments consistent with Regulation S-X promulgated under the Securities Act;

(xvi) the amount of any increase in expenses (A) due to purchase accounting associated with the Transactions or (B) resulting from the revaluation of inventory (including any impact of changes of inventory valuation policy methods including changes in capitalization of variances) or other inventory adjustments;

(xvii) the amount of any addback described in clauses (b)(i) through (b)(xvi) above as it pertains to equity investment income or income relating to joint ventures which is attributable to a Permitted Business and which the Parent does not consolidate for purposes of IFRS;

(xviii) any unrealized foreign exchange losses; and

(xix) the amount of any minority interest expense consisting of income attributable to minority interests of third parties in the Ekati Core Zone Joint Venture deducted in calculating Consolidated Net Income;

minus (c) to the extent such amounts increase Consolidated Net Income:

(i) non-cash gains or income; provided that if any non-cash gain or income represents an accrual or deferred income in respect of potential cash items in any future period, such Person may determine not to deduct such non-cash gain or income in the current period;

(ii) unrealized net gains in the fair market value of any arrangements under hedging agreements;

(iii) the amount added back to Consolidated EBITDA pursuant to clause (b)(x) above (as described in such clause) to the extent the relevant reimbursement amounts were not received within the time period required by such clause;

(iv) any unrealized foreign exchange gains;

(v) to the extent that such Person adds back the amount of any non-cash charge to Consolidated EBITDA pursuant to clause (b)(iv) above, the cash payment in respect thereof in the relevant future period;

(vi) the excess of actual cash rent paid over rent expense during such period due to the use of straight line rent for IFRS purposes; and

(vii) the amount of any deduction described in clauses (c)(i) through (c)(vi) above as it pertains to equity investment income or income relating to joint ventures which is attributable to a Permitted Business and which the Parent does not consolidate for purposes of IFRS.

"**Consolidated Interest Expense**" means, with respect to any Person for any period, the sum of (a) consolidated total interest expense of such Person and its Restricted Subsidiaries (and, in the case of the Parent, the Ekati Core Zone Joint Venture) for such period, whether paid or accrued and whether or not capitalized (including (without duplication), amortization of any debt issuance cost and/or original issue discount, any premium paid to obtain payment, financial assurance or similar bonds, any interest capitalized during construction, any non-cash interest payment, the interest component of any deferred payment obligation, the interest component of any payment under any capital lease (regardless of whether accounted for as interest expense under IFRS), any commission, discount and/or other fee or charge owed with respect to any letter of credit, bank guarantee and/or bankers' acceptance or any similar facilities, any fee and/or expense paid to the agent under the Revolving Credit Facilities in connection therewith, any administrative agency (or trustee) and/or financing fee and any cost associated with any surety bond (whether amortized or immediately expensed)), *plus* (b) any cash dividend paid or payable in respect of Disqualified Stock during such period other than to such Person, joint venture or any Issuer or Guarantor, *plus* (c) any net losses or obligations arising from any hedge agreement and/or other derivative financial instrument issued by such Person for the benefit of such Person, joint venture or its subsidiaries, in each case determined on a consolidated basis for such period. For purposes of this definition, interest in respect of any capital lease shall be deemed to accrue at an interest rate reasonably determined by such Person to be the rate of interest implicit in such capital lease in accordance with IFRS.

"**Consolidated Net Income**" means as to any Person (the "**Subject Person**") for any period, the net income (or loss) of the Subject Person and its Restricted Subsidiaries (and, in the case of the Parent, the Ekati Core Zone Joint Venture) on a consolidated basis for such period taken as a single accounting period determined in conformity with IFRS; *provided* that there shall be excluded, without duplication;

(a) any gain or charge attributable to any Asset Sale (including asset retirement costs or sales or issuances of Capital Stock) or of returned or surplus assets outside the ordinary course of business;

(b) (i) any gain or charge from (A) any extraordinary item (as determined in good faith by such Person) and/or (B) any non-recurring or unusual item (as determined in good faith by such Person) and/or (ii) any charge associated with and/or payment of any actual or prospective legal settlement, fine, judgment or order;

(c) (i) any unrealized net foreign currency translation or transaction gains or charges impacting net income (including currency re-measurements of Indebtedness, any net gains or charges resulting from hedging agreements for currency exchange risk associated with the above or any other currency related risk and those resulting from intercompany Indebtedness) and (ii) any unrealized gain or charge in respect of (x) any Hedging Obligations as determined in accordance with IFRS and/or (y) any other derivative instrument pursuant to, in the case of this Clause (y), Financial Accounting Standards Board's Accounting Standards Codification No. 815-Derivatives and Hedging;

(d) any net gain or charge with respect to (i) any disposed, abandoned, divested and/or discontinued asset, property or operation (other than, at the option of the Parent, any asset, property or operation pending the disposal, abandonment, divestiture and/or termination thereof), (ii) any disposal, abandonment, divestiture and/or discontinuation of any asset, property or operation (other than, at the option of the Parent, relating to assets or properties held for sale or pending the divestiture or discontinuation thereof) and/or (iii) any facility that has been closed during such period (excluding, in each case, sales of inventory and other assets in the ordinary course of business);

(e) any net income or charge (less all fees and expenses related thereto) attributable to the early extinguishment of Indebtedness (and the termination of any associated Hedging Obligations);

(f) (i) any charge incurred as a result of, in connection with or pursuant to any management equity plan, profits interest or stock option plan or any other management or employee benefit plan or agreement, pension plan, any stock subscription or shareholders agreement or any similar equity plan or agreement (including any deferred compensation arrangement) and (ii) any charge incurred in connection with the rollover, acceleration or payout of Capital Stock held by management of any direct or indirect parent of Parent, the Parent and/or any of its subsidiaries, in each case under this Clause (ii), to the extent that any such cash charge is funded with net cash proceeds contributed to the Subject Person as a capital contribution or as a result of the sale or issuance of Capital Stock (other than Disqualified Stock) of the Subject Person;

(g) any charge that is established, adjusted and/or incurred, as applicable, (i) within 12 months after the Escrow Release Date that is required to be established, adjusted or incurred, as applicable, as a result of the Transactions in accordance with IFRS, (ii) within 12 months after the closing of any other acquisition that is required to be established, adjusted or incurred, as applicable, as a result of such acquisition in accordance with IFRS or (iii) as a result of any change in, or adoption or modification of, accounting principles or practices;

(h) any (A) write-off or amortization made in such period of deferred financing costs and premiums paid or other expenses incurred directly in connection with any early extinguishment of Indebtedness, (B) goodwill or other asset impairment charges, write-offs or write-downs and (C) amortization of intangible assets;

(i) any net income (loss) of any Person if such Person is not an Issuer or a Restricted Subsidiary or the Ekati Core Zone Joint Venture, except that Consolidated Net Income will be increased by the amount of dividends, distributions or other payments made in cash or Cash Equivalent (or converted into cash or Cash Equivalents) by such Person to the Parent or any Restricted Subsidiary;

(j) (A) the effects of adjustments in component amounts required or permitted by IFRS (including, without limitation, in the inventory, property and equipment, lease, rights fee arrangements, software, goodwill, intangible asset, in-process research and development, deferred revenue, advanced billing and debt line items thereof), resulting from the application of recapitalization accounting or acquisition accounting, as the case may be, in relation to the Transactions or any consummated acquisition or similar In-

vestment or the amortization or write-off of any amounts thereof and/or (B) the cumulative effect of any change in accounting principles or policies (effected by way of either a cumulative effect adjustment or as a retroactive application, in each case, in accordance with IFRS) (except that, if the Parent determines in good faith that the cumulative effects thereof are not material to the interests of the Holders, the effects of any change in any such principles or policies may be included in any subsequent period after the fiscal quarter in which such change, adoption or modification was made);

(k) the income or loss of any Person accrued prior to the date on which such Person became a Restricted Subsidiary of such Subject Person or is merged into or consolidated with such Subject Person or any Restricted Subsidiary of such Subject Person or the date that such other Person's assets are acquired by such Subject Person or any Restricted Subsidiary of such Subject Person (except to the extent required for any calculation of Consolidated EBITDA on a pro forma basis);

(l) non-cash income (or loss) resulting from transfers of assets between the Subject Person or any of its Restricted Subsidiaries, or the Ekati Core Zone Joint Venture, on the one hand, and an Unrestricted Subsidiary, on the other hand;

(m) any asset impairment charges or financial impacts of natural disasters (including fire, flood and storm-related events) and any non-cash charges or reserves in respect of any restructuring, reduction, integration or severance;

(n) any deferred Tax expense associated with any tax deduction or net operating loss arising as a result of the Transactions, or the release of any valuation allowance related to any such item; and

(o) public company costs.

"**Contingent Obligations**" means, with respect to any Person, any obligation of such Person Guaranteeing in any manner, whether directly or indirectly, any operating lease, dividend or other obligation that, in each case, does not constitute Indebtedness ("**primary obligations**") of any other Person (the "**primary obligor**"), including any obligation of such Person, whether or not contingent:

(a) to purchase any such primary obligation or any property constituting direct or indirect security therefor;

(b) to advance or supply funds:

(i) for the purchase or payment of any such primary obligation; or

(ii) to maintain the working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor;

(c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation against loss in respect thereof; or

(d) for the avoidance of doubt, any contingent obligations in respect of workers' compensation claims, early retirement or termination obligations, pension fund obligations or contributions, or similar claims, obligations or contributions or social security or wage taxes.

"**continuing**" means, with respect to any Default or Event of Default, that such Default or Event of Default has not been cured or waived.

"**Controlled Investment Affiliate**" means, with respect to any Person, any other Person which directly or indirectly is in control of, is controlled by, or is under common control with, such Person and is organized by such Person (or any Person controlling such Person) primarily for making equity or debt investments, directly or indirect-

ly, in the Parent and its Subsidiaries or any other Person. For purposes of this definition, "control," as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise. For purposes of this definition, the terms "controlling," "controlled by" and "under common control with" have correlative meanings.

"**Corporate Trust Office**" means, with respect to the Trustee, the office of the Trustee at which at any time its corporate trust business relating to this Indenture shall be administered, which office at the date hereof is located at 50 South Sixth Street, Suite 1290, Minneapolis, Minnesota, 55402, Attention: Dominion Diamond Administrator, or such other address as the Trustee may designate from time to time by notice to the Issuers, or the principal corporate trust office of any successor Trustee (or such other address as such successor Trustee may designate from time to time by notice to the Issuers), and means with respect to the Notes Collateral Agent, the office of the Notes Collateral Agent at which at any time its corporate trust business relating to this Indenture shall be administered, which office at the date hereof is located at 50 South Sixth Street, Suite 1290, Minneapolis, Minnesota, 55402, Attention: Dominion Diamond Administrator, or such other address as the Notes Collateral Agent may designate from time to time by notice to the Issuers, or the principal corporate trust office of any successor Notes Collateral Agent (or such other address as such successor Notes Collateral Agent may designate from time to time by notice to the Issuers).

"**Corresponding Obligations**" means all Notes Obligations and all Pari Secured Indebtedness as they may exist from time to time, other than the Parallel Debts.

"**Credit Facilities**" means, one or more debt facilities, capital markets indentures, instruments or arrangements incurred by the Parent, any Restricted Subsidiary or any Finance Subsidiary (including the Revolving Credit Facility) with banks or other institutions or investors, providing for revolving credit loans, term loans, receivables financing (including through the sale of receivables to such institutions or to special purpose entities formed to borrow from such institutions against such receivables) or letters of credit, notes or other Indebtedness, in each case, as amended, restated, supplemented, modified, renewed, refunded, replaced, restructured, refinanced, repaid, increased or extended in whole or in part from time to time (and whether in whole or in part and whether or not with the original administrative agent and lenders or another administrative agent or agents or trustees or other banks or institutions and whether provided under one or more other credit or other agreements, indentures, financing agreements or otherwise) and in each case including all agreements, instruments and documents executed and delivered pursuant to or in connection with the foregoing (including any promissory notes and letters of credit issued pursuant thereto and any Guarantee and collateral agreement, patent and trademark security agreement, mortgages or letter of credit applications and other Guarantees, pledges, agreements, security agreements and collateral documents). Without limiting the generality of the foregoing, the term "**Credit Facilities**" shall include any agreement or instrument (1) changing the maturity of any Indebtedness incurred thereunder or contemplated thereby, (2) adding Subsidiaries of the Issuers as additional borrowers, issuers or guarantors thereunder, (3) increasing the amount of Indebtedness incurred thereunder or available to be borrowed thereunder or (4) otherwise altering the terms and conditions thereof.

"**Currency Exchange Protection Agreement**" means, in respect of any Person, any foreign exchange contract, currency swap agreement, currency option, cap, floor, ceiling or collar or agreement or other similar agreement or arrangement designed to protect such Person against fluctuations in currency exchange rates as to which such Person is a party and not for speculative purposes.

"**Custodian**" means Wilmington Trust, National Association, as custodian for DTC with respect to the Notes in global form, or any successor entity thereto.

"**DDDLP**" means Dominion Diamond Diavik Limited Partnership, a limited partnership established pursuant to the laws of the Northwest Territories, and its successors and assigns.

"**DDMC**" means the Escrow Issuer's subsidiary, Dominion Diamond Marketing Corporation, a Canadian corporation.

"**DDMI**" means Diavik Diamond Mines (2012) Inc., a company incorporated under the laws of Canada, and its successors and permitted assigns.

“**Default**” means any event that is, or with the passage of time or the giving of notice or both would be, an Event of Default.

“**Definitive Registered Note**” means a certificated Note registered in the name of the Holder thereof and issued in accordance with Sections 2.6 and 2.7 hereof, substantially in the form of Exhibit 1 hereto, except that such Note shall not bear the Global Note legend and shall not have the “Schedule of Principal Amount of Indebtedness Evidenced by this Note” attached thereto.

“**Depositary**” means DTC until a successor Depositary, if any, shall have become such pursuant to this Indenture, and thereafter “**Depositary**” shall mean or include each Person who is then a Depositary hereunder.

“**Designated Non-Cash Consideration**” means the Fair Market Value of non-cash consideration received by the Parent or one of its Restricted Subsidiaries in connection with an Asset Sale that is so designated as “**Designated Non-Cash Consideration**” pursuant to an Officer’s Certificate, setting forth the basis of such valuation, *less* the amount of cash or Cash Equivalents received in connection with a subsequent sale of such Designated Non-Cash Consideration.

“**Diavik Diamond Mine**” means the diamond mine located approximately 300 kilometers from Yellowknife in the Northwest Territories, Canada, and known as the “Diavik Diamond Mine.”

“**Diavik Joint Venture**” means the unincorporated joint venture arrangement between DDDLP and the Diavik Joint Venture Partner that owns and operates the Diavik Diamond Mine pursuant to the Diavik Joint Venture Agreement.

“**Diavik Joint Venture Agreement**” means the joint venture agreement dated March 23, 1995 between DDDLP and DDMI originally entered into between Aber Resources Limited and Kennecott Canada Inc. as of March 23, 1995, as amended from time to time, with the current parties thereto being DDDLP and DDMI.

“**Diavik Joint Venture Partner**” means at any time (i) DDMI or (ii) if DDMI is not then the counterparty to DDDLP under the Diavik Joint Venture Agreement, any person or persons, from time to time, that is then the counterparty to DDDLP under the Diavik Joint Venture Agreement.

“**Diavik Sale**” means any sale of DDDLP’s interest in the Diavik Joint Venture pursuant to the preemptive rights provision Article 15 of the Diavik Joint Venture Agreement by the Parent or any of its Restricted Subsidiaries.

“**Disqualified Stock**” means any Capital Stock which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, (a) matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable (other than for Qualified Capital Stock), pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof (other than for Qualified Capital Stock), in whole or in part, on or prior to 91 days following the date on which the Notes mature (it being understood that if any such redemption is in part, only such part coming into effect prior to 91 days following the date on which the Notes mature shall constitute Disqualified Stock), (b) is or becomes convertible into or exchangeable (unless at the sole option of the issuer thereof) for (i) debt securities or (ii) any Capital Stock that would constitute Disqualified Stock, in each case at any time on or prior to 91 days following the date on which the Notes mature, (c) contains any mandatory repurchase obligation or any other repurchase obligation at the option of the holder thereof (other than for Qualified Capital Stock), in whole or in part, which may come into effect prior to 91 days following the date on which the Notes mature (it being understood that if any such repurchase obligation is in part, only such part coming into effect prior to 91 days following the date on which the Notes mature shall constitute Disqualified Stock) or (d) provides for the scheduled payments of dividends in cash on or prior to 91 days following the date on which the Notes mature; provided that any Capital Stock that would not constitute Disqualified Stock but for provisions thereof giving holders thereof (or the holders of any security into or for which such Capital Stock is convertible, exchangeable or exercisable) the right to require the issuer thereof to redeem such Capital Stock upon the occurrence of any change of control, Qualifying IPO or any Asset Sale occurring prior to 91 days following the date on which the Notes mature shall not constitute Disqualified Stock if such Capital Stock provides that the issuer thereof will not redeem any such Capital Stock pursuant to such provisions

prior to the date on which the Notes mature unless such repurchase or redemption complies with Section 4.8. For purposes hereof, the amount of Disqualified Stock which does not have a fixed repurchase price shall be calculated in accordance with the terms of such Disqualified Stock as if such Disqualified Stock were purchased on any date on which Indebtedness shall be required to be determined pursuant to this Indenture, and if such price is based upon, or measured by, the Fair Market Value of such Disqualified Stock, such Fair Market Value to be determined as set forth herein.

"**Distribution**" means the distribution by Holdings of its shares of PledgeCo to Parent promptly following the consummation of the Second Amalgamation.

"**Dollar Equivalent**" means with respect to any monetary amount in a currency other than U.S. dollars, at any time for the determination thereof, the amount of U.S. dollars obtained by converting such foreign currency involved in such computation into U.S. dollars at the spot rate for the purchase of U.S. dollars with the applicable foreign currency as published in the *Wall Street Journal* in the "**Exchange Rates**" column under the heading "**Currency Trading**" on the date two Business Days prior to such determination

"**DTC**" means The Depository Trust Company.

"**Dutch Guarantor**" means a Guarantor organized under the laws of the Netherlands.

"**Ekati Core Zone**" means the property and assets (including products derived from such property) that are the subject of the Ekati Core Zone Joint Venture Agreement.

"**Ekati Core Zone Joint Venture**" means the unincorporated joint venture arrangement established pursuant to the Ekati Core Zone Joint Venture Agreement to undertake the exploration, development and mining of the Ekati Core Zone diamond mine.

"**Ekati Core Zone Joint Venture Agreement**" means that certain Northwest Territories Diamond Joint Venture Agreement—Core Zone Property, dated as of April 17, 1997, by and among BHP Diamonds Inc., DIA MET Minerals, Ltd., Charles E. Fipke and Dr. Stewart L. Blusson, as amended, restated, amended and restated, supplemented or otherwise modified from time to time.

"**Ekati Core Zone Manager**" means Dominion Diamond Ekati Corporation or any successor thereto appointed as operator of the Ekati Core Zone Joint Venture in accordance with the terms of the Ekati Core Zone Joint Venture Agreement.

"**Ekati Diamond Mine**" means the diamond mine located approximately 310 kilometers from Yellowknife in the Northwest Territories, Canada, and known as the "Ekati Diamond Mine."

"**Eligible Escrow Investments**" means (i) certificates of deposit, time or demand deposits and dollar time deposits maturing not later than the earlier of (x) three months from the date of acquisition and (y) the Special Mandatory Redemption Date, and overnight bank deposits and (ii) money market funds registered under the Federal Investment Company Act of 1940, whose shares are registered under the Securities Act, and rated "AAAm" or "AAAm G" by S&P and "Aaa" if rated by Moody's, including any such mutual fund for which the Escrow Agent or its affiliates serves as the investment manager, administrator, shareholder servicing agent and/or custodian.

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

"**Equity Offering**" means any public or private sale of Equity Interests of (1) the Parent or any Restricted Subsidiary of the Parent, or (2) the direct or indirect parent entity of the Parent to the extent that the net proceeds therefrom are contributed to the common equity capital of the Parent.

"**Escrow Account**" means a segregated account, under the sole control of the Trustee, that includes only cash and Eligible Escrow Investments, the proceeds thereof and interest earned thereon, free from all Liens other than the Lien in favor of the Trustee for the benefit of the holders of the Notes.

"**Escrow Agent**" means Wilmington Trust, National Association, in its capacity as escrow agent under the Escrow Agreement.

"**Escrow Agreement**" means the escrow agreement, dated as of the date hereof, by and among the Escrow Issuer, the Co-Issuer, the Escrow Agent and the Trustee.

"**Escrow Release Date**" means the time at which the Escrow Release Conditions are satisfied and the Escrowed Property is released, or, if the Acquisition closes concurrently with the issuance of the Notes on the Issue Date, "Escrow Release Date" shall mean the Issue Date.

"**Escrowed Proceeds**" means the proceeds from the offering of any debt securities or other Indebtedness paid into escrow accounts with an independent escrow agent on the date of the applicable offering or incurrence pursuant to escrow arrangements that permit the release of amounts on deposit in such escrow accounts upon satisfaction of certain conditions or the occurrence of certain events. The term "**Escrowed Proceeds**" shall include any interest earned on the amounts held in escrow.

"**Euroclear**" means Euroclear Bank SA/NV.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

"**Excluded Assets**" means (i) any owned real property with a value of less than $10.0 million and all leased real property and, except to the extent a security interest therein can be perfected by filing of a PPSA financing statement or an "all assets" UCC financing statement, leasehold interests in all other assets, (ii) any motor vehicle, airplane or other asset subject to a certificate of title (other than to the extent a security interest therein can be perfected by filing a PPSA financing statement or an "all assets" UCC financing statement and without the requirement to list any VIN, serial or similar number), (iii) any letter of credit right (other than to the extent such right can be perfected by filing a PPSA financing statement or an "all assets" UCC financing statement) and commercial tort claims, (iv) any governmental or regulatory license or state or local franchise, charter, consent, permit or authorization to the extent the granting of a security interest therein is prohibited or restricted thereby or by applicable law (after giving effect to the applicable anti-assignment provisions of the PPSA or UCC, as applicable), (v) margin stock, (vi)(A) any capital stock of Holdings in excess of 65% of the voting capital stock and 100% of the non-voting capital stock of Holdings; and (B) solely with respect to a taxable period beginning on or after the distribution by Holdings of its shares in PledgeCo to the Parent and with respect to debt treated as an obligation of a U.S. Person for U.S. federal income tax purposes, any capital stock of any CFC or CFC Holdco, in each case in excess of 65% of the voting capital stock and 100% of the non-voting capital stock of such entity; *provided* that this clause shall not apply to any entity that is a direct or indirect Subsidiary of the Parent on the Escrow Release Date (other than Holdings and the Ancillary Business Subsidiaries), (vii) capital stock comprising any director's qualifying shares, nominee shares or similar shares that are required by law to be held by persons other than the Issuer, the Co-Issuer or any Guarantor or comprising de minimis shares of a foreign Subsidiary held by the Issuer, the Co-Issuer or any Guarantor as nominee or in a similar capacity, (viii) general intangibles (except to the extent constituting capital stock) and any lease, license, permit or other agreement or any property or right subject thereto to the extent that a grant of a security interest therein would violate or invalidate such item or create a right of termination in favor of or otherwise require consent thereunder from any other party thereto (other than the Issuer, the Co-Issuer or any Guarantor) (after giving effect to the applicable anti-assignment provisions of the PPSA or UCC, as applicable), (ix) any pledge or security interest prohibited or restricted by applicable law, rule or regulation or any agreement with any governmental authority or which would require governmental (including regulatory) consent, approval, license or authorization to provide such security interest (after giving effect to the applicable anti-assignment provisions of the PPSA or UCC, as applicable) (with no requirement to obtain the consent of any governmental authority or third party), (x) any "intent-to-use" trademark application prior to the filing of a statement of use, (xi) Capital Stock held by any Person in any joint venture or non-wholly owned subsidiary (for so long as such joint venture or non-wholly owned subsidiary is not wholly owned by the Parent and its Restricted Subsidiaries) to the extent the pledge thereof is pro-

hibited or restricted by any joint venture agreement, organizational document or other similar contractual obligation binding on, in each case, such joint venture or non-wholly-owned Subsidiary and/or enforceable against such Person, (xii) the majority ownership interest in the assets of the Ekati Core Zone Joint Venture (for so long as such joint venture is not wholly-owned by the Parent and its Restricted Subsidiaries) and (xiii) any other exception to be agreed between the Issuers and the Notes Collateral Agent in the Security Documents or, if the Revolving Credit Agreement is in effect, any particular assets, to the extent and for so long as, in the reasonable judgment of the Revolving Credit Agreement Collateral Agent and the Issuers, the cost of creating or perfecting a security interest in such assets shall be excessive in view of the benefits to be obtained by the Revolving Credit Agreement Secured Parties therefrom, for so long as such property is excluded under the Revolving Credit Facility, which determination is communicated in writing to the Notes Collateral Agent by an Issuer or the Revolving Credit Facility Collateral Agent.

"**Fair Market Value**" means the value that would be paid by a willing buyer to an unaffiliated willing seller in a transaction not involving distress or necessity of either party, as determined in good faith by a responsible accounting or financial officer of the Parent.

"**Finance Subsidiary**" means a wholly owned Subsidiary that is formed for the purpose of borrowing funds or issuing securities and lending the proceeds to the Issuer, the Co-Issuer or a Guarantor and that conducts no business other than as may be reasonably incidental to, or related to, the foregoing.

"**First Amalgamation**" means the amalgamation after the Escrow Release Date, of the Escrow Issuer and the Company.

"**First Lien Secured Indebtedness**" means with respect to any Person, the sum of the aggregate outstanding Indebtedness (other than Indebtedness of the type specified in Sections 4.6(b)(iv), (vi), (viii), (xii) and (xiii)) of that Person and its Restricted Subsidiaries that is secured by a First Priority Lien on some or all of the Collateral and Indebtedness of a Restricted Subsidiary of the Parent that is not a Guarantor; *provided* that, in the case of any Indebtedness that is secured by a First Priority Lien on some or all of the Collateral, an authorized representative of the holders of such Indebtedness shall be a party to or have executed a joinder to the Intercreditor Agreement.

"**First Priority Lien**" means any Lien on some or all of the Collateral that ranks senior to the Liens on the Collateral securing the Notes and the Note Guarantees, including any Lien that ranks senior by virtue of the Intercreditor Agreement or any other agreement or instrument (including, for the avoidance of doubt, the Revolving Credit Facility).

"**Fixed Charge Coverage Ratio**" means, with respect to any specified Person for any period, the ratio of the Consolidated EBITDA of such Person for such period to the Fixed Charges of such Person for such period. In the event that the specified Person or any of its Restricted Subsidiaries incurs, assumes, Guarantees, repays, repurchases, redeems, defeases or otherwise discharges any Indebtedness (other than ordinary course working capital borrowings) or issues, repurchases or redeems preferred stock subsequent to the commencement of the period for which the Fixed Charge Coverage Ratio is being calculated and on or prior to the date on which the event for which the calculation of the Fixed Charge Coverage Ratio is made (the "**Calculation Date**"), then the Fixed Charge Coverage Ratio will be calculated giving *pro forma* effect (as determined in good faith by a responsible accounting or financial officer of the Parent) to such incurrence, assumption, Guarantee, repayment, repurchase, redemption, defeasance or other discharge of Indebtedness, or such issuance, repurchase or redemption of preferred stock, and the use of the proceeds therefrom, as if the same had occurred at the beginning of the applicable two full fiscal half-year reference period; *provided*, *however*, that the *pro forma* calculation of Fixed Charges shall not give effect to (i) any Indebtedness incurred on the Calculation Date (and, for the avoidance of doubt, not reclassified on such Calculation Date) pursuant to Section 4.6(b) or (ii) the discharge on the Calculation Date of any Indebtedness to the extent that such discharge will result from the application of proceeds of any Indebtedness incurred pursuant to Section 4.6(b); *provided*, *further*, that in calculating the Fixed Charge Coverage Ratio or any element thereof for any period, *pro forma* calculations will be made in good faith by a responsible financial or accounting officer of such Person (including any *pro forma* expenses and cost savings and cost reduction synergies that have occurred or, only with respect to any cost savings or cost reduction synergies that are attributable to an acquisition of another Person, are reasonably expected to occur within the next twelve months following the date of such calculation and that are reasonably identifiable and factually supportable including, without limitation, as a result of, or that would result from

any actions taken by such Person or any of its Restricted Subsidiaries including, without limitation, in connection with any cost reduction or cost savings plan or program or in connection with any transaction, investment, acquisition, disposition, restructuring, corporate reorganization or otherwise, in the good faith judgment of the chief executive officer, chief financial officer or any person performing a similarly senior accounting role of such Person (regardless of whether these cost savings and cost reduction synergies could then be reflected in *pro forma* financial statements to the extent prepared); *provided* that the aggregate amount of cost savings and cost reduction synergies that may be included in connection with an acquisition of another Person for any period, taken together with the pro forma calculation for Transaction Expected Cost Savings Addback and Other Transactions Expected Cost Savings Addback in accordance with the definition of "Consolidated EBITDA" and other pro forma calculations made in accordance with the definition of "Total Net Leverage Ratio," shall not exceed 25.0% of Consolidated EBITDA calculated after giving effect to any such additions for such period).

If any Indebtedness bears a floating rate of interest and is being given *pro forma* effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the Calculation Date had been the applicable rate for the entire period (taking into account any Hedging Obligations applicable to such Indebtedness). Interest on a Capital Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a responsible financial or accounting officer of the Parent to be the rate of interest implicit in such Capital Lease Obligation in accordance with IFRS. For purposes of making the computation referred to above, interest on any Indebtedness under any revolving credit facility computed with a *pro forma* basis shall be computed based upon the average daily balance of such Indebtedness during the applicable period except as set forth in the first paragraph of this definition. Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rate, shall be determined to have been based upon the rate actually chosen, or if none, then based upon such optional rate chosen as the Issuer may designate.

In addition, for purposes of calculating the Fixed Charge Coverage Ratio:

(a) acquisitions that have been made by the specified Person or any of its Restricted Subsidiaries, including through mergers, amalgamations, consolidations or otherwise (including acquisitions of assets used or useful in the Permitted Business), or any Person or any of its Restricted Subsidiaries acquired by the specified Person or any of its Restricted Subsidiaries, and including any related financing transactions and including increases in ownership of Restricted Subsidiaries, during the two full fiscal half-year reference period or subsequent to such reference period and on or prior to the Calculation Date or that are to be made on the Calculation Date, will be given *pro forma* effect as if they had occurred on the first day of the two full fiscal half year reference period;

(b) the Consolidated EBITDA attributable to discontinued operations, as determined in accordance with IFRS, and operations or businesses (and ownership interests therein) disposed of prior to the Calculation Date, will be excluded;

(c) the Fixed Charges attributable to discontinued operations, as determined in accordance with IFRS, and operations or businesses (and ownership interests therein) disposed of prior to the Calculation Date, will be excluded, but only to the extent that the obligations giving rise to such Fixed Charges will not be obligations of the specified Person or any of its Restricted Subsidiaries following the Calculation Date;

(d) any Person that is a Restricted Subsidiary on the Calculation Date will be deemed to have been a Restricted Subsidiary at all times during such two full fiscal half-year period;

(e) any Person that is not a Restricted Subsidiary on the Calculation Date will be deemed not to have been a Restricted Subsidiary at any time during such two full fiscal half-year period; and

(f) if any Indebtedness bears a floating rate of interest, the interest expense on such Indebtedness will be calculated as if the rate in effect on the Calculation Date had been the applicable rate for the entire period (taking into account any Hedging Obligation applicable to such Indebtedness if such Hedging Obligation has a remaining term as of the Calculation Date in excess of 12 months, or, if shorter, at least equal to the remaining term of such Indebtedness).

"**Fixed Charges**" means, with respect to any Person for any period, (a) Consolidated Interest Expense of such Person and its Restricted Subsidiaries for such period, (i) including the interest component of any payment under any capital lease (regardless of whether accounted for as interest expense under IFRS) and (ii) excluding (A) amortization of deferred financing fees, debt issuance costs, discounted liabilities, commissions, fees and expenses, (B) any expense arising from any bridge, commitment and/or other financing fee (including fees and expenses associated with the Transactions and annual agency fees), (C) any expense resulting from the discounting of Indebtedness in connection with the application of recapitalization accounting or, if applicable, acquisition accounting, (D) fees and expenses associated with any Asset Sales, acquisitions, Investments, issuances of Capital Stock or Indebtedness (in each case, whether or not consummated), (E) costs associated with obtaining, or breakage costs in respect of, any hedge agreement or any other derivative instrument other than any interest rate hedge agreement or interest rate derivative instrument with respect to Indebtedness, (F) penalties and interest relating to Taxes and (G) for the avoidance of doubt, any non-cash interest expense attributable to any movement in the mark to market valuation of any obligation under any hedge agreement or any other derivative instrument and/or any payment obligation arising under any hedge agreement or derivative instrument other than any interest rate hedge agreement or interest rate derivative instrument with respect to Indebtedness, plus (b) the product of (i) all dividends, whether paid or accrued and whether or not in cash, on any series of preferred stock of such Person or any of its Restricted Subsidiaries, other than dividends on Equity Interests payable solely in Equity Interests of the Parent (other than Disqualified Stock) to the Parent or a Restricted Subsidiary of the Parent, times (ii) a fraction, the numerator of which is one and the denominator of which is one minus the then current combined national, state and local statutory tax rate of such Person, expressed as a decimal, minus (c) cash interest income for such period. For purposes of this definition, interest in respect of any capital lease shall be deemed to accrue at an interest rate determined by such Person in good faith to be the rate of interest implicit in such capital lease in accordance with IFRS.

"**Global Note Legend**" means the legend set forth in Section 2.6(f)(i) and in Exhibit 1 – Form of Note, which is required to be placed on all Global Notes issued under this Indenture.

"**Global Notes**" means, individually and collectively, each of the global notes, substantially in the form of Exhibit 1 hereto and that bears the Global Note Legend, issued in accordance with Sections 2.1 and 2.6 hereof and that has the "Schedule of Principal Amount of Indebtedness Evidenced by this Note" attached thereto.

"**Guarantee**" means a guarantee other than by endorsement of negotiable instruments for collection in the ordinary course of business, direct or indirect, in any manner including, without limitation, by way of a pledge of assets or through letters of credit or reimbursement agreements in respect thereof, of all or any part of any Indebtedness (whether arising by virtue of partnership arrangements, or by agreements to keep-well, to maintain financial statement conditions or otherwise), or entered into for purposes of assuring in any other manner the obligee of such Indebtedness of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part); *provided*, *however* that the term "**Guarantee**" will not include the endorsements for collection or deposit in the ordinary course of business or any obligation to the extent it is payable only in Capital Stock of the guarantor that is not Disqualified Stock. The term "**Guarantee**" used as a verb has a corresponding meaning.

"**Guarantor**" means each of the Parent and the Subsidiary Guarantors.

"**Hedging Obligations**" means, with respect to any specified Person, the obligations of such Person under:

(a) interest rate swap agreements (whether from fixed to floating or from floating to fixed), interest rate cap agreements and interest rate collar agreements, other agreements or arrangements designed to manage interest rates or interest rate risk;

(b) any foreign exchange contract, currency swap agreement, currency option, cap, floor, ceiling or collar agreement or other similar agreement or arrangement designed to protect such Person against fluctuations in currency exchange rates;

(c) any forward contract, commodity futures contract, commodity option agreement, commodity swap agreement or other similar agreement or arrangement designed to protect against fluctuations in the price of commodities used, produced, processed or sold by that Person or any of its Restricted Subsidiaries at the time; and

(d) other agreements or arrangements designed to protect such Person against fluctuations in interest rates, commodity prices or currency exchange rates, including Currency Exchange Protection Agreements.

"**Holder**" means the Person in whose name a Note is registered on the Registrar's books.

"**Holdings**" means Northwest Acquisitions Holdco B.V., an entity incorporated under the laws of the Netherlands.

"**IFRS**" means the International Financial Reporting Standards promulgated by the International Accounting Standards Board or any successor board or agency as endorsed by the European Union and, in relation to the Parent, the generally accepted accounting principles in the Netherlands, including IFRS.

"**Immediate Family Member**" means, with respect to any individual, such individual's child, stepchild, grandchild or more remote descendant, parent, stepparent, grandparent, spouse, former spouse, domestic partner, former domestic partner, sibling, mother-in-law, father-in-law, son-in-law and daughter-in-law (including adoptive relationships), any trust (including trustees of such trust), partnership, limited liability company or other bona fide estate-planning vehicle the primary beneficiaries of which are any of the foregoing individuals, such individual's estate or revocable trust (or an executor or administrator or trustee acting on its behalf), heirs or legatees or any private foundation or fund that is controlled by any of the foregoing individuals or any donor-advised fund of which any such individual is the donor.

"**Indebtedness**" means, with respect to any specified Person, any indebtedness of such Person (excluding accrued expenses and trade payables):

(a) in respect of borrowed money;

(b) evidenced by bonds, notes, debentures or similar instruments or letters of credit (or reimbursement agreements in respect thereof);

(c) in respect of banker's acceptances (except to the extent any such reimbursement obligations relate to trade payables and such obligations are satisfied within 30 days of incurrence);

(d) representing Capital Lease Obligations;

(e) representing the balance deferred and unpaid of the purchase price of any property due more than one year after such property is acquired;

(f) the principal component or liquidation preference of all obligations of such Person with respect to the redemption, repayment or other repurchase of any Disqualified Stock or, with respect to any Subsidiary, any preferred stock (but excluding, in each case, any accrued dividends);

(g) representing any Hedging Obligations;

(h) the principal component of all Indebtedness of other Persons secured by a Lien on any asset of such Person, whether or not such Indebtedness is assumed by such Person; *provided*, *however*, that the amount of such Indebtedness will be the lesser of (i) the Fair Market Value of such asset at such date of determination and (ii) the amount of such Indebtedness of such other Persons; and

(i) the principal component of Indebtedness of other Persons to the extent Guaranteed by such Person,

provided that the foregoing indebtedness shall be included in this definition of "**Indebtedness**" only if, and to the extent that, the indebtedness would appear as a liability upon a balance sheet of such Person prepared in accordance with IFRS.

The term “**Indebtedness**” shall not include:

(i) any lease of property which would be considered an operating lease under IFRS;

(ii) Contingent Obligations;

(iii) [reserved];

(iv) money borrowed and set aside at the time of the incurrence of any Indebtedness in order to pre-fund the payment of interest on such Indebtedness; *provided* that such money is held to secure the payment of such interest;

(v) any revolving credit facility to the extent any commitment under such revolving credit facilities is undrawn; or

(vi) in connection with the purchase by the Issuer, the Co-Issuer or any other Restricted Subsidiary of any business, any post-closing payment adjustments to which the seller may become entitled to the extent such payment is determined by a final closing balance sheet or such payment depends on the performance of such business after the closing.

“**Indenture**” means this instrument as originally executed or as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof.

“**Indirect Participant**” means a Person who holds a beneficial interest in a Global Note through a Participant.

“**Initial Purchasers**” means Credit Suisse Securities (USA) LLC, Citigroup Global Markets Inc., Natixis Securities Americas LLC and UBS Securities LLC.

“**Insolvency or Liquidation Proceeding**” means:

(1) any case commenced by or against any Obligor under any Bankruptcy Law, any other proceeding for the reorganization, recapitalization or adjustment or marshalling of the assets or liabilities of any Obligor, any receivership or assignment for the benefit of creditors relating to Obligors or any similar case or proceeding relative to the Obligors or its creditors, as such, in each case whether or not voluntary;

(2) any liquidation, dissolution, marshalling of assets or liabilities or other winding up of or relating to any Obligor, in each case whether or not voluntary and whether or not involving bankruptcy or insolvency; or

(3) any other proceeding of any type or nature in which substantially all claims of creditors of any Obligor are determined and any payment or distribution is or may be made on account of such claims.

“**Insolvency Regulation**” means the Council Regulation (EC) No. 848/2015 of 20 May 2015 on Insolvency Proceedings.

“**Intercreditor Agreement**” means (i) the intercreditor agreement to be dated as of the Escrow Release Date between, among others, the Issuer, the Co-Issuer, the Guarantors, the Revolving Credit Facility Collateral Agent and the Notes Collateral Agent, in the form attached to the supplemental indenture to be entered into on the Escrow Release Date, as amended, restated or otherwise modified or varied from time to time and (ii) any replacement thereof or other intercreditor agreement that contains terms not materially less favorable to the holders of the Notes than the intercreditor agreement referred to in clause (i).

“**Interest Payment Date**” means the Stated Maturity of an installment of interest on the Notes.

“**Internal Restructuring Transactions**” means, promptly after the consummation of the Acquisition, (i) the conversion of each of the Escrow Issuer’s subsidiaries which are domiciled in Canada, other than DDMC, to unlimited liability companies formed under the *Business Corporations Act* (British Columbia), (ii) the purchase by Holdings of all of the outstanding Capital Stock of DDMC, a majority of the Capital Stock of Dominion Diamond (India) Private Limited and a majority of the Capital Stock in Dominion Diamond Marketing N.V. with funds lent to it by Dominion Diamond ULC, (iii) the purchase by DDMC of the remaining Capital Stock of Dominion Diamond (India) Private Limited and Dominion Diamond Marketing N.V, (iv) the First Amalgamation, (v) the amalgamation of Amalgamated ULC and Dominion Diamonds Holdings ULC (the “**Second Amalgamation**”), (vi) the Distribution, (vii) the distribution of the funds received in connection with the transactions referred to in (ii) and (iii) above by: Dominion Diamond Luxembourg SARL to DDHL, by Dominion Diamond (Cyprus) Limited and DDHL to Amalgamated ULC, by Amalgamated ULC to PledgeCo, by PledgeCo to Parent and by Parent to its shareholder; (vi) the liquidation of Dominion Diamond (Cyprus) Limited and Dominion Diamond Luxembourg SARL and (vii) each of the sales, distributions, contributions and other transactions consummated by and between Parent and/or its Restricted Subsidiaries in connection with, or in furtherance of, the items described in the foregoing clauses (i) through (vi).

“**Investment Grade Status**” shall occur when the Notes are rated Baa3 or better by Moody’s and BBB- or better by S&P (or, if either such entity ceases to rate the Notes, the equivalent investment grade credit rating from any other “nationally recognized statistical rating organization” within the meaning of Rule 15c3-1(c)(2)(vi)(F) under the Exchange Act selected by the Issuers as a replacement agency).

“**Investments**” means, with respect to any Person, all direct or indirect investments by such Person in other Persons (including Affiliates) in the forms of loans (including Guarantees or other obligations, but excluding advances or extensions of credit to customers or suppliers made in the ordinary course of business), advances or capital contributions (excluding endorsements of negotiable instruments and documents in the ordinary course of business, and commission, travel and similar advances to officers, employees and consultants made in the ordinary course of business), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities, together with all items that are or would be classified as investments on a balance sheet prepared in accordance with IFRS. If the Parent or any Restricted Subsidiary of the Parent sells or otherwise disposes of any Equity Interests of any direct or indirect Subsidiary of the Parent such that, after giving effect to any such sale or disposition, such Person is no longer a Restricted Subsidiary of the Parent, the Parent will be deemed to have made an Investment on the date of any such sale or disposition equal to the Fair Market Value of the Parent’s Investments in such Restricted Subsidiary that were not sold or disposed of in an amount determined as provided in Section 4.8(d). Except as otherwise provided in this Indenture, for purposes of determining the amount of any Investment at any time outstanding, (a) the amount of an Investment will be determined at the time the Investment is made and without giving effect to subsequent changes in value and, to the extent applicable, shall be determined based on the equity value of such Investment, *minus* (b) any payments received on or in respect of any Investment (whether consisting of distributions, repayments of principal, returns of capital or dividends, redemptions or interest or otherwise).

“**Investors**” means the Sponsor and its Affiliates and any funds, partnerships or other investment vehicles managed or controlled by any such entities or their respective Affiliates, but not including, however, any portfolio companies of any of the foregoing.

“**IPO Reorganization Transaction**” means transactions taken in connection with and reasonably related to consummating an initial public offering, as determined by the Parent.

“**Issue Date**” means the date of this Indenture.

“**Issuer**” means (i) prior to the consummation of the First Amalgamation, the Escrow Issuer and (ii) after the consummation of the First Amalgamation, Amalgamated ULC, until a successor replaces it and, thereafter, means the successor.

“**Issuer Order**” means a written order of the Issuers signed by an Officer of the Issuers or Parent, or any other Person authorized by a resolution of the Board of Directors of the Parent and delivered to the Trustee.

“**Issuers**” means collectively the Issuer and the Co-Issuer.

"**Junior Collateral**" means any "Collateral" as defined in any Notes Collateral Document and any other Junior Debt Document or any other assets of any Obligor with respect to which a Lien is granted or purported to be granted pursuant to a Junior Collateral Document as security for any Junior Obligations.

"**Junior Collateral Documents**" means the Notes Collateral Documents and each of the security agreements and other instruments and documents executed and delivered by any Obligor for purposes of providing collateral security for any Additional Junior Debt.

"**Junior Debt**" means the Notes Obligations, Pari Secured Indebtedness and Additional Junior Debt.

"**Junior Debt Documents**" means (a) the Notes Documents, (b) Pari Secured Indebtedness Documents and (c) any Additional Junior Debt Documents.

"**Junior Lien Secured Indebtedness**" means Indebtedness that is secured by a Lien on some or all of the Collateral that is junior in priority to the Lien securing the Notes.

"**Junior Obligations**" means (a) the Notes Obligations, (b) Pari Secured Indebtedness Documents and (c) any Additional Junior Debt Obligations.

"**Junior Representative**" means (i) in the case of the Notes and Pari Secured Indebtedness, the Notes Collateral Agent and (ii) in the case of any Additional Junior Debt Facility and the Additional Junior Secured Parties thereunder, each Additional Junior Agent in respect of such Additional Junior Debt Facility that is named as such in the applicable joinder agreement to the Intercreditor Agreement.

"**Junior Secured Parties**" means the Notes Secured Parties, the Pari Secured Indebtedness Secured Parties and any Additional Junior Secured Parties.

"**Lien**" means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law, including any conditional sale or other title retention agreement, any lease in the nature thereof.

"**Limited Condition Transaction**" means any acquisition or other Permitted Investment the consummation of which is not conditioned on the availability of, or on obtaining, third party financing.

"**Limited Guarantee**" means a Guarantee by a Person organized other than in the United States and Canada, the amount of which is limited in order to comply with applicable requirements of law in the jurisdiction of organization of the applicable Person with respect to the enforceability of such Guarantee.

"**Management Advances**" means loans or advances made to, or Guarantees with respect to loans or advances made to, directors, Officers or employees of any Parent or any Restricted Subsidiary:

(a) in respect of travel, entertainment or moving related expenses incurred in the ordinary course of business;

(b) in respect of moving related expenses incurred in connection with any closing or consolidation of any facility or office; or

(c) in the ordinary course of business and (in the case of this Clause (c)) not exceeding $5.0 million in the aggregate outstanding at any time.

"**Maturity**" means, with respect to any Indebtedness, the date on which any principal of such indebtedness becomes due and payable as therein or herein provided, whether at the Stated Maturity with respect to such principal or by declaration of acceleration, call for redemption or purchase or otherwise.

"**Minority Interest**" means the percentage interest represented by any shares of stock of any class of Capital Stock of a Restricted Subsidiary of the Parent that are not owned by the Parent or a Restricted Subsidiary of the Parent.

"**Moody's**" means Moody's Investors Service, Inc. or any successor to its ratings business.

"**Net Proceeds**" means the aggregate cash proceeds received by the Parent or any of its Restricted Subsidiaries in respect of any Asset Sale (including, without limitation, any cash received upon the sale or other disposition of any non-cash consideration or Cash Equivalents received in any Asset Sale), net of the direct costs relating to such Asset Sale, including, without limitation:

(a) all legal, accounting, investment banking, commissions and other fees and expenses incurred, title and recording tax expenses, and all federal, state, provincial, foreign and local taxes required to be paid or accrued as a liability under IFRS, as a consequence of such Asset Sale;

(b) all payments made on any Indebtedness which is secured by any assets subject to such Asset Sale, in accordance with the terms of any Lien upon such assets, or which must by its terms, or in order to obtain a necessary consent to such Asset Sale, or by applicable law be repaid out of the proceeds from such Asset Sale;

(c) all distributions and other payments required to be made to holders of Minority Interests in Subsidiaries or joint ventures as a result of such Asset Sale; and

(d) the deduction of appropriate amounts to be provided by the seller as a reserve, in accordance with IFRS, or held in escrow, in either case for adjustment in respect of the sale price or for any liabilities associated with the assets disposed of in such Asset Sale and retained by the Parent or any Restricted Subsidiary after such Asset Sale.

"**Non-Recourse Debt**" means Indebtedness:

(a) as to which neither the Parent nor any of its Restricted Subsidiaries (i) provides credit support of any kind (including any undertaking, agreement or instrument that would constitute Indebtedness) or (ii) is directly or indirectly liable as a guarantor or otherwise;

(b) no default with respect to which (including any rights that the holders of the Indebtedness may have to take enforcement action against an Unrestricted Subsidiary) would permit, upon notice, lapse of time or both any holder of any other Indebtedness of the Parent or any of its Restricted Subsidiaries to declare a default on such other Indebtedness or cause the payment of the Indebtedness to be accelerated or payable prior to its Stated Maturity; and

(c) the explicit terms of which provide there is no recourse to the stock or assets of the Parent or any of its Restricted Subsidiaries (other than the Equity Interests of an Unrestricted Subsidiary).

"**Note Guarantee**" means a Guarantee by each Guarantor of the Issuers' Obligations under this Indenture and the Notes pursuant to this Indenture.

"**Non-U.S. Person**" means a person who is not a U.S. Person.

"**Notes Collateral Agent**" means Wilmington Trust, National Association, as collateral agent for the Trustee, the Holders and any Pari Secured Indebtedness Secured Parties (to the extent the authorized representative of such Pari Secured Indebtedness Secured Parties shall have executed a joinder to the Security Documents).

"**Notes Documents**" means this Indenture, the Notes, the Note Guarantees, the Security Documents, and any notes, security documents and other operative agreements evidencing or governing the Notes Obligations.

"**Notes Obligations**" means the Obligations arising pursuant to or in respect of the Notes Documents.

"**Notes Secured Parties**" means the Trustee, the Notes Collateral Agent and the holders of the Notes.

"**Obligations**" means any principal, interest (including any interest and fees accruing subsequent to the filing of a petition in bankruptcy, reorganization or similar proceeding at the rate provided for in the documentation with respect thereto, whether or not such interest or fees is an allowed claim under applicable state, federal or foreign law), penalties, fees, expenses, indemnifications, reimbursements, damages and other liabilities payable under the documentation governing any Indebtedness.

"**Obligors**" means, collectively, the Issuer, the Co-Issuer and each of the Guarantors.

"**Offering Circular**" means the offering circular dated as of October 6, 2017 relating to the offering of the Original Notes.

"**Officer**" means the Chairman of the Board, the Chief Executive Officer, the President, the Chief Financial Officer, any Vice President, the Treasurer, any Assistant Treasurer, Managing Director, Director or the Secretary or any Assistant Secretary of the Parent or the equivalent position of any of the foregoing or, in the event that the Parent is a partnership or a limited liability company that has no such officers, a person duly authorized under applicable law by the general partner, managers, members or a similar body to act on behalf of the Parent. Officer of the Issuer, the Co-Issuer or any other Restricted Subsidiary has a correlative meaning.

"**Officer's Certificate**" means a certificate signed by an Officer.

"**Operating Mining Asset**" means each of the following: (1) the Diavik Diamond Mine and the Ekati Diamond Mine, (2) any future mining properties, surface rights and any related licenses owned directly or through participation interests by the Parent or any of its Restricted Subsidiaries and (3) any equipment of the Parent or any of its Restricted Subsidiaries used in connection with therewith.

"**Opinion of Counsel**" means an opinion from legal counsel reasonably satisfactory to the Trustee, who may be an employee of or counsel to the Parent or any Subsidiary of the Parent.

"**Parent**" means Washington Diamond Investments B.V. and its successors or assigns.

"**Pari Secured Indebtedness**" means Indebtedness that is secured by a Lien on some or all of the Collateral that is pari passu to the Lien securing the Notes; *provided* that (i) such Indebtedness is permitted to be incurred and secured on such basis by this Indenture and (ii) an authorized representative of the holders of such Indebtedness shall have executed a joinder to the Security Documents.

"**Pari Secured Indebtedness Documents**" means, with respect to any series of Pari Secured Indebtedness, the notes, credit agreements, indentures, security documents and other operative agreements evidencing or governing such Pari Secured Indebtedness and each other agreement entered into for the purpose of securing such Pari Secured Indebtedness.

"**Pari Secured Indebtedness Secured Parties**" means, with respect to any series of Pari Secured Indebtedness, the holders of such Pari Secured Indebtedness, the Representative with respect thereto, any trustee or agent therefor under any related Pari Secured Indebtedness Documents and the beneficiaries of each indemnification obligation undertaken by the Obligors under any related Pari Secured Indebtedness Documents.

"**Permitted Business**" means (i) any businesses, services or activities engaged in by the Parent or any of its Restricted Subsidiaries on the Escrow Release Date and (ii) the business, services or activities that are related or complementary to acquiring, exploring, exploiting, developing, producing, operating, transporting, marketing or disposing diamonds and other gemstones and any business or activity relating to, arising from, or necessary, appropriate or incidental to the foregoing activities.

"**Permitted Business Investments**" means Investments made in (A) a Permitted Business, including through agreements, acquisitions, transactions, interests or arrangements which permit one to share (or have the effect of sharing) risks or costs, comply with regulatory requirements regarding ownership or satisfy other customary objectives in mining or other extraction businesses, and in any event including, without limitation, Investments made in connection with or in the form of: (i) direct or indirect ownership interests in diamond mining properties, surface rights, gathering or upgrading systems or facilities and any related licenses; (ii) operating agreements, development agreements, area of mutual interest agreements, pooling agreements, service contracts, joint venture agreements, partnership or limited liability company agreements (whether general or limited), working interests, royalty interests, mineral leases, farm in agreements, farm out agreements, contracts for the sale, transportation or exchange of diamonds or other gemstones or other similar or customary agreements, transactions, properties, interests or arrangements, and Investments and expenditures in connection therewith or pursuant thereto and (iii) direct or indirect ownership interests in diamond mining businesses and related equipment, including without limitation, transportation and processing equipment; and (B) Persons engaged in a Permitted Business.

"**Permitted Collateral Liens**" means:

(a) Liens securing the Notes and any Permitted Refinancing Indebtedness in respect thereof (and Permitted Refinancing Indebtedness in respect of such Permitted Refinancing Indebtedness) incurred to refinance such Notes incurred in compliance with Section 4.6(b)(v), and the related Guarantees or guarantees of such Permitted Refinancing Indebtedness; *provided* that such Liens will be subject to the Intercreditor Agreement and/or any Additional Intercreditor Agreement as applicable, and a representative, trustee or agent for the holders of such Indebtedness shall be party to such Intercreditor Agreement or Additional Intercreditor Agreement;

(b) Liens on the Collateral to secure Indebtedness that is permitted by Sections 4.6(b)(i) or 4.6(b)(ii); *provided* that, in each case, all property and assets (including, without limitation, the Collateral) securing such Indebtedness also secure the Notes and the Guarantees on a second lien basis (or at the option of the Issuers, on a senior or *pari passu* basis); *provided, further*, that such Liens on the Collateral may rank senior in priority to the Liens on the Collateral securing the Notes and the Guarantees; and *provided, further*, that a representative, trustee or agent for the holders of such Indebtedness shall be party to the Intercreditor Agreement and/or an Additional Intercreditor Agreement, as applicable, that the Notes Collateral Agent is party to (for the avoidance of doubt, such Indebtedness may receive priority as to enforcement proceeds from such Collateral);

(c) Liens on the Collateral to secure Acquired Debt that is permitted by Section 4.6(b)(xiv); *provided* that, all property and assets (including, without limitation, the Collateral) securing such Indebtedness also secure the Notes and the Guarantees on a second lien basis (or at the option of the Issuers, on a senior or *pari passu* basis); *provided*, *further*, that such Liens on the Collateral may rank senior in priority to the Liens on the Collateral securing the Notes and the Guarantees; and *provided*, *further*, that a representative, trustee or agent for the holders of such Indebtedness shall be party to the Intercreditor Agreement and/or an Additional Intercreditor Agreement, as applicable, that the Notes Collateral Agent is party to;

(d) [reserved];

(e) Liens on the Collateral to secure Secured Indebtedness that is permitted by Section 4.6(a) and Permitted Refinancing Indebtedness in respect thereof (and Permitted Refinancing Indebtedness in respect of such Permitted Refinancing Indebtedness); *provided* that all property and assets (including, without limitation, the Collateral) securing such Indebtedness also secure the Notes and the Guarantees on a senior or *pari passu* basis; *provided*, *further*, that such Liens on the Collateral must rank equal (or junior) in priority to the Liens securing the Notes and the Guarantees; and *provided*, *further*, that a representative, trustee or agent for the holders of such Indebtedness shall be party to the Intercreditor Agreement and/or an Additional Intercreditor Agreement, as applicable, that the Notes Collateral Agent is party;

(f) [reserved];

(g) Liens on the Collateral to secure obligations under Hedging Obligations (other than Hedging Obligations in respect of commodity prices) permitted by Section 4.6(b)(viii) to the extent such Hedging Obligations relate to Indebtedness and any Permitted Refinancing Indebtedness in respect thereof (and Permitted Refinancing Indebtedness in respect of such Permitted Refinancing Indebtedness) and such Indebtedness is also secured by the Collateral; *provided* that, all property and assets (including without limitation the Collateral) securing such Indebtedness or Hedging Obligations also secure the Notes and any Guarantees on a second lien basis (or at the option of the Issuers, on a senior or *pari passu* basis); *provided*, *further*, that such Liens on the Collateral may rank senior in priority to the Liens on the Collateral securing the Notes and the Note Guarantees; and *provided*, *further*, that a representative, trustee or agent for the holders of such Obligations shall be party to the Intercreditor Agreement and/or an Additional Intercreditor Agreement, as applicable, that the Notes Collateral Agent is party to; and

(h) Liens on the Collateral that are set forth in one or more of Clauses (f), (g), (h), (i), (m), (o), (r), (s), (t), (u), (v), (bb), (cc), (ee) and (ff) of the definition of "Permitted Liens" and that, in each case, would not materially interfere with the ability of the Notes Collateral Agent to enforce any Lien over the Collateral.

"**Permitted Equity**" means common equity, Qualified Capital Stock or other preferred Capital Stock or instruments having terms permitted under the Revolving Credit Facility.

"**Permitted Holders**" means each of (1) the Investors and their respective Controlled Investment Affiliates, (2) the members of management of Parent or any Restricted Subsidiaries of the Parent (or any parent entity thereof) on the Escrow Release Date, (3) any Permitted Parent and (4) any group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act or any successor provision) the members of which include any of the Permitted Holders specified in clauses (1), (2), or (3) above (a "Permitted Holder Group") and all members of such Permitted Holder Group (only with respect to the Voting Stock beneficially owned by such Permitted Holder Group); *provided* that, in the case of a Permitted Holder Group and without giving effect to the existence of such Permitted Holder Group or any other group, such Investors and members of management, collectively, have beneficial ownership of more than 50% of the total voting power of the Voting Stock of the Parent or any parent entity thereof held by such Permitted Holder Group. Any Person or group whose acquisition of beneficial ownership constitutes a Change of Control in respect of which a Change of Control Offer is made in accordance with the requirements of this Indenture will thereafter, together with its Affiliates, constitute an additional Permitted Holder.

"**Permitted Investments**" means:

(a) any Investment in the Parent or in a Restricted Subsidiary of the Parent (including an Investment in itself not otherwise prohibited by this Indenture);

(b) any Investment in cash and Cash Equivalents;

(c) any Investment by the Parent or any Restricted Subsidiary of the Parent in any Person, if as a result of such Investment:

(i) such Person becomes a Restricted Subsidiary of the Parent; or

(ii) such Person is merged, consolidated or amalgamated with or into, or transfers or conveys substantially all of its assets to, or is liquidated into, the Parent or a Restricted Subsidiary of the Parent, and, in each case, any Investment held by such Person;

(d) any Investment made as a result of the receipt of non-cash consideration from (i) any sale, lease, conveyance or other disposition of assets that was made pursuant to and in compliance with Section 4.9 or (ii) a disposition of assets not constituting an Asset Sale;

(e) any acquisition of assets or Capital Stock solely in exchange for the issuance of Equity Interests (other than Disqualified Stock) of the Parent;

(f) any Investments received in compromise or resolution of (i) obligations of trade creditors or customers that were incurred in the ordinary course of business of the Parent or any of its Restricted Subsidiaries, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer; or (ii) litigation, arbitration or other disputes with Persons who are not Affiliates;

(g) Investments represented by Hedging Obligations not for speculative purposes;

(h) receivables owing to the Parent or any Restricted Subsidiary created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary trade terms; *provided*, *however*, that such trade terms may include such concessionary trade terms as the Parent or any such Restricted Subsidiary deems reasonable under the circumstances;

(i) surety and performance bonds and workers' compensation, utility, lease, tax, performance and similar deposits and prepaid expenses in the ordinary course of business, including surety bonds securing reclamation or environmental obligations;

(j) Guarantees of Indebtedness permitted under Section 4.6;

(k) Guarantees by the Parent or any of its Restricted Subsidiaries of operating leases (other than Capital Lease Obligations) or of other obligations that do not constitute Indebtedness, entered into by the Parent or any Restricted Subsidiary in the ordinary course of business;

(l) Investments of a Restricted Subsidiary acquired after the Escrow Release Date or of any entity merged into the Parent or merged into or consolidated or amalgamated with a Restricted Subsidiary in accordance with Section 5.1 to the extent that such Investments were not made in contemplation of or in connection with such acquisition, merger, consolidation or amalgamation and were in existence on the date of such acquisition, merger, consolidation or amalgamation;

(m) Investments received as a result of a foreclosure by the Parent or any of its Restricted Subsidiaries with respect to any secured Investment in default;

(n) any Investment existing on, or made pursuant to binding commitments existing on, the Escrow Release Date, and any Investment consisting of an extension, modification or renewal of any Investment existing on, or made pursuant to a binding commitment existing on, the Escrow Release Date; *provided* that the amount of any such Investment may be increased (i) as required by the terms of such Investment as in existence on the Escrow Release Date or (ii) as otherwise permitted under this Indenture;

(o) Investments in the Notes and any other Indebtedness of the Parent or any Restricted Subsidiary;

(p) Management Advances;

(q) payroll, commission, travel, relocation and similar advances to cover matters that are expected at the time of such advances ultimately to be treated as expenses for accounting purposes and that are made in the ordinary course of business;

(r) Investments in any Person to the extent such Investments consist of prepaid expenses, negotiable instruments held for collection and lease, utility and workers' compensation, performance and similar deposits made in the ordinary course of business by the Parent or any Restricted Subsidiary;

(s) Permitted Business Investments in an amount at the time of such Investment not to exceed the greater of (x) $150.0 million and (y) 8.0% of Total Assets, at any one time outstanding (in each case, with the Fair Market Value of such Investment being measured at the time made and without giving effect to subsequent changes in value);

(t) Investments in connection with the Transactions, and any Investments held by the Company or its Restricted Subsidiaries on the Escrow Release Date and permitted to remain (or not prohibited from remaining) outstanding after the Escrow Release Date pursuant to the terms of the Arrangement Agreement;

(u) Investments in the Diavik Joint Venture and the Ekati Core Zone Joint Venture, in each case relating to the diamond mining business of the Diavik Joint Venture and the Ekati Core Zone Joint Venture, respectively;

(v) other Investments in any Person having an aggregate Fair Market Value (measured on the date each such Investment was made and without giving effect to subsequent changes in value), when taken together with all other Investments made pursuant to this Clause (v) that are at the time outstanding, not to exceed $25.0 million in any fiscal year; *provided* that unused amounts in any fiscal year may be carried over to succeeding fiscal years; *provided, further*, that if an Investment is made pursuant to this Clause (v) in a Person that is not a Restricted Subsidiary and such Person subsequently becomes a Restricted Subsidiary or is subsequently designated a Restricted Subsidiary pursuant to Section 4.8, such Investment shall thereafter be deemed to have been made pursuant to Clause (a) or (c) of this definition of "Permitted Investments" and not this Clause (v);

(w) other Investments in any Person; *provided* that, after giving pro forma effect to such Investment, the Parent's Total Net Leverage Ratio would not exceed 1.50: to 1.00;

(x) Investments in joint ventures or any Unrestricted Subsidiaries in an aggregate amount not to exceed $15.0 million in any fiscal year; *provided* that unused amounts in any fiscal year may be carried over to succeeding fiscal years subject to a maximum of $30.0 million in any fiscal year;

(y) Investments in connection with a Permitted Reorganization;

(z) Investments in connection with and reasonably related to consummating an initial public offering;

(aa) Investments funded with Permitted Equity that does not increase the amount calculated under Section 4.8(a)(C) and is not otherwise applied or consideration paid in Permitted Equity of the Parent (or equity of a direct or indirect parent company thereof);

(bb) Restricted Subsidiaries may be established or created if the Parent, the Issuers and such Restricted Subsidiaries comply with the requirements to guaranty and secure the Notes Obligations, if applicable; and

(cc) acquisitions of Investments in joint ventures to the extent required by, or made pursuant to, applicable buy/sell arrangements and/or similar binding arrangements.

"**Permitted IPO Distributions**" means, after a Qualifying IPO, Restricted Payments in an amount, on an annual basis, not to exceed 6.0% of the net proceeds received by (or contributed to) the Parent or any Restricted Subsidiary from such Qualifying IPO.

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

(a) Liens in favor of the Parent or any Restricted Subsidiary;

(b) Liens on property of a Person existing at the time such Person is merged with or into or consolidated or amalgamated with the Parent or any Subsidiary of the Parent; *provided* that (x) such Liens were in existence prior to the contemplation of such merger, consolidation or amalgamation and do not extend to any assets other than those of the Person merged into or consolidated or amalgamated with the Par-

ent or the Subsidiary and (y) the Indebtedness secured by such Liens was permitted to be incurred under Section 4.6(b)(xiv);

(c) Liens on property (including Capital Stock) existing at the time of acquisition of the property by the Parent or any Subsidiary of the Parent; *provided* that (x) such Liens were in existence prior to, such acquisition, and not incurred in contemplation of, such acquisition and (y) the Indebtedness secured by such Liens was permitted to be incurred under Section 4.6(b)(xiv);

(d) Liens existing on the Escrow Release Date (or permitted to remain outstanding after the Escrow Release Date pursuant to the terms of the Arrangement Agreement (including Liens on cash or cash equivalents backstopping any letters of credit existing on the Issue Date) and any replacements, refinancings or renewals thereof, so long as no such replacement, refinancing or renewal thereof increases the amount of such Lien except to the extent such increase constitutes a Permitted Lien under any other section of the definition of Permitted Liens;

(e) Liens on Capital Stock of and assets of any Restricted Subsidiary that is not an Issuer, the Co-Issuer or any Guarantor that secure Permitted Debt of such Restricted Subsidiary or any other Restricted Subsidiary that is not an Issuer, the Co-Issuer or a Guarantor;

(f) Liens for taxes, assessments or governmental charges or claims that (x) are not yet delinquent for a period of more than 60 days or (y) that are being contested in good faith by appropriate proceedings and for which appropriate reserves have been made;

(g) survey exceptions, encumbrances, ground leases, easements or reservations of, or rights of others for, licenses, rights of way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning, building codes or other restrictions (including, without limitation, minor defects or irregularities in title and similar encumbrances) as to the use of real property or Liens incidental to the conduct of the business of such Person or to the ownership of its properties that were not incurred in connection with Indebtedness and that do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of such Person;

(h) Liens encumbering property or assets under construction arising from progress or partial payments by a customer of the Parent or its Restricted Subsidiaries relating to such property or assets;

(i) Liens in favor of customs and revenue authorities arising as a matter of law to secure payments of customs duties in connection with the importation of goods;

(j) any attachment, prejudgment or judgment Lien that does not constitute an Event of Default and notices of *lis pendens* and associated rights related to litigation being contested in good faith by appropriate proceedings and for which adequate reserves have been made;

(k) Liens created for the benefit of (or to secure) the Notes issued on the date of this Indenture (and any Note Guarantees thereof);

(l) Liens to secure any Permitted Refinancing Indebtedness permitted to be incurred under this Indenture; *provided*, *however*, that:

(i) the new Lien shall be limited to all or part of the same property and assets that secured or, under the written agreements pursuant to which the original Lien arose, could secure the original Lien (*plus* improvements and accessions to, such property or proceeds or distributions thereof); and

(ii) the Indebtedness secured by the new Lien is not increased to any amount greater than the sum of (x) the outstanding principal amount, or, if greater, committed amount, of the Indebtedness renewed, refunded, refinanced, replaced, redeemed, defeased or discharged with such

Permitted Refinancing Indebtedness and (y) an amount necessary to pay any fees and expenses, including premiums, related to such renewal, refunding, refinancing, replacement, defeasance or discharge;

(m) Liens arising solely by virtue of any statutory or common law provisions relating to banker's Liens, rights of set-off or similar rights and remedies as to deposit accounts or other funds maintained or deposited with a depositary institution;

(n) Liens on cash or Cash Equivalents (or other cash equivalents) securing reimbursement or indemnity obligations in respect of letters of credit, letters of guarantee or surety bonds securing or supporting reclamation or environmental obligations;

(o) any (i) interest or title of a lessor or sublessor under any lease, mineral leases for bonus or rental payments and for compliance with the terms of such leases; (ii) restriction or encumbrance that the interest or title of such lessor or sublessor may be subject to (including without limitation, ground leases or other prior leases of the demised premises, mortgages, mechanics' liens, statutory tax liens, and easements); or (iii) subordination of the interest of the lessee or sublessee under such lease to any restrictions or encumbrance referred to in the preceding Clause (ii);

(p) Liens arising under this Indenture in favor of the Trustee for its own benefit and similar Liens in favor of other trustees, agents and representatives arising under instruments governing Indebtedness permitted to be incurred under this Indenture, *provided*, *however*, that such Liens are solely for the benefit of the trustees, agents or representatives in their capacities as such and not for the benefit of the holders of the Indebtedness;

(q) Liens securing Hedging Obligations, which obligations are permitted by Section 4.6(b)(viii);

(r) Liens upon specific items of inventory, receivables or other goods (or the proceeds thereof) of any Person securing such Person's obligations in respect of bankers' acceptances or receivables securitizations issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory, receivables or other goods (or the proceeds thereof);

(s) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of assets entered into in the ordinary course of business;

(t) (i) mortgages, liens, security interests, restrictions, encumbrances or any other matters of record that have been placed by any developer, landlord, contractor or other third party on property over which the Parent or any Restricted Subsidiary has easement rights or on any real property leased by the Parent or any Restricted Subsidiary (including those arising from progress or partial payments by a third party relating to such property or assets) and subordination or similar agreements relating thereto and (ii) any condemnation or eminent domain proceedings or compulsory purchase order affecting real property;

(u) Liens (including put and call arrangements) on Capital Stock or other securities of any Unrestricted Subsidiary that solely secure Indebtedness of such Unrestricted Subsidiary;

(v) pledges of goods, the related documents of title and/or other related documents arising or created in the ordinary course of the Parent or any Restricted Subsidiary's business or operations as Liens only for Indebtedness to a bank or financial institution directly relating to the goods or documents on or over which the pledge exists;

(w) (a) Liens on the ownership interests in, or assets owned by, any joint ventures which are not Restricted Subsidiaries securing contributions to, or obligations of, such joint ventures; (b) customary rights of first refusal and tag, drag and similar rights in joint venture agreements; and (c) Liens on joint venture assets or equity in joint venture participants securing obligations to joint venture partners;

(x) Liens under industrial revenue, municipal or similar bonds;

(y) [reserved];

(z) Liens created on any asset of the Parent or a Restricted Subsidiary established to hold assets of any stock option plan or any other management or employee benefit or incentive plan or unit trust of the Parent or a Restricted Subsidiary securing any loan to finance the acquisition of such assets;

(aa) [reserved];

(bb) the following ordinary course items:

(i) leases, licenses, subleases or sublicenses (including, without limitation, real property and intellectual property rights) granted to others that do not materially interfere with the ordinary course of business of the Parent and its Restricted Subsidiaries, taken as a whole;

(ii) landlords', carriers', warehousemen's, mechanics', materialmen's, repairmen's or the like Liens arising by contract or statute in the ordinary course of business;

(iii) pledges or deposits made (A) in connection with leases, tenders, bids, statutory obligations, surety or appeal bonds, government contracts, performance bonds and similar obligations, or (B) in connection with workers' compensation, unemployment insurance and other social security legislation (including, in each case, Liens to secure letters of credit issued to assure payment of such obligations);

(iv) Liens arising from Uniform Commercial Code financing statement filings under U.S. state law (or similar filings under applicable jurisdictions including PPSA filings) regarding (1) operating leases entered into by the Parent and its Restricted Subsidiaries in the ordinary course of business and/or (2) the sale of accounts receivable in the ordinary course of business for which a Uniform Commercial Code financing statement filing or PPSA filing or similar financing statement under the applicable jurisdiction is required;

(v) Liens on insurance policies and proceeds thereof, or other deposits, to secure insurance premium financings in the ordinary course of business;

(vi) leases, licenses, subleases and sublicenses of assets in the ordinary course of business; and

(vii) Liens securing or arising by reason of any netting or set-off arrangement entered into in the ordinary course of banking or other trading activities;

(cc) Liens on Escrowed Proceeds for the benefit of the related holders of debt securities or other Indebtedness (or the underwriters or arrangers thereof) or on cash set aside at the time of the incurrence of any Indebtedness or government securities purchased with such cash, in either case, to the extent such cash or government securities prefund the payment of interest on such Indebtedness and are held in an escrow account or similar arrangement to be applied for such purpose;

(dd) Liens securing Indebtedness permitted by Section 4.6(b)(iv) covering only the assets acquired with or financed by such Indebtedness;

(ee) Liens by the Parent or any Restricted Subsidiary of the Parent with respect to Indebtedness at any one time outstanding that does not exceed $50.0 million, as determined on the date of incurrence of such Indebtedness after giving *pro forma* effect to such incurrence and the application of the proceeds therefrom;

(ff) Liens arising under farm out agreements, farm in agreements, contracts for the sale, purchase, exchange, transportation, gathering or processing of minerals or ore, declarations, orders and agreements, partnership agreements, operating agreements, royalties, working interests, carried working interests, net profit interests, joint interest billing arrangements, participation agreements, production sales contracts, area of mutual interest agreements, deferred production agreements, other disposal agreements, seismic or geophysical permits or agreements, licenses, sublicenses and other agreements which are customary in the mining industry;

(gg) Liens on cash, Cash Equivalents or other property arising in connection with the defeasance, discharge or redemption of Indebtedness;

(hh) Liens securing Guarantees of any Indebtedness or other obligations otherwise permitted to be secured by a Lien under this Indenture;

(ii) liens, pledges or deposits made in the ordinary course of business to secure liability to insurance carriers;

(jj) Liens on equipment of the Parent or any Restricted Subsidiary granted in the ordinary course of business or consistent with industry practice to the Parent's or such Restricted Subsidiary's supplier at which such equipment is located;

(kk) Liens (i) solely on any cash earnest money deposits made by the Parent or any of the Restricted Subsidiaries in connection with any letter of intent or purchase agreement in respect of any Investment permitted under this Indenture or (ii) consisting of an agreement to dispose of any property permitted to be sold pursuant to Section 4.9;

(ll) Liens to secure contractual payments (contingent or otherwise) payable by the Parent or its Subsidiaries to a seller after the consummation of an acquisition of a product, business, license or other assets;

(mm) in the case of real or immovable property located in Canada, reservations, limitations, provisos and conditions expressed in any original grant from the Crown or other grants of real or immovable property, or interests therein, that do not materially affect the use of the affected land for the purpose for which it is used by the Issuers or the applicable Guarantor;

(nn) rights reserved to or vested in any Canadian governmental authority by the terms of any lease, license, franchise, grant or permit or by any Canadian (federal or provincial) statutory provision to terminate any such lease, license, franchise, grant or permit, or to require annual or other payments as a condition to the continuance thereof;

(oo) security given to a Canadian public utility or Canadian (federal or provincial) governmental authority when required by such utility or authority in connection with operations in Canada in the ordinary course of its business;

(pp) undetermined or inchoate Liens, arising or potentially arising under statutory provisions which have not at the time been filed or registered in accordance with applicable law or of which written notice has not been duly given in accordance with applicable law or which, although filed or registered, relate to obligations not due or delinquent;

(qq) servicing agreements, developing agreements, site plan agreements and other agreements with governmental authorities pertaining to the use or development of any of the assets of the Parent, the Escrow Issuer or any Restricted Subsidiary; *provided* that such Person complies in all material respects with such agreements and such agreements do not materially reduce the value of the assets of such Person or materially interfere with the use of such assets in the operation of the business of such Person;

(rr) Liens granted pursuant to a security agreement between the Parent, the Escrow Issuer or any Restricted Subsidiary and a licensee of intellectual property to secure the damages, if any, incurred by such licensee resulting from the rejection of the license of such licensee in a bankruptcy, reorganization or similar proceeding with respect to the Parent, the Escrow Issuer or such Restricted Subsidiary;

(ss) Liens arising solely in connection with rights of dissenting equity holders pursuant to any requirement of law in respect of any acquisition permitted by this Indenture;

(tt) Liens on assets not constituting Collateral securing obligations in an aggregate outstanding principal amount not to exceed $10.0 million; and

(uu) any extension, renewal, refinancing or replacement, in whole or in part, of any Lien set forth in Clauses (b) through (tt) or this Clause (uu) (but excluding Clause (ee)) of this definition; *provided* that any such Lien is limited to all or part of the same property or assets (*plus* improvements, accessions, proceeds or dividends or distributions in respect thereof) that secured (or, under the written arrangements under which the original Lien arose, could secure) the Indebtedness being refinanced.

"**Permitted Parent**" means any direct or indirect parent of the Parent formed not in connection with, or in contemplation of, a transaction that, assuming such parent entity was not a parent entity, would constitute a Change of Control.

"**Permitted Refinancing Indebtedness**" means any Indebtedness (including Indebtedness incurred in the future) of the Parent or any of its Restricted Subsidiaries issued in exchange for, or the net proceeds of which are used at any time to extend, renew, refund, refinance, replace, exchange, redeem, defease or discharge other Indebtedness of the Parent or any of its Restricted Subsidiaries (other than intercompany Indebtedness), including Indebtedness that refinances Permitted Refinancing Indebtedness; *provided* that:

(a) the aggregate principal amount (or accreted value, if applicable, or if issued with original issue discount, aggregate issue price) of such Permitted Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable, or if issued with original issue discount, aggregate issue price) (or, if greater, the committed amount (only to the extent the committed amount could have been incurred or issued on the date of initial incurrence or issuance and was deemed incurred or issued at such time for the purposes of Section 4.6)) of the Indebtedness being extended, renewed, refunded, refinanced, replaced, exchanged, redeemed, defeased or discharged (*plus* all accrued interest on the Indebtedness and the amount of all fees and expenses, including premiums, incurred in connection therewith);

(b) such Permitted Refinancing Indebtedness has (i) a final maturity date that is either (A) no earlier than the final maturity date of the Indebtedness being renewed, refunded, refinanced, replaced, redeemed, exchanged, defeased or discharged or (B) after the final maturity date of the Notes and (ii) has a Weighted Average Life to Maturity that is equal to or greater than the Weighted Average Life to Maturity of the Indebtedness being extended, renewed, refunded, refinanced, replaced, redeemed, defeased or discharged;

(c) if the Indebtedness being extended, renewed, refunded, refinanced, replaced, defeased or discharged is expressly contractually subordinated in right of payment to the Notes or the Note Guarantee, as the case may be, such Permitted Refinancing Indebtedness is subordinated in right of payment to, the Notes or the Note Guarantee, as the case may be, on terms at least as favorable to the holders of Notes or the Note Guarantee, as the case may be, as those contained in the documentation governing the Indebtedness being extended, renewed, refunded, refinanced, replaced, exchanged, defeased or discharged; and

(d) such Indebtedness is incurred by any Issuer, any Guarantor or by any Restricted Subsidiary that was an obligor (including, without limitation, as borrower, issuer or guarantor) on the Indebtedness being refinanced and is guaranteed only by any Issuer, any Guarantor or Persons who were obligors (including, without limitation, as borrower, issuer or guarantor) on the Indebtedness being refinanced.

Notwithstanding the foregoing, any Indebtedness incurred under Credit Facilities pursuant to Section 4.6 shall be subject to the refinancing provisions of the definition of "Credit Facilities" and not pursuant to the requirements set forth in this definition of Permitted Refinancing Indebtedness.

"**Permitted Reorganization**" means internal re-organizations and or restructurings (including in connection with tax planning and corporate re-organizations), so long as, after giving effect thereto, in the determination of the Parent, the security interest of the lenders under the Revolving Credit Facility in the Collateral, taken as a whole, is not materially impaired.

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

"**PledgeCo**" means Northwest Acquisitions Pledge B.V., an entity incorporated under the laws of the Netherlands.

"**PPSA**" means the Personal Property Security Act (Ontario) and the regulations thereunder, as from time to time in effect; provided, however, if validity, attachment, perfection (or opposability), effect of perfection or non-perfection or priority of the Notes Collateral Agent's security interests in any Collateral are governed by the personal property security laws or laws relating to movable property of any such other jurisdiction including the Civil Code (Quebec), "PPSA" means the Personal Property Security Act or such other applicable legislation in effect from time to time in such other jurisdiction for the purposes of the provisions hereof relating to such validity, attachment, perfection (or opposability), effect of perfection or non-perfection or priority and for the definitions related to such provisions.

"**Private Placement Legend**" means the legend set forth in Section 2.6(f)(ii) and in Exhibit 1 – Form of Note, which is required to be placed on all Notes issued under this Indenture except where otherwise permitted by this Indenture.

"**Public Debt**" means any Indebtedness consisting of bonds, debentures, notes or other similar debt securities issued in (1) a public offering registered under the Securities Act or (2) a private placement to institutional investors that is underwritten for resale in accordance with Rule 144A or Regulation S under the Securities Act, whether or not it includes registration rights entitling the holders of such debt securities to registration thereof with the SEC for public resale whether or not listed on an exchange.

"**QIB**" means "qualified institutional investor" as defined in Rule 144A.

"**Qualified Capital Stock**" of any Person means any Capital Stock of such Person that is not Disqualified Stock.

"**Qualifying IPO**" means any transaction or series of related transactions that results in any of the common Capital Stock of Parent, any direct or indirect parent of Parent or the Issuers being publicly traded on any U.S. national securities exchange or any analogous exchange or any recognized securities exchange in Canada, the United Kingdom or any country in the European Union.

"**Rating Agencies**" means Moody's and S&P or, in the event Moody's and S&P no longer assigns a rating to the Notes, any other "nationally recognized statistical rating organization" within the meaning of Rule 15c3-1(c)(2)(vi)(F) under the Exchange Act selected by the Issuers as a replacement agency.

"**Record Date**" for the interest payable on any Interest Payment Date means the April 15 or October 15 (whether or not a Business Day), as the case may be, next preceding such Interest Payment Date.

"**Redemption Date**," when used with respect to any Note to be redeemed, in whole or in part, means the date fixed for such redemption by or pursuant to this Indenture.

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

"**Registered Equivalent Notes**" means, with respect to any notes originally issued in a Rule 144A or other private placement transaction under the Securities Act of 1933, substantially identical notes (having the same Guarantees) issued in a dollar for dollar exchange therefor pursuant to an exchange offer registered with the SEC.

"**Registrar**" means Wilmington Trust, National Association in such capacity, or any successor Registrar appointed under this Indenture.

"**Regulation S**" means Regulation S under the Securities Act (including any successor regulation thereto), as it may be amended from time to time.

"**Regulation S Global Note**" means a Global Note bearing the Global Note Legend and the Private Placement Legend and deposited with the Custodian and registered in the name of Cede & Co., as nominee for DTC, that will be issued in an initial amount equal to the principal amount of the Notes resold by the Initial Purchasers in reliance on Regulation S.

"**Replacement Assets**" means properties and/or assets that replace the properties and/or assets that were the subject of an Asset Sale.

"**Representatives**" means the Senior Representatives and the Junior Representatives.

"**Restricted Investment**" means an Investment other than a Permitted Investment.

"**Restricted Period**" means the distribution compliance period, ending 40 days after the later of the Issue Date and the last date on which the Issuer, the Co-Issuer or any Affiliate of the Issuers was the owner of the Notes.

"**Restricted Subsidiary**" of a Person means any Subsidiary of the referent Person that is not an Unrestricted Subsidiary.

"**Revolving Credit Agreement**" means that certain Credit Agreement, dated as of the Escrow Release Date, among Northwest Acquisitions ULC, as borrower, Washington Diamond Investments B.V., as parent, the lenders party thereto and Credit Suisse AG, Cayman Islands Branch, as administrative agent and collateral agent, as amended, extended, renewed, restated, refunded, replaced, refinanced, supplemented, modified or otherwise changed from time to time.

"**Revolving Credit Agreement Documents**" means the Revolving Credit Agreement and the other "Loan Documents" as defined in the Revolving Credit Agreement.

"**Revolving Credit Agreement Secured Parties**" means the "**Secured Parties**" as defined in the Revolving Credit Agreement Security Agreement.

"**Revolving Credit Agreement Security Agreements**" means the "Canadian Security Agreement" and the "U.S. Security Agreement", each as defined in the Revolving Credit Agreement.

"**Revolving Credit Facility**" means the Initial Revolving Facility (as defined in the Revolving Credit Agreement).

"**Revolving Credit Facility Collateral Agent**" means Credit Suisse AG, Cayman Islands Branch, in its capacity as collateral agent under the Revolving Credit Agreement, and any successor thereto or assign thereof.

"**Revolving Credit Facility Obligations**" means the "**Secured Obligations**" as defined in the Revolving Credit Agreement.

"**Rule 144A**" means Rule 144A under the Securities Act (including any successor regulation thereto), as it may be amended from time to time.

"**S&P**" means Standard & Poor's Ratings Group or any successor to its ratings business.

"**Sale/Leaseback Transaction**" means an arrangement relating to property now owned or hereafter acquired whereby the Parent or any of its Restricted Subsidiaries transfers such property to a Person (other than the Parent or any of its Subsidiaries) and the Parent or any of its Restricted Subsidiaries leases it from such Person.

"**SEC**" means the U.S. Securities and Exchange Commission.

"**Second Amalgamation**" has the meaning assigned to such term in the definition of "Internal Restructuring Transactions."

"**Secured Indebtedness**" means, with respect to any Person (i) Indebtedness (other than Indebtedness of the type specified in Sections 4.6(b)(iv), (vi), (viii), (xii) and (xiii) of that Person and its Restricted Subsidiaries that is secured by a Lien and Indebtedness of a Restricted Subsidiary of the Parent that is not a Guarantor.

"**Secured Parties**" means (i) the Holders, (ii) the Trustee and (iii) the Agents.

"**Securities Act**" means the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

"**Security Documents**" means (i) the security agreement, dated as of the Escrow Release Date, by and among the Issuer, certain Guarantors and the Notes Collateral Agent, in the form attached to the supplemental indenture to be entered into on the Escrow Release Date (as amended from time to time in accordance with this Indenture and the terms thereof, the "**Canadian Security Agreement**"), (ii) the security agreement, dated as of the Escrow Release Date, by and among the Co-Issuer, certain Guarantors and the Notes Collateral Agent, in the form attached to the supplemental indenture to be entered into on the Escrow Release Date (as amended from time to time in accordance with this Indenture and the terms thereof, the "**U.S. Security Agreement**"), (iii) those certain pledge agreements, by and among certain Guarantors and the Notes Collateral Agent, in the form attached to the supplemental indenture to be entered into on the Escrow Release Date (as amended from time to time in accordance with this Indenture and the terms thereof, the "**Dutch Pledge Agreements**"), (iv) a subordination agreement, dated as of the Escrow Release Date, by and among the Issuer, Diavik Diamond Mines (2012) Inc., Dominion Diamond Diavik Limited Partnership and Notes Collateral Agent, in the form attached to the supplemental indenture to be entered into on the Escrow Release Date , as the same may be amended, supplemented or otherwise modified from time to time, (v) any other instrument and document executed and delivered pursuant to this Indenture or otherwise or any of the foregoing, as the same may be amended, supplemented or otherwise modified from time to time and pursuant to which the Collateral and any other Liens in favor of the Notes Collateral Agent as security for the Notes and the Note Guarantees are pledged, assigned or granted to or on behalf of the Notes Collateral Agent for the benefit of the holders of the Notes or notice of such pledge, assignment or grant is given, (vi) the Intercreditor Agreement, and (vii) any Additional Intercreditor Agreement.

"**Senior Collateral**" means any "Collateral" as defined in any Revolving Credit Agreement Document or any other Senior Debt Document or any other assets of any Obligor with respect to which a Lien is granted or purported to be granted pursuant to a Senior Collateral Document as security for any Senior Obligation.

"**Senior Collateral Documents**" means the Revolving Credit Agreement Security Agreements and the other "Collateral Documents" as defined in the Revolving Credit Agreement, the Intercreditor Agreement and each of the security agreements and other instruments and documents executed and delivered by any Obligor for purposes of providing collateral security for any Senior Obligation.

"**Senior Representative**" means (i) in the case of any Revolving Credit Facility Obligations or the Revolving Credit Agreement Secured Parties, the Revolving Credit Facility Collateral Agent, and (ii) in the case of any

Additional Senior Debt Facility and the Additional Senior Secured Parties thereunder, each Additional Senior Agent in respect of such Additional Senior Debt Facility that is named as such in the applicable Joinder Agreement.

"**Senior Debt Documents**" means (a) the Revolving Credit Agreement Documents and (b) any Additional Senior Debt Documents.

"**Senior Lien**" means the Liens on the Senior Collateral in favor of the Senior Secured Parties under the Senior Collateral Documents.

"**Senior Obligations**" means the Revolving Credit Facility Obligations and any Additional Senior Debt Obligations.

"**Senior Secured Parties**" means the Revolving Credit Agreement Secured Parties and any Additional Senior Secured Parties.

"**Significant Subsidiary**" means, at the date of determination, any Restricted Subsidiary that together with its Subsidiaries which are Restricted Subsidiaries (i) for the most recent fiscal year, accounted for more than 10% of the consolidated revenues of the Parent or (ii) as of the end of the most recent fiscal year, was the owner of more than 10% of the consolidated assets of the Parent.

"**Sponsor**" means the Washington Companies and/or its affiliates, together with the funds, partnerships or other co-investment vehicles managed, advised or controlled thereby.

"**Stated Maturity**" means, with respect to any installment of interest or principal on any series of Indebtedness, the date on which the payment of interest or principal was scheduled to be paid in the original documentation governing such Indebtedness (or as of the Issue Date if later), and will not include any contingent obligations to repay, redeem or repurchase any such interest or principal prior to the date originally scheduled for the payment thereof.

"**Subordinated Obligation**" means any Indebtedness of the Issuer, the Co-Issuer or any of the Guarantors (whether outstanding on the Issue Date or thereafter incurred) which is subordinate or junior in right of payment to the Notes pursuant to a written agreement or any Indebtedness of a Guarantor (whether outstanding on the Issue Date or thereafter incurred) which is subordinate or junior in right of payment to the Note Guarantee pursuant to a written agreement, as the case may be.

"**Subsidiary**" means, with respect to any specified Person:

(a) any corporation, association or other business entity (other than a partnership, joint venture, limited liability company or similar entity) of which more than 50% of the total ordinary voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency and after giving effect to any voting agreement or stockholders' agreement that effectively transfers voting power) to vote in the election of directors, managers or trustees of the corporation, association or other business entity is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person (or a combination thereof); and

(b) any partnership, joint venture, limited liability company or similar entity of which (i) more than 50% of the capital accounts, distribution rights, total equity and voting interests or general and limited partnership interests, as applicable, are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof, whether in the form of membership, general, special or limited partnership interests or otherwise, and (ii) such Person or any Subsidiary of such Person is a controlling general partner or otherwise controls such entity.

"**Subsidiary Guarantor**" means each Restricted Subsidiary of the Parent (other than the Issuers) that executes a Note Guarantee in accordance with the provisions of this Indenture, and their respective successors and as-

signs, in each case, until the Note Guarantee of such Person has been released in accordance with the provisions of this Indenture.

"**Tax**" means any present or future tax, duty, levy, fee impost, assessment or other governmental charge (including penalties, interest and any other additions thereto that are imposed by any government or other taxing authority, and, for the avoidance of doubt, including any withholding or deduction for or on account of Tax). "**Taxes**" and "**Taxation**" shall be construed to have corresponding meanings.

"**Total Assets**" means, with respect to any specified Person at any time, the total assets of such Person and its Subsidiaries which are Restricted Subsidiaries, in each case as shown on the most recent balance sheet of such Person, determined on a consolidated basis in accordance with IFRS; *provided* that, for purposes of calculating "**Total Assets**" for purposes of testing the covenants under this Indenture in connection with any transaction, the total consolidated assets of the Parent and its Restricted Subsidiaries shall be adjusted to reflect any acquisitions and dispositions of assets that have occurred during the period from the date of the applicable balance sheet through the applicable date of determination, including any such transactions occurring on the date of determination.

"**Total Net Debt**" means, as of any date, the outstanding principal amount of all third party Indebtedness for borrowed money, purchase money debt, Capital Lease Obligations, Indebtedness evidenced by notes, bonds or similar instruments, in each case, of the Parent and its Restricted Subsidiaries determined on a consolidated basis, *minus* (without duplication) (i) the Unrestricted Cash Amount, (ii) reimbursement obligations under letters of credit or letters of guarantee or surety bonds to the extent secured by cash or cash equivalents or Cash Equivalents and (iii) unsecured surety bonds, unsecured letters of credit and/or unsecured letters of guarantee unless drawn upon and not reimbursed within five Business Days. For the avoidance of doubt, for purposes of calculating any ratio on a net basis required to be satisfied as a condition to the incurrence of any debt, the proceeds of any debt being incurred in reliance on such ratio shall not be netted (but the Issuers may give pro forma effect to the repayment of any debt to be repaid with such proceeds).

"**Total Net Leverage Ratio**" means, as of any date, the ratio of (a) Total Net Debt as of such date to (b) Consolidated EBITDA for the applicable computation period. In the event that the specified Person or any of its Restricted Subsidiaries incurs, assumes, Guarantees, repays, repurchases, redeems, defeases or otherwise discharges any Indebtedness (other than ordinary course working capital borrowings) or issues, repurchases or redeems preferred stock subsequent to the commencement of the period for which the Total Net Leverage Ratio is being calculated and on or prior to the date on which the event for which the calculation of the Total Net Leverage Ratio is made (the "Calculation Date"), then the Total Net Leverage Ratio will be calculated giving pro forma effect (as determined in good faith by a responsible accounting or financial officer of the Parent) to such incurrence, assumption, Guarantee, repayment, repurchase, redemption, defeasance or other discharge of Indebtedness, or such issuance, repurchase or redemption of preferred stock, and the use of the proceeds therefrom, as if the same had occurred at the beginning of the applicable four full fiscal quarter reference period; *provided* that in calculating the Total Net Leverage Ratio or any element thereof for any period, pro forma calculations will be made in good faith by a responsible financial or accounting officer of such Person (including any pro forma expenses and cost savings and cost reduction synergies that have occurred or, only with respect to any cost savings or cost reduction synergies that are attributable to an acquisition of another Person, are reasonably expected to occur within the next twelve months following the date of such calculation and that are reasonably identifiable and factually supportable including, without limitation, as a result of, or that would result from any actions taken by such Person or any of its Restricted Subsidiaries including, without limitation, in connection with any cost reduction or cost savings plan or program or in connection with any transaction, investment, acquisition, disposition, restructuring, corporate reorganization or otherwise, in the good faith judgment of the chief executive officer, chief financial officer or any person performing a similarly senior accounting role of such Person (regardless of whether these cost savings and cost reduction synergies could then be reflected in pro forma financial statements to the extent prepared); *provided* that the aggregate amount of cost savings and cost reduction synergies that may be included in connection with an acquisition of another Person for any period, taken together with the pro forma calculation for Transaction Expected Cost Savings Addback and Other Transactions Expected Cost Savings Addback in accordance with the definition of "**Consolidated EBITDA**" and other pro forma calculations made in accordance with the definition of "**Fixed Charge Coverage Ratio**," shall not exceed 25.0% of Consolidated EBITDA calculated after giving effect to any such additions for such period).

In addition, for purposes of calculating the Consolidated EBITDA for such period:

(1) acquisitions that have been made by the specified Person or any of its Subsidiaries which are Restricted Subsidiaries, including through mergers, amalgamations or consolidations, or by any Person or any of its Subsidiaries which are Restricted Subsidiaries acquired by the specified Person or any of its Subsidiaries which are Restricted Subsidiaries, and including all related financing transactions and including increases in ownership of Subsidiaries which are Restricted Subsidiaries, during the four fiscal quarter reference period or subsequent to such reference period and on or prior to the Calculation Date, or that are to be made on the Calculation Date, will be given pro forma effect (as determined in good faith by a responsible accounting or financial officer of the Parent) as if they had occurred on the first day of the four fiscal quarter reference period;

(2) the Consolidated EBITDA attributable to discontinued operations, as determined in accordance with IFRS, and operations or businesses (and ownership interests therein) disposed of prior to the Calculation Date, will be excluded;

(3) any Person that is a Restricted Subsidiary on the Calculation Date will be deemed to have been a Restricted Subsidiary at all times during such four fiscal quarter period; and

(4) any Person that is not a Restricted Subsidiary on the Calculation Date will be deemed not to have been a Restricted Subsidiary at any time during such four fiscal quarter period;

provided, further, that in calculating the Total Net Leverage Ratio or any element thereof for any period, pro forma calculations will be made in good faith by a responsible financial or accounting officer of such Person (including any pro forma expenses and cost savings and cost reduction synergies that have occurred or, only with respect to any cost savings or cost reduction synergies that are attributable to an acquisition of another Person, are reasonably expected to occur within the next twelve months following the date of such calculation and that are reasonably identifiable and factually supportable including, without limitation, as a result of, or that would result from any actions taken by such Person or any of its Restricted Subsidiaries including, without limitation, in connection with any cost reduction or cost savings plan or program or in connection with any transaction, investment, acquisition, disposition, restructuring, corporate reorganization or otherwise, in the good faith judgment of the chief executive officer, chief financial officer or any person performing a similarly senior accounting role of such Person (regardless of whether these cost savings and cost reduction synergies could then be reflected in pro forma financial statements to the extent prepared); *provided* that the aggregate amount of cost savings and cost reduction synergies that made be included in connection with an acquisition of another Person for any period shall not exceed 25% of Consolidated EBITDA calculated prior to any such additions for such period).

If any Indebtedness bears a floating rate of interest and is being given pro forma effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the Calculation Date had been the applicable rate for the entire period (taking into account any Hedging Obligations applicable to such Indebtedness). Interest on a Capital Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a responsible financial or accounting officer of the Parent to be the rate of interest implicit in such Capital Lease Obligation in accordance with IFRS. For purposes of making the computation referred to above, interest on any Indebtedness under any revolving credit facility computed with a pro forma basis shall be computed based upon the average daily balance of such Indebtedness during the applicable period except as set forth in the first paragraph of this definition. Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rate, shall be determined to have been based upon the rate actually chosen, or if none, then based upon such optional rate chosen as the Issuer may designate.

"**Transactions**" means the issuance and sale of the Notes, the entry into the Revolving Credit Agreement, the Investment made by the Sponsor in the Parent and/or its Restricted Subsidiaries, the Acquisition, the Internal Restructuring Transactions, the termination of the Company's existing Indebtedness on the Escrow Release Date (including security interests and guarantees in connection therewith), and the Available Cash Transactions, together with the payment of the related fees and expenses.

"**Transfer Agent**" means Wilmington Trust, National Association in such capacity, or any successor Transfer Agent appointed under this Indenture.

"**Treasury Rate**" means as of any redemption date, the yield to maturity as of such redemption of U.S. Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519)) that has become publicly available at least two Business Days (but not more than five Business Days) prior to the redemption date (or, if such statistical release is no longer published or available, any publicly available source of similar market data) most nearly equal to the period from the redemption date to, November 1, 2019, *provided*, *however*, that if the period from the redemption date to November 1, 2019 is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year will be used.

"**Trust Officer**" means, (i) when used with respect to the Trustee, any managing director, director, vice president, assistant vice president, associate or trust officer in the agency and trust department of the Trustee or any other officer of the Trustee customarily performing functions similar to those performed by any of the above-designated officers, and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his or her knowledge of and familiarity with the particular subject, and, in each case, who shall have direct responsibility for the administration of this Indenture, and (ii) when used with respect to the Notes Collateral Agent, any managing director, director, vice president, assistant vice president, associate or trust officer in the agency and trust department of the Notes Collateral Agent or any other officer of the Notes Collateral Agent customarily performing functions similar to those performed by any of the above-designated officers, and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his or her knowledge of and familiarity with the particular subject, and, in each case, who shall have direct responsibility for the administration of this Indenture.

"**Trustee**" means Wilmington Trust, National Association in such capacity, the party named as such in this Indenture until a successor replaces it in accordance with the applicable provisions of this Indenture and, thereafter, means the successor serving hereunder.

"**UCC**" means the Uniform Commercial Code as in effect from time to time in the State of New York or any other state, the laws of which are required to be applied in connection with the issue of perfection of security interests.

"**Unrestricted Cash Amount**" means, as to any Person on any date of determination, the amount of (a) unrestricted cash and Cash Equivalents of such Person and (b) cash and Cash Equivalents of such Person that are restricted in favor of the Revolving Credit Facility and/or the notes and/or other permitted secured Indebtedness (which may also include cash and Cash Equivalents securing other Indebtedness that is secured by a Lien on Collateral along with the Revolving Credit Facility, the notes and/or any other permitted secured Indebtedness), in each case as determined in accordance with IFRS.

"**Unrestricted Subsidiary**" means any Subsidiary of the Parent that is designated by the Board of Directors of the Parent as an Unrestricted Subsidiary pursuant to a resolution of the Board of Directors; *provided* that at the time of such designation, no event of default under this Indenture has occurred and is continuing, but only to the extent that, at the time of such designation, such Subsidiary:

(a) has no Indebtedness other than Non-Recourse Debt;

(b) except as permitted by Section 4.10, is not party to any agreement, contract, arrangement or understanding with the Parent or any Restricted Subsidiary of the Parent unless the terms of any such agreement, contract, arrangement or understanding are no less favorable to the Parent or such Restricted Subsidiary than those that might be obtained at the time from Persons who are not Affiliates of the Parent; and

(c) is a Person with respect to which neither the Parent nor any of its Restricted Subsidiaries has any direct or indirect obligation (a) to subscribe for additional Equity Interests or (b) to maintain or pre-

serve such Person's financial condition or to cause such Person to achieve any specified levels of operating results.

"**U.S. dollar**" or "**$**" means the lawful currency of the United States of America.

"**U.S. Government Obligations**" means direct obligations of, or obligations guaranteed by, the United States of America, and the payment for which the United States pledges its full faith and credit.

"**U.S. Person**" means a "United States person" within the meaning of Section 7701(a)(30) of the Code.

"**Voting Stock**" of any specified Person as of any date means the Capital Stock of such Person that is at the time entitled to vote in the election of the Board of Directors of such Person.

"**Washington Companies**" means Mr. Dennis R. Washington, his Immediate Family Members and or/any Affiliate thereof.

"**Weighted Average Life to Maturity**" means, when applied to any Indebtedness at any date, the number of years obtained by dividing:

(a) the sum of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect of the Indebtedness, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by

(b) the then outstanding principal amount of such Indebtedness.

1.2 Other Definitions

Term	Defined in Section
"Additional Amounts"	4.12(a)
"Additional Intercreditor Agreements"	9.8(a)
"Additional Notes"	2.14
"Affiliate Transaction"	4.10(a)
"Asset Sale Offer"	4.9(d)
"Authenticating Agent"	2.2
"Authentication Order"	2.2
"Authorized Agent"	12.7
"Canadian Defined Benefit Plan"	4.26
"Change of Control Offer"	4.11(a)
"Change of Control Payment"	4.11(a)
"Change of Control Payment Date"	4.11(a)
"Code"	4.12(a)(x)
"Covenant Defeasance"	8.3
"Deemed Date"	4.6(e)
"Defaulted Interest"	2.11
"Diavik Sale Offer"	4.31
"Diavik Sale Payment"	4.31
"Diavik Sale Payment Date"	4.31
"Dutch Collateral Party"	12.16
"Dutch Obligor"	12.19
"Escrow Termination Date"	3.11(b)
"Event of Default"	6.1(a)
"Excess Proceeds"	4.9(c)
"Extended Outside Date"	3.11(d)(i)
"Extension Election"	3.11(d)(i)

Term	Defined in Section
"incur"	4.6(a)
"LCT Election"	1.4
"LCT Election Test Date"	1.4
"Legal Defeasance"	8.2
"Judgment Currency"	12.13
"Note Obligations"	10.1(a)
"Notes"	Recitals
"Notes Offer"	4.9(b)(i)
"Original Notes"	Recitals
"Outside Date"	3.11(d)
"Parallel Debt"	12.16
"Participants"	2.1(c)
"Paying Agent"	2.3
"Payment Default"	6.1(a)(v)(A)
"Permitted Debt"	4.6(b)
"Regulation 803 Reimbursement"	4.12(b)
"Replacement Note"	2.7
"Restricted Payments"	4.8(a)
"Special Mandatory Redemption"	3.11(b)
"Special Mandatory Redemption Date"	3.11(c)
"Suspension Period"	4.24(a)
"Security Register"	2.3
"Tax Jurisdiction"	4.12(a)
"Tax Redemption Date"	3.9

1.3 Rules of Construction

Unless the context otherwise requires:

(a) a term has the meaning assigned to it;

(b) an accounting term not otherwise defined has the meaning assigned to it in accordance with IFRS;

(c) "or" is not exclusive;

(d) "including" or "include" means including or include without limitation;

(e) words in the singular include the plural and words in the plural include the singular;

(f) unsecured or unguaranteed Indebtedness shall not be deemed to be subordinate or junior to secured or guaranteed Indebtedness merely by virtue of its nature as unsecured or unguaranteed Indebtedness;

(g) the words "herein," "hereof" and "hereunder" and other words of similar import refer to this Indenture and the Notes as a whole and not to any particular Article, Section, Clause or other subdivision; and

(h) for purposes of the covenants and definitions set forth in this Indenture except as otherwise provided for in Section 4.6(h), any amounts stated in U.S. dollars shall be deemed to include both U.S. dollars and Dollar Equivalents.

1.4 Limited Condition Transactions

(a) When calculating the availability under any basket or ratio under this Indenture or compliance with any provision of this Indenture in connection with any Limited Condition Transaction and any actions or transactions related thereto (including acquisitions, Investments, the incurrence or issuance of Indebtedness, Disqualified Stock or preferred stock and the use of proceeds thereof, the incurrence of Liens, repayments and Restricted Payments), in each case, at the option of the Issuers (the Issuers' election to exercise such option, an "LCT Election"), the date of determination for availability under any such basket or ratio and whether any such action or transaction is permitted (or any requirement or condition therefor is complied with or satisfied (including as to the absence of any continuing Default or Event of Default)) under this Indenture shall be deemed to be the date (the "LCT Test Date") the acquisition agreements for such Limited Condition Transaction are entered into (or, if applicable, the date of delivery of an irrevocable notice, declaration of a Restricted Payment or similar event), and if, after giving pro forma effect to the Limited Condition Transaction and any actions or transactions related thereto (including acquisitions, Investments, the incurrence or issuance of Indebtedness, Disqualified Stock or preferred stock and the use of proceeds thereof, the incurrence of Liens, repayments and Restricted Payments) and any related pro forma adjustments, an Issuer or any of its Restricted Subsidiaries would have been permitted to take such actions or consummate such transactions on the relevant LCT Test Date in compliance with such ratio, test or basket (and any related requirements and conditions), such ratio, test or basket (and any related requirements and conditions) shall be deemed to have been complied with (or satisfied) for all purposes (in the case of Indebtedness, for example, whether such Indebtedness is committed, issued or incurred at the LCT Test Date or at any time thereafter); *provided*, that (a) if financial statements for one or more subsequent fiscal quarters shall have become available, the Issuers may elect, in its sole discretion, to re-determine all such ratios, tests or baskets on the basis of such financial statements, in which case, such date of redetermination shall thereafter be deemed to be the applicable LCT Test Date for purposes of such ratios, tests or baskets, and (b) except as contemplated in the foregoing clause (a), compliance with such ratios, tests or baskets (and any related requirements and conditions) shall not be determined or tested at any time after the applicable LCT Test Date for such Limited Condition Transaction and any actions or transactions related thereto (including acquisitions, Investments, the incurrence or issuance of Indebtedness, Disqualified Stock or preferred stock and the use of proceeds thereof, the incurrence of Liens, repayments and Restricted Payments).

(b) For the avoidance of doubt, if the Issuers have made an LCT Election, (1) if any of the ratios, tests or baskets for which compliance was determined or tested as of the LCT Test Date would at any time after the LCT Test Date have been exceeded or otherwise failed to have been complied with as a result of fluctuations in any such ratio, test or basket, including due to fluctuations in EBITDA or total assets of the Issuers or the Person subject to such Limited Condition Transaction, such baskets, tests or ratios will not be deemed to have been exceeded or failed to have been complied with as a result of such fluctuations; (2) if any related requirements and conditions (including as to the absence of any continuing Default or Event of Default) for which compliance or satisfaction was determined or tested as of the LCT Test Date would at any time after the LCT Test Date not have been complied with or satisfied (including due to the occurrence or continuation of an Default or Event of Default), such requirements and conditions will not be deemed to have been failed to be complied with or satisfied (and such Default or Event of Default shall be deemed not to have occurred or be continuing); and (3) in calculating the availability under any ratio, test or basket in connection with any action or transaction unrelated to such Limited Condition Transaction following the relevant LCT Test Date and prior to the earlier of the date on which such Limited Condition Transaction is consummated or the date that the definitive agreement or date for redemption, purchase or repayment specified in an irrevocable notice for such Limited Condition Transaction is terminated, expires or passes, as applicable, without consummation of such Limited Condition Transaction, any such ratio, test or basket shall be determined or tested giving pro forma effect to such Limited Condition Transaction.

2. The Notes

2.1 The Notes

(a) **Form and Dating**. The Notes and the Trustee's certificate of authentication shall be substantially in the form of Exhibit 1 hereto with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture. The Notes may have notations, legends or endorsements required by law, the rules of any securities exchange or usage. The Issuers shall approve the form of the Notes and any notation, legend or endorsement thereon. Each Note shall be dated the date of its authentication. The terms and provisions

contained in the form of the Notes shall constitute and are hereby expressly made a part of this Indenture. However, to the extent any provision of any Note conflicts with the express provisions of this Indenture, the provisions of this Indenture shall govern and be controlling. The Notes shall be in minimum denominations of $2,000 and integral multiples of $1,000 in excess thereof.

(b) **Global Notes**.

(i) Notes issued in global form shall be substantially in the form of Exhibit 1 hereto with such applicable legends as are provided in such Exhibit. Each Global Note will represent such of the outstanding Notes as will be specified therein and each shall provide that it represents the aggregate principal amount of outstanding Notes from time to time endorsed thereon and that the aggregate principal amount of outstanding Notes represented thereby may from time to time be reduced or increased, as appropriate, to reflect exchanges, redemptions, repurchases and cancellations. Any endorsement of a Global Note to reflect the amount of any increase or decrease in the aggregate principal amount of outstanding Notes represented thereby will be made by the Trustee or the Custodian, at the direction of the Trustee, in accordance with instructions given by the Holder thereof as required by Section 2.6 hereof.

(ii) Notes sold within the United States to QIBs pursuant to Rule 144A under the Securities Act shall be issued initially in the form of a 144A Global Note, which shall be deposited with the Custodian for DTC and registered in the name of Cede & Co., the nominee of DTC, duly executed by the Issuers and authenticated by the Trustee or the Authenticating Agent as herein provided. The aggregate principal amount of the 144A Global Note may from time to time be increased or decreased by adjustments made on Schedule A to each such Global Note, as herein provided.

(iii) Notes offered and sold in reliance on Regulation S shall be issued initially in the form of a Regulation S Global Note, which shall be deposited with the Custodian for DTC and registered in the name of Cede & Co., the nominee of DTC, duly executed by the Issuers and authenticated by the Trustee as herein provided. The aggregate principal amount of the Regulation S Global Note may from time to time be increased or decreased by adjustments made on Schedule A to each such Global Note, as herein provided.

(c) **Book-Entry Provisions**. Book-Entry Interests will be limited to persons that have accounts with DTC or persons that may hold interests through such participants, including through Euroclear and Clearstream. Ownership of interests in the Book-Entry Interests and transfers thereof will be subject to restrictions on transfer and certification requirements as set forth herein. In addition, transfers of Book-Entry Interests between participants in DTC, participants in Euroclear or participants in Clearstream will be effected by DTC, Euroclear or Clearstream pursuant to customary procedures and subject to the applicable rules and procedures established by DTC, Euroclear or Clearstream and their respective participants.

Members of, or participants and account holders in, DTC, Euroclear and Clearstream ("**Participants**") shall have no rights under this Indenture with respect to any Global Note held on their behalf by the Depositary or by the Trustee or any custodian of the Depositary or under such Global Note, and the Depositary or its nominee may be treated by the Issuers, the Guarantors, the Trustee and any agent of an Issuer, a Guarantor or the Trustee as the sole owner of such Global Note for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Issuers, the Guarantors, the Trustee or any agent of an Issuer, a Guarantor or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depositary or impair, as between the Depositary and its Participants, the operation of customary practices of such persons governing the exercise of the rights of an owner of a beneficial interest in any Global Note.

(d) **Definitive Registered Notes**. Definitive Registered Notes issued upon transfer of a Book-Entry Interest or a Definitive Registered Note, or in exchange for a Book-Entry Interest or a Definitive Registered Note, shall be issued in accordance with this Indenture.

Definitive Registered Notes will be substantially in the form of Exhibit 1 hereto and will have a legend with respect to restrictions on transfer as set forth in such Exhibit.

The registered Holder of a Note may grant proxies and otherwise authorize any Person, including Participants and Persons that may hold interests through Participants, to take any action that a Holder is entitled to take under this Indenture or the Notes.

Except as provided in this Section 2.1(d) and Section 2.6, owners of a Book-Entry Interest in Notes will not be entitled to receive Definitive Registered Notes.

2.2 Execution and Authentication

An Officer of each Issuer shall sign the Notes for the Issuers by manual or facsimile signature.

If an Officer whose signature is on a Note no longer holds that office at the time the Trustee authenticates the Note, the Note shall be valid nevertheless.

A Note shall not be valid or obligatory for any purpose until an authorized signatory of the Trustee or the Authenticating Agent signs the certificate of authentication on the Note by manual signature. The signature shall be conclusive evidence that the Note has been authenticated under this Indenture. Notwithstanding the foregoing, if any Note shall have been authenticated and delivered hereunder but never issued and sold by the Issuers, the Issuers shall deliver such Note to the Trustee for cancellation as provided for in Section 2.10 hereof.

Pursuant hereto, the Trustee or the Authenticating Agent will, upon receipt of an Issuer Order (an "**Authentication Order**"), authenticate (a) on the Issue Date, Original Notes executed and delivered to it by the Issuers in an aggregate principal amount of $550,000,000 and (b) Additional Notes subject to compliance at the time of issuance of such Additional Notes with the provisions of this Indenture. The aggregate principal amount of Notes outstanding shall not exceed the aggregate principal amount of Notes authorized for issuance by the Issuers pursuant to one or more Issuer Orders, except as provided in Section 2.7.

The Trustee may appoint one or more authenticating agents (each, an "**Authenticating Agent**"), reasonably acceptable to the Issuers to authenticate the Notes. Unless limited by the terms of such appointment, any such Authenticating Agent may authenticate Notes whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by any such agent. An Authenticating Agent has the same rights as any Registrar, Transfer Agent or Paying Agent to deal with the Holders, the Co-Issuer or the Issuer or an Affiliate of the Issuers.

The Trustee shall have the right to decline to authenticate and deliver any Notes under this Section 2.2 if the Trustee, being advised by counsel, determines that such action may not lawfully be taken or if the Trustee in good faith shall determine that such action would expose the Trustee to personal liability to existing Holders.

2.3 Paying Agent and Registrar for the Notes

The Issuers shall maintain one or more paying agents (each, a "**Paying Agent**") for the Notes in the contiguous United States. The initial Paying Agent, as appointed by the Issuers, will be Wilmington Trust, National Association and Wilmington Trust, National Association hereby accepts such appointment.

The Issuers shall also maintain both a Registrar and a Transfer Agent with offices in the contiguous United States. The Issuers hereby appoint as the initial Registrar Wilmington Trust, National Association and Wilmington Trust, National Association hereby accepts such appointment. The Issuers hereby appoint as the initial Transfer Agent Wilmington Trust, National Association and Wilmington Trust, National Association hereby accepts such appointment.

Upon written notice to the Trustee, the Issuers may change any Paying Agent, the Registrar or the Transfer Agent without prior notice to the Holders.

Subject to any applicable laws and regulations, the Registrar will maintain a register (the "**Security Register**") at the Corporate Trust Office of the Registrar reflecting ownership of Definitive Registered Notes outstanding

from time to time and the applicable Paying Agent will make payments on and facilitate transfer of Definitive Registered Notes on behalf of the Issuers. The Registrar will upon written request provide the Issuers with a copy of the Security Register on each Record Date, or, if not a Business Day, the following Business Day. Notwithstanding the foregoing, for so long as Notes are Global Notes held by Cede & Co., DTC, or a nominee of DTC, no such copy shall be required. Such registration in the Security Register shall be conclusive evidence of the ownership of Notes. Included in the books and records for the Notes shall be notations as to whether such Notes have been paid, exchanged or transferred, cancelled, lost, stolen, mutilated or destroyed and whether such Notes have been replaced. In the case of the replacement of any of the Notes, the Registrar shall keep a record of the Note so replaced and the Note issued in replacement thereof. In the case of the cancellation of any of the Notes, the Registrar shall keep a record of the Note so cancelled and the date on which such Note was cancelled.

If the Issuers fail to maintain a Registrar, Paying Agent or Transfer Agent, the Trustee shall act as such and shall be entitled to appropriate compensation therefor pursuant to Section 7.6.

Payments on the Global Notes will be made to Cede & Co. as the registered holder of the Global Notes.

2.4 Paying Agent to Hold Money in Trust

Not later than 10:00 a.m. (New York time) on each Interest Payment Date, the maturity date of the Notes and each payment date relating to an Asset Sale Offer, a Diavik Sale Offer or a Change of Control Offer, and the Business Day immediately following any acceleration of the Notes pursuant to Section 6.2, the Issuers shall deposit with the applicable Paying Agent money in immediately available funds sufficient to make cash payments, if any, due on such date. Each Paying Agent shall hold in trust for the benefit of Holders or the Trustee all money held by such Paying Agent for the payment of principal of, interest, premium and Additional Amounts, if any, on the Notes, and shall notify the Trustee of any default by the Issuers (or any other obligor on the Notes) in making any such payment. The Issuers at any time may require a Paying Agent to pay all money held by it to the Trustee and account for any funds disbursed, and the Trustee may at any time during the continuance of any Default under Section 6.1(a)(i) or (ii), upon written request to a Paying Agent, require such Paying Agent to pay all money held by it to the Trustee and to account for any funds disbursed. Upon doing so, the Paying Agent shall have no further liability for the money so paid over to the Trustee. If an Issuer or any Affiliate of the Issuers acts as Paying Agent, it shall, on or before each due date of any principal, premium, if any, or interest on the Notes, segregate and hold in a separate trust fund for the benefit of the Holders a sum of money sufficient to pay such principal, premium, if any, or interest so becoming due until such sum of money shall be paid to such Holders or otherwise disposed of as provided in this Indenture, and shall promptly notify the Trustee of its action or failure to act. Upon any insolvency, bankruptcy or reorganization proceedings relating to the Issuer or the Co-Issuer (including, without limitation, its bankruptcy, voluntary or judicial liquidation, composition with creditors, reprieve from payment, controlled management, fraudulent conveyance, general settlement with creditors, reorganization or similar laws affecting the rights of creditors generally), each Paying Agent shall serve as an agent of the Trustee for the Notes. Subject to the actual receipt of both payment instructions and such funds as provided in Section 2.4 by the Paying Agent, such Paying Agent shall make payments on the Notes in accordance with the provisions of this Indenture.

2.5 Holder Lists

The Registrar shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Holders. If the Trustee or the Paying Agent is not the Registrar, the Issuers shall furnish to the Trustee and the Paying Agent, in writing no later than the Record Date for each Interest Payment Date and at such other times as the Trustee and the Paying Agent may request in writing, a list in such form and as of such Record Date as the Trustee and the Paying Agent may reasonably require of the names and addresses of registered Holders, including the aggregate principal amount of Notes held by each registered Holder.

2.6 Transfer and Exchange

(a) **Transfer and Exchange of Global Notes**. A Global Note may not be transferred except as a whole by a Depositary to a Custodian or a nominee of such Custodian, by a Custodian or a nominee of such Custodian to such Depositary or to another nominee or Custodian of such Depositary, or by such Custodian or Depositary or any such nominee to a successor Depositary or Custodian or a nominee thereof.

All Global Notes will be exchanged by the Issuers for Definitive Registered Notes:

(i) if DTC notifies the Issuers that it is unwilling or unable to continue to act as Depositary and a successor Depositary is not appointed by the Issuers within 120 days;

(ii) if DTC ceases to be registered as a clearing agency under the Exchange Act and a successor Depositary is not appointed by the Issuers within 120 days; or

(iii) if any Holder of a Book-Entry Interest so requests such exchange in writing delivered through DTC following an Event of Default by the Issuers under this Indenture.

Upon the occurrence of any of the preceding events in Clauses (i) through (iii) above, the Issuers shall issue or cause to be issued Definitive Registered Notes in such names as the relevant Depositary shall instruct the Registrar.

Global Notes also may be exchanged or replaced, in whole or in part, as provided in Section 2.7. A Global Note may not be exchanged for another Note other than as provided in this Section 2.6(a). Book-Entry Interests in a Global Note may be transferred and exchanged as provided in Section 2.6(b) or (c) hereof.

(b) **General Provisions Applicable to Transfer and Exchange of Book-Entry Interests in the Global Notes**. The transfer and exchange of Book-Entry Interests shall be effected through the Depositary, in accordance with this Indenture and the Applicable Procedures.

Transfers of Book-Entry Interests will be subject to restrictions on transfer comparable to those set forth herein to the extent required by the Securities Act. Transfers and exchanges of Book-Entry Interests for Book-Entry Interests also will require compliance with either subparagraph (i) or (ii) of this Section 2.6(b), as applicable, as well as subparagraph (iii) of this Section 2.6(b), if applicable:

(i) **Transfer of Beneficial Interests in the Same Global Note**. Book-Entry Interests may be transferred to Persons who take delivery thereof in the form of a Book-Entry Interest in accordance with the transfer restrictions set forth in the Note; *provided*, *however*, that prior to the expiration of the Restricted Period, Book-Entry Interests in the Regulation S Global Notes will be limited to Persons that have accounts with DTC, Euroclear or Clearstream or Persons who hold interests through DTC, Euroclear or Clearstream, and any sale or transfer of such interest to U.S. Persons shall not be permitted during the Restricted Period unless such resale or transfer is made pursuant to Rule 144A. No written orders or instructions shall be required to be delivered to the Trustee to effect the transfers set forth in this Section 2.6(b)(i).

(ii) **All Other Transfers and Exchanges of Beneficial Interests in Global Notes**. A Holder may transfer or exchange a Book-Entry Interest in Global Notes in a transaction not subject to Section 2.6(b)(i) only if the Trustee, Registrar or Transfer Agent receives either:

(A) both:

(1) a written order from a Participant or an Indirect Participant given to the Depositary in accordance with the Applicable Procedures directing such Depositary to credit or cause to be credited a Book-Entry Interest in another Global Note in an amount equal to the Book-Entry Interest to be transferred or exchanged; and

(2) instructions given by the Depositary in accordance with the Applicable Procedures containing information regarding the Participant's account to be credited with such increase; or

(B) both:

(1) a written order from a Participant or an Indirect Participant given to the Depositary in accordance with the Applicable Procedures directing such Depositary to cause to be issued a Definitive Registered Note in an amount equal to the Book-Entry Interest to be transferred or exchanged; and

(2) instructions given by the Depositary to the Registrar containing information specifying the identity of the Person in whose name such Definitive Registered Note shall be registered to effect the transfer or exchange referred to in (A) above, the principal amount of such securities and the CUSIP, ISIN or other similar number identifying the Notes,

provided that any such transfer or exchange is made in accordance with the transfer restrictions set forth in the Private Placement Legend.

(iii) **Transfer of Book-Entry Interests to Another Global Note**. A Book-Entry Interest in any Global Note may be transferred to a Person who takes delivery thereof in the form of a Book-Entry Interest in another Global Note if the transfer complies with the requirements of Section 2.6(b)(ii) hereof and the Trustee, Registrar or Transfer Agent receives the following:

(A) if the transferee will take delivery in the form of a Book-Entry Interest in a 144A Global Note, then the transferor must deliver a certificate in the form of Exhibit 2 hereto, including the certifications in item (1) thereof; and

(B) if the transferee will take delivery in the form of a Book-Entry Interest in a Regulation S Global Note then the transferor must deliver a certificate in the form of Exhibit 2 hereto, including the certifications in item (2) thereof.

(c) **Transfer or Exchange of Book-Entry Interests in Global Notes for Definitive Registered Notes**. If any Holder of a Book-Entry Interest in a Global Note proposes to exchange such Book-Entry Interest for a Definitive Registered Note or to transfer such Book-Entry Interest to a Person who takes delivery thereof in the form of a Definitive Registered Note, then, upon receipt by the Trustee and the Registrar of the following documentation:

(i) if the holder of such Book-Entry Interest in a Global Note proposes to exchange such Book-Entry Interest for a Definitive Registered Note, a certificate from such holder in the form of Exhibit 2 hereto, including the certifications in item (1) thereof;

(ii) if such Book-Entry Interest is being transferred to a QIB in accordance with Rule 144A, a certificate to the effect set forth in Exhibit 2 hereto, including the certifications in item (1) thereof;

(iii) if such Book-Entry Interest is being transferred to a Non-U.S. Person in an offshore transaction in accordance with Rule 904, a certificate to the effect set forth in Exhibit 2 hereto, including the certifications in item (2) thereof; or

(iv) if such Book-Entry Interest is being transferred pursuant to any provision of the Securities Act other than Rule 144A or Regulation S, a certificate to the effect set forth in Exhibit 2 hereto, including the certifications in item (3) thereof, and, if requested, an Opinion of Counsel respecting the compliance of the transfer with applicable securities laws,

then, upon satisfaction of the conditions set forth in Section 2.6(b)(ii)(B), the Trustee, Paying Agent and/or Registrar shall cause the aggregate principal amount of the applicable Global Note to be reduced accordingly pursuant to Section 2.6(g) hereof, and the Issuers shall execute and the Trustee shall authenticate and deliver to the Person designated in the instructions a Definitive Registered Note in the appropriate principal amount. Any Definitive Registered Note issued in exchange for a Book-Entry Interest in a Global Note pursuant to this Section 2.6(c) shall be registered

by the Registrar in such name or names and in such authorized denomination or denominations as the Holder of such Book-Entry Interest shall instruct the Registrar through instructions from the Depositary and the Participant or Indirect Participant. The Paying Agent or Registrar shall deliver (or caused to be delivered) such Definitive Registered Notes to the Persons in whose names such Notes are so registered. Any Definitive Registered Note issued in exchange for a Book-Entry Interest in a Global Note pursuant to this Section 2.6(c) shall bear the Private Placement Legend and shall be subject to all restrictions on transfer contained therein.

(d) **Transfer and Exchange of Definitive Registered Notes for Book-Entry Interests in the Global Notes**. If any Holder of a Definitive Registered Note proposes to exchange such Note for a Book-Entry Interest in a Global Note or to transfer such Definitive Registered Notes to a Person who takes delivery thereof in the form of a Book-Entry Interest in a Global Note, then, upon receipt by the Trustee and the Registrar of the following documentation:

(i) if the Holder of such Definitive Registered Note proposes to exchange such Note for a Book-Entry Interest in a Global Note, a certificate from such Holder in the form of Exhibit 3 hereto, including the certifications in item (2) thereof;

(ii) if such Definitive Registered Note is being transferred to a QIB in accordance with Rule 144A, a certificate to the effect set forth in Exhibit 2 hereto, including the certifications in item (1) thereof;

(iii) if such Definitive Registered Note is being transferred in an offshore transaction in accordance with Rule 904, a certificate to the effect set forth in Exhibit 2 hereto, including the certifications in item (2) thereof, as applicable; or

(iv) if such Definitive Registered Note is being transferred pursuant to any provision of the Securities Act other than Rule 144A or Regulation S, a certificate to the effect set forth in Exhibit 2 hereto, including the certifications in item (3) thereof,

the Trustee will cancel the Definitive Registered Note, and the Trustee will increase or cause to be increased the aggregate principal amount of, in the case of Clause (i) of this Section 2.6(d), the appropriate Global Note, in the case of Clause (ii) of this Section 2.6(d), the appropriate 144A Global Note, in the case of Clause (iii) of this Section 2.6(d), the appropriate Regulation S Global Note, and in the case of Clause (iv) of this Section 2.6(d), the appropriate 144A Global Note.

(e) **Transfer and Exchange of Definitive Registered Notes for Definitive Registered Notes**. Upon request by a Holder of Definitive Registered Notes, and such Holder's compliance with this Section 2.6(e), the Transfer Agent or the Registrar will register the transfer or exchange of Definitive Registered Notes of which registration the Issuers will be informed of by the Transfer Agent or the Registrar (as the case may be). Prior to such registration of transfer or exchange, the requesting Holder must present or surrender to the Transfer Agent or the Registrar the Definitive Registered Notes duly endorsed and accompanied by a written instruction of transfer in the form appearing on the reverse of such Note duly executed by such Holder or its attorney, duly authorized to execute the same in writing. In the event that the Holder of such Definitive Registered Notes does not transfer the entire principal amount of Notes represented by any such Definitive Registered Note, the Transfer Agent or the Registrar will forward to the Trustee such Definitive Registered Note for cancellation pursuant to Section 2.10 hereof and the Issuers (who have been informed of such cancellation) shall execute and the Trustee or the Authenticating Agent shall authenticate and deliver to the requesting Holder and any transferee Definitive Registered Notes in the appropriate principal amounts. In addition, the requesting Holder shall provide any additional certifications, documents and information, as applicable, required pursuant to the following provisions of this Section 2.6(e).

Any Definitive Registered Note may be transferred to and registered in the name of Persons who take delivery thereof in the form of a Definitive Registered Note if the Registrar receives the following:

(i) if the transfer will be made pursuant to Rule 144A, then the transferor must deliver a certificate in the form of Exhibit 2 hereto, including the certifications in item (1) thereof; and

(ii) if the transfer will be made in reliance on Regulation S, a certificate in the form of Exhibit 2 hereto, including the certifications in item (2) thereof.

(f) **Legends**.

(i) **Global Note Legend**. Each Global Note shall bear the following legend:

THIS GLOBAL NOTE IS HELD BY THE DEPOSITARY (AS DEFINED IN THE INDENTURE GOVERNING THIS NOTE) OR ITS NOMINEE IN CUSTODY FOR THE BENEFIT OF THE BENEFICIAL OWNERS HEREOF, AND IS NOT TRANSFERABLE TO ANY PERSON UNDER ANY CIRCUMSTANCES EXCEPT THAT (1) THE TRUSTEE MAY MAKE SUCH NOTATIONS HEREON AS MAY BE REQUIRED PURSUANT TO SECTION 2.6 OF THE INDENTURE, (2) THIS GLOBAL NOTE MAY BE EXCHANGED IN WHOLE BUT NOT IN PART PURSUANT TO SECTION 2.6(a) OF THE INDENTURE, (3) THIS GLOBAL NOTE MAY BE DELIVERED TO THE TRUSTEE FOR CANCELLATION PURSUANT TO SECTION 2.10 OF THE INDENTURE AND (4) THIS GLOBAL NOTE MAY BE TRANSFERRED TO A SUCCESSOR DEPOSITARY WITH THE PRIOR WRITTEN CONSENT OF NORTHWEST ACQUISITIONS ULC AND DOMINION FINCO INC.

UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR NOTES IN DEFINITIVE FORM, THIS NOTE MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY. UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (55 WATER STREET, NEW YORK, NEW YORK) ("**DTC**"), TO THE ISSUERS OR THEIR AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR SUCH OTHER ENTITY AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

(ii) **Private Placement Legend**. Each Note shall bear a legend substantially in the following form except where otherwise permitted by the provisions of this Indenture:

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "**SECURITIES ACT**"), AND, ACCORDINGLY, MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, U.S. PERSONS, EXCEPT AS SET FORTH IN THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE HOLDER:

(1) REPRESENTS THAT (A) IT IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "**SECURITIES ACT**")) (A "**QIB**") OR (B) IT IS NOT A U.S. PERSON, IS NOT ACQUIRING THIS SECURITY FOR THE ACCOUNT OR FOR THE BENEFIT OF A U.S. PERSON AND IS ACQUIRING THIS SECURITY IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH REGULATION S UNDER THE SECURITIES ACT,

(2) AGREES THAT IT WILL NOT RESELL OR OTHERWISE TRANSFER THIS SECURITY PRIOR TO THE DATE THAT IS ONE YEAR (IN THE CASE OF 144A NOTES) OR 40 DAYS (IN THE CASE OF THE REGULATION S NOTES) AFTER THE LAT-

ER OF THE ORIGINAL ISSUE DATE OF THE NOTES AND THE LAST DATE ON WHICH AN ISSUER OR ANY AFFILIATE OF THE ISSUERS WAS THE OWNER OF THIS NOTE (OR ANY PREDECESSOR OF THIS NOTE) EXCEPT (A) TO THE ISSUERS OR ANY SUBSIDIARY THEREOF, (B) TO A PERSON WHOM THE HOLDER REASONABLY BELIEVES IS A QIB OR AN ACCREDITED INVESTOR PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QIB OR AN ACCREDITED INVESTOR, RESPECTIVELY, IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT OR AN AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, (C) OUTSIDE THE UNITED STATES IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH RULE 904 UNDER THE SECURITIES ACT, (D) PURSUANT TO AN EXEMPTION FROM REGISTRATION OTHER THAN AS PROVIDED BY RULE 144 UNDER THE SECURITIES ACT OR (E) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT AND, IN EACH CASE, IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS; PROVIDED THAT TRANSFERS IN RELIANCE UPON RULE 144 WILL NOT BE PERMITTED, EVEN IF THEN LEGALLY AVAILABLE, AND

(3) AGREES THAT IT WILL DELIVER TO EACH PERSON TO WHOM THIS SECURITY OR AN INTEREST HEREIN IS TRANSFERRED (OTHER THAN A TRANSFER PURSUANT TO CLAUSE (2)(D) OR (2)(E) ABOVE) A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND.

IN CONNECTION WITH ANY TRANSFER OF THIS SECURITY OR ANY INTEREST HEREIN WITHIN THE TIME PERIOD REFERRED TO ABOVE, THE HOLDER MUST CERTIFY TO THE TRUSTEE THE MANNER OF SUCH TRANSFER. AS USED HEREIN THE TERMS “OFFSHORE TRANSACTION,” “UNITED STATES” AND “U.S. PERSON” HAVE THE MEANING GIVEN TO THEM BY RULE 902 OF REGULATION S UNDER THE SECURITIES ACT.

THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE NOT TRANSFERABLE EXCEPT AS PERMITTED PURSUANT TO APPLICABLE CANADIAN PROVINCIAL AND TERRITORIAL SECURITIES LEGISLATION AND MAY NOT BE SOLD, TRANSFERRED OR OTHERWISE TRADED EXCEPT IN COMPLIANCE THEREWITH.

(g) **Cancellation and/or Adjustment of Global Notes**. At such time as all Book-Entry Interests in a particular Global Note have been exchanged for Definitive Registered Notes or a particular Global Note has been redeemed, repurchased or cancelled in whole and not in part, each such Global Note will be returned to or retained and cancelled by the Trustee in accordance with Section 2.11. At any time prior to such cancellation, if any Book-Entry Interest in a Global Note is exchanged for or transferred to a Person who will take delivery thereof in the form of a Book-Entry Interest in another Global Note or for Definitive Registered Notes, the principal amount of Notes represented by such Global Note will be reduced accordingly and an endorsement will be made on such Global Note by the Trustee or the Custodian, at the direction of the Trustee to reflect such reduction; and if the Book-Entry Interest is being exchanged for or transferred to a Person who will take delivery thereof in the form of a Book-Entry Interest in another Global Note, such other Global Note will be increased accordingly and an endorsement will be made on such Global Note by the Trustee or the Custodian, at the direction of the Trustee to reflect such increase.

(h) **General Provisions Relating to Transfers and Exchanges**.

(i) To permit registrations of transfers and exchanges, the Issuers will execute and the Trustee will authenticate Global Notes and Definitive Registered Notes upon receipt of an Authentication Order in accordance with Section 2.2 hereof or at the Registrar’s request.

(ii) No service charge will be made by the Issuers or the Registrar to a Holder of a Book-Entry Interest in a Global Note, a Holder of a Global Note or a Holder of a Definitive Registered Note for any registration of transfer or exchange, but the Issuers may require payment of a sum sufficient to cover any stamp duty, stamp duty reserve, documentary or other similar tax or governmental charge that may be imposed in connection therewith (other

than any such transfer taxes or similar governmental charge payable upon exchange or transfer pursuant to Sections 3.6, 4.11 and 9.4 hereof).

(iii) No Transfer Agent or Registrar will be required to register the transfer of or exchange of any Note selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part.

(iv) All Global Notes and Definitive Registered Notes issued upon any registration of transfer or exchange of Global Notes or Definitive Registered Notes will be the valid obligations of the Issuers, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Global Notes or Definitive Registered Notes surrendered upon such registration of transfer or exchange.

(v) The Issuers shall not be required to register the transfer into their register kept at their registered office of any Definitive Registered Notes:

(A) for a period of 15 calendar days prior to any date fixed for the redemption of the Notes under Section 3.3;

(B) for a period of 15 calendar days immediately prior to the date fixed for selection of Notes to be redeemed in part;

(C) for a period of 15 calendar days prior to the Record Date with respect to any Interest Payment Date; or

(D) which the Holder has tendered (and not withdrawn) for repurchase in connection with a Change of Control Offer, Diavik Sale Offer or an Asset Sale Offer.

Any such transfer will be made without charge to the Holder, other than any taxes, duties and governmental charges payable in connection with such transfer.

(vi) The Trustee, any Agent and the Issuers may deem and treat the Person in whose name any Note is registered as the absolute owner of such Note for the purpose of receiving payment of principal and interest, and premium and Additional Amounts, if any, on such Notes and for all other purposes, and none of the Trustee, any Agent or the Issuers shall be affected by notice to the contrary.

(vii) The Trustee shall have no responsibility or obligation to any beneficial owner of a Global Note, a member of, or a participant in, DTC or other Person with respect to the accuracy of the records of DTC or its nominee or of any participant or member thereof, with respect to any ownership interest in the Notes or with respect to the delivery to any participant, member, beneficial owner or other Person (other than DTC) of any notice (including any notice of redemption or purchase) or the payment of any amount or delivery of any Notes (or other security or property) under or with respect to such Notes. All notices and communications to be given to the Holders and all payments to be made to Holders in respect of the Notes shall be given or made only to the registered Holders (which shall be DTC or its nominee in the case of a Global Note). The rights of beneficial owners in any Global Note shall be exercised only through DTC subject to the applicable rules and procedures of DTC. The Trustee may rely and shall be fully protected in relying upon information furnished by DTC with respect to its members, participants and any beneficial owners.

(viii) The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Note (including any transfers between or among DTC participants, members or beneficial owners in any Global Note) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by, the terms of this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

All certifications, certificates and Opinions of Counsel required to be submitted to the Issuers, the Trustee or the Registrar pursuant to this Section 2.6 to effect a registration of transfer or exchange may be submitted by facsimile.

2.7 Replacement Notes

If a mutilated certificated Note is surrendered to the Registrar or if the Holder claims that the Note has been lost, destroyed or wrongfully taken, the Issuers shall issue and upon receipt of an Issuer Order the Trustee shall authenticate a replacement Note in such form as the Note (a "Replacement Note") mutilated, lost, destroyed or wrongfully taken if the Holder satisfies any other reasonable requirements of the Trustee or the Issuers. If required by the Trustee or the Issuers, such Holder shall furnish an indemnity bond sufficient in the judgment of the Issuers and the Trustee to protect the Issuers, the Trustee, the Paying Agent, the Transfer Agent, the Registrar, and any Authenticating Agent from any loss that any of them may suffer if a Note is replaced. The Issuers and the Trustee may charge the Holder for their expenses in replacing a Note, including but not limited to the reasonable expenses of counsel and any tax that may be imposed with respect to replacement of such Note.

Every Replacement Note shall be an additional obligation of the Issuers.

The provisions of this Section 2.7 are exclusive and preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or wrongfully taken Notes.

2.8 Outstanding Notes

Notes outstanding at any time are all Notes authenticated by the Trustee (or the Authenticating Agent) except for those cancelled by it, those delivered to it for cancellation, those otherwise deemed discharged in accordance with the terms of Article 8 of this Indenture and those set forth in this Section 2.8 as not outstanding. Except as provided in Section 2.9, a Note does not cease to be outstanding because an Issuer or an Affiliate of the Issuers holds the Note.

If a Note is replaced pursuant to Section 2.7, it ceases to be outstanding unless the Trustee and the Issuers receive proof satisfactory to them that the Note which has been replaced is held by a *bona fide* purchaser.

If the principal amount of any Note is considered paid under Section 4.1 hereof, it ceases to be outstanding and interest on it ceases to accrue.

If a Paying Agent segregates and holds in trust, in accordance with this Indenture, on a Redemption Date or maturity date money sufficient to pay all principal, premium, if any, interest and Additional Amounts, if any, payable on that date with respect to the Notes (or portions thereof) to be redeemed or maturing, as the case may be, and a Paying Agent is not prohibited from paying such money to the Holders on that date pursuant to the terms of this Indenture, then on and after that date such Notes (or portions thereof) will cease to be outstanding and interest on them shall cease to accrue.

2.9 Notes Held by an Issuer

The Issuers shall promptly notify the Trustee of any Notes owned by an Issuer or any Affiliate of the Issuers. In determining whether the Holders of the required principal amount of Notes have concurred in any direction or consent or any amendment, modification or other change to this Indenture, Notes owned by an Issuer or by an Affiliate of the Issuers shall be disregarded and treated as if they were not outstanding, except that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent or any amendment, modification or other change to this Indenture, only Notes regarding which a Trust Officer of the Trustee actually knows are so owned shall be so disregarded. Notes so owned which have been pledged in good faith shall not be disregarded if the pledgee establishes to the satisfaction of the Trustee the pledgees right so to act with respect to the Notes and that the pledgee is not an Issuer or an Affiliate of the Issuers.

2.10 Cancellation

The Issuers at any time may deliver Notes to the Trustee for cancellation. The Registrar and each Paying Agent shall forward to the Trustee any Notes surrendered to them for registration of transfer, exchange or payment. The Trustee, in accordance with its customary procedures, and no one else shall cancel all Notes surrendered for registration of transfer, exchange, payment or cancellation and dispose (subject to the Trustee's retention policy) of such cancelled Notes in its customary manner. Except as otherwise provided in this Indenture, the Issuers may not issue new Notes to replace Notes they have redeemed, paid or delivered to the Trustee for cancellation.

2.11 Defaulted Interest

Any interest on any Note that is payable, but is not punctually paid or duly provided for, on the dates and in the manner provided in the Notes and this Indenture (all such interest herein called "**Defaulted Interest**") shall forthwith cease to be payable to the Holder on the relevant Record Date by virtue of having been such Holder, and such Defaulted Interest may be paid by the Issuers, at their election in each case, as provided in Clause (a) or (b) of this Section 2.11:

(a) The Issuers may elect to make payment of any Defaulted Interest to the Persons in whose names the Notes are registered at the close of business on a special record date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Issuers shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Note and the date of the proposed payment, and at the same time the Issuers shall either (i) deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest; or (ii) make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this Clause (a) provided. In addition, the Issuers shall fix a special record date for the payment of such Defaulted Interest, such date to be not more than 15 days and not less than 10 days prior to the proposed payment date and not less than 15 days after the receipt by the Trustee of the notice of the proposed payment date. The Issuers shall promptly but, in any event, not less than 15 days prior to the special record date, notify the Trustee of such special record date and, in the name and at the expense of the Issuers, the Trustee shall cause notice of the proposed payment date of such Defaulted Interest and the special record date therefor to be mailed first-class, postage prepaid to each Holder as such Holder's address appears in the Security Register (where the Notes are Definitive Registered Notes), not less than 10 days prior to such special record date. Notice of the proposed payment date of such Defaulted Interest and the special record date therefor having been so mailed, such Defaulted Interest shall be paid to the Persons in whose names the Notes are registered at the close of business on such special record date and shall no longer be payable pursuant to Section 2.11(b).

(b) The Issuers may make payment of any Defaulted Interest on the Notes in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Notes may be listed, and upon such notice as may be required by such exchange, if, after notice given by the Issuers to the Trustee of the proposed payment date pursuant to this Clause, such manner of payment shall be deemed reasonably practicable.

Subject to the foregoing provisions of this Section 2.11, each Note delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Note shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Note.

2.12 Computation of Interest

Interest on the Notes shall accrue from the date of original issuance or, if interest has already been paid, from the date it was most recently paid. Interest on the Notes shall be computed on the basis of a 360-day year of twelve 30-day months. For the purposes solely of disclosure under the Interest Act (Canada), whenever interest to be paid on the Notes is calculated on the basis of a year of 360 days consisting of twelve 30-day months, the yearly rate of interest to which the rate used in such calculation is equivalent during any particular period is the rate so used multiplied by a fraction of which: (a) the numerator is the product of (i) the actual number of days in the calendar

year in which such period ends, and (ii) the sum of (A) the product of (x) 30 and (y) the number of complete months elapsed in the relevant period and (B) the number of days elapsed in any incomplete month in the relevant period, and (b) the denominator is the product of: (i) 360, and (ii) the actual number of days in the relevant period.

2.13 CUSIP and ISIN Numbers

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

2.14 Issuance of Additional Notes

The Issuers may from time to time, subject to compliance with Section 4.6 of this Indenture, and in accordance with the procedures of Section 2.2 issue further notes (the "**Additional Notes**") ranking *pari passu* with the Notes and with the same terms as to status, redemption and otherwise as such Notes (save for payment of interest accruing prior to the issue date of such Additional Notes for the first payment of interest following the issue date of such Additional Notes). The Original Notes and any Additional Notes subsequently issued shall be treated as a single class for all purposes under this Indenture including, without limitation, waivers, amendments, redemptions and offers to purchase, *provided* that any Additional Notes that are not fungible with the Original Notes for U.S. federal income tax purposes will not have the same CUSIP, ISIN or other applicable securities identifier as the Original Notes. Additional Notes issued pursuant to Regulation S under the Securities Act may also bear a different CUSIP prior to the date that is 40 days after the later of the commencement of the offering or the closing date of the offering of any such Additional Notes.

3. Redemption, Offers to Purchase

3.1 Right of Redemption

The Issuers may redeem all or any portion of the Notes upon the terms and at the Redemption Prices set forth in the Notes. Any redemption pursuant to this Section 3.1 shall be made pursuant to this Article 3.

3.2 Notices to Trustee

If the Issuers elect to redeem Notes pursuant to Section 3.1, they shall notify the Trustee in writing of the Redemption Date, the principal amount of Notes to be redeemed and the paragraph of the Notes and Clause of this Indenture pursuant to which the redemption will occur.

The Issuers shall give each notice to the Trustee provided for in this Section 3.2 in writing at least 5 Business Days before the date notice is mailed or otherwise delivered to the Holders pursuant to Section 3.4 unless the Trustee (in its sole discretion) consents to a shorter period, *provided* that such notice shall be revocable at the Issuers' sole discretion. Such notice shall be accompanied by or set out within an Officer's Certificate from the Issuers to the effect that such redemption will comply with the conditions herein.

3.3 Selection of Notes to be Redeemed

If less than all of the Notes are to be redeemed at any time, the Paying Agent or the Registrar, shall select the Notes to be redeemed on a by lot basis to the extent practicable or, to the extent that selection on a by lot basis is not practicable for any reason, by such other method as required by the rules of DTC. Neither the Registrar nor the Paying Agent will be liable for selections made by it in accordance with this Section 3.3.

No Notes of $2,000 or less can be redeemed in part. Except as provided in the preceding sentence, provisions of this Indenture that apply to Notes called for redemption or tendered for purchase also apply to portions of Notes called for redemption or purchase.

3.4 Notice of Redemption

(a) (i) The Issuers shall mail or cause to be mailed by first-class mail, or otherwise deliver or cause to be delivered, a notice of redemption at least 10 days but not more than 60 days before a redemption date to each Holder to be redeemed at its registered address, except that redemption notices may be mailed more than 60 days prior to a redemption date if the notice is issued in connection with a defeasance of the Notes or a satisfaction and discharge of this Indenture pursuant to Article 8 hereof and shall comply with Section 12.1.

(ii) For Notes that are represented by global certificates held on behalf of DTC or Euroclear or Clearstream, notices may be given by delivery of the relevant notices to DTC or Euroclear or Clearstream for communication to entitled account holders in substitution for the aforesaid mailing.

(b) The notice shall identify the Notes to be redeemed (including CUSIP and ISIN numbers) and shall state:

(i) the Redemption Date (if then determined and otherwise its manner of determination);

(ii) the Redemption Price (if then determined and otherwise its manner of determination) and the amount of accrued interest, if any, and Additional Amounts, if any, to be paid per $1,000 principal amount of Notes;

(iii) the name and address of the Paying Agent;

(iv) that Notes called for redemption must be surrendered to the Paying Agent to collect the Redemption Price *plus* accrued interest, if any, and Additional Amounts, if any;

(v) if any Definitive Registered Note is to be redeemed in part only, the portion of the principal amount of that Note that is to be redeemed and that, a new Definitive Registered Note in principal amount equal to the unredeemed portion of the original Note will be issued in the name of the Holder upon cancellation of the original Note;

(vi) that, if any Note contains a CUSIP or ISIN number, no representation is being made as to the correctness of such CUSIP or ISIN number either as printed on the Notes or as contained in the notice of redemption;

(vii) that, unless the Issuers default in making such redemption payment, interest on the Notes (or portion thereof) called for redemption shall cease to accrue on and after the Redemption Date;

(viii) the paragraph of the Notes and/or Section of this Indenture pursuant to which the Notes called for redemption are being redeemed; and

(ix) whether the redemption is conditioned on any events and, if so, shall provide a detailed explanation of such conditions.

(c) At the Issuers' written request, the Trustee (or the Paying Agent) shall give a notice of redemption in the Issuers' name and at the Issuers' expense. In such event, the Issuers shall provide the Trustee (or the Paying Agent) with the notice and the other information required by this Section 3.4 at least 5 Business Days prior to the publication of the notice of redemption (or such shorter time the Trustee consents to, in its sole discretion).

3.5 Deposit of Redemption Price

On or prior to 10:00 a.m. (New York time) on any Redemption Date, the Issuers shall deposit or cause to be deposited with the Paying Agent (or, if an Issuer or a Subsidiary is the Paying Agent, shall segregate and hold in trust) a sum in same day funds sufficient to pay the Redemption Price of and accrued interest and Additional Amounts, if any, on all Notes to be redeemed on that date other than Notes or portions of Notes called for redemption that have previously been delivered by the Issuers to the Trustee for cancellation. The Paying Agent shall return to the Issuers any money so deposited that is not required for that purpose.

3.6 Payment of Notes Called for Redemption

If notice of redemption has been given in the manner provided in this Indenture, subject to the satisfaction of any conditions precedent set forth in a notice of redemption, the Notes called for redemption shall become due on the date fixed for redemption. On or after the Redemption Date, interest ceases to accrue on Notes or portions of Notes called for redemption. Upon surrender of any Note for redemption in accordance with a notice of redemption, such Note shall be paid and redeemed by the Issuers at the Redemption Price, together with accrued interest, if any, to, but not including, the Redemption Date; *provided*, *however*, that installments of interest whose Stated Maturity is on or prior to the Redemption Date shall be payable to the Holders registered as such at the close of business on the relevant Record Date.

Notice of redemption shall be deemed to be given when mailed or distributed, whether or not the Holder receives the notice. In any event, failure to give such notice, or any defect therein, shall not affect the validity of the proceedings for the redemption of Notes held by Holders to whom such notice was properly given.

3.7 Notes Redeemed in Part

(a) Upon surrender of a Global Note that is redeemed in part, the Paying Agent shall forward such Global Note to the Trustee who shall make a notation on the Security Register to reduce the principal amount of such Global Note to an amount equal to the unredeemed portion of the Global Note surrendered; *provided*, *however*, that each such Global Note shall be in a principal amount at final Stated Maturity of $2,000 or an integral multiple of $1,000 in excess thereof.

(b) Upon surrender and cancellation of a certificated Note that is redeemed in part, the Issuers shall execute and the Trustee shall authenticate for the Holder (at the Issuers' expense) a new Note equal in principal amount to the unredeemed portion of the Note surrendered and cancelled; *provided*, *however*, that each such certificated Note shall be in a principal amount at final Stated Maturity of $2,000 or an integral multiple of $1,000 in excess thereof.

3.8 Optional Redemption

(a) Prior to November 1, 2019, the Issuers may, at their option, on any one or more occasions, redeem up to 40% of the aggregate principal amount of the Notes (including any Additional Notes issued after the Issue Date) at a redemption price equal to 107.125% of the principal amount thereof, *plus* accrued and unpaid interest and Additional Amounts, if any, thereon to, but not including, the redemption date, with all or a portion of the net proceeds of one or more Equity Offerings; *provided* that at least 60% of the aggregate principal amount of the Notes issued under this Indenture (including any Additional Notes issued after the Issue Date) remains outstanding immediately after the occurrence of such redemption; and *provided*, *further*, that such redemption shall occur within 180 days of the date of the closing of any such Equity Offering.

(b) On or after November 1, 2019, the Issuers may on any one or more occasions redeem all or a part of the Notes at the redemption prices (expressed as percentages of principal amount) indicated in the table below, *plus* accrued and unpaid interest and Additional Amounts, if any, on the Notes redeemed, to, but not including, the applicable date of redemption, if redeemed during the twelve-month period beginning on November 1 of the years indicated below, subject to the rights of holders of Notes on the relevant Record Date to receive interest on the relevant Interest Payment Date occurring on or prior to the redemption date.

Year	Redemption Price
2019	103.563%
2020	101.781%
2021 and thereafter	100.000%

(c) In addition, at any time prior to November 1, 2019, the Issuers may also redeem, in whole or in part, the Notes at a redemption price equal to 100% of the principal amount of Notes to be redeemed, *plus* the Applicable Premium as of, and accrued and unpaid interest and Additional Amounts, if any, to, but not including, the redemption date, subject to the rights of Holders of the Notes on the relevant Record Date to receive interest due on the relevant Interest Payment Date occurring on or prior to the redemption date.

(d) Until October 22, 2019, the Issuers, at their option, on one or more occasions, may redeem up to 10% of the aggregate principal amount of the Notes (including any Additional Notes issued after the Issue Date) during each twelve-month period commencing with the Issue Date at a redemption price equal to 103% of the principal amount of Notes to be redeemed, *plus* accrued and unpaid interest and Additional Amounts, if any, to, but not including, the redemption date, subject to the rights of holders of the Notes on the relevant Record Date to receive interest due on the relevant Interest Payment Date occurring on or prior to the redemption date.

(e) All redemptions of the Notes will be made upon not less than 10 days' nor more than 60 days' prior written notice (with a copy to the Trustee and the Paying Agent), except that a redemption notice may be made more than 60 days prior to a redemption date if the notice is issued in connection with a defeasance of the Notes or a satisfaction and discharge of this Indenture. Unless the Issuers default in the payment of the redemption price, interest will cease to accrue on the Notes or portions thereof called for redemption on the applicable redemption date.

(f) Notice of any redemption including, without limitation, upon an Equity Offering may, at the Issuers' discretion, be subject to one or more conditions precedent, including, but not limited to, completion of the related Equity Offering.

(g) In addition, subject to the procedures and processes of DTC, if such redemption or notice is subject to satisfaction of one or more conditions precedent, such notice may state that, in the Issuers' discretion, the redemption date may be delayed until such time as any or all such conditions shall be satisfied (*provided*, *however*, that, in any case, such redemption date shall be no more than 60 days from the date on which such notice is first given), or such redemption may not occur and such notice may be rescinded in the event that any or all such conditions shall not have been satisfied by the redemption date, or by the redemption date so delayed. Notwithstanding anything else in this Indenture or the Notes to the contrary, redemption notices may be given more than 60 days prior to a redemption date if the notice is issued in connection with a defeasance of the Notes or a satisfaction and discharge of this Indenture (subject to the requirement in the case of a satisfaction and discharge of this Indenture that Notes not delivered to the Trustee for cancellation have become due and payable or will become due and payable or be called for redemption within one year). The Issuers may provide in such notice that payment of the redemption price and performance of the Issuers' obligations with respect to such redemption may be performed by another Person.

3.9 Redemption for Changes in Taxes

The Issuers may redeem the Notes, in whole but not in part, at their discretion at any time upon giving not less than 10 nor more than 60 days' prior written notice to the Holders, with a copy to the Trustee and the Paying Agent (which notice will be irrevocable and given in accordance with the procedures set forth in Sections 3.3 and 3.4), at a redemption price equal to 100% of the principal amount thereof, together with accrued and unpaid interest (if any) to, but not including, the date fixed by the Issuers for redemption (a "**Tax Redemption Date**") and all Additional Amounts (if any) then due and which will become due on the Tax Redemption Date as a result of the redemption or otherwise (subject to the right of Holders of the Notes on the relevant Record Date to receive interest due on the relevant Interest Payment Date and Additional Amounts (if any) in respect thereof), if on the next date on which any amount would be payable in respect of the Notes, the Issuer, the Co-Issuer or a Guarantor is or would be required to pay Additional Amounts and the Issuer, the Co-Issuer or relevant Guarantor cannot avoid any such payments obligation by taking reasonable measures available to the Issuer, the Co-Issuer or relevant Guarantor (including making payments through a Paying Agent located in another jurisdiction and, in the case of a Guarantor, such

payments being made by the Issuer, the Co-Issuer or another Guarantor who can make such payments without the obligation to pay Additional Amounts), and the Issuers determine that the requirement arises as a result of:

(a) any amendment to, or change in, the laws or any regulations, treaties or rulings promulgated thereunder of a relevant Tax Jurisdiction which change or amendment has not been formally announced before and is effective on or after the Issue Date (or, if the relevant Tax Jurisdiction became a Tax Jurisdiction on a date after the Issue Date, such later date); or

(b) any amendment to, introduction of, or change in, an official interpretation, administration or application of such laws, regulations, treaties or rulings (including a holding, judgment or order by a court of competent jurisdiction or a change in published administrative practice or revenue guidance) which amendment or change has not been formally announced before and is effective on or after the Issue Date (or, if the relevant Tax Jurisdiction became a Tax Jurisdiction on a date after the Issue Date, such later date).

The Issuers will not give any such notice of redemption earlier than 90 days prior to the earliest date on which the Issuer, the Co-Issuer or relevant Guarantor would be obligated to make such payment or withholding if a payment in respect of the Notes was then due, and the obligation under this Indenture to pay Additional Amounts must be in effect at the time such notice is given. Prior to the publication or, where relevant, mailing of any notice of redemption of the Notes pursuant to the foregoing, the Issuers will deliver to the Trustee an opinion of independent tax counsel, to the effect that there has been such amendment or change which would entitle the Issuers to redeem the Notes hereunder, along with an Officer's Certificate to the effect that the Issuers or relevant Guarantor cannot avoid its obligation to pay Additional Amounts by taking reasonable measures available to it.

The Trustee will accept and shall be entitled to rely on such Officer's Certificate and Opinion of Counsel as sufficient evidence of the satisfaction of the conditions precedent as set forth in this Section 3.9 without further inquiry, in which event it will be conclusive and binding on the Holders of the Notes.

3.10 Mandatory Redemption

Except as set forth in Section 3.11, the Issuers are not required to make mandatory redemption or sinking fund payments with respect to the Notes. However, under certain circumstances, the Issuers may be required to offer to purchase the Notes as set forth in Sections 4.9, 4.11 and 4.31.

3.11 Special Mandatory Redemption

(a) If on or prior to the applicable Outside Date (as defined below), the Escrow Agent receives the Escrow Release Officer's Certificate from the Issuers, the Escrow Agreement provides that the Escrow Agent shall release the Escrowed Property (as defined in the Escrow Agreement) (including investment earnings when available) to or at the written order of the Issuers in accordance with the Escrow Agreement (the date of such release, the "**Escrow Release Date**").

(b) If (i) the Escrow Release Conditions are not satisfied on or prior to the applicable Outside Date or (ii) the Issuers notify the Escrow Agent and the Trustee in writing that (A) the Sponsor or the Company will not pursue the consummation of the Acquisition or (B) the Arrangement Agreement shall have been validly terminated (which notice the Issuers shall be required to deliver if they determine in their sole judgment that such valid termination has occurred) (the "**Escrow Termination Date**"), then the Escrow Agreement provides that the Escrow Agent shall, without the requirement of notice to or action by the Issuers, the Trustee or any other Person, liquidate and release all of the Escrowed Property (including investment earnings thereon and proceeds thereof) to the Trustee. If the Escrow Termination Date occurs, the Trustee shall, without further notice or action from the Escrow Agent or the Issuers, apply the Escrowed Property to redeem all of the Notes (the "**Special Mandatory Redemption**") on the Special Mandatory Redemption Date (as defined below) at a redemption price equal to 100% of the initial issue price of the Notes being redeemed, plus accrued and unpaid interest, if any, to, but excluding, the Special Mandatory Redemption Date.

(c) The Issuers shall cause a notice of Special Mandatory Redemption to be delivered to the Escrow Agent, the Trustee and the Holders of the Notes no later than the next Business Day following the earlier to occur of (x) the Escrow Termination Date and (y) the applicable Outside Date, which shall provide for the redemption of the Notes on the third Business Day following the earlier to occur of (x) the Escrow Termination Date and (y) the applicable Outside Date, as may be extended to comply with applicable DTC procedures (the "**Special Mandatory Redemption Date**"). The Trustee shall pay to the Issuers any Escrowed Property remaining after redemption of the Notes and payment of fees and expenses of the Trustee and Escrow Agent.

(d) The "**Outside Date**" will initially be February 10, 2018, and may be extended from time to time, but no more than two times, as follows:

(i) the Issuers may, by written notice to the Trustee and the Escrow Agent (an "**Extension Election**") delivered not later than two Business Days prior to the applicable Outside Date, make an election to extend the applicable Outside Date to a date (an "**Extended Outside Date**") specified by the Issuers, so long as, concurrently with the provision of such notice, the Escrow Issuer deposits an amount (either in cash or Eligible Escrow Investments) sufficient (as determined solely by the Escrow Issuer), when taken together with the amount of Escrowed Property then on deposit in the Escrow Account, to pay an amount equal to 100% of the initial issue price of the Notes, *plus* all accrued and unpaid interest, if any, on the Notes through the extended Special Mandatory Redemption Date; and

(ii) the Extended Outside Date shall be, in the case of either the first or the second Extension Election, a date specified by the Issuers that is a Business Day; *provided* that such date shall be no later than 30 days after the then current Outside Date.

4. Covenants

4.1 Payment of Notes

The Issuers covenant and agree, jointly and severally, for the benefit of the Holders that they shall pay the principal of, premium, if any, interest and Additional Amounts, if any, on the Notes on the dates and in the manner provided in the Notes and in this Indenture. Notwithstanding the foregoing, if a "secured creditor" (as that term is defined under the BIA) is determined by a court of competent jurisdiction not to include a Person to whom obligations are owed on a joint or joint and several basis, then the obligations of the Issuers, to the extent such obligations are secured, shall be several obligations and not joint or joint and several obligations. Principal, premium, if any, interest and Additional Amounts, if any, shall be considered paid on the date due if by 10:00 a.m. (New York time) on such date the Trustee or the Paying Agent (other than the Issuer, the Co-Issuer or any of their Affiliates) holds, in accordance with this Indenture, money sufficient to pay all principal, premium, if any, interest and Additional Amounts, if any then due. If the Issuer, the Co-Issuer or any of their Affiliates acts as Paying Agent, principal, premium, if any, interest and Additional Amounts, if any, shall be considered paid on the due date if the entity acting as Paying Agent complies with Section 2.4.

The Issuers shall pay interest (including post-petition interest in any Insolvency or Liquidation Proceeding) from time to time on demand on overdue principal (and premium, if any) at a rate that is 1.0% higher than the then applicable interest rate on the Notes, and it shall pay interest on overdue installments of interest and Additional Amounts (without regard to any applicable grace periods) at the same rate to the extent lawful.

4.2 Corporate Existence

Subject to Article 5, each Issuer and each Restricted Subsidiary shall do or cause to be done all things necessary to preserve and keep in full force and effect their corporate, partnership, limited liability company or other existence and the rights (charter and statutory), licenses and franchises of each Issuer and each Restricted Subsidiary; *provided*, *however*, that the Issuers shall not be required to preserve any such right, license or franchise if the Boards of Directors of the Issuers shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Issuers and the Restricted Subsidiaries as a whole and that the loss thereof is not disadvantageous in any material respect to the Holders.

4.3 Taxes

The Parent will pay, and will cause each of its Subsidiaries to pay, within the time period allowed without incurring penalties, all material Taxes, assessments, and governmental levies except such as are contested in good faith and by appropriate proceedings and for which adequate reserves have been established or where the failure to effect such payment is not adverse in any material respect to the Holders of the Notes.

4.4 Stay, Extension and Usury Laws

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

4.5 Statement as to Compliance

(a) The Parent shall deliver to the Trustee, within 120 days after the end of each fiscal year, an Officer's Certificate (that need not comply with Section 12.2) stating that a review of the activities of the Parent and its Subsidiaries during the preceding fiscal year have been made under the supervision of the signing Officer with a view to determining whether the Parent and its Subsidiaries have kept, observed, performed and fulfilled their obligations under this Indenture, and further stating that, to the best of his or her knowledge, the Parent and its Subsidiaries have kept, observed, performed and fulfilled each and every covenant contained in this Indenture and is not in default in the performance or observance of any of the terms, provisions and conditions of this Indenture (or, if a Default or Event of Default has occurred, describing all such Defaults or Events of Default of which he or she may have knowledge and what action the Parent is taking or proposes to take with respect thereto).

(b) So long as any of the Notes are outstanding, the Parent shall deliver written notice to the Trustee, within 30 days after any Officer becoming aware of any Default or Event of Default.

4.6 Limitation on Incurrence of Indebtedness and Issuance of Preferred Stock

(a) From and after the Escrow Release Date, the Parent shall not, and shall not cause or permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise, with respect to (collectively, "incur") any Indebtedness (including Acquired Debt), and the Parent shall not issue any Disqualified Stock and shall not permit any of its Restricted Subsidiaries to issue any shares of preferred stock; *provided*, *however*, that the Parent may incur Indebtedness (including Acquired Debt) or issue Disqualified Stock and any Restricted Subsidiary may incur Indebtedness (including Acquired Debt) or issue preferred stock, if on the date on which such additional Indebtedness is incurred or such Disqualified Stock or such preferred stock is issued, as the case may be:

(i) if such Indebtedness to be incurred is unsecured, the Parent's Fixed Charge Coverage Ratio would have been at least 2.0 to 1.0 for the Parent's most recently ended four fiscal quarters for which internal financial statements are available immediately preceding the date on which such additional Indebtedness is incurred or such Disqualified Stock or such preferred stock is issued, as the case may be;

(ii) if such Indebtedness to be incurred is Pari Secured Indebtedness, if the Parent's Total Net Leverage Ratio for the Parent's most recently ended four fiscal quarters for which internal financial statements are available immediately preceding the date on which such additional Pari Secured Indebtedness is incurred would have been less than 1.15 to 1.0; or

(iii) if such Indebtedness to be incurred is Junior Lien Secured Indebtedness, if the Parent's Total Net Leverage Ratio for the Parent's most recently ended four fiscal quarters for which internal finan-

cial statements are available immediately preceding the date on which such additional Junior Lien Secured Indebtedness is incurred would have been less than 1.65 to 1.0;

in each case determined on a *pro forma* basis (including a *pro forma* application of the net proceeds therefrom) and other transaction consummated in connection therewith and other appropriate pro forma adjustments), as if the additional Indebtedness had been incurred or the Disqualified Stock or the preferred stock had been issued, as the case may be, and the application of proceeds therefrom had occurred at the beginning of such four fiscal quarter period; *provided* that (x) the aggregate amount of Indebtedness at any time outstanding incurred under clauses (i), (ii) and (iii) above by Restricted Subsidiaries that are not the Issuers or the Guarantors shall not exceed the greater of $25.0 million and 1.5% of Total Assets; and (y) Indebtedness incurred under clauses (ii) and (iii) above shall be subject to the Intercreditor Agreement or an Additional Intercreditor Agreement.

(b) Section 4.6(a) will not prohibit the incurrence of any of the following items of Indebtedness (collectively, "**Permitted Debt**"):

(i) the incurrence by the Parent and any Restricted Subsidiary of additional Indebtedness under Credit Facilities in an aggregate principal amount at any one time outstanding under this Clause (i) not to exceed $260.0 million, *plus*, in the case of any refinancing of any Indebtedness permitted under this Clause (i) or any portion thereof, the aggregate amount of fees, underwriting discounts, premiums and other costs and expenses incurred in connection with such refinancing;

(ii) Indebtedness of the Parent or any Restricted Subsidiary outstanding on the Escrow Release Date (other than Indebtedness set forth in clause (i) or (iii));

(iii) the incurrence by the Issuers of Indebtedness represented by the Notes to be issued on the date of this Indenture and the incurrence by any Guarantor of a Note Guarantee at any time;

(iv) the incurrence by the Parent or any of its Restricted Subsidiaries of Indebtedness represented by Capital Lease Obligations, mortgage financings or purchase money obligations, in each case, incurred for the purpose of financing all or any part of the purchase price, lease expense, rental payments or cost of design, construction, installation or improvement of property (real or personal), plant or equipment or other capital assets used in the business of the Parent or any of its Restricted Subsidiaries, whether through the direct purchase of assets or the Capital Stock of any Person owning such property, plant or equipment or other capital assets (including any Indebtedness deemed to be incurred in connection with such purchase) (it being understood that any such Indebtedness may be incurred after the acquisition or purchase or the construction, installation or the making of any improvement with respect to such property, plant or equipment or other capital assets) in an aggregate principal amount, including all Permitted Refinancing Indebtedness incurred at any time to renew, refund, refinance, replace, defease or discharge any Indebtedness incurred pursuant to this Clause (iv), not to exceed the greater of (x) $65.0 million and (y) 3.5% of Total Assets at any time outstanding;

(v) the incurrence by the Parent or any of its Restricted Subsidiaries of Permitted Refinancing Indebtedness in exchange for, or the net proceeds of which are used to renew, refund, refinance, replace, redeem, defease or discharge any Indebtedness (other than intercompany Indebtedness) that was permitted by this Indenture to be incurred under Section 4.6(a), 4.6(b)(ii), (iii) and (xiv) or this Section 4.6(b)(v);

(vi) the incurrence by the Parent or any of its Restricted Subsidiaries of intercompany Indebtedness between or among the Parent and any of its Restricted Subsidiaries or the issuance of any preferred stock by the Parent or any of its Restricted Subsidiaries to the Parent or a Restricted Subsidiary; *provided*, *however*, that:

(A) if (x) the Issuer, the Co-Issuer or any Guarantor is the obligor on such Indebtedness and the payee is not the Issuer, the Co-Issuer or a Guarantor, such Indebtedness must be unsecured and expressly subordinated to the prior payment in full in cash of all Obligations then due

with respect to the Notes, in the case of the Issuer or the Co-Issuer, or any Note Guarantee, in the case of a Guarantor and (y) the Issuer, the Co-Issuer or any Guarantor is the issuer of such preferred stock and the holder is not the Issuer, the Co-Issuer or a Guarantor, such holder's rights under such preferred stock must be expressly subordinated to the prior payment in full in cash of all Obligations then due with respect to the Notes, in the case of the Issuer or the Co-Issuer, or any Note Guarantee, in the case of a Guarantor; and

(B) (i) any subsequent issuance or transfer of Equity Interests that results in any such Indebtedness being held by a Person other than the Parent or a Restricted Subsidiary of the Parent and (ii) any sale or other transfer of any such Indebtedness to a Person that is not either the Parent or a Restricted Subsidiary of the Parent will be deemed, in each case, to constitute an incurrence of such Indebtedness by Parent or such Restricted Subsidiary, as the case may be, that was not permitted by this Section 4.6(b)(vi);

(vii) the issuance by any Restricted Subsidiaries to the Parent or to any of its Restricted Subsidiaries of shares of preferred stock; *provided*, *however*, that:

(A) any subsequent issuance or transfer of Equity Interests that results in any such preferred stock being held by a Person other than the Parent or a Restricted Subsidiary of the Parent; and

(B) any sale or other transfer of any such preferred stock to a Person that is not either the Parent or a Restricted Subsidiary of the Parent,

will be deemed, in the case of each of (A) and (B), to constitute an issuance of such preferred stock by such Restricted Subsidiary that was not permitted by this Section 4.6(b)(vii);

(viii) the incurrence by the Parent or any of its Restricted Subsidiaries of Hedging Obligations not for speculative purposes (as determined in good faith by the Parent) and any customary cash management obligations;

(ix) the Guarantee by the Parent or any of its Restricted Subsidiaries of Indebtedness of the Parent or a Restricted Subsidiary of the Parent that was permitted to be incurred by another provision of this Section 4.6; *provided* that if the Indebtedness being Guaranteed is subordinated to or *pari passu* with the Notes or a Note Guarantee, the Guarantee must be subordinated to or *pari passu* with the Notes or a Note Guarantee, to the same extent as the Indebtedness Guaranteed;

(x) the incurrence by the Parent or any of its Restricted Subsidiaries of Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently drawn against insufficient funds, so long as such Indebtedness is covered within 30 Business Days of such incurrence;

(xi) Indebtedness in respect of self-insurance obligations or captive insurance companies or consisting of the financing of insurance premiums in the ordinary course of business;

(xii) the incurrence by the Parent or any of its Restricted Subsidiaries of Indebtedness arising from agreements of the Parent or any of its Restricted Subsidiaries providing for obligations in respect of earnouts or other adjustments of purchase price or, in each case, similar obligations, in each case, incurred or assumed in connection with the acquisition or disposition of any business or assets or Capital Stock of a Subsidiary, *provided* that the maximum aggregate liability of the Parent and its Restricted Subsidiaries in respect of all such Indebtedness shall at no time exceed the gross proceeds, including the Fair Market Value of non-cash proceeds (measured at the time received and without giving effect to any subsequent changes in value), actually received by the Parent and its Restricted Subsidiaries in connection with such disposition;

(xiii) the incurrence by the Parent or any of its Restricted Subsidiaries of Indebtedness in respect of (A) letters of credit, letters of guarantees, bid, performance, appeal, surety, reclamation, remediation, rehabilitation and similar bonds, completion guarantees, judgment, advance payment, customs, VAT or similar instruments issued for the account of the Parent and any of its Restricted Subsidiaries in the ordinary course of business (including, but not limited to, those securing reclamation or environmental obligations), in each case, other than an obligation for money borrowed (other than advances or credit for goods and services in the ordinary course of business and on terms and conditions that are customary in a Permitted Business and other than the extension of credit represented by such letter of credit, bond, Guarantee or other instrument itself), including Guarantees and obligations of the Parent or any of its Restricted Subsidiaries with respect to letters of credit or similar instruments supporting such obligations or in respect of self-insurance and workers compensation obligations; and (B) any customary cash management, cash pooling or netting or setting off arrangements;

(xiv) Indebtedness of a Person outstanding on the date on which such Person becomes a Restricted Subsidiary or is acquired by the Parent or a Restricted Subsidiary or merged, consolidated, amalgamated or otherwise combined with (including pursuant to any acquisition of assets and assumption of related liabilities) the Parent or a Restricted Subsidiary in accordance with this Indenture, and Indebtedness incurred by the Parent or a Restricted Subsidiary, in each case, (A) to provide all or any portion of the funds utilized to consummate the transaction or series of related transactions pursuant to which such Person became a Restricted Subsidiary or was otherwise acquired by or was merged into the Parent or a Restricted Subsidiary or (B) otherwise in contemplation of such acquisition; *provided*, *however*, with respect to this Section 4.6(b)(xiv) that at the time of the acquisition or other transaction pursuant to which such Indebtedness was deemed to be incurred, (x) the Parent would have been able to incur $1.00 of additional Indebtedness pursuant to Section 4.6(a) after giving *pro forma* effect to the incurrence of such Indebtedness pursuant to this Section 4.6(b)(xiv) or (y) the Fixed Charge Coverage Ratio of the Parent would not be less than it was immediately prior to giving *pro forma* effect such acquisition or other transaction;

(xv) Indebtedness incurred by any Restricted Subsidiary that is not a Guarantor in an aggregate amount not to exceed $7.5million;

(xvi) Indebtedness incurred by or on behalf of a joint venture of the Parent or any Restricted Subsidiary, or Indebtedness incurred representing Guarantees thereof, in an aggregate amount not to exceed the greater of (x) $25.0 million and (y) 1.5% of Total Assets;

(xvii) the incurrence by the Parent or any Restricted Subsidiary (other than any Ancillary Business Subsidiary) of Indebtedness in an aggregate principal amount at any time outstanding, including all Permitted Refinancing Indebtedness incurred to renew, refund, replace, defease or discharge any Indebtedness incurred pursuant to this Section 4.6(b)(xvii) not to exceed the greater of (x) $50.0 million and (y) 3.0% of Total Assets;

(xviii) Indebtedness arising pursuant to the Available Cash Transactions;

(xix) Indebtedness and Disqualified Stock of the Parent, and Indebtedness, Disqualified Stock and preferred stock of any Restricted Subsidiary, in an aggregate outstanding principal amount which, when taken together with the principal amount of all other Indebtedness incurred pursuant to this clause and then outstanding, will not exceed 100% of the net cash proceeds, the Fair Market Value of property (other than cash) and marketable securities received by the Parent from the issuance or sale (other than to a Restricted Subsidiary) of Capital Stock of Parent or its direct or indirect parent (other than Disqualified Stock) or otherwise contributed to the equity (other than through the issuance of Disqualified Stock) of the Parent, in each case, subsequent to the Escrow Release Date, and any Permitted Refinancing Indebtedness in respect thereof; *provided, however,* that any such net cash proceeds that are so received or contributed shall not increase the amount available for making Restricted Payments to the extent the Parent and its Restricted Subsidiaries incur Indebtedness in reliance thereon;

(xx) Indebtedness of the Parent or any of its Restricted Subsidiaries supported by a letter of credit issued pursuant to the Revolving Credit Facility in a principal amount not in excess of the stated amount of such letter of credit;

(xxi) Indebtedness incurred in connection with judgements, decrees, attachments or awards that do not constitute an Event of Default under Section 6.1(a)(vi);

(xxii) Indebtedness consisting of obligations to make payments to current or former officers, directors and employees of the Parent or any of its Subsidiaries, their respective estates, spouses or former spouses with respect to the cancellation, purchase or redemption of Equity Interests of the Parent or any of its Subsidiaries to the extent permitted under Section 4.8(b)(v);

(xxiii) unfunded pension fund and other employee benefit plan obligations and liabilities incurred by the Parent and/or any Restricted Subsidiary in the ordinary course of business to the extent that the unfunded amounts would not otherwise cause an Event of Default under Section 6.1(a)(ix);

(xxiv) customer deposits and advance payments received in the ordinary course of business from customers for goods and services purchased in the ordinary course of business or consistent with past practice;

(xxv) obligations in respect of letters of support, guarantees or similar obligations issued, made or incurred for the benefit of any Restricted Subsidiary of the Parent to the extent required by law or in connection with any statutory filing or the delivery of audit opinions performed in jurisdictions other than within the United States; and

(xxvi) Indebtedness arising under a declaration of joint and several liability used for the purpose of Section 2:403 of the Dutch Civil Code (and any residual liability under such declaration pursuant to Section 2:404(2) of the Dutch Civil Code).

(c) The Parent shall not, and shall not permit the Issuer, the Co-Issuer or any Subsidiary Guarantor to, incur any Indebtedness (including Permitted Debt) that is contractually subordinated in right of payment to any other Indebtedness of the Issuer, the Co-Issuer or any Guarantor unless such Indebtedness is also contractually subordinated in right of payment to the Notes or the Guarantor's Note Guarantee (as applicable) on substantially identical terms; *provided*, *however*, that no Indebtedness will be deemed to be contractually subordinated in right of payment to any other Indebtedness of the Issuer, the Co-Issuer or any Guarantor solely by virtue of being unsecured, by virtue of being secured with different collateral or by virtue of being secured on a junior priority basis or by virtue of the application of waterfall or other payment ordering provisions affecting different tranches of Indebtedness under Credit Facilities, the Intercreditor Agreement or any Additional Intercreditor Agreement.

(d) For purposes of determining compliance with, and the outstanding principal amount of, any particular Indebtedness incurred pursuant to and in compliance with this Section 4.6:

(i) in the event that an item or portion of an item of proposed Indebtedness meets the criteria of more than one of the categories of Permitted Debt set forth in Section 4.6(b)(i) through 4.6(b)(xxvi), or is entitled to be incurred pursuant to Section 4.6(a), the Issuers, in their sole discretion, will be permitted to classify such item or portion of an item of Indebtedness on the date of its incurrence and only be required to include the amount and type of such Indebtedness in one of such Clauses and from time to time to reclassify all or a portion of such item of Indebtedness, in any manner that complies with this Section 4.6, *provided* that Indebtedness outstanding on the Escrow Release Date under any revolving credit facility shall be deemed initially incurred under Section 4.6(b)(i) (it being understood that some or all of such Indebtedness may in the future be reclassified in any manner that complies with this Section 4.6);

(ii) Guarantees of, or obligations in respect of letters of credit relating to, Indebtedness which is otherwise included in the determination of a particular amount of Indebtedness shall not be included; and

(iii) Indebtedness permitted by this Section 4.6 need not be permitted solely by reference to one provision permitting such Indebtedness but may be permitted in part by one such provision and in part by one or more other provisions of this Section 4.6 permitting such Indebtedness.

(iv) The amount of any Indebtedness outstanding as of any date will be:

(A) in the case of any Indebtedness issued with original issue discount, the amount of the liability in respect thereof determined in accordance with IFRS;

(B) in respect of Hedging Obligations (the amount of any such Indebtedness to be equal at any time to either (A) zero if such Hedging Obligation is incurred pursuant to Section 4.6(b)(viii) or (B) the notional amount of such Hedging Obligation if not incurred pursuant to such Clause);

(C) the principal amount of the Indebtedness, in the case of any other Indebtedness; and

(D) in respect of Indebtedness of another Person secured by a Lien on the assets of the specified Person, the lesser of:

(1) the Fair Market Value of such assets at the date of determination; and

(2) the amount of the Indebtedness of the other Person.

(e) In connection with the incurrence or issuance, as applicable, of revolving loan Indebtedness under this Section 4.6 and the granting of any Lien to secure any such Indebtedness, the Parent or the applicable Restricted Subsidiary may designate such incurrence or issuance and the granting of any such Lien as having occurred on the date of first incurrence or issuance of such revolving loan Indebtedness (such date, the "Deemed Date"), and any related subsequent actual incurrence or issuance or granting of any such Lien therefor will be deemed for all purposes under this Indenture to have been incurred or issued and granted on such Deemed Date, including, without limitation, for purposes of calculating the Fixed Charge Coverage Ratio and usage of any other baskets or ratios under this Indenture (as applicable).

(f) Accrual of interest, accrual of dividends, the accretion or amortization of original issue discount, the payment of interest on any Indebtedness in the form of additional Indebtedness, the reclassification of preferred stock as Indebtedness due to a change in accounting principles and the payment of dividends in the form of additional shares of preferred stock or Disqualified Stock will not be deemed to be an incurrence of Indebtedness or an issuance of preferred stock or Disqualified Stock for purposes of this Section 4.6. The amount of any Indebtedness outstanding as of any date shall be the principal amount or liquidation preference thereof, together with any interest thereon that is more than 30 days past due, in the case of any other Indebtedness.

(g) If at any time an Unrestricted Subsidiary becomes a Restricted Subsidiary, any Indebtedness of such Subsidiary shall be deemed to be incurred by a Restricted Subsidiary of the Parent as of such date (and, if such Indebtedness is not permitted to be incurred as of such date under this Section 4.6, the Issuers shall be in Default of this Section 4.6).

(h) For purposes of determining compliance with any U.S. dollar-denominated restriction on the incurrence of Indebtedness, the U.S. dollar-equivalent principal amount of Indebtedness denominated in a different currency shall be utilized, calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred; *provided*, *however*, that (i) if such Indebtedness denominated in non-U.S. dollar currency is subject to a Currency Exchange Protection Agreement with respect to U.S. dollars, the amount of such Indebtedness expressed in U.S. dollars will be calculated so as to take account of the effects of such Currency Exchange Protection Agreement; and (ii) the U.S. dollar-equivalent of the principal amount of any such Indebtedness outstanding on the Escrow Release Date shall be calculated based on the relevant currency exchange rate in effect on the Escrow Release Date. The principal amount of any refinancing Indebtedness incurred in the same currency as the Indebted-

ness being refinanced will be the U.S. dollar-equivalent of the Indebtedness refinanced determined on the date such Indebtedness was originally incurred, except that to the extent that:

(i) such U.S. dollar-equivalent was determined based on a Currency Exchange Protection Agreement, in which case the refinancing Indebtedness will be determined in accordance with the preceding sentence; and

(ii) the principal amount of the refinancing Indebtedness exceeds the principal amount of the Indebtedness being refinanced, in which case the U.S. dollar-equivalent of such excess will be determined on the date such refinancing Indebtedness is being incurred.

The principal amount of any Indebtedness incurred to refinance other Indebtedness, if incurred in a different currency from the Indebtedness being refinanced, shall be calculated based on the currency exchange rate applicable to the currencies in which such Permitted Refinancing Indebtedness is denominated that is in effect on the date of such refinancing.

Notwithstanding any other provision of this Section 4.6, the maximum amount of Indebtedness that the Issuer, the Co-Issuer or any other Restricted Subsidiary may incur pursuant to this Section 4.6 shall not be deemed to be exceeded solely as a result of fluctuations in exchange rates or currency values.

4.7 Liens

(a) From and after the Escrow Release Date, the Parent shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, assume or suffer to exist any Lien of any kind securing Indebtedness upon any of their property or assets, now owned or hereafter acquired, except

(i) in the case of any property or asset that does not constitute Collateral:

(A) Permitted Liens, or

(B) if such Lien is not a Permitted Lien, to the extent that all payments due under this Indenture, the Notes and the Note Guarantees are secured on an equal and ratable basis (or in the case of Indebtedness which is subordinated in right of payment to the Notes or any Note Guarantees, prior or senior thereto, with the same relative priority as the Notes or such Note Guarantees, as applicable, shall have with respect to such subordinated Indebtedness) with the obligations so secured until such time as such obligations are no longer secured by a Lien; and

(ii) in the case of any property or asset that constitutes Collateral, Permitted Collateral Liens.

(b) Notwithstanding the foregoing exceptions, no Liens permitted by this Section 4.7 shall be permitted to attach to any Capital Stock of any joint ventures, other than (i) inchoate Liens arising under application of law, (ii) Liens incurred pursuant to clause (w) of the definition of "Permitted Liens" and (iii) any Lien constituting a Permitted Collateral Lien (*provided* that, in the case of this clause (iii), (x) the Notes and Guarantees shall also be secured by a Lien on such Capital Stock on a senior or pari basis (or with respect to any Permitted Collateral Lien securing debt incurred under clause (i) or (ii) of the definition of "Permitted Debt," on a junior basis) and (y) a representative, trustee or agent for the holders of such Indebtedness shall be party to the Intercreditor Agreement and/or an Additional Intercreditor Agreement, as applicable, that the Notes Collateral Agent is party to).

(c) Any Lien created for the benefit of the Holders pursuant to the preceding paragraph shall provide by its terms that such Lien shall be automatically and unconditionally released and discharged upon the release and discharge of the initial Lien.

(d) With respect to any revolving loan Indebtedness relating to the incurrence or issuance of Indebtedness that is designated to be incurred or issued on any date pursuant to Section 4.6(e), any Lien that does or that shall secure such Indebtedness may also be designated by the Parent or any Restricted Subsidiary to be incurred on

such date and, in such event, any related subsequent actual incurrence of such Lien shall be deemed for all purposes under this Indenture to be incurred on such prior date, including for purposes of calculating usage of any "Permitted Lien."

(e) With respect to any Lien securing Indebtedness that was permitted to secure such Indebtedness at the time of the incurrence of such Indebtedness, such Lien shall also be permitted to secure any "Increased Amount" of such Indebtedness. The "Increased Amount" of any Indebtedness shall mean any increase in the amount of such Indebtedness in connection with any accrual of interest, the accretion of accreted value, the amortization of original issue discount, the payment of interest in the form of additional Indebtedness with the same terms, accretion of original issue discount or liquidation preference and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies or increases in the value of property securing Indebtedness.

4.8 Restricted Payments

(a) From and after the Escrow Release Date, the Parent shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly:

(i) declare or pay any dividend or make any other payment or distribution on account of the Parent's or any of its Restricted Subsidiaries' Equity Interests (including, without limitation, any such payment or distribution made in connection with any merger, amalgamation or consolidation involving the Parent or any of its Restricted Subsidiaries) or to the direct or indirect holders of the Parent's or any of its Restricted Subsidiaries' Equity Interests in their capacity as such (other than dividends or distributions payable in Equity Interests (other than Disqualified Stock) of the Parent and other than dividends or distributions payable to the Parent or a Restricted Subsidiary of the Parent);

(ii) purchase, redeem or otherwise acquire or retire for value (including, without limitation, any such purchase, redemption, acquisition or retirement made in connection with any merger, amalgamation or consolidation involving the Parent) any Equity Interests of the Parent or any direct or indirect parent of the Parent, in each case held by Persons other than the Parent or a Restricted Subsidiary of the Parent;

(iii) make any principal payment on or with respect to, or purchase, redeem, defease or otherwise acquire or retire for value, prior to the Stated Maturity thereof, any Indebtedness of the Issuer, Co-Issuer or any Guarantor that is expressly contractually subordinated in right of payment to the Notes or to any Note Guarantee (excluding any intercompany Indebtedness between or among the Parent and any of its Restricted Subsidiaries and without regard to security or priority of security), except (i) a payment of principal at the Stated Maturity thereof or (ii) the purchase, repurchase or other acquisition of Indebtedness purchased in anticipation of satisfying a sinking fund obligation, principal installment or scheduled maturity, in each case due within one year of the date of such purchase, repurchase or other acquisition; or

(iv) make any Restricted Investment,

(all such payments and other actions set forth in Section 4.8(a)(i) through (iv) being collectively referred to as "**Restricted Payments**"), unless, at the time of and after giving effect to such Restricted Payment:

(A) no Default or Event of Default has occurred and is continuing or would occur as a consequence of such Restricted Payment;

(B) the Parent would, after giving *pro forma* effect to such Restricted Payment as if such Restricted Payment had been made at the beginning of the applicable four full fiscal quarters, have been permitted to incur at least $1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in Section 4.6(a); and

(C) such Restricted Payment, together with the aggregate amount of all other Restricted Payments made by the Parent and its Restricted Subsidiaries since the Escrow Release Date (including Re-

stricted Payments permitted by Section 4.8(b)(i) but excluding all other Restricted Payments permitted by Section 4.8(b)) is equal to or less than the sum, without duplication, of:

(1) 50% of the Consolidated Net Income of the Parent for the period (taken as one accounting period) from the first day of the first fiscal quarter in which the Issue Date occurs to the end of the Parent's most recently ended fiscal quarter for which internal financial statements are available at the time of such Restricted Payment (or, if such Consolidated Net Income for such period is a deficit, less 100% of such deficit); *plus*

(2) 100% of the aggregate net cash proceeds received and the Fair Market Value of property (other than cash) and marketable securities received by the Parent since the Escrow Release Date as a contribution to its common equity capital or from the issue or sale of Equity Interests of the Parent (other than Disqualified Stock) or from the issue or sale of convertible or exchangeable Disqualified Stock or convertible or exchangeable debt securities of the Parent that have been converted into or exchanged for such Equity Interests (other than Equity Interests (or Disqualified Stock or debt securities) sold to a Subsidiary of the Parent); *plus*

(3) (I) to the extent that any Restricted Investment that was made after the Escrow Release Date is (x) sold, disposed of or otherwise cancelled, liquidated or repaid, 100% of the aggregate amount received in cash and the Fair Market Value of property (other than cash) and the marketable securities received by the Parent or any Restricted Subsidiary, or (y) made in an entity that subsequently becomes a Restricted Subsidiary, 100% of the Fair Market Value of the Restricted Investment of the Parent and its Restricted Subsidiaries as of the date such entity becomes a Restricted Subsidiary; *plus*

(II) to the extent that any Unrestricted Subsidiary of the Parent designated as such after the Escrow Release Date is redesignated as a Restricted Subsidiary or is merged or consolidated into the Parent or a Restricted Subsidiary, or all of the assets of any Unrestricted Subsidiary, joint venture or minority investment are transferred to the Parent or a Restricted Subsidiary, the Fair Market Value of the property received by the Parent or any Restricted Subsidiary or the Parent's Restricted Investment in such Subsidiary, joint venture or minority interest as of the date of such redesignation, merger, consolidation or transfer of assets, to the extent such Investments reduced the Restricted Payments capacity under this Section 4.8(a)(C)(3) and were not previously repaid or otherwise reduced; *plus*

(4) 100% of any cash dividends or distributions received by the Parent or a Restricted Subsidiary after the Escrow Release Date from an Unrestricted Subsidiary, to the extent that such dividends or distributions were not otherwise included in the Consolidated Net Income of the Parent for such period; *plus*

(5) $15.0 million.

(b) Section 4.8(a) shall not prohibit:

(i) the payment of any dividend or the consummation of any irrevocable redemption within 60 days after the date of declaration of the dividend or giving of the redemption notice, as the case may be, if at the date of declaration or notice, the dividend or redemption payment would have complied with this Indenture;

(ii) the making of any Restricted Payment in exchange for, or out of the net cash proceeds of the substantially concurrent sale (other than to a Subsidiary of the Parent) of, Equity Interests of the Parent (other than Disqualified Stock) or from the substantially concurrent contribution of common equity capital to the Parent (to the extent the net cash proceeds from the sale of Equity Interests have not otherwise been applied to the making of such Restricted Payments pursuant to Section 4.8(b)(v); *provided* that the amount

of any such net cash proceeds that are utilized for any such Restricted Payment shall be excluded from Section 4.8(a)(C)(2) or Section 4.8(b)(v);

(iii) the repurchase, redemption, discharge, defeasance or other acquisition or retirement for value of Indebtedness of any Issuer, the Co-Issuer or any Guarantor that is contractually subordinated to the Notes or to any Note Guarantee (including all accrued interest on the Indebtedness, and the amount of all penalties, fees, costs, expenses, discounts and premiums incurred in connection therewith and any original issue discount or debt issuance costs with respect thereto) in exchange for, or by conversion into, or out of the net cash proceeds from a substantially concurrent incurrence of Permitted Refinancing Indebtedness;

(iv) the payment of any dividend (or, in the case of any partnership or limited liability company, any similar distribution) by a Restricted Subsidiary of the Parent to the holders of its Equity Interests (other than the Parent or any Restricted Subsidiary) on no more than a *pro rata* basis;

(v) the defeasance, repurchase, redemption or other acquisition or retirement for value of any Equity Interests of the Parent (or any of its direct or indirect parents) or any Restricted Subsidiary of the Parent held by any of the Parent's (or any of its Restricted Subsidiaries') future, current or former officers, directors, employees or consultants pursuant to any equity subscription agreement, stock option agreement, restricted stock grant, shareholders' agreement or similar agreement; *provided* that the aggregate price paid for all such repurchased, redeemed, acquired or retired Equity Interests may not exceed $10.0 million in any calendar year (with unused amounts in any calendar year being permitted to be carried over into succeeding calendar years, subject to a maximum amount of $15.0 million) (*plus* the net cash proceeds of key man life insurance policies received by the Parent or its Restricted Subsidiaries) and *provided*, *further*, that such amount in any calendar year may be increased by an amount not to exceed the cash proceeds from the sale of Equity Interests of the Parent or a Restricted Subsidiary received by the Parent or a Restricted Subsidiary during such calendar year, in each case to members of management, directors or consultants of the Parent, any of its Restricted Subsidiaries or any of its direct or indirect parent companies to the extent the cash proceeds from the sale of Equity Interests have not otherwise been applied to the making of Restricted Payments pursuant to Section 4.8(a)(C)(2) or Section 4.8(b)(ii);

(vi) the defeasance, repurchase, redemption or other acquisition or retirement for value of any Equity Interests of the Parent or any Restricted Subsidiary of the Parent held by any of the Parent's (or any of its Restricted Subsidiaries') current or former directors, employees or consultants in connection with the exercise or vesting of any equity compensation (including, without limitation, stock options, restricted stock and phantom stock) (a) in order to satisfy the Parent's or such Restricted Subsidiary's tax withholding obligation with respect to such exercise or vesting, or (b) to the extent such Equity Interests represent a portion of the exercise price of such Equity Interests;

(vii) repurchases of Subordinated Obligations at a purchase price not greater than (1) 101% of the principal amount of such Subordinated Obligations and accrued and unpaid interest thereon in the event of a Diavik Sale or a Change of Control or (2) 100% of the principal amount of such subordinated Indebtedness and accrued and unpaid interest thereon in the event of an Asset Sale, in each case *plus* accrued interest, in connection with any Diavik sale offer, change of control offer or asset sale offer required by the terms of such Subordinated Obligations, but only if:

(A) in the case of a Diavik Sale, the Issuers have complied with and fully satisfied their obligations under Section 4.31;

(B) in the case of a Change of Control, the Issuers have complied with and fully satisfied their obligations under Section 4.11;

(C) in the case of an Asset Sale, the Issuers have complied with and fully satisfied their obligations in accordance with Section 4.9;

(viii) the repurchase, redemption or other acquisition for value of Capital Stock of the Parent representing fractional shares of such Capital Stock in connection with a merger, consolidation, amalgamation or other combination involving the Parent or any other transaction permitted by this Indenture;

(ix) repurchases of Capital Stock deemed to occur upon the exercise of stock options to the extent such Capital Stock represents a portion of the exercise price thereof;

(x) the declaration and payment of dividends to holders of any class or series of Disqualified Stock of the Parent or any preferred stock of any Restricted Subsidiary issued on or after the Issue Date in accordance with the restrictions set forth in Section 4.6 to the extent such dividends are included in the definition of "Fixed Charges";

(xi) payments of cash, dividends, distributions, advances or other Restricted Payments by the Parent or any of its Restricted Subsidiaries to allow the payment of cash in lieu of the issuance of fractional shares upon (x) the exercise of options or warrants or (y) the conversion or exchange of Capital Stock of any such Person;

(xii) advances or loans to (a) any future, present or former officer, director, employee or consultant of the Parent or a Restricted Subsidiary to pay for the purchase or other acquisition for value of Equity Interests of Parent or any Restricted Subsidiary (other than Disqualified Stock), or any obligation under a forward sale agreement, deferred purchase agreement or deferred payment arrangement pursuant to any management equity plan or stock option plan or any other management or employee benefit or incentive plan or other agreement or arrangement or (b) any management equity plan or stock option plan or any other management or employee benefit or incentive plan or unit trust or the trustees of any such plan or trust to pay for the purchase or other acquisition for value of Equity Interests of the Parent or any Restricted Subsidiary (other than Disqualified Stock); *provided* that the total aggregate amount of Restricted Payments made under this Clause (xii) does not exceed $5.0 million in any calendar year;

(xiii) payments or distributions to any direct or indirect parent of Parent to pay customary salary, bonus, long-term incentive, severance and other benefits (including payment to certain service providers of the Parent or its Subsidiaries pursuant to any equity plan (whether in the form of options, cash settled options or otherwise)) payable to current or former directors, officers, members of management, managers, employees or consultants of any direct or indirect parent of Parent (or any Immediate Family Member of any of the foregoing), as well as applicable employment taxes in connection therewith, to the extent such salary, bonuses, severance and other benefits are attributable and reasonably allocated to the operations of the Parent and/or its Restricted Subsidiaries (and/or the Parent's and/or its Restricted Subsidiaries' obligations with respect to joint ventures), in each case, so long as such parent applies the amount of any such Restricted Payment for such purpose (including as a reimbursement of amounts previously paid by a direct or indirect parent of Parent);

(xiv) so long as no Default has occurred and is continuing or would be caused thereby, other Restricted Payments in an aggregate amount not to exceed the greater of (x) $25.0 million and (y) 1.5% of Total Assets since the Escrow Release Date;

(xv) (a) for any taxable period with respect to which the Parent, the Issuer, the Co-Issuer or any Restricted Subsidiary of the Parent is treated as a CFC or disregarded as separate from a CFC for U.S. federal income tax purposes, distributions in a maximum amount equal to the product of: (x) the aggregate amount of income that is required to be included in the taxable income of the direct or indirect shareholders of the Parent, the Issuer, the Co-Issuer or any Restricted Subsidiary of the Parent under Section 951(a) of the Code attributable to "Subpart F income" of the Parent, the Issuer, the Co-Issuer or such Restricted Subsidiary of the Parent within the meaning of Section 952(a) of the Code or the holding of "United States property" by the Parent, the Issuer, Co-Issuer or such Restricted Subsidiary of the Parent within the meaning of Section 956 of the Code; and (y) the Assumed Tax Rate (such distributions, "CFC Tax Distributions"); *provided* that (i) CFC Tax Distributions with respect to any taxable income attributable to Unrestricted Subsidiaries shall be permitted to be made only to the extent that such Unrestricted Subsidiaries have made cash payments for such purpose to the Parent, the Issuer or a Restricted Subsidiary; (ii)

CFC Tax Distributions may be made on a quarterly basis during a calendar year based on the good-faith estimate of the relevant entity of the taxable income of the relevant entity for the taxable year to which such quarterly distributions relate; and (iii) if the aggregate amount of quarterly CFC Tax Distributions made for a taxable year exceeds the maximum amount of CFC Tax Distributions permitted to be made for such year, the excess distributions shall be applied to reduce amounts payable under this clause (xv)(a) for the immediately succeeding taxable year, and to the extent not so applied, shall reduce such amounts in future taxable years;

(b) for any taxable period with respect to which the Parent, the Issuer, Co-Issuer or any Restricted Subsidiary of the Parent is treated as a partnership, or disregarded as separate from a partnership, for U.S. federal income tax purposes, distributions by the Parent to its direct or indirect owners, and distributions by the Issuer, the Co-Issuer or any such Restricted Subsidiary to its direct owners, in each case, in an aggregate amount not to exceed the product of: (x) the Assumed Tax Rate; and (y) the taxable income of the Parent, the Issuer, the Co-Issuer or such Restricted Subsidiary, as applicable, for such taxable period, determined by reducing the taxable income by any taxable loss of the relevant entity for prior taxable periods to the extent that the loss has not previously been taken into account in determining tax distributions under this Clause (xv)(b) and is of a character that would permit the loss to be deducted against the income of the taxable period in question (such distributions, "Partnership Tax Distributions"); *provided* that Partnership Tax Distributions may be made on a quarterly basis during a calendar year based on the good-faith estimate of the relevant entity of the taxable income of such relevant entity for the taxable year to which such quarterly distributions relate; and (ii) if the aggregate amount of quarterly Partnership Tax Distributions made for a taxable year exceeds the maximum amount of Partnership Tax Distributions permitted to be made for such year, the excess distributions shall be applied to reduce amounts payable under this Clause (xv)(b) for the immediately succeeding taxable year, and to the extent not so applied, shall reduce such amounts in future taxable years;

(xvi) payments or distributions to any direct or indirect parent of the Parent to pay general administrative costs and expenses, including legal, accounting and other ordinary course corporate overhead or other operational expenses of any such parent (including, if applicable, any public company costs and IT costs), customary salary, bonus and other benefits payable to directors, officers, employees, members of management and/or consultants of any such parent, and for the payment of franchise or similar taxes and similar fees, taxes and expenses required to maintain the legal existence of any such parent and indemnification claims made by directors and officers, members of management, managers, employees or consultants in each case to the extent attributable and reasonably allocated to the operations of the Parent and/or its Restricted Subsidiaries (and/or the Parent's and/or its Restricted Subsidiaries' obligations with respect to joint ventures);

(xvii) (a) customary distributions necessary to pay advisory, refinancing, subsequent transaction and exit fees of direct and indirect parents of the Parent attributable to the ownership of Parent and its Restricted Subsidiaries and the Parent and/or its Restricted Subsidiaries' obligations with respect to joint ventures and (b) distributions to pay any direct or indirect parent of the Parent constituting an assets under management charge in an amount not to exceed $7.5 million in any fiscal year;

(xviii) AHYDO Payments with respect to Indebtedness permitted under Section 4.6;

(xix) payments, dividends, distributions or redemptions (including the Closing Date Distributions) in connection with the Transactions (including costs of the Transactions) on or after the Issue Date;

(xx) Permitted IPO Distributions;

(xxi) Restricted Payments constituting any part of a Permitted Reorganization or IPO Reorganization Transaction;

(xxii) the distribution of shares or the equity of, or debt owed to, the Parent or any Restricted Subsidiary by, an Unrestricted Subsidiary (or a Restricted Subsidiary that owns an Unrestricted Subsidiary

so long as such Restricted Subsidiary owns no material assets other than Equity Interests of an Unrestricted Subsidiary);

(xxiii) the consummation of the Available Cash Transactions and prepayments of Indebtedness pursuant thereto;

(xxiv) Restricted Payments permitted under Section 4.10;

(xxv) the making of any Restricted Payment to Sponsor in an amount equal to the excess of the Escrowed Property *minus* the net proceeds of the offering of the Notes;

(xxvi) payments or distributions to any direct or indirect parent of Parent to pay audit and other accounting and reporting expenses of such parent to the extent attributable to any such parent (but excluding, for the avoidance of doubt, the portion of any such expenses, if any, attributable to the ownership or operations of any subsidiary of any such parent other than the Parent and its Restricted Subsidiaries (and/or the Parent's and/or its Restricted Subsidiaries' obligations with respect to any joint ventures)), the Parent and its Restricted Subsidiaries (and/or the Parent's and/or its Restricted Subsidiaries' obligations with respect to any joint ventures);

(xxvii) payments or distributions to any direct or indirect parent of Parent for the payment of insurance premiums to the extent attributable to any such parent (but excluding, for the avoidance of doubt, the portion of any such premiums, if any, attributable to the ownership or operations of any subsidiary of any such parent other than the Parent and its Restricted Subsidiaries (and/or the Parent's and/or its Restricted Subsidiaries' obligations with respect to any joint ventures)), the Parent and Parent and its Restricted Subsidiaries (and/or the Parent's and/or its Restricted Subsidiaries' obligations with respect to any joint ventures); and

(xxviii) payments or distributions to any direct or indirect parent of Parent to pay fees and expenses related to any debt and/or equity offerings (including refinancings), investments and/or acquisitions permitted or not restricted by this Indenture (whether or not consummated, and including advisory, refinancing, subsequent transaction and exit fees of any direct or indirect parent of the Parent) and expenses and indemnities of any trustee, agent, arranger, underwriter or similar role.

(c) For purposes of determining compliance with this Section 4.8, in the event that a Restricted Payment (or portion thereof) meets the criteria of more than one of the categories set forth in Section 4.8(b)(i) through 4.8(b)(xxviii) above, or is permitted pursuant to Section 4.8(a) and/or one or more of the Clauses contained in the definition of "Permitted Investments," the Issuers, in their sole discretion, will be entitled to divide or classify such Restricted Payment or Investment (or portion thereof) on the date of its payment or later reclassify (based on circumstances existing on the date of such reclassification) such Restricted Payment or Investment (or portion thereof) in any manner that complies with this Section 4.8.

(d) The amount of all Restricted Payments (other than cash) will be the Fair Market Value on the date of the Restricted Payment of the asset(s) or securities proposed to be transferred or issued by the Parent or such Restricted Subsidiary, as the case may be, pursuant to the Restricted Payment. Unsecured Indebtedness shall not be deemed to be subordinate or junior to secured Indebtedness by virtue of its nature as unsecured Indebtedness.

4.9 Asset Sales

(a) The Parent shall not, and shall not permit any of its Restricted Subsidiaries to consummate an Asset Sale unless:

(i) the Parent (or such Restricted Subsidiary, as the case may be) receives consideration at the time of the Asset Sale at least equal to the Fair Market Value (measured as of the date of the definitive agreement with respect to such Asset Sale) of the assets or Equity Interests issued or sold or otherwise disposed of; and

(ii) except with respect to any single transaction that involves assets having a Fair Market Value of less than $20.0 million or series of related transactions involving assets having a Fair Market Value of less than $35.0 million in the aggregate in any fiscal year of Parent, at least 75% of the consideration received in the Asset Sale by the Parent or such Restricted Subsidiary is in the form of cash or Cash Equivalents. For purposes of this provision, each of the following will be deemed to be cash:

(A) any liabilities, as recorded on the most recent consolidated balance sheet of the Parent or any of its Restricted Subsidiaries (other than contingent liabilities and Subordinated Obligations) that are assumed, or otherwise discharged by the transferee of any such assets pursuant to an agreement that releases the Parent or such Restricted Subsidiary from further liability or indemnifies the Parent or such Restricted Subsidiary against further liabilities in full;

(B) any securities, notes or other obligations received by the Parent or any such Restricted Subsidiary from such transferee that are converted by the Parent or such Restricted Subsidiary into cash or Cash Equivalents within 180 days following the closing of the Asset Sale, to the extent of the cash or Cash Equivalents received in that conversion;

(C) any Capital Stock or assets of the kind referred to in Section 4.9(b)(iv);

(D) any Designated Non-Cash Consideration received by the Parent or any of its Restricted Subsidiaries in such Asset Sale having an aggregate Fair Market Value, taken together with all other Designated Non-Cash Consideration received pursuant to this Section 4.9 that is at any one time outstanding, not to exceed $35.0 million at the time of the receipt of such Designated Non-Cash Consideration (with the Fair Market Value of each item of Designated Non-Cash Consideration being measured at the time received and without giving effect to subsequent changes in value);

(E) Indebtedness (other than Subordinated Obligations) of any Restricted Subsidiary that is no longer a Restricted Subsidiary as a result of such Asset Sale, to the extent that the Parent and each other Restricted Subsidiary are released from any Guarantee of such Indebtedness in connection with such Asset Sale;

(F) consideration consisting of Indebtedness (other than Subordinated Obligations) of the Parent or any Restricted Subsidiary received from Persons who are not the Parent or any Restricted Subsidiary;

(G) accounts receivable of a business retained by Parent or any Restricted Subsidiary, as the case may be, following the sale of such business; and

(H) Replacement Assets.

(b) Within 365 days after the receipt of any Net Proceeds from an Asset Sale, the Parent (or the relevant Restricted Subsidiary, as the case may be) may apply such Net Proceeds (at the option of the Parent or such Restricted Subsidiary):

(i) to purchase the Notes pursuant to an offer to all holders of Notes at a purchase price equal to at least 100% of the principal amount thereof, *plus* accrued and unpaid interest and Additional Amounts, if any, to (but not including) the date of purchase (a "**Notes Offer**");

(ii) (A) to repay or prepay any then outstanding Indebtedness of the Issuer, the Co-Issuer or any Guarantor (1) outstanding under Section 4.6(b)(i) and secured by a First Priority Lien on the Collateral or (2) any other Indebtedness that is secured by a First Priority Lien on the Collateral and, in each case, that is not subordinated in right of payment to the Notes or any Note Guarantee and, if the Indebtedness repaid is revolving credit Indebtedness, to correspondingly permanently reduce commitments with respect thereto; or (B) to make an Asset Sale Offer (as defined below) to all Holders of the Notes and holders of other In-

debtedness that is secured by a Lien on the Collateral and that is not subordinated in right of payment to the Notes or any Note Guarantee;

(iii) to purchase or permanently prepay or redeem or repay (A) any Indebtedness that is secured only by Liens on assets or property that do not constitute Collateral and, if the Indebtedness prepaid, redeemed or repaid is revolving credit Indebtedness, to correspondingly reduce commitments with respect thereto or (B) any Indebtedness of a Restricted Subsidiary that is not a Guarantor, other than Indebtedness owed to the Parent or another Restricted Subsidiary (or any Affiliate thereof);

(iv) to invest in Additional Assets;

(v) to make capital expenditures in respect of the Parent's or its Restricted Subsidiaries' Permitted Business; or

(vi) to enter into a binding commitment to apply the Net Proceeds pursuant to Section 4.9(b)(ii), (iii), (iv) or (v); *provided* that such binding commitment shall be treated as a permitted application of the Net Proceeds from the date of such commitment until the earlier of (x) the date on which such investment, acquisition or expenditure is consummated, and (y) the 180th day following the expiration of the aforementioned 365-day period.

(c) Pending the final application of any Net Proceeds, the Parent or its applicable Restricted Subsidiary may temporarily reduce revolving credit borrowings or otherwise invest the Net Proceeds in any manner that is not prohibited by this Indenture. Any Net Proceeds from Asset Sales that are not applied or invested as provided in Section 4.9(b) will constitute "**Excess Proceeds**."

(d) When the aggregate amount of Excess Proceeds exceeds $35.0 million, within 30 days thereof, the Issuers shall make an offer (an "**Asset Sale Offer**") to all holders of Notes and, to the extent notified by the Issuers in such notice, make an offer to all holders of other Indebtedness that is *pari passu* with the Notes or any Note Guarantees to purchase, prepay or redeem with the proceeds of sales of assets to purchase, prepay or redeem the maximum principal amount of Notes and such other *pari passu* Indebtedness (*plus* all accrued interest on the Indebtedness and the amount of all fees and expenses, including premiums, incurred in connection therewith) that may be purchased, prepaid or redeemed out of the Excess Proceeds. The offer price for the Notes in any Asset Sale Offer shall be equal to at least 100% of the principal amount and the offer price for any *pari passu* Public Debt may be no greater than 100% of the principal amount, in each case, *plus* accrued and unpaid interest and Additional Amounts, if any, to, but excluding, the date of purchase, prepayment or redemption, subject to the rights of holders of Notes on the relevant Record Date to receive interest due on the relevant Interest Payment Date, and shall be payable in cash. After the completion of any Asset Sale, the Issuers may make an Asset Sale Offer prior to the time it is required to do so hereunder.

(e) If any Excess Proceeds remain after consummation of an Asset Sale Offer, the Parent and its Subsidiaries may use those Excess Proceeds for any purpose not otherwise prohibited by this Indenture. If the aggregate principal amount of Notes and other *pari passu* Indebtedness tendered in (or to be prepaid or redeemed in connection with) such Asset Sale Offer exceeds the amount of Excess Proceeds or if the aggregate amount of Notes tendered pursuant to a Notes Offer exceeds the amount of the Net Proceeds so applied, the Trustee will select the Notes and the Issuers will select such other *pari passu* Indebtedness, if applicable, to be purchased on a *pro rata* basis (or, in the case of Notes issued in global form as discussed in Section 2.1(b), based on a method that most nearly approximates a *pro rata* selection as the Trustee deems fair and appropriate) unless otherwise required by applicable law or applicable stock exchange or depositary requirements, based on the amounts tendered or required to be prepaid or redeemed. Upon completion of each Asset Sale Offer, the amount of Excess Proceeds will be reset at zero.

(f) If holders of not less than 90% in aggregate principal amount of the outstanding Notes properly tender and do not withdraw such Notes in an Asset Sale Offer and the Issuers, or any third party making an Asset Sale Offer in lieu of the Issuers as described above, purchase all of the Notes properly tendered and not withdrawn by such holders, the Issuers or such third party will have the right, upon not less than 10 days nor more than 60 days' prior notice, *provided* that such notice is given not more than 30 days following such purchase pursuant to the Asset Sale Offer described above, to redeem all the Notes that remain outstanding following such purchase at a price in

cash equal to 100% of the aggregate principal amount of Notes being repurchased, *plus* accrued and unpaid interest on the Notes repurchased to, but excluding, the date of purchase (subject to the rights of holders of Notes on the relevant Record Date to receive interest due on the relevant Interest Payment Date occurring on or prior to the redemption date if the Notes have not been redeemed or repurchased prior to such date).

(g) The Issuers shall comply with the requirements of Rule 14e-1 under the Exchange Act and any other applicable securities laws and regulations to the extent those laws and regulations are applicable in connection with each repurchase of Notes pursuant to a Change of Control Offer, a Diavik Sale Offer, an Asset Sale Offer or a Notes Offer. To the extent that the provisions of any securities laws or regulations conflict with Sections 4.9, 4.11or 4.31 hereof, the Issuers shall comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under the Change of Control, Diavik Sale, Asset Sale or Notes Offer provisions of this Indenture by virtue of such compliance.

(h) The provisions under this Section 4.9 may be waived or modified with the consent of the holders of a majority in principal amount of the Notes.

4.10 Transactions with Affiliates

(a) From and after the Escrow Release Date, the Parent shall not, and shall not permit any of its Restricted Subsidiaries to, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of the Parent (each, an "**Affiliate Transaction**") involving aggregate payments or consideration in excess of $20.0 million, unless:

(i) the Affiliate Transaction is on terms, taken as a whole, that are not materially less favorable to the Parent or the relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Parent or such Restricted Subsidiary with a Person who is not an Affiliate (as determined in good faith by a responsible financial or accounting officer of the Parent); and

(ii) the Issuers deliver to the Trustee, with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of $30.0 million, a resolution of the Board of Directors of the Parent accompanied by an Officer's Certificate certifying that such Affiliate Transaction complies with this Section 4.10 and that such Affiliate Transaction has been approved by a majority of the members of the Board of Directors of the Parent.

(b) The following items will not be deemed to be Affiliate Transactions and, therefore, will not be subject to Section 4.10(a):

(i) any employment agreement or arrangement, collective bargaining agreement, consultant agreement, stock option, stock appreciation, stock incentive or stock ownership or similar plan, employee benefit arrangements, officer or director indemnification agreement, restricted stock agreement, severance agreement or other compensation plan or arrangement, in each case entered into by the Parent or any of its Restricted Subsidiaries in the ordinary course of business (as determined in good faith by a responsible financial or accounting officer of the Parent) with officers, directors, consultants or employees of the Parent and its Restricted Subsidiaries and payments, awards, grants or issuances of securities pursuant thereto;

(ii) transactions between or among the Parent and/or its Restricted Subsidiaries and/or joint ventures that are not otherwise prohibited by the terms of this Indenture;

(iii) the Closing Date Distributions;

(iv) any Investment (other than a Permitted Investment) or other Restricted Payment, in either case, that does not violate Section 4.8;

(v) any Permitted Investments;

(vi) transactions with a Person (other than an Unrestricted Subsidiary of the Parent) that is an Affiliate of the Parent solely because the Parent owns, directly or through a Restricted Subsidiary, an Equity Interest in, or controls, such Person;

(vii) payment of customary directors' fees, indemnification and similar arrangements (including the payment of directors' and officers' insurance premiums), consulting fees, employee salaries, bonuses, employment agreements and arrangements, compensation or employee benefit arrangements, including stock options or legal fees; *provided* that no Event of Default under Clause (i), (ii) or (ix) of Section 6.1(a) shall have occurred and be continuing;

(viii) any issuance of Equity Interests (other than Disqualified Stock) of the Parent to Affiliates of the Parent and the granting and performance of registration rights;

(ix) transactions with a joint venture or similar entity which would constitute an Affiliate Transaction solely because the Parent owns, directly or through a Restricted Subsidiary, an Equity Interest in, or controls, such joint venture or similar entity;

(x) transactions pursuant to, or contemplated by any agreement or arrangement in effect on the Escrow Release Date and transactions pursuant to any amendment, modification, supplement or extension thereto; *provided* that any such amendment, modification, supplement or extension to the terms thereof, taken as a whole, is not materially more disadvantageous to the Holders of the Notes than the original agreement or arrangement as in effect on the Escrow Release Date as determined by the Parent;

(xi) (i) transactions with customers, clients, suppliers, or purchasers or sellers of goods or services or providers of employees or other labor, in each case in the ordinary course of business and (ii) to the extent constituting Affiliate Transactions, transactions with any governmental agency or entity, or government controlled entity in connection with a Permitted Business to the extent such transactions are, in the good faith judgment of a responsible executive officer of the Parent, beneficial, directly or indirectly, to the Parent or the relevant Restricted Subsidiary;

(xii) payment of dividends or distributions to fund third-party fees and expenses owing in connection with the Acquisition and the other Transactions on or within 60 days after the Escrow Release Date;

(xiii) transactions between the Parent or any Restricted Subsidiary and any Person, a director of which is also a director of the Parent and such director is the sole cause for such Person to be deemed an Affiliate of the Parent or any Restricted Subsidiary; *provided*, *however*, that such director shall abstain from voting as a director of the Parent on any matter involving such other Person;

(xiv) transactions constituting any part of a Permitted Reorganization, IPO Reorganization Transaction, or the Transactions and the payment of fees and expenses related thereto;

(xv) any contribution of capital to Parent or any Restricted Subsidiary;

(xvi) transactions permitted by Section 5.1;

(xvii) any transactions pursuant to any agreement between any Person and an Affiliate of such Person existing at the time such Person becomes a Subsidiary of the Parent or is merged into or amalgamated or consolidated with the Parent or any Subsidiary of the Parent, *provided* that such agreement was not entered into in contemplation of such acquisition, merger or any amendment thereto; and

(xviii) any transaction with respect to which the Parent or any of its Restricted Subsidiaries obtains an opinion as to the fairness to the Parent or such Restricted Subsidiary, as applicable, of such Affiliate Transaction from a financial point of view issued by an accounting, appraisal or investment banking firm of national standing.

4.11 Change of Control

(a) If a Change of Control occurs, each Holder will have the right to require the Issuers to repurchase all or any part (equal to $2,000 and integral multiples of $1,000 in excess thereof) of that holder's Notes pursuant to an offer (the "**Change of Control Offer**") on the terms set forth in this Section 4.11. In the Change of Control Offer, the Issuers shall offer a payment in cash (the "**Change of Control Payment**") equal to 101% of the aggregate principal amount of Notes repurchased *plus* accrued and unpaid interest and Additional Amounts, if any, on the Notes repurchased to, but excluding, the date of purchase (the "**Change of Control Payment Date**"), subject to the rights of holders of Notes on the relevant Record Date to receive interest due on the relevant Interest Payment Date occurring on or prior to the redemption date. The Issuers shall comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with the repurchase of the Notes as a result of a Change of Control. To the extent that the provisions of any securities laws or regulations conflict with this Section 4.11, the Issuers shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations under this Section 4.11 by virtue of such compliance.

(b) On the Change of Control Payment Date, the Issuers shall, to the extent lawful:

(i) accept for payment all Notes or portions of Notes properly tendered pursuant to the Change of Control Offer;

(ii) deposit with an agent to be appointed by the Issuers (such as the Paying Agent) an amount equal to the Change of Control Payment in respect of all Notes or portions of Notes properly tendered; and

(iii) deliver or cause to be delivered to the Trustee the Notes properly accepted.

(c) The Paying Agent shall promptly mail (or cause to be delivered) to each Holder properly tendered the Change of Control Payment for such Notes, and the Trustee shall promptly authenticate and mail (or cause to be transferred by book entry) to each holder a new Note equal in principal amount to any unpurchased portion of the Notes surrendered, if any; *provided* that each such new Note shall be in a minimum principal amount of $2,000 or integral multiples of $1,000 in excess thereof. Any Note so accepted for payment will cease to accrue interest on and after the Change of Control Payment Date unless the Issuers default in making the Change of Control Payment. The Issuers shall publicly announce the results of the Change of Control Offer on or as soon as practicable after the Change of Control Payment Date.

(d) The provisions set forth herein that require the Issuers to make a Change of Control Offer following a Change of Control will be applicable whether or not any other provisions of this Indenture are applicable. Except as set forth in this Section 4.11 and Section 4.31 with respect to a Change of Control or Diavik Sale, respectively, this Indenture does not contain provisions that permit the Holders to require that the Issuers repurchase or redeem the Notes in the event of a takeover, recapitalization or similar transaction.

(e) The Issuers shall not be required to make a Change of Control Offer upon a Change of Control if (1) a third party makes the Change of Control Offer in the manner, at the time and otherwise in compliance with the requirements set forth in this Indenture applicable to a Change of Control Offer made by the Issuers and purchases all Notes properly tendered and not withdrawn under the Change of Control Offer, or (2) notice of redemption of all outstanding Notes has been given pursuant to Section 3.4, unless and until there is a default in payment of the applicable redemption price.

(f) If holders of not less than 90% in aggregate principal amount of the outstanding Notes properly tender and do not withdraw such Notes in a Change of Control Offer and the Issuers, or any third party making a Change of Control Offer in lieu of the Issuers as described above, purchase all of the Notes properly tendered and not withdrawn by such holders, the Issuers or such third party will have the right, upon not less than 10 days nor more than 60 days' prior notice, *provided* that such notice is given not more than 30 days following such purchase pursuant to the Change of Control Offer described above, to redeem all the Notes that remain outstanding following

such purchase at a price in cash equal to 101% of the aggregate principal amount of Notes being repurchased, *plus* accrued and unpaid interest on the Notes repurchased to, but excluding, the date of purchase (subject to the rights of holders of Notes on the relevant Record Date to receive interest due on the relevant Interest Payment Date occurring on or prior to the redemption date if the Notes have not been redeemed or repurchased prior to such date).

(g) A Change of Control Offer may be made in advance of a Change of Control, and conditioned upon the occurrence of such Change of Control, if a definitive agreement is in place for the Change of Control at the time of making the Change of Control Offer.

(h) The provisions under this Section 4.11 may be waived or modified with the consent of the Holders of a majority in principal amount of the Notes then outstanding prior to the occurrence of the Change of Control.

(i) Within 30 days following any Change of Control, the Issuers shall:

(i) cause a notice of the Change of Control Offer to be published through the newswire service of Bloomberg, or if Bloomberg does not then operate, any similar agency or, so long as the Notes are represented by Global Notes held on behalf of DTC, by delivery of the relevant notice to that clearing system for communication by it to entitled account Holders in substitution for publication as otherwise required in this Section 4.11(i)(i);

(ii) send notice of the Change of Control Offer by first class mail, with a copy to the Trustee, to each Holder at the address of such Holder appearing in the Security Register (where the Notes are Definitive Registered Notes), stating:

(A) that a Change of Control has occurred and that all Notes will be accepted for payment;

(B) the circumstances and/or relevant facts in respect of such Change of Control;

(C) the Change of Control Payment and the Change of Control Payment Date which date shall be no earlier than 10 days (subject to the Depositary's requirements) and no later than 60 days from the date such notice is mailed or delivered, subject to extension to a date not later than 60 days after the original Change of Control Payment Date (in the case where such notice is mailed or otherwise sent prior the occurrence of the Change of Control) in the event that the occurrence of the Change of Control is delayed beyond the Change of Control Payment Date set forth in such notice, pursuant to the procedures required by this Indenture and described in such notice;

(D) that any Note accepted for payment pursuant to the Change of Control Offer shall cease to accrue interest after the Change of Control Payment Date unless the Issuers fail to pay the Change of Control Payment;

(E) that any Note (or portion thereof) not tendered shall continue to accrue interest; and

(F) such other procedures that a Holder is required to follow to accept a Change of Control Offer or to withdraw such acceptance as determined by the Issuers, so long as such procedures are consistent with the terms of this Indenture.

4.12 Additional Amounts

(a) All payments made by or on behalf of the Issuers under or with respect to the Notes or any of the Guarantors with respect to any Note Guarantee, as applicable, will be made free and clear of and without withholding or deduction for, or on account of, any present or future Taxes unless the withholding or deduction for, or on account of, such Taxes is then required by law. If any deduction or withholding for, or on account of, any Taxes

imposed or levied by or on behalf of (1) any jurisdiction in which the Issuer, the Co-Issuer or any Guarantor (including any successor entity) is then incorporated, organized, engaged in business for tax purposes or otherwise considered to be a resident for tax purposes or any political subdivision or governmental authority thereof or therein having the power to tax; or (2) any other jurisdiction from or through which payment on any such Note or Note Guarantee is made by or on behalf of the Issuer, the Co-Issuer or any Guarantor (including the jurisdiction of any Paying Agent) or any political subdivision or governmental authority thereof or therein having the power to tax (each, a "**Tax Jurisdiction**"), will at any time be required by law to be made from any payments made by or on behalf of the Issuers under or with respect to the Notes or any of the Guarantors with respect to any Note Guarantee, including payments of principal, redemption price, interest or premium, the Issuer, the Co-Issuer or the relevant Guarantor, as applicable, shall pay (together with such payments) such additional amounts (the "**Additional Amounts**") as may be necessary in order that the net amounts received by each holder or beneficial owner of the Notes or Note Guarantees in respect of such payments after such withholding or deduction (including any such withholding or deduction from such Additional Amounts) will equal the respective amounts that would have been received by each holder or beneficial owner of the Notes or Note Guarantees in respect of such payments on any such Notes or Note Guarantee in the absence of such withholding or deduction; *provided*, *however*, that no such Additional Amounts shall be payable with respect to:

(i) any Taxes, to the extent such Taxes would not have been so imposed or levied but for the existence of any present or former connection between the holder or the beneficial owner (or between a fiduciary, settlor, beneficiary, partner, member or shareholder of, or possessor of power over the relevant holder or beneficial owner, if the relevant holder or beneficial owner is an estate, nominee, trust, partnership or corporation) of the Notes and the relevant Tax Jurisdiction (including, without limitation, being a citizen or resident of such jurisdiction for Tax purposes, incorporated in or carrying on a business, having or maintaining a permanent establishment or being physically present in such jurisdiction), other than any connection arising solely from the acquisition, ownership or holding of such Note, the exercise or enforcement of rights under such Note or under a Note Guarantee or the receipt of any payments in respect of such Note or a Note Guarantee;

(ii) any Taxes, to the extent that such Taxes were imposed as a result of the presentation of a Note for payment (where the Notes are in the form of Definitive Registered Notes and presentation is required) more than 30 days after the relevant payment is first made available for payment to the holder or beneficial owner (except to the extent that the holder or beneficial owner would have been entitled to Additional Amounts had the Note been presented on the last day of such 30 day period);

(iii) any estate, inheritance, gift, sales, transfer, personal property or similar Taxes, assessment or other governmental charge;

(iv) any Taxes required to be paid other than by deduction or withholding from payments under, or with respect to, the Notes or with respect to any Note Guarantee;

(v) any Taxes, to the extent such Taxes are imposed, withheld or deducted by reason of the failure of the holder or beneficial owner of the Notes, to comply with any reasonable written request of the Issuers addressed to the holder or beneficial owner and made at least 30 days before any such withholding or deduction is to be made, to satisfy any certification, identification, information reporting or other reporting requirements, whether required by statute, treaty, regulation or administrative practice of the relevant Tax Jurisdiction, as a precondition to exemption from, or reduction in the rate of deduction or withholding of, Taxes imposed by the Tax Jurisdiction (including, without limitation, a certification that the holder or beneficial owner is not resident in the Tax Jurisdiction), but in each case, only to the extent the holder or beneficial owner is legally entitled to satisfy such requirements;

(vi) any Taxes imposed, withheld or deducted on a payment of principal, redemption price, premium or interest on a Note or Note Guarantee to the holder or beneficial owner of a Note who is a fiduciary, a partnership, a limited liability company or any person other than the sole beneficial owner of such payment, if such Tax would not have been imposed had the beneficiary or settlor with respect to such fiduciary, member of such partnership, an interest holder in such limited liability company or beneficial owner of such payment been the actual holder of the Note or Note Guarantee;

(vii) any Taxes, to the extent that such Taxes would not have been imposed but for the holder or beneficial owner of Notes or the recipient of interest payable on the Notes not dealing at arm's length, within the meaning of the Income Tax Act (Canada), with the Issuer, the Co-Issuer or relevant Guarantor, as applicable;

(viii) any Taxes, to the extent that such Taxes would not have been imposed but for such holder or beneficial owner of Notes being, or not dealing at arm's length (within the meaning of the Income Tax Act (Canada)) with, at any time a "specified shareholder" of the Issuer or Co-Issuer as defined in subsection 18(5) of the Income Tax Act (Canada);

(ix) any U.S. federal Taxes;

(x) any deduction or withholding of Taxes imposed or required pursuant to Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended (the "**Code**"), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code; or

(xi) any combination of items (i) through (x) above.

(b) Where Tax is payable pursuant to Regulation 803 of the Income Tax Act (Canada) by a holder or beneficial owner of the Notes or any Note Guarantee in respect of any amount payable under the Notes or Note Guarantee to the holder (other than by reason of a transfer of the notes to a person resident in Canada with whom the transferor does not deal at arm's length for the purposes of such Act), but no Additional Amount is paid in respect of such Tax, the Issuer, the Co-Issuer or Note Guarantor, as applicable, will pay as or on account of interest to the holder an amount equal to such Tax (a "Regulation 803 Reimbursement") *plus* an amount equal to any Tax required to be paid by the holder or beneficial owner as a result of such Regulation 803 Reimbursement within 45 days after receiving from the holder a notice containing reasonable particulars of the Tax so payable, provided such holder or beneficial owner would have been entitled to receive Additional Amounts on account of such Tax (and only to the extent of such Additional Amounts that such holder or beneficial owner would have been entitled to receive) but for the fact that it is payable otherwise than by deduction or withholding from payments made under or with respect to the Notes or any Note Guarantee.

(c) The Issuers and the Guarantors, jointly and severally, will reimburse the holders or beneficial owners of Notes or Note Guarantees, upon written request of such holder or beneficial owner of Notes and certified proof of payment for the amount of (1) any Taxes levied or imposed by a Tax Jurisdiction and payable by such holder or beneficial owner in connection with payments made under or with respect to the Notes or under or with respect to any Note Guarantee; and (2) any Taxes levied or imposed with respect to any reimbursement under the foregoing clause (1) or this clause (2), so that the net amount received by such holder or beneficial owner after such reimbursement will not be less than the net amount such holder or beneficial owner would have received if the Taxes giving rise to the reimbursement described in clauses (1) and/or (2) had not been imposed, *provided, however*, that the indemnification obligation provided for in this paragraph shall not extend to Taxes imposed for which the holder or beneficial owner of the Notes or Note Guarantees would not have been eligible to receive payment of Additional Amounts hereunder by virtue of clauses (i) through (xi) above or to the extent such holder or beneficial received Additional Amounts with respect to such payments.

(d) In addition to the foregoing, the Issuers and the Guarantors shall also pay each holder or beneficial owner (or reimburse each holder or beneficial owner for) any present or future stamp, issue, registration, transfer, court or documentary Taxes, or any other excise or property Taxes, charges or similar levies (including penalties and interest related thereto) which are levied by any Tax Jurisdiction on the execution, delivery, issuance or registration of any of the Notes, this Indenture, any Note Guarantee or any other document referred to therein, or the receipt of any payments with respect thereto, or the enforcement of the Notes, this Indenture, any Note Guarantee or any other document referred to therein (other than, in each case, in connection with a transfer of the Notes after the Issue Date and limited solely, to the extent that such Taxes or similar charges or levies arise from the receipt of any payments of principal or interest on the Notes, to any such Taxes or similar charges or levies that are not excluded under Section 4.12(a)(i), (ii), (iii), (vii) and (viii)).

(e) If the Issuer, the Co-Issuer or any Guarantor, as the case may be, becomes aware that it shall be obligated to pay Additional Amounts with respect to any payment under or with respect to the Notes or any Note Guarantee, each of the Issuer, the Co-Issuer or the relevant Guarantor, as the case may be, shall deliver to the Trustee on a date that is at least 30 days prior to the date of that payment (unless the obligation to pay Additional Amounts arises less than 45 days prior to that payment date, in which case the Issuer, the Co-Issuer or the relevant Guarantor shall notify the Trustee and the Paying Agent promptly thereafter) an Officer's Certificate stating the fact that Additional Amounts will be payable and the amount estimated to be so payable. The Officer's Certificate shall also set forth any other information reasonably necessary to enable the Paying Agents to pay Additional Amounts to holders on the relevant payment date. The Trustee and the Paying Agent shall be entitled to rely solely on such Officer's Certificate as conclusive proof that such payments are necessary. The Issuer, the Co-Issuer or the relevant Guarantor, as the case may be, will provide the Trustee with documentation evidencing the payment of Additional Amounts.

(f) The Issuer, the Co-Issuer or the relevant Guarantor shall make or shall cause to be made all withholdings and deductions for, or on account of, Tax required by law and will remit or will cause to be remitted the full amount deducted or withheld to the relevant Tax authority in accordance with applicable law. The Issuer, the Co-Issuer or the relevant Guarantor, as applicable, shall use its reasonable efforts to obtain Tax receipts from each Tax authority evidencing the payment of any Taxes so deducted or withheld. The Issuer, the Co-Issuer or the relevant Guarantor shall furnish to the Trustee (or to a holder upon written request), within a reasonable time after the date the payment of any Taxes so deducted or withheld is made, certified copies of Tax receipts evidencing payment by the Issuer, the Co-Issuer or a Guarantor, as the case may be, or if, notwithstanding such entity's efforts to obtain receipts, receipts are not obtained, other evidence of payments (reasonably satisfactory to the Trustee) by such entity.

(g) Whenever in this Indenture there is mentioned, in any context, the payment of amounts based upon the principal amount of the Notes or of principal, purchase price in connection with a purchaser of the Notes, interest or any other amount payable under, or with respect to, any of the Notes or any Note Guarantee, such mention shall be deemed to include mention of the payment of Additional Amounts to the extent that, in such context, Additional Amounts are, were or would be payable in respect thereof.

(h) The obligations in this Section 4.12 shall survive any termination, defeasance or discharge of this Indenture or any transfer by a holder or beneficial owner of its Notes, and will apply, *mutatis mutandis*, to any jurisdiction in which any successor Person to the Issuer, the Co-Issuer or any Guarantor is incorporated, organized, engaged in business for tax purposes or otherwise resident for tax purposes or any jurisdiction from or through which such Person makes any payment on, or with respect to, the Notes (or any Note Guarantee) and any department or political subdivision or taxing authority or agency thereof or therein.

4.13 Limitation on Lines of Business

From and after the Escrow Release Date, the Parent will not, and will not permit any Restricted Subsidiary to, engage in any business other than a Permitted Business, except to the extent as would not be material to the Parent and its Restricted Subsidiaries taken as a whole.

4.14 [Reserved]

4.15 [Reserved]

4.16 Dividend and Other Payment Restrictions Affecting Restricted Subsidiaries

(a) From and after the Escrow Release Date, the Parent will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, create or permit to exist or become effective any consensual encumbrance or restriction on the ability of any Restricted Subsidiary to:

(i) pay dividends or make any other distributions on its Capital Stock to the Parent or any of its Restricted Subsidiaries, or with respect to any other interest or participation in its profits, or pay any Indebtedness owed to the Parent or any of its Restricted Subsidiaries;

(ii) make loans or advances to the Parent or any of its Restricted Subsidiaries; or

(iii) sell, lease or transfer any of its properties or assets to the Parent or any of its Restricted Subsidiaries, *provided* that (x) the priority of any preferred stock in receiving dividends or liquidating distributions prior to dividends or liquidating distributions being paid on common stock and (y) the subordination of (including the application of any standstill period to) loans or advances made to the Parent or any Restricted Subsidiary to other Indebtedness incurred by the Parent or any Restricted Subsidiary, in each case, shall not be deemed to constitute such an encumbrance or restriction.

(b) However, the preceding restrictions will not apply to encumbrances or restrictions existing under or by reason of:

(i) agreements governing Indebtedness incurred pursuant to Section 4.6(b)(ii) and other Credit Facilities as in effect on the Escrow Release Date and any amendments, restatements, modifications, renewals, supplements, increases, refundings, replacements or refinancings of those agreements; *provided* that the amendments, restatements, modifications, renewals, supplements, increases, refundings, replacements or refinancings are not materially more restrictive, taken as a whole, with respect to such dividend and other payment restrictions than those contained in comparable financings in such jurisdictions as such Indebtedness is being incurred or would not otherwise materially adversely affect the Issuers' ability to make principal or interest payments on the Notes as they become due (in each case as determined in good faith by the Board of Directors or a responsible accounting or financial officer of the Parent);

(ii) this Indenture, the Notes (including Additional Notes), the Note Guarantees, the Intercreditor Agreement, any Additional Intercreditor Agreement and the Security Documents;

(iii) applicable law, rule, regulation or order or the terms of any license, authorization, approval, concession or permit or similar restriction;

(iv) any instrument governing Indebtedness or Capital Stock of a Person acquired by the Parent or any of its Restricted Subsidiaries as in effect at the time of such acquisition (except to the extent such Indebtedness or Capital Stock was incurred in connection with or in contemplation of such acquisition), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person, or the property or assets of the Person, so acquired; *provided* that, in the case of Indebtedness, such Indebtedness was permitted by the terms of this Indenture to be incurred;

(v) customary non-assignment and similar provisions in contracts, leases and licenses (including, without limitation, licenses of intellectual property) entered into in the ordinary course of business;

(vi) purchase money obligations for property (including Capital Stock) acquired in the ordinary course of business, Capital Lease Obligations and mortgage financings that impose restrictions on the property purchased or leased of the nature set forth in Section 4.16(a)(iii);

(vii) any agreement for the sale or other disposition of assets, including without limitation an agreement for the sale or other disposition of the Capital Stock or assets of a Restricted Subsidiary, that restricts distributions by the applicable Restricted Subsidiary pending the sale or other disposition;

(viii) Permitted Refinancing Indebtedness; *provided* that the restrictions contained in the agreements governing such Permitted Refinancing Indebtedness are not materially more restrictive, taken as a whole, than those contained in the agreements governing the Indebtedness being refinanced (as determined in good faith by the Board of Directors or a responsible accounting or financial officer of the Parent);

(ix) Liens permitted to be incurred under Section 4.7 that limit the right of the debtor to dispose of the assets subject to such Liens;

(x) provisions limiting the disposition or distribution of assets or property in, or transfer of Capital Stock of, joint venture agreements, asset sale agreements, sale-leaseback agreements, stock sale agreements and other similar agreements (including agreements entered into in connection with a Restricted Investment), which limitations are applicable only to the assets, property or Capital Stock that are the subject of such agreements;

(xi) agreements governing other Indebtedness of the Parent or any of its Restricted Subsidiaries or the issuance of preferred stock by a Restricted Subsidiary or the payment of dividends thereon in accordance with the terms thereof permitted to be incurred pursuant to an agreement entered into subsequent to the Escrow Release Date or issued, as applicable, in accordance with Section 4.6, and any amendments, restatements, modifications, renewals, supplements, increases, refundings, replacements or refinancings of those agreements; *provided* that any such encumbrance or restriction contained in such Indebtedness are not materially more restrictive taken as a whole than customary in comparable financings in such jurisdictions as such Indebtedness is being incurred or will not adversely affect in any material respect the Issuers' ability to make principal or interest payments on the Notes as they become due (in each case, as determined in good faith by a responsible accounting or financial officer of the Parent);

(xii) supermajority voting requirements existing under corporate charters, bylaws, stockholders agreements and similar documents and agreements;

(xiii) customary provisions restricting subletting or assignment of any lease governing a leasehold interest;

(xiv) encumbrances or restrictions contained in Hedging Obligations permitted from time to time hereunder;

(xv) restrictions on cash or other deposits or net worth imposed by customers or suppliers or required by insurance, surety or bonding companies, in each case under contracts entered into in the ordinary course of business;

(xvi) any customary provisions in joint venture, partnership and limited liability company agreements relating to joint ventures that are not Restricted Subsidiaries of the Parent and other similar agreements;

(xvii) any agreement with a governmental entity providing for development financing; and

(xviii) any encumbrance or restriction existing under any agreement that extends, renews, refinances or replaces the agreements containing the encumbrances or restrictions in the foregoing Clauses (i) through (xvii) of this Section 4.16(b) or in this Section 4.16(b)(xviii); *provided* that the terms and conditions of any such encumbrances or restrictions are not materially more restrictive, taken as a whole, with respect to such dividend and other payment restrictions than those under or pursuant to the agreement so extended, renewed, refinanced or replaced or will not adversely affect in any material respect the Issuers' ability to make principal or interest payments on the Notes as they become due (in each case, as determined in good faith by the Board of Directors or a responsible accounting or financial officer of the Parent).

4.17 Designation of Restricted and Unrestricted Subsidiaries

(a) From and after the Escrow Release Date, the Board of Directors of the Parent may designate any Restricted Subsidiary to be an Unrestricted Subsidiary if that designation would not cause a Default. If a Restricted Subsidiary is designated as an Unrestricted Subsidiary, the aggregate Fair Market Value of all outstanding Investments owned by the Parent and its Restricted Subsidiaries in the Subsidiary designated as an Unrestricted Subsidiary will be deemed to be an Investment made as of the time of the designation and will reduce the amount available for

Restricted Payments under Section 4.8 or under one or more Clauses in the definition of "Permitted Investments," as determined by the Parent. That designation will only be permitted if the Investment would be permitted at that time and if the Restricted Subsidiary otherwise meets the definition of an Unrestricted Subsidiary.

(b) Any designation of a Subsidiary of the Parent as an Unrestricted Subsidiary will be evidenced to the Trustee by filing with the Trustee a copy of a resolution of the Board of Directors of the Parent giving effect to such designation and an Officer's Certificate certifying that such designation complied with the preceding conditions and was permitted by Section 4.8. If, at any time, any Unrestricted Subsidiary would fail to meet the preceding requirements as an Unrestricted Subsidiary, it will thereafter cease to be an Unrestricted Subsidiary for purposes of this Indenture and any Indebtedness of such Subsidiary will be deemed to be incurred by a Restricted Subsidiary of the Parent as of such date and, if such Indebtedness is not permitted to be incurred as of such date under Section 4.6, the Issuers will be in default of such covenant. The Board of Directors of the Parent may at any time designate any Unrestricted Subsidiary to be a Restricted Subsidiary of the Parent; *provided* that such designation will be deemed to be an incurrence of Indebtedness by a Restricted Subsidiary of the Parent of any outstanding Indebtedness of such Unrestricted Subsidiary, and such designation will only be permitted if (1) such Indebtedness is permitted under Section 4.6, calculated on a *pro forma* basis as if such designation had occurred at the beginning of the four full fiscal quarter reference period; and (2) no Default or Event of Default would be in existence following such designation.

4.18 Payment for Consent

From and after the Escrow Release Date, the Parent shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, pay or cause to be paid any cash consideration to or for the benefit of any holder of the Notes for consent, waiver or amendment of any of the terms or provisions of this Indenture or the Notes unless such consideration is paid to all Holders of the Notes that consent, waive or agree to amend in the time frame set forth in the solicitation documents relating to such consent, waiver or amendment; *provided* that this provision shall not be breached if consents, waivers or amendments are sought in connection with an exchange offer for all of the Notes where participation in such exchange offer is limited to holders who are "qualified institutional buyers," within the meaning of Rule 144A or other similar qualified investors under other applicable securities laws, or non-U.S. Persons, within the meaning of Regulation S.

4.19 Reports

(a) From and after the Escrow Release Date, the Parent will make available, upon request, to any Holder or prospective purchaser of Notes in the United States, in connection with any sale thereof, the information specified in Rule 144A(d)(4) under the Securities Act, unless the Parent is subject to Section 13 or 15(d) of the Exchange Act at or prior to the time of such request.

(b) So long as any Notes are outstanding, the Parent shall furnish to the Trustee:

(i) within 120 days (or 150 days for delivery of the first annual report to be delivered after the Escrow Release Date) after the end of the Parent's fiscal year (commencing with the fiscal year ending January 31, 2018), annual reports containing the following information with a level of detail that is substantially comparable and similar in scope to the Offering Circular: audited consolidated balance sheet of the Parent as of the end of the two most recent fiscal years and audited consolidated income statements and statements of cash flow of the Parent for the two most recent fiscal years (and comparative information for the end of the prior fiscal year), including complete notes to such financial statements and the report of the independent auditors on the financial statements, together with a customary management discussion and analysis of the Parent's financial condition and results of operations;

(ii) within 60 days (or 75 days for delivery of the first three quarterly reports to be delivered after the Escrow Release Date) following the end of the Parent's first three fiscal quarters in each fiscal year (commencing with the quarter ending October 31, 2017), quarterly reports for each of the first three quarters of each fiscal year containing the following information: an unaudited condensed consolidated balance sheet as of the end of such three-month period and unaudited condensed statements of income and cash flow for the year to date period ending on the unaudited condensed balance sheet date, and the compa-

rable prior year periods for the Parent, together with condensed footnote disclosure, together with a customary management discussion and analysis of the Parent's financial condition and results of operations; and;

(iii) [reserved]

(iv) (x) promptly after the occurrence of any material acquisition, disposition or restructuring of the Parent and its Restricted Subsidiaries, taken as a whole, or any senior executive officer changes at the Parent or changes in the auditors of the Parent or other material event that the Parent announces publicly, a report containing a description of such event and (y) promptly after any restatement by the Parent or any Restricted Subsidiary of any reserve or resource information disclosed in the Offering Circular, if such restatement would constitute a "material change" (as defined in Canadian National Instrument 43-101-Standards of Disclosure for Mineral Projects) in relation to Parent or any Restricted Subsidiary, a report containing a description of such restatement, *provided* that no such report will be required to include any exhibits;

provided, *however*, that any reports set out in this paragraph delivered to the Trustee via email or filed with the SEC shall be deemed to have been "furnished" to the Trustee in accordance with the terms of this Section 4.19(b).

(c) All financial statements shall be prepared in accordance with IFRS on a consistent basis for the periods presented. No report need include separate financial statements or financial information for the Parent or Subsidiaries of the Parent or any Guarantors or any disclosure with respect to the results of operations or any other financial or statistical disclosure not of a type included in the Offering Circular.

(d) If the Parent has designated any of its Subsidiaries as Unrestricted Subsidiaries and such Subsidiaries are Significant Subsidiaries, then the quarterly and annual financial information required by the preceding paragraph will include a reasonably detailed presentation, either on the face of the financial statements or in the footnotes thereto, of the financial condition and results of operations of the Parent and its Restricted Subsidiaries separate from the financial condition and results of operations of the Unrestricted Subsidiaries of the Parent.

(e) The Parent will also make available copies of all reports required by Clauses (i) and (ii) of Section 4.19(b) on the Parent's website (which may be password protected or otherwise secured website).

(f) In addition, in the case of furnishing the information pursuant to Clauses (i) and (ii) of Section 4.19(b), the Parent will promptly thereafter hold a conference call with Holders of the Notes hosted by an officer of the Parent to discuss the operations of the Parent and its Subsidiaries in respect of the relevant period.

(g) To the extent that any reports or other information is not furnished within the time periods specified above and such reports or other information is subsequently furnished, the Parent will be deemed to have satisfied its obligations with respect thereto and any Default or Event of Default with respect thereto shall be deemed to have been cured. The Parent may satisfy its obligation to furnish any reports or other information to the Trustee and Holders of the Notes at any time by filing or furnishing as applicable, such information with the SEC, it being understood that the Trustee shall have no obligation to determine if such filings have been made.

(h) Delivery of such reports, information and documents to the Trustee shall be for informational purposes only and the Trustee's receipt of such reports, information and documents shall not constitute constructive notice of any information contained therein, including the Issuers' compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officer's Certificates).

4.20 Limitation on Parent Activities

Parent shall not:

(a) incur any Indebtedness for borrowed money other than (i) the Indebtedness permitted to be incurred by Parent under this Indenture or otherwise in connection with the Transactions, (ii) Guarantees of Indebted-

ness or other obligations of the Issuers and/or any Restricted Subsidiary, which Indebtedness or other obligations are otherwise permitted under this Indenture and (iii) Indebtedness owed to the Issuers or any Restricted Subsidiary otherwise permitted under this Indenture; or

(b) create or suffer to exist any Lien on any property or asset now owned or hereafter acquired by it other than (i) the Liens created under the Collateral Documents and, subject to the Intercreditor Agreement, the collateral documents relating to the Revolving Credit Facility, in each case, to which it is a party, (ii) any other Lien created in connection with the Transactions, (iii) Permitted Liens on the Collateral that are secured on a *pari passu* or junior basis with the Notes, so long as such Permitted Liens secure Indebtedness permitted hereunder that is permitted to be secured on the same basis pursuant to Section 4.7 and (iv) Liens of the type permitted under Section 4.7 (other than in respect of debt for borrowed money); and

(c) engage in any material business activity or own any material assets other than (i) holding, indirectly through PledgeCo, the Capital Stock of the Issuer and directly, the Capital Stock of Holdings and the Co-Issuer and, indirectly, any other subsidiary of the Issuers or Holdings (and/or any joint venture of any thereof); (ii) performing its obligations under the Notes, the Revolving Credit Agreement Documents and other Indebtedness, Liens (including the granting of Liens) and Guarantees permitted hereunder; (iii) issuing its own Capital Stock (including, for the avoidance of doubt, the making of any dividend or distribution on account of, or any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value of, any shares of any class of Capital Stock permitted hereunder); (iv) filing Tax reports and paying Taxes, including Tax distributions made pursuant to clause (15) of the second paragraph under Section 4.8 and other customary obligations in the ordinary course (and contesting any Taxes); (v) preparing reports to Governmental authorities and to its shareholders and creditors; (vi) holding director and shareholder meetings, preparing organizational records and other organizational activities required to maintain its separate organizational structure or to comply with applicable Requirements of law; (vii) effecting any initial public offering of its Capital Stock; (viii) holding (A) Cash, Cash Equivalents and other assets received in connection with permitted distributions or dividends received from, or permitted Investments or permitted Asset Sales made by, any of its subsidiaries or permitted contributions to the capital of, or proceeds from the issuance of Capital Stock of, the Parent pending the application thereof and (B) the proceeds of Indebtedness permitted by Section 4.6; (ix) providing indemnification for its officers, directors, members of management, employees and advisors or consultants; (x) participating in tax, accounting and other administrative matters; (xi) the performance of its obligations under any document, agreement and/or Investment contemplated by the Transactions or otherwise not prohibited under this Indenture; (xii) complying with applicable requirements of law (including with respect to the maintenance of its existence); (xiii) the Internal Restructuring Transactions, any Permitted Reorganization or any IPO Reorganization Transaction, and (xiv) activities incidental, complementary, ancillary, corollary or related to any of the foregoing and not otherwise prohibited by this Indenture.

(d) Notwithstanding the above or any other provision of this Indenture, nothing in this Indenture shall preclude Parent from consummating the Transactions, any Permitted Reorganization or any IPO Reorganization Transaction.

4.21 Limitations on Business Activities of Co-Issuer

(a) The Co-Issuer may not own any material assets or other property, other than Indebtedness or other obligations owing to Co-Issuer by the Parent and its Restricted Subsidiaries and Cash Equivalents, or engage in any trade or conduct any business other than treasury, cash management, hedging and cash pooling activities and activities incidental thereto.

(b) The Co-Issuer will not incur any material liabilities or obligations other than as necessary to maintain its existence, its obligations pursuant to the Notes and pursuant to other Indebtedness permitted to be incurred by the Issuer or any Guarantor and liabilities and obligations pursuant to business activities permitted by this Section 4.21.

(c) The Co-Issuer shall at all times be organized and existing under the laws of the United States of America, any State of the United States or the District of Columbia.

(d) The Co-Issuer shall be a Restricted Subsidiary of the Parent at all times.

4.22 Limitation on Sale/Leaseback Transactions

From and after the Escrow Release Date, the Parent shall not, and shall not permit any of its Restricted Subsidiaries to, enter into any Sale/Leaseback Transaction with respect to any Operating Mining Asset if the aggregate fair market value of the assets sold subject to all Sale/Leaseback Transactions exceeds the greater of (x) $30.0 million and (y) 2.0% of Total Assets, unless:

(a) the Parent or such Restricted Subsidiary could have incurred Indebtedness in an amount equal to the Attributable Indebtedness in respect of such Sale/Leaseback Transaction pursuant to Section 4.6;

(b) the Parent or such Restricted Subsidiary would be permitted to create a Lien on the property subject to such Sale/Leaseback Transaction under Section 4.7; and

(c) the Sale/Leaseback Transaction is treated as an Asset Sale and all of the conditions of this Indenture set forth in Section 4.9 (including the provisions concerning the application of Net Proceeds) are satisfied with respect to such Sale/Leaseback Transaction, treating all of the consideration received in such Sale/Leaseback Transaction as Net Proceeds for purposes of such covenant.

4.23 [Reserved]

4.24 Suspension of Covenants when Notes Rated Investment Grade

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

(i) the Notes have achieved Investment Grade Status; and

(ii) no Default or Event of Default shall have occurred and be continuing on such date, then,

beginning on that day and continuing until such time, if any, at which the Notes cease to have Investment Grade Status (such period, the "**Suspension Period**"), the following Sections of this Indenture will no longer be applicable to the Notes and any related default provisions of this Indenture will cease to be effective and will not be applicable to the Parent and its Restricted Subsidiaries: Section 4.6; Section 4.8; Section 4.9; Section 4.10; Section 4.13; Section 4.16; Section 4.17; Section 4.22(a) and (c); Section 4.26; Section 4.29; and Section 5.1(b)(iv).

(b) The Clauses listed in Section 4.24(a) shall not, however, be of any effect with regard to the actions of the Parent and the Restricted Subsidiaries properly taken during the continuance of the Suspension Period; *provided* that (i) with respect to the Restricted Payments made after any such reinstatement, the amount of Restricted Payments will be calculated as though Section 4.8 had been in effect prior to, but not during, the Suspension Period and (ii) all Indebtedness incurred, or Disqualified Stock or preferred stock issued, during the Suspension Period will be classified to have been incurred or issued pursuant to Section 4.6(b)(ii). Upon the occurrence of a Suspension Period, the amount of Excess Proceeds shall be reset at zero.

(c) The Parent and/or the Issuers shall notify the Trustee that the first two conditions set forth in Section 4.24(a) have been satisfied, *provided* that such notification shall not be a condition for the suspension of the covenants set forth above to be effective. The Trustee shall be under no obligation to monitor the ratings of the Notes, determine whether the notes achieve Investment Grade Status or notify the Holders that the conditions set forth in Section 4.24(a) have been satisfied.

4.25 Activities Prior to Escrow Release

(a) Prior to the earlier of (x) the Escrow Release Date and (y) the Special Mandatory Redemption Date, the Escrow Issuer's primary activities will be restricted to (i) issuing the Original Notes, (ii) issuing Capital Stock and receiving capital contributions from, a direct or indirect parent entity, (iii) performing its obligations in respect of the Notes under this Indenture and the Escrow Agreement, (iv) performing its obligations under the pur-

chase agreement with the Initial Purchasers, if any, (v) participating in the consummation of the Transactions and the satisfaction of the Escrow Release Conditions and performing its obligations under the agreements related to the Transactions, (vi) redeeming the Original Notes pursuant to the Special Mandatory Redemption, if applicable, and (vii) conducting such other activities as are necessary or appropriate to carry out the activities described above and in the Arrangement Agreement.

(b) Prior to the earlier of (x) the Escrow Release Date and (y) the Special Mandatory Redemption Date, the Escrow Issuer will not (i) own, hold or otherwise have any interest in any assets other than the Escrow Account and cash and Cash Equivalents or (ii) engage in any business activity or enter into any transaction or agreement (including, without limitation, making any restricted payment, incurring any debt, incurring any Liens except in favor of the Holders of the Notes, entering into any merger, amalgamation, consolidation or sale of all or substantially all of its assets or engaging in any transaction with its Affiliates) except in the ordinary course of the primary activities described above or as necessary or advisable (as determined by the Escrow Issuer) to effectuate the Transactions.

4.26 Limitations with respect to Canadian Defined Benefit Plans

From and after the Escrow Release Date, neither Parent nor its Restricted Subsidiaries shall establish or commence contributing to or otherwise participate in any "registered pension plan" as defined in subsection 248(1) of the Income Tax Act (Canada) which contains a "defined benefit provision" as defined in subsection 147.1(1) of the Income Tax Act (Canada) (a "**Canadian Defined Benefit Plan**"), with the exception of any Canadian Defined Benefit Plan that Parent or any of its Restricted Subsidiaries participates in or contributes to immediately prior to the Escrow Release Date. Neither Parent nor its Restricted Subsidiaries shall acquire an interest in any Person if such Person sponsors, administers, participates in, or has any liability in respect of any Canadian Defined Benefit Plan. Neither Parent nor its Restricted Subsidiaries shall terminate, or cause to be terminated, any of the Canadian Defined Benefit Plans, if such Canadian Defined Benefit Plan would have a wind up deficiency on termination.

4.27 Centre of Main Interests

Each Dutch Guarantor shall maintain its centre of main interests (as that term is used in Article 3(1) of the Insolvency Regulation) in the Netherlands for the purposes of the Insolvency Regulation.

4.28 [Reserved]

4.29 Future Guarantors

(a) From and after the Escrow Release Date, the Parent will cause each Restricted Subsidiary that Guarantees Indebtedness under the Revolving Credit Facility to execute and deliver to the Trustee a supplemental indenture to this Indenture pursuant to which such Restricted Subsidiary will, subject to Section 4.29(d), irrevocably and unconditionally Guarantee, on a joint and several basis, the full and prompt payment of the principal of, premium, if any, and interest in respect of the Notes on a senior basis and all other obligations under this Indenture and execute and deliver to the Trustee supplements to the Security Documents and take all actions required by the Security Documents to perfect the liens granted thereunder; *provided*, *however*, that a Restricted Subsidiary shall not be required to Guarantee the Notes (i) if such Restricted Subsidiary is not a wholly-owned Subsidiary or (ii) if such Restricted Subsidiary is prohibited from guaranteeing any Indebtedness pursuant to the terms of any Acquired Debt for so long as such Acquired Debt remains outstanding and such Restricted Subsidiary does not incur any Indebtedness other than Acquired Debt.

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

(c) Each Note Guarantee shall be released in accordance with Section 10.9.

(d) Future Note Guarantees provided by Guarantors organized in jurisdictions other than the United States and Canada, may be Limited Guarantees if the Parent, in consultation with local counsel, determines that such limitations are required due to legal requirements within such jurisdiction.

4.30 Limitations with Respect to Joint Ventures

From and after the Escrow Release Date, the Parent and each of its Restricted Subsidiaries shall not (a) consent to any Indebtedness or Liens incurred by the Diavik Joint Venture, the Ekati Core Zone Joint Venture, or their respective managers, other than (x) equipment and purchase money financing in the ordinary course of business and (y) with respect to Dominion Diamond Ekati Corporation (or any successor thereto as manager of the Ekati Core Zone Joint Venture that is a Guarantor), (1) its Note Guarantee of the Notes offered hereby, (2) its Guarantee of the Revolving Credit Facility Obligations, (3) the incurrence or Guarantee of Junior Lien Secured Indebtedness, Pari Secured Indebtedness and First Lien Secured Indebtedness, to the extent such incurrence or Guarantee is otherwise permitted under this Indenture, and (4) Liens securing obligations under the foregoing clauses (1)-(3), to the extent such Liens are otherwise permitted under this Indenture, (b) consent to any sale, transfer or disposition of any material portion of real property by the Diavik Joint Venture or the Ekati Core Zone Joint Venture, (c) permit any merger, amalgamation or change of control of the Ekati Core Zone Manager, unless the surviving entity (in the case of a merger or amalgamation) or the acquiror (in the case of a change of control) is the Parent or any of its Restricted Subsidiaries, (d) permit any amendments to the joint venture agreements in respect of the Diavik Joint Venture and Ekati Core Zone Joint Venture in any manner materially adverse to the holders of the Notes and (e) allow the Ekati Core Zone Manager to: (i) carry on any material business other than as contemplated by the Ekati Core Zone Joint Venture Agreement, (ii) establish, maintain or acquire any Canadian Defined Benefit Plan not in existence on the Escrow Release Date or (iii) wind up any Canadian Defined Benefit Plan.

4.31 Diavik Sale

(a) If a Diavik Sale occurs, each Holder will have the right to require the Issuers to repurchase all or any part (equal to $2,000 and integral multiples of $1,000 in excess thereof) of that holder's Notes pursuant to an offer (the "**Diavik Sale Offer**") on the terms set forth in this Section 4.31. In the Diavik Sale Offer, the Issuers shall offer a payment in cash (the "**Diavik Sale Payment**") equal to 101% of the aggregate principal amount of Notes repurchased *plus* accrued and unpaid interest and Additional Amounts, if any, on the Notes repurchased to, but not including, the date of purchase (the "**Diavik Sale Payment Date**"), subject to the rights of holders of Notes on the relevant Record Date to receive interest due on the relevant Interest Payment Date occurring on or prior to the redemption date. The Issuers shall comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with the repurchase of the Notes as a result of a Diavik Sale. To the extent that the provisions of any securities laws or regulations conflict with this Section 4.31, the Issuers shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations under this Section 4.31 by virtue of such compliance.

(b) On the Diavik Sale Payment Date, the Issuers shall, to the extent lawful:

(i) accept for payment all Notes or portions of Notes properly tendered pursuant to the Diavik Sale Offer;

(ii) deposit with an agent to be appointed by the Issuers (such as the Paying Agent) an amount equal to the Diavik Sale Payment in respect of all Notes or portions of Notes properly tendered; and

(iii) deliver or cause to be delivered to the Trustee the Notes properly accepted.

(c) The Paying Agent shall promptly mail (or cause to be delivered) to each Holder properly tendered the Diavik Sale Payment for such Notes, and the Trustee shall promptly authenticate and mail (or cause to be transferred by book entry) to each holder a new Note equal in principal amount to any unpurchased portion of the Notes

surrendered, if any; *provided* that each such new Note shall be in a minimum principal amount of $2,000 or integral multiples of $1,000 in excess thereof. Any Note so accepted for payment will cease to accrue interest on and after the Diavik Sale Payment Date unless the Issuers default in making the Diavik Sale Payment. The Issuers shall publicly announce the results of the Diavik Sale Offer on or as soon as practicable after the Diavik Sale Payment Date.

(d) The provisions set forth herein that require the Issuers to make a Diavik Sale Offer following a Diavik Sale will be applicable whether or not any other provisions of this Indenture are applicable. Except as set forth in this Section 4.31 or Section 4.11 with respect to a Diavik Sale or a Change of Control, respectively, this Indenture does not contain provisions that permit the Holders to require that the Issuers repurchase or redeem the Notes in the event of a takeover, recapitalization or similar transaction.

(e) The Issuers shall not be required to make a Diavik Sale Offer upon a Diavik Sale if (1) a third party makes the Diavik Sale Offer in the manner, at the time and otherwise in compliance with the requirements set forth in this Indenture applicable to a Diavik Sale Offer made by the Issuers and purchases all Notes properly tendered and not withdrawn under the Diavik Sale Offer, or (2) notice of redemption of all outstanding Notes has been given pursuant to Section 3.4, unless and until there is a default in payment of the applicable redemption price.

(f) If holders of not less than 90% in aggregate principal amount of the outstanding Notes properly tender and do not withdraw such Notes in a Diavik Sale Offer and the Issuers, or any third party making a Diavik Sale Offer in lieu of the Issuers as described above, purchase all of the Notes properly tendered and not withdrawn by such holders, the Issuers or such third party will have the right, upon not less than 10 days nor more than 60 days' prior notice, *provided* that such notice is given not more than 30 days following such purchase pursuant to the Diavik Sale Offer described above, to redeem all the Notes that remain outstanding following such purchase at a price in cash equal to 101% of the aggregate principal amount of Notes being repurchased, *plus* accrued and unpaid interest on the Notes repurchased to, but excluding, the date of purchase (subject to the rights of holders of Notes on the relevant Record Date to receive interest due on the relevant Interest Payment Date occurring on or prior to the redemption date if the Notes have not been redeemed or repurchased prior to such date).

(g) A Diavik Sale Offer may be made in advance of a Diavik Sale, and conditioned upon the occurrence of such Diavik Sale.

(h) The provisions under this Section 4.31 may be waived or modified with the consent of the Holders of a majority in principal amount of the Notes then outstanding prior to the occurrence of the Diavik Sale.

(i) Within 30 days following the Diavik Sale, the Issuers shall:

(i) cause a notice of the Diavik Sale Offer to be published through the newswire service of Bloomberg, or if Bloomberg does not then operate, any similar agency or, so long as the Notes are represented by Global Notes held on behalf of DTC, by delivery of the relevant notice to that clearing system for communication by it to entitled account Holders in substitution for publication as otherwise required in this Section 4.31(i)(i);

(ii) send notice of the Diavik Sale Offer by first class mail, with a copy to the Trustee, to each Holder at the address of such Holder appearing in the Security Register (where the Notes are Definitive Registered Notes), stating:

(A) that a Diavik Sale has occurred and that all Notes will be accepted for payment;

(B) the circumstances and/or relevant facts in respect of such Diavik Sale;

(C) the Diavik Sale Payment and the Diavik Sale Payment Date which date shall be no earlier than 10 days (subject to the Depositary's requirements) and no later than 60 days from the date such notice is mailed or delivered, subject to extension to a date not later than 60 days after the original Diavik Sale Payment Date (in the case where such notice is mailed or otherwise sent prior the occurrence of the Diavik Sale) in the event that the occurrence of the Diavik Sale is

delayed beyond the Diavik Sale Payment Date set forth in such notice, pursuant to the procedures required by this Indenture and described in such notice;

(D) that any Note accepted for payment pursuant to the Diavik Sale Offer shall cease to accrue interest after the Diavik Sale Payment Date unless the Issuers fail to pay the Diavik Sale Payment;

(E) that any Note (or portion thereof) not tendered shall continue to accrue interest; and

such other procedures that a Holder is required to follow to accept a Diavik Sale Offer or to withdraw such acceptance as determined by the Issuers, so long as such procedures are consistent with the terms of this Indenture.

5. Successors

5.1 Merger, Consolidation or Sale of Assets

(a) The Issuers shall not, directly or indirectly (i) consolidate, amalgamate or merge with or into another Person (whether or not such Issuer is the surviving Person) or (ii) voluntarily sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of such Issuer's properties or assets, in one or more related transactions, to another Person, unless:

(i) either: (a) the Issuer or Co-Issuer, as applicable, is the surviving corporation; or (b) the Person formed by or surviving any such consolidation, amalgamation or merger (if other than the Issuer or the Co-Issuer) or to which such sale, assignment, transfer, lease, conveyance or other disposition has been made is (x) in the case of such transaction involving the Issuer but not the Co-Issuer, an entity organized or existing under the laws of Canada or any province thereof, any state of the United States or the District of Columbia and (y) in the case of such transaction involving the Co-Issuer, an entity existing under the laws of any state of the United States or the District of Columbia;

(ii) the Person formed by or surviving any such consolidation, amalgamation or merger (if other than the Issuer or the Co-Issuer, as applicable) or the Person to which such sale, assignment, transfer, conveyance, lease or other disposition has been made assumes all the obligations of the Issuer or the Co-Issuer, as applicable, under the Notes, this Indenture, the Intercreditor Agreement, any Additional Intercreditor Agreement and the Security Documents, in each case, pursuant to agreements required by the Notes Documents (and the Note Guarantees will be confirmed as applying to such surviving entity's obligations) and the Notes, this Indenture, the Intercreditor Agreement, any Additional Intercreditor Agreement and the Security Documents will remain in full force and effect as so amended and supplemented;

(iii) immediately after such transaction or transactions, no Default or Event of Default exists;

(iv) the Issuer or the Co-Issuer, as applicable or the Person formed by or surviving any such consolidation, amalgamation or merger (if other than the Issuer or the Co-Issuer, as applicable), or to which such sale, assignment, transfer, conveyance, lease or other disposition has been made would, on the date of such transaction after giving *pro forma* effect thereto and any related financing transactions as if the same had occurred at the beginning of the applicable four fiscal quarter period (i) be permitted to incur at least $1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in Section 4.6(a); or (ii) the Parent would have a Fixed Charge Coverage Ratio not less than it was immediately prior to giving effect to such transaction;

(v) each Subsidiary Guarantor (unless it is the party to the transactions above, in which case Section 5.1(a)(ii) shall apply) shall have by supplemental indenture confirmed that its Note Guarantee shall apply to such Person's obligations in respect of this Indenture, the Intercreditor Agreement, any Additional Intercreditor Agreement and the Security Documents, in each case, pursuant to agreements reasonably satisfactory to the Trustee and the Notes Collateral Agent, and shall continue to be in effect; and

(vi) the Issuer or the Co-Issuer, as applicable, shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, amalgamation, merger or transfer and such supplemental indenture (if any) comply with Section 5.1 and that all conditions precedent in this Indenture relating to such transaction have been satisfied and that the supplemental indenture, this Indenture and the Notes constitute legal, valid and binding obligations of the Issuer or the Co-Issuer, as applicable, or the Person formed by or surviving any such consolidation, amalgamation or merger (if other than the Issuer or the Co-Issuer, as applicable, as the case may be) enforceable in accordance with their terms; *provided* that in giving an Opinion of Counsel, counsel may rely on an Officer's Certificate as to any matters of fact.

The surviving entity will succeed to, and be substituted for, and may exercise every right and power of, the Issuers under this Indenture, *provided* that the Issuers will not be released from the obligation to pay the principal of and interest and premium, if any, on the Notes except in the case of a sale of all the Issuer's assets in a transaction that is subject to, and complies with the provisions of, this Section 5.1.

(b) From and after the Escrow Release Date, the Parent shall not, directly or indirectly (i) consolidate, amalgamate or merge with or into another Person (whether or not the Parent is the surviving Person) or (ii) voluntarily sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of the Parent's and its Restricted Subsidiaries' properties or assets, in one or more related transactions, to another Person, unless:

(i) either: (a) the Parent is the surviving corporation; or (b) the Person formed by or surviving any such consolidation, amalgamation or merger (if other than the Parent) or to which such sale, assignment, transfer, lease, conveyance or other disposition has been made is an entity organized or existing under the laws of any member state of the European Union as in effect on January 1, 2003 (excluding Greece), Switzerland, Canada, Australia, India, any state of the United States or the District of Columbia;

(ii) the Person formed by or surviving any such consolidation, amalgamation or merger (if other than the Parent) or the Person to which such sale, assignment, transfer, conveyance, lease or other disposition has been made assumes all the obligations of the Parent under the Notes, this Indenture, the Note Guarantees, the Intercreditor Agreement, any Additional Intercreditor Agreement and the Security Documents (to the extent the Parent is a party thereto), in each case, pursuant to agreements required by the Notes Documents; and the Notes, this Indenture, the Note Guarantees, the Intercreditor Agreement, any Additional Intercreditor Agreement and the Security Documents will remain in full force and effect as so amended and supplemented;

(iii) immediately after such transaction or transactions, no Default or Event of Default exists;

(iv) the Parent or the Person formed by or surviving any such consolidation, amalgamation or merger (if other than the Parent), or to which such sale, assignment, transfer, conveyance, lease or other disposition has been made would, on the date of such transaction after giving *pro forma* effect thereto and any related financing transactions as if the same had occurred at the beginning of the applicable four fiscal quarter period (i) be permitted to incur at least $1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in Section 4.6(a); or (ii) have had a Fixed Charge Coverage Ratio not less than it was immediately prior to giving effect to such transaction; and

(v) the Parent shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, amalgamation, merger or transfer and such supplemental indenture (if any) comply with Section 5.1 and that all conditions precedent in this Indenture relating to such transaction have been satisfied and that the supplemental indenture, this Indenture and the Notes constitute legal, valid and binding obligations of the Parent or the Person formed by or surviving any such consolidation, amalgamation or merger (if other than the Parent, as the case may be) enforceable in accordance with their terms; *provided* that in giving an Opinion of Counsel, counsel may rely on an Officer's Certificate as to any matters of fact.

(c) From and after the Escrow Release Date, a Subsidiary Guarantor (other than a Subsidiary Guarantor whose Note Guarantee is to be released in accordance with the terms of the Note Guarantee and Section 10.9)

may not sell or otherwise dispose of all or substantially all of its assets to, or consolidate, amalgamate with or merge with or into (whether or not such Subsidiary Guarantor is the surviving Person), another Person, other than the Parent or the Issuer, the Co-Issuer or another Subsidiary Guarantor, unless:

(i) immediately after giving effect to that transaction, no Default or Event of Default exists; and

(ii) either:

(A) such Guarantor is the surviving corporation;

(B) the Person acquiring the property in any such sale or disposition or the Person formed by or surviving any such consolidation, amalgamation or merger unconditionally assumes, pursuant to a supplemental indenture substantially in the form as provided for in Exhibit 4 hereto, all the obligations of such Guarantor under such Indenture, its Note Guarantee, the Intercreditor Agreement, any Additional Intercreditor Agreement and the Security Documents, on terms set forth therein; or

(C) the net proceeds of such sale or other disposition are applied, to the extent required, in accordance with Section 4.9.

(d) For purposes of this Article 5, the sale, lease, conveyance, assignment, transfer, or other disposition of all or substantially all of the properties and assets of one or more Subsidiaries of the Parent, which properties and assets, if held by the Parent instead of such Subsidiaries, would constitute all or substantially all of the properties and assets of the Parent on a consolidated basis, shall be deemed to be the transfer of all or substantially all of the assets of the Parent.

(e) This Section 5.1 will not apply to any sale, assignment, transfer, conveyance, lease or other disposition of assets between or among the Parent and the Restricted Subsidiaries (including the Issuers). Section 5.1(a)(iii) and (iv), Section 5.1(b)(iii) and (iv) and Section 5.1(c)(i) will not apply to any merger or consolidation of the Parent, the Issuer, the Co-Issuer or any other Restricted Subsidiary into an Affiliate solely for the purpose of reincorporating the Parent, the Issuer, the Co-Issuer or such Restricted Subsidiary in another jurisdiction. Notwithstanding any other provision of this Indenture, nothing in this Indenture will prevent and this Section 5.1 will not apply to (i) any Restricted Subsidiary that is not the Issuer, the Co-Issuer or a Guarantor consolidating or amalgamating with, merging with or into or transferring all or part of its properties and assets to the Issuer, the Co-Issuer, a Guarantor or any other Restricted Subsidiary of the Parent that is not a Guarantor; (ii) the Parent or the Issuer amalgamating with or merging with or into a Restricted Subsidiary for the purpose of reincorporating the Parent or the Issuer in another jurisdiction; and (iii) any Guarantor consolidating with, amalgamating with or merging with or into or transferring all or part of its properties and assets to the Issuer, the Co-Issuer or another Guarantor.

Notwithstanding anything to the contrary herein, the Transactions, the release of Escrowed Property (as defined in the Escrow Agreement) and the related transactions will be permitted under this Indenture.

5.2 Successor Substituted

(a) Upon any consolidation or merger, or any sale, assignment, conveyance, transfer, lease or other disposition of all or substantially all of the properties and assets of the Parent, the Issuer or the Co-Issuer in accordance with Section 5.1 of this Indenture, any surviving entity formed by such consolidation or into which the Parent, the Issuer or the Co-Issuer is merged or to which such sale, assignment, conveyance, transfer, lease or other disposition is made shall succeed to, and be substituted for (so that from and after the date of such consolidation, merger, sale, assignment, transfer, ease, conveyance or other disposition, the provisions of this Indenture referring to the "Parent," "Issuer" or "Co-Issuer," as applicable, shall refer instead to the surviving entity and not to the Parent, the Issuer or the Co-Issuer, as applicable), and may exercise every right and power of, the Parent, the Issuer or the Co-Issuer, as applicable under this Indenture with the same effect as if such surviving entity had been named as the Parent, the Issuer or the Co-Issuer, as applicable herein; *provided*, *however*, that any predecessor Issuer shall not be

released from its obligation to pay the principal of, premium, if any, or interest on the Notes except in the case of a sale of all such Issuer's assets in a transaction that is subject to and complies with Section 5.1 hereof.

6. Events of Default and Remedies

6.1 Events of Default

(a) Each of the following is an "**Event of Default**":

(i) default for 30 days in the payment when due of interest or Additional Amounts, if any, with respect to the Notes;

(ii) default in the payment when due (at maturity, upon redemption or otherwise) of the principal of, or premium, if any, on, the Notes;

(iii) failure by the Issuer, the Co-Issuer or any Guarantor to comply with Section 5.1;

(iv) failure by the Parent or any of its Restricted Subsidiaries for 60 days after receipt of written notice to any Issuer by the Trustee or the Holders of at least 30% in aggregate principal amount of the Notes then outstanding voting as a single class to comply with any of the other agreements in this Indenture (other than a default in performance, or breach, or a covenant or agreement which is specifically dealt with in Section 6.1(a)(i), (ii) or (iii), the Intercreditor Agreement and any Additional Intercreditor Agreement or the Security Documents);

(v) default under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness for money borrowed by the Parent or any of its Restricted Subsidiaries (or the payment of which is guaranteed by the Parent or any of its Restricted Subsidiaries), whether such Indebtedness or Guarantee now exists, or is created, after the Issue Date, if that default:

(A) is caused by a failure to pay principal of such Indebtedness at the Stated Maturity thereof after giving effect to any applicable grace periods provided in such Indebtedness and such failure to make any payment has not been waived or the maturity of such Indebtedness has not been extended (a "**Payment Default**"); or

(B) results in the acceleration of such Indebtedness prior to its Stated Maturity,

and, in each case, the principal amount of any such Indebtedness, together with the principal amount of any other such Indebtedness under which there has been a Payment Default or the maturity of which has been so accelerated, aggregates $25.0 million or more;

(vi) failure by the Parent or any Significant Subsidiary of the Parent or group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary of the Parent, to pay final judgments entered by a court or courts of competent jurisdiction aggregating in excess of $25.0 million (net of any amount with respect to which a reputable and solvent insurance company has acknowledged liability in writing), which judgments are not paid, discharged, stayed or fully bonded for a period of 60 days after such judgments become final and nonappealable (or, if later, the date when payment is due pursuant to such judgment);

(vii) (A) any security interest created by the Security Documents with respect to Collateral having a Fair Market Value in excess of $25.0 million ceases to be a valid, perfected security interest (except as permitted by the terms of this Indenture, the Intercreditor Agreement or any Additional Intercreditor Agreement or the Security Documents), or as assertion by the Parent or any Restricted Subsidiary that any Collateral having a Fair Market Value in excess of $25.0 million is not subject to a valid, perfected security interest (except as permitted by the terms of this Indenture, the Security Documents, the Intercreditor

Agreement or any Additional Intercreditor Agreement); or (B) the repudiation by the Parent of any of its material obligations under the Security Documents;

(viii) except as permitted by this Indenture (including with respect to any limitations), any Note Guarantee of a Significant Subsidiary of the Parent is held in any judicial proceeding to be unenforceable or invalid or ceases for any reason to be in full force and effect, or any Guarantor that is a Significant Subsidiary of the Parent or any Person acting on behalf of any such Guarantor that is a Significant Subsidiary of the Parent, denies or disaffirms its obligations under its Note Guarantee;

(ix) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Issuer, the Co-Issuer, the Parent or any Significant Subsidiary of the Parent, under any federal, state, provincial or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (ii) the appointment of a receiver, interim receiver, trustee, custodian, sequestrator, monitor, administrator, conservator or similar official for the Issuer, the Co-Issuer, the Parent or any Significant Subsidiary of the Parent or of any substantial part of their respective properties, and, in any such case, such proceeding or petition shall continue undismissed, unvacated, unbounded or unstayed pending appeal for 60 consecutive days or an order or decree approving or ordering any of the foregoing shall be entered which has not been stayed; and

(x) the Issuer, the Co-Issuer, the Parent or any Significant Subsidiary of the Parent shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any federal, state, provincial or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (ii) admit in writing its inability to pay its debts as such debts become due, (iii) apply for or consent to the appointment of a receiver, interim receiver, trustee, custodian, sequestrator, monitor, administrator, conservator or similar official for the Issuer, the Co-Issuer, the Parent or such Significant Subsidiary of the Parent or for a substantial part of their respective assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing.

6.2 Acceleration

(a) In the case of an Event of Default arising after the Escrow Release Date under Section 6.1(a)(ix) or (x), with respect to the Parent and/or the Issuer or the Co-Issuer, all then outstanding Notes will become due and payable immediately without further action or notice. A Default arising after the Escrow Release Date under Section 6.1(a)(iii) or (iv) will not constitute an Event of Default until the Trustee or the Holders of at least 30% in aggregate principal amount of the then outstanding Notes notify the Issuers of the Default and, with respect to Section 6.1(a)(iv), the Issuers do not cure such Default within the time specified in Section 6.1(a)(iv) after receipt of such notice. If prior to the Escrow Release Date, an Event of Default under Section 6.1(a)(iv) (solely with respect to an Event of Default arising due to the failure to comply with Section 4.25) occurs and is continuing, the Trustee or the Holders of at least 30% in aggregate principal amount of the then outstanding Notes may declare all of the then outstanding Notes to be due and payable immediately by notice in writing to the Issuers and, in case of a notice by Holders, also to the Trustee specifying the respective Event of Default and that it is a notice of acceleration.

(b) If any other Event of Default occurs and is continuing after the Escrow Release Date (other than an Event of Default described in Section 6.1(a)(viii) above), the Trustee or the Holders of at least 30% in aggregate principal amount of the then outstanding Notes may declare all of the then outstanding Notes to be due and payable immediately by notice in writing to the Issuers and, in case of a notice by Holders, also to the Trustee specifying the respective Event of Default and that it is a notice of acceleration.

(c) In the event of a declaration of acceleration of the Notes because an Event of Default under Section 6.1(a)(v) has occurred and is continuing, the declaration of acceleration of the Notes shall be automatically annulled if (i) the event of default or Payment Default triggering such Event of Default pursuant to Section 6.1(a)(v) shall be remedied or cured, or waived by the holders of the Indebtedness, or the Indebtedness that gave rise to such Event of Default shall have been discharged in full, in each case, within 30 days after the declaration of acceleration with respect thereto, (ii) the annulment of the acceleration of the Notes would not conflict with any judgment or decree of a court of competent jurisdiction and (iii) all existing Events of Default, except nonpayment of principal,

premium or interest, including Additional Amounts, if any, on the Notes that became due solely because of the acceleration of the Notes, have been cured or waived.

(d) If a Default or an Event of Default occurs and is continuing and is known to the Trustee, the Trustee shall mail or otherwise deliver to each Holder a notice of the Default or Event of Default, within 30 days after the Trustee becomes aware of such Default or Event of Default, by first class mail specifying such event, notice or other action, its status and what action the Issuers are taking or propose to take with respect thereto. Except in the case of a Default or an Event of Default in payment of principal of, premium, if any, on the Notes or interest, if any, or Additional Amounts, if any, on any Note, the Trustee may withhold the notice to the Holders if and so long as a committee of its Trust Officers in good faith determines that withholding the notice is in the interests of the Holders. The Trustee shall not be deemed to have knowledge of a Default unless a Trust Officer has actual knowledge of such Default or written notice of such Default or Event of Default has been received by the Trustee at its Corporate Trust Office which notice references this Indenture and/or the Notes. The Issuers shall also notify the Trustee within 30 days of the occurrence of any Event of Default.

(e) In the event that the Notes have become due and payable as provided under this Section 6.2 prior to the earlier to occur of (x) the Escrow Termination Event and (y) the delivery of an Escrow Release Officer's Certificate (in each case in accordance with and as defined in the Escrow Agreement), the Trustee shall deliver a written notice (substantially in the form of Annex II to the Escrow Agreement) to the Escrow Agent that directs the Escrow Agent to release the Escrowed Property to the Trustee in accordance with the Escrow Agreement.

6.3 Other Remedies

If an Event of Default occurs and is continuing, the Trustee may, but shall not be obliged, in its discretion proceed to protect and enforce its rights and the rights of the Holders by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy.

All rights of action and claims under this Indenture or the Notes may be prosecuted and enforced by the Trustee without the possession of any of the Notes or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name and as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the properly incurred compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Holders in respect of which such judgment has been recovered.

6.4 Waiver of Past Defaults

The Holders of not less than a majority in aggregate principal amount of the outstanding Notes may on behalf of the Holders of all the Notes rescind an acceleration or waive any past or existing Default or Event of Default hereunder and its consequences, except a continuing Default or Event of Default in respect of the payment of the principal of (or premium, if any), Additional Amounts, if any or interest on any Note held by a non-consenting Holder, unless such payment is due solely because of such acceleration.

Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon.

6.5 Control by Majority

Subject to Section 7.2(a)(iv), the Holders of a majority in aggregate principal amount of the then outstanding Notes may direct, in writing, the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee under this Indenture; *provided*, that:

(a) the Trustee may refuse to follow any direction that conflicts with law, its fiduciary duties, this Indenture or that the Trustee determines in good faith may be unduly prejudicial to the rights of Holders not joining in the giving of such direction;

(b) the Trustee may refuse to follow any direction that the Trustee determines is unduly prejudicial to the rights of other Holders or would involve the Trustee in personal liability; and

(c) the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction.

6.6 Limitation on Suits

Except (subject to Article 9) to enforce the right to receive payment of principal, premium, if any, or interest or Additional Amounts when due, no Holder may pursue any remedy with respect to this Indenture or the Notes unless:

(a) the Holder has previously given the Trustee written notice of a continuing Event of Default;

(b) the Holders of at least 30% in aggregate principal amount of the then outstanding Notes shall have made a written request to the Trustee to pursue the remedy;

(c) such Holder or Holders offer the Trustee, and the Trustee has received, security and/or indemnity satisfactory to the Trustee against any loss, liability or expense;

(d) the Trustee has not complied with the request within 60 days after the receipt of the request and the offer of security and/or indemnity; and

(e) Holders of a majority in aggregate principal amount of the then outstanding Notes have not given the Trustee a written direction that is inconsistent with the request within such 60 day period.

A Holder may not use this Indenture to prejudice the rights of another Holder or to obtain a preference or priority over another Holder.

6.7 Right of Holders to Receive Payment

Notwithstanding any other provision of this Indenture, the right of any Holder to receive payment of the principal of, premium, if any, Additional Amounts, if any, and interest, if any, on the Notes held by such Holder, on or after the respective due dates expressed in the Notes, or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder.

6.8 Collection Suit by Trustee

The Issuers covenant that if default is made in the payment of:

(a) any installment of interest on any Note when such interest becomes due and payable and such default continues for a period of 30 days, or

(b) the principal of (or premium, if any, on) any Note at the Maturity thereof,

the Issuers shall, upon demand of the Trustee, pay to the Trustee for the benefit of the Holders of such Notes, the whole amount then due and payable on such Notes for principal (and premium, if any), Additional Amounts, if any and interest, and interest on any overdue principal (and premium, if any) and Additional Amounts, if any and, to the extent that payment of such interest shall be legally enforceable, upon any overdue installment of interest, at the rate borne by the Notes, and, in addition thereto, such further amount as shall be sufficient to cover the amounts provided

for in Section 7.6 and such further amount as shall be sufficient to cover the costs and expenses of collection, including the properly incurred compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

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

6.9 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 compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.6) and the Holders allowed in any judicial proceedings relative to the Issuers or any Guarantor, their creditors or their property and, unless prohibited by law or applicable regulations, may vote on behalf of the Holders at their direction in any election of a trustee in bankruptcy or other Person performing similar functions, and any Custodian in any such judicial proceeding is hereby authorized by each Holder to make 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 it for the compensation, expenses, disbursements and advances of the Trustee, its agents and their counsel, and any other amounts due the Trustee and the Agents under Section 7.6.

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

6.10 Priority of Payment

Subject to the Intercreditor Agreement or any Additional Intercreditor Agreement, to the extent applicable, if the Trustee or the Notes Collateral Agent collects any money or property pursuant to this Article 6 or from the enforcement of any Security Document, it shall pay out (or in the case of the Notes Collateral Agent, it shall pay to the Trustee to pay out) the money or property in the following order:

First: to the Trustee, the Notes Collateral Agent and their agents (including the Agents) and attorneys for amounts due under Section 7.6, including payment of all compensation, expenses and liabilities incurred, and all advances made, by the Trustee, the Agents and the Notes Collateral Agent and the costs and expenses of collection;

Second: to Holders for amounts due and unpaid on the Notes for principal of, premium, if any, interest, if any, and Additional Amounts, if any, ratably, without preference or priority of any kind, according to the amounts due and payable on the Notes for principal, premium, if any, interest, if any, and Additional Amounts, if any, respectively; and

Third: to the Issuers, any Guarantor or any other obligors of the Notes, as their interests may appear, or as a court of competent jurisdiction may direct.

The Trustee may fix a record date and payment date for any payment to Holders pursuant to this Section 6.10. At least 30 days before such record date, the Issuers shall mail or otherwise deliver to each Holder and the Trustee a notice that states the record date, the payment date and amount to be paid.

6.11 Undertaking for Costs

A court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in the suit of an undertaking to pay the costs of such suit, and such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.11 does not apply to a suit by the Trustee, a suit by Holders of more than 10% in aggregate principal amount of the outstanding Notes or to any suit by any Holder pursuant to Section 6.7.

6.12 Restoration of Rights and Remedies

If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, subject to any determination in such proceeding, the Issuer, the Co-Issuer, any Guarantor, the Trustee and the Holders shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee and the Holders shall continue as though no such proceeding had been instituted.

6.13 Rights and Remedies Cumulative

Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes in Section 2.7, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

6.14 Delay or Omission not Waiver

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

6.15 Record Date

The Issuers may set a record date for purposes of determining the identity of Holders entitled to vote or to consent to any action by vote or consent authorized or permitted by Sections 6.4 and 6.5. Unless this Indenture provides otherwise, such record date shall be the later of the date specified by the Issuers and 30 days prior to the first solicitation of such consent.

6.16 Waiver of Stay or Extension Laws

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

7. Trustee

7.1 Duties of Trustee

(a) If an Event of Default has occurred and is continuing of which a Trust Officer of the Trustee has actual knowledge, the Trustee shall exercise such rights and powers vested in it by this Indenture and, in the exercise of its power, use the degree of care and skill of a prudent man in the conduct of his own affairs.

(b) Except during the continuance of an Event of Default of which a Trust Officer of the Trustee has actual knowledge:

(i) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture and no others and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith on its part, the Trustee, in the exercise of its rights and duties hereunder, may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. In the case of any such certificates or opinions which by any provisions hereof are specifically required to be furnished to the Trustee, the Trustee shall examine the same to determine whether they conform to and comply with the requirements of this Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein).

(c) The Trustee shall not be relieved from liability for its own gross negligence, willful misconduct or fraud, except that:

(i) this Section 7.1(c) does not limit the effect of Section 7.1(b);

(ii) the Trustee shall not be liable for any error of judgment made in good faith by a Trust Officer unless it is proved that the Trustee was grossly negligent in ascertaining the pertinent facts; 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 pursuant to Sections 6.2 or 6.5.

(d) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Issuers or the Guarantors. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

(e) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers, if it shall have reasonable grounds to believe that repayment of such funds or adequate indemnity and/or security against such risk or liability is not reasonably assured to it.

(f) The Trustee shall not be required to take notice or be deemed to have notice or knowledge of any Default (except a Default due to nonpayment, if the Trustee is also the Paying Agent) unless a Trust Officer of such Trustee shall have received written notice or obtained actual knowledge thereof; in the absence of receipt of such notice or actual knowledge, a Trustee may conclusively assume that there is no Default.

(g) The Trustee shall have no duty to see to any recording, filing or depositing of this Indenture or any agreement referred to herein or any financing statement or continuation statement evidencing a security interest, or to see to the maintenance of any such recording or filing or depositing or to any rerecording, refiling or redepositing of any thereof.

(h) Every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to this Section 7.1.

(i) The Trustee is hereby authorized and directed to execute and deliver the Escrow Agreement.

7.2 Certain Rights of Trustee

(a) Subject to Section 7.1:

(i) the Trustee may rely, and shall be protected in acting or refraining from acting, upon any resolution, certificate, instruction, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document believed by it to be genuine and to have been signed or presented by the proper person;

(ii) before the Trustee acts or refrains from acting, it may require an Officer's Certificate or an Opinion of Counsel or both, which shall conform to Section 12.3. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such certificate or opinion. The Trustee may consult with counsel or other professional advisors and the advice of such counsel, professional advisor or any Opinion of Counsel will be full and complete authorization and protection from liability in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;

(iii) the Trustee may act through its attorneys and agents and shall not be responsible for monitoring or supervising the activities of, or acting on the advice of, such attorney or for the misconduct or negligence of any attorney or agent appointed with due care by it hereunder;

(iv) the Trustee shall be under no obligation to exercise any of its rights or powers vested in it by this Indenture or the Security Documents at the request of any Holder, unless such Holder shall have offered to the Trustee, and the Trustee has received, security and/or indemnity satisfactory to the Trustee against any loss, liability or expense;

(v) the Trustee shall not be liable for any action it takes or omits to take in good faith that it believes to be authorized or within its rights or powers conferred upon it by this Indenture or the Security Documents, *provided* that the Trustee's conduct does not constitute gross negligence or fraud;

(vi) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officer's Certificate and/or an Opinion of Counsel;

(vii) 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 Issuers personally or by agent or attorney;

(viii) the Trustee shall not under any circumstance be liable for any direct loss, punitive or special damages or any consequential loss (including, but not limited to, loss of business, goodwill, opportunity or profit of any kind) of the Issuer, the Co-Issuer, the Parent, any Guarantor or any Restricted Subsidiary, even if advised of it in advance and even if foreseeable;

(ix) in the event the Trustee receives inconsistent or conflicting requests and indemnity from two or more groups of Holders, each representing less than a majority in aggregate principal amount of the Notes then outstanding, pursuant to the provisions of this Indenture, the Trustee, in its sole discretion, may determine what action, if any, will be taken and shall not incur any liability for its failure to act until such inconsistency or conflict is, in its reasonable opinion, resolved;

(x) [reserved];

(xi) in order to comply with the laws, rules, regulations and executive orders in effect from time to time applicable to banking institutions, including those relating to the funding of terrorist activities and money laundering ("**Applicable Law**," for example, section 326 of the USA Patriot Act of the United States), the Trustee and Agents are required to obtain, verify, record and update certain information relating to individuals and entities which maintain a business relationship or open an account with the Trustee and Agents. Accordingly, each of the parties agree to provide to the Trustee and Agents, upon their request from time to time such identifying information and documentation as may be available for each party in order to enable the Trustee and Agents to comply with Applicable Law;

(xii) notwithstanding any other provision of this Indenture, the Trustee and the Paying Agent shall be entitled to make a deduction or withholding from any payment which they make under this Indenture for or on account of any present or future taxes, duties or charges if and to the extent so required by applicable law, in which event the Trustee or the Paying Agent, as applicable, shall make such payment after such withholding or deduction has been made and shall account to the relevant authorities for the amount so withheld or deducted;

(xiii) the Trustee shall (except as expressly otherwise provided herein) as regards all the trusts, powers, authorities and discretions vested in it by this Indenture or by applicable law, have absolute and uncontrolled discretion as to the exercise or non-exercise thereof and, absent any willful misconduct, gross negligence or fraud on the part of the Trustee, the Trustee shall not be responsible for any loss, damage, cost, claim or any other liability or inconvenience that may result from the exercise or non-exercise thereof;

(xiv) unless otherwise specifically provided in this Indenture, any demand, request, direction or notice of the Issuers mentioned herein shall be sufficiently evidenced if in writing and signed by an Officer of each Issuer and any resolution of the Board of Directors shall be sufficiently evidenced by a board resolution;

(xv) the Trustee shall have no duty to inquire as to the performance of the covenants of the Parent or its Restricted Subsidiaries. Delivery of reports, information and documents to the Trustee under Section 4.19 hereof shall be for informational purposes only and the Trustee's receipt of such reports, information and documents shall not constitute constructive notice of any information contained therein, including each Issuer's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officer's Certificates);

(xvi) the Trustee shall not have any obligation or duty to monitor, determine or inquire as to compliance, and shall not be responsible or liable for compliance with restrictions on transfer, exchange, redemption, purchase or repurchase, as applicable, of minimum denominations imposed under this Indenture or under applicable law or regulation with respect to any transfer, exchange, redemption, purchase or repurchase, as applicable, of any interest in any Notes;

(xvii) the Trustee is not required to give any bond or surety with respect to the performance of its duties or the exercise of its powers under this Indenture or the Notes;

(xviii) no provision of this Indenture shall require the Trustee to do anything which, in its opinion, may be illegal or contrary to applicable law or regulation;

(xix) the Trustee may assume without inquiry in the absence of actual knowledge that the Issuers and the Parent are duly complying with their obligations contained in this Indenture required to be performed and observed by them, and that no Default or Event of Default or other event which would require repayment of the Notes has occurred;

(xx) At any time that the security granted pursuant to the Security Documents has become enforceable and the Holders have given a direction to the Trustee to enforce such Collateral, the Trustee is not required to give any direction to the Notes Collateral Agent with respect thereto unless it has been indemni-

fied and/or secured in accordance with Section 7.1(e) hereof, if requested. In any event, in connection with any enforcement of such security, the Trustee is not responsible for:

(A) any failure of the Notes Collateral Agent to enforce such security within a reasonable time or at all;

(B) any failure of the Notes Collateral Agent to pay over the proceeds of enforcement of the Collateral;

(C) any failure of the Notes Collateral Agent to realize such security for the best price obtainable;

(D) monitoring the activities of the Notes Collateral Agent in relation to such enforcement;

(E) taking any enforcement action itself in relation to such security;

(F) agreeing to any proposed course of action by the Notes Collateral Agent which could result in the Trustee incurring any liability for its own account; or

(G) paying any fees, costs or expenses of the Notes Collateral Agent; and

(xxi) the permissive right of the Trustee to take the actions permitted by this Indenture and the Intercreditor Agreement shall not be construed as an obligation or duty to do so.

(b) The Trustee may request that the Issuers or the Parent deliver an Officer's Certificate setting forth the names of the individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture, which Officer's Certificate may be signed by persons authorized to sign an Officer's Certificate on behalf of the Issuer and the Co-Issuer or the Parent, including any person specified as so authorized in any such certificate previously delivered and not superseded.

(c) The Trustee may consult with legal counsel of its own choosing at the expense of the Issuers, *provided* all fees and expenses are reasonable and documented, as to any matter relating to this Indenture and any Security Documents, and the Trustee shall not incur any liability in acting in good faith in accordance with any advice from such counsel.

7.3 Individual Rights of Trustee

The Trustee, any Paying Agent, any Registrar and any of their Affiliates or any other agent of the Issuer, of the Co-Issuer or of the Trustee, in its individual or any other capacity, may become the owner or pledgee of Notes, may make loans to, accept deposits from, and perform services for the Issuers or any of their Affiliates and may otherwise deal with the Issuers with the same rights it would have if it were not Trustee, Notes Collateral Agent, Paying Agent, Registrar or such other agent.

The Trustee will be permitted to engage in other transactions; however, if it acquires any conflicting interest in its capacity as Trustee it must eliminate such conflict within 90 days or resign as Trustee.

7.4 Trustee's Disclaimer

The recitals contained herein and in the Notes, except for the Trustee's certificates of authentication, shall be taken as the statements of the Issuers, and the Trustee assumes no responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture, the Notes, the Intercreditor Agreement or any Additional Intercreditor Agreement except that the Trustee represents that it is duly authorized to execute and deliver this Indenture, authenticate the Notes and perform its obligations hereunder. The Trustee shall not be accountable for the use or application by the Issuers of Notes or the proceeds thereof. The Trustee shall not be

required to give security for the execution of the trusts or its conduct or administration hereunder. The Trustee shall not be bound to give any notice of the execution hereof and nothing herein contained shall impose any obligation on the Trustee to see or to require evidence of registration or filing (or renewals thereof) of this Indenture or any instrument ancillary or supplemental hereto. The Trustee shall not incur any liability or responsibility whatever or be in any way responsible for the consequence of any breach on the part of the Issuer, the Co-Issuer or their respective agents of any of the covenants herein contained.

7.5 Notice of Listing/Delisting

The Issuers shall promptly notify the Trustee whenever the Notes become listed on any securities exchange and of any delisting thereof.

7.6 Compensation and Indemnity

(a) The Issuers shall pay to the Trustee and each Agent from time to time such fees, expenses and compensation as shall be agreed in writing for its services hereunder. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Issuers shall reimburse the Trustee and each Agent upon request for all reasonable expenses incurred or made by it, including costs of collection, in addition to the compensation for its services. Such expenses shall include the compensation and reasonable expenses of the Trustee's and each Agent's agents and counsel.

(b) The Issuers, jointly and severally, failing which the Guarantors, jointly and severally, shall indemnify the Trustee, each Agent and each of their officers, directors, employees and agents for any and all claims, liabilities and expenses (including attorney's fees and expenses) incurred without gross negligence, willful misconduct or fraud on its part, arising out of or in connection with its duties, acceptance and performance (including the costs and expenses of defending itself against any claim, whether asserted by the Issuers, the Guarantors, any Holder or any other Person). The Trustee or any other indemnified party shall notify the Issuers promptly of any claim for which it or any other indemnified party may seek indemnity. Failure by the Trustee or such other indemnified party to so notify the Issuers shall not relieve the Issuers or the Guarantors of their obligations hereunder. The Issuers or such Guarantor, at the sole discretion of the Trustee, shall defend the claim and the Trustee or such other indemnified party shall cooperate in such defense. The Trustee or such other indemnified party may have separate counsel and the Issuers shall pay the reasonable fees and expenses of such counsel. Neither the Issuers nor any Guarantor need not pay for any settlement made without their consent, which consent may not be unreasonably withheld. The Issuers shall not reimburse any expense or indemnify against any loss, liability or expense incurred by the Trustee or such Agent through the Trustee's or such Agent's own willful misconduct, gross negligence or fraud as determined in a final non-appealable judgment by a court of competent jurisdiction.

(c) To secure the Issuers' and the Guarantors' payment obligations in this Section 7.6, the Trustee shall have a lien prior to the Notes on all money or property held or collected by the Trustee, in its capacity as Trustee, except money or property held in trust to pay principal of, premium, if any, and interest on particular Notes.

(d) When the Trustee or any Agent incurs expenses after the occurrence of a Default specified in Section 6.1(a)(ix) or (x) with respect to any Issuer, any Guarantor, or any Restricted Subsidiary, the expenses are intended to constitute expenses of administration under Bankruptcy Law and in any Insolvency or Liquidation Proceeding.

(e) The Issuers' and the Guarantors' obligations under this Section 7.6 and any claim arising hereunder shall survive the resignation or removal of any Trustee or any Agent, the satisfaction and discharge of the Issuers' obligations pursuant to Article 8 and any rejection or termination under any Bankruptcy Law or in any Insolvency or Liquidation Proceeding, and the termination of this Indenture.

7.7 Replacement of Trustee

(a) A resignation or removal of the Trustee by the Issuers or otherwise and appointment of a successor Trustee shall become effective only upon the successor Trustee's acceptance of appointment as provided in this Section 7.7.

(b) The Trustee may resign at any time by so notifying the Issuers in writing. The Holders of a majority in outstanding principal amount of the outstanding Notes or the Issuers at any time may remove the Trustee by so notifying the Trustee and, if applicable, the Issuers in writing. The Issuers shall remove the Trustee if:

(i) the Trustee fails to comply with Section 7.9;

(ii) the Trustee is adjudged bankrupt or insolvent or an order for relief is entered with respect to the Trustee under any Bankruptcy Law or any Insolvency or Liquidation Proceeding is commenced in respect of the Trustee;

(iii) a receiver or other public officer takes charge of the Trustee or its property; or

(iv) the Trustee otherwise becomes incapable of acting.

(c) If the Trustee resigns or is removed, or if a vacancy exists in the office of Trustee for any reason, the Issuers shall promptly appoint a successor Trustee *provided*, *however*, in the case of the bankruptcy of the Issuer or the Co-Issuer, the resigning Trustee shall have the right to appoint a successor trustee within 10 Business Days after giving its notice of resignation if a successor trustee has not already been appointed and has accepted such appointment. Within one year after the successor Trustee takes office, the Holders of a majority in principal amount of the outstanding Notes may appoint a successor Trustee to replace the successor Trustee appointed by the Issuers. If the successor Trustee does not deliver its written acceptance required by Section 7.7(d) within 30 days after the retiring Trustee resigns or is removed, the retiring Trustee, the Issuers or the Holders of a majority in principal amount of the outstanding Notes may, at the expense of the Issuer, petition any court of competent jurisdiction for the appointment of a successor Trustee.

(d) A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Issuers. Thereupon 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. The successor Trustee shall mail a notice of its succession to the Holders. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee.

(e) If a successor Trustee does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee, the Issuers or the Holders of at least 25% in outstanding principal amount of the Notes may petition any court of competent jurisdiction for the appointment of a successor Trustee at the expense of the Issuer.

(f) If the Trustee fails to comply with Section 7.9, any Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(g) Notwithstanding the replacement of the Trustee pursuant to this Section 7.7, the Issuers' and the Guarantors' obligations under Section 7.6 shall continue for the benefit of the retiring Trustee.

7.8 Successor Trustee by Merger

Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder; *provided* such corporation shall be otherwise qualified and eligible under this Article 7, without the execution or filing of any document or any further act on the part of any of the parties hereto. In

case any Notes shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Notes so authenticated with the same effect as if such successor Trustee had itself authenticated such Notes. In case at that time any of the Notes shall not have been authenticated, any successor Trustee may authenticate such Notes either in the name of any predecessor hereunder or in the name of the successor Trustee. In all such cases such certificates shall have the full force and effect which this Indenture provides for the certificate of authentication of the Trustee shall have; *provided*, *however*, that the right to adopt the certificate of authentication of any predecessor Trustee or to authenticate Notes in the name of any predecessor Trustee shall apply only to its successor or successors by merger, conversion or consolidation.

7.9 Eligibility; Disqualification

There shall at all times be a Trustee hereunder that is a corporation organized or doing business under the laws of the United States of America or any state thereof or the District of Columbia that is authorized under such laws to exercise corporate trustee power, that is subject to supervision or examination by the relevant authorities in such jurisdiction and that is a corporation which is generally recognized as a corporation which customarily performs such corporate trustee roles and provides such corporate trustee services in transaction similar in nature to the offering of the Notes. No obligor under the Notes or Person directly controlling, controlled by, or under common control with such obligor shall serve as trustee under the Notes.

7.10 Appointment of Co-Trustee

(a) It is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction denying or restricting the right of banking corporations or associations to transact business as trustee in such jurisdiction. It is recognized that in case of litigation under this Indenture, and in particular in case of the enforcement thereof on default, or in the case the Trustee deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein granted to the Trustee or hold title to the properties, in trust, as herein granted or take any action which may be desirable or necessary in connection therewith, it may be necessary that the Trustee appoint an individual or institution as a separate or co-trustee. The following provisions of this Section 7.10 are adopted to these ends.

(b) In the event that the Trustee appoints an additional individual or institution as a separate or co-trustee, each and every remedy, power, right, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Indenture to be exercised by or vested in or conveyed to the Trustee with respect thereto shall be exercisable by and vest in such separate or co-trustee but only to the extent necessary to enable such separate or co-trustee to exercise such powers, rights and remedies, and only to the extent that the Trustee by the laws of any jurisdiction is incapable of exercising such powers, rights and remedies, and every covenant and obligation necessary to the exercise thereof by such separate or co-trustee shall run to and be enforceable by either of them.

(c) Should any instrument in writing from the Issuers be required by the separate or co-trustee so appointed by the Trustee for more fully and certainly vesting in and confirming to him or it such properties, rights, powers, trusts, duties and obligations, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuers; *provided*, *however*, that if an Event of Default shall have occurred and be continuing, if each Issuer does not execute any such instrument within 15 days after request therefor, the Trustee shall be empowered as an attorney-in-fact for such Issuer to execute any such instrument in such Issuer's name and stead. In case any separate or co-trustee or a successor to either shall die, become incapable or acting, resign or be removed, all the estates, properties, rights, powers, trusts, duties and obligations of such separate or co-trustee, so far as permitted by law, shall vest in and be exercised by the Trustee until the appointment of a new trustee or successor to such separate or co-trustee.

(d) Each separate trustee and co-trustee shall, to the extent permitted by law, be appointed and act subject to the following provisions and conditions:

(i) all rights and powers, conferred or imposed upon the Trustee shall be conferred or imposed upon and may be exercised or performed by such separate trustee or co-trustee; and

(ii) no trustee hereunder shall be personally liable by reason of any act or omission of any other trustee hereunder.

(e) Any notice, request or other writing given to the Trustee shall be deemed to have been given to each of the then separate trustees and co-trustees, as effectively as if given to each of them. Every instrument appointing any separate trustee or co-trustee shall refer to this Indenture and the conditions of this Article 7.

(f) Any separate trustee or co-trustee may at any time appoint the Trustee as its agent or attorney-in-fact with full power and authority, to the extent not prohibited by law, to do any lawful act under or in respect of this Indenture on its behalf and in its name. If any separate trustee or co-trustee shall become incapable of acting, resign or be removed, all of its estates, properties, rights, remedies and trusts shall vest in and be exercised by the Trustee, to the extent permitted by law, without the appointment of a new or successor Trustee.

7.11 Rights of Other Agents

The rights, privileges, protections, immunities and benefits given to the Trustee in this Indenture, including, without limitation, its right to be indemnified and/or secured, are extended to, and shall be enforceable by the Paying Agent(s) (other than the Issuer, the Co-Issuer or any Affiliate of the Issuers acting as Paying Agent), the Transfer Agent(s), any Authenticating Agent, the Notes Collateral Agent and the Registrar as if the Paying Agents(s), the Transfer Agent(s), the Authenticating Agent, the Notes Collateral Agent and the Registrar were named as the Trustee herein.

7.12 Force Majeure

Neither the Trustee nor any Agent shall incur any liability for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Trustee or such Agent (including, but not limited to, any act or provision of any present or future law or regulation or governmental authority, any act of God or war, civil unrest, local or national disturbance or disaster, any act of terrorism, or the unavailability of the Federal Reserve Bank wire or facsimile or other wire or communication facility) and, for the avoidance of doubt, *provided* that the Issuers have complied with Section 4.1 hereof, neither the Issuer, the Co-Issuer nor any Guarantor shall incur any liability for any such failure by the Trustee or any Agent.

7.13 Resignation of Agents

(a) Any Agent may resign its appointment hereunder at any time without the need to give any reason and without being responsible for any costs associated therewith by giving notice to the Issuers and the Trustee (and in the case of resignation of the Paying Agent the Paying Agent giving 30 days' written notice) (waivable by the Issuers and the Trustee), *provided* that in the case of resignation of the Paying Agent no such resignation shall take effect until a new Paying Agent shall have been appointed by the Issuers to exercise the powers and undertake the duties hereby conferred and imposed upon the Paying Agent. Following receipt of a notice of resignation from any Agent, the Issuers shall promptly give notice thereof to the Holders in accordance with Section 12.1. Such notice shall expire at least 30 days before or after any due date for payment in respect of the Notes.

(b) If any Agent gives notice of its resignation in accordance with this Section 7.13 and a replacement Agent is required and by the tenth day before the expiration of such notice such replacement has not been duly appointed, such Agent may itself appoint as its replacement any reputable and experienced financial institution. Immediately following such appointment, the Issuers shall give notice of such appointment to the Trustee, the remaining Agents and the Holders whereupon the Issuers, the Trustee, the remaining Agents and the replacement Agent shall acquire and become subject to the same rights and obligations between themselves as if they had entered into an agreement in the form *mutatis mutandis* of this Indenture.

(c) Upon its resignation becoming effective the Paying Agent shall forthwith transfer all moneys held by it hereunder, if any, to the successor Paying Agent or, if none, the Trustee or to the Trustee's order, but shall have no other duties or responsibilities hereunder, and shall be entitled to the payment by the Issuers of their remuneration

for the services previously rendered hereunder and to the reimbursement of all reasonable expenses (including legal fees) incurred in connection therewith.

(d) For purposes of any Dutch Pledge Agreement any resignation by the Notes Collateral Agent is not effective with respect to its rights under the Parallel Debt until all rights and obligations under the Parallel Debt have been assigned and assumed to the successor agent. The Notes Collateral Agent will reasonably cooperate in assigning its rights and obligations under the Parallel Debt to any such successor agent and will reasonably cooperate in transferring all rights and obligations under Dutch Pledge Agreement (as the case may be) to such successor agent.

7.14 Agents General Provisions

(a) The rights, powers, duties and obligations and actions of each Agent under this Indenture are several and not joint or joint and several.

(b) The Issuers and the Agents acknowledge and agree that in the event of a Default or Event of Default, the Trustee may, by notice in writing to the Issuers and the Agents, require that the Agents act as agents of, and take instructions exclusively from, the Trustee. Until they have received such written notice from the Trustee, the Agents shall act solely as agents of the Issuers and need have no concern for the interests of the Holders. In the case of an Event of Default under Section 6.01(a)(ix) or (x), the Agents shall automatically act as agents of the Trustee, without the need for notice or further action on the part of the Trustee or Holders.

(c) In the event that instructions given to any Agent are not reasonably clear, then such Agent shall be entitled to seek clarification from the Issuers or other party entitled to give the Agents instructions under this Indenture. If an Agent has sought clarification in accordance with this Section 7.14(c), then such Agent shall be entitled to take no action until such clarification is provided, and shall not incur any liability for not taking any action pending receipt of such clarification.

(d) The roles, duties and functions of the Agents are of a mechanical nature and each Agent shall only perform those acts and duties as specifically set out in this Indenture and no other acts, covenants, obligations or duties shall be implied or read into this Indenture against any of the Agents.

(e) The Issuers shall provide the Agents with a certified list of authorized signatories.

(f) Any obligation the Agents may have to publish a notice to Holders of Global Notes on behalf of the Issuers will have been met upon delivery of the notice to DTC, Euroclear and/or Clearstream, as applicable.

(g) No Agent shall be under any duty or obligation towards, or have any relationship of agency for or with, any person other than the Issuers. No Agent shall have any relationship of trust for any person.

(h) The Agents shall have no obligation to act or take any action if they believe they will incur costs for which they will not be reimbursed.

(i) No Agent shall be required to make any payment under this Indenture unless and until it has received the full amount to be paid in accordance with the terms of this Indenture. To the extent that an Agent has made a payment for which it did not receive the full amount, the Issuers will reimburse the Agent the full amount of any shortfall.

8. Defeasance, Satisfaction and Discharge

8.1 Issuers' Option to Effect Legal Defeasance or Covenant Defeasance

The Issuers may, at their option by a resolution of such Issuer's Board of Directors, at any time, with respect to the Notes, elect to have either Section 8.2 or 8.3 be applied to all outstanding Notes upon compliance with the conditions set forth below in this Article 8.

8.2 Legal Defeasance and Discharge

Upon the Issuers' exercise under Section 8.1 of the option applicable under this Section 8.2, the Issuers and each of the Guarantors will, subject to the satisfaction of the conditions set forth in Section 8.4 hereof, be deemed to have been discharged from their obligations with respect to all outstanding Notes (including the Note Guarantees) and have Liens on the Collateral securing the Notes released on the date the conditions set forth below are satisfied ("**Legal Defeasance**"). For this purpose, Legal Defeasance means that the Issuers and the Guarantors will be deemed to have paid and discharged the entire Indebtedness represented by the outstanding Notes (including the Note Guarantees), which will thereafter be deemed to be "outstanding" only for the purposes of Section 8.8 hereof and the other Sections of this Indenture referred to in Clauses (a) and (b) below, to have Liens on the Collateral securing the Notes released and to have satisfied all their other obligations under such Notes, the Note Guarantees and this Indenture (and the Trustee, on demand of and at the expense of the Issuers, shall execute such instruments provided to it by the Issuers acknowledging the same), except for the following provisions which will survive until otherwise terminated or discharged hereunder:

(a) the rights of holders of outstanding Notes to receive payments in respect of the principal of, or interest (including Additional Amounts) or premium, if any, on, such Notes when such payments are due from the trust referred to below;

(b) the Issuers' obligations with respect to the Notes concerning issuing temporary Notes, registration of Notes, mutilated, destroyed, lost or stolen Notes and the maintenance of an office or agency for payment and money for security payments held in trust;

(c) the rights, powers, trusts, duties and immunities of the Trustee, and the Issuers' and the Guarantors' obligations in connection therewith; and

(d) this Article 8.

8.3 Covenant Defeasance

Upon the Issuers' exercise under Section 8.1 of the option applicable to this Section 8.3, the Issuers and the Guarantors will, subject to the satisfaction of the conditions set forth in Section 8.4 hereof, be released from each of their obligations under any covenant contained in Sections 4.6 through 4.11, Sections 4.13 through 4.17, Sections 4.20 through 4.23, Section 4.31 and Sections 5.1(a)(iv) and 5.1(b)(iv) and have Liens on the Collateral securing the Notes released ("**Covenant Defeasance**") and the Notes will thereafter be deemed not "outstanding" for the purposes of any direction, waiver, consent or declaration or act of Holders (and the consequences of any thereof) in connection with such covenants, but will continue to be deemed "outstanding" for all other purposes hereunder (it being understood that such Notes will not be deemed outstanding for accounting purposes).

For this purpose, Covenant Defeasance means that, with respect to the outstanding Notes and Note Guarantees, the Issuers and the Guarantors may omit to comply with and will have no liability in respect of any term, condition or limitation set forth in any such covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any other document and such omission to comply will not constitute a Default or an Event of Default under Section 6.1 hereof, but, except as specified above, the remainder of this Indenture and such Notes and Note Guarantees will be unaffected thereby. In addition, upon the Issuers' exercise of this Section 8.3, subject to the satisfaction of the conditions set forth in Section 8.4 hereof, Section 6.1(a)(iii), (iv), (v), (vi), (vii) and (viii) hereof, and other than with respect to the Issuers, Section 6.1(a)(ix) and 6.1(a)(x) hereof will not constitute Events of Default.

8.4 Conditions to Defeasance

In order to exercise either Legal Defeasance or Covenant Defeasance under Sections 8.1, 8.2 and 8.3 hereof:

(a) the Issuers must irrevocably deposit with the Trustee (or its designee (as Agent)), in trust, for the benefit of the Holders, cash in U.S. dollars, non-callable U.S. Government Obligations, or a combination of cash in U.S. dollars and non-callable U.S. Government Obligations, in amounts as will be sufficient, in the case of non-callable U.S. Government Obligations only in the opinion of an internationally recognized investment bank, appraisal firm or firm of independent public accountants, to pay the principal of, or interest (including Additional Amounts) and premium, if any, on, the outstanding Notes on the stated date for payment thereof or on the applicable redemption date, as the case may be, and the Issuers must specify whether the Notes are being defeased to such stated date for payment or to a particular redemption date;

(b) in the case of Legal Defeasance, the Issuers must deliver to the Trustee an opinion of independent United States counsel confirming that (a) the Issuers have received from, or there has been published by, the U.S. Internal Revenue Service a ruling or (b) since the Issue Date, there has been a change in the applicable U.S. federal income tax law, in either case to the effect that, and based thereon such Opinion of Counsel will confirm that, the holders of the outstanding Notes will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such Legal Defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred;

(c) in the case of Covenant Defeasance, the Issuers must deliver to the Trustee an opinion of independent United States counsel confirming that the holders of the outstanding Notes will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such Covenant Defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred;

(d) in the case of Legal Defeasance or Covenant Defeasance, the Issuer or the Co-Issuer must deliver to the Trustee either (i) an opinion of independent counsel in Canada to the effect that, based upon Canadian law then in effect, the holders and beneficial owners of the outstanding Notes will not recognize income, gain or loss for Canadian federal, provincial or territorial or other Canadian income tax purposes, as a result of Legal Defeasance or Covenant Defeasance, as the case may be, and will be subject to Canadian income taxes on the same amounts and in the same manner and at the same times as would have been the case if such Legal Defeasance or Covenant Defeasance, as the case may be, had not occurred or (ii) a ruling directed to the Trustee received from tax authorities of Canada to the same effect as the opinion of counsel described in clause (i) above;

(e) such Legal Defeasance or Covenant Defeasance shall not result in a breach or violation of, or constitute a default under, any material agreement or instrument (other than this Indenture or any other agreements being defeased, discharged or replaced) to which the Issuer, the Co-Issuer or any of their Subsidiaries is a party or by which the Issuer, the Co-Issuer or any of their Subsidiaries is bound;

(f) the Issuers must deliver to the Trustee an Officer's Certificate stating that the deposit was not made by the Issuers with the intent of preferring the Holders over the other creditors of the Issuers with the intent of defeating, hindering, delaying or defrauding any creditors of the Issuers or others; and

(g) the Issuers must deliver to the Trustee an Officer's Certificate and an Opinion of Counsel, subject to customary assumptions and qualifications, each stating that all conditions precedent relating to the Legal Defeasance or the Covenant Defeasance have been complied with.

8.5 Satisfaction and Discharge of Indenture

(a) This Indenture and the Note Guarantees shall be discharged and shall cease to be of further effect as to all Notes issued thereunder (except for certain surviving rights of the Trustee and the Issuers' obligations with respect thereto), when:

(i) either:

(A) all Notes that have been authenticated, except lost, stolen or destroyed Notes that have been replaced or paid and Notes for whose payment money has been deposited in trust and thereafter repaid to the Issuers, have been delivered to the Trustee for cancellation; or

(B) all Notes that have not been delivered to the Trustee for cancellation (i) have become due and payable by reason of the mailing of a notice of redemption or otherwise, (ii) will become due and payable within one year or (iii) are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Issuers, and in each case the Issuer, the Co-Issuer or any Guarantor has irrevocably deposited or caused to be deposited with the Trustee (or its designee (as Agent)) as trust funds in trust solely for the benefit of the holders, cash in U.S. dollars, non-callable U.S. Government Obligations, or a combination of cash in U.S. dollars and non-callable U.S. Government Obligations, in amounts as will be sufficient, in the case of non-callable U.S. Government Obligations only in the opinion of a nationally recognized investment bank, appraisal firm or firm of independent public accountants without consideration of any reinvestment of interest, to pay and discharge the entire Indebtedness on the Notes not delivered to the Trustee for cancellation for principal, premium, Additional Amounts, if any, and accrued interest to the date of maturity or redemption; *provided* that, upon any redemption that requires the payment of a premium, the amount deposited shall be sufficient to the extent that an amount is deposited with the Trustee equal to the premium calculated as of the date of the notice of redemption, with any deficit on the date of redemption only required to be deposited with the Trustee on or prior to the date of redemption (it being understood that any satisfaction and discharge shall be subject to the condition subsequent that such deficit is in fact paid);

(ii) in the case of a discharge under Section 8.5(a)(i)(B) above, no Default or Event of Default shall have occurred and be continuing on the date of the deposit (other than a Default or Event of Default resulting from the borrowing of funds to be applied to such deposit and the grant of any Lien securing such borrowing) and the deposit will not result in a breach or violation of, or constitute a default under, any other instrument to which the Issuer, the Co-Issuer or any Guarantor is a party or by which the Issuer, the Co-Issuer or any Guarantor is bound;

(iii) the Issuer, the Co-Issuer or any Guarantor shall have paid or caused to be paid all sums payable by it under this Indenture; and

(iv) the Issuers shall have delivered irrevocable instructions to the Trustee (or its designee (as Agent)) under this Indenture to apply the deposited money toward the payment of the Notes at maturity or on the redemption date, as the case may be.

(b) In addition, the Issuers shall deliver an Officer's Certificate and an Opinion of Counsel to the Trustee stating that all conditions precedent to satisfaction and discharge have been satisfied; *provided* that any such counsel may rely on any Officer's Certificate as to matters of fact (including as to compliance with Section 8.5(a)(i) through (iv)).

8.6 Survival of Certain Obligations

Notwithstanding Sections 8.1, 8.2 and 8.3, any obligations of the Issuers and the Guarantors in Sections 2.2 through 2.14, 6.7, 7.6, 7.7, and 8.7 through 8.9 shall survive until the Notes have been paid in full. Thereafter, any

obligations of the Issuers and the Guarantors in Section 7.6, 8.7 and 8.8 shall survive such satisfaction and discharge. Nothing contained in this Article 8 shall abrogate any of the obligations or duties of the Trustee under this Indenture.

8.7 Acknowledgment of Discharge by Trustee

Subject to Section 8.9, after the conditions of Sections 8.2 or 8.3 have been satisfied, including satisfaction of the conditions and requirements of Sections 8.4 and 8.5, where applicable, the Trustee upon written request shall acknowledge in writing the discharge of all of the Issuers' obligations under this Indenture except for those surviving obligations specified in this Article 8.

8.8 Application of Trust Money

Subject to Section 8.9, the Trustee shall hold in trust cash in U.S. dollars or U.S. Government Obligations deposited with it pursuant to this Article 8. It shall apply the deposited cash or U.S. Government Obligations through the Paying Agent and in accordance with this Indenture to the payment of principal of, premium, if any, interest, and Additional Amounts, if any, on the Notes; but such money need not be segregated from other funds except to the extent required by law.

8.9 Repayment to Issuer

Subject to Sections 7.6 and 8.1 through 8.4, the Trustee and the Paying Agent shall promptly pay to the Issuers upon request set forth in an Officer's Certificate any excess money held by them at any time and thereupon shall be relieved from all liability with respect to such money. The Trustee and the Paying Agent shall pay to the Issuers upon written request any money held by them for the payment of principal, premium, if any, interest or Additional Amounts, if any, that remains unclaimed for two years.

8.10 Indemnity for Government Securities

The Issuers shall pay and shall indemnify the Trustee against any tax, fee or other charge imposed on or assessed against deposited U.S. Government Obligations or the principal, premium, if any, interest, if any, and Additional Amounts, if any, received on such U.S. Government Obligations.

8.11 Reinstatement

If the Trustee or Paying Agent is unable to apply cash in U.S. dollars or U.S. Government Obligations in accordance with this Article 8 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, the Issuers and the Guarantors' obligations under this Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to this Article 8 until such time as the Trustee or any such Paying Agent is permitted to apply all such cash or U.S. Government Obligations in accordance with this Article 8; *provided*, *however*, that, if the Issuers have made any payment of principal of, premium, if any, interest, if any, and Additional Amounts, if any, on any Notes because of the reinstatement of its obligations, the Issuers shall be subrogated to the rights of the Holders of such Notes to receive such payment from the cash in U.S. dollars or U.S. Government Obligations held by the Trustee or Paying Agent.

9. Amendment, Supplement and Waiver

9.1 Without Consent of Holders

Notwithstanding Section 9.2 of this Indenture, without the consent of any Holder, the Issuers, the Guarantors, the Trustee and the Notes Collateral Agent (as applicable and to the extent each is a party to the relevant document) subject to Section 9.7 hereof, may amend or supplement this Indenture, the Notes, the Note Guarantees, the Security Documents, the Intercreditor Agreement and any Additional Intercreditor Agreement:

(a) to cure any ambiguity, defect or inconsistency;

(b) to provide for uncertificated Notes in addition to or in place of certificated Notes;

(c) to provide for the assumption of the Issuer's, the Co-Issuer's or a Guarantor's obligations to Holders of Notes and Note Guarantees in the case of a merger, amalgamation or consolidation or sale of all or substantially all of the Issuer's, the Co-Issuer's or such Guarantor's assets, as applicable;

(d) to make any change that would provide any additional rights or benefits to the Holders or that does not adversely affect the legal rights under this Indenture of any such holder in any material respect;

(e) to conform the text of this Indenture, the Notes, the Note Guarantees or the Security Documents, the Intercreditor Agreement or any Additional Intercreditor Agreement to any provision of the "Description of Notes" section of the Offering Circular to the extent that such provision in that "Description of Notes" was intended to be a verbatim recitation of a provision of this Indenture, the Note Guarantees, the Notes, the Security Documents, the Intercreditor Agreement or any Additional Intercreditor Agreement;

(f) to enter into additional or supplemental Security Documents or to add additional parties or collateral to the Intercreditor Agreement, any Additional Intercreditor Agreement or any Security Document to the extent permitted thereunder and under this Indenture;

(g) to the extent necessary or desirable to provide for the issuance of Additional Notes in accordance with the limitations set forth in this Indenture as of the Issue Date;

(h) to release any Note Guarantee or any Collateral in accordance with the terms of this Indenture, the Intercreditor Agreement, any Additional Intercreditor Agreement or any Security Document, as applicable;

(i) to allow any Guarantor to execute a supplemental indenture and/or a Note Guarantee with respect to the Notes or release Note Guarantees pursuant to the terms of this Indenture;

(j) to the extent necessary or desirable to secure the Notes or provide for Guarantees of Additional Notes;

(k) to evidence and provide for the acceptance and appointment under this Indenture of a successor trustee;

(l) to comply with the rules of any applicable securities depository; or

(m) to make any amendment to the provisions of this Indenture relating to the transfer and legending of the Notes; *provided, however*, that (a) compliance with this Indenture as so amended would not result in the Notes being transferred in violation of the Securities Act or any other applicable securities law and (b) such amendment does not materially and adversely affect the rights of holders to transfer the Notes.

9.2 With Consents of Holders

(a) Except as provided in Section 9.1 hereof and in Section 9.2(b), and subject to Section 9.7 hereof, this Indenture, the Notes, any Note Guarantees, the Security Documents, the Intercreditor Agreement and any Additional Intercreditor Agreement may be amended or supplemented with the consent of the Holders of at least a majority in aggregate principal amount of the Notes then outstanding (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes), and any existing Default or Event of Default or compliance with any provision of this Indenture, the Notes, the Note Guarantees, the Security Docu-

ments, the Intercreditor Agreement and any Additional Intercreditor Agreement may be waived with the consent of the Holders of a majority in aggregate principal amount of the then outstanding Notes (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes).

(b) Unless consented to by holders of each affected Notes (or, in the case of Clauses (viii) and (ix) below, 75%) of the aggregate principal amount of the then outstanding Notes (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes), an amendment, supplement or waiver may not (with respect to any Notes held by a non-consenting holder):

(i) reduce the principal amount of Notes whose holders must consent to an amendment, supplement or waiver;

(ii) (A) reduce the principal of or change the fixed maturity of any Note or (B) reduce the purchase price payable upon the redemption of any Notes or (C) change the time (other than notice periods) at which any Notes may be redeemed, in the case of each of Clauses (B) and (C) as described under Sections 3.8 and 3.9;

(iii) reduce the rate of or change the time for payment of interest, including default interest, on any Note;

(iv) waive a Default or Event of Default in the payment of principal of, or interest, Additional Amounts or premium, if any, on, the Notes (except a rescission of acceleration of the Notes by the holders of at least a majority in aggregate principal amount of the then outstanding Notes and a waiver of the payment default that resulted from such acceleration);

(v) make any Note payable in money other than that stated in the Notes;

(vi) make any change in the provisions of this Indenture relating to waivers of past Defaults or the rights of holders of Notes to receive payments of principal of, or interest, Additional Amounts or premium, if any, on, the Notes (other than as permitted in Section 9.2(b)(vii));

(vii) waive a redemption payment with respect to any Note (other than a payment required by Section 4.9, 4.11 or 4.31);

(viii) modify or release any of the Note Guarantees in any manner adverse to the Holders, other than in accordance with the terms of this Indenture and any relevant intercreditor agreement (or any additional intercreditor agreement or priority agreement entered into in accordance with the terms of this Indenture);

(ix) release all or substantially all the security interests granted to the Notes Collateral Agent for the benefit of the Trustee in the Collateral other than in accordance with the terms of the Security Documents, the Intercreditor Agreement and any Additional Intercreditor Agreement and/or this Indenture;

(x) impair the right of any Holder to institute suit for the enforcement of any payment on or with respect to such holder's Notes or any Note Guarantee in respect thereof;

(xi) make any change to the ranking of the Notes or Note Guarantees, in each case in a manner that adversely affects the rights of the Holders; or

(xii) make any change in the preceding amendment, supplement and waiver provisions.

The consent of the Holders is not necessary hereunder to approve the particular form of any proposed amendment. It is sufficient if such consent approves the substance of the proposed amendment.

9.3 Effect of Supplemental Indentures

Upon the execution of any supplemental indenture under this Article 9, this Indenture shall be deemed modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

9.4 Notation on or Exchange of Notes

If an amendment, modification or supplement changes the terms of a Note, the Issuers or Trustee may require the Holder to deliver it to the Trustee. The Trustee may place an appropriate notation on such Note and on any Note subsequently authenticated regarding the changed terms and return it to the Holder. Alternatively, if the Issuers so determine, the Issuers in exchange for the Note shall issue and the Trustee shall authenticate a new Note that reflects the changed terms. Failure to make the appropriate notation or to issue a new Note shall not affect the validity of such amendment, modification or supplement.

9.5 Revocation and Effect of Consents

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 or portion of a Note that evidences the same debt as the consenting Holder's Note, even if notation of the consent is not made on any Note. However, any such Holder or subsequent Holder may revoke the consent as to its Note if the Trustee receives written notice of revocation before the date the amendment, supplement or waiver becomes effective. An amendment, supplement or waiver becomes effective in accordance with its terms and thereafter binds every Holder.

9.6 Notice of Amendment or Waiver

Promptly after the execution by the Issuers and the Trustee of any supplemental indenture or waiver pursuant to Section 9.1, the Issuers shall give notice thereof to the Holders of each outstanding Note affected, in the manner provided for in Section 12.1(b), setting forth in general terms the substance of such supplemental indenture or waiver. The failure to give such notice to all Holders, or any defect therein, shall not impair or affect the validity of an such supplemental indenture or waiver.

9.7 Trustee to Sign Amendments, Etc.

The Trustee will sign any amended or supplemental indenture or Additional Intercreditor Agreement or deed or amendment to an Additional Intercreditor Agreement authorized pursuant to this Article 9 if the amendment or supplement or Additional Intercreditor Agreement or deed or amendment to an Additional Intercreditor Agreement does not adversely affect the rights, duties, liabilities or immunities of the Trustee. The Issuers may not sign an amended or supplemental indenture or Additional Intercreditor Agreement or deed or amendment to an Additional Intercreditor Agreement until the Board of Directors of each of the Issuers approves it. In executing any amended or supplemental indenture or Additional Intercreditor Agreement or deed or amendment to an Additional Intercreditor Agreement, the Trustee will be entitled to receive and (subject to Section 7.1 hereof) will be fully protected in relying upon, in addition to the documents required by Section 12.2 hereof, an Officer's Certificate and an Opinion of Counsel stating that the execution of such amended or supplemental indenture or Additional Intercreditor Agreement or deed or amendment to an Additional Intercreditor Agreement is authorized or permitted by this Indenture.

9.8 Additional Intercreditor Agreements

(a) At the written request of the Parent accompanied by the documents required by Section 12.2, in connection with the incurrence by the Parent or any of its Restricted Subsidiaries of any Indebtedness that is permitted to be secured by Liens on the Collateral on a pari passu basis (but without regard to control of remedies) with the Liens on the Collateral securing the Notes Obligations (and not secured by Liens on any other assets of Obligors) pursuant to the definition of "Permitted Collateral Liens" and to the extent such Indebtedness is permitted to be incurred, secured and guaranteed on such basis by this Indenture, the Issuers, the relevant Guarantors, the Trustee and the Notes Collateral Agent shall enter into with the holders of such Indebtedness (or their duly authorized represent-

atives) an Additional Intercreditor Agreement; *provided*, that such Additional Intercreditor Agreement will not impose any personal obligations on the Trustee or the Notes Collateral Agent or adversely affect the personal rights, duties, liabilities or immunities of the Trustee and the Notes Collateral Agent under this Indenture or the Intercreditor Agreement. For the avoidance of doubt, subject to the foregoing and Section 9.8(b), any such Additional Intercreditor Agreement may provide for any *pari passu* or junior security interests in respect of any such Indebtedness (to the extent such Indebtedness was permitted to be incurred under this Indenture); *provided* that such Additional Intercreditor Agreement shall not provide for any additional standstill periods as it relates to the enforcement of the Collateral by the Notes Collateral Agent on behalf of the Trustee and the Holders of the Notes. If more than one such intercreditor agreement is outstanding at any one time, the collective terms of such intercreditor agreements must not conflict and must be no more disadvantageous to the Holders of the Notes than if all such Indebtedness was a party to one such agreement. By their acceptance of the Notes, the Holders are deemed to authorize and direct the Trustee and Notes Collateral Agent to enter into such Additional Intercreditor Agreement requested by the Parent.

(b) At the direction of the Parent and without the consent of the Holders of the Notes, the Trustee and the Notes Collateral Agent shall from time to time enter into one or more amendments and/or restatements to the Intercreditor Agreement or any Additional Intercreditor Agreement to:

(i) cure any ambiguity, omission, defect or inconsistency therein;

(ii) add Subsidiary Guarantors or other parties (such as representatives of new issuances of Indebtedness) thereto;

(iii) further secure the Notes (including Additional Notes);

(iv) make provision for equal and ratable grants of Liens on the Collateral to secure Additional Notes or to implement any Permitted Collateral Liens to the extent permitted by this Indenture;

(v) subject to Section 9.8(a), to provide for additional Indebtedness (including with respect to any Intercreditor Agreement or Additional Intercreditor Agreement, the addition of provisions relating to new Indebtedness ranking junior in right of payment to the Notes) to the extent permitted under this Indenture) or any other obligations that are permitted by the terms of this Indenture to be incurred and secured by a Lien on the Collateral on a senior, *pari passu* or junior basis with the Liens securing the Notes or the Note Guarantees;

(vi) add Restricted Subsidiaries to the Intercreditor Agreement or an Additional Intercreditor Agreement;

(vii) amend the Intercreditor Agreement or any Additional Intercreditor Agreement in accordance with the terms thereof;

(viii) increase the amount of the Credit Facilities covered by any such agreement, the incurrence of which is not prohibited by this Indenture; or

(ix) make any other change thereto that does not adversely affect the rights of the Holders of the Notes in any material respect.

(c) The Parent will not otherwise direct the Trustee or the Notes Collateral Agent to enter into any amendment and/or restatement to the Intercreditor Agreement or, if applicable, any Additional Intercreditor Agreement, without the consent of the Holders of a majority in aggregate principal amount of the Notes then outstanding, except as otherwise permitted in this Article 9, and the Parent or Issuer may only direct the Trustee and the Notes Collateral Agent to enter into any amendment to the extent such amendment does not impose any personal obligations on the Trustee or Notes Collateral Agent.

10. Note Guarantees

10.1 Note Guarantees

(a) Each of the Guarantors hereby fully and unconditionally guarantees, on a joint and several basis, to each Holder and to the Trustee and its successors and assigns on behalf of each Holder, the full payment of principal of, premium, if any, interest, if any, and Additional Amounts, if any on, and all other monetary obligations of the Issuers under this Indenture and the Notes (including obligations to the Trustee and the Agents hereunder and the obligation to pay Additional Amounts, if any) with respect to each Note authenticated and delivered by the Trustee or its agent pursuant to and in accordance with this Indenture, in accordance with the terms of this Indenture (all the foregoing being hereinafter collectively called the "**Note Obligations**"). Notwithstanding the foregoing, if a "secured creditor" (as that term is defined under the BIA) is determined by a court of competent jurisdiction not to include a Person to whom obligations are owed on a joint or joint and several basis, then the obligations of each Guarantor incorporated under the laws of Canada or any province therein, to the extent such obligations are secured, shall be several obligations and not joint or joint and several obligations. The Guarantors further agree that the Note Obligations may be extended or renewed, in whole or in part, without notice or further assent from the Guarantors and that the Guarantors will remain bound under this Article 10 notwithstanding any extension or renewal of any Note Obligation. All payments under such Note Guarantee will be made in U.S. dollars.

(b) Each of the Guarantors hereby agrees that its obligations hereunder are unconditional and shall be as if it were principal debtor and not merely surety, unaffected by, and irrespective of, any validity, irregularity or unenforceability of any Note or this Indenture, any failure to enforce the provisions of any Note or this Indenture, any waiver, modification or indulgence granted to the Issuers with respect thereto by the Holders, the Trustee or the Notes Collateral Agent, or any other circumstance which may otherwise constitute a legal or equitable discharge of a surety or guarantor or defense of a guarantor (except payment in full); *provided*, *however*, that, notwithstanding the foregoing, no such waiver, modification, indulgence or circumstance shall without the written consent of the relevant Guarantor increase the principal amount of a Note or the interest rate thereon or change the currency of payment with respect to any Note, or alter the Stated Maturity thereof. Each of the Guarantors hereby waives diligence, presentment, demand of payment, filing of claims with a court in the event of merger or bankruptcy of the Issuer or the Co-Issuer, any right to require that the Trustee or the Notes Collateral Agent pursue or exhaust its legal or equitable remedies against the Issuers prior to exercising its rights under the Note Guarantee (including, for the avoidance of doubt, any right which any Guarantor may have to require the seizure and sale of the assets of the Issuers to satisfy the outstanding principal of, interest on or any other amount payable under each Note prior to recourse against any Guarantor or its assets), protest or notice with respect to any Note or the Indebtedness evidenced thereby and all demands whatsoever, and covenants that the Note Guarantee will not be discharged with respect to any Note except by payment in full of the principal thereof and interest thereon or as otherwise provided in this Indenture, including Section 10.4. If at any time any payment of principal of, premium, if any, interest, if any, or Additional Amounts, if any, on such Note is rescinded or must be otherwise restored or returned upon the insolvency, bankruptcy or reorganization of the Issuers, the Guarantors' obligations hereunder with respect to such payment shall be reinstated as of the date of such rescission, restoration or returns as though such payment had become due but had not been made at such times.

(c) Each of the Guarantors also agrees to pay any and all costs and expenses (including reasonable attorneys' fees) incurred by the Trustee, the Notes Collateral Agent or any Holder in enforcing any rights under this Section 10.1.

10.2 Subrogation

(a) Each Guarantor shall be subrogated to all rights of the Holders against the Issuers in respect of any amounts paid to such Holders by each Guarantor pursuant to the provisions of its Note Guarantee.

(b) Each Guarantor agrees that it shall not be entitled to any right of subrogation in relation to the Holders in respect of any obligations guaranteed hereby until payment in full of all obligations guaranteed hereby. Each Guarantor further agrees that, as between the Guarantors, on the one hand, and the Holders, the Trustee and the Notes Collateral Agent, on the other hand, the maturity of the obligations guaranteed hereby may be accelerated as provided in Article 6 hereof for the purposes of this Note Guarantee, notwithstanding any stay, injunction or other

prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and in the event of any declaration of acceleration of such obligations as provided in Article 6, such obligations (whether or not due and payable) will forthwith become due and payable by the Guarantors for the purpose of this Note Guarantee. The Guarantors will have the right to seek contribution from any non-paying Guarantor so long as the exercise of such right does not impair the rights of the Holders under the Note Guarantee.

10.3 Subject to Intercreditor Agreement and any Additional Intercreditor Agreement

This Indenture is entered into with the benefit of and subject to the terms of the Intercreditor Agreement and any Additional Intercreditor Agreement, as applicable. The rights and benefits of the Holders are limited by and subject to the terms of the Intercreditor Agreement and any Additional Intercreditor Agreement, as applicable.

10.4 Limitation on Guarantor Liability

Each Guarantor, and by its acceptance of Notes, each Holder, hereby confirms that it is the intention of all such parties that the Note Guarantee of such Guarantor not constitute a fraudulent transfer or conveyance, for purposes of Bankruptcy Law, in any Insolvency or Liquidation Proceeding, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar national, federal, local or state law or voidable preference, transfer undervalue, financial assistance or improper corporate benefit, or violate the corporate purpose of the relevant Guarantor or any applicable maintenance of share capital or similar laws or regulations affecting the rights of creditors generally under any applicable law or regulation to the extent applicable to any Note Guarantee. To effectuate the foregoing intention, the Trustee, the Notes Collateral Agent, the Holders and the Guarantors hereby irrevocably agree that the obligations of such Guarantor will be limited to the maximum amount (as may be set forth in a supplemental indenture to the extent reasonably determined by the Issuers) that will, after giving effect to such maximum amount and all other contingent and fixed liabilities of such Guarantor that are relevant under such laws, and after giving effect to any collections from, rights to receive contribution from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under this Article 10, result in the obligations of such Guarantor under its Note Guarantee not constituting either a fraudulent transfer or conveyance or voidable preference, financial assistance or improper corporate benefit, or violating the corporate purpose of the relevant Guarantor or any applicable capital maintenance or, in each case, any similar laws or regulations affecting the rights of creditors generally under any applicable law or regulation.

10.5 Notation Not Required

Neither the Issuers nor the Guarantors shall be required to make a notation on the Notes to reflect any Note Guarantee or any release, termination or discharge thereof.

10.6 Successors and Assigns

This Article 10 shall be binding upon the Guarantors and each of their successors and assigns and shall inure to the benefit of the successors and assigns of the Trustee, the Notes Collateral Agent and the Holders and, in the event of any transfer or assignment of rights by any Holder, the Trustee or the Notes Collateral Agent, the rights and privileges conferred upon that party in this Indenture and in the Notes shall automatically extend to and be vested in such transferee or assigns, all subject to the terms and conditions of this Indenture.

10.7 No Waiver

Neither a failure nor a delay on the part of any of the Trustee, the Notes Collateral Agent or the Holders in exercising any right, power or privilege under this Article 10 shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise of any right, power or privilege. The rights, remedies and benefits of the Trustee and the Holders herein expressly specified are cumulative and are not exclusive of any other rights, remedies or benefits which either may have under this Article 10 at law, in equity, by statute or otherwise.

10.8 Modification

No modification, amendment or waiver of any provision of this Article 10, nor the consent to any departure by any Guarantor therefrom, shall in any event be effective unless the same shall be in writing and signed by the Trustee, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on any Guarantor in any case shall entitle such Guarantor to any other or further notice or demand in the same, similar or other circumstance.

10.9 Releases

(a) The Note Guarantee of a Subsidiary Guarantor shall be released:

(i) in connection with any sale or other disposition of all or substantially all of the assets of that Guarantor (including by way of merger, amalgamation or consolidation) to a Person that is not (either before or after giving effect to such transaction) the Parent or a Restricted Subsidiary of the Parent, if the sale or other disposition does not violate Section 4.9 and other applicable provisions of this Indenture;

(ii) in connection with any sale, exchange, transfer or other disposition of Capital Stock of that Guarantor (whether by direct sale or through a holding company) to a Person that is not (either before or after giving effect to such transaction) the Parent or a Restricted Subsidiary of the Parent, if the sale or other disposition does not violate Section 4.9 and other applicable provisions of this Indenture and as a result of such disposition such Guarantor no longer qualifies as a Subsidiary of the Parent;

(iii) upon designation by the Parent of such Subsidiary Guarantor as an Unrestricted Subsidiary in accordance with the applicable provisions of this Indenture;

(iv) upon repayment in full of the Notes or upon Legal Defeasance in accordance with Section 8.2 or Covenant Defeasance in accordance with Section 8.3 or upon satisfaction and discharge of this Indenture in accordance with Section 8.5;

(v) when required pursuant to the Intercreditor Agreement or any Additional Intercreditor Agreement, upon the sale of all the Capital Stock of, or all or substantially all of the assets of, that Subsidiary Guarantor or its parent entity pursuant to a security enforcement sale in compliance with the Intercreditor Agreement or any Additional Intercreditor Agreement;

(vi) upon the liquidation or dissolution of such Guarantor, *provided* that no Default or Event of Default has occurred or is continuing;

(vii) pursuant to Sections 9.1 and 9.2;

(viii) upon such Guarantor's consolidation with, amalgamation with, merger into or transfer of all or substantially all of its properties or assets to the Issuer, the Co-Issuer or another Guarantor, and as a result of, or in connection with, such transaction such Guarantor dissolving or otherwise ceasing to exist to the extent such transaction does not violate the provisions of this Indenture;

(ix) upon release of such Subsidiary Guarantor of its guarantee of the obligations under the Revolving Credit Facility except in the case of a release of guarantees in connection with the termination and/or payment in full of the Revolving Credit Facility; or

(x) with respect to Holdings, upon the Distribution.

(b) In addition, the Note Guarantee of the Parent will be automatically and unconditionally released (and thereupon will terminate and be discharged and be of no further force and effect) upon (i) repayment in full of the Notes, (ii) Legal Defeasance or Covenant Defeasance pursuant to Sections 8.2 and 8.3 respectively, (iii) a satis-

faction and discharge of this Indenture that complies with Section 8.5 and (iv) if the Parent is not the surviving entity, as a result of any transaction involving the Parent permitted under Section 5.1(b).

(c) Upon any occurrence giving rise to a release as specified above, the Trustee, at the sole cost and expense of the Parent and upon receipt of the documents required by Section 12.2, will execute any documents delivered to it and certified by a responsible officer of the Parent as being required in order to evidence or effect such release, discharge and termination in respect of such guarantee.

10.10 Additional Guarantors to Execute Supplemental Indenture

The Issuers shall cause any Restricted Subsidiary that becomes a Guarantor after the Issue Date to do so by executing a supplemental indenture in the form attached as Exhibit 4 hereto.

11. Collateral and Security

11.1 Collateral and Security Documents

On the Issue Date, the Issuers, the Escrow Agent and the Trustee shall execute and deliver the Escrow Agreement. Until the Escrow Release Date, the payment of the principal of and interest on the Notes when due, whether on an Interest Payment Date, at maturity, by acceleration, repurchase, redemption or otherwise shall be secured as provided in the Escrow Agreement. From and after the Escrow Release Date, the due and punctual payment of the principal of, and premium on, if any, interest and Additional Amounts, if any, on the Notes and any Note Guarantee when and as the same shall be due and payable, whether on an Interest Payment Date, at maturity, by acceleration, repurchase, redemption or otherwise, and interest on the overdue principal of, premium on, if any, interest and Additional Amounts (to the extent permitted by law), if any, on the Notes and any Note Guarantee and payment and performance of all other Notes Obligations and obligations of the Issuers and any Guarantor to the Holders of Notes or the Trustee under this Indenture, the Notes, any Note Guarantee and the other Notes Documents, according to the terms hereunder or thereunder, are secured as provided in the Security Documents and the Intercreditor Agreement which the Issuers and the Guarantors have entered into prior to or simultaneously with the Escrow Release Date. Each Holder, by its acceptance thereof, consents and agrees to the terms of the Security Documents, Intercreditor Agreement and any Additional Intercreditor Agreement (including, without limitation, the provisions providing for foreclosure and release of Collateral and authorizing the Notes Collateral Agent to enter into any Security Document, or enforce any Security Document, on its behalf) as the same may be in effect or may be amended from time to time in accordance with its terms and authorizes and directs the Notes Collateral Agent to enter into the Security Documents and the Intercreditor Agreement and to perform its obligations and exercise its rights thereunder in accordance therewith. The Issuers shall deliver to the Trustee copies of all documents delivered to the Notes Collateral Agent pursuant to the Security Documents, and each Issuer shall and shall cause each of its Restricted Subsidiaries to, do or cause to be done all such acts and things as may be reasonably required, or which the Notes Collateral Agent from time to time may reasonably request, to assure and confirm to the Trustee that the Notes Collateral Agent holds, for the benefit of the Holders and the Trustee, duly created, enforceable and perfected Liens as contemplated hereby and by the Security Documents and the Intercreditor Agreement. The Issuers shall, and shall cause each Guarantor to and each Guarantor shall, make all filings (including filings of continuation statements and amendments to UCC and PPSA financing statements that may be necessary to continue the effectiveness of such UCC and PPSA financing statements) and each take, and shall cause their respective Subsidiaries to take, any and all actions reasonably necessary or required by the Security Documents to create and maintain, as security for the Notes Obligations, valid and enforceable perfected Liens in and on the Collateral in favor of the Notes Collateral Agent for the benefit of itself, the Trustee and the Holders, subject to no other Liens other than Permitted Collateral Liens and with the respective rankings as set forth in the Intercreditor Agreement and any Additional Intercreditor Agreement.

11.2 Release of the Collateral

(a) The Collateral will be released from the Lien of the Notes Collateral Agent over such Collateral:

(i) other than with respect to any Liens over the Capital Stock of the Issuer, the Co-Issuer or the Parent in connection with any sale, assignment, transfer, conveyance or other disposition of such property or assets to a Person that is not (either before or after giving effect to such transaction) the Parent or any of its Restricted Subsidiaries, if the sale or other disposition does not violate this Indenture;

(ii) in order to effectuate a merger, consolidation, conveyance or transfer conducted in compliance with Section 5.1 and the applicable provisions of this Indenture; *provided* that following such merger, consolidation, conveyance or transfer, a Lien of at least equivalent ranking over the same assets or property is granted in favor of the Notes Collateral Agent (on its own behalf and on behalf of the Trustee) to the extent such assets or property continue to exist as assets or property of the Parent or a Restricted Subsidiary (or the Person formed by or surviving such transaction);

(iii) in the case of a Guarantor that is released from its Note Guarantee pursuant to the terms of this Indenture, the release of the property and assets, and Capital Stock, of such Guarantor;

(iv) if the Parent designates any of its Restricted Subsidiaries (other than the Issuer or the Co-Issuer) to be an Unrestricted Subsidiary in accordance with the applicable provisions of this Indenture, the release of the property and assets of such Restricted Subsidiary;

(v) upon repayment in full of the Notes or upon Legal Defeasance, Covenant Defeasance or satisfaction and discharge of this Indenture as provided in Sections 8.2, 8.3 and 8.5, respectively;

(vi) when required pursuant to the Intercreditor Agreement or any Additional Intercreditor Agreement, in the case of a security enforcement sale in compliance with the Intercreditor Agreement or any Additional Intercreditor Agreement, as applicable, the release of the property and assets subject to such enforcement;

(vii) upon the full and final payment and performance of all financial obligations of the Issuers and the Guarantors under this Indenture and the Notes;

(viii) in accordance with Sections 9.1 and 9.2;

(ix) with respect to any Collateral released from the Lien securing obligations under the Revolving Credit Facility except (i) in the case of a release in connection with the termination and/or payment in full of the Revolving Credit Facility or (ii) to the extent such Collateral secures any other First Lien Secured Indebtedness, Senior Obligations or Junior Debt; and

(x) upon a release of the Lien that resulted in the creation of the Lien under Section 4.7.

(b) Upon any occurrence giving rise to a release as specified in Clause (a) above, upon receipt of the documents required by Section 12.2, the Trustee (if required) or the Notes Collateral Agent, as applicable, will execute any documents reasonably requested by the Issuer, the Co-Issuer or any Guarantor certified in writing by an Officer of such person as being required in order to evidence or effect such release, discharge and termination in respect of such Lien in accordance with this Section 11.2 and in accordance with any applicable provisions of any Pari Secured Indebtedness Document, all at the cost and expense of the Parent.

11.3 Authorization of Actions to be Taken by the Trustee Under the Security Documents

Upon reasonable request of the Trustee, the Issuers and Guarantors shall execute and deliver such further instruments and do such further acts as may be reasonably necessary to carry out more effectively the purposes of this Indenture.

Subject to Sections 7.1 and 7.2 and the terms of the Security Documents and the Intercreditor Agreement, the Trustee may, but shall not be obliged, in its sole discretion and without the consent of the Holders, direct, on behalf of the holders of Notes, the Notes Collateral Agent to take all actions it deems necessary or appropriate in order to:

(a) enforce any of the terms of the Security Documents, the Intercreditor Agreement or any Additional Intercreditor Agreement; and

(b) collect and receive any and all amounts payable in respect of the Obligations of the Issuers or any Guarantor hereunder.

Subject to the provisions hereof, the Security Documents, the Intercreditor Agreement and any Additional Intercreditor Agreement, the Trustee and/or the Notes Collateral Agent shall have power to institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Collateral by any acts that may be unlawful or in violation of the Security Documents, the Intercreditor Agreement or this Indenture, and such suits and proceedings as the Trustee may deem expedient to preserve or protect its interests and the interests of the Holders in the Collateral (including power to institute and maintain suits or proceedings to restrain the enforcement of or compliance with any legislative or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid if the enforcement of, or compliance with, such enactment, rule or order would impair the security interest under the Security Documents or be prejudicial to the interests of the holders of Notes or of the Trustee and/or the Notes Collateral Agent).

11.4 Authorization of Receipt of Funds by the Trustee Under the Security Documents

The Trustee and/or the Notes Collateral Agent is authorized to receive any funds for the benefit of the holders of Notes distributed under the Security Documents or Intercreditor Agreement, and to make further distributions of such funds to the Holders according to this Indenture, the Intercreditor Agreement and any Additional Intercreditor Agreement.

11.5 Further Action

Upon the terms and subject to the conditions of this Indenture, the Intercreditor Agreement, any Additional Intercreditor Agreement and the Security Documents, the Issuers and any Guarantor shall use its reasonable efforts to take, or cause to be taken, all appropriate action, and to do or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to consummate and make effective the security over the Collateral as contemplated by the Security Documents and the Intercreditor Agreement.

11.6 Trustee Confirmation

Upon the request and cost of the Issuers, subject to receipt of certain documentation satisfactory to the Trustee (including an Officer's Certificate and Opinion of Counsel), the Trustee shall confirm to the Notes Collateral Agent that the Issuers have no further payment obligations under this Indenture upon (i) repayment in full of the Notes or upon Legal Defeasance, Covenant Defeasance or satisfaction or discharge of this Indenture as provided in Sections 8.2, 8.3 and 8.5, respectively, or (ii) the full and final payment and performance of all financial obligations of the Issuers and the Guarantors under this Indenture and the Notes.

11.7 After Acquired Collateral

Subject to the limitations and exceptions set forth in the Security Documents, if the Issuer, the Co-Issuer or any Guarantor creates or is required to create any additional security interest upon any property or asset to secure any Senior Obligations, it must concurrently grant a security interest with the priority required by the Security Documents (subject to Permitted Liens) upon such property as security for the Notes Obligations. Also, if granting a security interest in such property requires the consent of a third party, the Issuers will use commercially reasonable efforts to obtain such consent with respect to the security interest for the benefit of the Notes Collateral Agent on behalf of the Trustee and the Holders of the Notes. If such third party does not consent to the granting of the securi-

ty interest after the use of such commercially reasonable efforts, the applicable entity will not be required to provide such security interest.

11.8 Notes Collateral Agent

(a) The Trustee and each of the Holders by acceptance of the Notes hereby (i) designates and appoints the Notes Collateral Agent as its agent under this Indenture, the Security Documents and the Intercreditor Agreement, (ii) irrevocably authorizes the Notes Collateral Agent to execute and deliver the Intercreditor Agreement, the Security Documents (including future Security Documents) and any Additional Intercreditor Agreement authorized by this Indenture, to take such action on its behalf under the provisions of this Indenture, the Security Documents and the Intercreditor Agreement and to exercise such powers and perform such duties as are expressly delegated to the Notes Collateral Agent by the terms of this Indenture, the Security Documents, the Intercreditor Agreement and any Additional Intercreditor Agreement, and (iii) consents and agrees to the terms of the Intercreditor Agreement, each Security Document and any Additional Intercreditor Agreement, as the same may be in effect or may be amended, restated, supplemented or otherwise modified from time to time in accordance with their respective terms. The Notes Collateral Agent hereby accepts such designation and appointment and agrees to act as the Notes Collateral Agent on the express conditions contained in this Section 11.8. Each Holder agrees that any action taken by the Notes Collateral Agent in accordance with the provision of this Indenture, the Intercreditor Agreement, the Security Documents and any Additional Intercreditor Agreement, and the exercise by the Notes Collateral Agent of any rights or remedies set forth herein and therein shall be authorized and binding upon all Holders. The provisions of this Section 11.8 are solely for the benefit of the Notes Collateral Agent and none of the Trustee, any of the Holders nor the Issuers or any Guarantors shall have any rights as a third party beneficiary of any of the provisions contained herein.

(b) Notwithstanding any provision to the contrary contained elsewhere in this Indenture, the Security Documents, the Intercreditor Agreement or any Additional Intercreditor Agreement, the duties of the Notes Collateral Agent shall be ministerial and administrative in nature, and the Notes Collateral Agent shall not have any duties or responsibilities, except those expressly set forth herein and in the other Note Documents to which the Notes Collateral Agent is a party, nor shall the Notes Collateral Agent have or be deemed to have any trust or other fiduciary relationship with the Trustee, any Holder, the Issuers or any Guarantor, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Indenture, the Security Documents, the Intercreditor Agreement or any Additional Intercreditor Agreement otherwise exist against the Notes Collateral Agent.

(c) The Notes Collateral Agent shall be entitled to all of the rights, privileges and immunities granted to the Trustee under this Indenture, including without limitation, Section 7.1(d), (e), (f) and (g) and Section 7.2. The Notes Collateral Agent may resign or be replaced in accordance with Section 7.13. The Notes Collateral Agent shall be entitled to compensation and indemnity in accordance with Section 7.6.

(d) Notwithstanding anything to the contrary contained herein, other than in the case of actions expressly contemplated by Clause (b) of Section 11.2, the Notes Collateral Agent shall solely act pursuant to the instructions of the Holders and the Trustee with respect to the Security Documents and the Collateral. Other than in the case of actions expressly contemplated by Clause (b) of Section 11.2, the Notes Collateral Agent shall be fully justified in failing or refusing to take any action under this Indenture or the Security Documents unless it shall first receive such direction, advice or concurrence of the Trustee or the Holders of a majority in aggregate principal amount of the Notes as it determines and, if it so requests, it shall first be indemnified to its satisfaction by the Holders against any and all loss, liability and expense which may be incurred by it by reason of taking or continuing to take any such action. The Notes Collateral Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Indenture or the Security Documents in accordance with a request, direction, instruction or consent of the Trustee or the Holders of a majority in aggregate principal amount of the then outstanding Notes and such request and any action taken or failure to act pursuant thereto shall be binding upon all of the Holders. After the occurrence of an Event of Default, the Trustee or the Holders of a majority in aggregate principal amount of the Notes may direct the Notes Collateral Agent in connection with any action required or permitted by this Indenture or the Security Documents. For the avoidance of doubt, the Notes Collateral Agent shall have no discretion under this Indenture, the Intercreditor Agreement or the Security Documents and shall not be required to make or give any determination, consent, approval, request or direction without the written direction of the Holders of a majority in aggregate principal amount of the then outstanding Notes or the Trustee, as applicable.

(e) The Notes Collateral Agent shall not be liable for any action taken or omitted to be taken by it in connection with this Indenture or the Security Documents or instrument referred to herein or therein, except to the extent that any of the foregoing are found by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from its own gross negligence or willful misconduct.

(f) Notwithstanding anything to the contrary in this Indenture or any other Notes Document, in no event shall the Notes Collateral Agent be responsible for, or have any duty or obligation with respect to, the recording, filing, registering, perfection, protection or maintenance of the security interests or Liens intended to be created by this Indenture or the other Note Documents (including without limitation the filing or continuation of any UCC or PPSA financing or continuation statements or similar documents or instruments), nor shall the Notes Collateral Agent be responsible for, and the Notes Collateral Agent makes no representation regarding, the validity, effectiveness or priority of any of the Security Documents or the security interests or Liens intended to be created thereby.

(g) Before the Notes Collateral Agent acts or refrains from acting in each case at the request or direction of the Issuer or the Guarantors, other than in the case of actions expressly contemplated by clause (b) of Section 11.2 (which shall require such documents as are expressly stated therein), it may require an Officer's Certificate and an Opinion of Counsel, which shall conform to the provisions of Section 12.2. The Notes Collateral Agent shall not be liable for any action it takes or omits to take in good faith in reliance on such certificate or opinion.

(h) Whether or not expressly stated in any Security Document, the Notes Collateral Agent shall be entitled to all of the rights, privileges and immunities afforded to it under this Indenture when executing, delivering or performing under any Security Document.

12. Miscellaneous

12.1 Notices

(a) Any notice or communication shall be in writing in English and delivered in person or mailed by first class mail or sent by facsimile or electronic transmission in pdf format addressed as follows:

if to the Issuers or any Guarantor:

c/o Dominion Diamond Corporation
900 - 606 4 Street SW
Calgary, AB, Canada T2P 1T1
Telephone: 867-669-6106
Attention: Matthew Quinlan, Chief Financial Officer

With copies to:

Michael J. Zeidel, Esq.
Skadden, Arps, Slate Meagher & Flom LLP
Four Times Square
New York, NY 10036
Telephone: (212) 735-3000
Facsimile(212) 735-2000

if to the Trustee, Notes Collateral Agent, the Paying Agent, Transfer Agent and Registrar:

Wilmington Trust, National Association
50 South Sixth Street, Suite 1290
Minneapolis, Minnesota 55402

Facsimile: (612) 217-5651
Attention: Dominion Diamond Administrator

The Issuers, the Guarantors, the Trustee or the Notes Collateral Agent by notice to the other may designate additional or different addresses for subsequent notices or communications. All communications delivered to the Trustee or the Notes Collateral Agent shall be deemed effective when received.

(b) Notices to the Holders regarding the Notes shall be in the case of certificated Notes, sent to each Holder by fax, email or first-class mail at such Holder's respective address as it appears on the registration books of the Registrar.

Notices given by first-class mail shall be deemed given five calendar days after mailing and notices given by publication shall be deemed given on the first date on which publication is made. Failure to mail a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders. If a notice or communication is mailed in the manner provided above, it is duly given, whether or not the addressee receives it.

(c) [Reserved.]

(d) If and so long as the Notes are represented by Global Notes, notice to Holders shall be given by delivery of the relevant notice to DTC for communication to entitled account holdings.

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

(f) Notwithstanding anything herein to the contrary, any notices required to be delivered to the Trustee hereunder or under the Notes shall not be considered to have been delivered to the Trustee unless (i) a Trust Officer has received such notice, or (ii) such notice shall have been given to the Trustee by the Issuers or by any Holder of the Notes at the Corporate Trust Office of the Trustee and such notice references this Indenture or the Notes.

12.2 Certificate and Opinion as to Conditions Precedent

Upon any request or application by the Issuer, the Co-Issuer, Parent or any other Guarantor to the Trustee to take or refrain from taking any action under this Indenture (except in connection with the original issuance of the Notes on the date hereof), the Issuer, the Co-Issuer, Parent or any other Guarantor, as the case may be, shall furnish upon request to the Trustee:

(a) an Officer's Certificate stating that, in the opinion of the signer, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with; and

(b) an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

Any Officer's Certificate may be based, insofar as it relates to legal matters, upon an Opinion of Counsel. Any Opinion of Counsel may be based and may state that it is so based, insofar as it relates to factual matters, upon an Officer's Certificate stating that the information with respect to such factual matters is in the possession of the Issuers, the Parent or a Subsidiary of the Parent.

12.3 Statements Required in Certificate or Opinion

Every Officer's Certificate or Opinion of Counsel with respect to compliance with a condition or covenant provided for in this Indenture shall include:

(a) a statement that each individual signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;

(b) 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;

(c) a statement that, in the opinion of each such individual, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with.

12.4 Rules by Trustee, Paying Agent and Registrar

The Trustee may make reasonable rules for action by or at a meeting of Holders. The Registrar and the Paying Agent may make reasonable rules for their functions.

12.5 Legal Holidays

If an Interest Payment Date or other payment date is not a Business Day, payment shall be made on the next succeeding day that is a Business Day, and no interest shall accrue for the intervening period. If a Record Date is not a Business Day, the Record Date shall not be affected.

12.6 Governing Law

THIS INDENTURE, THE NOTES AND THE NOTE GUARANTEES SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

12.7 Jurisdiction

The Issuers and the Guarantors agree that any suit, action or proceeding against the Issuer, the Co-Issuer or the Guarantors brought by any Holder or the Trustee arising out of or based upon this Indenture, the Notes or the Note Guarantees may be instituted in any state or Federal court in the Borough of Manhattan, New York, New York, and any appellate court from any thereof, and each of them irrevocably submits to the non-exclusive jurisdiction of such courts in any suit, action or proceeding. The Issuers and the Guarantors irrevocably waive, to the fullest extent permitted by law, any objection to any suit, action, or proceeding that may be brought in connection with this Indenture, the Notes, or the Note Guarantees, including such actions, suits or proceedings relating to securities laws of the United States of America or any state thereof, in such courts whether on the grounds of venue, residence or domicile or on the ground that any such suit, action or proceeding has been brought in an inconvenient forum. The Issuers and the Guarantors agree that final judgment in any such suit, action or proceeding brought in such court shall be conclusive and binding upon the Issuer, the Co-Issuer or the applicable Guarantor, as the case may be, and may be enforced in any court to the jurisdiction of which the Issuer, the Co-Issuer or the applicable Guarantor, as the case may be, are subject by a suit upon such judgment; *provided*, *however*, that service of process is effected upon the Issuer, the Co-Issuer or the applicable Guarantor, as the case may be, in the manner provided by this Indenture or by any other legal means. Each of the Issuers and the Guarantors has appointed CT Corporation System, with offices on the date hereof at 111 Eighth Avenue, 13th Floor, New York, NY 10011, as its agent (the "**Authorized Agent**"), for service of process in any suit, action or proceeding arising out of or based upon this Indenture, the Notes and the Note Guarantees which may be instituted in any U.S. federal or New York state court located in the City of New York, New York, by any Holder or the Trustee, and expressly accepts the non-exclusive jurisdiction of any such

court in respect of any such suit, action or proceeding. Each of the Issuers and the Guarantors hereby represents and warrants that the Authorized Agent has accepted such appointment and has agreed to act as said agent for service of process, and the Issuers and the Guarantors agree to take any and all action, including the filing of any and all documents that may be necessary to continue such respective appointment in full force and effect as aforesaid. Service of process upon the Authorized Agent shall be deemed, in every respect, effective service of process upon the Issuer and the Guarantors. Notwithstanding the foregoing, any action involving the Issuers or the Guarantor arising out of or based upon this Indenture, the Notes or the Note Guarantees may be instituted by any Holder or the Trustee in any court of competent jurisdiction in New York, New York. Each of the Issuers and the Guarantors agrees to take any and all action as may be necessary to maintain the designation and appointment of an agent in full force and effect until November 1, 2022 (or earlier, if the Notes are prepaid in full).

12.8 No Personal Liability of Directors, Officers, Employees and Stockholders

No director, officer, employee, incorporator, member, partner or stockholder of the Issuer, the Co-Issuer or any Guarantor, as such, shall have any liability for any obligations of the Issuer, the Co-Issuer or the Guarantors under the Notes, this Indenture, the Note Guarantees, the Intercreditor Agreement, any Additional Intercreditor Agreement or the Security Documents or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for the issuance of the Notes.

12.9 Successors

All agreements of the Issuers and the Guarantors in this Indenture and the Notes shall bind their respective successors. All agreements of the Trustee or Notes Collateral Agent in this Indenture shall bind its successors.

12.10 Multiple Originals

The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. One signed copy is enough to prove this Indenture. The exchange of copies of this Indenture and of signature pages by facsimile or ".pdf" transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture and signature pages for all purposes.

12.11 Table of Contents, Cross-Reference Sheet and Headings

The table of contents, cross-reference sheet and headings of the Sections of this Indenture have been inserted for convenience of reference only, are not intended to be considered a part hereof and shall not modify or restrict any of the terms or provisions hereof.

12.12 Severability

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

12.13 Judgment Currency

Any payment on account of an amount that is payable in U.S. dollars which is made to or for the account of any Holder, the Trustee or the Notes Collateral Agent in lawful currency of any other jurisdiction (the "**Judgment Currency**"), whether as a result of any judgment or order or the enforcement thereof or the liquidation of the Issuer, the Co-Issuer or any Guarantor, shall constitute a discharge of the Issuer's, the Co-Issuer's or the applicable Guarantor's obligation under this Indenture and the Notes or Note Guarantee, as the case may be, only to the extent of the amount of U.S. dollars with such Holder, the Trustee or the Notes Collateral Agent, as the case may be, could purchase in the London foreign exchange markets with the amount of the Judgment Currency in accordance with normal banking procedures at the rate of exchange prevailing on the first Business Day following receipt of the payment in the Judgment Currency. If the amount of U.S. dollars that could be so purchased is less than the amount of

U.S. dollars originally due to such Holder or the Trustee, as the case may be, the Issuers and the Guarantors shall indemnify and hold harmless the Holder, the Trustee or the Notes Collateral Agent, as the case may be, from and against all loss or damage arising out of, or as a result of, such deficiency. This indemnity shall constitute an obligation separate and independent from the other obligations contained in this Indenture or the Notes, shall give rise to a separate and independent cause of action, shall apply irrespective of any indulgence granted by any Holder, the Trustee or the Notes Collateral Agent from time to time and shall continue in full force and effect notwithstanding any judgment or order for a liquidated sum in respect of an amount due hereunder or under any judgment or order.

12.14 WAIVERS OF JURY TRIAL

THE ISSUERS, THE GUARANTORS, THE NOTES COLLATERAL AGENT AND THE TRUSTEE HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS INDENTURE, THE NOTES OR THE NOTE GUARANTEES AND FOR ANY COUNTERCLAIM THEREIN.

12.15 Dutch Terms

In this Indenture, where it relates to a Dutch entity, a reference to:

(a) a winding-up, administration or dissolution includes a Dutch entity being declared bankrupt (*failliet verklaard*) or dissolved (*ontbonden*);

(b) a moratorium includes (*voorlopige surseance van betaling*);

(c) insolvency includes a bankruptcy and moratorium;

(d) a trustee in bankruptcy includes a *curator*;

(e) an administrator includes a *bewindvoerder*;

(f) security interest includes any mortgage (*hypotheek*), pledge (*pandrecht*), financial collateral agreement (*financiële zekerheidsovereenkomst*), retention of title arrangement (*eigendomsvoorbehoud*), right of retention (*recht van retentie*), right to reclaim goods (*recht van reclame*) and in general any right in rem (*beperkt recht*) created for the purpose of granting security (*goederenrechtelijke zekerheid*); and

(g) an attachment includes a *beslag*.

12.16 Parallel Debt

(a) Each Issuer and Guarantor which agrees to provide security pursuant to a Junior Collateral Document governed by the laws of the Netherlands (a "**Dutch Collateral Party**") hereby irrevocably and unconditionally undertakes to pay (each such payment undertaking by a Dutch Collateral Party, a "**Parallel Debt**") to the Notes Collateral Agent amounts equal to the amounts due by that Dutch Collateral Party in respect of its Corresponding Obligations.

(b) The Parallel Debt of each Dutch Collateral Party will be payable in the currency or currencies of the Corresponding Obligations and will become due and payable as and when and to the extent the relevant Corresponding Obligations become due and payable. An Event of Default in respect of the Corresponding Obligations shall constitute a default (*verzuim*) within the meaning of Section 3:248 of the Dutch Civil Code with respect to the Parallel Debts without any notice being required.

(c) Each of the parties to this Indenture hereby acknowledges that:

(i) each Parallel Debt constitutes an undertaking, obligation and liability to the Notes Collateral Agent which is separate and independent from, and without prejudice to, the Corresponding Obligations of the relevant Dutch Collateral Party; and

(ii) each Parallel Debt represents the Notes Collateral Agent's own separate and independent claim to receive payment of the Parallel Debt from the relevant Dutch Collateral Party, it being understood, in each case, that pursuant to this paragraph (c), the amount which may become payable by each Dutch Collateral Party by way of Parallel Debts shall not exceed at any time the total of the amounts which are payable under or in connection with the Corresponding Obligations of that Dutch Collateral Party at such time.

(d) An amount paid by such Issuer and/or Guarantor to the Notes Collateral Agent in respect of the Parallel Debt will discharge the liability of the applicable Issuers and Guarantors under the Corresponding Obligations in an equal amount.

(e) For the purpose of this Section 12.16, the Notes Collateral Agent acts in its own name and for itself and not as agent, trustee or representative of any other Secured Party.

12.17 Guarantors organized under the laws of the Netherlands

If any Dutch Guarantor, is represented by an attorney-in-fact in connection with the signing and/or execution of this Indenture or any other agreement, deed or document referred to in or made pursuant to this Indenture, it is hereby expressly acknowledged and accepted by the other parties to this Indenture that the existence and extent of the attorney-in-fact's authority and the effects of the attorney-in-fact's exercise or purported exercise of his or her authority shall be governed by the laws of the Netherlands.

12.18 Waiver of Immunity

To the extent either Issuer or any Guarantor or any of its properties, assets or revenues may have or may hereafter become entitled to, or have attributed to them, any right of immunity, on the grounds of sovereignty, from any legal action, suit or proceeding, from set-off or counterclaim, from the jurisdiction of any court, from service of process, from attachment upon or prior to judgment, or from attachment in aid of execution of judgment, or from execution of judgment, or other legal process or proceeding for the giving of any relief or for the enforcement of any judgment, in any jurisdiction in which proceedings may at any time be commenced, with respect to their obligations, liabilities or any other matter under or arising out of or in connection with this Indenture, the Notes or the Note Guarantees, each Issuer and each Guarantor hereby irrevocably and unconditionally, to the extent permitted by applicable law, waives and agrees not to plead or claim any such immunity and consents to such relief and enforcement.

12.19 Termination Dutch CIT Fiscal Unity

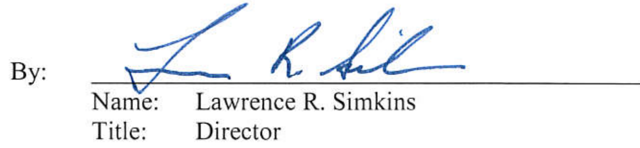
If, at any time, an Obligor that is organized under the laws of the Netherlands or resident for tax purposes in the Netherlands (a "Dutch Obligor") is part of a Dutch CIT Fiscal Unity and such Dutch CIT Fiscal Unity is, in respect of such Dutch Obligor, terminated (*verbroken*) or disrupted (*beëindigd*) as a result of or in connection with the entering into of any Junior Collateral Document or the Notes Collateral Agent enforcing its rights under any Junior Collateral Document, such Dutch Obligor shall, together with the parent (*moedermaatschappij*) or deemed parent (*aangewezen moedermaatschappij*) of the Dutch CIT Fiscal Unity, for no consideration and as soon as possible, lodge a request with the relevant Governmental Authority to allocate and surrender any Tax losses as referred to in Article 20 of the Dutch CITA to the Dutch Obligor leaving the Dutch CIT Fiscal Unity (within the meaning of Article 15af of the Dutch CITA) to the extent such tax losses are attributable (*toerekenbaar*) to the Dutch Obligor leaving the Dutch CIT Fiscal Unity.

(*Signature pages follow*)

In Witness Whereof, the parties have caused this Indenture to be duly executed as of the date first written above.

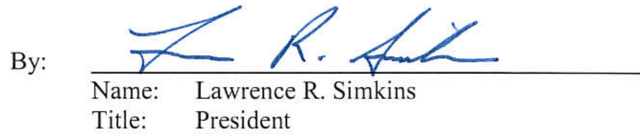
The Issuers

Northwest Acquisitions ULC



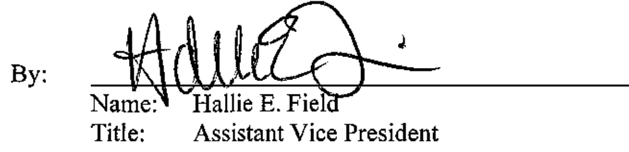
By: ______________________________
Name: Lawrence R. Simkins
Title: Director

Dominion Finco Inc.



By: ______________________________
Name: Lawrence R. Simkins
Title: President

Wilmington Trust, National Association,
as Trustee, Notes Collateral Agent, Paying Agent, Registrar and Transfer Agent

By: 

Name: Hallie E. Field
Title: Assistant Vice President

Exhibit 1

Form of Note

ISIN: [US66727WAA09][1] [USC6700PAA96][2] No.
CUSIP: [66727WAA0][3] [C6700PAA9][4] $

Maturity Date: November 1, 2022

[Global Note Legend - each Global Note will bear a legend in substantially the form as set forth in Section 2.6(f)(i) of the Indenture]

[Private Placement Legend – each Note will bear a legend in substantially the form as set forth in Section 2.6(f)(ii) of the Indenture, except where otherwise permitted by the Indenture]

7.125% Senior Secured Second Lien Notes Due 2022

Northwest Acquisitions ULC, an unlimited liability company formed under the laws of British Columbia, and Dominion Finco Inc., a Delaware corporation (together, the "Issuers"), jointly and severally, for value received promise to pay to Cede & Co. or registered assigns the principal sum of ________________________ dollars [or such lesser or greater amounts as shall be set forth in the "Schedule of Principal Amount of Indebtedness Evidenced by this Note"] [*to be included in the Global Notes*].

From ____________, or from the most recent Interest Payment Date (as defined below) to which interest has been paid or provided for, cash interest on this Note will accrue at 7.125%, payable semi-annually on May 1 and November 1 of each year (or, if any such day is not a Business Day, on the next succeeding Business Day) (the "Interest Payment Date"), beginning on May 1, 2018, to the Person in whose name this Note (or any predecessor Note) is registered at the close of business on the preceding April 15 and October 15 (the "Record Dates"), as the case may be; *provided* that, if this Note is authenticated between a Record Date referred to on the face hereof and the next succeeding Interest Payment Date, interest shall accrue from such next succeeding Interest Payment Date.

Capitalized terms used herein shall have the same meanings assigned to them in the Indenture unless otherwise indicated.

THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

Unless the certificate of authentication hereon has been executed by the Trustee referred to on the reverse hereof by manual signature of an authorized signatory, this Note shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose.

Reference is hereby made to the further provisions of this Note set forth on the reverse hereof and to the Indenture, which provisions shall for all purposes have the same effect as if set forth at this place.

---

[1] 144A

[2] Reg S

[3] 144A

[4] Reg S

In witness whereof, the Issuers have caused this Note to be signed manually or by facsimile by their duly authorized signatory, respectively.

Dated: _______________

NORTHWEST ACQUISITIONS ULC

By: ____
Name:
Title:

DOMINION FINCO INC.

By: ____
Name:
Title:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This is one of the Notes referred to in the within-mentioned Indenture.

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Trustee

By: ____
Authorized Officer

Reverse Side of Note

7.125% Senior Secured Second Lien Note Due 2022

1. Interest

Northwest Acquisitions ULC, an unlimited liability company formed under the laws of British Columbia (such company, and its successors and assigns under the Indenture hereinafter referred to, being herein called the "**Issuer**") and Dominion Finco Inc., a Delaware corporation (such Person, and its respective successors and assigns under the Indenture hereinafter referred to, being herein called the "**Co-Issuer**" and, together with the Issuer, the "**Issuers**"), jointly and severally, for value received promise to pay interest on the principal amount of this Note from __________ until maturity on November 1, 2022, at the interest rate per annum shown above. Interest will be computed on the basis of a 360-day year of twelve 30-day months. Notwithstanding the foregoing, if a "secured creditor" (as such term is defined under the BIA) is determined by a court of competent jurisdiction not to include a Person to whom obligations are owed on a joint or joint and several basis, then the obligations of the Issuers, to the extent such obligations are secured, shall be several obligations and not joint or joint and several obligations. The Issuers will pay interest (including post-petition interest in any Insolvency or Liquidation Proceeding) on overdue principal at a rate that is 1% higher than the then applicable interest rate borne by the Notes, and it shall pay interest on overdue installments of interest and Additional Amounts (without regard to any applicable grace periods) at the same rate to the extent lawful. For the purposes solely of disclosure under the Interest Act (Canada), whenever interest to be paid on the Notes is calculated on the basis of a year of 360 days consisting of twelve 30-day months, the yearly rate of interest to which the rate used in such calculation is equivalent during any particular period is the rate so used multiplied by a fraction of which: (a) the numerator is the product of (i) the actual number of days in the calendar year in which such period ends, and (ii) the sum of (A) the product of (x) 30 and (y) the number of complete months elapsed in the relevant period and (B) the number of days elapsed in any incomplete month in the relevant period, and (b) the denominator is the product of: (i) 360, and (ii) the actual number of days in the relevant period.

2. Additional Amounts

(a) All payments made by or on behalf of the Issuers under or with respect to the Notes or any of the Guarantors with respect to any Note Guarantee, as applicable, will be made free and clear of and without withholding or deduction for, or on account of, any present or future Taxes unless the withholding or deduction for, or on account of, such Taxes is then required by law. If any deduction or withholding for, or on account of, any Taxes imposed or levied by or on behalf of (1) any jurisdiction in which the Issuer, the Co-Issuer or any Guarantor (including any successor entity) is then incorporated, organized, engaged in business for tax purposes or otherwise considered to be a resident for tax purposes or any political subdivision or governmental authority thereof or therein having the power to tax; or (2) any other jurisdiction from or through which payment on any such Note or Note Guarantee is made by or on behalf of the Issuer, the Co-Issuer or any Guarantor (including the jurisdiction of any Paying Agent) or any political subdivision or governmental authority thereof or therein having the power to tax (each, a "**Tax Jurisdiction**"), will at any time be required by law to be made from any payments made by or on behalf of the Issuers under or with respect to the Notes or any of the Guarantors with respect to any Note Guarantee, including payments of principal, redemption price, interest or premium, the Issuer, the Co-Issuer or the relevant Guarantor, as applicable, shall pay (together with such payments) such additional amounts (the "**Additional Amounts**") as may be necessary in order that the net amounts received by each holder or beneficial owner of the Notes or Note Guarantees in respect of such payments after such withholding or deduction (including any such withholding or deduction from such Additional Amounts) will equal the respective amounts that would have been received by each holder or beneficial owner of the Notes or Note Guarantees in respect of such payments on any such Notes or Note Guarantee in the absence of such withholding or deduction; *provided*, *however*, that no such Additional Amounts shall be payable with respect to:

(i) any Taxes, to the extent such Taxes would not have been so imposed or levied but for the existence of any present or former connection between the holder or the beneficial owner (or between a fiduciary, settlor, beneficiary, partner, member or shareholder of, or possessor of power over the relevant holder or beneficial owner, if the relevant holder or beneficial owner is an estate, nominee, trust, partnership or corporation) of the Notes and the relevant Tax Jurisdiction (including, without limitation, being a

citizen or resident of such jurisdiction for Tax purposes, incorporated in or carrying on a business, having or maintaining a permanent establishment or being physically present in such jurisdiction), other than any connection arising solely from the acquisition, ownership or holding of such Note, the exercise or enforcement of rights under such Note or under a Note Guarantee or the receipt of any payments in respect of such Note or a Note Guarantee;

(ii) any Taxes, to the extent that such Taxes were imposed as a result of the presentation of a Note for payment (where the Notes are in the form of Definitive Registered Notes and presentation is required) more than 30 days after the relevant payment is first made available for payment to the holder or beneficial owner (except to the extent that the holder or beneficial owner would have been entitled to Additional Amounts had the Note been presented on the last day of such 30-day period);

(iii) any estate, inheritance, gift, sales, transfer, personal property or similar Taxes, assessment or other governmental charge;

(iv) any Taxes required to be paid other than by deduction or withholding from payments under, or with respect to, the Notes or with respect to any Note Guarantee;

(v) any Taxes, to the extent such Taxes are imposed, withheld or deducted by reason of the failure of the holder or beneficial owner of Notes, to comply with any reasonable written request of the Issuers addressed to the holder or beneficial owner and made at least 30 days before any such withholding or deduction is to be made, to satisfy any certification, identification, information reporting or other reporting requirements, whether required by statute, treaty, regulation or administrative practice of the relevant Tax Jurisdiction, as a precondition to exemption from, or reduction in the rate of deduction or withholding of, Taxes imposed by the Tax Jurisdiction (including, without limitation, a certification that the holder or beneficial owner is not resident in the Tax Jurisdiction), but in each case, only to the extent the holder or beneficial owner is legally entitled to satisfy such requirements;

(vi) any Taxes imposed, withheld or deducted on a payment of principal redemption price, premium or interest on a Note or Note Guarantee to the holder or beneficial owner of a Note who is a fiduciary, a partnership, a limited liability company or any person other than the sole beneficial owner of such payment, if such Tax would not have been imposed had the beneficiary or settlor with respect to such fiduciary, member of such partnership, an interest holder in such limited liability company or beneficial owner of such payment been the actual holder of the Note or Note Guarantee;

(vii) any Taxes, to the extent that such Taxes would not have been imposed but for the holder or beneficial owner of Notes or the recipient of interest payable on the Notes not dealing at arm's length, within the meaning of the Income Tax Act (Canada), with the Issuer, the Co-Issuer or relevant Guarantor, as applicable;

(viii) any Taxes, to the extent that such Taxes would not have been imposed but for such holder or beneficial owner of Notes being, or not dealing at arm's length (within the meaning of the Income Tax Act (Canada)) with, at any time a "specified shareholder" of the Issuer or Co-Issuer as defined in subsection 18(5) of the Income Tax Act (Canada);

(ix) any U.S. federal Taxes;

(x) any deduction or withholding of Taxes imposed or required pursuant to Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended (the "**Code**"), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code; or

(xi) any combination of items (i) through (x) above.

(b) Where Tax is payable pursuant to Regulation 803 of the Income Tax Act (Canada) by a holder or beneficial owner of the Notes or any Note Guarantee in respect of any amount payable under the Notes or Note Guarantee to the holder (other than by reason of a transfer of the notes to a person resident in Canada with whom the transferor does not deal at arm's length for the purposes of such Act), but no Additional Amount is paid in respect of such Tax, the Issuer, the Co-Issuer or Note Guarantor, as applicable, will pay as or on account of interest to the holder an amount equal to such Tax (a "Regulation 803 Reimbursement") *plus* an amount equal to any Tax required to be paid by the holder or beneficial owner as a result of such Regulation 803 Reimbursement within 45 days after receiving from the holder a notice containing reasonable particulars of the Tax so payable, provided such holder or beneficial owner would have been entitled to receive Additional Amounts on account of such Tax (and only to the extent of such Additional Amounts that such holder or beneficial owner would have been entitled to receive) but for the fact that it is payable otherwise than by deduction or withholding from payments made under or with respect to the Notes or any Note Guarantee.

(c) The Issuers and the Guarantors, jointly and severally, will reimburse the holders or beneficial owners of Notes or Note Guarantees, upon written request of such holder or beneficial owner of Notes and certified proof of payment for the amount of (1) any Taxes levied or imposed by a Tax Jurisdiction and payable by such holder or beneficial owner in connection with payments made under or with respect to the Notes or under or with respect to any Note Guarantee; and (2) any Taxes levied or imposed with respect to any reimbursement under the foregoing clause (1) or this clause (2), so that the net amount received by such holder or beneficial owner after such reimbursement will not be less than the net amount such holder or beneficial owner would have received if the Taxes giving rise to the reimbursement described in clauses (1) and/or (2) had not been imposed, *provided, however*, that the indemnification obligation provided for in this paragraph shall not extend to Taxes imposed for which the holder or beneficial owner of the Notes or Note Guarantees would not have been eligible to receive payment of Additional Amounts hereunder by virtue of clauses (i) through (xi) above or to the extent such holder or beneficial received Additional Amounts with respect to such payments.

(d) In addition to the foregoing, the Issuers and the Guarantors shall also pay each holder or beneficial owner (or reimburse each holder or beneficial owner for) for any present or future stamp, issue, registration, transfer, court or documentary Taxes, or any other excise or property Taxes, charges or similar levies (including penalties and interest related thereto) which are levied by any Tax Jurisdiction on the execution, delivery, issuance or registration of any of the Notes, the Indenture, any Note Guarantee or any other document referred to therein, or the receipt of any payments with respect thereto, or the enforcement of the Notes, the Indenture, any Note Guarantee or any other document referred to therein (other than, in each case, in connection with a transfer of the Notes after the Issue Date and limited solely, to the extent that such Taxes or similar charges or levies arise from the receipt of any payments of principal or interest on the Notes, to any such Taxes or similar charges or levies that are not excluded under paragraphs 2(a)(i), (ii), (iii), (vii) and (viii)).

(e) If the Issuer, the Co-Issuer or any Guarantor, as the case may be, becomes aware that it shall be obligated to pay Additional Amounts with respect to any payment under or with respect to the Notes or any Note Guarantee, each of the Issuer, the Co-Issuer or the relevant Guarantor, as the case may be, shall deliver to the Trustee on a date that is at least 30 days prior to the date of that payment (unless the obligation to pay Additional Amounts arises less than 45 days prior to that payment date, in which case the Issuer, the Co-Issuer or the relevant Guarantor shall notify the Trustee and the Paying Agent promptly thereafter) an Officer's Certificate stating the fact that Additional Amounts will be payable and the amount estimated to be so payable. The Officer's Certificate shall also set forth any other information reasonably necessary to enable the Paying Agents to pay Additional Amounts to holders on the relevant payment date. The Trustee and the Paying Agent shall be entitled to rely solely on such Officer's Certificate as conclusive proof that such payments are necessary. The Issuer, the Co-Issuer or the relevant Guarantor, as the case may be, will provide the Trustee with documentation evidencing the payment of Additional Amounts.

(f) The Issuer, the Co-Issuer or the relevant Guarantor shall make or shall cause to be made all withholdings and deductions for, or on account of, Tax required by law and will remit or will cause to be remitted the full amount deducted or withheld to the relevant Tax authority in accordance with applicable law. The Issuer, the Co-Issuer or the relevant Guarantor, as applicable, shall use its reasonable efforts to obtain Tax receipts from each Tax authority evidencing the payment of any Taxes so deducted or withheld. The Issuer, the Co-Issuer or the relevant Guarantor shall furnish to the Trustee (or to a holder upon written request), within a reasonable time after the

date the payment of any Taxes so deducted or withheld is made, certified copies of Tax receipts evidencing payment by the Issuer, the Co-Issuer or a Guarantor, as the case may be, or if, notwithstanding such entity's efforts to obtain receipts, receipts are not obtained, other evidence of payments (reasonably satisfactory to the Trustee) by such entity.

(g) Whenever in the Indenture there is mentioned, in any context, the payment of amounts based upon the principal amount of the Notes or of principal, purchase price in connection with a purchaser of the Notes, interest or any other amount payable under, or with respect to, any of the Notes or any Note Guarantee, such mention shall be deemed to include mention of the payment of Additional Amounts to the extent that, in such context, Additional Amounts are, were or would be payable in respect thereof.

(h) The obligations in this Article 2 shall survive any termination, defeasance or discharge of the Indenture or any transfer by a holder or beneficial owner of its Notes, and will apply, *mutatis mutandis*, to any jurisdiction in which any successor Person to the Issuer, the Co-Issuer or any Guarantor is incorporated, organized, engaged in business for tax purposes or otherwise resident for tax purposes or any jurisdiction from or through which such Person makes any payment on, or with respect to, the Notes (or any Note Guarantee) and any department or political subdivision or taxing authority or agency thereof or therein.

3. Method of Payment

The Issuers shall pay interest on this Note (except Defaulted Interest) to the persons who are registered Holders of this Note at the close of business on the Record Date for the next succeeding Interest Payment Date, even if this Note is cancelled after the Record Date and on or before the Interest Payment Date except as provided in Section 2.11 of the Indenture with respect to Defaulted Interest. The Issuers shall pay principal, premium and Additional Amounts, if any, and interest in U.S. Dollars in immediately available funds that at the time of payment is legal tender for payment of public and private debts; *provided*, *however*, that payment of interest may be made at the option of the Issuers by check mailed to the Holder at its address set forth in the Security Register.

The amount of payments in respect of interest on each Interest Payment Date shall correspond to the aggregate principal amount of Notes represented by the Regulation S Global Note and the Rule 144A Global Note, as established by the Registrar at the close of business on the relevant Record Date. Payments of principal shall be made upon surrender of the Regulation S Global Note and the Rule 144A Global Note to the Paying Agent.

4. Paying Agent and Registrar

Initially, Wilmington Trust, National Association will act as Paying Agent and as the initial Registrar and Transfer Agent. The Issuers may change the Paying Agents, Transfer Agents or Registrars without notice to the Holders.

5. Indenture

The Issuers issued the Notes under an indenture dated as of October 23, 2017 (the "**Indenture**"), among the Issuers, the Guarantors, Wilmington Trust, National Association, as trustee (the "**Trustee**"), Paying Agent, Transfer Agent and Registrar and the Notes Collateral Agent. The terms of the Notes include those stated in the Indenture. Terms defined in the Indenture and not defined herein have the meanings ascribed thereto in the Indenture. The Notes are subject to all such terms, and Holders are referred to the Indenture for a statement of those terms.

To the extent any provision of this Note conflicts with the express provisions of the Indenture, the provisions of the Indenture shall govern and be controlling.

6. Optional Redemption

(a) Prior to November 1, 2019, the Issuers may, at their option, on any one or more occasions, redeem up to 40% of the aggregate principal amount of the Notes (including any Additional Notes issued after the Issue Date) at a redemption price equal to 107.125% of the principal amount thereof, *plus* accrued and unpaid interest and

Additional Amounts, if any, thereon to, but not including, the redemption date, with all or a portion of the net proceeds of one or more Equity Offerings; *provided* that at least 60% of the aggregate principal amount of the Notes issued under the Indenture (including any Additional Notes issued after the Issue Date) remains outstanding immediately after the occurrence of such redemption; and *provided*, *further*, that such redemption shall occur within 180 days of the date of the closing of any such Equity Offering.

(b) On or after November 1, 2019, the Issuers may on any one or more occasions redeem all or a part of the Notes at the redemption prices (expressed as percentages of principal amount) indicated in the table below, *plus* accrued and unpaid interest and Additional Amounts, if any, on the Notes redeemed, to, but not including, the applicable date of redemption, if redeemed during the twelve-month period beginning on November 1 of the years indicated below, subject to the rights of holders of Notes on the relevant Record Date to receive interest on the relevant Interest Payment Date occurring on or prior to the redemption date.

Year	Redemption Price
2019	103.563%
2020	101.781%
2021 and thereafter	100.000%

(c) In addition, at any time prior to November 1, 2019 the Issuers may also redeem, in whole or in part, the Notes at a redemption price equal to 100% of the principal amount of Notes to be redeemed, *plus* the Applicable Premium (as defined below) as of, and accrued and unpaid interest and Additional Amounts, if any, to, but not including, the redemption date, subject to the rights of Holders of the Notes on the relevant Record Date to receive interest due on the relevant Interest Payment Date occurring on or prior to the redemption date.

(d) Until October 22, 2019, the Issuers, at their option, on one or more occasions, may redeem up to 10% of the aggregate principal amount of the Notes (including any Additional Notes issued after the Issue Date) during each twelve-month period commencing with the Issue Date at a redemption price equal to 103% of the principal amount of Notes to be redeemed, *plus* accrued and unpaid interest and Additional Amounts, if any, to, but not including, the redemption date, subject to the rights of holders of the Notes on the relevant Record Date to receive interest due on the relevant Interest Payment Date occurring on or prior to the redemption date.

(e) All redemptions of the Notes will be made upon not less than 10 days' nor more than 60 days' prior written notice (with a copy to the Trustee and the Paying Agent), except that a redemption notice may be made more than 60 days prior to a redemption date if the notice is issued in connection with a defeasance of the Notes or a satisfaction and discharge of the Indenture. Unless the Issuers default in the payment of the redemption price, interest will cease to accrue on the Notes or portions thereof called for redemption on the applicable redemption date.

(f) Notice of any redemption including, without limitation, upon an Equity Offering may, at the Issuers' discretion, be subject to one or more conditions precedent, including, but not limited to, completion of the related Equity Offering.

(g) In addition, subject to the procedures and processes of DTC, if such redemption or notice is subject to satisfaction of one or more conditions precedent, such notice may state that, in the Issuers' discretion, the redemption date may be delayed until such time as any or all such conditions shall be satisfied (*provided*, *however*, that, in any case, such redemption date shall be no more than 60 days from the date on which such notice is first given), or such redemption may not occur and such notice may be rescinded in the event that any or all such conditions shall not have been satisfied by the redemption date, or by the redemption date so delayed. Notwithstanding anything else in the Indenture or the Notes to the contrary, redemption notices may be given more than 60 days prior to a redemption date if the notice is issued in connection with a defeasance of the Notes or a satisfaction and discharge of the Indenture (subject to the requirement in the case of a satisfaction and discharge of the Indenture that Notes not delivered to the Trustee for cancellation have become due and payable or will become due and payable or be called for redemption within one year). The Issuers may provide in such notice that payment of the redemption price and performance of the Issuers' obligations with respect to such redemption may be performed by another Person.

"**Applicable Premium**" means, with respect to any Note on any Redemption Date, the greater of (x) 1% of the principal amount of such Note and (y) the excess of:

(i) the present value at such Redemption Date of (i) the Redemption Price of the Note on November 1, 2019 (such Redemption Price being set forth in the table in paragraph 6(b) above), plus (ii) all required interest payments due on the Note through November 1, 2019 (excluding accrued but unpaid interest to the Redemption Date) discounted back to the Redemption Date on a semi-annual basis (assuming a 360-day year consisting of twelve 30-day months) at a rate equal to the Treasury Rate as of such Redemption Date plus 50 basis points; *over*

(ii) the then-outstanding principal amount of the Note.

"**Treasury Rate**" means as of any redemption date, the yield to maturity as of such redemption of U.S. Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519)) that has become publicly available at least two Business Days (but not more than five Business Days) prior to the redemption date (or, if such statistical release is no longer published or available, any publicly available source of similar market data) most nearly equal to the period from the redemption date to, November 1, 2019, *provided*, *however*, that if the period from the redemption date to November 1, 2019 is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year will be used.

Notice of any redemption including, without limitation, upon an Equity Offering may, at the Issuers' discretion, be subject to one or more conditions precedent, including, but not limited to, completion of the related Equity Offering.

7. Redemption for Changes in Taxes

The Issuers may redeem the Notes, in whole but not in part, at their discretion at any time upon giving not less than 10 nor more than 60 days' prior written notice to the Holders, with a copy to the Trustee and the Paying Agent (which notice will be irrevocable and given in accordance with the procedures set forth in Sections 3.3 and 3.4), at a redemption price equal to 100% of the principal amount thereof, together with accrued and unpaid interest (if any) to, but not including, the date fixed by the Issuers for redemption (a "**Tax Redemption Date**") and all Additional Amounts (if any) then due and which will become due on the Tax Redemption Date as a result of the redemption or otherwise (subject to the right of Holders of the Notes on the relevant Record Date to receive interest due on the relevant Interest Payment Date and Additional Amounts (if any) in respect thereof), if on the next date on which any amount would be payable in respect of the Notes, the Issuer, the Co-Issuer or a Guarantor is or would be required to pay Additional Amounts and the Issuer, the Co-Issuer or relevant Guarantor cannot avoid any such payments obligation by taking reasonable measures available to the Issuer, the Co-Issuer or relevant Guarantor (including making payments through a Paying Agent located in another jurisdiction and, in the case of a Guarantor, such payments being made by the Issuer, the Co-Issuer or another Guarantor who can make such payments without the obligation to pay Additional Amounts), and the Issuers determine that the requirement arises as a result of:

(a) any amendment to, or change in, the laws or any regulations, treaties or rulings promulgated thereunder of a relevant Tax Jurisdiction which change or amendment has not been formally announced before and is effective on or after the Issue Date (or, if the relevant Tax Jurisdiction became a Tax Jurisdiction on a date after the Issue Date, such later date); or

(b) any amendment to, introduction of, or change in, an official interpretation, administration or application of such laws, regulations, treaties or rulings (including a holding, judgment or order by a court of competent jurisdiction or a change in published administrative practice or revenue guidance) which amendment or change has not been formally announced before and is effective on or after the Issue Date (or, if the relevant Tax Jurisdiction became a Tax Jurisdiction on a date after the Issue Date, such later date).

The Issuers will not give any such notice of redemption earlier than 90 days prior to the earliest date on which the Issuer, the Co-Issuer or relevant Guarantor would be obligated to make such payment or withholding if a payment in respect of the Notes was then due, and the obligation under the Indenture to pay Additional Amounts must be in effect at the time such notice is given. Prior to the publication or, where relevant, mailing of any notice of redemption of the Notes pursuant to the foregoing, the Issuers will deliver to the Trustee an opinion of independent tax counsel, to the effect that there has been such amendment or change which would entitle the Issuers to redeem the Notes hereunder, along with an Officer's Certificate to the effect that the Issuers or relevant Guarantor cannot avoid its obligation to pay Additional Amounts by taking reasonable measures available to it.

The Trustee will accept and shall be entitled to rely on such Officer's Certificate and Opinion of Counsel as sufficient evidence of the satisfaction of the conditions precedent as described above without further inquiry, in which event it will be conclusive and binding on the Holders of the Notes.

8. Notice of Redemption

Notice of redemption shall be provided in accordance with Section 3.4 of the Indenture. Notice of redemption will be mailed by first-class mail, or otherwise delivered or caused to be delivered, at least 10 days but not more than 60 days before the redemption date to each Holder at its registered address, except that redemption notices may be mailed more than 60 days prior to a redemption date if the notice is issued in connection with a defeasance of the Notes or a satisfaction and discharge of the Indenture. If less than all of the Notes are to be redeemed at any time, the Paying Agent or the Registrar shall select Notes to be redeemed on a by lot basis to the extent practicable or, to the extent that selection on a by lot basis is not practicable for any reason, by such other method as required by the rules of DTC; *provided*, *however*, no Notes of $2,000 or less can be redeemed in part.

9. Repurchase at the Option of Holders

If a Change of Control (as defined in the Indenture) occurs at any time, the Holder of this Note will have the right to require the Issuers to repurchase on the Change of Control Payment Date all or any part (equal to $2,000 or an integral multiple of $1,000 in excess thereof) of this Note at a purchase price in cash in an amount equal to 101% of the principal amount hereof, *plus* any accrued and unpaid interest and Additional Amounts, if any, on the Notes repurchased to, but excluding, the Change of Control Payment Date (subject to the rights of Holders of Notes on the relevant Record Dates to receive interest due on the relevant Interest Payment Date occurring on or prior to the redemption date). The Issuers shall purchase all Notes properly and timely tendered in the Change of Control Offer and not withdrawn in accordance with the procedures set forth in such notice. The Change of Control Offer will state, among other things, the procedures that Holders of the Notes must follow to accept the Change of Control Offer.

If a Diavik Sale (as defined in the Indenture) occurs at any time, the Holder of this Note will have the right to require the Issuers to repurchase on the Diavik Sale Payment Date all or any part (equal to $2,000 or an integral multiple of $1,000 in excess thereof) of this Note at a purchase price in cash in an amount equal to 101% of the principal amount hereof, *plus* any accrued and unpaid interest and Additional Amounts, if any, on the Notes repurchased to, but not including, the Diavik Sale Payment Date (subject to the rights of Holders of Notes on the relevant Record Dates to receive interest due on the relevant Interest Payment Date occurring on or prior to the redemption date). The Issuers shall purchase all Notes properly and timely tendered in the Diavik Sale Offer and not withdrawn in accordance with the procedures set forth in such notice. The Diavik Sale Offer will state, among other things, the procedures that Holders of the Notes must follow to accept the Diavik Sale Offer.

In accordance with Section 4.9 of the Indenture, when the aggregate amount of Excess Proceeds exceeds $35.0 million, the Issuers shall be required to make an offer (an "**Asset Sale Offer**") to all Holders and may make an offer to all holders of other Indebtedness that is *pari passu* with the Notes or any Note Guarantees to purchase, prepay or redeem with the proceeds of sales of assets to purchase, prepay or redeem the maximum principal amount of Notes and such other *pari passu* Indebtedness (plus all accrued interest on the Indebtedness and the amount of all fees and expenses, including premiums, incurred in connection therewith) that may be purchased, prepaid or redeemed out of the Excess Proceeds. The offer price for the Notes in any Asset Sale Offer shall be equal to at least 100% of the principal amount and the offer price for any *pari passu* Public Debt may be no greater than 100% of the principal amount, in each case, plus accrued and unpaid interest and Additional Amounts, if any, to, but excluding,

the date of purchase, prepayment or redemption, subject to the rights of the Holders on the relevant Record Date to receive interest due on the relevant Interest Payment Date, and will be payable in cash. After the completion of any Asset Sale, the Issuers may make an Asset Sale Offer prior to the time it is required to do so under this paragraph.

10. Denominations, Transfer, Exchange

The Notes are in minimum denominations of $2,000 and integral multiples of $1,000 of principal amount at maturity. The transfer of Notes may be registered, and Notes may be exchanged, as provided in the Indenture. The Registrar and the Transfer Agent may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and to pay any taxes and fees required by law or permitted by the Indenture.

The Issuers need not exchange or register the transfer of any Note or portion of a Note selected for redemption, except for the unredeemed portion of any Note being redeemed in part. Also, the Issuers need not exchange or register the transfer of any Notes for a period of 15 days before a selection of Notes to be redeemed or during the period between a record date and the next succeeding Interest Payment Date.

11. Unclaimed Money

All moneys paid by the Issuers to the Trustee or a Paying Agent for the payment of the principal of, or premium, if any, or interest or Additional Amounts on, if any, any Notes that remain unclaimed at the end of two years after such principal, premium or interest has become due and payable may be repaid to the Issuers, subject to applicable law, and the Holder of such Note thereafter may look only to the Issuers or any Guarantor for payment thereof.

12. Discharge and Defeasance

Subject to the conditions set forth in Section 8.4 of the Indenture, the Issuers at any time may terminate some or all of its obligations and the obligations of the Guarantors under the Notes, the Note Guarantees and the Indenture and have Liens on the Collateral securing the Notes released, if the Issuers irrevocably deposit with the Trustee U.S. dollars, non-callable U.S. Government Obligations, or a combination thereof for the payment of principal of, or interest (including Additional Amounts) and premium, if any, on, the Notes to redemption or maturity, as the case may be.

13. Amendment, Supplement and Waiver

(a) Except as provided in Article 9 of the Indenture, the Indenture, the Notes, any Note Guarantees, the Security Documents, the Intercreditor Agreement and any Additional Intercreditor Agreement may be amended or supplemented with the consent of the Holders of at least a majority in aggregate principal amount of the Notes then outstanding (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes), and any existing Default or Event of Default or compliance with any provision of the Indenture, the Notes, the Note Guarantees, the Security Documents, the Intercreditor Agreement and any Additional Intercreditor Agreement may be waived with the consent of the Holders of a majority in aggregate principal amount of the then outstanding Notes (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes).

(b) Unless consented to by Holders of each affected Notes (or, in the case of Clauses (viii) and (ix) below, 75%) of the aggregate principal amount of the then outstanding Notes (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes), an amendment, supplement or waiver may not (with respect to any Notes held by a non-consenting holder):

(i) reduce the principal amount of Notes whose holders must consent to an amendment, supplement or waiver;

(ii) (a) reduce the principal of or change the fixed maturity of any Note or (b) reduce the purchase price payable upon the redemption of any Notes or (c) change the time (other than notice periods) at

which any Notes may be redeemed, in the case of each of (b) and (c) in Sections 3.8 and 3.9 of the Indenture;

(iii) reduce the rate of or change the time for payment of interest, including default interest, on any Note;

(iv) waive a Default or Event of Default in the payment of principal of, or interest, Additional Amounts or premium, if any, on, the Notes (except a rescission of acceleration of the Notes by the holders of at least a majority in aggregate principal amount of the then outstanding Notes and a waiver of the payment default that resulted from such acceleration);

(v) make any Note payable in money other than that stated in the Notes;

(vi) make any change in the provisions of the Indenture relating to waivers of past Defaults or the rights of holders of Notes to receive payments of principal of, or interest, Additional Amounts or premium, if any, on, the Notes (other than as permitted in Clause (vii));

(vii) waive a redemption payment with respect to any Note (other than a payment required by Sections 4.9, 4.11 or 4.31 of the Indenture);

(viii) modify or release any of the Note Guarantees in any manner adverse to the Holders, other than in accordance with the terms of the Indenture and any relevant intercreditor agreement (or any additional intercreditor agreement or priority agreement entered into in accordance with the terms of the Indenture);

(ix) release all or substantially all the security interests granted to the Notes Collateral Agent for the benefit of the Trustee in the Collateral other than in accordance with the terms of the Security Documents, the Intercreditor Agreement and any Additional Intercreditor Agreement and/or the Indenture;

(x) impair the right of any Holder to institute suit for the enforcement of any payment on or with respect to such holder's Notes or any Note Guarantee in respect thereof;

(xi) make any change to the ranking of the Notes or Note Guarantees, in each case in a manner that adversely affects the rights of the Holders; or

(xii) make any change in the preceding amendment, supplement and waiver provisions.

The consent of the Holders is not necessary to approve the particular form of any proposed amendment. It is sufficient if such consent approves the substance of the proposed amendment.

The Trustee shall be entitled to rely on such evidence as it deems appropriate, including Officer's Certificates and Opinions of Counsel.

(c) Notwithstanding Clause 13(b) above, without the consent of any Holder, the Issuers, the Guarantors, the Trustee and the Notes Collateral Agent (as applicable and to the extent each is a party to the relevant document) subject to Section 9.7 of the Indenture, may amend or supplement the Indenture, the Notes, the Note Guarantees, the Security Documents, the Intercreditor Agreement and any Additional Intercreditor Agreement:

(i) to cure any ambiguity, defect or inconsistency;

(ii) to provide for uncertificated Notes in addition to or in place of certificated Notes;

(iii) to provide for the assumption of the Issuer's, the Co-Issuer's or a Guarantor's obligations to Holders of Notes and Note Guarantees in the case of a merger, amalgamation or consolidation or sale of all or substantially all of the Issuer's, the Co-Issuer's or such Guarantor's assets, as applicable;

(iv) to make any change that would provide any additional rights or benefits to the Holders or that does not adversely affect the legal rights under the Indenture of any such holder in any material respect;

(v) to conform the text of the Indenture, the Notes, the Note Guarantees, the Security Documents, the Intercreditor Agreement or any Additional Intercreditor Agreement to any provision of the "Description of Notes" section of the Offering Circular to the extent that such provision in that "Description of Notes" was intended to be a verbatim recitation of a provision of the Indenture, the Note Guarantees, the Notes, the Security Documents, the Intercreditor Agreement or any Additional Intercreditor Agreement;

(vi) to enter into additional or supplemental Security Documents or to add additional parties or collateral to the Intercreditor Agreement, any Additional Intercreditor Agreement or any Security Document to the extent permitted thereunder and under the Indenture;

(vii) to the extent necessary or desirable to provide for the issuance of Additional Notes in accordance with the limitations set forth in the Indenture as of the Issue Date;

(viii) to release any Note Guarantee or any Collateral in accordance with the terms of the Indenture, the Intercreditor Agreement, any Additional Intercreditor Agreement or any Security Document, as applicable;

(ix) to allow any Guarantor to execute a supplemental indenture and/or a Note Guarantee with respect to the Notes or release Note Guarantees pursuant to the terms of the Indenture;

(x) to the extent necessary or desirable to secure the Notes or provide for Guarantees of Additional Notes;

(xi) to evidence and provide for the acceptance and appointment under the Indenture of a successor trustee; or

(xii) to comply with the rules of any applicable securities depository; or

(xiii) to make any amendment to the provisions of the Indenture relating to the transfer and legending of the Notes; *provided, however*, that (a) compliance with the Indenture as so amended would not result in the Notes being transferred in violation of the Securities Act or any other applicable securities law and (b) such amendment does not materially and adversely affect the rights of holders to transfer the Notes.

14. Defaults and Remedies

The Notes have the Events of Default as set forth in Section 6.1 of the Indenture. In the case of an Event of Default arising under Section 6.1(a)(ix) or (x) of the Indenture with respect to the Parent and/or the Issuer or the Co-Issuer, all then outstanding Notes will become due and payable immediately without further action or notice. A Default arising after the Escrow Release Date under Section 6.1(a)(iii) or (iv) of the Indenture will not constitute an Event of Default until the Trustee or the Holders of at least 30% in aggregate principal amount of the then outstanding Notes notify the Issuers of the Default and, with respect to Section 6.1(a)(iv) of the Indenture, the Issuers do not cure such default within the time specified in Section 6.1(a)(iv) of the Indenture after receipt of such notice. If prior to the Escrow Release Date, an Event of Default under Section 6.1(a)(iv) of the Indenture (solely with respect to an Event of Default arising due to the failure to comply with Section 4.25 of the Indenture) occurs and is continuing, the Trustee or the Holders of at least 30% in aggregate principal amount of the then outstanding Notes may declare all of the then outstanding Notes to be due and payable immediately by notice in writing to the Issuers and, in case of a notice by Holders, also to the Trustee specifying the respective Event of Default and that it is a notice of acceleration. If any other Event of Default occurs and is continuing after the Escrow Release Date (other than an Event of Default described in Section 6.1(a)(viii) of the Indenture), the Trustee or the Holders of at least 30% in aggregate principal amount of the then outstanding Notes may declare all of the then outstanding Notes to be due and payable

immediately by notice in writing to the Issuers and, in case of a notice by Holders, also to the Trustee specifying the respective Event of Default and that it is a notice of acceleration. In the event of a declaration of acceleration of the Notes because an Event of Default set forth in Section 6.1(a)(v) of the Indenture has occurred and is continuing, the declaration of acceleration of the Notes shall be automatically annulled if (i) the event of default or Payment Default triggering such Event of Default pursuant to Section 6.1(a)(v) of the Indenture shall be remedied or cured, or waived by the holders of the Indebtedness, or the Indebtedness that gave rise to such Event of Default shall have been discharged in full, in each case, within 30 days after the declaration of acceleration with respect thereto, (ii) the annulment of the acceleration of the Notes would not conflict with any judgment or decree of a court of competent jurisdiction and (iii) all existing Events of Default, except nonpayment of principal, premium or interest, including Additional Amounts, if any, on the Notes that became due solely because of the acceleration of the Notes, have been cured or waived.

Holders may not enforce the Indenture or the Notes except as provided in the Indenture. The Trustee may refuse to enforce the Indenture or the Notes unless it receives an indemnity and/or security satisfactory to it. Subject to certain limitations set forth in the Indenture, Holders of a majority in aggregate principal amount of the Notes may direct the Trustee in its exercise of any trust or power. The Holders of a majority in aggregate principal amount of the Notes then outstanding by written notice to the Trustee may rescind any acceleration or waive any past or existing Default or Event of Default and its consequences under the Indenture except a continuing Default or Event of Default in the payment of interest or Additional Amounts or premium on, or the principal of, the Notes held by a non-consenting Holder. The above description of Events of Default and remedies is qualified by reference, and subject in its entirety, to the more complete description thereof contained in the Indenture.

15. Trustee Dealings with the Issuers

The Trustee under the Indenture, the Notes Collateral Agent, any Paying Agent, any Registrar or any other agent of the Issuers or of the Trustee, in its individual or any other capacity, may become the owner or pledgee of Notes, may make loans to, accept deposits from and perform services for the Issuers or any of their Affiliates and may otherwise deal with the Issuers with the same rights it would have if it were not Trustee, Notes Collateral Agent, Paying Agent, Registrar or other such agent.

16. No Recourse Against Others

No director, officer, employee, incorporator, member, partner or stockholder, of the Issuer, the Co-Issuer or any Guarantor, as such, shall have any liability for any obligations of the Issuer, the Co-Issuer or the Guarantors under the Notes, the Indenture, the Note Guarantees, the Intercreditor Agreement, any Additional Intercreditor Agreement or the Security Documents or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder by accepting a Note waives and releases all such liability. The waiver and release shall be part of the consideration for the issuance of the Notes.

17. Authentication

This Note shall not be valid until an authorized officer of the Trustee (or an authenticating agent) signs by manual signature the certificate of authentication on the other side of this Note.

18. Persons Deemed Owners

The registered Holder of a Note may be treated as the owner of it for all purposes. Only registered Holders have rights under the Indenture.

19. CUSIP and ISIN Numbers

The Issuers have caused CUSIP and ISIN numbers to be printed on the Notes, and the Trustee may use CUSIP and ISIN numbers in notices of redemption as a convenience to Holders. No representation is made as to the accuracy of such numbers either as printed on the Notes or as contained in any notice of redemption, and reliance may be placed only on the other identification numbers placed thereon.

20. Governing Law

THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

The Issuers shall furnish to any Holder upon written request and without charge to the Holder a copy of the Indenture, the Security Documents, the Intercreditor Agreement and any Additional Intercreditor Agreement. Requests may be made to:

Northwest Acquisitions ULC
Dominion Finco Inc.
c/o Dominion Diamond Corporation
900 - 606 4 Street SW
Calgary, AB, Canada T2P 1T1
Attention: Finance

Schedule A

Schedule of Principal Amount of Indebtedness Evidenced by this Note

The following decreases/increases in the principal amount of this Note have been made:

Date of Decrease/ Increase	Decrease in Principal Amount	Increase in Principal Amount	Principal Amount Following such Decrease/Increase	Notation Made by or on Behalf of Registrar

Exhibit 2

Form of Certificate of Transfer

[*Issuers address*]

[*Trustee/Registrar address*]

Re: $_________ 7.125% Senior Secured Second Lien Notes due 2022 of Northwest Acquisitions ULC and Dominion Finco Inc.

Reference is hereby made to the Indenture, dated as of October 23, 2017 (the "**Indenture**"), among, *inter alios*, Northwest Acquisitions ULC, an unlimited liability company formed under the laws of British Columbia (the "**Issuer**"), Dominion Finco Inc., a Delaware corporation (the "**Co-Issuer**" and, together with the Issuer, the "**Issuers**"), the Guarantors named therein and Wilmington Trust, National Association, as Trustee, Notes Collateral Agent, Paying Agent, Transfer Agent and Registrar. Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

_______________ (the "**Transferor**") owns and proposes to transfer the Note[s] or interest in such Note[s] specified in Annex A hereto, in the principal amount of $________ in such Note[s] or interests (the "**Transfer**"), to _____________ (the "**Transferee**"), as further specified in Annex A hereto. In connection with the Transfer, the Transferor hereby certifies that:

[CHECK ALL THAT APPLY]

1. ☐ **Check if Transferee will take delivery of a Book-Entry Interest in the 144A Global Note or a Definitive Registered Note Pursuant to Rule 144A**. The Transfer is being effected pursuant to and in accordance with Rule 144A under the United States Securities Act of 1933, as amended (the "Securities Act"), and, accordingly, the Transferor hereby further certifies that the beneficial interest or the Book-Entry Interest or Definitive Registered Note is being transferred to a Person that the Transferor reasonably believed and believes is purchasing the beneficial interest or the Book-Entry Interest or Definitive Registered Note for its own account, or for one or more accounts with respect to which such Person exercises sole investment discretion, and such Person and each such account is a "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act in a transaction meeting the requirements of Rule 144A under the Securities Act and such Transfer is in compliance with any applicable blue sky securities laws of any state of the United States. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or the Book-Entry Interest or Definitive Registered Note will be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the 144A Global Note and/or the Definitive Registered Note and in the Indenture and the Securities Act.

2. ☐ **Check if Transferee will take delivery of a Book-Entry Interest in the Regulation S Global Note or a Definitive Registered Note pursuant to Regulation S**. The Transfer is being effected pursuant to and in accordance with Rule 903 or Rule 904 under the Securities Act and, accordingly, the Transferor hereby further certifies that (i) the Transfer is not being made to a person in the United States and (x) at the time the buy order was originated, the Transferee was outside the United States or such Transferor and any Person acting on its behalf reasonably believed and believes that the Transferee was outside the United States or (y) the transaction was executed in, on or through the facilities of a designated offshore securities market, (ii) such Transferor does not know that the transaction was prearranged with a buyer in the United States, (iii) no directed selling efforts have been made in connection with the Transfer in contravention of the requirements of Rule 903(b) or Rule 904(b) of Regulation S under the Securities Act, (iv) the transaction is not part of a plan or scheme to evade the registration requirements of the Securities Act and (v) if the proposed transfer is being effected prior to the expiration of a Restricted Period, the transferee is not a U.S. Person, as such term is defined pursuant to Regulation S of the Securities Act, and will take delivery only as a Book-Entry Interest so transferred through Euroclear or Clearstream. Upon consummation of the pro-

posed transfer in accordance with the terms of the Indenture, the transferred Book-Entry Interest or Definitive Registered Note will be subject to the restrictions on Transfer enumerated in the Private Placement Legend printed on the Regulation S Global Note and/or the Definitive Registered Note and in the Indenture and the Securities Act.

3. ☐ **Check and complete if Transferee will take delivery of a Book-Entry Interest in a Global Note or a Definitive Registered Note pursuant to any provision of the Securities Act other than Rule 144A or Regulation S**. The Transfer is being effected in compliance with the transfer restrictions applicable to Book-Entry Interests in Global Notes and Definitive Registered Notes and pursuant to and in accordance with the Securities Act and any applicable blue sky securities laws of any state of the United States.

This certificate and the statements contained herein are made for your benefit and the benefit of the Issuers.

Signatures must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program ("**STAMP**") or such other "signature guarantee program" as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

Annex 1
To Certificate of Transfer

(a) The Transferor owns and proposes to transfer the following:

[CHECK ONE]

(i) ☐ a Book-Entry Interest in the:

(A) ☐ 144A Global Note (ISIN _________), or

(B) ☐ Regulation S Global Note (ISIN _________).

(b) After the Transfer the Transferee will hold:

[CHECK ONE]

(i) ☐ a Book-Entry Interest in the:

(A) ☐ 144A Global Note (ISIN _________), or

(B) ☐ Regulation S Global Note (ISIN _________).

Exhibit 3

Form of Certificate of Exchange

[*Issuers address*]

[*Trustee/Registrar address*]

Re: $________ 7.125% Senior Secured Second Lien Notes due 2022 of Northwest Acquisitions ULC and Dominion Finco Inc.
CUSIP _________; ISIN _________

Reference is hereby made to the Indenture, dated as of October 23, 2017 (the "**Indenture**"), among, *inter alios*, Northwest Acquisitions ULC, an unlimited liability company formed under the laws of British Columbia (the "**Issuer**"), Dominion Finco Inc., a Delaware corporation (the "**Co-Issuer**," and together with the Issuer, the "**Issuers**"), the Guarantors named therein and Wilmington Trust, National Association as Trustee, Notes Collateral Agent, Paying Agent, Transfer Agent and Registrar. Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

_____________ (the "**Owner**") owns and proposes to exchange the Note[s] or interest in such Note[s] specified herein, in the principal amount of $_________ in such Note[s] or interests (the "**Exchange**").

In connection with the Exchange, the Owner hereby certifies that:

1. ☐ **Check if Exchange is from Book-Entry Interest in a Global Note for Definitive Registered Notes**. In connection with the Exchange of the Owner's Book-Entry Interest in a Global Note for Definitive Registered Notes in an equal amount, the Owner hereby certifies that such Definitive Registered Notes are being acquired for the Owner's own account without transfer. The Definitive Registered Notes issued pursuant to the Exchange will be subject to restrictions on transfer enumerated in the Indenture and the Securities Act.

2. ☐ **Check if Exchange is from Definitive Registered Notes for Book-Entry Interest in a Global Note**. In connection with the Exchange of the Owner's Definitive Registered Notes for Book-Entry Interest in a Global Note in an equal amount, the Owner hereby certifies that such Book-Entry Interest in a Global Note are being acquired for the Owner's own account without transfer. The Book-Entry Interests transferred in exchange will be subject to restrictions on transfer enumerated in the Indenture and the Securities Act.

This certificate and the statements contained herein are made for your benefit and the benefit of the Issuers.

Signatures must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program ("**STAMP**") or such other "signature guarantee program" as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

Annex 2
To Certificate of Exchange

(a) The Owner owns and proposes to exchange the following:

[CHECK ONE OF (a) OR (b)]

(i) ☐ a Book-Entry Interest held through Euroclear/Clearstream Account No. _________ in the:

(A) ☐ 144A Global Note (ISIN _________), or

(B) ☐ Regulation S Global Note (ISIN _________), or

(ii) ☐ a Definitive Registered Note.

(b) After the Exchange the Owner will hold:

[CHECK ONE]

(i) ☐ a Book-Entry Interest held through Euroclear/Clearstream Account No. _________ in the:

(A) ☐ 144A Global Note (ISIN _________), or

(B) ☐ Regulation S Global Note (ISIN _________), or

(ii) ☐ a Definitive Registered Note.

Exhibit 4

Form of Supplemental Indenture to be Delivered by Subsequent Guarantors

[ ] Supplemental Indenture (this "**Supplemental Indenture**"), dated as of _________, among _________, a company incorporated and existing under the laws of _________ (the "**Subsequent Guarantor**"), [a subsidiary of the Parent (as such term is defined in the Indenture referred to below) (or its permitted successor),] the Issuers (as defined in the Indenture referred to herein) and Wilmington Trust, National Association, as trustee under the Indenture referred to below (the "**Trustee**"). Reference is hereby made to the Indenture, dated as of October 23, 2017 (the "**Indenture**"), among Northwest Acquisitions ULC, an unlimited liability company formed under the laws of British Columbia, Dominion Finco Inc., a Delaware corporation, the Guarantors named therein and Wilmington Trust, National Association as Trustee, Notes Collateral Agent, Paying Agent, Transfer Agent and Registrar.

W I T N E S S E T H

Whereas, the Issuers have heretofore executed and delivered to the Trustee an indenture (the "**Indenture**"), dated as of October 23, 2017, providing for the issuance of 7.125% Senior Secured Second Lien Notes due 2022 (the "**Notes**");

Whereas, the Indenture provides that under certain circumstances the Subsequent Guarantor shall execute and deliver to the Trustee a supplemental indenture pursuant to which the Subsequent Guarantor shall guarantee on the terms and subject to the provisions, including the limitations and conditions, set forth herein, in the Note Guarantee and in the Indenture including but not limited to Article 10 thereof, all of the Issuers' Obligations under the Notes and the Indenture on the terms and conditions set forth herein (the "**Guarantee**"); and

Whereas, pursuant to Section 9.1 of the Indenture, the Issuers and the Trustee are authorized to execute and deliver this Supplemental Indenture without the consent of Holders.

Now, Therefore, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Subsequent Guarantor and the Trustee mutually covenant and agree for the equal and ratable benefit of the Holders as follows:

1. ***Capitalized Terms***.

Capitalized terms used herein without definition shall have the meanings assigned to them in the Indenture.

2. ***Agreement to Guarantee***.

The Subsequent Guarantor hereby agrees to provide an unconditional Guarantee on the terms and subject to the provisions, including the limitations and conditions, set forth herein, in the Guarantee and in the Indenture including but not limited to Article 10 thereof, and hereby further agrees to accede to the Indenture as a Guarantor and be bound by the covenants therein applicable to Guarantors.

3. ***Execution and Delivery***.

(i) This Supplemental Indenture shall be executed on behalf of the Subsequent Guarantor by one of its Directors or Officers.

(ii) The Subsequent Guarantor hereby agrees that its Guarantee shall remain in full force and effect notwithstanding any failure to endorse on each Note a notation of such Guarantee.

(iii) If an Officer whose signature is on this Supplemental Indenture or on the Guarantee no longer holds that office at the time the Trustee authenticates the Note on which a Guarantee is endorsed, the Guarantee shall be valid nevertheless.

Upon execution of this Supplemental Indenture, the delivery of any Note by the Trustee, after the authentication thereof hereunder, shall constitute due delivery of the Guarantee set forth in this Supplemental Indenture on behalf of the Subsequent Guarantor.

4. [***Issuers, as they deem necessary and appropriate, to insert limitation on Guarantor language applicable to the relevant jurisdiction of such Guarantor***.]

5. ***Releases***.

Each Guarantee shall be automatically and unconditionally released and discharged in accordance with Section 10.9 of the Indenture.

6. ***No Recourse against others***.

No past, present or future director, officer, employee, incorporator, member, partner, stockholder or agent of any Subsequent Guarantor, as such, shall have any liability for any obligations of the Issuers or any Subsequent Guarantor under the Notes, any Guarantees, the Indenture or this Supplemental Indenture, the Intercreditor Agreement, any Additional Intercreditor Agreement or the Security Documents or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes.

7. ***Incorporation by Reference***.

Section 12.9 of the Indenture is incorporated by reference into this Supplemental Indenture as if more fully set out herein.

8. THIS SUPPLEMENTAL INDENTURE AND THE NOTES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.

9. ***Counterparts***.

The parties may sign any number of copies of this Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. The exchange of copies of this Supplemental Indenture and of signature pages by facsimile or ".pdf" transmission shall constitute effective execution and delivery of this Supplemental Indenture as to the parties hereto and may be used in lieu of the original Supplemental Indenture and signature pages for all purposes.

10. ***Effect of Headings***.

The Section headings herein are for convenience only and shall not affect the construction hereof.

11. ***The Trustee***.

The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Supplemental Indenture or for or in respect of the recitals contained herein, all of which recitals are made solely by each Subsequent Guarantor and the Issuers.

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

Dated: ____________

[SUBSEQUENT GUARANTOR], as a Subsequent Guarantor

By: ____
Name:
Title:

Northwest Acquisitions ULC, as Issuer

By: ____
Name:
Title:

Dominion Finco Inc., as Co-Issuer

By: ____
Name:
Title:

Wilmington Trust, National Association,
as Trustee

By: ____
Name:

This is Exhibit “B” referred to in the
Affidavit of Mark Freake sworn before me
this 12th day of May, 2020

____

A Notary Public in and for Ontario

Execution Version

INTERCREDITOR AGREEMENT

among

NORTHWEST ACQUISITIONS ULC,

WASHINGTON DIAMOND INVESTMENTS B.V.,

the other Grantors from time to time party hereto,

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH,
as Bank Collateral Agent for the Credit Agreement Secured Parties,

WILMINGTON TRUST, NATIONAL ASSOCIATION,
solely in its capacity as Notes Collateral Agent, as the Initial Junior Priority Representative

and

each Additional Senior Agent and Additional Junior Agent from time to time party hereto

dated as of November 1, 2017

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This INTERCREDITOR AGREEMENT, dated as of November 1, 2017 (as amended, supplemented or otherwise modified from time to time, this "Agreement"), is entered into by and among Northwest Acquisitions ULC, an unlimited liability company formed under the laws of British Columbia (which, promptly after the consummation of the Acquisition, will be amalgamated with Dominion Diamond ULC, an unlimited liability company formed under the laws of British Columbia, which amalgamated company will be amalgamated with Dominion Diamond Holdings ULC, with the amalgamated company being called Dominion Diamond ULC) (the "Borrower"), Washington Diamond Investments B.V., with corporate seat in Amsterdam, the Netherlands ("Parent"), the other Grantors (as defined below) party hereto, Credit Suisse AG, Cayman Islands Branch, as administrative agent for the Credit Agreement Secured Parties (as defined below) (in such capacity and together with its successors in such capacity, the "Bank Collateral Agent"), Wilmington Trust, National Association, as Notes Collateral Agent and Representative for the Initial Junior Secured Parties (in such capacity and together with its successors in such capacity, the "Initial Junior Priority Representative") and each Additional Senior Agent and each Additional Junior Agent that from time to time becomes a party hereto pursuant to Section 8.09.

In consideration of the mutual agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Bank Collateral Agent (for itself and on behalf of the Credit Agreement Secured Parties), the Initial Junior Priority Representative (for itself and on behalf of the Initial Junior Secured Parties), each Additional Senior Agent (for itself and on behalf of the Additional Senior Secured Parties under the applicable Additional Senior Debt Facility) and each Additional Junior Agent (for itself and on behalf of the Additional Junior Secured Parties under the applicable Additional Junior Debt Facility) agree as follows:

ARTICLE I

DEFINITIONS

SECTION 1.01 Certain Defined Terms. Capitalized terms used but not otherwise defined herein (including in the preamble and recitals hereto) have the meanings set forth in the Credit Agreement and the Second Lien Notes Indenture or, if defined in the New York UCC, the meanings specified therein. As used in this Agreement, the following terms have the meanings specified below:

"Additional Intercreditor Agreement" has the meaning assigned to such term in the Second Lien Notes Indenture.

"Additional Junior Agent" means the collateral agent, administrative agent and/or trustee (as applicable) or any other similar agent or Person under any Additional Junior Debt Documents, in each case, together with its successors in such capacity.

"Additional Junior Debt" means any Indebtedness of the Borrower or any other Grantor (other than Indebtedness constituting Initial Junior Debt Obligations) Guaranteed by the Guarantors (and not Guaranteed by any other Person) which Indebtedness and Guarantees are secured by the Junior Collateral (or a portion thereof) on a pari passu basis (but without regard to control of remedies) with the Initial Junior Debt Obligations (and not secured by Liens on any other assets of the Borrower or any Guarantor); provided, however, that (i) such Indebtedness is permitted to be incurred, secured and Guaranteed on such basis by each Senior Debt Document and Junior Debt Document and (ii) the Representative for the holders of such Indebtedness shall have become party to (A) this Agreement pursuant to, and by satisfying the conditions set forth in, Section 8.09 hereof and (B) if any other Junior Obligations are outstanding, the Additional Intercreditor Agreement pursuant to, and by satisfying the conditions set forth in such Additional Intercreditor Agreement; provided that if such Indebtedness is the initial Additional Junior Debt, then the Grantors, the Junior Priority Representatives and the Representative for the holders of such Indebtedness shall have

executed and delivered the Additional Intercreditor Agreement. Additional Junior Debt shall include any Registered Equivalent Notes and Guarantees thereof by the Guarantors issued in exchange therefor.

"Additional Junior Debt Documents" means, with respect to any Series of Additional Junior Debt Obligations, the notes, credit agreements, indentures, security documents and other operative agreements evidencing or governing such Additional Junior Debt Obligations and each other agreement entered into for the purpose of securing such Additional Junior Debt Obligations.

"Additional Junior Debt Facility" means each debt facility, credit agreement, indenture or other governing agreement with respect to any Additional Junior Debt.

"Additional Junior Debt Obligations" means, with respect to any Series of Additional Junior Debt, (a) all principal of, and interest, fees and other amounts (including, without limitation, any interest, fees, and expenses which accrue after the commencement of any Insolvency or Liquidation Proceeding, whether or not allowed or allowable as a claim in any such proceeding) payable with respect to, such Additional Junior Debt, (b) all other amounts payable to the related Additional Junior Secured Parties under the related Additional Junior Debt Documents and (c) any Refinancing of the foregoing.

"Additional Junior Secured Parties" means, with respect to any Series of Additional Junior Debt Obligations, the holders of such Additional Junior Debt Obligations, the Representative with respect thereto, any trustee or agent therefor under any related Additional Junior Debt Documents and the beneficiaries of each indemnification obligation undertaken by the Borrower or any Guarantor under any related Additional Junior Debt Documents.

"Additional Senior Agent" means the collateral agent, administrative agent and/or trustee (as applicable) under any Additional Senior Debt Documents, in each case, together with its successors in such capacity.

"Additional Senior Debt" means any Indebtedness of the Borrower or any other Grantor (other than Indebtedness constituting Senior Credit Facility Obligations) Guaranteed by the Guarantors (and not Guaranteed by any other Subsidiary of Parent) which Indebtedness and Guarantees are secured by the Senior Collateral (or a portion thereof) on a pari passu basis (but without regard to control of remedies) with the Senior Credit Facility Obligations (and not secured by Liens on any other assets of the Borrower or any Subsidiary of Parent); provided, however, that, (i) such Indebtedness is permitted to be incurred, secured and Guaranteed on such basis by each Senior Debt Document and Junior Debt Document and (ii) the Representative for the holders of such Indebtedness shall have become party to this Agreement pursuant to, and by satisfying the conditions set forth in, Section 8.09 hereof. Additional Senior Debt shall include any Registered Equivalent Notes and Guarantees thereof by the Guarantors issued in exchange therefor.

"Additional Senior Debt Documents" means, with respect to any Series of Additional Senior Debt Obligations, the notes, credit agreements, indentures, security documents and other operative agreements evidencing or governing such Additional Senior Debt Obligations and each other agreement entered into for the purpose of securing such Additional Senior Debt Obligations.

"Additional Senior Debt Facility" means each debt facility, credit agreement, indenture or other governing agreement with respect to any Additional Senior Debt.

"Additional Senior Debt Obligations" means, with respect to any Series of Additional Senior Debt, (a) all principal of, and interest, fees and other amounts (including, without limitation, any interest, fees, and expenses which accrue after the commencement of any Insolvency or Liquidation Proceeding, whether or not allowed or allowable as a claim in any such proceeding) payable with respect to, such Ad-

ditional Senior Debt, (b) all other amounts payable to the related Additional Senior Secured Parties under the related Additional Senior Debt Documents and (c) any Refinancing of the foregoing.

"Additional Senior Secured Parties" means, with respect to any Series of Additional Senior Debt Obligations, the holders of such Additional Senior Debt Obligations, the Representative with respect thereto, any trustee or agent therefor under any related Additional Senior Debt Documents and the beneficiaries of each indemnification obligation undertaken by the Borrower or any Guarantor under any related Additional Senior Debt Documents.

"Agreement" has the meaning assigned to such term in the preamble hereto.

"Bank Collateral Agent" has the meaning assigned to such term in the preamble hereto.

"Bankruptcy Code" means Title 11 of the United States Code, as amended.

"Bankruptcy Law" means the Bankruptcy Code, Canadian Insolvency Law and any other federal, state, or foreign law for the relief of debtors, or any arrangement, reorganization, insolvency, moratorium, assignment for the benefit of creditors, any other marshalling of the assets or liabilities of Parent or any of its Subsidiaries, or similar law affecting creditors' rights generally.

"Borrower" has the meaning provided in the preamble hereto.

"Business Day" means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed.

"Canadian Insolvency Law" means any of the Bankruptcy and Insolvency Act (Canada), the Companies' Creditors Arrangement Act (Canada) and the Winding-Up and Restructuring Act (Canada), each as now and hereafter in effect, any successors to such statutes, any other law in respect of bankruptcy, insolvency, liquidation, dissolution, wind-up, arrangement, restructuring, reorganization, receivership, compromise of debts, or a stay of proceedings or the relief of debtors, including in respect of any arrangement proceeding, any plan of arrangement and any other law permitting a company to arrange its debt or securities including the Canada Business Corporations Act and any other corporate statutes.[1]

"Class Debt" has the meaning assigned to such term in Section 8.09.

"Class Debt Parties" has the meaning assigned to such term in Section 8.09.

"Class Debt Representatives" has the meaning assigned to such term in Section 8.09.

"Collateral" means the Senior Collateral and the Junior Collateral.

"Collateral Documents" means the Senior Collateral Documents and the Junior Collateral Documents.

"Credit Agreement" means that certain Revolving Credit Agreement, dated as of November 1, 2017, as amended, restated, supplemented or otherwise modified, Refinanced or replaced from time to time, among the Borrower, Parent, the lenders from time to time party thereto, the Bank Collateral Agent, and the other parties thereto.

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[1] Blakes to comment on Canadian law aspects of agreement.

"Credit Agreement Loan Documents" means the Credit Agreement and the other "Loan Documents" as defined in the Credit Agreement.

"Credit Agreement Secured Parties" means the "Secured Parties" as defined in the Credit Agreement.

"Credit Agreement Security Agreements" means, collectively, the "U.S. Security Agreement" and the "Canadian Security Agreement," each as defined in the Credit Agreement.

"Debt Facility" means any Senior Debt Facility and any Junior Debt Facility.

"Designated Junior Representative" means (i) the Initial Junior Priority Representative until such time as the Junior Debt Facility under the Initial Junior Debt Documents ceases to be the only Junior Debt Facility under this Agreement and (ii) thereafter, the Junior Representative designated by all then existing Junior Representatives in a written notice from the Borrower or such Junior Representative to the Designated Senior Representative.

"Designated Senior Representative" means (i) the Bank Collateral Agent until such time as the facility under the Credit Agreement Loan Documents ceases to be the only Senior Debt Facility under this Agreement and (ii) thereafter, the Senior Representative designated by all then existing Senior Representatives in a written notice to the Designated Junior Representative.

"DIP Financing" has the meaning assigned to such term in Section 6.01.

"Discharge" means, with respect to any Debt Facility, the date on which such Debt Facility and the Senior Obligations or Junior Obligations thereunder, as the case may be, are no longer secured by Shared Collateral in accordance with the terms of the Senior Debt Documents or Junior Debt Documents, as applicable, governing such Debt Facility. The term "Discharged" shall have a corresponding meaning.

"Discharge of Senior Credit Facility Obligations" means the Discharge of the Senior Credit Facility Obligations; provided that the Discharge of Senior Credit Facility Obligations shall not be deemed to have occurred in connection with a Refinancing of such Senior Credit Facility Obligations with an Additional Senior Debt Facility secured by such Shared Collateral under one or more Additional Senior Debt Documents which has been designated in writing by the Representative (under the Credit Agreement so Refinanced) or by the Borrower, in each case, to each other Representative as the "Credit Agreement" for purposes of this Agreement.

"Discharge of Senior Obligations" means the date on which the Discharge of Senior Credit Facility Obligations and the Discharge of each Additional Senior Debt Facility has occurred.

"Grantors" means the Borrower, Parent, and each other Subsidiary of Parent which has granted a security interest pursuant to any Collateral Document to secure any Secured Obligations. The Grantors existing on the date hereof are set forth in Annex I hereto.

"Guarantors" has the meaning assigned to such term in the Guaranty and the Second Lien Notes Indenture.

"Initial Junior Debt" means the Junior Debt incurred pursuant to any of the Initial Junior Debt Documents.

"Initial Junior Debt Documents" means the Second Lien Notes Indenture, the Initial Junior Debt Security Agreements, the other "Security Documents" (as defined in the Second Lien Notes Indenture), "Pari Secured Indebtedness Documents" (as defined in the Second Lien Notes Indenture) and any other notes, security documents, pledge agreements, debentures and other operative agreements evidencing or governing any Initial Junior Debt Obligations, including any agreement entered into for the purpose of securing any Initial Junior Debt Obligations.

"Initial Junior Debt Obligations" means the "Secured Liabilities" as defined in the Initial Junior Debt Security Agreements and the other Junior Debt Obligations arising pursuant to the Initial Junior Debt Documents.

"Initial Junior Debt Security Agreements" means, collectively, (a) that certain U.S. Security Agreement, dated as of November 1, 2017, among the Grantors party thereto and the Initial Junior Priority Representative and (b) that certain Canadian Security Agreement, dated as of November 1, 2017, among the Grantors party thereto and the Initial Junior Priority Representative.

"Initial Junior Priority Representative" has the meaning assigned to such term in the introductory paragraph of this Agreement

"Initial Junior Secured Parties" means the "Secured Parties" as defined in the Initial Junior Debt Security Agreements and the other holders of any Initial Junior Debt Obligations and the Initial Junior Priority Representative.

"Insolvency or Liquidation Proceeding" means:

(1) any case commenced by or against the Borrower or any other Grantor under any Bankruptcy Law, any other proceeding for the reorganization, recapitalization or adjustment or marshalling of the assets or liabilities of the Borrower or any other Grantor, any receivership or assignment for the benefit of creditors relating to the Borrower or any other Grantor or any similar case or proceeding relative to the Borrower or any other Grantor or its creditors, as such, in each case whether or not voluntary;

(2) any liquidation, dissolution, marshalling of assets or liabilities or other winding up of or relating to the Borrower or any other Grantor, in each case whether or not voluntary and whether or not involving bankruptcy or insolvency (except to the extent the foregoing does not constitute an event of default under any Junior Debt Document or Senior Debt Document); or

(3) any other proceeding of any type or nature in which substantially all claims of creditors of the Borrower or any other Grantor are determined and any payment or distribution is or may be made on account of such claims.

"Intellectual Property" means "Intellectual Property" as defined in the Credit Agreement Security Agreements.

"Joinder Agreement" means a supplement to this Agreement in the form of Annex III or Annex IV hereof required to be delivered by the Borrower and a Representative to the Designated Senior Representative and the Designated Junior Representative pursuant to Section 8.09 hereof in order to include an additional Debt Facility hereunder and to become the Representative hereunder for the Senior Secured Parties or Junior Secured Parties, as the case may be, under such Debt Facility.

"Junior Class Debt" has the meaning assigned to such term in Section 8.09.

"Junior Class Debt Parties" has the meaning assigned to such term in Section 8.09.

"Junior Class Debt Representative" has the meaning assigned to such term in Section 8.09.

"Junior Collateral" means any "Collateral" (or similar term) as defined in any Junior Debt Document or any other assets of the Borrower or any other Grantor with respect to which a Lien is granted or purported to be granted pursuant to a Junior Collateral Document as security for any Junior Obligation.

"Junior Collateral Documents" means the Initial Junior Debt Security Agreements and the other "Security Documents" as defined in the Second Lien Notes Indenture and each of the other security agreements and other instruments and documents executed and delivered by the Borrower or any Grantor for purposes of providing collateral security for any Junior Obligation.

"Junior Debt" means the Initial Junior Debt and any Additional Junior Debt.

"Junior Debt Documents" means (a) the Initial Junior Debt Documents and (b) any Additional Junior Debt Documents.

"Junior Debt Facility" means each debt facility, credit agreement, indenture or other governing agreement with respect to any Junior Debt.

"Junior Obligations" means (a) the Initial Junior Debt Obligations and (b) any Additional Junior Debt Obligations.

"Junior Obligations Enforcement Date" means , with respect to any Junior Representative, the date which is 120 days after the occurrence of both (i) an Event of Default (under and as defined in the Junior Debt Document for which such Junior Representative has been named as Representative) and (ii) the Designated Senior Representative's and each other Representative's receipt of written notice from such Junior Representative that (x) such Junior Representative is the Designated Junior Priority Representative and that an Event of Default (under and as defined in the Junior Debt Document for which such Junior Representative has been named as Representative) has occurred and is continuing and (y) the Junior Obligations of the Series to which such Junior Representative is the Junior Representative are currently due and payable in full (whether as a result of acceleration thereof or otherwise) in accordance with the terms of the applicable Junior Debt Document; provided that the Junior Obligations Enforcement Date shall be stayed and shall not occur and shall be deemed not to have occurred at any time either (1) a Senior Representative has commenced and is diligently pursuing any enforcement action with respect to all or a material portion of Shared Collateral or (2) any Grantor which has granted a security interest in any Shared Collateral is then a debtor under or with respect to (or otherwise subject to) any Insolvency or Liquidation Proceeding.

"Junior Representative" means (i) in the case of the Initial Junior Debt Obligations or the Initial Junior Secured Parties, the Initial Junior Priority Representative and (ii) in the case of any Additional Junior Debt Facility and the Additional Junior Secured Parties thereunder, each Additional Junior Agent in respect of such Additional Junior Debt Facility that is named as such in the applicable Joinder Agreement.

"Junior Secured Parties" means the Initial Junior Secured Parties and any Additional Junior Secured Parties.

"Lien" means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge, easement, arrangement that in substance secures performance of an obligation, trusts or deemed trusts, title retention agreement or security interest in, on or of such asset and (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agree-

ment (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset.

"New York UCC" means the Uniform Commercial Code as from time to time in effect in the State of New York.

"Notes Collateral Agent" means Wilmington Trust, National Association, as notes collateral agent under the Second Lien Notes Indenture, its successors and assigns.

"Officer's Certificate" has the meaning assigned to such term in Section 8.08.

"Plan of Reorganization" means any plan of reorganization, plan of liquidation, plan of arrangement, agreement for composition, or other type of dispositive restructuring plan proposed in or in connection with any Insolvency or Liquidation Proceeding.

"Pledged or Controlled Collateral" has the meaning assigned to such term in Section 5.05(a).

"Proceeds" means the proceeds of any sale, collection or other liquidation of Shared Collateral, any payment or distribution made in respect of Shared Collateral in an Insolvency or Liquidation Proceeding and any amounts received by any Senior Representative or any Senior Secured Party from a Junior Secured Party in respect of Shared Collateral pursuant to this Agreement or any other intercreditor agreement.

"Recovery" has the meaning assigned to such term in Section 6.04.

"Refinance" means, in respect of any Indebtedness, to refinance, extend, renew, defease, amend, increase, modify, supplement, restructure, refund, replace or repay, or to issue other Indebtedness or enter alternative financing arrangements, in exchange or replacement for such indebtedness (in whole or in part), including by adding or replacing lenders, creditors, agents, borrowers and/or guarantors, and including in each case, but not limited to, after the original instrument giving rise to such Indebtedness has been terminated and including, in each case, through any credit agreement, indenture or other agreement. "Refinanced" and "Refinancing" have correlative meanings.

"Registered Equivalent Notes" means, with respect to any notes originally issued in a Rule 144A or other private placement transaction under the Securities Act of 1933, substantially identical notes (having the same Guarantees) issued in a dollar for dollar exchange therefor pursuant to an exchange offer registered with the SEC.

"Representatives" means the Senior Representatives and the Junior Representatives.

"SEC" means the United States Securities and Exchange Commission and any successor agency thereto.

"Second Lien Notes Indenture" means that certain Indenture dated as of October 23, 2017, among the Borrower and Dominion Finco Inc., a Delaware corporation, as issuers, the Guarantors identified therein and Wilmington Trust, National Association, as trustee, notes collateral agent, paying agent, transfer agent and registrar.

"Secured Obligations" means the Senior Obligations and the Junior Obligations.

"Secured Parties" means the Senior Secured Parties and the Junior Secured Parties.

"Senior Class Debt" has the meaning assigned to such term in Section 8.09.

"Senior Class Debt Parties" has the meaning assigned to such term in Section 8.09.

"Senior Class Debt Representative" has the meaning assigned to such term in Section 8.09.

"Senior Collateral" means any "Collateral" (or similar term) as defined in any Credit Agreement Loan Document or any other Senior Debt Document or any other assets of the Borrower or any other Grantor with respect to which a Lien is granted or purported to be granted pursuant to a Senior Collateral Document as security for any Senior Obligation.

"Senior Collateral Documents" means the Credit Agreement Security Agreements, the "Dutch Pledge Agreement" (as defined in the Credit Agreement) and the other "Collateral Documents" as defined in the Credit Agreement and each of the other security agreements and other instruments and documents executed and delivered by the Borrower or any Grantor from time to time for purposes of providing collateral security for any Senior Obligation.

"Senior Credit Facility Obligations" means the "Secured Obligations" as defined in the Credit Agreement.

"Senior Debt Documents" means (a) the Credit Agreement Loan Documents and (b) any Additional Senior Debt Documents.

"Senior Debt Facilities" means the facility under the Credit Agreement and any Additional Senior Debt Facilities.

"Senior Lien" means the Liens on the Senior Collateral in favor of the Senior Secured Parties under the Senior Collateral Documents.

"Senior Obligations" means the Senior Credit Facility Obligations and any Additional Senior Debt Obligations.

"Senior Representative" means (i) in the case of any Senior Credit Facility Obligations or the Credit Agreement Secured Parties, the Bank Collateral Agent and (iii) in the case of any Additional Senior Debt Facility and the Additional Senior Secured Parties thereunder, each Additional Senior Agent in respect of such Additional Senior Debt Facility that is named as such in the applicable Joinder Agreement.

"Senior Secured Parties" means the Credit Agreement Secured Parties and any Additional Senior Secured Parties.

"Series" means, (a) (x) with respect to the Senior Secured Parties, each of (i) the Credit Agreement Secured Parties (in their capacities as such) and (ii) the Additional Senior Secured Parties that become subject to this Agreement after the date hereof that are represented by a common Representative (in its capacity as such for such Additional Senior Secured Parties) and (y) with respect to the Junior Secured Parties, each of (i) the Initial Junior Secured Parties (in their capacity as such) and (ii) the Additional Junior Secured Parties that become subject to this Agreement after the date hereof that are represented by a common Representative (in its capacity as such for such Additional Junior Secured Parties) and (b) (x) with respect to any Senior Obligations, each of (i) the Senior Credit Facility Obligations and (ii) the Additional Senior Debt Obligations incurred pursuant to any Additional Senior Debt Facility and or any Additional Senior Debt Documents, which pursuant to any Joinder Agreement, are to be represented hereunder

by a common Representative (in its capacity as such for such Additional Senior Debt Obligations) and (y) with respect to any Junior Obligations, each of (i) the Initial Junior Debt Obligations and (ii) the Additional Junior Debt Obligations incurred pursuant to any Additional Junior Debt Facility and the related Additional Junior Debt Documents, which pursuant to any Joinder Agreement, are to be represented under this Agreement by a common Representative (in its capacity as such for such Additional Junior Debt Obligations).

"Shared Collateral" means, at any time, Collateral in which the holders of Senior Obligations under at least one Senior Debt Facility and the holders of Junior Obligations under at least one Junior Debt Facility (or their Representatives) hold a security interest at such time. If, at any time, any portion of the Senior Collateral under one or more Senior Debt Facilities does not constitute Junior Collateral under one or more Junior Debt Facilities, then such portion of such Senior Collateral shall constitute Shared Collateral only with respect to the Junior Debt Facilities for which it constitutes Junior Collateral and shall not constitute Shared Collateral for any Junior Debt Facility which does not have a security interest in such Collateral at such time.

"Uniform Commercial Code" or "UCC" means the New York UCC, or the Uniform Commercial Code (or any similar or comparable legislation including the Personal Property Security Act and Securities Transfer Act in effect in any province or territory of Canada and, in the case of Quebec, the Civil Code of Quebec) of another jurisdiction, to the extent it may be required to apply to any item or items of Collateral.

SECTION 1.02 Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument, other document, statute or regulation herein shall be construed as referring to such agreement, instrument, other document, statute or regulation as from time to time amended, supplemented or otherwise modified, (ii) any reference herein to any Person shall be construed to include such Person's successors and assigns, but shall not be deemed to include the subsidiaries of such Person unless express reference is made to such subsidiaries, (iii) the words "herein," "hereof and "hereunder," and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (iv) all references herein to Articles, Sections and Annexes shall be construed to refer to Articles, Sections and Annexes of this Agreement, (v) unless otherwise expressly qualified herein, the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights and (vi) the term "or" is not exclusive.

ARTICLE II

PRIORITIES AND AGREEMENTS WITH RESPECT TO SHARED COLLATERAL

SECTION 2.01 Subordination.

(a) Notwithstanding the date, time, manner or order of filing or recordation of any document or instrument or grant, attachment or perfection of any Liens granted to any Junior Representative or any Junior Secured Parties on the Shared Collateral or of any Liens granted to any Senior Representative or the Senior Secured Parties on the Shared Collateral (or any actual or alleged defect in any of the foregoing) and notwithstanding any provision of the UCC, any applicable law, any Junior Debt Document or any Senior Debt Document or any other circumstance whatsoever, each Junior Representative, on behalf

of itself and each Junior Secured Party under its Junior Debt Facility, hereby agrees that any Lien on the Shared Collateral securing (or purporting to secure) any Senior Obligations now or hereafter held by or on behalf of any Senior Secured Parties or any Senior Representative or other agent or trustee therefor, regardless of how acquired, whether by grant, statute, operation of law, subrogation or otherwise, shall have priority over and be senior in all respects and prior to any Lien on the Shared Collateral securing (or purporting to secure) any Junior Obligations; and

(b) any Lien on the Shared Collateral securing (or purporting to secure) any Junior Obligations now or hereafter held by or on behalf of any Junior Secured Parties or any Junior Representative or other agent or trustee therefor, regardless of how acquired, whether by grant, statute, operation of law, subrogation or otherwise, shall be junior and subordinate in all respects to all Liens on the Shared Collateral securing any Senior Obligations. All Liens on the Shared Collateral securing (or purporting to secure) any Senior Obligations shall be and remain senior in all respects and prior to all Liens on the Shared Collateral securing any Junior Obligations for all purposes, whether or not such Liens securing (or purporting to secure) any Senior Obligations are subordinated to any Lien securing any other obligation of the Borrower, any Grantor or any other Person or otherwise subordinated, voided, avoided, invalidated or lapsed.

SECTION 2.02 Nature of Senior Lender Claims. Each Junior Representative, on behalf of itself and each Junior Secured Party under its Junior Debt Facility, acknowledges that (a) all or a portion of the Senior Obligations may be revolving in nature and that the amount thereof that may be outstanding at any time or from time to time may be increased or reduced and subsequently reborrowed, (b) the terms of the Senior Debt Documents and the Senior Obligations may be amended, supplemented or otherwise modified, and the Senior Obligations, or a portion thereof, may be Refinanced from time to time and (c) the aggregate amount of the Senior Obligations may be increased, in each case, without notice to or consent by the Junior Representatives or the Junior Secured Parties and without affecting the provisions hereof. The Lien priorities provided for in Section 2.01 shall not be altered or otherwise affected by any amendment, supplement or other modification, or any Refinancing, of either the Senior Obligations or the Junior Obligations, or any portion thereof. As between the Borrower and the other Grantors and the Junior Secured Parties, the foregoing provisions will not limit or otherwise affect the obligations of the Borrower and the other Grantors contained in any Junior Debt Document with respect to the incurrence of additional Senior Obligations.

SECTION 2.03 Prohibition on Contesting Liens. Each of the Junior Representatives, for itself and on behalf of each Junior Secured Party under its Junior Debt Facility, agrees that it shall not (and hereby waives any right to) contest or support any other Person in contesting, in any proceeding (including any Insolvency or Liquidation Proceeding), the validity, extent, perfection, priority or enforceability of any Lien securing any Senior Obligations held (or purported to be held) by or on behalf of any of the Senior Secured Parties or any Senior Representative or other agent or trustee therefor in any Senior Collateral, and the Designated Senior Representative and each other Senior Representative, for itself and on behalf of each Senior Secured Party under its Senior Debt Facility, agrees that it shall not (and hereby waives any right to) contest or support any other Person in contesting, in any proceeding (including any Insolvency or Liquidation Proceeding), the validity, extent, perfection, priority or enforceability of any Lien securing any Junior Obligations held (or purported to be held) by or on behalf of any of any Junior Representative or any of the Junior Secured Parties in the Junior Collateral. Notwithstanding the foregoing, no provision in this Agreement shall be construed to prevent or impair the rights of the Designated Senior Representative or any other Senior Representative to enforce this Agreement (including the priority of the Liens securing the Senior Obligations as provided in Section 2.01) or any of the Senior Debt Documents.

SECTION 2.04 No New Liens. The parties hereto agree that, subject to Section 2.07, so long as the Discharge of Senior Obligations has not occurred (a) none of the Grantors shall grant or permit any

additional Liens on any asset or property of any Grantor to secure any Junior Obligation unless it has granted, or concurrently therewith grants, a Lien on such asset or property of such Grantor to secure the Senior Obligations; and (b) if any Junior Representative or any Junior Secured Party shall hold any Lien on any assets or property of any Grantor securing any Junior Obligations that are not also subject to the senior-priority Liens securing Senior Obligations under the Senior Collateral Documents, such Junior Representative or Junior Secured Party (i) shall notify the Designated Senior Representative promptly upon becoming aware thereof and, unless such Grantor shall promptly grant a similar Lien on such assets or property to the Senior Representatives as security for the Senior Obligations, shall assign such Lien to the Senior Representatives as security for the Senior Obligations (but shall retain a junior lien on such assets or property subject to the terms hereof) and (ii) until such assignment or such grant of a similar Lien to the Senior Representatives, shall be deemed to hold and have held such Lien for the benefit of the Senior Representatives as security for the Senior Obligations. If any Junior Representative or any Junior Secured Party shall, at any time, receive any proceeds or payment from or as a result of any Liens granted in contravention of this Section 2.04, it shall pay such proceeds or payments over to the Designated Senior Representative in accordance with the terms of Section 4.02. Notwithstanding the foregoing, this Section 2.04 shall not prohibit or restrict or apply to Cash and cash equivalents that defease or discharge any Junior Obligations under the Junior Debt Documents in a transaction that is permitted under the Senior Debt Documents.

SECTION 2.05 Perfection of Liens. Except for the agreements of the Designated Senior Representative pursuant to Section 5.05 hereof, none of the Designated Senior Representatives, the other Senior Representatives or the Senior Secured Parties shall be responsible for perfecting and maintaining the perfection of Liens with respect to the Shared Collateral for the benefit of the Junior Representatives or the Junior Secured Parties. The provisions of this Agreement are intended solely to govern the respective Lien priorities as between the Senior Secured Parties and the Junior Secured Parties and shall not impose on the Designated Senior Representative, the other Senior Representatives, the Senior Secured Parties, the Junior Representatives, the Junior Secured Parties or any agent or trustee therefor any obligations in respect of the disposition of Proceeds of any Shared Collateral which would conflict with prior perfected claims therein in favor of any other Person or any order or decree of any court or governmental authority or any applicable law.

SECTION 2.06 Refinancings.

(a) The Senior Credit Facility Obligations of any Series may be Refinanced, in whole or in part, in each case, without notice to, or the consent (except to the extent a consent is otherwise required to permit the Refinancing transaction under any Secured Credit Document) of any party hereto, all without affecting the priorities provided for herein or the other provisions hereof; provided that the collateral agent of the holders of any such Refinancing indebtedness shall have executed a Joinder Agreement on behalf of the holders of such Refinancing indebtedness that is secured by Shared Collateral and such collateral agent and Grantors shall have complied with Section 8.09 with respect to such Indebtedness.

(b) The Junior Credit Facility Obligations of any Series may be Refinanced, in whole or in part, in each case, without notice to, or the consent (except to the extent a consent is otherwise required to permit the Refinancing transaction under any Secured Credit Document) of any party hereto, all without affecting the priorities provided for herein or the other provisions hereof; provided that the collateral agent of the holders of any such Refinancing indebtedness that is secured by Shared Collateral shall have executed a Joinder Agreement on behalf of the holders of such Refinancing indebtedness and such collateral agent and Grantors shall have complied with Section 8.09 with respect to such Indebtedness.

SECTION 2.07 Certain Cash Collateral.

(a) Notwithstanding anything in this Agreement or any other Senior Debt Documents or Junior Debt Documents to the contrary, collateral consisting of cash and cash equivalents pledged to secure Senior Obligations consisting of reimbursement obligations in respect of Letters of Credit or otherwise held by the Bank Collateral Agent pursuant to the Credit Agreement (or any equivalent or successor agreement) shall be applied as specified in such Section of the Credit Agreement and will not constitute Shared Collateral.

(b) Cash and cash equivalents that defease or discharge any Junior Obligations under the Junior Debt Documents in a transaction that is permitted under the Senior Debt Documents shall be applied as specified in the applicable Junior Debt Documents and will not constitute Shared Collateral.

ARTICLE III

ENFORCEMENT

SECTION 3.01 Exercise of Remedies.

(a) So long as the Discharge of Senior Obligations has not occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Borrower or any other Grantor, (i) neither any Junior Representative nor any Junior Secured Party will (x) exercise or seek to exercise any rights or remedies (including setoff or recoupment) with respect to any Shared Collateral in respect of any Junior Obligations, or institute any action or proceeding with respect to such rights or remedies (including any action of foreclosure or exercise of a power of sale), (y) contest, protest or object to any foreclosure proceeding or action or exercise of a power of sale brought with respect to the Shared Collateral or any other Senior Collateral by the Designated Senior Representative, any other Senior Representative or any Senior Secured Party in respect of the Senior Obligations, the exercise of any right by the Designated Senior Representative, any other Senior Representative or any Senior Secured Party (or any receiver, agent or sub-agent on their behalf) in respect of the Senior Obligations under any lockbox agreement, control agreement, landlord waiver or bailee's letter or similar agreement or arrangement to which the Designated Senior Representative, any other Senior Representative or any Senior Secured Party either is a party or may have rights as a third party beneficiary, or any other exercise by any such party of any rights and remedies relating to the Shared Collateral under the Senior Debt Documents or otherwise in respect of the Senior Collateral or the Senior Obligations, or (z) object to the forbearance by the Senior Secured Parties from bringing or pursuing any foreclosure proceeding or action, exercise of a power of sale or any other exercise of any rights or remedies relating to the Shared Collateral in respect of Senior Obligations and (ii) except as otherwise provided herein, the Designated Senior Representative, the other Senior Representatives and the Senior Secured Parties shall have the exclusive right to enforce rights, exercise remedies (including setoff, recoupment, and the right to credit bid their debt) and make determinations regarding the release, disposition or restrictions with respect to the Shared Collateral without any consultation with or the consent of any Junior Representative or any Junior Secured Party; provided, however, that (A) in any Insolvency or Liquidation Proceeding commenced by or against the Borrower or any other Grantor, any Junior Representative may file a claim, proof of claim, or statement of interest with respect to the Junior Obligations under its Junior Debt Facility, (B) any Junior Representative may take any action (not adverse to the prior Liens on the Shared Collateral securing the Senior Obligations or the rights of the Designated Senior Representative, the other Senior Representatives or the Senior Secured Parties to exercise remedies in respect thereof) in order to create, prove, perfect, preserve or protect (but not enforce) its rights in, and perfection and priority of its Lien on, the Shared Collateral, (C) to the extent not otherwise inconsistent with this Agreement, any Junior Representative and the Junior Secured Parties may exercise their rights and remedies as unsecured creditors, as provided in Section 5.04, (D) any Junior Representative may exercise the rights and remedies provided for in Section 6.03 and may vote on a proposed Plan of Reorganization in any Insolvency or Liquidation Proceeding of any Grantor that is in accordance with

the terms of this Agreement (including Section 6.12), (E) any Junior Representative and the Junior Secured Parties may file any necessary or appropriate responsive or defensive pleadings in opposition to any motion, claim, adversary proceeding or other pleading made by any person objecting to or otherwise seeking the disallowance of the claims or Liens of the Junior Secured Parties, including any claims secured by the Junior Collateral, in each case in accordance with the terms of this Agreement and (F) from and after the Junior Obligations Enforcement Date, the Designated Junior Representative (or such other Person, if any, authorized by or as is so authorized under any Additional Intercreditor Agreement) may exercise or seek to exercise any rights or remedies (including setoff) with respect to any Shared Collateral in respect of any Junior Obligations, or institute any action or proceeding with respect to such rights or remedies (including any action of foreclosure), but only so long as (1) a Senior Representative has not commenced and is not diligently pursuing any enforcement action with respect to all or a material portion of Shared Collateral or (2) any Grantor which has granted a security interest in any Shared Collateral is not then a debtor under or with respect to (or otherwise subject to) any Insolvency or Liquidation Proceeding. In exercising rights and remedies with respect to the Senior Collateral, the Designated Senior Representative, the other Senior Representatives and the Senior Secured Parties may enforce the provisions of the Senior Debt Documents and exercise remedies thereunder, all in such order and in such manner as they may determine in the exercise of their sole discretion. Such exercise and enforcement shall include the rights of a receiver or an agent appointed by them to sell or otherwise dispose of Shared Collateral upon foreclosure or pursuant to an exercise of a power of sale, to incur expenses in connection with such sale or disposition and to exercise all the rights and remedies of a secured lender or creditor under the Uniform Commercial Code of any applicable jurisdiction and of a secured creditor under Bankruptcy Laws of any applicable jurisdiction.

(b) So long as the Discharge of Senior Obligations has not occurred, except as expressly provided in the proviso in Section 3.01(a), each Junior Representative, agrees that it will not, in the context of its role as secured creditor, take or receive any Shared Collateral or any Proceeds of Shared Collateral in connection with the exercise of any right or remedy (including setoff or recoupment) with respect to any Shared Collateral in respect of Junior Obligations. Without limiting the generality of the foregoing, unless and until the Discharge of Senior Obligations has occurred, except as expressly provided in the proviso in Section 3.01(a), the sole right of the Junior Representatives and the Junior Secured Parties with respect to the Shared Collateral is to hold a Lien on the Shared Collateral in respect of Junior Obligations pursuant to the Junior Debt Documents for the period and to the extent granted therein and to receive a share of the Proceeds thereof, if any, after the Discharge of Senior Obligations has occurred.

(c) Subject to the proviso in Section 3.01(a), (i) each Junior Representative, for itself and on behalf of each Junior Secured Party under its Junior Debt Facility, agrees that neither such Junior Representative nor any such Junior Secured Party will take any action that would hinder any exercise of remedies undertaken by the Designated Senior Representative, any other Senior Representative or any Senior Secured Party (or any receiver, agent or sub-agent on their behalf) with respect to the Shared Collateral under the Senior Debt Documents, including any sale, lease, exchange, transfer or other disposition of the Shared Collateral, whether by foreclosure or otherwise, and (ii) each Junior Representative, for itself and on behalf of each Junior Secured Party under its Junior Debt Facility, hereby waives any and all rights it or any such Junior Secured Party may have as a junior lien creditor or otherwise to object to the manner in which the Designated Senior Representative, the other Senior Representatives or the Senior Secured Parties seek to enforce or collect the Senior Obligations or the Liens granted on any of the Senior Collateral, regardless of whether any action or failure to act by or on behalf of the Designated Senior Representative, any other Senior Representative or any other Senior Secured Party is adverse to the interests of the Junior Secured Parties.

(d) Each Junior Representative hereby acknowledges and agrees that no covenant, agreement or restriction contained in any Junior Debt Document shall be deemed to restrict in any way the rights and

remedies of the Designated Senior Representative, the other Senior Representatives or the Senior Secured Parties with respect to the Senior Collateral as set forth in this Agreement and the Senior Debt Documents.

(e) Subject to the proviso in Section 3.01(a), until the Discharge of Senior Obligations, the Designated Senior Representative or any Person authorized by it shall have the exclusive right to exercise any right or remedy with respect to the Shared Collateral and shall have the exclusive right to determine and direct the time, method and place for exercising such right or remedy or conducting any proceeding with respect thereto. Following the Discharge of Senior Obligations, the Designated Junior Representative or any Person authorized by it shall have the exclusive right to exercise any right or remedy with respect to the Collateral and shall have the exclusive right to direct the time, method and place of exercising or conducting any proceeding for the exercise of any right or remedy available to the Junior Secured Parties with respect to the Collateral, or of exercising or directing the exercise of any trust or power conferred on the Junior Representatives, or for the taking of any other action authorized by the Junior Collateral Documents; provided, however, that nothing in this Section shall impair the right of any Junior Representative or other agent or trustee acting on behalf of the Junior Secured Parties to take such actions with respect to the Collateral after the Discharge of Senior Obligations (subject to the terms of any intercreditor agreement governing the Junior Secured Parties or the Junior Obligations).

SECTION 3.02 Cooperation. Subject to the proviso in Section 3.01(a), each Junior Representative, on behalf of itself and each Junior Secured Party under its Junior Debt Facility, agrees that, unless and until the Discharge of Senior Obligations has occurred, it will not commence, or join with any Person (other than the Senior Secured Parties and the Designated Senior Representative upon the request thereof) in commencing, any enforcement, collection, execution, levy, power of sale or foreclosure action or proceeding with respect to any Lien held by it in the Shared Collateral under any of the Junior Debt Documents or otherwise in respect of the Junior Obligations, including the appointment of a receiver.

SECTION 3.03 Actions upon Breach. Should any Junior Representative or any Junior Secured Party, contrary to this Agreement, in any way take, attempt to take or threaten to take any action with respect to the Shared Collateral (including any attempt to realize upon or enforce any remedy with respect to this Agreement) or fail to take any action required by this Agreement, the Designated Senior Representative or any other Senior Representative or other Senior Secured Party (in its or their own name or in the name of the Borrower or any other Grantor) or the Borrower may obtain relief against such Junior Representative or such Junior Secured Party by injunction, specific performance or other appropriate equitable relief. Each Junior Representative, on behalf of itself and each Junior Secured Party under its Junior Debt Facility, hereby (i) agrees that the Senior Secured Parties' damages from the actions of the Junior Representatives or any Junior Secured Party may at that time be difficult to ascertain and may be irreparable and waives any defense that the Borrower, any other Grantor or the Senior Secured Parties cannot demonstrate damage or be made whole by the awarding of damages and (ii) irrevocably waives any defense based on the adequacy of a remedy at law and any other defense that might be asserted to bar the remedy of specific performance in any action that may be brought by the Designated Senior Representative, any other Senior Representative or and Senior Secured Party.

ARTICLE IV

PAYMENTS

SECTION 4.01 Application of Proceeds. After an event of default under any Senior Debt Document has occurred and until such event of default is cured or waived, so long as the Discharge of Senior Obligations has not occurred, the Shared Collateral or Proceeds thereof received in connection with the sale or other disposition of, or collection on, such Shared Collateral upon the exercise of remedies or in any

Insolvency or Liquidation Proceeding shall be applied by the Designated Senior Representative to the Senior Obligations in such order as specified in the relevant Senior Debt Documents until the Discharge of Senior Obligations has occurred. Upon the Discharge of Senior Obligations, the Designated Senior Representative shall deliver promptly to the Designated Junior Representative any Shared Collateral or Proceeds thereof held by it in the same form as received, with any necessary endorsements, or as a court of competent jurisdiction may otherwise direct, to be applied by the Designated Junior Representative to the Junior Obligations in such order as specified in the relevant Junior Debt Documents.

SECTION 4.02 Payments Over. Any Shared Collateral or Proceeds thereof received by any Junior Representative or any Junior Secured Party in connection with the exercise of any right or remedy (including setoff or recoupment) relating to the Shared Collateral in contravention of this Agreement shall be segregated and held in trust for the benefit of and forthwith paid over to the Designated Senior Representative for the benefit of the Senior Secured Parties in the same form as received, with any necessary endorsements, or as a court of competent jurisdiction may otherwise direct. The Designated Senior Representative is hereby authorized to make any such endorsements as agent for each of the Junior Representatives or any such Junior Secured Party. This authorization is coupled with an interest and is irrevocable.

ARTICLE V

OTHER AGREEMENTS

SECTION 5.01 Releases.

(a) Each Junior Representative, for itself and on behalf of each Junior Secured Party under its Junior Debt Facility, agrees that, in the event of a sale, transfer or other disposition of any specified item of Shared Collateral (including all or substantially all of the equity interests of any subsidiary of Parent), (i) in connection with the exercise of remedies in respect of Shared Collateral by a Senior Representative or (ii) if not in connection with the exercise of remedies in respect of Shared Collateral by a Senior Representative, so long as such sale, transfer or other disposition is not prohibited by the terms of the Junior Debt Documents and the Senior Debt Documents and, in the case of this clause (ii) other than in connection with the Discharge of Senior Obligations, the Liens granted to the Junior Representatives and the Junior Secured Parties upon such Shared Collateral to secure Junior Obligations shall terminate and be released, automatically and without any further action, concurrently with the termination and release of all Liens granted upon such Shared Collateral to secure Senior Obligations. Upon delivery to each Junior Representative of an Officer's Certificate stating that any such termination and release of Liens securing the Senior Obligations has become effective (or shall become effective concurrently with such termination and release of the Liens granted to the Junior Secured Parties and the Junior Representatives) and any instruments of termination or release reasonably requested and prepared by the Borrower or any other Grantor, such Junior Representative will promptly execute, deliver or acknowledge, at the Borrower's or the other Grantor's sole cost and expense, such instruments to evidence such termination and release of the Liens. Nothing in this Section 5.01(a) will be deemed to affect any agreement of a Junior Representative, for itself and on behalf of the Junior Secured Parties under its Junior Debt Facility, to release the Liens on the Junior Collateral as set forth in the relevant Junior Debt Documents.

(b) Each Junior Representative, for itself and on behalf of each Junior Secured Party under its Junior Debt Facility, hereby irrevocably constitutes and appoints each Senior Representative and any officer or agent of each Senior Representative, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of such Junior Representative or such Junior Secured Party or in such Senior Representative's own name, from time to time in such Senior Representative's discretion, for the purpose of carrying out the terms of Section 5.01(a), to take any and all appropriate action and to execute any and all documents and instruments that may be reasona-

bly requested by the Borrower or the Senior Representative to accomplish the purposes of Section 5.01(a), including any termination statements, amendments, endorsements or other instruments of transfer or release.

(c) Unless and until the Discharge of Senior Obligations has occurred, each Junior Representative, for itself and on behalf of each Junior Secured Party under its Junior Debt Facility, hereby consents to the application, whether prior to or after an event of default under any Senior Debt Document of proceeds of Shared Collateral to the repayment of Senior Obligations pursuant to the Senior Debt Documents; provided that nothing in this Section 5.01(c) shall be construed to prevent or impair the rights of the Junior Representatives or the Junior Secured Parties to receive proceeds in connection with the Junior Obligations not otherwise in contravention of this Agreement.

(d) Notwithstanding anything to the contrary in any Junior Collateral Document, in the event the terms of a Senior Collateral Document and a Junior Collateral Document each require any Grantor (i) to make payment in respect of any item of Shared Collateral, (ii) to deliver or afford control over any item of Shared Collateral to, or deposit any item of Shared Collateral with, (iii) to register ownership of any item of Shared Collateral in the name of or make an assignment of ownership of any Shared Collateral or the rights thereunder to, (iv) cause any securities intermediary, commodity intermediary or other Person acting in a similar capacity to agree to comply, in respect of any item of Shared Collateral, with instructions or orders from, or to treat, in respect of any item of Shared Collateral, as the entitlement holder, (v) hold any item of Shared Collateral in trust for (to the extent such item of Shared Collateral cannot be held in trust for multiple parties under applicable law), (vi) obtain the agreement of a bailee or other third party to hold any item of Shared Collateral for the benefit of or subject to the control of or, in respect of any item of Shared Collateral, to follow the instructions of or (vii) obtain the agreement of a landlord with respect to access to leased premises where any item of Shared Collateral is located or waivers or subordination of rights with respect to any item of Shared Collateral in favor of, in any case, both any Designated Senior Representative and any Junior Representative or Junior Secured Party, such Grantor may, until the applicable Discharge of Senior Obligations has occurred, comply with such requirement under the Junior Collateral Document as it relates to such Shared Collateral by taking any of the actions set forth above only with respect to, or in favor of, the Designated Senior Representative.

SECTION 5.02 Insurance and Condemnation Awards. Unless and until the Discharge of Senior Obligations has occurred, the Designated Senior Representative and the Senior Secured Parties shall have the sole and exclusive right, subject to the rights of the Grantors under the Senior Debt Documents, (a) to adjust settlement for any insurance policy covering the Shared Collateral in the event of any loss thereunder and (b) to approve any award granted in any condemnation or similar proceeding affecting the Shared Collateral. Unless and until the Discharge of Senior Obligations has occurred, all proceeds of any such policy and any such award, if in respect of the Shared Collateral, shall be paid (i) first, prior to the occurrence of the Discharge of Senior Obligations, to the Designated Senior Representative for the benefit of Senior Secured Parties pursuant to the terms of the Senior Debt Documents, (ii) second, after the occurrence of the Discharge of Senior Obligations, to the extent required under the Junior Debt Documents, to the Designated Junior Representative for the benefit of the Junior Secured Parties pursuant to the terms of the applicable Junior Debt Documents and (iii) third, if no Junior Obligations are outstanding (or, if not otherwise required under the applicable Senior Debt Documents or Junior Debt Documents to be paid as provided in clauses (i) and (ii)), to the owner of the subject property, such other Person as may be entitled thereto or as a court of competent jurisdiction may otherwise direct. If any Junior Representative or any Junior Secured Party shall, at any time, receive any proceeds of any such insurance policy or any such award in contravention of this Agreement, it shall pay such proceeds over to the Designated Senior Representative or the applicable Grantor in accordance with the terms of Section 4.02.

SECTION 5.03 Amendments to Debt Documents.

(a) The Senior Debt Documents may be amended, restated, supplemented or otherwise modified in accordance with their terms, and the Senior Obligations may be Refinanced or replaced, in whole or in part, in each case, without the consent of any Junior Representative or any Junior Secured Party, all without affecting the Lien priorities provided for herein or the other provisions hereof; provided, however, that, without the consent of the Designated Junior Representatives, no such amendment, restatement, supplement, modification or Refinancing (or successive amendments, restatements, supplements, modifications or Refinancings) shall be permitted hereunder if it would be prohibited by or inconsistent with any of the terms of this Agreement.

(b) Without the prior written consent of the Designated Senior Representative, no Junior Collateral Document may be amended, supplemented or otherwise modified or entered into to the extent such amendment, supplement or modification, or the terms of any new Junior Collateral Document, would be prohibited by or inconsistent with any of the terms of this Agreement. The Borrower agrees to deliver to the Designated Senior Representative copies of (i) any amendments, supplements or other modifications to the Junior Collateral Documents and (ii) any new Junior Collateral Documents promptly after effectiveness thereof. Each Junior Representative, for itself and on behalf of each Junior Secured Party under its Junior Debt Facility, agrees that the Borrower shall cause each Junior Collateral Document under its Junior Debt Facility to include the following language (or language to similar effect reasonably approved by the Designated Senior Representative):

> "Notwithstanding anything herein to the contrary, (i) the liens and security interests granted to the Junior Representative pursuant to this Agreement are expressly subject and subordinate to the liens and security interests granted in favor of the Senior Secured Parties (as defined in the Intercreditor Agreement referred to below), including liens and security interests granted to Credit Suisse AG, Cayman Islands Branch, as administrative agent, pursuant to or in connection with the Revolving Credit Agreement, dated as of November 1, 2017 (as amended, restated, supplemented or otherwise modified from time to time), among Northwest Acquisitions ULC, an unlimited liability company formed under the laws of British Columbia (which, promptly after the consummation of the Acquisition, will be amalgamated with Dominion Diamond ULC, an unlimited liability company formed under the laws of British Columbia, which amalgamated company will be amalgamated with Dominion Diamond Holdings ULC, with the amalgamated company being called Dominion Diamond ULC), Washington Diamond Investments B.V., with corporate seat in Amsterdam, the Netherlands, the lenders party thereto, the other parties thereto, and Credit Suisse AG, Cayman Islands Branch, as administrative agent, and (ii) the exercise of any right or remedy by the Junior Representative hereunder is subject to the limitations and provisions of the Intercreditor Agreement dated as of November 1, 2017 (as amended, restated, supplemented or otherwise modified from time to time, the "Intercreditor Agreement"), among Credit Suisse AG, Cayman Islands Branch, as Bank Collateral Agent , Wilmington Trust, National Association, solely its capacity as Notes Collateral Agent, as Initial Junior Priority Representative, the other agents and representatives party thereto, Northwest Acquisitions ULC, an unlimited liability company formed under the laws of British Columbia (which, promptly after the consummation of the Acquisition, will be amalgamated with Dominion Diamond ULC, an unlimited liability company formed under the laws of British Columbia, which amalgamated company will be amalgamated with Do-

minion Diamond Holdings ULC, with the amalgamated company being called Dominion Diamond ULC), Washington Diamond Investments B.V. and its other subsidiaries and affiliated entities party thereto. In the event of any conflict between the terms of the Intercreditor Agreement and the terms of this Agreement, the terms of the Intercreditor Agreement shall govern."

(c) In the event that any Senior Representative enters into any amendment, waiver or consent in respect of any of the Senior Collateral Documents for the purpose of adding to or deleting from, or waiving or consenting to any departures from any provisions of, any Senior Collateral Document or changing in any manner the rights of the Designated Senior Representative, the Senior Secured Parties, the Borrower or any other Grantor thereunder (including the release of any Liens in Senior Collateral), then such amendment, waiver or consent shall apply automatically to any comparable provision of the comparable Junior Collateral Documents without the consent of any Junior Representative or any Junior Secured Party and without any action by any Junior Representative, the Borrower or any other Grantor; provided, however, (A) no such amendment, waiver or consent shall have the effect of (i) removing assets subject to the Lien of the Junior Collateral Documents, except to the extent that a release of such Lien is permitted by Section 5.01 of this Agreement and provided that there is a corresponding release of the Lien securing the Senior Obligations, (ii) imposing duties that are adverse on any Junior Representative without its consent or (iii) altering the terms of the Junior Debt Documents to permit other Liens on the Collateral not permitted under the terms of the Junior Debt Documents as in effect on the date hereof or Article VI hereof and (B) that written notice of such amendment, waiver or consent shall have been given by the Borrower to each Junior Representative within 10 Business Days after the effectiveness of such amendment, waiver or consent.

SECTION 5.04 Rights as Unsecured Creditors. The Junior Representatives and the Junior Secured Parties may exercise rights and remedies as unsecured creditors against the Borrower and any other Grantor in accordance with the terms of the Junior Debt Documents and applicable law so long as such rights and remedies do not violate or are not otherwise inconsistent with any provision of this Agreement (including any provision prohibiting or restricting the Junior Secured Parties from taking various actions or making various objections). Except to the extent set forth in Section 2.04, 4.02 or 5.02, nothing in this Agreement shall prohibit the receipt by any Junior Representative or any Junior Secured Party of the required payments of principal, premium, interest, fees and other amounts due under the Junior Debt Documents so long as such receipt is not the direct or indirect result of the exercise by a Junior Representative or any Junior Secured Party of rights or remedies as a secured creditor in respect of Shared Collateral in contravention of this Agreement. In the event any Junior Representative or any Junior Secured Party becomes a judgment lien creditor in respect of Shared Collateral as a result of its enforcement of its rights as an unsecured creditor in respect of Junior Obligations, such judgment lien shall be subordinated to the Liens securing Senior Obligations on the same basis as the other Liens securing the Junior Obligations are so subordinated to such Liens securing Senior Obligations under this Agreement. Nothing in this Agreement shall impair or otherwise adversely affect any rights or remedies the Designated Senior Representative, the other Senior Representatives or the Senior Secured Parties may have with respect to the Senior Collateral.

SECTION 5.05 Gratuitous Bailee for Perfection.

(a) Each Senior Representative acknowledges and agrees that if it shall at any time hold a Lien securing any Senior Obligations on any Shared Collateral that can be perfected by the possession or control of such Shared Collateral or of any account in which such Shared Collateral is held, and if such Shared Collateral or any such account is in fact in the possession or under the control of such Senior Representative, or of agents or bailees of such Senior Representative (such Shared Collateral being referred to

herein as the "Pledged or Controlled Collateral"), or if it shall any time obtain any landlord waiver or bailee's letter or any similar agreement or arrangement granting it rights or access to Shared Collateral, such Senior Representative shall also hold such Pledged or Controlled Collateral, or take such actions with respect to such landlord waiver, bailee's letter or similar agreement or arrangement, as sub-agent or gratuitous bailee for the benefit of and on behalf of the relevant Junior Representatives, in each case solely for the purpose of perfecting the Liens granted under the relevant Junior Collateral Documents and subject to the terms and conditions of this Section 5.05.

(b) In the event that the Senior Collateral Agent (or its agents or bailees) has Lien filings against Intellectual Property that is part of the Shared Collateral that are necessary for the perfection of Liens in such Shared Collateral, the Senior Collateral Agent agrees to hold such Liens as sub-agent and gratuitous bailee for the relevant Second Priority Representatives and any assignee thereof, solely for the purpose of perfecting the security interest granted in such Liens pursuant to the relevant Second Priority Collateral Documents, subject to the terms and conditions of this Section 5.05.

(c) Except as otherwise specifically provided herein, until the Discharge of Senior Obligations has occurred, each Senior Representative shall be entitled to deal with the Pledged or Controlled Collateral in accordance with the terms of the Senior Debt Documents as if the Liens under the Junior Collateral Documents did not exist. The rights of the Junior Representatives and the Junior Secured Parties with respect to the Pledged or Controlled Collateral shall at all times be subject to the terms of this Agreement.

(d) No Senior Representative shall have any obligation whatsoever to the Junior Representatives or any Junior Secured Party to assure that any of the Pledged or Controlled Collateral is genuine or owned by the Grantors or to protect or preserve rights or benefits of any Person or any rights pertaining to the Shared Collateral, except as expressly set forth in this Section 5.05. The duties or responsibilities of each Senior Representative under this Section 5.05 shall be limited solely to holding or controlling the Shared Collateral and the related Liens referred to in paragraphs (a) and (b) of this Section 5.05 as sub-agent and gratuitous bailee for the relevant Junior Representative for purposes of perfecting the Lien held by such Junior Representative.

(e) No Senior Representative shall have by reason of the Junior Collateral Documents or this Agreement, or any other document, a fiduciary relationship in respect of any Junior Representative or any Junior Secured Party, and each, Junior Representative, for itself and on behalf of each Junior Secured Party under its Junior Debt Facility, hereby waives and releases each Senior Representative from all claims and liabilities arising pursuant to such Senior Representative's role under this Section 5.05 as sub-agent and gratuitous bailee with respect to the Shared Collateral.

(f) Upon the Discharge of Senior Obligations, each Senior Representative shall, at the Grantors' sole cost and expense, (i) (A) deliver to the Designated Junior Representative, to the extent that it is legally permitted to do so, all Shared Collateral, including all proceeds thereof, held or controlled by such Senior Representative or any of its agents or bailees, including the transfer of possession and control, as applicable, of the Pledged or Controlled Collateral, together with any necessary endorsements and notices to depositary banks, securities intermediaries and commodities intermediaries, and assign its rights under any landlord waiver or bailee's letter or any similar agreement or arrangement granting it rights or access to Shared Collateral, or (B) direct and deliver such Shared Collateral as a court of competent jurisdiction may otherwise direct, (ii) notify any applicable insurance carrier that it is no longer entitled to be a loss payee or additional insured under the insurance policies of any Grantor issued by such insurance carrier and (iii) notify any governmental authority involved in any condemnation or similar proceeding involving any Grantor that the Designated Senior Representative is no longer entitled to approve any awards granted in such proceeding. The Borrower and the other Grantors shall take such further action as is required to

effectuate the transfer contemplated hereby and shall indemnify each Senior Representative for loss or damage suffered by such Senior Representative as a result of such transfer, except for loss or damage suffered by such Senior Representative as a result of its own willful misconduct, gross negligence or bad faith. No Senior Representative has any obligation to follow instructions from the Designated Junior Representative in contravention of this Agreement.

(g) Neither the Designated Senior Representative nor any of the other Senior Representatives or Senior Secured Parties shall be required to marshal any present or future collateral security for any obligations of the Borrower or any other Grantor to the Designated Senior Representative, any other Senior Representative or any Senior Secured Party under the Senior Debt Documents or any assurance of payment in respect thereof, or to resort to such collateral security or other assurances of payment in any particular order, and all of their rights in respect of such collateral security or any assurance of payment in respect thereof shall be cumulative and in addition to all other rights, however existing or arising.

SECTION 5.06 When Discharge of Senior Obligations Deemed to Not Have Occurred. If, at any time after the Discharge of Senior Obligations has occurred, the Borrower or any other Grantor incurs any Senior Obligations (other than in respect of the payment of indemnities surviving the Discharge of Senior Obligations), then the Discharge of Senior Obligations shall automatically be deemed not to have occurred for all purposes of this Agreement (other than with respect to any actions taken prior to the date of such designation as a result of the occurrence of such first Discharge of Senior Obligations) and the applicable agreement governing such Senior Obligations shall automatically be treated as a Senior Debt Document for all purposes of this Agreement, including for purposes of the Lien priorities and rights in respect of Shared Collateral set forth herein and the granting by the Designated Senior Representative of amendments, waivers and consents hereunder and the agent, representative or trustee for the holders of such Senior Obligations shall be a Senior Representative for all purposes of this Agreement. Upon receipt of notice of such incurrence (including the identity of the new Designated Senior Representative), each Junior Representative (including the Designated Junior Representative) shall promptly (a) enter into such documents and agreements (at the expense of the Borrower), including amendments or supplements to this Agreement, as the Borrower or such new Senior Representative shall reasonably request in writing in order to provide the new Senior Representative the rights of a Senior Representative contemplated hereby, (b) deliver to the Designated Senior Representative, to the extent that it is legally permitted to do so, all Shared Collateral, including all proceeds thereof, held or controlled by such Junior Representative or any of its agents or bailees, including the transfer of possession and control, as applicable, of the Pledged or Controlled Collateral, together with any necessary endorsements and notices to depositary banks, securities intermediaries and commodities intermediaries, and assign its rights under any landlord waiver or bailee's letter or any similar agreement or arrangement granting it rights or access to Shared Collateral and (c) notify any governmental authority involved in any condemnation or similar proceeding involving a Grantor that it is not entitled to approve any awards granted in such proceeding.

ARTICLE VI

INSOLVENCY OR LIQUIDATION PROCEEDINGS

SECTION 6.01 Financing and Sale Issues. Until the Discharge of Senior Obligations has occurred, if the Borrower or any other Grantor shall be subject to any Insolvency or Liquidation Proceeding and the Designated Senior Representative, any other Senior Representative or any Senior Secured Party shall desire to consent (or not object) to, as applicable, the sale, use or lease of cash or other collateral under Section 363 of the Bankruptcy Code or to consent (or not object) to the Borrower's or any other Grantor's obtaining financing under Section 364 of the Bankruptcy Code or any similar provision of or order made under any other Bankruptcy Law to be secured by the Senior Collateral ("DIP Financing"), then each Junior Representative, for itself and on behalf of each Junior Secured Party under its Junior

Debt Facility, agrees that it will (as applicable) raise no (a) objection to and will not otherwise contest such use of such cash or other collateral or such DIP Financing and, except to the extent permitted by the proviso in clause (ii) of Section 3.01(a) and Section 6.03, will not request adequate protection or any other relief in connection therewith and, to the extent the Liens securing the Senior Obligations are subordinated to or pari passu with such DIP Financing, will subordinate (and will be deemed hereunder to have subordinated) its Liens in the Shared Collateral to (x) such DIP Financing (and all obligations relating thereto) on the same basis as the Liens securing the Junior Obligations are so subordinated to Liens securing Senior Obligations under this Agreement, (y) any adequate protection Liens provided to the Senior Secured Parties, and (z) to any "carve-out" for professional and United States Trustee fees (or any administration charge granted under Canadian Insolvency Law) agreed to by the Designated Senior Representative, and the Designated Junior Representative, for itself and on behalf of each Junior Secured Party under its Junior Debt Facility, agrees that notice received four Business Days prior to the entry of an order approving such usage of cash or other collateral or approving such DIP Financing shall be adequate notice, (b) objection to (and will not otherwise contest) any motion for relief from the automatic or any other stay imposed by Section 362 of the Bankruptcy Code or from any injunction against foreclosure or enforcement in respect of Senior Obligations with respect to the Senior Collateral made by Designated Senior Representative, any other Senior Representative or any other Senior Secured Party, (c) objection to (and will not otherwise contest) any lawful exercise by any Senior Secured Party of the right to credit bid Senior Obligations at any sale in foreclosure or exercise of a power of sale in respect of Senior Collateral (including, without limitation, pursuant to Section 363(k) of the Bankruptcy Code or any similar provision of or order made under any other applicable Bankruptcy Law) or to exercise any rights under Section 1111(b) of the Bankruptcy Code (or any similar provision of or order made under any other applicable Bankruptcy Law), (d) objection to (and will not otherwise contest) any other request for judicial relief made in any court by any Senior Secured Party relating to the lawful enforcement of any Lien on Senior Collateral or (e) objection to (and will not otherwise contest or oppose) any order relating to a sale or other disposition of any or all of the Senior Collateral for which the Designated Senior Representative has consented that provides, to the extent such sale or other disposition is to be free and clear of Liens, that the Liens securing the Senior Obligations and the Junior Obligations will attach to the proceeds of such sale on the same basis of priority as the Liens on the Shared Collateral securing the Senior Obligations rank to the Liens on the Shared Collateral securing the Junior Obligations pursuant to this Agreement. In addition, the Junior Secured Parties are not deemed to have waived any rights to credit bid on the Shared Collateral in any such sale or disposition in accordance with Section 363(k) of the Bankruptcy Code (or any similar provision of or order made under any other applicable Bankruptcy Law), so long as any such credit bid provides for the payment in full in cash of the Senior Obligations.

SECTION 6.02 Relief from the Automatic Stay. Until the Discharge of Senior Obligations has occurred, each Junior Representative, for itself and on behalf of each Junior Secured Party under its Junior Debt Facility, agrees that none of them shall seek relief from the automatic stay imposed by Section 362 of the Bankruptcy Code or any other stay in any Insolvency or Liquidation Proceeding or take any action in derogation thereof, in each case in respect of any Shared Collateral, without the prior written consent of the Designated Senior Representative.

SECTION 6.03 Adequate Protection. Each Junior Representative, for itself and on behalf of each Junior Secured Party under its Junior Debt Facility, agrees that none of them shall object, contest or support any other Person objecting to or contesting (a) any request by the Designated Senior Representative, the other Senior Representatives or the Senior Secured Parties for adequate protection in any form, (b) any objection by the Designated Senior Representative, the other Senior Representatives or the Senior Secured Parties to any motion, relief, action or proceeding based on the Designated Senior Representative's or any other Senior Representative's or Senior Secured Party's claiming a lack of adequate protection or (c) the allowance and payment of interest, fees, expenses or other amounts of the Designated Senior Representative, any other Senior Representative or any other Senior Secured Party as adequate protec-

tion or otherwise under Section 506(b) or 506(c) of the Bankruptcy Code or any similar provision of or order under any other Bankruptcy Law. Notwithstanding anything to the contrary contained in this Section 6.03 or in Section 6.01, in any Insolvency or Liquidation Proceeding, (i) if the Senior Secured Parties (or any subset thereof) are granted adequate protection in the form of a Lien on additional or replacement collateral and/or a superpriority administrative expense claim in connection with any DIP Financing or use of cash collateral under Section 363 or 364 of the Bankruptcy Code or any similar provision of or order under any other Bankruptcy Law, then each Junior Representative, for itself and on behalf of each Junior Secured Party under its Junior Debt Facility, may seek or request adequate protection in the form of (as applicable) a Lien on such additional or replacement collateral and/or a superpriority administrative expense claim, which Lien and/or superpriority administrative expense claim (as applicable) is subordinated to the Liens securing and claims with respect to the Senior Obligations and such DIP Financing (and all obligations relating thereto) on the same basis as the other Liens securing and claims with respect to the Junior Obligations are so subordinated to the Liens securing and claims with respect to the Senior Obligations under this Agreement and (ii) in the event any Junior Representatives, for themselves and on behalf of the Junior Secured Parties under their Junior Debt Facilities, seek or request adequate protection and such adequate protection is granted in the form of (as applicable) a Lien on additional or replacement collateral and/or a superpriority administrative expense claim, then such Junior Representatives, for themselves and on behalf of each Junior Secured Party under their Junior Debt Facilities, agree that the Senior Representatives shall also be granted (as applicable) a senior Lien on such additional or replacement collateral as security for the Senior Obligations and/or a senior superpriority administrative expense claim, and that any Lien on such additional or replacement collateral securing the Junior Obligations and/or superpriority administrative expense claim shall be subordinated to the Liens on such collateral securing and claims with respect to the Senior Obligations and any such DIP Financing (and all obligations relating thereto) and any other Liens and claims granted to the Senior Secured Parties as adequate protection on the same basis as the other Liens securing and claims with respect to the Junior Obligations are so subordinated to such Liens securing and claims with respect to Senior Obligations under this Agreement. Without limiting the generality of the foregoing, to the extent that the Senior Secured Parties are granted adequate protection in the form of payments in the amount of current post-petition fees and expenses, and/or other cash payments, then the Junior Representatives, for themselves and on behalf of the Junior Secured Parties under their Junior Debt Facilities, shall not be prohibited from seeking adequate protection in the form of payments in the amount of current post-petition incurred fees and expenses, and/or other cash payments (as applicable), subject to the right of the Senior Secured Parties to object to the reasonableness of the amounts of fees and expenses or other cash payments so sought by the Junior Secured Parties.

SECTION 6.04 Preference Issues. If any Senior Secured Party is required in any Insolvency or Liquidation Proceeding or otherwise to disgorge, turn over or otherwise pay any amount to the estate of the Borrower or any other Grantor (or any trustee, receiver or similar Person therefor), because the payment of such amount was declared to be fraudulent or preferential or at under value in any respect or for any other reason, any amount (a "Recovery"), whether received as proceeds of security, enforcement of any right of setoff, recoupment or otherwise, then the Senior Obligations shall be reinstated to the extent of such Recovery and deemed to be outstanding as if such payment had not occurred and the Senior Secured Parties shall still be entitled to a future Discharge of Senior Obligations with respect to all such recovered amounts. If this Agreement shall have been terminated prior to such Recovery, this Agreement shall be reinstated in full force and effect, and such prior termination shall not diminish, release, discharge, impair or otherwise affect the obligations of the parties hereto. Each Junior Representative, for itself and on behalf of each Junior Secured Party under its Junior Debt Facility, hereby agrees that none of them shall be entitled to benefit from any avoidance action affecting or otherwise relating to any distribution or allocation made in accordance with this Agreement, whether by preference or otherwise, it being understood and agreed that the benefit of such avoidance action otherwise allocable to them shall instead be allocated and turned over for application in accordance with the priorities set forth in this Agreement.

SECTION 6.05 Separate Grants of Security and Separate Classifications. Each Junior Representative, for itself and on behalf of each Junior Secured Party under its Junior Debt Facility, acknowledges and agrees that:

(a) With respect to any Insolvency or Liquidation Proceeding other than under Canadian Insolvency Law: (i) the grants of Liens pursuant to the Senior Collateral Documents and the Junior Collateral Documents constitute separate and distinct grants of Liens, (ii) the Junior Secured Parties' claims against the Grantors in respect of their Liens on the Shared Collateral constitute junior claims separate and apart (and of a different class) from the senior claims of the Senior Secured Parties against the Grantors in respect of the Shared Collateral, and (iii) because of, among other things, their differing rights in the Shared Collateral, the Junior Obligations are fundamentally different from the Senior Obligations and must be separately classified in any Plan of Reorganization proposed, confirmed, or adopted in an Insolvency or Liquidation Proceeding. To further effectuate the intent of the parties as provided in the immediately preceding sentence, if it is held that the claims of the Senior Secured Parties and the Junior Secured Parties in respect of the Shared Collateral constitute only one secured claim (rather than separate classes of senior and junior secured claims), then each Junior Representative, for itself and on behalf of each Junior Secured Party under its Junior Debt Facility, hereby acknowledges and agrees that all distributions from the Shared Collateral shall be made as if there were separate classes of senior and junior secured claims against the Grantors in respect of the Shared Collateral (with the effect being that, to the extent that the aggregate value of the Shared Collateral is sufficient (for this purpose ignoring all claims held by the Junior Secured Parties), the Senior Secured Parties shall be entitled to receive, in addition to amounts distributed to them in respect of principal, pre-petition interest and other claims, all amounts owing in respect of post-petition interest, fees, and expenses (whether or not allowed or allowable in such Insolvency or Liquidation Proceeding) before any distribution is made from the Shared Collateral in respect of the Junior Obligations, with each Junior Representative, for itself and on behalf of each Junior Secured Party under its Junior Debt Facility, hereby acknowledging and agreeing to turn over to the Designated Senior Representative amounts otherwise received or receivable by them from the Shared Collateral to the extent necessary to effectuate the intent of this sentence, even if such turnover has the effect of reducing the claim or recovery of the Junior Secured Parties).

(b) Notwithstanding clause (a) above, with respect to any Insolvency or Liquidation Proceeding under Canadian Insolvency Law, whether ancillary or plenary, the claims of the Senior Secured Parties and the Junior Secured Parties shall not be classified in different classes of senior and junior secured claims and shall be classified in the same class of senior secured claims. None of the Senior Representatives nor any Junior Representatives shall bring, commence or file any action, pleading, application, motion or other process to challenge the classification described in the immediately preceding sentence. In addition, the parties hereto agree that regardless of whether any claim is allowed or allowable, and without limiting the generality of the other provisions of this Agreement, this Agreement entitles the Senior Representative and each Senior Secured Party, and is intended to provide the Senior Representative and each Senior Secured Party with the right to receive, in respect of their Senior Obligations, payment from the Shared Collateral of all claims through distributions made therefrom pursuant to the provisions of this Agreement even though any such claims are not allowed or allowable against the Borrowers or any other Grantors under any applicable Bankruptcy Law. Each Junior Representative, for and on behalf of the Junior Secured Parties, shall direct any Junior Representative, trustee, trustee in bankruptcy, receiver, receiver and manager or similar person, subject to Section 2.01 and Section 4.01, to pay and distribute over any distributions, payments, Shared Collateral or proceeds thereof received by any of them in respect of the claims of the Junior Parties to the Senior Parties until the Discharge of Senior Obligations and Section 4.02 shall apply, *mutatis mutandis*. To further effectuate the intent of the parties as provided in the immediately preceding sentences, to the extent that any Insolvency or Liquidation Proceeding involving the Borrower or any other Grantor is commenced in Canada, whether ancillary or plenary, until the Discharge of Senior Obligations has occurred, each Junior Representative, for and on behalf of the Junior Secured

Parties, agrees that it will only vote any of the claims of the Junior Secured Parties against the Borrower or any other Grantor in favor of a Plan of Reorganization (x) that provides for the Discharge of Senior Obligations by payment in full in cash or (y) with respect to which the Junior Representative has received written notice from the Designated Senior Representative acknowledging the Designated Senior Representative's support of such plan.

SECTION 6.06 No Waivers of Rights of Senior Secured Parties. Nothing contained herein shall, except as expressly provided herein, prohibit or in any way limit the Designated Senior Representative, any other Senior Representative or any other Senior Secured Party from objecting in any Insolvency or Liquidation Proceeding or otherwise to any action taken by any Junior Secured Party, including the reasonableness of any amount of fees and expenses or other cash payments sought as adequate protection by the Junior Secured Parties or the asserting by any Junior Secured Party of any of its rights and remedies under the Junior Debt Documents or otherwise.

SECTION 6.07 Application. This Agreement, which the parties hereto expressly acknowledge is a "subordination agreement" under Section 510(a) of the Bankruptcy Code or any similar provision of any other Bankruptcy Law and any applicable UCC, shall be effective before, during and after the commencement of any Insolvency or Liquidation Proceeding. The relative rights as to the Shared Collateral and proceeds thereof shall continue after the commencement of any Insolvency or Liquidation Proceeding on the same basis as prior to the date of the petition therefor, subject to any court order approving the financing of, or use of cash collateral by, any Grantor. All references herein to any Grantor shall include such Grantor as a debtor-in-possession and any receiver or trustee for such Grantor.

SECTION 6.08 506(c) Claims. Until the Discharge of Senior Obligations has occurred, each Junior Representative, on behalf of itself and each Junior Secured Party under its Junior Debt Facility, agrees that it will not assert or enforce any claim under Section 506(c) of the Bankruptcy Code or any similar provision of or order under any other Bankruptcy Law senior to or on a parity with the Liens securing the Senior Obligations for costs or expenses of preserving or disposing of any Shared Collateral.

SECTION 6.09 Reorganization Securities. If, in any Insolvency or Liquidation Proceeding, debt obligations of the reorganized debtor secured by Liens upon any property of the reorganized debtor are distributed, pursuant to a Plan of Reorganization on account of both the Senior Obligations and the Junior Obligations, then, to the extent the debt obligations distributed on account of the Senior Obligations and on account of the Junior Obligations are secured by Liens upon the same assets or property, the provisions of this Agreement will survive the distribution of such debt obligations pursuant to such plan and will apply with like effect to the Liens securing such debt obligations.

SECTION 6.10 Post-Petition Interest.

(a) None of the Junior Representatives or any other Junior Secured Party shall oppose or seek to challenge any claim by any Senior Representative or any Senior Secured Party for allowance in any Insolvency or Liquidation Proceeding of Senior Obligations consisting of claims for post-petition interest, fees, costs, expenses, and/or other charges, under Section 506(b) of the Bankruptcy Code, any similar provision of or order made under any other applicable Bankruptcy Law or otherwise (for this purpose ignoring all claims and Liens held by the Junior Secured Parties on the Shared Collateral).

(b) None of the Senior Representatives or any Senior Secured Party shall oppose or seek to challenge any claim by any Junior Representative or any other Junior Secured Party for allowance in any Insolvency or Liquidation Proceeding of Junior Obligations consisting of claims for post-petition interest, fees, costs, expenses, and/or other charges, under Section 506(b) of the Bankruptcy Code, any similar provision of or order made under any other applicable Bankruptcy Law or otherwise, to the extent of the

value of the Lien of the Junior Representatives on behalf of the Junior Secured Parties on the Shared Collateral (after taking into account the Senior Obligations and the Senior Liens).

SECTION 6.11 Voting. No Junior Representative or any other Junior Secured Party may support or vote in favor of any Plan of Reorganization (and each shall be deemed to have voted to reject any Plan of Reorganization) that is inconsistent with the terms of this Agreement. Without limiting the generality of the foregoing, no Junior Representative or any other Junior Secured Party may support or vote in favor of any Plan of Reorganization unless such plan (a) pays off, in cash in full, all Senior Obligations or (b) is accepted by the class of holders of Senior Obligations voting thereon in accordance with Section 1126(c) of the Bankruptcy Code or any similar provision of or order made under any other applicable Bankruptcy Law.

ARTICLE VII

RELIANCE; ETC.

SECTION 7.01 Reliance. The consent by the Senior Secured Parties to the execution and delivery of the Junior Debt Documents to which the Senior Secured Parties have consented and all loans and other extensions of credit made or deemed made on and after the date hereof by the Senior Secured Parties to the Borrower or any Subsidiary shall be deemed to have been given and made in reliance upon this Agreement. Each Junior Representative, on behalf of itself and each Junior Secured Party under its Junior Debt Facility, acknowledges that it and such Junior Secured Parties have, independently and without reliance on the Designated Senior Representative or any other Senior Representative or other Senior Secured Party, and based on documents and information deemed by them appropriate, made their own credit analysis and decision to enter into the Junior Debt Documents to which they are party or by which they are bound, this Agreement and the transactions contemplated hereby and thereby, and they will continue to make their own credit decision in taking or not taking any action under the Junior Debt Documents or this Agreement; provided that, nothing shall impose a duty on the Notes Collateral Agent to make any credit decisions beyond that which may be required under the Junior Debt Documents.

SECTION 7.02 No Warranties or Liability. Each Junior Representative, on behalf of itself and each Junior Secured Party under its Junior Debt Facility, acknowledges and agrees that neither the Designated Senior Representative nor any other Senior Representative or other Secured Party has made any express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectibility or enforceability of any of the Senior Debt Documents, the ownership of any Shared Collateral or the perfection or priority of any Liens thereon. The Senior Secured Parties will be entitled to manage and supervise their respective loans and extensions of credit under the Senior Debt Documents in accordance with law and as they may otherwise, in their sole discretion, deem appropriate, and the Senior Secured Parties may manage their loans and extensions of credit without regard to any rights or interests that the Junior Representatives and the Junior Secured Parties have in the Shared Collateral or otherwise, except as otherwise provided in this Agreement. Neither the Designated Senior Representative nor any other Senior Representative or other Senior Secured Party shall have any duty to any Junior Representative or Junior Secured Party to act or refrain from acting in a manner that allows, or results in, the occurrence or continuance of an event of default or default under any agreement with the Borrower or any Subsidiary (including the Junior Debt Documents), regardless of any knowledge thereof that they may have or be charged with. Except as expressly set forth in this Agreement, the Designated Senior Representative, the other Senior Representatives, the Senior Secured Parties, the Junior Representatives and the Junior Secured Parties have not otherwise made to each other, nor do they hereby make to each other, any warranties, express or implied, nor do they assume any liability to each other with respect to (a) the enforceability, validity, value or collectibility of any of the Senior Obligations, the Junior Obligations or any guarantee or security which may have been granted to any of them in connection therewith, (b) any

Grantor's title to or right to transfer any of the Shared Collateral or (c) any other matter except as expressly set forth in this Agreement.

SECTION 7.03 Obligations Unconditional. All rights, interests, agreements and obligations of the Designated Senior Representative, the other Senior Representatives, the Senior Secured Parties, the Junior Representatives and the Junior Secured Parties hereunder shall remain in full force and effect irrespective of:

(a) any lack of validity or enforceability of any Senior Debt Document or any Junior Debt Document;

(b) any change in the time, manner or place of payment of, or in any other terms of, all or any of the Senior Obligations or Junior Obligations, or any amendment or waiver or other modification, including any increase in the amount thereof, whether by course of conduct or otherwise, of the terms of any Senior Debt Document or of the terms of any Junior Debt Document;

(c) any exchange of any security interest in any Shared Collateral or any other collateral or any amendment, waiver or other modification, whether in writing or by course of conduct or otherwise, of all or any of the Senior Obligations or Junior Obligations or any guarantee thereof;

(d) the commencement of any Insolvency or Liquidation Proceeding in respect of the Borrower or any other Grantor; or

(e) any other circumstances that otherwise might constitute a defense available to, or a discharge of, (i) the Borrower or any other Grantor in respect of the Senior Obligations or (ii) any Junior Representative or Junior Secured Party in respect of this Agreement.

ARTICLE VIII

MISCELLANEOUS

SECTION 8.01 Conflicts. In the event of any conflict or inconsistency between the provisions of this Agreement and the provisions of any Senior Debt Document or any Junior Debt Document, the provisions of this Agreement shall govern.

SECTION 8.02 Continuing Nature of this Agreement; Severability. Subject to Section 6.04, this Agreement shall continue to be effective until the Discharge of Senior Obligations shall have occurred. This is a continuing agreement of Lien subordination, and the Senior Secured Parties may continue, at any time and without notice to the Junior Representatives or any Junior Secured Party, to extend credit and other financial accommodations and lend monies to or for the benefit of the Borrower or any other Grantor constituting Senior Obligations in reliance hereon. The terms of this Agreement shall survive and continue in full force and effect in any Insolvency or Liquidation Proceeding. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction. The parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 8.03 Amendments; Waivers.

(a) No failure or delay on the part of any party hereto in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the parties hereto are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by any party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice or demand on any party hereto in any case shall entitle such party to any other or further notice or demand in similar or other circumstances.

(b) Neither this Agreement nor any provision hereof may be terminated, waived, amended or modified (other than pursuant to any Joinder Agreement) except pursuant to an agreement or agreements in writing entered into by each Representative (and with respect to any such termination, waiver, amendment or modification which by the terms of this Agreement requires the Borrower's consent or which increases the obligations or reduces the rights of the Borrower or any other Grantor, with the consent of the Borrower).

(c) Notwithstanding the foregoing, without the consent of any Secured Party, any Representative may become a party hereto by execution and delivery of a Joinder Agreement in accordance with Section 8.09 of this Agreement and upon such execution and delivery, such Representative and the Secured Parties and Senior Obligations or Junior Obligations of the Debt Facility for which such Representative is acting shall be subject to the terms hereof.

(d) Notwithstanding the foregoing, without the consent of any other Representative or Secured Party, the Designated Senior Representative may effect amendments and modifications to this Agreement to the extent necessary to reflect any incurrence of any Additional Junior Debt Obligations or Additional Senior Debt Obligations in compliance with the Credit Agreement, the Initial Junior Debt Documents, any Additional Senior Debt Documents and any Additional Junior Debt Documents.

SECTION 8.04 Information Concerning Financial Condition of the Borrower and the Other Grantors. The Designated Senior Representative, the other Senior Representatives, the Senior Secured Parties, the Junior Representatives and the Junior Secured Parties shall each be responsible for keeping themselves informed of (a) the financial condition of the Borrower and the other Grantors and all endorsers or guarantors of the Senior Obligations or the Junior Obligations and (b) all other circumstances bearing upon the risk of nonpayment of the Senior Obligations or the Junior Obligations. The Designated Senior Representative, the other Senior Representatives, the Senior Secured Parties, the Junior Representatives and the Junior Secured Parties shall have no duty to advise any other party hereunder of information known to it or them regarding such condition or any such circumstances or otherwise; provided that, nothing shall impose a duty on the Notes Collateral Agent beyond that which may be required under the Junior Debt Documents. In the event that the Designated Senior Representative, any other Senior Representative, any Senior Secured Party, any Junior Representative or any Junior Secured Party, in its sole discretion, undertakes at any time or from time to time to provide any such information to any other party, it shall be under no obligation to (i) make, and the Designated Senior Representative, the other Senior Representatives, the Senior Secured Parties, the Junior Representatives and the Junior Secured Parties shall not make or be deemed to have made, any express or implied representation or warranty, including with respect to the accuracy, completeness, truthfulness or validity of any such information so provided, (ii) provide any additional information or to provide any such information on any subsequent occasion, (iii) undertake any investigation or (iv) disclose any information that, pursuant to accepted or reasonable

commercial finance practices, such party wishes to maintain confidential or is otherwise required to maintain confidential.

SECTION 8.05 Subrogation. Each Junior Representative, on behalf of itself and each Junior Secured Party under its Junior Debt Facility, hereby waives any rights of subrogation it may acquire as a result of any payment hereunder until the Discharge of Senior Obligations has occurred.

SECTION 8.06 Application of Payments. Except as otherwise provided herein, all payments received by the Senior Secured Parties may be applied, reversed and reapplied, in whole or in part, to such part of the Senior Obligations as the Senior Secured Parties, in their sole discretion, deem appropriate, consistent with the terms of the Senior Debt Documents. Except as otherwise provided herein, each Junior Representative, on behalf of itself and each Junior Secured Party under its Junior Debt Facility, assents to any such extension or postponement of the time of payment of the Senior Obligations or any part thereof and to any other indulgence with respect thereto, to any substitution, exchange or release of any security that may at any time secure any part of the Senior Obligations and to the addition or release of any other Person primarily or secondarily liable therefor.

SECTION 8.07 Additional Grantors. The Borrower agrees that, if any Subsidiary of Parent shall become a Grantor after the date hereof, it will promptly cause such Subsidiary to become party hereto by executing and delivering an instrument in the form of Annex II. Upon such execution and delivery, such Subsidiary will become a Grantor hereunder with the same force and effect as if originally named as a Grantor herein. The execution and delivery of such instrument shall not require the consent of any other party hereunder, and will be acknowledged by the Designated Senior Representative. The rights and obligations of each Grantor hereunder shall remain in full force and effect notwithstanding the addition of any new Grantor as a party to this Agreement.

SECTION 8.08 Dealings with Grantors. Upon any application or demand by the Borrower or any Grantor to the Designated Senior Representative or the Designated Junior Representative to take or permit any action under any of the provisions of this Agreement or under any Collateral Document (if such action is subject to the provisions hereof), the Borrower or such Grantor, as appropriate, shall furnish to the Designated Junior Representative and/or the Designated Senior Representative a certificate of an appropriate officer (an "Officer's Certificate") stating that all conditions precedent, if any, provided for in this Agreement or such Collateral Document, as the case may be, relating to the proposed action have been complied with, except that in the case of any such application or demand as to which the furnishing of such documents is specifically required by any provision of this Agreement or any Collateral Document relating to such particular application or demand, no additional certificate or opinion need be furnished.

SECTION 8.09 Additional Debt Facilities. To the extent, but only to the extent, permitted by the provisions of the Senior Debt Documents and the Junior Debt Documents, the Borrower may incur or issue and sell one or more series or classes of Additional Junior Debt and one or more series or classes of Additional Senior Debt. Any such additional class or series of Additional Junior Debt (the "Junior Class Debt") may be secured by a junior priority, subordinated Lien on Shared Collateral, in each case under and pursuant to the Junior Collateral Documents for such Junior Class Debt, if and subject to the condition that the Representative of any such Junior Class Debt (each, a "Junior Class Debt Representative"), acting on behalf of the holders of such Junior Class Debt (such Representative and holders in respect of any such Junior Class Debt being referred to as the "Junior Class Debt Parties"), becomes a party to this Agreement by satisfying the conditions set forth in clauses (i) through (v), as applicable, of the immediately succeeding paragraph. Any such additional class or series of Additional Senior Debt (the "Senior Class Debt"; and the Senior Class Debt and Junior Class Debt, collectively, the "Class Debt") may be secured by a senior Lien on Shared Collateral, in each case under and pursuant to the Senior Collateral Doc-

uments, if and subject to the condition that the Representative of any such Senior Class Debt (each, a "Senior Class Debt Representative"; and the Senior Class Debt Representatives and Junior Class Debt Representatives, collectively, the "Class Debt Representatives"), acting on behalf of the holders of such Senior Class Debt (such Representative and holders in respect of any such Senior Class Debt being referred to as the "Senior Class Debt Parties"; and the Senior Class Debt Parties and Junior Class Debt Parties, collectively, the "Class Debt Parties"), becomes a party to this Agreement by satisfying the conditions set forth in clauses (i) through (v), as applicable, of the immediately succeeding paragraph. In order for a Class Debt Representative to become a party to this Agreement:

(i) such Class Debt Representative shall have executed and delivered a Joinder Agreement to the Designated Senior Representative and the Designated Junior Representative substantially in the form of Annex III (if such Representative is a Junior Class Debt Representative) or Annex IV (if such Representative is a Senior Class Debt Representative) (with such changes as may be reasonably approved by the Designated Senior Representative and such Class Debt Representative) pursuant to which it becomes a Representative hereunder, and the Class Debt in respect of which such Class Debt Representative is the Representative and the related Class Debt Parties become subject hereto and bound hereby;

(ii) the Borrower shall have delivered to the Designated Senior Representative and the Designated Junior Representative true and complete copies of each of the Junior Debt Documents or Senior Debt Documents, as applicable, relating to such Class Debt, certified as being true and correct by a Responsible Officer of the Borrower;

(iii) in the case of any Junior Class Debt, all filings, recordations and/or amendments or supplements to the Junior Collateral Documents necessary to confirm and perfect the junior priority Liens securing the relevant Junior Obligations relating to such Class Debt shall have been made, executed and/or delivered by the new Class Debt Representative and/or the Borrower (or, with respect to any such filings or recordations, acceptable provisions to perform such filings or recordings have been taken in the reasonable judgment of the Borrower), and all fees and taxes in connection therewith shall have been paid (or acceptable provisions to make such payments have been taken in the reasonable judgment of the Designated Senior Representative);

(iv) the Borrower shall have delivered to the Designated Senior Representative and the Designated Junior Representative an Officer's Certificate stating that such Additional Senior Debt Obligations or Additional Junior Debt Obligations are permitted by each applicable Senior Debt Document and Junior Debt Document to be incurred, or to the extent a consent is otherwise required to permit the incurrence of such Additional Senior Debt Obligations or Additional Junior Debt Obligations under any applicable Senior Debt Document and Junior Debt Document, each Grantor has obtained the requisite consent; and

(v) the Junior Debt Documents or Senior Debt Documents, as applicable, relating to such Class Debt shall provide, in a manner reasonably satisfactory to the Designated Senior Representative, that each Class Debt Party with respect to such Class Debt will be subject to and bound by the provisions of this Agreement in its capacity as a holder of such Class Debt.

SECTION 8.10 Consent to Jurisdiction; Waivers. The Designated Senior Representative, the Initial Designated Junior Representative and each other Representative, on behalf of itself and the Secured Parties of the Debt Facility for which it is acting, irrevocably and unconditionally:

(a) submits for itself and its property in any legal action or proceeding relating to this Agreement, or for recognition and enforcement of any judgment in respect thereof, to the exclu-

sive jurisdiction of the courts of the State of New York sitting in New York County, the courts of the United States of America for the Southern District of New York, and appellate courts from any thereof;

(b) consents that any such action or proceeding may be brought in such courts and waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(c) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such Person (or its Representative) at the address referred to in Section 8.11;

(d) agrees that nothing herein shall affect the right of any other party hereto (or any Secured Party) to effect service of process in any other manner permitted by law or shall limit the right of any party hereto (or any Secured Party) to sue in any other jurisdiction; and

(e) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding referred to in this Section 8.10 any special, exemplary, punitive or consequential damages.

SECTION 8.11 Notices. All notices, requests, demands and other communications provided for or permitted hereunder shall be in writing and shall be sent:

(i) if to the Borrower or any Grantor, to the Borrower, at its address at:

900 – 606 4 Street SW
Calgary, AB T2P 1T1
Canada
Attention: Finance
Tel.: (403) 910-1933

(ii) if to the Bank Collateral Agent, to it at:

Credit Suisse AG, Cayman Islands Branch
Eleven Madison Avenue, 6th Floor
New York, New York 10010
Attention: Agency Manager
Fax: (212) 322-2291
Email: agency.loanops@credit-suisse.com

(iii) if to the Initial Junior Priority Representative, to it at:

Wilmington Trust, National Association, as Notes Collateral Agent
50 South Sixth Street, Suite 1290
Minneapolis, Minnesota 55402
Attention: Dominion Diamond Administrator
Fax: (612) 217-5651

(iv) if to any other Representative, to it at the address specified by it in the Joinder Agreement delivered by it pursuant to Section 8.09.

Any party hereto may change its address, fax number or e-mail address for notices and other communications hereunder by notice to the other parties hereto. Unless otherwise specifically provided herein, any notice or other communication herein required or permitted to be given shall be in writing and, may be personally served, faxed, electronically mailed or sent by courier service or U.S. mail and shall be deemed to have been given when delivered in person or by courier service, upon receipt of a telecopy or electronic mail or upon receipt via U.S. mail (registered or certified, with postage prepaid and properly addressed). For the purposes hereof, the addresses of the parties hereto shall be as set forth above or, as to each party, at such other address as may be designated by such party in a written notice to all of the other parties. As agreed to in writing among the Designated Senior Representative and each other Representative from time to time, notices and other communications may also be delivered by e-mail to the e-mail address of a representative of the applicable person provided from time to time by such person.

SECTION 8.12 Further Assurances. Each Senior Representative, on behalf of itself and each Senior Secured Party under its Senior Debt Facility, and each Junior Representative, on behalf of itself and each Junior Secured Party under its Junior Debt Facility, agrees that it will take such further action and shall execute and deliver such additional documents and instruments (in recordable form, if requested) as the other parties hereto may reasonably request (at the Borrower's sole cost and expense) to effectuate the terms of, and the Lien priorities contemplated by, this Agreement.

SECTION 8.13 **GOVERNING LAW; WAIVER OF JURY TRIAL; JURISDICTION**.

(A) THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAWS, EXCEPT AS REQUIRED BY MANDATORY PROVISIONS OF LAW. *If any Loan Party incorporated under the laws of the Netherlands is represented by an attorney in connection with the signing and/or execution of this Agreement or any other agreement, deed or document referred to in or made pursuant to this Agreement, it is hereby expressly acknowledged and accepted by the other parties to this Agreement that the existence and extent of the attorney's authority and the effects of the attorney's exercise or purported exercise of his or her authority shall be governed by the laws of the Netherlands.*

(B) EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT AND FOR ANY COUNTERCLAIM THEREIN.

(c) Each party hereto hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of any U.S. Federal or New York State court sitting in New York County, New York in any action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Nothing in this Agreement shall affect any right that any party hereto may otherwise have to bring any action or proceeding relating to this Agreement against any other party hereto or its properties in the courts of any jurisdiction.

(d) Each party hereto hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any court referred to in

paragraph (c) of this Section (excluding the last sentence of such paragraph (c)). Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

SECTION 8.14 Parties in Interest. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, as well as the other Secured Parties, all of whom are intended to be bound by, and to be third party beneficiaries of, this Agreement.

SECTION 8.15 Headings. Article, Section and Annex headings used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

SECTION 8.16 Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original but all of which when taken together shall constitute a single contract. Delivery of an executed signature page to this Agreement by facsimile or other electronic transmission shall be as effective as delivery of a manually signed counterpart of this Agreement.

SECTION 8.17 Authorization. By its signature, each Person executing this Agreement on behalf of a party hereto represents and warrants to the other parties hereto that it is duly authorized to execute this Agreement. The Bank Collateral Agent represents and warrants that this Agreement is binding upon the Credit Agreement Secured Parties. The Initial Junior Priority Representative represents and warrants that this Agreement is binding upon the Initial Junior Secured Parties.

SECTION 8.18 Provisions Solely to Define Relative Rights. The lien priorities set forth in this Agreement and the rights and benefits hereunder in respect of such lien priorities shall inure solely to the benefit of the Designated Senior Representative, the other Senior Representatives, the Senior Secured Parties, the Junior Representatives and the Junior Secured Parties, and their respective permitted successors and assigns, and no other Person (including the Grantors, or any trustee, receiver, debtor in possession or bankruptcy estate in a bankruptcy or like proceeding) shall have or be entitled to assert such rights. Nothing in this Agreement is intended to or shall impair the obligations of any Grantor, which are absolute and unconditional, to pay the Obligations as and when the same shall become due and payable in accordance with their terms.

SECTION 8.19 Effectiveness. This Agreement shall become effective when executed and delivered by the parties hereto.

SECTION 8.20 Bank Collateral Agent and Initial Junior Priority Representative. It is understood and agreed that (a) the Bank Collateral Agent is entering into this Agreement in its capacity as administrative agent under the Credit Agreement and the provisions of Article VIII of the Credit Agreement applicable to it as administrative agent thereunder shall also apply to it as Designated Senior Representative hereunder and (b) the Initial Junior Priority Representative is entering in this Agreement in its capacity as collateral agent under the Second Lien Notes Indenture and the provisions of the Second Lien Notes Indenture (including, without limitation, Article 7 and Article 11) and the other Initial Junior Debt Documents granting or extending any rights, protections, privileges, indemnities or immunities to the trustee and collateral agent thereunder shall also apply to the Initial Junior Priority Representative hereunder.

For the avoidance of doubt, the parties hereto acknowledge that in no event shall any party hereto be responsible or liable for special, indirect, or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether any such party has been advised of the likelihood of such loss or damage and regardless of the form of action.

SECTION 8.21 Relative Rights. Notwithstanding anything in this Agreement to the contrary (except to the extent expressly contemplated herein, including in Section 2.04 and Section 5.03(c)), nothing in this Agreement is intended to or will (a) amend, waive or otherwise modify the provisions of any Senior Debt Documents or any Junior Debt Documents, or permit the Borrower or any other Grantor to take any action, or fail to take any action, to the extent such action or failure would otherwise constitute a breach of, or default under, any Senior Debt Documents or any Junior Debt Documents, (b) change the relative priorities of the Senior Obligations or the Liens granted under the Senior Collateral Documents on the Shared Collateral (or any other assets) as among the Senior Secured Parties, (c) otherwise change the relative rights of the Senior Secured Parties in respect of the Shared Collateral as among such Senior Secured Parties or (d) obligate the Borrower or any other Grantor to take any action, or fail to take any action, that would otherwise constitute a breach of, or default under, any Senior Debt Document or any Junior Debt Document.

SECTION 8.22 Survival of Agreement. All covenants, agreements, representations and warranties made by any party in this Agreement shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement.

SECTION 8.23 Integration. This Agreement together with the other Senior Debt Documents and Junior Debt Documents represents the entire agreement of each of the Grantors and the Secured Parties with respect to the subject matter hereof and there are no promises, undertakings, representations or warranties by any Grantor, any Representative or any other Secured Party relative to the subject matter hereof not expressly set forth or referred to herein or in the other Senior Debt Documents or Junior Debt Documents.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH,
as Bank Collateral Agent and Designated Senior Representative

By: ______________________________
Name: Mikhail Faybusovich
Title: Authorized Signatory

By: ______________________________
Name: Andrew Griffin
Title: Authorized Signatory

WILMINGTON TRUST, NATIONAL ASSOCIATION,
solely in its capacity as Notes Collateral Agent, as Initial Junior Priority Representative

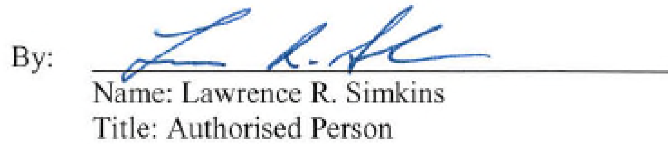
By:
Name:
Title: Hallie E. Field
Assistant Vice President

[Signature Page to Intercreditor Agreement]

NORTHWEST ACQUISITIONS ULC, as Borrower

By:
Name: Lawrence R. Simkins
Title: President

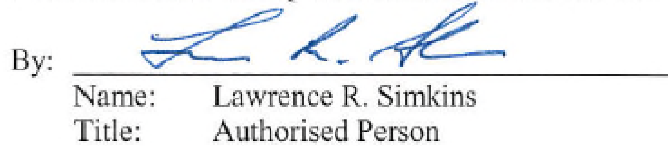
WASHINGTON DIAMOND INVESTMENTS B.V., as Parent

By: 
Name: Lawrence R. Simkins
Title: Authorised Person

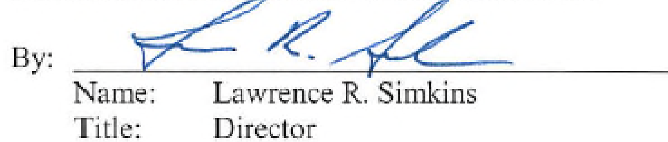
NORTHWEST ACQUISITIONS PLEDGE B.V.

By:
Name: Lawrence R. Simkins
Title: Authorised Person

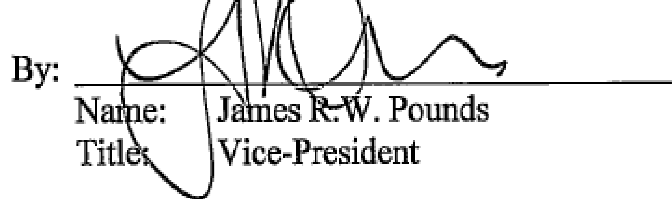
NORTHWEST ACQUISITIONS HOLDCO B.V.

By: 
Name: Lawrence R. Simkins
Title: Authorised Person

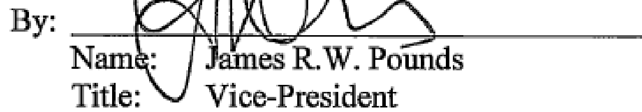
DOMINION DIAMOND CORPORATION

By: 
Name: Lawrence R. Simkins
Title: Director

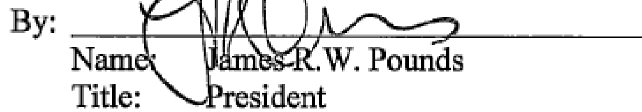
DOMINION DIAMOND HOLDINGS LTD.

By: 
Name: James R.W. Pounds
Title: Vice-President

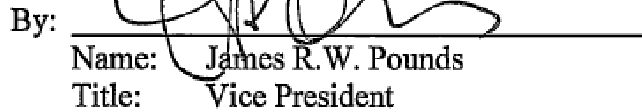
DOMINION DIAMOND NY CORPORATION

By: 
Name: James R.W. Pounds
Title: Vice-President

DOMINION DIAMOND DELAWARE COMPANY LLC

By: 
Name: James R.W. Pounds
Title: President

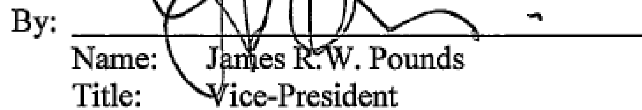
DOMINION DIAMOND EKATI CORPORATION

By: 
Name: James R.W. Pounds
Title: Vice President

6355137 CANADA INC.

By:
Name: James R.W. Pounds
Title: Vice-President

DOMINION DIAMOND DIAVIK LIMITED PARTNERSHIP, by its general partner DOMINION DIAMOND HOLDINGS LTD.

By: 
Name: James R.W. Pounds
Title: Vice-President

DOMINION FINCO INC.

By:
Name: Lawrence R. Simkins
Title: President

ANNEX I

Grantors

Northwest Acquisitions Pledge B.V.

Northwest Acquisitions Holdco B.V.

Dominion Diamond Corporation

Dominion Diamond Holdings Ltd.

Dominion Diamond NY Corporation

Dominion Diamond Delaware Company LLC

Dominion Diamond Ekati Corporation

6355137 Canada Inc.

Dominion Diamond Diavik Limited Partnership

Dominion Finco Inc.

ANNEX II

[FORM OF] SUPPLEMENT NO. [ ] dated as of [ ], to the INTERCREDITOR AGREEMENT dated as of [ ], 2017 (the "Intercreditor Agreement"), among Northwest Acquisitions ULC, an unlimited liability company formed under the laws of British Columbia (which, promptly after the consummation of the Acquisition, will be amalgamated with Dominion Diamond ULC, an unlimited liability company formed under the laws of British Columbia, which amalgamated company will be amalgamated with Dominion Diamond Holdings ULC, with the amalgamated company being called Dominion Diamond ULC) (the "Borrower"), Washington Diamond Investments B.V., with corporate seat in Amsterdam, the Netherlands ("Parent"), the other Grantors party thereto, Credit Suisse AG, Cayman Islands Branch, as administrative agent for the Credit Agreement Secured Parties (in such capacity, the "Bank Collateral Agent") and Wilmington Trust, National Association, solely in its capacity as Notes Collateral Agent, as Initial Junior Priority Representative (in such capacity, the "Initial Junior Priority Representative") and each Additional Senior Agent and each Additional Junior Agent that from time to time becomes a party thereto.

A. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Intercreditor Agreement.

B. The Grantors have entered into the Intercreditor Agreement. Pursuant to certain Senior Debt Documents and certain Junior Debt Documents, certain newly acquired or organized Subsidiaries of Parent are required to enter into the Intercreditor Agreement. Section 8.07 of the Intercreditor Agreement provides that such Subsidiaries may become party to the Intercreditor Agreement by execution and delivery of an instrument in the form of this Supplement. The undersigned Subsidiary (the "**New Grantor**") is executing this Supplement in accordance with the requirements of the Credit Agreement, the Additional Junior Debt Documents and Additional Senior Debt Documents.

Accordingly, the Designated Senior Representative and the New Grantor agree as follows:

SECTION 1. In accordance with Section 8.07 of the Intercreditor Agreement, the New Grantor by its signature below becomes a Grantor under the Intercreditor Agreement with the same force and effect as if originally named therein as a Grantor, and the New Grantor hereby agrees to all the terms and provisions of the Intercreditor Agreement applicable to it as a Grantor thereunder. Each reference to a "Grantor" in the Intercreditor Agreement shall be deemed to include the New Grantor. The Intercreditor Agreement is hereby incorporated herein by reference.

SECTION 2. The New Grantor represents and warrants to the Designated Senior Representative and the other Secured Parties that this Supplement has been duly authorized, executed and delivered by it and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms.

SECTION 3. This Supplement may be executed in counterparts, each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Supplement shall become effective when the Designated Senior Representative shall have received a counterpart of this Supplement that bears the signature of the New Grantor. Delivery of an executed signature page to this Supplement by facsimile transmission shall be as effective as delivery of a manually signed counterpart of this Supplement.

SECTION 4. Except as expressly supplemented hereby, the Intercreditor Agreement shall remain in full force and effect.

SECTION 5. THIS SUPPLEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

SECTION 6. In case any one or more of the provisions contained in this Supplement should be held invalid, illegal or unenforceable in any respect, no party hereto shall be required to comply with such provision for so long as such provision is held to be invalid, illegal or unenforceable, but the validity, legality and enforceability of the remaining provisions contained herein and in the Intercreditor Agreement shall not in any way be affected or impaired. The parties hereto shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 7. All communications and notices hereunder shall be in writing and given as provided in Section 8.11 of the Intercreditor Agreement. All communications and notices hereunder to the New Grantor shall be given to it in care of the Borrower as specified in the Intercreditor Agreement.

SECTION 8. The Borrower agrees to reimburse the Designated Senior Representative for its reasonable out-of-pocket expenses in connection with this Supplement, including the reasonable fees, other charges and disbursements of counsel for the Designated Senior Representative.

[Signature Page Follows]

IN WITNESS WHEREOF, the New Grantor and the Designated Senior Representative have duly executed this Supplement to the Intercreditor Agreement as of the day and year first above written.

[NAME OF NEW GRANTOR],

By: ______________________________
Name:
Title:

Acknowledged by:
[________________], as Designated Senior Representative,

By: ______________________________
Name:
Title:

ANNEX III

[FORM OF] JOINDER NO. [ ] dated as of [ ], 20[ ] to the INTERCREDITOR AGREEMENT dated as of [ ], 2017 (the "Intercreditor Agreement"), among Northwest Acquisitions ULC, an unlimited liability company formed under the laws of British Columbia (which, promptly after the consummation of the Acquisition, will be amalgamated with Dominion Diamond ULC, an unlimited liability company formed under the laws of British Columbia, which amalgamated company will be amalgamated with Dominion Diamond Holdings ULC, with the amalgamated company being called Dominion Diamond ULC) (the "Borrower"), Washington Diamond Investments B.V., with corporate seat in Amsterdam, the Netherlands ("Parent"), the other Grantors party hereto, Credit Suisse AG, Cayman Islands Branch, as administrative agent for the Credit Agreement Secured Parties (in such capacity, the "Bank Collateral Agent") and Wilmington Trust, National Association, solely in its capacity as Notes Collateral Agent, as Initial Junior Priority Representative (in such capacity, the "Initial Junior Priority Representative") and each Additional Senior Agent and each Additional Junior Agent that from time to time becomes a party thereto.

A. Capitalized terms used herein but not otherwise defined herein shall have the meanings assigned to such terms in the Intercreditor Agreement.

B. As a condition to the ability of the Borrower to incur Junior Debt and to secure such Junior Class Debt with a Lien pari passu with the Lien securing the existing Junior Debt and to have such Junior Class Debt guaranteed by the Grantors, in each case under and pursuant to the Junior Collateral Documents, the Junior Class Representative in respect of such Junior Class Debt is required to become a Representative under, and such Junior Class Debt and the Junior Class Debt Parties in respect thereof are required to become subject to and bound by, the Intercreditor Agreement. Section 8.09 of the Intercreditor Agreement provides that such Junior Class Debt Representative may become a Representative under, and such Junior Class Debt and such Junior Class Debt Parties may become subject to and bound by, the Intercreditor Agreement, pursuant to the execution and delivery by the Junior Class Debt Representative of an instrument in the form of this Joinder and the satisfaction of the other conditions set forth in Section 8.09 of the Intercreditor Agreement. The undersigned Junior Class Debt Representative (the "New Representative") is executing this Joinder in accordance with the requirements of the Senior Debt Documents and the Junior Debt Documents.

Accordingly, the Designated Senior Representative and the New Representative agree as follows:

SECTION 1. In accordance with Section 8.09 of the Intercreditor Agreement, the New Representative by its signature below becomes a Representative under, and the related Junior Class Debt and Junior Class Debt Parties become subject to and bound by, the Intercreditor Agreement with the same force and effect as if the New Representative had originally been named therein as a Representative, and the New Representative, on behalf of itself and such Junior Class Debt Parties, hereby agrees to all the terms and provisions of the Intercreditor Agreement applicable to it as a Junior Representative and to the Junior Class Debt Parties that it represents as Junior Secured Parties. Each reference to a "Representative," "Junior Representative" or "Additional Junior Agent" in the Intercreditor Agreement shall be deemed to include the New Representative. The Intercreditor Agreement is hereby incorporated herein by reference.

SECTION 2. The New Representative represents and warrants to the Designated Senior Representative, the Designated Junior Representative and the other Secured Parties that (i) it has full power and authority to enter into this Joinder, in its capacity as [agent] [trustee] under [describe new Junior Debt Facility], (ii) this Joinder has been duly authorized, executed and delivered by it and constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms of such Agreement and (iii)

the Junior Debt Documents relating to such Junior Class Debt provide that, upon the New Representative's entry into this Agreement, the Junior Class Debt Parties in respect of such Junior Class Debt will be subject to and bound by the provisions of the Intercreditor Agreement as Junior Secured Parties.

SECTION 3. This Joinder may be executed in counterparts, each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Joinder shall become effective when the Designated Senior Representative and the Designated Junior Representative shall have received a counterpart of this Joinder that bears the signature of the New Representative. Delivery of an executed signature page to this Joinder by facsimile transmission shall be effective as delivery of a manually signed counterpart of this Joinder.

SECTION 4. Except as expressly supplemented hereby, the Intercreditor Agreement shall remain in full force and effect.

SECTION 5. THIS JOINDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

SECTION 6. In case any one or more of the provisions contained in this Joinder should be held invalid, illegal or unenforceable in any respect, no party hereto shall be required to comply with such provision for so long as such provision is held to be invalid, illegal or unenforceable, but the validity, legality and enforceability of the remaining provisions contained herein and in the Intercreditor Agreement shall not in any way be affected or impaired. The parties hereto shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 7. All communications and notices hereunder shall be in writing and given as provided in Section 8.11 of the Intercreditor Agreement. All communications and notices hereunder to the New Representative shall be given to it at the address set forth below its signature hereto.

SECTION 8. The Borrower agrees to reimburse the Designated Senior Representative and the Designated Junior Representative for their reasonable out-of-pocket expenses in connection with this Joinder, including the reasonable fees, other charges and disbursements of counsel for the Designated Senior Representative and the Designated Junior Representative.

[Signature Page Follows]

IN WITNESS WHEREOF, the New Representative and the Designated Senior Representative have duly executed this Joinder to the Intercreditor Agreement as of the day and year first above written.

[NAME OF NEW REPRESENTATIVE], as
[ ] for the holders of
[ ]

By: ______________________________
Name:
Title:

Address for notices: ______________________________
____
____
attention of: ______________________________
Telecopy: ______________________________

[ ], as Designated Senior Representative

By: ______________________________
Name:
Title:

[ ], as Designated Junior Representative

By: ______________________________
Name:
Title:

Acknowledged by:

[NORTHWEST ACQUISITIONS ULC][DOMINION DIAMOND ULC],
as Borrower

By: ____
Name:
Title:

WASHINGTON DIAMOND INVESTMENTS B.V.,
as Parent

By: ____
Name:
Title:

THE OTHER GRANTORS
LISTED ON SCHEDULE I HERETO

By: ______________________________
Name:
Title:

Schedule I to the Joinder to the
Intercreditor Agreement

Grantors[2]

Northwest Acquisitions Pledge B.V.

Northwest Acquisitions Holdco B.V.

Dominion Diamond Corporation

Dominion Diamond Holdings Ltd.

Dominion Diamond NY Corporation

Dominion Diamond Delaware Company LLC

Dominion Diamond Ekati Corporation

6355137 Canada Inc.

Dominion Diamond Diavik Limited Partnership

Dominion Finco Inc.

---

[2] To be updated, if necessary, at the time of execution.

ANNEX IV

[FORM OF] JOINDER NO. [ ] dated as of [ ], 20[ ] to the INTERCREDITOR AGREEMENT dated as of [ ], 2017 (the "Intercreditor Agreement"), among Northwest Acquisitions ULC, an unlimited liability company formed under the laws of British Columbia (which, promptly after the consummation of the Acquisition, will be amalgamated with Dominion Diamond ULC, an unlimited liability company formed under the laws of British Columbia, which amalgamated company will be amalgamated with Dominion Diamond Holdings ULC, with the amalgamated company being called Dominion Diamond ULC) (the "Borrower"), Washington Diamond Investments B.V., with corporate seat in Amsterdam, the Netherlands ("Parent"), the other Grantors party hereto, Credit Suisse AG, Cayman Islands Branch, as administrative agent for the Credit Agreement Secured Parties (in such capacity, the "Bank Collateral Agent") and Wilmington Trust, National Association, solely in its capacity as Notes Collateral Agent, as Initial Junior Priority Representative (in such capacity, the "Initial Junior Priority Representative") and each Additional Senior Agent and each Additional Junior Agent that from time to time becomes a party thereto.

A. Capitalized terms used herein but not otherwise defined herein shall have the meanings assigned to such terms in the Intercreditor Agreement.

B. As a condition to the ability of the Borrower to incur Senior Class Debt after the date of the Intercreditor Agreement and to secure such Senior Class Debt with the Senior Lien and to have such Senior Class Debt guaranteed by the Grantors, in each case under and pursuant to the Senior Collateral Documents, the Senior Class Debt Representative in respect of such Senior Class Debt is required to become a Representative under, and such Senior Class Debt and the Senior Class Debt Parties in respect thereof are required to become subject to and bound by, the Intercreditor Agreement. Section 8.09 of the Intercreditor Agreement provides that such Senior Class Debt Representative may become a Representative under, and such Senior Class Debt and such Senior Class Debt Parties may become subject to and bound by, the Intercreditor Agreement, pursuant to the execution and delivery by the Senior Class Debt Representative of an instrument in the form of this Joinder and the satisfaction of the other conditions set forth in Section 8.09 of the Intercreditor Agreement. The undersigned Senior Class Debt Representative (the "New Representative") is executing this Supplement in accordance with the requirements of the Senior Debt Documents and the Junior Debt Documents.

Accordingly, the Designated Senior Representative, the Designated Junior Representative and the New Representative agree as follows:

SECTION 1. In accordance with Section 8.09 of the Intercreditor Agreement, the New Representative by its signature below becomes a Representative under, and the related Senior Class Debt and Senior Class Debt Parties become subject to and bound by, the Intercreditor Agreement with the same force and effect as if the New Representative had originally been named therein as a Representative, and the New Representative, on behalf of itself and such Senior Class Debt Parties, hereby agrees to all the terms and provisions of the Intercreditor Agreement applicable to it as a Senior Representative and to the Senior Class Debt Parties that it represents as Senior Debt Parties. Each reference to a "Representative," "Senior Representative" or "Additional Senior Agent" in the Intercreditor Agreement shall be deemed to include the New Representative. The Intercreditor Agreement is hereby incorporated herein by reference.

SECTION 2. The New Representative represents and warrants to the Designated Senior Representative, the Designated Junior Representative and the other Secured Parties that (i) it has full power and authority to enter into this Joinder, in its capacity as [agent] [trustee] under [describe new Senior Debt Facility], (ii) this Joinder has been duly authorized, executed and delivered by it and constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms of such Agreement and (iii) the

Senior Debt Documents relating to such Senior Class Debt provide that, upon the New Representative's entry into this Agreement, the Senior Class Debt Parties in respect of such Senior Class Debt will be subject to and bound by the provisions of the Intercreditor Agreement as Senior Secured Parties.

SECTION 3. This Joinder may be executed in counterparts, each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Joinder shall become effective when the Designated Senior Representative and the Designated Junior Representative shall have received a counterpart of this Joinder that bears the signature of the New Representative. Delivery of an executed signature page to this Joinder by facsimile transmission shall be effective as delivery of a manually signed counterpart of this Joinder.

SECTION 4. Except as expressly supplemented hereby, the Intercreditor Agreement shall remain in full force and effect.

SECTION 5. THIS JOINDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

SECTION 6. In case any one or more of the provisions contained in this Joinder should be held invalid, illegal or unenforceable in any respect, no party hereto shall be required to comply with such provision for so long as such provision is held to be invalid, illegal or unenforceable, but the validity, legality and enforceability of the remaining provisions contained herein and in the Intercreditor Agreement shall not in any way be affected or impaired. The parties hereto shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 7. All communications and notices hereunder shall be in writing and given as provided in Section 8.11 of the Intercreditor Agreement. All communications and notices hereunder to the New Representative shall be given to it at the address set forth below its signature hereto.

SECTION 8. The Borrower agrees to reimburse the Designated Senior Representative and the Designated Junior Representative for their reasonable out-of-pocket expenses in connection with this Joinder, including the reasonable fees, other charges and disbursements of counsel for the Designated Senior Representative and Designated Junior Representative.

[Signature Page Follows]

IN WITNESS WHEREOF, the New Representative and the Designated Senior Representative have duly executed this Joinder to the Intercreditor Agreement as of the day and year first above written.

[NAME OF NEW REPRESENTATIVE], as
[ ] for the holders of
[ ]

By: ______________________________
Name:
Title:

____
Address for notices:
____
____
attention of: ______________________
Telecopy: ________________________

[ ], as Designated Senior Representative

By: ______________________________
Name:
Title:

[ ], as Designated Junior Representative

By: ______________________________
Name:
Title:

Acknowledged by:

[NORTHWEST ACQUISITIONS ULC][DOMINION DIAMOND ULC],
as Borrower

By: ____
Name:
Title:

WASHINGTON DIAMOND INVESTMENTS B.V.,
as Parent

By: ____
Name:
Title:

THE OTHER GRANTORS
LISTED ON SCHEDULE I HERETO

By: ____________________________
Name:
Title:

Grantors[3]

Northwest Acquisitions Pledge B.V.

Northwest Acquisitions Holdco B.V.

Dominion Diamond Corporation

Dominion Diamond Holdings Ltd.

Dominion Diamond NY Corporation

Dominion Diamond Delaware Company LLC

Dominion Diamond Ekati Corporation

6355137 Canada Inc.

Dominion Diamond Diavik Limited Partnership

Dominion Finco Inc.

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[3] To be updated, if necessary, at the time of execution.

		Clerk's Stamp
COURT FILE NUMBER	2001-05630	
COURT	COURT OF QUEEN'S BENCH OF ALBERTA IN BANKRUPTCY AND INSOLVENCY	
JUDICIAL CENTRE	CALGARY	
APPLICANTS	IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF DOMINION DIAMOND MINES ULC, DOMINION DIAMOND DELAWARE COMPANY LLC, DOMINION DIAMOND CANADA ULC, WASHINGTON DIAMOND INVESTMENTS, LLC, DOMINION DIAMOND HOLDINGS, LLC AND DOMINION FINCO INC.	
DOCUMENT	**CERTIFICATE OF NECESSITY FOR REMOTE COMMISSIONING**	
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**DENTONS CANADA LLP** 77 King Street West, Suite 400 Toronto, ON M5K 0A1 Solicitors: John Salmas / Mark Freake Telephone: 416-863-4737 / 416-863-4456 Facsimile: 416-863-4592 File Number:	

I, John Salmas, notary public of the Affidavit of Mark Freake, which is dated the 12th day of May, 2020, hereby certify that I am satisfied that the process of remote commissioning was necessary because it was impossible or unsafe, for medical reasons, for the deponent and the notary public to be physically present together, pursuant to the requirements of the *Notice to the Profession & Public: Remote Commissioning of Affidavits for use in Civil and Family Proceedings during the COVID-19 Pandemic*.

Dated the 12th day of May, 2020, at the City of Toronto, in the Province of Ontario.

Per: ________________________________

JOHN SALMAS