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**PLAN OF COMPROMISE AND ARRANGEMENT**

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**PURSUANT TO THE  
*COMPANIES' CREDITORS ARRANGEMENT ACT (CANADA)***

**REGARDING**

**METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS VII CORP.,  
IN ITS CAPACITY AS ISSUER TRUSTEE OF DEVONSHIRE TRUST**

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**February 27, 2017**

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# PLAN OF COMPROMISE AND ARRANGEMENT

## PURSUANT TO THE *COMPANIES' CREDITORS ARRANGEMENT ACT (CANADA)*

### ARTICLE 1

#### INTERPRETATION

##### 1.1 Definitions

In this Plan:

"**Actual/365 Fixed Basis**" means a day count convention for calculating interest where each month is treated as having its actual number of days but where the year is assumed to have 365 days, thus providing an additional day of interest on a leap year (366 days of interest applied to an assumed 365-day year);

"**Administrative Agent**" means Metcalfe & Mansfield Capital Corporation, in its capacity as administrative agent under the Administration Agreement, and its successors and permitted assigns in such capacity;

"**Administration Agreement**" means the administration agreement made as of August 2, 2006 between the Applicant and the Administrative Agent providing for certain administrative, management and audit services, as amended, supplemented, modified, restated or replaced from time to time;

"**Advance Tax Ruling**" has the meaning ascribed to it in Section 17.7;

"**Affiliated Companies**" means affiliated companies within the meaning of the *Ontario Securities Act*, as amended, and the instruments, rules and regulations thereunder;

"**Aggregate Available Cash**" has the meaning ascribed to it in Section 5.3.7;

"**Agreement Relating to the Mitigation of Loss**" means the agreement relating to the mitigation of loss dated as of June 13, 2014, entered into between the Applicant and Barclays, as amended, supplemented, modified, restated or replaced from time to time;

"**Anticipated Costs**" means, as at any time, fees, expenses, disbursements or other costs, including any unpaid fee or expense incurred in the provision of goods and services in the administration and management of the Conduit, which are required to be incurred or paid in order to finally settle the estate of the Applicant and includes all Costs in excess of the initial amount of the Costs Reserve on the Plan Implementation Date;

"**Anticipated Costs Invoice**" means has the meaning ascribed to it in Section 7.3;

"**Applicant**" means Metcalfe & Mansfield Alternative Investments VII Corp., in its capacity as issuer trustee of the Conduit;

"**Balance of the Aggregate Available Cash**" means an amount equal to the difference between (i) the Aggregate Available Cash and (ii) the sum of the Costs Reserve, the Indemnity Reserve and all Noteholder Claims, in each case as at the Plan Implementation Date;

"**Barclays**" means Barclays Bank PLC;

"**Barclays' Loss**" means the "Barclays' Loss" referred to in the decision of the Court of Appeal for Ontario, rendered July 26, 2013 in Court File No. C54400;

"**Barclays' Other Claims**" means Barclays' claim in the Litigation and all other claims (contractual or otherwise) that Barclays and its Affiliated Companies may have against the CCAA Parties or could have had against the CCAA Parties in the event that Trial 2 was necessary and had proceeded, including the Barclays' Loss claim in respect of the Litigation under the Agreement Relating to the Mitigation Loss, save and except for (i) the Noteholder Claims of Barclays and the Barclays' Subsidiaries and the claims of Barclays and the Barclays' Subsidiaries to Interest Distributions, in each case rateably with the other Noteholders as provided herein and (ii) only for the purposes of Sections 5.3.3 and 5.3.5, Barclays' claims to the CDS Collateral;

"**Barclays' Subsidiaries**" is the collective reference to each of the following companies that Barclays has represented is wholly-owned by it: Hollygrice Limited, Strickyard Limited, Winhall Limited, Hentock Limited, Coskwo Limited, Blaytell Limited, Godler Limited, Pilkbull Limited, Harflane Limited and "**Barclays' Subsidiary**" means any one thereof;

"**BOC Average 1M BA Rate**" means the average monthly rate for bankers' acceptances with a one-month term, as calculated and published as part of series V122504 by the Bank of Canada (see <http://www.bankofcanada.ca/rates/interest-rates/canadian-interest-rates/>, Series V122504);

"**BOC Daily 1M BA Rate**" means the daily rate for bankers' acceptances with a one-month term, as calculated and published as part of series V39068 by the Bank of Canada (see <http://www.bankofcanada.ca/rates/interest-rates/canadian-interest-rates/>, Series V39068);

"**Business Day**" means a day, other than a Saturday or Sunday, on which banks are generally open for business in Toronto, Ontario and Montreal, Québec;

"**CCAA**" means the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended;

"**CCAA Court**" means the Superior Court of Justice (Ontario);

"**CCAA Charge**" means a Charge created by the Initial CCAA Order;

"**CCAA Parties**" means, collectively, the Applicant and the Conduit;

"**CCAA Proceedings**" means the within proceedings under the CCAA commenced by the Applicant;

"**CDN\$**" means the lawful currency of Canada;

"**CDPQ**" means Caisse de dépôt et placement du Québec;

"**CDS Clearing**" means CDS Clearing and Depository Services Inc.;

"**CDS Collateral**" means all cash and other assets held by the Custodian pursuant to the Tri-Party Custody Agreement;

"**Charge**" means a valid and enforceable security interest, lien, charge, pledge, encumbrance, mortgage, hypothec, adverse claim, title retention agreement or trust agreement of any nature or kind (but excluding any statutory deemed trust or lien for any taxes or levies), on the property of the Conduit;

"**Claims Procedure and Meeting Order**" means the Order of the CCAA Court dated July 8, 2014 establishing the Noteholder identification and verification procedure to establish Proven Claims and directing the calling and holding of the Meeting;

"**Class**" means with reference to a Series, a class of Notes within such Series;

"**Class A Notes**" means the outstanding Class A Series A Senior Short Term Notes of the Conduit issued under the Supplemental Indenture;

"**Class E Notes**" means the outstanding Class E Series A Senior Short Term Notes of the Conduit issued under the Supplemental Indenture;

"**Class FRN Notes**" means the outstanding Class FRN-1 Series A Senior Medium Term Notes and the Class FRN-2 Series A Senior Medium Term Notes of the Conduit issued under the Supplemental Indenture;

"**Collateral Deficiency**" has the meaning ascribed to it in Section 5.3.3;

"**Conduit**" means Devonshire Trust, a trust constituted under the laws of the Province of Ontario pursuant to the Settlement Deed;

"**Consultant**" means 9205-3701 Québec Inc., in its capacity as consultant under the Consultation Agreement, and its successors and permitted assigns in such capacity;

"**Consultation Agreement**" means the consultation agreement in connection with the Litigation made as of January 21, 2009 between the Financial Services Agent, the Consultant, the Administrative Agent and the Applicant, as amended, supplemented, modified, restated or replaced from time to time;

"**Costs**" means the costs for the services and disbursements of:

- (i) counsel to the Applicant, Fasken, Martineau, DuMoulin LLP;
- (ii) the accountants to the Applicant, Pricewaterhouse Coopers;
- (iii) counsel to the directors of the Applicant, Lavery DeBilly LLP;
- (iv) litigation counsel to the Applicant, Lenczner, Slaght Royce Smith Griffin LLP;
- (v) the Consultant to the Applicant;
- (vi) the Indenture Trustee;
- (vii) the Custodian;
- (viii) the directors of the Applicant in an amount not to exceed \$250,000 on condition that no out of the ordinary circumstances or unforeseen difficulties arise in the implementation of this Plan, where such circumstances or difficulties would be evidenced by costs in excess of costs anticipated for the Monitor, counsel to the Monitor, Osler Hoskin & Harcourt LLP, and/or counsel to the Applicant, Fasken Martineau DuMoulin LLP;
- (ix) the Monitor;
- (x) counsel to the Monitor, Osler, Hoskin & Harcourt, LLP;
- (xi) other Persons relating to the administration of the estate of the Applicant; and
- (xii) all applicable taxes relating to each of the foregoing costs;

"**Costs Invoice**" has the meaning ascribed to it in Section 6.3;

"**Costs Reserve**" has the meaning ascribed to it in Section 6.1;

"**Costs Reserve Account**" means the account established by the Monitor with respect to the Costs Reserve, and any replacement account established for such purpose, in each case in trust for the benefit of the Persons set forth in Section 6.2;

"**Covered Third Party Claim**" means a claim by a third party against an Indemnified Party that, whether or not successful, would entitle such Indemnified Party to indemnity pursuant to an Indemnity Claim;

"**CRA**" means the Canada Revenue Agency;

"**CRA Confirmation**" means a written confirmation from the CRA that Interest Distributions can be made to Non-Resident Noteholders subject to the applicable Withholding Taxes being retained in the Withholding Tax Reserve Account and that the CRA will nonetheless issue the Advance Tax Ruling;



**"Custodian"** means The Bank of New York Mellon (previously known as Bank of New York, as successor to JPMorgan Chase Bank N.A.), acting through its London Branch, in its capacity as custodian under the Tri-Party Custody Agreement, and its successors and permitted assigns in such capacity;

**"Defence Costs"** means the costs for the defence of the Indemnified Parties or any of them against any Covered Third Party Claims;

**"Effective Time"** means the first moment in time on the Plan Implementation Date;

**"Exclusion Condition"** means National Bank of Canada and/or National Bank Financial Inc. instituting proceedings against Barclays in the Ontario Superior Court of Justice solely on the basis of the NBC Causes of Action, without prejudice to any defences which Barclays may have, within thirty (30) days following the Sanction Order becoming final in accordance with the provisions of Section 14.1.3;

**"Financial Services Agent"** means Quanto Financial Corporation, in its capacity as financial services agent under the Financial Services Agreement, and its successors and permitted assigns in such capacity;

**"Financial Services Agreement"** means the financial services agreement made as of August 2, 2006 between the Applicant and the Financial Services Agent, providing for certain structuring, arranging, analytical, credit assessment, originating and negotiation services, as amended, supplemented, modified, restated or replaced from time to time;

**"First Interest Distribution"** means a distribution made on account of, in lieu of or in satisfaction of interest on the Notes pursuant to Section 11.6;

**"First Interest Distribution Amount"** means an amount equal to the difference between (a) the amount then standing to the credit of the Tax Reserve Account and (b) the amount of the estimate referred to in clause (ii) of Section 11.6;

**"First Supplement"** means the First Supplement to Series A Supplemental Indenture made as of December 21, 2007 among the Applicant, the Indenture Trustee and the Issuing and Paying Agent;

**"Funds Transfer Date"** means the date on which the funds transfers contemplated in Sections 5.3.3, 5.3.4, 5.3.5 and 5.3.7 are to occur as contemplated in Sections 5.2.3 and 14.1.7;

**"Governmental Authority"** means any governmental, regulatory or administrative authority, department, agency, commission, bureau, official minister, board, panel, tribunal, Crown corporation, Crown ministry, court or dispute settlement panel or other law, rule or regulation-making or enforcing entity having or purporting to have jurisdiction on behalf of any nation, or province, territory or state or other subdivision thereof or any municipality, district or other subdivision thereof or other geographic or political subdivision of any of them or exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power;

**"Indemnified Party"** means any Person having the right to make an Indemnity Claim;

**"Indemnity Claim"** means (i) any claim for indemnity which may be made by the Applicant under and in accordance with the rights of indemnity granted to it, in its favour or in favour of any of its Representatives by the Conduit pursuant to the Settlement Deed, which rights of indemnity, it is hereby acknowledged for greater certainty, also serve to indemnify the Applicant against losses suffered by it or any of its Representatives as a consequence of indemnities granted by the Applicant pursuant to any Programme Agreement and whether such Indemnity Claim is asserted before or after any Programme Agreement upon which the Applicant may rely in order to make such indemnity claim has been terminated, it being expressly deemed for all purposes of this Plan that the indemnity provisions of the Programme Agreements shall remain in full force and effect even following any termination of such Programme Agreements, (ii) any claim for indemnity by the Applicant or any Representative thereof on account of Taxes Payable by the Conduit for which it or any of its Representatives may be held liable under the provisions of either one of Subsection 159(3) of the Tax Act or Section 14 of the *Tax Administration Act* (Quebec) as a consequence of a distribution made under the terms of Article 11, and (iii) any claim for indemnity in respect of Defence Costs of the Applicant or any Representative thereof, as well as any reasonable costs and expenses incurred by the Applicant or any of its Representatives in enforcing their rights under the Plan;

**"Indemnity Payments"** means the payment of any amounts due to the Indemnified Parties pursuant to Other Indemnity Claims;

**"Indemnity Reserve"** has the meaning ascribed to it in Section 8.1;

**"Indemnity Reserve Account"** means the account established by the Monitor with respect to the Indemnity Reserve, and any replacement account established for such purpose, in each case in trust for the benefit of the Persons set forth in Section 8.2;

**"Indenture Trustee"** means CIBC Mellon Trust Company, in its capacity as indenture trustee under the Trust Indenture, and its successors and permitted assigns in such capacity;

**"Initial CCAA Order"** means the initial order of the CCAA Court dated July 8, 2014, pursuant to which, among other things, the CCAA Court granted a stay of proceedings with respect to, among others, the CCAA Parties, as same may be further amended from time to time;

**"Initial Distribution"** has the meaning ascribed to it in Section 11.2;

**"Interest Distribution"** refers to any one of the First Interest Distribution or any other distribution on account of, in lieu of or in satisfaction of interest on the Notes, referred to in Article 11 and **"Interest Distributions"** is the collective reference to all such distributions;

**"Interest Period"** means the first day of a calendar month up to and including the last day of such calendar month;

**"Issuing and Paying Agent"** means NBCN Inc., in its capacity as issuing and paying agent under the Trust Indenture, and its successors and permitted assigns in such capacity;

**"Litigation"** means the action (Court File Nos. CV-09-0370103 and CV-09-8387CL) commenced in the Ontario Superior Court on January 13, 2009 between Barclays, as plaintiff, and the Applicant, the Custodian and the Indenture Trustee, as defendants;

**"Meeting"** means a meeting of the Noteholders with Proven Claims to consider and vote on the Plan held pursuant to the Claims Procedure and Meeting Order and includes any meeting or meetings resulting from the adjournment thereof;

**"Monitor"** means Deloitte Restructuring Inc., in its capacity as monitor of the CCAA Parties appointed pursuant to the Initial CCAA Order;

**"NBC Causes of Action"** means the causes of action that National Bank of Canada and National Bank Financial Inc. allege they have against Barclays in the draft statement of claim prepared by Stockwoods LLP and dated July 31, 2014;

**"Non-Resident Noteholder"** means any Noteholder with a Proven Claim that, as at the Record Date, was a "non-resident" of Canada within the meaning of the Tax Act;

**"Noteholder"** means a holder of one or more Notes on the Record Date, including any holder of a beneficial interest in a Note;

**"Noteholder Claim"** means, with respect to any Noteholder, the aggregate face amount of the Notes held by such Noteholder on the Record Date;

**"Notes"** means collectively, the Class A Notes, the Class E Notes and the Class FRN Notes;

**"Notice of Claim"** has the meaning set out in Section 8.5.1;

**"Order"** means an order of the CCAA Court in the CCAA Proceedings;

**"Other Indemnity Claim"** means an Indemnity Claim other than a Tax Indemnity Claim;

**"Payment Agreement"** means the payment agreement dated as of June 13, 2014, entered into among the Applicant, the Monitor and Barclays, as amended, supplemented, modified, restated or replaced from time to time;

**"Permitted Investments"** means negotiable instruments or securities represented by instruments in registered or bearer form which evidence bankers' acceptances or guaranteed investment certificates (GIC) issued or fully guaranteed as to both credit and timeliness by a Canadian chartered bank listed on Schedule 1 of the *Bank Act* (Canada), the tenor of which instruments or securities shall be determined by the Monitor in consultation with the Applicant to ensure sufficient liquidity in the Plan Reserves to permit the Monitor to make the payments and Interest Distributions as and when contemplated in this Plan, all as permitted by applicable law;

**"Person"** means any individual, partnership, limited partnership, limited liability company, joint venture, trust, trustee, corporation, unincorporated organization, government, agency, regulatory

body or instrumentality thereof, legal personal representative or litigation guardian, or any other entity howsoever designated or constituted;

"**Plan**" means this plan of compromise or arrangement and the Schedules hereto, as same may be amended hereafter in accordance with Section 17.1 herein;

"**Plan Completion Date**" has the meaning ascribed to it in Section 12.1;

"**Plan Implementation Date**" means the Business Day on which the conditions precedent to implementation of this Plan as set out in Article 14 hereof have been satisfied, fulfilled or waived, as applicable, and the Monitor has completed and filed its certificate in accordance with Section 14.3 of this Plan;

"**Plan Participants**" means, the Applicant, the Conduit, the Noteholders, the Financial Services Agent, the Consultant, the Indenture Trustee, the Issuing and Paying Agent, the Custodian and the Administrative Agent;

"**Plan Reserve Accounts**" refers collectively to the Costs Reserve Account, the Indemnity Reserve Account, the Tax Reserve Account and the Withholding Tax Reserve Account;

"**Plan Reserves**" refers collectively to the Costs Reserve, the Indemnity Reserve, the Tax Reserve and the Withholding Tax Reserve;

"**Post Plan Implementation Date Duties**" has the meaning ascribed to it in Section 13.2.10;

"**Post-Maturity Period**" means, with respect to any Note, the period commencing on the date of its maturity up to but excluding the Plan Implementation Date;

"**Primary Plan Reserves**" refers collectively to the Costs Reserve, the Indemnity Reserve and the Tax Reserve;

"**Programme Agreements**" has the meaning set forth in the Trust Indenture and includes, for the purposes of this Plan, the Consultation Agreement, the Termination Agreements and all agreements, instruments and documents in which rights of indemnity have been granted by the Applicant;

"**Pro Rata Share**" means, with respect to any Noteholder, the ratio of:

- (i) the aggregate amount of interest due to such Noteholder as of the Plan Implementation Date on account of all Notes then held by it; to
- (ii) the aggregate amount of interest due to all Noteholders as of the Plan Implementation Date on account of all the Notes;

in each case calculated in accordance with the provisions of Sections 11.3 and 11.4 and rounded up to the second decimal point;

**"Proven Claim"** means a Noteholder Claim in respect of which all Required Documentation has been properly submitted and (a) not objected to by the Monitor or (b) objected to by the Monitor and the validity and quantum of which is subsequently (i) finally determined or (ii) accepted for voting or distribution purposes, as the case may be, in accordance with the provisions of this Plan and the Claims Procedure and Meeting Order;

**"QRA"** means Quebec Revenue Agency;

**"Record Date"** means July 7, 2014;

**"Released Claims"** has the meaning ascribed to it in Section 16.1;

**"Released Parties"** means, collectively, the Applicant, the Financial Services Agent, the Administrative Agent, the Consultant, the Issuing and Paying Agent, the Conduit, the Indenture Trustee, the Custodian, the Noteholders, Barclays, the Barclays' Subsidiaries, the Monitor and the respective Representatives of each such Person;

**"Representative"** means, with respect to any Person, its present and former trustees, officers, directors, employees, shareholders, Affiliated Companies, agents, associated individuals, representatives, auditors, financial advisors, legal counsel, and other professionals and advisors, indemnitees, dependents, heirs and assigns;

**"Required Documentation"** means the physical certificates, if any, representing the Notes held by a Noteholder, a Voter Identification Form and such tender and transmittal documentation as the Monitor may request as provided in the Claims Procedure and Meeting Order;

**"Resident Noteholder"** means any Noteholder with a Proven Claim that is not a Non-Resident Noteholder;

**"Sanction Order"** means the Order dated August 20, 2014, sanctioning and implementing this Plan;

**"Settlement Agreement"** means the letter agreement dated June 13, 2014 entered into among Barclays (on its own behalf and as representative of the Barclays' Subsidiaries), the Applicant and the Custodian evidencing the settlement of the Litigation;

**"Settlement Amount"** has the meaning ascribed to it in Section 5.2.3.2;

**"Settlement Deed"** means the Settlement Deed made as of August 2, 2006 providing for the establishment of the Conduit as a trust under the laws of the Province of Ontario, as amended, supplemented, modified, restated or replaced from time to time;

**"Settlement Deficiency"** has the meaning ascribed to it in Section 5.3.4;

**"Settlement Parties"** refers collectively to the Applicant, Barclays and CDPQ;

**"Special Order"** has the meaning ascribed to it in Section 5.2.2;

**"Standstill"** means the standstill period observed pursuant to the agreement reached on August 16, 2007 with respect to the asset backed commercial paper market in Canada (commonly known as the Montreal Accord and more fully described in the affidavit of Mathieu Lafleur-Ayotte referred to in the Initial CCAA Order), to which the Applicant became a party on October 15, 2007, as such period was extended to April 16, 2008 pursuant to a number of extension agreements and as such period was further extended to January 12, 2009 by daily standstill extensions pursuant to correspondence from Barclays to the Applicant on each Business Day;

**"Supplemental Indenture"** means the Series A Supplemental Indenture, made as of August 2, 2006, among the Applicant, the Indenture Trustee and the Issuing and Paying Agent pursuant to the Trust Indenture, as amended by the First Supplement;

**"Tax Act"** means the *Income Tax Act* (Canada), as amended;

**"Tax Clearance Certificates"** means a certificate issued by the CRA to the Applicant or the Conduit, pursuant to Section 159(2) of the Tax Act and a certificate issued by the QRA to the Applicant or the Conduit pursuant to Section 14 of the *Tax Administration Act* (Québec), in each case relating to Taxes Payable on or prior to December 31, 2014 and **"Tax Clearance Certificate"** refers to either one thereof;

**"Tax Indemnity Claim"** means a claim for indemnity described in clause (ii) of the definition of **"Indemnity Claims"**;

**"Tax Reserve"** has the meaning ascribed to it in Section 7.1;

**"Tax Reserve Account"** means the account established by the Monitor with respect to the Tax Reserve, and any replacement account established for such purpose, in each case in trust for the benefit of the Persons set forth in Section 7.2;

**"Taxes"** means all taxes of any kind or nature whatsoever including income taxes, sales taxes, levies, stamp taxes, royalties, duties, and all fees, deductions, compulsory loans, withholdings (including payroll withholdings) and Withholding Taxes imposed, levied, collected, withheld or assessed at any time, by any Governmental Authority having power to tax, together with penalties, fines, additions to tax and interest thereon, and **"Tax"** shall have a correlative meaning;

**"Taxes Payable"** has the meaning ascribed to it in Section 7.1;

**"Termination Agreement"** means any agreement to which the Applicant or the Conduit is a party under the terms of which a Programme Agreement has been terminated and **"Termination Agreements"** is the collective reference to all of the Termination Agreements;

**"Threatened Litigation"** means, as at any time, any pending litigation at such time and any litigation threatened in writing as at such time in respect of which the limitation period applicable to the subject matter of such threatened litigation has not expired and which has not yet resulted in pending litigation, in each case, against an Indemnified Party;

"**Trial 2**" means the second trial between Barclays and the Applicant contemplated by the Bifurcation Order of the Ontario Superior Court dated October 2, 2009 in the Litigation;

"**Tri-Party Custody Agreement**" means the amended and restated tri-party custody agreement dated December 1, 2006 among Barclays, the Applicant and the Custodian (as successor to JPMorgan Chase Bank N.A.);

"**Trust Indenture**" means the trust indenture made as of August 2, 2006 among the Applicant, the Indenture Trustee and the Issuing and Paying Agent, as amended by the Supplemental Indenture and the First Supplement;

"**Unaffected Claims**" has the meaning ascribed to it in Section 3.3 herein;

"**Unaffected Creditors**" means all Persons holding Unaffected Claims, to the extent of their Unaffected Claims and "**Unaffected Creditor**" means any one of them;

"**Voter Identification Form**" means the form that Noteholders must properly complete and deliver to comply with the Claims Procedure and Meeting Order;

"**Website**" means the website established by the Monitor for purposes of the Plan and having the following web address:

(for English): <http://www.deloitte.com/ca/devonshire>

(for French) : <http://www.deloitte.com/ca/devonshire/fr/>

"**Withholding Tax Amount**" means, with respect to Interest Distributions to be made to each Non-Resident Noteholder:

- (i) at all times prior to the receipt of the Advance Tax Ruling and the CRA Confirmation, the amount of the Interest Distributions to be paid to such Non-Resident Noteholder; and
- (ii) prior to the receipt of the Advance Tax Ruling but following receipt of the CRA Confirmation, the aggregate amount of Withholding Taxes payable with respect to the Interest Distributions to be paid to such Non-Resident Noteholder, as determined by the Monitor at the maximum rate applicable under the Tax Act or, subject to receipt from the Non-Resident Noteholder of evidence concerning its residency and beneficial ownership of the Notes satisfactory to the Monitor and the Applicant, such lower rate as may be permitted by treaty;

"**Withholding Taxes**" means the Taxes required to be withheld and paid to the CRA pursuant to the Tax Act with respect to amounts payable on account of, in lieu of or in satisfaction of interest on the Notes, as determined by the Monitor at the maximum rate applicable under the Tax Act or, subject to receipt from the Non-Resident Noteholder of evidence concerning its residency and beneficial ownership of the Notes satisfactory to the Monitor and the Applicant, such lower rate as may be permitted by treaty;

"**Withholding Tax Reserve**" has the meaning ascribed to it in Section 9.1;

"**Withholding Tax Reserve Account**" means the account established by the Monitor with respect to the Withholding Tax Reserve, and any replacement account established for such purpose, in each case in trust for the benefit of the Persons set forth in Section 9.2.

## **1.2 Certain Rules of Interpretation**

In this Plan and the Schedules hereto:

- 1.2.1 the division of this Plan into articles, sections, subsections and clauses and the insertion of headings and a table of contents are for convenience of reference only and shall not affect the construction or interpretation of this Plan. The terms "this Plan", "hereof", "hereunder", "herein" and similar expressions refer to this Plan and not to any particular article, section, subsection or clause and include any plan supplemental hereto. Unless otherwise indicated, any reference in this Plan to an article, section, subsection, clause or schedule refers to the specified article, section, subsection, clause or schedule of or to this Plan;
- 1.2.2 the use of words in the singular or plural, or with a particular gender, shall not limit the scope or exclude the application of any provision of this Plan or a schedule hereto to such Person (or Persons) or circumstances as the context otherwise permits;
- 1.2.3 the words "includes" and "including" and similar terms of inclusion shall not, unless expressly modified by the words "only" or "solely", be construed as terms of limitation, but rather shall mean "includes without limitation" and "including without limitation", so that references to included matters shall be regarded as illustrative without being either characterizing or exhaustive;
- 1.2.4 unless otherwise specified, all references to time herein and in any document issued pursuant hereto mean local time in Toronto, Ontario and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. on such Business Day. Unless otherwise specified, the time period within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next succeeding Business Day if the last day of the period is not a Business Day. Whenever any payment to be made or action to be taken under this Plan is required to be made or to be taken on a day other than a Business Day, such payment shall be made or action taken on the next succeeding Business Day; and
- 1.2.5 unless otherwise provided, any reference to a statute, or other enactment of parliament or a legislature includes all regulations made thereunder, all enactments to or re-enactments of such statute or regulations in force from time to time, and if applicable, any statute or regulation that supplements or supersedes such statute or regulation.



## ARTICLE 2

### **PURPOSE AND EFFECT OF THE PLAN**

#### **2.1 Purpose**

The purpose of this Plan is to implement the settlement set forth in the Settlement Agreement including the liquidation of all assets of the Applicant, the establishment of the Plan Reserves to be held by the Monitor as set forth herein, the compromise of the Notes, the making of distributions to the Noteholders, the extinguishing of Barclays' Other Claims and the winding-up of the Conduit.

#### **2.2 Affected Persons**

This Plan will be implemented under the CCAA and be binding on all Noteholders and other Persons in accordance with its terms, on the Plan Implementation Date.

## ARTICLE 3

### **CLASSIFICATION OF CREDITORS**

#### **3.1 Class of Creditors**

The sole class for the purpose of considering and voting on this Plan shall be the class consisting of Noteholders.

#### **3.2 Noteholder Identification Procedure**

Noteholders shall identify their respective Noteholder Claims for voting purposes, vote in respect of the Plan, and receive the distributions provided for under and pursuant to this Plan in accordance with the Claims Procedure and Meeting Order, the Sanction Order and this Plan.

#### **3.3 Unaffected Claims**

This Plan does not compromise, release or otherwise affect any rights or claims:

- 3.3.1 for fees and expenses incurred in the provision of goods and services in the administration and management of the Conduit or relating to the CCAA Proceedings and authorized pursuant to paragraph 7 of the Initial CCAA Order;
- 3.3.2 of the Monitor and its counsel, counsel to the CCAA Parties or that otherwise are secured by the CCAA Charges; or
- 3.3.3 that are owed to Her Majesty in Right of Canada or the Province of Quebec pursuant to the Tax Act or the *Taxation Act* (Quebec) or that fall within Sections 6(3) and 6(4) of the CCAA.

All of the foregoing rights and claims set out in this Section 3.3 are collectively referred to as the "**Unaffected Claims**" and any one of them is an "**Unaffected Claim**".

## **ARTICLE 4**

### **TREATMENT OF CREDITORS**

#### **4.1 Treatment of Claims**

On the Plan Implementation Date the claims affected by this Plan, including the Noteholder Claims, Barclays' Other Claims and the Released Claims, will be compromised, released and otherwise affected in accordance with the terms of this Plan.

#### **4.2 Treatment of Notes**

For purposes of distributions pursuant to this Plan, except as otherwise provided in Article 11 with respect to Non-Resident Noteholders, all Notes shall be treated equally and rateably, without any preference, priority or distinction among them for any reason.

#### **4.3 Voting Right of Noteholders**

Subject to this Plan and the Claims Procedure and Meeting Order, each Noteholder having a Proven Claim shall be entitled to one vote in an amount equal to such Noteholder's Proven Claim. The procedure for determining the validity and quantum of the Noteholder Claims for voting purposes shall be governed by the Claims Procedure and Meeting Order. For the sake of clarity, where the registered holder of the Note differs from the beneficial holder of the Note, only the beneficial holder of the Note shall be entitled to vote.

#### **4.4 Unaffected Creditors**

Notwithstanding anything to the contrary herein, each Unaffected Creditor shall not be entitled to vote or to receive any distribution under this Plan in respect of its Unaffected Claim. All Unaffected Claims shall be unaffected by the CCAA Proceedings and principal and interest shall continue to accrue notwithstanding the CCAA Proceedings.

#### **4.5 Barclays' Other Claims**

Barclays' and the Barclays' Subsidiaries shall only exercise the right to vote and receive any distribution under this Plan in their capacity as Noteholders and strictly in respect of their Noteholder Claims. With respect to the Barclays' Other Claims and Barclays' claim to the CDS Collateral held by the Custodian, neither Barclays nor any of its Affiliated Companies (including the Barclays' Subsidiaries) shall constitute a separate class of creditors nor have any right to vote or receive distributions under this Plan, save and except the right to receive the payment from the Custodian contemplated in Section 5.3.5.

## ARTICLE 5

### STEPS FOR DISTRIBUTIONS

#### **5.1 Plan Implementation**

Further to the Monitor's receipt in trust as provided in this Plan of (i) the Settlement Amount from the Custodian pursuant to the instruction referred to in Section 5.2.4.1, (ii) the Settlement Deficiency, if any, from Barclays pursuant to the instruction referred to in Section 5.2.4.2, and (iii) all other assets in the Applicant's estate, the Monitor shall, on behalf of the Applicant:

- 5.1.1 create and fund the Primary Plan Reserves;
- 5.1.2 pay to the Noteholders with Proven Claims the entire face amount outstanding under their Notes on the Record Date as provided in this Plan; and
- 5.1.3 when and as contemplated in Article 9 and Article 11 and subject to the provisions thereof, make Interest Distributions to the Noteholders with Proven Claims from amounts then available under the Plan Reserves for such purposes.

#### **5.2 Pre-Closing Steps**

- 5.2.1 By no later than the fifth Business Day prior to the proposed date of the Meeting, each Noteholder shall provide to the Monitor all Required Documentation.
- 5.2.2 With the filing of the application for the Initial Order, the Applicant shall bring a motion in the Litigation proceedings, to be heard contemporaneously with the application for the Initial CCAA Order, for an order (i) declaring that on the Plan Implementation Date, the amount of the Barclays' Loss shall be mitigated by an amount equal to CDN\$240,118,309, thereby reducing the Barclays' Loss to CDN\$23,881,691, and (ii) conditional on the Plan Implementation Date occurring, dismissing the Litigation as against all parties without costs (the "**Special Order**").
- 5.2.3 Upon the conditions precedent to implementation of the Plan contemplated in Sections 14.1.1, 14.1.2, 14.1.3, 14.1.4, 14.1.5 and 14.1.6 being met, the Monitor shall send a written notice to the Custodian (the receipt of such notice by the Custodian being a condition precedent to the Custodian's obligations under Sections 5.3.3 and 5.3.5) and the Settlement Parties:
  - 5.2.3.1 confirming that such conditions precedent have been met;
  - 5.2.3.2 containing a statement setting forth the aggregate amount that the Custodian must transfer to the Applicant from the CDS Collateral (the "**Settlement Amount**") and each component part thereof, which aggregate amount shall correspond to the sum of (a) CDN\$532,668,082.00, (b) CDN\$1,061,916.00, (c) CDN\$58,412,380.00, and (d) an amount in CDN\$ (being interest on the amount in clauses (a), (b) and (c) above) calculated from and including

June 1, 2014 to but excluding the Funds Transfer Date at a rate per annum equal to the BOC Daily 1M BA Rate, reset each Business Day, plus 1.00%, calculated on an Actual/365 Fixed Basis and compounded daily; and

- 5.2.3.3 requesting that the Custodian initiate the transfer of funds contemplated in Section 5.3.3 on the date specified in such notice, and that following such transfer, Barclays, the Custodian and the Applicant then successively make the funds transfers contemplated in Sections 5.3.4, 5.3.5 and 5.3.7.
- 5.2.4 Upon the conditions precedent to implementation of the Plan contemplated in Sections 14.1.2 and 14.1.3 being met:
  - 5.2.4.1 the Applicant and Barclays shall deliver a written instruction to the Custodian, directing it to transfer the funds contemplated in Section 5.3.3 directly to the Monitor; and
  - 5.2.4.2 the Applicant shall deliver a written direction to Barclays instructing it to pay the Settlement Deficiency, if any, directly to the Monitor.

**5.3 Closing Steps**

The following steps or transactions shall occur and shall be deemed to occur on the Plan Implementation Date in the order they appear below, save and except for Steps 1 to Step 6 below (set forth in Sections 5.3.1 to 5.3.6 below) that, subject to their consummation, shall be deemed to occur concurrently with each other.

***STEP 1***

- 5.3.1 By virtue of this Plan and without any further action by any Person, the Barclays' Other Claims shall be subordinated to the claims of all other creditors of the Applicant including all Noteholder Claims.

***STEP 2***

- 5.3.2 By virtue of this Plan and without any further action by any Person, the Barclays' Other Claims shall be extinguished.

***STEP 3***

- 5.3.3 The Custodian shall then transfer to the Monitor in trust for the Applicant pursuant to the instruction referred to in Section 5.2.4.1, an amount equal to the lesser of:
  - 5.3.3.1 the aggregate amount of the CDS Collateral; and
  - 5.3.3.2 the Settlement Amount.

To the extent that on the Funds Transfer Date, the Settlement Amount exceeds the amount of the CDS Collateral (the deficiency, if any, between the Settlement Amount

and the CDS Collateral shall be referred to as the "**Collateral Deficiency**"), the Custodian shall not be required to pay such Collateral Deficiency to the Applicant or the Monitor.

***STEP 4***

- 5.3.4 To the extent that on the Funds Transfer Date, the amount received by the Monitor from the Custodian is less than the Settlement Amount, whether as a result of the existence of a Collateral Deficiency or for any other reason (the deficiency, if any, between the amount received by the Monitor from the Custodian and the Settlement Amount shall be referred to as the "**Settlement Deficiency**"), Barclays shall pay to the Monitor in trust for the Applicant pursuant to the instruction referred to in Section 5.2.4.2 on such date an amount equal to the Settlement Deficiency such that the sum of the amount received by the Monitor from Barclays under this Section 5.3.4 and the amount received from the Custodian under Section 5.3.3 is equal to the Settlement Amount.

***STEP 5***

- 5.3.5 To the extent that on the Funds Transfer Date there does not exist a Settlement Deficiency and subject to the payments in Sections 5.3.3 and 5.3.4, if any, having been made, the Custodian shall pay to Barclays, from the CDS Collateral, CDN\$600,000,000, together with all accrued interest thereon, net of the amount paid by the Custodian to the Monitor as provided in Section 5.3.3.

***STEP 6***

- 5.3.6 By virtue of this Plan and without any further action by any Person, the Applicant shall renounce and forgo its right to payment of any and all amounts from Barclays on account of court costs relating to the Litigation, including interest thereon.

***STEP 7***

- 5.3.7 The Applicant shall transfer to the Monitor, on the Funds Transfer Date, in accordance with the Monitor's written instructions, all cash it then holds including the amounts, if any, received by it from the Custodian and Barclays pursuant to Steps 3 and 4 above and, on the Funds Transfer Date or at the earliest date thereafter the transfer can be made without losing the right to interest accrued, all fixed term guaranteed investment certificates it holds (such cash and guaranteed investment certificates are collectively referred to herein as the "**Aggregate Available Cash**"), all of which the Monitor shall hold in trust and distribute in accordance with the provisions of Articles 6, 7, 8, 9 and 10.

***STEP 8***

- 5.3.8 From the Aggregate Available Cash received by it, the Monitor shall establish and fund the Primary Plan Reserves as contemplated in Article 6, Article 7 and Article 8.

***STEP 9***

- 5.3.9 From the Aggregate Available Cash received by it, less the Primary Plan Reserves, the Monitor shall make the Initial Distribution to the Noteholders.

***STEP 10***

- 5.3.10 Immediately following the Initial Distribution, all of the Notes will thereupon be cancelled and terminated without any further action on the part of the Noteholders provided, however, that notwithstanding such cancellation and termination, the Noteholders shall be entitled to Interest Distributions as and when contemplated in Article 9 and Article 11 and subject to the provisions thereof. Save and except for the right of Noteholders to receive Interest Distributions in accordance with the Plan, the rights and obligations of the Noteholders and the Applicant in respect of the Notes will cease. Interest will cease accruing on the Notes as of the day immediately preceding the Plan Implementation Date.

***STEP 11***

- 5.3.11 To the extent not yet terminated, by virtue of this Plan and without any further action by any Person:
- 5.3.11.1 the Settlement Agreement and all rights and obligations of the parties thereto (save for those contemplated in Sections 6(o), 9, 10, 16 and 17 thereof) shall cease and terminate with no additional payments being made by or on behalf of the parties thereto (save for the payments contemplated expressly in the Plan); and
  - 5.3.11.2 all other Programme Agreements, save and except for the Settlement Deed, and all rights and obligations of the parties thereto shall cease and terminate with no additional payments being made by or on behalf of the parties thereto (save for the payments contemplated expressly in this Plan) provided, however, that for the purposes of this Plan, the indemnity provisions of the Programme Agreements shall be deemed to remain in full force and effect even following the termination of the Programme Agreements.

***STEP 12***

- 5.3.12 By virtue of this Plan and without any further action by any Person, the Special Orders, the Agreement Relating to the Mitigation of Loss and the Payment Agreement shall become effective, continue in full force and effect and not be terminated by virtue of this Plan.

#### **5.4 Post-Implementation Matters**

As soon as is practicable and in consultation with the Monitor, the Conduit will be terminated and wound-up in accordance with the Settlement Deed as contemplated in Section 17.5 and the Settlement Deed shall thereupon terminate and be cancelled.

### **ARTICLE 6**

#### **COSTS RESERVE**

##### **6.1 Establishment of Costs Reserve**

Upon receipt of the Aggregate Available Cash, the Monitor shall fund therefrom a reserve in the amount of \$1,510,000, on account of Costs (the "**Costs Reserve**"), which reserve shall be established in its own dedicated in trust account maintained with a Canadian chartered bank listed on Schedule 1 of the *Bank Act* (Canada) or an Affiliated Company of such a bank and invested in Permitted Investments.

The Monitor shall hold, administer and apply the Costs Reserve only in accordance with the provisions of this Article 6.

##### **6.2 Waterfall for Costs Reserve**

The Monitor shall hold the Costs Reserve in trust for the following Persons and purposes and shall apply the Costs Reserve in the following order of priority:

6.2.1 first, for the benefit of the CCAA Parties for the purpose of paying Costs incurred; and

6.2.2 then, for the benefit of the Noteholders on account of Interest Distributions.

##### **6.3 Conditions to Payment of Costs Out of Costs Reserve**

Promptly following its receipt from the Applicant of any invoice relating to Costs incurred (a "**Costs Invoice**"), the Monitor, with the Applicant's consent, shall pay from the Costs Reserve the amount owing on such Costs Invoice to the Person(s) entitled to payment of such Costs. If the Applicant does not consent to payment of a Costs Invoice, the Monitor may apply to the CCAA Court for further directions.

##### **6.4 Transfer to Tax Reserve Account**

On the date that the Indemnity Reserve is exhausted further to the last transfer from the Indemnity Reserve Account to the Tax Reserve Account pursuant to Section 8.6.3 or 8.6.4, as the case may be, the Monitor shall transfer to the Tax Reserve Account the balance then outstanding in the Costs Reserve Account.

**6.5 Termination of Costs Reserve**

The Costs Reserve shall terminate automatically as soon as it is exhausted in accordance with the provisions of this Plan.

**ARTICLE 7**

**TAX RESERVE**

**7.1 Establishment of Tax Reserve**

Upon receipt of the Aggregate Available Cash, the Monitor shall fund therefrom a reserve in an amount equal to the Balance of the Aggregate Available Cash (which, as at June 1, 2014 is estimated to be CDN\$59,693,904) on account of (i) Taxes that may be required to be paid or to be withheld by the CCAA Parties in order to receive the Tax Clearance Certificates (the "**Taxes Payable**"), (ii) Tax Indemnity Claims, and (iii) Anticipated Costs (the "**Tax Reserve**"), which reserve shall be established in its own dedicated in trust account maintained with a Canadian chartered bank listed on Schedule 1 of the *Bank Act* (Canada) or an Affiliated Company of such a bank and invested in Permitted Investments.

The Monitor shall hold, administer and apply the Tax Reserve only in accordance with the provisions of this Article 7.

**7.2 Waterfall for Tax Reserve**

The Monitor shall hold the Tax Reserve in trust for the following Persons and purposes and shall apply the Tax Reserve in the following order of priority:

7.2.1 prior to the time that the Costs Reserve is exhausted:

- 7.2.1.1 first, for the benefit of the CCAA Parties for the purpose of paying Anticipated Costs incurred or to be incurred in excess of the amount of the Costs Reserve;
- 7.2.1.2 second, for the benefit of the CCAA Parties for the purpose of paying Taxes Payable and satisfying Tax Indemnity Claims; and
- 7.2.1.3 then, for the benefit of the Noteholders on account of Interest Distributions; and

7.2.2 as of and from the time that the Costs Reserve is exhausted:

- 7.2.2.1 first, for the benefit of the CCAA Parties for the purpose of paying Anticipated Costs incurred or to be incurred;
- 7.2.2.2 second, for the benefit of the CCAA Parties for the purpose of paying Taxes Payable and satisfying Tax Indemnity Claims; and



7.2.2.3 then, for the benefit of the Noteholders on account of Interest Distributions.

**7.3 Conditions to Payment of Anticipated Costs Out of Tax Reserve**

Promptly following its receipt of any invoice relating to Anticipated Costs from the Applicant (an "**Anticipated Costs Invoice**"), the Monitor shall pay from the Tax Reserve the amount owing on such Anticipated Costs Invoice to the Person(s) entitled to payment of such Anticipated Costs if the Monitor has approved such Anticipated Costs and the amount thereof and the Applicant consents. If there is any dispute with respect to the Anticipated Costs Invoice, the Monitor may apply to the CCAA Court for further directions.

**7.4 Conditions to Payment of Taxes and Tax Indemnity Claims Out of Tax Reserve**

7.4.1 Promptly following its receipt of any tax assessment, statement or other document attesting that any Taxes Payable are owed by the CCAA Parties to a Governmental Authority, the Monitor, following consultation with the Applicant, shall pay such Taxes Payable to such Governmental Authority from the Tax Reserve.

7.4.2 Promptly following its receipt from an Indemnified Party of a Tax Indemnity Claim, the Monitor shall pay from the Tax Reserve to such Indemnified Party the amount claimed by such Indemnified Party provided that the Monitor has also received:

7.4.2.1 evidence that such Indemnified Party has paid Taxes Payable to a Governmental Authority;

7.4.2.2 the tax assessment, statement or other document relating to the Taxes Payable by the CCAA Parties that such Indemnified Party paid; and

7.4.2.3 a reasonably detailed summary describing the circumstances for the payment by the Indemnified Party, if the Indemnified Party is a Person other than the Applicant.

**7.5 Payment of Interest Distributions**

The Monitor shall make Interest Distributions to the Noteholders from the Tax Reserve Account as and when contemplated in Article 11.

**7.6 Termination of Tax Reserve**

The Tax Reserve shall terminate automatically as soon as it is exhausted in accordance with the provisions of this Plan and no further amounts then stand to the credit of any of the other Plan Reserve Accounts.

**ARTICLE 8**

**INDEMNITY RESERVE**

**8.1 Establishment of Indemnity Reserve**

Upon receipt of the Aggregate Available Cash, the Monitor shall fund therefrom a reserve in the amount of CDN\$5,000,000 on account of Other Indemnity Claims as well as Anticipated Costs, Taxes Payable and Tax Indemnity Claims to the extent the Costs Reserve and the Tax Reserve are insufficient to pay such Anticipated Costs, Taxes Payable and Tax Indemnity Claims (the "**Indemnity Reserve**"), which reserve shall be established in its own dedicated in trust account maintained with a Canadian chartered bank listed on Schedule 1 of the *Bank Act* (Canada) or an Affiliated Company of such a bank and invested in Permitted Investments.

The Monitor shall hold, administer and apply the Indemnity Reserve only in accordance with the provisions of this Article 8.

**8.2 Waterfall for Indemnity Reserve**

The Monitor shall hold the Indemnity Reserve in trust for the following Persons and purposes and shall apply the Indemnity Reserve in the following order of priority:

8.2.1 prior to the time the Costs Reserve and the Tax Reserve are exhausted:

- 8.2.1.1 first, for the benefit of the CCAA Parties for the purpose of satisfying Other Indemnity Claims; and
- 8.2.1.2 then, subject to Section 8.6, for the benefit of the Noteholders on account of Interest Distributions; and

8.2.2 as of and from the time that the Costs Reserve and the Tax Reserve are exhausted:

- 8.2.2.1 first, for the benefit of the CCAA Parties for the purpose of paying Anticipated Costs incurred or to be incurred;
- 8.2.2.2 second, for the benefit of the CCAA Parties for the purpose of paying Taxes Payable and satisfying Tax Indemnity Claims;
- 8.2.2.3 third, for the benefit of the CCAA Parties for the purpose of satisfying Other Indemnity Claims; and
- 8.2.2.4 then, subject to Section 8.6, for the benefit of the Noteholders on account of Interest Distributions.

**8.3 Conditions to Payment of Anticipated Costs Out of Indemnity Reserve**

Promptly following its receipt of an Anticipated Costs Invoice from the Applicant, the Monitor shall pay from the Indemnity Reserve the amount owing on such Anticipated Costs Invoice to

the Person(s) entitled to payment of such Anticipated Costs if the Monitor has approved such Anticipated Costs and the amount thereof and the Applicant consents. If there is any dispute with respect to the Anticipated Costs Invoice, the Monitor may apply to the CCAA Court for further directions.

**8.4 Conditions to Payment of Taxes and Tax Indemnity Claims Out of Indemnity Reserve**

8.4.1 To the extent that the Tax Reserve is then exhausted or insufficient to permit the Monitor to pay Taxes Payable, promptly following its receipt of any tax assessment, statement or other document attesting that any Taxes Payable are owed by the CCAA Parties to a Governmental Authority, the Monitor, following consultation with the Applicant, shall pay such Taxes Payable to such Governmental Authority from the Indemnity Reserve.

8.4.2 To the extent that the Tax Reserve is then exhausted or insufficient to permit the Monitor to pay a Tax Indemnity Claim, promptly following its receipt from an Indemnified Party of a Tax Indemnity Claim, the Monitor shall pay from the Indemnity Reserve to such Indemnified Party the amount claimed by such Indemnified Party provided, that the Monitor has also received:

8.4.2.1 evidence that such Indemnified Party has paid Taxes Payable to a Governmental Authority; and

8.4.2.2 the tax assessment, statement or other document relating to the Taxes Payable by the CCAA Parties that such Indemnified Party paid.

**8.5 Conditions to Payment of Other Indemnity Claims**

8.5.1 The Monitor may receive a claim in writing for payment of Indemnity Payments from any Indemnified Party (a "**Notice of Claim**") and any such Notices of Claim received by the Monitor shall be addressed, subject to Section 8.5.6, in the order that they are received.

8.5.2 The Monitor shall be under no obligation, however, to make payment of an Indemnity Payment relating to:

8.5.2.1 Defence Costs and other costs of the type referred to in clause (iii) of the definition of "**Indemnity Claims**", unless it receives concurrently with the Notice of Claim relating thereto, an invoice relating to such Defence Costs and other costs; and

8.5.2.2 an Other Indemnity Claim (other than one referred to in Section 8.5.2.1), or Covered Third Party Claim, unless it receives concurrently with the Notice of Claim relating thereto, a copy of a final non-appealable judgment of a court of competent jurisdiction condemning an Indemnified Party to pay a sum of money and the Monitor determines that the payment of such amount constitutes an Other Indemnity Claim or Covered Third Party Claim.

- 8.5.3 The Monitor may require, in fulfilling its duties hereunder, any supporting information deemed to be reasonably necessary. In addition, in respect of any Other Indemnity Claim, the Monitor shall request any further supporting documentation in respect thereof that may be reasonably requested by Barclays or CDPQ and the applicable Indemnified Party shall provide such further supporting documentation as is reasonably accessible to it to the Monitor as promptly as possible. Any request for supporting information shall take into account whether a determination referred to in Section 8.5.2 has been made and shall be made by the Monitor promptly following its receipt of a Notice of Claim.
- 8.5.4 Receipt by the Monitor of a Notice of Claim and information in support thereof in accordance with this Section does not commit the Monitor to pay any amounts from the Indemnity Reserve prior to the Monitor obtaining from such advisors as it may reasonably require such additional advice and analysis as the Monitor considers to be reasonably desirable in making a determination as to any of the matters set out above including, without limitation, any additional information, advice or analysis concerning the Notice of Claim. If any dispute arises with respect to the amount of any Notice of Claim, the Monitor may apply to the CCAA Court for further directions. All reasonable expenses of the Monitor and its legal counsel in this regard shall constitute Costs or Anticipated Costs, as the case may be, and be paid subject to the same payment conditions as any other Costs or Anticipated Costs as contemplated in Sections 6.3, 7.3 and 8.3, as the case may be.
- 8.5.5 Where the Monitor has determined that a request for payment of an Indemnity Payment is appropriate, the Monitor shall, within three (3) Business Days of such determination, pay to or to the order of the Indemnified Party making the request (or any other Person designated by that Indemnified Party in writing to the Monitor), an amount equal to the lesser of:
- 8.5.5.1 the amount of the request for Indemnity Payment; and
  - 8.5.5.2 the amount then standing to the credit of the Indemnity Reserve Account.
- 8.5.6 Where more than one Notice of Claim is received by the Monitor, then the payment thereof contemplated hereunder shall be made in the order, following the receipt of such Notices of Claim, that the conditions set out in this Section 8.5 are satisfied with respect to each such Notice of Claim.

## **8.6 Reductions in Indemnity Reserve**

- 8.6.1 On the second anniversary of the Plan Implementation Date, the Indemnity Reserve shall be reduced by, and the Monitor shall transfer to the Tax Reserve Account, the balance outstanding in the Indemnity Reserve Account less an amount equal to the sum of:
- 8.6.1.1 CDN\$1,000,000; and
  - 8.6.1.2 the amount in excess of CDN\$1,000,000 that the Applicant, acting reasonably and following consultation with the Monitor, estimates is required

to satisfy any Threatened Litigation and anticipated Defence Costs related thereto.

8.6.2 From time to time between the second and fourth anniversary of the Plan Implementation Date, whenever a final non-appealable judgment of a court of competent jurisdiction is rendered with respect to any Threatened Litigation or all parties adverse to an Indemnified Party desist therefrom, the Indemnity Reserve shall be reduced by, and the Monitor shall transfer to the Tax Reserve Account, the balance outstanding in the Indemnity Reserve Account less an amount equal to the sum of:

8.6.2.1 CDN\$1,000,000; and

8.6.2.2 the amount, if any, exceeding CDN\$1,000,000 that the Applicant, acting reasonably and following consultation with the Monitor, estimates is required to satisfy Threatened Litigation and anticipated Defence Costs related thereto.

8.6.3 On the fourth anniversary of the Plan Implementation Date, the Indemnity Reserve shall be reduced by, and the Monitor shall transfer to the Tax Reserve Account, the balance outstanding in the Indemnity Reserve Account less an amount equal to the amount that the Applicant, acting reasonably and after consultation with the Monitor, determines is required to satisfy Threatened Litigation and anticipated Defence Costs related thereto.

8.6.4 Following the fourth anniversary of the Plan Implementation Date, whenever a final non-appealable judgment of a court of competent jurisdiction is rendered with respect to any Threatened Litigation or all parties adverse to an Indemnified Party desist therefrom, the Indemnity Reserve shall be reduced by, and the Monitor shall transfer to the Tax Reserve Account, the balance in the Indemnity Reserve Account less an amount equal to the amount that the Applicant, acting reasonably and following consultation with the Monitor, estimates is required to satisfy remaining Threatened Litigation and anticipated Defence Costs related thereto.

8.6.5 When the Monitor, in consultation with the Applicant, determines that no amounts are required to satisfy Threatened Litigation and the anticipated Defence Costs related thereto, the Monitor shall transfer to the Tax Reserve Account the balance in the Indemnity Reserve Account.

## **8.7 Termination of Indemnity Reserve**

The Indemnity Reserve shall terminate automatically as soon as it is exhausted in accordance with the provisions of this Plan.

## ARTICLE 9

### WITHHOLDING TAX RESERVE

#### **9.1 Establishment of Withholding Tax Reserve**

If the Advance Tax Ruling in a form satisfactory to the Monitor has not been obtained by the seventh (7<sup>th</sup>) Business Day prior to the date on which the First Interest Distribution is to be made, then the Monitor shall establish by no later than the date of the making of the First Interest Distribution, a reserve (the "**Withholding Tax Reserve**") in a dedicated in trust account maintained with a Canadian chartered bank listed on Schedule 1 of the *Bank Act* (Canada) or an Affiliated Company of such a bank and invested in Permitted Investments. The Monitor shall transfer the Withholding Tax Amount to the Withholding Tax Reserve Account from time to time as contemplated in Sections 11.6 and 11.7.

The Monitor shall hold, administer and apply the Withholding Tax Reserve only in accordance with the provisions of this Article 9.

The Monitor shall not establish the Withholding Tax Reserve and shall make the First Interest Distribution in accordance with the provisions of Section 11.6 if (i) the Advance Tax Ruling in a form satisfactory to the Monitor is obtained by the seventh (7<sup>th</sup>) Business Day prior to the date on which the First Interest Distribution is to be made or (ii) prior to the receipt of the Advance Tax Ruling and the CRA Confirmation, Barclays has issued a written notice to the Monitor and the Applicant waiving the benefit of, and right to obtain, the Advance Tax Ruling and CRA Confirmation and requesting that all Interest Distributions hereunder be made to it in the manner contemplated in Section 11.6.6.

#### **9.2 Waterfall for Withholding Tax Reserve**

The Monitor shall hold the Withholding Tax Reserve in trust for the following Persons and purposes and shall apply the Withholding Tax Reserve in the following order of priority:

- 9.2.1 first, for the purpose of paying any Withholding Taxes to the CRA;
- 9.2.2 second, other than with respect to interest earned on, or investment returns arising from, the Withholding Tax Reserve, for the benefit of the Non-Resident Noteholders only, on account of Interest Distributions made to them; and
- 9.2.3 third, with respect to interest earned on, or investment returns arising from, the Withholding Tax Reserve, for the benefit of the Noteholders, on account of Interest Distributions made to them.

#### **9.3 Conditions to Payment Out of Withholding Tax Reserve**

Promptly following the receipt from the Applicant of the Advance Tax Ruling in a form satisfactory to the Monitor and in consultation with the Applicant, the Monitor shall pay from the Withholding Tax Reserve, in accordance with the provisions of such Advance Tax Ruling:

- 9.3.1 to the CRA, the amount required to be paid on account of Withholding Taxes; and
- 9.3.2 if any amounts other than Withholding Taxes have been deposited in the Withholding Tax Reserve Account, then, to each Non-Resident Noteholder, an amount equal to the aggregate amount such Non-Resident Noteholder would have received on account of the Interest Distributions made had no Withholding Taxes been applicable less the amount of the applicable Withholding Taxes paid to the CRA pursuant to Section 9.3.1 with respect to such Non-Resident Noteholder's Interest Distributions.

**9.4 Transfer to Tax Reserve Account**

On the first Business Day following the date on which all the payments contemplated in Section 9.3 have been made, the Monitor shall transfer to the Tax Reserve Account the balance then outstanding in the Withholding Tax Reserve Account.

**9.5 Termination of Withholding Tax Reserve**

The Withholding Tax Reserve shall terminate automatically as soon as it is exhausted in accordance with the provisions of this Plan.

**ARTICLE 10**

**PLAN RESERVES RECORDS & INVESTMENTS**

**10.1 Financial Matters**

The Monitor shall keep such books, records and accounts as are necessary and appropriate to document the assets in the Plan Reserves and all transactions related thereto.

**10.2 Notice of Amounts in the Plan Reserve Accounts**

The Monitor shall, not less frequently than monthly, provide notice to the Applicant and the Noteholders of the balance of the Plan Reserve Accounts and the details of any deposits to, and payments made from, the Plan Reserve Accounts during the period since the last notice delivered by the Monitor or since the Plan Implementation Date, as the case may be. Furthermore, any Noteholder may request that the Monitor provide it with such information as it may reasonably request with respect to the Plan Reserve Accounts.

**10.3 Investment of Plan Reserves**

Following consultation with the Applicant, the Monitor shall invest the proceeds in the Plan Reserve Accounts. Notwithstanding the foregoing and the provisions of Sections 6.1, 7.1, 8.1 and 9.1, until, in the Monitor's sole discretion, it is in the interests of the stakeholders to transfer each Plan Reserve into a dedicated non-interest in trust account and not invest any proceeds in the Plan Reserve Accounts.

#### **10.4 Plan Reserves Income**

The Applicant shall direct the Monitor to pay from the Tax Reserve Account all Taxes Payable with respect to the Applicant's net income resulting from interest earned on, or investment returns arising from, the Plan Reserves.

### **ARTICLE 11**

#### **DISTRIBUTIONS**

##### **11.1 Distributions to Noteholders**

Each Noteholder with a Proven Claim shall be entitled to the following distributions:

11.1.1 an initial distribution on the Plan Implementation Date, in an amount equal to the aggregate face amount of the Notes held by such Noteholder, as provided in this Plan, in full and final satisfaction of its Proven Claim; and

11.1.2 its Pro Rata Share of all Interest Distributions made from time to time in accordance with the provisions of this Article 11.

##### **11.2 Initial Distribution to Noteholders**

Within three (3) Business Days of the Plan Implementation Date, in full and final satisfaction of all Proven Claims, from the Aggregate Available Cash received by it, the Monitor shall make a first distribution to the Noteholders with Proven Claims, in full satisfaction of principal owing on their Notes, in an amount equal to the face amount of the Notes held by such Noteholders (the "**Initial Distribution**"). If all Noteholders have Proven Claims, then the aggregate amount of the Initial Distribution shall be equal to CDN\$678,931,389, which corresponds to the aggregate outstanding face amount of all the Notes.

##### **11.3 Interest on Notes**

For the purpose of Interest Distributions to be made to the Noteholders pursuant to this Plan, each Class of Notes shall bear interest as provided herein notwithstanding any provision of the Trust Indenture or the Notes to the contrary. Interest shall accrue on the Notes only up to but excluding the Plan Implementation Date, even if a Noteholder fails to present the Required Documentation as required herein and thereby is not paid its Noteholder Claim on the Plan Implementation Date.

##### **11.4 Interest Calculations**

11.4.1 By virtue of this Plan and without any further action by any Person, the terms of the Class A Notes and the Supplemental Indenture are hereby amended so that interest on the Class A Notes for each Interest Period included in a particular year during the Post-Maturity Period shall accrue and be computed daily on the face amount of each Class A



Note, on an Actual/365 Fixed Basis but, without any compounding of interest, at the BOC Average 1M BA Rate applicable on each day during such Interest Period. The BOC Average 1M BA Rate applicable during each Interest Period shall be the average monthly rate for bankers' acceptances with a one-month term, as calculated and published as part of series V122504 by the Bank of Canada (see <http://www.bankofcanada.ca/rates/interest-rates/canadian-interest-rates/>, Series V122504).

11.4.2 The face amount of each Class FRN Note shall bear interest:

11.4.2.1 for the period commencing on August 13, 2007 up to but excluding the date of its maturity, at the rate and calculated and compounded as provided in such Note and the Supplemental Indenture; and

11.4.2.2 for each Interest Period included in a particular year during the Post-Maturity Period, computed daily on the face amount of each Class FRN Note plus the capitalized interest thereon up to but excluding the maturity date of each Class FRN Note, on an Actual/365 Fixed Basis but without any compounding of interest, at the BOC Average 1M BA Rate applicable on each day during such Interest Period and, by virtue of this Plan and without any further action by any Person, the terms of the Class FRN Notes and the Supplemental Indenture are hereby amended accordingly. As is the case for the Class A Notes, the BOC Average 1M BA Rate applicable to the Class FRN Notes during each Interest Period shall be the average monthly rate for bankers' acceptances with a one-month term, as calculated and published as part of series V122504 by the Bank of Canada (see <http://www.bankofcanada.ca/rates/interest-rates/canadian-interest-rates/>, Series V122504).

11.4.3 The face amount of each Class E Note shall bear interest:

11.4.3.1 for the period commencing on the initial maturity date of such Class E Note up to but excluding the extended maturity date thereof (which for all purposes of this Plan shall be deemed to be its maturity date), at the rate and calculated as provided in such Note and the Supplemental Indenture; and

11.4.3.2 for each Interest Period included in a particular year during the Post-Maturity Period, computed daily on an Actual/365 Fixed Basis but without any compounding of interest, at the BOC Average 1M BA Rate + 1.00% applicable on each day during such Interest Period. As is the case for the Class A Notes and Class FRN Notes, the BOC Average 1M BA Rate applicable to the Class E Notes during each Interest Period shall be the average monthly rate for bankers' acceptances with a one-month term, as calculated and published as part of series V122504 by the Bank of Canada (see <http://www.bankofcanada.ca/rates/interest-rates/canadian-interest-rates/>, Series V122504).

11.4.4 The aggregate amount of interest accrued on each Note and calculated as aforesaid up to but excluding the Record Date is available for consultation on the Website.

11.4.5 Nothing contained in this Section 11.4 including the amendments contemplated in Sections 11.4.1 or 11.4.2.2 is intended to amend the provisions regarding the supplemental interest payable on the Notes contemplated in the First Supplement.

**11.5 Pro Rata Share Calculation**

On the Plan Implementation Date, the Monitor shall calculate the Pro Rata Share of each Noteholder and send a notice to each Noteholder setting forth only its Pro Rata Share, rounded to two decimal points, for the purpose of all Interest Distributions to be made under this Plan, subject to the provisions of Sections 11.6, 11.7 and 11.8 with respect to Withholding Taxes.

**11.6 First Interest Distribution**

The Applicant shall provide to the Monitor (i) a copy of each Tax Clearance Certificate within five (5) Business Days of its receipt thereof, and (ii) within five (5) Business Days of its receipt of the second Tax Clearance Certificate, an estimate of the amount the Applicant determines, acting reasonably and with the Monitor's consent, will be required to satisfy any remaining or future tax liabilities (including any outstanding Tax Indemnity Claims and Taxes on income to be earned in the Plan Reserves) of the CCAA Parties and any Anticipated Costs. On receipt of both items described in clauses (i) and (ii) of this Section:

11.6.1 the Monitor shall distribute from the Tax Reserve Account to each Resident Noteholder, its Pro Rata Share of the First Interest Distribution Amount on account of, in lieu of or in satisfaction of interest on such Resident Noteholder's Notes;

11.6.2 if the Advance Tax Ruling and the CRA Confirmation have not been obtained and Barclays has not issued the notice contemplated in Section 9.1, then each Non-Resident Noteholder's Pro Rata Share of the First Interest Distribution Amount shall be transferred by the Monitor to the Withholding Tax Reserve Account;

11.6.3 if the Advance Tax Ruling has not been obtained but the CRA Confirmation has been obtained, then each Non-Resident Noteholder's Pro Rata Share of the First Interest Distribution Amount, less the amount of applicable Withholding Taxes relating to such Non-Resident Noteholder's Pro Rata Share, shall be distributed by the Monitor to each Non-Resident Noteholder on account of, in lieu of or in satisfaction of interest on such Non-Resident Noteholder's Notes and the Monitor shall transfer the amount of such Withholding Taxes to the Withholding Tax Reserve Account;

11.6.4 if the Advance Tax Ruling has been obtained and in accordance with its terms Withholding Taxes are payable in respect of Interest Distributions to a Non-Resident Noteholder, then such Non-Resident Noteholder's Pro Rata Share of the First Interest Distribution Amount, less the amount of applicable Withholding Taxes relating to such Non-Resident Noteholder's Pro Rata Share, shall be distributed by the Monitor to such Non-Resident Noteholder on account of, in lieu of or in satisfaction of interest on such

Non-Resident Noteholder's Notes and the Monitor shall pay the amount of such Withholding Taxes to the CRA;

11.6.5 if the Advance Tax Ruling in a form satisfactory to the Monitor has been obtained and in accordance with its terms no Withholding Taxes are payable in respect of Interest Distributions to a Non-Resident Noteholder, such Non-Resident Noteholder's Pro Rata Share of the First Interest Distribution Amount shall be distributed by the Monitor to such Non-Resident Noteholder on account of, in lieu of or in satisfaction of interest on such Non-Resident Noteholder's Notes; and

11.6.6 if the Advance Tax Ruling and the CRA Confirmation have not been obtained but Barclays has issued the notice contemplated in Section 9.1, then each Non-Resident Noteholder's Pro Rata Share of the First Interest Distribution Amount, less the amount of Withholding Taxes relating to such Non-Resident Noteholder's Pro Rata Share, shall be distributed to such Non-Resident Noteholder on account of, in lieu of or in satisfaction of interest on such Non-Resident Noteholder's Notes and the Monitor shall pay the amount of such Withholding Taxes to the CRA.

#### **11.7 Subsequent Interest Distributions**

Following a First Interest Distribution made pursuant to Section 11.6, each time that funds are transferred to the Tax Reserve Account from the Costs Reserve Account or the Indemnity Reserve Account pursuant to Sections 6.4, 8.6.1, 8.6.2 or 8.6.3 or funds are otherwise deposited in the Tax Reserve Account, the Monitor may make a distribution from the Tax Reserve Account in an amount equal to the difference between the funds so transferred to the Tax Reserve Account and Anticipated Costs, by paying:

11.7.1 to each Resident Noteholder, its Pro Rata Share of such amount, on account of, in lieu of or in satisfaction of interest on such Resident Noteholder's Notes; and

11.7.2 with respect to each Non-Resident Noteholder, its Pro Rata Share of such amount, on account of, in lieu of or in satisfaction of interest on such Non-Resident Noteholder's Notes, in accordance with the provisions of Sections 11.6.2 to 11.6.6, as the case may be, *mutatis mutandis*.

Without limiting the foregoing, if the Advance Tax Ruling has not been obtained by the second anniversary of the Plan Implementation Date, as of and from such anniversary date the Monitor shall make all Interest Distributions under this Plan by paying (i) to each Resident Noteholder, its Pro Rata Share of such Interest Distributions, (ii) to each Non-Resident Noteholder, its Pro Rata Share of such Interest Distributions less the amount of applicable Withholding Taxes relating to such Non-Resident Noteholder's Pro Rata Share, and (iii) to the CRA, the applicable Withholding Taxes relating to each Non-Resident Noteholder's Pro Rata Share of such Interest Distributions.

**11.8 Final Interest Distributions**

Following the final transfer of funds to the Tax Reserve Account from the Costs Reserve Account pursuant to Section 6.4 and the Indemnity Reserve Account pursuant to Section 8.6.5, the Monitor shall make a final distribution on account of, in lieu of or in satisfaction of interest on the Notes and pay to each Noteholder its Pro Rata Share of all amounts standing to the credit of the Tax Reserve Account less an amount reserved for Anticipated Costs in accordance with the provisions of the last paragraph of Section 11.7, *mutatis mutandis*. Following the final payment of all outstanding Anticipated Costs, the Monitor shall pay to each Noteholder, on account of, in lieu of or in satisfaction of interest on the Notes, its Pro Rata Share of the balance outstanding in the Tax Reserve Account in accordance with the provisions of the last paragraph of Section 11.7, *mutatis mutandis*. Notwithstanding any other provision of this Article 11, no Noteholder is entitled to or shall receive any amount on account of, in lieu of or in satisfaction of interest on its Notes that exceeds the aggregate amount of interest that it would otherwise be entitled to receive on its Notes as calculated in accordance with the provisions of Section 11.4.

**11.9 Failure to Claim**

Noteholders who fail to establish Proven Claims within two (2) years of the Plan Implementation Date will be barred from receiving all distributions under this Plan and any amounts that such Noteholders would otherwise have received will be distributed to the other Noteholders who have established Proven Claims on a Pro Rata Share basis in accordance with the provisions of the last paragraph of Section 11.7, *mutatis mutandis*.

**ARTICLE 12****PLAN COMPLETION****12.1 Plan Completion**

This Plan shall be fully completed upon the later of (i) the date upon which all the Plan Reserves are exhausted and (ii) the date upon which the final distribution is made by the Monitor to the Noteholders pursuant to Section 11.8 (such later date, the "**Plan Completion Date**"). The Monitor shall be fully and finally released from all its duties and obligations under this Plan and the Sanction Order upon the filing with the CCAA Court of a certificate of the Monitor certifying that the Plan Completion Date has occurred.

**ARTICLE 13****SANCTION ORDER****13.1 Application for Sanction Order**

The application for the Sanction Order shall be brought by the Applicant as soon as reasonably practicable following the approval of this Plan by the requisite majorities of Noteholders voting

at the Meeting. On the Plan Implementation Date, subject to the satisfaction of the conditions contained in Article 8 herein, this Plan will be binding upon all Noteholders and all other Persons in accordance with its terms.

### **13.2 Effect of Sanction Order**

In addition to sanctioning this Plan, and subject to the discretion of the CCAA Court, the Sanction Order shall, among other things and without limitation:

- 13.2.1 direct and authorize the Plan Reserves and distributions contemplated under this Plan;
- 13.2.2 declare that all distributions or payments by or at the direction of the Monitor, in each case on behalf of the Applicant under the Plan, are for the account of the CCAA Parties and the fulfillment of their obligations under the Plan;
- 13.2.3 declare that the compromises, releases and injunctions effected hereby are approved, binding and effective as of the Plan Implementation Date upon all Noteholders, the Monitor and all other Persons affected by this Plan and shall enure to the benefit of all such Persons;
- 13.2.4 provide that no Person who is a party to any obligation or agreement with the CCAA Parties shall, following the Plan Implementation Date, accelerate, terminate, rescind, refuse to perform or repudiate its obligations thereunder, or enforce or exercise any right (including any right of set-off, dilution or other remedy) or make any demand under or in respect of any such obligation or agreement, by reason:
  - 13.2.4.1 of any event(s) that occurred on or prior to the Plan Implementation Date that would have entitled any other Person thereto to enforce those rights or remedies (including defaults or events of default arising as a result of the insolvency of the CCAA Parties);
  - 13.2.4.2 of the fact that relief under the CCAA has been sought or obtained in respect of the CCAA Parties, that the CCAA Proceedings have been commenced or completed, or that the within restructuring has been implemented in respect of the CCAA Parties; or
  - 13.2.4.3 of any compromises or arrangements effected pursuant to this Plan;
- 13.2.5 confirm the effect of the Claims Procedure and Meeting Order;
- 13.2.6 provide for a release of the Released Parties in a form consistent with Section 16.1;
- 13.2.7 provide that, as of the Plan Implementation Date, the Settlement Agreement (save and except for the provisions of Sections 6(o), 9, 10, 16 and 17 thereof) and all Programme Agreements (save and except the Settlement Deed) are terminated and all Charges thereunder are discharged, provided, however, that for the purposes of the Plan, **(i)** the indemnity provisions of the Programme Agreements shall be deemed to remain in full

force and effect even following such termination and **(ii)** the Noteholders shall continue to constitute secured creditors of the Applicant for purposes of the Programme Agreements;

- 13.2.8 provide that the Monitor shall be authorized, in connection with the making of any payment or distribution under this Plan, to apply in its sole discretion to any Governmental Authority for any consent, authorization, certificate or approval in connection therewith in order to obtain confirmation that it will not be liable for any Taxes Payable provided, that, in so doing, the Monitor may not alter the agreement of the Plan Participants set forth in Article 7 and Article 9;
- 13.2.9 declare that the Monitor shall not incur any liability under the Tax Act or any similar provincial or territorial tax legislation as a result of the completion of the steps contemplated by the Plan, including in respect of its making any payments ordered or permitted under the Plan or the Sanction Order, and is released, remised and discharged from any claims against it under or pursuant to the Tax Act, any similar provincial or territorial tax legislation or otherwise at law, arising in respect of the completion of the steps contemplated by the Plan, including in respect of its making any payments ordered or permitted under the Plan or the Sanction Order and that any claims of such a nature are forever barred and extinguished;
- 13.2.10 provide that the Monitor shall be discharged and released on the Plan Implementation Date, save and except with respect to any remaining duties or powers required to implement and give effect to the terms of this Plan and the Sanction Order (the "**Post Plan Implementation Date Duties**");

13.2.11 declare that the Monitor shall incur no liability or obligation as a result of carrying out the provisions of the Sanction Order and/or the Plan except in respect of any gross negligence or wilful misconduct and declare that the Monitor shall be entitled to rely on the books and records of the CCAA Parties and any information provided by the CCAA Parties without independent investigation and shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information; and

13.2.12 declare that the Monitor shall continue to hold the benefit of a CCAA Charge as against the funds held in the Plan Reserves from time to time, and the benefit of all protections of the Monitor provided for in the Initial CCAA Order, Claims Procedure and Meeting Order, Sanction Order, any other Order in the CCAA Proceedings, the CCAA and at law, including the stay of proceedings in its favour, as provided in the Initial CCAA Order as against the funds held in the Plan Reserves from time to time, and the benefit of all protections of the Monitor provided for in the Initial CCAA Order, Claims Procedure and Meeting Order, Sanction Order, the CCAA and at law, until the Monitor has completed its duties under this Plan and the fees and disbursements of the Monitor and its counsel have been fully paid.

### **13.3 Monitor**

On the Plan Implementation Date, and subject to the Sanction Order and any other Orders, the Monitor shall be discharged and released and shall have no further obligations or responsibilities, except only with respect to any remaining duties or power required to implement and give effect to the terms of this Plan, including the Post Plan Implementation Date Duties. In carrying out the Post Plan Implementation Date Duties, the Monitor shall incur no liability or obligation as a result thereof save and except for any gross negligence or wilful misconduct on its part.

## **ARTICLE 14**

### **CONDITIONS PRECEDENT**

#### **14.1 Conditions Precedent to Implementation of Plan**

The implementation of this Plan shall be conditional upon the fulfillment or waiver of the following conditions on or before the Plan Implementation Date:

##### ***APPROVAL BY NOTEHOLDERS***

14.1.1 the Plan shall have been approved pursuant to the CCAA by the Noteholders with Proven Claims;

##### ***GRANTING OF SANCTION ORDER***

14.1.2 the Sanction Order shall have been granted by the CCAA Court in a form acceptable to the Settlement Parties;

***EXPIRY OF APPEAL PERIODS***

14.1.3 the appeal periods and any periods for leave to appeal with respect to the Sanction Order shall have expired without an appeal or application for leave to appeal of such Order having been commenced or, in the event of an appeal or application for leave to appeal, a final determination denying leave to appeal or dismissing such appeal and affirming the sanctioning of this Plan and recognizing the sanctioning of this Plan, as the case may be, shall have been made by the applicable appellate court, with no further right of appeal;

***COMPLETION OF NECESSARY DOCUMENTATION***

14.1.4 the execution and delivery by all relevant Persons of all agreements, settlements, resolutions, releases, documents and other instruments that are necessary to be executed and delivered to implement and give effect to all material terms and provisions of this Plan;

***DIRECTIONS OF PAYMENT***

14.1.5 Barclays and the Applicant shall have executed and delivered to all relevant Persons the directions of payment referred to in Section 5.2.4;

***SPECIAL ORDER***

14.1.6 the Special Order shall have been issued by the relevant court in a form acceptable to Barclays and the Applicant; and

***FUNDS TRANSFERS***

14.1.7 the funds transfers contemplated in Sections 5.3.3, 5.3.4, 5.3.5 and 5.3.7 shall have been completed.

Any waiver in whole or in part, of conditions in this Section 14.1 must be in accordance with Section 14.2.

**14.2 Waiver**

Any waiver of conditions in Section 14.1 shall be in writing. The Applicant, with the prior written consent of the Monitor and the other Settlement Parties, shall have the right to waive one or more of the above conditions precedent in whole or in part, except the conditions set out in Sections 14.1.1, 14.1.2, 14.1.6 and 14.1.7.

**14.3 Monitor's Certificate**

Upon the satisfaction or waiver of the conditions set out in Section 14.1 hereof, the Monitor shall file with the CCAA Court in the CCAA Proceedings a certificate that states that all conditions precedent set out in Section 14.1 of this Plan have been satisfied or waived and that the Plan Implementation Date has occurred. The Monitor shall serve such certificate on the service list maintained in the CCAA Proceedings.



#### **14.4 Termination of Plan for Failure to Become Effective**

If the Plan Implementation Date shall not have occurred on or before 60 days following the date of the Sanction Order, or such later date as the Monitor and the Settlement Parties may agree in writing, then, subject to further Order of the CCAA Court, this Plan shall automatically terminate and be of no further force or effect; provided, that this Plan shall not automatically terminate pursuant to this Section if the sole basis for the non-occurrence of the Plan Implementation Date is the pendency of any appeal or application for leave to appeal with respect to the Sanction Order.

### **ARTICLE 15**

#### **EFFECT OF PLAN**

##### **15.1 Effect of Plan Generally**

The Plan (including, without limitation, the releases and injunctions contained in the Plan), upon being sanctioned and approved by the CCAA Court pursuant to the Sanction Order, shall be binding on the Plan Implementation Date on the Noteholders and all other Persons (and each of their respective Representatives, heirs, executors, administrators, guardians, legal personal representatives, successors and assigns) irrespective of the jurisdiction in which such Noteholders and other Persons reside, or in which the claims arose.

##### **15.2 Consents, Waivers and Agreements**

On the Plan Implementation Date, each Noteholder shall be deemed to have consented and agreed to all of the provisions of this Plan in its entirety. In particular, each Noteholder shall be deemed:

- 15.2.1 to have executed and delivered to the Monitor and to the Plan Participants all consents, releases or agreements required to implement and carry out this Plan in its entirety; and
- 15.2.2 to have agreed that, if there is any conflict between the provisions, express or implied, of any agreement or other arrangement, written or oral, existing between such Noteholder and the Plan Participants at the Plan Implementation Date (other than those entered into by the Plan Participants in writing on or after the date hereof) and the provisions of this Plan, the provisions of this Plan take precedence and priority and the provisions of such agreement or other arrangement shall be deemed to be amended accordingly.

##### **15.3 Exculpation**

The Applicant, the Monitor, the Conduit, Barclays, Barclays' Subsidiaries, CDPQ, the Consultant, the Custodian and the Indenture Trustee (including in each case, their respective Representatives) shall have no liability or obligation to any Person for their role, or any act or omission, in connection with the Litigation, the Settlement Agreement, the CCAA Proceedings, activities undertaken in preparation for or anticipation of the CCAA Proceedings, the Plan, the

pursuit of sanctioning of the Plan, the consummation and implementation of the Plan or the administration of the Plan or the property to be distributed under the Plan provided, however, that this Section 15.3 shall not limit the obligations of any Person under the Plan.

#### **15.4 Crown Claims**

Any claims of the federal and provincial Crowns of a kind that could be subject to a demand under subsection 224(1.2) of the Tax Act or any substantially similar provision in Canada of provincial legislation or in respect of which the federal or provincial Crown has a Charge in the property of the CCAA Parties or recourse for non-payment against directors or officers of the CCAA Parties, outstanding under the provisions of said subsection 224(1.2) or substantially similar provincial legislation, or any other such claims of the federal or provincial Crown shall be paid on or before the Plan Implementation Date.

## **ARTICLE 16**

### **RELEASES AND INJUNCTIONS**

#### **16.1 Release of the Released Parties**

For good and valuable consideration, every Person (regardless of whether or not such Person is a Noteholder), including each of the Released Parties, on the Person's own behalf and on behalf of the Person's respective present and future Representatives, dependents, heirs, and assigns, as applicable, hereby fully, finally, irrevocably and unconditionally releases and forever discharges each of the Released Parties of and from any and all past, present and future claims, rights, interests, actions, rights of indemnity, liabilities, demands, duties, injuries, damages, expenses, fees (including attorneys' fees and liens), costs, compensation, or causes of action (excluding the NBC Causes of Action to the extent the Exclusion Condition is met) of whatsoever kind or nature whether foreseen or unforeseen, known or unknown, asserted or unasserted, contingent or actual, liquidated or unliquidated, whether in tort or contract, whether statutory, at common law or in equity, based on, in connection with, arising out of, or in any way related to, in whole or in part, directly or indirectly: any act, inaction or omission existing or taking place on or prior to the Plan Implementation Date relating to or otherwise in connection with the creation, issuance, rating, sale and marketing of the Notes in Canada, the Conduit, the Notes, the Litigation, all matters raised or which could have been raised in the Litigation, purchases and sales of the Notes and agreements relating thereto, the Settlement Agreement, the business and affairs of any of the Released Parties relating to or otherwise in connection with the Notes, the Programme Agreements, the CCAA Proceedings, the activities undertaken or not undertaken as a result of the Standstill, in anticipation of or preparation for the compromise of the Notes and/or the CCAA Proceedings, the Meeting or the Plan (collectively, the "**Released Claims**"); and each Person shall not make or continue any claims or proceedings whatsoever based on, in connection with, arising out of, or in any way related to, in whole or in part, directly or indirectly, the substance of the facts giving rise to any matter herein released (including, without limitation, any action, cross-claim, counter-claim, third party action or application) against any Person who claims or might reasonably be expected to claim in any manner or forum against one or more of the

Released Parties, including, without limitation, by way of contribution or indemnity, in common law, or in equity, breach of trust or breach of fiduciary duty or under the provisions of any statute or regulation, and that in the event that any of the Released Parties are added to such claim or proceeding, it will immediately discontinue any such claim or proceeding. Notwithstanding the foregoing, nothing herein shall release or discharge a Released Party from its obligations, if any, under the Plan or the Payment Agreement. This Section 16.1 does not apply to the NBC Causes of Action to the extent the Exclusion Condition is met or to Unaffected Claims and does not operate to release the obligations of Barclays under the Payment Agreement.

## **16.2 Injunction**

All Persons (regardless of whether or not such Persons are Noteholders), along with their respective present and future Representatives, dependents, heirs and assigns, as applicable, are permanently and forever barred, estopped, stayed and enjoined, on and after the Effective Time, with respect to Released Claims, from (i) commencing, conducting or continuing in any manner, directly or indirectly, any action, suits, demands or other proceedings of any nature or kind whatsoever (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against the Released Parties, (ii) enforcing, levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, decree or order against the Released Parties or their property, (iii) commencing, conducting or continuing in any manner, directly or indirectly, any action, suits or demands, including without limitation, by way of contribution or indemnity or other relief, in common law, or in equity, breach of trust or breach of fiduciary duty or under the provisions of any statute or regulation, or other proceedings of any nature or kind whatsoever (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against any Person who makes such a claim or might reasonably be expected to make such a claim, in any manner or forum, against one or more of the Released Parties, (iv) creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any Charge of any kind, or (v) taking any actions to interfere with the implementation or consummation of this Plan. This Section 16.2 does not apply to the NBC Causes of Action to the extent the Exclusion Condition is met or to Unaffected Claims or to the enforcement of any obligations under the Plan or under the Payment Agreement.

## **16.3 Exclusions**

Notwithstanding Sections 16.1 and 16.2, nothing in this Plan shall release, enjoin or compromise claims against directors of the Applicant that are described in Section 5.1(2) of the CCAA.

# **ARTICLE 17**

## **GENERAL PROVISIONS**

### **17.1 Plan Amendment**

The Applicant reserves the exclusive right to amend this Plan, subject to the Monitor's consent, in a written document filed with the CCAA Court, at any time prior to the Plan Implementation Date, with the prior written consent of the other Settlement Parties, provided, however, that:

- 17.1.1 prior to or during the Meeting, any such amendment must be communicated to the Noteholders in such manner as may be agreed by the Monitor, or as may be ordered by the CCAA Court;
- 17.1.2 after the Meeting, an amendment may be made if it concerns a matter which, in the opinion of the Monitor, or as declared by the CCAA Court, is of an administrative nature required to better give effect to the implementation of this Plan and/or to the Sanction Order and is not materially prejudicial to the interests of the Noteholders or the Plan Participants;
- 17.1.3 after the Meeting, any other amendment may only be made if approved by the CCAA Court;
- 17.1.4 any amendment that materially alters the effect of Section 16.1 or Section 16.2 of this Plan must be approved by any Plan Participants affected by the proposed amendment, modification or supplement; and
- 17.1.5 any supplementary plan or plans of compromise or arrangement filed by the Applicant with the CCAA Court and, if required by this Section 17.1, approved by the CCAA Court, shall, for all purposes be a part of and incorporated in this Plan.

**17.2 Severability**

In the event that any provision in this Plan is held by the CCAA Court to be invalid, void or unenforceable, this Plan shall be null and void in all respects, with effect in accordance with Section 17.3 hereof.

**17.3 Termination**

At any time prior to the Plan Implementation Date, the Applicant may, with the prior consent of the other Settlement Parties, and subject to further order of the CCAA Court, determine not to proceed with this Plan notwithstanding any prior approvals given at the Meeting or the obtaining of the Sanction Order. If the conditions precedent to implementation of this Plan are not satisfied or waived, if the Applicant determines not to proceed with this Plan, if the CCAA Court holds any provision of this Plan to be invalid, void or unenforceable or if the Sanction Order is not issued by the CCAA Court: (a) this Plan shall be null and void in all respects; (b) any document or agreement executed pursuant to this Plan, shall be deemed null and void; and (c) nothing contained in this Plan, and no act taken in preparation of the consummation of this Plan, shall: (i) constitute or be deemed to constitute a waiver or release of any Noteholder Claims, Barclays' Other Claims or any defences thereto by or against any of the CCAA Parties or any other Person; (ii) prejudice in any manner the rights of any of the Noteholders, the CCAA Parties or any other Person in any further proceedings involving one or more of the CCAA Parties including any further proceedings relating to the Barclays' Other Claims; or (iii) constitute an admission of any sort by any of the Noteholders, the CCAA Parties or any other Person.

#### **17.4 Covenant of the Plan Participants**

Each Plan Participant hereby covenants and agrees, and is deemed to covenant and agree to execute and deliver, on or after the Effective Time, all such agreements, instruments and documents and to take all such further actions as any of the other Plan Participants may reasonably deem necessary from time to time (at the requesting Plan Participant's expense) to carry out the intent and purposes of this Plan and to consummate the transactions contemplated hereby.

#### **17.5 Covenant of Applicant Regarding Tax Clearance Certificates**

The Applicant shall use all commercially reasonable efforts to promptly make, and diligently pursue, all filings and correspondence required to receive the Tax Clearance Certificates and otherwise close-out all open tax years with a view to distribution to the Noteholders of the Tax Reserve and, if available, the Indemnity Reserve, and the winding up of the Applicant and the Conduit as promptly as practicable.

#### **17.6 Covenant of Applicant Regarding Costs**

The Applicant shall use commercially reasonable efforts with respect to Costs as are under its direct control so that such Costs do not exceed the amount of the Costs Reserve, provided that no contestation or unforeseen event occurs with respect to the Plan, the CCAA Proceedings, the distributions contemplated by Article 11 and the process of acquiring the two Tax Clearance Certificates.

#### **17.7 Covenant of Applicant Regarding Withholding Taxes**

The Applicant and the Conduit shall request, in a form satisfactory to the Monitor, an advance tax ruling from the CRA, as promptly as practicable following the Initial CCAA Order, seeking to confirm that Interest Distributions in this Plan to Non-Resident Noteholders are not subject to Withholding Taxes (the "**Advance Tax Ruling**").

#### **17.8 Paramountcy**

From and after the Plan Implementation Date, any conflict between: (a) this Plan; and (b) any information statement or summary in respect of this Plan, or the covenants, warranties, representations, terms, conditions, provisions or obligations, express or implied, of any contract, mortgage, security agreement, indenture, loan agreement, commitment letter, document or agreement, written or oral, and any and all amendments and supplements thereto existing between any of the CCAA Parties and any Noteholder or other Person as at the Plan Implementation Date will be deemed to be governed by the terms, conditions and provisions of this Plan and the Sanction Order, which shall take precedence and priority.

#### **17.9 Responsibilities of the Monitor**

The Monitor is acting in its capacity as Monitor in the CCAA Proceedings, and the Monitor will not be responsible or liable for any obligations of the CCAA Parties hereunder. The Monitor will

have only those powers granted to it, and shall be subject to the duties provided for, by this Plan, by the CCAA and by any Order of the CCAA Court in the CCAA Proceedings, including the Initial CCAA Order.

### **17.10 Plan and Certain Laws**

Section 36.1 of the CCAA, Sections 38 and 95 to 101 of the *Bankruptcy and Insolvency Act* (Canada) and any other federal or provincial law relating to preferences, fraudulent conveyances or transfers at undervalue, shall not apply to this Plan or to any payments, distributions, transfers, allocations or transactions made or completed in connection with this Plan, whether before or after the date of the Initial CCAA Order, including, without limitation, to any and all of the payments, distributions, transfers, allocations or transactions contemplated by and to be implemented pursuant to this Plan.

### **17.11 Deeming Provisions**

In this Plan, the deeming provisions are not rebuttable and are conclusive and irrevocable.

### **17.12 Notices**

Any notice or communication to be delivered hereunder shall be in writing and shall reference this Plan and may, subject as hereinafter provided, be made or given by personal delivery, by electronic mail or by fax addressed to the respective parties as follows:

17.12.1if to a Noteholder:

to the known address (including fax number or email address) for such Noteholder or, if a Noteholder has filed a Voter Identification Form in accordance with the Claims Procedure and Meeting Order, the address for such Noteholder specified therein;

17.12.2if to the Monitor:

Deloitte Restructuring Inc.

Attention: Pierre Laporte

Fax: 514 390-4103

E-mail: [pilaporte@deloitte.ca](mailto:pilaporte@deloitte.ca)

with a copy to:

Osler, Hoskin & Harcourt LLP

Attention: Sandra Abitan and Mary Paterson

Fax: 514 904-8100; 416 862-6666

E-mail: [sabitan@osler.com](mailto:sabitan@osler.com); [mpaterson@osler.com](mailto:mpaterson@osler.com)

17.12.3if to the Applicant:

Metcalf & Mansfield Alternative Investments VII Corp.

Attention: Mr. Claude Dalphond

Fax: 514 982-0170

E-mail: [claude.dalphond@ivanhoecambridge.com](mailto:claude.dalphond@ivanhoecambridge.com)

with a copy to:

Fasken Martineau DuMoulin LLP

Attention: Robert Y. Girard

Fax: 514 397-7600

E-mail: [rgirard@fasken.com](mailto:rgirard@fasken.com)

or to such other address as any party may from time to time notify the others in accordance with this Section 17.12. All such notices and communications that are delivered shall be deemed to have been received on the date they are sent. Any such notices and communications that are sent by electronic mail or faxed shall be deemed to be received on the date sent or faxed if sent before 5:00 p.m. Eastern Time on a Business Day and otherwise shall be deemed to be received on the Business Day next following the day upon which such electronic mail or fax was sent. Any notice or other communication sent by mail shall be deemed to have been received on the fifth Business Day after the date of mailing. The unintentional failure to give a notice contemplated hereunder shall not invalidate any action taken by any Person pursuant to this Plan.

### **17.13 Acknowledgement Regarding Custodian**

The Plan Participants acknowledge and agree that the Custodian is subject to this Plan solely for the purposes of making the payments required to be made by the Custodian pursuant to Sections 5.3.3 and 5.3.5 of this Plan.

### **17.14 Successors and Assigns**

The rights, benefits and obligations of any Person named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, trustee, administrator, successor or assign of such Person.

### **17.15 Further Assurances**

Notwithstanding that the transactions and events set out in this Plan shall be deemed to occur without any additional act or formality other than as set out herein, each of the Persons affected hereby shall make, do and execute or cause to be made, done or executed all such further acts, deeds, agreements, transfers, assurances, instruments, documents or discharges as may be reasonably required by the Monitor in order to implement and give effect to this Plan.

**17.16 Governing Law**

This Plan shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to any conflict of law provision that would require the application of the law of any other jurisdiction. In the event of any dispute or issue in connection with, or related to, the interpretation, application or effect of this Plan, such dispute or issue shall be subject to the exclusive jurisdiction of the CCAA Court.

Dated at Toronto, Ontario, as of this twenty-seventh day of February, 2017.