Court File No. CV-11-9532-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CRYSTALLEX INTERNATIONAL CORPORATION

RESPONDING AND CROSS-MOTION RECORD OF COMPUTERSHARE TRUST COMPANY OF CANADA IN ITS CAPACITY AS TRUSTEE FOR THE HOLDERS OF CRYSTALLEX SENIOR 9.375% SENIOR NOTES DUE DECEMBER 23, 2011 AND THE AD HOC COMMITTEE OF BENEFICIAL OWNERS OF THE SENIOR NOTES

(Returnable on a date to be set)

May 28, 2021

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NOTICE OF MOTION
(Motion for Unsealing and Disclosure returnable on a date to be set)

Computershare Trust Company of Canada, in its capacity as replacement trustee (the "**Trustee**") pursuant to that certain Trust Indenture dated December 23, 2004, as supplemented by a First Supplemental Trust Indenture made by Crystallex dated December 23, 2004, pursuant to which Crystallex International Corporation ("**Crystallex**") issued $100,000,000[1] of senior 9.375% notes (the "**Notes**" and the holders thereof, "**Noteholders**") due December 23, 2011 together with the *ad hoc* committee of certain Noteholders (the "**Noteholder Committee**"), will make a motion before the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) on on a date to be set, or as soon after that time as the motion can be heard, via Zoom videoconference in light of the COVID-19 pandemic.

PROPOSED METHOD OF HEARING: The motion is to be heard orally via Zoom videoconference.

[1] Unless otherwise specified, all amounts referenced herein are in U.S. dollars.

THE MOTION IS FOR:

1. An Order that the following information be unsealed in the Court record and/or publicly disclosed by Crystallex[2]:

   (a) the amount of contingent value rights ("**CVRs**") held by Crystallex's DIP lender, Tenor Special Situation I, LP or its affiliates (collectively "**Tenor**");

   (b) the amount of CVRs transferred by Tenor to Robert Fung and Marc Oppenheimer, each of whom is a director and officer of Crystallex, and the terms of such transfer;

   (c) the current outstanding balance of the Tenor DIP facility;

   (d) the balance of the Tenor DIP facility as of the date of each future stay extension sought by Crystallex in these proceedings;

   (e) the issuer(s), type(s) (*i.e.*, debt or equity) and market value at time of receipt of the liquid securities received by Crystallex in 2018 pursuant to its amended settlement with Venezuela;

   (f) the identity of any advisors engaged by Crystallex in connection with the Citgo Sale Process (as defined below) and the terms of their respective engagements; and

   (g) the engagement terms of Crystallex's independent director, Sergio Marchi, and his financial advisor;

2. An Order that any figures that are ordered unsealed, or that are refused to be sealed on Crystallex's sealing motion, be brought current as at the date on which they are made public by Crystallex or the Monitor;

[2] Counsel will deliver a schedule to Crystallex and the Monitor specifying the specific redactions in the Court record that are sought to be unsealed.

3. An Order, to the extent necessary, varying the terms of Orders in this proceeding dated December 18, 2014, December 23, 2015, March 17, 2016, June 27, 2016, September 12, 2016, December 14, 2016, May 25, 2017, December 20, 2017, February 27, 2018, May 9, 2018, October 29, 2018, May 3, 2019, November 4, 2019 and May 4, 2021, and any other prior order made in these proceedings sealing any of the information set out in paragraph 1 hereof (collectively, the "**Sealing Orders**"), to permit the disclosure of the information set out in paragraph 1 above;

4. Costs of this motion; and

5. Such further and other relief as to this Court seems just.

THE GROUNDS FOR THE MOTION ARE:

A. Background

6. Crystallex was a Canadian gold mining company. Its principal asset was its right to develop Las Cristinas, a Venezuelan gold project estimated to contain more than 20 million ounces of gold.

7. In February 2011, the Venezuelan government unilaterally rescinded Crystallex's mining operation contract for Las Cristinas. Shortly thereafter, Crystallex filed a request for arbitration with the International Centre for the Settlement of Investment Dispute ("**ICSID**") pursuant to the bilateral investment treaty in place between Venezuela and Canada, claiming $3.8 billion from Venezuela for the loss of its investment in Las Cristinas. Since that time, Crystallex's sole business activity has been pursuing its claim against Venezuela.

8. On December 23, 2011 (being the date the Notes matured), Crystallex sought and obtained an Order of this Court (the "**Initial Order**") granting it protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**").

9. The principal purpose of commencing the CCAA proceedings was to stay creditors while Crystallex pursued its claim against Venezuela. Crystallex now holds an approximately $1.4 billion (plus interest) final judgment against Venezuela (the "**Judgment**").

10. The Judgment has been finally recognized in both Canada and the U.S. Crystallex is now engaged in efforts to enforce the Judgment against Venezuela, most notably by pursuing a sale of the shares of the indirect parent company of the U.S. oil company Citgo Petroleum Corp. (the "**Citgo Sale Process**") before the United States District Court for the District of Delaware.

11. To date, Crystallex has received $500 million in cash and liquid securities from Venezuela pursuant to prior settlement agreements reached with Venezuela. As of March 31, 2020, Crystallex had approximately $116.1 million of cash on hand (being the last publicly disclosed figure).

12. Crystallex has made no distributions to its creditors, including the Noteholders, who have been waiting nearly a decade to be repaid the amounts due and owing to them.

13. The Noteholders have a Court-approved proven irrevocable claim against Crystallex of $188,198,213.88 calculated as at December 31, 2015. With ongoing interest calculated at

the contractual rate and expense reimbursement entitlements, the amount owing to the Noteholders is now in excess of $314 million.

B. Access to Information is Critical to the Trustee and Noteholder Committee

14. Ongoing public disclosure of information in respect of Crystallex's business and financial affairs is critical to the Noteholders' and other stakeholders' participation in the CCAA proceedings.

15. Crystallex has failed to make fair and reasonable public disclosure in respect of its business and financial affairs to its stakeholders in these proceedings, including in respect of the information sought on this motion (further details of which are provided below).

16. Crystallex's failure to make fair and reasonable public disclosure negatively impacts the Trustee and Noteholder Committee's full and effective participation in the case to protect and advance their rights and interests, including in that it impairs their ability to respond to Crystallex's actions, consult with and instruct counsel, formulate options and alternatives that may assist in advancing the case for the benefit of stakeholders and creates an unproductive (and unfair) negotiating dynamic given the significant information asymmetry between the parties.

C. The Initial Order Permits this Court to Order Disclosure of the Requested Information

17. The Initial Order authorizes this Court to direct the Monitor to provide information to creditors, including information that Crystallex says is confidential. Paragraph 29 of the Initial Order provides:

> **THIS COURT ORDERS** that the Monitor shall provide any creditor of [Crystallex] with information provided by [Crystallex] in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by [Crystallex] is confidential, the Monitor shall not provide such information to creditors or any other person unless otherwise directed by this Court or on such terms as the Monitor and [Crystallex] may agree.

18. The Trustee and the Noteholder Committee have requested from the Monitor the information sought by this motion. The information has not been provided to date.

D. Amount of CVRs held by Tenor, Robert Fung and Marc Oppenheimer ought to be disclosed

19. In connection with the original DIP loan, Crystallex agreed to pay Tenor 35% of the CVRs. As Tenor advanced further loans, Crystallex agreed to provide more CVRs.

20. Crystallex last disclosed the amount of CVRs provided to Tenor almost seven years ago. At that time, Tenor had been issued 70.554% of the CVRs. Crystallex has made no further public disclosure on this matter despite having received further DIP financing from Tenor.

21. Additionally, Crystallex has never disclosed the amount of CVRs transferred in 2014 by Tenor to Robert Fung or Marc Oppenheimer, each of whom is a director and officer of Crystallex, nor has it disclosed the terms of those transfers.

22. The CVRs are subordinate to the Notes, which means that persons holding CVRs have a pecuniary incentive to attempt to minimize the amount ultimately paid to the Noteholders (and to other creditors).

23. Disclosure of the amount of CVRs provided by Crystallex to Tenor (which has two board representatives), and by Tenor to Robert Fung and Marc Oppenheimer, is necessary in order for the Trustee and Noteholder Committee to understand the economic entitlements of Crystallex's insiders, fully understand and assess the potential impact of any conflict of interest among Crystallex's directors and officers, as well as to fully understand Crystallex's capital structure and resulting optionality for Crystallex.

E. Balance of the Tenor DIP Facility Ought to be Disclosed

24. Crystallex last disclosed the DIP balance as of September 30, 2017. At that time, the DIP balance was $111,312,397.75.

25. The DIP loan agreement has been extended and amended since that time, but Crystallex has made no further public disclosure of the outstanding balance.

26. Because the DIP loan is secured by a super-priority CCAA charge that is senior to the CCAA charge securing amounts owing to the Noteholders and other creditors, it is essential for the Trustee and Noteholder Committee to have access to the outstanding DIP balance (both at present, and on a go forward basis) in order to understand what obligations could rank ahead of them.

F. Details of Liquid Securities Received by Crystallex Ought to be Disclosed

27. The Monitor has reported that the "majority" of the $425 million initial payment received by Crystallex from Venezuela in 2018 was comprised of "liquid securities." Further details regarding the liquid securities disclosed by the Monitor in its Thirty-First Report dated May 1, 2019 were sealed by the Court on motion by Crystallex.

28. The Noteholders are likely entitled to some portion of the value of the liquid securities, and in any event the liquid securities represent a material asset of Crystallex. But because there has been limited disclosure in respect of the liquid securities, the Trustee and Noteholder Committee are unable to undertake an assessment of the value of the liquid securities and how they impact the case, including with respect to stakeholder recoveries and how the liquid securities are ultimately dealt with.

G. Details of Advisor Engagements Ought to be Disclosed

29. Media outlets have reported that Crystallex has engaged Moelis & Co. ("**Moelis**") as its investment banker in connection with the Citgo Sales Process.

30. Crystallex has never reported any Moelis engagement or the associated terms or expense to its stakeholders or to this Court.

31. To the extent that Moelis, or any other advisors engaged by Crystallex, will be paid in priority to the Noteholders, the financial terms agreed to with those advisors ought to be disclosed to stakeholders. In the absence of this disclosure, the Trustee and Noteholder Committee are prevented from assessing—or challenging, if necessary—the appropriateness of Crystallex's expenditures.

H. The Terms of Engagement of Sergio Marchi and his Financial Advisor Ought to be Disclosed

32. In 2020, Crystallex appointed Mr. Marchi to replace Harry Near as an independent director. On his appointment, Mr. Marchi elected to continue the engagement of a financial advisor who had recently been retained by Mr. Near.

33. There has been no disclosure of the terms of the financial advisor's engagement nor of Mr. Marchi's engagement, despite him being charged with playing a critical role in these proceedings and in Crystallex's efforts to reorganize creditor claims.

34. Additionally, stakeholders are entitled to information about costs being incurred by Crystallex in connection with Mr. Marchi's and the financial advisor's engagements.

I. Updated Figures

35. In connection with the latest request of Crystallex for a stay extension, the Monitor provided its Thirty-Seventh Report. That report includes certain financial information that Crystallex has moved be sealed and that has to date not been publicly disclosed. Because Crystallex's motion for a sealing order in respect of that financial information will be heard and determined well after the Thirty-Seventh Report of the Monitor was made, even if this Court does not seal the financial information, stakeholders will be receiving stale data when it is ultimately made public. This was the case on the last occasion the Court refused to seal all of the financial information Crystallex sought to seal, which was ultimately not disclosed until nearly a year after it had first been filed with the Court.

36. Stakeholders should not be forced to receive stale data merely because Crystallex engages in unsuccessful motion and appeal practice.

J. The Sealing Orders Permit Variation of their Terms

37. Each of the Sealing Orders was made without prejudice to the ability of any party, including the Trustee and Noteholder Committee, to apply to the Court on notice to all

parties in interest to modify the terms of the Sealing Orders that dealt with confidentiality of filed materials.

38. To the extent that the information sought by the Trustee and Noteholder Committee is the subject of any of the Sealing Orders, it is open to this Court to vary those orders to unseal the relevant information.

K. General

39. The provisions of the CCAA and this Court's equitable and statutory jurisdiction thereunder, including sections 11 and 11.9 of the CCAA;

40. Paragraph 29 of the Initial Order and the terms of the prior Sealing Orders;

41. Subsection 6.1(c) of the Trust Indenture dated December 23, 2004;The Stay Extension and Standstill Order dated June 5, 2013;

42. The Endorsement of this Court dated May 9, 2018;

43. Rules 1.04, 1.05, 2.03, 4.06, and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and

44. Such further and other grounds as counsel may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

45. The Affidavit of Scott Reid sworn May 28, 2021;

46. The report of the Monitor, to be filed;

47. Such further and other evidence as counsel may advise and this Court may permit.

Dated: May 28, 2021

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Lawyers for Computershare Trust Company of Canada in its capacity as Trustee for the holders of Crystallex senior 9.375% notes due December 23, 2011 and the Ad Hoc Committee of Beneficial Owners of the Senior Notes of Crystallex

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CRYSTALLEX INTERNATIONAL CORPORATION

Court File No. CV-11-9532-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced at Toronto

NOTICE OF MOTION
(Motion for Unsealing and Disclosure returnable on a date to be set)

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Court File No. CV-11-9532-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CRYSTALLEX INTERNATIONAL CORPORATION

AFFIDAVIT OF SCOTT REID
(SWORN MAY 28, 2021)

I, Scott Reid, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

I. INTRODUCTION

1. I am the President and Chief Investment Officer of Stornoway Portfolio Management Inc. ("**Stornoway**"), investment manager to Stornoway Recovery Fund LP and Ravensource Fund. I hold a Bachelor of Commerce (Hons.) degree from the University of Manitoba and am a CFA Charterholder.

2. Stornoway is a participant in an *ad hoc* committee (the "**Noteholder Committee**") of beneficial holders of the $100,000,000 (principal amount) of senior 9.375% notes due December 2011 (the "**Notes**" and the holders thereof, "**Noteholders**") issued by Crystallex International Corporation ("**Crystallex**"). Participants in the Noteholder Committee beneficially own in excess of 66 2/3% of the principal amount of the Notes. The replacement trustee under the Trust Indenture (as defined below) that governs the Notes is Computershare Trust Company of Canada (the "**Trustee**").

3. I have personally participated in the Noteholder Committee since very early on in these *Companies' Creditors Arrangement Act* ("**CCAA**") proceedings, which commenced in December 2011. I have personal knowledge of the matters set out below, except where stated to be on information and belief and whereso stated I believe it to be true and have identified the source of my information.

4. I swear this Affidavit:

(a) in response to the motion by Crystallex to seal the cash balance, cash flow statement and cash flow forecast information filed in connection with its November 2020 and May 2021 stay extension requests;[1] and

(b) in support of the Trustee and Noteholder Committee's cross-motion seeking:

(i) to unseal and/or have disclosed, as applicable, the following information in respect of Crystallex:[2]

(A) the amount of contingent value rights ("**CVRs**")[3] held by Crystallex's DIP lender, Tenor Special Situation I, LP or its affiliates (collectively, "**Tenor**");

(B) the amount of CVRs transferred by Tenor to Robert Fung and Marc Oppenheimer, each of whom is a director and officer of Crystallex, and the terms of such transfer;

(C) the current outstanding balance of the Tenor DIP facility (and require that the then current balance of the Tenor DIP facility be disclosed in connection with each stay extension sought by Crystallex);

(D) the issuer(s), type(s) (*i.e.*, debt or equity) and market value at time of receipt of the liquid securities received by Crystallex under the Amended Settlement (as defined below);

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[1] For ease of reference, I refer to Crystallex's cash balance, cash flow statement and cash flow forecast herein collectively as "cash flow information".

[2] I am advised by counsel to the Trustee and Noteholder Committee, Goodmans LLP ("**Goodmans**"), that they will deliver a schedule to Crystallex and the Monitor specifying the specific redactions in the Court record that are sought to be unsealed.

[3] The CVRs are alternatively described in these proceedings as a percentage of the "net arbitration proceeds" Crystallex receives from Venezuela, or as "lender additional compensation." For ease of reference, I will refer to them as CVRs throughout my affidavit.

(E) the identity of any advisors engaged by Crystallex in connection with the Citgo Sale Process (as defined below), and the terms of their respective engagements; and

(F) the engagement terms of Crystallex's independent director, Sergio Marchi, and his financial advisor; and

(ii) an Order that any figures that are ordered unsealed, or that are refused to be sealed on Crystallex's motion, be brought current as at the date on which they are made public by Crystallex or the Monitor.

5. I understand that Crystallex has delivered two affidavits sworn by Robert Fung in support of its sealing request for the cash flow information. I have not read them as I understand Crystallex has purported to deliver those affidavits on an entirely confidential basis. As a result, I am making this affidavit, which is partly in response to Crystallex's motion, without having had the opportunity to review the evidence to which I am responding. The secretive nature of Crystallex's proposed process on this motion (which, to be clear, is not agreed to) is unfair to me as a responding affiant and to the Trustee and Noteholder Committee, and is typical of Crystallex's approach to these proceedings.

6. I do not, and do not intend to, waive any applicable privilege by any statement made in this affidavit.

7. Unless otherwise specified, all amounts referenced herein are in U.S. dollars.

II. BACKGROUND

A. Overview

8. Crystallex was a Canadian gold mining company. Its principal asset was its right to develop Las Cristinas, a Venezuelan gold project estimated to contain more than 20 million ounces of gold. In February 2011, the Venezuelan government unilaterally rescinded Crystallex's mining operation contract for Las Cristinas. Shortly thereafter, Crystallex filed a request for arbitration with the International Centre for the Settlement of Investment Disputes ("**ICSID**") pursuant to the bilateral investment treaty in place between Venezuela and

Canada, claiming $3.8 billion from Venezuela for the loss of its investment in Las Cristinas. Since that time, Crystallex's sole business activity has been pursuing its claim against Venezuela for the unlawful expropriation of its investment in Las Cristinas.

9. In 2016, Crystallex announced it had obtained an ICSID award against Venezuela in the amount of $1.202 billion, plus interest, for a total award as at April 4, 2016, of $1.386 billion (the "**Award**"). The Award accrues post-award interest at the rate of the 6-month average U.S. dollar LIBOR + 1%, compounded annually, calculated from the date of the Award until full payment.

10. I understand from U.S. and Canadian court filings that: (i) the Award has been recognized in both Canada and the U.S. and that such recognition orders are now final in each jurisdiction; and (ii) Crystallex is engaged in efforts to enforce the Award and related judgments against Venezuela, most notably by pursuing a sale of the shares of the indirect parent company of the U.S. oil company Citgo Petroleum Corp. (the "**Citgo Sale Process**") before the United States District Court for the District of Delaware (the "**Delaware District Court**").

B. Stornoway

11. Stornoway is an investment management firm located in Toronto that manages the Stornoway Recovery Fund LP and the TSX-listed Ravensource Fund. A key fund strategy is to invest in the securities of financially troubled companies and work with key stakeholders to revitalize them. I have personally been involved in overseeing Stornoway's investment in Crystallex since Stornoway made its initial investment in 2006.

12. Stornoway has been a frequent investor in the debt of distressed companies that are subject to restructuring proceedings in Canada. In addition, prior to starting Stornoway, I was a financial advisor at a major Canadian financial institution that was involved in various Canadian restructurings. Over the course of the past 20 years, I estimate I have personally been involved in more than 20 restructuring cases. As such, I am familiar with restructuring practice generally in Canada.

13. As noted above, Stornoway participates in the Noteholder Committee that has been a main participant in the CCAA proceedings since their commencement.

C. The Notes

14. The Notes constitute substantially all of Crystallex's pre-filing indebtedness. They were issued by Crystallex pursuant to a short form prospectus dated December 17, 2004, to fund the development of Las Cristinas. The Notes matured seven years later on December 23, 2011. On the same day the Notes matured, Crystallex filed for protection from its creditors under the CCAA.

15. Pursuant to the consent Stay Extension and Standstill Order dated June 5, 2013 (the "**Standstill Order**"), this Court ordered that the Trustee (on behalf of the Noteholders) has an irrevocable proven claim against Crystallex in respect of the Notes totalling $188,198,233.18 as at December 31, 2015. Together with ongoing interest (calculated in accordance with the Trust Indenture) and expense reimbursement entitlements over the past five-plus years, I calculate the current claim of the Noteholders to be in excess of $314 million.[4]

D. Current Status of the Case

16. Crystallex has been in CCAA for nearly a decade now. During that period, the hundreds of millions of dollars that Crystallex owes to the Noteholders have remained unpaid and the Trustee and Noteholders have been stayed from pursuing any enforcement action.

17. In addition, Crystallex has elected not to pursue a CCAA plan of arrangement or other restructuring transaction that would allow it to emerge from these proceedings and has advised the Noteholder Committee it has no intention of pursuing a CCAA plan; rather, it has elected to remain in CCAA indefinitely, presumably to continue to benefit from the CCAA stay and the other protections the CCAA process affords it. Throughout the CCAA

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[4] The Standstill Order also provides that the Trustee (on behalf of the Noteholders) shall have an additional irrevocable proven claim of $5,165,917.39 relating to certain pre-filing fees and expenses, which amount is not included in my estimate.

process, Crystallex has enjoyed all the benefits of CCAA protection while disclosing almost none of the financial information I have become used to receiving as a creditor in a public insolvency process.

18. The Noteholder Committee, Crystallex and Tenor have mediated certain disagreements between them over the past two years, first pursuant to a consensual mediation with the Honourable Robert A. Blair throughout much of 2019, and subsequently pursuant to a Court-ordered mediation with Mr. Blair that commenced in March 2020.

19. No resolution has been achieved through these mediation efforts in whole or in part.

E. Public Disclosure of Cash Flow Information

20. The Trustee and Noteholder Committee have consistently opposed Crystallex's efforts to withhold information from its stakeholders, most notably as relates to the financial reporting that Crystallex is required to file in connection with its stay extension requests. With the assistance of counsel, we have also tried throughout the case to work with the Monitor to access information we believe is important for stakeholders to know (including most if not all of the information at issue on this motion), with virtually no success to date.

21. Most recently, the Trustee and Noteholder Committee successfully opposed Crystallex's request to seal the cash flow information filed in connection with its May 2020 stay extension motion.

22. Crystallex and Tenor subsequently sought leave to appeal this Court's decision, which leave to appeal motion was dismissed by the Ontario Court of Appeal on February 9, 2021.

23. Following the Court of Appeal's decision, on or about February 22, 2021, Ernst & Young Inc., the Court-appointed Monitor (the "**Monitor**"), posted an updated version of its Thirty-Third Report dated April 30, 2020 (the "**Thirty-Third Report**") to its website, which disclosed Crystallex's cash balance as at March 31, 2020 ($116.1 million), its actual cash flow for the period October 2019 through March 2020, and its cash flow forecast for the period April 2020 through November 2020. A copy of the public version of the Thirty-Third Report posted on the Monitor's website is attached hereto as Exhibit "A".

24. The Monitor filed updated cash flow information with the Court in connection with Crystallex's stay extension motion in November 2020. The parties agreed to a without prejudice interim sealing of the November 2020 cash flow information while they awaited the Ontario Court of Appeal's decision on Crystallex's and Tenor's leave to appeal motion.

25. Following the release of the Court of Appeal decision, counsel to the Trustee and Noteholder Committee wrote to counsel to Crystallex to inquire whether Crystallex would agree to the unsealing of the November 2020 cash flow information in light of this Court's decision and the Ontario Court of Appeal's dismissal of the leave application.

26. Notwithstanding the decisions of this Court and of the Court of Appeal, counsel advised that Crystallex maintained its sealing request in respect of the November 2020 cash flow information and that it also intended to seek to seal the updated April 2021 cash flow information filed in connection with Crystallex's recent stay extension request.

27. Notably, by the time the leave to appeal process was complete, the cash flow information publicly disclosed by the Monitor was almost a year old. To prevent the possibility of a recurrence of this stale-dating problem, the Trustee and Noteholder Committee seek an order than any figures that are ordered unsealed or not sealed on this motion be brought current at the time they are ultimately made public by Crystallex or the Monitor.

F. Public Disclosure of Tenor and Director and Officer CVR Entitlements

28. In connection with the original DIP loan, Crystallex agreed to provide Tenor with 35% of the CVRs. As Tenor advanced further loans under the DIP, Crystallex agreed to provide it with more CVRs. The last public disclosure in this regard was made nearly seven years ago when the Monitor disclosed that Tenor had earned 70.554% of the CVRs. Based on reviewing the Monitor's reports, I expect that Tenor is likely entitled to a greater percentage of the CVRs as a result of having advanced further DIP financing to Crystallex; however, there has been no public disclosure of Tenor's current CVR entitlement.

29. I also understand from the Monitor's reports that in 2014 Tenor transferred some of its CVR entitlements to two of Crystallex's directors and officers, Robert Fung and Marc

Oppenheimer. The amount of CVRs that were transferred and the terms related thereto have never been publicly disclosed to stakeholders.

G. Public Disclosure of Tenor DIP Balance

30. The last public disclosure of the DIP balance ($111,312,397.75) was as at September 30, 2017, more than three and a half years ago.

H. Disclosure Regarding Liquid Securities Received under the Amended Settlement with Venezuela

31. Based on my review of prior Monitor's reports, I understand that in connection with an Amended and Restated Settlement Agreement entered into by Crystallex and Venezuela dated September 10, 2018 (the "**Amended Settlement**"), Crystallex received an initial payment of $425 million from Venezuela in and around October and November 2018. The Monitor has reported that "more than a majority" of the initial payment received by Crystallex was in the form of "liquid securities", with the balance being received in cash.

32. Under the Amended Settlement, a copy of which is attached as Exhibit "B" hereto, Venezuela was entitled to deliver "Liquid Securities" to Crystallex in satisfaction of its initial payment obligation. "Liquid Securities" is defined in the Amended Settlement as "[…] public debt securities in U.S. dollars freely tradeable in the United States and subject to publicly available pricing quotations."

33. Except as described above, to my knowledge there has been no public disclosure regarding the liquid securities Crystallex received from Venezuela, including the issuer(s), type of security (*i.e.*, debt or equity), or their market value at time of receipt.

I. Public Disclosure of Advisor and Independent Director Engagements

34. As discussed later in my affidavit, I understand from various court filings both here and in the U.S. that Crystallex is advancing the Citgo Sale Process as a means of enforcing the remaining judgment debt owing to it by Venezuela.

35. It has been reported in the media that Crystallex has engaged Moelis & Co. ("**Moelis**") to act as its investment banker in connection with the Citgo Sale Process. To the best of my

knowledge, this Court's approval was not sought with respect to any such engagement, nor has there been any disclosure to stakeholders of the financial terms of any such engagement or of the engagement of any other advisor Crystallex may have hired in connection with the Citgo Sale Process, including any work fee(s) or success fee(s) that may have been agreed to by Crystallex.

36. Similarly, there has been no disclosure by Crystallex regarding the terms of engagement of its new independent director, Sergio Marchi, or Mr. Marchi's financial advisor, each of whom were engaged in 2020.

J. Prior Sealing

37. To the extent this Court has previously sealed information at Crystallex's request, those orders have provided that any party may apply to the Court to modify the sealing, and that nothing in the initial sealing orders shall be deemed to prejudice such party's right to seek such modification or to assert that the sealed materials are not confidential. An example of such an order is attached hereto as Exhibit "C".

K. Information Disclosure to Stakeholders Pursuant to the Initial Order

38. Paragraph 29 of the Initial Order granted in these proceedings, a copy of which is attached as Exhibit "D", provides as follows:

> THIS COURT ORDERS that the Monitor shall provide any creditor of [Crystallex] with information provided by [Crystallex] in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by [Crystallex] is confidential, the Monitor shall not provide such information to creditors or any other person unless otherwise directed by this Court or on such terms as the Monitor and [Crystallex] may agree.

39. Throughout the case, the Trustee and Noteholder Committee have repeatedly requested financial and other information about Crystallex from the Monitor pursuant to paragraph 29 of the Initial Order. On nearly every occasion, the Monitor has advised the Trustee and

Noteholder Committee that it is unable to provide the requested information as Crystallex objects to its disclosure on the basis that it is confidential.

III. THE IMPORTANCE OF INFORMATION DISCLOSURE TO STORNOWAY

40. As a Toronto-based investment manager that specializes in distressed investments, Stornoway is a frequent participant in CCAA and other Canadian restructuring proceedings. As a stakeholder in these types of proceedings, I rely on being able to access regular public reporting from the debtor and the monitor (or other court officer) regarding the restructuring initiatives being pursued and financial and business information in respect of the debtor, including as relates to its assets and liabilities, capital structure, cash balance, expenditures and liquidity.

41. Access to this type of information is very important for Stornoway, which manages its funds' investments on behalf of third-party investors. Among other things, Stornoway uses the publicly available information in CCAA and similar proceedings to:

(a) continuously monitor the value of our funds' investments;

(b) take investment decisions (e.g. to buy or sell investments);

(c) make appropriate disclosure to our investors regarding the status and value of the funds' investments;

(d) consider and respond to motions brought by the debtor or other parties in a case;

(e) evaluate a debtor or other stakeholder's proposed course of action in a case (to pursue a particular sale transaction, for instance); and

(f) take strategic decisions and actions in a case, such as to support or oppose a transaction or other relief sought, or to proactively seek relief from the supervising court.

42. Being able to access and analyze ongoing disclosure regarding a debtor's business, restructuring and financial affairs is a critical component of Stornoway's efforts to protect

and maximize the value of its funds' investments in companies that are in public restructuring proceedings.

43. In this case, Crystallex's failure to make routine public disclosure to its stakeholders has impaired Stornoway's ability to fully participate in the CCAA proceedings in order to protect and advance its rights and interests. This is particularly concerning to me given that the parties who control Crystallex—and have all of the information—hold economic interests (*i.e.*, the CVRs), the particulars of which have never been fully disclosed, that incentivize them to seek to limit the Noteholders' and other creditors' recoveries for their own gain. I discuss this dynamic in greater detail below.

44. Examples of the basic pieces of information Stornoway does not have appropriate disclosure in respect of are detailed in the following paragraphs.

Cash Flow Information and Advisor Engagements

45. To the best of my knowledge, prior to the Monitor posting the Thirty-Third Report in February 2021, it had been nearly seven years since Crystallex last publicly disclosed its cash flow information to stakeholders.

46. While the Thirty-Third Report did provide updated cash flow information as at March 31, 2020, that information is already more than a year stale. Although I can estimate Crystallex's current cash balance by assuming the same burn rate disclosed in the April 2020 cash flow forecast, I have no way of knowing if this estimate is at all accurate. This uncertainty increases with each passing day to the extent Crystallex is permitted to once again seal its cash flow information on a go-forward basis, including because the data points available to me are becoming increasingly stale.

47. Even with the disclosure provided in the Thirty-Third Report, Stornoway is still unaware of the particulars of Crystallex's cash use as the cash flow information was only disclosed on an aggregated basis, without disclosing the details of what Crystallex has been spending or expects to spend its cash on. This means I have no ability to assess (or challenge) the appropriateness of Crystallex's expenditures.

48. In this regard, I note that based on my review of court filings in the Delaware District Court enforcement proceedings, a special master (the "**Special Master**") has recently been appointed by the court to design and oversee the Citgo Sale Process. Those same court filings indicate that the Special Master's fees and expenses in connection with submitting the proposed sales procedures order are capped at $2 million in the aggregate, one-third of which is to paid by Crystallex. No disclosure has been provided to Crystallex's stakeholders in the CCAA proceedings regarding these significant anticipated expenses notwithstanding that this information is publicly available in the Delaware District Court enforcement proceedings.[5]

49. As noted above, it has also been publicly reported that Crystallex has engaged Moelis to advise it in connection with the Citgo Sale Process. No disclosure has been provided by Crystallex in respect of any such engagement (or the engagement of any other advisor in connection with the Citgo Sale Process aside from Crystallex's U.S. enforcement counsel), including financial terms that may have been agreed to by Crystallex.

50. Given the Citgo Sale Process is progressing, it seems reasonable to infer that Crystallex's associated expenses, whether in respect of Moelis or any other advisors it may have engaged, will also be increasing.

51. Understanding what advisors Crystallex has engaged and the terms of those engagements is of critical importance to Stornoway, both so it can consider the appropriateness and terms of those engagements, and also so it can understand what professional fees Crystallex is obligated to pay and the impact that has on Crystallex's cash flow and, potentially, creditor recoveries.

CVR Entitlements

52. As mentioned, there has been no disclosure of the current amount of CVRs held by Tenor. The last public disclosure in this regard was also nearly seven years ago when it was

[5] This is not the first time information has been publicly disclosed in Crystallex's U.S. proceedings that has not been publicly disclosed in these CCAA proceedings: in 2018, each of Crystallex and PDVSA filed a copy of the Amended Settlement with the Delaware court on a public basis while it remained under seal in these proceedings.

disclosed that Tenor held 70.554% of the CVRs. While I have previously estimated what Tenor's current CVR entitlement may be by extrapolating from publicly available information regarding the principal amount of further DIP financing provided by Tenor since then, I do not know if this estimate is accurate.

53. In addition, Crystallex has never publicly disclosed the amount of CVRs that Tenor transferred to Messrs. Fung and Oppenheimer in 2014, or the terms of that transfer.

54. Messrs. Fung and Oppenheimer, plus two Tenor nominees, Robin Shah and Daniel Kochav, represent four of Crystallex's five directors. As detailed in my prior affidavits, given (i) the CVRs are subordinate to the Notes and the claims of other creditors, and (ii) the value of the CVRs (if any) is, in part, a function of the amount of Noteholder and other creditor claims, the Trustee and Noteholder Committee believe these directors have a significant conflict of interest in addressing, among other things, the rights and entitlements of the Noteholders and other creditors.

55. The fact there has not been fulsome disclosure of the CVR entitlements of Crystallex's directors and officers, particularly where those entitlements incentivize those same directors and officers to attempt to minimize the rights and entitlements of the Noteholders and other creditors, is very concerning to me.

56. Finally, not knowing the current CVR entitlements of Tenor and Messrs. Fung and Oppenheimer means Stornoway does not have a complete understanding of Crystallex's capital structure, which is a fundamental aspect of any restructuring case. Moreover, as any unallocated CVRs (*i.e.*, 100% less whatever has been allocated to Tenor and management to date) are a potential source of value in a restructuring transaction, not knowing the particulars of the existing CVRs is an impediment to Stornoway being able to fully analyze Crystallex's situation and what opportunities may be available.

DIP Balance

57. The Monitor's last disclosure of the DIP balance was as at September 30, 2017, more than three and a half years ago.

58. Although I can estimate the current DIP balance based on the publicly disclosed interest rate information, I have no way of knowing the impact of undisclosed amounts (for instance, expense reimbursement amounts that may have been added to the DIP balance) on the actual current DIP balance.

59. The DIP principal and interest owing to Tenor are particularly important to Stornoway as these obligations are secured by a super-priority CCAA charge against Crystallex's assets, which charge ranks in priority to the CCAA charge securing Crystallex's obligations to the Noteholders and other creditors. It is critical for Stornoway to accurately understand what obligations could rank ahead of the Notes in assessing any potential resolution of the case.

Liquid Securities Received by Crystallex under the Amended Settlement

60. Stornoway does not know the identity or quantum of the liquid securities received by Crystallex pursuant to the Amended Settlement, only that (based on the Monitor's reports) they represent the majority of the $425 million initial payment received by Crystallex, *i.e.*, that they had a market value of greater than $212.5 million at the time of receipt by Crystallex in late 2018.

61. Clearly, the liquid securities represent a material asset of Crystallex that will be a part of any resolution or material transaction in this case. They also represent a potential source of liquidity for Crystallex. Based on the limited information available to me in this case, I also believe the Noteholders and other creditors are entitled to some portion of the value of these securities. Not knowing the particulars of these securities means that Stornoway is impaired in assessing how they impact the case, including with respect to stakeholder recoveries and how they ultimately ought to be dealt with.

Terms of Engagement of New Independent Director and Financial Advisor

62. In 2020, while the Noteholder Committee and Crystallex/Tenor were directed to mediate Crystallex's governance (among other topics), Crystallex elected to appoint a new independent director, Sergio Marchi, without any consultation with the Noteholder Committee. Shortly prior to that appointment, Crystallex's former independent director, Harry Near, had engaged a financial advisor. I understand from CCAA court filings and

discussions with Mr. Marchi that he has elected to continue the engagement of the financial advisor initially retained by Mr. Near.

63. Crystallex has never provided any disclosure regarding the terms of Mr. Marchi's or his financial advisor's engagement. This is concerning given the critical mandate the independent director is charged with in this case, which includes directing the conduct of these proceedings and the efforts of Crystallex to reorganize creditor claims. Moreover, as with other advisor and professional expenses, any fees payable to the independent director and his financial advisor will impact Crystallex's cash flow.

64. Crystallex's failure to disclose what I consider to be very basic financial and business information relevant to this case negatively impacts Stornoway in a number of ways:

(a) It impairs Stornoway's ability to monitor and fully assess the status of its funds' investments in the Notes;

(b) It makes it very difficult to fully and accurately assess Crystallex's situation, in turn impairing the Noteholder Committee's ability to formulate options and alternatives that may assist in advancing this case for the benefit of stakeholders. Similarly, it impairs the ability of third parties, such as potential financiers or purchasers, to understand the case and potentially propose options or alternatives to Crystallex and its stakeholders to advance the case;

(c) To the extent Crystallex seeks any material relief, Stornoway lacks much of the basic information necessary to fully consider the impact of that relief on its rights and interests, and to consult with and instruct counsel as to how to respond. By way of example, were Crystallex to seek approval of a new settlement of its judgment against Venezuela (and even assuming Crystallex were to make full disclosure of the terms of such a settlement, which has not been the case previously), Stornoway would be unable to fully assess the impact of such a settlement on the Noteholders' recovery given it does not have current (or in some cases, any) information regarding many of the factors that would impact such recovery, including Crystallex's current cash balance, the DIP balance, accrued professional fees and

particulars of the liquid securities Crystallex received from Venezuela under the Amended Settlement; and

(d) It creates what I believe to be a very unproductive (and inequitable) negotiating dynamic between the Noteholder Committee and Crystallex/Tenor. As referenced previously, the Noteholder Committee, Crystallex and Tenor have been engaged in mediation for much of the past two years. The representatives of Crystallex and Tenor participating in that mediation, as members of Crystallex's management and/or board of directors, have access to any and all information regarding Crystallex and its financial position they wish. In contrast, Stornoway and the other participants in the Noteholder Committee lack significant basic information, such as that outlined in the preceding paragraphs. Without in any way disclosing the content of our mediation discussions or waiving any applicable privilege, in my view the significant information asymmetry between the parties makes it very difficult for them to negotiate about issues on which they are adverse in an attempt to achieve a consensual resolution.

65. I am also very concerned that Crystallex's continuing failure to make basic financial information available to its non-insider stakeholders is part of its strategy to keep the Noteholder Committee and other non-insiders "in the dark" as a means of achieving an advantage in any negotiations and the case generally, to the benefit of Tenor and the other CVR holders that control Crystallex.

66. Given that the Citgo Sale Process is now advancing, it is particularly critical for the Noteholder Committee and other stakeholders to obtain fair disclosure at this juncture so that they are fully apprised of all relevant facts in the event the Citgo Sale Process leads, either directly or via resulting negotiations with Venezuela, to further recoveries by Crystallex, and potentially to a proposed resolution or similar inflection point in these CCAA proceedings. If the Noteholder Committee were required to wait to receive proper disclosure from Crystallex until such a scenario were already upon us (or, worse yet, were we never to receive proper disclosure), I believe we would be disadvantaged in considering, negotiating and responding to any relief that may be sought by Crystallex, such as approval of a further settlement with Venezuela or some other transaction, as well as in proposing

our own options and alternatives. The Noteholder Committee and other stakeholders are entitled to be fully informed so that they can act appropriately as circumstances evolve.

67. I believe that other stakeholders share many of the same concerns regarding the lack of disclosure in this case that I do. Attached as Exhibit "E" is a letter I understand was sent by a Crystallex shareholder to this Court (among others) outlining the concerns he has with what he describes as the "excessive secrecy" of this case.

IV. CRYSTALLEX IS OBLIGATED TO DISCLOSE FINANCIAL INFORMATION TO ITS STAKEHOLDERS

A. Crystallex is a Debtor in a Public CCAA Process

68. I firmly believe that Crystallex, which has benefited from CCAA protection for nearly a decade and owes hundreds of millions to its creditors, has a duty to make ongoing and fair public disclosure of its business and financial affairs to its stakeholders. I believe that disclosure of this information to stakeholders is part of the fundamental balancing of interests in a CCAA case: if creditors are to be stayed, in return they are entitled to full disclosure from the debtor.

69. In my more than 20 years of experience in CCAA and other Canadian restructuring cases, I have never been involved in a case where the type of information the Trustee and Noteholder Committee seek access to has not been publicly disclosed. Where I have been involved in cases that involved sealing, that sealing has typically been on the consent of all key stakeholders and for a limited duration, following which the information has been disclosed.

B. Crystallex is a Reporting Issuer

70. As noted above, the Notes were issued in 2004 on a public basis pursuant to a prospectus. At the time the Notes were issued, Crystallex was a reporting issuer under Ontario securities law and provided regular continuous disclosure to its security holders, including interim and annual financial statements and related management discussion and analysis.

71. Crystallex's public reporting continued following the commencement of these CCAA proceedings, but ceased in and around August 2013. Based on my review of the Ontario Securities Commission's Reporting Issuers List, Crystallex remains a reporting issuer under Ontario securities law, but has been noted in default as a result of its failure to make certain filings and pay certain fees. A copy of an excerpt of the Ontario Securities Commission's Reporting Issuer List that references Crystallex is attached hereto as Exhibit "F".

72. Ironically, Crystallex provided more public disclosure to its stakeholders when it was solvent and meeting its obligations in the normal course, than it has since it became insolvent and sought protection from its creditors under the CCAA. Had Crystallex not filed for insolvency protection, I expect it would have continued to make the type of public disclosure sought by the Trustee and Noteholder Committee, as have similarly situated companies that are all also pursuing claims against Venezuela (as detailed below at paragraphs 83 to 85).

C. The Trust Indenture

73. Pursuant to subsection 6.1(c) of the Trust Indenture dated December 23, 2004 (the "**Trust Indenture**") under which the Notes were issued, a copy of which is attached as Exhibit "G" hereto, Crystallex agreed with the Trustee for the benefit of the Trustee and the Noteholders that:

> …[s]o long as any Notes are outstanding, [Crystallex] shall furnish to the Trustee a copy of the financial statements, whether annual or interim, of [Crystallex] and any report of [Crystallex's] Auditors thereon at the same time as such financial statements are filed with securities regulatory authorities […]

74. The Trustee is in turn obligated pursuant to section 6.16 of the Trust Indenture to make Crystallex's financial statements available for inspection by Noteholders upon reasonable written request.

D. The Standstill Order and the May 9 Endorsement

75. Finally, pursuant to both the Standstill Order and the Endorsement of this Court dated May 9, 2018 (the "**May 9 Endorsement**"), copies of which are attached as Exhibits "H" and "I", respectively, Crystallex is required to provide "AAP Statements" to the Trustee and Noteholder Committee.[6] These statements (which I have also referred to in prior affidavits as "Distribution Statements") are to set out Crystallex's receipt and proposed distribution of arbitration proceeds received from Venezuela. As such, they are one potential means for the Noteholder Committee to receive information regarding Crystallex's financial position, including its expenditures.

76. Crystallex has previously delivered two AAP Statements to the Trustee and Noteholder Committee. I am advised by Goodmans that on December 17, 2019, counsel to Crystallex purported to deliver a third AAP Statement to Goodmans on a confidential basis pursuant to Goodmans' confidentiality agreement with Crystallex. Neither the Standstill Order nor the May 9 Endorsement contemplates the AAP Statements being delivered on a confidential basis, and for the reasons outlined below at paragraphs 77 to 82, Stornoway is not prepared to receive the AAP Statements on a confidential basis. In addition, Crystallex did not purport to deliver any of the prior AAP Statements on a confidential basis. I understand from Goodmans that it has not received any AAP Statements since December 17, 2019.

V. EXECUTION OF AN OPEN-ENDED CONFIDENTIALITY AGREEMENT IS NOT A WORKABLE SOLUTION FOR STORNOWAY

77. I understand that it may be open to Stornoway to sign a confidentiality agreement with Crystallex to access certain of the information discussed herein.

78. I am concerned that even if Stornoway agreed to receive information from Crystallex on a confidential basis, I would still not receive adequate disclosure to allow me to make informed decisions with respect to this case.

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[6] AAP stands for "application of arbitration proceeds".

79. For instance, I am advised by Goodmans that they recently requested information from Crystallex, via the Monitor, regarding the advisors Crystallex has engaged in connection with the Citgo Sale Process and related anticipated professional expenditures. Goodmans confirmed to the Monitor that, without prejudice as to whether this information should be made public, they were prepared to receive it under their Court-ordered confidentiality agreement at present. I am further advised by Goodmans that the Monitor has recently advised Goodmans that Crystallex is not prepared to disclose this information to Goodmans, even on a confidential basis, because Crystallex believes the information is "commercially sensitive and/or proprietary".

80. I also understand from Goodmans that it has previously requested information from the Monitor regarding the liquid securities received by Crystallex under the Amended Settlement, and Crystallex has similarly refused to provide this information, even on a confidential basis pursuant to Goodmans' confidentiality agreement.

81. Further, I am advised by Goodmans that the form of confidentiality agreement Crystallex has proposed has no fixed termination date. In my experience, such an "open-ended" confidentiality agreement is not market in a restructuring case. To the contrary, in my experience, confidentiality agreements in restructuring matters typically have short terms (e.g. one to three months) and require the debtor company to publicly disclose any material non-public information that has been provided pursuant to the confidentiality agreement at the end of the term.

82. Executing an open-ended confidentiality agreement is not a workable solution for Stornoway, which, as mentioned, makes investments on behalf of third party investors in its funds and needs to be able to share the information it receives with those investors. Further, receipt of information on a confidential basis may restrict Stornoway's ability to trade in the Notes indefinitely. Being restricted from trading in the Notes may cause prejudice to Stornoway, its funds and their investors if, for instance, Stornoway believed it was necessary or appropriate to trade in the Notes, or it needed to sell Notes to fund investor redemptions.

VI. CRYSTALLEX'S "COMPETITORS" PROVIDE REGULAR ONGOING DISCLOSURE TO THEIR STAKEHOLDERS

83. Two other Canadian mining companies that are also pursuing claims against Venezuela make regular public disclosure to their stakeholders, including providing detailed financial information.

84. Attached as Exhibit "J" are the interim consolidated financial statements of Gold Reserve Inc. ("**Gold Reserve**") for Q1 2021 available on SEDAR. Based on my review of this filing, it appears that Gold Reserve is in a similar position to Crystallex in that it holds a significant arbitral award against Venezuela and has entered into a settlement agreement with Venezuela that is now "delinquent".

85. Attached as Exhibit "K" are the annual consolidated financial statements of Rusoro Mining Ltd. ("**Rusoro**") for 2019 and 2020 available on SEDAR. As with Gold Reserve, it appears that Rusoro is in a similar situation to Crystallex in that it holds an arbitral award against Venezuela, has entered into a settlement agreement with Venezuela, and has been engaged in litigation with Venezuela regarding the recognition of its arbitral award.

VII. RESPONSE TO FUNG AFFIDAVITS

86. I am advised by Goodmans that Mr. Fung has delivered two entirely confidential affidavits in support of its sealing request. While I have not been permitted to access these affidavits at present and therefore am not able to respond to them specifically, I understand from prior public affidavits of Mr. Fung that he believes disclosure of Crystallex's financial information could be used by Venezuela and/or competing creditors of Venezuela to somehow imperil Crystallex's efforts to collect on its judgment against Venezuela.

87. Stornoway, as a significant creditor and one of the economic beneficiaries of Crystallex's enforcement efforts against Venezuela, entirely rejects Mr. Fung's view that disclosure of the type of information discussed in this affidavit could somehow imperil Crystallex's enforcement efforts or its competitive position vis-à-vis Venezuela or competing creditors. To be clear, Stornoway fully supports Crystallex's efforts to recover on its judgment against Venezuela so that Crystallex can repay the amounts owing to the Noteholders in

full, and its only interest in this case is to ensure that Crystallex does just that. But it simply does not agree that Crystallex can keep the Noteholders and other stakeholders in the dark in a public CCAA process, or that the type of information the Trustee and Noteholder Committee seek public disclosure of could jeopardize Crystallex's effort, or the Noteholders' resulting recoveries. This is a judgment call that Stornoway and other creditors should be able to make, balancing staying informed with advancing recovery efforts.

88. While I am not privy to the specifics of Mr. Fung's concerns, I expect one may be that disclosure of Crystallex's financial information, in particular its cash balance and cash burn, could somehow lead to Venezuela engaging in a "war of attrition" with Crystallex in an attempt to exhaust Crystallex's resources (something, of course, that Venezuela has been attempting to do since the outset of this case irrespective of the state of Crystallex's finances or the public disclosure thereof).

89. Based on the information available to me, this concern makes no sense:

(a) Approximately one year ago, Crystallex had $116 million of cash on hand. Based on the cash burn disclosed in the Thirty-Third Report, it would take more than a decade for Crystallex to exhaust its current cash resources. On top of this, Crystallex also holds securities that had a market value of at least $212.5 million at their time of receipt. Accordingly, if necessary, Crystallex is well funded to continue its pursuit of Venezuela for a significant further period of time;

(b) Even if Crystallex were somehow at risk of exhausting its current resources (which, for clarity, is something its creditors should know), Crystallex has a proven history of obtaining financing to pursue its claim against Venezuela (both Tenor and the Noteholder Committee made offers to finance Crystallex's claim at the outset of this case);

(c) Venezuela has paid approximately $500 million of cash and liquid securities to Crystallex pursuant to prior settlements disclosed in these proceedings. Given Crystallex had no material liquid assets at the outset of this case and its litigation efforts have been financed by the Tenor DIP, it follows that Venezuela is the source

of all or substantially all of Crystallex's current assets. While I understand from court filings that Crystallex's prior settlements may have been negotiated by a different Venezuelan regime versus the regime currently participating in the Delaware District Court enforcement proceedings (*i.e.*, the Maduro versus Guaido regimes), I do not understand how Venezuela does not have access to what has been paid to Crystallex to date. If nothing else, Venezuela would know from public filings in these proceedings that Crystallex has recovered approximately $500 million to date, including $425 million as the initial payment under the Amended Settlement, the majority of which was comprised of liquid securities. I also understand from recent filings in the Delaware District Court that the Special Master's mandate will include ascertaining the total amount of the outstanding judgment owing to Crystallex by Venezuela, which presumably will require disclosure of the payments received by Crystallex from Venezuela to date. A copy of the Delaware District Court's Order Regarding Special Master dated May 25, 2021, is attached hereto as Exhibit "L".

(d) In light of this Court's denial of Crystallex's sealing request last year, Crystallex's cash balance as at March 31, 2020, along with its cash flow statement for the period October 2019 through March 2020, and its cash flow forecast for the period April 2020 through November 2020, are already in the public record, including posted on the Monitor's website. To the best of my knowledge based on my ongoing review of the U.S. and CCAA court filings involving Crystallex, there have been no negative consequences for Crystallex as a result of this disclosure, and no change in the tactics of Venezuela or competing creditors. Moreover, there is no apparent change in Crystallex's circumstances today relative to a year ago: it was a debtor in a public CCAA process attempting to enforce its judgement against Crystallex a year ago, and it remains in exactly the same position today (albeit further advanced in its enforcement efforts).

VIII. CONCLUSION

90. Stornoway, and the Noteholder Committee in which it participates, is a significant stakeholder in these proceedings, which have been ongoing for nearly a decade without

any resolution. Being able to access the information I describe in this affidavit is necessary in order for the Trustee and Noteholder Committee to fully participate in these proceedings, consult with and instruct counsel, and protect and advance their rights and interests.

91. I believe that access to this information is particularly critical given Crystallex has shown no inclination to try to advance this case or to engage with the Noteholder Committee, and because Crystallex is controlled by insiders who hold economic entitlements that incentivize them to take positions that are adverse to the interests of the Noteholders and other creditors.

92. I am not aware of any prejudice that has come to Crystallex as a result of the recent public disclosure of the May 2020 cash flow information, and do not believe any prejudice will arise from public disclosure of the information to which the Trustee and Noteholder Committee seek access.

SWORN remotely by Scott Reid stated as being located in the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario on May 28, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*.

A Commissioner for taking affidavits
Name: Chris Armstrong

SCOTT REID

THIS IS EXHIBIT "A"
TO THE AFFIDAVIT OF SCOTT REID
SWORN BEFORE ME OVER VIDEOCONFERENCE
ON MAY 28, 2021

Commissioner for Taking Affidavits

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CRYSTALLEX INTERNATIONAL CORPORATION

THIRTY-THIRD REPORT OF THE MONITOR AS OF APRIL 30, 2020

INTRODUCTION

1. This Court granted Crystallex International Corporation ("**Crystallex**" or the "**Applicant**") protection under the *Companies' Creditors Arrangement Act (Canada)* (the "**CCAA**") pursuant to the Initial Order of Mr. Justice Newbould dated December 23, 2011 (the "**Initial Order**"). Also pursuant to the Initial Order, this Court appointed Ernst & Young Inc. as the monitor (the "**Monitor**") of the Applicant and granted a stay of proceedings, which was most recently extended to May 6, 2020 pursuant to an order of this Court dated November 4, 2019.

2. On the same date as the Initial Order, Crystallex also commenced a proceeding before the United States Bankruptcy Court in the District of Delaware (the "**Delaware Bankruptcy Court**") pursuant to Chapter 15 of the United States Bankruptcy Code to obtain an order recognizing this CCAA proceeding as the foreign main proceeding and providing a stay of proceedings in the United States (the "**Chapter 15 Proceedings**"). On January 20, 2012, the Delaware Bankruptcy Court granted an order approving the recognition of the CCAA proceeding as a foreign main proceeding and giving full force and effect in the United States to the Initial Order, including any extensions or amendments authorized under the CCAA proceeding.

3. To provide the necessary financing for its CCAA proceeding and to pursue its arbitration claim against the Bolivarian Republic of Venezuela ("**Venezuela**") in relation to certain mine sites that it alleged were expropriated, Crystallex obtained debtor-in-possession

financing ("**CCAA Financing**") from Luxembourg Investment Company 31 S.à.r.l. (successor to Tenor Kry Coöperatief U.A.) ("**Tenor**" or the "**DIP Lender**"). This Court granted an Order dated April 16, 2012 approving the CCAA Financing ("**CCAA Financing Order**"). The current outstanding principal owed to the DIP Lender is US$75,733,333.

4. On April 4, 2016, an arbitral tribunal constituted under the auspices of the Additional Facility of the International Center for Settlement of Investment Disputes granted an award (the "**Award**") in favour of the Applicant. The Award against Venezuela includes:

   a) US$1.202 billion in damages;
   b) interest accrued at 6-month average U.S. dollar LIBOR plus 1%, compounded annually, from April 13, 2008 to the date of the Final Award Order; and
   c) post judgment interest from the date of the Final Award Order.

PURPOSE

5. The Monitor is filing this thirty-third report (the "**Thirty-Third Report**") to provide the Court with an update on:

   a) challenges and adverse changes with respect to Crystallex's Award realization strategy;
   [redacted]
   c) the Applicant's request for approval of the thirteenth amendment to the debtor-in-possession financing agreement (the "**Thirteenth Credit Amendment Agreement**");
   d) the Applicant's request for an extension of the Stay Period to November 6, 2020;
   e) the Applicant's liquidity position;
   f) the Applicant's cash flow projection from April 1, 2019 to November 30, 2020 (the "**Cash Flow Statement**");
   g) the Applicant's request for an order filing certain portions of this Thirty-Third Report under a sealing order; and
   h) the Monitor's observations and recommendations.

6. In preparing this Thirty-Third Report and making the comments herein, the Monitor has been provided with, and has relied upon, unaudited financial information, books and records prepared by Crystallex, and discussions with and information from management of the Applicant ("**Management**") (collectively, the "**Information**").

7. The Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Auditing Standards ("**GAAS**") pursuant to the *Chartered Professional Accountants Canada Handbook* and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information.

8. Capitalized terms not defined in this Thirty-Third Report are as defined in previous reports of the Monitor. Unless otherwise stated, all monetary amounts contained herein are expressed in U.S. Dollars.

CHALLENGES AND ADVERSE CHANGES WITH RESPECT TO CRYSTALLEX'S AWARD REALIZATION STRATEGY

9. There are a number of challenges that Crystallex faces in monetizing the Award including, but not limited, to the following:

   a) as this Court knows, most of the world, including Venezuela, has been adversely and materially impacted by the novel coronavirus ("**COVID-19**") pandemic. Among other things, the sudden decline in economic activities and transportation demands around the world has triggered a sharp drop in oil prices and put additional pressure on Venezuela's oil industry, which accounts for more than fifty percent of the country's gross domestic product. The COVID-19 pandemic is expected to pose unprecedented challenges to Venezuela's already decimated health and financial systems. As at the date of this report, Venezuela and the United States have not been able to reach a resolution on terms for the

United States to lift sanctions that could assist Venezuela in responding to the COVID-19 pandemic impacts;

b) the ongoing uncertainty with respect to who will be the next leader of a new transitional government, if any, in Venezuela. As described in the affidavit sworn by Robert Fung on April 24, 2020 (the "**Fung Affidavit**"), it is difficult for the Applicant to engage in any meaningful settlement discussions with Venezuela in the coming months regardless of which regime is in power;

c) the inability of Crystallex to execute on the PDVH shares as long as the Delaware Stay remains in place[1]. The uncertainty as to when the United States Supreme Court (the "**Supreme Court**") will release its decision may complicate the Applicant's dual-track strategy given the ever changing economic and political situation in Venezuela;

[redacted]

e) the potential outcome of the Declaratory Judgement Action involving Crystallex's competing creditors. Although it is difficult to predict how the Declaratory Judgement Action will be resolved between PDVSA and the Bondholders, a myriad of outcomes could further delay Crystallex's efforts to execute the Writ of the Attachment.

10. As described in previous reports of the Monitor and as out in detail in Confidential Appendix "**A**", the Applicant developed and implemented a dual-track strategy whereby it is concurrently pursuing enforcement of the Award and a negotiated resolution with Venezuela. An update on these efforts is set out below.

Appeal of Writ of Attachment

11. On September 26, 2019, Venezuela and PDVSA both filed petitions for a panel rehearing of the Third Circuit Appeal which had affirmed the Delaware Order issuing the Writ of

[1] Refer to the Confidential Appendix -A for the capitalized terms not defined in paragraph 9 to paragraph 17.

Attachment. On November 21, 2019, the Third Circuit denied Venezuela and PDVSA's rehearing petitions (the "**Third Circuit Decision**").

12. On February 19, 2020, Venezuela and PDVSA petitioned the United States Supreme Court for a writ of certiorari (the "**Writ of Certiorari**") for leave to appeal the Third Circuit Decision to the United States Supreme Court. On April 13, 2020, Crystallex filed its opposition brief. As described in the affidavit sworn by Robert Fung on April 26, 2020 (the "**Fung Affidavit**"), the Supreme Court may call for the view of the United States Solicitor General as to whether the Supreme Court should agree to grant the petition to hear the case. The Applicant has advised the Monitor that it is not able to predict whether the Supreme Court will seek the views of the Solicitor General or when the Supreme Court will make a determination on the petition. [redacted]

Delaware Stay

13. As set out in previous reports of the Monitor, on November 30, 2018, the Delaware Court issued an Order that granted a stay of further proceedings (the "**Delaware Stay**") until the later of i) January 10, 2019; or ii) the disposition of the Third Circuit Appeal. On October 10, 2019, the Applicant filed an application to lift the Delaware Stay. Venezuela and PDVSA jointly opposed Crystallex's request.

14. On December 12, 2019, the Delaware Court issued a memorandum order staying the Writ of Attachment proceedings until the conclusion of any proceedings in the Supreme Court, if applicable, or "further order of this or any other Court lifting the stay".

U.S. Sanctions

15. On November 22, 2019, OFAC published a final rule that amends previous Sanctions with respect to Venezuela and PDVSA's property. Among other things, the amendment

prohibits Crystallex from attaching, executing or selling the PDVH shares unless Crystallex obtains a specific license authorizing it to proceed.[2]

16. [redacted]

17. Notwithstanding the challenges and material adverse developments described above, the Applicant continues to pursue its dual-track strategy with respect to the Award. However, there are increasing uncertainties in terms of timing and quantum of proceeds realizable from the Award. Therefore, while the Applicant's desire is to have some recovery for its shareholders, the Monitor's view is that such result is uncertain at this time.

[redacted]

Status of Mediation

18. As described in the Thirty-First Report of the Monitor dated May 1, 2019, the Monitor proposed mediation (the "**Mediation**") among the Applicant, the DIP Lender and the Noteholders ("**Mediation Participants**"), who agreed to attend a voluntary Mediation before the Honourable Mr. Robert Blair (the "**Mediator**").

19. The Mediation Participants exchanged their mediation briefs and reply mediation briefs prior to a two-day Mediation session on May 28 and 29, 2019. A follow-up Mediation session was held on June 11, 2019 and thereafter the Mediation Participants, without counsel, attended several meetings, both in-person and via telephone in the context of the ongoing mediation in an attempt to resolve the ongoing disputes.

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[2] § 591.407 Settlement agreements and enforcement of certain orders through judicial process. https://www.law.cornell.edu/cfr/text/31/591.407

20. On November 18, 2019, the voluntary Mediation was terminated. [redacted]

21. [redacted]

22. [redacted]

[redacted]

23. At a case conference on January 27, 2020 to discuss the proposed filing and scheduling of the various motions, Justice Hainey directed that all the "parties should attempt to mediate their disputes with Mr. Blair or if he is not available another mutually agreeable mediator. If the disputes cannot be resolved counsel will schedule the Motions with me and they will be heard expeditiously".

24. The Noteholders, Crystallex and the DIP Lender held multiple mediation sessions with Mr. Blair through 2020 and the mediation is ongoing.

25. Several issues are outstanding as between the Noteholders, the DIP Lender and Crystallex, including those described in greater detail below.

26. [redacted]

27. [redacted]

28. [redacted]

[redacted]

29. [redacted].

30. [redacted]

[redacted]

31. [redacted]

32. [redacted]

[redacted]

33. [redacted]

34. [redacted]

35. [redacted]

36. [redacted]

[redacted]

37. [redacted]

38. [redacted]

THE THIRTEENTH CREDIT AMENDMENT AGREEMENT

39. As described in the Thirty-Second Report, the Applicant and the DIP Lender reached an agreement on the terms of an extension and amendment of the debtor-in-possession credit agreement (the "**DIP Credit Agreement**") through to May 6, 2020 or the expiry of the Stay, if earlier (the "**Twelfth Amendment Agreement**"), which Agreement was approved by the Court on November 6, 2019.

40. The DIP Credit Agreement will mature on May 6, 2020. The Monitor understands that the DIP Lender is prepared to further extend the maturity of the DIP Credit Agreement on the terms of the Thirteenth Credit Amendment Agreement, subject to Court approval.

41. The Thirteenth Credit Amendment Agreement is attached as Exhibit A to the Fung Affidavit, and simply extends the maturity date to match the proposed Stay extension date or the expiry of the Stay period, if earlier. The Thirteenth Credit Amendment Agreement becomes effective when all the conditions precedent therein are satisfied or waived and contains no extension or amendment fees.

42. The DIP Credit Agreement permits the DIP Lender to assign its interests in the DIP Loan without any further approvals, or the consent of the Borrower provided the assignment is made to a "Tenor affiliate". There have been other such assignments of the DIP Loan in this CCAA Proceeding by the DIP Lender, the last such assignment having taken place in 2014. In each case, Crystallex has executed an "assignment agreement" to document the assignment. Pursuant to an assignment agreement dated and effective as of March 30, 2020, the DIP Loan was assigned from Luxembourg Investment Company 31 S.à.r.l., as assignor and the DIP Lender, to Tenor Special Situation I, LP, a Cayman Islands Exempted Limited Partnership, as assignee, and Crystallex as the agreement of borrower (the "**2020 Assignment Agreement**"). In the opinion of the Monitor and as discussed with counsel to the Applicant prior to its execution, the Agreement of Borrower to the 2020 Assignment Agreement was unnecessary in whole and was too broad in the acknowledgements and confirmations the Applicant purported to grant under it. However, based on the confirmation by the Company's counsel that they have reviewed the draft Assignment Agreement and concluded that the Applicant and its stakeholders are not placed in a worse

position by virtue of signing the Agreement of Borrower in respect of the Assignment Agreement, the Monitor did not object to the Applicant signing same.

THE APPLICANT'S REQUEST FOR AN EXTENSION OF THE STAY PERIOD

43. The current stay of proceedings under the Initial Order, as extended by subsequent orders, expires on May 6, 2020. In connection with the Thirteenth Credit Amendment Agreement, the Applicant seeks a six-month extension of the Stay Period to November 6, 2020. The length of the Stay sought by the Applicant is consistent with the previous Stay period extension.

THE APPLICANT'S LIQUIDITY POSITION

44. Attached as Confidential Appendix "**B**" is a summary of the Applicant's actual receipts and disbursements from the period of October 1, 2019 to March 31, 2020 compared to the cash flow forecast included in the Thirty-Second Report. The balance of the Applicant's cash and cash equivalents as at March 31, 2020 was approximately $116.1 million, which was $0.9 million higher than forecast. The favorable variance is primarily due to the lower than forecast Arbitration costs and higher than forecast harmonized sales tax refunds. [redacted]

THE APPLICANT'S CASH FLOW STATEMENT

45. Attached as Confidential Appendix "**C**" to this Thirty-Third Report is the Applicant's projected Cash Flow Statement for the period from April 1, 2020 to November 30, 2020 (the "**Period**"). For reasons set out in the Fung Affidavit, the Applicant requests that the Cash Flow Statement be sealed.

46. The Cash Flow Statement represents the estimates of Management of the projected cash flow during the Period on a monthly basis. The Cash Flow Statement has been prepared

using the probable and hypothetical assumptions set out in the notes to the Cash Flow Statement (the "**Probable and Hypothetical Assumptions**" or the "**Assumptions**").

47. The Cash Flow Statement contains Management's assumption that the Applicant will not receive any payments from Venezuela during the Period. [redacted] projected to be incurred during the Period and that [redacted] will remain outstanding at November 30, 2020. The Applicant projects that it will have the ability to sustain its operations through the proposed Stay period to advance all necessary strategic initiatives related to asset preservation and enforcement strategies in connection with the Award.

48. The Monitor has reviewed the Cash Flow Statement to the standard required of a Court-appointed Monitor stipulated by section 23(1) (b) of the CCAA.

49. Pursuant to this standard, the Monitor's review of the Cash Flow Statement consisted of inquiries, analytical procedures and discussions related to information supplied to it by certain key members of Management and employees and legal counsel of the Applicant. Since the Probable and Hypothetical Assumptions need not be supported, the Monitor's procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the Cash Flow Statement. The Monitor also reviewed the support provided by Management for the Probable and Hypothetical Assumptions and the preparation and presentation of the Cash Flow Statement.

50. Based on this review, nothing has come to the Monitor's attention that causes it to believe, in all material respects, that:

a) the Probable and Hypothetical Assumptions are inconsistent with the purpose of the Cash Flow Statement;
b) as at the date of this Report, the Probable and Hypothetical Assumptions are not suitably supported and consistent with the plans of the Applicant or do not provide a reasonable basis for the Cash Flow Statement, given the Probable and Hypothetical

Assumptions; or

c) the Cash Flow Statement does not reflect the Probable and Hypothetical Assumptions.

51. The Cash Flow Statement has been prepared solely for the purpose described above, and readers are cautioned that it may not be appropriate for other purposes.

THE APPLICANT'S REQUEST FOR SEALING THE THIRTY-THIRD REPOrT

52. The Applicant has requested that certain portions of this report and the Appendices to this report to be sealed and filed under a protective order. The Applicant advised the Monitor that the redactions and sealing are necessary to protect the Applicant's strategic interests in its Award realization activities.

THE MONITOR'S OBSERVATIONS AND RECOMMENDATIONS

53. The main objectives of the Applicant in this CCAA proceeding are: i) the pursuit and collection of the Award for the benefit of its stakeholders; and ii) the development of a plan of arrangement or scheme of distribution that can be approved by this Court.

54. The Monitor is of the view that the Applicant has made progress and is continuing to pursue collection of the Award in good faith and with due diligence.

55. The Monitor believes it is beneficial for the Applicant, the DIP Lender and the Noteholders to reconcile their differences on various issues and encourages the parties to continue their negotiations regarding these matters.

56. Based on Management's assumptions described above, the Cash Flow Statement indicates that the Applicant is estimated to have sufficient liquidity through November 30, 2020. Therefore, the Monitor supports the Applicant's motion for an extension of the Stay Period to November 6, 2020.

57. The Monitor supports the extension of the maturity of the Applicant's obligations under the DIP Credit Agreement and the Thirteenth Credit Amendment Agreement.

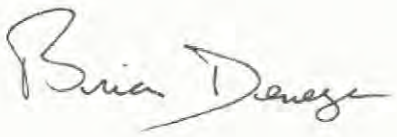
58. The Applicant has requested that the unredacted version of the Thirty-Third Report be sealed and filed under a protective order. Following numerous discussions, the Applicant

advised the Monitor that the redactions are necessary to protect the Applicant's strategic interests in its Award realization activities.

All of which is respectfully submitted this 30th day of April 2020.

ERNST & YOUNG INC.
In its capacity as Court-appointed Monitor of
Crystallex International Corporation

Per:



Brian M. Denega
Senior Vice President

Confidential Appendix A

Confidential Appendix B

Crystallex International Corporation ("Crystallex")
Actual to Forecast Report
October 1, 2019 to March 31, 2020

US $000

	Actual						
	30-Oct-19	30-Nov-19	31-Dec-19	31-Jan-20	28-Feb-20	31-Mar-20	Total
Opening Cash Balance	127,054	123,310	122,641	121,110	118,187	117,449	127,054
Receipts							
[redacted]							
Total Receipts	350	253	19	58	168	52	900
Disbursements							
[redacted]							
Total Disbursements	(4,093)	(922)	(1,550)	(2,981)	(906)	(1,366)	(11,818)
Net Cash Flow	(3,744)	(669)	(1,531)	(2,923)	(738)	(1,314)	(10,919)
Ending Cash Balance	123,310	122,641	121,110	118,187	117,449	116,135	116,135

**Certain numbers in the Cash Flow Statement are rounded.*

[redacted]

Confidential Appendix C

Crystallex International Corporation ("Crystallex")
Cash Flow Statement
April 1, 2020 to Novermber 30, 2020
US $000

	Notes	1 30-Apr-20	2 31-May-20	3 30-Jun-20	4 31-Jul-20	5 31-Aug-20	6 30-Sep-20	7 31-Oct-20	8 30-Nov-20	Total
Opening Cash Balance	2	116,135	113,993	112,863	111,736	110,471	109,336	108,199	106,937	116,135
Receipts										
[redacted]										
Total Receipts		50	50	50	50	50	50	50	50	400
Disbursements										
[redacted]										
Total Disbursements		(2,192)	(1,180)	(1,177)	(1,315)	(1,186)	(1,187)	(1,312)	(1,186)	(10,734)
Net Cash Flow		(2,142)	(1,130)	(1,127)	(1,265)	(1,136)	(1,137)	(1,262)	(1,136)	(10,334)
Ending Cash Balance		113,993	112,863	111,736	110,471	109,336	108,199	106,937	105,802	105,802

** Certain numbers in the Cash Flow Statement are rounded.*

This monthly cash flow statement (the "Cash Flow Statement") has been prepared by Management solely for the purpose of determining the ability of Crystallex International Corporation ("Crystallex" or the "Applicant") to fund its business activities as set out herein. The Cash Flow Statement represents Management's reasonable estimates at present. This is not a projection or forecast as contemplated in the *Chartered Professional Accountants Canada Handbook*. The actual timing and amount of the receipts and disbursements may fluctuate from the estimates shown herein and these fluctuations may be material. Readers are cautioned that the Cash Flow Statement may not be appropriate for their purposes.

Capitalized terms not defined in the notes to the Cash Flow Statement are defined in the reports of the Monitor.

1. The Cash Flow Statement is presented for the period from April 1, 2020 to November 30, 2020 (the "Period") and represents Management's estimate of the projected financial results from operations during that time on a cash, not accrual, basis. The Cash Flow Statement is presented in thousands of U.S. Dollars. Actual disbursements will reflect the foreign exchange rate in effect on the date of the transaction.

[redacted]

The total cash disbursements of $10.7 million does not include any estimated potential accounts payable of approximately $11.6 million that is projected to be outstanding as of November 30, 2020.

THIS IS EXHIBIT "B"
TO THE AFFIDAVIT OF SCOTT REID
SWORN BEFORE ME OVER VIDEOCONFERENCE
ON MAY 28, 2021

Commissioner for Taking Affidavits

AMENDED AND RESTATED CONTRACT OF TRANSACTION AND SETTLEMENT

This Amended and Restated Contract of Transaction and Settlement (this "Agreement") is made and entered into as of the 10th day of September 2018 by and among the Bolivarian Republic of Venezuela (the Bolivarian Republic of Venezuela, together with all instrumentalities thereof involved in the actions described herein, "Venezuela") and Crystallex International Corporation ("Crystallex"). This Agreement constitutes an amendment and restatement of the Contract of Transaction and Settlement, dated as of November 15, 2017, entered into among the parties hereto (the "Original Settlement Agreement").

RECITALS

WHEREAS, on April 4, 2016, an arbitral tribunal rendered a final award in an arbitration between Crystallex and Venezuela, pursuant to the Arbitration (Additional Facility) Rules of the International Centre for Settlement of Investment Disputes, and the July 1, 1996 Agreement between the Government of Canada and the Government of the Republic of Venezuela for the Promotion and Protection of Investments, ICSID Case No. ARB(AF)/11/2 (the "Award"). The Award provided that Venezuela owed Crystallex U.S. $1.202 billion, plus interest.

WHEREAS, on April 7, 2017, the United States District Court for the District of Columbia issued a judgment confirming the Award in an action styled *Crystallex International Corp. v. Bolivarian Republic of Venezuela*, C.A. No. 16-0661 (RC) (the "DC Judgment").

WHEREAS, the parties hereto have previously entered into the Original Settlement Agreement, which was subsequently modified to clarify the intentions of the parties.

WHEREAS, Venezuela made several payments for a total amount of U.S. $74,638,998.43.

WHEREAS, on August 9, 2018, the United States District Court for the District of Delaware issued an order authorizing the attachment of the shares of PDV Holding Inc. (the "Writ of Attachment") with respect to the enforcement of the DC Judgment in an action styled *Crystallex International Corp. v. Bolivarian Republic of Venezuela*, C.A. No. 17-151-LPS (D. Del.) (the "Delaware Order"), and the Writ of Attachment was served on August 24, 2018.

WHEREAS, the parties hereto consider that it is in their best interest and mutual benefit to amend and restate the Original Settlement Agreement to provide for the terms and conditions of a temporary stay of the Writ of Attachment and the DC Judgment as well as for a potential revised final settlement with respect to the payment of the Award, and to that end are entering into this Agreement.

AGREEMENT

NOW THEREFORE, in exchange for the mutual promises made herein, and for good and sufficient consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

REPÚBLICA BOLIVARIANA DE VENEZUELA MINISTERIO DEL PODER POPULAR DE DESARROLLO MINERO ECOLÓGICO CONSULTORÍA JURÍDICA

PROCURADOR GENERAL DE LA REPÚBLICA VISTO

Crystallex International Corporation

1. Initial Payment. On the date hereof, as a condition precedent to the effectiveness of the provisions of this Agreement, Venezuela shall deliver (or cause to be delivered) to Crystallex (or its designee) cash in U.S. dollars in immediately available funds and/or Liquid Securities (as defined below) in an amount, in the case of cash, or with a Market Value (as defined below) in the case of Liquid Securities of at least U.S. $425,000,000 (the "Initial Payment") in accordance with the payment instructions set forth on Annex A hereto or such other payment instructions specified in writing (including electronic communication) from time to time by Crystallex in its sole discretion, which amount shall be applied to the outstanding amount of the Award. With respect to any Liquid Securities delivered as part of such payment, such delivery shall be deemed to be applied to the outstanding amount of the Award in an amount equal to the Market Value of such securities, regardless of whether the ultimate proceeds or realization in respect of such securities is less than or greater than such Market Value; *provided* that (x) with respect to any Liquid Securities sold by Crystallex prior to the date that is six months after the Initial Payment is made, the amount of the Initial Payment shall be deemed to be increased or reduced, as applicable, by an amount equal to the Proceeds Adjustment Factor (as defined below) and (y) any such sale by Crystallex during such six-month period shall be conducted in a commercially reasonable manner and Crystallex shall provide to Venezuela commercially reasonable evidence of the relevant sales and amounts and pricing for the same. It is agreed that Crystallex will not apply or liquidate any cash or Liquid Securities delivered pursuant to the Initial Payment until the Temporary Stay of Execution in Section 2 below is achieved. As used herein (i) "Liquid Securities" means public debt securities in U.S. dollars freely tradeable in the United States and subject to publicly available pricing quotations; (ii) "Market Value", with respect to any Liquid Securities, means the volume weighted average price of such Liquid Securities over the 30-trading-day period ending immediately prior to the date such Liquid Securities are delivered pursuant to the terms of this Agreement or, if, in the reasonable judgment of Crystallex, such volume weighted average price is not available or sufficient liquidity does not exist for the such volume weighted average price to be a commercially reasonable measure of the current market value of the Liquid Securities, such market value as of such date as is determined in a commercially reasonable manner by Crystallex; and (iii) "Proceeds Adjustment Factor" means the amount by which the aggregate sale proceeds received by Crystallex for any Liquid Securities delivered as part of the Initial Payment (such amount, the "Liquid Securities Proceeds Amount") exceeds or is less than the Market Value of such Liquid Securities determined at the time of such delivery, with any excess to be deemed to increase the amount of the Initial Payment (and decrease the Deferred Settlement Amount (as defined below) accordingly) and any shortfall to be deemed to reduce to the amount of the Initial Payment (and increase the Deferred Settlement Amount accordingly). It is agreed that Crystallex will not apply or liquidate any cash or Liquid Securities delivered in accordance with the Initial Payment, until the Temporary Stay Period, as defined in Section 2 of this Agreement, is commenced. In the event that the Temporary Stay Period is not commenced, Crystallex will return the cash or Liquid Securities delivered in accordance with the Initial Payment.

2. Temporary Stay of Execution Proceedings. Subject to receipt of the Initial Payment as provided above, and subject to the terms of Section 6 below, Crystallex shall suspend all affirmative efforts to execute upon the Writ of Attachment, and any other efforts to

Crystallex International Corporation

execute upon or otherwise seek to enforce the DC Judgment, from the date of this Agreement until January 10th, 2019 (the date 120 days after the date hereof) (such period, the "Temporary Stay Period"). Such suspension shall not require Crystallex to take any steps to remove or lift the Writ of Attachment. The parties agree that no party shall take any step to execute upon or disturb the Writ of Attachment during the Temporary Stay Period. For the avoidance of doubt, Venezuela (including PDVSA and its subsidiaries) agrees to take all necessary steps to stay its appeal without prejudice of the Delaware Order during the Temporary Stay Period.

3. [Intentionally Omitted].

4. Final Settlement Requirements. Prior to the end of the Temporary Stay Period, Venezuela shall satisfy the following requirements (the "Final Settlement Requirements"):

a. Venezuela shall provide to Crystallex first-priority, valid, enforceable and perfected liens on collateral which shall constitute Liquid Securities (unless Crystallex and Venezuela agree otherwise, each in their sole discretion, and in writing) and which shall have a Market Value as of the Final Settlement Effective Date (or, if Crystallex accepts collateral other than Liquid Securities in its sole discretion, the orderly liquidation value thereof as of the Final Settlement Effective Date as determined in a manner acceptable to Crystallex) of 120% of the Deferred Settlement Amount (as defined below) ("Acceptable Collateral"), pursuant to collateral documentation satisfactory to Crystallex in its commercially reasonable discretion that is substantially customary for an international secured indebtedness transaction similar to the transactions contemplated hereby that is secured by such type(s) of collateral, and take all reasonable and appropriate actions to ensure the validity, enforceability, perfection and priority of such collateral interest, including the holding of such Liquid Securities in an account in the name of or otherwise under the control of Crystallex or its designee; and

b. Venezuela will execute and deliver a note (the "Settlement Note"), together with the related documentation of secured indebtedness (together with the Settlement Note and the related collateral documentation described in clause (a) above, the "Final Settlement Documentation"), which will evidence and govern its obligations and the obligations of its applicable affiliates with respect to the payment of the remaining balance of the Award and related guarantees. The Final Settlement Documentation will contain the terms and conditions described in Annex B hereto and, otherwise, must be in form and substance satisfactory to Crystallex in its commercially reasonable judgment.

Notwithstanding the foregoing, on or prior to the date that is 120 days after the date hereof (the "Interim Deadline"), if the requirements of clauses (a) and (b) of this Section 4 have not been satisfied in full on or prior to such date, Venezuela shall nonetheless execute and deliver all applicable Final Settlement Documentation, which shall identify the Acceptable Collateral to be provided, and which shall be effective and binding, but the Acceptable Collateral to be delivered under the Final Settlement Documentation may be delivered (and the other requirements of clause (a) above may be satisfied) at any time prior to the end of the Temporary Stay Period. Upon the execution and delivery of the Final Settlement Documentation, the remaining amount owing by Venezuela in respect of the Award shall be deemed to be an amount equal to U.S. $814,632,217.00, reduced or increased by any Proceeds Adjustment Factor if applicable as provided above (and less any additional amounts paid by or on behalf of the Republic to

Crystallex International Corporation

Crystallex in respect of the Award after the date of this Agreement other than the Initial Payment) (such amount, as reduced or increased if applicable, the "Deferred Settlement Amount"), and shall be payable in installments as described under the heading "Payment Installments" in Annex B hereto, pursuant to the terms of the Settlement Terms Sheet.

In the event that Venezuela does not make a payment on date it is due, in accordance with the provisions of the Settlement Note, it will have a remediation period of 30 consecutive days to remedy the situation, provided that this remediation period can only be used once per calendar year. Any other delay that occurs within the same period will be considered an Event of Default for all purposes of the Settlement Note.

5. Final Settlement Effective Date. If the Final Settlement Requirements have been satisfied on or prior to the end of the Temporary Stay Period, then it is agreed that, on the date such requirements are satisfied (the "Final Settlement Effective Date"):

a. Crystallex will request the Court to (i) lift the Writ of Attachment over the shares of PDV Holding, Inc., (ii) seek to suspend any further action to execute upon the Writ of Attachment and will not cause the shares of PDV Holding, Inc. to be sold pursuant to the Writ of Attachment so long as no event of default has occurred, and (iii) seek to suspend all other pending actions that seek to impose the DC Judgment;

b. Except as otherwise expressly provision herein, all obligations of Venezuela in respect of or relating to the Award shall be as set forth in, and shall be governed by the Final Settlement Documentation.

6. Termination of Temporary Stay. If Venezuela fails to satisfy the Final Settlement Requirements by the end of the Termination Stay Period or fails to execute and deliver the Final Settlement Documentation as provided in the on or prior to the Interim Deadline as required by Section 4, then:

i. The Temporary Stay Period shall automatically terminate; and

ii. Crystallex may immediately recommence any actions stayed pursuant to Section 2 above, may seek to execute upon the Writ of Attachment, and may, in the sole, absolute and unfettered discretion of Crystallex, exercise any and all other rights, powers, privileges and remedies granted to or otherwise available to Crystallex at law, in equity, or otherwise, including under the Settlement Note and/or otherwise in respect of the Award (for the avoidance of doubt, not limited to amounts owing pursuant to the Settlement Note).

7. Non-Impairment. Except as expressly provided herein, nothing in this Agreement shall alter, impair, or affect any of Crystallex's rights, powers, privileges or remedies under or otherwise existing in respect of the Award and/or the DC Judgment, and the parties acknowledge that the Award and the DC Judgment shall remain in full force and effect, except if the Final Settlement Requirements have been met, in which case, Crystallex will suspend the enforcement of the Award and/or the DC Judgment in accordance with the terms herein.

PROCURADOR GENERAL (E) DE LA REPÚBLICA
VISTO

Crystallex International Corporation

8. No Waiver. No failure to exercise, and no delay in exercising, any right, power, or remedy hereunder shall waive or otherwise impair any right, power, or remedy which Crystallex may have. Nor shall any such delay be taken as acquiescence to any breach or default under this Agreement. Nor shall any waiver of any breach or default of Venezuela hereunder be deemed a waiver of any default or breach subsequently occurring. The rights and remedies herein specified are cumulative and not exclusive of any rights or remedies which Crystallex would otherwise have.

9. Taxes. Venezuela acknowledges that the amount of the Award paid pursuant to this Agreement including the Settlement Terms Sheet is net of all applicable Venezuelan taxes. If such Venezuelan taxes are payable on payments of the Award, the amount of the Award to be paid by Venezuela to Crystallex will be grossed up by the amount of such applicable taxes, and such grossed up amount on account of such taxes shall be deemed to be and have been deducted from such increased amount, and paid by Venezuela to the Venezuelan tax authorities on behalf of Crystallex. At Crystallex's request, and if applicable, Venezuela will promptly deliver evidence of the payment of such Venezuelan taxes as may be requested or required by the Canada Revenue Agency to enable Crystallex to successfully claim a foreign tax credit (or deduction) under the Income Tax Act (Canada) in respect of all such Venezuelan taxes payable and paid.

10. Authority. Subject to the next sentence, each party represents and warrants that it has full power and authority to enter into and deliver this Agreement and to enter into all of the commitments it has made herein, that the person signing this Agreement on its behalf has the authority to do so, and that this Agreement is enforceable in accordance with its terms. Notwithstanding anything to the contrary in this Agreement, Crystallex shall require the prior approval of the Court in Canada for this Agreement to become effective, and it is agreed that if such approval is not obtained within 5 business days after the date of this Agreement, this Agreement shall terminate and be of no further force and effect between the parties hereto, in which case Crystallex must immediately return the cash or Liquid Securities delivered in accordance with the Initial Payment established in section 1 of this document.

11. Confidentiality. Except as expressly permitted or required in this Agreement, the terms of this Agreement and the content of all negotiations in relation to it (except for the fact that the parties hereto have signed this Agreement) shall be kept confidential by each of the parties hereto and their respective advisors, who will not reveal or disclose to any third party, including, without limitation, the arbitral tribunal that issued the Award, the International Centre for Settlement of Investment Disputes, U.S. jurisdictions or other jurisdictions, without the prior written consent of the other party hereto, except for:

a. auditors, legal, financial and tax advisors, consultants and banks of each of the parties hereto, under conditions that preserve the confidentiality of the terms of this Agreement and the content of the negotiations in relation to it;

b. to the extent that such revelation or disclosure is required by applicable laws or regulations, or in any legal proceeding (having previously requested confidential treatment to the extent that it was permitted by the court, authority or the tribunal

REPÚBLICA BOLIVARIANA DE VENEZUELA MINISTERIO DEL PODER POPULAR DE DESARROLLO MINERO ECOLÓGICO CONSULTORÍA JURÍDICA

PROCURADOR GENERAL DE LA REPÚBLICA VISTO

Crystallex International Corporation

in question), or in compliance with or in response to an order issued by a competent court, tribunal or governmental authority; or

c. to the extent that such revelation or disclosure is necessary for the purpose of implementing or executing this Agreement, provided that the best efforts are made to request the application of conditions that preserve the confidentiality of the terms of this Agreement and the content of the negotiations in relation to it.

12. Further Assurances. The parties agree that they shall take such further action and shall execute and deliver such additional documents and instruments as Crystallex may reasonably request in order to implement or otherwise effectuate the terms of this Agreement. To the extent necessary to implement or otherwise effectuate the terms of the Agreement, Venezuela shall cause its applicable affiliated entities to execute documents referenced or required by this Agreement.

13. Service of Process: The parties hereby agree that notice or service for any purpose under this Agreement, including for purposes of commencing any legal proceeding, shall be made in writing to the following persons

If to Crystallex, to it at:

Fax: +1.416.203.0099
Address: 8 King Street East, Suite 1201, Toronto, Ontario M5C 1B5, Canada
Phone: +1.416.777.7339 (Direct); +1.416.203.2448 (Main)
Email: Rfung@crystallex.com
Attention: Robert Fung, Chairman and CEO

If to Venezuela, to it at:

Address: Av. Los Ilustres con Calle Francisco Lazo Martí Edificio Procuraduría General de la República, Urbanización Santa Mónica, Caracas, República Bolivariana de Venezuela
Phone: +58.212.5975972
Email: rmunoz@pgr.gob.ve
Attention: Reinaldo Muñoz Pedroza, Procurado General de la República

Such notice or legal process may be personally served, electronically mailed or sent by facsimile or courier service and shall be deemed to have been given when delivered in person or by courier service and signed for against receipt thereof or upon receipt of facsimile or electronic mail.

14. Procedural Agreement. In case of default of payment or collateral in the terms referred to in the Agreement, Venezuela agrees not to assert any defense or argument under 28 U.S.C. §§ 1602 et seq., by way of motion or other pleading in any suit, action or proceeding (i) in connection with or arising out of this Agreement or (ii) seeking to confirm, enforce or otherwise collect upon the Award, whether through service of notice, attachment prior to

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judgment, attachment in aid of execution, with respect to itself or its property or from attachment either prior to judgment or in aid of execution.

15. Governing Law. This Agreement shall be governed by New York law, without regard to choice of law rules thereof that might apply the laws of any jurisdiction.

16. Venue. Each party hereby submits to the exclusive jurisdiction of the federal and state courts sitting in the City and County of New York for any action or proceeding relating to this Agreement, and expressly waives any objection it may have to such jurisdiction or the inconvenience of such forum. Each party hereby expressly waives any immunity from the jurisdiction of such courts over any suit, action or proceeding that may be brought in connection with this Agreement. Each party hereby irrevocably waives, to the fullest extent permitted by the applicable law, any objection that they may now or hereafter have to the laying of the venue of any such proceedings brought in such a court, any claim that any such proceeding brought in such a court has been brought in an inconvenient forum and any right of objection based on place of residence or domicile.

17. Interpretation of the Agreement. No party shall be entitled to have any wording of this Agreement construed against any other party in the event of any dispute arising in connection with this Agreement, including, without limitation, on the basis of a party's capacity as principal drafter hereof.

18. Amendment and Restatement. This Agreement shall constitute an amendment and restatement of, and not a novation of, the Original Settlement Agreement. All obligations under the parties under the Original Settlement Agreement shall be continued as modified hereby.

19. Amendment; Assignments. This Agreement may not be amended, changed, modified, released, or discharged except by a writing signed by duly authorized representatives of each of the parties hereto or their successors or permitted assigns. Neither this Agreement nor any rights or obligations under this Agreement may be assigned, transferred or delegated by either party to any other person, without the prior consent of the other party to this Agreement. Any attempted or purported assignment, transfer or delegation without such prior written consent shall be *ab initio* null and void.

20. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the parties with respect to its subject matter and supersedes all prior and contemporaneous oral and written agreements and understandings relating to its subject matter. Each of the parties warrants and represents that it has relied upon its own judgment and that of its legal counsel regarding the consideration for and terms of this Agreement and that no statements or representations, written or oral, made by any other of the parties, their agents, employees, or legal counsel have influenced or induced that party to execute this Agreement.

21. Counterparts. This Agreement may be executed in any number of counterparts, including by facsimile or PDF signatures, each of which when executed and delivered will be deemed to be an original and all of which, taken together, will be deemed to be one and the same instrument.

PROCURADOR GENERAL DE LA REPÚBLICA
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MINISTERIO DEL PODER POPULAR DE DESARROLLO MINERO ECOLÓGICO
CONSULTORÍA JURÍDICA

Crystallex International Corporation

[Signature pages follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their duly authorized representatives, all as of the day and year first above written.

BOLIVARIAN REPUBLIC OF VENEZUELA

By: _____
Name: VICTOR M. CANO P.
Title: MINISTRO DEL PODER POPULAR DE DESARROLLO MINERO ECOLÓGICO
Date: SEPTIEMBRE 10, 2018

MINISTRO

REINALDO MUÑOZ PEDROZA
PROCURADOR GENERAL (E)
SEPTEMBER 10, 2018

Procuraduría General de la República
Procurador General (E)

CRYSTALLEX INTERNATIONAL CORP.

By: _____
Name: Robert A. Fung
Title: Chairman and CEO
Date: September 10, 2018

Crystallex International Corporation

VISTO

Annex A

Payment Instructions

Please pay via MT103 to Swift Code: PNBPUS3NNYC, Institution name: WELLS FARGO BANK, N.A., 375 PARK AVENUE, NY 4080, NEW YORK, NY UNITED STATES
To pay swift code: *CIBCCATT (CANADIAN IMPERIAL BANK OF COMMERCE TORONTO, CANADA)*
CIBC
TRANSIT 03202
40 Dundas St. West, Suite 700 Toronto, Ontario
Canada M5G 2C2

Beneficiary Information

Beneficiary Account Number: 426 11846 10

Beneficiary Name: Crystallex International Corporation
8 King Street East, Suite 1201, Toronto, Ontario, M5C1B5, Canada

Venezuela to confirm the above payment instructions the day prior to any payment under this Agreement or any Final Settlement Documentation.

For the avoidance of doubt, Crystallex may, at its sole discretion, by notice to Venezuela (which may be in the form of electronic communication), modify the payment instructions above. Upon such notice, this Annex A shall be deemed modified without any further action by any party.

PROCURADOR GENERAL (E) DE LA REPÚBLICA
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ANNEX B
Settlement Terms Sheet

Capitalized terms used and not otherwise defined in this Annex B shall have the meaning assigned thereto in the Agreement to which this Annex B is attached.

Note Issuer	Venezuela.
Holder	Crystallex.
Note Principal Amount	The Deferred Settlement Amount, equivalent to U.S. $814,632,217.00.
Collateral	The Settlement Note will be secured by the Acceptable Collateral as agreed to pursuant to the terms of Section 4 of the Agreement.
Payment Installments	The principal amount of the Settlement Note will be repayable (x) in four installments each representing an amount equal to U.S. $18,750,000, payable on February 28, 2019, April 30, 2019, June 30, 2019 and August 31, 2019, (y) in six installments each representing an amount equal to U.S. $100,000,000, payable on March 29, 2019, June 28, 2019, October 31, 2019, March 31, 2020, June 30, 2020 and October 30, 2020 and (z) 24 monthly installments each representing an amount equal to U.S. $5,818,009, payable on the last business day of each month, commencing March 31, 2019 and ending February 28, 2021; *provided* that if any Proceeds Adjustment Factor shall become applicable after the Final Settlement Date as described in Section 1 of the Agreement, then the amount of the March 29, 2019 installment shall be increased or reduced accordingly to reflect the increased or reduced principal amount of the Settlement Note as a result of the application of such Proceeds Adjustment Factor.
Interest	Obligations under the Settlement Note will not generate interest, except all amounts with respect to the Settlement Note not paid when due (including an acceleration) and will accrue interest at a monthly rate of 0.5%, compounded monthly, until all are paid in full. Said default interest will be paid on demand.
Prepayments	Optional prepayments of the Settlement Note will be permitted at any time, without premium or penalty. Mandatory prepayments of the Settlement Note will be required with (i) net proceeds of dispositions of any Collateral, and (ii) upon other customary circumstances depending on the nature of the Acceptable Collateral provided. All prepayments shall be applied to installments in inverse order of maturity.
Representations and Warranties	The Final Settlement Documentation will include representations and warranties customary for transactions of this type and others to be agreed.
Covenants	The Final Settlement Documentation will include customary covenants, reflecting the nature of the Acceptable Collateral, acceptable to Crystallex in its commercially reasonable discretion.

Crystallex International Corporation

Events of Default	The Final Settlement Documentation will include events of default with respect to the following: (1) non-payment of any amount when due, (2) breach of covenants and other obligations, (2) material inaccuracy of representations and warranties (3) invalidity or lack of perfection of collateral, (4) repudiation or invalidity of the note, collateral or supporting documentation, and (5) other events of default as may be appropriate and customary depending on the nature of the Collateral.
Taxes	All payments of the Award paid pursuant to the Settlement Note will be required to be made free and clear of, and without deduction or withholding for, any taxes, except as required by applicable law; and customary gross-up and related obligations will apply if the Issuer is required by applicable law to deduct or withhold any taxes from such payments. At the Holder's request, and if applicable, Venezuela will promptly deliver evidence of the payment of such withholding taxes as may be requested or required by Canada Revenue Agency to enable the Holder to successfully claim a foreign tax credit (or deduction) under the Income Tax Act (Canada) in respect of all such Venezuelan taxes payable and paid.
Remedies; Pari Passu Treatment; Enforcement Expenses	In addition to all other rights and remedies available to Holder while any event of default exists, including acceleration of the Settlement Note and foreclosure and other remedies with respect to the collateral under the Final Settlement Documentation or applicable law, upon the occurrence of an event of default, Crystallex may seek to enforce the DC Judgment, including by way of recommencement of any action stayed pursuant to Section 5 of the Agreement, without further notice to the Republic. In the event of default exists, the Issuer will not be permitted to (a) make payment of any other external indebtedness sooner or to a greater extent than all payments are made that are due and payable in respect of the Settlement Terms Sheet, and (b) refinance, restructure or exchange any external indebtedness without offering Crystallex the opportunity to opt-in and participate in any such refinancing, restructuring or exchange on terms at least as favorable as the terms applicable to the holders of such other external indebtedness. In such event, such payment may be made in cash or in securities that are freely tradable in the United States or European Union (which may include public debt obligations issued as part of any restructuring process) with a market value (as determined by a leading international investment bank chosen by Crystallex) equal or greater to the amount then owed under the Settlement Terms Sheet as previously in effect. The Issuer will be required to pay or reimburse the Holder upon demand for all out-of-pocket costs and expenses, including attorneys' fees and expenses, incurred by Holder in connection with (a) the collection of sums payable under the Final Settlement Documentation and (b) the exercise or enforcement of any of Holder's rights, powers or remedies under the Final

P.

PROCURADOR GENERAL (E) DE LA REPÚBLICA
VISTO

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MINISTERIO DEL PODER POPULAR PARA EL MINERO ECOLÓGICO
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	Settlement Documentation or applicable law.
Governing Law, Waiver of Jury Trial, Consent to Jurisdiction and Service of Process, Procedural Agreement	The Final Settlement Documentation will be governed by New York law. The Final Settlement Documentation will contain the usual provisions on the waiver of a jury trial, presentation to the exclusive jurisdiction of New York, the notification of process and the designation of the process agent, and waiver of exemptions under 28 U.S.C. §§ 1602 et seq.

PROCURADOR GENERAL DE LA REPÚBLICA
VISTO

REPÚBLICA BOLIVARIANA DE VENEZUELA
MINISTERIO DEL PODER POPULAR DE DESARROLLO MINERO ECOLÓGICO
CONSULTORÍA JURÍDICA

Crystallex International Corporation

THIS IS EXHIBIT "C"
TO THE AFFIDAVIT OF SCOTT REID
SWORN BEFORE ME OVER VIDEOCONFERENCE
ON MAY 28, 2021

Commissioner for Taking Affidavits

Court File No. CV-11-9532-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

THE HONOURABLE MR. JUSTICE NEWBOULD	)))	THURSDAY, THE 18th DAY OF DECEMBER, 2014

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CRYSTALLEX INTERNATIONAL CORPORATION (the "**Applicant**")

APPROVAL ORDER

THIS MOTION, made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the motion record of the Applicant, the affidavit of Harry Near dated December 15, 2014, the supplementary affidavit of Harry Near dated December 16, 2015, the Thirteenth Report of the Monitor, Ernst &Young Inc. (the "**Monitor**") dated December 13, 2014 (the "**Thirteenth Report**"), and on hearing the submissions of counsel for the Applicant, counsel for Computershare Trust Company of Canada in its capacity as Trustee (the "**Trustee**") for the holders of Senior 9.375% Notes due December 23, 2011, issued by the Applicant (the "**Senior Notes**"), counsel for the Ad Hoc Committee (as defined below) and each beneficial owner of the Senior Notes that is part of the *ad hoc* committee of beneficial owners of the Senior Notes (as specified on Schedule "A" hereto) (the "**Ad Hoc Committee**") in all capacities, including, without limitation, as beneficial owners of the Senior Notes and, to the extent applicable, shareholders or holders of other equity interests of the Applicant, counsel for the DIP Lender (as defined below), counsel for Greywolf Loan Participation LLC, in all capacities, including, without limitation, as beneficial owner of the Senior Notes, shareholder, or other holder of equity interests of the Applicant ("**Greywolf**"), counsel for the Monitor, and counsel for Juan Antonio Reyes:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the notice of motion and the motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

LEAVE AND APPROVAL

2. **THIS COURT ORDERS** that the Applicant is granted leave to bring this motion.

3. **THIS COURT ORDERS** that the terms attached as Schedule "A" to the Near Affidavit are hereby approved in their entirety, expressly incorporated by reference into this Order and effective as though they were made herein (the "**Terms**").

4. **THIS COURT ORDERS** that any creditor or shareholder of the Applicant may request a copy of the Terms from the Applicant and the Applicant shall be permitted to provide the Terms to such party on such terms as the Applicant and the Monitor agree or on further order of the Court.

APPROVAL OF MONITOR'S THIRTEENTH REPORT

5. **THIS COURT ORDERS** that the Thirteenth Report of the Monitor and the activities as set out therein be and are hereby approved.

CONFIDENTIALITY

6. **THIS COURT ORDERS** that all materials filed in connection with this motion that have been labeled as "Confidential" (the "**Sealed Materials**") shall be sealed and not form any part of the public record in this proceeding.

7. **THIS COURT ORDERS** that the Sealed Materials shall not be copied or disseminated beyond counsel or experts previously authorized in this proceeding or to be authorized by the Applicant or by further order of this Court.

8. **THIS COURT ORDERS** that any party may apply to the Court on proper notice to all parties in interest to modify the provisions in paragraphs 6 and 7 of this Order and nothing in this Order shall be deemed to prejudice their rights to seek such modification or to assert that the Sealed Materials are not confidential.

9. **THIS COURT ORDERS** that, subject to the execution of an appropriate confidentiality agreement, the form of which is to be settled between the Monitor and counsel to

the Trustee and Ad Hoc Committee, each acting reasonably, or by court order, and subject to any order made on any application of the Applicant or Monitor to prevent the release of any particular information or documentation, the Applicant or Monitor shall provide to counsel to the Trustee and the Ad Hoc Committee and to any other stakeholder that executes such a confidentiality agreement, access to the Applicant's information and documents, including (i) current, historical and future financial and accounting information; (ii) information and documents relating to the Arbitration Proceedings that the Applicant is entitled to disclose but not such information which in the opinion of the Applicant and the Monitor, each acting reasonably, should not be disclosed; and (iii) any other information and documents made available by the Applicant to the DIP Lender. Management of the Applicant shall also make themselves reasonably available from time to time to discuss the foregoing matters.

10. **THIS COURT ORDERS** that the Applicant and the Monitor shall have the right to explore all options and alternatives for any new financing for the Applicant and to explore all other options and alternatives for the Applicant with respect to its assets and property.

GENERAL

11. **THIS COURT ORDERS** that the Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

12. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, including the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**"), to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Applicant in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

13. **THIS COURT ORDERS** that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, including the Bankruptcy Court, for the recognition of this Order and for assistance in carrying out the terms of this Order.

14. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. (Toronto time) on the date of this Order.

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ON / LE
DEC 19 2014

SCHEDULE "A"

BENEFICIAL OWNERS OF SENIOR NOTES PART OF AD HOC COMMITTEE

1. QVT Fund LP
2. Quintessence Fund LP
3. Greywolf Loan Participation LLC
4. Outrider Master Fund, LP
5. Ravensource Fund
6. Stornoway Recovery Fund LP

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CRYSTALLEX INTERNATIONAL CORPORATION

Court File No: CV-11-9532-OOCL

ONTARIO
SUPERIOR COURT OF JUSTICE – COMMERCIAL LIST

Proceeding commenced at Toronto

APPROVAL ORDER

Davies Ward Phillips & Vineberg LLP
155 Wellington Street West
Toronto, ON M5V 3J7

Jay Swartz (LSUC #15417L)
Bryan D. McLeese (LSUC #55607C)
TeL 416.863.0900
Fax: 416.863.0871

Lawyers for Crystallex International Corporation

THIS IS EXHIBIT "D"
TO THE AFFIDAVIT OF SCOTT REID
SWORN BEFORE ME OVER VIDEOCONFERENCE
ON MAY 28, 2021

Commissioner for Taking Affidavits

Court File No. CV-11-9532-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.	)	FRIDAY, THE TWENTY-THIRD
	)	
JUSTICE NEWBOULD	)	DAY OF DECEMBER, 2011

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CRYSTALLEX INTERNATIONAL CORPORATION (the "Applicant")

INITIAL ORDER

THIS APPLICATION, made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Robert Fung sworn December 22, 2011 and the Exhibits thereto (the "Fung Affidavit") and the affidavit of Carlo Mattoni sworn December 22, 2011 and the Exhibits thereto, and on hearing the submissions of counsel for Crystallex International Corporation and Computershare Trust Company of Canada and on reading the consent of Ernst & Young Inc. to act as the Monitor,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. THIS COURT ORDERS AND DECLARES that the Applicant is a company to which the CCAA applies.

PLAN OF ARRANGEMENT

3. THIS COURT ORDERS that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "Plan").

POSSESSION OF PROPERTY AND OPERATIONS

4. THIS COURT ORDERS that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "Business") and Property. The Applicant shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "Assistants"), including without limitation the Applicant's arbitration counsel, Freshfields Bruckhaus Deringer LLP, the Applicant's Venezuelan arbitration counsel, Eduardo Travieso Iturbe, Luis Andres Guerrero Rosales, and Iron Corp., and the Applicant's valuation consultant, Compass Lexecon (collectively the "Arbitration Assistants") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. THIS COURT ORDERS that, without limiting the generality of paragraph 4 of this Order, the Applicant shall remain authorized to continue to manage, prosecute, pursue, and

instruct counsel in connection with, the Arbitration Proceedings (as defined in the Fung Affidavit) and to take steps to negotiate with the Government of Venezuela a settlement of the Arbitration Claim (as defined in the Fung Affidavit); provided that if an agreement is reached to settle the Arbitration Claim that agreement shall be made conditional upon the approval of this Court and shall not be effective until such approval is obtained.

6. THIS COURT ORDERS that the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

(a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; provided that any discretionary or extraordinary bonuses or retention payments shall not be paid without the prior approval of this Court; and

(b) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges.

7. THIS COURT ORDERS that the Applicant shall with the written consent of the Monitor be entitled but not required to pay the following expenses incurred prior to this Order:

(a) the fees and disbursements of the Arbitration Assistants incurred in connection with the Arbitration Proceedings;

(b) the fees and disbursements of independent counsel to the board of directors of the Applicant, Lax O'Sullivan Scott Lisus LLP;

(c) payments to A.M. King Limited on account of brokerage fees, commissions or other amounts owed in connection with the sale of the Applicant's mining equipment.

(d) amounts owing to creditors that have valid and enforceable possessory or statutory liens against any Property of the Applicant where the value of such Property exceeds the amount of the possessory or statutory liens or where the asset is deemed critical by the Applicant and the Monitor to the Restructuring of the Applicant; and

(e) payments on account of insurance (including directors and officers insurance).

8. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the

Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and

(b) payment for goods or services actually supplied to the Applicant following the date of this Order.

9. THIS COURT ORDERS that the Applicant shall remit, in accordance with legal requirements, or pay:

(a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

(b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and

(c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

10. THIS COURT ORDERS that until a real property lease is disclaimed in accordance with the CCAA, the Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicant and the landlord from time to time ("Rent"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

11. THIS COURT ORDERS that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

12. THIS COURT ORDERS that the Applicant shall, subject to such requirements as are imposed by the CCAA, have the right to:

(a) sell its mining equipment in storage in accordance with a method and on terms of sale approved by the Monitor;

(b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and

(c) pursue all avenues of interim financing or a refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material interim financing or refinancing becomes effective,

all of the foregoing to permit the Applicant to proceed with an orderly restructuring (the "Restructuring"). Without limiting the foregoing, the Applicant may conduct an auction to raise interim or DIP financing pursuant to procedures approved by the Monitor and using such

professional assistance as the Applicant may determine with the consent of the Monitor. If such approved procedures are followed to the satisfaction of the Monitor then the best offer as determined by the Applicant pursuant to the approved procedures shall be afforded the protection of the *Soundair* principles so that it will be too late to make topping offers thereafter and such offers will not be considered by this Court.

13. THIS COURT ORDERS that the Applicant shall provide each of the relevant landlords with notice of the Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

14. THIS COURT ORDERS that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises and such landlord shall be entitled to notify the Applicant of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

15. THIS COURT DECLARES that, pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronics Documents Act*, S.C. 2000, c. 5 and Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, and any regulations promulgated under authority of either Act, as applicable (the "Relevant Enactment"), the Applicant, in the course of these proceedings is permitted to disclose personal information of identifiable individuals in its possession or control to stakeholders or prospective lenders, or any of their respective advisors, but only to the extent desirable or required to negotiate and complete the Restructuring or to prepare and implement the Plan or transactions for that purpose; provided that the persons to whom such personal information is disclosed enter into confidentiality agreements with the Applicant binding them in the same manner and to the same extent with respect to the collection, use and disclosure of that information as if they were an organization as defined under the Relevant Enactment, and limiting the use of such information to the extent desirable or required to negotiate or complete the Restructuring or to prepare and implement the Plan or transactions for that purpose, and attorning to the jurisdiction of this Court for the purposes of that agreement. Upon the completion of the use of personal information for the limited purposes set out herein, such persons shall, upon the request of the Applicant, return the personal information to the Applicant or destroy it.

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

16. THIS COURT ORDERS that until and including January 21, ~~2011~~ 2012, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

17. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and

suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

18. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

19. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

20. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor

shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

21. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

22. THIS COURT ORDERS that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

23. THIS COURT ORDERS that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge") on the Property (other than photocopy equipment leased by the Applicant from CBSC Capital Inc. ("Excluded Property")) , which charge shall not exceed an aggregate amount of $10,000,000, as security for the indemnity provided in paragraph 22 of this Order. The Directors' Charge shall have the priority set out in paragraphs 34 and 36 herein. The Monitor shall review the quantum of the Directors' Charge and report to the Court thereon if thought appropriate.

24. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors'

and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 22 of this Order.

APPOINTMENT OF MONITOR

25. THIS COURT ORDERS that Ernst & Young Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

26. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) monitor the Applicant's receipts and disbursements;

(b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;

(c) advise the Applicant in its development of the Plan and any amendments to the Plan;

(d) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;

(e) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order;

(f) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and

(g) perform such other duties as are required by this Order or by this Court from time to time.

27. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

28. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

29. THIS COURT ORDERS that that the Monitor shall provide any creditor of the Applicant with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors or any other person unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

30. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

31. THIS COURT ORDERS that the Monitor, counsel to the Monitor and Canadian and U.S. counsel to the Applicant shall, subject to further order on a passing of accounts, be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor, Canadian and U.S. counsel for the Applicant and the Arbitration Assistants on a periodic basis and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor, and Canadian and U.S. counsel to the Applicant, reasonable retainers from time to time to be held by them as security for payment of their respective fees and disbursements outstanding from time to time

32. THIS COURT ORDERS that the Monitor and its legal counsel and the Applicant's Canadian legal counsel shall pass their accounts rendered in connection with these proceedings from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

33. THIS COURT ORDERS that the Monitor, counsel to the Monitor, if any, the Applicant's Canadian and U.S. counsel shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property (other than the Excluded Property), which charge shall not exceed an aggregate amount of $3,000,000, as security for their professional fees and disbursements incurred at their respective standard rates and charges, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 39 and 41 hereof. 34 36

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

34. THIS COURT ORDERS that the priorities of the Directors' Charge and the Administration Charge, as among them, shall be as follows:

First – Administration Charge; and

Second – Directors' Charge.

35. THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge or the Administration Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

36. THIS COURT ORDERS that each of the Directors' Charge and the Administration Charge (both as constituted and defined herein) shall constitute a charge on the Property (other than the Excluded Property) and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person.

37. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, either of the Directors' Charge or the Administration Charge, unless the Applicant also obtains the prior written consent of the Monitor and the other beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

38. THIS COURT ORDERS that the Directors' Charge and the Administration Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees") thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to *Bankruptcy and Insolvency Act* of Canada (the "BIA"), or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

(a) the creation of the Charges shall not create nor be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and

(c) the payments made by the Applicant pursuant to this Order and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

39. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

SERVICE AND NOTICE

40. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in the National Edition of The Globe and Mail and the Wall Street Journal a notice containing the information prescribed under the CCAA, (ii) within five business days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than $1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that for the purposes of the above list, (i) with respect to the 9.375% senior unsecured notes due on December 23, 2011, only the name and address of the indenture trustee of such notes and the aggregate amount owing in respect of such notes shall be listed and made publicly available and (ii) the Monitor shall not make the names and addresses of creditors who are individuals publicly available.

41. THIS COURT ORDERS that the Applicant and the Monitor be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Applicant's creditors or other interested parties at their respective

addresses as last shown on the records of the Applicant and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

42. THIS COURT ORDERS that the Applicant, the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Monitor may post a copy of any or all such materials on its website at www.ey.com/ca/crystallex.

GENERAL

43. THIS COURT ORDERS that the Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

44. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

45. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, including the United States Bankruptcy Court for the District of Delaware, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Applicant in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

46. THIS COURT ORDERS that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Applicant is authorized and empowered to act as a

representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

47. THIS COURT ORDERS that without limiting the generality of paragraph 46 of this Order, the Applicant is hereby authorized, as a foreign representative to apply to the United States Bankruptcy Court for the District of Delaware for relief pursuant to the *United States Bankruptcy Code*, 11 U.S.C. §§101-1330, as amended and if such relief is granted is authorized to take such other steps with respect thereto as it may deem appropriate from time to time.

48. THIS COURT ORDERS that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order, any such application not to be returnable before January 9, 2011.

49. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard Time on the date of this Order.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

DEC 23 2011

PER / PAR:

Newbould J.

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CRYSTALLEX INTERNATIONAL CORPORATION

(the "Applicant")

Court File No: CV-11-9532-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

INITIAL ORDER

~~**NOTICE OF APPLICATION**~~

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Lawyers for Crystallex International Corporation

THIS IS EXHIBIT "E"
TO THE AFFIDAVIT OF SCOTT REID
SWORN BEFORE ME OVER VIDEOCONFERENCE
ON MAY 28, 2021

Commissioner for Taking Affidavits

ADELSO ADRIANZA

113 Washington Street – Newton, MA 02458 – U.S.A.
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November 6, 2020

The Honorable
George R. Strathy,
Chief Justice of Ontario
Court of Appeal for Ontario
Osgoode Hall
60 Queen Street W.
Toronto, ON M5H 2M3
Canada

Dear Chief Justice Strathy,

I am a shareholder of and writing to you in reference to Crystallex International Corporation (the Company) and its appeal to the Ontario Superior Court of Justice – Commercial List regarding the CCAA Court's order denying the Company's request to continue sealing case documents as confidential. In several communications to the CCAA Court, the Monitor and the Company, I have decried the excessive secrecy in this CCAA case since the beginning because of the unwarranted vulnerability it imposed on the Company's stakeholders and the distorted incentives it provided to a Board of Directors (BOD) dominated by self-interested members. I have also repeatedly denounced the lack of adequate legal representation afforded to the Company's shareholders to ensure their interests are protected; this especially considering the self-evident conflict of interest of four of the five Directors.

It is perilous to underestimate the harm self-interested Directors in control of a company can cause to its stakeholders when enabled to pursue their self-interest in a legal vacuum that prevents the stakeholders from making sure their fiduciaries are kept up to their duties. The list of actions and omissions by the Interested Directors detrimental to the Company is long and have been discussed in detail in my previous communications to the CCAA Court, the Company, the Monitor, and the Delaware District and Bankruptcy Courts. Therefore, I will limit the discussion that follows to the most relevant points in relation to the unwarranted secrecy in the Company's CCAA proceedings and the resulting harm to the interests of the Company in general and the shareholders in particular.

THE FACTS

The CCAA Filing

The Board of Directors filed for bankruptcy purportedly to protect the Company from being taken over by the Noteholders and to pursue a $3.4 billion arbitration award against Venezuela for the illegal cancellation of the Las Cristinas mining operating agreement (MOA). The CCAA filing was predicated and approved on the grounds that:

a) The Company needed to stay all legal proceedings while pursuing the ICSID arbitration award and reorganizing its operations to protect the company for the benefit of its stakeholders,

b) The Company's conviction that an arbitration award for as low as $US 500 million would suffice to pay fully all the Company's debt, the arbitration and operating costs involved, and allowed it to return a significant amount to its shareholders. Importantly, the distribution waterfall in the Credit Agreement between the DIP Lender and the Company provided for the residual value of the Net Arbitration Award (NAP) – the net amount of the arbitration award remaining after paying:

   I. the taxes owed
   II. the Directors' and Administration charges,
   III. 100% of the financing debt (including the DIP loan, the unsecure notes and all other verified claims) and the interest owed,
   IV. the projected arbitration, restructuring and operating expenses,
   V. the Management Incentive Plan (MIP),
   VI. the DIP Lender's entitlement to the NAP (35%).

   The residual NAP (65%) accrued to the Company as a going concern, i.e., liquidation was not explicitly planned for then, and was only disclosed in the recent appeal to the Ontario Court of Appeals - ONCA. The Company is required to use fund from the residual NAP to pay the cost of:

   I. the CCAA and the Chapter 15 proceedings, and

   II. the pre- and post-filing legal fees incurred by the noteholders' Trustee to protect their rights in the Ontario courts. The Company defeated the Trustee's legal actions, yet it agreed to cover the Trustee's costs.

c) The pursuit of the arbitration award was warranted by the strong legal case against Venezuela and the Republic's past willingness to settle and pay arbitration awards,

d) The $3.4 billion claim against Venezuela for a gold mine with close to 17 million ounces of proven and probable gold reserves worth $US 20 billion was not guaranteed, but highly probable,

e) The high probability of a successful arbitration award worth as low as $US 500 million and the Company's $US 160 million total debt at the end of 2012 made it appropriate to consider the interest of the shareholders in the initial order,

f) The ultimate objectives of the CCAA filing approval was to:

   I. Enable the Company's financial rehabilitation through the pursuit of the arbitration claim,

   II. Protect and maximize the Company's property,

   III. Ensure the equitable distribution of the Company's assets among its stakeholders.

In the Reasons re Initial Order, Dec. 27, 2011, Justice Newbould stated:

> [20] *The CCAA is intended to provide a structured environment for negotiation of compromises between a debtor company and its creditors for the benefit of both. Where a debtor company realistically plans to continue operating or to otherwise deal with its assets but it requires the protection of the court in order to do so and it is otherwise too early for the court to determine whether the debtor company will succeed, relief should be granted under the CCAA. See Re Lehndorff General Partner*

Ltd, (1993), 17 C.B.R. (3d) 24, per Farley J, the benefit to a debtor company could, depending upon the circumstances, mean a benefit to its shareholders.

The DIP Financing

According to the case records, the DIP financing was meant to enable the pursuit of the arbitration claim to advance the objectives of the CCAA filing. The auction implemented for the DIP financing selection that favored Tenor Capital Management (the DIP Lender) was concluded under the following terms:

a) Total financing commitment for $US 36 million, which was purportedly estimated by the Company's arbitration counsel as the amount required to pursue and collect the claim against Venezuela over a three-year period,

b) 10% p.a. PIK interest and an entitlement to 35% of the NAP,

c) The Board of Directors was reduced from eight to five members and recomposed with two Tenor Management Capital nominee directors (Mr. R. Shah, and Mr. D. Kochav, Tenor's CEO and COO, respectively), two inside directors (Mr. R. Fung and Mr. M. Oppenheimer, the CEO and Chairman of the BOD and a former President and CEO, respectively), and an independent Director (Mr. H. Near until recently, following his resignation, and Mr. S. Marchi currently after being appointed recently to replace Mr. Near),

d) The DIP loan could not be paid off without the DIP Lender's consent and was to be deposited, together with the DIP Lender's share of the NAP, in a bank account in the Company's name for the exclusive benefit of the DIP Lender. Interest earned on the deposited funds accrue to the DIP Lender,

e) The payment of the DIP loan and the DIP Lender' share of the NAP is to be made over time per the DIP Lender's indications for it to avoid breaching the Canadian Criminal Interest Rate statute (Section 347 of the Canadian Criminal Code). Entering into financing arrangement or receiving interest compensation exceeding 60% per annum is deemed a criminal interest rate offence punishable by fine and imprisonment. When calculating breaches of Section 347, Canadian courts rely on actuarial calculations that by law must include all proceeds related to the loan, e.g. interest, any and all fees, fines and penalties, special or contingent compensation (e.g. CVRs) and the like.

f) The Preliminary and the final DIP Credit Agreements foreclosed any possibility for the Company to obtain financing from a source other than Tenor,

g) The Company spent the $US 36 million DIP loan in just over a year and obtained $40 million additional DIP financing from Tenor for an additional 53% share of the NAP, for a total $US 76 million loan and 88% share of the NAP. The latter is estimated at over $US 1 billion, assuming the collection of the full award and the pre- and post-award interest due ($US 1.6 billion),

The arbitration award was issued in April 2016, over four years after the Company filed its ICSID arbitration request.

The Self-interested Actions & Omissions

The Director's self-interested acts and omissions are many, started before the CCAA filing and

continue to this date; some are publicly known, while others remain undisclosed. The list below is a partial list of those publicly known:

a) The terms of the DIP financing agreement were negotiated and agreed between Tenor and members of the Company's former and current BOD months before the CCAA filing. The Company had been exploring long-term financing opportunities for over a year prior to the CCAA filing to fund the pursuit of the arbitration award but chose to pursue Tenor's financing offer.

b) A Management Incentive Plan (MIP) proposed by the Interested Directors potentially worth $US 80 to 100 million was approved to benefit a selected number of the Company's officers and Directors. The MIP was originally tied to the shareholders' share of the NAP and set at 25% of the residual NAP to be distributed to the Company. The dilution of the shareholders' NAP share through the subsequent DIP Loan increases and the resulting increase of the DIP Lender's NAP share from 35% to 88% resulted in a NAP Transfer agreement between the Interested Directors and the DIP Lender geared to make the former whole,

c) The Company passed on the opportunity to execute a writ of attachment it obtained from a New York court in June 2017 on $US 710 million worth of Nomura Bank notes owned by Venezuela and held for sale by Nomura Securities in New York, which would have enable it to a) pay off all the outstanding debt at the time, b) emerge from Insolvency as a going concern and d) continue the arbitration award collection efforts. However, the execution of the attachment was not in the best interest of the DIP Lender and the Interested Directors, given that it would have triggered breaches of Canadian laws by an earlier-than-anticipated execution of the NAP distribution scheme in the Credit Agreement. The Nomura notes attachment was set aside to pursue the first settlement agreement with Venezuela that was announced in mid-September 2017, and which Venezuela did not honor by failing to make an initial $US 25 million payment due the same month.

d) The BOD and the Noteholders entered into a standstill agreement geared to avoid the implementation of a Plan of Arrangement, which involved paying post-petition interest on the unsecured notes at a rate over 20% p.a. versus the 10% contracted rate. Post-petition interest is disallowed by the Canadian bankruptcy laws unless included in a court-approved Plan of Arrangement and limited to the higher of the contracted rate or 7% p.a.,

e) The Company filed for CCAA protection purportedly to pursue the arbitration award and collection to enable it to pay back its debt and the interest due on a dollar for dollar basis, and to emerge from insolvency. However, the terms of the Credit Agreement with Tenor inexorably lead to the liquidation of the Company following the collection and distribution of the arbitration award. This realization seemingly compelled the Ontario Court of Appeals (ONCA) to include the following statement in its shareholders oppression case decision:

> "[25] *In closing, we note that DIP financing was originally conceived to fund operations while a company under CCAA protection restructured. The disposition of this motion should not be interpreted as an endorsement or a rejection of the amendments approved by Newbould J.*"

f) The BOD opposed the approval of and funding for adequate shareholder legal representation in the CCAA proceedings in spite of the fact that four of its five members had conflicting interests as a result of the their self-interested goals as the CEO (R. Shah) and the COO (D. Kovach) of Tenor, and the NAP transfer agreement between R. Fung and M. Oppenheimer and Tenor.

Here is important to note that a Shareholders Committee (the Committee) was formed in March 2018 by several investors concerned by the lack of adequate representation in the CCAA proceedings. The Committee represented over 30% of the outstanding shares through an opt-in process and managed to get legal representation on a contingent basis seeking to redress the harm suffered by the shareholders. The Committee's legal counsel, Gowling WLG LLP, pursued a shareholders' oppression claim before the ONCA in June 2018 that was unsuccessful since, in the Court's opinion, it could not reversed the CCAA Court orders deemed to have caused the harm to the shareholders because the legal action was "too little too late". Gowling's legal representation agreement with the Committee ended after the shareholder oppression decision and, according to a member of the Company's legal counsel team, they withdrew from the case in January 2019.

Other Important Facts

The once probable arbitration award is today a legal certainty. The U.S. Supreme Court's decision to deny certiorari and to review the rulings by the Delaware District Court and the Third Circuit Court of Appeals made these final. In addition, the U.S. Justice Department acknowledged the validity of the Company's claim against Venezuela; while asking the Delaware District Court to delay the execution of a writ of attachment on Venezuela's CITGO shares to avoid conflict with "U.S. interests". While the Company's right to the award is certain, the timing of its collection in full is an open question and depends on the Delaware District Court's decision on the execution of the writ of attachment.

In 2018 – 2019 the Company received cash payments for close to $US 100 million from Venezuela and a portion of Huntington Ingalls' attachment of a Venezuelan Defense Ministry account at the Bank of New York Mellon. Prudently managed, these funds should be enough to fund the company's collection efforts for several years. In addition, the $US 350 million in bonds received from Venezuela and the over $US one billion outstanding award balance to be collected provide the balance sheet strength to secure regular financing if needed.

The Harm to the Shareholders Caused by Excessive and Unwarranted Confidentiality

The ongoing and unprecedented number of sealing orders in the Company's CCAA case have injured and continues to harm the shareholders' interests. The CCAA proceedings have been cloaked in secrecy from the outset, which has prevented the shareholders from protecting their interests. Consequently, the shareholders' interests have been made vulnerable to acts and omission by the BOD that resulted in the shareholders' legitimate expectation being oppressed and their interests being disregarded.

When shareholders decide to invest their retirement funds, college education savings and the like, they hold several expectations that underscore their decision. And if the reasonableness of such expectations is in doubt, rational shareholders who depend on their savings for retirement or their children's education purposes will refrain from exposing their savings to undue risk. It is for good reason that small individual investors hold dear several fundamental expectations:

1.- The right to:

a. Having proportionate participation in earnings,
b. Sharing in the Stock's appreciation,
c. Receiving ongoing honest and transparent communications from the company,
d. Getting and exercising their voting rights,
e. Being able to sell the stock when their legitimate expectations are not met.

2. The reliance on the shareholders' ability to appoint a board of directors fully committed and dedicated to charting the company's future and living up to their duty as fiduciaries to:

a. Protect and advance the company's and its stakeholders' best interest,
b. Act loyally and with care in discharging their responsibilities,
c. Abide by the company's bylaws and governance policies,
d. Plan and chart the long-term viability of the business,
e. Keep the shareholders adequately informed about the affairs of and decisions affecting the company and the shareholders' interests,
f. Protect and use the company's property to advance the long-term operations and viability of the business,
g. Inform and obtain the shareholders' approval for fundamental changes to the company's equity structure.

The CCAA filing and the continued secrecy in the CCAA proceedings have allowed a self-interested BOD to set aside their duties as fiduciaries towards both the company and its shareholders despite two inescapable facts: 1) the Company has had all along the undisputable right to receive compensation potentially worth billions of dollars for the illegal cancellation of the Mining Operation Contract (MOA), and 2) the Company's liabilities at the time of filing for CCAA protection amounted to $US 160 million.

The undisputable right to the arbitration compensation worth at least $US 1.6 billion (the final amount can only be determined once full payment is received and the post-award interest due is calculated) was sealed and delivered by the U.S. Supreme Court's certiorari denial and the U.S. Department of Justice acknowledging the Company's right to collect the award (although the DOJ would rather delay the collection to protect current "U.S. Interests"). Hence, the validity of the award and the right to the corresponding compensation are indisputable; and its full and effective collection is only a question of the efforts and time required to execute it.

The Fiduciary's Duties

> "The basic function of the fiduciary concept is well-known: fiduciaries are obliged to abnegate all self-interest, as well as those of third parties, and focus solely on the best interests of their beneficiaries. This requires that fiduciaries not benefit themselves or third parties, whether financially or otherwise, from their positions as fiduciaries, nor confer a benefit upon third parties at the expense of their beneficiaries' interests if the latter are tangibly related to the fiduciary nature of the parties' interaction. These prohibitions are enforced by the fiduciary rules against conflicts of interest. The rule against conflicts includes both conflicts of interest and conflicts of duty, such that any combination of these two can give rise to the prohibition. The correlation to the strict duties imposed on fiduciaries is that their beneficiaries are entitled to rely upon the fiduciaries' good faith in discharging their duties without the need for this performance to be monitored."

Source: Understanding Fiduciary Duties and Relationship Fiduciarity, Leonard I. Rotman, McGill Law Journal, Volume 62:2 Jun. 2017 p. 984.

While well-known, the proper discharge of a fiduciary's duties is not guaranteed. Holding a fiduciary such as BOD members up to their duties requires ongoing scrutiny by its beneficiaries and the entities entrusted with the protection of the public interest and the enforcement of the applicable laws. Unrestricted ongoing secrecy runs counter to the accountability and transparency required towards this end. Only under such conditions can a fiduciary carry out detrimental actions and omissions against the interests of his beneficiaries, which in the instant case are the Company, its estate and its shareholders. This is made self-evident by the BOD's known acts and omissions listed below:

1. Freezing out of and depriving the shareholders of their proportionate rights to share the fruits of their US$ 500 million investment in the company to finance the development of the Venezuelan mining operation, while
    a. Making misrepresentations about the DIP financing process not being allowed to exceed more than half of equity participation by the selected DIP lender,
    b. Not allowing the shareholders to participate in the DIP financing process to enable them to maintain their proportionate rights despite the DIP Lender's commitment to do so.
2. Implementing a total and continued shareholder black-out that started right before the CCAA filing. The Company:
    a. Provided no notice to shareholders of the impending and the executed CCAA filing. It purportedly published a notice ex-post in two journals and on its website that neither I nor hundreds of individual investors ever saw or heard about,
    b. Requested and obtained a court order to discontinue the annual shareholders' meeting and reporting the Company's state of affairs,
    c. Issued no information to the shareholders regarding the BOD's plans and the Company's financial status neither prior nor after the CCAA filing,
    d. Allowed the delisting of the Company's shares from all stock exchanges even though listing could be transferred and maintained on the Pink Sheets and OTC markets. This prevented the shareholders from exercising the last option they have to extricate themselves from a BOD that disregards their interests,
    e. Allowed and enabled the disproportionate dilution of the shareholder's equity holdings that reduced their $US 500 million investment in the Company from 100% to less than a 10% minority interest for a $US 76 million DIP loan and by allowing the DIP Lender to convert its CVR to 88% of the common stock.
    f. Granted the DIP Lender stock voting rights prior to exercising the CVR conversion to common stock and diluted the shareholders' pecuniary rights without any consideration for Company property not covered by the Credit Agreement (the mining data) and the tax benefits available only for the benefit of the shareholders that incurred the loss (the tax loss carry-forward), which by Canadian tax law expire upon a change of control,
    g. Approved the gifting of estate property worth hundreds of millions of dollars by giving away the mining data to Venezuela (over US$ 300 million), paying

excessive post-petition interest ($US 50 million), giving up the pre- and post-award interest on the arbitration award (US$ 340 million), allowing the DIP Lender to benefit from the available tax loss carry-forward deductions ($US 120 million) and risking the disallowance of this tax benefit upon a change in control at the expense of the legacy shareholder,

3. Failed to discharge its responsibility to adequately manage the financial and operating risks involved with the gold mining investment in Venezuela:
    a. The expropriation thread was made public by high-ranking Venezuelan government officials years prior to its execution,
    b. The BOD failed to prepare the company to deal with and provide for the resources needed to protect its rights. BODs of companies in similar situations (e.g. Gold Reserve and Rusoro Mining) planned and executed measures to protect the companies' interest and those of their stakeholders. Thus, these companies:
        i. Were adequately financed to pursue the arbitration award and collection,
        ii. Maintained their stock listing on the U.S. and Canadian stock markets,
        iii. Continue to provide timely reports on the status of the company's efforts to collect the arbitration award.
    c. The BOD failed to take action to protect the Company's property and rights after Venezuela rejected the approval of the environmental permit required to operate the mine, which effectively cancelled the MOA. The BOD waited two years to file for ICSID arbitration, three times longer than Rusoro and twice longer than Gold Reserve, which filed the arbitration claims as soon as the required six-month arbitration notice waiting period expired,

    According to the CBCA, the directors' duty of care requires a director to "exercise the care, diligence and skill that a reasonably prudent individual would exercise in comparable circumstances." The failure to prepare the company to deal with the impending expropriation is a clear breach of the duty of care.

4. Enabled the DIP Lender's de facto control over the Company through the DIP loans and the NAP sharing agreement with two non-independent Company Directors:
    a. The interim and final DIP loan terms precluded any DIP financing from a source other than Tenor and thereby gave Tenor de facto control over the company from that point onwards through the no-cancellation clause, the CVR conversion to common stock, the four interested directors on a five-directors BOD,
    b. The NAP sharing agreement provides for over US$ 80 million to R. Fung (CEO and Chairman) and M. Oppenheimer to compensate them for the diminished Management Incentive Plan (MIP) as a result of the dilution of the estate's residual NAP share from 65% to 12%. The MIP share was set at up to 25% of the residual NAP share,

c. The NAP sharing agreement made the two non-independent Company Directors beholden to Tenor's interests. This resulted in four of the five BOD members becoming Interested Directors,

d. Contrary to well-established corporate governance practice, the Company's by-laws allow BOD members to pursue their own self-interest if they a) disclose their self-interest and b) comply with the CBCA rules in that regard. However, the CBCA Director abdicates his duty to enforce the mandate to regulate Canadian business corporations and protect the integrity of the business environment in the public interest once a company files for bankruptcy protection. The Ontario Securities Commission (ONSC) does the same. The CBCA and the ONSC Directors do so by transferring their responsibilities to the CCAA/BIA courts, whose function and mandate is not necessarily to protect the shareholders' interests. This is one of the reasons why the U.S. Bankruptcy Code requires the appointment of a Trustee to protect the estate's interests.

5. The Supreme Court of Canada noted in *Peoples Department Stores v. Wise* that the statutory fiduciary duty under the CBCA (and similar provincial statutes) requires that directors:

I. Act honestly and in good faith vis-à-vis the corporation,

II. Respect the trust and confidence that have been reposed in them to manage the assets of the corporation in pursuit of the realization of the objects of the corporation,

III. Avoid conflicts of interest with the corporation,

IV. Not abuse their position for personal benefit,

V. Maintain the confidentiality of information they acquire by virtue of their position, and

VI. Serve the corporation selflessly, honestly and loyally.

Section 122(1) of the CBCA provides that:

Every director and officer of a corporation in exercising their powers and discharging their duties shall act honestly and in good faith with a view to the best interests of the corporation.

a) At a minimum, in advancing the "best interests of the corporation" the directors' fiduciary duty requires that they:

I. Advance the long-term interests of the corporation, i.e. protect its going-concern status,

II. Ensure that the corporation meets its statutory obligations, e.g. the CBCA and the ONSC regulations,

III. Protect and manage prudently the company's property,

IV. Provide for adequate corporate governance and business oversight,

b) By advancing the DIP Lender's interests to the exclusion of the other stakeholders, the Interested Directors abdicated their duty of care and loyalty owed to the Company and, by extension, unfairly disregarded the interests of the shareholders and oppressed their legitimate and reasonable expectations as investors in the company,

c) Other salient acts and omissions by the BOD in disregard of their fiduciary duties, which started with the bankruptcy filing and continued to date, are several and well-documented:

I. Replacing the shareholders' approved Rights plan with a BOD approved Rights plan tailor-made to facilitate the DIP Lender's takeover of the company,

II. Failing to abide to the company's bylaws and Corporate Governance guidelines and thus exposing it to breaches of law and financial losses by:

i. Hiring Venezuelan advisors to represent the company in settlement agreement negotiations with high ranking officials on the OFAC's Specially Designated Nationals and Blocked Persons List (SDN) for corruption and human rights violations,

ii. Indebting the company for and paying US$ 30 million to the Advisors that negotiated the two failed settlement agreements that yielded US$ 75 million in effective payments. This even though the Company:

1. had filed for bankruptcy protection,

2. was neither authorized by the CCAA Court to spend limited resources on, nor had it secured the funds needed to cover the cost of pursuing a settlement with Venezuela long before the ICSID arbitration panel rendered its decision,

3. made the payment as soon as the US$ 75 million cash payment from Venezuela was received, without any detailed documentation of the services provided and any certainty as to when the it would receive additional payments, and was incommensurate with the results obtained,

4. raised the spectrum of Foreign Corrupt Practices Act (FCPA) violations in a country notorious for pay-for-play government corruption, which has earned it a distinctive 16/100 score on a declining scale (with 87/100 [Denmark] being the least and 9/100 [Somalia] the most corrupt country) that measures the perceived levels of public sector corruption in 180 countries / territories around the world in Transparency International's 2019 survey.

Sir John Dalberg-Acton once said that "*Power tends to corrupt, and absolute power corrupts absolutely*." His conclusion is well-founded by world history and validated by the many laws and regulations put in place to curtail its often-nefarious effects. Unchecked power to pursue one's self-interests is a great incentive to advance them and to expose other parties to unwarranted vulnerability. Trust, but verify - a Russian proverb that became internationally known when used by President Reagan regarding the nuclear arms treaty with Russia,

encapsulates the reason why checks and balances are needed when conflicting interests are in play. Unwarranted ongoing secrecy in a court of law is in fact the antithesis of the open court principle. As noted by the Supreme Court of Canada in *Vancouver Sun (Re)*, this principle enhances the public's confidence in the justice system:

> *"Public access to the courts guarantees the integrity of judicial processes by demonstrating "that justice is administered in a non-arbitrary manner, according to the rule of law". Openness is necessary to maintain the independence and impartiality of courts. It is integral to public confidence in the justice system and the public's understanding of the administration of justice. Moreover, openness is a principal component of the legitimacy of the judicial process and why the parties and the public at large abide by the decisions of courts."*

The higher the secrecy in court proceedings, the bigger the potential for harm to the more vulnerable parties involved. The parties with a sizable stake in a legal proceeding and the wherewithal that allowed them to acquire that stake in the first place can and will protect their interests in court to the extent necessary. Individual shareholders that invest their retirement and the children's college funds cannot afford to do the same; and rely on the CBCA, the ONSC and other regulators appointed for that purpose. In the Company's CCAA proceeding, the harm befell the individual equity investors, who could not afford to have adequate legal representation in a proceeding currently in its eighth year, given the high entry barriers erected by the Interested Directors from the outset. The reason for this can be linked back to the successful efforts by the Interested Directors to foreclose all communications with the shareholders to keep them in the dark to advance their own interests, while running the statute of limitations clock out to scape responsibility.

Sincerely,

Adelso Adrianza

cc: The Honorable Justice J. Hainey, Ontario Superior Court of Justice
The Honorable Judge L. Selber Silverstein, Delaware U.S. District Bankruptcy Court
The Honorable Judge L Stark, Delaware U.S. District Court
Mr. David Byers - via e-mail (dbyers@stikeman.com)
Mr. Robert Chadwick – via e-mail (rchadwick@goodmans.ca)
Mr. Alexander Cobb – via e-mail (acobb@osler.com)
Mr. Brian Denega – via e-mail (brian.m.denega@ca.ey.com)
Mr. Robert Fung – via e-mail (rfung@crystallex.com)
Mr. Sergio Marchi – via e-mail (mail@crystallex.com)
Mr. Timothy Pinos – via e-mail (tpinos@casselsbrock.com)
Mr. Clifton Prophet - via e-mail (Clifton.Prophet@Gowlings.com)
Mr. Jay A. Swartz - via e-mail (JSwartz@DWPV.com)

ADELSO ADRIANZA

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VIA CERTIFIED MAIL

To: The Honorable George R. Strathy, Chief Justice of Ontario

cc: Honorable Justice J. Hainey, Ontario Superior Court of Justice
The Honorable Judge L. Selber Silverstein, Delaware U.S. District Bankruptcy Court
The Honorable Judge L. Stark, Delaware U.S. District Court

VIA E-MAIL

cc: Mr. David Byers - via e-mail (dbyers@stikeman.com)
Mr. Robert Chadwick – via e-mail (rchadwick@goodmans.ca)
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Mr. Brian Denega – via e-mail (brian.m.denega@ca.ey.com)
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U.S.M.S. X-RAY

$8.00

The Honorable
Chief Judge Leonard Stark
U.S. District Court - Delaware
J. Caleb Boggs Federal Building
844 N. King Street
Unit 26, Room 6124
Wilmington, DE 19801-3555

THIS IS EXHIBIT "F"
TO THE AFFIDAVIT OF SCOTT REID
SWORN BEFORE ME OVER VIDEOCONFERENCE
ON MAY 28, 2021

Commissioner for Taking Affidavits

Ontario Securities Commission

Please note
The default status of a reporting issuer shown on the list is as of the date of the last update indicated. More current information may be obtained by calling the Contact Centre at 416-593-8314 or 1-877-785-1555 (Toll Free).

Last Updated on May 28, 2021 at 08:04:22 am

Legend	
1a.	Failure to file annual financial statements.
1b.	Failure to file interim financial statements.
1c.	Failure to file an annual or interim management's discussion and analysis (MD&A) or annual or interim management report of fu nd performance (MRFP).
1d.	Failure to file an Annual Information Form (AIF).
1e.	Failure to file a certification of annual or interim filings required by Multilateral Instrument 52 -109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (MI 52-109).
1f.	Failure to file required proxy materials or a required information circular.
1g.	Failure to file an issuer profile supplement on the System for Electronic Disclosure by Insiders (SEDI) .
1h.	Failure to file a material change report.
1i.	Failure to provide a written update after filing a confidential report of a material change.
1j.	Failure to file a business acquisition report.
1k.	Failure to file annual oil and gas disclosure prescribed by National Instrument 51 -101 *Standards of Disclosure of Oil and Gas Activities* (NI 51-101) or technical reports for a mineral project required under NI 43-101 *Standards of Disclosure for Mineral Projects* (NI 43-101).
1l.	Failure to file a mandatory news release.
1m.	Failure to file corporate governance disclosure as required by National Instrument 58 -101 *Disclosure of Corporate Governance Practices.*
1n.	Failure to file audit committee disclosure as required by Multilateral Instrument 52 -110 *Audit Committees* or BC Instrument 52-509 *Audit Committees*.
1o.	Failure to include disclosure in an issuer's MD&A relating to disclosure controls and procedures and their effectiveness that is referred to in a certificate filed under MI 52-109.
2a.	Financial statements of the reporting issuer, or the auditors' report accompanying the financial statements, do not comply wi th the requirements of NI 51-102 *Continuous Disclosure Obligations* (NI 51-102), National Instrument 81-106 *Investment Fund Continuous Disclosure* (NI 81-106) or National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* .
2b.	The reporting issuer has acknowledged that its financial statements, or the auditors' report accompanying the financia l statements, may no longer be relied upon.
2c.	The reporting issuer's AIF, MD&A, MRFP, information circular, or business acquisition reports do not contain information for each of the content items required by NI 51-102 or NI 81-106.
2d.	The reporting issuer's technical disclosure or other reports do not comply with the disclosure requirements of NI 43 -101 or NI 51-101.
3.	Failure to pay a fee required by the Act or the regulations.
4.	Failure to comply with any other requirement related to continuous disclosure.

Ontario Securities Commission

Commission des valeurs mobilières de l'Ontario

Issuer Name Nom d'émetteur assujetti	Previous Name Nom précédent	Principal Jurisdiction Autorité principale	Category Catégorie	In Default En défaut	Nature of Default Nature du défaut	Cease Traded Ordonnance d'interdiction d'opérations	Order Date Date de l'ordonnance (YYYY/MM/DD)
Crescent Point Energy Corp.		AB	Non-InvFund	--	--	--	--
Crescita Therapeutics Inc.		ON	Non-InvFund	--	--	--	--
Cresco Labs Inc.		BC	Non-InvFund	--	--	--	--
Crest Resources Inc.		BC	Non-InvFund	--	--	--	--
Crestview Exploration Inc.		BC	Non-InvFund	--	--	--	--
Crew Energy Inc.		AB	Non-InvFund	--	--	--	--
Crombie Real Estate Investment Trust		NS	Non-InvFund	--	--	--	--
Cronos Group Inc.	PharmaCan Capital Corp.; Searchtech Ventures Inc.	ON	Non-InvFund	--	--	--	--
Cross Border Capital I Inc.		ON	Non-InvFund	--	--	--	--
Cross River Ventures Corp.		BC	Non-InvFund	--	--	--	--
Crossover		--	Non-InvFund	--	--	Yes/Oui	1984/12/05
Crosswinds Holdings Inc.	C.A. Bancorp Inc.; Masthead Resources Ltd.	ON	Non-InvFund	--	--	--	--
Crown Capital Partners Inc.		AB	Non-InvFund	--	--	--	--
Crown Point Energy Inc.	Crown Point Ventures Ltd.	AB	Non-InvFund	--	--	--	--
Crown Trust Company		--	Non-InvFund	--	--	Yes/Oui	1983/06/17
Crownbridge Industries Inc.		--	Non-InvFund	--	--	Yes/Oui	1992/02/06
CRS Electronics Inc.	Podium Capital Corporation	ON	Non-InvFund	Yes/Oui	1a, 1b, 1c, 1e, 3	Yes/Oui	2016/05/05
CRS Preferred NT Ltd.		ON	Non-InvFund	Yes/Oui	1a, 1b	--	--
Cruz Cobalt Corp.		BC	Non-InvFund	--	--	--	--
Cryptologic Corp.	Vogogo Inc.; SouthTech Capital Corporation	ON	Non-InvFund	--	--	--	--
CryptoStar Corp.	Aumento Capital VI Corporation	ON	Non-InvFund	--	--	--	--
Crystal Graphite Corporation		BC	Non-InvFund	Yes/Oui	1a, 1b, 1c, 1e, 3	Yes/Oui	2006/09/15
Crystal Peak Minerals Inc.	EPM Mining Ventures Inc.; Westhope Capital Corp.; Reed Lake Exploration Ltd.	ON	Non-InvFund	--	--	--	--
Crystallex International Corporation		ON	Non-InvFund	Yes/Oui	1c, 1e, 3	Yes/Oui	2012/04/13
CST Advantage Plan	Canadian Scholarship Trust Group Savings Plan 2001	ON	InvFund	--	--	--	--
CST Bright Plan	Bright Plan	ON	InvFund	--	--	--	--

THIS IS EXHIBIT "G"
TO THE AFFIDAVIT OF SCOTT REID
SWORN BEFORE ME OVER VIDEOCONFERENCE
ON MAY 28, 2021

Commissioner for Taking Affidavits

TRUST INDENTURE

made as of December 23, 2004

Between

CRYSTALLEX INTERNATIONAL CORPORATION
as issuer

and

CIBC MELLON TRUST COMPANY
as trustee

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TRUST INDENTURE

This Indenture is made as of December 23, 2004, between:

CRYSTALLEX INTERNATIONAL CORPORATION
a corporation existing under the laws of Canada (the "Corporation")

and

CIBC MELLON TRUST COMPANY
a trust company existing under the laws of Canada,
(the "Trustee")

RECITALS

A. The Corporation is authorized and wishes to create and issue Notes in the manner provided in this Indenture.

B. All necessary resolutions of the Directors have been duly passed and other proceedings taken and conditions complied with to make this Indenture valid and binding on the Corporation.

C. The foregoing recitals are made as representations and statements of fact by the Corporation and not by the Trustee.

NOW THEREFORE THIS TRUST INDENTURE WITNESSES and it is hereby covenanted, agreed and declared as follows.

SECTION 1 – INTERPRETATION

1.1 Definitions

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

(1) ***Affiliate*** has the meaning given thereto in the *Securities Act* (Ontario).

(2) ***Authorized Investment*** means a short term, interest-bearing or discount debt obligation issued or guaranteed by the government of Canada or of a province of Canada or by a Canadian chartered bank (which may include an Affiliate of the Trustee), provided that such obligation is assigned a rating not lower than R-1 (mid) by Dominion Bond Rating Service Limited (or equivalent rating by its successor) or an equivalent rating by Standard and Poor's Corporation (or its successor).

(3) ***BEO Participants*** means institutions which participate directly or indirectly in the Depository's book entry registration system for Notes.

(4) ***Board*** means the board of directors of the Corporation.

(5) ***Book Entry Only Notes*** means Notes of a Series which, in accordance with the terms applicable to such Series, are to be held only by or on behalf of the Depository.

(6) ***Branch*** means the Venezuelan permanent establishment through which the Corporation is carrying out the Las Cristinas Project.

(7) ***Branch Indebtedness*** means Indebtedness incurred by the Branch to fund the Las Cristinas Project.

(8) ***Branch Secured Indebtedness*** means Branch Indebtedness secured by cash or Cash Equivalents.

(9) ***Business Day*** means each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day when banking institutions in Toronto are authorized or obligated by law or regulation to close.

(10) ***Capital Lease*** means, with respect to a Person, a lease or other arrangement in respect of real or personal property that is required to be classified and accounted for as a capital lease on a balance sheet of the Person in accordance with GAAP.

(11) ***Capital Lease Obligation*** means, with respect to a Person, the obligation of the Person to pay rent or other amounts under a Capital Lease.

(12) ***Cash Equivalents*** means treasury bills; bankers' acceptances; publicly traded shares listed on the Toronto Stock Exchange or the New York Stock Exchange of a corporation with a market capitalization of at least U.S. $500 million; commercial paper maturing not more than 12 months from the date of issue and rated at least AA by Standards & Poor's Corporation or Aa by Moody's Investors Services; and debt Securities denominated in U.S dollars or Canadian dollars having not more than one year until final maturity, listed on a recognized stock exchange and rated at least AA by Standard & Poor's Corporation or Aa by Moody's Investors Services.

(13) ***CDS*** means The Canadian Depository for Securities Limited and its successors.

(14) ***Certified Resolution*** means a copy of a resolution certified by a senior officer of the Corporation to have been duly passed by the Directors and to be in full force and effect on the date of such certification.

(15) ***Change of Control*** means a Corporation Change of Control or a Project Change of Control.

(16) ***Consolidated Net Worth*** means the shareholders equity of the Corporation and its Subsidiaries determined on a consolidated basis in accordance with GAAP.

(17) ***Contingent Liability*** means, with respect to a Person, any agreement, undertaking or arrangement by which the Person guarantees, endorses or otherwise becomes or is contingently liable upon (by direct or indirect agreement, contingent or other, to provide funds for payment, to supply funds to, or otherwise to invest in, a debtor, or otherwise to assure a creditor against loss) the obligation, debt or other liability of any other Person (other than by endorsements of instruments in the course of collection), or guarantees the payment of dividends or other distributions upon the shares of any other Person. The amount of any Contingent Liability will, subject to any limitation contained therein, be deemed to be the outstanding principal amount (or maximum principal amount, if larger) of the obligation, debt or other liability to which the Contingent Liability relates.

(18) ***Convertible Debt*** means Indebtedness that is convertible into or exchangeable for common shares of the Corporation.

(19) ***Corporate Trust Office*** means the principal trust office of the Trustee at which, at any particular time, its corporate trust business relative to this Indenture is administered. At the date hereof, the Corporate Trust Office of the Trustee is located at 320 Bay Street, P.O. Box 1, Toronto, Ontario, M5H 4A6.

(20) ***Corporation*** means Crystallex International Corporation and its successors and assigns.

(21) ***Corporation Change of Control*** means the occurrence of any of the following events:

(a) there is a report filed on Schedule 13D, 14D-1 or 14D-1F (or any successor schedule, form or report) pursuant to the United States *Securities Exchange Act of 1934*, as amended (the "Exchange Act"), disclosing that any Person, other than the Corporation, any Subsidiary of the Corporation or any employee benefit plan of either the Corporation or any Subsidiary of the Corporation, has become the beneficial owner (as the term "beneficial owner" is defined under Rule 13d-3 or any successor rule or regulation promulgated under the Exchange Act) of Voting Shares representing more than 50% of the total voting power attached to all Voting Shares of the Corporation then outstanding; provided, however, that a person shall not be deemed to be the beneficial owner of, or to own beneficially, (1) any Securities tendered pursuant to a tender or exchange offer made by or on behalf of such Person until such tendered securities are accepted for purchase or exchange thereunder, or (2) any Securities if such beneficial ownership (i) arises solely as a result of a revocable proxy delivered in response to a proxy or consent solicitation made pursuant to applicable law, and (ii) is not also then reportable on Schedule 13D (or any successor schedule) under the Exchange Act;

(b) there is a report filed with any securities commission or securities regulatory authority in Canada, disclosing that any offeror (as the term "offeror" is defined in Section 89(1) of the *Securities Act* (Ontario) for the purpose of Section 101 of the *Securities Act* (Ontario), or any successor provision to either of the foregoing), other than the Corporation, any Subsidiary of the Corporation or any employee benefit plan of either the Corporation or any Subsidiary of the Corporation, has

acquired beneficial ownership (within the meaning of the *Securities Act* (Ontario)) of, or the power to exercise control or direction over, or Securities convertible into, any voting or equity shares of the Corporation, that together with the offeror's securities (as the term "offeror's securities" is defined in Section 89(1) of the *Securities Act* (Ontario) or any successor provision thereto in relation to the voting or equity shares of the Corporation) would constitute Voting Shares of the Corporation representing more than 50% of the total voting power attached to all Voting Shares of the Corporation then outstanding;

(c) there is consummated any amalgamation, consolidation, statutory arrangement (involving a business combination) or merger of the Corporation (1) in which the Corporation is not the continuing or surviving corporation or (2) pursuant to which any Voting Shares of the Corporation would be reclassified, changed or converted into or exchanged for cash, Securities or other property, other than (in each case) an amalgamation, consolidation, statutory arrangement or merger of the Corporation in which the holders of the Voting Shares of the Corporation immediately prior to the amalgamation, consolidation, statutory arrangement or merger have, directly or indirectly, more than 50% of the Voting Shares of the continuing or surviving corporation immediately after such transaction; or

(d) any Person or group of Persons shall succeed in having a sufficient number of its nominees elected to the Board of the Corporation such that such nominees, when added to any existing director remaining on the Board after such election who was a nominee of or is an affiliate or related Person of such Person or group of Persons, will constitute a majority of the Board.

(22) ***Corporation Counsel*** means, at any time, legal counsel retained by the Corporation.

(23) ***Corporation's Auditors*** means, at any time, a firm of chartered accountants duly appointed as auditors of the Corporation.

(24) ***Debt Accounts*** has the meaning ascribed to such term in Section 8.2.

(25) ***Defeasance Option*** has the meaning ascribed to that term in Section 8.5.

(26) ***Deferred Purchase Price Obligation*** means, with respect to a Person, an obligation issued, incurred or assumed by the Person in connection with the acquisition by the Person of an asset in respect of the deferred purchase price of the asset.

(27) ***Depository*** means CDS or such other Person as is designated in writing by the Corporation to act as depository in respect of a Series of Book Entry Only Notes.

(28) ***Directors*** means the directors of the Corporation or, whenever duly empowered by a resolution of the directors of the Corporation in accordance with applicable law, a committee of the directors of the Corporation, and reference to action by the Directors means action by the directors of the Corporation or action by any such committee.

(29) ***Environmental Laws*** means all federal, provincial, state, municipal, county, local and other laws, statutes, codes, ordinances, by-laws, rules, regulations, policies, guidelines, certificates, approvals, permits, consents, directions, standards, judgments, orders and other authorizations, as well as common law, civil and other jurisprudence or authority, in each case domestic or foreign, having the force of law at any time relating in whole or in part to any Environmental Matters and any permit, order, directions, certificate, approval, consent, registration, licence or other authorization of any kind held or required to be held in connection with any Environmental Matters.

(30) ***Environmental Matters*** means:

(a) condition or substance, heat, energy, sound, vibration, radiation or odour that may affect any component of the earth and its surrounding atmosphere or affect human health or any plant, animal or other living organism; and

(b) any waste, toxic substance, contaminant or dangerous good or the deposit, release or discharge of any thereof into any component of the earth and its surrounding atmosphere.

(31) ***Event of Default*** has the meaning ascribed to such term in Section 7.1.

(32) ***Extraordinary Resolution*** has the meaning ascribed to such term in Section 9.14.

(33) ***Financial Instrument Obligations*** means, with respect to any Person, obligations arising under:

(a) interest rate swap agreements, forward rate agreements, floor, cap or collar agreements, futures or options, insurance or other similar agreements or arrangements, or any combination thereof, entered into or guaranteed by the Person where the subject matter thereof is interest rates or the price, value or amount payable thereunder is dependent or based upon interest rates or fluctuations in interest rates in effect from time to time (but excluding conventional floating rate indebtedness);

(b) currency swap agreements, cross-currency agreements, forward agreements, floor, cap or collar agreements, futures or options, insurance or other similar agreements or arrangements, or any combination thereof, entered into or guaranteed by the Person where the subject matter thereof is currency exchange rates or the price, value or amount payable thereunder is dependent or based upon currency exchange rates or fluctuations in currency exchange rates in effect from time to time; and

(c) any agreement for the making or taking of any commodity (including coal, natural gas, oil and electricity), swap agreement, floor, cap or collar agreement or commodity future or option or other similar agreement or arrangement, or any combination thereof, entered into or guaranteed by the Person where the subject

matter thereof is any commodity or the price, value or amount payable thereunder is dependent or based upon the price or fluctuations in the price of any commodity;

or any other similar transaction, including any option to enter into any of the foregoing, or any combination of the foregoing, in each case to the extent of the net amount due or accruing due by the Person under the obligations determined by marking the obligations to market in accordance with their terms.

(34) ***GAAP*** means, as at any date of determination, accounting principles generally accepted in Canada.

(35) ***Global Note*** means a Note representing all or a portion of the aggregate principal amount of a Series of Notes.

(36) ***Indebtedness*** means, with respect to a Person, without duplication:

(a) all obligations of the Person for borrowed money, including obligations with respect to bankers' acceptances and contingent reimbursement obligations relating to letters of credit and other financial instruments;

(b) all Financial Instrument Obligations of the Person;

(c) all Deferred Purchase Price Obligations of the Person;

(d) all Capital Lease Obligations and Purchase Money Obligations of the Person; and

(e) all Contingent Liabilities of the Person with respect to obligations of another Person if such obligations are of the type referred to in paragraphs (a) to (d).

(37) ***Inter-Company Indebtedness*** means, with respect to the Corporation, indebtedness of the Corporation to a Subsidiary and, with respect to a Subsidiary, indebtedness of the Subsidiary to the Corporation or to another Subsidiary.

(38) ***Interest Payment Date*** means, for a Series of interest-bearing Notes, a date on which interest is due and payable in accordance with the terms pertaining to such Series.

(39) ***Las Cristinas Project*** means the acquisition, exploration, development and exploitation of the mineral deposits located in the areas of the gold mineral concessions known as Cristinas 4, 5, 6 and 7 in the Municipality of Sifontes, Bolivar State, Venezuela.

(40) ***Maturity Date*** means, with respect to a Note, the date on which the principal of such Note becomes due and payable as therein or herein provided, whether at the Stated Maturity thereof or by declaration of acceleration, call for redemption or otherwise.

(41) ***Non-Recourse Debt*** means, with respect to a Person, any indebtedness incurred to finance the creation, development, construction or acquisition of an asset of the Person (and any

extensions, renewals or refunding of any such indebtedness) provided that the recourse of the obligee thereof against the Person is limited in all circumstances (other than in respect of false or misleading representations or warranties) to the asset (including all rights and benefits related to or arising out of the asset).

(42) ***Non-Speculative Financial Instrument Obligations*** means, with respect to a Person, Financial Instrument Obligations of the Person entered into by the Person in the ordinary course of business for risk management purposes and not for speculative or capital raising purposes. For greater certainty, Non-Speculative Financial Instrument Obligations include Financial Instrument Obligations entered into by the Corporation or a Subsidiary in accordance with the terms of the Branch Indebtedness (or by a Subsidiary under the terms of Non-Recourse Debt).

(43) ***Notes*** means unsecured notes of the Corporation issued or to be issued pursuant to this Indenture and represented in the form of fully registered Global Notes held by or on behalf of the Depository.

(44) ***Noteholder*** or ***Holder*** means, at a particular time, a Person entered in the Register as a holder of one or more Notes outstanding at such time.

(45) ***Noteholders' Request*** means, in respect of a particular Series, an instrument signed in one or more counterparts by Noteholders holding not less than 25% of the aggregate principal amount of the outstanding Notes of such Series or, in respect of all Notes, an instrument signed in one or more counterparts by Noteholders holding not less than 25% of the aggregate principal amount of all outstanding Notes, in each case requesting or directing the Trustee to take or refrain from taking the action or proceeding specified therein.

(46) ***Obligations*** means, without duplication, with respect to a Person, all items which, in accordance with GAAP, would be included as liabilities on the liability side of the balance sheet of the Person and all Contingent Liabilities of the Person.

(47) ***Officers' Certificate*** means a certificate of the Corporation signed by any two officers of the Corporation in their capacities as such officers and not in their personal capacities.

(48) ***Ordinary Resolution*** has the meaning ascribed to such term in Section 9.13.

(49) ***Paying Agent*** means a Person authorized by the Corporation to pay the principal, Premium or interest payable in respect of any Notes on behalf of the Corporation, and may include the Trustee.

(50) ***Permitted Capital Lease Obligations*** means, with respect to a Subsidiary, the obligation of the Subsidiary to pay rent or other amounts under a Capital Lease, other than a Capital Lease entered into as part of a Sale and Leaseback Transaction unless:

(a) the property which is the subject matter of the Sale and Leaseback Transaction is owned by the Subsidiary;

(b) the proceeds of sale of such property have been determined by the board of directors of the Subsidiary to be at least equal to the fair value of such property; and

(c) either of the following is applicable:

(1) at the time of the Sale and Leaseback Transaction, the cost of acquiring the property which is the subject matter of the Sale and Leaseback Transaction could have been financed pursuant to a Purchase Money Obligation; or

(2) within 120 days after completion of the Sale and Leaseback Transaction, the Subsidiary reduces its Indebtedness, other than Indebtedness permitted pursuant to Section 6.9 (a) to (d), by an amount at least equal to the net proceeds from the Sale and Leaseback Transaction.

(51) ***Permitted Encumbrances*** means:

(a) any Security Interest securing Obligations of a Subsidiary that:

(1) exists before and at the time that the Subsidiary becomes a Subsidiary;

(2) was not created or assumed in contemplation or as a result of the Subsidiary becoming a Subsidiary; and

(3) immediately before and after the Subsidiary becomes a Subsidiary, does not attach to the assets or secure Obligations of the Corporation or any other Subsidiary;

(b) any Purchase Money Mortgage or Capital Lease of the Corporation or a Subsidiary;

(c) any Security Interest in an asset created or assumed by the Corporation or a Subsidiary to secure Non-Recourse Debt of the Corporation or the Subsidiary in respect of such asset;

(d) any Security Interest in cash, marketable debt Securities or accounts receivable created or assumed by the Corporation or a Subsidiary to or in favour of a bank or other lending institution to secure indebtedness of the Corporation or the Subsidiary that is payable on demand or that, on the date of issue or assumption of liability, has a term to maturity (including any right of extension or renewal) of 18 months or less and that is incurred by the Corporation or the Subsidiary in the ordinary course of business and for the purpose of carrying on the same;

(e) any Security Interest in cash or marketable debt Securities created or assumed by the Corporation to secure Non-Speculative Financial Instrument Obligations of

the Corporation if the aggregate value of such cash and marketable debt Securities is not more than 105% of the aggregate amount of the Non-Speculative Financial Instrument Obligations;

(f) any Security Interest created or assumed by a Subsidiary in favour of the Corporation or any Wholly-Owned Subsidiary;

(g) any Security Interest in an asset acquired by the Corporation or a Subsidiary that secures Obligations of any other Person, whether or not such Obligations are assumed by the Corporation or the Subsidiary, provided that the Security Interest:

(1) exists before and at the time that the asset is acquired by the Corporation or the Subsidiary;

(2) was not created or assumed in contemplation or as a result of the asset being acquired by the Corporation or the Subsidiary; and

(3) immediately before and after the asset is acquired by the Corporation or the Subsidiary, does not attach to the assets or secure Obligations of the Corporation or any other Subsidiary;

(h) any Security Interest in cash or marketable debt Securities in a sinking fund account established by the Corporation in support of a Series of Notes;

(i) any Security Interest or deposit under workers' compensation, social security or similar legislation or in connection with bids, tenders, leases, contracts or expropriation proceedings or to secure public or statutory obligations, surety and appeal bonds or costs of litigation where required by law;

(j) any Security Interest or privilege imposed by law, such as builders', mechanics', material men's, carriers', warehousemen's and landlords' liens and privileges; or any Security Interest or privilege arising out of judgments or awards with respect to which the Corporation or a Subsidiary at the time is prosecuting an appeal or proceedings for review and with respect to which it has secured a stay of execution pending such appeal or proceedings for review; or any Security Interest for taxes, assessments or governmental charges or levies not at the time due and delinquent or the validity of which is being contested at the time by the Corporation or a Subsidiary in good faith; or any undetermined or inchoate Security Interest or privilege incidental to current operations that has not been filed pursuant to law against the Corporation or a Subsidiary or that relates to obligations not due or delinquent; or the deposit of cash or securities in connection with any Security Interest or privilege referred to in this paragraph (j);

(k) any right reserved to or vested in any municipality or governmental or other public authority by the terms of any lease, licence, franchise, grant or permit held or acquired by the Corporation or a Subsidiary, or by any statutory provision, to

terminate the lease, licence, franchise, grant or permit or to purchase assets used in connection therewith or to require annual or other periodic payments as a condition of the continuance thereof;

(l) any Security Interest or right of distress reserved in or exercisable under any lease for rent to which the Corporation or a Subsidiary is a party and for compliance with the terms of the lease;

(m) any Security Interest created or assumed by the Corporation or a Subsidiary in favour of a public utility or any municipality or governmental or other public authority when required by the utility, municipality or other authority in connection with the operations of the Corporation or a Subsidiary;

(n) any reservations, limitations, provisos and conditions expressed in original grants from the Crown or the Republic of Venezuela;

(o) any minor encumbrance, such as easements, rights-of-way, servitudes or other similar rights in land granted to or reserved by other Persons, rights-of-way for sewers, electric lines, telegraph and telephone lines, oil and natural gas pipelines and other similar purposes, or zoning or other restrictions applicable to the Corporation's or a Subsidiary's use of real property, that do not in the aggregate materially detract from the value of the property or materially impair its use in the operation of the business of the Corporation or the Subsidiary;

(p) any extension, renewal, alteration, substitution or replacement, in whole or in part, of a Security Interest referred to in paragraphs (a) to (o) provided that the Security Interest is limited to all or part of the same assets, the principal amount of the secured Obligations is not increased by that action, the term of the secured Obligations is not shortened and the terms and conditions of the Security Interest are no more restrictive in any material respect than the Security Interest so extended;

(q) Branch Secured Indebtedness;

(r) Project Secured Indebtedness; and

(s) any other Security Interest created or assumed by the Corporation or a Subsidiary (in addition to the Security Interests referred to in paragraphs (a) to (r)) if, after giving effect to the Security Interest, the aggregate amount of all Indebtedness secured by Security Interests permitted by this paragraph (s) only does not at that time exceed 5% of Consolidated Net Worth.

(52) ***Person*** means an individual, corporation, body corporate, limited partnership, general partnership, joint stock company, association, joint venture, association, company, trust, bank, fund, governmental authority or other entity or organization, whether or not recognized as a legal entity.

(53) ***Preferred Shares*** means shares in the capital of a corporation, which rank prior, as to the payment of dividends or as to the distribution of assets upon any voluntary or involuntary liquidation, dissolution or winding-up of the corporation, to shares of any other class in the capital of the corporation.

(54) ***Premium*** means, with respect to a Note at a particular time, the excess, if any, of the then applicable Redemption Price of such Note over the principal amount of such Note.

(55) ***Project Change of Control*** means the occurrence of any transaction as a result of which the Corporation ceases to beneficially own, directly or indirectly, at least a majority interest in the Las Cristinas Project assets.

(56) ***Project Secured Indebtedness*** means Branch Indebtedness secured by a Security Interest in the Las Cristinas Project assets.

(57) ***Project Secured Indebtedness Limit*** means: (a) U.S.$200,000,000 or (b) U.S.$300,000,000 if the size of the plant at the Las Cristinas Project is increased to 40,000 tonnes of ore per day as confirmed in an Officers' Certificate delivered to the Trustee.

(58) ***Purchase Money Mortgage*** means, with respect to a Person, any Security Interest created or assumed by the Person to secure a Purchase Money Obligation provided that such Security Interest is limited to the asset financed by such Purchase Money Obligation and is created or assumed not later than three months after such Purchase Money Obligation is issued, incurred or assumed.

(59) ***Purchase Money Obligation*** means, with respect to a Person, indebtedness of the Person issued, incurred or assumed to finance all or part of the cost of acquiring any asset for the Person, other than shares, bonds and other Securities, or constructing, installing or improving any real property or fixtures of the Person, provided that the indebtedness is issued, incurred or assumed within 12 months after such acquisition, construction, installation or improvement, and includes any extension, renewal or refunding of any such indebtedness so long as the principal amount thereof outstanding on the date of such extension, renewal or refunding is not increased.

(60) ***Record Date*** means the date for determining the Holders of Notes of a Series entitled to receive payment of interest on an Interest Payment Date for such Series, which date shall be the tenth Business Day prior to such Interest Payment Date or such other date as shall be specified in a Certified Resolution delivered to the Trustee.

(61) ***Redemption Date*** has the meaning ascribed to such term in Section 5.3.

(62) ***Redemption Price*** means, in respect of a Note, the amount, excluding interest, payable on the Redemption Date fixed for such Note.

(63) ***Redemption Price Calculation Date*** has the meaning ascribed to such term in Section 5.3.

(64) ***Register*** has the meaning ascribed to such term in Section 3.1.

(65) ***Registrar*** has the meaning ascribed to such term in Section 3.1.

(66) ***Sale and Leaseback Transaction*** means, with respect to a Person, a transaction or series of transactions pursuant to which the Person sells or transfers real or personal property owned by the Person to a third party and subsequently leases that real or personal property.

(67) ***Securities*** means stocks, shares, units, instalment receipts, voting trust certificates, bonds, notes, other evidences of indebtedness, or other documents or instruments commonly known as securities or any certificates of interest, shares or participations in temporary or interim certificates for, receipts for, guarantees of, or warrants, options or rights to subscribe for, purchase or acquire any of the foregoing.

(68) ***Security Interest*** means any security interest, assignment by way of security, mortgage, charge (whether fixed or floating), hypothec, pledge, lien or other encumbrance on or interest in property or assets that secures the payment of Obligations.

(69) ***Series*** means a series of Notes which, unless otherwise specified in a Supplemental Indenture, consists of those Notes which have identical terms and were or are to be issued at the same time, regardless of whether such Notes are designated as a series.

(70) ***Stated Maturity*** means the date fixed and specified in a Note as the date on which the principal of such Note is due and payable.

(71) ***Subsidiary*** has the meaning given thereto in the *Securities Act* (Ontario).

(72) ***Supplemental Indenture*** means an indenture supplemental to this Indenture pursuant to which, among other things, Notes may be authorized for issue or the provisions of this Indenture may be amended.

(73) ***Trustee*** means the Person named as the "Trustee" in this Indenture, until a successor of such Person shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Trustee" shall refer instead to such successor Trustee.

(74) ***Trustee Counsel*** means, at any time, legal counsel retained by the Trustee, which may or may not be counsel to the Corporation.

(75) ***Voting Shares*** means shares in the capital of a corporation having voting power under ordinary circumstances to vote in the election of directors of the corporation.

(76) ***Wholly-Owned Subsidiary*** means a Subsidiary all of the outstanding shares in the capital of which are owned by the Corporation or one or more Wholly-Owned Subsidiaries.

1.2 Meaning of "outstanding" for Certain Purposes

Every Note certified and delivered by the Trustee hereunder shall be deemed to be outstanding until it is cancelled or delivered to the Trustee for cancellation or money for the payment thereof has been set aside pursuant to Section 8, provided that:

(a) if a new Note has been issued in substitution for a Note that has been mutilated, lost, stolen or destroyed, only one of such Notes shall be counted for the purpose of determining the aggregate principal amount of Notes outstanding;

(b) Notes that have been partially redeemed, purchased or converted shall be deemed to be outstanding only to the extent of the unredeemed, unpurchased or unconverted part of the principal amount thereof; and

(c) for the purpose of any provision of this Indenture entitling Holders of outstanding Notes to vote, sign consents, requisitions or other instruments or take any other action under this Indenture or to constitute a quorum at any meeting of Noteholders, Notes owned directly or indirectly by the Corporation or any Affiliate of the Corporation shall be disregarded, provided that:

(1) for the purpose of determining whether the Trustee shall be protected in acting and relying on any such vote, consent, requisition or other instrument or action or on the Noteholders present or represented at any meeting of Noteholders constituting a quorum, only the Notes which the Trustee knows are so owned shall be so disregarded; and

(2) Notes so owned that have been pledged in good faith other than to the Corporation or an Affiliate of the Corporation shall not be disregarded if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to vote, sign consents, requisitions or other instruments or take such other actions free from the control of the Corporation or any Affiliate of the Corporation.

1.3 Interpretation Not Affected by Headings

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

1.4 Extended Meanings

In this Indenture, unless otherwise expressly provided herein or unless the context otherwise requires, words importing the singular number include the plural and vice versa; words importing gender include the masculine, feminine and neuter genders; references to "Indenture", "this Indenture", "hereto", "herein", "hereof", "hereby", "hereunder" and similar expressions refer to this Indenture, and not to any particular Section, clause or other portion hereof, and

include all Schedules and amendments hereto, modifications or restatements hereof, and any and every Supplemental Indenture; and the expressions "Section", "clause" and "Schedule" followed by a number, letter, or combination of numbers and letters refer to the specified Section or clause of or Schedule to this Indenture.

1.5 Day Not a Business Day

If any day on which an amount is to be determined or an action is to be taken hereunder at a particular location is not a Business Day at such location, then such amount shall be determined or such action shall be taken at or before the requisite time on the next succeeding day that is a Business Day at such location.

1.6 Currency

Except as otherwise provided herein, all references in this Indenture to "U.S. dollars", "dollars" and "$" are to lawful money of the United States of America.

1.7 Other Currencies

For the purpose of making any computation under this Indenture, any currency other than U.S. dollars shall be converted into U.S. dollars at the Bank of Canada noon rate of exchange on the date on which such computation is to be made.

1.8 Statutes

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

1.9 Invalidity of Provisions

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

1.10 Applicable Law

This Indenture and the Notes shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable in the Province of Ontario and shall be treated in all respects as Ontario contracts.

1.11 Language

In the event of any contradiction, discrepancy or difference between the English language version and the French or other language version of the text of a Note, the English language version of such text shall govern.

SECTION 2 – THE NOTES

2.1 No Fixed Limitation

The aggregate principal amount of Notes which may be issued under this Indenture is unlimited, but Notes may be issued hereunder only upon the terms and subject to the conditions herein provided.

2.2 Issuance in Series

Notes may be issued in one or more Series. The Notes of each Series shall be designated in such manner, shall bear such date or dates and mature on such date or dates, shall bear interest, if any, at such rate or rates accruing from and payable on such date or dates, may be issued at such times and in such denominations, may be redeemable before maturity in such manner and subject to payment of such Premium, may be payable as to principal, interest and Premium at such place or places and in such currency or currencies, may be payable as to principal, interest and Premium in Securities of the Corporation or any other Person, may provide for such mandatory redemption, sinking fund or other analogous repayment obligations, may contain such provisions for the exchange or transfer of Notes of different denominations and forms, may have attached thereto or issued therewith Securities entitling the Holders to subscribe for, purchase or acquire Securities of the Corporation or any other Person upon such terms, may give the Holders thereof the right to convert Notes into Securities of the Corporation or any other Person upon such terms, may be defeasible at the option of the Corporation upon such terms, and may contain such other provisions, not inconsistent with the provisions of this Indenture, as may be determined by the Directors by a resolution passed at or prior to the time of issue of the Notes of such Series and set forth in a Supplemental Indenture pertaining to the Notes of such Series. At the option of the Corporation, the maximum principal amount of Notes of any Series may be limited, such limitation to be expressed in the Supplemental Indenture providing for the issuance of the Notes of such Series, and any such limitation may be increased at any time by the Corporation by means of a resolution of the Directors.

2.3 Form of Notes

The Notes of any Series may be of different denominations and forms and may contain such variations of tenor and effect, not inconsistent with the provisions of this Indenture, as are incidental to such differences of denomination and form, including variations in the provisions for the exchange of Notes of different denominations or forms and in the provisions for the registration or transfer of Notes, and any Series of Notes may consist of Notes having different dates of issue, different dates of maturity, different rates of interest, different redemption prices, different sinking fund provisions, and partly of Notes carrying the benefit of a sinking fund and partly of Notes with no sinking fund provided therefor.

Subject to the foregoing provisions and subject to any limitation as to the maximum principal amount of Notes of any particular Series, any Note may be issued as part of any Series of Notes previously issued.

The Notes and the registration panel and certificate of the Trustee endorsed thereon may be in such form or forms (which may include legends) as the Directors shall by resolution determine prior to the time of issue thereof and as shall be approved by the Trustee, whose approval shall be conclusively evidenced by its certification thereof.

The Notes of any Series may be engraved, lithographed, printed, mimeographed or typewritten, or partly in one form and partly in another, as the Corporation may determine, provided that if a Note is issued in mimeographed or typewritten form, the Corporation, on the demand of the Holder thereof, shall make available within a reasonable time after such demand, without expense to such Holder, an engraved, lithographed or printed Note in exchange therefor.

Every Global Note of each Series of Notes authenticated and delivered by the Trustee shall bear a legend in substantially the following form:

This Note is a Global Note within the meaning of the Trust Indenture hereinafter referred to and is registered in the name of a Depository or a nominee thereof. Unless this Note is presented by an authorized representative of The Canadian Depository for Securities Limited ("CDS") to Crystallex International Corporation or its agent for registration of transfer, exchange or payment, and any Note issued in respect thereof is registered in the name of CDS & Co., or in such other name as is requested by an authorized representative of CDS (and any payment is made to CDS & Co., or to such other entity as is requested by an authorized representative of CDS), any transfer, pledge or other use hereof for value or otherwise by or to any person is wrongful since the registered holder hereof, CDS & Co., has an interest herein.

2.4 Notes to Rank Equally

The Notes shall be direct unsecured obligations of the Corporation ranking (a) senior to Convertible Debt; (b) junior to Branch Secured Indebtedness; and (c) equally with each other and with the Notes of every other Series (regardless of their actual dates or terms of issue) and, except to the extent prescribed by law, with all other present and future unsubordinated and unsecured indebtedness of the Corporation.

2.5 Book Entry Only Notes

Except as otherwise provided in a Supplemental Indenture applicable to a Series of Notes, each Series of Notes shall be issued as Book Entry Only Notes represented by one or more Global Notes. Each Global Note authenticated in accordance with any Supplemental Indenture shall be registered in the name of the Depository designated for such Global Note or a nominee thereof and delivered to such Depository or a nominee thereof as custodian therefor, and each such Global Note shall constitute a single Note for all purposes of this Indenture and all Supplemental Indentures. Beneficial interests in the Global Note will not be shown on the Register or the records maintained by the Depository but will be represented through book-entry accounts of BEO Participants on behalf of the beneficial owners of such Global Note. None of the Corporation, the Trustee and any other Paying Agent shall have any responsibility or liability for any aspects of the records relating to or payments made by any Depository or any BEO Participant on account of the beneficial interest in any Global Note. Except as provided in this

Section 2.5, owners of beneficial interests in any Global Note shall not be entitled to have Notes registered in their names and shall not receive or be entitled to receive Notes in definitive form.

Notwithstanding any other provision in this Indenture or any provision in any Supplemental Indenture, no Global Note may be exchanged in whole or in part for Notes registered, and no transfer of a Global Note in whole or in part may be registered, in the name of any Person other than the Depository for such Global Note or a nominee thereof unless:

(a) the Depository notifies the Corporation that it is unwilling or unable to continue to act as depository in connection with the Global Note and the Corporation is unable to locate a qualified successor;

(b) the Corporation determines that the Depository is no longer willing, able or qualified to discharge properly its responsibilities as Holder of the Global Note and the Corporation is unable to locate a qualified successor;

(c) the Depository ceases to be a clearing agency or otherwise ceases to be eligible to be a depository and the Corporation is unable to locate a qualified successor;

(d) the Corporation determines that the Notes shall no longer be held as Book Entry Only Notes through the Depository;

(e) the Depository determines to transfer the Global Notes in accordance with subsection 3.3(d); or

(f) such right is required by applicable law, as determined by the Corporation and the Corporation Counsel;

following which Notes in fully registered form shall be issued to the beneficial owners of such Notes or their nominees.

Subject to the provisions of this Section 2.5, any exchange of a Global Note for Notes which are not Global Notes may be made in whole or in part in accordance with the provisions of Section 2.10, *mutatis mutandis*. All such Notes issued in exchange for a Global Note or any portion thereof shall be registered in such names as the Depository for such Global Note shall direct and shall be entitled to the same benefits and subject to the same terms and conditions (except insofar as they relate specifically to Global Notes) as the Global Note or portion thereof surrendered upon such exchange.

Every Note authenticated and delivered upon registration of transfer of a Global Note, or in exchange for or in lieu of a Global Note or any portion thereof, whether pursuant to this Section 2.5 or otherwise, shall be authenticated and delivered in the form of, and shall be, a Global Note, unless such Note is registered in the name of a Person other than the Depository for such Global Note or a nominee thereof.

2.6 Signatures on Notes

All Notes shall be signed (either manually or by facsimile signature) by any two of the following officers of the Corporation: the chairman of the Board, the vice-chairman of the Board, the chief executive officer, the chief financial officer and the secretary. A facsimile signature on any Note shall for all purposes of this Indenture be deemed to be the signature of the individual whose signature it purports to be and to have been signed at the time such facsimile signature was reproduced, and each Note so signed shall be valid and binding upon the Corporation notwithstanding that any individual whose signature (either manual or facsimile) appears on a Note is not at the date of this Indenture or at the date of the Note or at the date of the certification and delivery thereof an officer of the Corporation.

2.7 Certification

No Note issued shall be obligatory or entitle the Holder thereof to the benefit thereof until a certificate thereon has been signed by or on behalf of the Trustee substantially in the form set out in a Supplemental Indenture applicable to the Note or in some other form acceptable to the Trustee. Such certificate on any Note shall be conclusive evidence that such Note has been duly issued hereunder and is a valid obligation of the Corporation.

The certificate of the Trustee signed on a Note shall not be construed as a representation or warranty by the Trustee as to the validity of this Indenture or of such Note or its issuance, and the Trustee shall not be liable for the use made of such Note or the proceeds of issuance thereof. The certificate of the Trustee signed on any Note shall, however, be a representation and warranty by the Trustee that such Note has been duly certified by or on behalf of the Trustee pursuant to the provisions of this Indenture.

2.8 Concerning Interest

Except as otherwise provided in the Supplemental Indenture applicable to a Series of Notes,

(a) each Note of a Series, whether issued originally or in exchange or in substitution for previously issued Notes, shall bear interest from and including the later of:

(1) its date of issue; and

(2) the last Interest Payment Date to which interest shall have been paid or made available for payment on the outstanding Notes of such Series;

(b) interest shall be payable semi-annually in arrears in equal instalments;

(c) interest payable shall be computed on the basis of a year of 365 days; and

(d) whenever interest is computed on the basis of a year (the "deemed year") which contains fewer days than the actual number of days in the calendar year of

calculation, such rate of interest shall be expressed as a yearly rate for purposes of the *Interest Act* (Canada) by multiplying such rate of interest by the actual number of days in the calendar year of calculation and dividing such product by the number of days in the deemed year.

Subject to accrual of any interest on unpaid interest from time to time, interest on each Note shall cease to accrue from the earlier of the Maturity Date of such Note and, if such Note is called for redemption, the Redemption Date fixed for such Note, unless, in each case, upon due presentation and surrender of such Note for payment on or after such Maturity Date or Redemption Date, as the case may be, such payment is improperly withheld or refused.

Wherever in this Indenture or a Note there is mention, in any context, of the payment of interest, such mention is deemed to include the payment of interest on amounts in default to the extent that, in such context, such interest is, was or would be payable pursuant to this Indenture or such Note, and express mention of interest on amounts in default in any of the provisions of this Indenture shall not be construed as excluding such interest in those provisions of this Indenture in which such express mention is not made.

If the date for payment of any amount of principal, interest or Premium in respect of a Note is not a Business Day at the place of payment, then payment shall be made on the next Business Day at such place and the Holder of such Note shall not be entitled to any further interest or other payment in respect of the delay.

Except as otherwise provided in a Supplemental Indenture applicable to a Series of Notes, the Corporation shall pay the interest due upon the principal amount of an interest-bearing Note (except interest payable on maturity or redemption of such Note which, at the option of the Corporation, may be paid only upon presentation of such Note for payment) by forwarding or causing to be forwarded by same day delivery a cheque for such interest (less any tax required by law to be deducted or withheld) payable on the applicable Interest Payment Date to the Holder of such Note on the Record Date for such payment at the Holder's address appearing on the Register unless otherwise directed in writing by such Holder or, in the case of joint Holders, payable to all such joint Holders and addressed to one of them at the last address appearing in the Register and negotiable at par at each of the places at which interest upon such Note is payable. The forwarding of such cheque shall satisfy and discharge the liability for the interest on such Note to the extent of the sum represented thereby (plus the amount of any tax deducted or withheld) unless such cheque is not paid on presentation at any of the places at which such interest is payable. In the event of the non-receipt of such cheque by the applicable Noteholder or the loss, theft or destruction thereof, the Corporation or the Paying Agent, upon being furnished with evidence of such non-receipt, loss, theft or destruction and indemnity reasonably satisfactory to it, shall issue or cause to be issued to such Noteholder a replacement cheque for the amount of such cheque. Notwithstanding the foregoing, the Corporation, at its option, may cause the amount payable in respect of interest to be paid to a Noteholder by wire transfer to an account maintained by such Noteholder or in any other manner reasonably acceptable to the Trustee.

If payment of interest is made by cheque, such cheque shall be forwarded at least two Business Days prior to the applicable Interest Payment Date, and if payment is made in any other manner, such payment shall be made in a manner whereby the recipient receives credit for such payment on the applicable Interest Payment Date, provided the Trustee and the Paying Agent shall only forward such cheques upon receipt of the full amount of interest being paid in immediately available funds pursuant to Section 6.3.

2.9 Interim Notes

Subject to the provisions of any Supplemental Indenture authorizing any Series of Notes, definitive Notes, other than Global Notes, of such Series shall be lithographed or printed with steel engraved borders. Pending the preparation and delivery to the Trustee of definitive Notes of any Series, the Corporation may execute in lieu thereof (but subject to the same provisions, conditions and limitations as herein set forth) and the Trustee may certify interim printed, mimeographed or typewritten Notes, in such forms and in such denominations and with such appropriate omissions, insertions and variations as may be approved by the Trustee and any two of the officers of the Corporation referred to in Section 2.6 (whose certification or signature, either manual or facsimile, on any such interim Notes shall be conclusive evidence of such approval) entitling the Holders thereof to receive definitive Notes of such Series in any authorized denominations and forms when the same are prepared and ready for delivery, without expense to such Holders, but the total amount of interim Notes of any Series so issued shall not exceed the total amount of Notes of such Series for the time being authorized.

Forthwith after the issuance of any such interim Notes, the Corporation shall cause to be prepared the appropriate definitive Notes for delivery to the Holders of such interim Notes. After the preparation of definitive Notes of a Series, the interim Note or Notes of such Series shall be exchangeable for definitive Notes of such Series upon surrender of such interim Note or Notes at the Corporate Trust Office or at the principal office of any other Paying Agent, without charge to the Holder thereof. Upon surrender of any such interim Note, the Corporation shall execute and the Trustee shall authenticate and deliver in exchange for all or any part of such interim Note, one or more definitive Notes of the same Series, of any authorized denomination and of like tenor and for an aggregate principal amount equal to the aggregate principal amount of the interim Note or part thereof that is being exchanged for such definitive Note or Notes and, if part only of such interim Note is being exchanged for such definitive Note or Notes, together with such interim Note with the reduction of the principal amount thereof endorsed thereon or on a schedule annexed thereto by the Trustee or such Paying Agent or together with a new interim Note or Notes, executed by the Corporation and authenticated and delivered by the Trustee, of the same Series, of any authorized denomination and of like tenor and for an aggregate principal amount equal to the remaining principal amount of the surrendered interim Note or Notes. Upon the exchange of the entire principal amount of an interim Note for definitive Notes or for definitive Notes together with new interim Notes, the interim Note so exchanged shall be cancelled.

Any interim Notes when duly issued shall, until exchanged for definitive Notes, entitle the Holders thereof to rank for all purposes as Noteholders and otherwise in respect of this

Indenture to the same extent and in the same manner as though such exchange had actually been made. Any interest paid upon interim Notes shall be noted thereon by the Paying Agent at the time of payment unless paid by warrant or cheque to the Holder thereof.

2.10 Issue of Substitutional Notes

If any Note issued and certified hereunder becomes mutilated or is lost, destroyed or stolen, the Corporation, in its discretion, may issue, and thereupon the Trustee shall certify and deliver, a replacement Note of like date and tenor as the one mutilated, lost, destroyed or stolen in exchange for and in place of and upon cancellation of such mutilated Note or in lieu of and in substitution for such lost, destroyed or stolen Note. The substituted Note shall be in a form reasonably approved by the Trustee and shall be entitled to the benefit hereof and rank equally in accordance with its terms with all other Notes. The applicant for a replacement Note shall bear the cost of the issue thereof and in case of loss, destruction or theft shall, as a condition precedent to the issue thereof, furnish to the Corporation and to the Trustee such evidence of ownership and of the loss, destruction or theft of the Note so lost, destroyed or stolen as shall be satisfactory to each of the Corporation and the Trustee in their discretion, and such applicant shall also furnish indemnity, in amount and form satisfactory to each of the Corporation and the Trustee in their discretion, and shall pay the reasonable charges and expenses of the Corporation and the Trustee in connection therewith.

2.11 Option of Holder as to Place of Payment

Except as herein otherwise provided or except as otherwise provided in an applicable Supplemental Indenture, all amounts which at any time become payable on account of any Note or any interest or Premium thereon shall be payable at the option of the Holder at any of the places at which the principal and interest in respect of such Note are payable.

2.12 Record of Payments

The Trustee shall maintain accounts and records evidencing each payment of principal of and Premium and interest on Notes, which accounts and records shall constitute, in the absence of manifest error, prima facie evidence thereof.

None of the Corporation, the Trustee, any other Registrar and any Paying Agent shall be liable or responsible to any Person for any aspect of the records related to or payments made on account of beneficial interests in any Global Note or for maintaining, reviewing, or supervising any records relating to such beneficial interests.

2.13 Payment Agreements for Notes

Notwithstanding any provision in this Indenture or any Note to the contrary, the Corporation may enter into an agreement (whether in a Supplemental Indenture or otherwise) with the Holder of a Note, or with the Person for whom such Holder is acting as nominee, providing for the payment to such Holder of the principal of and Premium and interest on such Note and all other amounts payable hereunder at a place, and by wire transfer of funds or in such

other manner, other than the places or the manner specified in this Indenture or in such Note as the places and the manner for such payment, provided that (a) payment or prepayment in full of such Note shall be made only upon the surrender thereof at the place of payment as specified in the Indenture and (b) it will be a condition to the registration of any transfer of such Note that the Noteholder shall make the same available to the Trustee at its Corporate Trust Office for notation thereon of the portion of the principal amount thereof theretofore prepaid prior to any such transfer. Any such payment shall absolutely discharge the obligations of the Corporation with respect to such payment under such Note. The Corporation shall furnish to the Trustee an Officers' Certificate as to the persons with whom the Corporation has entered into such an agreement. The Corporation shall lodge a copy of any such agreement with the Trustee prior to the next Interest Payment Date of any Note to which such agreement relates. Any payment of the principal of and Premium and interest on any such Note and other amounts payable under this Indenture at such other place or in such other manner pursuant to such agreement shall, notwithstanding any other provision of this Indenture or the Notes, be valid and binding on the Corporation, the Trustee, any other Registrar, any Paying Agent, and all Holders of Notes.

2.14 Surrender for Cancellation

If the principal amount due upon any Note shall become payable before the Stated Maturity thereof, the Person presenting such Note for payment shall surrender the same for cancellation to the Corporate Trust Office and the Corporation shall pay or cause to be paid the interest accrued and unpaid thereon (computed on a per diem basis if the date fixed for payment is not an Interest Payment Date).

2.15 Right to Receive Indenture

Each Noteholder is entitled to receive from the Corporation a copy of this Indenture on written request and upon payment of a reasonable copying charge.

SECTION 3 – REGISTRATION, TRANSFER, EXCHANGE AND OWNERSHIP OF NOTES

3.1 Registers

The Corporation shall cause to be kept at the Corporate Trust Office, or at such other place and by such other Person as shall be agreed by the Corporation and the Trustee, a central register (the **"**Register**"**) (the Trustee or other Person maintaining the Register being hereinafter referred to as the **"**Registrar**"**) in which shall be entered the names and last known addresses of Holders of Notes and the other particulars, as prescribed by law, of the Notes held by each of them and of all transfers of such Notes. Such registration shall be noted on such Notes by the Registrar. The Registrar from time to time shall, when requested in writing so to do by the Corporation or by the Trustee, furnish the Corporation or the Trustee, as the case may be, with a list of the names and last known addresses of the Holders of Notes entered on the Register, showing the principal amount and serial numbers of the Notes held by each of them.

The Corporation shall, or shall cause the Registrar to, furnish to the Trustee, in writing at least seven Business Days before each Interest Payment Date and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and last known addresses of Noteholders.

The Register shall at all reasonable times and upon prior written request be open for inspection by the Corporation, the Trustee and any Noteholder.

3.2 Transfer of Notes

A Holder of a Note may at any time and from time to time have such Note transferred at the place at which the Register is kept pursuant to the provisions of Section 3.1.

No transfer of a Note shall be effective as against the Corporation unless:

(a) such transfer is made by the Holder of the Note or the executor, administrator or other legal representative of, or any attorney for, the Holder, duly appointed by an instrument in form and execution satisfactory to the Registrar, upon surrender to the Registrar of the Note and a duly executed form of transfer;

(b) such transfer is made in compliance with applicable law;

(c) such transfer is made in compliance with requirements as the Registrar may prescribe; and

(d) such transfer has been noted on such Note and on the Register by the Registrar.

3.3 Restrictions on Transfer of Global Notes

Notwithstanding any other provision of this Indenture, a Global Note registered in the name of the Depository or a nominee of the Depository may not be transferred by the Depository or such nominee except in the following circumstances or as otherwise specified in a Supplemental Indenture relating to such Global Note:

(a) such Global Note may be transferred by the Depository to a nominee of the Depository or by a nominee of the Depository to the Depository or to another nominee of the Depository or by the Depository or its nominee to a successor Depository or its nominee;

(b) such Global Note may be transferred at any time after the Depository for such Global Note has notified the Corporation or the Corporation determines that the Depository is unwilling or unable or no longer eligible to continue as Depository for such Global Note;

(c) such Global Note may be transferred at any time after the Corporation has determined, in its sole discretion, that the Notes represented by such Global Note shall no longer be held as Book Entry Only Notes; and

(d) such Global Note may be transferred at any time after the Trustee has determined that an Event of Default has occurred and is continuing with respect to the Notes of the Series issued in the form of such Global Note, provided that at the time of such transfer such Event of Default has not been waived in accordance with the provisions of this Indenture.

3.4 Transferee Entitled to Registration

The transferee of a Note shall be entitled, after the appropriate form of transfer is lodged with the Registrar and upon compliance with all other conditions in that regard required by this Indenture or by law, to be entered on the Register as the Holder of such Note free from all equities or rights of setoff or counterclaim between the Corporation and the transferor or any previous Holder of such Note, except in respect of equities of which the Corporation is required to take notice by statute or by order of a court of competent jurisdiction.

3.5 Closing of Register; Recording of Certain Transfers

The Corporation shall not have the power to close the Register.

Neither the Corporation nor the Registrar shall be required to:

(a) effect transfers or exchanges of Notes of any Series on any Interest Payment Date for Notes of that Series or during the 10 preceding Business Days, or

(b) effect transfers or exchanges of Notes of any Series:

(1) from the day of any selection by the Trustee of Notes of that Series to be redeemed until the day on which notice of redemption is given pursuant to Section 5.3, or

(2) that have been selected or called for redemption in whole or in part unless, upon due presentation thereof for redemption, such Notes are not redeemed.

3.6 Exchange of Notes

Subject to Section 3.5, Notes in any authorized form or denomination may be exchanged upon reasonable notice for Notes in any other authorized form or denomination, any such exchange to be for an equivalent aggregate principal amount of Notes of the same Series, carrying the same rate of interest and having the same Maturity Date and the same redemption and sinking fund provisions, if any.

Notes of any Series may be exchanged at the stock transfer office of the Trustee located at 199 Bay Street, Toronto, Ontario M5L 1G9 or at such other place or places as may be specified in the Notes of such Series or in the Supplemental Indenture providing for the issuance thereof, and at such other place or places as may from time to time be designated by the

Corporation pursuant to Section 6.2. Any Notes tendered for exchange shall be surrendered to the Trustee. The Corporation shall execute and the Trustee shall certify all Notes necessary to carry out such exchanges. All Notes surrendered for exchange shall be cancelled.

Notes issued in exchange for Notes which at the time of such issue have been selected or called for redemption at a later date shall be deemed to have been selected or called for redemption in the same manner and shall have noted thereon a statement to that effect, provided that:

(a) Notes which have been selected or called for redemption may not be exchanged for Notes of larger denominations; and

(b) if a Note that has been selected or called for redemption in part is presented for exchange into Notes of smaller denominations, the Trustee shall designate, according to such method as the Trustee shall deem equitable, particular Notes of those issued in exchange, which shall be deemed to have been selected or called for redemption, in whole or in part, and the Trustee shall note thereon a statement to that effect.

3.7 Ownership and Entitlement to Payment

The Person in whose name a Note is registered shall be deemed to be the beneficial owner thereof for all purposes of this Indenture and payment of or on account of the principal of and Premium and interest on such Note shall be made only to or upon the order in writing of such Person, and each such payment shall be a good and sufficient discharge to the Corporation, the Trustee, any other Registrar and any Paying Agent for the amount so paid.

If a Note is registered in the name of more than one Person, the principal, Premium and interest from time to time payable in respect thereof may be paid to the order of all such Persons, failing written instructions from them to the contrary, and each such payment shall be a good and sufficient discharge to the Corporation, the Trustee, any other Registrar and any Paying Agent for the amount so paid.

Notwithstanding any other provision of this Indenture, all payments in respect of Notes represented by a Global Note shall be made to the Depository or its nominee for subsequent payment by the Depository or its nominee to BEO Participants.

The Holder for the time being of a Note shall be entitled to the principal, Premium and interest evidenced by such Note, free from all equities or rights of setoff or counterclaim between the Corporation and the original or any intermediate Holder thereof except in respect of equities of which the Corporation is required to take notice by statute or by order of a court of competent jurisdiction. The receipt by any such Holder of any such principal, Premium or interest shall be a good and sufficient discharge to the Corporation, the Trustee, any other Registrar and any Paying Agent for the amount so paid, and none of the Corporation, the Trustee, any other Registrar and any Paying Agent shall be bound to inquire into the title of any such Holder.

3.8 Evidence of Ownership

The Corporation and the Trustee may treat the Holder of a Note as the beneficial owner thereof without actual production of such Note for the purpose of any Noteholders' Request, requisition, direction, consent, instrument or other document to be made, signed or given by the Holder of such Note.

3.9 No Notice of Trusts

Neither the Corporation nor the Trustee nor any other Registrar nor any Paying Agent shall be bound to take notice of or see to the performance or observance of any duty owed to a third Person (whether under a trust, express, implied, resulting or constructive, in respect of any Note or otherwise) by the beneficial owner or the Holder of a Note or any Person whom the Corporation or the Trustee treats, as permitted or required by law, as the beneficial owner or the Holder of such Note, and the Corporation, the Trustee or any other Registrar may transfer any Note on the direction of the Person so treated or registered as the Holder thereof, whether named as trustee or otherwise, as though that Person was the beneficial owner of such Note.

3.10 Charges for Transfer and Exchange

For each Note exchanged or transferred, the Trustee or other Registrar, except as otherwise herein provided, may charge a reasonable amount for its services and in addition may charge a reasonable amount for each new Note issued (such amounts to be agreed upon by the Trustee or other Registrar and the Corporation from time to time), and payment of such charges and reimbursement of the Trustee or other Registrar for any stamp taxes or governmental or other charges required to be paid shall be made by the Person requesting such exchange or transfer as a condition precedent thereto.

Notwithstanding the foregoing, no charge (except a charge to reimburse the Trustee or other Registrar for any stamp taxes or governmental or other charges) shall be made to a Noteholder:

(a) for any exchange or transfer of Notes of a Series applied for within a period of 45 days from the date of the first delivery of Notes of such Series;

(b) for any exchange of Notes in denominations in excess of $1,000 for Notes in lesser denominations, provided that the Notes surrendered for exchange shall not have been issued as a result of any previous exchange other than an exchange pursuant to Section 3.10(a);

(c) for any exchange of any Note that has been issued pursuant to Section 2.9; or

(d) for any exchange of any Note resulting from a partial redemption pursuant to 5.2.

SECTION 4 – ISSUE AND DELIVERY OF NOTES

4.1 Issuance of Notes

The Corporation may issue, and the Trustee shall certify and deliver to or to the order of the Corporation, Notes issuable under this Indenture, but only upon receipt by the Trustee of the following:

(a) a Certified Resolution authorizing the issuance and requesting the certification and delivery of a specified principal amount of the Notes and determining the material attributes thereof;

(b) an Officers' Certificate stating that no default exists in respect of any of the covenants, agreements or provisions of this Indenture or, if any such default exists, specifying the nature thereof and the action, if any, being taken by the Corporation to remedy such default;

(c) an order of the Corporation for the certification and delivery of such Notes specifying the principal amount requested to be certified and delivered and having attached a Supplemental Indenture providing for the issue of such Notes; and

(d) an opinion of Corporation Counsel to the effect that all legal requirements in respect of the proposed issue of such Notes have been satisfied.

Upon the certification and delivery by the Trustee of Notes in accordance with an order of the Corporation, the Supplemental Indenture attached to such order of the Corporation shall be deemed to be a Schedule to and form part of this Indenture.

4.2 No Notes to be Issued During Default

No Notes shall be certified and delivered hereunder if, at the time of such certification and delivery, the Corporation, to the knowledge of the Trustee, is in default hereunder, or would immediately after such issuance be in default hereunder, provided that in each case the Trustee may certify and deliver Notes notwithstanding such knowledge if the Trustee shall be satisfied, relying on the advice or opinion of Trustee Counsel or other appropriately qualified experts that such default is not material and that the Corporation is taking appropriate action to remedy such default.

SECTION 5 – REDEMPTION AND PURCHASE OF NOTES

5.1 General

The Corporation, when not in default hereunder, shall have the right at its option to redeem, either in whole at any time or in part from time to time before Stated Maturity, Notes of any Series which by their terms are made so redeemable, at such rate or rates of Premium, on such date or dates and on such terms and conditions as shall have been determined at the time of

issue of such Notes and as shall be expressed in such Notes or in the Supplemental Indenture authorizing or providing for the issue thereof.

5.2 Partial Redemption of Notes

If less than all of the Notes of a Series for the time being outstanding are to be redeemed, the Corporation shall, at least 15 Business Days and not more than 60 Business Days before the date upon which notice of redemption is to be given to Holders of such Notes, notify the Trustee in writing of the Corporation's intention to redeem Notes of such Series and of the aggregate principal amount of Notes to be redeemed. The Notes so to be redeemed shall be selected by the Trustee on a pro rata basis (to the nearest multiple of $1,000) in accordance with the principal amount of Notes of such Series registered in the name of each Holder or by lot or by such other means as the Trustee may deem equitable and expedient. For this purpose, the Trustee may make regulations with regard to the manner in which such Notes may be so selected, and regulations so made shall be valid and binding upon all Noteholders. Notes in denominations in excess of $1,000 may be selected and called for redemption in part only (such part being $1,000 or an integral multiple thereof) and, unless the context otherwise requires, reference to Notes in this Section 5 shall be deemed to include any such part of the principal amount of Notes which shall have been so selected and called for redemption. The Holder of any Note called for redemption in part only, upon surrender of such Note for payment, shall be entitled to receive, without expense to such Holder, one or more new Notes for the unredeemed part of the Note so surrendered, and the Trustee shall certify and deliver such new Note or Notes upon receipt of the Note so surrendered.

5.3 Notice of Redemption

Notice of intention to redeem any Notes shall be given by or on behalf of the Corporation to the Holders of the Notes which are to be redeemed, not more than 60 days and not less than 30 days prior to the date fixed for redemption (the "Redemption Date"), in the manner provided in Section 10.2. Every notice of redemption shall specify the Series and the Stated Maturity of the Notes called for redemption, the Redemption Date, the Redemption Price (or, where applicable only, the date upon which the Redemption Price shall be calculated in connection with the Notes called for redemption (the **"**Redemption Price Calculation Date**"**)), and the place or places of payment, and shall state that all interest thereon shall cease from and after the Redemption Date. In addition, unless all the outstanding Notes of a Series are to be redeemed, the notice of redemption shall specify

(a) in the case of a notice mailed to a Holder, the distinguishing letters and numbers of the Notes which are to be redeemed (or of such thereof as are registered in the name of such Holder);

(b) in the case of a published notice, the distinguishing letters and numbers of the Notes which are to be redeemed or, if such Notes are selected by terminal digit or other similar system, such particulars as may be sufficient to identify the Notes so selected;

(c) in the case of Book Entry Only Notes, that the redemption shall take place in such manner as may be agreed by the Depository, the Trustee and the Corporation; and

(d) in all cases, the principal amount of each Note to be redeemed or, if any such Note is to be redeemed in part only, the principal amount of such part.

If a notice of redemption specifies a Redemption Price Calculation Date for any Notes, the Corporation shall deliver to the Trustee, not later than the second Business Day prior to the Redemption Date for such Notes, an Officers' Certificate which specifies the Redemption Price of such Notes.

5.4 Notes Due on Redemption Date

Upon notice of redemption having been given as specified in Section 5.3, all the Notes so called for redemption shall thereupon be and become due and payable at the Redemption Price and on the Redemption Date specified in such notice, in the same manner and with the same effect as if such date was the Stated Maturity specified in such Notes, anything therein or herein to the contrary notwithstanding, and from and after such Redemption Date, if the money necessary to redeem such Notes shall have been deposited as provided in Section 8.2 and affidavits or other proof satisfactory to the Trustee as to the publication or mailing of such notice shall have been lodged with the Trustee, such Notes shall not be considered as outstanding hereunder and interest upon such Notes shall cease.

If any question shall arise as to whether any notice has been given as required or any deposit has been made, such question shall be decided by the Trustee, whose decision shall be final and binding upon all parties in interest.

5.5 Purchase of Notes

The Corporation may, at any time when it is not in default hereunder, purchase all or any of the Notes in the open market (which shall include purchase from or through an investment dealer or a firm holding membership on a recognized stock exchange), by tender or by private contract, at any price. All Notes so purchased shall forthwith be delivered to the Trustee and shall be cancelled by it and, subject to the following paragraph of this Section 5.5, no Notes shall be issued in substitution therefor.

If, upon an invitation for tenders, more Notes of a Series are tendered at the same lowest price than the Corporation is prepared to accept, the Notes to be purchased by the Corporation shall be selected by the Trustee, in such manner (which may include selection by lot, selection on a pro rata basis, random selection by computer or any other method) as the Trustee deems equitable and expedient, from the Notes of the Series tendered by each tendering Noteholder who tendered at such lowest price. For this purpose the Trustee may make, and from time to time amend, regulations with respect to the manner in which Notes of a Series may be so selected, and regulations so made shall be valid and binding upon all Noteholders, notwithstanding the fact that, as a result thereof, one or more of such Notes of the Series become subject to purchase in part only. The Holder of a Note of which a part only is purchased, upon

surrender of such Note for payment, shall be entitled to receive, without expense to such Holder, one or more new Notes of the same Series for the unpurchased part so surrendered, and the Trustee shall certify and deliver such new Note or Notes upon receipt of the Note so surrendered.

5.6 Cancellation of Notes

Subject to the provisions of Sections 5.2 and 5.5 as to Notes redeemed or purchased in part, all Notes redeemed or purchased in whole or in part by the Corporation shall not be reissued or resold and shall be forthwith delivered to and cancelled by the Trustee, and no Notes of the same Series shall be issued in substitution therefor.

SECTION 6 – COVENANTS OF THE CORPORATION

6.1 General Covenants

The Corporation hereby covenants and agrees with the Trustee for the benefit of the Trustee and the Noteholders as follows:

(a) the Corporation shall duly and punctually pay or cause to be paid to each Holder of Notes the principal thereof, interest accrued thereon and Premium payable thereon on the dates, at the places, in the currency, and in the manner specified herein or as otherwise provided in such Notes;

(b) subject to the express provisions hereof, the Corporation shall carry on and conduct or shall cause to be carried on and conducted its business and the business of its Subsidiaries in a proper and efficient manner and shall keep or cause to be kept proper books of account and make or cause to be made therein true and faithful entries of all its dealings and transactions in relation to its business and the business of its Subsidiaries, as the case may be, all in accordance with GAAP, provided that nothing herein contained shall prevent the Corporation from ceasing to operate or from causing any Subsidiary to cease to operate any premises or property if in the opinion of the Directors it shall be advisable and in the best interests of the Corporation or the Subsidiary concerned to do so;

(c) so long as any Notes are outstanding, the Corporation shall furnish to the Trustee a copy of the financial statements, whether annual or interim, of the Corporation and any report of the Corporation's Auditors thereon at the same time as such financial statements are filed with securities regulatory authorities;

(d) subject to the express provisions hereof, the Corporation shall, and shall cause each Subsidiary to, at all times maintain its respective corporate existence, carry on and conduct its respective business in a proper, efficient and businesslike manner and in accordance with good business practice and diligently maintain, use and operate its respective properties so as to preserve and protect the earnings, incomes, rents, issues and profits thereof; and

(e) the Corporation shall, and shall cause each Subsidiary to, from time to time pay or cause to be paid all taxes, rates, levies, assessments (ordinary or extraordinary), government fees or dues lawfully levied, assessed or imposed upon or in respect of its respective property or any part thereof or upon its income and profits as and when the same become due and payable and to withhold and remit any amounts required to be withheld by it from payments due to others and remit the same to any government or agency thereof, and it shall exhibit or cause to be exhibited to the Trustee, when requested, the receipts and vouchers establishing such payment and shall duly observe and conform to all applicable requirements of any governmental authority relative to any of the property or rights of the Corporation and of its Subsidiaries and all covenants, terms and conditions upon or under which any such property or rights are held; provided, however, that the Corporation and its Subsidiaries shall have the right to contest in good faith and diligently by legal proceedings any such taxes, rates, levies, assessments, government fees or dues, and during such contest, may deliver or defer payment or discharge thereof.

6.2 Maintenance of Offices or Agencies

The Corporation shall maintain, in Toronto, an office or agency where Notes may be presented or surrendered for payment, where Notes may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Corporation in respect of the Notes and this Indenture may be served. The Corporate Trust Office shall be such office or agency of the Corporation, unless the Corporation shall designate and maintain some other office or agency for one or more of such purposes. The Corporation shall give prompt notice to the Trustee of any change in the location of any such office or agency. If at any time the Corporation shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office, and the Corporation hereby appoints the Trustee as its agent to receive all such presentations, surrenders, notices and demands.

The Corporation may from time to time designate one or more other offices or agencies (in or outside of Toronto) where the Notes may be presented or surrendered for any or all such purposes, and may from time to time rescind such designation; provided, however, that no such designation or rescission shall in any manner relieve the Corporation of its obligation to maintain an office or agency in Toronto for such purposes. The Corporation will give prompt written notice to the Trustee of any such designation or rescission and any change in the location of any such office or agency.

6.3 Money for Payments to Be Held in Trust

If the Corporation shall at any time act as its own Paying Agent, it shall, on or before each due date of the principal and Premium and interest on any of the Notes, segregate and hold in trust for the benefit of the Persons entitled thereto a sum sufficient to pay the principal and Premium and interest so becoming due until such sums shall be paid to such Persons or

otherwise disposed of as herein provided, and shall promptly notify the Trustee of its action or failure to so act.

Whenever the Corporation shall have one or more Paying Agents for the Notes, it shall, on or before each due date of the principal of, and Premium and interest on, any Notes, deposit with a Paying Agent a sum in same day funds sufficient to pay the principal, Premium and interest so becoming due, such sum to be held in trust for the benefit of the Persons entitled to such principal, Premium or interest and (unless such Paying Agent is the Trustee) the Corporation shall promptly notify the Trustee of such action or any failure so to act.

The Corporation shall cause each Paying Agent other than the Trustee to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section, that such Paying Agent will:

(a) hold all sums held by it for the payment of the principal of and Premium and interest on Notes in trust for the benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as herein provided;

(b) give the Trustee notice of any default by the Corporation (or any other obligor upon the Notes) in the making of any payment of principal, Premium and interest; and

(c) at any time during the continuance of any such default, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such Paying Agent.

The Corporation may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay, or by an order of the Corporation direct any Paying Agent to pay, to the Trustee all sums held in trust by the Corporation or such Paying Agent, such sums to be held by the Trustee upon the same trusts as those upon which such sums were held by the Corporation or such Paying Agent; and, upon such payment by any Paying Agent to the Trustee, such Paying Agent shall be released from all further liability with respect to such money.

Any money deposited with the Trustee or any Paying Agent, or then held by the Corporation, in trust for the payment of the principal, Premium and interest on any Note and remaining unclaimed for six years after such principal, Premium and interest has become due and payable shall be paid, on written request of the Corporation, to the Corporation, or (if then held by the Corporation) shall be discharged from such trust; and the Holder of such Note shall thereafter, as an unsecured general creditor, look only to the Corporation for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Corporation as trustee thereof, shall thereupon cease.

6.4 Trustee's Remuneration and Expenses

The Corporation shall pay the Trustee reasonable remuneration for its services as trustee hereunder and shall pay or reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in the administration or execution of the trusts hereby created (including the reasonable compensation and the disbursements of Trustee Counsel and all other advisers and assistants not regularly in its employ who have been retained by the Trustee) both before any default hereunder and thereafter until all the duties of the Trustee shall be firmly and fully performed, except any such expense, disbursement or advance as may arise from its negligence or wilful default. Any amount due under this Section 6.4 and unpaid 30 days after request for such payment shall bear interest from the expiration of such 30 days at the standard set rate of the Trustee, being 2% per month, payable on demand. After default, all amounts so payable and the interest thereon shall be payable out of any funds coming into the possession of the Trustee or its successors in the trusts hereunder in priority to any payment of the principal of, or interest or Premium on, the Notes. Such remuneration shall continue to be payable until the trusts hereof shall be finally wound up, whether or not the trusts of this Indenture shall be in course of administration by or under the direction of a court.

6.5 Not to Extend Time for Payment of Interest

Subject to the provisions of Section 9.11 or Section 9.12 as applicable, in order to prevent any accumulation after maturity of unpaid interest, the Corporation shall not directly or indirectly extend or assent to the extension of time for payment of interest upon any Notes or directly or indirectly be or become a party to or approve any such arrangement by purchasing or funding interest on the Notes or in any other manner.

If the time for the payment of any interest shall be so extended, whether or not such extension is by or with the consent of the Corporation, notwithstanding anything herein or in the Notes contained, such interest shall not be entitled in case of default hereunder to the benefit of this Indenture until such time as payment in full has been made of the principal of all the Notes and of all interest on such Notes the payment of which has not been so extended.

6.6 Examination and Audit

The Corporation shall annually, within 90 days after the end of its fiscal year, have an examination and audit of the accounts, affairs and condition of the Corporation and its Subsidiaries made by the Corporation's Auditors.

6.7 Negative Pledge

The Corporation shall not, and shall not permit any Subsidiary to, create, incur, assume or suffer to exist any Security Interest, other than Permitted Encumbrances, on or over any of its assets (present or future) to secure any Obligation, unless at the same time all the Notes then outstanding shall be secured equally and rateably therewith.

6.8 Limitation on Senior Indebtedness of the Corporation

The Corporation shall not, directly or indirectly:

(a) issue, incur, assume or otherwise become liable for or in respect of any Indebtedness ranking senior to the Notes other than Indebtedness secured by Permitted Encumbrances, including Branch Secured Indebtedness and Project Secured Indebtedness; or

(b) permit Project Secured Indebtedness to exceed the Project Secured Indebtedness Limit.

6.9 Limitation on Subsidiary Indebtedness

The Corporation shall not permit a Subsidiary to, directly or indirectly, issue, incur, assume or otherwise become liable for or in respect of any Indebtedness except:

(a) Indebtedness of the Subsidiary existing at the date hereof for borrowed money, including obligations with respect to bankers' acceptances and contingent reimbursement obligations relating to letters of credit and other financial instruments;

(b) Inter-Company Indebtedness of the Subsidiary;

(c) Non-Recourse Debt of the Subsidiary;

(d) Non-Speculative Financial Instrument Obligations of the Subsidiary;

(e) Permitted Capital Lease Obligations of the Subsidiary;

(f) Purchase Money Obligations of the Subsidiary; and

(g) any other Indebtedness of the Subsidiary (in addition to the Indebtedness referred to in paragraphs (a) to (f)) if, after giving effect to the Indebtedness, the aggregate amount of all Indebtedness of all Subsidiaries permitted by this paragraph (g) only would not exceed 5% of Consolidated Net Worth.

For the purposes of this covenant, the assignment by the Corporation to a third party of Inter-Company Indebtedness owing by a Subsidiary will be considered to be an incurrence of Indebtedness by that Subsidiary.

6.10 Limitation on Subsidiary Preferred Shares

The Corporation shall not permit a Subsidiary to issue any Preferred Shares other than to the Corporation or another Subsidiary.

6.11 No Change of Domicile

The Corporation shall not, directly or indirectly through a Subsidiary, enter into a transaction or series of transactions, other than a transaction or series of transactions involving a Change of Control, in which all or substantially all of the undertaking, property and assets of the Corporation and its Subsidiaries would become the property of any other Person, whether by way of reorganization, consolidation, amalgamation, arrangement, merger, transfer, sale, lease or otherwise, unless the Corporation will be the continuing corporation or:

(a) the Person is a corporation organized and existing under the laws of Canada or a province or territory thereof or of the United States of America or a state thereof or of the District of Columbia and expressly assumes, by a Supplemental Indenture satisfactory in form to the Trustee and Trustee Counsel and executed and delivered to the Trustee, all the covenants and obligations of the Corporation under this Indenture and all Notes;

(b) at the time of and after giving effect to the reorganization, consolidation, amalgamation, arrangement, merger, transfer, sale, lease or other transaction, no Event of Default or event that, with the passing of time or the giving of notice or both, would constitute an Event of Default has occurred and is continuing;

(c) the Corporation shall have delivered to the Trustee an opinion of the Corporation Counsel and Officers' Certificate stating that the conditions precedent in this Section 6.11 have been satisfied; and

(d) neither the Corporation nor the Person, either at the time of or immediately after the consummation of any such transaction and after giving full effect thereto, or immediately after compliance by the Person with the provisions of Section 6.11(a), will be insolvent or generally fail to meet, or admit in writing its inability or unwillingness to meet, its obligations as they generally become due.

Whenever the conditions of this Section 6.11 have been duly observed and performed, the Person shall possess and from time to time may exercise each and every right and power of the Corporation under this Indenture, in the name of the Corporation or otherwise, and any act or proceeding required by any provision of this Indenture to be done or performed by any directors or officers of the Corporation may be done and performed with like force and effect by the directors or officers of the Person.

6.12 Transactions with Affiliates

The Corporation shall not, and shall not permit any Subsidiary to, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of the Company (each, an "Affiliate Transaction") other than an Affiliate Transaction made pursuant to the terms of a shareholders agreement with respect to the ownership and operation of the Lo Increible

properties in Venezuela or an Affiliate Transaction that, based on an Officer's Certificate to that effect, is on terms that are no less favourable than those that would have been obtained in a comparable arm's length transaction with a person who is not a "related person", as such term is defined in the *Bankruptcy and Insolvency Act* (Canada).

6.13 Limitation on Sale of Las Cristinas Project

The Corporation shall not sell, lease, transfer or otherwise dispose of all or part of its interest in the Las Cristinas Project unless it receives consideration at least equal to the fair market value thereof and unless at least 75% of the consideration received consists of cash or Cash Equivalents or commitments to pay cash or the assumption of Indebtedness of the Corporation (other than Indebtedness which is subordinated to the Notes).

6.14 Trustee May Perform Covenants

If the Corporation fails to perform any covenant on its part herein contained, the Trustee may perform any such covenant capable of being performed by it and, if any such covenant requires the payment or expenditure of money, the Trustee may make such payment or expenditure with its own funds or with money borrowed by or advanced to it for such purpose, but shall be under no obligation to do so. All sums so expended or advanced shall be repayable by the Corporation in the manner provided in Section 6.4, but no such performance or payment shall be deemed to relieve the Corporation from any default or continuing obligation hereunder.

6.15 Certificates Relating to Compliance and Default

So long as any Notes are outstanding, the Corporation shall deliver to the Trustee within 60 days after the end of each of its first three fiscal quarters in each of its fiscal years and within 120 days after the end of each of its fiscal years, and at any other time if so requested by the Trustee, an Officers' Certificate stating that the Corporation has complied with all covenants, conditions or other requirements contained herein, non-compliance with which would, with the giving of notice or the lapse of time or otherwise, constitute an Event of Default or, if such is not the case, specifying all relevant particulars thereof, the period of existence thereof and the action the Corporation is taking or proposes to take with respect thereto. For purposes of this Section 6.15, compliance by the Corporation with the covenants, conditions or other requirements of this Indenture shall be determined without regard to any period of grace or notice requirement under this Indenture.

6.16 Financial Statements

Following receipt of financial statements of the Corporation by the Trustee pursuant to this Indenture, the Trustee shall, while such statements are current, maintain custody of them and make them available for inspection by Noteholders upon reasonable written request. No obligation shall rest with the Trustee to analyze such statements, or evaluate the performance of the Corporation as indicated by such financial statements, in any manner whatsoever.

SECTION 7 – DEFAULTS AND REMEDIES

7.1 Events of Default

In addition to any events specified in a Supplemental Indenture relating to a Series of Notes or except as otherwise provided in any such Supplemental Indenture, each of the following events shall be an "Event of Default" in respect of each Series of Notes:

(a) failure to pay principal or Premium, if any, on any Notes when due;

(b) failure to pay interest on any Notes when due if such failure continues for a period of 30 days;

(c) the sale, transfer, lease or other disposition, in a transaction or series of transactions, of all or substantially all of the property and assets of the Corporation and its Subsidiaries, other than in accordance with Section 6.11;

(d) failure to observe or perform any other covenant or condition contained in this Indenture or a Supplemental Indenture if such failure continues for a period of 60 days after written notice thereof has been given to the Corporation by the Trustee or the Holders of at least 25% aggregate principal amount of the Notes of any affected Series then outstanding;

(e) failure by the Corporation or any Subsidiary to observe or perform any provision of any agreement under which Indebtedness is created if such failure has the effect of causing more than $10 million of such Indebtedness in the aggregate to become due and payable or to be required to be redeemed or repurchased before its stated maturity;

(f) the rendering by a court of competent jurisdiction of one or more judgments against the Corporation or any Subsidiary in an aggregate amount of more than $10 million if the judgments remain undischarged or unstayed for more than 30 days;

(g) proceedings are commenced for the winding-up, liquidation or dissolution of the Corporation or a Subsidiary (except as otherwise permitted under this Indenture), a decree or order of a court of competent jurisdiction is entered adjudging the Corporation or a Subsidiary a bankrupt or insolvent, or a petition seeking reorganization, arrangement or adjustment of or in respect of the Corporation or a Subsidiary is approved under applicable law relating to bankruptcy, insolvency or relief of debtors, unless the Corporation or such Subsidiary in good faith actively and diligently contests such proceedings, decree, order or approval, resulting in a dismissal or stay thereof within 60 days of commencement;

(h) the Corporation or a Subsidiary makes an assignment for the benefit of its creditors, or petitions or applies to any court or tribunal for the appointment of a

receiver or trustee for itself or any substantial part of its property, or commences for itself or acquiesces in any proceeding under any bankruptcy, insolvency, reorganization, arrangement or readjustment of debt law or statute or any proceeding for the appointment of a receiver or trustee for itself or any substantial part of its property, or suffers any such receivership or trusteeship and allows such suffered receivership or trusteeship to remain undischarged or unstayed for 30 days; and

(i) a resolution is passed for the winding-up or liquidation of the Corporation except in the course of carrying out or pursuant to a transaction in respect of which the conditions of Section 6.11 are duly observed and performed.

7.2 Notice of Event of Default

If an Event of Default shall occur and be continuing, the Trustee shall, within 10 days after it becomes aware of the occurrence of such Event of Default, give notice of such Event of Default to the Noteholders and to the escrow agent under the escrow agreement made as of December 23, 20004 between the Corporation and CIBC Mellon Trust Company as escrow agent in the manner specified in Section 10.2; provided, however, that, except in the case of a default in the payment of the principal of, (or Premium, if any) or interest on, any Note, the Trustee shall be protected in withholding such notice if and so long as the Trustee in good faith determines that the withholding of such notice is in the best interests of the Holders and the Trustee so advises the Corporation in writing.

If notice of an Event of Default has been given to Noteholders and such Event of Default is thereafter remedied or cured prior to the acceleration of the Indebtedness of the Corporation hereunder pursuant to Section 7.3, notice that such Event of Default is no longer continuing shall be given by the Trustee to the Persons to whom notice of such Event of Default was given pursuant to this Section 7.2, such notice to be given within a reasonable time, not to exceed 10 days, after the Trustee becomes aware that such Event of Default has been remedied or cured during such period of time.

7.3 Acceleration

If an Event of Default, other than that described in Section 7.1(g) to (i), occurs and is continuing, the Trustee or the Holders of not less than 25% of the principal amount of Notes of a Series of Notes then outstanding may declare the principal amount of and the Premium, if any, and any accrued and unpaid interest on all Notes of that Series then outstanding to be due and payable immediately.

If an Event of Default described in Section 7.1(g) to (i) occurs and is continuing, the principal amount of and the Premium, if any, and accrued and unpaid interest on all Notes then outstanding shall be due and payable immediately without any declaration or other action by the Trustee or the Holders.

Notwithstanding anything contained in this Indenture or the Notes to the contrary, if the principal amount and the Premium, if any, and any accrued and unpaid interest on Notes are due and payable automatically or by a declaration pursuant to this Section 7.3, the Corporation shall

pay to the Trustee forthwith, for the benefit of the Noteholders of the affected Notes, the amount of principal of and Premium, if any, and accrued and unpaid interest (including interest on amounts in default) on those Notes and all other fees and expenses payable in regard thereto under this Indenture, together with interest thereon at the rate borne by such Notes from the date that such amounts are due and payable automatically or by declaration pursuant to this Section 7.3 until payment is received by the Trustee. Such payments, when made, shall be deemed to have been made in discharge of the Corporation's obligations under this Indenture.

7.4 Waiver of Event of Default

Upon the happening of an Event of Default:

(a) the Holders of a Series of Notes then outstanding with respect to which an Event of Default shall have occurred and be continuing, pursuant to an Extraordinary Resolution (or, in the case of an Event of Default relating to a failure to make payment of principal or a covenant or provision hereof which pursuant to Section 9.11 hereof cannot be modified or amended without the consent of the Holder of each outstanding Note affected, with the consent of the Holder of each outstanding Note of the Series) shall have the power, exercisable by requisition in writing, to instruct the Trustee to waive such Event of Default with respect to such Series and to cancel any declaration with respect to such Series made by the Trustee pursuant to Section 7.3, and the Trustee shall thereupon waive such Event of Default with respect to such Series or cancel such declaration with respect to such Series upon such terms and conditions as shall be prescribed in such requisition; and

(b) the Trustee, so long as it has not become bound to declare the principal of and Premium and interest on the Notes then outstanding to be due and payable, or to obtain or enforce payment thereof, shall have the power to waive any Event of Default which has been remedied or cured or in respect of which, in the opinion of the Trustee, adequate satisfaction has been made.

No delay or omission of the Trustee or of the Noteholders in exercising any right or power accruing upon the occurrence of an Event of Default shall impair any such right or power or shall be construed to be a waiver of such Event of Default or acquiescence therein, and no act or omission, either of the Trustee or of the Noteholders, shall extend to or be taken in any manner whatsoever to affect any subsequent Event of Default or the rights resulting therefrom.

7.5 Enforcement by the Trustee

Upon the occurrence of an Event of Default, the Trustee shall exercise the rights and powers vested in it under this Indenture.

Subject to the provisions of Section 7.4 and to the provisions of any Extraordinary Resolution, if the Corporation fails to pay to the Trustee, forthwith after the same shall have been declared to be or has automatically become due and payable under Section 7.3, the principal of

and Premium and interest on the affected Notes together with any other amounts due hereunder, the Trustee shall, upon receipt of a Noteholders' Request on behalf of the Holders of the affected Notes and upon being sufficiently indemnified to its reasonable satisfaction against all costs, expenses and liabilities to be incurred, proceed in its name as Trustee hereunder to obtain or enforce payment of such principal of, and Premium and interest on, those Notes together with any other amounts due hereunder by such proceedings authorized by this Indenture or by suit at law or in equity as the Trustee in the Noteholders' Request shall have been directed to take, or if the Noteholders' Request contains no such direction, then by such proceedings authorized by this Indenture or by suit at law or in equity as the Trustee shall deem expedient.

The Trustee shall be entitled and is hereby empowered, either in its own name or as trustee of an express trust, or as attorney-in-fact for each of the Holders of the Notes, or in any one or more of such capacities, to file such proof of debt, amendment of proof of debt, claim, petition or other document as may be necessary or advisable in order to have the claims of the Trustee and some or all of the Holders of the Notes allowed in any insolvency, bankruptcy, liquidation or other judicial proceedings relative to the Corporation or its creditors or relative to or affecting its property. The Trustee is hereby irrevocably appointed (and the successive respective Holders of the Notes by taking and holding Notes shall be conclusively deemed to have so appointed the Trustee) the true and lawful attorney-in-fact of the respective Holders of the Notes with authority to make and file in the respective names of the Holders of the Notes or on behalf of the Holders of the Notes as a class, subject to deduction from any such claims of the amounts of any claims filed by any of the Holders of the Notes themselves, any proof of debt, amendment of proof of debt, claim, petition or other document in any such proceedings and to receive payment of any sums becoming distributable on account thereof, and to execute any such other documents and to do and perform any and all such acts and things, for and on behalf of such Holders of the Notes, as may be necessary or advisable, in the opinion of the Trustee acting on the advice of Trustee Counsel, in order to have the respective claims of the Trustee and of the Holders of the Notes against the Corporation or its property allowed in any such proceeding, and to receive payment of or on account of such claims, provided that nothing contained in this Indenture shall be deemed to give to the Trustee, unless so authorized by Extraordinary Resolution, any right to accept or consent to any plan of reorganization or otherwise by action of any character in such proceeding to waive or change in any way any right of any Noteholder.

The Trustee shall also have power at any time and from time to time to institute and to maintain such suits and proceedings as it may be advised shall be necessary or advisable to preserve and protect its interests and the interests of some or all of the Noteholders.

All rights of action hereunder may be enforced by the Trustee without the possession of any of the Notes or the production thereof at the trial or other proceedings relative thereto. Any such suit or proceeding instituted by the Trustee shall be brought in the name of the Trustee as trustee of an express trust, and any recovery of judgment shall be for the rateable benefit of the applicable Holders of the Notes whose rights are enforced subject to the provisions of this Indenture. In any proceeding brought by the Trustee (and also in any proceeding in which a declaratory judgment of a court may be sought as to the interpretation or construction of any provision of this Indenture to which the Trustee shall be a party), the Trustee shall be held to

represent all the Holders of the Notes whose rights are enforced, and it shall not be necessary to make any Holders of the Notes parties to any such proceeding.

7.6 Suits by Noteholders

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

(a) the Noteholders of such Series, by Extraordinary Resolution or by Noteholders' Request, shall have made a written request to the Trustee and the Trustee shall have been afforded reasonable opportunity either itself to proceed to exercise the powers conferred upon it or to institute an action, suit or proceeding in its name for such purpose;

(b) the Noteholders of such Series or any of them shall have furnished to the Trustee, when so requested by the Trustee, indemnity satisfactory to the Trustee with respect to the costs, expenses and liabilities to be incurred therein or thereby;

(c) the Trustee shall have failed to act within a reasonable time after such notification, request and provision of indemnity; and

(d) no direction inconsistent with such written request has been received by the Trustee from Holders of a majority in principal amount of the outstanding Notes of such Series.

If a Noteholder has the right to institute proceedings under this Section 7.6, such Noteholder, acting on behalf of itself and all other Noteholders, shall be entitled to commence proceedings in any court of competent jurisdiction in which the Trustee might have commenced proceedings under Section 7.5, but in no event shall any Noteholder or combination of Noteholders have any right to seek any other remedy or institute proceedings out of court. No one or more Noteholders shall have any right in any manner whatsoever to enforce any right under this Indenture or under any Note, except in accordance with the conditions and in the manner provided in this Indenture.

7.7 Application of Money

Except as herein otherwise expressly provided, any money received by the Trustee or a Noteholder pursuant to the provisions of this Section 7 or as a result of legal or other proceedings against the Corporation pursuant hereto, or from any trustee in bankruptcy or liquidator of the Corporation, shall be applied, together with other money available to the Trustee for such purpose, as follows:

(a) first, in payment or in reimbursement to the Trustee of its fees, costs, charges, expenses, borrowings, advances or other amounts furnished or provided by or at the request of the Trustee in or about the administration and execution of its trusts under, or otherwise in relation to, this Indenture, with interest thereon as herein provided;

(b) second, subject to the provisions of Section 6.5 and this Section 7.7, in payment of the principal of, and Premium, if any, and accrued and unpaid interest and interest on amounts in default on, the Notes which shall then be outstanding in the priority of principal first and then Premium and then accrued and unpaid interest and interest on amounts in default unless otherwise directed by an Extraordinary Resolution in respect of a Series of Notes, and in that case in such order or priority as between principal, Premium and interest as may be directed by such Extraordinary Resolution; and

(c) third, in payment of the surplus, if any, of such money to the Corporation or its assigns;

provided, however, that no payment shall be made pursuant to Section 7.7(b) in respect of the principal of, or Premium or interest on, any Note which the Trustee knows is held, directly or indirectly, by or for the benefit of the Corporation or any Affiliate of the Corporation (other than any Note pledged for value and in good faith to a Person other than the Corporation or any Affiliate of the Corporation, but only to the extent of such Person's interest therein) until the prior payment in full of the principal of and Premium and interest on all Notes which are not so held.

7.8 Distribution of Proceeds

Payments to Noteholders pursuant to Section 7.7(b) shall be made as follows:

(a) at least 15 days' notice of every such payment shall be given in the manner specified in Section 10.2, specifying the time and the place or places at which the applicable Notes are to be presented and the amount of the payment and the application thereof as between principal, Premium and interest;

(b) payment in respect of any Note shall be made upon presentation thereof at any one of the places specified in such notice and any such Note thereby paid in full shall be surrendered, otherwise a notation of such payment shall be endorsed thereon, but the Trustee may in its discretion dispense with presentation and surrender or endorsement in any case upon such indemnity being given as the Trustee shall consider sufficient;

(c) from and after the date of payment specified in such notice, interest shall accrue only on the amount owing on each Note after giving credit for the amount of the payment specified in such notice unless the Note in respect of which such amount

is owing is duly presented on or after the date so specified and payment of such amount is not made; and

(d) the Trustee shall not be required to make any payment to Noteholders unless the amount available to it for such purpose, after reserving therefrom such amount as the Trustee may think necessary to provide for the payments referred to in Section 7.7(a), exceeds two per cent of the aggregate principal amount of the Notes of the Series in default then outstanding.

7.9 Remedies Cumulative

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

7.10 Judgment Against the Corporation

In case of any judicial or other proceedings to enforce the rights of the Noteholders, judgment may be rendered against the Corporation in favour of the Noteholders or in favour of the Trustee, as trustee for the Noteholders, for any amount which may remain due in respect of the Notes and the interest thereon.

7.11 Immunity of Shareholders, Directors and Officers

The Noteholders and the Trustee hereby waive and release any right, cause of action or remedy now or hereafter existing in any jurisdiction against any past, present or future incorporator, shareholder, director or officer of the Corporation or of any Person referred to in Section 6.11 for the payment of the principal of, or Premium or interest on, any of the Notes or on any covenant, agreement, representation or warranty by the Corporation herein or contained in the Notes.

SECTION 8 – CANCELLATION, DISCHARGE AND DEFEASANCE

8.1 Cancellation and Destruction

All Notes surrendered to the Corporation, a Registrar or a Paying Agent for any purpose shall be delivered to the Trustee as soon as reasonably practicable. Each such Note and each Note surrendered to the Trustee shall be cancelled by the Trustee forthwith after all payments required in respect thereof to the date of surrender have been made. Subject to applicable law, all Notes cancelled or required to be cancelled under this or any other provision of this Indenture shall be destroyed by the Trustee in accordance with the Trustee's ordinary practice, and the Trustee shall, at the request of the Corporation, furnish to it a cancellation or destruction certificate in respect of the Notes so cancelled or destroyed.

8.2 Payment of Amounts Due on Maturity

Except as otherwise provided in a Supplemental Indenture applicable to a Series of Notes, the Corporation shall establish and maintain with the Trustee segregated trust accounts ("Debt Accounts") for each Series of Notes. Each such Debt Account shall be maintained by and be subject to the control of the Trustee for the purposes of this Indenture. Prior to 9:00 a.m., Toronto, Ontario time, on each Maturity Date for outstanding Notes, the Corporation shall deposit in the applicable Debt Accounts an amount sufficient to pay the amount payable in respect of such Notes on such Maturity Date (less any taxes required by law to be deducted or withheld). The Trustee shall use the funds deposited in Debt Accounts to pay, to the Holder of a Note entitled to receive payment on such Maturity Date, the principal amount of, accrued and unpaid interest if any, and Premium, if any, on such Note upon surrender of such Note at the Corporate Trust Office or at such other place as shall be designated for such purpose from time to time by the Corporation and the Trustee. The deposit of such amount to the applicable Debt Accounts shall satisfy and discharge the liability of the Corporation for the Notes to which the deposit relates to the extent of the amount deposited (plus the amount of any taxes required by applicable law to be deducted or withheld) and thereafter such Notes shall not to that extent be considered to be outstanding and the Holders shall have no right with respect thereto other than to receive out of the amount so deposited the respective amounts to which the Holders are entitled upon surrender of such Notes. Failure to make a deposit as required pursuant to this Section 8.2 shall constitute default in payment on the Notes in respect of which the deposit was required to have been made.

8.3 Repayment of Unclaimed Money

Subject to applicable law, any amount deposited pursuant to Section 8.2 and not claimed by and paid to the Holders of Notes as provided in Section 8.2 within six years after the later of the date of such deposit and the applicable Maturity Date shall be repaid to the Corporation by the Trustee on demand, together with any interest accrued thereon, and thereupon the Trustee shall be released from all further liability with respect to such amount and thereafter the Holders of the Notes in respect of which such amount was so repaid to the Corporation shall have no rights in respect thereof and the Corporation shall be discharged from its obligations in respect thereof.

8.4 Discharge

Upon proof being given to the Trustee that the principal of all the Notes and the Premium thereon and interest (including interest on amounts in default) thereon and other amounts payable hereunder have been paid or satisfied, or that all the outstanding Notes have matured or have been duly called for redemption and such payment or redemption has been duly and effectually provided for by payment to the Trustee or otherwise, and upon payment of all costs, charges and expenses properly incurred by the Trustee in relation to this Indenture and all interest thereon and the remuneration of the Trustee, or upon provision satisfactory to the Trustee being made therefor, the Trustee shall, at the written request and at the expense of the Corporation, execute and deliver to the Corporation such deeds or other instruments as shall be required to evidence

the satisfaction and discharge of this Indenture and to release the Corporation from its covenants herein contained other than those relating to the indemnification of the Trustee.

8.5 Defeasance

The Corporation shall have the right (the "Defeasance Option") to be released from the terms of this Indenture relating to the outstanding Notes of a Series specified by the Corporation in a written notice to the Trustee, and upon receipt of such notice the Trustee shall, at the request and expense of the Corporation, execute and deliver to the Corporation such deeds and other instruments as shall be necessary to release the Corporation from the terms of this Indenture relating to the Notes of the Series specified in such notice, except those relating to the indemnification of the Trustee, subject to the following:

(a) the Corporation shall have delivered to the Trustee evidence satisfactory to the Trustee that the Corporation has:

(1) segregated and deposited for the benefit of Holders of Notes of the Series sufficient funds for the payment of all principal, Premium, interest and other amounts due or to become due on the Notes of such Series to the Stated Maturity thereof,

(2) segregated and deposited for the benefit of the Trustee funds or otherwise made provision for the payment of all remuneration and expenses of the Trustee to carry out its duties under this Indenture in respect of the Notes of such Series, and

(3) segregated and deposited funds for the payment of present taxes owing and any taxes arising with respect to all deposited funds or other provision for payment in respect of the Notes of such Series,

in each case irrevocably, pursuant to the terms of a trust agreement in form and substance satisfactory to the Corporation and the Trustee;

(b) the Trustee shall have received an opinion or opinions of Corporation Counsel to the effect that the Holders of the Notes of such Series will not be subject to any additional taxes as a result of the exercise by the Corporation of the Defeasance Option with respect to such Notes and that such Holders will be subject to taxes, if any, including those in respect of income (including taxable capital gains), on the same amount, in the same manner and at the same time or times as would have been the case if the Defeasance Option had not been exercised in respect of such Notes;

(c) no Event of Default shall have occurred and be continuing on the date of the deposit referred to in Section 8.5(a);

(d) such release does not result in a breach or violation of, or constitute a default under, any material agreement or instrument to which the Corporation is a party or by which the Corporation is bound;

(e) the Corporation shall have delivered to the Trustee an Officers' Certificate stating that the deposit referred to in Section 8.5(a) was not made by the Corporation with the intent of preferring the Holders of the Notes of such Series over the other creditors of the Corporation or with the intent of defeating, hindering, delaying or defrauding creditors of the Corporation or others; and

(f) the Corporation shall have delivered to the Trustee an Officers' Certificate and an opinion of Corporation Counsel as required pursuant to Sections 11.12 and 11.13, stating that all conditions precedent provided for or relating to the exercise of such Defeasance Option have been complied with.

The Corporation shall be deemed to have made due provision for the depositing of funds if it deposits or causes to be deposited with the Trustee under the terms of an irrevocable trust agreement in form and substance satisfactory to the Corporation and the Trustee (each acting reasonably), solely for the benefit of the Holders of the Notes of the Series specified therein, money or debt Securities constituting direct obligations of Canada or an agency or instrumentality of Canada, which will be sufficient, in the written opinion of a firm of independent chartered accountants or an investment dealer acting reasonably and acceptable to the Trustee, to provide for payment in full when due of the Notes of such Series and all other amounts from time to time due and owing under this Indenture which pertain to the Notes of such Series.

The Trustee shall hold in trust all money or Securities deposited with it pursuant to this Section 8.5 and shall apply the deposited money and the money derived from such Securities in accordance with this Indenture to the payment of principal of and Premium and interest on the Notes and, as applicable, other amounts.

If the Trustee is unable to apply any money or Securities in accordance with this Section 8.5 by reason of any legal proceeding or any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Corporation's obligations under this Indenture and the Notes shall be revived and reinstated as though no money or Securities had been deposited pursuant to this Section 8.5 until such time as the Trustee is permitted to apply all such money or Securities in accordance with this Section 8.5, provided that if the Corporation has made any payment in respect of principal, Premium or interest on any Notes or, as applicable, other amounts because of the reinstatement of its obligations, the Corporation shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money or Securities held by the Trustee.

SECTION 9 – MEETINGS OF NOTEHOLDERS

9.1 Right to Convene Meetings

The Trustee may at any time and from time to time convene a meeting of Noteholders, and the Trustee shall convene a meeting of Noteholders upon receipt of a request of the Corporation or a Noteholders' Request and upon being indemnified to its reasonable satisfaction by the Corporation or by the Noteholders signing such request against the costs which may be incurred in connection with the calling and holding of such meeting. If the Trustee fails within 30 days after receipt of any such request and such indemnity to give notice convening a meeting, the Corporation or such Noteholders, as the case may be, may convene such meeting. Every such meeting shall be held in Toronto, Ontario, or at such other place as may be approved or determined by such of the Trustee, the Corporation or the Noteholders as convened the meeting in accordance with this Section 9.1.

9.2 Notices of Meetings

Notice of a meeting of Noteholders shall be given to the Noteholders in the manner specified in Section 10.2 at least 25 days prior to the date of the meeting, and a copy of any notice sent by mail to Noteholders shall be sent by mail to the Trustee (unless the meeting has been called by it) and to the Corporation (unless the meeting has been called by it). A notice of a meeting of Noteholders shall state the time and place at which the meeting is to be held and shall state briefly the general nature of the business to be transacted thereat, and it shall not be necessary for any such notice to set out the terms of any resolution to be proposed or any of the provisions of this Section 9.

9.3 Chairman

The Noteholders present in person or represented by proxy shall choose an individual present to be the chairman of the meeting.

9.4 Quorum

Subject to the provisions of Section 9.13, the quorum for a meeting of Noteholders shall be the Holder or Holders, present in person or represented by proxy, of at least 25% of the aggregate principal amount of the Notes then outstanding. If a quorum is not present within 30 minutes from the time fixed for the holding of a meeting, the meeting, if convened by the Noteholders, shall be dissolved, but in any other case the meeting shall be adjourned to the same day in the next week (unless such day is not a Business Day, in which case it shall be adjourned to the next following Business Day thereafter) at the same time and place, and no notice shall be required to be given in respect of such adjourned meeting. At the adjourned meeting, the Noteholders present in person or represented by proxy shall constitute a quorum and may transact the business for which the meeting was originally convened notwithstanding that they may not represent at least 25 % of the aggregate principal amount of the Notes then outstanding.

9.5 Power to Adjourn

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

9.6 Show of Hands

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

9.7 Poll

On every resolution proposed to be passed as an Extraordinary Resolution and on any other resolution submitted to a meeting in respect of which the chairman of the meeting or one or more Noteholders or proxyholders for Noteholders holding at least $10,000 principal amount of Notes demands a poll, a poll shall be taken in such manner and either at once or after an adjournment as the chairman of the meeting shall direct.

9.8 Voting

On a show of hands, every Person who is present and entitled to vote, whether as a Noteholder or as proxyholder for one or more Noteholders or both, shall have one vote. On a poll, each Noteholder present in person or represented by a proxy duly appointed by an instrument in writing shall be entitled to one vote in respect of each $1,000 principal amount of Notes held by such Noteholder on the record date fixed for the meeting. A proxyholder need not be a Noteholder. In the case of joint Holders of a Note, any one of them present in person or represented by proxy at the meeting may vote in the absence of the other or others, but if more than one of them are present in person or represented by proxy, they shall vote together in respect of the Notes of which they are joint Holders. Subject to the provisions of Section 9.9, in the case of Notes held by a Person other than an individual, an officer or representative of such Person may vote the Notes held by it unless there shall be more than one officer or representative of such Person present at the meeting, and those officers or individuals present do not agree on how the Notes may be voted, in which case a written proxy shall be required to determine who may vote the Notes and how such Notes are to be voted.

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

9.9 Regulations

The Trustee, or the Corporation with the approval of the Trustee, may from time to time make and from time to time vary such regulations as it shall from time to time think fit providing for or governing the following:

(a) voting by proxy by Noteholders, the form of the instrument appointing a proxyholder (which shall be in writing) and the manner in which it may be executed, and the authority to be provided by any Person signing a proxy on behalf of a Noteholder;

(b) the deposit of instruments appointing proxyholders at such place as the Trustee, the Corporation or the Noteholders convening the meeting, as the case may be, may, in the notice convening the meeting, direct and the time, if any, before the holding of the meeting or any adjournment thereof by which the same shall be deposited; and

(c) the deposit of instruments appointing proxyholders at an approved place or places other than the place at which the meeting is to be held and enabling particulars of such instruments appointing proxyholders to be provided before the meeting to the Corporation or to the Trustee at the place at which the meeting is to be held and for the voting of proxies so deposited as though the instruments themselves were produced at the meeting.

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

9.10 Corporation and Trustee May Be Represented

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

9.11 Powers Exercisable by Unanimous Consent of Noteholders

The following powers of the Noteholders shall be exercisable from time to time only with the consent of the Holder of each outstanding Note of each affected Series:

(a) reduce the principal amount at maturity of, extend the fixed maturity of, or alter the redemption provisions of, such Notes;

(b) change the currency in which any Notes or any Premium or interest thereon is payable;

(c) reduce the percentage in principal amount at maturity outstanding of such Notes that must consent to an amendment, supplement or waiver or consent to take any action under the Indenture, applicable Supplemental Indenture or such Notes;

(d) impair the right to institute suit for the enforcement of any payment on or with respect to such Notes;

(e) waive a default in payment with respect to such Notes;

(f) reduce the rate or extend the time for payment of interest on such Notes;

(g) affect the ranking of such Notes in a manner adverse to the Holder of the Notes; or

(h) make any changes to the Indenture, applicable Supplemental Indenture or such Notes that could result in the Corporation being required to make any withholding or deduction from payments made under or with respect to such Notes.

9.12 Powers Exercisable by Noteholders by Extraordinary Resolution

Subject to the provisions of Sections 7.4 and 9.11 of this Indenture, the following powers of the Noteholders shall be exercisable from time to time only by Extraordinary Resolution:

(a) power to sanction any modification, abrogation, alteration, compromise or arrangement of the rights of the Noteholders or any of them or, subject to the Trustee's prior consent, the Trustee against the Corporation or against its property, whether such rights arise under this Indenture or the Notes or otherwise, provided that such sanctioned actions are not prejudicial to the Trustee;

(b) power to assent to any modification of or change in or addition to or omission from the provisions contained in this Indenture which shall be agreed to by the Corporation and to authorize the Trustee to concur in and execute any Supplemental Indenture embodying any modification, change, addition or omission;

(c) power to sanction any scheme for the reconstruction or reorganization of the Corporation or for the consolidation, amalgamation or merger of the Corporation with or into any other Person or for the sale, leasing, transfer or other disposition of the undertaking, property and assets of the Corporation or any part thereof, provided that no such sanction shall be necessary in respect of any transaction which is not subject to any restriction in Section 6;

(d) power to direct or authorize the Trustee to exercise any power, right, remedy or authority given to it by this Indenture in any manner specified in any such Extraordinary Resolution (subject to the Trustee being sufficiently funded and

indemnified to its reasonable satisfaction) or to refrain from exercising any such power, right, remedy or authority;

(e) power to waive and direct the Trustee to waive any Event of Default and to cancel any declaration made by the Trustee pursuant to Section 7.3 either unconditionally or upon any condition specified in such Extraordinary Resolution;

(f) power to restrain any Noteholder from taking or instituting any suit, action or proceeding for the purpose of enforcing payment of the principal of, or interest or Premium on, any Notes or for the purpose of executing any trust or power hereunder;

(g) power to direct any Noteholder who, as such, has brought any action, suit or proceeding to stay or discontinue or otherwise deal with the same upon payment, if the taking of such suit, action or proceeding shall have been permitted by Section 7.6, of the costs, charges and expenses reasonably and properly incurred by such Noteholder in connection therewith;

(h) power to remove the Trustee at any time;

(i) power to assent to any compromise or arrangement with any creditor or creditors or any class or classes of creditors, whether secured or otherwise, and with holders of any shares or other Securities of the Corporation; and

(j) power to appoint a committee with power and authority (subject to such limitations, if any, as may be prescribed in the resolution) to exercise, and to direct the Trustee to exercise, on behalf of the Noteholders, such of the powers of the Noteholders as are exercisable by Extraordinary Resolution or otherwise as shall be included in the resolution appointing the committee. The resolution making such appointment may provide for payment of the expenses and disbursements of and compensation to such committee and the Trustee. Such committee shall consist of such number of individuals as shall be prescribed in the resolution appointing it and the members need not be Noteholders. Every such committee may elect its chairman and may make regulations respecting its quorum, the calling of its meetings, the filling of vacancies occurring in its number and its procedure generally. Such regulations may provide that the committee may act at a meeting at which a quorum is present or may act by minutes signed by the number of members thereof necessary to constitute a quorum. All acts of any such committee within the authority delegated to it shall be binding upon all Noteholders. Neither the committee nor any member thereof nor the Trustee shall be liable for any loss arising from or in connection with any action taken or omitted to be taken by them in good faith.

Except as otherwise provided in this Indenture, all other powers of and matters to be determined by the Noteholders may be exercised or determined from time to time by Ordinary Resolution.

9.13 Meaning of Ordinary Resolution

The expression "Ordinary Resolution" when used in this Indenture means, except as otherwise provided in this Indenture, a resolution proposed to be passed as an ordinary resolution at a meeting of Noteholders of a Series of Notes or of all Notes, as the case may be, duly convened for the purpose and held in accordance with the provisions of this Section 9 at which a quorum of such Noteholders is present and passed by the affirmative votes of Noteholders present in person or represented by proxy at the meeting who hold more than 50% of the aggregate principal amount of the Notes voted in respect of such resolution.

9.14 Meaning of Extraordinary Resolution

The expression "Extraordinary Resolution" when used in this Indenture means, except as otherwise provided in this Indenture, a resolution proposed to be passed as an extraordinary resolution at a meeting of Noteholders of a Series of Notes or of all Notes, as the case may be, duly convened for the purpose and held in accordance with the provisions of this Section at which the Holders of at least 51 % of the aggregate principal amount of the applicable Series of Notes or of all Notes, as the case may be, then outstanding are present in person or represented by proxy and passed by the affirmative votes of Noteholders present in person or represented by proxy at the meeting who hold not less than 66⅔% of the aggregate principal amount of the Notes voted in respect of such resolution.

If, at any such meeting, the Holders of at least 51% of the aggregate principal amount of the applicable Series of Notes or of all Notes, as the case may be, then outstanding are not present in person or represented by proxy within 30 minutes after the time appointed for the meeting, then the meeting, if convened by or on the requisition of Noteholders, shall be dissolved, but in any other case the meeting shall stand adjourned to such date, being not less than 21 nor more than 60 days later, and to such place and time as may be appointed by the chairman of the meeting. Notice of the time and place that such adjourned meeting is to be reconvened shall be given to the Noteholders in the manner specified in Section 10.2 at least 10 days prior to the date the adjourned meeting is to be reconvened. Such notice shall state that at the adjourned meeting the Noteholders present in person or represented by proxy shall constitute a quorum, but it shall not be necessary to set forth the purposes for which the meeting was originally called or any other particulars. At the adjourned meeting, the Noteholders present in person or represented by proxy shall constitute a quorum and may transact the business for which the meeting was originally convened, and a resolution proposed to be passed as an extraordinary resolution at such adjourned meeting and passed by the requisite vote as provided in this Section 9.14 shall be an Extraordinary Resolution within the meaning of this Indenture, notwithstanding that the Holders of at least 51% of the aggregate principal amount of the Notes then outstanding are not present in person or represented by proxy at such adjourned meeting.

9.15 Powers Cumulative

Any one or more of the powers or any combination of the powers in this Indenture stated to be exercisable by the Noteholders may be exercised from time to time, and the exercise of any one or more of such powers or any combination of powers from time to time shall not be deemed

to exhaust the rights of the Noteholders to exercise the same or any other such power or powers or combination of powers thereafter from time to time.

9.16 Minutes

Minutes of all resolutions and proceedings at every meeting of Noteholders shall be made and duly entered in books to be from time to time provided for that purpose by the Trustee at the expense of the Corporation, and any such minutes, if signed by the chairman of the meeting at which such resolutions were passed or proceedings had, or by the chairman of the next succeeding meeting of the Noteholders, shall be prima facie evidence of the matters therein stated and, unless the contrary is proved, every such meeting, in respect of the proceedings of which minutes shall have been made, shall be deemed to have been duly held and convened, and all resolutions passed thereat or proceedings had shall be deemed to have been duly passed and had.

9.17 Instruments in Writing

All actions which may be taken and all powers which may be exercised by the Noteholders at a meeting held as provided in this Section 9 may also be taken and exercised by an instrument in writing signed in one or more counterparts by the Holders of more than 50%, in the case of an Ordinary Resolution, or not less than 66⅔%, in the case of an Extraordinary Resolution, of the aggregate outstanding principal amount of a Series of Notes or of all Notes, as applicable, and the expressions "Ordinary Resolution" and "Extraordinary Resolution" when used in this Indenture shall include any instrument so signed.

9.18 Binding Effect of Resolutions

Every resolution passed in accordance with the provisions of this Section 9 at a meeting of Noteholders shall be binding upon all the Noteholders, whether present at or absent from such meeting, and every instrument in writing signed by Noteholders in accordance with Section 9.17 shall be binding upon all the Noteholders, whether signatories thereto or not, and each and every Noteholder and the Trustee (subject to the provisions for its remuneration, indemnification and protection herein contained) shall be bound to give effect accordingly to every such resolution and instrument in writing.

9.19 Serial Meetings

If any business to be transacted at a meeting of Noteholders or any action to be taken or power to be exercised by instrument in writing pursuant to Section 9.17 especially affects the rights of the Holders of Notes of one or more Series in a manner or to an extent differing from that in which it affects the rights of the Holders of Notes of any other Series, then:

(a) reference to such fact, indicating the Notes of each Series so especially affected, shall be made in the notice of such meeting and the meeting shall be and is herein called a "serial meeting";

(b) the Holders of Notes of a Series so especially affected shall not be bound by any action taken or power exercised at a serial meeting unless in addition to the other provisions of this Section 9:

(1) there are present in person or represented by proxy at such meeting Holders of at least 25% (or, for the purpose of passing an Extraordinary Resolution, at least 51%) of the aggregate principal amount of the Notes of such Series then outstanding, subject to the provisions of this Section 9 as to adjourned meetings, and

(2) the resolution is passed by the favourable votes of the Holders of more than 50% (or, in the case of an Extraordinary Resolution, not less than 66⅔%) of the aggregate principal amount of Notes of such Series voted on the resolution; and

(c) the Holders of Notes of a Series so especially affected shall not be bound by any action taken or power exercised by instrument in writing under Section 9.17 unless, in addition to the other provisions of this Section 9, such instrument is signed in one or more counterparts by the Holders of more than 50%, in the case of an Ordinary Resolution, or not less than 66⅔%, in the case of an Extraordinary Resolution, of the aggregate principal amount of the Notes of such Series then outstanding.

Notwithstanding anything herein contained, any covenant or other provision contained herein which is expressed to be effective only so long as any Notes of a particular Series remain outstanding may be modified by the required resolution or consent of the Holders of the Notes of such Series in the same manner as if the Notes of such Series were the only Notes outstanding hereunder. In addition, if any business to be transacted at any meeting or any action to be taken or power to be exercised by instrument in writing does not adversely affect the rights of the Holders of Notes of one or more other Series, the provisions of this Section 9 shall apply as if the Notes of each other Series were not outstanding and no notice of any such meeting need be given to the Holders of Notes of such Series.

9.20 Record Dates

If the Corporation shall solicit from the Holders any request, demand, authorization, direction, notice, consent, waiver or other action, the Corporation may, at its option, by or pursuant to a Certified Resolution, fix in advance a record date for the determination of such Holders entitled to provide such request, demand, authorization, direction, notice, consent, waiver or other action, but the Corporation shall have no obligation to do so. Any such record date shall be the record date specified in or pursuant to such Certified Resolution.

If such a record date is fixed, such request, demand, authorization, direction, notice, consent, waiver or other action may be given before or after such record date, but only the Holders of record at the close of business on such record date shall be deemed to be Holders for the purposes of determining whether Holders of the requisite proportion of Notes then

outstanding have authorized or agreed or consented to such request, demand, authorization, direction, notice, consent, waiver or other Act, and for this purpose the Notes then outstanding shall be computed as of such record date.

SECTION 10 – NOTICES

10.1 Notice to the Corporation

Any notice to the Corporation under the provisions hereof shall be valid and effective if delivered to the Chief Financial Officer of the Corporation at 18 King Street East, Suite 1210, Toronto, Ontario M5C 1C4, or if sent by facsimile transmission (with receipt confirmed) to the attention of the Chief Financial Officer of the Corporation at (416) 203-0099, and shall be deemed to have been validly given at the time of delivery or transmission if it is received prior to 4:00 p.m. on a Business Day, failing which it shall be deemed to have been given on the next Business Day. The Corporation may from time to time notify the Trustee of a change in address or facsimile number which thereafter, until changed by like notice, shall be the address or facsimile number of the Corporation for all purposes of this Indenture.

10.2 Notice to Noteholders

Unless otherwise expressly provided in this Indenture or, in relation to a particular Series, in the applicable Supplemental Indenture, any notice to Noteholders under the provisions hereof shall be valid and effective if it is delivered, sent by electronic communication or mailed postage prepaid, addressed to such Noteholders, at their addresses or electronic communication numbers, if any, appearing in the Register and, subject as provided in this Section 10.2, shall be deemed to have been received at the time of delivery or sending by electronic communication or on the 5th Business Day after the day on which it was mailed. Any notice made by delivery or sent by electronic communication on a day other than a Business Day, or after 4:00 p.m. (Toronto time) on a Business Day, shall be deemed to be received on the next following Business Day. All notices to joint Holders of any Notes may be given to whichever one of the Holders thereof is named first in the Register, and any notice so given shall be sufficient notice to all holders of such Note. In the event of a postal disruption, notice to Noteholders shall be given or sent by other appropriate means.

10.3 Notice to the Trustee

Any notice to the Trustee under the provisions hereof shall be valid and effective if delivered to the Trustee at 320 Bay Street, P.O. Box 1, Toronto, Ontario, M5H 4A6, Attention: Vice-President, Corporate Trust Services, or if sent by facsimile transmission (with receipt confirmed) to (416) 643-5570 and shall be deemed to have been validly given at the time of delivery or transmission if it is received prior to 4:00 p.m. on a Business Day, failing which it shall be deemed to have been given on the next Business Day. The Trustee may from time to time notify the Corporation of a change in address or facsimile number which thereafter, until changed by like notice, shall be the address or facsimile number of the Trustee for all purposes of this Indenture.

10.4 When Publication Not Required

If at any time a notice is required by this Indenture to be published in a particular city and no newspaper of general circulation is then being published and circulated on a daily basis in that city, the Corporation shall not be required to publish such notice in that city.

10.5 Waiver of Notice

Any notice provided for in this Indenture may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Noteholders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waivers.

SECTION 11 – CONCERNING THE TRUSTEE

11.1 Corporate Trustee Required Eligibility

The Trustee shall at all times be a corporation organized under the laws of Canada or any province thereof and authorized under such laws and the laws of the Province of Ontario to carry on trust business therein. If at any time the Trustee shall cease to be eligible in accordance with this Section 11, it shall resign immediately in the manner and with the effect hereinafter specified in this Section 11.

11.2 Certain Duties and Responsibilities of Trustee

In the exercise of the rights, powers and duties prescribed or conferred by the terms of this Indenture, the Trustee shall act honestly and in good faith and exercise that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances, and shall duly observe and comply with the provisions of any legislation and regulations which relate to the functions or role of the Trustee as a fiduciary hereunder. The duties and obligations of the Trustee shall be determined solely by the provisions hereof and, accordingly, the Trustee shall not be responsible except for the performance of such duties and obligations as they have undertaken herein.

None of the provisions of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers nor shall the Trustee be so compelled pursuant to any provisions contained in this Indenture.

The Trustee, upon the occurrence or at any time during the continuance of any act, action or proceeding, may require the Noteholders at whose instance it is acting to deposit with it any Notes held by them, for which Notes the Trustee shall issue receipts.

Notwithstanding any other provisions of this Indenture to the contrary, every provision of this Indenture that by its terms relieves the Trustee of liability or entitles the Trustee to rely or act

upon any evidence submitted to it is subject to the provisions of applicable legislation, this Section 11.2 and Section 11.3.

No provision of this Indenture shall operate to confer any obligation, duty or power on the Trustee in any jurisdiction in which it does not have the legal capacity required to assume, hold or carry out such obligation, duty or power. For the purposes of this Section 11.2, legal capacity includes, without limitation, the capacity to act as a fiduciary in such jurisdiction.

11.3 No Conflict of Interest

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

(b) If at any time the Trustee fails to comply with the provisions of Section 11.3(a), the Trustee shall within 10 days after the expiration of the 90-day period referred to therein, transmit notice of such failure to the Holders in the manner provided for notices to the Holders in Section 10.2.

(c) The Trustee may act, if requested by the Corporation, as trustee with respect to Convertible Debt, whether issued pursuant to this Indenture or otherwise.

11.4 Conditions Precedent to Trustee's Obligation to Act

The Trustee shall not be bound to give any notice or take any action or proceeding unless it is required to do so under the terms of this Indenture. The Trustee shall not be required to take notice of an Event of Default under this Indenture, other than in respect of payment of any money required by any provision of this Indenture to be paid to it, unless and until the Trustee is notified in writing of such Event of Default by any Noteholder or the Corporation, or has specific knowledge of such Event of Default. In the absence of such notice or knowledge, the Trustee may for all purposes of this Indenture assume that no Event of Default has occurred.

The obligation of the Trustee to commence or continue any act, action or proceeding under this Indenture shall be conditional upon its receipt of the following:

(a) an Extraordinary Resolution, Ordinary Resolution, Noteholders' Request, requisition in writing, or such other notice or direction as is required pursuant to

this Indenture, specifying the action or proceeding which the Trustee is requested, directed or authorized to take;

(b) sufficient funds to commence or continue such act, action or proceeding; and

(c) an indemnity satisfactory to the Trustee to protect and hold harmless the Trustee against the costs, charges, expenses and liabilities to be incurred thereby and any loss and damages it may suffer by reason thereof.

11.5 Resignation and Removal; Appointment of Successor

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Section 11.5 shall become effective until the acceptance of appointment by the successor Trustee under Section 11.6.

(b) The Trustee may resign at any time by giving 60 days written notice thereof to the Corporation. If an instrument of acceptance by a successor Trustee shall not have been delivered to the resigning Trustee within 30 days after the giving of such notice of resignation, the signing Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee.

(c) The Trustee may be removed at any time by an Extraordinary Resolution of the Noteholders.

(d) If at any time:

(1) the Trustee shall fail to comply with the provisions of Section 11.3, or

(2) the Trustee shall cease to be eligible under Section 11.1 and shall fail to resign after written request therefor by the Corporation or by any Holder who has been a bona fide Noteholder for at least six months, or

(3) the Trustee shall become incapable of acting or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or of its property shall be appointed or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation. conservation or liquidation,

then, in any case,

(i) the Corporation by a Certified Resolution may remove the Trustee, or

(ii) in the case of clause (1) above, a Noteholder and any other interested party, and in the case of clauses (2) and (3) above, any Noteholder may, on behalf of himself and all others similarly

situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(e) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of the Trustee for any cause, the Corporation, by a Certified Resolution, shall promptly appoint a successor Trustee. If, within one year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee shall be appointed by Ordinary Resolution of the Noteholders, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment in accordance with Section 11.6, become the successor Trustee and supersede the successor Trustee appointed by the Corporation. If no successor Trustee shall have been so appointed by the Corporation or the Holders of the Notes and so accepted such appointment, a Noteholder may on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee. Any successor Trustee appointed under any provision of this Section 11.5 shall be a corporation authorized to carry on the business of a trust company in all of the provinces of Canada.

(f) The Corporation shall give notice of each resignation and each removal of the Trustee and each appointment of a successor Trustee by mailing written notice of such event by registered mail, postage prepaid, to the Noteholders as their names and addresses appear in the Register. Alternatively, the Corporation may give such notice pursuant to a Bulletin issued by CDS. Each notice shall include the name of the successor Trustee and the address of its Corporate Trust Office.

11.6 Acceptance of Appointment by Successor

Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to the Corporation and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; but, upon written request of the Corporation or the successor Trustee, such retiring Trustee shall, upon payment of all amounts due it under Section 6.4, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee, and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder subject to the claim provided for in Section 6.4. Upon request of any such successor Trustee, acting reasonably, the Corporation shall execute any and all deeds, conveyances or instruments for more fully and certainly vesting in and confirming to it such rights, powers and trusts.

No successor Trustee shall accept its appointment unless at the time of such acceptance such successor Trustee shall be qualified and eligible under this Section 11.

11.7 Trustee May Deal in Notes

The Trustee may buy, sell, lend upon and deal in the Notes and generally contract and enter into financial transactions with the Corporation or otherwise, without being liable to account for any profits made thereby.

11.8 No Person Dealing with Trustee Need Inquire

No Person dealing with the Trustee shall be required to inquire as to whether the powers that the Trustee is purporting to exercise have become exercisable, or whether any amount remains due upon the Notes or to see to the application of any amount paid to the Trustee.

11.9 Investment of Money Held by Trustee

Unless otherwise provided in this Indenture (including the provisions of Section 8.5), any funds held by the Trustee under the trusts of this Indenture shall be deposited in a trust account in the name of the Trustee (which may be held with the Trustee or an Affiliate of the Trustee), which account shall be interest-bearing unless otherwise agreed by the Corporation. Upon the written direction of the Corporation, the Trustee shall invest such funds in Authorized Investments in its name and in accordance with such direction. Any direction by the Corporation to the Trustee as to the investment of funds shall be in writing and shall be provided to the Trustee not later than 9:00 a.m. on the Business Day on which the investment is to be made. Any such direction received by the Trustee after 9:00 a.m. or received on a day which is not a Business Day shall be deemed to have been given prior to 9:00 a.m. on the next Business Day. The Trustee shall not be held liable for any losses incurred in the investment of any funds in Authorized Investments.

All interest or other income received by the Trustee in respect of any investment or deposit made pursuant to the provisions of this Section 11.9 shall belong to the Corporation, and unless and until the Trustee shall have declared the principal of and Premium and interest on the Notes to be due and payable, the Trustee shall pay over to the Corporation all such interest and other income forthwith upon receipt thereof by the Trustee.

For the purposes of this Section 11.9, "Affiliate of the Trustee" includes Canadian Imperial Bank of Commerce, CIBC Mellon Global Securities Services Company and Mellon Bank, N.A.

11.10 Trustee Not Required to Give Security

The Trustee shall not be required to give any bond or security in respect of the execution of the trusts and powers of this Indenture or otherwise in respect of this Indenture.

11.11 Trustee Not Required to Possess Notes

All rights of action under this Indenture may be enforced by the Trustee without the possession of any of the Notes or the production thereof on any trial or other proceedings relative thereto.

11.12 Evidence of Compliance

The Corporation shall furnish to the Trustee forthwith evidence of compliance with the conditions specified in this Indenture relating to the issue, certification, authentication and delivery of Notes hereunder, the satisfaction and discharge of this Indenture or the taking of any other action to be taken by the Trustee at the request of or on the application of the Corporation. Such evidence shall consist of:

(a) an Officers' Certificate addressed to the Trustee stating that such conditions have been complied with in accordance with the terms of this Indenture; and

(b) in the case of conditions, compliance with which are by this Indenture subject to review or examination by Corporation Counsel, an opinion of Corporation Counsel addressed to the Trustee that such conditions have been complied with in accordance with the terms of this Indenture, including any statements required by applicable law.

11.13 Form of Evidence

Evidence furnished to the Trustee, which relates to a matter other than the issue, certification and delivery of Notes or the satisfaction and discharge of this Indenture or the compliance with a particular term of the Indenture which specifies more particularly the nature of evidence required for compliance, may consist of or otherwise be in accordance with a report or opinion of any solicitor, auditor, accountant, engineer or appraiser or any other Person whose qualifications give authority to a statement made by such Person, but if such report or opinion is furnished by a director, officer or employee of the Corporation it shall be in the form of a statutory declaration or a certificate.

Evidence furnished to the Trustee pursuant to Section 11.12 or this Section 11.13 shall include:

(a) a statement by the Person giving the evidence declaring that such Person has read and understands the provisions hereof relating to the conditions precedent with respect to compliance with which such evidence is being given;

(b) a statement describing the nature and scope of the examination or investigation upon which the statements or opinions contained in the evidence are based;

(c) a statement declaring that, in the belief of the Person giving the evidence, such Person has made such examination or investigation as is necessary to enable such

Person to make the statements or give the opinions contained or expressed therein; and

(d) a statement permitting and acknowledging reliance thereon by Holders.

11.14 Certain Rights of Trustee

Subject to the provisions of Section 11.2,

(a) the Trustee may conclusively act and rely as to the truth of the statements and correctness of the opinions expressed in, shall not be bound to make any investigation into the facts or matters of, and shall be fully protected in acting or relying or refraining from acting upon, any resolution, certificate, statement, statutory declaration, instrument, opinion, report, notice, request, direction, consent, order, bond, Note, note, other evidence of indebtedness or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) any request or order of the Corporation shall be sufficiently evidenced by a request or order in writing and signed by any officer of the Corporation, any resolution of the Directors shall be sufficiently evidenced by a Certified Resolution, and the Trustee may conclusively act and rely on any such request, order or Certified Resolution;

(c) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence is herein specifically prescribed) may, in the absence of bad faith on its part, rely and act upon an Officers' Certificate;

(d) the Trustee at the expense of the Corporation may consult with Trustee Counsel and such other experts and advisers as the Trustee believes are necessary to enable it to determine and discharge its duties hereunder, and the advice or opinion of the Trustee Counsel, experts or advisers shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon; and

(e) the Trustee shall not be under any obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Noteholders pursuant to this Indenture unless such Noteholders shall have offered to the Trustee sufficient funding or indemnity against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction, and provisions of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 11.14(e).

11.15 Merger, Conversion, Consolidation or Succession to Business

Any corporation into which the Trustee may be merged or with which it may be amalgamated or consolidated, or any corporation resulting from any merger, amalgamation or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such corporation shall be otherwise qualified and eligible under this Section 11, without the need for execution or filing of any specific instrument or any further act on the part of any of the parties hereto to evidence same.

11.16 Action by Trustee to Protect Interests

The Trustee shall have power to institute and maintain such actions and proceedings as it may consider necessary or expedient to preserve, protect or enforce its interests and the interests of the Noteholders.

11.17 Protection of Trustee

The Corporation hereby indemnifies and saves harmless the Trustee and its directors, officers and employees (each in this paragraph, an "Indemnified Persons") from and against all claims, demands, losses, actions, causes of action, costs, charges, expenses, damages, taxes (other than income or capital taxes), penalties and liabilities whatsoever brought against or incurred by the Trustee (collectively in this paragraph, "Claims"), including Claims arising under or pursuant to Environmental Laws, which it may suffer or incur as a result of or arising in connection with the performance of its duties and obligations under this Indenture, including any and all legal fees and disbursements of whatever kind or nature, except that no Indemnified Person shall be entitled to indemnification in respect of a Claim resulting from the negligence, wilful misconduct, breach of fiduciary duty or bad faith of the Trustee. This indemnity shall survive the removal or resignation of the Trustee under this Indenture and the termination of this Indenture.

The Trustee shall not be liable for or by reason of any statements of fact in this Indenture or in the Notes (except for the representations contained in Sections 11.3 and 11.18 and in the certificate of the Trustee on the Notes) or required to verify such statements, and all such statements are and shall be deemed to be made by the Corporation.

The Trustee shall not be bound to give notice to any Person of the execution of this Indenture.

The Trustee shall not incur any liability or responsibility whatever or in any way be responsible for the consequence of any breach on the part of the Corporation of any of the covenants contained in this Indenture or in any Notes or of any acts of the agents or employees of the Corporation.

Neither the Trustee nor any Affiliate of the Trustee shall be appointed a receiver or receiver and manager or liquidator of all or any part of the assets or undertaking of the Corporation.

Nothing in this Indenture shall impose on the Trustee any obligation to see to, or to require evidence of, the registration or filing (or renewal thereof) of this Indenture or any instrument ancillary or supplemental to this Indenture in any jurisdiction.

The Trustee shall not:

(a) be responsible or liable for any debts contracted by it, for damages to persons or property, for salaries, or for non-fulfilment of contracts in any period during which the Trustee is managing or in possession of assets of the Corporation;

(b) be liable to account as mortgagee in possession or for anything other than actual receipts or be liable for any loss on realization or for any default or omission for which a mortgagee in possession may be liable;

(c) be bound to do, observe or perform or to see to the observance of performance by the Corporation of any obligations or covenants imposed upon the Corporation; or

(d) in the case of any chattel paper, security or instrument, be obligated to preserve rights against any other Persons,

and the Corporation waives any provision of applicable law permitted to be waived by it which imposes higher or greater obligations upon the Trustee.

The Trustee shall not be responsible or liable in any manner whatever for the sufficiency, correctness, genuineness or validity of any security deposited with it.

The Trustee shall not incur any liability with respect to the delivery or non-delivery of any certificate or certificates whether delivered by hand, mail or any other means.

The Trustee shall not be responsible for ensuring that the proceeds from the sale of Notes are used in a manner contemplated by any prospectus pursuant to which such Notes were offered or sold.

11.18 Authority to Carry on Business

The Trustee represents to the Corporation that at the date of execution and delivery by it of this Indenture it is authorized to carry on the business of a trust company in each of the provinces of Canada. If the Trustee ceases to be authorized to carry on such business in any province of Canada, the validity and enforceability of this Indenture and the Notes issued under this Indenture shall not be affected in any manner whatsoever by reason only of such event, but within 90 days after ceasing to be authorized to carry on the business of a trust company in any

province of Canada the Trustee either shall become so authorized or shall resign in the manner and with the effect specified in Section 11.5.

11.19 Trustee Not Liable in Respect of Depository

The Trustee shall not have any liability whatsoever for:

(a) any aspect of the records relating to or payments made on account of beneficial ownership interests in the Notes held by and registered in the name of a Depository or any BEO Participant;

(b) maintaining, supervising or reviewing any records relating to such beneficial ownership interests; or

(c) any advice or representation made or given by or with respect to a Depository and made or given herein with respect to rules of such Depository or any action to be taken by a Depository or at the direction of a BEO Participant.

11.20 Global Notes

Notes issued to a Depository in the form of a Global Note shall be subject to the following:

(a) the Trustee may deal with the Depository as the authorized representative of the beneficial owners of such Notes;

(b) the rights of the beneficial owners of such Notes shall be exercised only through such Depository;

(c) such Depository will make book-entry transfers among the BEO Participants and will receive and transmit distributions of principal, Premium and interest on the Notes to the BEO Participants; and

(d) the BEO Participants shall have no rights under this Indenture or under or with respect to any of the Notes held on their behalf by such Depository, and the Depository may be treated by the Trustee and its agents, employees, officers and directors as the absolute owner of the Notes represented by such Global Note for all purposes whatsoever.

11.21 Trustee Appointed Attorney

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

11.22 Acceptance of Trusts

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

11.23 No Liability for Certain Deposited Monies

The Trustee will bear no liability for monies deposited other than with the Trustee. The Trustee will disburse monies according to this Indenture only to the extent that monies have been deposited with it.

SECTION 12 – SUPPLEMENTAL INDENTURES

12.1 Supplemental Indentures

From time to time the Trustee and, when authorized by a resolution of its Directors, the Corporation may, without the consent of any Noteholder, and they shall when required by this Indenture, execute, acknowledge and deliver by their proper officers Supplemental Indentures, which thereafter shall form part of this Indenture, for any one or more of the following purposes:

(a) adding limitations or restrictions to be observed by the Corporation upon the amount or issue of Notes hereunder, provided that such limitations or restrictions shall not be materially adverse to the interests of the Noteholders;

(b) adding to the covenants of the Corporation herein contained for the protection of the Noteholders or providing for Events of Default in addition to those herein specified;

(c) making such provisions not inconsistent with this Indenture as may be necessary or desirable with respect to matters or questions arising hereunder, including the making of any modifications in the form of the Notes which do not affect the substance thereof and which it may be expedient to make, provided that such provisions and modifications will not adversely affect the interests of the Noteholders;

(d) providing for the issue, as permitted hereby, of Notes of any one or more Series and the designation of any additional trustee in connection therewith;

(e) evidencing the succession, or successive successions, of successors to the Corporation and the covenants of and obligations assumed by any such successor in accordance with the provisions of this Indenture; and

(f) giving effect to any Extraordinary Resolution or Ordinary Resolution.

The Trustee may also, without the consent or concurrence of the Noteholders, by Supplemental Indenture or otherwise, concur with the Corporation in making any changes or corrections in this Indenture or in any Supplemental Note which it shall have been advised by Trustee Counsel are required for the purpose of curing or correcting any ambiguity or defective or inconsistent provision or omission or mistake or manifest error contained herein or in any Supplemental Indenture, provided that the rights of the Noteholders are in no way adversely affected thereby.

12.2 Effect of Supplemental Indentures

Upon the execution of any Supplemental Indenture relating to some or all Notes, this Indenture shall be modified in accordance therewith, such Supplemental Indenture shall form a part of this Indenture for all purposes in relation to such Notes, and every Holder of such Notes shall be bound thereby. Any Supplemental Indenture providing for the issue of Notes may contain terms which add to, modify or negate any of the terms contained in this Indenture in relation to the Notes to be so issued, and to the extent that there is any difference between the terms of this Indenture and the terms contained in a Supplemental Indenture, the terms contained in the Supplemental Indenture shall be applicable to the Notes to which such Supplemental Indenture relates and the corresponding terms contained in this Indenture shall not be applicable to such Notes unless otherwise indicated in such Supplemental Indenture; provided that no provision in a Supplemental Indenture relating to a Series of Notes shall adversely affect the rights of holders of Notes of any other Series.

12.3 Execution of Supplemental Indentures

In executing, or accepting the additional trusts created by, any Supplemental Indenture permitted by this Indenture or the modifications thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, and shall be fully protected in acting and relying upon, an opinion of Corporation Counsel stating that the execution of such Supplemental Indenture is authorized or permitted by this Indenture. The Trustee may, but shall not be obligated to, enter into any such Supplemental Indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

12.4 Reference in Securities to Supplemental Indentures

Securities of any Series authenticated and delivered after the execution of any Supplemental Indenture pursuant to this Section may, and shall if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such Supplemental Indenture.

SECTION 13 – EVIDENCE OF RIGHTS OF NOTEHOLDERS

13.1 Evidence of Rights of Noteholders

Any instrument which this Indenture may require or permit to be signed or executed by the Noteholders may be in any number of concurrent instruments of similar tenor and may be

signed or executed by such Noteholders in person or by attorney duly appointed in writing. Proof of the execution of any such instrument, or of a writing appointing any such attorney or of the holding by any Person of Notes shall be sufficient for any purpose of this Indenture if the fact and date of the execution by any Person of such instrument or writing are proved by the certificate of any notary public or other officer authorized to take acknowledgements of deeds to be recorded at the place at which such certificate is made that the Person signing such request or other instrument or writing acknowledged to him the execution thereof, or by an affidavit of a witness of such execution, or in any other manner which the Trustee may consider adequate.

The Trustee may, nevertheless, in its discretion, require further proof when it deems further proof desirable or may accept such other proof as it shall consider proper.

The ownership of Notes shall be proved by the Register as herein provided.

SECTION 14 – EXECUTION AND FORMAL DATE

14.1 Counterpart Execution

This Indenture may be executed in several counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument.

14.2 Formal Date

For the purpose of convenience, this Indenture may be referred to as bearing the formal date of December 23, 2004, irrespective of the actual date of execution hereof.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF the parties hereto have executed this Indenture under the hands of their proper signatories in that behalf.

CRYSTALLEX INTERNATIONAL CORPORATION

By: *Borden Rosiak*

Name: Borden Rosiak
Title: Chief Financial Officer

By: *Dan Ross*

Name: Dan Ross
Title: Executive Vice President and Corporate Counsel

CIBC MELLON TRUST COMPANY

By: *Eugenia Petryla*

Name: Eugenia Petryla
Title: Account Manager

By: *Mark Wright*

Name: Mark Wright
Title: Associate Manager

THIS IS EXHIBIT "H"
TO THE AFFIDAVIT OF SCOTT REID
SWORN BEFORE ME OVER VIDEOCONFERENCE
ON MAY 28, 2021

Commissioner for Taking Affidavits

Court File No. CV-11-9532-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	WEDNESDAY, THE 5TH
	)	
MR. JUSTICE NEWBOULD	)	DAY OF JUNE, 2013

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CRYSTALLEX INTERNATIONAL CORPORATION

(the "**Applicant**")

STAY EXTENSION AND STANDSTILL ORDER

THIS MOTION, made by the Applicant to extend the stay of proceedings on terms, pursuant to the *Companies' Creditors Arrangement* Act, R.S.C. 1985, c. C-36, as amended ("**CCAA**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the motion record of the Applicant, the Ninth Report of the Monitor, Ernst & Young Inc. (the "**Monitor**"), dated March 11, 2013, the Tenth Report of the Monitor dated June 4, 2013 and on hearing the submissions of counsel for the Applicant, counsel for Computershare Trust Company of Canada in its capacity as Trustee (the "**Trustee**") for the holders of Senior 9.375% Notes due December 23, 2011, issued by the Applicant (collectively, the "**Senior Notes**"), counsel for the Ad Hoc Committee (as defined below) and each beneficial owner of the Senior Notes that is part of the *ad hoc* committee of beneficial owners of the Senior Notes (as specified on Schedule "A" hereto) (the "**Ad Hoc Committee**") in all capacities, including, without limitation, as beneficial owners of the Senior Notes and, to the extent applicable, shareholders or holders of other equity interests of the Applicant, Tenor KRY

Coöperatief U.A. ("**Tenor**"), counsel for the Monitor, counsel for Forbes & Manhattan, Inc. and Aberdeen International Inc., counsel for McMillan LLP, and counsel for Juan Antonio Reyes, and upon Tenor, the Trustee, the Ad Hoc Committee, McMillan LLP, Forbes & Manhattan, Inc. and Aberdeen International Inc. consenting to this order and Juan Antonio Reyes not opposing this order:

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and Motion Record in respect of this Motion is hereby abridged so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that the Stay Period (as defined in the Initial Order of Mr. Justice Newbould dated December 23, 2011 (such date, the "**Filing Date**")) be and hereby is extended to and including December 31, 2014.

3. **THIS COURT ORDERS** that, by agreement of each of the Applicant, the Trustee and Tenor (collectively, with the Monitor, the "**Standstill Termination Notice Parties**"), from the date hereof until December 31, 2014 plus any one-year extensions pursuant to paragraph 4 herein (the "**Standstill Period**") there shall be a standstill on the terms set forth in paragraphs 6, 7, 12, 13, 14, 15 and 27 herein (the "**Standstill Period Terms**"). Notwithstanding any other provision of this Order, at any future stay extension motion seeking to extend the Stay Period beyond December 31, 2014 or any subsequent date ordered by this Court, any party other than a Standstill Termination Notice Party may, in its sole and absolute discretion, take any position it chooses to take in respect of such motion.

4. **THIS COURT ORDERS** that on December 31, 2014, the Standstill Period shall automatically continue for successive one-year periods pursuant to the Standstill Period

Terms unless at least thirty (30) days prior to the expiry of the initial Standstill Period or any one-year extension thereof written notice of termination of the Standstill Period (the "**Standstill Termination Notice**") is given by any of the Applicant, Tenor or the Trustee to each of the other Standstill Termination Notice Parties, in which case the Standstill Period shall terminate in accordance with paragraph 5 hereof. A Standstill Termination Notice may be given by any of the Applicant, Tenor or the Trustee, each in its sole and absolute discretion, to each of the other Standstill Termination Notice Parties, and in the case of the Trustee, may only be given by the Trustee if properly directed by holders of 50.01% of the aggregate principal of the Senior Notes pursuant to the terms of that certain trust indenture governing the Senior Notes dated as of December 23, 2004 (the "**Indenture**"), as supplemented by a first supplemental trust indenture dated as of December 23, 2004 (the "**First Supplemental Indenture**"), but may not be given by the Trustee if the Proven Standstill Noteholder Claim (as defined below) has been paid in full in accordance with paragraph 17 hereof.

5. **THIS COURT ORDERS** that the delivery of a Standstill Termination Notice shall terminate the Standstill Period and the continuation of the Standstill Period Terms immediately at the end of the then current Standstill Period, without further order of the Court.

6. **THIS COURT ORDERS** that the Applicant will have no obligation to file a Plan of Compromise and Arrangement pursuant to the CCAA during the Standstill Period and, absent agreement of each of the Applicant, Tenor, the Monitor and the Trustee, each acting in its sole and absolute discretion, no party shall be allowed to bring any motion in respect of the filing of a Plan of Compromise and Arrangement pursuant to the CCAA or file a plan of arrangement pursuant to any other statute during the Standstill Period.

7. **THIS COURT ORDERS** that no motions will be brought in these proceedings during the Standstill Period without leave of this Court, other than any motion(s) seeking approval of the fees and disbursements of counsel to the Applicant and/or the Monitor and counsel to the Monitor in accordance with the Initial Order of Mr. Justice Newbould dated December 23, 2011, any motions seeking approval of any report of the Monitor, or any motions to extend the stay consistent with the extension of the Standstill Period as contemplated by paragraph 4 hereof, provided that any such motion is made on at least seven (7) days' notice to the service list in these proceedings. Any party intending to seek such leave of the Court shall consult with the Monitor with respect to the motion they wish to bring prior to seeking such leave.

8. **THIS COURT ORDERS** that the Trustee (on behalf of all holders of the Senior Notes) shall have an irrevocable proven claim against the Applicant in the principal amount of US$104,135,273.97 (the "**Original Principal Amount**") as at the Filing Date and such claim shall be secured by the Prefiling Unsecured Creditors' Charge (as defined in the CCAA Financing Order (as defined below)).

9. **THIS COURT ORDERS** that upon the Trustee or counsel to the Trustee providing to the Monitor confirmation of the fees of the Trustee and legal and other professional expenses incurred and paid by the Trustee or a beneficial owner of the Senior Notes that is part of the Ad Hoc Committee, and upon the Monitor being satisfied with the confirmation so provided and confirming same to the Applicant and Tenor, the Trustee (on behalf of all holders of the Senior Notes) shall have an irrevocable proven claim against the Applicant for pre-filing fees and expenses in the amount of US$5,375,646.31, less the amount of US$206,665.43 on account of all outstanding pre-Filing Date cost awards (the "**Pre-Filing Cost Awards**") owed to the Applicant by any of the holders of

the Senior Notes or the Trustee (such net amount of US$5,168,980.88, the "**Trustee Pre-Filing Fees and Expenses Claim**") and such claim shall be secured by the Prefiling Unsecured Creditors' Charge on the basis set forth in paragraph 21 hereof. The Trustee Pre-Filing Fees and Expenses Claim shall only be paid following payment in full of all amounts now or hereafter owing by the Applicant as set out in Exhibit F of the Amended DIP Credit Agreement titled "Order of Application of Arbitration Proceeds" (the "**Waterfall Provision**") under subsections (f) and (g), but prior to any Arbitration Proceeds (as defined in the Amended DIP Credit Agreement) being retained by the Applicant or distributed to any holder of an equity security of the Applicant. "**Amended DIP Credit Agreement**" means the DIP credit agreement dated April 23, 2012 as amended by agreements dated May 15, 2012 and dated as of June 5, 2013, as such agreements and amendments exist as at the date hereof as reflected in copies delivered by the Applicant to the Monitor and counsel to the Ad Hoc Committee and the Trustee on May 31, 2013. The Pre-Filing Cost Awards shall be deemed satisfied in full pursuant to this paragraph 9 regardless of whether the Trustee Pre-Filing Fees and Expenses Claim is paid by the Applicant.

10. **THIS COURT ORDERS** that the Trustee (on behalf of all holders of the Senior Notes) shall have an irrevocable proven post-filing claim against the Applicant for the post-filing fees of the Trustee and legal and other professional expenses incurred by the Trustee or a beneficial owner of the Senior Notes that is part of the Ad Hoc Committee and paid in the amount of up to US$5,500,000, provided the Monitor has received confirmation of such fees and expenses and is satisfied with the confirmation so provided and has confirmed same to the Applicant and Tenor. The actual amount of such post-filing fees and expenses (up to US$5,500,000) (the "**Trustee Post-Filing Fees and Expenses**") shall be

added to the Original Principal Amount of the Senior Notes as at May 20, 2013 (the "**Standstill Trigger Date**") and secured by the Prefiling Unsecured Creditors' Charge. In addition to the Trustee Post-Filing Fees and Expenses, the Trustee shall be entitled to be reimbursed by the Applicant for further post-filing legal and professional expenses incurred by the Trustee or a beneficial owner of the Senior Notes that is part of the Ad Hoc Committee in an amount of up to US$250,000 (the "**Additional Expense Amount**") provided the Monitor has received confirmation of such fees and expenses and is satisfied with the confirmation so provided and has confirmed same to the Applicant and Tenor. The obligation of the Applicant to pay the Additional Expense Amount shall be secured by the Prefiling Unsecured Creditors' Charge.

11. **THIS COURT ORDERS** that the Trustee (on behalf of all holders of the Senior Notes) shall have an irrevocable proven post-filing claim against the Applicant for interest on the Original Principal Amount of the Senior Notes from the Filing Date to the Standstill Trigger Date at the simple interest rate of 9.375% per annum (the "**Base Rate**"), being US$13,747,995.93, which amount shall be added to the Original Principal Amount of the Senior Notes as at the Standstill Trigger Date, and secured by the Prefiling Unsecured Creditors' Charge.

12. **THIS COURT ORDERS** that, in addition to any other interest amount accruing thereon pursuant to this Order but without duplication, simple interest on the principal amount of the Senior Notes as of the Standstill Trigger Date (being US$123,383,269.90, such amount being the "**Proven Principal Senior Note Amount**") shall accrue at the Base Rate starting from the Standstill Trigger Date and ending on the earlier of: (i) the date of termination of the Standstill Period; and (ii) the payment in full of the Proven Standstill

Noteholder Claim in accordance with paragraph 17 hereof (such date, the "**Standstill End Date**").

13. **THIS COURT ORDERS** that, in addition to any other interest accruing thereon pursuant to this Order, simple incremental interest on the Proven Principal Senior Note Amount shall accrue at the rate of 2.625% per annum starting from the Standstill Trigger Date and ending on the Standstill End Date as a post-filing default rate of interest on the Senior Notes.

14. **THIS COURT ORDERS** that, in addition to any other interest accruing thereon pursuant to this Order but without duplication, simple incremental interest on the Proven Principal Senior Note Amount shall accrue at the rate of 5% per annum starting from the Standstill Trigger Date and ending on the Standstill End Date as additional compensation for allowing the Proven Principal Senior Note Amount to remain outstanding through to and including the Standstill End Date without requiring the Applicant to file a plan of compromise or arrangement.

15. **THIS COURT ORDERS** that, in addition to any other interest accruing thereon pursuant to this Order but without duplication, simple incremental interest on the Proven Principal Senior Note Amount shall accrue at the rate of 3% per annum starting from the Standstill Trigger Date and ending on the Standstill End Date as a CCAA standstill rate of interest.

16. **THIS COURT ORDERS** that: (a) the Trustee (on behalf of all holders of the Senior Notes) shall have an irrevocable proven post-filing claim against the Applicant for all interest accruing on the Proven Principal Senior Note Amount pursuant to paragraphs 12, 13, 14 and 15 hereof (the aggregate of such amounts, the "**Proven Standstill Interest**

Claim" and, with the Proven Principal Senior Note Amount and the Additional Expense Amount, the "**Proven Standstill Noteholder Claim**") and such claim shall be secured by the Prefiling Unsecured Creditors' Charge; and (b) without limiting any other obligations of the Applicant with respect to payments in respect of the Senior Notes, all payments by the Applicant in respect of the Senior Notes and interest thereon (including, for the avoidance of doubt, payments in respect of the Proven Standstill Noteholder Claim) shall be made in accordance with Section 6.1 of the First Supplemental Indenture, including, without limitation, the obligation of the Applicant to pay Additional Amounts (as such term is defined in Section 6.1 of the First Supplemental Indenture).

17. **THIS COURT ORDERS** that, notwithstanding termination of the Standstill Period for any reason, the Proven Standstill Noteholder Claim shall be payable in full in accordance with the Waterfall Provision after Arbitration Proceeds are received by the Applicant, free from any reduction for set-off or any other counter-claims (whether past, present or future) that the Applicant may allege.

18. **THIS COURT ORDERS** that this Order is without prejudice to any position any party may wish to take with respect to the interest accruing (including the applicable rate thereon) and payable on the Senior Notes or Prefiling Unsecured Non-Senior Notes Claims (as defined below) for the period from and after the expiry of the Standstill Period.

19. **THIS COURT ORDERS** that, except as provided in this Order, no rights are being waived by any party who consents to this Order including, without limitation, the right of any party to object to motions brought by any other party.

20. **THIS COURT ORDERS** that, on termination of the Standstill Period, all obligations pursuant to the Standstill Period Terms shall come to an end without the need for further Order of the Court, and, on termination of the Standstill Period, the prohibition on any party against bringing any motion in respect of the filing of a Plan of Compromise and Arrangement pursuant to the CCAA shall terminate, in all cases without further order of the Court. For the avoidance of doubt, notwithstanding termination of the Standstill Period, all interest on the Senior Notes accrued during the Standstill Period pursuant to paragraphs 12, 13, 14 and 15 hereof shall continue to constitute a proven post-filing claim against the Applicant.

21. **THIS COURT ORDERS** that the Prefiling Unsecured Creditors' Charge created pursuant to paragraph 13 of the Order of Mr. Justice Newbould made in these proceedings dated April 16, 2012 (the "**CCAA Financing Order**") is hereby amended as follows: (i) with respect to the Senior Notes, the Prefiling Unsecured Creditors' Charge shall secure the full amount of the Proven Standstill Noteholder Claim as may exist from time to time; and (ii) solely with respect to the Trustee Pre-Filing Fees and Expenses Claim referred to in paragraph 9 hereof, the Prefiling Unsecured Creditors' Charge shall rank subordinate to the Lender Additional Compensation Charge and the MIP Charge (each as defined in the CCAA Financing Order). The Prefiling Unsecured Creditors' Charge shall otherwise remain in full force and effect in accordance with the provisions of the CCAA Financing Order.

22. **THIS COURT ORDERS** that all interest accruing on or applicable to the Senior Notes (including, without limitation, any interest accruing pursuant to paragraphs 12 to 15 hereof) shall stop accruing if the Proven Standstill Noteholder Claim (but, for greater certainty, excluding the Trustee Pre-Filing Fees and Expenses Claim, which shall be paid

in accordance with the Waterfall Provision) is paid in full during the Standstill Period in accordance with paragraph 17 hereof, and that if the Proven Standstill Noteholder Claim is paid in full in accordance with paragraph 17 hereof during the Standstill Period, the Trustee or any Noteholder shall not seek any further or additional compensation, remuneration or entitlements of any kind or nature from the Applicant or the Applicant's assets, or assert any additional claims against the Applicant in respect of the Senior Notes, other than the Trustee Pre-Filing Fees and Expenses Claim as provided herein and an administrative expense claim by the Trustee for its fees from and after the date hereof in the maximum aggregate amount of CDN$25,000 (the "**Trustee Administration Fee**") per year provided that supporting documentation is provided to the Monitor and the Monitor subsequently confirms the satisfaction of the foregoing to the Applicant and Tenor. Any payments by the Applicant on account of the Senior Notes during the Standstill Period shall be applied as provided for pursuant to Section 7.7 of the Indenture. For the avoidance of doubt, the Trustee Administration Fee is in addition to the Trustee Post-Filing Fees and Expenses and the Additional Expense Amount.

23. **THIS COURT ORDERS** that amounts shall be payable by the Applicant to the Trustee in accordance with the Waterfall Provision after Arbitration Proceeds are received by the Applicant, and, except as provided in paragraph 22 hereof with respect to the Trustee Administration Fee, no amounts shall be payable by the Applicant to the Trustee except in accordance with the Waterfall Provision. The Applicant shall deliver a copy of the statement referred to in the first paragraph of the Waterfall Provision to the Trustee and the Ad Hoc Committee at the same time such statement is delivered to Tenor and the Monitor and the Trustee and the Ad Hoc Committee shall have standing in respect of any

dispute concerning such statement to the extent such dispute impacts the rights of the Trustee or the holders of the Senior Notes.

24. **THIS COURT ORDERS** that the Prefiling Unsecured Creditors' Charge as amended hereby shall continue to benefit from the protections granted in paragraph 21 of the CCAA Financing Order and further that: (i) subject to the immediately following sentence, the Prefiling Unsecured Creditors' Charge shall survive the termination of these CCAA proceedings; and (ii) the Prefiling Unsecured Creditors' Charge shall remain valid and enforceable as a passive lien with no enforcement rights as provided by paragraph 15 of the CCAA Financing Order, and the rights and remedies of the beneficiaries of the Prefiling Unsecured Creditors' Charge shall not otherwise be limited or impaired in any way by any application(s) for the appointment of a receiver, interim receiver or receiver and manager (whether pursuant to the *Bankruptcy and Insolvency Act* (Canada) or otherwise) in respect of the Applicant or its property and any receivership order issued pursuant to any such application (except that the foregoing shall not prevent a Court from including in a receivership order charges in favour of a receiver, interim receiver, receiver manager or the holder of any receiver certificate issued by any receiver, interim receiver or receiver manager in priority to any then existing charge, it being understood that each of the parties reserves all rights with respect to the granting of any such charges, including, without limitation, the amount secured thereby and the priority thereof). This paragraph 24 shall be without prejudice to any party's rights, obligations or positions as to any security or charges (including the Prefiling Unsecured Creditors' Charge) that may be provided, obtained or continued in connection with the Senior Notes pursuant to any Plan of Compromise and Arrangement under the CCAA or the granting of a sanction order under the CCAA in respect of such Plan.

25. **THIS COURT ORDERS** that, solely for the purposes of the calculation of the amounts payable pursuant to subsections (f) and (g) of the Waterfall Provision, and for no other purpose, the total amount of the proven and allowed unsecured claims referred to in subsection (e) of the Waterfall Provision to be deducted from the gross amount of the Arbitration Proceeds (as such term is defined in the Amended DIP Credit Agreement) in determining the amount of the "Net Arbitration Proceeds" shall be deemed to be equal to the sum of (A) the Original Principal Amount of the Senior Notes (being US$104,135,273.97) plus simple interest at the Base Rate accruing thereon from and after the Standstill Trigger Date (but, for greater certainty, excluding all interest on the Senior Notes accrued from the Filing Date to the Standstill Trigger Date and all interest arising under or referred to in paragraphs 13, 14 and 15 of this Order, any Additional Amounts payable pursuant to Section 6.1 of the First Supplemental Indenture, and excluding any other amount) and (B) the principal amount of any other unsecured pre-filing claim unrelated to the Senior Notes that is now or hereinafter determined to be a Proven Claim in accordance with the Claims Procedure Order dated November 30, 2012 (the "**Claims Procedure Order**") plus any interest to which such pre-filing creditor may be entitled on such Proven Claim accruing from and after the Standstill Trigger Date at such pre-filing creditor's existing interest rate, if any (but, for greater certainty, excluding interest, if any, that has accrued on such pre-filing creditor's Proven Claim from the Filing Date to the Standstill Trigger Date or any additional interest in excess of such pre-filing creditor's existing rate of interest, if any, accruing on such pre-filing creditor's Proven Claim from and after the Standstill Trigger Date in accordance with in this Order and excluding any other amount).

26. **THIS COURT ORDERS** that by agreement of the Applicant, the Trustee and Tenor, any limitation period applicable to any claim of the Applicant, the Trustee, Tenor or a beneficial holder of the Senior Notes (other than in connection with any appeals or applications for leave to appeal of this Order or the Additional CCAA Financing Order), including, without limitation, any claim for amounts owing in respect of the Senior Notes, be and is hereby tolled such that the limitation period ceases to run as at the date hereof until the date that is thirty (30) days following the termination of the Standstill Period, provided that any limitation period applicable to a Claim (as defined below) released pursuant to paragraph 29 hereof shall not be tolled.

27. **THIS COURT ORDERS** that, subject to the last sentence of this paragraph 27:

(a) interest on any other unsecured prefiling claim unrelated to the Senior Notes that is now or hereinafter determined to be a Proven Claim in accordance with the Claims Procedure Order other than the Proven Claim by or in respect of Cassels Brock & Blackwell LLP (collectively, the "**Prefiling Unsecured Non-Senior Notes Claims**" and each, a "**Prefiling Unsecured Non-Senior Notes Claim**"), shall accrue simple interest from the Standstill Trigger Date at the lesser of: (i) twice the rate of interest to which each such holder of a Prefiling Unsecured Non-Senior Notes Claim was otherwise entitled to receive from the Standstill Trigger Date or (ii) the simple rate of 12% per annum (the "**Cap Rate**") to the earlier of the date of termination of the Standstill Period and the date of payment in full of the Prefiling Unsecured Non-Senior Notes Claims, provided that such rate of interest shall be no less than simple interest at 5% per annum and no more than the Cap Rate (such additional interest that such holder of a Prefiling Unsecured Non-Senior Notes Claim would not otherwise be entitled to receive is herein

called, the "**Other Non-Senior Notes Unsecured Creditor Standstill Interest**") and such Other Non-Senior Notes Unsecured Creditor Standstill Interest shall be secured by the Prefiling Unsecured Creditors' Charge;

(b) notwithstanding termination of the Standstill Period for any reason, all Other Non-Senior Notes Unsecured Creditor Standstill Interest shall be payable in full in accordance with the Waterfall Provision after Arbitration Proceeds are received by the Applicant, free from any reduction for set-off or any other counter-claims (whether past, present or future) that the Applicant may allege; and

(c) as set out in paragraph 25 hereof, all Other Non-Senior Notes Unsecured Creditor Standstill Interest provided for herein shall not be included in the calculation of Net Arbitration Proceeds solely with respect to the calculation of the amounts of the Arbitration Proceeds payable by the Applicant under subsections (f) and (g) of the Waterfall Provision.

No such holder of a Prefiling Unsecured Non-Senior Notes Claim shall be entitled to receive any Other Non-Senior Notes Unsecured Creditor Standstill Interest unless it provides satisfactory written confirmation to the Monitor by the date of payment of the Prefiling Unsecured Non-Senior Notes Claims that such holder agrees to be bound by the release set out in paragraph 29 hereof (each, a "**Consenting Holder of Prefiling Unsecured Non-Senior Notes Claims**"). For greater certainty, no holder of a Prefiling Unsecured Non-Senior Notes Claim shall have the benefit of the interest rate enhancements provided for in this paragraph 27 unless it is bound by the release contained in paragraph 29 of this Order in each and every capacity it may have in respect of the Applicant (including as holder of Common Shares or other equity interests).

28. **THIS COURT ORDERS** that this Order and its terms shall only become effective upon the entry of a Final Order of the Court approving the US$11,100,000 increase in the DIP financing and the amendment agreement with respect thereto pursuant to the additional debtor in possession financing motion filed with the Court dated March 31, 2013 (the "**Additional CCAA Financing Order**"). "**Final Order**" shall mean an Order of this Court from which no leave to appeal has been sought within twenty-one (21) days of the date of such Order, or in the event leave to appeal is sought within such time period, it is denied, or if leave to appeal is granted, the appeal of such Order has been dismissed, and no further leave to appeal to the Supreme Court of Canada has been sought within sixty (60) days of the date leave to appeal is denied or the appeal is dismissed, or in the event leave to appeal to the Supreme Court of Canada is sought within such time period, it is denied, or if leave to appeal to the Supreme Court of Canada is granted, the appeal of such Order has been dismissed, unless all parties and stakeholders who have appeal rights in respect of this motion waive their appeal rights or each of the Applicant, Tenor and the Trustee, each acting in their sole and absolute discretion, agree in writing to waive such Final Order requirement.

29. **THIS COURT ORDERS** that, upon the consent of (i) the Applicant, (ii) Tenor, (iii) the Trustee for itself and on behalf of all present and future legal and beneficial owners of the Senior Notes, (iv) each beneficial owner of the Senior Notes that is part of the Ad Hoc Committee, and (v) each Consenting Holder of Prefiling Unsecured Non-Senior Notes Claims (each of the foregoing, a "**Release Party**"), each Release Party, its current and former affiliates (including, without limitation, any affiliated or related investment manager, management company and general partner entity, and any funds and other accounts under such affiliates' or related entities' management at any time) and each of

their respective current and former directors, officers, employees, legal counsel, partners, members, agents, representatives, heirs, successors and assigns (collectively, the "**Related Parties**") be and are hereby released and discharged to the fullest extent permitted by law by each other Release Party and its Related Parties from any and all demands, liabilities, claims, actions, causes of action, counterclaims, suits, debts, sums of money, cost awards, accounts, agreements, covenants, obligations, duties, fees, damages, judgments, orders (including for injunctive relief or specific performance and compliance orders), expenses, executions and other recoveries (collectively, "**Claims**"), including, without limitation, any and all Claims in respect of statutory liabilities of directors, officers, members and employees of any person and any alleged fiduciary or other duty, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, whether in law or in equity, based in whole or in part on any act or omission, transaction, agreement, indebtedness, liability, obligation, claim, matter, dealing or other occurrence existing or taking place on or prior to the date of this Order in any way relating to, arising out of or in connection with the Applicant (including its business and operations), this restructuring, the pre-filing litigation between the Applicant and the Trustee, the trading in or holding of any of the securities of the Applicant, any contravention or alleged contravention of Section 347 of the *Criminal Code* (Canada) (or any other statutory or regulatory provision imposing restrictions or limits on interest or the cost of credit), the business and affairs of the Applicant in connection with this restructuring or these CCAA proceedings, *provided that* this paragraph 29 shall not release or discharge:

(i) any obligation, right, remedy, claim, protection, charge or related priority created by or recognized under this Order, the CCAA Financing Order or

the Additional CCAA Financing Order, *provided further* that Tenor and the Applicant (and each of them and each of their respective Related Parties) release any Claims that any of them may have against the Trustee, the Ad Hoc Committee, any beneficial owner of the Senior Notes that is part of the Ad Hoc Committee or any of their respective Related Parties based on any of their respective acts or omissions that have occurred up to the date of this Order, and the Trustee, the Ad Hoc Committee and all beneficial holders of the Senior Notes that are part of the Ad Hoc Committee (and each of them and each of their respective Related Parties) release any Claims that any of them may have against Tenor or its Related Parties based on any of Tenor's acts or omissions that have occurred up to the date of this Order;

(ii) the Senior Notes (including, for the avoidance of doubt, the entire amount of the Proven Standstill Noteholder Claim) and the Trustee Pre-Filing Fees and Expenses Claim which shall continue to exist as valid, binding, debt obligations of the Applicant until they are satisfied in full;

(iii) the Applicant's obligations under the Indenture and the First Supplemental Indenture;

(iv) the Applicant's obligations to Tenor pursuant to the Amended DIP Credit Agreement or any of the other Credit Documents (as that term is defined in the Amended DIP Credit Agreement);

(v) the matters set out in Section 5.1(2) of the CCAA; and

(vi) any Claims any present or future beneficial owner or holder of the Senior Notes (including, without limitation, any beneficial owner of the Senior Notes that is part of the Ad Hoc Committee) and any Consenting Holder of Prefiling Unsecured Non-Senior Notes Claims (and any of their respective Related Parties) may have against the Applicant or its Related Parties with respect to the common shares of the Applicant (the "**Common Shares**"), *provided further* that none of the Trustee, any beneficial owner or holder of the Senior Notes (but solely in its capacity as a beneficial owner or holder of the Senior Notes), each beneficial owner of the Senior Notes that is part of the Ad Hoc Committee in any and all capacities each of them may have in relation to the Applicant, or any Consenting Holder of Prefiling Unsecured Non-Senior Notes Claims or Cassels Brock & Blackwell LLP (and none of them and none of their respective Related Parties) shall be permitted, directly or indirectly, to commence, initiate, fund, encourage or instigate any claim, action or proceeding (each, a "**Proceeding**") in respect of any Claims that, but for this proviso (vi), would be released pursuant to this paragraph 29, it being understood that any beneficial owner of the Senior Notes that is part of the Ad Hoc Committee and any Consenting Holder of Prefiling Unsecured Non-Senior Notes Claims (and each of them and each of their respective Related Parties) shall be entitled: (x) to join, participate in and take such other actions as are reasonably necessary to preserve its rights in connection with any such Proceeding commenced by another party or parties and receive the benefit of any such Proceeding, including, without limitation, any amount, award, compensation, damages or settlement

payable or provided in connection with such a Proceeding whether in cash or other consideration; and (y) to receive its rateable share of any amounts paid or distributions made (whether in cash or other consideration) by the Applicant to the holders of the Common Shares.

For the avoidance of doubt, each beneficial owner of the Senior Notes that is part of the Ad Hoc Committee shall continue to be bound by and benefit from the protections of this Order in all its capacities, including, without limitation, as the legal or beneficial owner of the Common Shares or any other equity interest in the Applicant, notwithstanding that any beneficial owner of the Senior Notes that is part of the Ad Hoc Committee may at any time no longer be a beneficial owner of the Senior Notes.

30. **THIS COURT HEREBY REQUESTS** the aid and recognition of any Court, Tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, including the United States Bankruptcy Court for the District of Delaware, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All Courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make orders and to provide such assistance to the Applicant and to the Monitor, as an Officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Applicant in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

JUN 5 2013

NB

Signature of judge, officer or registrar

SCHEDULE "A"

BENEFICIAL OWNERS OF SENIOR NOTES PART OF AD HOC COMMITTEE

1. QVT Fund LP
2. Quintessence Fund LP
3. Greywolf Loan Participation LLC
4. Outrider Master Fund, LP
5. Ravensource Fund
6. Stornoway Recovery Fund LP

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CRYSTALLEX INTERNATIONAL CORPORATION

Court File No: CV-12-9539-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

ORDER

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Lawyers for Crystallex International Corporation

THIS IS EXHIBIT "I"
TO THE AFFIDAVIT OF SCOTT REID
SWORN BEFORE ME OVER VIDEOCONFERENCE
ON MAY 28, 2021

Commissioner for Taking Affidavits

CITATION: Crystallex International Corporation (Re), 2018 ONSC 2959
COURT FILE NO.: CV-11-9532-00CL
DATE: 20180509

SUPERIOR COURT OF JUSTICE – ONTARIO
(COMMERCIAL LIST)

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CRYSTALLEX INTERNATIONAL CORPORATION

BEFORE: HAINEY J.

COUNSEL: *Robin Schwill*, for Crystallex International Corporation

David Byers and *Lesley Mercer*, for the Monitor of Applicant

Tim Pinos and *Ryan Jacobs*, for the DIP Lender

Robert Chadwick and *Chris Armstrong*, for Computershare Trust Company of Canada in its capacity as Trustee of the Senior Notes and the Ad Hoc Committee of Holders of the Senior Notes

Nicholas Kluge, for the Equity Committee

Aubrey G. Kauffman, for Robert Fung and Marc Oppenheimer

HEARD: May 9, 2018

ENDORSEMENT

[1] Stay extension granted to October 31, 2018 on the terms of the Order as signed. Without prejudice as to whether such statements are or are not required pursuant to the Stay Extension and Standstill Order dated June 5, 2013 (the "Standstill Order") and to all rights of the parties under the Standstill Order (all of which are fully reserved), the Applicant has agreed to provide Computershare Trust Company of Canada, in its capacity as Trustee for the holders of 9.375% Senior Unsecured Notes of Crystallex (the "Noteholders"), and the Ad Hoc Committee of the Noteholders the statements referred to in the first paragraph of the Waterfall Provision and paragraph 23 of the Standstill Order, with respect to any arbitration proceeds received to date and from and after this date. Such statements shall be provided by the Applicant to the Trustee and the Ad Hoc Committee at the same time they are provided to the Monitor and the DIP Lender. The motion materials marked confidential are to be sealed in accordance with the terms of the Order and without prejudice to any party's right to seek modification or to assert that the sealed materials are not confidential. The stay extension order is without prejudice to the Noteholders' ability to seek the relief as set out in paragraph 18 of the Noteholders' factum by way of further motion.

HAINEY J.

Date: May 9, 2018

THIS IS EXHIBIT "J"
TO THE AFFIDAVIT OF SCOTT REID
SWORN BEFORE ME OVER VIDEOCONFERENCE
ON MAY 28, 2021

Commissioner for Taking Affidavits

GOLD RESERVE INC.

March 31, 2021

Interim Consolidated Financial Statements

U.S. Dollars

(unaudited)

GOLD RESERVE INC.
CONSOLIDATED BALANCE SHEETS
(Unaudited - Expressed in U.S. dollars)

	March 31, 2021	December 31, 2020
ASSETS		
Current Assets:		
Cash and cash equivalents (Note 4)	$ 55,904,402	$ 57,415,350
Marketable securities (Note 5)	124,578	83,575
Income tax receivable (Note 10)	8,682,839	8,682,839
Prepaid expense and other	300,610	573,411
Total current assets	65,012,429	66,755,175
Property, plant and equipment, net (Note 6)	2,487,955	2,514,552
Right of use asset	143,246	165,576
Total assets	$ 67,643,630	$ 69,435,303
LIABILITIES		
Current Liabilities:		
Accounts payable and accrued expenses (Note 3)	$ 839,109	$ 780,925
Lease liability	94,706	92,819
Contingent value rights (Note 3)	60,242	60,242
Total current liabilities	994,057	933,986
Lease liability	52,620	77,093
Total liabilities	1,046,677	1,011,079
SHAREHOLDERS' EQUITY		
Serial preferred stock, without par value		
Authorized: Unlimited		
Issued: None		
Common shares	302,469,647	302,469,647
Class A common shares, without par value		
Authorized: Unlimited		
Issued and outstanding: 2021…99,395,048 2020…99,395,048		
Contributed surplus	20,625,372	20,625,372
Stock options (Note 9)	21,456,674	21,409,668
Accumulated deficit	(277,954,740)	(276,080,463)
Total shareholders' equity	66,596,953	68,424,224
Total liabilities and shareholders' equity	$ 67,643,630	$ 69,435,303

Contingencies (Note 3)

The accompanying notes are an integral part of the interim consolidated financial statements.

Approved by the Board of Directors:

/s/ James Michael Johnston /s/ James P. Geyer

GOLD RESERVE INC.

CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE LOSS

(Unaudited - Expressed in U.S. dollars)

	Three Months Ended March 31,	
	2021	**2020**
INCOME (LOSS)		
Interest income	$ 10,104	$ 202,317
Gain (loss) on marketable equity securities	41,003	(44,726)
Foreign currency gain (loss)	8,301	(40,621)
	59,408	116,970
EXPENSES		
Corporate general and administrative (Note 3)	1,115,799	1,213,413
Contingent value rights (Note 3)	–	32,654
Siembra Minera Project costs (Note 7)	278,467	377,042
Exploration costs	23,519	–
Legal and accounting	321,453	187,132
Arbitration and settlement (Note 3)	80,304	277,486
Equipment holding costs	114,143	108,573
	1,933,685	2,196,300
Net loss before income tax benefit	(1,874,277)	(2,079,330)
Income tax benefit (Note 10)	–	597,358
Net loss and comprehensive loss for the period	$ (1,874,277)	$ (1,481,972)
Net loss per share, basic and diluted	$ (0.02)	$ (0.01)
Weighted average common shares outstanding, basic and diluted	99,395,048	99,395,048

The accompanying notes are an integral part of the interim consolidated financial statements.

GOLD RESERVE INC.

CONSOLIDATED STATEMENTS OF CHANGES IN SHAREHOLDERS' EQUITY

(Unaudited - Expressed in U.S. dollars)

For the Three Months Ended March 31, 2021 and 2020

	Common Shares		Contributed		Accumulated
	Number	Amount	Surplus	Stock Options	Deficit
Balance, December 31, 2020	99,395,048	$ 302,469,647	$ 20,625,372	$ 21,409,668	$ (276,080,463)
Net loss for the period	–	–	–	–	(1,874,277)
Stock option compensation (Note 9)	–	–	–	47,006	–
Balance, March 31, 2021	99,395,048	$ 302,469,647	$ 20,625,372	$ 21,456,674	$ (277,954,740)
Balance, December 31, 2019	99,395,048	$ 302,469,647	$ 20,625,372	$ 20,752,893	$ (264,563,178)
Net loss for the period	–	–	–	–	(1,481,972)
Balance, March 31, 2020	99,395,048	$ 302,469,647	$ 20,625,372	$ 20,752,893	$ (266,045,150)

The accompanying notes are an integral part of the interim consolidated financial statements.

GOLD RESERVE INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited - Expressed in U.S. dollars)

	Three Months Ended March 31,	
	2021	**2020**
Cash Flows from Operating Activities:		
Net loss for the period	$ (1,874,277)	$ (1,481,972)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities:		
Stock option compensation	47,006	–
Depreciation	26,597	33,029
Loss (gain) on marketable equity securities	(41,003)	44,726
Income tax recovery	–	(597,358)
Changes in non-cash working capital:		
Decrease in income tax receivable	–	3,204,812
Net decrease in prepaid expense and other	272,801	410,986
Net increase in payables and accrued expenses	57,928	280,968
Net cash provided by (used in) operating activities	(1,510,948)	1,895,191
Cash Flows from Investing Activities:		
Net cash used in investing activities	–	–
Cash Flows from Financing Activities:		
Net cash used in financing activities	–	–
Change in Cash and Cash Equivalents:		
Net increase (decrease) in cash and cash equivalents	(1,510,948)	1,895,191
Cash and cash equivalents - beginning of period	57,415,350	61,822,137
Cash and cash equivalents - end of period	$ 55,904,402	$ 63,717,328

The accompanying notes are an integral part of the interim consolidated financial statements.

GOLD RESERVE INC.

NOTES TO INTERIM CONSOLIDATED FINANCIAL STATEMENTS

(Expressed in U.S. dollars)

Note 1. The Company and Significant Accounting Policies:

Gold Reserve Inc. ("Gold Reserve," the "Company," "we," "us," or "our") is engaged in the business of acquiring, exploring and developing mining projects and was incorporated in 1998 under the laws of the Yukon Territory, Canada and continued to Alberta, Canada in September 2014.

Gold Reserve Inc. is the successor issuer to Gold Reserve Corporation which was incorporated in 1956. Management's primary activities are focused on the execution of the July 2016 settlement agreement, (as amended, the "Settlement Agreement") with the Bolivarian Republic of Venezuela ("Venezuela") in regards to the payment of the Award (as defined herein) and the acquisition of our Mining Data by Venezuela, identifying our legal options associated with the collection of the unpaid balance of the Award and developing our future operational strategies associated with post-sanctions development of the Siembra Minera Project.

The U.S. and Canadian governments have imposed various sanctions targeting Venezuela (the "Sanctions"). The Sanctions implemented by the U.S. government generally block all property of the Venezuelan government and state-owned/controlled entities such as Siembra Minera. In addition, U.S. Sanctions prohibit U.S. Persons (as defined by U.S. Sanction statutes) from dealing with Specially Designated Nationals ("SDNs") and targets corruption in, among other identified sectors, the gold sector of the Venezuela economy. The Sanctions implemented by the Canadian government generally include asset freezes and impose prohibitions on dealings, by Canadian entities and/or citizens as well as other individuals in Canada, with certain named Venezuelan officials under the Special Economic Measures (Venezuela) Regulations of the *Special Economic Measures Act and the Justice for Victims of Corrupt Foreign Officials Regulations of the Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)*. In addition, on March 26, 2020, the U.S. government indicted Venezuelan President Nicolas Maduro and a number of key associates for human rights abuses and drug trafficking. (See Note 3, Arbitral Award, Settlement Agreement and Mining Data Sale and Note 7, Empresa Mixta Ecosocialista Siembra Minera, S.A.).

Basis of Presentation and Principles of Consolidation. These interim consolidated financial statements have been prepared in accordance with U.S. generally accepted accounting principles ("U.S. GAAP"). The statements include the accounts of the Company, Gold Reserve Corporation and three Barbadian subsidiaries one of which was formed to hold our equity interest in Siembra Minera which is beneficially owned 55% by a Venezuelan state-owned entity and 45% by Gold Reserve. Our investment in Siembra Minera is accounted for as an equity investment. All subsidiaries are wholly owned. All intercompany accounts and transactions have been eliminated on consolidation. Our policy is to consolidate those subsidiaries where control exists. We have only one operating segment, the exploration and development of mineral properties. As these unaudited interim consolidated financial statements do not contain all of the disclosures required by U.S. GAAP for annual financial statements, they should be read in conjunction with the annual financial statements and the related notes included in our Annual Report on Form 40-F for the year ended December 31, 2020.

Cash and Cash Equivalents. We consider short-term, highly liquid investments purchased with an original maturity of three months or less to be cash equivalents for purposes of reporting cash equivalents and cash flows. The cost of these investments approximates fair value. We manage the exposure of our cash and cash equivalents to credit risk by diversifying our holdings into various major financial institutions.

Exploration and Development Costs. Exploration costs incurred in locating areas of potential mineralization or evaluating properties or working interests with specific areas of potential mineralization are expensed as incurred. Development costs of proven mining properties not yet producing are capitalized at cost and classified as capitalized exploration costs under property, plant and equipment. Mineral property acquisition costs are capitalized and holding costs of such properties are charged to operations during the period if no significant exploration or development activities are being conducted on the related properties. Upon commencement of production, capitalized exploration and development costs would be amortized based on the estimated proven and probable reserves benefited. Mineral properties determined to be impaired or that are abandoned are written-down to the estimated fair value. Carrying values do not necessarily reflect present or future values.

Property, Plant and Equipment. Property, plant and equipment is recorded at cost and are depreciated on a straight-line basis over their estimated useful lives, except for equipment not yet placed into use. Included in property, plant and equipment is certain equipment, relating to the Brisas Project that is not being depreciated as it is not in use. The ultimate recoverable value of this equipment may be different than management's current estimate. We have additional property, plant and equipment which are recorded at cost less accumulated depreciation. Replacement costs and major improvements are capitalized. Maintenance and repairs are charged to expense as incurred. The cost and accumulated depreciation of assets retired or sold are removed from the accounts and any resulting gain or loss is reflected in operations. Furniture, office equipment and leasehold improvements are depreciated using the straight-line method over five to ten years. The remaining property, plant and equipment are fully depreciated.

Impairment of Long-Lived Assets. We review long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying amount of the assets may not be recoverable. If the sum of the expected future net cash flows to be generated from the use or eventual disposition of a long-lived asset (undiscounted and without interest charges) is less than the carrying amount of the asset, an impairment loss is recognized based on a determination of the asset's fair value. Fair value is generally determined by discounting estimated cash flows based on market participant expectations of those future cash flows, or applying a market approach that uses market prices and other relevant information generated by market transactions involving comparable assets.

Foreign Currency. The U.S. dollar is our (and our foreign subsidiaries') functional currency. Monetary assets and liabilities denominated in a foreign currency are translated into U.S. dollars at the rates of exchange in effect at the balance sheet dates. Non-monetary assets and liabilities are translated at historical rates and revenue and expense items are translated at average exchange rates during the reporting period, except for depreciation which is translated at historical rates. Translation gains and losses are included in the statement of operations.

Stock Based Compensation. We maintain an equity incentive plan which provides for the grant of stock options to purchase Class A common shares. We use the fair value method of accounting for stock options. The fair value of options granted to employees is computed using the Black-Scholes method as described in Note 9 and is expensed over the vesting period of the option. For non-employees, the fair value of stock-based compensation is recorded as an expense over the vesting period or upon completion of performance. Consideration paid for shares on exercise of stock options, in addition to the fair value attributable to stock options granted, is credited to capital stock. Stock options granted under the plan become fully vested and exercisable upon a change of control.

Income Taxes. We use the liability method of accounting for income taxes. Deferred tax assets and liabilities are determined based on the differences between the tax basis of assets and liabilities and those amounts reported in the financial statements. The deferred tax assets or liabilities are calculated using the enacted tax rates expected to apply in the periods in which the differences are expected to be settled. Deferred tax assets are recognized to the extent that they are considered more likely than not to be realized.

Use of Estimates. The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Net Income (Loss) Per Share. Basic net income (loss) per share is computed by dividing net income (loss) by the weighted average number of Class A common shares outstanding during each period. Diluted net income per share reflects the potentially dilutive effects of outstanding stock options. In periods in which a loss is incurred, the effect of potential issuances of shares under stock options and convertible notes would be anti-dilutive, and therefore basic and diluted losses per share are the same in those periods.

Marketable Securities. The Company's marketable securities consist of equity securities which are reported at fair value with changes in fair value included in the statement of operations.

Equity accounted investments. Investments in incorporated entities in which the Company has the ability to exercise significant influence over the investee are accounted for by the equity method.

Financial Instruments. Marketable securities are measured at fair value at each reporting date, with the change in value recognized in the statement of operations as a gain or loss. Cash and cash equivalents, deposits, advances and receivables are accounted for at amortized cost which approximates fair value. Accounts payable and contingent value rights are recorded at amortized cost which approximates fair value.

Note 2. New Accounting Policies:

Adopted in the year

In January 2020, the FASB issued ASU 2020-01, Investments - Equity Securities (Topic 321), Investments - Equity Method and Joint Ventures (Topic 323), and Derivatives and Hedging (Topic 815). This update is intended to clarify certain interactions between Topics which guide the accounting for certain equity securities and investments under the equity method of accounting. These amendments improve current GAAP by reducing diversity in practice and increasing comparability of the accounting for these interactions. This update was effective for us commencing with the annual period beginning after December 15, 2020, including interim periods within that year. The adoption of this standard did not have a significant impact on our financial statements.

Note 3. Arbitral Award, Settlement Agreement and Mining Data Sale:

In October 2009 we initiated a claim (the "Brisas Arbitration") under the Additional Facility Rules of the International Centre for the Settlement of Investment Disputes ("ICSID") to obtain compensation for the losses caused by the actions of Venezuela that terminated our previous mining project known as the "Brisas Project." On September 22, 2014, we were granted an Arbitral Award (the "Award") totaling $740.3 million.

In July 2016, we signed the Settlement Agreement, subsequently amended, whereby Venezuela agreed to pay us a total of approximately $1.032 billion which is comprised of $792 million to satisfy the Award (including interest) and $240 million for the purchase of our mining data related to the Brisas Project (the "Mining Data") and was to be settled in a series of payments ending on or before June 15, 2019. As agreed, the first $240 million received by Gold Reserve from Venezuela has been recognized as proceeds from the sale of the Mining Data.

To date, the Company has received payments of approximately $254 million pursuant to the Settlement Agreement. The remaining unpaid amount due from Venezuela pursuant to the Settlement Agreement, which is now delinquent, totals approximately $908 million (including interest of approximately $130 million) as of March 31, 2021. In relation to the unpaid amount due from Venezuela, the Company has not recognized an Award receivable or associated liabilities which include taxes, bonus plan and contingent value right payments in accordance with the Settlement Agreement, as management has not yet determined that payment from Venezuela is probable. The Award receivable and any associated liabilities will be recognized when, in management’s judgment, it is probable that payment from Venezuela will occur.

The interest rate provided for on any unpaid amounts pursuant to the Award is specified as LIBOR plus two percent. In 2017, U.K.’s Financial Conduct Authority announced that LIBOR will be phased out of existence as a dependable index for variable interest rates no later than December 31, 2021. Working groups assembled by the U.S. Federal Reserve have identified the Secured Overnight Funding Rate ("SOFR") as the preferred replacement for LIBOR. When it is possible to engage with the Venezuelan government, we expect to negotiate an appropriate replacement interest rate or, alternatively, petition the court responsible for the enforcement of our Award judgement to rule on a new interest rate benchmark. There is no assurance that we will be successful in such efforts. In the interim, management plans to use the recommended SOFR benchmark as the best estimate of accrued interest on the remaining unpaid amount due from Venezuela.

In addition to other constraints, the Sanctions restrict the Company from working with those Venezuelan government officials responsible for the payment and transfer of funds associated with the Settlement Agreement which adversely impacts our ability to collect the remaining balance of the Award plus interest and/or amounts due pursuant to the Settlement Agreement from Venezuela. The Company, with counsels’ assistance, continues to evaluate and pursue various options in regard to the Award and the Settlement Agreement.

In March 2020, the U.S. Congress passed legislation which allows companies to carryback net operating losses incurred in 2018, 2019 and 2020 to offset income earned in prior years. In response to this legislation, management reduced its estimate of the U.S. related income tax due on amounts received in 2018 from the sale of Mining Data. The effect of this change in estimate was to increase the net proceeds subject to the CVR and the Bonus Plan and as a result, the Company recorded an increase in its obligation to the CVR holders and Bonus Plan participants by approximately $60 thousand and $70 thousand, respectively.

(Expressed in U.S. dollars)

We have Contingent Value Rights ("CVRs") outstanding that entitle the holders to an aggregate of 5.466% of certain proceeds from Venezuela associated with the collection of the Award and/or sale of Mining Data or an enterprise sale (the "Proceeds"), less amounts for certain specified obligations (as defined in the agreement), as well as a bonus plan as described below. As of March 31, 2021, the total cumulative estimated obligation due pursuant to the terms of the CVR from the sale of the Mining Data and collection of the Award was approximately $10.0 million, of which approximately $60 thousand remains payable to CVR holders.

We maintain a bonus plan (the "Bonus Plan") which is intended to compensate the participants, including executive officers, employees, directors and consultants for their past and present contributions to the Company. The bonus pool under the Bonus Plan is comprised of the gross proceeds collected or the fair value of any consideration realized less applicable taxes multiplied by 1.28% of the first $200 million and 6.4% thereafter. As of March 31, 2021, the total cumulative estimated obligation pursuant to the terms of the Bonus Plan from the sale of the Mining Data and collection of the Award was approximately $4.4 million, of which approximately $70 thousand remains payable to Bonus Plan participants.

Due to U.S. and Canadian Sanctions and the uncertainty of transferring the remaining amounts due from Venezuela to bank accounts outside of Venezuela, management only considers those funds received by the Company into its North American bank accounts as funds available for purposes of the CVR and Bonus Plan cash distributions.

Following receipt, if any, of additional funds pursuant to the Settlement Agreement and after applicable payments to CVR holders and Bonus Plan participants, we expect to distribute to our shareholders a substantial majority of any remaining amounts, subject to applicable regulatory requirements and retaining sufficient reserves for operating expenses, contractual obligations, accounts payable and income taxes, and any obligations arising as a result of the collection of the remaining amount owed by Venezuela.

Note 4. Cash and Cash Equivalents:

	March 31, 2021	December 31, 2020
Bank deposits	$ 2,632,943	$ 9,457,061
Short term investments	53,271,459	47,958,289
Total	$ 55,904,402	$ 57,415,350

Short term investments include money market funds and US treasury bills which mature in three months or less.

Note 5. Marketable Securities:

	March 31, 2021	December 31, 2020
Equity securities		
Fair value and carrying value at beginning of period	$ 83,575	$ 177,945
Increase in fair value	41,003	5,756
Disposals during the year	–	(100,126)
Fair value and carrying value at balance sheet date	$ 124,578	$ 83,575

Marketable equity securities are classified as trading securities and accounted for at fair value, based on quoted market prices with unrealized gains or losses recorded in the Consolidated Statements of Operations.

Accounting Standards Codification ("ASC") 820 establishes a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value into three broad levels: Level 1 inputs are quoted prices in active markets for identical assets or liabilities, Level 2 inputs are inputs other than quoted prices included within Level 1 that are directly or indirectly observable for the asset or liability and Level 3 inputs are unobservable inputs for the asset or liability that reflect the entity's own assumptions. The fair values of the Company's marketable equity securities as at the balance sheet date are based on Level 1 inputs.

(Expressed in U.S. dollars)

Note 6. Property, Plant and Equipment:

	Cost	Accumulated Depreciation	Net
March 31, 2021			
Machinery and equipment	$ 1,858,959	$ –	$ 1,858,959
Furniture and office equipment	421,432	(295,150)	126,282
Transportation equipment	326,788	(181,677)	145,111
Leasehold improvements	29,390	(21,787)	7,603
Mineral property	350,000	–	350,000
	$ 2,986,569	$ (498,614)	$ 2,487,955

	Cost	Accumulated Depreciation	Net
December 31, 2020			
Machinery and equipment	$ 1,858,959	$ –	$ 1,858,959
Furniture and office equipment	421,432	(286,083)	135,349
Transportation equipment	326,788	(165,338)	161,450
Leasehold improvements	29,390	(20,596)	8,794
Mineral property	350,000	–	350,000
	$ 2,986,569	$ (472,017)	$ 2,514,552

Machinery and equipment consists of infrastructure equipment and a semi-autogenous grinding (SAG) mill originally intended for use on the Brisas Project. We evaluate our equipment to determine whether events or changes in circumstances have occurred that may indicate that the carrying amount may not be recoverable. We regularly obtain comparable market data for similar equipment as evidence that our equipment's fair value less cost to sell is in excess of the carrying amount. No impairment write-downs of property, plant and equipment were recorded during the three months ended March 31, 2021 and 2020.

Note 7. Empresa Mixta Ecosocialista Siembra Minera, S.A.:

In October 2016, together with an affiliate of the government of Venezuela, we established Siembra Minera. The primary purpose of this entity is to develop the Siembra Minera Project, as defined below.

Siembra Minera is beneficially owned 55% by Corporacion Venezolana de Mineria, S.A., a Venezuelan government corporation, and 45% by Gold Reserve. Siembra Minera (pursuant to the agreement which governs the formation and operation of Siembra Minera) holds certain gold, copper, silver and other strategic mineral rights (primarily comprised of the Brisas and Las Cristinas concessions) contained within Bolivar State comprising the Siembra Minera Project (which has a twenty year term with two ten year extensions) and is, among other things authorized, via current or future Presidential Decrees and Ministerial resolutions, to carry on its business, pay a net smelter return royalty to Venezuela on the future sale of gold, copper, silver and any other strategic minerals over the life of the Siembra Minera Project and provide net profits participation based on the sales price of gold per ounce. A number of authorizations, which still have not been provided by the current administration, are critical to the future operation and economics of the Siembra Minera Project. Pursuant to the Settlement Agreement, both parties will retain their respective interest in Siembra Minera in the event all of the agreed upon Settlement Agreement payments are not made by Venezuela.

(Expressed in U.S. dollars)

On March 16, 2018, the Company announced the completion of a technical report for the Preliminary Economic Assessment ("PEA") for the Siembra Minera Project in accordance with Canadian National Instrument 43-101 – Standards of Disclosure for Mineral Projects which included, among other information, resource estimates, pit design, mine plan, flowsheet design, design criteria, project layout, infrastructure requirements, capital and operating estimates. The Company has directly incurred the costs associated with the Siembra Minera Project which, beginning in 2016 through March 31, 2021, amounted to a total of approximately $21.3 million. The Siembra Minera Project expenditures primarily include costs associated with the completion of the PEA that included a number of engineering, environmental and social third party advisors as well as costs associated with a number of social work programs in the vicinity of the Siembra Minera Project, which are expensed as incurred and classified within "Siembra Minera Project Costs" in the Consolidated Statements of Operations. Project expenditures incurred in 2021 and 2020 include costs associated with the preservation of our technical competency through the retention of technical consultants, work related to compliance and reporting obligations, maintenance of the technical data base, and ongoing costs of social work programs.

In addition to other constraints, the Sanctions restrict the Company from working with those Venezuelan government officials responsible for the operation of Siembra Minera and the development of the Siembra Minera Project which, until Sanctions are lifted, obstructs our ability to develop the Siembra Minera Project as originally planned.

Note 8. KSOP Plan:

The KSOP Plan was originally adopted in 1990 and was most recently restated effective January 1, 2017. The purpose of the KSOP Plan is to offer retirement benefits to eligible employees of the Company. The KSOP Plan provides for a salary deferral or “401(k)” component, a non-elective contribution of 3% of each eligible Participant’s annual compensation and discretionary contributions. Allocation of Class A common shares or cash to participants' accounts, subject to certain limitations, is at the discretion of the Board. For the 2020 Plan year, the Compensation Committee of the Board recommended that Class A common shares with a fair value of approximately $170,000 be contributed to participants in the KSOP Plan in lieu of a cash-based employer contribution. The shares are expected to be contributed to participants accounts in the second quarter of 2021. As of March 31, 2021, no contributions by the Company had been made for plan year 2021.

Note 9. Stock Based Compensation Plans:

Equity Incentive Plan

The Company's equity incentive plan provides for the grant of stock options to purchase up to a maximum of 8,750,000 of the Class A common shares. As of March 31, 2021, there were 1,997,000 options available for grant. Grants are made for terms of up to ten years with vesting periods as required by the TSXV and as may be determined by a committee of the Board established pursuant to the equity incentive plan.

Stock option transactions for the three months ended March 31, 2021 and 2020 are as follows:

	2021		2020	
	Shares	Weighted Average Exercise Price	Shares	Weighted Average Exercise Price
Options outstanding - beginning of period	4,629,565	$ 2.36	4,369,565	$ 3.09
Options granted	50,000	1.61	-	-
Options outstanding - end of period	4,679,565	$ 2.36	4,369,565	$ 3.09
Options exercisable - end of period	4,589,564	$ 2.37	4,369,565	$ 3.09

(Expressed in U.S. dollars)

The following table relates to stock options at March 31, 2021:

	Outstanding Options				Exercisable Options			
Exercise Price	Number	Weighted Average Exercise Price	Aggregate Intrinsic Value	Weighted Average Remaining Contractual Term (Years)	Number	Weighted Average Exercise Price	Aggregate Intrinsic Value	Weighted Average Remaining Contractual Term (Years)
$1.61 - $1.93	879,922	$1.81	$ -	4.31	789,921	$1.82	$ -	3.72
$2.39 - $2.39	3,369,643	$2.39	-	5.88	3,369,643	$2.39	-	5.88
$3.15 - $3.26	430,000	$3.21	-	3.71	430,000	$3.21	-	3.71
$1.61 - $3.26	4,679,565	$2.36	$ -	5.39	4,589,564	$2.37	$ -	5.31

In the third quarter of 2020, in order to reflect the decrease in the market price of the Class A Shares as a result of the return of capital transaction that was completed in 2019, the Company reduced the exercise price of 4,369,565 previously granted options. The exercise price was reduced to the higher of: (i) the original exercise price of each option less $0.76; or (ii) the closing price on the principal market of the Class A Shares on the day prior to the re-pricing becoming effective. Approval of Shareholders was given with respect to the stock options granted to Company insiders. The re-pricing was accounted for as a modification under ASC 718 and the Company recorded non-cash compensation expense of approximately $500,000 which represents the increase in the fair value of the options as a result of the re-pricing.

The Company granted 50,000 and NIL options during the three-month periods ended March 31, 2021 and 2020, respectively. The Company recorded non-cash compensation during the three months ended March 31, 2021 and 2020 of $47,006 and NIL, respectively for stock options granted in current and prior periods.

The weighted average fair value of the options granted in 2021 was calculated as $0.70. The fair value of options granted was determined using the Black-Scholes model based on the following weighted average assumptions:

Risk free interest rate	0.46%
Expected term	5.0 years
Expected volatility	51%
Dividend yield	nil

The risk free interest rate is based on the US Treasury rate on the date of grant for a period equal to the expected term of the option. The expected term is based on historical exercise experience and projected post-vesting behavior. The expected volatility is based on historical volatility of our common stock over a period equal to the expected term of the option.

Change of Control Agreements

The Company maintains change of control agreements with certain officers and employees. A Change of Control is generally defined as one or more of the following: the acquisition by any individual, entity or group, of beneficial ownership of 25 percent of the voting power of the Company's outstanding Common Shares; a change in the composition of the Board that causes less than a majority of the current directors of the Board to be members of the incoming board; reorganization, merger or consolidation or sale or other disposition of all or substantially all of the assets of the Company; liquidation or dissolution of the Company; or any other event the Board reasonably determines constitutes a Change of Control. As of March 31, 2021, the amount payable under the change of control agreements, in the event of a Change of Control, was approximately $6.7 million, which has not been recognized herein as no event of a change of control has been triggered as of the date of this report.

(Expressed in U.S. dollars)

Note 10. Income Tax:

Income tax benefit for the three months ended March 31, 2021 and 2020 differs from the amount that would result from applying Canadian tax rates to net income before taxes. These differences result from the items noted below:

	2021		2020	
	Amount	%	Amount	%
Income tax benefit based on Canadian tax rates	$ 468,569	25	$ 519,833	25
Increase (decrease) due to:				
Different tax rates on foreign subsidiaries	(76,520)	(4)	(34,139)	(2)
Non-deductible expenses	(9,858)	(1)	(9,882)	-
Change in valuation allowance and other	(382,191)	(20)	121,546	6
	$ -	-	$ 597,358	29

The Company recorded income tax benefit of $NIL and $0.6 million for the three months ended March 31, 2021 and 2020, respectively. We have recorded a valuation allowance to reflect the estimated amount of the deferred tax assets which may not be realized, principally due to the uncertainty of utilization of net operating losses and other carry forwards prior to expiration. The valuation allowance for deferred tax assets may be reduced in the near term if our estimate of future taxable income changes. As part of the US government response to the COVID-19 pandemic, the U.S. Congress passed the CARES act in late March 2020 which, among other things, allowed companies to carryback losses incurred in 2018, 2019 and 2020. The Company recorded an income tax benefit in 2020 to reflect the carryback of U.S. taxable losses incurred in 2020 and 2019 to offset taxable income in 2018. The Company has an income tax receivable of $8.7 million related to the carryback of losses as noted above and prior year overpayments resulting from revisions to management's estimates of the timing and amount of deductions available to the Company's U.S. subsidiary associated with the write-off of certain subsidiaries primarily related to the Company's previous investment in the Brisas Project.

The components of the Canadian and U.S. deferred income tax assets and liabilities as of March 31, 2021 and December 31, 2020 were as follows:

	March 31, 2021	December 31, 2020
Deferred income tax assets		
Net operating loss carry forwards	$ 36,545,863	$ 35,650,114
Property, Plant and Equipment	5,674,440	5,676,072
Other	1,562,230	1,638,122
	43,782,533	42,964,308
Valuation allowance	(43,677,987)	(42,958,243)
	$ 104,546	$ 6,065
Deferred income tax liabilities		
Other	(104,546)	(6,065)
Net deferred income tax asset	$ -	$ -

At March 31, 2021, we had the following U.S. and Canadian tax loss carry forwards stated in U.S. dollars.

	U.S.	Canadian	Expires
$		$ 2,078,857	2026
		3,858,088	2027
		14,705,272	2028
		13,936,295	2029
		17,217,517	2030
		19,279,633	2031
		5,593,839	2032
		8,132,291	2033
		9,422,491	2034
		13,449,912	2035
		15,990,530	2036
		12,059,053	2037
		1,154,018	2038
		3,007,702	2039
		4,779,494	2040
		1,038,598	2041
	571,266		-
$	571,266	$ 145,703,590	

THIS IS EXHIBIT "K"
TO THE AFFIDAVIT OF SCOTT REID
SWORN BEFORE ME OVER VIDEOCONFERENCE
ON MAY 28, 2021

Commissioner for Taking Affidavits

RUSORO MINING LTD.

Consolidated Financial Statements
FOR THE YEARS ENDED DECEMBER 31, 2020 AND 2019
(Expressed in US dollars)

Grant Thornton

Independent Auditor's Report

Grant Thornton LLP
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To the shareholders of Rusoro Mining Ltd:

Opinion

We have audited the consolidated financial statements of Rusoro Mining Ltd (the "Company"), which comprise the consolidated statements of financial position as at December 31, 2020 and December 31, 2019 and the consolidated statements of loss and comprehensive loss, consolidated statements of changes in equity and consolidated statements of cash flows for the years then ended, and notes to the consolidated financial statements, including a summary of significant accounting policies.

In our opinion, the accompanying consolidated financial statements present fairly, in all material respects, the consolidated financial position of Rusoro Mining Ltd as at December 31, 2020 and December 31, 2019, and its consolidated financial performance and its consolidated cash flows for the years then ended in accordance with International Financial Reporting Standards (IFRSs).

Basis for opinion

We conducted our audit in accordance with Canadian generally accepted auditing standards. Our responsibilities under those standards are further described in the *Auditor's Responsibilities for the Audit of the Consolidated Financial Statements* section of our report. We are independent of the Company in accordance with the ethical requirements that are relevant to our audit of the consolidated financial statements in Canada, and we have fulfilled our other ethical responsibilities in accordance with these requirements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

Emphasis of matter

Without modifying our opinion, we draw attention to Note 2 to the consolidation financial statements which indicates that in March 2012 all of the Company's mining concessions expired by force of law and all of its assets and operations reverted to the Venezuelan government. This condition, along with other matters as set forth in Note 1, indicate the existence of a material uncertainty that may cast significant doubt about the Company's ability to continue as a going concern. Management's plans in regard to these matters are also described in Note 2. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

Information other than the consolidated financial statements and auditor's report thereon

Management is responsible for the other information. The other information comprises the Management Discussion and Analysis but does not include the consolidated financial statements and our auditor's report thereon.

Our opinion on the consolidated financial statements does not cover the other information and we do not express any form of assurance conclusion thereon.

In connection with our audit of the consolidated financial statements, our responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with

the consolidated financial statements or our knowledge obtained in the audit or otherwise appears to be materially misstated.

If, based on the work we have performed, we conclude that there is a material misstatement of this other information, we are required to report that fact. We have nothing to report in this regard.

Responsibilities of management and those charged with governance for the consolidated financial statements

Management is responsible for the preparation and fair presentation of the consolidated financial statements in accordance with International Financial Reporting Standards (IFRSs), and for such internal control as management determines is necessary to enable the preparation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the consolidated financial statements, management is responsible for assessing the Company's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless management either intends to liquidate the Company or to cease operations, or has no realistic alternative but to do so.

Those charged with governance are responsible for overseeing the Company's financial reporting process.

Auditor's responsibilities for the audit of the consolidated financial statements

Our objectives are to obtain reasonable assurance about whether the consolidated financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with Canadian generally accepted auditing standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these consolidated financial statements.

As part of an audit in accordance with Canadian generally accepted auditing standards, we exercise professional judgment and maintain professional skepticism throughout the audit. We also:

- Identify and assess the risks of material misstatement of the consolidated financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control.
- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by management.
- Conclude on the appropriateness of management's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Company's ability to continue as a going concern. If we conclude that a material uncertainty exists, we are required to draw attention in our auditor's report to the related disclosures in the consolidated financial statements or, if such disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of our auditor's report. However, future events or conditions may cause the Company to cease to continue as a going concern.
- Evaluate the overall presentation, structure and content of the consolidated financial statements, including the disclosures, and whether the consolidated financial statements represent the underlying transactions and events in a manner that achieves fair presentation.

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We communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that we identify during our audit.

We also provide those charged with governance with a statement that we have complied with relevant ethical requirements regarding independence, and to communicate with them all relationships and other matters that may reasonably be thought to bear on our independence, and where applicable, related safeguards.

The engagement partner on the audit resulting in this independent auditor's report is Robert J. Riecken.

Grant Thornton LLP

Vancouver, Canada
April 20, 2021

Chartered Professional Accountants

RUSORO MINING LTD.
Consolidated Statements of Financial Position
(Expressed in US dollars)

	December 31, 2020	December 31, 2019
ASSETS		
Current Assets		
Cash	$ 446	$ 228
Receivables	6,161	6,478
Prepaids	30,248	30,711
Total assets	$ 36,855	$ 37,417
LIABILITIES		
Current Liabilities		
Accounts payable and accrued liabilities (Note 4)	$ 69,818,986	$ 59,914,087
Convertible loan (Note 7)	29,750,000	29,750,000
Decommissioning and restoration provision (Note 6)	229,296	45,954
Derivative financial liability (Note 5)	32,213,895	23,422,776
Promissory notes payable (Note 8)	5,503,620	5,503,620
Total liabilities	137,515,797	118,636,437
SHAREHOLDERS' DEFICIENCY		
Issued capital	738,028,283	738,028,283
Contributed surplus	67,530,382	67,435,469
Deficit	(923,368,140)	(904,393,305)
	(117,809,475)	(98,929,553)
Non-controlling interests	(19,669,467)	(19,669,467)
Total shareholders' deficiency	(137,478,942)	(118,599,020)
Total liabilities and shareholders' deficiency	$ 36,855	$ 37,417

Nature of operations (Note 1)
Basis of presentation and going concern assumption (Note 2)
Contingencies (Note 15)

Approved by the Board of Directors and authorized for issue on April 20, 2021:

"Andre Agapov" Director

"Gordon Keep" Director

See accompanying notes to the consolidated financial statements.

RUSORO MINING LTD.
Consolidated Statements of Loss and Comprehensive Loss
(Expressed in US dollars)

	Year ended December 31,	
	2020	2019
OPERATING EXPENSES		
General and administrative, net of recoveries (Note 10)	$ 972,876	$ 670,909
Foreign exchange loss	85,542	387,666
Share based compensation (Note 9)	94,913	681,777
LOSS FROM OPERATIONS	(1,153,331)	(1,740,352)
Interest on convertible loan (Note 7)	8,847,043	7,937,264
Interest on gold sale contract (Note 5)	2,738,195	2,167,234
Loss on revaluation of gold sale contract (Note 5)	6,052,924	3,419,076
Decommissioning and restoration provision and currency devaluation (Note 2(b) and 6)	183,342	10,508
	17,821,504	13,534,082
NET LOSS AND COMPREHENSIVE LOSS	$ (18,974,835)	$ (15,274,434)
Attributable to:		
Equity shareholders of the Company	$ (18,974,835)	$ (15,274,434)
LOSS PER SHARE		
Basic and diluted	$ (0.03)	$ (0.03)
WEIGHTED AVERAGE NUMBER OF SHARES OUTSTANDING		
- Basic and diluted	544,810,623	544,810,623

See accompanying notes to the consolidated financial statements.

(Expressed in US dollars)

	Issued capital Shares	Amount	Contributed surplus	Deficit	Non-controlling interests	Shareholders' deficiency
Balance, December 31, 2018	544,810,623	$ 738,028,283	$ 66,753,692	$ (889,118,871)	$ (19,669,467)	$ (104,006,363)
Share based compensation	-	-	681,777	-	-	681,777
Net loss and comprehensive loss	-	-	-	(15,274,434)	-	(15,274,434)
Balance, December 31, 2019	544,810,623	$ 738,028,283	$ 67,435,469	$ (904,393,305)	$ (19,669,467)	$ (118,599,020)
Share based compensation	-	-	94,913	-	-	94,913
Net loss and comprehensive loss	-	-	-	(18,974,835)	-	(18,974,835)
Balance, December 31, 2020	544,810,623	$ 738,028,283	$ 67,530,382	$ (923,368,140)	$ (19,669,467)	$ (137,478,942)

See accompanying notes to the consolidated financial statements.

RUSORO MINING LTD.
Consolidated Statements of Cash Flows
(Expressed in US dollars)

	Year ended December 31,	
	2020	**2019**
CASH PROVIDED BY (USED IN)		
OPERATING ACTIVITIES		
Net loss for the year	$ (18,974,835)	$ (15,274,434)
Adjustments for items not involving cash:		
Share based compensation	94,913	681,777
Interest on gold sale contract	2,738,195	2,167,234
Interest on convertible loan	8,847,043	7,937,264
Decomissioning and restoration provision and foreign currency devaluation	183,342	10,508
Loss on revaluation of gold sale contract	6,052,924	3,419,076
Changes in non-cash working capital items (Note 13)	1,058,636	1,007,363
	218	(51,212)
CHANGE IN CASH	218	(51,212)
Cash – beginning of the year	228	51,440
Cash – end of the year	$ 446	$ 228

Supplemental cash flow information (Note 13)

See accompanying notes to the consolidated financial statements.

1. NATURE OF OPERATIONS

Rusoro Mining Ltd. (the “Company” or “Rusoro”) was incorporated under the laws of the Province of British Columbia on March 1, 2000. The registered office of the Company is 3200-650 West Georgia Street, Vancouver, British Columbia, Canada and the corporate headquarters is located at 3123-595 Burrard Street, Vancouver, British Columbia, Canada. The principal business activities of the Company are the operation, acquisition, exploration and development of gold mining and mineral properties.

The Company received mining concessions in Venezuela for the exploration, development and exploitation of alluvial and vein gold. Until March 14, 2012, the Company owned two producing gold mines in Venezuela. It held a 95% ownership interest in the Choco 10 mine (the “Choco Mine”) which was acquired on November 30, 2007 and a 50% ownership interest in the Isidora mine (the “Isidora Mine”) which was acquired on December 23, 2008. The Company operated the Isidora Mine under a joint venture agreement with the Venezuelan government (Note 14).

On September 16, 2011, the Venezuelan government, through publication in the Official Gazette of Venezuela, enacted a law-decree (the “Decree") reserving the government of Venezuela exclusive rights over the extraction of gold in Venezuela (the “Nationalization”). The Decree mandated the expiration of all mining concessions held by the Company and their reversal to the Venezuelan government except for those in which the Company and the Venezuelan government agree to continue operating jointly in the form of a mixed-interest enterprise (the “Mixed Enterprise’’) and in which the Company could not own more than a 45% share participation.

The Company was unable to agree with the Venezuelan government upon the terms and conditions of the migration of its mining assets to the Mixed Enterprise within the designated time periods. Therefore, effective March 14, 2012, in accordance with the procedures outlined in the Decree, all of the Company’s mining concessions expired by force of the Decree and all of its assets and operations reverted to the Venezuelan government who took possession and control of the assets and operations in accordance with Venezuelan law, thereby becoming the new operator and employer.

Management determined the Company’s sole recourse was to file a Request for Arbitration under the Additional Facility Rules of the International Centre for Settlement of Investment Disputes (“ICSID”) against the government of Venezuela alleging violations of the provisions of the Bilateral Treaty for the Protection of Investments entered between the governments of Canada and Venezuela (the “Treaty”). This request was filed on July 17, 2012. The Treaty provides that the Venezuelan government must pay a fair, prompt, and timely compensation to the Company as a result of the Nationalization. In parallel, the Company continued to seek an amicable resolution with the Venezuelan government.

In June 2012, the Company entered into a Creditors and Shareholders Agreement (the “CSA”) with significant equity holders and creditors who agreed not to take any steps or actions to exercise their rights and remedies against the Company until the expiration of a standstill period, subject to various clauses.

Also in June 2012, the Company entered into a litigation funding agreement (the “Litigation Funding Agreement”) with a subsidiary (the "Funder"), of the Calunius Litigation Risk Fund LP (the "Fund"). Calunius Capital LLP is the exclusive investment advisor to the Fund, which specializes in funding commercial litigation and arbitration claims. Under the terms of the Litigation Funding Agreement, the Funder agreed to assist in the funding of Rusoro's legal costs in relation to the international arbitration proceedings against the Republic of Venezuela (the "Respondent" or “Venezuela”) on a non-recourse basis. Rusoro continued to have complete control over the conduct of the international arbitration proceedings, insofar as the proceedings relate to the Company's claims, and continued to have the right to settle with the Respondent, discontinue proceedings, pursue the proceedings to trial and take any action Rusoro considers appropriate to enforce judgment.

The Litigation Funding Agreement provides contingent consideration to the Funder and other select parties as described in Note 14 and resulted in an amendment to the terms of the Gold Sale Contract adding an annual interest rate of 11% (Note 5).

1. NATURE OF OPERATIONS (Continued)

On August 22, 2016, the Arbitral Tribunal ("Tribunal") operating under the ICSID Additional Facility Rules, awarded ("the Award") the Company compensation of $967.77 million plus pre and post award interest which combined equates to in excess of $1.57 billion as of December 31, 2020. No value has been accrued for the Award as at December 31, 2020, as the ultimate receipt, final settlement amount and the timing of the receipt of the Award is uncertain.

In its Award, the Tribunal upheld the Company's claims that Venezuela breached its obligations under the Treaty by unlawfully expropriating the Company's investments without paying compensation and by imposing certain restrictions on the export of gold. As a result of these breaches, the Tribunal ordered Venezuela to pay compensation of $967.77 million as of the date of the expropriation (September 16, 2011), together with interest accrued between that date and the date of actual payment, calculated at a rate p.a. equal to US$ Libor for one year deposits, plus a margin of 4%, to be compounded annually. The amounts awarded must be paid net of any taxes imposed by Venezuela. The Tribunal also ordered Venezuela to contribute $3.3 million towards Rusoro's costs in the arbitration.

In October 2016, Rusoro received notice that the Bolivarian Republic of Venezuela ("Venezuela") had brought an application before the Paris Court of Appeals to set aside ("recours en annulation") the Award, which was filed by Venezuela in 2017. Rusoro had instructed Freshfields Bruckhaus Deringer and Teynier Pic to represent it in these proceedings, with the support of a special correspondent.

In December 2017, the Company amended its Litigation Funding Agreement and was provided with additional litigation funding of $7 million, which is intended to continue the Company's efforts to enforce the Award.

In October 2018, the Company executed a settlement agreement ("Settlement Agreement") with the Venezuelan government whereby the parties agreed that the Company would receive over $1.28 billion in monthly instalments through 2023 in exchange for the Company's mining data and full release of the Award. Under the Settlement Agreement, the Venezuelan government agreed to pay an initial payment of $100 million in November 2018, and upon completion of this initial payment, the Company would suspend legal enforcement of the Award and deliver the Company's mining data to the Venezuelan government. The Company would be entitled to resume legal enforcement of the Award if payment due under the Settlement Agreement is not received by the Company within the periods provided, and the Company is able to terminate the Settlement Agreement under certain default scenarios. The Venezuelan government retained the right to continue proceedings to set aside the Award at the seat of arbitration in Paris.

In January 2019, the Paris Court of Appeals partially annulled the Award (the "French Court Decision"). Whilst the Paris Court of Appeals upheld the tribunal's finding on the merits that Venezuela is liable for the unlawful expropriation of the Company's investments, it annulled the Award's finding on damages. The French Court Decision did not seek to determine the damages that Venezuela must pay to the Company for its breach of the Treaty.

In March 2021, the French Supreme Court overturned the French Court Decision, therefore reinstating the arbitral Award in full and will allow the Company to continue to vigorously pursue recognition and enforcement of the Award.

As at December 31, 2020 and the date of this report, the Company has not received the payment of $100 million.

2. BASIS OF PRESENTATION AND GOING CONCERN ASSUMPTION

a) Basis of Presentation

These annual consolidated financial statements have been prepared in accordance with International Financial Reporting Standards ("IFRS") as issued by the International Accounting Standards Board ("IASB"). The date that the Board of Directors approved these consolidated financial statements for issuance was April 20, 2021.

b) Foreign Currency Translation

In August 2018, the Venezuelan government replaced the bolivar fuerte ("BsF") with the bolivar soberano ("BsS") at a rate of 1 BsS to 100,000 BsF. The Venezuelan government continues to use the DICOM free floating exchange rate mechanism as amended in May 2017, now with a rate referencing the BsS. The DICOM exchange rate at December 31, 2020 was 1,194,643 BsS to the US dollar, which is effectively equal to 119,464,300,000 BsF to 1 US dollar (December 31, 2019: 4,740,929,000 BsF to the US Dollar).

c) Going Concern Assumption

In assessing whether the going concern assumption is appropriate, management takes into account all available information about the future, which is at least, but is not limited to, twelve months from the end of the reporting period. Management is aware in making its assessment, of material uncertainties related to events or conditions, such as those described above and herein, that may cast significant doubt upon the Company's ability to continue as a going concern.

In March 2012, in accordance with the procedures outlined in the Decree, 100% of the Company's Venezuelan mining concessions expired by force of the Decree and the Company's assets and operations reverted to the Venezuelan government.

Under these circumstances, the Company maintains the position that the application of the going concern assumption is still appropriate, as courses of action have been identified and acted upon which will increase the likelihood of the Company's ability to repay its loan and its other liabilities as follows:

1) The Company retains the right to seek reinstatement of the Award, including fair compensation paid to the Company, which will be sufficient for the Company to repay all its outstanding liabilities, if the payments under the Settlement Agreement are not received as provided in the agreement;
2) In June 2012, the Company entered into the Litigation Funding Agreement whereby the Funder agreed to assist in the funding of Rusoro's legal costs in relation to the international arbitration proceedings against Venezuela on a non-recourse basis and funding of the Company's expected operating expenditures, which was further amended in December 2017 and April 2019 for up to $7 million;
3) Related to the Litigation Funding Agreement, the Company entered into the CSA with significant equity holders and creditors who agreed not to take any steps or actions to exercise their rights and remedies against the Company until the expiration of a standstill period, subject to various clauses; and
4) In October 2018, the Company executed the Settlement Agreement with the Venezuelan government whereby the parties agreed that the Company would receive over $1.28 billion, including an initial $100 million to be paid.

(Expressed in US dollars)

2. BASIS OF PRESENTATION AND GOING CONCERN ASSUMPTION (Continued)

c) Going Concern Assumption (Continued)

There are material uncertainties surrounding the Nationalization, Award and Settlement Agreement (Note 1), including, but not limited to the timing and/or form of any compensation related to the Award or ultimate receipt of payments pursuant to the Settlement Agreement. Management is making efforts to work with vendors and potential creditors not covered by the CSA to have them forbear on demanding currently due amounts while it pursues the above-mentioned courses of action. There is, however, no assurance that the sufficient sources of funding described above will be available to the Company, that they will be available on terms and a timely basis that are acceptable to the Company, or that the Company will be able to secure additional funding.

These financial statements have been prepared on the basis of a going concern, which assumes that the Company will realize its assets and discharge its liabilities in the normal course of business. As at December 31, 2020, the Company had a net working capital deficiency (current assets minus current liabilities) of $137,478,942. These financial statements do not reflect the adjustments to the carrying values of assets and liabilities, the reported expenses and the statement of financial position classifications used that would be necessary should the Company be unable to continue as a going concern. These adjustments could be material.

d) Basis of Consolidation

These consolidated financial statements include the financial statements of the Company, its subsidiaries, and joint arrangements. Intercompany balances and transactions, including any unrealized income and expenses arising from intercompany transactions, are eliminated in preparing the consolidated financial statements.

The principal subsidiaries, joint arrangements, and the Company's ownership interests therein, are as follows:

Company	Location	Ownership interest	Status
Promotora Minera de Guayana, P.M.G., S.A.	Venezuela	95%	Consolidated
Minera Venrus C.A.	Venezuela	50%	Proportionate Share
Minera Rusoro Venezolana C.A.	Venezuela	50%	Proportionate Share
El Callao Gold Mining Company de Venezuela S.C.S.	Venezuela	50%	Proportionate Share
Proyectos Mineros del Sur, PROMINSUR, C.A.	Venezuela	100%	Consolidated
Corporacion Aurifera de El Callo, C.A.	Venezuela	100%	Consolidated
Corporacion Minera Choco 9 C.A.	Venezuela	100%	Consolidated
Corporacion 80.000 C.A.	Venezuela	100%	Consolidated
Lamin Laboreos Mineros C.A.	Venezuela	100%	Consolidated
Mineria MS C.A.	Venezuela	100%	Consolidated
General Mining de Guayana C.A.	Venezuela	100%	Consolidated
Krysos Mining S.A.	Venezuela	100%	Consolidated
Inversiones Yuruan C.A.	Venezuela	100%	Consolidated
Venezuela Holdings (BVI) Ltd	British Virgin Islands	100%	Consolidated

Non-controlling interests in the net assets of consolidated subsidiaries are identified separately from the Company's equity therein. Similarly, non-controlling interests in the components of comprehensive income (loss) are identified separately. Non-controlling interests consist of the amount of those interests at the date of the original business combination and the non-controlling interests' share of changes in equity since the date of the combination. A 5% non-controlling interest exists in Promotora Minera de Guayana, P.M.G., S.A. ("PMG"), which represents the outside interest's share of the carrying value of PMG, which owns the Choco Mine.

3. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

a) Basis of Measurement

These consolidated financial statements have been prepared using the measurement basis specified by IFRS for each type of asset, liability, income and expenses as set out in the accounting policies below. Certain items, including derivative financial instruments, are stated at fair value.

b) Significant Judgments, Estimates and Assumptions

The preparation of the Company's consolidated financial statements using accounting policies consistent with IFRS requires management to make judgments, estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Estimates and assumptions are continually evaluated and are based on management's experience and other factors, including expectations of future events that are believed to be reasonable under the circumstances. Actual results could differ from these estimates.

The areas that require management to make significant judgments, estimates and assumptions in determining carrying values include, but are not limited to, the following:

i. Interpretation of the Nationalization Decree

The Company made assumptions about the extent of application of the Decree. Those assumptions include that the Company's receivables and prepaid expenses and all of the Company's liabilities will continue with the Company after the expiration, forced by the Decree, of its mining concessions.

ii. Litigation, Possible Recovery and Related Success Fee Contingencies

The Company made assumptions about the likelihood of litigation success, the amount and possible recovery from litigation award, and the related impact on contingent success fees. Changes in these assumptions and related estimates may materially impact the carrying value of accounts payable and accrued liabilities and accounts receivable.

iii. Decommissioning and Restoration Provision

The Company assesses its provision for decommissioning and restoration on an annual basis or when new material information becomes available. Mining and exploration activities are subject to various laws and regulations governing the protection of the environment. In general, these laws and regulations are continually changing and the Company has made, and intends to make in the future, expenditures to comply with such laws and regulations. Accounting for decommissioning and restoration provisions requires management to make estimates of the future costs the Company will incur to complete the reclamation and remediation work required to comply with existing laws and regulations at each mining operation. Actual costs incurred may differ from those amounts estimated. In addition, future changes to environmental laws and regulations could increase the extent of reclamation and remediation work required to be performed by the Company. Increases in future costs could materially impact the amounts charged to operations for reclamation and remediation. The provision represents management's best estimate of the present value of the future decommissioning and restoration provision. The actual future expenditures may differ from the amounts currently provided.

3. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

b) Significant Judgments, Estimates and Assumptions (Continued)

iv. Deferred Taxes

The Company recognizes the deferred tax benefit related to deferred tax assets to the extent recovery is probable. Assessing the recoverability of deferred tax assets requires management to make significant estimates of future taxable profit. In addition, future changes in tax laws could limit the ability of the Company to obtain tax deductions in future periods from deferred tax assets.

v. *Share-based compensation*

Management is required to make certain estimates when determining the fair value of stock option awards, and the number of awards that are expected to vest. These estimates affect the amount recognized as share-based compensation in profit or loss.

c) Functional and Presentation Currency and Foreign Currency Translation

Since January 1, 2010, the Company's functional and presentation currency of all of its operations is the US dollar, as this is the principal currency of the economic environments in which they operate. Foreign currency transactions are initially recorded using the foreign currency rate of exchange at the date of the transaction. Monetary assets and liabilities denominated in foreign currencies are retranslated at the foreign currency rate of exchange prevailing at the reporting date.

The DICOM exchange rate at December 31, 2020 was 1,194,643 BsS to the US dollar, which is effectively equal to 119,464,300,000 BsF to 1 US dollar (Note 2(b)).

d) Cash

Cash comprises cash at banks.

e) Accrual for Termination Benefits

The Company's Venezuelan subsidiaries accrued liabilities for their workers' termination benefits, which are payable when the working relationship between the employer and an employee comes to a close. Termination benefits are an acquired right of the worker based on the provisions of the Organic Labour Law ("OLL") and the collective bargaining agreements currently in effect. The OLL and the collective bargaining agreements also call for additional benefits that are applicable under certain circumstances and the Company has recorded an additional accrual for such liabilities.

f) Provisions

Liabilities are recognized when the Company has a present obligation (legal or constructive) that has arisen as a result of a past event and it is probable that a future outflow of resources will be required to settle the obligation, provided that a reliable estimate can be made of the amount of the obligation. A provision is a liability of uncertain timing or amount.

Provisions are measured as the expenditure expected to be required to settle the obligation at the reporting date. In cases where it is determined that the effects of the time value of money are significant, the provisions are measured at the present value of the expenditures expected to be required to settle the obligation using a pre-tax rate that reflects the current market assessment of the time value of money and the risks specific to the obligation. The increase of the provision due to the passage of time is recognized as a financing expense included within other expenses.

3. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

g) Decommissioning and Restoration Provision

The Company records a provision and corresponding asset for the present value of the estimated costs of legal and constructive obligations for future site reclamation, remediation and closure where the outflow of resources is probable and a reliable estimate can be made of the obligation. Over time, the provision is increased to reflect an interest element in the estimated future cash flows (accretion expense) considered in the initial measurement. The capitalized cost in the asset is amortized using either the unit of production method or the straight-line basis, as appropriate. The estimated present value of the obligation is reassessed on an annual basis or when new material information becomes available. Increases or decreases to the obligation usually arise due to changes in legal or regulatory requirements, the extent of environmental remediation required, methods of reclamation, cost estimates, or discount rates. Changes to the decommissioning and restoration provision are recorded with an offsetting charge to the related asset.

h) Interest in Joint Operations

The Company conducts a portion of its business through joint arrangements where the parties are bound by contractual arrangements establishing joint control over such arrangements and requiring unanimous consent of each of the parties regarding those activities that significantly affect the returns of the arrangement. The Company's interest in a joint arrangement is classified as either a joint operation or a joint venture depending on its rights and obligations in the arrangement. In a joint operation, the Company has rights to its share of the assets, and obligations for its share of the liabilities, of the joint arrangement, while in a joint venture, the Company has rights to its share of the net assets of the joint arrangement. For a joint operation, the Company recognizes in the consolidated financial statements, its share of the assets, liabilities, revenue, and expenses of the joint arrangement, while for a joint venture, the Company recognizes in the consolidated financial statements its investment in the joint arrangement using the equity method of accounting.

i) Convertible Loan

The convertible loan was initially recorded at fair value and subsequently measured at amortized cost. The convertible loan is allocated between the debt and equity components based on their respective fair values at the date of issuance and is recorded net of transaction costs. The equity component is estimated using the residual method and the debt component is accreted to the face value using the effective interest method, with the resulting charge recorded as accretion on convertible loan, which is included in interest on convertible loan in profit or loss.

In instances where the Company issues equity instruments to settle all or a part of the outstanding debt, the equity instruments are treated as consideration paid and are measured initially at fair value of the equity instruments issued, or when not reliably measurable, at the fair value of the financial liability extinguished. Any difference between the carrying amount of the financial liability extinguished and the consideration paid is recognized in profit or loss. If the financial liability is not fully extinguished, and terms related to the remaining portion have been modified, the Company allocates the consideration paid between the extinguished portion and the modified portion.

3. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

j) Income Tax

The tax expense or benefit for the period consists of two components: current and deferred. Tax expense is recognized in profit or loss except to the extent it relates to a business combination or items recognized directly in equity or other comprehensive income (loss), in which case it is recognized in equity or in other comprehensive income (loss), respectively.

Current tax assets and liabilities comprise those obligations to, or claims from, tax authorities relating to the current or prior reporting periods, that are unpaid at the reporting date. Current tax is payable on taxable profit which differs from profit or loss in the consolidated financial statements. Calculation of current tax is based on tax rates and tax laws that have been enacted or substantively enacted by the end of the reporting period.

Deferred taxes are calculated using the liability method on temporary differences between the carrying amounts of assets and liabilities and their tax bases, unused tax credits and unused tax losses. Deferred tax is not provided on the initial recognition of goodwill or on the initial recognition of an asset or liability unless the related transaction is a business combination or affects taxable profit or accounting profit.

Deferred tax on temporary differences associated with shares in subsidiaries and joint ventures is not provided if reversal of these temporary differences can be controlled by the Company and it is probable that reversal will not occur in the foreseeable future.

Deferred tax assets and liabilities are calculated, without discounting, at tax rates that are expected to apply to their respective period of realization, provided they are enacted or substantively enacted by the end of the reporting period. Deferred tax assets are recognized to the extent that it is probable that they will be able to be utilized against future taxable income.

Deferred tax assets and liabilities are offset only when the Company has a right and intention to offset current tax assets and liabilities from the same taxation authority and the deferred tax assets and liabilities relate to income taxes levied by the same taxation authority on either the same entity or different entities which intend to settle current tax assets and liabilities on a net basis or simultaneously in each future period in which significant amounts of deferred tax assets or liabilities are expected to be recovered or settled.

Changes in deferred tax assets or liabilities are recognized as a component of deferred tax recovery or expense in profit or loss, except where they relate to items that are recognized in other comprehensive income (loss) or directly in equity, in which case the related deferred tax is also recognized in other comprehensive income (loss) or equity, respectively.

k) Share Capital

Share capital issued for other than cash is valued at the price at which the stock trades at the time the risks and rewards of ownership of the asset are transferred to the Company or the Company's liability is extinguished.

Share issuance costs, such as commissions, professional fees and regulatory fees are charged directly to share capital.

3. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

l) Share-based Payments

Share-based payment arrangements in which the Company receives goods or services as consideration for its own equity instruments are accounted for as equity-settled transactions and, when determinable, are recorded at the value of the goods and services received. If the value of the goods and services received are not determinable, then the fair value of the share-based payment is used.

The Company uses a fair value based method (Black-Scholes Option-Pricing model) for all share options granted to directors, employees and certain non-employees. In this model, expected volatility is determined from historical volatility, adjusted for normalizing factors. For directors and employees, the fair value of the share options is measured at the date of grant.

For grants to non-employees where the fair value of the goods or services is not determinable, the fair value of the share options is measured on the date the services are received.

The fair value of share-based payments is charged either to profit or loss or the related asset as applicable, with the offsetting credit to contributed surplus. For directors and employees, the share options are recognized over the vesting period based on the best available estimate of the number of share options expected to vest. Estimates are subsequently revised if there is any indication that the number of share options expected to vest differs from previous estimates. Any cumulative adjustment prior to vesting is recognized in the current period. No adjustment is made to any expense recognized in prior periods where vested. For non-employees, the share options are recognized over the related service period. When share options are exercised, the amounts previously recognized in contributed surplus are transferred to share capital.

m) Earnings (Loss) Per Share

Basic earnings (loss) per share is calculated by dividing the net earnings (loss) for the period attributable to the equity shareholders of the Company by the weighted average number of common shares outstanding during the period.

Diluted earnings (loss) per share is calculated using the treasury stock method which, for purposes of determining the weighted average number of shares outstanding, assumes that the proceeds to be received on the exercise of the share options and warrants are applied to repurchase common shares at the average market price for the period. Outstanding options, warrants and the equity component of the convertible loan are excluded from the calculation of diluted loss per share, as they are anti-dilutive.

n) Financial Instruments

The Company's financial instruments consist of cash, receivables, accounts payable and accrued liabilities, convertible loan, derivative financial liabilities and promissory notes payable. Cash and receivables are classified and measured at amortized cost using the effective interest method.

Accounts payable and accrued liabilities, convertible loan and promissory notes payable are classified and measured at amortized cost using the effective interest method. Other financial liabilities, other than derivative financial liabilities, are recognized initially at fair value, net of transactions costs incurred and are subsequently stated at amortized cost. Any difference between amounts originally received (net of transaction costs) and the redemption value is recognized in profit or loss over the period to maturity using the effective interest method.

3. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

n) Financial Instruments (Continued)

Financial assets are assessed for indicators of impairment at each reporting period end. Financial assets are impaired and impairment losses are incurred if, and only if, there is objective evidence that, as a result of one or more events that occurred after the initial recognition of the financial asset, the estimated future cash flows of the financial asset have been negatively impacted, and this impact can be reliably estimated.

o) Recent Accounting Standards

Adoption of new accounting standards

The IASB has issued a number of amendments to standards and interpretations, some of which were not yet effective in 2020. Amendments not yet effective have not been applied in preparing these consolidated financial statements. It is anticipated that these amendments will have no impact on the Company's financial statements when they are adopted in future years. Effective January 1, 2020, the Company has adopted the following new standards and amendments:

- Amendments to IFRS 3, Business Combinations ("IFRS 3") (assist in determining whether a transaction should be accounted for as a business combination or an asset acquisition. It amends the definition of a business to include an input and a substantive process that together significantly contribute to the ability to create goods and services provided to customers, generating investment and other income, and it excludes returns in the form of lower costs and other economic benefits. This amendment did not have a material impact on the Company's consolidated financial statements.
- Amendments to IFRS 9, Financial Instruments ("IFRS 9") and IFRS 7, Financial Instruments: Disclosures ("IFRS 7") will affect entities that apply the hedge accounting requirements to hedging relationships directly affected by the interest rate benchmark reform. The amendments modify specific hedge accounting requirements, so that entities would apply those hedge accounting requirements assuming that the interest rate benchmark is not altered as a result of the interest rate benchmark reform. If a hedging relationship no longer meets the requirements for hedge accounting for reasons other than those specified by the amended Standards, then discontinuation of hedge accounting is still required. This amendment did not have a material impact on the Company's consolidated financial statements.

New standards and interpretations net yet adopted

Classification of Liabilities as Current or Non-Current (Amendments to IAS 1)

The IASB has published Classification of Liabilities as Current or Non-Current (Amendments to IAS 1) which clarifies the guidance on whether a liability should be classified as either current or non-current. The amendments:

- clarify that the classification of liabilities as current or non-current should only be based on rights that are in place "at the end of the reporting period";
- clarify that classification is unaffected by expectations about whether an entity will exercise its right to defer settlement of a liability; and
- make clear that settlement includes transfers to the counterparty of cash, equity instruments, other assets or services that result in extinguishment of the liability.

This amendment is effective for annual periods beginning on or after January 1, 2022. Earlier application is permitted. The extent of the impact of adoption of this amendment has not yet been determined.

4. ACCOUNTS PAYABLE AND ACCRUED LIABILITIES

	December 31, 2020	December 31, 2019
Financial liabilities		
Accounts payable and accrued liabilities	$9,524,939	$9,366,374
Accrual for interest on convertible loan (Note 6)	56,032,052	47,185,009
Due to related parties (Note 10)	4,261,995	3,362,704
	$69,818,986	$59,914,087

5. DERIVATIVE FINANCIAL LIABILITY

In 2010, the Company received $6,973,000 from a gold buyer, Vicolven Enterprises Inc. ("Vicolven") in exchange for the delivery of 7,300 ounces of finished gold in 2011 and the commitment to issue 12,400,000 share-purchase warrants. No gold has been delivered with respect to this contract. In February 2011, the Company paid Vicolven a portion of the amount owing in US dollars in lieu of delivery of 700 ounces (as permitted by Vicolven) for a total of $711,000. In relation to the Company's commitment to issuing 12,400,000 share-purchase warrants, the $330,000 value associated with these committed share-purchase warrants has been deducted from the proceeds of $6,973,000 resulting in a net amount of $6,643,000.

On September 20, 2011, as a result of the Decree and proposed nationalization of the Company's Venezuelan gold mining assets by the government of Venezuela, a letter was written to the gold buyer, Vicolven Enterprises Inc., indicating that management no longer expects to settle the obligation with the delivery of finished gold as stated in the agreement. Instead, the Company will settle the outstanding, undelivered ounces of finished gold owing to Vicolven Enterprises Inc. in cash as permitted under the agreement with Vicolven.

On June 1, 2012, in relation to the Litigation Funding Agreement and the CSA, the Company signed an amendment with Vicolven whereby the Company agrees to pay interest of 11%, compounded annually, on the amount outstanding of 6,642 gold ounces. Interest will ultimately be payable in cash on the same terms as the original balance. Per the agreement, the interest payable was enacted retroactively to January 1, 2012.

Since the contract will be paid in cash in lieu of gold, and will no longer qualify for the own use exemption, it has been reclassified from deferred revenue to a derivative financial instrument. As of December 31, 2020, 16,973 (December 31, 2019 – 15,442) ounces of finished gold were still outstanding and valued at fair market value using the spot price of gold on December 31, 2020, of $1,898 (December 31, 2019 - $1,517) per ounce. Included in this amount is the principal amount of 6,642 gold ounces plus cumulative accrued interest of 10,331 (December 31, 2019 – 8,800) gold ounces for the period January 1, 2012, through December 31, 2020.

	December 31, 2020	December 31, 2019
Balance, beginning of year	$23,422,776	$17,836,466
Change in fair value	6,052,924	3,419,076
Fair value of interest expense	2,738,195	2,167,234
Balance, end of year	$32,213,895	$23,422,776

(Expressed in US dollars)

6. DECOMMISSIONING AND RESTORATION PROVISION

Decommissioning and restoration provisions are comprised of costs associated with environmental rehabilitation. These costs have been estimated based on the Company's interpretation of current regulatory requirements and have been measured at the net present value of future cash expenditures upon reclamation and closure using the information currently available.

Costs associated with decommissioning and restoration are capitalized depending on the nature of the asset related to the obligation and depreciated over the life of the asset. The decommissioning and restoration provision relates to reclamation and closure costs of the Company's operating Choco Mine and Isidora Mine, as well as to some of the exploration and development activities undertaken on the Company's mineral properties.

In view of the uncertainties concerning decommissioning and restoration, the ultimate cost of reclamation, remediation and closure activities could differ materially from the estimated amount recorded. The estimate of the Company's decommissioning and restoration provision is subject to change based on amendments to laws and regulations and as new information regarding the Company's operations becomes available.

Future changes, if any, to the provision as a result of amended requirements, laws, regulations, operating assumptions, estimated timing and amount of obligations may be significant and would be recognized prospectively as a change in accounting estimate. Any such change would result in an increase or decrease to the provision and a corresponding increase or decrease to the mineral property and/or property, plant and equipment balance(s).

	December 31, 2020	December 31, 2019
Balance, beginning of year	$45,954	$35,446
Change in estimate of future cash flows due to:		
Devaluation of the Venezuelan currency	(4,769,403)	(1,142,377)
Inflation	4,952,745	1,152,885
Balance, end of year	$229,296	$45,954

Due to the expiry by force of the Decree and reversal to the Venezuelan government of all of the Company's mining concessions on March 14, 2012, the Company's decommissioning and restoration provision became an on-demand liability on that date as opposed to be payable in accordance with the Company's long-term closure plan. Consequently as at December 31, 2020 and December 31, 2019, decommissioning and restoration provision was classified as current.

7. CONVERTIBLE LOAN

In June 2008, the Company entered into an $80,000,000 principal amount Convertible Loan (the "Loan") with a two year term and 10% annual interest to fund the acquisition of various Venezuelan mineral interests. During the years ended December 31, 2009 and 2010 the Company made various repurchases and restructured the Loan resulting in a reduced principal amount of $30,000,000. During the year ended December 31, 2011 the conversion option expired and the Company defaulted on the Loan; in addition, the Loan now bears interest at 11%, compounded quarterly.

In June 2012, the Company entered into the CSA with significant equity holders and creditors (the "Lenders") who agreed not to take any steps or actions to exercise their rights and remedies against the Company until the expiration of a standstill period, subject to various clauses. In consideration for the CSA, the Lenders were provided a contingent success fee in addition to amounts due and payable to the Lenders under the Loan of 20% of the value of the Loan (Note 15).

(Expressed in US dollars)

7. CONVERTIBLE LOAN (Continued)

During the year ended December 31, 2017, the Company's existing convertible loan of $30,000,000 was transferred to a new group of investors. The Company bought $250,000 of this debt at a cost of $175,000, and thus retired debt plus accrued interest totalling $465,441. The remaining $29,750,000 is still in default, however the new investors have become parties to the CSA.

As at December 31, 2020, the loan was still in default and outstanding and carried an amount owing of $56,032,052 (December 31, 2019 - $47,185,009) in accrued interest.

8. PROMISSORY NOTES PAYABLE

There were no promissory notes issued during the years ended December 31, 2020 and 2019.

As at December 31, 2020 and 2019, the Company owes $5,503,620 in promissory notes. The notes will become due and payable as to three times their subscription amount on the date that is ninety days from the date that the Company receives its first payment from the Venezuela government in respect of the Award issued in August 2016.

9. EQUITY

a. Authorized Share Capital of the Company

Unlimited number of common shares and preferred shares without par value.

b. Share Based Payments

In December 2016, the Company adopted a rolling share option plan available to its directors, officers, consultants and key employees. The option plan reserves for issuance, pursuant to the exercise of share options, is limited to not more than 10% of the issued common shares of the Company at the time of grant. Options are non-transferable and may have a term of up to 10 years from the date of issue. Amount of options, vesting terms, conditions and exercise price are determined by the board of directors at the time of grant.

The following share options were outstanding and exercisable at December 31, 2020:

Number of Options Outstanding & Exercisable	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life (years)
12,485,000	C$0.05	5.36
11,375,000	C$0.075	7.75
4,725,000	C$0.08	7.33
11,050,000	C$0.105	8.59
14,825,000	C$0.17	6.35
54,460,000	C$0.11	6.70

Share option transactions are summarized as follows:

	Number of Options	Weighted Average Exercise Price
Balance, December 31, 2018	54,435,000	C$0.21
Share options expired	(11,150,000)	C$0.59
Share options granted	11,050,000	C$0.105
Balance, December 31, 2019	54,335,000	C$0.11
Share options expired	(4,200,000)	C$0.17
Share options granted	4,325,000	C$0.05
Balance, December 31, 2020	54,460,000	C$0.10

(Expressed in US dollars)

9. EQUITY (Continued)

b. Share Based Payments (Continued)

During the year ended December 31, 2020, 4,325,000 share options were granted to directors, officers, and consultants of the Company with an exercise price of C$0.05 per share option. The options vested immediately and are exercisable until September 3, 2030. Using the Black-Scholes option pricing model, the grant date fair value was $94,913 or $0.02 per option.

During the year ended December 31, 2019, 11,050,000 share options were granted to directors, officers, employees and consultants of the Company with an exercise price of C$0.105 per share option. The options vested immediately and are exercisable until May 2, 2029. Using the Black-Scholes option pricing model, the grant date fair value was $681,777 or $0.06 per option.

The Company used the following assumptions:

	2020	2019
Risk-free interest rate	0.46%	1.69%
Expected life (years)	10 years	10 years
Annualized volatility	75.00%	75.00%
Dividend rate	0.00%	0.00%
Forfeiture rate	0.00%	0.00%

10. RECOVERIES FROM LITIGATION FUNDING

	Year ended December 31,	
	2020	2019
General and administrative expense	$1,489,893	$2,595,456
Recoveries	(517,017)	(1,924,547)
	$972,876	$670,909

11. RELATED PARTY TRANSACTIONS

a. Related Party Transactions

The nature of transactions undertaken and the relationships with related parties of the Company are as follows:

	Relationship with the Company	**Nature of Transactions**
Company A	An officer/director of the Company and a director of the Company are also an officer and director, respectively, of Company A.	Machinery and facilities rental and provision of general mining-related services.
Company B	A director of the Company is also a partner of Company B.	Provision of legal services.
Company C	A director of the Company is also an officer of Company C.	Provision of corporate administrative services.

(Expressed in US dollars)

11. RELATED PARTY TRANSACTIONS (Continued)

The Company incurred the following fees and expenses in the normal course of operations in connection with companies owned by key management and directors. Expenses and transactions with related parties have been measured at the price agreed between the parties, which are determined on a cost recovery basis.

	Year ended December 31,	
	2020	2019
Provision of legal services	$51,625	$296,554
Provision of corporate administrative services	120,000	120,000
	$171,625	$416,554

Included in accounts payable and accrued liabilities (Note 4) are amounts due to Company A, B, and C of $1,330,652 (December 31, 2019: $1,279,027). These amounts are unsecured, due on demand and non-interest bearing.

Included in accounts payable and accrued liabilities (Note 4) is $487,608 (December 31, 2019: $469,941) owed to the CEO of the Company, and $150,000 (December 31, 2019: $150,000) owed to a director of the Company for a non-interest bearing loan with no fixed maturity date. These loans are to be repaid with a contingent success fee upon successful recovery of fair compensation. As at December 31, 2020, recovery of fair compensation is deemed to be indeterminable and $nil has been accrued for the contingent success fee.

b. Compensation of Management and Directors

The remuneration of the directors and key management personnel was as follows:

	Year ended December 31,	
	2020	2019
Salaries and directors' fees	$830,000	$830,000
Stock based compensation	71,651	555,293
	$901,651	$1,385,293

Included in accounts payable and accrued liabilities (Note 4) is $2,293,735 (December 31, 2019: $1,463,735) related to compensation of management and directors.

12. CAPITAL MANAGEMENT DISCLOSURES

The Company's capital management objectives are to safeguard the Company's ability to support its normal business requirements which mainly consist of its efforts to reach a compensation agreement with the Venezuelan government or the enforcement of an arbitration award before ICSID for the expropriation of its assets in Venezuela as a result of the Nationalization. In the management of capital, the Company includes the components of shareholders' deficiency excluding non-controlling interests, plus convertible loan, less cash.

As at December 31, 2020, capital, as defined above was a deficiency of $137,478,942 (December 31, 2019: deficiency of $118,599,020). The Company manages its capital structure and makes adjustments to it in light of changes in its economic environment and the risk characteristics of the Company's assets. To effectively manage its capital requirements, the Company plans its funding needs in advance to ensure the Company has liquidity to meet its objectives.

(Expressed in US dollars)

13. SUPPLEMENTAL CASH FLOW INFORMATION

	Year ended December 31,	
	2020	2019
CHANGES IN NON-CASH WORKING CAPITAL ITEMS		
Receivables and prepaid expenses	$779	$(29,966)
Accounts payable and accrued liabilities	1,057,857	1,037,329
	$1,058,636	$1,007,363

14. JOINT OPERATION

On July 4, 2008, the Company entered into an agreement ("the Mixed Enterprise Agreement") with MIBAM to create a mixed enterprise. Pursuant to the Mixed Enterprise Agreement, Minera Venrus C.A. ("Venrus C.A."), a Venezuelan corporation was incorporated on December 23, 2008, and is 50% owned by the Company and 50% owned by Empresa de Producción Social Minera Nacional, C.A. (a Venezuelan government entity). Up to March 14, 2012, the Company conducted a portion of its business through this joint operation under which the joint operation participants are bound by the articles of incorporation of Venrus C.A. The Company recorded its 50% proportionate share of assets, liabilities, revenues, and operating costs of the joint operation. Due to the Decree on September 16, 2011, the Company lost its mining concessions operated by the joint operation hence the Company lost any control or influence over the management of the operations of Venrus C.A.

15. CONTINGENCIES

The Company has various contingent liabilities as described below, which are dependent upon successful recovery of compensation pursuant to the Award and Settlement Agreement. As of the date of this report, the Company has not received the initial payment of $100 million. Due to the uncertainty of the amount of the Award, the enforecment and collection of the Award, the receipt of the payments under the Settlement Agreement (or future litigation success), or ultimately, the Company's ability to receive fair compensation for the expropriation of its investments in Venezuela, the Company only considers the payment to be received when funds are received by the Company in a bank account which is fully controlled by the Company. As at December 31, 2020 and the date of this report, the Company assessed that the likelihood of receiving the payments or other compensation is indeterminable and the contingent obligations arising as a result of the collection of the Award or Settlement Agreement cannot be reasonably estimated.

i. Gold Reserve Lawsuit

Pursuant to a settlement in 2012, the Company issued a conditional promissory note in the amount of C$1,000,000. The promissory note will only become due and payable in the event that the Company is successful in the litigation it has commenced against the Venezuelan government seeking compensation for the Nationalization. The Company considers the litigation to be successful when appropriate financial compensation has been received. The promissory note and any payment due under it shall be subordinate and postponed in right of payment to (a) the rights of the Funder as defined in the Creditors and Shareholders Agreement, and Litigation Funding Agreement, and (b) the rights of the Funder and Freshfields Bruckhaus Deringer US LLP under a Priorities Agreement. No value has been accrued for the promissory note as at December 31, 2020, as recovery of fair compensation is deemed indeterminable.

ii. Litigation Funding Agreement

Under the terms of the privileged Litigation Funding Agreement, the Company has given certain warranties and covenants to the Funder. In consideration for the provision of arbitration financing, Rusoro has agreed to pay to the Funder a portion of any final settlement of the arbitration claim against the Respondent (the "Funder's Fee"). The Funder's Fee shall only become payable upon recovery of fair compensation and the value of the Funder's Fee is dependent upon a number of variables including the value of any settlement and the length of time taken to receive the settlement. The agreement also provides that the amount of the Funder's Fee shall not exceed the amount of the aggregate proceeds of the arbitration claim under any circumstances. See Note 10 for details of recoveries received under the Litigation Funding Agreement.

15. CONTINGENCIES (Continued)

iii. Contingent Success Fees

In addition to the Litigation Funding Agreement the Company has also provided contingent success fees to select stakeholders, including the Lenders of the Convertible Loan and the board of directors and management of the Company, in consideration for their discounted services or forgiveness of select obligations. The terms, clauses, and priority of the contingent fee agreements are varied, but generally provide each party a contingent success fee based on successful outcome of the litigation and final settlement. Management estimates the aggregate potential exposure related to these contingent success fees will not exceed 15% of the Award. As at December 31, 2020, recovery of fair compensation is deemed to be indeterminable and $nil has been accrued.

iv. Trust and Contribution Agreements

The Company is a party to a trust agreement and a contribution agreement whereby it has agreed to pay to a trust established for members of management and the executive committee of the board of directors, a success fee upon the completion of a transaction or series of transactions. For the purposes of the contribution agreement, a "Transaction" is defined as: (a) any merger, consolidation, reorganization, recapitalization, restructuring, leveraged buyout, business combination, or any transaction pursuant to which the Company is acquired by or combined with a third party; or (b) the acquisition by a third party of any assets or operations of the Company, or any outstanding shares of the Company; or (c) a sale or spin-off of any material assets, of 5% or more of the capital stock of any subsidiary of the Company, or any transaction which has the effect of altering the capitalization of the Company. Where a change in control accompanies the Transaction, the success fee will be equal to 1% of the aggregate transaction value as defined in the contribution agreement. If the Transaction involves the acquisition of less than 50% of the voting power of the then outstanding Company's shares, then the success fee will be equal to 0.5% of the aggregate transaction value. As at December 31, 2020, none of the Transaction criteria had been met and $nil had been paid to the Trust.

In October 2012, the Company entered into a trust agreement and a contribution agreement whereby it has agreed to pay to a trust established for the board of directors and management of the Company a success fee equal to 2% of the proceeds received by the Company in respect of the legal proceedings it has commenced against the Venezuelan Government to obtain compensation for the nationalization of the Company's gold assets in Venezuela.

The trustees (the "Trustees") for the trust are independent directors and members of the compensation committee of the board of directors. The Trustees are empowered to allocate the success fee amongst the board of directors and management of the Company as they deem appropriate. As at December 31, 2020, none of the criteria had been met and $nil had been paid to the Trust.

v. Other Matters

The Company is involved in various claims and litigation arising in the normal course of business. The Company may be exposed to transactions in the normal course of operations that may not be in compliance with certain Venezuelan laws and regulations. While the outcome of these matters is uncertain and there can be no assurance that such matters will be resolved in the Company’s favor, the Company does not currently believe that the outcome of adverse decisions in any pending or threatened proceedings related to these and other matters or any amount which it may be required to pay by reason thereof would have a material impact on its consolidated statement of financial position, statement of comprehensive loss, or statement of cash flows. Based on the information currently available, estimates of financial impact cannot be reasonably made.

16. FINANCIAL INSTRUMENTS

a. Financial Assets and Liabilities

The Company's financial instruments consist of the following: cash, receivables, accounts payable and accrued liabilities, a convertible loan, a derivative financial liability ("gold delivery contract") (Note 5) and promissory notes payable.

The carrying amounts of cash, receivables, accounts payable and accrued liabilities, and promissory notes payable are considered to be reasonable approximations of their fair values due to the short-term nature of these instruments. The gold delivery contract is marked to market at each reporting period based on the current spot price of gold and the number of gold ounces owing to the gold buyer (Note 5), and as such, is a reasonable approximation of the fair value. Management reviewed all significant financial instruments held by the Company and determined that no significant differences between fair value and carrying value existed as at December 31, 2020.

Financial instruments that are measured subsequent to initial recognition at fair value are grouped into a hierarchy based on the degree to which the fair value is observable. Level 1 fair value measurements are derived from unadjusted, quoted prices in active markets for identical assets or liabilities. Level 2 fair value measurements are derived from inputs other than quoted prices included within Level 1 that are observable for the asset or liability directly or indirectly. Level 3 fair value measurements are derived from valuation techniques that include inputs for the asset or liability that are not based on observable market data.

The gold delivery contract, being a derivative financial liability, is measured using Level 2 inputs.

b. Financial Instrument Risk Exposure

The Company thoroughly examines the various financial instrument risks to which it is exposed, and assesses the impact and likelihood of those risks. Where material, these risks are reviewed and monitored by management. There have not been any significant changes from the previous period as to how these risks are reviewed and monitored by management. The types of financial instrument risk exposures and the objectives and policies for managing these risks exposures are described below.

i. Credit Risk

Credit risk is the risk that the counterparty to a financial instrument will cause a financial loss for the Company by failing to discharge its obligations. Management does not believe the Company is exposed to any significant concentration of credit risk as all of its cash is held with Canadian banks.

ii. Liquidity Risk

Liquidity risk is the risk that the Company will be unable to meet its obligations associated with financial liabilities as they fall due. The Company manages liquidity risk by monitoring cash and other financial resources available to meet its maturing obligations. The Company currently has a working capital deficiency of $137,478,942.

iii. Market Risk

(a) Interest Rate Risk

Interest rate risk is the risk that the future cash flows and fair values of the Company's financial instruments will fluctuate because of changes in market interest rates. The majority of the Company's financial instruments, if applicable, have fixed interest rates and therefore management does not believe the Company is exposed to any significant concentration of interest rate risk.

16. FINANCIAL INSTRUMENTS (Continued)

b. Financial Instrument Risk Exposure (Continued)

(b) Currency Risk

Currency risk is the risk that the value of the Company's financial instruments will fluctuate due to changes in foreign exchange rates. The Company is exposed to currency risk as the Company's financial assets and liabilities include items denominated in BsS and C$.

Changes in the applicable exchange rate may result in a decrease or increase in foreign exchange gains or losses recognized in profit or loss. The Company does not use derivative instruments to reduce its exposure to foreign currency risk.

The Company's Venezuelan operations and cash holdings are currently subject to currency and exchange controls. These government-imposed controls may adversely affect the Company as such controls limit the Company's ability to flow US dollars out of the country for US dollar operating and capital expenditures.

As at December 31, 2020, the Company had a net monetary liability position of $nil (December 31, 2019: $nil) denominated in Venezuelan Bolivars.

17. COVID-19 UNCERTAINTY

To the date of this report, the spread of COVID-19 has severely impacted many local economies around the globe. In many countries, including Canada, businesses are being forced to cease or limit operations for long or indefinite periods of time. Measures taken to contain the spread of the virus, including travel bans, quarantines, social distancing, and closures of non-essential services have triggered significant disruptions to businesses worldwide, resulting in an economic slowdown. Global stock markets have also experienced great volatility. Governments and central banks have responded with monetary and fiscal interventions to stabilize economic conditions. As at the date of this report, the Company has not been significantly impacted by the spread of COVID-19.

The duration and impact of the COVID-19 pandemic, as well as the effectiveness of government and central bank responses, remains unclear at this time. It is not possible to reliably estimate the duration and severity of these consequences, as well as their impact on the financial position and results of the Company for future periods.

18. INCOME TAX

The Company incurred $nil current tax expense and $nil deferred tax expense in each of the years ending December 31, 2020 and 2019.

Income taxes differ from the amount that would be determined by applying the combined Canadian federal and provincial statutory income tax rate of 27.00% for the year ended December 31, 2020 (2019 – 27.00%) to loss before income taxes. The differences are the result of:

(Expressed in US dollars)

18. INCOME TAX (Continued)

	2020	2019
Loss before income taxes	($18,974,835)	($15,274,434)
Statutory tax rate	27.00%	27.00%
Expected income tax expense / (recovery)	(5,123,205)	(4,124,097)
Rate difference in foreign jurisdictions	2,388,702	2,143,061
Impact of currency devaluation	49,502	2,837
Foreign exchange and other differences	1,683,012	1,211,900
Change in unrecognized deductible temporary items	1,001,989	766,299
Income tax expense	$-	$-

As at December 31, 2020, the Company's tax liability includes income taxes payable of $nil (2019 - $nil).

The significant components of deferred tax assets not recognized are as follows:

	2020	2019
Deferred tax assets not recognized:		
Non-capital loss carried forward	$20,553,434	$19,086,543
Property, plant and equipment	48,709	48,709
Other	32,129	32,129
	$20,634,272	$19,167,381

As at December 31, 2020, the Company's non-capital losses relate entirely to Canada and expire between 2021 to 2040.

THIS IS EXHIBIT "L"
TO THE AFFIDAVIT OF SCOTT REID
SWORN BEFORE ME OVER VIDEOCONFERENCE
ON MAY 28, 2021

Commissioner for Taking Affidavits

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CRYSTALLEX INTERNATIONAL CORP.,	:	
Plaintiff,	:	
v.	:	Misc. No. 17-151-LPS
BOLIVARIAN REPUBLIC OF VENEZUELA,	:	
Defendant.	:	

MEMORANDUM ORDER

On April 13, 2021, the Court issued an order appointing Robert B. Pincus as a special master in this case. (D.I. 258) On May 14, 2021, the Special Master submitted a revised proposal for an order formalizing his appointment. (D.I. 265, 265-1) The Court permitted objections to the proposed order to be filed within five days. (D.I. 264) The Court received objections from Plaintiff Crystallex International Corporation ("Crystallex"), Intervenors PDV Holding, Inc. ("PDVH") and CITGO Petroleum Corporation ("CITGO"), and nonparties Phillips Petroleum Company Venezuela Limited and ConocoPhillips Petrozuata B.V. (together, "ConocoPhillips"). (*See generally* D.I. 266, 267, 268) The Court subsequently received responsive letters from Crystallex, PDVH and CITGO, Defendant Bolivarian Republic of Venezuela ("the Republic"), Intervenor Petróleos de Venezuela S.A. ("PDVSA"), and Intervenors Blackrock Financial Management, Inc. and Contrarian Capital Management, L.L.C. (together, "Intervenor Bondholders"). (*See generally* D.I. 269, 270, 271, 273, 274-1)[1] The

[1] In their responsive letters, the Republic and PDVSA agreed with the positions taken by

Court will briefly address each issue raised in the letters.

Standard of Review for Factual Findings. Crystallex objects to the Court reviewing the Special Master's factual findings for clear error. (D.I. 268 at 1) Given that objection, the Venezuela Parties concede that Federal Rule of Civil Procedure 53(f)(3) requires the Court to review the Special Master's factual findings de novo. (D.I. 269 at 3) The Court agrees with the parties' reading of the rule. Accordingly, the Court will review the Special Master's factual findings de novo.

OFAC Language. Crystallex and ConocoPhillips both request that the Court add language to the proposed order regarding sanctions imposed on Venezuela by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC"). Crystallex asks the Court to add language stating that the Special Master is acting as an "arm of the Court." (D.I. 268 at 1-3) Similarly, ConocoPhillips requests that the Court add language stating that the Special Master's activities are "authorized conduct" under the OFAC sanctions and prohibiting certain other conduct by the Special Master. (D.I. 266 at 1-2) The Venezuela Parties advise the Court that the Special Master "and his OFAC counsel spoke extensively with the parties about these matters, and they decided that the proposals were either unnecessary, incorrect, or outside the scope of his assignment." (D.I. 269 at 1; *see also* D.I. 265 at 1 (Special Master reporting that his OFAC counsel had discussions with OFAC counsel of the various parties)) The Venezuela Parties further accuse Crystallex and ConocoPhillips of seeking "a preemptory order from this Court that ***their*** participation in this matter – past, present, and future – complies with the

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PDVH and CITGO in their opening and responsive letters. (*See generally* D.I. 270, 271) The Court refers generally to the positions of all four of these entities as those of the "Venezuela Parties."

Venezuelan sanctions regime, regardless of the regulations." (*Id.*) (internal footnote omitted)

Crystallex's proposed language is adopted in part and rejected in part. The Court will include the following provision in its appointment order:

> ***Arm of the Court.*** The Court finds that the Special Master, in effectuating his Court-appointed duties, is acting pursuant to Federal Rule of Civil Procedure 53 and, thus, as an arm of the Court.

(*See* D.I. 268 at 2) (non-substantive modifications have been made to Crystallex's proposal) While likely unnecessary, the Court agrees with Crystallex that this portion of its proposed language is nonetheless appropriate because it "is correct and would facilitate the efficient exercise of the Special Master's authority." (*Id.*)

The Court will not, however, include Crystallex's additional proposal, which would have the Court find, for sanctions purposes, that any payments to the Special Master relate to the official business of the United States. (*See id.*) (citing 31 C.F.R. § 591.509)[2] Nor will the Court include ConocoPhillips' proposed provision, which would require the Court to find that "the Parties and ConocoPhillips are not financing . . . any conduct or transaction that purports to encumber, transfer or otherwise affect the PDVH shares, or that constitutes a prohibited dealing with" a Specially Designated National. (D.I. 266 at 2) The Court has not determined that Crystallex's or ConocoPhillips' positions are wrong, but neither has it, to this date, made a determination that one or both of them is correct. While the Court may soon be required to resolve additional issues regarding the OFAC regulations, the Court need not do so at this time in

[2] The Court is also not including the first two sentences of Crystallex's proposal, which repeat certain language from prior decisions of the Court, some of which is already contained in a "Whereas" provision of the Special Master's proposed order.

order to finalize the Special Master's appointment.

Fee Cap. ConocoPhillips objects to the initial fee cap of $2 million for the Special Master, his counsel, and his other advisors. (D.I. 266 at 2) ConocoPhillips proposes that the cap instead be set at $1 million. (*See id.*) That objection is overruled. Given the scope and complexity of the anticipated sale of PDVH shares, the Court concludes that $2 million is a reasonable cap at this point. The Court also agrees with the other parties that requiring additional proceedings to raise the fee cap above ConocoPhillips' preferred $1 million would be an inefficient use of resources. (*See* D.I. 269 at 3; D.I. 273 at 1) Like the parties, the Court is confident that the Special Master and his advisors will perform their functions efficiently and prudently.

Contributions by Intervenor Bondholders. Crystallex, ConocoPhillips, and the Venezuela Parties all object to the participation of the Intervenor Bondholders in the structuring of the sale without paying a portion of the fees and costs. (*See* D.I. 266 at 2; D.I. 268 at 3-5; D.I. 269 at 3) Those objections are sustained.

The Court agrees with Crystallex that the Intervenor Bondholders should not have opportunities to increase expenses for the other parties without sharing in those costs themselves. (*See* D.I. 268 at 5) The Court also agrees with ConocoPhillips that there is no persuasive reason why it should be treated differently from the Intervenor Bondholders. (*See* D.I. 266 at 2) While the Intervenor Bondholders are parties in this case and ConocoPhillips is a third party, the sale for which the Court is preparing involves – at least at present – only the satisfaction of the Republic's debt to Crystallex. Currently in this proceeding, neither ConocoPhillips nor the Intervenor Bondholders have an interest in the PDVH shares to be sold that is nearly as strong as

Crystallex's. If, like ConocoPhillips, the Intervenor Bondholders nonetheless wish to be included in the discussions with the Special Master, the Intervenor Bondholders, like ConocoPhillips, should pay a proportionate share of the fees incurred by the Special Master (including his counsel and other advisors).

To the extent the Special Master envisioned allowing the Intervenor Bondholders to participate in these proceedings but with lesser rights than other parties (*see, e.g.*, D.I. 265 at 1) ("I do, however, propose to revise the Proposed Order to include a limited set of rights to the Intervenor Bondholders."), the Court believes that such limited participation would only complicate these proceedings and would increase the risk of unnecessary delay and expense. As the Intervenor Bondholders correctly state, "'[w]hen a party intervenes, it becomes a full participant in the lawsuit and is treated just as if it were an original party.'" (D.I. 274-1 at 2) (quoting *Wayne Land & Min. Grp. LLC v. Del. River Basin Comm'n*, 894 F.3d 509, 521 n.6 (3d Cir. 2018) (other internal quotation marks omitted)) Here, being a "full participant" means bearing a proportionate share of the expenses incurred by the Special Master.[3] Accordingly, if the Intervenor Bondholders wish to participate in this process, then they should be responsible for the same portion of the Special Master's fees as Crystallex, the Venezuela Parties, and

[3] This conclusion is consistent with Federal Rule of Civil Procedure 53(g)(3), which provides that the Court "must allocate payment among the parties after considering the nature and amount of the controversy, the parties' means, and the extent to which any party is more responsible than other parties for the reference to a master." While the Intervenor Bondholders are not responsible for the reference to a master, the nature and amount of the controversy as well as the Intervenor Bondholders' means fully support, under the circumstances here, imposing the same obligations on them as all other parties (and non-party ConocoPhillips) are bearing. *See also generally* Fed. R. Civ. P. 24 (1966 Adv. Comm. Notes) ("An intervention of right . . . may be subject to appropriate conditions or restrictions responsive among other things to the requirements of efficient conduct of the proceedings.").

ConocoPhillips (i.e., a one-quarter share).

Given today's ruling, the Court understands that the Intervenor Bondholders may prefer not to participate going forward. (*See* D.I. 274-1 at 3) They write that they "would recede from participation in [these] proceedings rather than pay a portion of fees." (*Id.*) Now that they are aware of the Court's ruling, the Intervenor Bondholders may well determine that the "limited and defensive interests" they have in "the proceedings before the Special Master" are fully and/or adequately protected without their further participation. (*Id.*)[4] The Court does not wish to guess which way the Intervenor Bondholders will come out on a choice to which they do not believe they should have been put. (*See id.*) Therefore, by no later than tomorrow, May 26, 2021, the Intervenor Bondholders shall file a letter with the Court indicating whether they will either (i) participate and pay their one-quarter share of the fees and costs, or (ii) withdraw from further discussions with the Special Master.

Compensation Language. The Venezuela Parties request that the Court modify language in the proposed order to clarify that their share of fees and costs may come from any of four entities (i.e., the Republic, PDVSA, PDVH, or CITGO). (*See generally* D.I. 267) Crystallex does not take a position on the issue. (*See* D.I. 273 at 1) The Court will adopt a version of the Venezuela Parties' proposal. Like Crystallex, the Court is not concerned about which entity will provide the necessary funds. The Court does expect, however, that all the Venezuela

[4] The Intervenor Bondholders identify "two limited and defensive but highly important interests in proceedings before the Special Master." (D.I. 274-1 at 2) First, "the Intervenor Bondholders seek to be assured of a timely opportunity to object before the Special Master and this Court." (*Id.*) Second, "the Intervenor Bondholders have an interest in ascertaining that full disclosure is made to prospective purchasers of PDVH shares concerning the pledge of collateral protecting the 2020 Notes." (*Id.*)

Parties will work together to ensure that their portion of the Special Master's fees and costs are reimbursed promptly.

Conclusion. After the Court receives the Intervenor Bondholders' position on how they will proceed, the Court will issue an order finalizing the Special Master's appointment.

May 25, 2021
Wilmington, Delaware

HONORABLE LEONARD P. STARK
UNITED STATES DISTRICT JUDGE

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

Court File No. CV-11-9532-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CRYSTALLEX INTERNATIONAL CORPORATION

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced at Toronto

AFFIDAVIT OF SCOTT REID
(Sworn May 28, 2021)

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

Court File No. CV-11-9532-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CRYSTALLEX INTERNATIONAL CORPORATION

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced at Toronto

RESPONDING AND CROSS MOTION RECORD
(Returnable on a date to be set)

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