

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT
PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported): April 28, 2021

Tilray, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-38594
(Commission
File Number)

82-4310622
(IRS Employer
Identification No.)

1100 Maughan Rd.
Nanaimo, BC, Canada

(Address of principal executive offices)

V9X 1J2

(Zip code)

Registrant's telephone number, including area code: (844) 845-7291

Not Applicable
(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Securities Exchange Act of 1934:

<u>Title of each class</u>	<u>Trading Symbol(s)</u>	<u>Name of each exchange on which registered</u>
Class 2 Common Stock, \$0.0001 par value per share	TLRY	The Nasdaq Global Select Market

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter):

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Introductory Note.

As previously disclosed in the Current Reports on Form 8-K filed by Tilray, Inc., a Delaware corporation (“**Tilray**”), with the Securities and Exchange Commission (the “**SEC**”) on December 21, 2020 and February 22, 2021, Tilray entered into an Arrangement Agreement on December 15, 2020, as amended on February 19, 2021 (the “**Arrangement Agreement**”), with Aphria Inc., a corporation existing under the laws of the Province of Ontario (“**Aphria**”), pursuant to which Tilray agreed to acquire all of the issued and outstanding common shares of Aphria (the “**Aphria Shares**”) pursuant to a plan of arrangement (the “**Plan of Arrangement**”) under the Business Corporations Act (Ontario) (the “**Arrangement**”). The Arrangement was consummated on April 30, 2021 (the “**Closing Date**”).

Item 2.01. Completion of Acquisition or Disposition of Assets.

The information provided in the Introductory Note is incorporated by reference herein.

Under the terms of the Arrangement Agreement and the Plan of Arrangement, on April 30, 2021, each Aphria Share outstanding immediately prior to the effective time of the Arrangement (the “**Effective Time**”) was transferred to Tilray in exchange for 0.8381 of a share (the “**Exchange Ratio**”) of Class 2 common stock of Tilray, par value \$0.0001 per share (“**Class 2 Common Stock**”). In the aggregate, Aphria shareholders received 266,804,667 shares of Class 2 Common Stock (the “**Consideration Shares**”). The Exchange Ratio was agreed to on December 15, 2020 and was not adjusted for any subsequent changes in market price of the Class 2 Common Stock or the Aphria Shares prior to the Closing Date. The Arrangement was intended to qualify as a reorganization for U.S. federal income tax purposes.

In addition, at the Effective Time, (i) all Aphria equity awards granted under Aphria’s equity compensation plans (the “**Aphria Plans**”) as of the Effective Time were assumed and exchanged into corresponding awards with respect to Class 2 Common Stock, with the number of shares underlying such awards (and the exercise prices of such awards, in the case of options) adjusted based on the Exchange Ratio, (ii) all of the warrants to acquire Aphria Shares issued in 2016, to the extent not exercised as of the Effective Time, were exchanged into warrants to acquire shares of Class 2 Common Stock after adjustments to reflect the terms of the Arrangement, and (iii) all remaining warrants to acquire Aphria Shares remained outstanding and became exercisable, in accordance with their respective terms, for Class 2 Common Stock, after adjustments to reflect the terms of the Arrangement.

Treatment of Aphria Convertible Securities

Pursuant to the Arrangement, at the Effective Time, (i) each outstanding option to purchase Aphria Shares (each, an “**Aphria Option**”) issued pursuant to the Aphria Plans, to the extent it had not been exercised as of the Effective Date (as defined in the Arrangement Agreement), was exchanged for a stock option (each, a “**Replacement Option**”) to purchase a number of shares of Class 2 Common Stock equal to the product of the Exchange Ratio, rounded down to two decimal places, multiplied by the number of Aphria Shares issuable on exercise of such Aphria Option immediately prior to the Effective Time (rounded down to the next whole number of shares of Class 2 Common Stock) for an exercise price per share of Class 2 Common Stock (rounded up to the nearest whole cent) equal to the exercise price per share of such Aphria Option immediately prior to the Effective Time divided by the Exchange Ratio, rounded down to two decimal places; (ii) each restricted share unit issued under the Aphria Plans (each, an “**Aphria RSU**”) to the extent it had not been exercised as of the Effective Date, was exchanged for a restricted stock unit of Tilray (each, a “**Replacement RSU**”) in respect of a number of shares of Class 2 Common Stock equal to the product of the Exchange Ratio, rounded down to two decimal places, multiplied by the number of Aphria Shares underlying such Aphria RSU immediately prior to the Effective Time (rounded down to the next whole number of shares of Class 2 Common Stock); and (iii) each deferred share unit of Aphria issued pursuant to the Aphria Plans (each, an “**Aphria DSU**”), to the extent it had not been exercised as of the Effective Date, was exchanged for a deferred share unit of Tilray (the “**Replacement DSUs**”) in respect of a number of shares of Class 2 Common Stock equal to the product of the Exchange Ratio, rounded down to two decimal places, multiplied by the number of Aphria Shares underlying such Aphria DSU immediately prior to the Effective Time (rounded down to the next whole number of shares of Class 2 Common Stock). The terms, conditions and manner of exercise and other terms and conditions of each of the Replacement Options, the Replacement RSUs, and the Replacement DSUs are the same as the terms and conditions of the respective Aphria Options, Aphria RSUs or Aphria DSUs for which they were exchanged, except that such Replacement Options, Replacement RSUs and Replacement DSUs are governed by the terms and conditions of the Tilray, Inc. Amended and Restated 2018 Equity Incentive Plan (the “**Tilray Plan**”). The Replacement Options, Replacements RSUs and Replacement DSUs are convertible into aggregate of 6,461,092 shares of Class 2 Common Stock. The exercise prices for the Replacement Options range from C\$1.69 to C\$27.58. The settlement of Replacement RSUs and Replacement DSUs vary, occurring within a short-term deferral period after either the satisfaction of time- or performance-based conditions or upon a deferred settlement date (including but not limited to termination of service or upon election) as permitted under the applicable award agreement.

Treatment of Aphria Warrants

Pursuant to the Arrangement, at the Effective Time, each 2016 Aphria Warrant (as defined in the Arrangement Agreement), to the extent it had not been exercised as of the Effective Date, was exchanged for a warrant (a “**Replacement Warrant**”) to purchase a number of shares of Class 2 Common Stock equal to the product of the Exchange Ratio, rounded down to two decimal places, multiplied by the number of Aphria Shares issuable on exercise of such Aphria Warrant immediately prior to the Effective Time for an exercise price per share of Class 2 Common Stock equal to the exercise price per share of such Aphria Warrant immediately prior to the Effective Time divided by the Exchange Ratio, rounded down to two decimal places, and rounded up to the nearest whole cent (provided that, to the extent the foregoing calculation resulted in a Replacement Warrant being exercisable for a fraction of a share of Class 2 Common Stock, then the number of shares of Class 2 Common Stock subject to such Replacement Warrant was rounded down to the next whole number of shares of Class 2 Common Stock). After giving effect to the foregoing adjustments, an aggregate amount of 166,000 Replacement Warrants, with an expiration date of September 19, 2021, were issued at an exercise price of \$3.79 in connection with the consummation of the Arrangement. The terms, conditions and manner of exercise for each of the Replacement Warrants are otherwise the same as the terms and conditions of the 2016 Aphria Warrant for which it was exchanged.

At the Effective Time, each 2020 Aphria Warrant (as defined in the Arrangement Agreement) was continued on the same terms and conditions as were applicable immediately prior to the Effective Time, except that, pursuant to the terms of the Aphria Warrant Indenture (as defined in the Arrangement Agreement), the terms of the 2020 Aphria Warrants were amended so as to substitute for the Aphria Shares subject to such 2020 Aphria Warrants such number of shares of Class 2 Common stock equal to (A) the number of Aphria Shares subject to the 2020 Aphria Warrants immediately prior to the Effective Time, multiplied by (B) the Exchange Ratio, rounded down to two decimal places.

The foregoing summary description of the completion of the Arrangement does not purport to be complete and is qualified in its entirety by reference to the terms of the Arrangement Agreement, which was filed as Exhibit 2.1 to the Current Reports on Form 8-K filed by Tilray with the SEC on December 21, 2020 and February 22, 2021, and is incorporated by reference into this Item 2.01.

Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

Aphria Supplemental Indenture

On the Closing Date, Aphria, Tilray and GLAS Trust Company LLC, as trustee (the “**Trustee**”), entered into the First Supplemental Indenture (the “**Aphria Supplemental Indenture**”) to the Indenture dated as of April 23, 2019 (the “**Aphria Indenture**”), between Aphria and the Trustee, relating to Aphria’s 5.25% Convertible Senior Notes due 2024 (the “**Aphria Convertible Notes**”). As of the date hereof, approximately \$259.24 million aggregate principal amount of the Aphria Convertible Notes is outstanding.

The Aphria Supplemental Indenture provides that, from and after the Effective Time (as defined in the Aphria Supplemental Indenture), the right to convert each \$1,000 principal amount of the Aphria Convertible Notes into a number of Aphria Shares under the Aphria Indenture became a right to convert such principal amount of the Aphria Convertible Notes into a number of units of Reference Property (as defined in the Aphria Supplemental Indenture) equal to the conversion rate then in effect, subject to Aphria’s right to settle any conversion of Aphria Convertible Notes in units of Reference Property, cash or any combination thereof. Upon consummation of the Arrangement, the conversion rate of the Aphria Convertible Notes was 0.8381 units of Reference Property. In addition, Tilray agreed to guarantee Aphria’s obligations under the Aphria Indenture and the Aphria Convertible Notes as provided in the Aphria Supplemental Indenture.

The foregoing description of the Aphria Supplemental Indenture is not complete and is qualified in its entirety by reference to the full text of the Aphria Indenture and the Aphria Supplemental Indenture, copies of which are filed as Exhibits 4.1 and 4.2 hereto, respectively, and incorporated herein by reference.

Item 2.04. Triggering Events That Accelerate or Increase a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement.

The information set forth under Item 2.03 of this Current Report on Form 8-K is incorporated by reference into this Item 2.04. The closing of the Arrangement Agreement triggered the right of holders of Aphria Convertible Notes to convert such notes into Class 2 Common Stock pursuant to the terms of the Aphria Indenture, as amended by the Aphria Supplemental Indenture.

Item 3.01. Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing.

As of the close of trading on April 30, 2021, Aphria, acting pursuant to authorization from its board of directors voluntarily withdrew the listing of the Aphria Common Shares from the Nasdaq Global Select Market.

Item 3.02. Unregistered Sales of Equity Securities.

The information contained in Item 2.01 of this Current Report on Form 8-K is hereby incorporated by reference into this Item 3.02. The Consideration Shares, the Replacement Options, the Replacement RSUs, the Replacement DSUs and the Replacement Warrants issued by Tilray in connection with the consummation of the Arrangement were issued in a transaction exempt from the registration requirements of the Securities Act of 1933, as amended (the “*Securities Act*”), pursuant to Section 3(a)(10) of the Securities Act based on the final order of the Ontario Superior Court of Justice (Commercial List) issued on April 19, 2021, approving the Plan of Arrangement following a hearing by the court which considered, among other things, the fairness of the Arrangement to the persons affected.

The issuance of the shares of Class 2 Common Stock underlying the Replacement Options, the Replacement RSUs and the Replacement DSUs will be registered under the Securities Act under a Form S-8 registration statement for the Company’s Amended and Restated 2018 Equity Incentive Plan.

The issuance of the shares of Class 2 Common Stock underlying of the Replacement Warrants will be exempt from the registration requirements of the Securities Act provided by Section 4(a)(2) thereof, Rule 506(b) of Regulation D thereunder or Rule 903 of Regulation S thereunder, or any other available exemption, in each case, in accordance with the representations of the holder thereof at the time of exercise.

On April 29, 2021, Tilray issued 258,799 shares of Class 2 Common Stock to Wyckoff in connection with a settlement agreement and release. For more information, see “Wyckoff Arbitration” under Item 8.01 of this Current Report on Form 8-K. The securities were issued in reliance on the exemption from registration provided by Section 4(a)(2) of the Securities Act, such exemption being available based on the representations of Wyckoff.

Item 3.03 Material Modification to Rights of Security Holders.

The information set forth under Item 2.01 and Item 3.01, of this Current Report on Form 8-K is incorporated by reference into this Item 3.03.

Item 5.07 Submission of Matters to a Vote of Security Holders.

Special Meeting of Tilray Stockholders

On April 30, 2021, Tilray reconvened a special meeting of its stockholders (the “*Special Meeting*”) at which the stockholders voted on the proposals set forth below, each of which is described in greater detail in the Joint Circular/Proxy. As previously disclosed, the Special Meeting was originally convened and then adjourned, without conducting any other business, on April 16, 2021.

As of March 12, 2021, the record date for the Special Meeting, there were 178,841,550 shares of Class 2 Common Stock, issued and outstanding. At the Special Meeting, there were 69,314,452 shares of Class 2 Common Stock were present in person or represented by proxy, and the Tilray Share Issuance Proposal, the Tilray Advisory Compensation Proposal, and the Tilray Adjournment Proposal (each as defined below) were approved by the stockholders. The final voting results for each matter submitted to a vote of the stockholders at the Special Meeting are as follows:

The Tilray Charter Amendment Proposal — To consider and vote on a proposal to increase the authorized capital stock of Tilray from 743,333,333 shares to 900,000,000 shares of capital stock, consisting of 890,000,000 shares of Class 2 common stock and 10,000,000 shares of preferred stock, as reflected in the amendment to the second amended and restated certificate of incorporation of Tilray attached as Appendix “F” to the Joint Circular/Proxy (the “**Tilray Charter Amendment Proposal**”).

FOR	AGAINST	ABSTENTIONS
64,984,409	3,649,828	680,215

The Tilray Share Issuance Proposal — To consider and vote on a proposal to issue shares of Class 2 Common Stock to Aphria Shareholders pursuant to the Arrangement Agreement, which is further described in the Joint Circular/Proxy, including in the section entitled “*The Arrangement Agreement and Related Agreements*” (the “**Tilray Share Issuance Proposal**”).

FOR	AGAINST	ABSTENTIONS
67,463,462	1,413,830	437,160

The Tilray Compensation Proposal — To consider and approve, on an advisory (non-binding) basis, the compensation that may be paid to Tilray’s named executive officers that is based on or otherwise relates to the transactions contemplated by the Arrangement Agreement, which is further described in the Joint Circular/Proxy, including in the section entitled “*Interests of Tilray’s Directors and Management in the Arrangement*” (the “**Tilray Compensation Proposal**”).

FOR	AGAINST	ABSTENTIONS
60,477,691	6,855,945	1,980,816

The Tilray Adjournment Proposal—To approve the adjournment of the Tilray Meeting to a later date or dates, if necessary or appropriate, to solicit additional proxies in the event there are not sufficient votes at the time of the Tilray Meeting to approve the Tilray Charter Amendment Proposal or the Tilray Share Issuance Proposal (the “**Tilray Adjournment Proposal**”).

FOR	AGAINST	ABSTENTIONS
65,454,200	2,872,484	987,768

In light of receipt of the requisite approval of the Share Issuance Proposal by Tilray’s stockholders described above, Tilray consummated the Arrangement on April 30, 2021.

Item 8.01. Other Events.

Press Release

On May 3, 2021, Tilray issued a press release announcing the closing of the Arrangement. The press release is attached as Exhibit 99.1 to this Current Report on Form 8-K.

Wyckoff Arbitration

As previously disclosed, Wyckoff Farms (“**Wyckoff**”), a cannabinoid supplier to Tilray, and Tilray had been engaged in binding arbitration, which commenced in March 2020 and related to a supply agreement dispute between the parties. On April 29, 2021, the parties mutually agreed to settle this matter. Pursuant to a settlement agreement and release, Tilray (i) paid \$20.0 million in cash and \$5.0 million in Class 2 Common Stock to Wyckoff on April 29, 2021, and (ii) agreed to pay either \$15.0 million in Class 2 Common Stock or \$20.0 million in cash, depending on certain circumstances, to Wyckoff within nine months of the settlement date, in each case subject to certain upward adjustments based on the trading price and resale registration status of the Class 2 Common Stock. The parties also agreed to, among other things, withdraw from the arbitration proceeding and to release the other party from any and all claims arising out of or relating to the arbitration or the supply agreement.

Item 9.01. Financial Statements and Exhibits.

- (a) Financial statements of businesses or funds acquired.

Consolidated statements of financial position of Aphria Inc. and its subsidiaries as of May 31, 2020 and 2019, and the related consolidated statements of loss and comprehensive loss, changes in equity and cash flows for the years then ended, including the related notes, which includes information responsive to Item 9.01(a) of Form 8-K, are incorporated by reference to Exhibit 99.2 of Tilray’s Current Report on Form 8-K (File No. 001-38594) filed with the SEC on February 25, 2021.

The unaudited condensed interim consolidated financial statements of Aphria for the three and nine months ended February 28, 2021 and February 29, 2020, and the notes related thereto, are filed as Exhibit 99.3 to this Current Report on Form 8-K and incorporated by reference into this Item 9.01(a).

(b) Pro forma financial information.

The unaudited pro forma condensed consolidated financial statements of Tilray (after giving effect to the Arrangement), for the three months and nine months ended February 28, 2021 and February 29, 2020, is filed as Exhibit 99.4 to this Current Report on Form 8-K and incorporated by reference into this Item 9.01(b).

(d) Exhibits.

<u>Exhibit Number</u>	<u>Exhibit Description</u>
2.1[†]	Arrangement Agreement by and between Tilray and Aphria dated December 15, 2020 (incorporated by reference to Exhibit 2.1 of Tilray's Current Report on Form 8-K (File No. 001-38594), filed with the SEC on December 21, 2020).
2.2	Amendment No. 1 to Arrangement Agreement and Plan of Arrangement by and between Tilray and Aphria dated February 19, 2021 (incorporated by reference to Exhibit 2.1 of Tilray's Current Report on Form 8-K (File No. 001-38594), filed with the SEC on February 22, 2021).
4.1[*]	Indenture dated as of April 23, 2019, between Aphria Inc. and GLAS Trust Company LLC, relating to Aphria Inc.'s 5.25% Convertible Senior Notes due 2024.
4.2[*]	First Supplemental Indenture dated as of April 30, 2021, among Aphria Inc., Tilray, Inc. and GLAS Trust Company LLC.
10.1[*]	Resignation Letter and Release by and between Tilray and Brendan Kennedy dated December 15, 2020 (incorporated by reference to Exhibit 5.02 of Tilray's Current Report on Form 8-K (File No. 001-38594), filed with the SEC on December 21, 2020).
10.2^{*±}	Separation Agreement and Complete Release dated as of April 30, 2021, by and between Michael Kruteck and Tilray, Inc.
10.3^{*±}	Separation Agreement and Complete Release dated as of April 29, 2021, by and between Jon Levin and Tilray, Inc.
23.1[*]	Consent of PricewaterhouseCoopers LLP.
99.1[*]	Press release dated May 3, 2021.
99.2	Audited consolidated statements of financial position of Aphria Inc. and its subsidiaries as of May 31, 2020 and 2019, and the related consolidated statements of loss and comprehensive loss, changes in equity and cash flows for the years then ended, together with the Report of Independent Registered Public Accounting Firm thereon and the notes thereto (incorporated by reference to Exhibit 99.2 of Tilray's Current Report on Form 8-K (File No. 001-38594) filed with the SEC on February 25, 2021).
99.3[*]	Unaudited condensed interim consolidated financial statements of Aphria for the three and nine months ended February 28, 2021 and February 29, 2020, and the notes related thereto.
99.4[*]	Unaudited pro forma condensed consolidated financial statements of Tilray (after giving effect to the Arrangement), for the three months and nine months ended February 28, 2021 and February 29, 2020.
99.5^{*±}	Certain disclosures regarding Tilray, Inc. following completion of the Arrangement.
104 [*]	Cover Page Interactive Data File (embedded within the Inline XBRL document).

* Filed herewith.

† Schedules have been omitted pursuant to Item 601(b)(2) of Regulation S-K. The registrant will furnish copies of any such schedules to the Securities and Exchange Commission upon request.

± Indicates a management or compensatory plan or description thereof.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

TILRAY, INC.

Date: May 4, 2021

By: /s/ Irwin D. Simon

Irwin D. Simon
President and Chief Executive Officer

APHRIA INC.

AND

GLAS TRUST COMPANY LLC,

as Trustee

INDENTURE

Dated as of April 23, 2019

5.25% Convertible Senior Notes due 2024

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EXHIBIT

Exhibit A Form of Note A-1

APHRIA INC.

Reconciliation and tie between Trust Indenture Act of 1939, as amended and Indenture, dated as of April 23, 2019

Section of Trust Indenture Act of 1939, as Amended	Section of Indenture
310(a)	7.08
310(b)	7.09
	7.14
310(c)	Inapplicable
311(a)	7.15
311(b)	7.15
311(c)	Inapplicable
312(a)	5.01
	5.02
312(b)	16.18
312(c)	16.18
313(a)	7.11
313(b)	7.11
313(c)	7.11
313(d)	7.11
314(a)	4.06
	4.08
314(b)	Inapplicable
314(c)	16.05
314(d)	Inapplicable
314(e)	16.05
314(f)	Inapplicable
315(a)	7.01
315(b)	6.10
315(c)	7.01
315(d)	7.01
315(e)	6.11
316(a)	6.09
	8.04
316(b)	6.06
316(c)	8.01
317(a)	6.04
317(b)	4.04
318(a)	16.19

(1) This Cross-Reference Table does not constitute part of the Indenture and shall not have any bearing on the interpretation of any of its terms or provisions.

INDENTURE dated as of April 23, 2019 between APHRIA INC., a corporation existing under the Ontario Business Corporations Act, as issuer (the “**Company**,” as more fully set forth in Section 1.01) and GLAS TRUST COMPANY LLC, a limited liability company organized and existing under the laws of the State of New Hampshire, as trustee (the “**Trustee**,” as more fully set forth in Section 1.01).

WITNESSETH:

WHEREAS, for its lawful corporate purposes, the Company has duly authorized the issuance of its 5.25% Convertible Senior Notes due 2024 (the “**Notes**”), initially in an aggregate principal amount not to exceed \$300,000,000 (as increased by an amount equal to the aggregate principal amount of any additional Notes purchased by the Initial Purchasers pursuant to the exercise of their option to purchase additional Notes as set forth in the Purchase Agreement), and in order to provide the terms and conditions upon which the Notes are to be authenticated, issued and delivered, the Company has duly authorized the execution and delivery of this Indenture; and

WHEREAS, the Form of Note, the certificate of authentication to be borne by each Note, the Form of Notice of Conversion, the Form of Fundamental Change Repurchase Notice and the Form of Assignment and Transfer to be borne by the Notes are to be substantially in the forms hereinafter provided; and

WHEREAS, all acts and things necessary to make the Notes, when executed by the Company and authenticated and delivered by the Trustee or a duly authorized authenticating agent, as in this Indenture provided, the valid, binding and legal obligations of the Company, and this Indenture a valid agreement according to its terms, have been done and performed, and the execution of this Indenture and the issuance hereunder of the Notes have in all respects been duly authorized.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

That in order to declare the terms and conditions upon which the Notes are, and are to be, authenticated, issued and delivered, and in consideration of the premises and of the purchase and acceptance of the Notes by the Holders thereof, the Company covenants and agrees with the Trustee for the equal and proportionate benefit of the respective Holders from time to time of the Notes (except as otherwise provided below), as follows:

ARTICLE 1
DEFINITIONS

Section 1.01 *Definitions*. The terms defined in this Section 1.01 (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Indenture and of any indenture supplemental hereto shall have the respective meanings specified in this Section 1.01. All other terms used in this Indenture that are defined in the Trust Indenture Act, or that are by reference in the Trust Indenture Act defined in the Securities Act (except as herein or any indenture supplemental hereto otherwise expressly provided or unless the context otherwise requires), shall have the meanings assigned to such terms in the Trust Indenture Act and in the Securities Act as in force at the date of the execution of this instrument. The words “herein,”

“hereof,” “hereunder” and words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision. The terms defined in this Article include the plural as well as the singular.

“**Additional Interest**” means all amounts, if any, payable pursuant to the Registration Rights Agreement and/or Section 6.03, as applicable.

“**Additional Amounts**” shall have the meaning set forth in Section 2.11(b).

“**Additional Shares**” shall have the meaning specified in Section 13.03(a).

“**Affiliate**” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, “control,” when used with respect to any specified Person means the power to direct or cause the direction of the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing. Notwithstanding anything to the contrary herein, the determination of whether one Person is an “**Affiliate**” of another Person for purposes of this Indenture shall be made based on the facts at the time such determination is made or required to be made, as the case may be, hereunder.

“**Applicable Procedures**” means, with respect to any transfer or transaction involving a Global Note or any beneficial interest therein, the rules and procedures of the Depository, in each case to the extent applicable to such transaction and as in effect from time to time.

“**Bid Solicitation Agent**” means the Company or the Person appointed by the Company to solicit bids for the Trading Price of the Notes in accordance with Section 13.01(b)(i). The Company shall initially act as the Bid Solicitation Agent.

“**Board of Directors**” means the board of directors of the Company or a committee of such board duly authorized to act for it hereunder.

“**Board Resolution**” means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors, and to be in full force and effect on the date of such certification, and delivered to the Trustee.

“**Business Day**” means, with respect to any Note, any day other than a Saturday, a Sunday or a day on which the Federal Reserve Bank of New York is authorized or required by law or executive order to close or be closed or the banking institutions in the City of Toronto, Ontario are authorized or required by law or executive order to close or be closed.

“**Canadian Resale Restriction Termination Date**” means, with respect to the Notes, September 18, 2019, and with respect to any additional Notes issued pursuant to the first sentence of Section 2.10, and any Notes issued in exchange therefor or in substitution thereof, the date that is four months and one day following the latest possible issue date of such Notes.

“**Canadian Restrictive Legend**” shall have the meaning specified in Section 2.05(c).

“**Canadian Securities Laws**” shall have the meaning specified in Section 2.10.

“**Capital Stock**” means, for any entity, any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) stock issued by that entity, but shall not include any debt securities convertible into or exchangeable for any securities otherwise constituting Capital Stock pursuant to this definition.

“**Cash Settlement**” shall have the meaning specified in Section 13.02(a).

“**Clause A Distribution**” shall have the meaning specified in Section 13.04(c).

“**Clause B Distribution**” shall have the meaning specified in Section 13.04(c).

“**Clause C Distribution**” shall have the meaning specified in Section 13.04(c).

“**close of business**” means 5:00 p.m. (New York City time).

“**Combination Settlement**” shall have the meaning specified in Section 13.02(a).

“**Commission**” means the U.S. Securities and Exchange Commission.

“**Common Equity**” of any Person means Capital Stock of such Person that is generally entitled (a) to vote in the election of directors of such Person or (b) if such Person is not a corporation, to vote or otherwise participate in the selection of the governing body, partners, managers or others that will control the management or policies of such Person.

“**Common Shares**” means the common shares of the Company, no par value, at the date of this Indenture, subject to Section 13.07.

“**Company**” shall have the meaning specified in the first paragraph of this Indenture, and subject to the provisions of Article 11, shall include its successors and assigns.

“**Company Order**” means a written order of the Company, signed by any of its officers and delivered to the Trustee.

“**Conversion Agent**” shall have the meaning specified in Section 4.02.

“**Conversion Date**” shall have the meaning specified in Section 13.02(c).

“**Conversion Obligation**” shall have the meaning specified in Section 13.01(a).

“**Conversion Price**” means as of any time, \$1,000, *divided by* the Conversion Rate as of such time.

“**Conversion Rate**” shall have the meaning specified in Section 13.01(a).

“**Corporate Trust Office**” means the designated office of the Trustee at which at any time this Indenture shall be administered, which office at the date hereof is located at GLAS Trust

Company LLC, 3 Second Street, Suite 206, Jersey City, NJ 07311, Attention: Administrator for Aphria Inc., or such other address as the Trustee may designate from time to time by notice to the Holders and the Company, or the designated corporate trust office of any successor trustee (or such other address as such successor trustee may designate from time to time by notice to the Holders and the Company).

“**CSA**” means a Canadian securities administrator.

“**Custodian**” means the Trustee, as custodian for The Depository Trust Company, with respect to the Global Notes, or any successor Depository.

“**Daily Conversion Value**” means, for each of the 25 consecutive Trading Days during the Observation Period, 1/25th of the product of (a) the Conversion Rate on such Trading Day and (b) the Daily VWAP for such Trading Day.

“**Daily Measurement Value**” means the Specified Dollar Amount applicable to such conversion (if any), *divided by* 25.

“**Daily Settlement Amount,**” for each of the 25 consecutive Trading Days during the Observation Period, shall consist of:

(a) cash in an amount equal to the lesser of (i) the Daily Measurement Value and (ii) the Daily Conversion Value on such Trading Day; and

(b) if the Daily Conversion Value on such Trading Day exceeds the Daily Measurement Value, a number of Common Shares equal to (i) the difference between the Daily Conversion Value and such Daily Measurement Value, *divided by* (ii) the Daily VWAP for such Trading Day.

“**Daily VWAP**” means the per share volume-weighted average price as displayed under the heading “Bloomberg VWAP” on Bloomberg page “APHA.US <equity> AQR” (or its equivalent successor if such page is not available) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such Trading Day (or if such volume-weighted average price is unavailable, the market value of one Common Share on such Trading Day reasonably determined, using a volume-weighted average method, by a nationally recognized independent investment banking firm retained for this purpose by the Company). The “**Daily VWAP**” shall be determined without regard to after-hours trading or any other trading outside of the regular trading session trading hours.

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

“**Default Settlement Method**” means Physical Settlement; *provided, however,* the Default Settlement Method may be changed from time to time by the Company in accordance with Section 13.02(a)(iii).

“Defaulted Amounts” means any amounts on any Note (including, without limitation, the Redemption Price, the Fundamental Change Repurchase Price, principal and interest) that are payable but are not punctually paid or duly provided for.

“Depository” means, with respect to each Global Note, the Person specified in Section 2.05(c) as the Depository with respect to such Notes, until a successor shall have been appointed and become such pursuant to the applicable provisions of this Indenture, and thereafter, **“Depository”** shall mean or include such successor.

“Distributed Property” shall have the meaning specified in Section 13.04(c).

“Effective Date” shall have the meaning specified in Section 13.03(c), except that, as used in Section 13.04 and Section 13.05, **“Effective Date”** means the first date on which Common Shares trade on the applicable exchange or in the applicable market, regular way, reflecting the relevant share split or share consolidation, as applicable.

“Event of Default” shall have the meaning specified in Section 6.01.

“Ex-Dividend Date” means the first date on which Common Shares trade on the New York Stock Exchange (or if the Common Shares are not then listed on the New York Stock Exchange, the principal U.S. national or regional securities exchange on which the Common Shares are traded or, if the Common Shares are not then listed on a U.S. national or regional securities exchange, the Toronto Stock Exchange or the principal Canadian securities exchange on which the Common Shares are traded or, if the Common Shares are not then listed on a U.S. national or regional or Canadian securities exchange, the other principal market on which the Common Shares are listed or admitted for trading), regular way, without the right to receive the issuance, dividend or distribution in question, from the Company or, if applicable, from the seller of Common Shares on such exchange or market (in the form of due bills or otherwise) as determined by such exchange or market.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“Form of Assignment and Transfer” means the “Form of Assignment and Transfer” attached as Attachment 3 to the Form of Note attached hereto as Exhibit A.

“Form of Fundamental Change Repurchase Notice” means the “Form of Fundamental Change Repurchase Notice” attached as Attachment 2 to the Form of Note attached hereto as Exhibit A.

“Form of Note” means the “Form of Note” attached hereto as Exhibit A.

“Form of Notice of Conversion” means the “Form of Notice of Conversion” attached as Attachment 1 to the Form of Note attached hereto as Exhibit A.

“Fundamental Change” will be deemed to have occurred at the time after the Notes are originally issued if any of the following occurs:

(a) (1) a “person” or “group” within the meaning of Section 13(d) of the Exchange Act, other than the Company, its Wholly Owned Subsidiaries and the employee benefit plans of the Company and its Wholly Owned Subsidiaries, has become the direct or indirect “beneficial owner,” as defined in Rule 13d-3 under the Exchange Act, of Common Equity representing more than 50% of the voting power of the Company’s Common Equity;

(b) the consummation of (A) any recapitalization, reclassification or change of the Common Shares (other than changes resulting from a share split or consolidation) as a result of which the Common Shares would be converted into, or exchanged for, shares, stock, other securities, other property or assets; (B) any share exchange, consolidation, amalgamation, arrangement or merger of the Company pursuant to which the Common Shares will be converted into cash, securities or other property or assets; or (C) any sale, lease, exchange or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of the Company and its Subsidiaries, taken as a whole, to any Person other than one of the Company’s Wholly Owned Subsidiaries; *provided, however*, that a transaction described in clause (A) or (B) in which the holders of all classes of the Company’s Common Equity immediately prior to such transaction own, directly or indirectly, more than 50% of all classes of Common Equity of the continuing or surviving corporation or transferee or the parent thereof immediately after such transaction in substantially the same proportions (relative to each other) as such ownership immediately prior to such transaction shall not be a Fundamental Change pursuant to this clause (b);

(c) the shareholders of the Company approve any plan or proposal for the liquidation or dissolution of the Company; or

(d) the Common Shares (or other common shares underlying the Notes) ceases to be listed or quoted on any of The New York Stock Exchange, The Nasdaq Global Select Market, The Nasdaq Global Market or the Toronto Stock Exchange (or any of their respective successors);

provided, however, that a transaction or transactions described in clause (a) or clause (b) above will not constitute a Fundamental Change, if at least 90% of the consideration received or to be received by the common shareholders of the Company, excluding cash payments for fractional shares and cash payments made in respect of dissenters’ statutory appraisal rights, in connection with such transaction or transactions consists of common shares that are listed or quoted on any of The New York Stock Exchange, The Nasdaq Global Select Market, The Nasdaq Global Market or the Toronto Stock Exchange (or any of their respective successors) or will be so listed or quoted when issued or exchanged in connection with such transaction or transactions and as a result of such transaction or transactions the Notes become convertible into such consideration, excluding cash payments for fractional shares and cash payments made in respect of dissenters’ statutory appraisal rights (subject to the provisions set forth below under Section 13.02). If any transaction in which the Common Shares are replaced by the common shares or other Common Equity of another entity occurs, following completion of any related Make-Whole Fundamental Change Period (or, in the case of a transaction that would have been a Fundamental Change or a Make-Whole Fundamental Change but for the proviso immediately following clause (d) of this definition, following the effective date of

such transaction) references to the Company in this definition shall instead be references to such other entity.

“**Fundamental Change Company Notice**” shall have the meaning specified in Section 14.01(b).

“**Fundamental Change Repurchase Date**” shall have the meaning specified in Section 14.01(a).

“**Fundamental Change Repurchase Notice**” shall have the meaning specified in Section 14.01(c)(i).

“**Fundamental Change Repurchase Price**” shall have the meaning specified in Section 14.01(a).

The terms “**given**”, “**mailed**”, “**notify**” or “**sent**” with respect to any notice to be given to a Holder pursuant to this Indenture, shall mean notice (x) given to the Depositary (or its designee) pursuant to the standing instructions from the Depositary or its designee, including by electronic mail in accordance with the Applicable Procedures (in the case of a Global Note) or (y) mailed to such Holder by first class mail, postage prepaid, at its address as it appears on the Note Register (in the case of a Physical Note), in each case, in accordance with Section 16.03. Notice “given” shall be deemed to include any notice to be “mailed” or “delivered,” as applicable, under this Indenture.

“**Global Note**” shall have the meaning specified in Section 2.05(b).

“**Holder**,” as applied to any Note, or other similar terms (but excluding the term “beneficial holder”), means any Person in whose name at the time a particular Note is registered on the Note Register.

“**Indemnified Taxes**” shall have the meaning specified in Section 2.11(b).

“**Indenture**” means this instrument as originally executed or, if amended or supplemented as herein provided, as so amended or supplemented.

“**Initial Purchasers**” means the initial purchasers listed on Schedule I to the Purchase Agreement.

“**Interest Payment Date**” means each June 1 and December 1 of each year, beginning on December 1, 2019.

“**Last Original Issue Date**” means, (x) with respect to the Notes offered pursuant to the Offering Memorandum, and any Notes issued in exchange therefor or in substitution thereof, the later of (i) the date of this Indenture, and (ii) the last date any Notes are originally issued pursuant to the Offering Memorandum pursuant to the exercise of the option granted to the Initial Purchaser(s) of such Notes to purchase additional Notes; and (y) with respect to any additional Notes issued pursuant to the first sentence of Section 2.10, and any Notes issued in exchange therefor or in substitution thereof, the later of (i) the date such Notes are originally issued and (ii) the last date any

Notes are originally issued as part of the same offering pursuant to the exercise of an option granted to the applicable initial purchaser(s) of such Notes to purchase additional Notes.

“Last Reported Sale Price” of the Common Shares (or other security for which a last reported sale price must be determined) on any date means the closing sale price per share (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on that date as reported in composite transactions for the New York Stock Exchange or the other principal U.S. national or regional securities exchange on which the Common Shares (or such other security) are traded. If the Common Shares (or such other security) are not listed for trading on the New York Stock Exchange or another U.S. national or regional securities exchange on the relevant date, the **“Last Reported Sale Price”** of the Common Shares (or other security for which a last reported sale price must be determined) on any date means the closing sale price (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) per Common Share (or such other security) on that date as reported in composite transactions for the Toronto Stock Exchange or the other principal Canadian securities exchange on which the Common Shares (or such other security) are traded. If the Common Shares (or such other security) are not listed for trading on a U.S. national or regional securities exchange or a Canadian securities exchange on the relevant date, the **“Last Reported Sale Price”** shall be the last quoted bid price per Common Share (or such other security) in the over-the-counter market on the relevant date as reported by OTC Markets Group Inc. or a similar organization. If the Common Shares (or such other security) is not so quoted, the **“Last Reported Sale Price”** shall be the average of the mid-point of the last bid and ask prices for the Common Shares (or such other security) on the relevant date from at least three nationally recognized independent investment banking firms selected by the Company for this purpose. The **“Last Reported Sale Price”** will be determined without regard to after-hours trading or any other trading outside of regular trading session hours.

“Make-Whole Fundamental Change” means any transaction or event that constitutes a Fundamental Change (as defined above and determined after giving effect to any exceptions to or exclusions from such definition, but without regard to the *proviso* in clause (b) of the definition thereof).

“Make-Whole Fundamental Change Period” shall have the meaning specified in Section 13.03(a).

“Market Disruption Event” means, for the purposes of determining amounts due upon conversion (a) a failure by the New York Stock Exchange or the principal U.S. national or regional securities exchange on which the Common Shares are traded, or, if the Common Shares are not traded on any U.S. national or regional securities exchange, the Toronto Stock Exchange or the other principal Canadian securities exchange on which the Common Shares are traded or, if the Common Shares are not then listed on a U.S. national or regional or Canadian securities exchange, the other principal market on which the Common Shares are listed or admitted for trading to open for trading during its regular trading session or (b) the occurrence or existence prior to 1:00 p.m., New York City time, on any Scheduled Trading Day for the Common Shares for more than one half-hour period in the aggregate during regular trading hours of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant stock exchange

or otherwise) in the Common Shares or in any options contracts or futures contracts relating to the Common Shares.

“**Maturity Date**” means June 1, 2024.

“**Measurement Period**” shall have the meaning specified in Section 13.01(b)(i).

“**New Shares**” shall have the meaning specified in Section 13.04(c).

“**Note**” or “**Notes**” shall have the meaning specified in the first paragraph of the recitals of this Indenture.

“**Note Register**” shall have the meaning specified in Section 2.05(a).

“**Note Registrar**” shall have the meaning specified in Section 2.05(a).

“**Notice of Conversion**” shall have the meaning specified in Section 13.02(b).

“**Notice of Optional Redemption**” shall have the meaning specified in Section 15.02(a).

“**Notice of Tax Redemption**” shall have the meaning specified in Section 15.04(a).

“**Observation Period**” with respect to any Note surrendered for conversion means: (i) subject to clause (ii) below, if the relevant Conversion Date occurs prior to December 1, 2023, the 25 consecutive Trading Day period beginning on, and including, the Trading Day immediately succeeding such Conversion Date; (ii) if the relevant Conversion Date occurs during a Redemption Period, the 25 consecutive Trading Days beginning on, and including, the 26th Scheduled Trading Day immediately preceding the applicable Redemption Date; and (iii) subject to clause (ii) above, if the relevant Conversion Date occurs on or after December 1, 2023, the 25 consecutive Trading Days beginning on, and including, the 26th Scheduled Trading Day immediately preceding the Maturity Date.

“**Offering Memorandum**” means the preliminary offering memorandum dated April 17, 2019, as supplemented by the related pricing term sheet dated April 17, 2019, relating to the offering and sale of the Notes.

“**Officer**” means, with respect to the Company, the President, the Chief Executive Officer, the Treasurer, the Chief Financial Officer, the Chief Operating Officer, the General Counsel, the Secretary, any Executive or Senior Vice President or any Vice President (whether or not designated by a number or numbers or word or words added before or after the title “Vice President”).

“**Officer’s Certificate**,” when used with respect to the Company, means a certificate that is delivered to the Trustee and that is signed by any Officer of the Company. Each such certificate shall include the statements provided for in Section 16.05 if and to the extent required by the provisions of such Section. The Officer giving an Officer’s Certificate pursuant to Section 4.08 shall be the principal executive, financial or accounting officer of the Company.

“**1% Provision**” shall have the meaning specified in Section 13.04(m).

“**open of business**” means 9:00 a.m. (New York City time).

“**Opinion of Counsel**” means an opinion in writing signed by legal counsel, who may be an employee of or counsel to the Company, or other counsel who is reasonably acceptable to the Trustee, which opinion may contain customary exceptions and qualifications as to the matters set forth therein, that is delivered to the Trustee. Each such opinion shall include the statements provided for in Section 16.05 if and to the extent required by the provisions of such Section 16.05.

“**Optional Redemption**” shall have the meaning specified in Section 15.01.

“**outstanding**,” when used with reference to Notes, shall, subject to the provisions of Section 8.04, mean, as of any particular time, all Notes authenticated and delivered by the Trustee under this Indenture, except:

- (a) Notes theretofore canceled by the Trustee or accepted by the Trustee for cancellation;
- (b) Notes, or portions thereof, that have become due and payable and in respect of which monies in the necessary amount shall have been deposited in trust with the Trustee or with any Paying Agent (other than the Company) or shall have been set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent);
- (c) Notes that have been paid pursuant to Section 2.06 or Notes in lieu of which, or in substitution for which, other Notes shall have been authenticated and delivered pursuant to the terms of Section 2.06 unless proof satisfactory to the Trustee is presented that any such Notes are held by protected purchasers in due course;
- (d) Notes converted pursuant to Article 13 and required to be cancelled pursuant to Section 2.08; and
- (e) Notes redeemed pursuant to Article 15.

“**Paying Agent**” shall have the meaning specified in Section 4.02.

“**Person**” means an individual, a corporation, a limited liability company, an association, a partnership, a joint venture, a joint stock company, a trust, an unincorporated organization or a government or an agency or a political subdivision thereof.

“**Physical Notes**” means permanent certificated Notes in registered form issued in denominations of \$1,000 principal amount and integral multiples thereof.

“**Physical Settlement**” shall have the meaning specified in Section 13.02(a).

“**Predecessor Note**” of any particular Note means every previous Note evidencing all or a portion of the same debt as that evidenced by such particular Note; and, for the purposes of this

definition, any Note authenticated and delivered under Section 2.06 in lieu of or in exchange for a mutilated, lost, destroyed or stolen Note shall be deemed to evidence the same debt as the mutilated, lost, destroyed or stolen Note that it replaces.

“**Purchase Agreement**” means that certain Purchase Agreement, dated as of April 17, 2019, among the Company and certain representatives of the Initial Purchasers.

“**Record Date**” means, with respect to any dividend, distribution or other transaction or event in which the holders of Common Shares (or other applicable security) have the right to receive any cash, securities or other property or in which the Common Shares (or such other security) are exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of holders of the Common Shares (or such other security) entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors, by statute, by contract or otherwise).

“**Redemption Date**” means the date on which Notes are redeemed pursuant to an Optional Redemption or a Tax Redemption, as applicable.

“**Redemption Notice**” means, as applicable, a Notice of Optional Redemption or Notice of Tax Redemption.

“**Redemption Notice Date**” means the date on which a Notice of Optional Redemption is delivered pursuant to Section 15.02 or the date on which a Notice of Tax Redemption is delivered pursuant to Section 15.04.

“**Redemption Period**” means, with respect to any Optional Redemption or Tax Redemption of Notes pursuant to Article 15, the period from, and including, the relevant Redemption Notice Date to, and including, the Scheduled Trading Day immediately preceding the Redemption Date for such conversion.

“**Redemption Price**” means, for any Notes to be redeemed pursuant to Section 15.01 or Section 15.03, 100% of the principal amount of such Notes, *plus* accrued and unpaid interest, if any, to, but excluding, the applicable Redemption Date (unless such Redemption Date falls after a Regular Record Date but on or prior to the immediately succeeding Interest Payment Date, in which case interest accrued on such Notes to the Interest Payment Date will be paid to Holders of record of such Notes as of the close of business on such Regular Record Date, and the Redemption Price will be equal to 100% of the principal amount of such Notes).

“**Reference Property**” shall have the meaning specified in Section 13.07(a).

“**Registrable Securities**” shall have the meaning set forth in the Registration Rights Agreement.

“**Registration Rights Agreement**” means the Registration Rights Agreement dated as of the date hereof, among the Company and certain representatives of the Initial Purchasers.

“**Regular Record Date**,” with respect to any Interest Payment Date, means the May 15 or November 15 (whether or not such day is a Business Day) immediately preceding the applicable June 1 or December 1 Interest Payment Date, respectively.

“**Relevant Taxing Jurisdiction**” shall have the meaning specified in Section 2.11(a).

“**Resale Documents**” shall have the meaning set forth in the Registration Rights Agreement.

“**Resale Restriction Termination Date**” shall mean the date that is the later of (i) the date that is one year after the last date of original issuance of the Notes, and (ii) such later date, if any, as may be required by applicable law.

“**Responsible Officer**” means, when used with respect to the Trustee, any officer within the Corporate Trust Office of the Trustee, including any vice president, assistant vice president, any trust officer or assistant trust officer, or any other officer of the Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter relating to this Indenture is referred because of such person’s knowledge of and familiarity with the particular subject and who, in each case, shall have direct responsibility for the administration of this Indenture.

“**Restricted Security**” means any Note or Common Share issued upon conversion of any Note that constitutes a “restricted security” (as defined in Rule 144) or, with respect to the Canadian restrictive legend, issued prior to the Canadian Resale Restriction Termination Date; *provided, however*, that such Note or Common Share will cease to be a Restricted Security upon the earliest to occur of the following events:

- (a) such Note or Common Share is sold or otherwise transferred to a Person (other than the Company or an Affiliate of the Company) pursuant to a registration statement that was effective under the Securities Act at the time of such sale or transfer;
- (b) such Note or Common Share is sold or otherwise transferred to a Person (other than the Company or an Affiliate of the Company) pursuant to an available exemption (including Rule 144) from the registration and prospectus-delivery requirements of, or in a transaction not subject to, the Securities Act and, immediately after such sale or transfer, such Note ceases to constitute a “restricted security” (as defined in Rule 144); and
- (c) such Note or Common Share is eligible for resale, by a Person that is not an Affiliate of the Company and that has not been an Affiliate of the Company during the immediately preceding three (3) months, pursuant to Rule 144 without any limitations thereunder as to volume, manner of sale, availability of current public information or notice.

The Trustee is under no obligation to determine whether any Note or Common Share is a Restricted Security and may conclusively rely on an Officer’s Certificate with respect thereto.

“**Restrictive Legend**” shall have the meaning specified in Section 2.05(c).

“**Rule 144**” means Rule 144 as promulgated under the Securities Act.

“**Rule 144A**” means Rule 144A as promulgated under the Securities Act.

“**Scheduled Trading Day**” means a day that is scheduled to be a Trading Day on the New York Stock Exchange or the other principal U.S. national or regional securities exchange on which the Common Shares are traded, or, if the Common Shares are not traded on any U.S. national or regional securities exchange, the Toronto Stock Exchange or the other principal Canadian securities exchange on which the Common Shares are traded or, if the Common Shares are not then listed on a U.S. national or regional or Canadian securities exchange, the principal other or market on which the Common Shares are listed or admitted for trading. If the Common Shares are not so listed or admitted for trading, “**Scheduled Trading Day**” means a Business Day.

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

“**SEDAR**” means the Canadian System for Electronic Document Analysis and Retrieval.

“**Settlement Amount**” has the meaning specified in Section 13.02(a)(iv).

“**Settlement Method**” means, with respect to any conversion of Notes, Physical Settlement, Cash Settlement or Combination Settlement, as elected (or deemed to have been elected) by the Company.

“**Settlement Notice**” has the meaning specified in Section 13.02(a)(iii).

“**Share Exchange Event**” shall have the meaning specified in Section 13.07(a).

“**Share Price**” shall have the meaning specified in Section 13.03(c).

“**Significant Subsidiary**” means, with respect to any Person, a Subsidiary of the Company that meets the definition of “significant subsidiary” in Article 1, Rule 1-02 of Regulation S-X under the Exchange Act.

“**Specified Dollar Amount**” means the maximum cash amount per \$1,000 principal amount of Notes to be received upon conversion as specified in the Settlement Notice (or as the Company is otherwise deemed to have elected as provided in Section 13.02(a)(iii)) related to any converted Notes.

“**Spin-Off**” shall have the meaning specified in Section 13.04(c).

“**Spin-Off Shares**” shall have the meaning specified in Section 13.04(c).

“**Subsidiary**” means, with respect to any Person, any corporation, association, partnership or other business entity of which more than 50% of the total voting power of shares of Capital Stock or other interests (including partnership interests) entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers, general partners or trustees thereof is at the time owned or controlled, directly or indirectly, by (i) such Person; (ii) such Person and one or more Subsidiaries of such Person; or (iii) one or more Subsidiaries of such Person.

“**Successor Company**” shall have the meaning specified in Section 11.01(a).

“**Tax Act**” means the Income Tax Act (Canada), as amended, and the regulations promulgated thereunder.

“**Taxes**” shall have the meaning specified in Section 2.11(a).

“**Trading Day**” means a day on which (i) trading in the Common Shares (or other security for which a closing sale price must be determined) generally occurs on the New York Stock Exchange or, if the Common Shares (or such other security) are not then listed on the New York Stock Exchange, on the principal other U.S. national or regional securities exchange on which the Common Shares (or such other security) are then listed or, if the Common Shares (or such other security) are not then listed on a U.S. national or regional securities exchange, on the Toronto Stock Exchange or, if the Common Shares (or such other security) are not then listed on the Toronto Stock Exchange, on the other principal Canadian regional securities exchange on which the Common Shares (or such other security) are then listed or, if the Common Shares (or such other security) are not then listed on a U.S. national or regional securities exchange or a Canadian securities exchange, the principal other market on which the Common Shares (or such other security) are then traded or quoted and (ii) a Last Reported Sale Price for the Common Shares (or such other security) is available on such securities exchange or market; *provided* that if the Common Shares (or such other security) are not so listed or traded, “**Trading Day**” means a Business Day; and *provided further* that, for purposes of determining amounts due upon conversion only, “**Trading Day**” means a day on which (x) there is no Market Disruption Event and (y) trading in the Common Shares generally occurs on the New York Stock Exchange or other principal U.S. national or regional securities exchange on which the Common Shares are traded, or, if the Common Shares are not traded on any U.S. national or regional securities exchange the Toronto Stock Exchange or the other principal Canadian securities exchange on which the Common Shares are traded or, if the Common Shares are not then listed on a U.S. national or regional or Canadian securities exchange, on the principal other market on which the Common Shares are then listed or admitted for trading, except that if the Common Shares are not so listed or admitted for trading, “**Trading Day**” means a Business Day.

“**Trading Price**” of the Notes on any date of determination means the average of the secondary market bid quotations obtained by the Bid Solicitation Agent for \$2,000,000 principal amount of Notes at approximately 3:30 p.m., New York City time, on such determination date from three independent nationally recognized securities dealers the Company selects for this purpose; *provided* that if three such bids cannot reasonably be obtained by the Bid Solicitation Agent but two such bids are obtained, then the average of the two bids shall be used, and if only one such bid can reasonably be obtained by the Bid Solicitation Agent, that one bid shall be used. If the Bid Solicitation Agent cannot reasonably obtain at least one bid for \$2,000,000 principal amount of Notes from a nationally recognized securities dealer, then the Trading Price per \$1,000 principal amount of Notes shall be deemed to be less than 98% of the product of the Last Reported Sale Price of the Common Shares and the Conversion Rate.

“**transfer**” shall have the meaning specified in Section 2.05(c).

“**Trust Indenture Act**” means the Trust Indenture Act of 1939, as amended, as it was in force at the date of execution of this Indenture; *provided, however*, that in the event the Trust Indenture Act of 1939 is amended after the date hereof, the term “Trust Indenture Act” shall mean, to the extent required by such amendment, the Trust Indenture Act of 1939, as so amended.

“**Trustee**” means the Person named as the “**Trustee**” in the first paragraph of this Indenture until a successor trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “**Trustee**” shall mean or include each Person who is then a Trustee hereunder.

“**unit of Reference Property**” shall have the meaning specified in Section 13.07(a).

“**U.S. Restrictive Legend**” shall have the meaning specified in Section 2.05(c).

“**Valuation Period**” shall have the meaning specified in Section 13.04(c).

“**Wholly Owned Subsidiary**” means, with respect to any Person, any Subsidiary of such Person, except that, solely for purposes of this definition, (x) the reference to “more than 50%” in the definition of “Subsidiary” shall be deemed replaced by a reference to “100%”; and (y) directors’ qualifying shares (or equivalent equity interests) will be disregarded in determining whether any Subsidiary is a Wholly Owned Subsidiary of a Person.

Section 1.02 *References to Interest.* Unless the context otherwise requires, any reference to interest on, or in respect of, any Note in this Indenture shall be deemed to include Additional Interest if, in such context, Additional Interest is, was or would be payable pursuant to the Registration Rights Agreement and Section 6.03. Unless the context otherwise requires, any express mention of Additional Interest in any provision hereof shall not be construed as excluding Additional Interest in those provisions hereof where such express mention is not made.

ARTICLE 2 ISSUE, DESCRIPTION, EXECUTION, REGISTRATION AND EXCHANGE OF NOTES

Section 2.01 *Designation and Amount.* The Notes shall be designated as the “5.25% Convertible Senior Notes due 2024.” The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture is initially limited to \$300,000,000 (as increased by an amount equal to the aggregate principal amount of any additional Notes purchased by the Initial Purchasers pursuant to the exercise of their option to purchase additional Notes as set forth in the Purchase Agreement), subject to Section 2.10 and except for Notes authenticated and delivered upon registration or transfer of, or in exchange for, or in lieu of other Notes to the extent expressly permitted hereunder.

Section 2.02 *Form of Notes.* The Notes and the Trustee’s certificate of authentication to be borne by such Notes shall be substantially in the respective forms set forth in Exhibit A, the terms and provisions of which shall constitute, and are hereby expressly incorporated in and made a part of this Indenture. To the extent applicable, the Company and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby. In

the case of any conflict between this Indenture and a Note, the provisions of this Indenture shall govern and control to the extent of such conflict.

Any Global Note may be endorsed with or have incorporated in the text thereof such legends or recitals or changes not inconsistent with the provisions of this Indenture as may be required by the Custodian or the Depositary, or as may be required to comply with any applicable law or any regulation thereunder or with the rules and regulations of any securities exchange or automated quotation system upon which the Notes may be listed or traded or designated for issuance or to conform with any usage with respect thereto, or to indicate any special limitations or restrictions to which any particular Notes are subject.

Any of the Notes may have such letters, numbers or other marks of identification and such notations, legends or endorsements as the Officer executing the same may approve (execution thereof to be conclusive evidence of such approval) and as are not inconsistent with the provisions of this Indenture, or as may be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any securities exchange or automated quotation system on which the Notes may be listed or designated for issuance, or to conform to usage or to indicate any special limitations or restrictions to which any particular Notes are subject.

Each Global Note shall represent such principal amount of the outstanding Notes as shall be specified therein and shall provide that it shall represent the aggregate principal amount of outstanding Notes from time to time endorsed thereon and that the aggregate principal amount of outstanding Notes represented thereby may from time to time be increased or reduced to reflect redemptions, repurchases, cancellations, conversions, transfers or exchanges permitted hereby. Any endorsement of a Global Note to reflect the amount of any increase or decrease in the amount of outstanding Notes represented thereby shall be made by the Trustee or the Custodian, at the direction of the Trustee, in such manner and upon written instructions given by the Holder of such Notes in accordance with this Indenture. Payment of principal (including the Redemption Price and the Fundamental Change Repurchase Price, if applicable) of, and accrued and unpaid interest on, a Global Note shall be made to the Holder of such Note on the date of payment, unless a record date or other means of determining Holders eligible to receive payment is provided for herein.

Section 2.03 *Date and Denomination of Notes; Payments of Interest and Defaulted Amounts.* (a) The Notes shall be issuable in registered form without coupons in denominations of \$1,000 principal amount and integral multiples thereof. Each Note shall be dated the date of its authentication and shall bear interest from the date specified on the face of such Note. Accrued interest on the Notes shall be computed on the basis of a 360-day year composed of twelve 30-day months and, for partial months, on the basis of the number of days actually elapsed in a 30-day month.

(b) The Person in whose name any Note (or its Predecessor Note) is registered on the Note Register at the close of business on any Regular Record Date with respect to any Interest Payment Date shall be entitled to receive the interest payable on such Interest Payment Date. The principal amount of any Note (x) in the case of any Physical Note, shall be payable at the office or agency of the Company maintained by the Company for such purposes in the United States, which shall initially be the Corporate Trust Office and (y) in the case of any Global Note, shall be payable

by wire transfer of immediately available funds to the account of the Depository or its nominee. The Company shall pay or cause the Paying Agent to pay interest (i) on any Physical Notes (A) to Holders holding Physical Notes having an aggregate principal amount of \$5,000,000 or less, by check mailed to the Holders of these Notes at their address as it appears in the Note Register and (B) to Holders holding Physical Notes having an aggregate principal amount of more than \$5,000,000, either by check mailed to each Holder or, upon application by such a Holder to the Note Registrar not later than the relevant Regular Record Date, by wire transfer in immediately available funds to that Holder's account within the United States, if such Holder has provided the Company, the Trustee or the Paying Agent (if other than the Trustee) with the requisite information necessary to make such wire transfer, which application shall remain in effect until the Holder notifies, in writing, the Note Registrar to the contrary or (ii) on any Global Note by wire transfer of immediately available funds to the account of the Depository or its nominee.

(c) Any Defaulted Amounts shall forthwith cease to be payable to the Holder on the relevant payment date but shall accrue interest per annum at the rate borne by the Notes, subject to the enforceability thereof under applicable law, from, and including, such relevant payment date, and such Defaulted Amounts together with such interest thereon shall be paid by the Company, at its election in each case, as provided in clause (i) or (ii) below:

(i) The Company may elect to make payment of any Defaulted Amounts to the Persons in whose names the Notes (or their respective Predecessor Notes) are registered at the close of business on a special record date for the payment of such Defaulted Amounts, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of the Defaulted Amounts proposed to be paid on each Note and the date of the proposed payment (which shall be not less than 25 days after the receipt by the Trustee of such notice, unless the Trustee shall consent to an earlier date), and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount to be paid in respect of such Defaulted Amounts or shall make arrangements satisfactory to the Trustee for such deposit on or prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Amounts as in this clause provided. Thereupon the Company shall fix a special record date for the payment of such Defaulted Amounts which shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment, and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment (unless the Trustee shall consent to an earlier date). The Company shall promptly notify the Trustee of such special record date, and the Trustee, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Amounts and the special record date therefor to be delivered to each Holder at its address as it appears in the Note Register, or by electronic means to the Depository in the case of Global Notes, not less than 10 days prior to such special record date. Notice of the proposed payment of such Defaulted Amounts and the special record date therefor having been so delivered, such Defaulted Amounts shall be paid to the Persons in whose names the Notes (or their respective Predecessor Notes) are registered at the close of business on such special record date and shall no longer be payable pursuant to the following clause (ii) of this Section 2.03(c). The Trustee shall have no responsibility whatsoever for the calculation of the Defaulted Amounts.

(ii) The Company may make payment of any Defaulted Amounts in any other lawful manner not inconsistent with the requirements of any securities exchange or automated quotation system on which the Notes may be listed or designated for issuance, and upon such notice as may be required by such exchange or automated quotation system, if, after notice given by the Company to the Trustee of the proposed payment pursuant to this clause, such manner of payment shall be deemed practicable by the Trustee.

Section 2.04 *Execution, Authentication and Delivery of Notes.* The Notes shall be signed in the name and on behalf of the Company by the manual or facsimile signature of its Chief Executive Officer, President, Chief Financial Officer, Treasurer, Secretary or any of its Executive or Senior Vice Presidents.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Notes executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Notes, and the Trustee in accordance with such Company Order shall authenticate and deliver such Notes, without any further action by the Company hereunder; *provided, however,* that, subject to Section 16.05, the Trustee shall be entitled, in connection with the original issuance of any additional Notes issued pursuant to the first sentence of Section 2.10, to receive an Officer's Certificate and an Opinion of Counsel of the Company with respect to the issuance, authentication and delivery of such Notes.

Only such Notes as shall bear thereon a certificate of authentication substantially in the form set forth on the Form of Note attached as Exhibit A hereto, executed manually or by facsimile by an authorized officer of the Trustee (or an authenticating agent appointed by the Trustee as provided by Section 16.10), shall be entitled to the benefits of this Indenture or be valid or obligatory for any purpose. Such certificate by the Trustee (or such an authenticating agent) upon any Note executed by the Company shall be conclusive evidence that the Note so authenticated has been duly authenticated and delivered hereunder and that the Holder is entitled to the benefits of this Indenture.

In case any Officer of the Company who shall have signed any of the Notes shall cease to be such Officer before the Notes so signed shall have been authenticated and delivered by the Trustee, or disposed of by the Company, such Notes nevertheless may be authenticated and delivered or disposed of as though the person who signed such Notes had not ceased to be such Officer of the Company; and any Note may be signed on behalf of the Company by such persons as, at the actual date of the execution of such Note, shall be the Officers of the Company, although at the date of the execution of this Indenture any such person was not such an Officer.

Section 2.05 *Exchange and Registration of Transfer of Notes; Restrictions on Transfer; Depositary.* (a) The Company shall cause to be kept at the Corporate Trust Office a register (the register maintained in such office or in any other office or agency of the Company designated pursuant to Section 4.02, the "**Note Register**") in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Notes and of transfers of Notes. Such register shall be in written form or in any form capable of being converted into written form within a reasonable period of time. The Trustee is hereby initially appointed the "**Note Registrar**" for the purpose of registering Notes and transfers of Notes as herein provided. The Company may appoint one or more co-Note Registrars in accordance with Section 4.02.

Upon surrender for registration of transfer of any Note to the Note Registrar or any co-Note Registrar, and satisfaction of the requirements for such transfer set forth in this Section 2.05, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Notes of any authorized denominations and of a like aggregate principal amount and bearing such restrictive legends as may be required by this Indenture.

Notes may be exchanged for other Notes of any authorized denominations and of a like aggregate principal amount, upon surrender of the Notes to be exchanged at any such office or agency maintained by the Company pursuant to Section 4.02. Whenever any Notes are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Notes that the Holder making the exchange is entitled to receive, bearing registration numbers not contemporaneously outstanding.

All Notes presented or surrendered for registration of transfer or for exchange, repurchase or conversion shall (if so required by the Company, the Trustee, the Note Registrar or any co-Note Registrar) be duly endorsed, or be accompanied by a written instrument or instruments of transfer in form satisfactory to the Note Registrar and duly executed, by the Holder thereof or its attorney-in-fact duly authorized in writing.

No service charge shall be imposed by the Company, the Trustee, the Note Registrar, any co-Note Registrar or the Paying Agent for any exchange or registration of transfer of Notes, but the Company may require a Holder to pay a sum sufficient to cover any documentary, stamp or similar issue or transfer tax required in connection therewith as a result of the name of the Holder of new Notes issued upon such exchange or registration of transfer being different from the name of the Holder of the old Notes surrendered for exchange or registration of transfer.

None of the Company, the Trustee, the Note Registrar or any co-Note Registrar shall be required to exchange or register a transfer of (i) any Notes surrendered for conversion or, if a portion of any Note is surrendered for conversion, such portion thereof surrendered for conversion, (ii) any Notes, or a portion of any Note, surrendered for repurchase (and not withdrawn) in accordance with Article 14 or (iii) any Notes selected for redemption in accordance with Article 15, except the unredeemed portion of any Note being redeemed in part.

All Notes issued upon any registration of transfer or exchange of Notes in accordance with this Indenture shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture as the Notes surrendered upon such registration of transfer or exchange.

(b) So long as the Notes are eligible for book-entry settlement with the Depositary, unless otherwise required by law, subject to the fourth paragraph from the end of Section 2.05(c) all Notes shall be represented by one or more Notes in global form (each, a “**Global Note**”) registered in the name of the Depositary or the nominee of the Depositary. Each Global Note shall bear the legend required on a Global Note set forth in Exhibit A hereto. The transfer and exchange of beneficial interests in a Global Note that does not involve the issuance of a Physical Note shall be effected

through the Depository (but not the Trustee or the Custodian) in accordance with this Indenture (including the restrictions on transfer set forth herein) and the Applicable Procedures.

(c) Every Note that bears or is required under this Section 2.05(c) to bear the legend(s) set forth in this Section 2.05(c) shall be subject to the restrictions on transfer set forth in this Section 2.05(c) (including the legend(s) set forth below), unless such restrictions on transfer shall be eliminated or otherwise waived by written consent of the Company, and the Holder of each such Restricted Security, by such Holder's acceptance thereof, agrees to be bound by all such restrictions on transfer. As used in this Section 2.05(c) and Section 2.05(d), the term "**transfer**" encompasses any sale, pledge, transfer or other disposition whatsoever of any Restricted Security.

Each Note that is a Restricted Security will be required to bear a legend in substantially the following form (the legend below, the "**U.S. Restrictive Legend**" and, prior to the Canadian Resale Restriction Termination Date, the second legend, the "**Canadian Restrictive Legend**" and collectively, the "**Restrictive Legends**"):

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "**SECURITIES ACT**"), AND ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT AS SET FORTH IN THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF, THE HOLDER AGREES: (1) THAT IT WILL NOT RESELL OR OTHERWISE TRANSFER THE SECURITY EVIDENCED HEREBY, EXCEPT: (A) TO APHRIA INC. (THE "**ISSUER**") OR A SUBSIDIARY OF THE ISSUER; (B) UNDER A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT; (C) TO A PERSON THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A ADOPTED UNDER THE SECURITIES ACT) THAT IS PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF ANOTHER QUALIFIED INSTITUTIONAL BUYER AND TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, ALL IN COMPLIANCE WITH RULE 144A (IF AVAILABLE); (D) OUTSIDE THE UNITED STATES IN A TRANSACTION MEETING THE REQUIREMENTS OF REGULATION S UNDER THE SECURITIES ACT; OR (E) UNDER ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT; AND (2) THAT IT WILL, PRIOR TO ANY TRANSFER OF THIS SECURITY, FURNISH TO THE ISSUER AND THE TRUSTEE OR TRANSFER AGENT FOR THIS SECURITY, AS APPLICABLE, SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS MAY BE REQUIRED TO CONFIRM THAT SUCH TRANSFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND ANY OTHER APPLICABLE SECURITIES LAWS.

IN CANADA, UNLESS PERMITTED UNDER SECURITIES LEGISLATION, THE HOLDER OF THIS SECURITY MUST NOT TRADE THE SECURITY BEFORE SEPTEMBER 18, 2019.

The Company may, in its sole discretion, cause the U.S. Restrictive Securities Legends on any Global Note to be removed (or deemed removed) and cause such Global Note to be identified by

an unrestricted CUSIP at any time on or after the Resale Restriction Termination Date, without delivering an Opinion of Counsel, by:

(A) delivering to the Trustee a written notice (x) certifying that all Notes represented by such Global Note would be freely tradable under Rule 144 by a person who is not an Affiliate of the Company (within the meaning of Rule 144) and has not been an Affiliate of the Company (within the meaning of Rule 144A) during the immediately preceding 90 days, the Company is no longer subject to the limitations imposed by Rule 144(i), (y) instructing the Trustee to take any actions as may be necessary so that the Restrictive Securities Legends set forth on the Global Notes shall be deemed removed from the Global Notes in accordance with the terms and conditions of the Notes and the Indenture, without further action on the part of Holders and (z) instructing the Trustee to take any actions as may be necessary so that the restricted CUSIP number for the Notes shall be removed from such Global Note and replaced with an unrestricted CUSIP number. Immediately upon receipt of such notice by the Trustee the Restrictive Securities Legends will be deemed removed from such Global Notes specified in such notice and the restricted CUSIP number will be deemed removed from each of such Global Note and deemed replaced with an unrestricted CUSIP number; and

(B) providing the Depositary an instruction letter for the Depositary's mandatory exchange process (or any successor notice, form or action required pursuant to the Applicable Procedures) to the extent required.

Upon a sale or transfer after the expiration of the Canadian Resale Restriction Termination Date of any Note, all requirements that such Note bear the Canadian Restrictive Legend shall cease to apply.

Notwithstanding any other provisions of this Indenture (other than the provisions set forth in this Section 2.05(c)), a Global Note may not be transferred as a whole or in part except (i) by the Depositary to a nominee of the Depositary or by a nominee of the Depositary to the Depositary or another nominee of the Depositary or by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary and (ii) for exchange of a Global Note or a portion thereof for one or more Physical Notes in accordance with the second immediately succeeding paragraph.

The Depositary shall be a clearing agency registered under the Exchange Act. The Company initially appoints The Depositary Trust Company to act as Depositary with respect to each Global Note. Initially, each Global Note shall be issued to the Depositary, registered in the name of Cede & Co., as the nominee of the Depositary, and deposited with the Trustee as custodian for Cede & Co.

If (i) the Depositary notifies the Company at any time that the Depositary is unwilling or unable to continue as depositary for the Global Notes and a successor depositary is not appointed within 90 days, (ii) the Depositary ceases to be registered as a clearing agency under the Exchange Act and a successor depositary is not appointed within 90 days or (iii) an Event of Default with respect to the Notes has occurred and is continuing and, subject to the Applicable Procedures, a

beneficial owner of any Note requests that its beneficial interest therein be issued as a Physical Note, the Company shall execute, and the Trustee, upon receipt of an Officer's Certificate and a Company Order for the authentication and delivery of Notes, shall authenticate and deliver (x) in the case of clause (iii), a Physical Note to such beneficial owner in a principal amount equal to the principal amount of such Note corresponding to such beneficial owner's beneficial interest and (y) in the case of clause (i) or (ii), Physical Notes to each beneficial owner of the related Global Notes (or a portion thereof) in an aggregate principal amount equal to the aggregate principal amount of such Global Notes in exchange for such Global Notes, and upon delivery of the Global Notes to the Trustee such Global Notes shall be canceled.

Physical Notes issued in exchange for all or a part of a Global Note pursuant to this Section 2.05(c) shall be registered in such names and in such authorized denominations as the Depository, pursuant to instructions from its direct or indirect participants or otherwise, or, in the case of clause (iii) of the immediately preceding paragraph, the relevant beneficial owner, shall instruct the Trustee. Upon execution and authentication, the Trustee shall deliver such Physical Notes to the Persons in whose names such Physical Notes are so registered.

At such time as all interests in a Global Note have been converted, canceled, repurchased upon a Fundamental Change, redeemed or transferred, such Global Note shall be, upon receipt thereof, canceled by the Trustee in accordance with standing procedures and existing instructions between the Depository and the Custodian. At any time prior to such cancellation, if any interest in a Global Note is exchanged for Physical Notes, converted, canceled, repurchased, redeemed or transferred to a transferee who receives Physical Notes therefor or any Physical Note is exchanged or transferred for part of such Global Note, the principal amount of such Global Note shall, in accordance with the standing procedures and instructions existing between the Depository and the Custodian, be appropriately reduced or increased, as the case may be, and an endorsement shall be made on such Global Note, by the Trustee or the Custodian, at the direction of the Trustee, to reflect such reduction or increase.

None of the Company, the Trustee, the Paying Agent, the Conversion Agent, or any agent of the Company or the Trustee shall have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of a Global Note or maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

(d) Any share certificate representing Common Shares issued upon conversion of Notes that are Restricted Securities shall bear a legend in substantially the following form and, if issued prior to the Canadian Resale Restriction Termination Date, the second and third legends below:

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "**SECURITIES ACT**"), AND ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT AS SET FORTH IN THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF, THE HOLDER AGREES:

(1) THAT IT WILL NOT RESELL OR OTHERWISE TRANSFER THE SECURITY EVIDENCED HEREBY, EXCEPT: (A) TO APHRIA INC. (THE "**ISSUER**") OR A SUBSIDIARY OF THE ISSUER; (B) UNDER A REGISTRATION STATEMENT THAT HAS

BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT; (C) TO A PERSON THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A ADOPTED UNDER THE SECURITIES ACT) THAT IS PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF ANOTHER QUALIFIED INSTITUTIONAL BUYER AND TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, ALL IN COMPLIANCE WITH RULE 144A (IF AVAILABLE); (D) OUTSIDE THE UNITED STATES IN A TRANSACTION MEETING THE REQUIREMENTS OF REGULATION S UNDER THE SECURITIES ACT; OR (E) UNDER ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT; AND (2) THAT IT WILL, PRIOR TO ANY TRANSFER OF THIS SECURITY, FURNISH TO THE ISSUER AND THE TRUSTEE OR TRANSFER AGENT FOR THIS SECURITY, AS APPLICABLE, SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS MAY BE REQUIRED TO CONFIRM THAT SUCH TRANSFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND ANY OTHER APPLICABLE SECURITIES LAWS.

IN CANADA, UNLESS PERMITTED UNDER SECURITIES LEGISLATION, THE HOLDER OF THIS SECURITY MUST NOT TRADE THE SECURITY BEFORE SEPTEMBER 18, 2019.

THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE LISTED ON THE TORONTO STOCK EXCHANGE (“TSX”); HOWEVER, THE SAID SECURITIES CANNOT BE TRADED THROUGH THE FACILITIES OF TSX SINCE THEY ARE NOT FREELY TRANSFERABLE, AND CONSEQUENTLY ANY CERTIFICATE REPRESENTING SUCH SECURITIES IS NOT “GOOD DELIVERY” IN SETTLEMENT OF TRANSACTIONS ON TSX.

Any such Common Shares (i) as to which such restrictions on transfer shall have expired in accordance with their terms, (ii) that has been transferred pursuant to a registration statement that has become or been declared effective under the Securities Act and that continues to be effective at the time of such transfer or (iii) that has been sold pursuant to an available exemption (including Rule 144) from the registration and prospectus-delivery requirements of, or in a transaction not subject to, the Securities Act and, immediately after such sale or transfer, such Note ceases to constitute a “restricted security” (as defined in Rule 144), may, upon surrender of the certificates representing such Common Shares for exchange in accordance with the procedures of the transfer agent for the Common Shares, be exchanged for a new certificate or certificates for a like aggregate number of Common Shares, which shall not bear the restrictive legend required by this Section 2.05(d).

(e) Reserved.

(f) The Company shall cause any Note that is repurchased or owned by it to be surrendered to the Trustee for cancellation in accordance with Section 2.08.

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

(h) The Trustee may rely and shall be fully protected in relying upon information furnished by the Depositary with respect to its members, participants and beneficial owners.

None of the Company, the Trustee or any agent of the Company or the Trustee shall have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of a Global Note or maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

Neither the Company nor the Trustee, Paying Agent or Conversion Agent shall have any responsibility or liability for any act or omission of the Depositary. All notices and communications to be given to the Holders and all payments to be made to Holders in respect of the Notes shall be given or made only to, or upon the order of, the registered Holder(s) (which shall be the Depositary or its nominee in the case of a Global Note).

Section 2.06 *Mutilated, Destroyed, Lost or Stolen Notes.* In case any Note shall become mutilated or be destroyed, lost or stolen, the Company in its discretion may execute, and upon receipt of a Company Order the Trustee or an authenticating agent appointed by the Trustee shall authenticate and deliver, a new Note, bearing a registration number not contemporaneously outstanding, in exchange and substitution for the mutilated Note, or in lieu of and in substitution for the Note so destroyed, lost or stolen. In every case the applicant for a substituted Note shall furnish to the Company, to the Trustee and, if applicable, to such authenticating agent such security or indemnity as may be required by them to save each of them harmless from any loss, liability, cost or expense caused by or connected with such substitution, and, in every case of destruction, loss or theft, the applicant shall also furnish to the Company, to the Trustee and, if applicable, to such authenticating agent evidence to their satisfaction of the destruction, loss or theft of such Note and of the ownership thereof.

The Trustee or such authenticating agent may authenticate any such substituted Note and deliver the same upon the receipt of a Company Order and of such security or indemnity as the Trustee, the Company and, if applicable, such authenticating agent may require. No service charge shall be imposed by the Company, the Trustee, the Note Registrar, any co-Note Registrar or the Paying Agent upon the issuance of any substitute Note, but the Company may require a Holder to pay a sum sufficient to cover any documentary, stamp or similar issue or transfer tax required in connection therewith as a result of the name of the Holder of the new substitute Note being different from the name of the Holder of the old Note that became mutilated or was destroyed, lost or stolen. In case any Note that has matured or is about to mature or has been surrendered for required repurchase or is about to be converted in accordance with Article 13 shall become mutilated or be

destroyed, lost or stolen, the Company may, in its sole discretion, instead of issuing a substitute Note, pay or authorize the payment of or convert or authorize the conversion of the same (without surrender thereof except in the case of a mutilated Note), as the case may be, if the applicant for such payment or conversion shall furnish to the Company, to the Trustee and, if applicable, to such authenticating agent such security or indemnity as may be required by them to save each of them harmless for any loss, liability, cost or expense caused by or connected with such substitution, and, in every case of destruction, loss or theft, evidence satisfactory to the Company, the Trustee and, if applicable, any Paying Agent or Conversion Agent evidence of their satisfaction of the destruction, loss or theft of such Note and of the ownership thereof.

Every substitute Note issued pursuant to the provisions of this Section 2.06 by virtue of the fact that any Note is destroyed, lost or stolen shall constitute an additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Note shall be found at any time, and shall be entitled to all the benefits of (but shall be subject to all the limitations set forth in) this Indenture equally and proportionately with any and all other Notes duly issued hereunder. To the extent permitted by law, all Notes shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the replacement, payment, redemption, conversion or repurchase of mutilated, destroyed, lost or stolen Notes and shall preclude any and all other rights or remedies notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement, payment, redemption, conversion or repurchase of negotiable instruments or other securities without their surrender.

Section 2.07 *Temporary Notes.* Pending the preparation of Physical Notes, the Company may execute and the Trustee or an authenticating agent appointed by the Trustee shall, upon receipt of a Company Order, authenticate and deliver temporary Notes (printed or lithographed). Temporary Notes shall be issuable in any authorized denomination, and substantially in the form of the Physical Notes but with such omissions, insertions and variations as may be appropriate for temporary Notes, all as may be determined by the Company. Every such temporary Note shall be executed by the Company and authenticated by the Trustee or such authenticating agent upon the same conditions and in substantially the same manner, and with the same effect, as the Physical Notes. Without unreasonable delay, the Company shall execute and deliver to the Trustee or such authenticating agent Physical Notes (other than any Global Note) and thereupon any or all temporary Notes (other than any Global Note) may be surrendered in exchange therefor, at each office or agency maintained by the Company pursuant to Section 4.02 and the Trustee or such authenticating agent shall, upon receipt of a Company Order, authenticate and deliver in exchange for such temporary Notes an equal aggregate principal amount of Physical Notes. Such exchange shall be made by the Company at its own expense and without any charge therefor. Until so exchanged, the temporary Notes shall in all respects be entitled to the same benefits and subject to the same limitations under this Indenture as Physical Notes authenticated and delivered hereunder.

Section 2.08 *Cancellation of Notes Paid, Converted, Etc.* The Company shall cause all Notes surrendered for the purpose of payment at maturity, repurchase upon a Fundamental Change, redemption, registration of transfer or exchange or conversion, if surrendered to the Company or any of its agents, Subsidiaries or Affiliates, to be surrendered to the Trustee for cancellation. All such Notes delivered to the Trustee shall be canceled promptly by it in accordance with its customary procedures. Except for any Notes surrendered for registration of transfer or exchange, or as

otherwise expressly permitted by any of the provisions of this Indenture, no Notes shall be authenticated in exchange for any Notes surrendered to the Trustee for cancellation. The Trustee shall dispose of canceled Notes in accordance with its customary procedures and, after such disposition, shall deliver a certificate of such disposition to the Company, at the Company's written request in a Company Order.

Section 2.09 *CUSIP Numbers.* The Company in issuing the Notes may use "CUSIP" numbers (if then generally in use), and, if so, the Trustee shall use "CUSIP" numbers in all notices issued to Holders as a convenience to such Holders; *provided* that the Trustee shall have no liability for any defect in the "CUSIP" numbers as they appear on any Note, notice or elsewhere, and *provided, further*, that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or on such notice and that reliance may be placed only on the other identification numbers printed on the Notes. The Company shall promptly notify the Trustee in writing of any change in the "CUSIP" numbers.

Section 2.10 *Additional Notes; Repurchases.* The Company may, without the consent of, or notice to, the Holders and notwithstanding Section 2.01, reopen this Indenture and issue additional Notes hereunder with the same terms as the Notes initially issued hereunder (other than differences in the issue date, the issue price, interest accrued prior to the issue date of such additional Notes and, if applicable, restrictions on transfer in respect of such additional Notes) in an unlimited aggregate principal amount; *provided* that if any such additional Notes are not fungible with the Notes initially issued hereunder for U.S. federal income tax purposes, Canadian federal income tax purposes or for the purposes of U.S. securities laws or applicable securities laws in Canada ("**Canadian Securities Laws**") such additional Notes shall have a separate CUSIP number. Prior to the issuance of any such additional Notes, the Company shall deliver to the Trustee a Company Order, an Officer's Certificate and an Opinion of Counsel, such Officer's Certificate and Opinion of Counsel to cover such matters, in addition to those required by Section 16.05, as the Trustee shall reasonably request. In addition, the Company may, to the extent permitted by law, directly or indirectly (regardless of whether such Notes are surrendered to the Company), repurchase Notes in the open market or otherwise, whether by the Company or its Subsidiaries or through a privately negotiated transaction or public tender or exchange offer or through counterparties to private agreements, including by cash-settled swaps or other derivatives. The Company shall cause any Notes so repurchased (other than Notes repurchased pursuant to cash-settled swaps or other cash-settled derivatives) to be surrendered to the Trustee for cancellation and shall deliver a cancellation order to the Trustee. Upon delivery of such cancellation order, the Trustee shall cancel such repurchased Notes in accordance with Section 2.08 and such Notes shall no longer be considered outstanding under this Indenture upon their repurchase.

Section 2.11 *Additional Amounts*

(a) All payments or deliveries (whether upon conversion (together with payments of cash in lieu of fractional shares), repurchase, redemption, maturity or otherwise, and whether in cash, Common Shares, Reference Property or otherwise) made by or on behalf of the Company or any successor under or with respect to the Notes are required to be made free and clear of and without withholding or deduction for or on account of any present or future tax, duty, levy, impost, assessment or other governmental charge (including penalties, interest and other liabilities related

thereto) (hereinafter referred to as “**Taxes**”) imposed or levied by or on behalf of the government of Canada, any province or territory of Canada or any political subdivision or any authority or agency therein or thereof, or any other jurisdiction in which the Company, or any successor following any consolidation, merger, amalgamation, combination or similar transaction involving the Company, are or are deemed to be organized or resident for tax purposes or from or through which payments or deliveries by or on behalf of the Company with respect to the notes are made or deemed made or by or within any political subdivision thereof or any authority or agency therein or thereof having power to tax (each, a “**Relevant Taxing Jurisdiction**”), unless such Person is required to withhold or deduct Taxes by law or by the interpretation or administration thereof.

(b) If the Company is so required to withhold or deduct any amount for or on account of Taxes imposed by a Relevant Taxing Jurisdiction from any payment or delivery made under or with respect to the Notes, the Company shall be required to pay such additional amounts (“**Additional Amounts**”) as may be necessary so that the net amount received by a Holder or beneficial owner of Notes (including Additional Amounts) after such withholding or deduction will not be less than the amount such Holder or beneficial owner of Notes would have received if such Taxes (including Taxes on any Additional Amounts) had not been withheld or deducted; *provided, however*, that the foregoing obligations to pay Additional Amounts do not apply to:

(i) any Canadian withholding Taxes imposed on a payment to a Holder or beneficial owner of Notes (or the right to receive interest payable on the Notes) by reason of the Company not dealing at arm’s length (within the meaning of the Tax Act) with such Holder or beneficial owner of Notes (or the right to receive interest payable on the Notes) at the time of the payment;

(ii) any Canadian withholding Taxes imposed on a payment to a Holder or beneficial owner of Notes by reason of such Holder or beneficial owner being a “specified shareholder” of the Company (as defined in subsection 18(5) of the Tax Act) or by reason of such Holder or beneficial owner not dealing at arm’s length with a specified shareholder of the Company;

(iii) any Canadian withholding Taxes imposed on a payment to a Holder, former Holder or beneficial owner of Notes by reason of such Holder’s, former Holder’s or beneficial owner’s failure to comply with any certification, identification, information, documentation or other reporting requirement if compliance is required by law, regulation, administrative practice or an applicable treaty as a precondition to exemption from, or a reduction in the rate of deduction or withholding of, such Taxes (provided that in the case of any imposition or change in any such certification, identification, information, documentation or other reporting requirement which applies to Holders, former Holders or beneficial owners of Notes who are not residents of Canada, at least sixty (60) days prior to the effective date of any such imposition or change, the Company shall give written notice, in the manner provided for in this Indenture, to the Trustee and the applicable Holders then outstanding of such imposition or change, as the case may be, and provide the Trustee and such Holders with such forms or documentation, if any, as may be required to comply with such certification, identification, information, documentation, or other reporting requirement);

(iv) any Taxes that would not have been so imposed but for the existence of any present or former connection between the relevant Holder or beneficial owner of Notes and the Relevant Taxing Jurisdiction including, for greater certainty and without limitation, being or having been a citizen, resident or national thereof, or being or having been present or engaged in a trade or business therein or maintaining a permanent establishment or other physical presence in or otherwise having some connection with the Relevant Taxing Jurisdiction (other than a connection from the mere acquisition, ownership or holding of such Note or a beneficial interest therein or the enforcement of rights thereunder or the receipt of any payment in respect thereof); or

(v) any estate, inheritance, gift, sales, excise, transfer, personal property tax or similar tax, assessment or governmental charge,

(any Taxes imposed by a Relevant Taxing Jurisdiction that are not excluded pursuant to any of the above clauses are referred to as “**Indemnified Taxes**”).

(c) The Company shall make any required withholding or deduction and remit the full amount deducted or withheld to the Relevant Taxing Jurisdiction in accordance with applicable law. Upon request, the Company shall provide the Trustee on behalf of Holders and beneficial owners of Notes (and the Trustee shall forthwith provide Holders and beneficial owners of Notes) with official receipts or other documentation evidencing the payment of the Taxes with respect to which Additional Amounts are paid.

(d) If the Company is or will become obligated to pay Additional Amounts under or with respect to any payment or delivery made on the Notes, at least 30 days prior to the date of such payment (unless such obligation to pay Additional Amounts arises after the 30th day prior to such date, in which case it shall be promptly thereafter), the Company shall deliver to the Trustee and the Paying Agent (if other than the Trustee) an officer’s certificate stating the fact that Additional Amounts will be payable and the amount so payable and such other information necessary to enable the Paying Agent to pay Additional Amounts to Holders or beneficial owners on the relevant payment date.

(e) Whenever in this Indenture there is mentioned in any context: (i) the payment of principal; (ii) Redemption Price in connection with an Optional Redemption or Tax Redemption of Notes; (iii) Fundamental Change Repurchase Price in connection with a repurchase of Notes upon a Fundamental Change; (iv) interest; or (v) any other amount payable on or with respect to any of the Notes (including amounts payable on conversion), such reference shall be deemed to include payment of Additional Amounts provided for in this Section 2.11 to the extent that, in such context, Additional Amounts are, were or would be payable in respect thereof.

(f) The Company shall indemnify and hold harmless a Holder or beneficial owner of the Notes for the amount of any Indemnified Taxes payable pursuant to Regulation 803 of the Income Tax Regulations (Canada) levied or imposed and paid by such Holder or beneficial owner as a result of payments made under or with respect to the Notes, any liability (including penalties, interest, additions to tax and expenses) arising therefrom or with respect thereto, and any such Indemnified

Taxes levied or imposed and paid by such Holder or beneficial owner of the Notes with respect to any reimbursement under this paragraph.

(g) The Company shall pay any present or future stamp, court or documentary taxes or any other excise, property or similar Taxes, charges or levies that arise in any Relevant Taxing Jurisdiction from the execution, delivery, enforcement or registration of the Notes, this Indenture or any other document or instrument in relation thereof, or the receipt of any payments with respect to the Notes and the Company shall agree to indemnify the Holders and beneficial owners of Notes for any such amounts (including penalties, interest and other liabilities related thereto) paid by such Holders or beneficial owners.

The obligations described in this Section 2.11 will survive any termination or discharge of this Indenture.

ARTICLE 3 SATISFACTION AND DISCHARGE

Section 3.01 *Satisfaction and Discharge.* This Indenture shall upon request of the Company contained in an Officer's Certificate cease to be of further effect, and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when (a) (i) all Notes theretofore authenticated and delivered (other than Notes which have been destroyed, lost or stolen and which have been replaced, paid or converted as provided in Section 2.06) have been delivered to the Trustee for cancellation; or (ii) the Company has deposited with the Trustee or delivered to Holders, as applicable, after the Notes have become due and payable, whether on the Maturity Date, any Redemption Date, any Fundamental Change Repurchase Date, upon conversion or otherwise, cash (or cash and/or Common Shares (or other Reference Property) or a combination thereof, as applicable, solely to satisfy the Company's Conversion Obligation) sufficient to pay all of the outstanding Notes and all other sums due and payable under this Indenture by the Company; and (b) the Company has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture have been complied with. Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee under Section 7.06 shall survive.

ARTICLE 4 PARTICULAR COVENANTS OF THE COMPANY

Section 4.01 *Payment of Principal and Interest.* The Company covenants and agrees that it will cause to be paid the principal (including the Redemption Price and the Fundamental Change Repurchase Price, if applicable) of, and accrued and unpaid interest on, each of the Notes at the places, at the respective times and in the manner provided herein and in the Notes.

Section 4.02 *Maintenance of Office or Agency.* The Company will maintain in the United States, an office or agency where the Notes may be surrendered for registration of transfer or exchange or for presentation for payment or repurchase ("**Paying Agent**") or for conversion ("**Conversion Agent**") and where notices and demands to or upon the Company in respect of the

Notes and this Indenture may be delivered. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrender, and notices and demands may be made or delivered at the Corporate Trust Office. For the avoidance of doubt, the Trustee, Paying Agent or Conversion Agent shall not accept service of process on the Company.

The Company may also from time to time designate as co-Note Registrars one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided* that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in the United States, for such purposes. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency. The terms “**Paying Agent**” and “**Conversion Agent**” include any such additional or other offices or agencies, as applicable.

The Company hereby initially designates the Trustee as the Paying Agent, Note Registrar, Custodian and Conversion Agent and the Corporate Trust Office as the office or agency located in the United States, where Notes may be surrendered for registration of transfer or exchange or for presentation for payment or repurchase or for conversion and where notices and demands to or upon the Company in respect of the Notes and this Indenture may be presented.

Section 4.03 *Appointments to Fill Vacancies in Trustee’s Office.* The Company, whenever necessary to avoid or fill a vacancy in the office of Trustee, will appoint, in the manner provided in Section 7.09, a Trustee, so that there shall at all times be a Trustee hereunder.

Section 4.04 *Provisions as to Paying Agent.* (a) If the Company shall appoint a Paying Agent other than the Trustee, the Company will cause such Paying Agent to execute and deliver to the Trustee an instrument in which such agent shall agree with the Trustee, subject to the provisions of this Section 4.04:

(i) that it will hold all sums held by it as such agent for the payment of the principal (including the Redemption Price and the Fundamental Change Repurchase Price, if applicable) of, and accrued and unpaid interest on, the Notes in trust for the benefit of the Holders;

(ii) that it will give the Trustee prompt notice of any failure by the Company to make any payment of the principal (including the Redemption Price and the Fundamental Change Repurchase Price, if applicable) of, and accrued and unpaid interest on, the Notes when the same shall be due and payable; and

(iii) that at any time during the continuance of an Event of Default, upon request of the Trustee, it will forthwith pay to the Trustee all sums so held in trust.

The Company shall, on or before each due date of the principal (including the Redemption Price and the Fundamental Change Repurchase Price, if applicable) of, or accrued and unpaid

interest on, the Notes, deposit with the Paying Agent a sum in immediately available U.S. Dollars sufficient to pay such principal (including the Redemption Price and the Fundamental Change Repurchase Price, if applicable) or accrued and unpaid interest, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee in writing of any failure to take such action; *provided* that if such deposit is made on the due date, such deposit must be received by the Paying Agent by 11:00 a.m., New York City time, on such date.

(b) If the Company shall act as its own Paying Agent, it will, on or before each due date of the principal (including the Redemption Price and the Fundamental Change Repurchase Price, if applicable) of, and accrued and unpaid interest on, the Notes, set aside, segregate and hold in trust for the benefit of the Holders a sum sufficient to pay such principal (including the Redemption Price and the Fundamental Change Repurchase Price, if applicable) and accrued and unpaid interest so becoming due and will promptly notify the Trustee in writing of any failure to take such action and of any failure by the Company to make any payment of the principal (including the Redemption Price and the Fundamental Change Repurchase Price, if applicable) of, or accrued and unpaid interest on, the Notes when the same shall become due and payable.

(c) Anything in this Section 4.04 to the contrary notwithstanding, the Company may, at any time, for the purpose of obtaining a satisfaction and discharge of this Indenture, or for any other reason, pay, cause to be paid or deliver to the Trustee all sums or amounts held in trust by the Company or any Paying Agent hereunder as required by this Section 4.04, such sums or amounts to be held by the Trustee upon the trusts herein contained and upon such payment or delivery by the Company or any Paying Agent to the Trustee, the Company or such Paying Agent shall be released from all further liability but only with respect to such sums or amounts.

(d) Subject to applicable escheatment laws, any money deposited with the Trustee, the Conversion Agent, or Paying Agent or any money and Common Shares held by the Company, in trust for the payment of the principal (including the Redemption Price and the Fundamental Change Repurchase Price, if applicable) of, accrued and unpaid interest on and the consideration due upon conversion of any Note and remaining unclaimed for two years after such principal (including the Redemption Price and the Fundamental Change Repurchase Price, if applicable), interest or consideration due upon conversion has become due and payable shall be paid to the Company on request of the Company contained in an Officer's Certificate, or (if then held by the Company) shall be discharged from such trust and the Trustee shall have no further liability with respect to such funds; and the Holder of such Note shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease.

Section 4.05 *Existence.* Subject to Article 11, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence.

Section 4.06 *Rule 144A Information Requirement and Annual Reports.* (a) At any time the Company is not subject to Section 13 or 15(d) of the Exchange Act, and not exempt from reporting pursuant to Rule 12g3-2(b) under the Exchange Act, the Company shall, so long as any of the Notes or any Common Shares issuable upon conversion thereof shall, at such time, constitute "restricted securities" within the meaning of Rule 144(a)(3) under the Securities Act, promptly provide to the

Trustee and, upon written request, any Holder, beneficial owner or prospective purchaser of such Notes or any Common Shares issuable upon conversion of such Notes, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act to facilitate the resale of such Notes or Common Shares pursuant to Rule 144A.

(b) The Company shall file with the Trustee, within 15 days after the same are required to be filed with the Commission or any CSA, copies of any financial statements, management discussion and analysis, annual information form, material change report and business acquisition report that the Company is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act or that the Company, as a “reporting issuer” under Canadian Securities Laws, is required to file with any CSA (including Management’s Discussion & Analysis, but excluding any such information, documents or reports, or portions thereof, subject to confidential treatment and any correspondence with the Commission or with any CSA, as the case may be, and giving effect to any grace period provided by Rule 12b-25 under the Exchange Act (or any successor rule or provided under applicable Canadian Securities Laws, as applicable). Any such document or report that the Company files with the Commission via the Commission’s EDGAR system (or any successor system) or with any CSA via SEDAR (or any successor system) shall be deemed to be filed with the Trustee for purposes of this Section 4.06(b) at the time such documents are filed via the EDGAR system or SEDAR system (or such respective successor). The Trustee will have no responsibility to determine whether such filings have been made.

(c) Delivery of the reports, information and documents described in subsection (b) above to the Trustee is for informational purposes only, and the information and the Trustee’s receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company’s compliance with any of its covenants hereunder (as to which the Trustee is entitled to conclusively rely on an Officer’s Certificate). The Trustee shall have no liability or responsibility for the filing, timeliness or content of any such reports.

Section 4.07 *Stay, Extension and Usury Laws.* The Company covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law or other law that would prohibit or forgive the Company from paying all or any portion of the principal of or interest on the Notes as contemplated herein, wherever enacted, now or at any time hereafter in force, or that may affect the covenants or the performance of this Indenture; and the Company (to the extent it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

Section 4.08 *Compliance Certificate; Statements of Defaults.* The Company shall deliver to the Trustee within 120 days after the end of each fiscal year (beginning with the fiscal year ending on May 31, 2019) an Officer’s Certificate stating whether the signers thereof have knowledge of any Event of Default that occurred during the previous year and, if so, specifying each such Event of Default and the nature thereof.

In addition, the Company shall deliver to the Trustee, as soon as reasonably practicable, and in any event within 30 days after obtaining knowledge of the occurrence of any Event of Default or Default, an Officer's Certificate setting forth the details of such Event of Default or Default, its status and the action that the Company is taking or proposing to take in respect thereof.

Section 4.09 *Registration Rights.* (a) The Company agrees that the Holders from time to time of Registrable Securities are entitled to the benefits of the Registration Rights Agreement.

(b) By its acceptance thereof, the Holder of Registrable Securities will have agreed to be bound by the terms of the Registration Rights Agreement relating to the Registrable Securities.

(c) Any Additional Interest payable pursuant to the Registration Rights Agreement will be in addition to, and not in lieu of, any Additional Interest that may be payable as a result of the Company's election pursuant to Section 6.03. Whenever Additional Interest is accruing on a Regular Record Date, the Company will pay all accrued and unpaid Additional Interest to the Holders of record on such Regular Record Date on the corresponding Interest Payment Date. If Additional Interest is not accruing on a Regular Record Date, but has accrued since the immediately preceding Regular Record Date, the Company shall pay any accrued and unpaid Additional Interest on the Interest Payment Date corresponding to the later Regular Record Date to Holders of record on such later Regular Record Date.

(d) Additional Interest will be payable in arrears on each Interest Payment Date following accrual in the same manner as regular interest on the Notes.

(e) If Additional Interest is payable by the Company pursuant to the Registration Rights Agreement, the Company shall, no later than three Business Days prior to the date on which any such Additional Interest is scheduled to be paid, deliver to the Trustee (with a copy to the Paying Agent) an Officer's Certificate to that effect stating (i) the amount of such Additional Interest that is payable, (ii) the date on which such Additional Interest is payable, (iii) a direction to the Paying Agent to make payment to the extent the Paying Agent receives funds from the Company to do so, and (iv) a notice to Holders detailing the Additional Interest that is payable and the date on which such payment is to be made. Unless and until a Responsible Officer of the Trustee and Paying Agent receives at the Corporate Trust Office such a certificate, the Trustee and Paying Agent may assume without inquiry that no such Additional Interest is payable. If the Company has paid Additional Interest directly to the Persons entitled to it, the Company shall deliver to the Trustee (with a copy to the Paying Agent) an Officer's Certificate setting forth the particulars of such payment.

Section 4.10 *Further Instruments and Acts.* Upon request of the Trustee or requisite Holders, the Company will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of this Indenture.

ARTICLE 5
LISTS OF HOLDERS AND REPORTS BY THE COMPANY AND THE TRUSTEE

Section 5.01 *Lists of Holders.* The Company covenants and agrees that it will furnish or cause to be furnished to the Trustee, semi-annually, not more than five days after each May 15 and November 15 of each year, beginning with November 15, 2019, and at such other times as the Trustee may request in writing, within 30 days after receipt by the Company of any such request (or such lesser time as the Trustee may reasonably request in order to enable it to timely provide any notice to be provided by it hereunder), a list in such form as the Trustee may reasonably require of the names and addresses of the Holders as of a date not more than 15 days (or such other date as the Trustee may reasonably request in order to so provide any such notices) prior to the time such information is furnished, except that no such list need be furnished so long as the Trustee is acting as Note Registrar.

Section 5.02 *Preservation and Disclosure of Lists.* The Trustee shall preserve, in as current a form as is reasonably practicable, all information as to the names and addresses of the Holders contained in the most recent list furnished to it as provided in Section 5.01 or maintained by the Trustee in its capacity as Note Registrar, if so acting, and shall otherwise comply with Section 312(a) of the Trust Indenture Act. The Trustee may destroy any list furnished to it as provided in Section 5.01 upon receipt of a new list so furnished.

ARTICLE 6
DEFAULTS AND REMEDIES

Section 6.01 *Events of Default.* Each of the following events shall be an “**Event of Default**” with respect to the Notes:

- (a) default in any payment of interest on any Note when due and payable, and the default continues for a period of 30 consecutive days;
- (b) default in the payment of principal of any Note when due and payable on the Maturity Date, upon any redemption, upon any required repurchase, upon declaration of acceleration or otherwise;
- (c) failure by the Company to comply with its obligation to convert the Notes in accordance with this Indenture upon exercise of a Holder’s conversion right and such failure continues for a period of three (3) Business Days;
- (d) failure by the Company to issue (i) a Fundamental Change Company Notice in accordance with Section 14.01(b), (ii) notice of a Make-Whole Fundamental Change in accordance with Section 13.03(b) or (iii) notice of a specified corporate event in accordance with Section 13.01(b)(ii) or Section 13.01(b)(iii), in each case when due;
- (e) failure by the Company to comply with its obligations under Article 11;

(f) failure by the Company for 60 days after written notice from the Trustee or the Holders of at least 25% in principal amount of the Notes then outstanding has been received by the Company to comply with any of its other agreements contained in the Notes or this Indenture;

(g) default by the Company or any Subsidiaries of the Company with respect to any mortgage, agreement or other instrument under which there may be outstanding, or by which there may be secured or evidenced, any indebtedness for money borrowed in excess of \$15,000,000 (or its foreign currency equivalent) in the aggregate of the Company and/or any such Subsidiary, whether such indebtedness now exists or shall hereafter be created (i) resulting in such indebtedness becoming or being declared due and payable prior to its stated maturity date or (ii) constituting a failure to pay the principal or interest of any such indebtedness when due and payable, at its stated maturity, upon required repurchase, upon declaration of acceleration or otherwise;

(h) a final judgment or judgments for the payment in excess of \$15,000,000 (or its foreign currency equivalent) (excluding any amounts covered by insurance) in the aggregate rendered against the Company or any Subsidiary of the Company, which judgment is not discharged, bonded, paid, waived or stayed within 60 days after (i) the date on which the right to appeal thereof has expired if no such appeal has commenced, or (ii) the date on which all rights to appeal have been extinguished;

(i) the Company or any Significant Subsidiary shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to the Company or any such Significant Subsidiary or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company or any such Significant Subsidiary or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due; or

(j) an involuntary case or other proceeding shall be commenced against the Company or any Significant Subsidiary seeking liquidation, reorganization or other relief with respect to the Company or such Significant Subsidiary or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company or such Significant Subsidiary or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of 30 consecutive days.

Section 6.02 *Acceleration; Rescission and Annulment.* If one or more Events of Default shall have occurred and be continuing (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body), then, and in each and every such case (other than an Event of Default specified in Section 6.01(i) or Section 6.01(j) with respect to the Company), unless the principal of all of the Notes shall have already become due and payable, either the Trustee or the Holders of at least 25% in aggregate principal amount of the Notes then outstanding determined in accordance with Section

8.04, by notice to the Company (and to the Trustee if given by Holders), may (and the Trustee, at the written request of such Holders, shall) declare 100% of the principal of, and accrued and unpaid interest on, all the Notes to be due and payable immediately, and upon any such declaration the same shall become and shall automatically be immediately due and payable, anything contained in this Indenture or in the Notes to the contrary notwithstanding. If an Event of Default specified in Section 6.01(i) or Section 6.01(j) with respect to the Company occurs and is continuing, 100% of the principal of, and accrued and unpaid interest, if any, on, all Notes shall become and shall automatically be immediately due and payable.

The immediately preceding paragraph, however, is subject to the conditions that if, at any time after the principal of the Notes shall have been so declared due and payable, and before any judgment or decree for the payment of the monies due shall have been obtained or entered as hereinafter provided, and if (1) rescission would not conflict with any judgment or decree of a court of competent jurisdiction and (2) any and all existing Events of Default under this Indenture, other than the nonpayment of the principal of and accrued and unpaid interest, if any, on Notes that shall have become due solely by such acceleration, shall have been cured or waived pursuant to Section 6.09, then and in every such case (except as provided in the immediately succeeding sentence) the Holders of a majority in aggregate principal amount of the Notes then outstanding, by notice to the Company and to the Trustee, may waive all Defaults or Events of Default with respect to the Notes and rescind and annul such declaration and its consequences and such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver or rescission and annulment shall extend to or shall affect any subsequent Default or Event of Default, or shall impair any right consequent thereon. Notwithstanding anything to the contrary herein, no such waiver or rescission and annulment shall extend to or shall affect any Default or Event of Default resulting from (i) the nonpayment of the principal (including the Redemption Price and the Fundamental Change Repurchase Price, if applicable) of, or accrued and unpaid interest on, any Notes, (ii) a failure to repurchase any Notes when required or (iii) a failure to pay or deliver, as the case may be, the consideration due upon conversion of the Notes.

Section 6.03 *Additional Interest.* Notwithstanding anything in this Indenture or in the Notes to the contrary, to the extent the Company elects, the sole remedy for an Event of Default relating to the Company's failure to comply with its obligations as set forth in Section 4.06(b) shall, for the first 180 days after the occurrence of such an Event of Default, consist exclusively of the right to receive Additional Interest on the Notes at a rate equal to 0.25% per annum of the principal amount of the Notes outstanding for each day during the first 90 days during which such Event of Default is continuing, beginning on, and including, the date on which such an Event of Default first occurs and 0.50% per annum of the principal amount of the Notes outstanding from the 91st day to, and including, the 180th day following the occurrence of an Event of Default, so long as such Event of Default is continuing. Additional Interest payable pursuant to this Section 6.03 shall be in addition to, not in lieu of, any Additional Interest payable pursuant to the Registration Rights Agreement. If the Company so elects, such Additional Interest shall be payable in the same manner and on the same dates as the stated interest payable on the Notes. On the 181st day after such Event of Default (if the Event of Default relating to the Company's reporting obligations is not cured or waived prior to such 181st day), the Notes shall be immediately subject to acceleration as provided in Section 6.02. The provisions of this paragraph will not affect the rights of Holders of Notes in the

event of the occurrence of any Event of Default other than the Company's failure to comply with its obligations as set forth in Section 4.06(b). In the event the Company does not elect to pay Additional Interest following an Event of Default in accordance with this Section 6.03 or the Company elected to make such payment but does not pay the Additional Interest when due, the Notes shall be immediately subject to acceleration as provided in Section 6.02.

In order to elect to pay Additional Interest as the sole remedy during the first 180 days after the occurrence of any Event of Default relating to the Company's failure to comply with its obligations as set forth in Section 4.06(b) in accordance with the immediately preceding paragraph, the Company must notify all Holders, the Trustee and the Paying Agent in writing of such election prior to the beginning of such 180-day period. Upon the failure to timely give such notice, the Notes shall be immediately subject to acceleration as provided in Section 6.02.

Section 6.04 *Payments of Notes on Default; Suit Therefor.* If an Event of Default described in clause (a) or (b) of Section 6.01 shall have occurred and be continuing, the Company shall, upon demand of the Trustee, pay to the Trustee, for the benefit of the Holders, the whole amount then due and payable on the Notes for principal and interest, if any, with interest on any overdue principal and interest, if any, at the rate borne by the Notes at such time and, in addition thereto, such further amount as shall be sufficient to cover any amounts due to the Trustee under Section 7.06. If the Company shall fail to pay such amounts forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid, may prosecute such proceeding to judgment or final decree and may enforce the same against the Company or any other obligor upon the Notes and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Company or any other obligor upon the Notes, wherever situated.

In the event there shall be pending proceedings for the bankruptcy or for the reorganization of the Company or any other obligor on the Notes under Title 11 of the United States Code, or any other applicable law, or in case a receiver, assignee or trustee in bankruptcy or reorganization, liquidator, sequestrator or similar official shall have been appointed for or taken possession of the Company or such other obligor, the property of the Company or such other obligor, or in the event of any other judicial proceedings relative to the Company or such other obligor upon the Notes, or to the creditors or property of the Company or such other obligor, the Trustee, irrespective of whether the principal of the Notes shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand pursuant to the provisions of this Section 6.04, shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount of principal and accrued and unpaid interest, if any, in respect of the Notes, and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents and to take such other actions as it may deem necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and of the Holders allowed in such judicial proceedings relative to the Company or any other obligor on the Notes, its or their creditors, or its or their property, and to collect and receive any monies or other property payable or deliverable on any such claims, and to distribute the same after the deduction of any amounts due to the Trustee under Section 7.06; and any receiver, assignee or trustee in bankruptcy or reorganization, liquidator, custodian or similar official is hereby

authorized by each of the Holders to make such payments to the Trustee, as administrative expenses, and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due it for reasonable compensation, expenses, advances and disbursements, including agents and counsel fees, and including any other amounts due to the Trustee under Section 7.06, incurred by it up to the date of such distribution. To the extent that such payment of reasonable compensation, expenses, advances and disbursements out of the estate in any such proceedings shall be denied for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, monies, securities and other property that the Holders may be entitled to receive in such proceedings, whether in liquidation or under any plan of reorganization or arrangement or otherwise.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting such Holder or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

All rights of action and of asserting claims under this Indenture, or under any of the Notes, may be enforced by the Trustee without the possession of any of the Notes, or the production thereof at any trial or other proceeding relative thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Holders.

In any proceedings brought by the Trustee (and in any proceedings involving the interpretation of any provision of this Indenture to which the Trustee shall be a party) the Trustee shall be held to represent all the Holders, and it shall not be necessary to make any Holders parties to any such proceedings.

In case the Trustee shall have proceeded to enforce any right under this Indenture and such proceedings shall have been discontinued or abandoned because of any waiver pursuant to Section 6.09 or any rescission and annulment pursuant to Section 6.02 or for any other reason or shall have been determined adversely to the Trustee, then and in every such case the Company, the Holders and the Trustee shall, subject to any determination in such proceeding, be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Company, the Holders and the Trustee shall continue as though no such proceeding had been instituted.

Section 6.05 *Application of Monies Collected by Trustee.* Any monies collected by the Trustee pursuant to this Article 6 with respect to the Notes shall be applied in the following order, at the date or dates fixed by the Trustee for the distribution of such monies, upon presentation of the several Notes, and stamping thereon the payment, if only partially paid, and upon surrender thereof, if fully paid:

First, to the payment of all amounts due the Trustee (acting in any capacity) hereunder;

Second, in case the principal of the outstanding Notes shall not have become due and be unpaid, to the payment of interest on, and any cash due upon conversion of, the Notes in default in

the order of the date due of the payments of such interest and cash due upon conversion, as the case may be, with interest (to the extent that such interest has been collected by the Trustee) upon such overdue payments at the rate borne by the Notes at such time, such payments to be made ratably to the Persons entitled thereto;

Third, in case the principal of the outstanding Notes shall have become due, by declaration or otherwise, and be unpaid to the payment of the whole amount (including, if applicable, the payment of the Redemption Price and the Fundamental Change Repurchase Price and any cash due upon conversion) then owing and unpaid upon the Notes for principal and interest, if any, with interest on the overdue principal and, to the extent that such interest has been collected by the Trustee, upon overdue installments of interest at the rate borne by the Notes at such time, and in case such monies shall be insufficient to pay in full the whole amounts so due and unpaid upon the Notes, then to the payment of such principal (including, if applicable, the Redemption Price and the Fundamental Change Repurchase Price and any cash due upon conversion) and interest without preference or priority of principal over interest, or of interest over principal or of any installment of interest over any other installment of interest, or of any Note over any other Note, ratably to the aggregate of such principal (including, if applicable, the Redemption Price and the Fundamental Change Repurchase Price and any cash due upon conversion) and accrued and unpaid interest; and

Fourth, to the payment of the remainder, if any, to the Company.

Section 6.06 *Proceedings by Holders.* Except to enforce the right to receive payment of principal (including, if applicable, the Redemption Price and the Fundamental Change Repurchase Price) or interest when due, or the right to receive payment or delivery of the consideration due upon conversion, no Holder of any Note shall have any right by virtue of or by availing of any provision of this Indenture or the Notes to institute any suit, action or proceeding in equity or at law upon or under or with respect to this Indenture, or for the appointment of a receiver, trustee, liquidator, custodian or other similar official, or for any other remedy hereunder, unless:

- (a) such Holder previously shall have given to the Trustee written notice of an Event of Default and of the continuance thereof, as herein provided;
- (b) Holders of at least 25% in aggregate principal amount of the Notes then outstanding shall have made written request upon the Trustee to institute such action, suit or proceeding in its own name as Trustee hereunder;
- (c) such Holders shall have offered to the Trustee such security and/or indemnity satisfactory to it against any loss, liability or expense to be incurred therein or thereby (including the Trustee's legal costs and expenses);
- (d) the Trustee for 60 days after its receipt of such notice, request and offer of such security or indemnity, shall have neglected or refused to institute any such action, suit or proceeding; and

(e) no direction that, in the opinion of the Trustee, is inconsistent with such written request shall have been given to the Trustee by the Holders of a majority of the aggregate principal amount of the Notes then outstanding within such 60-day period pursuant to Section 6.09,

it being understood and intended, and being expressly covenanted by the taker and Holder of every Note with every other taker and Holder and the Trustee that no one or more Holders shall have any right in any manner whatever by virtue of or by availing of any provision of this Indenture to affect, disturb or prejudice the rights of any other Holder (it being understood that the Trustee shall not have an affirmative duty to ascertain whether or not any such direction would prejudice the rights of any Holder), or to obtain or seek to obtain priority over or preference to any other such Holder, or to enforce any right under this Indenture, except in the manner herein provided and for the equal, ratable and common benefit of all Holders (except as otherwise provided herein). For the protection and enforcement of this Section 6.06, each and every Holder and the Trustee shall be entitled to such relief as can be given either at law or in equity.

Notwithstanding any other provision of this Indenture and any provision of any Note, each Holder shall have the right to institute suit for the enforcement of its right to receive payment or delivery, as the case may be, of (x) the principal (including the Redemption Price and the Fundamental Change Repurchase Price, if applicable) of, (y) accrued and unpaid interest, if any, on, and (z) the consideration due upon conversion of, such Note, on or after the respective due dates expressed or provided for in such Note or in this Indenture, or to institute suit for the enforcement of any such payment or delivery, as the case may be, and such right to receive such payment or delivery, as the case may be, on or after such respective dates shall not be impaired or affected without the consent of such Holder.

Section 6.07 *Proceedings by Trustee.* In case of an Event of Default, the Trustee may in its discretion proceed to protect and enforce the rights vested in it by this Indenture by such appropriate judicial proceedings as are necessary to protect and enforce any of such rights, either by suit in equity or by action at law or by proceeding in bankruptcy or otherwise, whether for the specific enforcement of any covenant or agreement contained in this Indenture or in aid of the exercise of any power granted in this Indenture, or to enforce any other legal or equitable right vested in the Trustee by this Indenture or by law.

Section 6.08 *Remedies Cumulative and Continuing.* Except as provided in the last paragraph of Section 2.06, all powers and remedies given by this Article 6 to the Trustee or to the Holders shall, to the extent permitted by law, be deemed cumulative and not exclusive of any thereof or of any other powers and remedies available to the Trustee or the Holders, by judicial proceedings or otherwise, to enforce the performance or observance of the covenants and agreements contained in this Indenture, and no delay or omission of the Trustee or of any Holder of any of the Notes to exercise any right or power accruing upon any Default or Event of Default shall impair any such right or power, or shall be construed to be a waiver of any such Default or Event of Default or any acquiescence therein; and, subject to the provisions of Section 6.06, every power and remedy given by this Article 6 or by law to the Trustee or to the Holders may be exercised from time to time, and as often as shall be deemed expedient, by the Trustee or by the Holders.

Section 6.09 *Direction of Proceedings and Waiver of Defaults by Majority of Holders.* The Holders of a majority of the aggregate principal amount of the Notes at the time outstanding determined in accordance with Section 8.04 shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee with respect to the Notes; provided, however, that such direction shall not be in conflict with any rule of law or with this Indenture, and the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction. The Trustee may refuse to follow any direction, subject to the Trustee's duties under the Trust Indenture Act, that it determines is unduly prejudicial to the rights of any other Holder or that would involve the Trustee in personal liability (it being understood that the Trustee shall not have an affirmative duty to ascertain whether or not any such direction would prejudice any Holder). The Holders of a majority in aggregate principal amount of the Notes at the time outstanding determined in accordance with Section 8.04 may on behalf of the Holders of all of the Notes waive any past Default or Event of Default hereunder and its consequences except (i) a default in the payment of accrued and unpaid interest, if any, on, or the principal (including any Redemption Price and any Fundamental Change Repurchase Price) of, the Notes when due that has not been cured pursuant to the provisions of Section 6.01, (ii) a failure by the Company to pay or deliver, as the case may be, the consideration due upon conversion of the Notes or (iii) a default in respect of a covenant or provision hereof which under Article 10 cannot be modified or amended without the consent of each Holder of an outstanding Note affected. Upon any such waiver the Company, the Trustee and the Holders shall be restored to their former positions and rights hereunder; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon. Whenever any Default or Event of Default hereunder shall have been waived as permitted by this Section 6.09, said Default or Event of Default shall for all purposes of the Notes and this Indenture be deemed to have been cured and to be not continuing; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon.

Section 6.10 *Notice of Defaults.* The Trustee shall, within 90 days after the occurrence and continuance of a Default of which a Responsible Officer has actual knowledge, deliver to all Holders notice of all Defaults actually known to a Responsible Officer in the manner and to the extent provided in Section 313(c) of the Trust Indenture Act, unless such Defaults shall have been cured or waived before the giving of such notice; provided that, except in the case of a Default in the payment of the principal of (including the Redemption Price and the Fundamental Change Repurchase Price, if applicable), or accrued and unpaid interest on, any of the Notes or a Default in the payment or delivery of the consideration due upon conversion, the Trustee shall be protected in withholding such notice if and so long as the Trustee determines in good faith that the withholding of such notice is in the interests of the Holders.

Section 6.11 *Undertaking to Pay Costs.* All parties to this Indenture agree, and each Holder of any Note by its acceptance thereof shall be deemed to have agreed, that any court may, in its discretion, require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; provided that the provisions of this Section 6.11 (to the extent permitted

by law) shall not apply to any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% in principal amount of the Notes at the time outstanding determined in accordance with Section 8.04, or to any suit instituted by any Holder for the enforcement of the payment of the principal of or accrued and unpaid interest, if any, on any Note (including, but not limited to, the Redemption Price and the Fundamental Change Repurchase Price, if applicable) on or after the due date expressed or provided for in such Note or to any suit for the enforcement of the right to convert any Note, or receive the consideration due upon conversion, in accordance with the provisions of Article 13.

ARTICLE 7
CONCERNING THE TRUSTEE

Section 7.01 *Duties and Responsibilities of Trustee.* The Trustee, prior to the occurrence of an Event of Default and after the curing or waiver of all Events of Default that may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. In the event an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs; provided that subject to the provisions of this Article 7, if an Event of Default occurs and is continuing, the Trustee will be under no obligation to exercise any of the rights or powers under this Indenture at the written request or direction of any of the Holders unless such Holders have offered to the Trustee indemnity or security satisfactory to it against any loss, liability or expense (including the reasonable costs of the Trustee's legal counsel) that might be incurred by it in compliance with such written request or direction.

No provision of this Indenture shall be construed to relieve the Trustee from liability for its own grossly negligent action, its own gross negligence or willful misconduct, except that:

(a) prior to the occurrence of an Event of Default and after the curing or waiving of all Events of Default that may have occurred:

(i) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Indenture, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of gross negligence or willful misconduct on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but, in the case of any such certificates or opinions that by any provisions hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of any mathematical calculations or other facts stated therein), provided, however, that the Trustee need not act or refrain from acting based on any certificate or opinion that it determines to be not in conformity with the requirements of this Indenture. If

presented with a non-conforming certificate or opinion, the Trustee may request the delivering party to re-issue the certificate or opinion in the manner required by this Indenture before taking any action;

(b) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer or Officers of the Trustee unless it shall be proved in a court that the Trustee was grossly negligent in ascertaining the pertinent facts;

(c) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the written direction of the Holders of not less than a majority of the aggregate principal amount of the Notes at the time outstanding determined as provided in Section 8.04 relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture;

(d) whether or not therein provided, every provision 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;

(e) the Trustee shall not be liable in respect of any payment (as to the correctness of amount, entitlement to receive or any other matters relating to payment) or notice effected by the Company or any Paying Agent or any records maintained by any co-Note Registrar with respect to the Notes;

(f) if any party fails to deliver a notice relating to an event the fact of which, pursuant to this Indenture, requires notice to be sent to the Trustee, the Trustee may conclusively rely on its failure to receive such notice as reason to act as if no such event occurred, unless a Responsible Officer of the Trustee had actual knowledge of such event;

(g) in the absence of written investment direction from the Company, all cash received by the Trustee shall be placed in a non-interest bearing trust account, and in no event shall the Trustee be liable for the selection of investments or for investment losses incurred thereon or for losses incurred as a result of the liquidation of any such investment prior to its maturity date or the failure of the party directing such investments prior to its maturity date or the failure of the party directing such investment to provide timely written investment direction, and the Trustee shall have no obligation to invest or reinvest any amounts held hereunder in the absence of such written investment direction from the Company; and

(h) in the event that the Trustee is also acting as Custodian, Note Registrar, Paying Agent, Conversion Agent, Bid Solicitation Agent or transfer agent hereunder, the rights and protections afforded to the Trustee pursuant to this Article 7 shall also be afforded to such Custodian, Note Registrar, Paying Agent, Conversion Agent, Bid Solicitation Agent or transfer agent.

None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers.

Section 7.02 *Reliance on Documents, Opinions, Etc.* Except as otherwise provided in Section 7.01:

(a) the Trustee may conclusively rely and (subject to Sections 315(a) through 315(d) of the Trust Indenture Act) shall be fully protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, note, coupon or other paper or document believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties;

(b) any request, direction, order or demand of the Company mentioned herein shall be sufficiently evidenced by an Officer's Certificate (unless other evidence in respect thereof be herein specifically prescribed); and any Board Resolution may be evidenced to the Trustee by a copy thereof certified by the Secretary or an Assistant Secretary of the Company;

(c) the Trustee may consult with counsel and require an Opinion of Counsel and any advice of such counsel or Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken or omitted by it hereunder in good faith and in accordance with such advice or Opinion of Counsel;

(d) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney at the expense of the Company and shall incur no liability of any kind by reason of such inquiry or investigation;

(e) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, custodians, nominees or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent, custodian, nominee or attorney appointed by it with due care hereunder; and

(f) the permissive rights of the Trustee enumerated herein shall not be construed as duties;

(g) the Trustee shall not be required to give any bond or surety in respect of the performance of its powers and duties hereunder;

(h) the Trustee may request that the Company deliver a certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture;

(i) [reserved];

(j) the Trustee shall not be responsible or liable for any action it takes or omits to take in good faith which it reasonably believes to be authorized or within its rights or powers; and

neither the Trustee nor any of its directors, officers, employees, agents or affiliates shall be responsible for nor have any duty to monitor the performance or any action of the Company, or any of its directors, members, officers, agents, affiliates or employees, nor shall it have any liability in connection with the malfeasance or nonfeasance by any such party. The Trustee shall not be responsible for any inaccuracy or omission in the information obtained from the Company or for any inaccuracy or omission in the records that may result from such information or any failure by the Trustee to perform its duties as set forth herein as a result of any such inaccuracy or incompleteness. In no event shall the Trustee be liable for any consequential, punitive, special or indirect loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action. The Trustee shall not be charged with knowledge of any Default or Event of Default with respect to the Notes, unless either (1) a Responsible Officer shall have actual knowledge of such Default or Event of Default or (2) written notice of such Default or Event of Default shall have been given to a Responsible Officer of the Trustee by the Company or by any Holder of the Notes at the Corporate Trust Office of the Trustee, and such notice references the Notes and/or this Indenture and states that it is a notice of Default or Event of Default.

Section 7.03 *No Responsibility for Recitals, Etc.* The recitals contained herein and in the Notes (except in the Trustee's certificate of authentication) shall be taken as the statements of the Company, and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Notes. The Trustee shall not be accountable for the use or application by the Company of any Notes or the proceeds of any Notes authenticated and delivered by the Trustee in conformity with the provisions of this Indenture or any money paid to the Company or upon the Company's direction under any provision of this Indenture.

Section 7.04 *Trustee, Paying Agents, Conversion Agents, Bid Solicitation Agent or Note Registrar May Own Notes.* The Trustee, any Paying Agent, any Conversion Agent, Bid Solicitation Agent (if other than the Company or any Affiliate thereof) or Note Registrar, in its individual or any other capacity, may become the owner or pledgee of Notes with the same rights it would have if it were not the Trustee, Paying Agent, Conversion Agent, Bid Solicitation Agent or Note Registrar.

Section 7.05 *Monies and Common Shares to Be Held in Trust.* All monies and Common Shares received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received. Money and Common Shares held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money or Common Shares received by it hereunder except as may be agreed from time to time by the Company and the Trustee.

Section 7.06 *Compensation and Expenses of Trustee.* The Company covenants and agrees to pay to the Trustee, in any capacity under this Indenture, from time to time, and the Trustee shall be entitled to, reasonable compensation for all services rendered by it hereunder in any capacity (which shall not be limited by any provision of law in regard to the compensation of a trustee of an

express trust) as mutually agreed to in writing between the Trustee and the Company, and the Company will pay or reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances reasonably incurred or made by the Trustee in accordance with any of the provisions of this Indenture in any capacity thereunder (including the reasonable compensation and the expenses and disbursements of its agents and counsel and of all Persons not regularly in its employ and including reasonable attorneys' fees in connection with its enforcement of its rights to indemnity herein) except any such expense, disbursement or advance as shall have been caused by its gross negligence or willful misconduct, as determined by a final, non-appealable decision of a court of competent jurisdiction. The Company also covenants to indemnify the Trustee in any capacity under this Indenture and any other document or transaction entered into in connection herewith and its officers, directors, attorneys, employees and agents and any authenticating agent for, and to hold them harmless against, any loss, claim (whether asserted by the Company, a Holder or any other Person), damage, liability or expense (including reasonable attorneys' fees) incurred without gross negligence or willful misconduct on the part of the Trustee, its officers, directors, agents or employees, or such agent or authenticating agent, as the case may be as determined by a final, non-appealable decision of a court of competent jurisdiction, and arising out of or in connection with the acceptance or administration of this Indenture or in any other capacity hereunder, including the costs and expenses of defending themselves against any claim of liability in the premises. The obligations of the Company under this Section 7.06 to compensate or indemnify the Trustee and to pay or reimburse the Trustee for expenses, disbursements and advances shall be secured by a senior claim to which the Notes are hereby made subordinate on all money or property held or collected by the Trustee, except, subject to the effect of Section 6.05, funds held in trust herewith for the benefit of the Holders of particular Notes. The Trustee's right to receive payment of any amounts due under this Section 7.06 shall not be subordinate to any other liability or indebtedness of the Company. The obligation of the Company under this Section 7.06, and this Article 7 generally, shall survive the satisfaction and discharge of this Indenture, the payment of the Notes, and the earlier resignation or removal of the Trustee. The Company need not pay for any settlement made without its consent, which consent shall not be unreasonably withheld. The indemnification provided in this Section 7.06 shall extend to the officers, directors, agents and employees of the Trustee.

Without prejudice to any other rights available to the Trustee under applicable law, when the Trustee and its agents and any authenticating agent incur expenses or render services after an Event of Default specified in Section 6.01(i) or Section 6.01(j) occurs, the expenses and the compensation for the services are intended to constitute expenses of administration under any bankruptcy, insolvency or similar laws.

Section 7.07 *Officer's Certificate as Evidence.* Except as otherwise provided in Section 7.01, whenever in the administration of the provisions of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of gross negligence or willful misconduct, recklessness and bad faith on the part of the Trustee, be deemed to be conclusively proved and established by an Officer's Certificate delivered to the Trustee, and such Officer's Certificate, in the absence of gross negligence or willful misconduct, recklessness and bad faith on the part of the Trustee, shall be full warrant to the Trustee for any action taken or omitted by it under the provisions of this Indenture upon the faith thereof.

Section 7.08 *Eligibility of Trustee.* (a) There shall at all times be a Trustee hereunder which shall be a Person that is eligible pursuant to the Trust Indenture Act (as if the Trust Indenture Act were applicable hereto) to act as such and has a combined capital and surplus of at least the minimum amount required by the Trust Indenture Act. If such Person publishes reports of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

Section 7.09 *Resignation or Removal of Trustee.* (a) The Trustee may at any time resign by giving written notice of such resignation to the Company and by delivering notice thereof to the Holders. Upon receiving such notice of resignation, the Company shall promptly appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the resigning Trustee and one copy to the successor trustee. If no successor trustee shall have been so appointed and have accepted appointment within 60 days after the giving of such notice of resignation to the Holders, the resigning Trustee may, at the expense of the Company, upon ten Business Days' notice to the Company and the Holders, petition any court of competent jurisdiction for the appointment of a successor trustee, or any Holder who has been a bona fide holder of a Note or Notes for at least six months (or since the date of this Indenture) may, subject to the provisions of Section 6.11, on behalf of himself or herself and all others similarly situated, petition any such court for the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

(b) In case at any time any of the following shall occur:

(i) the Trustee shall cease to be eligible in accordance with the provisions of Section 7.08 and shall fail to resign after written request therefor by the Company or by any such Holder, or

(ii) 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 either case, the Company may by a Board Resolution remove the Trustee and appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor trustee, or, subject to the provisions of Section 6.11, any Holder who has been a bona fide holder of a Note or Notes for at least six months (or since the date of this Indenture) may, on behalf of himself or herself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee.

(c) The Holders of a majority in aggregate principal amount of the Notes at the time outstanding, as determined in accordance with Section 8.04, may at any time remove the Trustee and nominate a successor trustee that shall be deemed appointed as successor trustee unless within ten days after notice to the Company of such nomination the Company objects thereto, in which case the Trustee so removed or any Holder, upon the terms and conditions and otherwise as in Section 7.09(a) provided, may petition any court of competent jurisdiction for an appointment of a successor trustee.

(d) Any resignation or removal of the Trustee and appointment of a successor trustee pursuant to any of the provisions of this Section 7.09 shall become effective upon acceptance of appointment by the successor trustee as provided in Section 7.10.

(e) The resigning Trustee shall not be responsible or liable for the actions or inactions of any successor Trustee.

Section 7.10 *Acceptance by Successor Trustee.* Any successor trustee appointed as provided in Section 7.09 shall execute, acknowledge and deliver to the Company and to its predecessor trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor hereunder, with like effect as if originally named as Trustee herein; but, nevertheless, on the written request of the Company or of the successor trustee, the trustee ceasing to act shall, upon payment of any amounts then due it pursuant to the provisions of Section 7.06, execute and deliver an instrument transferring to such successor trustee all the rights and powers of the trustee so ceasing to act. Upon request of any such successor trustee, the Company shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such rights and powers. Any trustee ceasing to act shall, nevertheless, retain a senior claim to which the Notes are hereby made subordinate on all money or property held or collected by such trustee as such, except for funds held in trust for the benefit of Holders of particular Notes, to secure any amounts then due it pursuant to the provisions of Section 7.06.

No successor trustee shall accept appointment as provided in this Section 7.10 unless at the time of such acceptance such successor trustee shall be eligible under the provisions of Section 7.08.

Upon acceptance of appointment by a successor trustee as provided in this Section 7.10, each of the Company and the successor trustee, at the written direction and at the expense of the Company shall deliver or cause to be delivered notice of the succession of such trustee hereunder to the Holders. If the Company fails to deliver such notice within ten days after acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be delivered at the expense of the Company.

Section 7.11 *Succession by Merger, Etc.* Any corporation or other entity into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation or other entity resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation or other entity succeeding to all or substantially all of the corporate trust

business of the Trustee (including the administration of this Indenture), shall be the successor to the Trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto; provided that in the case of any corporation or other entity succeeding to all or substantially all of the corporate trust business of the Trustee such corporation or other entity shall be eligible under the provisions of Section 7.08.

In case at the time such successor to the Trustee shall succeed to the trusts created by this Indenture, any of the Notes shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor trustee or authenticating agent appointed by such predecessor trustee, and deliver such Notes so authenticated; and in case at that time any of the Notes shall not have been authenticated, any successor to the Trustee or an authenticating agent appointed by such successor trustee may authenticate such Notes either in the name of any predecessor trustee hereunder or in the name of the successor trustee; and in all such cases such certificates shall have the full force which it is anywhere in the Notes or in this Indenture provided that the certificate of the Trustee shall have; *provided, however*, that the right to adopt the certificate of authentication of any predecessor trustee or to authenticate Notes in the name of any predecessor trustee shall apply only to its successor or successors by merger, conversion or consolidation.

Section 7.12 *Trustee's Application for Instructions from the Company.* Any application by the Trustee for written instructions from the Company (other than with regard to any action proposed to be taken or omitted to be taken by the Trustee that affects the rights of the Holders of the Notes under this Indenture) may, at the option of the Trustee, set forth in writing any action proposed to be taken or omitted by the Trustee under this Indenture and the date on and/or after which such action shall be taken or such omission shall be effective. The Trustee shall not be liable to the Company for any action taken by, or omission of, the Trustee in accordance with a proposal included in such application on or after the date specified in such application (which date shall not be less than three Business Days after the date any officer that the Company has indicated to the Trustee should receive such application actually receives such application, unless any such officer shall have consented in writing to any earlier date), unless, prior to taking any such action (or the effective date in the case of any omission), the Trustee shall have received written instructions in accordance with this Indenture in response to such application specifying the action to be taken or omitted.

Section 7.13 *Reports by the Trustee.* If required by Section 313(a) of the Trust Indenture Act, the Trustee, within sixty (60) days after each November 15, commencing November 15, 2019, shall, as applicable, deliver through the Depository or transmit by mail, first class postage prepaid, to the Holders, as their names and addresses appear upon the Note Register, a brief report dated as of such November 15, which complies with Section 313(a) of the Trust Indenture Act. The Trustee shall comply with Section 313(b) and 313(c) of the Trust Indenture Act. A copy of each such report shall, at the time of such transmission to Holders, be filed by the Trustee with the Company, with each securities exchange upon which any Notes are listed (if so listed) and also with the Commission. The Company agrees to promptly notify the Trustee in writing when any Notes become listed on any securities exchanges and of any delisting thereof.

Section 7.14 *Disqualification; Conflicting Interests.* If the Trustee has or shall acquire any "conflicting interest" within the meaning of Section 310(b) of the Trust Indenture Act, the Trustee

and the Company shall in all respects comply with the provisions of Section 310(b) of the Trust Indenture Act.

Section 7.15 *Preferential Collection of Claims Against the Company.* The Trustee shall comply with Section 311(a) of the Trust Indenture Act, excluding any creditor relationship described in Section 311(b) of the Trust Indenture Act. A Trustee who has resigned or been removed shall be subject to Section 311(a) of the Trust Indenture Act to the extent included therein.

ARTICLE 8 CONCERNING THE HOLDERS

Section 8.01 *Action by Holders.* Whenever in this Indenture it is provided that the Holders of a specified percentage of the aggregate principal amount of the Notes may take any action (including the making of any demand or request, the giving of any notice, consent or waiver or the taking of any other action), the fact that at the time of taking any such action, the Holders of such specified percentage have joined therein may be evidenced by any instrument or any number of instruments of similar tenor executed by Holders in person or by agent or proxy appointed in writing, or by the record of the Holders voting in favor thereof at any meeting of Holders duly called and held in accordance with the provisions of Article 9, or by a combination of such instrument or instruments and any such record of such a meeting of Holders. Whenever the Company or the Trustee solicits the taking of any action by the Holders, the Company or the Trustee may, but shall not be required to, fix in advance of such solicitation, a date as the record date for determining Holders entitled to take such action. The record date if one is selected shall be not more than fifteen days prior to the date of commencement of solicitation of such action.

Section 8.02 *Proof of Execution by Holders.* Subject to the provisions of Section 7.01, Section 7.02 and Section 9.05, proof of the execution of any instrument by a Holder or its agent or proxy shall be sufficient if made in accordance with such reasonable rules and regulations as may be prescribed by the Trustee or in such manner as shall be satisfactory to the Trustee. The holding of Notes shall be proved by the Note Register or by a certificate of the Note Registrar. The record of any Holders' meeting shall be proved in the manner provided in Section 9.06.

Section 8.03 *Who Are Deemed Absolute Owners.* The Company, the Trustee, any authenticating agent, any Paying Agent, any Conversion Agent and any Note Registrar may deem the Person in whose name a Note shall be registered upon the Note Register to be, and may treat it as, the absolute owner of such Note (whether or not such Note shall be overdue and notwithstanding any notation of ownership or other writing thereon made by any Person other than the Company or any Note Registrar) for the purpose of receiving payment of or on account of the principal (including any Redemption Price and any Fundamental Change Repurchase Price) of and (subject to Section 2.03) accrued and unpaid interest on such Note, for conversion of such Note and for all other purposes; and neither the Company nor the Trustee nor any Paying Agent nor any Conversion Agent nor any Note Registrar shall be affected by any notice to the contrary. The sole registered holder of a Global Note shall be the Depositary or its nominee. All such payments or deliveries so made to any Holder for the time being, or upon its order, shall be valid, and, to the extent of the sums or Common

Shares so paid or delivered, effectual to satisfy and discharge the liability for monies payable or shares deliverable upon any such Note. Notwithstanding anything to the contrary in this Indenture or the Notes following an Event of Default, any holder of a beneficial interest in a Global Note may directly enforce against the Company, without the consent, solicitation, proxy, authorization or any other action of the Depositary or any other Person, such holder's right to exchange such beneficial interest for a Note in certificated form in accordance with the provisions of this Indenture.

Section 8.04 *Company-Owned Notes Disregarded.* In determining whether the Holders of the requisite aggregate principal amount of Notes have concurred in any direction, consent, waiver or other action under this Indenture, Notes that are owned by the Company, by any Subsidiary thereof or by any Affiliate of the Company or any Subsidiary thereof shall be disregarded and deemed not to be outstanding for the purpose of any such determination; provided that for the purposes of determining whether the Trustee shall be protected in conclusively relying on any such direction, consent, waiver or other action only Notes that a Responsible Officer actually knows are so owned shall be so disregarded. Notes so owned that have been pledged in good faith may be regarded as outstanding for the purposes of this Section 8.04 if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to so act with respect to such Notes and that the pledgee is not the Company, a Subsidiary thereof or an Affiliate of the Company or a Subsidiary thereof. In the case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel shall be full protection to the Trustee. Upon request of the Trustee, the Company shall furnish to the Trustee promptly an Officer's Certificate listing and identifying all Notes, if any, known by the Company to be owned or held by or for the account of any of the above described Persons; and, subject to Section 7.01, the Trustee shall be entitled to accept such Officer's Certificate as conclusive evidence of the facts therein set forth and of the fact that all Notes not listed therein are outstanding for the purpose of any such determination.

Section 8.05 *Revocation of Consents; Future Holders Bound.* At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 8.01, of the taking of any action by the Holders of the percentage of the aggregate principal amount of the Notes specified in this Indenture in connection with such action, any Holder of a Note that is shown by the evidence to be included in the Notes the Holders of which have consented to such action may, by filing written notice with the Trustee at its Corporate Trust Office and upon proof of holding as provided in Section 8.02, revoke such action so far as concerns such Note. Except as aforesaid, any such action taken by the Holder of any Note shall be conclusive and binding upon such Holder and upon all future Holders and owners of such Note and of any Notes issued in exchange or substitution therefor or upon registration of transfer thereof, irrespective of whether any notation in regard thereto is made upon such Note or any Note issued in exchange or substitution therefor or upon registration of transfer thereof.

ARTICLE 9 HOLDERS' MEETINGS

Section 9.01 *Purpose of Meetings.* A meeting of Holders may be called at any time and from time to time pursuant to the provisions of this Article 9 for any of the following purposes:

(a) to give any notice to the Company or to the Trustee or to give any directions to the Trustee permitted under this Indenture, or to consent to the waiving of any Default or Event of

Default hereunder (in each case, as permitted under this Indenture) and its consequences, or to take any other action authorized to be taken by Holders pursuant to any of the provisions of Article 6;

(b) to remove the Trustee and nominate a successor trustee pursuant to the provisions of Article 7;

(c) to consent to the execution of an indenture or indentures supplemental hereto pursuant to the provisions of Section 10.02; or

(d) to take any other action authorized to be taken by or on behalf of the Holders of any specified aggregate principal amount of the Notes under any other provision of this Indenture or under applicable law.

Section 9.02 *Call of Meetings by Trustee.* The Trustee may at any time call a meeting of Holders to take any action specified in Section 9.01, to be held at such time and at such place as the Trustee shall determine. Notice of every meeting of the Holders, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting and the establishment of any record date pursuant to Section 8.01, shall be delivered to Holders of such Notes. Such notice shall also be delivered to the Company. Such notices shall be delivered not less than 20 nor more than 90 days prior to the date fixed for the meeting.

Any meeting of Holders shall be valid without notice if the Holders of all Notes then outstanding are present in person or by proxy or if notice is waived before or after the meeting by the Holders of all Notes then outstanding, and if the Company and the Trustee are either present by duly authorized representatives or have, before or after the meeting, waived notice.

Section 9.03 *Call of Meetings by Company or Holders.* In case at any time the Company, pursuant to a Board Resolution, or the Holders of at least 10% of the aggregate principal amount of the Notes then outstanding, shall have requested the Trustee to call a meeting of Holders, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have delivered the notice of such meeting within 20 days after receipt of such request, then the Company or such Holders may determine the time and the place for such meeting and may call such meeting to take any action authorized in Section 9.01, by delivering notice thereof as provided in Section 9.02.

Section 9.04 *Qualifications for Voting.* To be entitled to vote at any meeting of Holders a Person shall be a Holder of one or more Notes on the record date pertaining to such meeting or be a Person appointed by an instrument in writing as proxy by a Holder of one or more Notes on the record date pertaining to such meeting. The only Persons who shall be entitled to be present or to speak at any meeting of Holders shall be the Persons entitled to vote at such meeting and their counsel and any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

Section 9.05 *Regulations.* Notwithstanding any other provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Holders, in regard to proof of the holding of Notes and of the appointment of proxies, and in regard to the

appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall think fit.

The Trustee shall, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Company or by Holders as provided in Section 9.03, in which case the Company or the Holders calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by vote of the Holders of a majority in aggregate principal amount of the outstanding Notes represented at the meeting and entitled to vote at the meeting.

Subject to the provisions of Section 8.04, at any meeting of Holders each Holder or proxyholder shall be entitled to one vote for each \$1,000 principal amount of Notes held or represented by him or her; *provided, however*, that no vote shall be cast or counted at any meeting in respect of any Note challenged as not outstanding and ruled by the chairman of the meeting to be not outstanding. The chairman of the meeting shall have no right to vote other than by virtue of Notes held by it or instruments in writing as aforesaid duly designating it as the proxy to vote on behalf of other Holders. Any meeting of Holders duly called pursuant to the provisions of Section 9.02 or Section 9.03 may be adjourned from time to time by the Holders of a majority of the aggregate principal amount of Notes represented at the meeting, whether or not constituting a quorum, and the meeting may be held as so adjourned without further notice.

Section 9.06 *Voting.* The vote upon any resolution submitted to any meeting of Holders shall be by written ballot on which shall be subscribed the signatures of the Holders or of their representatives by proxy and the outstanding aggregate principal amount of the Notes held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record in duplicate of the proceedings of each meeting of Holders shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more Persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was delivered as provided in Section 9.02. The record shall show the aggregate principal amount of the Notes voting in favor of or against any resolution. The record shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one of the duplicates shall be delivered to the Company and the other to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting.

Any record so signed and verified shall be conclusive evidence of the matters therein stated.

Section 9.07 *No Delay of Rights by Meeting.* Nothing contained in this Article 9 shall be deemed or construed to authorize or permit, by reason of any call of a meeting of Holders or any rights expressly or impliedly conferred hereunder to make such call, any hindrance or delay in the exercise of any right or rights conferred upon or reserved to the Trustee or to the Holders under any of the provisions of this Indenture or of the Notes.

ARTICLE 10
SUPPLEMENTAL INDENTURES

Section 10.01 *Supplemental Indentures Without Consent of Holders.* Notwithstanding anything to the contrary in Section 10.02, the Company, when authorized by the resolutions of the Board of Directors and the Trustee, at the Company's expense, may from time to time and at any time enter into an indenture or indentures supplemental hereto (which shall conform to the provisions of the Trust Indenture Act, if applicable) for one or more of the following purposes:

- (a) to cure any ambiguity, omission, defect or inconsistency in this Indenture;
- (b) to provide for the assumption by a Successor Company of the obligations of the Company under this Indenture pursuant to Article 11;
- (c) to add guarantees with respect to the Notes;
- (d) to secure the Notes;
- (e) to add to the covenants or Events of Default of the Company for the benefit of the Holders or surrender any right or power conferred upon the Company under this Indenture;
- (f) to make any change that does not adversely affect the rights of any Holder;
- (g) increase the Conversion Rate as provided in this Indenture;
- (h) provide for the acceptance of appointment by a successor trustee or facilitate the administration of the trusts under this Indenture by more than one trustee;
- (i) in connection with any Share Exchange Event, to provide that the notes are convertible into Reference Property, subject to the provisions of Section 13.02, and make such related changes to the terms of the Notes to the extent expressly required, by Section 13.07;
- (j) comply with the rules of the Depositary, so long as such amendment does not materially adversely affect the rights of any Holder;
- (k) to conform the provisions of this Indenture or the Notes to the "Description of Notes" section of the Offering Memorandum (as provided for in an Officer's Certificate delivered by the Company to the Trustee); or
- (l) comply with any requirement of the Commission in connection with the qualification of this Indenture under the Trust Indenture Act.

Upon the written request of the Company, the Trustee is hereby authorized to join with the Company in the execution of any such supplemental indenture and to make any further appropriate agreements and stipulations that may be therein contained, but the Trustee shall not be obligated to, but may in its discretion, enter into any supplemental indenture that affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Any supplemental indenture authorized by the provisions of this Section 10.01 may be executed by the Company and the Trustee without the consent of the Holders of any of the Notes at the time outstanding, notwithstanding any of the provisions of Section 10.02.

Section 10.02 *Supplemental Indentures with Consent of Holders.* With the consent (evidenced as provided in Article 8) of the Holders of at least a majority of the aggregate principal amount of the Notes then outstanding (determined in accordance with Article 8 and including, without limitation, consents obtained in connection with a repurchase of, or tender or exchange offer for, the Notes), the Company, when authorized by the resolutions of the Board of Directors and the Trustee, at the Company's expense, may from time to time and at any time enter into an indenture or indentures supplemental hereto (which shall conform to the provisions of the Trust Indenture Act, if applicable) for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture, the Notes or any supplemental indenture or of modifying in any manner the rights of the Holders; provided, however, that, without the consent of each Holder of an outstanding Note affected, no such supplemental indenture shall:

- (a) reduce the principal amount of Notes whose Holders must consent to an amendment;
- (b) reduce the rate of or extend the stated time for payment of interest on any Note;
- (c) reduce the principal of or extend the Maturity Date of any Note;
- (d) make any change that adversely affects the conversion rights of any Notes;
- (e) reduce the Redemption Price or the Fundamental Change Repurchase Price of any Note or amend or modify in any manner adverse to the Holders the Company's obligation to make such payments, whether through an amendment or waiver of provisions in the covenants, definitions or otherwise;
- (f) make any Note payable in a currency, or at a place of payment, other than that stated in the Note;
- (g) change the ranking of the Notes;
- (h) impair the right of any Holder to receive payment of principal and interest on such Holder's Note on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such Holder's Notes; or
- (i) make any change in this Article 10 that requires each Holder's consent or in the waiver provisions in Section 6.02 or Section 6.09.

Upon the written request of the Company, and upon the filing with the Trustee of evidence of the consent of Holders as aforesaid and subject to Section 10.05, the Trustee shall join with the Company in the execution of such supplemental indenture unless such supplemental indenture affects the Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such supplemental indenture.

Holders do not need under this Section 10.02 to approve the particular form of any proposed supplemental indenture. It shall be sufficient if such Holders approve the substance thereof. After any supplemental indenture pursuant to Section 10.01 or this Section 10.02 becomes effective, the Company shall deliver to the Holders a notice briefly describing such supplemental indenture. However, the failure to give such notice to all the Holders, or any defect in the notice, will not impair or affect the validity of the supplemental indenture.

Section 10.03 *Effect of Supplemental Indentures.* Upon the execution of any supplemental indenture pursuant to the provisions of this Article 10, this Indenture shall be and be deemed to be modified and amended in accordance therewith and the respective rights, limitation of rights, obligations, duties and immunities under this Indenture of the Trustee, the Company and the Holders shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments and all the terms and conditions of any such supplemental indenture shall be and be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

Section 10.04 *Notation on Notes.* Notes authenticated and delivered after the execution of any supplemental indenture pursuant to the provisions of this Article 10 may, at the Company's expense, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company or the Trustee shall so determine, new Notes so modified as to conform, in the opinion of the Trustee and the Board of Directors, to any modification of this Indenture contained in any such supplemental indenture may, at the Company's expense, be prepared and executed by the Company, authenticated by the Trustee (or an authenticating agent duly appointed by the Trustee pursuant to Section 16.10) and delivered in exchange for the Notes then outstanding, upon surrender of such Notes then outstanding.

Section 10.05 *Evidence of Compliance of Supplemental Indenture to Be Furnished to Trustee.* In addition to the documents required by Section 16.05, the Trustee shall receive, and shall be fully protected in conclusively relying upon, an Officer's Certificate and an Opinion of Counsel as conclusive evidence that any supplemental indenture executed pursuant hereto complies with the requirements of this Article 10 and is permitted or authorized by this Indenture (which Opinion of Counsel will state, subject to customary exceptions, that such supplemental indenture constitutes the legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms).

ARTICLE 11 CONSOLIDATION, MERGER, AMALGAMATION, SALE, CONVEYANCE AND LEASE

Section 11.01 *Company May Consolidate, Etc. on Certain Terms.* Subject to the provisions of Section 11.02, the Company shall not consolidate or amalgamate with, undertake an arrangement with, or merge with or into, or sell, convey, transfer or lease all or substantially all of its properties and assets to another Person, unless:

(a) the resulting, surviving or transferee Person (the "**Successor Company**"), if not the Company, shall be a corporation organized and existing under the laws of Canada, any province or territory thereof, the United States of America, any State thereof or the District of Columbia, and the

Successor Company (if not the Company) shall expressly assume, by supplemental indenture all of the obligations of the Company under the Notes and this Indenture; and

(b) immediately after giving effect to such transaction, no Default or Event of Default has occurred and is continuing under this Indenture.

For purposes of this Section 11.01, the sale, conveyance, transfer or lease of all or substantially all of the properties and assets of one or more Subsidiaries of the Company to another Person, which properties and assets, if held by the Company instead of such Subsidiaries, would constitute all or substantially all of the properties and assets of the Company on a consolidated basis, shall be deemed to be the sale, conveyance, transfer or lease of all or substantially all of the properties and assets of the Company to another Person.

Section 11.02 *Successor Corporation to Be Substituted.* In case of any such consolidation, merger, amalgamation, arrangement, sale, conveyance, transfer or lease and upon the assumption by the Successor Company (if not the Company), by supplemental indenture (which shall conform to the provisions of the Trust Indenture Act, as then in effect, if applicable), executed and delivered to the Trustee and satisfactory in form to the Trustee, of the due and punctual payment of the principal of and accrued and unpaid interest on all of the Notes, the due and punctual delivery or payment, as the case may be, of any consideration due upon conversion of the Notes and the due and punctual performance of all of the covenants and conditions of this Indenture to be performed by the Company, such Successor Company (if not the Company) shall succeed to and, except in the case of a lease of all or substantially all of the Company's properties and assets, shall be substituted for the Company, with the same effect as if it had been named herein as the party of the first part, and may thereafter exercise every right and power of the Company under this Indenture. Such Successor Company thereupon may cause to be signed, and may issue either in its own name or in the name of the Company any or all of the Notes issuable hereunder which theretofore shall not have been signed by the Company and delivered to the Trustee; and, upon the order of such Successor Company instead of the Company and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee shall authenticate and shall deliver, or cause to be authenticated and delivered, any Notes that previously shall have been signed and delivered by the Officers of the Company to the Trustee for authentication, and any Notes that such Successor Company thereafter shall cause to be signed and delivered to the Trustee for that purpose. All the Notes so issued shall in all respects have the same legal rank and benefit under this Indenture as the Notes theretofore or thereafter issued in accordance with the terms of this Indenture as though all of such Notes had been issued at the date of the execution hereof. In the event of any such consolidation, merger, amalgamation, sale, conveyance or transfer (but not in the case of a lease), upon compliance with this Article 11 the Person named as the "Company" in the first paragraph of this Indenture (or any successor that shall thereafter have become such in the manner prescribed in this Article 11) may be dissolved, wound up and liquidated at any time thereafter and, except in the case of a lease, such Person shall be released from its liabilities as obligor and maker of the Notes and from its obligations under this Indenture and the Notes.

In case of any such consolidation, merger, amalgamation, sale, conveyance, transfer or lease, such changes in phraseology and form (but not in substance) may be made in the Notes thereafter to be issued as may be appropriate.

ARTICLE 12
IMMUNITY OF INCORPORATORS, SHAREHOLDERS, OFFICERS AND DIRECTORS

Section 12.01 *Indenture and Notes Solely Corporate Obligations.* No recourse for the payment of the principal of or accrued and unpaid interest on any Note, nor for any claim based thereon or otherwise in respect thereof, and no recourse under or upon any obligation, covenant or agreement of the Company in this Indenture or in any supplemental indenture or in any Note, nor because of the creation of any indebtedness represented thereby, shall be had against any incorporator, shareholder, employee, agent, Officer or director or Subsidiary, as such, past, present or future, of the Company or of any successor corporation, either directly or through the Company, or any successor corporation, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that all such liability is hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Indenture and the issue of the Notes.

ARTICLE 13
CONVERSION OF NOTES

Section 13.01 *Conversion Privilege.* (a) Subject to and upon compliance with the provisions of this Article 13, each Holder of a Note shall have the right, at such Holder's option, to convert all or any portion (if the portion to be converted is \$1,000 principal amount or an integral multiple thereof) of such Note (i) subject to satisfaction of the conditions described in Section 13.01(b), at any time prior to the close of business on the Business Day immediately preceding December 1, 2023 under the circumstances and during the periods set forth in Section 13.01(b), and (ii) regardless of the conditions described in Section 13.01(b), on or after December 1, 2023 and prior to the close of business on the Business Day immediately preceding the Maturity Date, in each case, at an initial conversion rate of 106.5644 Common Shares (subject to adjustment as provided in this Article 13, the "**Conversion Rate**") per \$1,000 principal amount of Notes (subject to, and in accordance with, the settlement provisions of Section 13.02, the "**Conversion Obligation**").

(b) (i) Prior to the close of business on the Business Day immediately preceding December 1, 2023, a Holder may surrender all or any portion of its Notes for conversion at any time during the five Business Day period immediately after any five consecutive Trading Day period (the "**Measurement Period**") in which the Trading Price per \$1,000 principal amount of Notes, as determined following a request by a Holder of Notes in accordance with this subsection (b)(i), for each Trading Day of the Measurement Period was less than 98% of the product of the Last Reported Sale Price of Common Shares on each such Trading Day and the Conversion Rate on each such Trading Day. The Trading Prices shall be determined by the Bid Solicitation Agent pursuant to this subsection (b)(i) and the definition of Trading Price set forth in this Indenture. The Company shall provide written notice to the Bid Solicitation Agent (if other than the Company) of the three independent nationally recognized securities dealers selected by the Company pursuant to the definition of Trading Price, along with appropriate contact information for each. The Bid Solicitation Agent (if other than the Company) shall have no obligation to determine the Trading Price per \$1,000 principal amount of Notes unless the Company has requested such determination, and the Company shall have no obligation to make such request (or, if the Company is acting as Bid Solicitation Agent, the Company shall have no obligation to determine the Trading Price per \$1,000

principal amount of Notes) unless a Holder provides the Company with reasonable evidence that the Trading Price per \$1,000 principal amount of Notes on any Trading Day would be less than 98% of the product of the Last Reported Sale Price of the Common Shares on such Trading Day and the Conversion Rate on such Trading Day, at which time the Company shall instruct the Bid Solicitation Agent (if other than the Company) to determine, or, if the Company is acting as Bid Solicitation Agent, the Company shall determine, the Trading Price per \$1,000 principal amount of Notes beginning on the next Trading Day and on each successive Trading Day until the Trading Price per \$1,000 principal amount of Notes is greater than or equal to 98% of the product of the Last Reported Sale Price of the Common Shares and the Conversion Rate. If (x) the Company is not acting as Bid Solicitation Agent, and the Company does not instruct the Bid Solicitation Agent to determine the Trading Price per \$1,000 principal amount of Notes when obligated as provided in the preceding sentence, or if the Company instructs the Bid Solicitation Agent to obtain bids and the Bid Solicitation Agent fails to make such determination, or (y) the Company is acting as Bid Solicitation Agent and the Company fails to make such determination when obligated as provided in the preceding sentence, then, in either case, the Trading Price per \$1,000 principal amount of Notes shall be deemed to be less than 98% of the product of the Last Reported Sale Price of the Common Shares and the Conversion Rate on each Trading Day of such failure. If the Trading Price condition set forth above has been met, the Company shall so notify the Holders, the Trustee and the Conversion Agent (if other than the Trustee) in writing. If, at any time after the Trading Price condition set forth above has been met, the Trading Price per \$1,000 principal amount of Notes is greater than or equal to 98% of the product of the Last Reported Sale Price of the Common Shares and the Conversion Rate for such date, the Company will so notify the Holders, the Trustee and the Conversion Agent (if other than the Trustee) in writing.

(ii) If, prior to the close of business on the Business Day immediately preceding December 1, 2023, the Company elects to:

(A) issue to all or substantially all holders of the Common Shares any rights, options or warrants (other than in connection with a stockholder rights plan) entitling them, for a period of not more than 45 calendar days after the announcement date of such issuance, to subscribe for or purchase Common Shares at a price per share that is less than the average of the Last Reported Sale Prices of the Common Shares for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of such issuance; or

(B) distribute to all or substantially all holders of the Common Shares the Company's assets, securities or rights to purchase securities of the Company (other than in connection with a stockholder rights plan), which distribution has a per share value, as reasonably determined by the Board of Directors, exceeding 10% of the Last Reported Sale Price of the Common Shares on the Trading Day preceding the date of announcement for such distribution,

then, in either case, the Company shall notify all Holders, the Trustee and the Conversion Agent (if other than the Trustee) at least 35 Scheduled Trading Days prior to the Ex-Dividend Date for such issuance or distribution. Once the Company has given such notice, a Holder may surrender all or any portion of its Notes for conversion at any time until the earlier of (1) the close of business on the

Business Day immediately preceding the Ex-Dividend Date for such issuance or distribution and (2) the Company's announcement that such issuance or distribution will not take place, in each case, even if the Notes are not otherwise convertible at such time.

(iii) If (x) a transaction or event that constitutes (x) a Fundamental Change or (y) a Make-Whole Fundamental Change occurs prior to the close of business on the Business Day immediately preceding December 1, 2023, regardless of whether the Company is required to offer to repurchase the Notes pursuant to Section 14.01, or if (y) the Company is a party to a consolidation, merger, amalgamation, binding share exchange, or sale, conveyance, transfer or lease of all or substantially all of the assets of the Company, that occurs prior to the close of business on the Business Day immediately preceding December 1, 2023, in each case, pursuant to which the Common Shares would be converted into cash, securities or other assets, then, in each case, all or any portion of any Holder's Notes may be surrendered for conversion at any time from or after the actual effective date of such transaction until 35 Trading Days after the date that is the actual effective date of such transaction or, if such transaction also constitutes a Fundamental Change, until the related Fundamental Change Repurchase Date. The Company shall notify Holders, the Trustee and the Conversion Agent (if other than the Trustee) in writing no later than the actual effective date of such transaction.

(iv) Prior to the close of business on the Business Day immediately preceding December 1, 2023, a Holder may surrender all or any portion of its Notes for conversion at any time during any fiscal quarter commencing after the fiscal quarter ending on August 31, 2019 (and only during such fiscal quarter), if the Last Reported Sale Price of the Common Shares for at least 20 Trading Days (whether or not consecutive) during the period of 30 consecutive Trading Days ending on, and including, the last Trading Day of the immediately preceding fiscal quarter is greater than or equal to 130% of the Conversion Price on each applicable Trading Day.

(v) If the Company issues a Redemption Notice pursuant to Article 15 prior to the close of business on the Business Day immediately preceding December 1, 2023, then a Holder may surrender all or any portion of its Notes for conversion at any time prior to the close of business on the Scheduled Trading Day prior to the Redemption Date, even if the Notes are not otherwise convertible at such time. After that time, the right to convert pursuant to this subsection (b)(v) shall expire, unless the Company defaults in the payment of the Redemption Price, in which case a Holder of Notes may convert all or any portion of its Notes until the Redemption Price has been paid or duly provided for.

(c) Notwithstanding anything herein to the contrary, prior to the date that is five years plus one day from the Last Original Issue Date, Holders would otherwise be entitled to receive, upon conversion of the Notes, any property (including cash) or securities that would not constitute "prescribed securities" for the purposes of clause 212(1)(b)(vii)(E) of the Tax Act as it applied for the 2007 taxation year (referred to herein as "**Ineligible Consideration**"), such holders shall not be entitled to receive such Ineligible Consideration but the Company or the successor or acquirer, as the case may be, shall have the right (at the sole option of the Company or the successor or acquirer, as the case may be) to deliver either such Ineligible Consideration or "prescribed securities," for the

purposes of clause 212(1)(b)(vii)(E) of the Tax Act as it applied for the 2007 taxation year, with a market value equal to the market value of such Ineligible Consideration. The Company shall notify Holders, the Trustee and the Conversion Agent (if other than the Trustee) in writing as promptly as practicable following the date the Company publicly announces such transaction but in no event less than 25 Scheduled Trading Days prior to the effective date of such transaction, unless the Company previously agreed to a Physical Settlement for all such conversions, in which case the Company shall notify Holders, the Trustee and the Conversion Agent (if other than the Trustee) in writing no less than 10 Scheduled Trading Days prior to the anticipated effective date of such transaction. Such notice will also state the consideration into which the Notes will be convertible after the effective date of such transaction. After such notice, the Company or the successor or acquirer, as the case may be, may not change the consideration to be delivered upon conversion of the Notes except in accordance with any other provision of this Indenture.

For the avoidance of doubt, neither the Trustee nor the Conversion Agent shall have any obligation (i) to monitor the stock price or make any calculation or determination whether or not an event triggering the rights of the Holders to surrender Notes for conversion has occurred, (ii) to notify the Company, the Depository, or the Holders if the Notes have become subject to conversion, or (iii) to ensure timely delivery of any Settlement Amounts.

Section 13.02 *Conversion Procedure; Settlement Upon Conversion.*

(a) Subject to this Section 13.02, Section 13.03(b) and Section 13.07(a), upon conversion of any Note, the Company shall satisfy its Conversion Obligation by paying or delivering, as the case may be, to the converting Holder, in respect of each \$1,000 principal amount of Notes being converted, cash (“**Cash Settlement**”), Common Shares, together, if applicable, with cash in lieu of delivering any fractional Common Share in accordance with Section 13.02(j) (“**Physical Settlement**”), or a combination of cash and Common Shares, together, if applicable, with cash in lieu of delivering any fractional Common Share in accordance with Section 13.02(j) (“**Combination Settlement**”), at its election, as set forth in this Section 13.02, subject to the requirements of Section 13.07.

(i) All conversions for which the relevant Conversion Date occurs during a Redemption Period shall be settled using the same Settlement Method, and all conversions for which the relevant Conversion Date occurs on or after December 1, 2023 shall be settled using the same Settlement Method.

(ii) Except for any conversions for which the relevant Conversion Date occurs during a Redemption Period and any conversions for which the relevant Conversion Date occurs on or after December 1, 2023, the Company shall use the same Settlement Method for all conversions with the same Conversion Date, but the Company shall not have any obligation to use the same Settlement Method with respect to conversions with different Conversion Dates.

(iii) If, in respect of any Conversion Date (or any conversion for which the relevant Conversion Date occurs during a Redemption Period on or after December 1, 2023), the Company elects to deliver a notice (the “**Settlement Notice**”) of the relevant Settlement

Method in respect of such Conversion Date (or such period, as the case may be), the Company shall deliver such Settlement Notice to converting Holders no later than the close of business on the Trading Day immediately following the relevant Conversion Date (or, in the case of any conversions of any Notes for which the relevant Conversion Date occurs (A) during a Redemption Period, in the applicable Redemption Notice or (B) on or after December 1, 2023, no later than the close of business on the Business Day immediately preceding December 1, 2023). If the Company does not elect a Settlement Method with respect to any conversion prior to the deadline set forth in the immediately preceding sentence, then the Company shall be deemed to have elected the Default Settlement Method in respect of such conversion. Such Settlement Notice, if provided, shall specify the relevant Settlement Method and, in the case of Combination Settlement, the applicable Specified Dollar Amount. If the Company delivers a Settlement Notice electing Combination Settlement in respect of its Conversion Obligation but does not indicate a Specified Dollar Amount per \$1,000 principal amount of Notes to be converted in such Settlement Notice, the Specified Dollar Amount per \$1,000 principal amount of Notes shall be deemed to be \$1,000. For the avoidance of doubt, the Company's failure to so select a Settlement Method or Specified Dollar Amount when so permitted shall not constitute a Default or Event of Default under this Indenture or the Notes. By notice to the Holders, the Company may change the Default Settlement Method to any permitted Settlement Method, except it may not change the Default Settlement Method during any Redemption Period (in respect of Notes converted with a Conversion Date occurring during such Redemption Period) or on or after December 1, 2023 (in respect of Notes converted with a Conversion Date that occurs on or after December 1, 2023).

(iv) The cash, Common Shares or combination of cash and Common Shares in respect of any conversion of Notes (the "**Settlement Amount**") shall be computed as follows in respect of each \$1,000 principal amount of Notes being converted:

(A) if Physical Settlement applies to such conversion, a number of Common Shares equal to the Conversion Rate in effect on the Conversion Date for such conversion;

(B) if Cash Settlement applies to such conversion, the Company shall pay to the converting Holder in respect of each \$1,000 principal amount of Notes being converted cash in an amount equal to the sum of the Daily Conversion Values for each of the 25 consecutive Trading Days during the related Observation Period; and

(C) if Combination Settlement applies to such conversion, the Company shall pay or deliver, as the case may be, to the converting Holder in respect of each \$1,000 principal amount of Notes being converted, a Settlement Amount equal to the sum of the Daily Settlement Amounts for each of the 25 consecutive Trading Days during the related Observation Period.

(v) The Daily Settlement Amounts (if applicable) and the Daily Conversion Values (if applicable) shall be determined by the Company promptly following the last day of the Observation Period. Promptly after such determination of the Daily Settlement

Amounts or the Daily Conversion Values, as the case may be, and the amount of cash payable in lieu of delivering any fractional Common Share, if any, the Company shall notify the Trustee and the Conversion Agent (if other than the Trustee) of the same. The Trustee and the Conversion Agent (if other than the Trustee) shall have no responsibility for any such determination.

(b) Subject to Section 13.02(e), before any Holder of a Note shall be entitled to convert a Note as set forth above, such Holder shall (i) in the case of a Global Note, comply with the Applicable Procedures and, if required, pay funds equal to interest payable on the next Interest Payment Date to which such Holder is not entitled as set forth in Section 13.02(h) and (ii) in the case of a Physical Note (1) complete, manually sign and deliver an irrevocable notice to the Conversion Agent as set forth in the Form of Notice of Conversion (or a facsimile, PDF or other electronic transmission thereof) (a notice pursuant to the applicable procedure of the Depository or a notice as set forth in the Form of Notice of Conversion, a “**Notice of Conversion**”) at the office of the Conversion Agent and state in writing therein the principal amount of Notes to be converted and the name or names (with addresses) in which such Holder wishes the certificate or certificates for any Common Shares to be delivered upon settlement of the Conversion Obligation to be registered, (2) surrender such Notes, duly endorsed to the Company or in blank (and accompanied by appropriate endorsement and transfer documents), at the office of the Conversion Agent, (3) if required, furnish appropriate endorsements and transfer documents and (4) if required, pay funds equal to interest payable on the next Interest Payment Date to which such Holder is not entitled as set forth in Section 13.02(h). The Trustee (and if different, the Conversion Agent) shall notify the Company of any conversion pursuant to this Article 13 on the Conversion Date for such conversion. No Notes may be surrendered for conversion by a Holder thereof if such Holder has also delivered a Fundamental Change Repurchase Notice to the Company in respect of such Notes and has not validly withdrawn such Fundamental Change Repurchase Notice in accordance with Section 14.02.

If more than one Note shall be surrendered for conversion at one time by the same Holder, the Conversion Obligation with respect to such Notes shall be computed on the basis of the aggregate principal amount of the Notes (or specified portions thereof to the extent permitted thereby) so surrendered.

(c) A Note shall be deemed to have been converted immediately prior to the close of business on the date (the “**Conversion Date**”) that the Holder has complied with the requirements set forth in subsection (b) above. Except as set forth in Section 13.03(b) and Section 13.07(a), the Company shall pay or deliver, as the case may be, the consideration due in respect of the Conversion Obligation on the second Business Day immediately following the relevant Conversion Date, if Physical Settlement applies, or on the second Business Day immediately following the last Trading Day of the Observation Period, if any other Settlement Method applies. If any Common Shares are due to a converting Holder, the Company shall issue and deliver (or otherwise cause to be delivered) to the Conversion Agent or to such Holder, or such Holder’s nominee or nominees, the full number of Common Shares to which such Holder shall be entitled, in book-entry format through the Depository, in satisfaction of the Company’s Conversion Obligation.

(d) In case any Note shall be surrendered for partial conversion, the Company shall execute and the Trustee shall authenticate and deliver to or upon the written order of the Holder of

the Note so surrendered a new Note or Notes in authorized denominations in an aggregate principal amount equal to the unconverted portion of the surrendered Note, without payment of any service charge by the converting Holder but, if required by the Company or Trustee, with payment of a sum sufficient to cover any documentary, stamp or similar issue or transfer tax or similar governmental charge required by law or that may be imposed in connection therewith as a result of the name of the Holder of the new Notes issued upon such conversion being different from the name of the Holder of the old Notes surrendered for such conversion.

(e) If a Holder submits a Note for conversion, the Company shall pay any documentary, stamp or similar issue or transfer tax due on the issue of any Common Shares upon conversion, unless the tax is due because the Holder requests such shares to be issued in a name other than the Holder's name, in which case the Holder shall pay that tax. The Conversion Agent may refuse to deliver the certificates representing the Common Shares being issued in a name other than the Holder's name until the Trustee receives a sum sufficient to pay any tax that is due by such Holder in accordance with the immediately preceding sentence.

(f) Except as provided in Section 13.04, no adjustment shall be made for dividends on any Common Shares issued upon the conversion of any Note as provided in this Article 13.

(g) Upon the conversion of an interest in a Global Note, the Trustee, or the Custodian at the direction of the Trustee, shall make a notation on such Global Note as to the reduction in the principal amount represented thereby. The Company shall notify the Trustee in writing of any conversion of Notes effected through any Conversion Agent other than the Trustee.

(h) Upon conversion, a Holder shall not receive any separate cash payment for accrued and unpaid interest, if any, except as set forth below in this Section 13.02(h), and the Company will not adjust the Conversion Rate for any accrued and unpaid interest on any converted Notes. The Company's settlement of the full Conversion Obligation shall be deemed to satisfy in full its obligation to pay the principal amount of the Note and accrued and unpaid interest, if any, to, but not including, the relevant Conversion Date. As a result, accrued and unpaid interest, if any, to, but not including, the relevant Conversion Date shall be deemed to be paid in full rather than cancelled, extinguished or forfeited. Upon a conversion of Notes into a combination of cash and Common Shares, accrued and unpaid interest will be deemed to be paid first out of the cash paid upon such conversion. Notwithstanding the foregoing, if Notes are converted after the close of business on a Regular Record Date, Holders of such Notes as of the close of business on such Regular Record Date will receive the full amount of interest payable on such Notes on the corresponding Interest Payment Date notwithstanding the conversion. Notes surrendered for conversion during the period from the close of business on any Regular Record Date to the open of business on the immediately following Interest Payment Date must be accompanied by funds equal to the amount of interest payable on the Notes so converted; *provided, however*, that no such payment shall be required (1) for conversions following the Regular Record Date immediately preceding the Maturity Date; (2) if the Company has specified a Redemption Date that is after a Regular Record Date and on or prior to the Business Day immediately following the corresponding Interest Payment Date; (3) if the Company has specified a Fundamental Change Repurchase Date that is after a Regular Record Date and on or prior to the Business Day immediately following the corresponding Interest Payment Date; or (4) to the extent of any Defaulted Amounts, if any Defaulted Amounts exists at the time of conversion with

respect to such Note. Therefore, for the avoidance of doubt, all Holders of record on the Regular Record Date immediately preceding the Maturity Date, shall receive the full interest payment due on Maturity Date in cash regardless of whether their Notes have been converted following such Regular Record Date.

(i) The Person in whose name any Common Shares shall be issuable upon conversion shall be treated as a shareholder of record of such shares as of the close of business on the relevant Conversion Date (if Physical Settlement applies to such conversion) or as of the close of business on the last Trading Day of the relevant Observation Period (if Combination Settlement applies to such conversion), as the case may be. Upon a conversion of Notes, such Person shall no longer be a Holder of such Notes surrendered for conversion.

(j) The Company shall not issue any fractional Common Share upon conversion of the Notes and shall instead pay cash in lieu of delivering any fractional Common Share issuable upon conversion based on the Daily VWAP for the relevant Conversion Date, in the case of Physical Settlement, or based on the Daily VWAP for the last Trading Day of the relevant Observation Period, in the case of Combination Settlement. For each Note surrendered for conversion, if the Company has elected (or is deemed to have elected) Combination Settlement, the full number of shares that shall be issuable upon conversion thereof shall be computed on the basis of the aggregate Daily Settlement Amounts for the relevant Observation Period and any fractional shares remaining after such computation shall be paid in cash.

Section 13.03 Increased Conversion Rate Applicable to Certain Notes Surrendered in Connection with Make-Whole Fundamental Changes or Converted During a Redemption Period.

(a) If (i) the Effective Date of a Make-Whole Fundamental Change occurs prior to the Maturity Date and a Holder elects to convert any of its Notes in connection with such Make-Whole Fundamental Change or (ii) the Company issues a Redemption Notice pursuant to Section 15.02 or Section 15.04 calling any Notes for redemption and a Holder elects to convert any of its Notes with a Conversion Date occurring during the related Redemption Period, the Company shall, in each case, under the circumstances described below, increase the Conversion Rate for the Notes so surrendered for conversion of such Notes by a number of additional Common Shares (the “**Additional Shares**”), as described below. A conversion of Notes shall be deemed for these purposes to be “in connection with” a Make-Whole Fundamental Change if the relevant Conversion Date occurs during the period from, and including, the Effective Date of such Make-Whole Fundamental Change up to, and including, the Business Day immediately prior to the related Fundamental Change Repurchase Date (or, in the case of a Make-Whole Fundamental Change that would have been a Fundamental Change but for the proviso in clause (b) of the definition thereof, the 35th Trading Day immediately following the Effective Date of such Make-Whole Fundamental Change) (such period, the “**Make-Whole Fundamental Change Period**”).

(b) Upon surrender of Notes for conversion in connection with a Make-Whole Fundamental Change or of Notes with a Conversion Date occurring during the related Redemption Period, the Company shall, at its option, satisfy the related Conversion Obligation by Physical Settlement, Cash Settlement or Combination Settlement, based on the Conversion Rate as increased to reflect the Additional Shares pursuant to the table set forth below in accordance with Section

13.02; *provided, however*, that if, at the effective time of a Make-Whole Fundamental Change described in clause (b) of the definition of Fundamental Change that constitutes a Common Share Change Event, the Reference Property of which is composed entirely of cash, then, for any conversion of Notes with a Conversion Date occurring on or after the Effective Date of such Make-Whole Fundamental Change, the Conversion Obligation will be deemed to be an amount of cash per \$1,000 principal amount of converted Notes equal to the Conversion Rate on such Conversion Date (including any increase to reflect the Additional Shares), *multiplied by* the Share Price for such Make-Whole Fundamental Change. In such event, the Conversion Obligation will be determined and paid to Holders in cash on the second Business Day following the Conversion Date. The Company will notify the Holders of the Effective Date of any Make-Whole Fundamental Change and issue a press release announcing such Effective Date no later than the Business Day after the Effective Date.

(c) The number of Additional Shares, if any, by which the Conversion Rate will be increased will be determined by reference to the table below, based on the date on which the Make-Whole Fundamental Change occurs or becomes effective (the “**Effective Date**”) or the Redemption Notice Date, as applicable and the price (the “**Share Price**”) paid (or deemed to be paid) Common Share in the Make-Whole Fundamental Change or on the Redemption Notice Date in the manner set forth in this Section 13.03(c). If the holders of the Common Shares receive in exchange for their Common Shares only cash in a Make-Whole Fundamental Change described in clause (b) of the definition of Fundamental Change, the Share Price shall be the cash amount paid per share. In all other cases, the Share Price shall be the average of the Last Reported Sale Prices of the Common Shares over the five consecutive Trading Days ending on, and including, the Trading Day immediately preceding the Effective Date of the Make-Whole Fundamental Change or the Redemption Notice Date, as the case may be. In the event that a conversion during a Redemption Period would also be deemed to be in connection with a Make-Whole Fundamental Change, a Holder of the Notes to be converted will be entitled to a single increase to the Conversion Rate with respect to the first to occur of the applicable Redemption Notice Date or the Effective Date of the applicable Make-Whole Fundamental Change, and the later event will be deemed not to have occurred for purposes of this Section 13.03(c).

(d) The Share Prices set forth in the column headings of the table below shall be adjusted as of any date on which the Conversion Rate of the Notes is otherwise adjusted. The adjusted Share Prices shall equal the Share Prices applicable immediately prior to such adjustment, *multiplied by* a fraction, the numerator of which is the Conversion Rate immediately prior to such adjustment giving rise to the Share Price adjustment and the denominator of which is the Conversion Rate as so adjusted. The number of Additional Shares set forth in the table below shall be adjusted in the same manner and at the same time as the Conversion Rate as set forth in Section 13.04.

(e) The following table sets forth the number of Additional Shares by which the Conversion Rate shall be increased per \$1,000 principal amount of Notes pursuant to this Section 13.03 for each Share Price and Effective Date or Redemption Notice Date, as applicable, set forth below:

Effective Date / Redemption Notice Date	Share Price										
	\$7.82	\$8.50	\$9.38	\$11.00	\$12.20	\$15.00	\$20.00	\$25.00	\$30.00	\$35.00	\$40.00
April 23, 2019	21.3128	21.3128	19.3201	13.9083	11.1483	6.8489	3.2406	1.5796	0.5456	0.2156	0.0000
June 1, 2020	21.3128	21.3128	18.4996	13.0356	10.3040	6.1689	2.8506	1.3676	0.4289	0.1613	0.0000
June 1, 2021	21.3128	21.3128	17.2208	11.7083	9.0580	5.2089	2.3256	1.0956	0.2989	0.1070	0.0000
June 1, 2022	21.3128	20.0238	15.2174	9.6720	7.1890	3.8556	1.6606	0.7836	0.1556	0.0556	0.0000
June 1, 2023	21.3128	17.0944	11.8073	6.3356	4.2544	1.9623	0.8756	0.4476	0.0778	0.0413	0.0000
June 1, 2024	21.3128	11.0826	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000

The exact Share Price or Effective Date or Redemption Notice Date may not be set forth in the table above, in which case:

- (i) if the Share Price is between two Share Prices in the table above or the Effective Date or Redemption Notice Date, as applicable, is between two dates in the table, the number of Additional Shares by which the Conversion Rate will be increased will be determined by a straight-line interpolation between the number of Additional Shares set forth for the higher and lower Share Prices and the earlier and later dates, as applicable, based on a 365- or 366-day year, as applicable;
- (ii) if the Share Price is greater than \$40.00 per share (subject to adjustment in the same manner as the Share Prices set forth in the column headings of the table above pursuant to Section 13.03(d) above), no Additional Shares shall be added to the Conversion Rate; and
- (iii) if the Share Price is less than \$7.82 per share (subject to adjustment in the same manner as the Share Prices set forth in the column headings of the table above pursuant to Section 13.03(d) above), no Additional Shares shall be added to the Conversion Rate.

Notwithstanding the foregoing, in no event shall the Conversion Rate per \$1,000 principal amount of Notes exceed 127.8772 Common Shares, subject to adjustment in the same manner as the Conversion Rate pursuant to Section 13.04.

(f) Nothing in this Section 13.03 shall prevent an adjustment to the Conversion Rate that would otherwise be required pursuant to Section 13.04 in respect of a Make-Whole Fundamental Change.

Section 13.04 *Adjustment of Conversion Rate.* The Conversion Rate shall be adjusted from time to time by the Company if any of the following events occurs, except that the Company shall not make any adjustments to the Conversion Rate if Holders participate (other than in the case of (x) a share split or share consolidation or (y) a tender or exchange offer), at the same time and upon the same terms as holders of the Common Shares and solely as a result of holding the Notes, in any of the transactions described in this Section 13.04, without having to convert their Notes, as if they held a number of Common Shares equal to the Conversion Rate, multiplied by the principal amount (expressed in thousands) of Notes held by such Holder.

(a) If the Company exclusively issues Common Shares as a dividend or distribution on Common Shares, or if the Company effects a share split or share consolidation (in each case excluding an issuance solely pursuant to a Share Exchange Event, as to which the provisions of Section 13.07 shall apply), the Conversion Rate shall be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_1}{OS_0}$$

where,

- CR₀ = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date of such dividend or distribution, or immediately prior to the open of business on the Effective Date of such share split or share consolidation, as applicable;
- CR₁ = the Conversion Rate in effect immediately after the open of business on such Ex-Dividend Date or Effective Date, as applicable;
- OS₀ = the number of Common Shares outstanding immediately prior to the open of business on such Ex-Dividend Date or Effective Date, as applicable (before giving effect to any such dividend, distribution, share split or share consolidation); and
- OS₁ = the number of Common Shares outstanding immediately after giving effect to such dividend, distribution, share split or share consolidation, as applicable.

Any adjustment made under this Section 13.04(a) shall become effective immediately after the open of business on the Ex-Dividend Date for such dividend or distribution, or immediately after the open of business on the Effective Date for such share split or share consolidation, as applicable. If any dividend or distribution of the type described in this Section 13.04(a) is declared but not so paid or made, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution, to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

(b) If the Company issues to all or substantially all holders of the Common Shares any rights, options or warrants (other than pursuant to a shareholders rights plan) entitling them, for a period of not more than 60 calendar days after the announcement date of such issuance, to subscribe for or purchase shares of the Common Shares at a price per share that is less than the average of the Last Reported Sale Prices of the Common Shares for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of such issuance, the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where,

- CR₀ = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such issuance;
- CR₁ = the Conversion Rate in effect immediately after the open of business on such Ex-Dividend Date;
- OS₀ = the number of Common Shares outstanding immediately prior to the open of business on such Ex-Dividend Date;

X = the total number of Common Shares issuable pursuant to such rights, options or warrants; and

Y = the number of Common Shares equal to the aggregate price payable to exercise such rights, options or warrants, *divided by* the average of the Last Reported Sale Prices of the Common Shares over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of the issuance of such rights, options or warrants.

Any increase made under this Section 13.04(b) shall be made successively whenever any such rights, options or warrants are issued and shall become effective immediately after the open of business on the Ex-Dividend Date for such issuance. To the extent that Common Shares are not delivered after the expiration of such rights, options or warrants, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect had the increase with respect to the issuance of such rights, options or warrants been made on the basis of delivery of only the number of Common Shares actually delivered. If such rights, options or warrants are not so issued, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect if such Ex-Dividend Date for such issuance had not occurred.

For purposes of this Section 13.04(b) and for the purpose of Section 13.01(b)(ii)(A), in determining whether any rights, options or warrants entitle the holders of the Common Shares to subscribe for or purchase Common Shares at less than such average of the Last Reported Sale Prices of the Common Shares for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of such issuance, and in determining the aggregate offering price of such Common Shares, there shall be taken into account any consideration received by the Company for such rights, options or warrants and any amount payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined by the Board of Directors.

(c) If the Company distributes shares of its Capital Stock, evidences of its indebtedness, other assets or property of the Company, or rights, options or warrants to acquire its Capital Stock or other securities, to all or substantially all holders of the Common Shares, excluding (i) dividends, distributions or issuances as to which an adjustment is effected (or would be effected, disregarding the 1% Provision) pursuant to Section 13.04(a) or Section 13.04(b), (ii) rights issued under a shareholder rights plan (except as provided in Section 13.10), (iii) dividends or distributions paid exclusively in cash as to which the provisions set forth in Section 13.04(d) shall apply, (iv) distributions of Reference Property in a Share Exchange Event, and (v) Spin-Offs as to which the provisions set forth below in this Section 13.04(c) shall apply (any of such shares of Capital Stock, evidences of indebtedness, other assets or property or rights, options or warrants to acquire Capital Stock or other securities, the “**Distributed Property**”), then the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{SP_0}{SP_0 - FMV}$$

where,

- CR₀ = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such distribution;
- CR₁ = the Conversion Rate in effect immediately after the open of business on such Ex-Dividend Date;
- SP₀ = the average of the Last Reported Sale Prices of the Common Shares over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such distribution; and
- FMV = the fair market value (as determined by the Board of Directors) of the Distributed Property with respect to each outstanding share of the Common Shares on the Ex-Dividend Date for such distribution.

Any increase made under the portion of this Section 13.04(c) above shall become effective immediately after the open of business on the Ex-Dividend Date for such distribution. If such distribution is not so paid or made, the Conversion Rate shall be decreased to be the Conversion Rate that would then be in effect if such distribution had not been declared. Notwithstanding the foregoing, if “FMV” (as defined above) is equal to or greater than “SP₀” (as defined above), then, in lieu of the foregoing increase, each Holder of a Note shall receive, in respect of each \$1,000 principal amount thereof, at the same time and upon the same terms as holders of the Common Shares receive the Distributed Property, the amount and kind of Distributed Property such Holder would have received if such Holder owned a number of Common Shares equal to the Conversion Rate in effect on the Ex-Dividend Date for the distribution.

With respect to an adjustment pursuant to this Section 13.04(c) where there has been a payment of a dividend or other distribution on the Common Shares of shares of Capital Stock of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit of the Company (other than solely pursuant to a Share Exchange Event, as to which the provisions of Section 13.07 shall apply), that are, or, when issued, will be, listed or admitted for trading on a U.S. national securities exchange or reasonably comparable Canadian or other non-U.S. equivalent (a “Spin-Off”), the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{FMV_0 + MP_0}{MP_0}$$

where,

- CR₀ = the Conversion Rate in effect immediately before the close of business on the last Trading Day of the Valuation Period for such Spin-Off;
- CR₁ = the Conversion Rate in effect at the close of business on the last Trading Day of such Valuation Period;

FMV₀ = the average of the Last Reported Sale Prices of the Capital Stock or similar equity interest distributed to holders of the Common Shares applicable to one Common Share (determined by reference to the definition of Last Reported Sale Price as set forth in Section 1.01 as if references therein to Common Shares were to such Capital Stock or similar equity interest) over the first 10 consecutive Trading Day period after, and including, the Ex-Dividend Date of such Spin-Off (the “**Valuation Period**”); and

MP₀ = the average of the Last Reported Sale Prices of the Common Shares over such Valuation Period.

The increase to the Conversion Rate under the preceding paragraph shall occur at the close of business on the last Trading Day of the Valuation Period; *provided* that (x) in respect of any conversion of Notes for which Physical Settlement is applicable, if the relevant Conversion Date occurs during the Valuation Period, references to “10” in the preceding paragraph shall be deemed to be replaced with such lesser number of Trading Days as have elapsed from, and including, the Ex-Dividend Date of such Spin-Off to, and including, the Conversion Date in determining the Conversion Rate and (y) in respect of any conversion of Notes for which Cash Settlement or Combination Settlement is applicable, for any Trading Day that falls within the relevant Observation Period for such conversion and within the Valuation Period, references to “10” in the preceding paragraph shall be deemed to be replaced with such lesser number of Trading Days as have elapsed from, and including the Ex-Dividend Date of such Spin-Off to, and including, such Trading Day in determining the Conversion Rate applicable to such conversion as of such Trading Day of such Observation Period. If any dividend or distribution that constitutes a Spin-Off that results in an adjustment under this clause (c) is declared but not so paid or made, such Conversion Rate shall be immediately decreased, effective as of the date the Board of Directors determines not to pay or make such dividend or distribution, to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared or announced.

In addition, notwithstanding the foregoing, if the Company effects a transaction that would be a Spin-Off as described in this Section 13.04(c), but for the fact that it is, for tax, securities law or other reasons, structured as a transaction described in Section 13.07 and in such transaction (i) the holders of the Common Shares receive both shares of a new series or class of the Common Shares (the “**New Shares**”) and shares of the entity being spun off (the “**Spin-Off Shares**”), and (ii) the rights and privileges of the holders of our common shares are not materially adversely affected, then the Company may (but is not obligated to), by notice to the Holders, the Conversion Agent and the Trustee prior to the effective date of such transaction, elect to treat the distribution of the Spin-Off Shares as being subject to the adjustment provisions set forth in this Section 13.04(c) and the distribution of the New Shares as being subject to Section 13.07, as if the distribution of the Spin-Off Shares was in a separate transaction subject only to this Section 13.04(c).

For purposes of Section 13.04(a), Section 13.04(b) and this Section 13.04(c), if any dividend or distribution to which this Section 13.04(c) is applicable also includes one or both of:

(A) a dividend or distribution of Common Shares to which Section 13.04(a) is applicable (the “**Clause A Distribution**”); or

(B) a dividend or distribution of rights, options or warrants to which Section 13.04(b) is applicable (the “**Clause B Distribution**”),

then, in either case, (1) such dividend or distribution, other than the Clause A Distribution and the Clause B Distribution, shall be deemed to be a dividend or distribution to which this Section 13.04(c) is applicable (the “**Clause C Distribution**”) and any Conversion Rate adjustment required by this Section 13.04(c) with respect to such Clause C Distribution shall then be made, and (2) the Clause A Distribution and Clause B Distribution shall be deemed to immediately follow the Clause C Distribution and any Conversion Rate adjustment required by Section 13.04(a) and Section 13.04(b) with respect thereto shall then be made, except that, if determined by the Company (I) the “Ex-Dividend Date” of the Clause A Distribution and the Clause B Distribution shall be deemed to be the Ex-Dividend Date of the Clause C Distribution and (II) any Common Shares included in the Clause A Distribution or Clause B Distribution shall be deemed not to be “outstanding immediately prior to the open of business on such Ex-Dividend Date or Effective Date” within the meaning of Section 13.04(a) or “outstanding immediately prior to the open of business on such Ex-Dividend Date” within the meaning of Section 13.04(b).

(d) If any cash dividend or distribution is made to all or substantially all holders of the Common Shares, the Conversion Rate shall be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{SP_0}{SP_0 - C}$$

where,

CR₀ = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such dividend or distribution;

CR₁ = the Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for such dividend or distribution;

SP₀ = the Last Reported Sale Price of the Common Shares on the Trading Day immediately preceding the Ex-Dividend Date for such dividend or distribution; and

C = the amount in cash per share the Company distributes to all or substantially all holders of the Common Shares.

Any increase pursuant to this Section 13.04(d) shall become effective immediately after the open of business on the Ex-Dividend Date for such dividend or distribution. If such dividend or distribution is not so paid, the Conversion Rate shall be decreased, effective as of the date the Board of Directors determines not to make or pay such dividend or distribution, to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared. Notwithstanding the foregoing, if “C” (as defined above) is equal to or greater than “SP₀” (as defined above), then, in lieu of the foregoing increase, each Holder of a Note shall receive, for each \$1,000 principal amount of Notes it holds, at the same time and upon the same terms as holders of Common Shares, the amount of cash that such Holder would have received if such Holder owned a number of Common Shares equal to the Conversion Rate on the Ex-Dividend Date for such cash dividend or distribution.

(e) If the Company or any of its Subsidiaries make a payment in respect of a tender or exchange offer for the Common Shares, to the extent that the cash and value of any other consideration included in the payment per share of the Common Shares exceeds the average of the Last Reported Sale Prices of the Common Shares over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer, the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{AC + (SP_1 \times OS_1)}{OS_0 \times SP_1}$$

where,

- CR_0 = the Conversion Rate in effect immediately prior to the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires;
- CR_1 = the Conversion Rate in effect immediately after the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires;
- AC = the aggregate value of all cash and any other consideration (as determined by the Board of Directors) paid or payable for Common Shares purchased in such tender or exchange offer;
- OS_0 = the number of Common Shares outstanding immediately prior to the date such tender or exchange offer expires (prior to giving effect to the purchase of all Common Shares accepted for purchase or exchange in such tender or exchange offer);
- OS_1 = the number of Common Shares outstanding immediately after the date such tender or exchange offer expires (after giving effect to the purchase of all Common Shares accepted for purchase or exchange in such tender or exchange offer); and
- SP_1 = the average of the Last Reported Sale Prices of the Common Shares over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires.

The increase to the Conversion Rate under this Section 13.04(e) shall occur at the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires; *provided, however*, that (x) in respect of any conversion of Notes for which Physical Settlement is applicable, if the relevant Conversion Date occurs during the 10 Trading Days immediately following, and including, the Trading Day next succeeding the expiration date of any tender or exchange offer, references to “10” or “10th” in the preceding paragraph shall be deemed replaced with such lesser number of Trading Days as have elapsed from, and including the Trading Day next succeeding the date that such tender or exchange offer expires to, and including, the Conversion Date in determining the Conversion Rate and (y) in

respect of any conversion of Notes for which Cash Settlement or Combination Settlement is applicable, for any Trading Day that falls within the relevant Observation Period for such conversion and within the 10 Trading Days immediately following, and including, the Trading Day next succeeding the expiration date of any tender or exchange offer, references to “10” or “10th” in the preceding paragraph shall be deemed replaced with such lesser number of Trading Days as have elapsed from, and including, the Trading Day next succeeding the expiration date of such tender or exchange offer to, and including, such Trading Day in determining the Conversion Rate as of such Trading Day of such Observation Period.

If the Company or one of its Subsidiaries is obligated to purchase Common Shares pursuant to any such tender or exchange offer described in this Section 13.04(e) but the Company or such Subsidiary is permanently prevented by applicable law from effecting any such purchase or all such purchases are rescinded, the relevant Conversion Rate will be readjusted to be such Conversion Rate that would then be in effect if such tender or exchange offer had not been made or had been made only in respect of the purchases that have been made.

(f) Notwithstanding this Section 13.04 or any other provision of this Indenture or the Notes, if (i) a Conversion Rate adjustment for any dividend or distribution becomes effective on any Ex-Dividend Date as described in this Section 13.04; (ii) a Note is to be converted for which Physical Settlement or Combination Settlement applies; (iii) the Conversion Date for such conversion (in the case of Physical Settlement) or any Trading Day in the Observation Period for such conversion (in the case of Combination Settlement) occurs on or after such Ex-Dividend Date and on or before the related Record Date; (iv) the consideration due upon such conversion includes any whole Common Shares based on a Conversion Rate that is adjusted for such dividend or distribution; and (v) the Holder would be entitled to participate in such dividend or distribution on account of such shares, then, notwithstanding anything to the contrary, (x) in the case of Physical Settlement, the Conversion Rate adjustment relating to such Ex-Dividend Date will not be made for such conversion, and, instead, the Common Shares issuable upon such conversion based on such unadjusted Conversion Rate will be entitled to participate in such dividend or distribution; and (y) in the case of Combination Settlement, the Conversion Rate adjustment relating to such Ex-Dividend Date will be made for such conversion in respect of such Trading Day, but the Common Shares issuable upon such conversion will not be entitled to participate in such dividend or distribution.

(g) Except as stated herein, the Company shall not adjust the Conversion Rate for the issuance of Common Shares or any securities convertible into or exchangeable for Common Shares or the right to purchase Common Shares or such convertible or exchangeable securities.

(h) In addition to those adjustments required by clauses (a), (b), (c), (d) and (e) of this Section 13.04, and to the extent permitted by applicable law and subject to the applicable rules of any exchange on which any of the Company’s securities are then listed, the Company from time to time may increase the Conversion Rate by any amount for a period of at least 20 Business Days if the Board of Directors determines that such increase would be in the Company’s best interest. In addition, to the extent permitted by applicable law and subject to the applicable rules of any exchange on which any of the Company’s securities are then listed, the Company may (but is not required to) increase the Conversion Rate to avoid or diminish any income tax to holders of

Common Shares or rights to purchase Common Shares in connection with a dividend or distribution of Common Shares (or rights to acquire Common Shares) or similar event.

(i) Notwithstanding anything to the contrary in this Indenture, if

(i) a Note is to be converted,

(ii) the Record Date or Effective Date for any event that requires an adjustment to the Conversion Rate pursuant to Sections 13.04(a), Section 13.04(b), Section 13.04(c) or Section 13.04(d), has occurred on or before the Conversion Date for such conversion, but an adjustment to the Conversion Rate for such event has not yet become effective as of such Conversion Date,

(iii) the consideration due upon such conversion includes any whole Common Shares, and

(iv) such Common Shares are not entitled to participate in such event (because they were not held on the related Record Date or otherwise),

then solely for purposes of such conversion, the Company will, without duplication, give effect to such adjustment on such Conversion Date and, for the avoidance of doubt, such shares will not be entitled to participate in such event. In such case, if the date the Company is otherwise required to deliver the consideration due upon such conversion is before the first date on which the amount of such adjustment can be determined, then the Company will delay settlement of such conversion until the second Business Day after such first date.

(j) Notwithstanding anything to the contrary in this Article 13, the Conversion Rate shall not be adjusted:

(i) upon the issuance of any Common Shares pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Company's securities and the investment of additional optional amounts in Common Shares under any plan;

(ii) upon the issuance of any Common Shares, restricted stock or restricted stock units or options, rights or other derivatives to purchase Common Shares pursuant to any present or future employee, director or consultant benefit plan or program of or assumed by the Company or any of the Company's Subsidiaries;

(iii) upon the issuance of Common Shares pursuant to any option, warrant, right or exercisable, exchangeable or convertible security not described in clause (iii) of this subsection and outstanding as of the date the Notes were first issued (other than any rights plan);

(iv) upon the repurchase of any Common Shares pursuant to an open-market share repurchase program or other buy-back transaction that is not a tender offer or exchange offer of the nature described in Section 13.04(e), including pursuant to "10b-18" purchases on the

New York Stock Exchange or other U.S. securities exchange or “normal course issuer bids” effected through the facilities of the Toronto Stock Exchange;

(v) solely for a change in the par value of the Common Shares; or

(vi) for accrued and unpaid interest, if any.

(k) All calculations and other determinations under this Article 13 shall be made by the Company and shall be made to the nearest one-ten thousandth (1/10,000th) of a share.

(l) Whenever the Conversion Rate is adjusted as herein provided, the Company shall promptly file with the Trustee (and the Conversion Agent if not the Trustee) an Officer’s Certificate setting forth (i) the adjusted Conversion Rate, (ii) the subsection of this Section 13.04 pursuant to which such adjustment has been made, showing in reasonable detail and setting forth a brief statement of the facts requiring such adjustment and (iii) the date as of which such adjustment is effective (which certificates shall be conclusive evidence of the accuracy of such adjustment absent manifest error). Unless and until a Responsible Officer of the Trustee shall have received such Officer’s Certificate, the Trustee shall not be deemed to have knowledge of any adjustment of the Conversion Rate and may assume without inquiry that the last Conversion Rate of which it has knowledge is still in effect. Promptly after delivery of such certificate, the Company shall prepare a notice of such adjustment of the Conversion Rate setting forth the adjusted Conversion Rate and the date on which each adjustment becomes effective and shall deliver such notice of such adjustment of the Conversion Rate to each Holder (with a copy of such notice delivered to the Trustee and Conversion Agent). Failure to deliver such notice shall not affect the legality or validity of any such adjustment.

(m) If an adjustment to the Conversion Rate otherwise required by this Section 13.04 would result in a change of less than 1% to the Conversion Rate, then notwithstanding the foregoing, the Company may, at its election, defer and carry forward such adjustment, except that all such deferred adjustments must be given effect immediately upon the earliest of the following: (i) when all such deferred adjustments would result in an aggregate change of at least 1% to the Conversion Rate; (ii) on the Conversion Date for any Notes (in the case of Physical Settlement); (iii) on each Trading Day of any Observation Period related to any conversion of Notes (in the case of Cash Settlement or Combination Settlement); (iv) on the effective date of any Fundamental Change or Make-Whole Fundamental Change; (v) if the Company calls any Notes for redemption; or (vi) December 1, 2023, in each case, unless the adjustment has already been made. The provision described in the immediately preceding sentence of this Section 13.04(m) is referred to herein as the “**1% Provision.**”

(n) For purposes of this Section 13.04, the number of Common Shares at any time outstanding shall not include Common Shares held in the treasury of the Company so long as the Company does not pay any dividend or make any distribution on Common Shares held in the treasury of the Company, but shall include Common Shares issuable in respect of scrip certificates issued in lieu of fractions of Common Shares.

Section 13.05 *Adjustments of Prices.* Whenever any provision of this Indenture requires the Company to calculate the Last Reported Sale Prices, the Daily VWAPs, the Daily Conversion Values or the Daily Settlement Amounts over a span of multiple days (including, without limitation, an Observation Period and the period, if any, for determining the Share Price for purposes of a Make-Whole Fundamental Change or for purposes of determining whether the Company may issue a Redemption Notice), the Board of Directors will make appropriate adjustments, if any, to each to account for any adjustment to the Conversion Rate that becomes effective, or any event requiring an adjustment to the Conversion Rate where the Ex-Dividend Date, Effective Date or expiration date, as the case may be, of the event occurs, at any time during the period when the Last Reported Sale Prices, the Daily VWAPs, the Daily Conversion Values or the Daily Settlement Amounts are to be calculated.

Section 13.06 *Shares to Be Fully Paid* The Company shall provide, free from preemptive rights, out of its authorized but unissued shares or shares held in treasury, sufficient Common Shares to provide for conversion of the Notes from time to time as such Notes are presented for conversion (assuming delivery of the maximum number of Additional Shares pursuant to Section 13.03 and that at the time of computation of such number of shares, all such Notes would be converted by a single Holder and that Physical Settlement were applicable).

Section 13.07 *Effect of Recapitalizations, Reclassifications and Changes of the Common Shares*

(a) In the case of:

- (i) any recapitalization, reclassification or change of the Common Shares (other than changes resulting from a share split or consolidation),
- (ii) any consolidation, merger, arrangement, amalgamation, combination or similar transaction involving the Company,
- (iii) any sale, lease, exchange or other transfer to a third party of the consolidated assets of the Company and the Company's Subsidiaries substantially as an entirety or
- (iv) any statutory share exchange,

in each case, as a result of which the Common Shares would be converted into, or exchanged for, shares, stock, other securities, other property or assets (including cash or any combination thereof) (any such event, a "**Share Exchange Event**"), then, at the effective time of the Share Exchange Event, the Company or the successor or acquiring corporation, as the case may be, will execute with the Trustee a supplemental indenture, without the consent of Holders, providing that at and after the effective time of such Share Exchange Event, the right to convert each \$1,000 principal amount of the Notes will be changed into a right to convert such principal amount of the Notes into the kind and amount of shares, stock, other securities, or other property or assets (including cash or any combination thereof) that a holder of a number of Common Shares equal to the Conversion Rate immediately prior to such Share Exchange Event would have owned or been entitled to receive (the "**Reference Property**," with each "**unit of Reference Property**" meaning the kind and amount of

Reference Property that a holder of one Common Share is entitled to receive) upon such Share Exchange Event. However, at and after the effective time of the Share Exchange Event, (i) the Company or the successor or acquiring company, as the case may be, will continue to have the right to determine the form of consideration to be paid or delivered, as the case may be, upon conversion of the Notes, as set forth under Section 13.02 and (ii)(x) any amount payable in cash upon conversion of the Notes as set forth under Section 13.02 will continue to be payable in cash, (y) any Common Shares that the Company would have been required to deliver upon conversion of the Notes as set forth under Section 13.02 will instead be deliverable in the amount and type of Reference Property that a holder of that number of Common Shares would have received in such Share Exchange Event and (z) the Daily VWAP will be calculated based on the value of a unit of Reference Property that a holder of one Common Share would have received in such Share Exchange Event. If the Share Exchange Event causes the Common Shares to be converted into, or exchanged for, the right to receive more than a single type of consideration (determined based in part upon any form of shareholder election), (i) the Reference Property into which the Notes will be convertible shall be deemed to be the weighted average of the types and amounts of consideration actually received by the holders of Common Shares and (ii) the unit of Reference Property for purposes of the immediately preceding paragraph shall refer to the consideration referred to in clause (i) attributable to one Common Share. If the holders of the Common Shares receive only cash in such Share Exchange Event, then for all conversions for which the relevant Conversion Date occurs after the effective date of such Share Exchange Event, (A) the consideration due upon conversion of each \$1,000 principal amount of Notes shall be solely cash in an amount equal to the Conversion Rate in effect on the Conversion Date (as may be increased by any Additional Shares pursuant to Section 13.03), *multiplied by* the price paid per Common Share in such Common Share Change Event and (B) the Company shall satisfy the Conversion Obligation by paying cash to converting Holders on the second Business Day immediately following the relevant Conversion Date. The Company shall notify Holders, the Trustee and the Conversion Agent (if other than the Trustee) in writing of such weighted average as soon as practicable after such determination is made.

The supplemental indenture providing that the Notes will be convertible into Reference Property will also provide for anti-dilution and other adjustments that are as nearly equivalent as possible to the adjustments provided for in this Article 13. If the Reference Property in respect of any such Share Exchange Event includes shares, stock, securities or other property or assets of a Person other than the Company or the Successor Company, as the case may be, in such Share Exchange Event, such other Person will also execute such supplemental indenture, and such supplemental indenture shall contain such additional provisions to protect the interests of the Holders as the Board of the Directors of the Company reasonably considers necessary by reason of the foregoing, including the provisions providing for the purchase rights set forth in Article 14.

(b) When the Company executes a supplemental indenture pursuant to subsection (a) of this Section 13.07, the Company shall promptly file with the Trustee an Officer's Certificate briefly stating the reasons therefor, the kind or amount of cash, securities or property or asset that will comprise a unit of Reference Property after any such Share Exchange Event, any adjustment to be made with respect thereto and that all conditions precedent have been complied with, and shall promptly deliver or cause to be delivered notice thereof to all Holders. The Company shall cause notice of the execution of such supplemental indenture to be delivered to each Holder within 20 days

after execution thereof. Failure to deliver such notice shall not affect the legality or validity of such supplemental indenture.

(c) The Company shall not become a party to any Share Exchange Event unless its terms are consistent with this Section 13.07. None of the foregoing provisions shall affect the right of a holder of Notes to convert its Notes to cash, Common Shares or a combination of cash and Common Shares, as applicable, as set forth in Section 13.01 and Section 13.02 prior to the effective date of such Share Exchange Event.

(d) The above provisions of this Section shall similarly apply to successive Share Exchange Events.

Section 13.08 *Certain Covenants.* (a) The Company covenants that all Common Shares issued upon conversion of Notes will be fully paid and non-assessable by the Company and free from all taxes, liens and charges with respect to the issue thereof.

(b) The Company covenants that, if any Common Shares to be provided for the purpose of conversion of Notes hereunder require registration with or approval of any governmental authority under any federal or state law before such Common Shares may be validly issued upon conversion, the Company will, to the extent then permitted by the rules and interpretations of the Commission, secure such registration or approval, as the case may be.

(c) The Company covenants that if at any time the Common Shares shall be listed on any national securities exchange or automated quotation system, the Company will list and keep listed, so long as the Common Shares shall be so listed on such exchange or automated quotation system, any Common Shares issuable upon conversion of the Notes.

Section 13.09 *Responsibility of Trustee.* The Trustee and any other Conversion Agent shall not at any time be under any duty or responsibility to any Holder to determine the Conversion Rate (or any adjustment thereto) or whether any facts exist that may require any adjustment (including any increase) of the Conversion Rate, or with respect to the nature or extent or calculation of any such adjustment when made, or with respect to the method employed, or herein or in any supplemental indenture provided to be employed, in making the same. The Trustee and any other Conversion Agent shall not be accountable with respect to the validity or value (or the kind or amount) of any Common Shares, or of any securities, property or cash that may at any time be issued or delivered upon the conversion of any Note; and the Trustee and any other Conversion Agent make no representations with respect thereto. Neither the Trustee nor any Conversion Agent shall be responsible for any failure of the Company to issue, transfer or deliver any Common Shares or stock certificates or other securities or property or cash upon the surrender of any Note for the purpose of conversion or to comply with any of the duties, responsibilities or covenants of the Company contained in this Article. Without limiting the generality of the foregoing, neither the Trustee nor any Conversion Agent shall be under any responsibility to determine the correctness of any provisions contained in any supplemental indenture entered into pursuant to Section 13.07 relating either to the kind or amount of shares of stock or securities or property (including cash) receivable by Holders upon the conversion of their Notes after any event referred to in such Section 13.07 or to any adjustment to be made with respect thereto, but, subject to the provisions of Section 7.01, may

accept (without any independent investigation) as conclusive evidence of the correctness of any such provisions, and shall be protected in conclusively relying upon, the Officer's Certificate (which the Company shall be obligated to file with the Trustee prior to the execution of any such supplemental indenture) with respect thereto. Neither the Trustee nor the Conversion Agent shall be responsible for determining whether any event contemplated by Section 13.01(b) has occurred that makes the Notes eligible for conversion or no longer eligible therefor until the Company has delivered to the Trustee and the Conversion Agent the notices referred to in Section 13.01(b) with respect to the commencement or termination of such conversion rights, on which notices the Trustee and the Conversion Agent may conclusively rely, and the Company agrees to deliver such notices to the Trustee and the Conversion Agent immediately after the occurrence of any such event or at such other times as shall be provided for in Section 13.01(b).

Section 13.10 *Stockholder Rights Plans.* If the Company has a stockholder rights plan in effect upon conversion of the Notes, each Common Share, if any, issued upon such conversion shall be entitled to receive the applicable number of rights, if any, and the certificates representing the Common Shares issued upon such conversion shall bear such legends, if any, in each case as may be provided by the terms of any such stockholder rights plan, as the same may be amended from time to time. However, if, prior to any conversion of Notes, the rights have separated from the Common Shares in accordance with the provisions of the applicable stockholder rights plan, the Conversion Rate shall be adjusted at the time of separation as if the Company distributed to all or substantially all holders of the Common Shares Distributed Property as provided in Section 13.04(c), subject to readjustment in the event of the expiration, termination or redemption of such rights.

Section 13.11 *Notice to Holders Prior to Certain Actions.* In case of any:

(a) action by the Company or one of its Subsidiaries that would require an adjustment in the Conversion Rate pursuant to Section 13.04 or Section 13.10; or

(b) voluntary or involuntary dissolution, liquidation or winding-up of the Company;

then, in each case (unless notice of such event is otherwise required pursuant to another provision of this Indenture), the Company shall cause to be filed with the Trustee and the Conversion Agent (if other than the Trustee) and to be delivered to each Holder, as promptly as possible but in any event at least 10 days prior to the applicable date hereinafter specified, a notice stating (i) the date on which a record is to be taken for the purpose of such action by the Company or one of its Subsidiaries or, if a record is not to be taken, the date as of which the holders of Common Shares of record are to be determined for the purposes of such action by the Company or one of its Subsidiaries, or (ii) the date on which such dissolution, liquidation or winding-up is expected to become effective or occur, and the date as of which it is expected that holders of Common Shares of record shall be entitled to exchange their Common Shares for securities or other property deliverable upon such dissolution, liquidation or winding-up. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such action by the Company or one of its Subsidiaries, dissolution, liquidation or winding-up.

ARTICLE 14
OFFER TO REPURCHASE NOTES

Section 14.01 *Offer to Repurchase Notes Upon a Fundamental Change.* (a) If a Fundamental Change occurs at any time, the Company will be required to offer to repurchase for cash all of the outstanding Notes in integral multiple of \$1,000 principal amount on the date (the “**Fundamental Change Repurchase Date**”) specified by the Company that is not less than 20 Business Days or more than 35 Business Days following the date of the related Fundamental Change Company Notice at a repurchase price equal to 100% of the principal amount thereof, plus accrued and unpaid interest thereon to, but excluding, the Fundamental Change Repurchase Date (the “**Fundamental Change Repurchase Price**”), unless the Fundamental Change Repurchase Date falls after a Regular Record Date but on or prior to the Interest Payment Date to which such Regular Record Date relates, in which case the Company shall instead pay, on or, at the Company’s election, before such Interest Payment Date, the full amount of accrued and unpaid interest to Holders of record as of such Regular Record Date, and the Fundamental Change Repurchase Price shall be equal to 100% of the principal amount of Notes to be repurchased pursuant to this Article 14.

(b) On or before the 20th Business Day after the occurrence of the effective date of a Fundamental Change, the Company shall provide to all Holders of Notes, the Trustee, the Conversion Agent and the Paying Agent (in the case of a Paying Agent other than the Trustee) a written notice (the “**Fundamental Change Company Notice**”) of the occurrence of the effective date of the Fundamental Change and of the resulting repurchase right. In the case of Physical Notes, such notice shall be by first class mail or, in the case of Global Notes, such notice shall be delivered in accordance with the Applicable Procedures. Each Fundamental Change Company Notice shall specify:

- (i) the events causing the Fundamental Change;
- (ii) the effective date of the Fundamental Change;
- (iii) the last date on which a Holder may exercise the repurchase right pursuant to this Article 14;
- (iv) the Fundamental Change Repurchase Price;
- (v) the Fundamental Change Repurchase Date;
- (vi) the name and address of the Paying Agent and the Conversion Agent, if applicable;
- (vii) if applicable, the Conversion Rate and any adjustments to the Conversion Rate as a result of such Fundamental Change (or related Make-Whole Fundamental Change);
- (viii) that the Notes with respect to which a Fundamental Change Repurchase Notice has been delivered by a Holder may be converted only if the Holder validly withdraws the Fundamental Change Repurchase Notice in accordance with the terms of this Indenture; and

- (ix) the procedures that Holders must follow to require the Company to repurchase their Notes.

Simultaneously with providing such notice, the Company will publish the information on its website or through such other public medium as it may use at that time.

No failure of the Company to give the foregoing notices (which failure, for the avoidance of doubt, shall result in an Event of Default under Section 6.01(d)) and no defect therein shall limit the Holders' repurchase rights or affect the validity of the proceedings for the repurchase of the Notes pursuant to this Section 14.01.

At the Company's request, the Trustee shall give such notice in the Company's name and at the Company's expense; *provided, however*, that, in all cases, the text of such Fundamental Change Company Notice shall be prepared by the Company.

- (c) To exercise the Fundamental Change repurchase right under this Section 14.01 the Holder shall:

(i) deliver to the Paying Agent by a Holder of a duly completed notice (the "**Fundamental Change Repurchase Notice**") in the form set forth in Attachment 2 to the Form of Note attached hereto as Exhibit A, if the Notes are Physical Notes, or in compliance with the Applicable Procedures for surrendering interests in Global Notes, if the Notes are Global Notes, in each case on or before the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date; and

(ii) deliver the Notes, if the Notes are Physical Notes, to the Paying Agent at any time after delivery of the Fundamental Change Repurchase Notice (together with all necessary endorsements for transfer) at the Corporate Trust Office of the Paying Agent, or book-entry transfer of the Notes, if the Notes are Global Notes, in compliance with the Applicable Procedures, in each case such delivery being a condition to receipt by the Holder of the Fundamental Change Repurchase Price therefor.

The Fundamental Change Repurchase Notice in respect of any Notes to be repurchased shall state:

- (i) in the case of Physical Notes, the certificate numbers of the Notes to be delivered for repurchase;
- (ii) the portion of the principal amount of Notes to be repurchased, which must be \$1,000 or an integral multiple thereof; and
- (iii) that the Notes are to be repurchased by the Company pursuant to the applicable provisions of the Notes and this Indenture;

provided, however, that if the Notes are Global Notes, to exercise the Fundamental Change repurchase right, Holders must surrender their Notes in accordance with the Applicable Procedures.

Notwithstanding anything herein to the contrary, any Holder delivering to the Paying Agent the Fundamental Change Repurchase Notice contemplated by this Section 14.01 shall have the right to withdraw, in whole or in part, such Fundamental Change Repurchase Notice at any time prior to the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date by delivery of a written notice of withdrawal to the Paying Agent in accordance with Section 14.02.

The Paying Agent shall promptly notify the Company of the receipt by it of any Fundamental Change Repurchase Notice or written notice of withdrawal thereof.

(d) Notwithstanding the foregoing, no Notes may be repurchased by the Company on any date at the option of the Holders upon a Fundamental Change if the principal amount of the Notes has been accelerated, and such acceleration has not been rescinded, on or prior to such date (except in the case of an acceleration resulting from a Default by the Company in the payment of the Fundamental Change Repurchase Price with respect to such Notes). The Paying Agent will promptly return to the respective Holders thereof any Physical Notes held by it during the acceleration of the Notes (except in the case of an acceleration resulting from a Default by the Company in the payment of the Fundamental Change Repurchase Price with respect to such Notes), or any instructions for book-entry transfer of the Notes in compliance with the Applicable Procedures shall be deemed to have been cancelled, and, upon such return or cancellation, as the case may be, the Fundamental Change Repurchase Notice with respect thereto shall be deemed to have been withdrawn.

Section 14.02 *Withdrawal of Fundamental Change Repurchase Notice.* (a) A Fundamental Change Repurchase Notice may be withdrawn (in whole or in part) in respect of Physical Notes by means of a written notice of withdrawal delivered to the Corporate Trust Office of the Trustee and Paying Agent in accordance with this Section 14.02 at any time prior to the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date, specifying:

- (i) the principal amount of the Notes with respect to which such notice of withdrawal is being submitted, which must be in principal amounts of \$1,000 or an integral multiple thereof,
- (ii) if Physical Notes have been issued, the certificate number of the Note in respect of which such notice of withdrawal is being submitted, and
- (iii) the principal amount, if any, of such Note that remains subject to the original Fundamental Change Repurchase Notice, which portion must be in principal amounts of \$1,000 or an integral multiple of \$1,000;

provided, however, that if the Notes are Global Notes, Holders may withdraw their Notes subject to repurchase at any time prior to the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date in accordance with the Applicable Procedures.

Section 14.03 *Deposit of Fundamental Change Repurchase Price.* (a) The Company will deposit with the Paying Agent (or, if the Company is acting as its own Paying Agent, set aside, segregate and hold in trust as provided in Section 4.04) at or prior to 11:00 a.m., New York City

time, on the Fundamental Change Repurchase Date an amount of money sufficient to repurchase all of the Notes to be repurchased at the appropriate Fundamental Change Repurchase Price. Subject to receipt of funds and/or Notes by the Paying Agent, payment for Notes surrendered for repurchase (and not withdrawn prior to the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date) will be made on the later of (i) the Fundamental Change Repurchase Date (provided the Holder has satisfied the conditions in Section 14.01) and (ii) the time of book-entry transfer or the delivery of such Note to the Paying Agent by the Holder thereof in the manner required by Section 14.01 by mailing checks for the amount payable to the Holders of such Notes entitled thereto as they shall appear in the Note Register; provided, however, that payments to the Depositary shall be made by wire transfer of immediately available funds to the account of the Depositary or its nominee. The Trustee shall, promptly after such payment and upon written demand by the Company, return to the Company any funds in excess of the Fundamental Change Repurchase Price.

(b) If by 11:00 a.m. New York City time, on the Fundamental Change Repurchase Date, the Paying Agent holds money sufficient to pay the Fundamental Change Repurchase Price (and, to the extent not included in the Fundamental Change Repurchase Price, accrued and unpaid interest, if applicable) of the Notes to be repurchased on such Fundamental Change Repurchase Date, then, with respect to the Notes that have been properly surrendered for repurchase and have not been validly withdrawn, (i) such Notes will cease to be outstanding, (ii) interest will cease to accrue on such Notes (whether or not book-entry transfer of the Notes has been made or the Notes have been delivered to the Trustee or Paying Agent) and (iii) all other rights of the Holders of such Notes will terminate (other than the right to receive the Fundamental Change Repurchase Price and, if applicable, accrued and unpaid interest).

(c) Upon surrender of a certificated Note that is to be repurchased in part pursuant to Section 14.01, the Company shall execute and the Trustee shall authenticate and deliver to the Holder a new certificated Note in an authorized denomination equal in principal amount to the unrepurchased portion of the certificated Note surrendered.

Section 14.04 *Covenant to Comply with Applicable Laws Upon Repurchase of Notes.* In connection with any repurchase offer upon a Fundamental Change pursuant to this Article 13, the Company will, if required:

(a) comply with the applicable provisions of Rule 13e-4, Rule 14e-1 and any other tender offer rules under the Exchange Act that may then be applicable, and any requirements of Canadian Securities Laws that may then be applicable;

(b) file a Schedule TO or any other required schedule under the Exchange Act and all materials required under applicable U.S. and Canadian Securities Laws or other applicable laws; and

(c) otherwise comply with all U.S. federal and state and Canadian Securities Laws in connection with any offer by the Company to repurchase the Notes;

in each case, so as to permit the rights and obligations under this Article 14 to be exercised in the time and in the manner specified in this Article 14.

ARTICLE 15
OPTIONAL REDEMPTION

Section 15.01 *Optional Redemption.* No sinking fund is provided for the Notes. The Notes shall not be redeemable by the Company prior to June 6, 2022 except pursuant to Section 15.03. Subject to Section 15.06, on or after June 6, 2022 and on or before the 30th Scheduled Trading Day immediately before the Maturity Date, the Company may redeem (an “**Optional Redemption**”) for cash all or any portion of the Notes, at the Redemption Price, if the Last Reported Sale Price of the Common Shares has been at least 130% of the Conversion Price then in effect for at least 20 Trading Days (whether or not consecutive) during any 30 consecutive Trading Day period (including the last Trading Day of such period) ending on, and including, the Trading Day immediately preceding the Redemption Notice Date in accordance with Section 15.02.

Section 15.02 *Notice of Optional Redemption; Selection of Notes.* (a) In case the Company exercises its Optional Redemption right to redeem all or, as the case may be, any part of the Notes pursuant to Section 15.01, it shall fix a Redemption Date and it (or, at its written request received by the Trustee not less than five (5) Business Days prior to the Redemption Notice Date (or such shorter period of time as may be acceptable to the Trustee), the Trustee, in the name of and at the expense of the Company) shall deliver or cause to be delivered a notice of such Optional Redemption (a “**Notice of Optional Redemption**”) not less than 30 nor more than 60 Scheduled Trading Days (as calculated by the Company) prior to the Redemption Date to each Holder so to be redeemed as a whole or in part; *provided, however*, that, if the Company shall give such notice, it shall also give written notice of the Redemption Date to the Trustee and the Paying Agent (if other than the Trustee). The Redemption Date must be a Business Day.

(b) The Notice of Optional Redemption, if delivered in the manner herein provided, shall be conclusively presumed to have been duly given, whether or not the Holder receives such notice. In any case, failure to give such Notice of Optional Redemption or any defect in the Notice of Optional Redemption to the Holder of any Note designated for redemption as a whole or in part shall not affect the validity of the proceedings for the redemption of any other Note.

- (c) Each Notice of Optional Redemption shall specify:
- (i) the Redemption Date;
 - (ii) the Redemption Price (including the amount of accrued interest, if any, to be paid on the Redemption Date);
 - (iii) that on the Redemption Date, the Redemption Price will become due and payable upon each Note to be redeemed, and that interest thereon, if any, shall cease to accrue on and after the Redemption Date;
 - (iv) the place or places where such Notes are to be surrendered for payment of the Redemption Price;

(v) that Holders may surrender their Notes for conversion at any time prior to the close of business on second the Scheduled Trading Day immediately preceding the Redemption Date;

(vi) the procedures a converting Holder must follow to convert its Notes and the Settlement Method and, if applicable, Specified Dollar Amount that would apply to each conversion with a Conversion Date occurring during the related Redemption Period;

(vii) the Conversion Rate and, if applicable, the number of Additional Shares added to the Conversion Rate in accordance with Section 13.03;

(viii) the CUSIP, ISIN or other similar numbers, if any, assigned to such Notes; and

(ix) in case any Note is to be redeemed in part only, the portion of the principal amount thereof to be redeemed and on and after the Redemption Date, upon surrender of such Note, a new Note in principal amount equal to the unredeemed portion thereof shall be issued.

Each Notice of Optional Redemption shall be irrevocable.

(d) Subject to the Applicable Procedures, if the Company decides to redeem fewer than all of the outstanding Notes, the Company will instruct the Trustee and Paying Agent regarding the selection of Notes or portions thereof of a Global Note or the Notes in certificated form to be redeemed (in principal amounts of \$1,000 or integral multiples thereof) in accordance with the Applicable Procedures. If any Note selected for partial redemption is submitted for conversion in part after such selection, the portion of the Note submitted for conversion shall be deemed (so far as may be possible) to be the portion selected for redemption, subject, in the case of Notes represented by a Global Note, to the Applicable Procedures.

Section 15.03 *Redemption of Notes for Changes in Tax Law of the Relevant Taxing Jurisdiction.* Subject to Section 15.06, the Company may redeem (a “**Tax Redemption**”) for cash all, but not part of, the Notes, at its option, if the Company has, or on the next Interest Payment Date would, become obligated to pay to the Holder of any Notes Additional Amounts (which are more than a de minimis amount) as a result of (1) any amendment to, or change in, the laws or any regulations or rulings promulgated thereunder of a Relevant Taxing Jurisdiction that is announced and becomes effective after the date of the Offering Memorandum (or, if the applicable Relevant Taxing Jurisdiction became a Relevant Taxing Jurisdiction on a date after the date of the Offering Memorandum, such later date) or (2) any amendment to, or change in, an official interpretation regarding such laws, regulations or rulings, including by virtue of a holding, judgment or order by a court of competent jurisdiction that is announced and becomes effective after the date of the Offering Memorandum (or, if the applicable Relevant Taxing Jurisdiction became a Relevant Taxing Jurisdiction on a date after the date of the Offering Memorandum, such later date); *provided* that the Company may only redeem the Notes under this Section 15.03 if (x) it cannot avoid these obligations by taking reasonable measures available to it and (y) it delivers to the Trustee an Opinion of Counsel and an Officer’s Certificate, in each case, attesting to such change and obligation to pay Additional Amounts. Neither the Trustee nor the Paying Agent will have any obligation or liability

to determine whether any such change in law exists and whether the Company has taken measures necessary to avoid these obligations.

Section 15.04 *Notice of Tax Redemption.* (a) In case the Company exercises its Tax Redemption right to redeem all of the Notes pursuant to Section 15.03, it shall fix a Redemption Date and it or, at its written request received by the Trustee not less than five (5) Business Days prior to the date such Notice of Tax Redemption is to be sent (or such shorter period of time as may be acceptable to the Trustee), the Trustee, in the name of and at the expense of the Company, shall deliver or cause to be delivered a notice of such Tax Redemption (a “**Notice of Tax Redemption**”) not less than 30 nor more than 60 Scheduled Trading Days (as calculated by the Company) prior to the Redemption Date to each Holder; *provided, however*, that, (x) the Company shall not give a Notice of Tax Redemption earlier than 60 Scheduled Trading Days prior to, or later than 365 days after, the earliest date on or from which the Company would be obligated to pay any such Additional Amounts; and (y) at the time the Company gives a Notice of Tax Redemption, the circumstances creating the Company’s obligation to pay such Additional Amounts remain in effect. The Redemption Date must be a Business Day.

(b) The Notice of Tax Redemption, if delivered in the manner herein provided, shall be conclusively presumed to have been duly given, whether or not the Holder receives such notice. In any case, failure to give such Notice of Tax Redemption or any defect in the Notice of Tax Redemption to the Holder of any Note designated for redemption as a whole or in part shall not affect the validity of the proceedings for the redemption of any other Note.

(c) Each Notice of Tax Redemption shall specify:

- (i) the Redemption Date;
- (ii) the Redemption Price (including the amount of accrued interest, if any, to be paid on the Redemption Date);
- (iii) that on the Redemption Date, the Redemption Price will become due and payable upon each Note to be redeemed, and that interest thereon, if any, shall cease to accrue on and after the Redemption Date;
- (iv) the place or places where such Notes are to be surrendered for payment of the Redemption Price;
- (v) that Holders may surrender their Notes for conversion at any time prior to the close of business on the Trading Day immediately preceding the Redemption Date;
- (vi) the procedures a converting Holder must follow to convert its Notes and the Settlement Method and, if applicable, Specified Dollar Amount that would apply to each conversion with a Conversion Date occurring during the related Redemption Period;
- (vii) the Conversion Rate and, if applicable, the number of Additional Shares added to the Conversion Rate in accordance with Section 14.03;

(viii) the CUSIP, ISIN or other similar numbers, if any, assigned to such Notes; and

(ix) that each Holder who does not wish to have the Company redeem its Notes will have the right to elect to not have its Notes redeemed and the procedures for making such election.

A Notice of Tax Redemption shall be irrevocable.

(d) Upon receiving such Notice of Tax Redemption, each Holder who does not wish to have the Company redeem its Notes will have the right to elect to (i) convert its Notes; or (ii) to the extent permitted by the Applicable Procedures with respect to any Global Note, not have its Notes redeemed, in which case the Company will not be obligated to pay any Additional Amounts on any payment with respect to such Notes solely as a result of such change in tax law that resulted in the obligation to pay such Additional Amounts (whether upon conversion, required repurchase in connection with a Fundamental Change, upon any Optional Redemption as described under Section 15.01, maturity or otherwise, and whether in cash, Common Shares, Reference Property or otherwise) after the Redemption Date for such Tax Redemption (or, if the Company fails to pay the Redemption Price on the Redemption Date, such later date on which the Company pays the Redemption Price), and all future payments with respect to such Notes will be subject to the deduction or withholding of such Relevant Taxing Jurisdiction taxes required by law to be deducted or withheld as a result of such change in tax law; *provided* that, the obligations to pay Additional Amounts to any electing Holder, subject to the exceptions set forth in Section 2.11, will continue to apply for payments and deliveries made in periods prior to the Redemption Date; *provided, further* that, notwithstanding the foregoing, if a Holder electing not to have its Notes redeemed converts its Notes during the related Redemption Period, the Company will be obligated to pay Additional Amounts, if any, with respect to such conversion.

(e) The Holder must deliver to the Trustee and Paying Agent a written notice of election through the Applicable Procedures with respect to any Global Note which needs to be received by the Trustee and Paying Agent no later than the close of business on a Business Day at least five Business Days prior to the Redemption Date. A Holder may withdraw any notice of election by delivering to the Paying Agent a written notice of withdrawal from a Holder through the Applicable Procedures with respect to any Global Note prior to the close of business on the Business Day prior to the Redemption Date. Where no election is made, the Holder's Notes will be redeemed without any further action.

Section 15.05 *Payment of Notes Called for Redemption.* (a) If any Redemption Notice has been given in respect of the Notes in accordance with Section 15.02 or Section 15.04, as applicable, the Notes shall become due and payable on the Redemption Date at the place or places stated in the Redemption Notice and at the applicable Redemption Price. On presentation and surrender of the Notes at the place or places stated in the Redemption Notice, the Notes shall be paid and redeemed by the Company at the applicable Redemption Price.

(b) At or prior to 11:00 a.m., New York City time, on the Redemption Date, the Company shall deposit with the Paying Agent or, if the Company or a Subsidiary of the Company is

acting as the Paying Agent, shall segregate and hold in trust as provided in Section 7.05 an amount of cash (in immediately available funds if deposited on the Redemption Date), sufficient to pay the Redemption Price of all of the Notes to be redeemed on such Redemption Date. Subject to receipt of funds by the Paying Agent, payment for the Notes to be redeemed shall be made on the Redemption Date for such Notes. The Paying Agent shall, promptly after such payment and upon written demand by the Company, return to the Company any funds in excess of the Redemption Price.

Section 15.06 *Restrictions on Redemption.* Notwithstanding anything herein to the contrary, (a) the Company may only call Notes for redemption (whether an Optional Redemption or Tax Redemption) if the Resale Documents are effective and available for use and are expected to remain effective and available for use during the applicable Redemption Period as of the date of the applicable Redemption Notice, unless no Registrable Securities remain outstanding at such time, (b) the Company may not call the Notes for redemption if the Redemption Date would fall after the 30th Scheduled Trading Day immediately before the Maturity Date and (c) no Notes may be redeemed on any date if the principal amount of the Notes has been accelerated in accordance with the terms of this Indenture, and such acceleration has not been rescinded, on or prior to the Redemption Date (except in the case of an acceleration resulting from a Default by the Company in the payment of the Redemption Price with respect to such Notes).

ARTICLE 16 MISCELLANEOUS PROVISIONS

Section 16.01 *Provisions Binding on Company's Successors.* All the covenants, stipulations, promises and agreements of the Company contained in this Indenture shall bind its successors and assigns whether so expressed or not.

Section 16.02 *Official Acts by Successor Corporation.* Any act or proceeding by any provision of this Indenture authorized or required to be done or performed by any board, committee or Officer of the Company shall and may be done and performed with like force and effect by the like board, committee or officer of any corporation or other entity that shall at the time be the lawful sole successor of the Company.

Section 16.03 *Addresses for Notices, Etc.* Any notice or demand that by any provision of this Indenture is required or permitted to be given by the Trustee or by the Holders to the Company shall be deemed to have been sufficiently given or made, for all purposes if given or served by overnight courier or by being deposited postage prepaid by registered or certified mail in a post office letter box addressed (until another address is filed by the Company with the Trustee) to Aphria Inc., Aphria Inc., 265 Talbot St. W. Leamington, Ontario, N8H 4H3, Attention: Christelle Gedeon, Chief Legal Officer, with copies to: Fasken Martineau DuMoulin LLP, 333 Bay Street, Suite 2400, Toronto, Ontario M5H 2TC, Attention: Grant McGlaughlin, Esq., and DLA Piper LLP (US), 1251 Avenue of the Americas, New York, NY 10020, Attention: Christopher Giordano, Esq. Any notice, direction, request or demand hereunder to or upon the Trustee shall be deemed to have been sufficiently given or made, for all purposes, if given or served by being deposited postage prepaid by registered or certified mail in a post office letter box addressed to the Corporate Trust Office or sent electronically in PDF format to an email address specified by the Trustee.

The Trustee, by notice to the Company, may designate additional or different addresses for subsequent notices or communications.

Any notice or communication delivered or to be delivered to a Holder of Physical Notes shall be mailed to it by first class mail, postage prepaid, at its address as it appears on the Note Register and shall be sufficiently given to it if so mailed within the time prescribed. Any notice or communication delivered or to be delivered to a Holder of Global Notes shall be delivered in accordance with the Applicable Procedures of the Depositary and shall be sufficiently given to it if so delivered within the time prescribed (and any such notice so given will be deemed to have been given in writing for purposes of this Indenture). Notwithstanding any other provision of this Indenture or any Note, where this Indenture or any Note provides for notice of any event (including any Fundamental Change Company Notice) to a Holder of a Global Note (whether by mail or otherwise), such notice shall be sufficiently given if given to the Depositary (or its designee) pursuant to the standing instructions from the Depositary or its designee, including by electronic mail in accordance with the Applicable Procedures.

Failure to mail or deliver a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders. If a notice or communication is mailed or delivered, as the case may be, in the manner provided above, it is duly given, whether or not the addressee receives it.

In case by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give such notice to Holders by mail, then such notification as shall be made with the approval of the Trustee shall constitute a sufficient notification for every purpose hereunder.

Section 16.04 *Governing Law; Jurisdiction; Service of Process*;. THIS INDENTURE AND EACH NOTE, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS INDENTURE AND EACH NOTE, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

The Company irrevocably consents and agrees, for the benefit of the Holders from time to time of the Notes and the Trustee, that any legal action, suit or proceeding against it with respect to obligations, liabilities or any other matter arising out of or in connection with this Indenture or the Notes may be brought in the courts of the State of New York or the courts of the United States located in the Borough of Manhattan, New York City, New York and, until amounts due and to become due in respect of the Notes have been paid, hereby irrevocably consents and submits to the non-exclusive jurisdiction of each such court *in personam*, generally and unconditionally with respect to any action, suit or proceeding for itself in respect of its properties, assets and revenues.

The Company irrevocably and unconditionally waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions, suits or proceedings arising out of or in connection with this Indenture brought in the courts of the State of New York or the courts of the United States located in the Borough of Manhattan, New York City, New York and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

The Company shall appoint CT Corporation System, 28 Liberty Street, New York, NY 10005, as its agent for service of process in any suit, action or proceeding with respect to this Indenture and the Notes and for actions brought under the U.S. federal or state securities laws brought in any U.S. federal or state court located in the Borough of Manhattan in the City of New York. The Company shall take all actions, including payment of fees to CT Corporation System, to ensure that such appointment remains effective at all times.

Section 16.05 *Evidence of Compliance with Conditions Precedent; Certificates and Opinions of Counsel to Trustee.* Upon any application or demand by the Company to the Trustee to take any action under any of the provisions of this Indenture, the Company shall, if requested by the Trustee, furnish to the Trustee an Officer's Certificate stating that such action is permitted by the terms of this Indenture.

Each Officer's Certificate and Opinion of Counsel provided for, by or on behalf of the Company in this Indenture and delivered to the Trustee with respect to compliance with this Indenture (other than the Officer's Certificates provided for in Section 4.08 or pursuant to Section 314(a)(4) of the Trust Indenture Act) shall comply with the provisions of Section 314(e) of the Trust Indenture Act and shall include (a) a statement that the person signing such certificate is familiar with the requested action and this Indenture; (b) a brief statement as to the nature and scope of the examination or investigation upon which the statement contained in such certificate is based; (c) a statement that, in the judgment of such person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed judgment as to whether or not such action is permitted by this Indenture; and (d) a statement as to whether or not, in the judgment of such person, such action is permitted by this Indenture and, if applicable, that all conditions precedent thereto have been complied with; *provided that* (1) the Opinion of Counsel to be delivered in connection with the original issuance of Notes on the date hereof under this Indenture shall not be required to comply with clauses (a) through (d) of this Section 16.05 and (2) no Opinion of Counsel shall be required to be delivered in connection with (i) the mandatory exchange of the restricted CUSIP of the Restricted Securities to an unrestricted CUSIP pursuant to the Applicable Procedures of the Depositary upon the Notes becoming freely tradable by non-Affiliates of the Company under Rule 144 or (2) a request by the Company that the Trustee deliver a notice to Holders under the Indenture where the Trustee receives an Officer's Certificate with respect to such notice. With respect to matters of fact, an Opinion of Counsel may rely on an Officer's Certificate or certificates of public officials.

Notwithstanding anything to the contrary in this Section 16.05, if any provision in this Indenture specifically provides that the Trustee shall or may receive an Opinion of Counsel in connection with any action to be taken by the Trustee or the Company hereunder, the Trustee shall be entitled to receive, or entitled to request, such Opinion of Counsel.

Section 16.06 *Legal Holidays.* In any case where any Interest Payment Date, any Fundamental Change Repurchase Date, any Redemption Date or the Maturity Date is not a Business Day, then any action to be taken on such date need not be taken on such date, but may be taken on the next succeeding Business Day with the same force and effect as if taken on such date, and no interest shall accrue in respect of the delay.

Section 16.07 *No Security Interest Created.* Nothing in this Indenture or in the Notes, expressed or implied, shall be construed to constitute a security interest under the Uniform Commercial Code or similar legislation, as now or hereafter enacted and in effect, in any jurisdiction.

Section 16.08 *Benefits of Indenture.* Nothing in this Indenture or in the Notes, expressed or implied, shall give to any Person, other than the Holders, the parties hereto, any Paying Agent, any Conversion Agent, any authenticating agent, any Note Registrar and their successors hereunder, any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 16.09 *Table of Contents, Headings, Etc.* The table of contents and the titles and headings of the articles and sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

Section 16.10 *Authenticating Agent.* The Trustee may appoint an authenticating agent that shall be authorized to act on its behalf and subject to its direction in the authentication and delivery of Notes in connection with the original issuance thereof and transfers and exchanges of Notes hereunder, including under Section 2.04, Section 2.05, Section 2.06, Section 2.07, Section 10.04 and Section 14.03 as fully to all intents and purposes as though the authenticating agent had been expressly authorized by this Indenture and those Sections to authenticate and deliver Notes. For all purposes of this Indenture, the authentication and delivery of Notes by the authenticating agent shall be deemed to be authentication and delivery of such Notes “by the Trustee” and a certificate of authentication executed on behalf of the Trustee by an authenticating agent shall be deemed to satisfy any requirement hereunder or in the Notes for the Trustee’s certificate of authentication. Such authenticating agent shall at all times be a Person eligible to serve as trustee hereunder pursuant to Section 7.08.

Any corporation or other entity into which any authenticating agent may be merged or converted or with which it may be consolidated, or any corporation or other entity resulting from any merger, consolidation or conversion to which any authenticating agent shall be a party, or any corporation or other entity succeeding to the corporate trust business of any authenticating agent, shall be the successor of the authenticating agent hereunder, if such successor corporation or other entity is otherwise eligible under this Section 16.10, without the execution or filing of any paper or any further act on the part of the parties hereto or the authenticating agent or such successor corporation or other entity.

Any authenticating agent may at any time resign by giving written notice of resignation to the Trustee and to the Company. The Trustee may at any time terminate the agency of any authenticating agent by giving written notice of termination to such authenticating agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time any authenticating agent shall cease to be eligible under this Section, the Trustee may appoint a successor authenticating agent (which may be the Trustee), shall give written notice of such appointment to the Company and shall deliver notice of such appointment to all Holders.

The Company agrees to pay to the authenticating agent from time to time reasonable compensation for its services although the Company may terminate the authenticating agent, if it determines such agent's fees to be unreasonable.

The provisions of Section 7.02, Section 7.03, Section 7.04, Section 8.03 and this Section 16.10 shall be applicable to any authenticating agent.

If an authenticating agent is appointed pursuant to this Section 16.10, the Notes may have endorsed thereon, in addition to the Trustee's certificate of authentication, an alternative certificate of authentication in the following form:

, as Authenticating Agent, certifies that this is one of the Notes described in the within-named Indenture.

By: _____
Authorized Officer

Section 16.11 *Execution in Counterparts.* This Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument. The exchange of copies of this Indenture and of signature pages by facsimile or PDF or other electronic transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile, PDF or other electronic transmission shall constitute effective execution and delivery of this Indenture as to the other parties hereto

shall be deemed to be their original signatures for all purposes.

Section 16.12 *Severability.* In the event any provision of this Indenture or in the Notes shall be invalid, illegal or unenforceable, then (to the extent permitted by law) the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired.

Section 16.13 *Waiver of Jury Trial.* EACH OF THE COMPANY AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 16.14 *Force Majeure.* In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee shall use reasonable efforts that are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

Section 16.15 *Calculations.* (a) Except as otherwise provided herein, the Company shall be responsible for making all calculations called for under this Indenture and the Notes. These calculations include, but are not limited to, determinations of the Last Reported Sale Prices of the Common Shares, the Daily VWAPs, the Daily Conversion Values, the Daily Settlement Amounts, accrued interest payable on the Notes, currency exchange rates and the Conversion Rate of the Notes. The Company shall make all these calculations in good faith and in a commercially reasonable manner and, absent manifest error, the Company's calculations shall be final and binding on Holders of Notes. The Company shall provide a schedule of its calculations to each of the Trustee, the Paying Agent, the Registrar and the Conversion Agent, and each of the Trustee, Paying Agent, Note Registrar and Conversion Agent is entitled to rely conclusively upon the accuracy of the Company's calculations without independent verification. The Trustee, Paying Agent, Note Registrar or Conversion Agent may forward the Company's calculations to any Holder of Notes upon the written request of that Holder at the sole cost and expense of the Company. For the avoidance of doubt, none of the Trustee, Paying Agent, Note Registrar or the Conversion Agent will be responsible for making any calculations called for under the Notes, for determining whether the Notes may be surrendered for conversion pursuant to this Indenture, or for notifying the Company or the Depository or any of the Holders if the Notes have become convertible pursuant to the terms of this Indenture.

(b) Any price of our Common Shares (or such other security) that is reported in Canadian dollars shall be converted into U.S. dollars by the Company based on the most recently published daily exchange rate of the Bank of Canada on or immediately prior to the date of such share price.

Section 16.16 *USA PATRIOT Act.* The parties hereto acknowledge that in accordance with Section 326 of the USA PATRIOT Act, the Trustee, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. The parties to this Indenture agree that they will provide the Trustee with such information as it may request in order for the Trustee to satisfy the requirements of the USA PATRIOT Act.

Section 16.17 *Currency Indemnity.* U.S. dollars are the sole currency of account and payment for all principal, interest and cash for fractional shares due upon conversion (or damages) payable by the Company under or in connection with the Notes and the Trustee, Paying Agent and Conversion Agent shall only administer this Indenture in U.S. dollars. Any amount received or recovered in a currency other than U.S. dollars (as a result of, or through the enforcement of, a judgment or order of a court of any jurisdiction, in our winding-up or dissolution or otherwise) by any Holder of a Note in respect of any principal, interest or cash for fractional shares due upon conversion (or damages) to be due to it from the Company will only constitute a discharge to the Company to the extent of the U.S. dollar amount that the recipient is able to purchase with the amount so received or recovered in that other currency on the date of that receipt or recovery (or, if it is not practicable to make that purchase on that date, on the first date on which it is practicable to do so). If that U.S. dollar amount is less than the U.S. dollar amount expressed to be due to the recipient under any Note, the Company will indemnify such Holder against any loss sustained by it as a result; and if the amount of U.S. dollars so purchased is greater than the sum originally due to such Holder,

such Holder will, by accepting a Note, be deemed to have agreed to repay such excess. In any event, the Company will indemnify the recipient against the cost of making any such purchase.

Section 16.18 *Communication by Holders with Other Holders.* Holders may communicate pursuant to Section 312(b) of the Trust Indenture Act with other Holders with respect to their rights under this Indenture or the Notes and, in connection with any such communications, the Trustee shall satisfy its obligations under Section 312(b) of the Trust Indenture Act in accordance with the provisions of Section 312(b) of the Trust Indenture Act. The Company, the Trustee, the Note Registrar and anyone else shall have the protection of Section 312(c) of the Trust Indenture Act.

Section 16.19 *Conflict with Trust Indenture Act.* If and to the extent that any provision of this Indenture limits, qualifies or conflicts with the duties imposed by Sections 310 to 317, inclusive, of the Trust Indenture Act, such imposed duties shall control.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed as of the date first written above.

APHRIA INC.

By: /s/ Carl Merton

Name: Carl Merton

Title: CFO

GLAS TRUST COMPANY LLC, as Trustee

By: /s/ Adam Berman

Name: Adam Berman

Title: Vice President

[Signature Page to Aphria Inc. Indenture]

[FORM OF FACE OF NOTE]

[INCLUDE FOLLOWING LEGEND IF A GLOBAL NOTE]

[UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION (“DTC”), TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT HEREUNDER IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]

[INCLUDE FOLLOWING LEGEND IF A RESTRICTED SECURITY]

[THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), AND ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT AS SET FORTH IN THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF, THE HOLDER AGREES:

(1) THAT IT WILL NOT RESELL OR OTHERWISE TRANSFER THE SECURITY EVIDENCED HEREBY, EXCEPT

(A) TO APHRIA INC. (THE “ISSUER”) OR A SUBSIDIARY OF THE ISSUER;

(B) UNDER A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT;

(C) TO A PERSON THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A ADOPTED UNDER THE SECURITIES ACT) THAT IS PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF ANOTHER QUALIFIED INSTITUTIONAL BUYER AND TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, ALL IN COMPLIANCE WITH RULE 144A (IF AVAILABLE);

(D) OUTSIDE THE UNITED STATES IN A TRANSACTION MEETING THE REQUIREMENTS OF REGULATION S UNDER THE SECURITIES ACT; OR

(E) UNDER ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT; AND

(2) THAT IT WILL, PRIOR TO ANY TRANSFER OF THIS SECURITY, FURNISH TO THE ISSUER AND THE TRUSTEE OR TRANSFER AGENT FOR THIS SECURITY, AS APPLICABLE, SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS MAY BE REQUIRED TO CONFIRM THAT SUCH TRANSFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND ANY OTHER APPLICABLE SECURITIES LAWS.]

[INCLUDE FOLLOWING LEGEND IF ISSUED PRIOR TO THE CANADIAN RESALE RESTRICTION TERMINATION DATE]

[IN CANADA, UNLESS PERMITTED UNDER SECURITIES LEGISLATION, THE HOLDER OF THIS SECURITY MUST NOT TRADE THE SECURITY BEFORE SEPTEMBER 18, 2019].

5.25% Convertible Senior Note due 2024

No. [] [Initially]¹ \$[]

CUSIP No. []

Aphria Inc., a corporation existing under the Ontario Business Corporations Act (the “**Company**,” which term includes any successor corporation or other entity under the Indenture referred to on the reverse hereof), for value received hereby promises to pay to [CEDE & CO.]² []³, or registered assigns, the principal sum [as set forth in the “Schedule of Exchanges of Notes” attached hereto]⁴ [of \$[]]⁵, which amount, taken together with the principal amounts of all other outstanding Notes, shall not, unless permitted by the Indenture, exceed \$300,000,000 (as increased by an amount equal to the aggregate principal amount of any additional Notes purchased by the Initial Purchasers pursuant to the exercise of their option to purchase additional Notes as set forth in the Purchase Agreement) in aggregate at any time, on June 1, 2024, and interest thereon as set forth below.

This Note shall bear interest at the rate of 5.25% per year from April 23, 2019, or from the most recent date to which interest had been paid or provided for to, but excluding, the next scheduled Interest Payment Date until June 1, 2024. Interest is payable semi-annually in arrears on each June 1 and December 1, commencing on December 1, 2019, to Holders of record at the close of business on the preceding May 15 and November 15 (whether or not such day is a Business Day), respectively. Additional Interest will be payable as set forth in the Registration Rights Agreement and Section 6.03 of the within-mentioned Indenture, and any reference to interest on, or in respect of, any Note therein shall be deemed to include Additional Interest if, in such context, Additional Interest is, was or would be payable pursuant to any of the Registration Rights Agreement or such Section 6.03, and any express mention of the payment of Additional Interest in any provision therein shall not be construed as excluding Additional Interest in those provisions thereof where such express mention is not made.

Any Defaulted Amounts shall accrue interest per annum at the rate borne by the Notes, subject to the enforceability thereof under applicable law, from, and including, the relevant payment date to, but excluding, the date on which such Defaulted Amounts shall have been paid by the Company, at its election, in accordance with Section 2.03(c) of the Indenture.

¹ Include if a Global Note.

² Include if a Global Note.

³ Include if a Physical Note.

⁴ Include if a Global Note.

⁵ Include if a Physical Note.

The Company shall pay the principal of and interest on this Note, if and so long as such Note is a Global Note, in immediately available funds to the Depository or its nominee, as the case may be, as the registered Holder of such Note. As provided in and subject to the provisions of the Indenture, the Company shall pay the principal of any Notes (other than Notes that are Global Notes) at the office or agency designated by the Company for that purpose. The Company has initially designated the Trustee as its Paying Agent and Note Registrar in respect of the Notes and its agency in the United States as a place where Notes may be presented for payment or for registration of transfer and exchange.

Reference is made to the further provisions of this Note set forth on the reverse hereof, including, without limitation, provisions giving the Holder of this Note the right to convert this Note into cash, Common Shares or a combination of cash and Common Shares, as applicable, on the terms and subject to the limitations set forth in the Indenture. Such further provisions shall for all purposes have the same effect as though fully set forth at this place.

This Note, and any claim, controversy or dispute arising under or related to this Note, shall be construed in accordance with and governed by the laws of the State of New York.

In the case of any conflict between this Note and the Indenture, the provisions of the Indenture shall control and govern.

This Note shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been signed manually or by facsimile by the Trustee or a duly authorized authenticating agent under the Indenture.

[Remainder of page intentionally left blank]

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

APHRIA INC.

By: _____

Name:

Title:

Date:

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TRUSTEE'S CERTIFICATE OF AUTHENTICATION

GLAS TRUST COMPANY LLC, as Trustee, certifies that this is one of the Notes described in the within-named Indenture.

By: _____

Authorized Signatory

Date:

Aphria Inc.
5.25% Convertible Senior Note due 2024

This Note is one of a duly authorized issue of Notes of the Company, designated as its 5.25% Convertible Senior Notes due 2024 (the “**Notes**”), all issued or to be issued under and pursuant to an Indenture dated as of April 23, 2019 (the “**Indenture**”), between the Company and GLAS Trust Company LLC (the “**Trustee**”), to which Indenture and all indentures supplemental thereto reference is hereby made for a description of the rights, limitations of rights, obligations, duties and immunities thereunder of the Trustee, the Company and the Holders. Additional Notes may be issued in an unlimited aggregate principal amount, subject to certain conditions specified in the Indenture. Capitalized terms used in this Note and not defined in this Note shall have the respective meanings set forth in the Indenture.

In case certain Events of Default shall have occurred and be continuing, the principal of, and interest on, all Notes may be declared, by either the Trustee or Holders of at least 25% in aggregate principal amount of Notes then outstanding, and upon said declaration shall become, due and payable, in the manner, with the effect and subject to the conditions and certain exceptions set forth in the Indenture.

Subject to the terms and conditions of the Indenture, the Company will make all payments and deliveries in respect of the Fundamental Change Repurchase Price on the Fundamental Change Repurchase Date and the principal amount on the Maturity Date, as the case may be, to the Holder who surrenders a Note to a Paying Agent to collect such payments in respect of the Note. The Company will pay cash amounts in money of the United States that at the time of payment is legal tender for payment of public and private debts.

The Indenture contains provisions permitting the Company and the Trustee in certain circumstances, without the consent of the Holders, and in certain other circumstances, with the consent of the Holders of not less than a majority in aggregate principal amount of the Notes at the time outstanding, evidenced as in the Indenture provided, to execute supplemental indentures modifying the terms of the Indenture and the Notes. It is also provided in the Indenture that, subject to certain exceptions, the Holders of a majority in aggregate principal amount of the Notes at the time outstanding may on behalf of the Holders of all of the Notes waive any past Default or Event of Default under the Indenture and its consequences.

The Notes are issuable in registered form without coupons in denominations of \$1,000 principal amount and integral multiples thereof. At the office or agency of the Company referred to on the face hereof, and in the manner and subject to the limitations provided in the Indenture, Notes may be exchanged for a like aggregate principal amount of Notes of other authorized denominations, without payment of any service charge but, if required by the Company or Trustee, with payment of a sum sufficient to cover any transfer or similar tax that may be imposed in connection therewith as a result of the name of the Holder of the new Notes issued upon such exchange of Notes being different from the name of the Holder of the old Notes surrendered for such exchange.

The Notes shall be redeemable at the Company's option on a Redemption Date occurring or after June 6, 2022, on or before the 30th Scheduled Trading Day immediately before the Maturity Date, or in connection with a Tax Redemption in accordance with the terms and subject to the conditions specified in the Indenture. No sinking fund is provided for the Notes.

Upon the occurrence of a Fundamental Change, the Company is required to offer to repurchase for cash all of such Holder's Notes or any portion thereof (in principal amounts of \$1,000 or integral multiples thereof) on the Fundamental Change Repurchase Date at a price equal to the Fundamental Change Repurchase Price.

Subject to the provisions of the Indenture, the Holder hereof has the right, at its option, during certain periods and upon the occurrence of certain conditions specified in the Indenture, prior to the close of business on the Scheduled Trading Day immediately preceding the Maturity Date, to convert any Notes or portion thereof that is \$1,000 or an integral multiple thereof, into cash, Common Shares or a combination of cash and Common Shares, as applicable, at the Conversion Rate specified in the Indenture, as adjusted from time to time as provided in the Indenture.

[Insert the following bracketed paragraphs if this Note is a Registrable Security:]

[The Holder of this Note **[if this note is a global note, then insert:** (including any Person that has a beneficial interest in this Note)] and the Common Shares issuable upon conversion hereof is entitled to the benefits of a Registration Rights Agreement, dated as of April 23, 2019 (the "**Registration Rights Agreement**") between the Company and the Initial Purchasers. Pursuant to the Registration Rights Agreement, the Company has agreed for the benefit of the Holders from time to time of the Registrable Securities that it will, at its expenses, (a) use its commercially reasonable efforts to prepare and file or cause to be prepared and filed, as soon as practicable but in any event no later than **[Insert date 135 days after initial issue date of the Notes]** (the "**Filing Deadline**"), (i) with the Canadian Securities Commissions, the Preliminary MJDS Prospectus and (ii) with the Commission, the U.S. Shelf Registration Statement, a registration statement for an offering to be made on a delayed or continuous basis pursuant to General Instructions I.L. to Form F-10 registering the resale from time to time by Holders of the Registrable Securities and (b) (i) cause a final receipt to be issued by the OSC for the MJDS Prospectus, which receipt will also evidence the deemed receipt of each of the other Canadian Securities Commissions, and cause the U.S. Shelf Registration Statement to become effective in the United States, and (ii) file (A) a non-offering prospectus supplement with the Canadian Securities Commissions (pursuant to National Instrument 44-102 — Shelf Distributions), and (B) an offering prospectus supplement (the non-offering prospectus supplement and together with the offering prospectus supplement, the "**Supplement**") with the Commission (pursuant to General Instruction I.L. of Form F-10), which will each identify the registrable securities and the names of the Notice Holders as promptly as is practicable but in any event by the date (the "**Effectiveness Deadline**") that is **[Insert date 270 days after initial issue date of the Notes]** days after the initial issue date of the Notes, and to keep a U.S. Shelf Registration Statement continuously effective under the Securities Act until the expiration of the Effectiveness Period. None of the Company's security holders shall have the right to include any of the Company's securities in a U.S. Shelf Registration Statement, other than the Holders. Commencing on (and including) any date that a Registration Default has begun and ending on (but excluding) the next date on which there are no Registration Defaults that have occurred and are continuing (a

“**Registration Default Period**”), the Company shall pay to Holders of Notes in respect of each day in the Registration Default Period, additional interest at a rate per annum equal to (i) on the Notes that are Registrable Securities (A) at an annual rate of 0.25% of the aggregate principal amount of such Notes outstanding for the first 90 days and (B) thereafter at an annual rate of 0.50% of the aggregate principal amount of such Notes outstanding and (ii) on the shares of Common Shares that have been issued upon conversion of the Notes and that are Registrable Securities (A) at an annual rate of 0.25% of the corresponding principal amount of Notes that were so converted into such Common Shares and (ii) thereafter at an annual rate equal to 0.50% of the corresponding principal amount of Notes that were so converted into such Common Shares (collectively for clauses (i) and (ii), the “**RRA Additional Interest**”); provided that in the case of a Registration Default Period that is in effect solely as a result of a Registration Default of the type described in clause (iii), (iv) or (v) of the preceding paragraph, such RRA Additional Interest shall be paid only to the Holders (as set forth in the succeeding paragraph) that have delivered Notices and Questionnaires that caused the Company to incur the obligations set forth in Section 2(e) the non-performance of which is the basis of such Registration Default. Notwithstanding the foregoing, no RRA Additional Interest shall accrue as to any Security from and after the earlier of (x) the date such security is no longer a Registrable Security and (y) expiration of the Effectiveness Period. The rate of accrual of the RRA Additional Interest with respect to any period shall not exceed the rate provided for in this paragraph notwithstanding the occurrence of multiple concurrent Registration Defaults. [Terms used but not defined in this paragraph have the meanings specified therefor in the Registration Rights Agreement.

By its acceptance hereof, the Holder of this Note **[if this note is a global note, then insert:** (including any Person that has a beneficial interest in this Note)] agrees to be bound by the terms of the Registration Rights Agreement relating to the Registrable Securities which are the subject of such election.]

ABBREVIATIONS

The following abbreviations, when used in the inscription of the face of this Note, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM = as tenants in common

UNIF GIFT MIN ACT = Uniform Gifts to Minors Act

CUST = Custodian

TEN ENT = as tenants by the entireties

JT TEN = joint tenants with right of survivorship and not as tenants in common

Additional abbreviations may also be used though not in the above list.

SCHEDULE OF EXCHANGES OF NOTES

Aphria Inc.
5.25% Convertible Senior Notes due 2024

The initial principal amount of this Global Note is [] DOLLARS (\$[]). The following increases or decreases in this Global Note have been made:

Date of exchange	Amount of decrease in principal amount of this Global Note	Amount of increase in principal amount of this Global Note	Principal amount of this Global Note following such decrease or increase	Signature of authorized signatory of Trustee or Custodian

⁶ Include if a Global Note.

[FORM OF NOTICE OF CONVERSION]

To: Aphria Inc.

To: GLAS Trust Company LLC
3 Second Street, Suite 206
Jersey City, NJ 07311
Attention: Administrator for Aphria Inc.

The undersigned registered owner of this Note hereby exercises the option to convert this Note, or the portion hereof (that is \$1,000 principal amount or an integral multiple thereof) below designated, into cash, Common Shares or a combination of cash and Common Shares, as applicable, in accordance with the terms of the Indenture referred to in this Note, and directs that any cash payable and any Common Shares issuable and deliverable upon such conversion, together with any cash for any fractional share, and any Notes representing any unconverted principal amount hereof, be issued and delivered to the registered Holder hereof unless a different name has been indicated below. If any Common Shares or any portion of this Note not converted are to be issued in the name of a Person other than the undersigned, the undersigned will pay all documentary, stamp or similar issue or transfer taxes, if any in accordance with Section 13.02(d) and Section 13.02(e) of the Indenture. Any amount required to be paid to the undersigned on account of interest accompanies this Note. Capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Indenture.

Dated: _____

Signature(s)

Signature Guarantee

Signature(s) must be guaranteed by an eligible Guarantor Institution (banks, stock brokers, savings and loan associations and credit unions) with membership in an approved signature guarantee medallion program pursuant to Securities and Exchange Commission Rule 17Ad-15 if Common Shares are to be issued, or Notes are to be delivered, other than to and in the name of the registered holder.

Fill in for registration of shares if to be issued, and Notes if to be delivered, other than to and in the name of the registered holder:

(Name)

(Street Address)

(City, State and Zip Code)
Please print name and address

Principal amount to be converted (if less than all): \$ _____,000

NOTICE: The above signature(s) of the Holder(s) hereof must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

Social Security or Other Taxpayer

Identification Number

[FORM OF FUNDAMENTAL CHANGE REPURCHASE NOTICE]

To: Aphria Inc.

To: Paying Agent/Tender Agent

The undersigned registered owner of this Note hereby acknowledges receipt of a notice from [] (the "Company") as to the occurrence of a Fundamental Change with respect to the Company and specifying its offer to repurchase Notes, the Fundamental Change Repurchase Date and hereby accepts such offer and requests and instructs the Company to pay to the registered holder hereof in accordance with Section 14.01 of the Indenture referred to in this Note (1) the entire principal amount of this Note, or the portion thereof (that is \$1,000 principal amount or an integral multiple thereof) below designated, and (2) if such Fundamental Change Repurchase Date does not fall during the period after a Regular Record Date and on or prior to the corresponding Interest Payment Date, accrued and unpaid interest, if any, thereon to, but excluding, such Fundamental Change Repurchase Date. Capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Indenture.

In the case of Physical Notes, the certificate numbers of the Notes to be repurchased are as set forth below:

Dated: _____

Signature(s)

Social Security or Other Taxpayer

Identification Number

Principal amount to be repaid (if less than all): \$ _____,000

NOTICE: The above signature(s) of the Holder(s) hereof must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

[FORM OF ASSIGNMENT AND TRANSFER]

For value received _____ hereby sell(s), assign(s) and transfer(s) unto _____ (Please insert social security or Taxpayer Identification Number of assignee) the within Note, and hereby irrevocably constitutes and appoints _____ attorney to transfer the said Note on the books of the Company, with full power of substitution in the premises.

In connection with any transfer of the within Note occurring prior to the Resale Restriction Termination Date, as defined in the Indenture governing such Note, the undersigned confirms that such Note is being transferred:

- o To Aphria Inc. or a subsidiary thereof; or
- o Pursuant to a registration statement that has become or been declared effective under the Securities Act of 1933, as amended; or
- o Pursuant to and in compliance with Rule 144A under the Securities Act of 1933, as amended; or
- o Pursuant to and in compliance with Rule 144 under the Securities Act of 1933, as amended, or any other available exemption from the registration requirements of the Securities Act of 1933, as amended.

Dated: _____

Signature(s)

Signature Guarantee

Signature(s) must be guaranteed by an eligible Guarantor Institution (banks, stock brokers, savings and loan associations and credit unions) with membership in an approved signature guarantee medallion program pursuant to Securities and Exchange Commission Rule 17Ad-15 if Notes are to be delivered, other than to and in the name of the registered holder.

NOTICE: The signature on the assignment must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.



Execution Version

This FIRST INDENTURE SUPPLEMENT, dated as of April 30, 2021 (this “Indenture Supplement”), is entered into by and among Aphria Inc., a corporation existing under the Business Corporations Act (Ontario), as issuer (the “Company”), Tilray, Inc., a Delaware corporation (the “Parent Guarantor”), and GLAS Trust Company LLC, as trustee under the Indenture (together with its successors in such capacity, the “Trustee”), supplements the Existing Indenture referred to below. Capitalized terms used but not otherwise defined herein shall have the respective meanings set forth in the Indenture.

RECITALS

WHEREAS, the Company and the Trustee are parties to that certain Indenture, dated as of April 23, 2019 (as amended, supplemented, restated or otherwise modified from time to time prior to the date hereof, the “Existing Indenture” and, as amended by this Indenture Supplement, the “Indenture”), by and between the Company and the Trustee.

WHEREAS, on or about the date hereof, the Parent Guarantor will acquire all of the outstanding Common Shares of the Company (the “Combination”) pursuant to that certain Arrangement Agreement dated December 15, 2020, between the Company and the Parent Guarantor (as amended by that certain Amendment No. 1 to Arrangement Agreement and Plan of Arrangement dated February 19, 2021, the “Arrangement Agreement”).

WHEREAS, pursuant to the terms and conditions of the Arrangement Agreement and subject to the terms and conditions therein, at the effective time of the Combination (the “Effective Time”), each Common Share issued and outstanding immediately prior to the Effective Time will be converted into the right to receive 0.8381 of a share of Class 2 common stock, par value \$0.0001 per share, of the Parent Guarantor (the “Parent Guarantor Common Stock”).

WHEREAS, the Combination constitutes a Share Exchange Event under the Indenture.

WHEREAS, pursuant to Sections 10.01(i) and 13.07(a) of the Existing Indenture, the Trustee and the Company, without the consent of the Holders, may enter into one or more supplemental indentures in connection with any Share Exchange Event, to provide that the Notes are convertible into Reference Property, subject to the provisions of Section 13.02 of the Existing Indenture, and make such related changes to the terms of the Notes to the extent expressly required by Section 13.07 of the Existing Indenture.

WHEREAS, the Combination does not constitute a Fundamental Change under the Indenture.

WHEREAS, the Parent Guarantor wishes to become party to the Indenture as a guarantor in connection with the Combination.

WHEREAS, pursuant to Section 10.01(c) of the Existing Indenture, the Trustee and the Company, without the consent of the Holders, may enter into one or more supplemental indentures to add guarantees with respect to the Notes.

WHEREAS, the Company wishes to amend the Existing Indenture as set forth in this Indenture Supplement, and the Company has requested that the Trustee execute and deliver this Indenture Supplement.

WHEREAS, the conditions set forth for entry into a supplemental indenture pursuant to Sections 10.05 and 16.05 of the Indenture have been satisfied.

NOW, THEREFORE, in consideration of the mutual agreements herein set forth, the parties agree as follows:

I. Amendments.

(a) In connection with the Combination, the Existing Indenture is hereby amended such that at and after the Effective Time “Reference Property” shall mean the Parent Guarantor Common Stock, and “unit of Reference Property” shall mean 0.8381 share of Parent Guarantor Common Stock for each one (1) Common Share outstanding as of immediately prior to the Effective Time.

(b) Pursuant to Section 13.07 of the Existing Indenture, as a result of the Combination:

(i) at and after the Effective Time, the right to convert each \$1,000 principal amount of Notes shall be changed into a right to convert such principal amount of Notes into the number of units of Reference Property equal to the Conversion Rate in effect immediately prior to the Effective Time;

(ii) at and after the Effective Time (1) the Company shall continue to have the right to determine the Settlement Method applicable upon conversion of Notes in accordance with Section 13.02 of the Existing Indenture; and (2)(A) any amount payable in cash upon conversion of the Notes in accordance with Section 13.02 of the Existing Indenture shall continue to be payable in cash, (B) any Common Shares that the Company would have been required to deliver upon conversion of the Notes in accordance with Section 13.02 of the Existing Indenture shall instead be deliverable in units of Reference Property, and (C) the Daily VWAP shall be calculated based on the value of a unit of Reference Property;

(iii) the definitions of “Scheduled Trading Day,” “Trading Day” and “Market Disruption Event” shall be determined by reference to the Parent Guarantor Common Stock; and

(iv) the provisions of the Existing Indenture, as modified herein, including without limitation, (1) all references and provisions respecting the terms “Common Shares,” “Conversion Price,” “Conversion Rate,” and “Last Reported Sale Price” and (2) the provisions of Article 14 of the Existing Indenture shall continue to apply, *mutatis mutandis*, to the Holders’ right to convert their respective Notes into the Reference Property.

(c) As and to the extent required by Section 13.07(a) of the Existing Indenture, the Conversion Rate shall be subject to anti-dilution and other adjustments with respect to the Reference Property that shall be as nearly equivalent as is possible to the adjustments provided for in Article 13 of the Existing Indenture.

(d) References to the “Company” and to “Common Shares” in the definition of “Fundamental Change” in Section 1.01 of the Existing Indenture shall instead be references to the “Parent Guarantor” and the “Parent Guarantor Common Stock,” respectively. Except as amended hereby, the purchase rights set forth in Article 14 of the Existing Indenture shall continue to apply.

(e) The Existing Indenture is hereby amended such that, at and after the Effective Time, subject to the provisions of this Section I(e), the Parent Guarantor absolutely, irrevocably and unconditionally guarantees to each Holder and to the Trustee the full and punctual payment (whether at an installment date or the Maturity Date, upon redemption, purchase pursuant to an offer to purchase or acceleration or otherwise) of the principal, premium, interest and all other amounts that may come due and payable under each Note and the full and punctual payment of all other amounts payable by the Company under the Indenture as they come due. Upon failure by the Company to pay punctually any such amount, the Parent Guarantor shall, without duplication, forthwith pay the amount not so paid at the place and time and in the manner specified in the Indenture. This Section I(e) constitutes a direct, general, and unconditional primary obligation of the Parent Guarantor which will at all times rank at least *pari passu* with all other present and future senior unsecured obligations of the Parent Guarantor, except for such obligations as may be preferred by provisions of law that are both mandatory and of general application.

(i) *Guaranty Unconditional.* To the extent permitted by applicable law, the obligations of the Parent Guarantor under this Section I(e) are unconditional and absolute and, without limiting the generality of the foregoing, will not be released, discharged or otherwise affected by:

(1) any extension, renewal, settlement, compromise, waiver or release in respect of any obligation of the Company under the Indenture or any Note, by operation of law or otherwise;

(2) any modification or amendment of or supplement to the Indenture or any Note;

(3) any change in the corporate existence, structure or ownership of the Company, or any insolvency, bankruptcy, reorganization, plan of arrangement or other similar proceeding affecting the Company or its assets or any resulting release or discharge of any obligation of the Company contained in the Indenture or any Note;

(4) the existence of any claim, set-off or other rights which any of the Parent Guarantor may have at any time against the Company, the Trustee or any other person, whether in connection with the Indenture or any unrelated transactions, *provided*, that nothing herein prevents the assertion of any such claim by separate suit or compulsory counterclaim;

(5) any invalidity or unenforceability relating to or against the Company for any reason of the Indenture or any Note, or any provision of applicable law purporting to prohibit the payment by the Company of the principal of or interest on any Note or any other amount payable by the Company under the Indenture;

(6) any other act or omission to act or delay of any kind by the Company, the Trustee or any other person or any other circumstance whatsoever which might, but for the provisions of this paragraph, constitute a legal or equitable discharge of or defense to any of the Parent Guarantor's obligations under this Section I(e); or

(7) any defenses (other than full and unconditional payment) or benefits that may be derived from or afforded by law which limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms of this Section I(e) or the Indenture.

(ii) *Discharge Reinstatement.* Subject to Section I(e)(vii), the Parent Guarantor's obligations under this Section I(e) will remain in full force and effect until the principal of, premium (if any), and interest on the Notes and all other amounts payable by the Company under the Indenture have been indefeasibly paid in full. If at any time any payment of the principal of, premium, if any, or interest on any Note or any other amount payable by the Company under the Indenture is rescinded or must be otherwise restored or returned upon the insolvency, bankruptcy, arrangement or reorganization of the Company or otherwise, the Parent Guarantor's obligations under this Section I(e) with respect to such payment will be reinstated as though such payment had been due but not made at such time.

(iii) *Waiver by the Parent Guarantor.* To the extent permitted by applicable law, the Parent Guarantor unconditionally and irrevocably waives acceptance hereof, presentment, demand, protest and any notice not provided for herein, as well as any requirement that at any time any action be taken by any person against the Company or any other person. This this Section I(e) constitutes a guarantee of payment and not of collection.

(iv) To the extent permitted by applicable law, the Parent Guarantor expressly waives irrevocably and unconditionally:

(1) Any right it may have to first require any Holder of the Notes to proceed against, initiate any actions before a court of law or any other judge or authority, or enforce any other rights or security or claim payment from the Company or any other person (including the Parent Guarantor or any other guarantor) before claiming it under the Indenture; and

(2) Any right to which it may be entitled to have the assets of the Company or any other person (including any other guarantor) first be used, applied or depleted as payment of the Company's or the Parent Guarantor's obligations hereunder, prior to any amount being claimed from or paid by the Parent Guarantor under this Section I(e).

(v) *Subrogation and Contribution.* Upon making any payment with respect to any obligation of the Company under this Section I(e), the Parent Guarantor will be subrogated to the rights of the payee against the Company with respect to such obligation; *provided, however,* that the Parent Guarantor shall not be entitled to enforce, or to receive any payments arising out of or based upon, such right of subrogation until the principal of (and premium, if any) interest, additional amounts on all Notes and any other amounts due under the Indenture shall have been paid in full.

(vi) *Stay of Acceleration.* If acceleration of the time for payment of any amount payable by the Company under the Indenture or the Notes is stayed upon the insolvency, bankruptcy or reorganization of the Company, all such amounts otherwise subject to acceleration under the terms of the Indenture are nonetheless payable by the Parent Guarantor forthwith on demand by the Trustee.

(vii) *Release of the Parent Guarantor.* The guaranty of the Parent Guarantor under this Section I(e) will automatically and unconditionally be released without the need for any action by any party:

(1) upon a liquidation or dissolution of the Parent Guarantor; and

(2) upon payment in full of the aggregate principal amount of all notes then outstanding and all other obligations under the Indenture and the notes then due and owing.

II. Governing Law.

THIS INDENTURE SUPPLEMENT, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS INDENTURE SUPPLEMENT, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK.

III. Execution in Counterparts.

This Indenture Supplement may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument. The exchange of copies of this Indenture Supplement and of signature pages by facsimile or PDF or other electronic transmission shall constitute effective execution and delivery of this Indenture Supplement as to the parties hereto and may be used in lieu of the original Indenture Supplement for all purposes. Signatures of the parties hereto transmitted by facsimile, PDF or other electronic transmission shall constitute effective execution and delivery of this Indenture Supplement as to the other parties hereto shall be deemed to be their original signatures for all purposes.

IV. Concerning the Trustee.

The recitals contained in this Indenture Supplement shall be taken as the statements of the Company, and the Trustee assumes no responsibility for their correctness. The Trustee shall not be responsible or accountable in any way whatsoever for or with respect to the validity, execution or sufficiency of this Indenture Supplement and makes no representation with respect thereto. In entering into this Indenture Supplement, the Trustee shall be entitled to the benefit of every provision of the Indenture relating to the conduct of or affecting the liability of or affording protection to the Trustee. For the avoidance of doubt, in connection with this Indenture Supplement, the Trustee is entitled to rely conclusively upon the accuracy of the Company's calculations without independent verification and shall have no liability or responsibility for such calculations or any information used in connection with such calculations.

V. No Other Changes.

Except as explicitly provided herein, the Indenture shall remain unchanged and in full force and effect, and each reference to the Indenture and words of similar import in the Indenture, as amended hereby, shall be a reference to the Indenture as amended hereby and as the same may be further amended, supplemented and otherwise modified and in effect from time to time. This Indenture Supplement may be used to create a conformed amended and restated Indenture for the convenience of administration by the parties hereto.

VI. Execution, Delivery and Validity.

Each of the Company and the Parent Guarantor represents and warrants to the Trustee that this Indenture Supplement has been duly and validly executed and delivered by it and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms.

VII. Binding Effect.

This Indenture Supplement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

VIII. Direction to the Trustee.

The Company hereby directs the Trustee to execute this Indenture Supplement and acknowledges and agrees that the Trustee will be fully protected in relying upon the foregoing direction and the rights, protections and indemnities afforded the Trustee under the Indenture shall apply to the execution of this Indenture Supplement and any action or inaction in connection herewith.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this First Indenture Supplement to be duly executed and delivered by their respective proper and duly authorized officers as of the day and year first above written.

APHRIA INC.,
as the Company

By: /s/ Irwin D. Simon

Name: Irwin D. Simon
Title: President & CEO

TILRAY, INC.,
as the Parent Guarantor

By: /s/ Irwin D. Simon

Name: Irwin D. Simon

Title: President & CEO

GLAS Trust Company LLC,
as Trustee

By: /s/ Lisha John

Name: Lisha John

Title: Vice President

SEPARATION AGREEMENT AND COMPLETE RELEASE

This Separation Agreement and Complete Release ("Agreement") is entered into, by and between the undersigned **Michael Kruteck** (the "Employee") and Tilray Inc. (the "Company"), as of the date that Employee signs this Agreement.

WHEREAS, Employee was employed by the Company as **Chief Financial Officer** under an Employment Agreement between Employee and the Company dated January 20, 2020 ("Employment Agreement");

WHEREAS, the Company is working to complete a change in control on or before April 30, 2021, whereby the Company would merge with Aphria (the "Change in Control");

WHEREAS, if the Change in Control is completed on or before April 30, 2021, then the Company has decided to terminate Employee's employment without Cause (as defined in the Employment Agreement), effective May 6, 2021;

WHEREAS, if the Company terminates the Employee's employment, then the Company desires to provide severance pay to Employee to assist Employee in Employee's transition to new employment; and

WHEREAS, Employee and the Company desire to resolve any and all of their differences between them, whether now pending or which may arise through the course of Employee's employment with the Company, with respect to Employee's employment with the Company and the termination thereof.

THEREFORE, in consideration of the mutual promises and covenants set forth below, the sufficiency and receipt of which are hereby acknowledged. Employee and the Company acknowledge and voluntarily agree as follows:

1. That Employee's last day of employment will be May 6, 2021, contingent upon completion of a Change in Control that the Company may complete on or before April 30, 2021; provided, however, that if the Company does not complete the Change in Control on or before April 30, 2021, then the Employee's employment will not be terminated and will be governed by the terms of the Employment Agreement. The Company will pay Employee for all accrued salary through Employee's last day of employment within ten (10) days after May 6, 2021 and in compliance with applicable law.

2. That the Company will pay Employee severance at Employee's current base rate of wages, less applicable taxes and withholdings, equal to **twelve (12) months** ("Severance Period"), of pay, as severance pay, paid in substantially equal installments in accordance with the Company's regular payroll practices, beginning with the regularly scheduled pay date following your final date; provided, however, that the Company will make such payment only if Employee does not revoke Employee's acceptance of this Agreement, according to the procedure established in this Agreement. In addition, if applicable, the Company will excuse the Employee from repaying any signing bonus s/he received, provided Employee does not revoke this Agreement.

3. That the Company will reimburse Employee for premiums that Employee pays for continuation coverage pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA") for Employee and Employee's eligible dependents until the earlier of **twelve (12) months** from your final date or the time when Employee or Employee's dependents, respectively, are no longer eligible for continuation coverage, provided that Employee does not revoke Employee's acceptance of this Agreement during the revocation period specified in this Agreement. Thereafter, any continuation of Employee's health care coverage in accordance with COBRA will be at Employee's sole expense. If Employee revokes Employee's acceptance of this Agreement during the revocation period specified in this Agreement, then any continuation of Employee's health care coverage from Employee's last day of employment forward in accordance with COBRA will be at Employee's sole expense.

4. That the Company will pay Employee an amount equal to Employee's target bonus for the 2021 calendar year, pro-rated based on the number of days that Employee was employed by the Company during the 2021 calendar year, less applicable taxes and withholdings. Such payment will be made within ten (10) days after May 6, 2021 provided that Employee does not revoke Employee's acceptance of this Agreement.

5. That the Company will accelerate the vesting of all of Employee's outstanding equity incentive awards.

6. That any benefits due Employee under the Company's 401(K) plan will be determined in accordance with the plan as in existence on the effective date of this Agreement.

7. That the Company will pay Employee a one-time payment of \$38,709.00, less applicable taxes and withholdings, as payment for Employee completing, by May 6, 2021, all identified and agreed upon Tasks as specified in the April 29, 2021, electronic mail message exchange between Employee and the Company (subject line "Tasks through May 6"). Such payment will be made within ten (10) days after May 6, 2021, provided that Employee does not revoke Employee's acceptance of this Agreement.

8. That the Company will not contest Employee's initial application for unemployment compensation benefits following the expiration of the Severance Period.

9. That upon receiving a request from a prospective employer of Employee, the Company will give a neutral reference that will inform the prospective employer of the dates and positions of Employee's employment with the Company.

10. That Employee will timely submit Employee's business expenses, if any, and the Company will handle Employee's timely submissions in accordance with its policies and past practices.

11. That except as provided for in Paragraph Numbers 1, 2, 3, 4, 5, 6, 7 and 9 of this Agreement, all compensation and other payments or benefits due Employee as a result of Employee's employment with the Company have been paid in full, and that Employee is not entitled to any additional salary, bonus, stock options, commissions, paid time off, or other benefits (aside from any benefits to which Employee is entitled as a participant in any employee benefit plan as to which Employee may have continuing rights pursuant to the terms of such plan) or payments whatsoever.

12. That Employee, on behalf of Employee, Employee's heirs, executors, assigns, and attorneys; hereby completely and irrevocably discharges and releases the Company and its subsidiaries and affiliated entities and their respective current and former officers, directors, employees, agents, owners, members, successors, assigns, and attorneys, hereinafter "the Releasees" from all claims, demands, actions, causes of action, and liabilities of any kind whatsoever, including, without limitation, claims arising out of or in any way related, directly or indirectly, to Employee's employment with the Company, compensation therefor, or termination thereof, including, without limitation, claims for unpaid compensation, benefits, bonus compensation, commissions, or severance pay, wrongful discharge, defamation, discriminatory compensation practices, retaliation, breach of contract, unjust enrichment, fraudulent inducement to contract, negligent misrepresentation, tortious interference with a business contract or business relationship, breach of fiduciary duty, promissory estoppel, intentional or negligent infliction of emotional distress, negligence claims and claims pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C § 2000e, the Age Discrimination in Employment Act (the "ADEA"), 29 U.S.C. § 621, the Americans with Disabilities Act, 42 U.S.C. § 12101, the National Labor Relations Act, 29 U.S.C. § 151, the Family and Medical Leave Act, 29 U.S.C. § 2601, the California Fair Employment and Housing Act, Cal. Government Code § 12001, The Unruh Civil Rights Act, Cal. Civil Code § 1102.1, California laws regarding the payment of wages, overtime, and vacation pay, Cal. Labor Code §§ 96 and 98, California Industrial Welfare Commission Wage Orders, the Minnesota Human Rights Act, Minn. Stat. § 363A, the Colorado Anti-Discrimination Laws, including without limitation, Part 4 of Article 34 of Title 24 of the Colorado Revised Statutes, Colorado Minimum Wage Order No. 32, , the Texas Human Rights Act, Texas Labor Code § 21.051, the Texas Wage Payment Law, Tex. Lab. Code Ann. § 61.001. § 21. 0022, the Equal Pay Act, 29 U.S.C. § 206, the Employee Retirement Income Security Act, 29 U.S.C. § 1001, and any state or local law of a similar nature to any of the foregoing, arising at any time prior to and including the effective date of this Agreement; provided, however, that Employee will continue to reserve all of Employee's rights as a plan participant in any continuing employee benefit plan, subject to the terms of such plans. Employee further agrees that Employee will not seek reinstatement or re-employment with the Company, or any of its known affiliated companies at any time in the future. Specifically excluded from this release are the rights and obligations of Employee and the Company under this Agreement.

That furthermore. Employee hereby waives any claim against the Releasees for attorneys' fees, expenses and costs related to the claims, demands, actions, causes of action, and liabilities set forth in the preceding paragraph.

Furthermore, nothing in this Agreement modifies or releases any rights Employee has to indemnification from Company or its affiliates.

13. That Employee will not make any statement, orally, in writing, or otherwise, or in any way disseminate any information, concerning the Company and its subsidiaries and affiliated entities, or concerning their respective businesses, business operations, or business practices, which in any way, in form or substance, harms, disparages, or otherwise casts an unfavorable light upon the Company and its subsidiaries and affiliated entities, or their respective employees, officers, or directors (past, or present), or their reputations or standing in the business community or the community as a whole.

14. That the Company will not make any statement through its executive leadership team or Board of Directors, whether orally, in writing, or otherwise, or in any way disseminate any Information, concerning Employee that in any way, in form or substance, harms, disparages, or otherwise casts an unfavorable light upon Employee or Employee's reputation or standing in the business community or the community as a whole. For avoidance of doubt, any statements made by the Company regarding its own performance, whether or not employee participated in or was involved in the subject matter of the Company's statement, is specifically excluded from this paragraph.

15. That Employee shall not initiate, assist, testify, or consult with respect to any investigation, complaint, suit, or action involving or related to the Releasees, other than for a claim brought by Employee challenging the validity of this Agreement under the ADEA, or the Older Worker Benefit Protection Act, unless compelled to do so by legal process. That furthermore, Employee will indemnify the Releasees for all expenses and costs, including reasonable attorneys' fees, which the Releasees incurs as a consequence of Employee's breach of this covenant. That nothing in any provision of this Agreement prevents Employee from filing an administrative charge or complaint, or otherwise communicating with or participating in an investigation by the Equal Employment Opportunity Commission or equivalent state agency, the National Labor Relations Board, the Occupational Safety and Health Administration, the Securities and Exchange Commission, any agency Inspector General, or any other federal, state, or local agency governing employee rights. Nothing in this Agreement shall be construed to limit any disclosure to any such governmental officials or agencies or making disclosures that are protected under whistleblower provisions of federal law or regulation. However, by signing this Agreement, Employee waives Employee's right to recover any damages or other relief in any claim or suit brought by employee, or by or through the EEOC, or other federal, state, or local law, except where prohibited by law. This Agreement does not limit Employee's right to receive an award for information provided to any government agency. Employee agrees to release and discharge the Releasees not only from any and all claims that Employee could make on Employee's own behalf, but Employee also specifically waives any right to become, and Employee promises not to become, a member of any class in any proceeding or case in which a claim or claims against the Releasees may arise, in whole or in part, from any event that occurred prior to the date of this Agreement. If Employee is not permitted to opt-out of a future class, the Employee agrees to waive any recovery for which Employee would be eligible as a member of such class. Nothing in this Agreement is intended to limit or interfere with Employee's rights under Section 7 of the National Labor Relations Act.

16. Employees owe obligations of confidentiality to the Company, which are detailed in the Employee's Confidentiality Agreement with Tilray Inc. and in the Company's Code of Business Conduct and Ethics. Notwithstanding Paragraph 24, below, all obligations contained in the Confidentiality Agreement remain in effect after termination of Employee's employment with the Company. That Employee covenants and represents that Employee has returned, or will return within five (5) days after his last day of employment, to the Company all of its known property of any kind that was in Employee's possession, custody, or control prior to the execution of this Agreement, including all documents, records, correspondence, keys, and credit cards and each and every copy of such materials. Employee agrees that if the Company discovers after the effective date of this Agreement that Employee has any of their files, documents, or records at Employee's home or otherwise in Employee's possession or control, Employee will immediately turn over such files, documents, or records to the Company.

17. That Employee confirms that Employee (a) has no knowledge of any facts or circumstances that Employee understands would give rise to a violation of any law, regulation, or Company policy; arising out of or in connection with Employee's employment or termination thereof; (b) has not reported any allegations of unlawful or unethical conduct to any third party that have not also been disclosed to the Company; (c) and acknowledges that Employee has received no injuries and contracted no occupational diseases arising out of or in connection with Employee's employment with the Company.

18. That the parties hereby further acknowledge:

- (a) That each has had the reasonable opportunity to review and consider the terms of this Agreement for a period of twenty-one (21) days; and that Employee has been advised, through this Agreement, to consult with an attorney, engaged at Employee's own expense, prior to signing this agreement;
 - (b) That, each fully understands, and had the opportunity to receive counsel regarding, their respective rights, obligations and liabilities hereunder;
 - (c) That to the extent THAT Employee has taken less than twenty-one (21) days to consider this Agreement, Employee acknowledges that Employee has had sufficient to consider this Agreement and to consult with counsel and that Employee does not desire additional time;
-

- (d) That Employee waives all claims accrued as of the date of execution and that this Agreement to the greatest extent permitted by law, but that this Agreement does not waive any claims that may arise in the future;
- (e) That nothing in this Agreement is or will be construed as an admission by either party, or any affiliate thereof, of any breach of any agreement or any intentional or unintentional wrongdoing of any nature;
- (f) That the terms of this Agreement are not effective or enforceable until seven (7) days after its execution, during which period Employee may revoke Employee's acceptance of this Agreement by having written or electronic notice delivered to the attention of **Nyree Pinto, VP, Global Talent, 2701 Eastlake Avenue EAST, Floor Three, Seattle, WA, 98102, or nyree.pinto@tilray.com;**
- (g) That the consideration the Company is providing Employee herein is in excess of the benefits that the Company would otherwise be obligated to provide Employee;

19. That Releasees are intended third party beneficiaries of this Agreement.

20. That this Agreement will be binding upon and accrue to the benefit of Employee, Employee's heirs, executors, and assigns, and the Releasees.

21. That in the event of a breach of this Agreement by either party, the prevailing party in any action to enforce that party's rights hereunder will be entitled to recover all costs and expenses, including reasonable attorneys' fees.

22. That if any term, provision, covenant, or condition of ILLS Agreement will be held by a court of competent jurisdiction to be invalid or unenforceable, in whole or in part, such decision will not affect the validity of the remaining portions.

23. That this Agreement may be signed in counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. One or more of the counterparts of this Agreement may be delivered by facsimile or pdf electronic file with the intention that delivery by such means shall have the same effect as delivery of an original counterpart.

24. That this Agreement is the entire agreement between the parties and supersedes and voids, except as described in Paragraph 1, all prior agreements and understandings between the parties, if any, with respect to Employee's employment with the Company and the termination thereof, and that this Agreement cannot be amended or modified except by a writing signed by both parties.

IN WITNESS WHEREOF, the parties have executed multiple copies of this Agreement, each of which constitutes an original, but all of which, when taken together constitute the same document.

Tilray Inc.

By: /s/ Michael Kruteck

By: /s/ Rita Seguin

Print Name: Michael Kruteck

Print Name and Title: Rita Seguin

Date of Execution: 4/30/2021

Date of Execution: 4/30/2021

SEPARATION AGREEMENT AND COMPLETE RELEASE

This Separation Agreement and Complete Release ("Agreement") is entered into, by and between the undersigned **Jon Levin** (the "Employee") and Tilray Inc. (the "Company"), as of the date that Employee signs this Agreement.

WHEREAS, Employee was employed by the Company as **Chief Operating Officer**;

WHEREAS, the Company is working to complete a change in control on or before April 30, 2021, whereby the Company would merge with Aphria (the "Change in Control");

WHEREAS, if the Change in Control is completed on or before April 30, 2021, then the Company has decided to terminate Employee's employment, effective April 30, 2021;

WHEREAS, if the Company terminates the Employee's employment, then the Company desires to provide severance pay to Employee to assist Employee in Employee's transition to new employment; and

WHEREAS, Employee and the Company desire to resolve any and all of their differences between them, whether now pending or which may arise through the course of Employee's employment with the Company, with respect to Employee's employment with the Company and the termination thereof.

THEREFORE, in consideration of the mutual promises and covenants set forth below, the sufficiency and receipt of which are hereby acknowledged, Employee and the Company acknowledge and voluntarily agree as follows:

1. That Employee's last day of employment will be April 30, 2021, contingent upon completion of a Change in Control that the Company may complete on or before April 30, 2021; provided, however, that if the Company does not complete the Change in Control on or before April 30, 2021, then this Agreement will be null and void and the Employee's employment will be governed by the terms of his Employment Agreement.

2. That the Company will pay Employee severance at Employee's current base rate of wages, less applicable taxes and withholdings, equal to **twelve (12) months** ("Severance Period"), of pay, as severance pay, paid in substantially equal installments in accordance with the Company's regular payroll practices, beginning with the regularly scheduled pay date following your final date; provided, however, that the Company will make such payment only if Employee does not revoke Employee's acceptance of this Agreement, according to the procedure established in this Agreement. In addition, if applicable, the Company will excuse the Employee from repaying any signing bonus s/he received, provided Employee does not revoke this Agreement.

3. That the Company will reimburse Employee for premiums that Employee pays for continuation coverage pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA") for Employee and Employee's eligible dependents until the earlier of **twelve (12) months** from your final date or the time when Employee or Employee's dependents, respectively, are no longer eligible for continuation coverage, provided that Employee does not revoke Employee's acceptance of this Agreement during the revocation period specified in this Agreement. Thereafter, any continuation of Employee's health care coverage in accordance with COBRA will be at Employee's sole expense. If Employee revokes Employee's acceptance of this Agreement during the revocation period specified in this Agreement, then any continuation of Employee's health care coverage from Employee's last day of employment forward in accordance with COBRA will be at Employee's sole expense.

4. That the Company will pay Employee an amount equal to Employee's target bonus for the 2021 calendar year, pro-rated based on the number of days that Employee was employed by the Company during the 2021 calendar year, less applicable taxes and withholdings.

5. That the Company will accelerate the vesting of all of Executive's outstanding equity incentive awards.
 6. That any benefits due Employee under the Company's 401(k) plan will be determined in accordance with the plan as in existence on the effective date of this Agreement.
 7. That the Company will not contest Employee's initial application for unemployment compensation benefits following the expiration of the Severance Period.
 8. That upon receiving a request from a prospective employer of Employee, the Company will give a neutral reference that will inform the prospective employer of the dates and positions of Employee's employment with the Company.
 9. That Employee will timely submit Employee's business expenses, if any, and the Company will handle Employee's timely submissions in accordance with its policies and past practices.
 10. That except as provided for in Paragraph Numbers 2, 3, 4, 5, 6 and 9 of this Agreement, all compensation and other payments or benefits due Employee as a result of Employee's employment with the Company have been paid in full, and that Employee is not entitled to any additional salary, bonus, stock options, commissions, paid time off, or other benefits (aside from any benefits to which Employee is entitled as a participant in any employee benefit plan as to which Employee may have continuing rights pursuant to the terms of such plan) or payments whatsoever.
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11. That Employee, on behalf of Employee, Employee's heirs, executors, assigns, and attorneys, hereby completely and irrevocably discharges and releases the Company and its subsidiaries and affiliated entities and their respective current and former officers, directors, employees, agents, owners, members, successors, assigns, and attorneys, hereinafter "the Releasees" from all claims, demands, actions, causes of action, and liabilities of any kind whatsoever, including, without limitation, claims arising out of or in any way related, directly or indirectly, to Employee's employment with the Company, compensation therefor, or termination thereof, including, without limitation, claims for unpaid compensation, benefits, bonus compensation, commissions, or severance pay, wrongful discharge, defamation, discriminatory compensation practices, retaliation, breach of contract, unjust enrichment, fraudulent inducement to contract, negligent misrepresentation, tortious interference with a business contract or business relationship, breach of fiduciary duty, promissory estoppel, intentional or negligent infliction of emotional distress, negligence claims and claims pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, the Age Discrimination in Employment Act (the "ADEA"), 29 U.S.C. § 621, the Americans with Disabilities Act, 42 U.S.C. § 12101, the National Labor Relations Act, 29 U.S.C. § 151, the Family and Medical Leave Act, 29 U.S.C. § 2601, the California Fair Employment and Housing Act, Cal. Government Code § 12001, the Unruh Civil Rights Act, Cal. Civil Code § 1102.1, California laws regarding the payment of wages, overtime, and vacation pay, Cal. Labor Code §§ 96 and 98, California Industrial Welfare Commission Wage Orders, the Minnesota Human Rights Act, Minn. Stat. § 363A, the Colorado Anti-Discrimination Laws, including without limitation, Part 4 of Article 34 of Title 24 of the Colorado Revised Statutes, Colorado Minimum Wage Order No. 32, , the Texas Human Rights Act, Texas Labor Code § 21.051, the Texas Wage Payment Law, Tex. Lab. Code Ann. § 61.001, § 21.0022, the Equal Pay Act, 29 U.S.C. § 206, the Employee Retirement Income Security Act, 29 U.S.C. § 1001, and any state or local law of a similar nature to any of the foregoing, arising at any time prior to and including the effective date of this Agreement; provided, however, that Employee will continue to reserve all of Employee's rights as a plan participant in any continuing employee benefit plan, subject to the terms of such plans. Employee further agrees that Employee will not seek reinstatement or re-employment with the Company, or any of its known affiliated companies at any time in the future. Specifically excluded from this release are the rights and obligations of Employee and the Company under this Agreement.

That furthermore, Employee hereby waives any claim against the Releasees for attorneys' fees, expenses and costs related to the claims, demands, actions, causes of action, and liabilities set forth in the preceding paragraph.

12. That Employee will not make any statement, orally, in writing, or otherwise, or in any way disseminate any information, concerning the Releasees, or concerning their respective businesses, business operations, or business practices, which in any way, in form or substance, harms, disparages, or otherwise casts an unfavorable light upon the Releasees, or their respective employees, officers, or directors (past or present), or their reputations or standing in the business community or the community as a whole.

13. That the Company will not make any official statement through its executive leadership team or Board of Directors, whether orally, in writing, or otherwise, concerning Employee that is in any way disparaging or otherwise casts an unfavorable light upon Employee or Employee's reputation or standing in the business community or the community as a whole. For avoidance of doubt, any statements made by the Company regarding its own performance, whether or not Employee participated in or was involved in the subject matter of the Company's statement, is specifically excluded from this paragraph.

14. That Employee shall not initiate, assist, testify, or consult with respect to any investigation, complaint, suit, or action involving or related to the Releasees, other than for a claim brought by Employee challenging the validity of this Agreement under the ADEA, or the Older Worker Benefit Protection Act, unless compelled to do so by legal process. That, furthermore, Employee will indemnify the Releasees for all expenses and costs, including reasonable attorneys' fees, which the Releasees incurs as a consequence of Employee's breach of this covenant. That nothing in any provision of this Agreement prevents Employee from filing an administrative charge or complaint, or otherwise communicating with or participating in an investigation by the Equal Employment Opportunity Commission or equivalent state agency, the National Labor Relations Board, the Occupational Safety and Health Administration, the Securities and Exchange Commission, any agency Inspector General, or any other federal, state, or local agency governing employee rights. Nothing in this Agreement shall be construed to limit any disclosure to any such governmental officials or agencies or making disclosures that are protected under whistleblower provisions of federal law or regulation. However, by signing this Agreement, Employee waives Employee's right to recover any damages or other relief in any claim or suit brought by employee, or by or through the EEOC, or other federal, state, or local law, except where prohibited by law. This Agreement does not limit Employee's right to receive an award for information provided to any government agency. Employee agrees to release and discharge the Releasees not only from any and all claims that Employee could make on Employee's own behalf, but Employee also specifically waives any right to become, and Employee promises not to become, a member of any class in any proceeding or case in which a claim or claims against the Releasees may arise, in whole or in part, from any event that occurred prior to the date of this Agreement. If Employee is not permitted to opt-out of a future class, the Employee agrees to waive any recovery for which Employee would be eligible as a member of such class. Nothing in this Agreement is intended to limit or interfere with Employee's rights under Section 7 of the National Labor Relations Act.

15. Employees owe obligations of confidentiality to the Company, which are detailed in the Employee's Confidentiality Agreement with Tilray Inc. and in the Company's Code of Business Conduct and Ethics. Notwithstanding Paragraph 23, below, all obligations contained in the Confidentiality Agreement remain in effect after termination of Employee's employment with the Company. That Employee covenants and represents that Employee has returned to the Company all of its known property of any kind that was in Employee's possession, custody, or control prior to the execution of this Agreement, including all documents, records, correspondence, keys, and credit cards and each and every copy of such materials. Employee agrees that if the Company discovers after the effective date of this Agreement that Employee has any of their files, documents, or records at Employee's home or otherwise in Employee's possession or control, Employee will immediately turn over such files, documents, or records to the Company.

16. That Employee confirms that Employee (a) has no knowledge of any facts or circumstances that Employee understands would give rise to a violation of any law, regulation, or Company policy; arising out of or in connection with Employee's employment or termination thereof; (b) has not reported any allegations of unlawful or unethical conduct to any third party that have not also been disclosed to the Company; (c) and acknowledges that Employee has received no injuries and contracted no occupational diseases arising out of or in connection with Employee's employment with the Company.

17. That the parties hereby further acknowledge:

- (a) That each has had the reasonable opportunity to review and consider the terms of this Agreement for a period of twenty-one (21) days; and that Employee has been advised, through this Agreement, to consult with an attorney, engaged at Employee's own expense, prior to signing this agreement:



- (b) That each fully understands, and had the opportunity to receive counsel regarding, their respective rights, obligations and liabilities hereunder;
- (c) That to the extent that Employee has taken less than twenty-one (21) days to consider this Agreement, Employee acknowledges that Employee has had sufficient time to consider this Agreement and to consult with counsel and that Employee does not desire additional time;
- (d) That Employee waives all claims accrued as of the date of execution and that this Agreement to the greatest extent permitted by law, but that this Agreement does not waive any claims that may arise in the future;
- (e) That nothing in this Agreement is or will be construed as an admission by either party, or any affiliate thereof, of any breach of any agreement or any intentional or unintentional wrongdoing of any nature;
- (f) That the terms of this Agreement are not effective or enforceable until seven (7) days after its execution, during which period Employee may revoke Employee's acceptance of this Agreement by having written or electronic notice delivered to the attention of **Nyree Pinto, VP, Global Talent, 2701 Eastlake Avenue EAST, Floor Three, Seattle, WA, 98102, or nyree.pinto@tilray.com;**
- (g) That the consideration the Company is providing Employee herein is in excess of the benefits that the Company would otherwise be obligated to provide Employee;



18. That Releasees are intended third party beneficiaries of this Agreement.
 19. That this Agreement will be binding upon and accrue to the benefit of Employee, Employee's heirs, executors, and assigns, and the Releasees.
 20. That in the event of a breach of this Agreement by either party, the prevailing party in any action to enforce that party's rights hereunder will be entitled to recover all costs and expenses, including reasonable attorneys' fees.
 21. That if any term, provision, covenant, or condition of this Agreement will be held by a court of competent jurisdiction to be invalid or unenforceable, in whole or in part, such decision will not affect the validity of the remaining portions.
 22. That this Agreement may be signed in counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. One or more of the counterparts of this Agreement may be delivered by facsimile or pdf electronic file with the intention that delivery by such means shall have the same effect as delivery of an original counterpart.
 23. That this Agreement is the entire agreement between the parties and supersedes and voids, except as described in Paragraph 1, all prior agreements and understandings between the parties, if any, with respect to Employee's employment with the Company and the termination thereof, and that this Agreement cannot be amended or modified except by a writing signed by both parties.
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IN WITNESS WHEREOF, the parties have executed multiple copies of this Agreement, each of which constitutes an original, but all of which, when taken together, constitute the same document.

Tilray Inc.

DocuSigned by:
By: /s/ Jon Levin
1712090D9AF7499...

By: /s/ Rita Seguin

Print
Name: Jon Levin

Print Name
and Title: Rita Seguin

Date of Execution: 4/29/2021

Date of Execution: 4/29/2021



Consent of Independent Registered Public Accounting Firm

We hereby consent to the incorporation by reference in the Registration Statements on Form S-3 (No. 333-233703) and S-8 (Nos. 333-226267, 333-231539, 333-235581, 333-238179) of Tilray, Inc. of our report dated July 28, 2020 relating to the consolidated financial statements and effectiveness of internal control over financial reporting of Aphria Inc., which appears in this Current Report on Form 8-K.

/s/ PricewaterhouseCoopers LLP

Chartered Professional Accountants, Licensed Public Accountants

Toronto, Canada

May 4, 2021



TILRAY & APHRIA ANNOUNCE CLOSING OF TRANSACTION THAT CREATES THE “NEW” TILRAY – A GLOBAL CANNABIS LEADER

Operational Efficiencies Expected to Generate Approximately US\$81 Million Annual Pre-Tax Cost-Saving Synergies for New Tilray Within Eighteen Months

Irwin D. Simon, Aphria’s Chairman and CEO, will Lead the New Tilray and Has Appointed New Executive Leadership Team; New Members of the Board of Directors Also Appointed

New Tilray Poised to Transform the Global Cannabis Industry as a Consumer Packaged Goods Powerhouse with a Diversified Portfolio of Leading Brands

Renewed Financial Strength to Drive Accelerated Growth Strategy and Sustained Profitability

Tilray’s Shares Will Continue Trading on the NASDAQ Under Symbol “TLRY”; Starting May 5, 2021, Tilray’s Shares Will Commence Trading on the Toronto Stock Exchange Under Symbol “TLRY”

New York, New York, and Leamington, Ontario -- May 3, 2021 -- Tilray, Inc. (“Tilray”) and Aphria Inc. (“Aphria”) today announced the completion of the previously announced business combination, ushering in a new era in the global cannabis industry. The combined company, which will operate as Tilray (the “Company”), brings together two highly complementary businesses to create the leading cannabis-focused consumer packaged goods (“CPG”) company with the largest global geographic footprint in the industry. The combined company had a market cap of approximately US\$8.2 billion based on the closing stock prices on April 30, 2021.

The Company’s class 2 common stock (“Tilray Shares”) will continue to trade on the Nasdaq Global Select Exchange under the ticker symbol “TLRY” and will commence trading on the Toronto Stock Exchange under the ticker symbol “TLRY” on May 5, 2021. As previously announced, each Aphria shareholder received 0.8381 of a Tilray Share for each Aphria common share (each an “Aphria Share”) held on April 30, 2021, the effective time of the transaction. Holders of Tilray Shares prior to the completion of the transaction continue to hold their Tilray Shares with no adjustment as a result of the transaction. An early warning report in respect of the Company’s acquisition of all of the outstanding Aphria Shares pursuant to the transaction will be filed on SEDAR and will be available under Aphria’s issuer profile at www.sedar.com.

Irwin D. Simon, the Company’s Chairman and Chief Executive Officer, commented, “Our focus now turns to execution on our highest return priorities including business integration and accelerating our global growth strategy. Covid-19 related lockdowns have presented unique challenges across Canadian and German markets. As these markets begin to re-open, Tilray is poised to strike and transform the industry with our highly scalable operational footprint, a curated portfolio of diverse medical and adult-use cannabis brands and products, a multi-continent distribution network, and a robust capital structure to fund our global expansion strategy and deliver sustained profitability and long-term value for our stakeholders.”



Mr. Simon continued, “Our global team is laser-focused on turning potential into performance and addressing consumer and patient needs for safe, innovative, and high-quality products. We are eager to get to work and want to thank both the Aphria and the Tilray Boards of Directors and especially Brendan Kennedy for his spirit of partnership and irrepressible belief in the art of ‘what’s possible.’ We will benefit enormously from his legacy and continued service on the Tilray Board.”

We expect that the business combination will provide, among others, the following financial and strategic benefits:

World’s Largest Global Cannabis Company. The combination of Aphria and Tilray brings together two highly complementary businesses to create the leading cannabis-focused CPG company with the largest global geographic footprint in the industry.

Strategic Footprint and Operational Scale. We believe that the Company has the strategic footprint and operational scale necessary to compete more effectively in today’s consolidating cannabis market with a strong, flexible balance sheet, strong cash balance, and access to capital, which we believe will give the Company the ability to accelerate growth and deliver long-term sustainable value for stockholders.

Low-cost, State-of-the-Art Production & the Leading Canadian Adult-Use Cannabis Producer. The demand for the Company’s products will be supported by low-cost state-of-the-art cultivation, processing, and manufacturing facilities, and it will have a complete portfolio of branded cannabis 2.0 products to strengthen its leadership position in Canada.

Positioned to Pursue an Accelerated International Growth Strategy. The Company is well-positioned to pursue international growth opportunities with its strong medical cannabis brands, distribution network in Germany, and end-to-end European Union Good Manufacturing Practices (“EU-GMP”) supply chain, which includes its production facilities in Portugal and Germany.

Enhanced Consumer Packaged Goods Presence and Infrastructure in the U.S. In the United States, Tilray has a strong consumer packaged goods presence and infrastructure with two strategic pillars, including SweetWater, a leading cannabis lifestyle branded craft brewer, and Manitoba Harvest, a pioneer in branded hemp, CBD and wellness products with access to 17,000 stores in North America. In the event of federal permissibility, the Company expects to be well-positioned to compete in the U.S. cannabis market given its existing strong brands and distribution system in addition to its track record of growth in consumer-packaged goods and cannabis products.



Substantial Synergies. The Company expects to deliver approximately US\$81 million (C\$100 million) of annual pre-tax cost synergies within eighteen months and plans to achieve cost synergies in the key areas of cultivation and production, cannabis and product purchasing, sales, and marketing, and corporate expenses.

Tilray's new leadership team and board of directors will provide a strong foundation for the Company to accelerate growth and capitalize on the business combination's many benefits.

Effective on closing, the senior management team and Board of Directors of the Company were reconstituted as follows:

- Irwin D. Simon, Chairman and Chief Executive Officer
- Carl Merton, Chief Financial Officer
- Denise Faltischek, Head of International and Chief Strategy Officer
- Jim Meiers, President, Canada
- Jared Simon, President, Manitoba Harvest and Tilray Wellness
- Rita Seguin, Chief Human Resources Officer
- Dara Redler, Interim Chief Legal Officer and Corporate Secretary
- Berrin Noorata, Chief Corporate Affairs Officer
- Lloyd Brathwaite, Chief Information Officer
- Freddy Bensch, Chief Executive Officer, SweetWater

Board of Directors:

- Irwin D. Simon, Chairman
- Renah Persofsky, ICD.D, Vice-Chair (Lead Director) and Chair of the Nominating and Governance Committee, Independent Director
- Jodi Butts, Nominating & Governance Committee Member, Independent Director
- David Clanachan, Newly Appointed Independent Director
- John M. Herhalt, Chair of the Audit Committee, Independent Director
- David Hopkinson, Nominating and Governance Committee & Compensation Committee Member, Independent Director
- Brendan Kennedy, Current Director and Former CEO, Tilray
- Tom Looney, Audit Committee & Compensation Committee Member, Independent Director
- Walter Robb, Chair of the Compensation Committee & Audit Committee Member, Independent Director

New Tilray Branding

The new Tilray logo blends both Aphria and legacy Tilray's branding into a design that reflects the new Company's growing portfolio of brands across cannabis-lifestyle and wellness product categories, including medical, adult-use, hemp foods, and beverages. The continued use of "Tilray" as the Company's name evokes hard work and hope – *til* shortened from *tilling the soil* and *ray* as *in a ray of sunshine*. Tilray is a pioneer navigating toward the end of prohibition and built to deliver on the collective wellbeing of the Company's employees, consumers, patients, partners, and local communities.



Advisors

Jefferies LLC served as financial advisor, and DLA Piper LLP (US), DLA Piper (Canada) LLP, and Fasken Martineau Dumoulin LLP acted as legal counsel to Aphria. Cowen served as financial advisor, and Cooley LLP and Blake, Cassels, and Graydon LLP acted as legal counsel to Tilray.

About Tilray

Tilray Inc. is a leading global cannabis-lifestyle and consumer packaged goods company with operations in Canada, the United States, Europe, Australia, and Latin America that is changing people's lives for the better – one person at a time – by inspiring and empowering the worldwide community to live their very best life by providing them with products that meet the needs of their mind, body, and soul and invoke a sense of wellbeing. Tilray's mission is to be the trusted partner for its patients and consumers by providing them with a cultivated experience and health and wellbeing through high-quality, differentiated brands and innovative products. A pioneer in cannabis research, cultivation, and distribution, Tilray's unprecedented production platform supports over 20 brands in over 20 countries, including comprehensive cannabis offerings, hemp-based foods, and alcoholic beverages.

For more information on how we open a world of wellbeing, visit [Tilray.com](https://www.tilray.com).



Forward-Looking Statements

Certain information in this communication constitutes forward-looking information or forward-looking statements (together, “forward-looking statements”) under Canadian securities laws and within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, which are intended to be covered by the safe harbor created by such sections and other applicable laws. Forward-looking statements are provided for the purpose of presenting information about management’s current expectations and plans relating to the future, and readers are cautioned that such statements may not be appropriate for other purposes. Any information or statements that are contained in this communication that are not statements of historical fact may be deemed to be forward-looking statements, including, but not limited to, statements regarding the expected strategic and financial benefits of the business combination. Words such as “forecast”, “future”, “should”, “could”, “enable”, “potential”, “contemplate”, “believe”, “anticipate”, “estimate”, “plan”, “expect”, “intend”, “may”, “project”, “will”, “would” and the negative of these terms or similar expressions identify forward-looking statements, although not all forward-looking statements contain these identifying words. Certain material factors or assumptions were used in drawing the conclusions contained in the forward-looking statements throughout this communication. Forward-looking statements reflect current beliefs of management of the Company with respect to future events and are based on information currently available to each respective management team including the reasonable assumptions, estimates, analysis and opinions of management of the Company considering their experience, perception of trends, current conditions and expected developments as well as other factors that each respective management believes to be relevant as at the date such statements are made. Forward-looking statements involve significant known and unknown risks and uncertainties. Many factors could cause actual results, performance or achievement to be materially different from any future forward-looking statements. There is a risk that some or all the expected benefits of the business combination may fail to materialize or may not occur within the time periods anticipated by the Company. The challenge of coordinating previously independent businesses makes evaluating the business and future financial prospects of the Company following the business combination difficult. Material risks and uncertainties that could cause actual results to differ from forward-looking statements include the inherent uncertainty associated with the financial and other projections as well as market changes arising from governmental actions or market conditions in response to the COVID-19 public health crisis; the prompt and effective integration of the Company; the ability to achieve the anticipated synergies and value-creation contemplated by the business combination; the response of business partners and retention as a result of the business combination; the impact of competitive responses to the business combination; and the diversion of management time on business combination-related issues. Readers are cautioned that the foregoing list of factors is not exhaustive. Other risks and uncertainties not presently known to the Company or that the Company presently believe are not material could also cause actual results or events to differ materially from those expressed in the forward-looking statements contained herein. For a more detailed discussion of risks and other factors, see the most recently filed annual information form of Aphria and the annual report filed on form 10-K of Tilray made with applicable securities regulatory authorities and available on SEDAR and EDGAR. The forward-looking statements included in this communication are made as of the date of this communication and the Company does undertake any obligation to publicly update such forward-looking statements to reflect new information, subsequent events or otherwise unless required by applicable securities laws.

For more information, visit: www.Tilray.com

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aphria inc.

Aphria Inc.

CONDENSED INTERIM CONSOLIDATED FINANCIAL STATEMENTS
FOR THE THREE AND NINE MONTHS ENDED FEBRUARY 28, 2021 AND FEBRUARY 29, 2020

(Unaudited, expressed in Canadian Dollars, unless otherwise noted)

Aphria Inc.

Condensed Interim Consolidated Financial Statements of Financial Position

(Unaudited - in thousands of Canadian dollars, except share and per share amounts)

	Note	February 28, 2021	May 31, 2020
Assets			
Current assets			
Cash and cash equivalents		\$ 267,134	\$ 497,222
Accounts receivable		81,890	55,796
Prepays and other current assets	4	34,732	42,983
Inventory	5	313,794	264,321
Biological assets	6	27,065	28,341
Current portion of convertible notes receivable	11	6,089	14,626
		730,704	903,289
Capital assets	8	644,711	587,163
Intangible assets	9	669,703	363,037
Promissory notes receivable		3,000	--
Long-term investments	12	11,292	27,016
Goodwill	10	745,908	617,934
		\$ 2,805,318	\$ 2,498,439
Liabilities			
Current liabilities			
Bank indebtedness	14	\$ --	\$ 537
Accounts payable and accrued liabilities	15	168,230	153,652
Income taxes payable		21,246	6,410
Current portion of lease liabilities		1,756	1,315
Current portion of long-term debt	16	25,759	8,467
		216,991	170,381
Long-term liabilities			
Lease liabilities		45,004	5,828
Long-term debt	16	233,356	129,637
Convertible debentures	17	622,796	270,783
Contingent consideration	10	76,196	--
Deferred tax liability, net	13	44,625	83,468
		1,238,968	660,097
Shareholders' equity			
Share capital	18	2,079,173	1,846,938
Warrants	19	360	360
Share-based payment reserve		29,661	27,721
Accumulated other comprehensive loss		(6,047)	(1,269)
Deficit		(595,182)	(61,215)
		1,507,965	1,812,535
Non-controlling interests	21	58,385	25,807
		1,566,350	1,838,342
		\$ 2,805,318	\$ 2,498,439

Nature of operations (Note 1),
 Commitments and contingencies (Note 32),
 Subsequent events (Note 34)

Approved on behalf of the Board:

"Renah Persofsky"

Signed: Director

"Irwin Simon"

Signed: Director

The accompanying notes are an integral part of these condensed interim consolidated financial statements

Aphria Inc.

Condensed Interim Consolidated Financial Statements of Income (Loss) and Comprehensive Income (Loss)

(Unaudited - in thousands of Canadian dollars, except share and per share amounts)

	Note	For the three months ended		For the nine months ended	
		February 28,		February 28,	
		2021	2020	2021	2020
Net revenue	22	\$ 153,638	\$ 144,424	\$ 459,859	\$ 391,136
Cost of goods sold	23	115,872	108,733	335,008	297,403
Gross profit before fair value adjustments		37,766	35,691	124,851	93,733
Fair value adjustment on sale of inventory		45,044	16,383	102,600	36,060
Fair value adjustment on growth of biological assets	6	(38,967)	(40,267)	(124,209)	(86,912)
Gross profit		31,689	59,575	146,460	144,585
Operating expenses:					
General and administrative	24	26,095	27,920	82,239	72,301
Share-based compensation	25	36,271	5,126	54,127	17,645
Selling		7,632	5,089	22,383	12,731
Amortization		13,792	5,352	24,848	16,256
Marketing and promotion		4,041	4,185	15,421	16,611
Research and development		158	710	586	1,992
Transaction costs		12,013	2,478	37,637	3,904
		100,002	50,860	237,241	141,440
Operating loss		(68,313)	8,715	(90,781)	3,145
Finance income (expense), net	26	(10,025)	(7,352)	(23,302)	(17,615)
Non-operating income (expense), net	27	(276,507)	9,848	(383,626)	34,719
(Loss) income before income taxes		(354,845)	11,211	(497,709)	20,249
Income taxes (recovery)	13	6,151	5,514	(11,020)	6,040
Net (loss) income		(360,996)	5,697	(486,689)	14,209
Other comprehensive (loss) income					
Other comprehensive (loss) income		(5,836)	(734)	(4,778)	(2,729)
Comprehensive (loss) income		\$ (366,832)	\$ 4,963	\$ (491,467)	\$ 11,480
Total comprehensive income (loss) attributable to:					
Shareholders of Aphria Inc.		(385,279)	5,893	(538,745)	12,944
Non-controlling interests	21	18,447	(930)	47,278	(1,464)
		\$ (366,832)	\$ 4,963	\$ (491,467)	\$ 11,480
Weighted average number of common shares - basic		316,670,951	257,517,234	299,130,624	253,477,710
Weighted average number of common shares - diluted		316,670,951	257,955,708	299,130,624	254,010,666
(Loss) income per share - basic	29	\$ (1.14)	\$ 0.02	\$ (1.63)	\$ 0.06
(Loss) income per share - diluted	29	\$ (1.14)	\$ 0.02	\$ (1.63)	\$ 0.06

The accompanying notes are an integral part of these condensed interim consolidated financial statements

Aphria Inc.

Condensed Interim Consolidated Statements of Changes in Equity

(Unaudited - in thousands of Canadian dollars, except share and per share amounts)

	Number of common shares	Share capital (Note 18)	Warrants (Note 19)	Share- based payment reserve	Accumulated other comprehensive loss	Retained earnings	Non- controlling interests (Note 21)	Total
Balance at May 31, 2019	250,989,120	\$ 1,655,273	\$ 1,336	\$ 36,151	\$ (119)	\$ 12,103	\$ 28,409	\$ 1,733,153
Share issuance - January 2020 bought deal	14,044,944	99,727	—	—	—	—	—	99,727
Share issuance - options exercised	1,105,901	6,783	—	(2,681)	—	—	—	4,102
Share issuance - RSUs exercised	667,529	4,428	—	—	—	—	—	4,428
Share issuance - DSUs exercised	60,342	392	—	—	—	—	—	392
Share issuance - warrants exercised	766,372	1,150	—	—	—	—	—	1,150
Cancelled shares	(500,000)	(615)	—	—	—	615	—	—
Expired warrants	—	—	(976)	—	—	976	—	—
Share-based payments Nuuvera Malta Ltd. acquisition	—	—	—	9,693	—	—	—	9,693
Comprehensive income (loss) for the period	—	—	—	—	(2,729)	15,673	82	(1,464)
Balance at February 29, 2020	267,134,208	\$ 1,767,138	\$ 360	\$ 43,163	\$ (2,848)	\$ 29,285	\$ 27,027	\$ 1,864,125

	Number of common shares	Share capital (Note 18)	Warrants (Note 19)	Share- based payment reserve	Accumulated other comprehensive income (loss)	Deficit	Non- controlling interests (Note 21)	Total
Balance at May 31, 2020	286,520,265	\$ 1,846,938	\$ 360	\$ 27,721	\$ (1,269)	\$ (61,215)	\$ 25,807	\$ 1,838,342
Share issuance - legal settlement	2,259,704	12,963	—	—	—	—	—	12,963
Share issuance - equity financing	17,432,879	128,448	—	—	—	—	—	128,448
Share issuance - SweetWater acquisition	9,823,183	85,675	—	—	—	—	—	85,675
Share issuance - options exercised	232,539	1,929	—	(1,751)	—	—	—	178
Share issuance - RSUs exercised	526,849	3,220	—	—	—	—	—	3,220
Share-based payments	—	—	—	3,691	—	—	—	3,691
Dividend paid to non- controlling interest	—	—	—	—	—	—	(14,700)	(14,700)
Comprehensive income (loss) for the period	—	—	—	—	(4,778)	(533,967)	47,278	(491,467)
Balance at February 28, 2021	316,795,419	\$ 2,079,173	\$ 360	\$ 29,661	\$ (6,047)	\$ (595,182)	\$ 58,385	\$ 1,566,350

The accompanying notes are an integral part of these condensed interim consolidated financial statements

Aphria Inc.
Condensed Interim Consolidated Statements of Cash Flows
(Unaudited - in thousands of Canadian dollars)

		For the nine months ended February 28,	
	Note	2021	2020
Cash used in operating activities:			
Net (loss) income for the period		\$ (486,689)	\$ 14,209
Adjustments for:			
Future income taxes	13	(37,974)	2,040
Fair value adjustment on sale of inventory		102,600	36,060
Fair value adjustment on growth of biological assets	6	(124,209)	(86,912)
Unrealized foreign exchange loss (gain)		24,744	3,136
Amortization	8,9	54,820	34,832
Loss on promissory notes receivable		—	12,000
Unrealized loss on convertible notes receivable	11	3,786	7,569
Transaction costs associated with business acquisitions		31,199	—
Other non-cash items		(641)	(544)
Share-based compensation	25	54,127	17,645
Loss on long-term investments	28	5,272	28,144
Loss (gain) on convertible debentures		352,013	(86,430)
Change in non-cash working capital	30	(43,831)	(102,941)
		(64,783)	(121,192)
Cash provided by (used in) financing activities:			
Share capital issued, net of cash issuance costs		127,163	99,727
Proceeds from warrants and options exercised		178	5,252
Proceeds from long-term debt		127,471	79,400
Repayment of long-term debt		(6,536)	(9,730)
Repayment of lease liabilities		(1,824)	(912)
(Decrease) increase in bank indebtedness		(537)	6,948
Dividend paid to non-controlling interest		(14,700)	—
		231,215	180,685
Cash used in investing activities:			
Proceeds from disposal of marketable securities		—	19,861
Investment in capital and intangible assets		(42,075)	(104,397)
Proceeds from disposal of capital and intangible assets		8,193	1,673
Promissory notes advances		(3,000)	—
Repayment of convertible notes receivable	11	5,000	—
Investment in long-term investments and equity investees		—	(605)
Proceeds from disposal of long-term investments and equity investees	28	10,452	26,177
Net cash paid on business acquisitions		(354,396)	(34,722)
		(375,826)	(92,013)
Effect of foreign exchange on cash and cash equivalents		(20,694)	(3,175)
Net decrease in cash and cash equivalents		(230,088)	(35,695)
Cash and cash equivalents, beginning of period		497,222	550,797
Cash and cash equivalents, end of period		\$ 267,134	\$ 515,102
Cash and cash equivalents are comprised of:			
Cash in bank		\$ 35,218	\$ 514,899
Short-term deposits		231,916	203
Cash and cash equivalents		\$ 267,134	\$ 515,102

The accompanying notes are an integral part of these condensed interim consolidated financial statements

Aphria Inc.

Notes to the Condensed Interim Consolidated Financial Statements

For the three and nine months ended February 28, 2021 and February 29, 2020

(Unaudited - in thousands of Canadian dollars, except share and per share amounts)

1. Nature of operations

Aphria Inc. (the "Company" or "Aphria") is a leading global cannabis company inspiring and empowering the worldwide community to live their very best life. The Company exists under the laws of the *Business Corporations Act* (Ontario), is licensed to produce and sell medical and adult-use cannabis, cannabis-derived extracts, and derivative cannabis products in Canada under the provisions of *The Cannabis Act*.

Broken Coast Cannabis Ltd. ("Broken Coast") is a wholly-owned subsidiary of the Company licensed to produce and sell cannabis under *The Cannabis Act*.

1974568 Ontario Ltd. ("Aphria Diamond") is a 51% majority-owned subsidiary of the Company. Aphria Diamond is licensed to produce cannabis under the provisions of *The Cannabis Act*.

SweetWater Brewing Company, LLC ("SweetWater") is a wholly-owned subsidiary operating in the beverage alcohol industry in the United States.

The registered office of the Company is located at 1 Adelaide Street East, Suite 2310, Toronto, Ontario.

The Company's common shares are listed under the symbol "APHA" on the Toronto Stock Exchange ("TSX") in Canada and the National Association of Securities Dealers Automated Quotations Exchange ("NASDAQ") in the United States.

These condensed interim consolidated financial statements were approved by the Company's Board of Directors on April 9, 2021.

2. Basis of preparation

(a) Statement of compliance

The Company's condensed interim consolidated financial statements have been prepared in accordance with IAS 34, "Interim Financial Reporting". These condensed interim consolidated financial statements do not include all notes of the type normally included within the annual financial report and should be read in conjunction with the audited financial statements of the Company for the year ended May 31, 2020, which have been prepared in accordance with International Financial Reporting Standards ("IFRS") as issued by the International Accounting Standards Board and Interpretations of the IFRS Interpretations Committee.

(b) Basis of measurement

These condensed interim consolidated financial statements have been prepared on the going concern basis, under the historical cost convention except for certain financial instruments that are measured at fair value and biological assets that are measured at fair value less costs to sell, as detailed in the Company's accounting policies.

(c) Functional currency

All figures presented in the consolidated financial statements are reflected in Canadian dollars; however, the functional currency of the Company includes the Canadian dollar, United States dollar and the Euro.

Foreign currency transactions are translated to the respective functional currencies of the Company's entities at the exchange rates in effect on the date of the transactions. Monetary assets and liabilities denominated in foreign currencies are translated to the functional currency at the foreign exchange rate applicable at the statement of financial position date. Non-monetary items carried at historical cost denominated in foreign currencies are translated to the functional currency at the date of the transactions. Non-monetary items carried at fair value denominated in foreign currencies are translated to the functional currency at the date when the fair value was determined. Realized and unrealized exchange gains and losses are recognized through profit and loss.

Aphria Inc.

Notes to the Condensed Interim Consolidated Financial Statements

For the three and nine months ended February 28, 2021 and February 29, 2020

(Unaudited - in thousands of Canadian dollars, except share and per share amounts)

On consolidation, the assets and liabilities of foreign operations reported in their functional currencies are translated into Canadian dollars, the Group's presentation currency, at period-end exchange rates. Income and expenses, and cash flows of foreign operations are translated into Canadian dollars using average exchange rates. Exchange differences resulting from translating foreign operations are recognized in other comprehensive income and accumulated in equity. The Company and all of its subsidiaries' functional currency is Canadian dollars, with the exception of SweetWater and CC Pharma GmbH whose functional currency is the United States Dollar and Euro respectively.

(d) Basis of consolidation

Subsidiaries are entities controlled by the Company. Control exists when the Company has the power, directly and indirectly, to govern the financial and operating policies of an entity and be exposed to the variable returns from its activities. The financial statements of subsidiaries are included in the consolidated financial statements from the date that control commences until the date that control ceases. The following is a list of the Company's operating subsidiaries:

Subsidiaries	Jurisdiction of incorporation	Ownership interest
Broken Coast Cannabis Ltd.	British Columbia, Canada	100%
SweetWater Brewing Company, LLC	Georgia, United States of America	100%
ARA – Avanti Rx Analytics Inc.	Ontario, Canada	100%
FL Group S.r.l.	Italy	100%
ABP, S.A.	Argentina	100%
Aphria Germany GmbH	Germany	100%
Aphria RX GmbH	Germany	100%
CC Pharma GmbH	Germany	100%
CC Pharma Research and Development GmbH	Germany	100%
Aphria Wellbeing GmbH	Germany	100%
Marigold Projects Jamaica Limited	Jamaica	95% ¹
ASG Pharma Ltd.	Malta	100%
ColCanna S.A.S.	Colombia	90%
CC Pharma Nordic ApS	Denmark	75%
1974568 Ontario Ltd.	Ontario, Canada	51%

Intragroup balances, and any unrealized gains and losses or income and expenses arising from transactions with jointly controlled entities are eliminated to the extent of the Company's interest in the entity.

The Company treats transactions with non-controlling interests that do not result in a loss of control as transactions with equity owners of the Company. A change in ownership interest results in an adjustment between the carrying amounts of the controlling and non-controlling interests to reflect their relative interests in the subsidiary. Any difference between the amount of the adjustment to non-controlling interests and any consideration paid or received is recognized in a separate reserve within equity attributable to the owners of the Company.

3. Significant accounting policies

These condensed interim consolidated financial statements have been prepared following the same accounting policies used in the preparation of the audited financial statements of the Company for the year ended May 31, 2020. For comparative purposes, the Company has reclassified certain immaterial items on the condensed interim consolidated statements of financial position and the condensed interim consolidated statements of income (loss) and comprehensive income (loss) to conform with the current period's presentation.

¹ The Company holds 49% of the issued and outstanding shares of Marigold Projects Jamaica Limited through wholly-owned subsidiary Marigold Acquisitions Inc. The Company holds rights through a licensing agreement to 95% of the results of operations of Marigold Projects Jamaica Limited.

Aphria Inc.

Notes to the Condensed Interim Consolidated Financial Statements

For the three and nine months ended February 28, 2021 and February 29, 2020

(Unaudited - in thousands of Canadian dollars, except share and per share amounts)

4. Prepaids and other current assets

Prepaids and other current assets are comprised of:

	February 28, 2021	May 31, 2020
Sales tax receivable	\$ 3,677	\$ 11,670
Prepaid assets	27,064	23,365
Other	3,991	7,948
	\$ 34,732	\$ 42,983

5. Inventory

Inventory is comprised of:

	Capitalized cost	Fair value adjustment	February 28, 2021	May 31, 2020
Cannabis	\$ 111,519	\$ 100,715	\$ 212,234	\$ 151,715
Cannabis trim	6,920	—	6,920	4,023
Cannabis oil	23,373	1,095	24,468	43,082
Cannabis vapes	7,288	319	7,607	7,551
Packaging and other inventory items	28,427	—	28,427	22,609
Beverage alcohol inventory	5,647	—	5,647	—
Distribution inventory	28,491	—	28,491	35,341
	\$ 211,665	\$ 102,129	\$ 313,794	\$ 264,321

The Company's capitalized cost (decreased) increased by \$(3,377) and \$25,890 for the three and nine months ended February 28, 2021. The (decrease) increase in capitalized costs is made up of the following: cannabis related inventory increased by \$7,473 and \$27,093, beverage alcohol inventory increased by \$(975) and \$5,647 and distribution inventory increased (decreased) by \$(9,875) and \$(6,850) for the three and nine months ended February 28, 2021.

6. Biological assets

Biological assets are comprised of:

	Amount
Balance at May 31, 2019	\$ 18,725
Changes in fair value less costs to sell due to biological transformation	115,255
Production costs capitalized	131,561
Transferred to inventory upon harvest	(237,200)
Balance at May 31, 2020	\$ 28,341
Changes in fair value less costs to sell due to biological transformation	124,209
Production costs capitalized	94,157
Transferred to inventory upon harvest	(219,642)
Balance at February 28, 2021	\$ 27,065

The Company values cannabis plants at cost, which approximates fair value from the date of initial clipping from mother plants until half-way through the flowering cycle of the plants. Measurement of the biological transformation of the plant at fair value less costs to sell begins in the fourth week prior to harvest and is recognized evenly until the point of harvest. The number of weeks in the growing cycle is between twelve and sixteen weeks from propagation to harvest. The Company has determined the fair value less costs to sell of cannabis to be between \$2.40 and \$2.90 per gram, upon harvest for greenhouse produced cannabis (May 31, 2020 - \$3.00 per gram) and between \$3.50 and \$4.00 per gram (May 31, 2020 - \$4.00 per gram), upon harvest for indoor produced cannabis. The Company has determined the fair value increment on cannabis trim to be \$nil per gram (May 31, 2020 - \$0.01 per gram).

Aphria Inc.

Notes to the Condensed Interim Consolidated Financial Statements

For the three and nine months ended February 28, 2021 and February 29, 2020

(Unaudited - in thousands of Canadian dollars, except share and per share amounts)

The fair value of biological assets is determined using a valuation model to estimate expected harvest yield per plant applied to the estimated price per gram less processing and selling costs. Only when there is a material change from the expected fair value used for cannabis does the Company make any adjustments to the fair value used. During the period, the Company amended the fair value based on an expected lower average selling price with the release of the Company's economy brands, which the Company is using to create demand for lower potency harvested cannabis.

In determining the fair value of biological assets, management has made the following estimates in this valuation model:

- The harvest yield is between 20 grams and 60 grams per plant;
- The selling price is between \$1.50 and \$6.50 per gram of cannabis;
- Processing costs include drying and curing, testing, post-harvest overhead allocation, packaging and labelling costs between \$0.30 and \$0.80 per gram;
- Selling costs include shipping, order fulfilment, patient acquisition and patient maintenance costs between \$0.00 and \$1.50 per gram;

Sales prices used in the valuation of biological assets is based on the average selling price of all cannabis products and can vary based on different strains being grown as well as the proportion of sales derived from wholesale compared to retail. Selling costs vary depending on methods of selling and are considered based on the expected method of selling and the determined additional costs which would be incurred. Expected yields for the cannabis plant is also subject to a variety of factors, such as strains being grown, length of growing cycle, and space allocated for growing. Management reviews all significant inputs based on historical information obtained as well as based on planned production schedules.

Management has quantified the sensitivity of the inputs and determined the following:

- Selling price per gram – a decrease in the average selling price per gram by 5% would result in the biological asset value decreasing by \$674 (May 31, 2020 - \$682) and inventory decreasing by \$12,215 (May 31, 2020 - \$9,895)
- Harvest yield per plant – a decrease in the harvest yield per plant of 5% would result in the biological asset value decreasing by \$404 (May 31, 2020 - \$439)

These inputs are level 3 on the fair value hierarchy and are subject to volatility in market prices and several uncontrollable factors, which could significantly affect the fair value of biological assets in future periods.

7. Related party transactions

Key management personnel compensation for the three and nine months ended February 28, 2021 and February 29, 2020 was comprised of:

	For the three months ended		For the nine months ended	
	February 28,		February 28,	
	2021	2020	2021	2020
Salaries	\$ 1,548	\$ 1,769	\$ 8,528	\$ 4,930
Stock options vested during the period	145	252	1,317	1,370
Deferred share units vested in the period	212	220	1,577	806
Deferred share units revalued in the period	4,039	(149)	4,289	(491)
Restricted share units vested in the period	2,043	331	7,183	474
Restricted share units revalued in the period	19,486	(42)	24,971	(24)
	\$ 27,473	\$ 2,381	\$ 47,865	\$ 7,065

Directors and officers of the Company control 0.10% or 332,377 of the voting shares of the Company.

As at February 28, 2021, a balance paid to an officer and director of the Company of \$nil (May 31, 2020 - \$801) is included within prepaid and other current assets.

During the period, the Company issued 150,000 deferred share units to directors of the Company under the terms of the Company's Omnibus Long-Term Incentive Plan, all of which vest over one year.

Aphria Inc.

Notes to the Condensed Interim Consolidated Financial Statements

For the three and nine months ended February 28, 2021 and February 29, 2020

(Unaudited - in thousands of Canadian dollars, except share and per share amounts)

During the period, the Company issued 866,190 restricted share units to officers and directors of the Company under the terms of the Company's Omnibus Long-Term Incentive Plan, all of which vest over two years.

During the period, the Company issued 50,000 stock options to officers of the Company, under the terms of the Company's Omnibus Long-Term Incentive Plan, all of which vest over three years.

8. Capital assets

	Land	Production facility	Equipment	Leasehold improvements	Construction in process	Right-of-use assets	Total capital assets
Cost							
At May 31, 2019	\$ 33,153	\$ 232,468	\$ 79,627	\$ 1,236	\$ 174,182	\$ —	\$ 520,666
IFRS 16 Adjustment	—	—	—	—	—	8,606	8,606
Additions	—	4,480	21,034	1,240	101,284	677	128,715
Transfers	72	37,491	108,730	16,081	(162,414)	40	—
Disposals	—	—	(7,157)	--	(5,559)	—	(12,716)
Impairment	(15)	(3,433)	(46)	(119)	(2,147)	(840)	(6,600)
Effect of foreign exchange	—	14	22	--	114	107	257
At May 31, 2020	33,210	271,020	202,210	18,438	105,460	8,590	638,928
Business Acquisition	—	—	13,502	523	2,017	39,992	56,034
Additions	314	3,755	5,419	434	28,576	1,449	39,947
Transfers	—	48,659	13,518	—	(62,177)	—	—
Effect of foreign exchange	3	(37)	(272)	(11)	29	(777)	(1,065)
At February 28, 2021	\$ 33,527	\$ 323,397	\$ 234,377	\$ 19,384	\$ 73,905	\$ 49,254	\$ 733,844
Accumulated depreciation							
At May 31, 2019	\$ —	\$ 7,660	\$ 8,919	\$ 189	\$ —	\$ —	\$ 16,768
Amortization	—	13,584	19,508	450	—	1,455	34,997
At May 31, 2020	—	21,244	28,427	639	—	1,455	51,765
Amortization	—	13,397	21,501	840	—	1,630	37,368
At February 28, 2021	\$ —	\$ 34,641	\$ 49,928	\$ 1,479	\$ —	\$ 3,085	\$ 89,133
Net book value							
At May 31, 2019	\$ 33,153	\$ 224,808	\$ 70,708	\$ 1,047	\$ 174,182	\$ —	\$ 503,898
At May 31, 2020	\$ 33,210	\$ 249,776	\$ 173,783	\$ 17,799	\$ 105,460	\$ 7,135	\$ 587,163
At February 28, 2021	\$ 33,527	\$ 288,756	\$ 184,449	\$ 17,905	\$ 73,905	\$ 46,169	\$ 644,711

Aphria Inc.

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9. Intangible assets

	Customer relationships	Corporate website	Licences, permits & applications	Non-compete agreements	Intellectual property, trademarks & brands	Total intangible assets
Cost						
At May 31, 2019	\$ 33,030	\$ 905	\$ 275,880	\$ 3,330	\$ 98,530	\$ 411,675
Additions	112	557	2,893	2	1,944	5,508
Impairment	—	—	(19,363)	—	—	(19,363)
Effect of foreign exchange	(540)	(5)	68	(55)	(358)	(890)
At May 31, 2020	32,602	1,457	259,478	3,277	100,116	396,930
Business acquisition	201,547	—	—	13,003	119,628	334,178
Additions	—	97	2,410	—	1,070	3,577
Disposals	—	—	—	—	(8,193)	(8,193)
Effect of foreign exchange	(3,484)	7	96	(204)	(1,859)	(5,444)
At February 28, 2021	\$ 230,665	\$ 1,561	\$ 261,984	\$ 16,076	\$ 210,762	\$ 721,048
Accumulated depreciation						
At May 31, 2019	\$ 6,003	\$ 417	\$ 859	\$ 1,490	\$ 10,850	\$ 19,619
Amortization	6,040	437	176	1,348	6,273	14,274
At May 31, 2020	12,043	854	1,035	2,838	17,123	33,893
Amortization	7,558	218	387	538	8,751	17,452
At February 28, 2021	\$ 19,601	\$ 1,072	\$ 1,422	\$ 3,376	\$ 25,874	\$ 51,345
Net book value						
At May 31, 2019	\$ 27,027	\$ 488	\$ 275,021	\$ 1,840	\$ 87,680	\$ 392,056
At May 31, 2020	\$ 20,559	\$ 603	\$ 258,443	\$ 439	\$ 82,993	\$ 363,037
At February 28, 2021	\$ 211,064	\$ 489	\$ 260,562	\$ 12,700	\$ 184,888	\$ 669,703

Included in Licences, permits & applications is \$254,216 of indefinite lived intangible assets. During the period, the Company disposed of \$8,193 of trademarks for proceeds of \$8,193.

10. Business Acquisition*Acquisition of SW Brewing Company, LLC*

On November 25, 2020, the Company, through its wholly-owned subsidiary Four Twenty Corporation, completed the purchase of all the shares of SW Brewing Company, LLC which is the holding company of 100% of the common shares of SweetWater. The purchase price consisted of cash consideration of \$255,543 USD (\$332,283 CAD), share consideration of 9,823,183 shares, and additional cash consideration of up to \$66,000 USD contingent on SweetWater achieving specified EBITDA targets. The fair value of the shares on the date the Company closed the acquisition was \$85,796, the fair value of the contingent consideration on the date the Company closed the acquisition was \$58,959 USD (\$76,664 CAD). During the quarter, the Company completed their review of the opening net working capital in accordance with the purchase agreement. Based on this review, the Company recorded an adjustment to the purchase price of \$1,016 USD (\$1,321 CAD) associated with the adjustment to the opening working capital acquired.

The Company is in the process of assessing the fair value of the net assets acquired and, as a result, the fair value of the net assets acquired may be subject to adjustments pending completion of final valuations and post-closing adjustments. The table below summarizes preliminary estimated fair value of the assets acquired and the liabilities assumed at the effective acquisition date.

Aphria Inc.

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	Amount
Consideration	
Cash	\$ 332,283
Shares	85,675
Contingent consideration	76,664
Total consideration	\$ 494,622
Net assets acquired	
Current assets	
Cash and cash equivalents	9,086
Accounts receivable	4,954
Prepays and other current assets	686
Inventory	6,261
Long-term assets	
Capital assets	56,034
Customer relationships	201,547
Intellectual property, trademarks & brands	119,628
Non-compete agreements	13,003
Goodwill	130,293
Total assets	541,492
Current liabilities	
Accounts payable and accrued liabilities	6,878
Current portion of lease liabilities	564
Long-term liabilities	
Lease liabilities	39,428
Total liabilities	46,870
Total net assets acquired	\$ 494,622

Revenue and net income and comprehensive net income for the Company would have been higher by approximately \$40,000 and \$16,000 for the nine months ended February 29, 2021 if the acquisition had taken place on June 1, 2020. In connection with this transaction, the Company expensed transaction costs of \$20,870.

The contingent consideration from the acquisition of SweetWater is a fair value measurement and as such is carried at fair value. The fair value has been determined by discounting future expected cash outflows at a discount rate of 5%. The inputs into the future expected cash outflows are level 3 on the fair value hierarchy and are subject to volatility and uncertainty, which could significantly affect the fair value of the contingent consideration in future periods. As at February 28, 2021, the fair value of the contingent consideration was \$76,196, expected to be paid in December 2023.

Goodwill is comprised of:

	February 28, 2021	May 31, 2020
CannWay Pharmaceuticals Inc. acquisition	\$ 1,200	\$ 1,200
Broken Coast Cannabis Ltd. acquisition	146,091	146,091
Nuuvera Corp. acquisition	377,221	377,221
LATAM Holdings Inc. acquisition	87,188	87,188
CC Pharma GmbH acquisition	6,146	6,146
SweetWater acquisition	130,293	—
Effect of foreign exchange	(2,231)	88
	\$ 745,908	\$ 617,934

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During the period ended February 28, 2021, the Company completed its quarterly assessment of indicators of impairment of the Company's cash-generating units ("CGUs"). The Company determined there were no indicators of impairment and therefore was not required to estimate the recoverable amount of the CGUs.

11. Convertible notes receivable

	February 28, 2021	May 31, 2020
HydRx Farms Ltd. (d/b/a Scientus Pharma)	\$ —	\$ 6,000
10330698 Canada Ltd. (d/b/a Starbuds)	2,000	4,728
High Tide Inc.	4,089	3,898
	6,089	14,626
Deduct - current portion	(6,089)	(14,626)
	\$ —	\$ —

HydRx Farms Ltd. (d/b/a Scientus Pharma)

On August 14, 2017, Aphria purchased \$11,500 in secured convertible debentures of Scientus Pharma ("SP"). The convertible debentures bore interest at 8%, paid semi-annually, matured in two years and included the right to convert the debentures into common shares of SP at \$2.75 per common share at any time before maturity. During the period, the Company settled the note receivable for \$5,000.

10330698 Canada Ltd. (d/b/a Starbuds)

On December 28, 2018, Aphria purchased \$5,000 in secured convertible debentures of Starbuds. The convertible debentures bear interest at 8.5% per annum accruing daily until maturity on December 28, 2020. The debentures are secured against the assets of Starbuds. The debentures and any accrued and unpaid interest are convertible into common shares for \$0.50 per common share and matured on December 28, 2020. Starbuds is currently in default under the convertible debentures.

As at February 28, 2021, the fair value of the Company's secured convertible debentures was \$2,000 (May 31, 2020 - \$4,728), which includes \$465 (May 31, 2020 - \$216) of accrued interest. The remaining change resulted in a fair value gain (loss) for the three and nine months ended February 28, 2021 of \$(3,384) and \$(2,977) (2020 - \$172 and (853)).

High Tide Inc.

On April 10, 2019, Aphria purchased \$4,500 in unsecured convertible debentures of High Tide Inc. ("High Tide"). The convertible debentures bear interest at 10% per annum, payable annually up front in common shares of High Tide based on the 10-day volume weighted average price (the "Debentures"). The debentures mature on April 10, 2021 and are convertible into common shares of High Tide at a price of \$0.75 at the option of the holder. In addition to the debentures, the Company received 6,000,000 warrants in High Tide as part of the purchase of the unsecured convertible debentures (Note 12).

As at February 28, 2021, the fair value of the unsecured convertible debentures was \$4,089 (May 31, 2020 - \$3,898), which resulted in a fair value gain (loss) for the three and nine months ended February 28, 2021 of \$66 and \$191 (2019 - \$12 and (162)).

Convertible notes receivable

The gain (loss) on convertible notes receivable recognized in the results of operations amounts to \$(3,318) and \$(3,786) for the three and nine months ended February 28, 2021 (2020 - \$(630) and \$(7,569)).

The fair value was determined using the Black-Scholes option pricing model using the following assumptions: the risk-free rate of 1.25%; expected life of the convertible note; volatility of 70% based on comparable companies; forfeiture rate of nil; dividend yield of nil; and, the exercise price of the respective conversion feature.

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12. Long-term investments

	Cost May 31, 2020	Fair value May 31, 2020	Investment	Divesture/ Transfer	Subtotal February 28, 2021	Change in fair value	Fair value February 28, 2021
Level 1 on fair value hierarchy							
Tetra Bio-Pharma Inc.	19,057	5,784	—	—	5,784	(673)	5,111
Aleafia Health Inc.	10,000	3,320	—	(3,320)	—	—	—
Rapid Dose Therapeutics Inc.	5,189	1,730	—	(1,730)	—	—	—
Fire & Flower Inc.	389	237	—	(237)	—	—	—
High Tide Inc.	450	165	—	-	165	561	726
Althea Group Holdings Ltd.	2,206	4,266	—	(4,266)	—	—	—
	37,291	15,502	—	(9,553)	5,949	(112)	5,837
Level 3 on fair value hierarchy							
Resolve Digital Health Inc.	718	—	—	—	—	—	—
Resolve Digital Health Inc.	282	—	—	—	—	—	—
Green Acre Capital Fund I	2,000	2,373	—	—	2,373	(173)	2,200
Weekend Holdings Corp.	1,890	1,379	—	—	1,379	(745)	634
IBBZ Krankenhaus GmbH	1,956	1,993	—	(1,993)	—	—	—
Greenwell Brands GmbH	152	155	—	(155)	—	—	—
HighArchy Ventures Ltd.	9,995	4,997	—	—	4,997	(2,997)	2,000
Schroll Medical ApS	605	617	—	—	617	4	621
	17,598	11,514	—	(2,148)	9,366	(3,911)	5,455
	54,889	27,016	—	(11,701)	15,315	(4,023)	11,292

Tetra Bio-Pharma Inc.

The Company owns 26,900,000 common shares and 6,900,000 warrants at a cost of \$19,057, with a fair value of \$5,111 as at February 28, 2021. Each warrant is exercisable at \$1.29 per warrant expiring November 1, 2021.

Aleafia Health Inc. (formerly Emblem Corp.) (“Aleafia”)

During the period, the Company sold 5,823,831 common shares in Aleafia, for proceeds of \$3,066 resulting in a loss of \$254 (Note 28).

Rapid Dose Therapeutics Inc. (“RDT”)

During the period, the Company sold 6,918,500 common shares in RDT for proceeds of \$1,360 resulting in a loss of \$370 (Note 28).

Fire & Flower Inc.

During the period, the Company sold 334,525 common shares, for proceeds of \$252 resulting in a gain of \$15 (Note 28).

High Tide Inc.

The Company owns 943,396 common shares and 6,000,000 warrants in High Tide Inc. at a cost of \$450, with a fair value of \$726 as at February 28, 2021. Each warrant is exercisable at \$0.85 per warrant expiring April 18, 2021.

Althea Group Holdings Ltd. (“Althea”)

During the period, the Company sold 12,250,000 common shares of Althea for proceeds of \$5,022 AUD (\$4,800 CAD), resulting in a gain of \$534 (Note 28).

Resolve Digital Health Inc. (“Resolve”)

The Company owns 2,200,026 common shares and 2,200,026 warrants in Resolve at a total cost of \$1,000, with a fair value of \$nil as at February 28, 2021. The Company determined the fair value of its investment based on its net realizable value. Each warrant is exercisable at \$0.65 per warrant expiring December 1, 2021.

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Green Acre Capital Fund I

The Company invested \$2,000 to Green Acre Capital Fund I. The Company determined the fair value of its investment, based on its proportionate share of net assets, to be \$2,200 as at February 28, 2021. The Company has received \$1,560 return of capital since its initial contribution.

Weekend Holdings Corp.

The Company owns 2,040,218 shares in Weekend Holdings Corp. for a total cost of \$1,420 USD (\$1,890 CAD), with a fair value of \$500 USD (\$634 CAD) as at February 28, 2021. The Company determined the fair value of its investment based on its net realizable value. The Company recognized a loss from the change in fair value of \$745.

IBBZ Krankenhaus GmbH Klinik Hygiea ("Krankenhaus")

During the period, the Company sold its 25.1% interest in Krankenhaus, which is the owner and operator of Berlin-based Schöneberg Hospital, for proceeds of €400 (\$600 CAD), resulting in a loss of \$1,393 (Note 28).

Greenwell Brands GmbH ("Greenwell")

During the period, the Company sold 1,250 common shares of Greenwell for proceeds of €250 (\$374 CAD), resulting in a gain of \$219 (Note 28).

HighArchy Ventures Ltd. ("HighArchy")

The Company owns 9,453,168 shares, and has an option to re-acquire control of 10,536,832 shares in HighArchy for a total cost of \$9,995, with a fair value of \$2,000 as at February 28, 2021. The Company determined the fair value of its investment based on its net realizable value.

Schroll Medical ApS

The Company has contributed capital of €403 (\$605 CAD) and owns 3,000 shares in Schroll Medical ApS. The Company determined that the fair value of its investment, based on the most recent financing at the same price, is equal to its carrying value. The Company recognized a gain from the change in fair value of \$4 due to changes in the foreign exchange rate.

13. Income taxes and deferred income taxes

A reconciliation of income taxes at the statutory rate with the reported taxes is as follows:

	For the nine months ended	
	February 28,	
	2021	2020
Net (loss) income before income taxes (recovery)	\$ (497,709)	\$ 20,249
Statutory rate	26.5%	26.5%
Expected income tax (recovery) at combined basic federal and provincial tax rate	(131,893)	5,366
Effect on income taxes of:		
Foreign tax differential	(417)	(110)
Permanent differences	45	(224)
Non-deductible share-based compensation and other expenses	14,344	4,537
Non-taxable portion of loss (gains)	51,496	(4,759)
Other	442	538
Tax assets not recognized	54,963	692
	\$ (11,020)	\$ 6,040
Income tax expense (recovery) is comprised of:		
Current	\$ 27,143	\$ 4,000
Future	(38,163)	2,040
	\$ (11,020)	\$ 6,040

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The following table summarized the movement in deferred tax:

	Amount
Balance at May 31, 2019	\$ 87,633
Future income tax recovery	(3,682)
Income tax recovery on share issuance costs	(483)
Balance at May 31, 2020	\$ 83,468
Future income tax recovery	(38,163)
Income tax recovery on share issuance costs	(967)
Effect of foreign exchange	287
Balance at February 28, 2021	\$ 44,625

The following table summarizes the components of deferred tax:

	February 28, 2021	May 31, 2020
Deferred tax assets		
Non-capital loss carry forward	\$ 95,464	\$ 46,904
Capital loss carry forward	2,220	2,556
Share issuance and financing fees	5,476	6,924
Unrealized loss	40,783	—
Other	8,604	2,483
Losses not recognized	(61,075)	(6,112)
Deferred tax liabilities		
Net book value in excess of undepreciated capital cost	(12,798)	(11,523)
Intangible assets in excess of tax costs	(94,078)	(95,928)
Unrealized gain	—	(5,592)
Biological assets and inventory in excess of tax costs	(29,221)	(23,180)
Net deferred tax liabilities	\$ (44,625)	\$ (83,468)

14. Bank indebtedness

The Company secured an operating line of credit in the amount of \$1,000 which bears interest at the lender's prime rate plus 75 basis points. As at February 28, 2021, the Company has not drawn on the line of credit. The operating line of credit is secured by a first charge on the property at 265 Talbot Street West, Leamington, Ontario and a first ranking position on a general security agreement.

The Company's subsidiary, CC Pharma, has two operating lines of credit for €3,500 each, which bear interest at Euro Over Night Index Average plus 1.79% and Euro Interbank Offered Rate plus 3.682%. As at February 28, 2021, a total of €nil (\$nil CAD) was drawn down from the available credit of €7,000 (May 31, 2020 - €351 (\$537 CAD)). The operating lines of credit are secured by a first charge on the inventory held by CC Pharma.

The Company's subsidiary, Four Twenty Corporation ("420") has a revolving credit facility for \$20,000 USD which bears interest at EURIBOR plus an applicable margin. As at February 28, 2021, the Company has not drawn on the credit facility. The revolving credit facility is secured by all of 420 and SweetWater's assets and includes a corporate guarantee by the Company.

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15. Accounts payable and accrued liabilities

Accounts payable and accrued liabilities are comprised of:

	February 28, 2021	May 31, 2020
Trade payables	\$ 58,218	\$ 56,749
RSU and DSU accruals	55,575	3,758
Other accruals	54,437	93,145
	\$ 168,230	\$ 153,652

16. Long-term debt

	February 28, 2021	May 31, 2020
Credit facility - \$80,000 - Canadian prime interest rate plus an applicable margin, 3-year term, with a 10-year amortization, repayable in blended monthly payments, due in November 2022	\$ 78,000	\$ 80,000
Term loan - \$25,000 - Canadian Five Year Bond interest rate plus 2.73% with a minimum 4.50%, 5-year term, with a 15-year amortization, repayable in blended monthly payments, due in July 2023	17,566	18,241
Term loan - \$25,000 - 3.95%, compounded monthly, 5-year term with a 15-year amortization, repayable in equal monthly instalments of \$188 including interest, due in April 2022	21,029	21,975
Term loan - \$1,250 - 3.99%, 5-year term, with a 10-year amortization, repayable in equal monthly instalments of \$13 including interest, due in July 2021	740	830
Mortgage payable - \$3,750 - 3.95%, 5-year term, with a 20-year amortization, repayable in equal monthly instalments of \$23 including interest, due in July 2021	3,131	3,239
Vendor take-back mortgage - \$2,850 - 6.75%, 5-year term, repayable in equal monthly instalments of \$56 including interest, due in June 2021	221	701
Term loan - \$100,000 USD - EURIBOR Option, 3-year term, with 3-year amortization, repayable in blended quarterly instalments, due in November 2023	127,410	—
Term loan - €5,000 - EURIBOR + 1.79%, 5-year term, repayable in quarterly instalments of €250 plus interest, due in December 2023	4,616	5,740
Term loan - €5,000 - EURIBOR + 2.68%, 5-year term, repayable in quarterly instalments of €250 plus interest, due in December 2023	4,616	5,740
Term loan - €1,500 - EURIBOR + 2.00%, 5-year term, repayable in quarterly instalments of €98 including interest, due in April 2025	2,307	2,296
Term loan - €1,500 - EURIBOR + 2.00%, 5-year term, repayable in quarterly instalments of €98 including interest, due in June 2025	2,307	—
	261,943	138,762
Deduct - unamortized financing fees	(2,828)	(658)
- principal portion included in current liabilities	(25,759)	(8,467)
	\$ 233,356	\$ 129,637

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Total long-term debt repayments are as follows:

Next 12 months	\$ 25,759
2 years	107,438
3 years	124,438
4 years	2,462
5 years	1,846
Thereafter	—
Balance of obligation	\$ 261,943

The credit facility of \$80,000 was entered into on November 29, 2019 by 51% owned subsidiary Aphria Diamond and is secured by a first charge on the property at 620 County Road 14, Leamington, Ontario, owned by Aphria Diamond, and a guarantee from Aphria Inc. Principal payments started on the credit facility on February 28, 2021.

The term loan of \$25,000 was entered into on July 27, 2018 and is secured by a first charge on the property at 223, 231, 239, 265, 269, 271 and 275 Talbot Street West, Leamington Ontario, a first position on a general security agreement, and an assignment of fire insurance to the lender. Principal payments started on the term loan in August 2018. The effective interest rate during the year was 4.68%.

The term loan of \$25,000 was entered into on May 9, 2017 and is secured by a first charge on the property at 265 Talbot Street West, Leamington Ontario, a first position on a general security agreement, and an assignment of fire insurance to the lender. Principal payments started on the term loan in March 2018.

The term loan of \$1,250 and mortgage payable of \$3,750 were entered into on July 22, 2016 and are secured by a first charge on the property at 265 Talbot Street West, Leamington, Ontario and a first position on a general security agreement.

The vendor take-back mortgage payable of \$2,850 was entered into on June 30, 2016 in conjunction with the acquisition of the property at 265 Talbot Street West. The mortgage is secured by a second charge on the property at 265 Talbot Street West, Leamington, Ontario.

During the quarter, the Company entered into a term loan for \$100,000 USD (\$127,410 CAD) through wholly-owned subsidiary 420. The term loan is secured by all of 420 and SweetWater's assets and includes a corporate guarantee by the Company.

During the period, the Company entered into a term loan for €1,500 (\$2,332 CAD) through wholly-owned subsidiary CC Pharma. The term loans for €13,500 (\$14,772 CAD) are held through wholly-owned subsidiary CC Pharma. These term loans are secured against the distribution inventory held by CC Pharma.

17. Convertible debentures

	February 28, 2021	May 31, 2020
Opening balance	\$ 270,783	\$ 421,366
Debt settlement	—	(91,169)
Fair value adjustment	352,013	(59,414)
Closing balance	\$ 622,796	\$ 270,783

The unsecured convertible debentures were entered into in April 2019, in the principal amount of \$350,000 USD, are due in five years from issuance (the "Notes"). The Notes bear interest at a rate of 5.25% per annum, payable semi-annually in arrears on June 1 and December 1 of each year, beginning on December 1, 2019. The Notes are an unsecured obligation and ranked senior in right of payment to all indebtedness that is expressly subordinated in right of payment to the Notes. The Notes will rank equal in right of payment with all liabilities that are not subordinated. The Notes are effectively junior to any secured indebtedness to the extent of the value of the assets securing such indebtedness.

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Holders of the Notes may convert all or any portion of their Notes, in multiples of \$1 USD principal amount, at their option at any time between December 1, 2023 to the maturity date. The initial conversion rate for the Notes will be 106.5644 common shares of Aphria per \$1 USD principal amount of Notes, which will be settled in cash, common shares of Aphria or a combination thereof, at Aphria's election. This is equivalent to an initial conversion price of approximately \$9.38 per common share, subject to adjustments in certain events. In addition, holders of the Notes may convert all or any portion of their Notes, in multiples of \$1 USD principal amount, at their option at any time preceding December 1, 2023, if:

- (a) the last reported sales price of the common shares for at least 20 trading days during a period of 30 consecutive trading days immediately preceding fiscal quarter is greater than or equal to 130% of the conversion price on each applicable trading day;
- (b) during the five business day period after any five consecutive trading day period (the "measurement period") in which the trading price per \$1 USD principal amount of the Notes for each trading day of the measurement period is less than 98% of the product of the last reported sale price of the Company's common shares and the conversion rate on each such trading day;
- (c) the Company calls any or all of the Notes for redemption or;
- (d) upon occurrence of specified corporate event.

The Company may not redeem the Notes prior to June 6, 2022, except upon the occurrence of certain changes in tax laws. On or after June 6, 2022, the Company may redeem for cash all or part of the Notes, at its option, if the last reported sale price of the Company's common shares has been at least 130% of the conversion price then in effect for at least 20 trading days during any 30 consecutive trading day period ending on and including trading day immediately preceding the date on which the Company provides notice of redemption. The redemption of Notes will be equal to 100% of the principal amount plus accrued and unpaid interest to, but excluding, the redemption date.

As at February 28, 2021 there was \$259,240 USD principal outstanding (May 31, 2020 - \$259,240 USD).

18. Share capital

The Company is authorized to issue an unlimited number of common shares. As at February 28, 2021, the Company has issued 316,795,419 shares.

Common Shares	Number of shares	Amount
Balance at May 31, 2020	286,520,265	\$ 1,846,938
Legal settlement	2,259,704	12,963
Equity financing	17,432,879	128,448
SweetWater acquisition	9,823,183	85,675
Options exercised	232,539	1,929
RSUs exercised	526,849	3,220
	316,795,419	\$ 2,079,173

- a) In June 2020 and September 2020, the Company issued 1,658,375 and 601,329 shares as part of legal settlements;
- b) In November 2020, the Company completed its at-the-market financing for net proceeds of \$128,448 and issued 17,432,879 shares.
- c) In November 2020, the Company completed the acquisition of SweetWater (Note 10) in which it issued 9,823,183 shares.
- d) Throughout the period, 232,539 shares were issued from the exercise of stock options with exercise prices ranging from \$1.64 to \$12.77 for a value of \$1,929, including any cash consideration; and,
- e) Throughout the period, 526,849 shares were issued in accordance with the restricted share unit plan to employees.

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19. Warrants

The warrant details of the Company are as follows:

Type of warrant	Expiry date	Number of warrants	Weighted average price	Amount
Warrant	September 26, 2021	200,000	\$ 3.14	\$ 360
Warrant	January 30, 2022	7,022,472	9.26	—
		7,222,472	\$ 9.09	\$ 360

	February 28, 2021		May 31, 2020	
	Number of warrants	Weighted average price	Number of warrants	Weighted average price
Outstanding, beginning of the period	7,222,472	\$ 9.09	2,292,800	\$ 12.25
Exercised during the period	—	—	(766,372)	1.50
Issued during the period	—	—	7,022,472	9.26
Expired during the period	—	—	(1,326,428)	19.84
Outstanding, end of the period	7,222,472	\$ 9.09	7,222,472	\$ 9.09

20. Stock options

The Company adopted a stock option plan under which it is authorized to grant options to officers, directors, employees and consultants enabling them to acquire common shares of the Company. The maximum number of common shares reserved for issuance of stock options that can be granted under the plan is 10% of the issued and outstanding common shares of the Company. The options granted can be exercised for up to a maximum of 10 years and vest as determined by the Board of Directors. The exercise price of each option can not be less than the market price of the common shares on the date of grant.

The Company recognized a share-based compensation expense of \$901 and \$3,691 during the three and nine months ended February 28, 2021 (2020 - \$2,632 and \$9,693), related to stock options (Note 25). The total fair value of options granted during the period was \$111 (2020 - \$6,842).

	February 28, 2021		May 31, 2020	
	Number of options	Weighted average price	Number of options	Weighted average price
Outstanding, beginning of the period	5,882,471	\$ 11.95	7,814,996	\$ 11.05
Exercised during the period	(626,215)	5.80	(1,566,331)	3.86
Issued during the period	50,000	6.00	1,894,128	7.98
Forfeited during the period	(797,095)	10.28	(2,260,322)	11.10
Expired during the period	(142,000)	12.22	—	—
Outstanding, end of the period	4,367,161	\$ 13.06	5,882,471	\$ 11.95
Exercisable, end of the period	3,557,168	\$ 13.82	3,873,497	\$ 12.26

In June 2020, the Company issued 50,000 stock options at an exercise price of \$6.00 per share, exercisable for 5 years to an officer of the Company. Nil options vested immediately and the remainder vest over 3 years.

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The outstanding option details of the Company are as follows:

Expiry date	Weighted average exercise price	Number of options	Vested and exercisable
January 2021 ²	\$ 21.70	10,000	10,000
January 2021 ²	\$ 22.89	80,000	80,000
March 2021	\$ 14.39	20,000	20,000
March 2021	\$ 9.98	200,000	200,000
May 2021	\$ 20.19	858,500	858,500
June 2021	\$ 1.40	1,668	1,668
June 2021	\$ 11.78	50,000	50,000
October 2022	\$ 6.90	37,000	37,000
July 2023	\$ 11.51	53,333	39,999
July 2023	\$ 11.85	251,334	188,000
September 2023	\$ 19.38	130,000	103,332
October 2023	\$ 19.70	40,000	26,666
February 2024	\$ 12.77	65,001	39,999
February 2024	\$ 13.31	1,000,000	1,000,000
April 2024	\$ 11.45	60,000	19,998
June 2024	\$ 9.15	300,000	100,000
June 2024	\$ 9.70	50,000	16,666
August 2024	\$ 9.13	401,155	122,837
October 2024	\$ 6.63	300,000	300,000
November 2024	\$ 6.26	250,000	183,333
June 2025	\$ 6.00	50,000	—
March 2028	\$ 12.29	119,378	119,378
March 2028	\$ 14.38	39,792	39,792
Outstanding, end of the period	\$ 13.06	4,367,161	3,557,168

The Company used the Black-Scholes option pricing model to determine the fair value of options granted using the following assumptions: risk-free rate of 0.39% on the date of grant; expected life of 5 years; volatility of 70% based on comparable companies; forfeiture rate of 35%; dividend yield of nil; and, the exercise price of the respective option.

² At quarter-end and as a result of its proposed transaction with Tilray, the Company remained in a No Trade Period under its Insider Trading Policy. Under the terms of the Company's Omnibus Long-Term Incentive Program, a No Trade Period freezes any expiry equity awards until the date that is 10 days after the end of the No Trade Period.

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21. Non-controlling interests

The following tables summarise the information relating to the Company's subsidiaries, CC Pharma Nordic ApS, Aphria Diamond, Marigold Projects Jamaica Limited ("Marigold"), and ColCanna S.A.S. before intercompany eliminations.

Non-controlling interests as at February 28, 2021:

	CC Pharma Nordic ApS	Aphria Diamond	Marigold	ColCanna S.A.S.	February 28, 2021
Current assets	\$ 1,050	\$ 49,104	\$ —	\$ 588	\$ 50,742
Non-current assets	\$ 120	183,563	—	115,663	299,346
Current liabilities	\$ (1,065)	(39,915)	—	(78)	(41,058)
Non-current liabilities	\$ (513)	(90,030)	—	(34,641)	(125,184)
Net assets	(408)	102,722	—	81,532	183,846
Non-controlling interests %	25%	49%	5%	10%	
Non-controlling interests	\$ (102)	\$ 50,334	\$ —	\$ 8,153	\$ 58,385

Non-controlling interests as at May 31, 2020:

	Aphria Diamond	Marigold	ColCanna S.A.S.	May 31, 2020
Current assets	\$ 51,521	\$ —	\$ 754	\$ 52,275
Non-current assets	176,507	—	115,614	292,121
Current liabilities	(15,630)	—	(378)	(16,008)
Non-current liabilities	(176,516)	—	(33,738)	(210,254)
Net assets	35,882	—	82,252	118,134
Non-controlling interests %	49%	5%	10%	
Non-controlling interests	\$ 17,582	\$ —	\$ 8,225	\$ 25,807

Non-controlling interests for the nine months ended February 28, 2021:

	CC Pharma Nordic ApS	Aphria Diamond	Marigold	ColCanna S.A.S.	February 28, 2021
Revenue	\$ 586	\$ 138,923	\$ —	\$ —	\$ 139,509
Total expenses (recovery)	\$ 994	\$ 42,082	—	\$ 720	43,796
Net comprehensive income	(408)	96,841	—	(720)	95,713
Non-controlling interests %	25%	49%	5%	10%	
	<u>\$ (102)</u>	<u>\$ 47,452</u>	<u>\$ —</u>	<u>\$ (72)</u>	<u>\$ 47,278</u>

Non-controlling interests for the nine months ended February 29, 2020:

	Aphria Diamond	CannInvest Africa Ltd.	Verve Dynamics	Marigold	ColCanna S.A.S.	February 29, 2020
Revenue	\$ 2,628	\$ —	\$ —	\$ 53	\$ —	\$ 2,681
Total expenses (recovery)	5,181	\$ 55	\$ 276	189	(145)	5,556
Net comprehensive loss	(2,553)	(55)	(276)	(136)	145	(2,875)
Non-controlling interests %	49%	50%	70%	5%	10%	
	<u>\$ (1,251)</u>	<u>\$ (28)</u>	<u>\$ (193)</u>	<u>\$ (7)</u>	<u>\$ 15</u>	<u>\$ (1,464)</u>

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22. Net revenue

Net revenue is comprised of:

	For the three months ended February 28,		For the nine months ended February 28,	
	2021	2020	2021	2020
Cannabis revenue	\$ 69,071	\$ 64,974	\$ 239,293	\$ 140,275
Cannabis excise taxes	(17,336)	(8,858)	(56,156)	(19,216)
Net cannabis revenue	51,735	56,116	183,137	121,059
Beverage alcohol revenue	15,324	—	16,259	—
Beverage alcohol excise taxes	(516)	—	(570)	—
Net beverage alcohol revenue	14,808	—	15,689	—
Distribution revenue	87,095	88,308	261,033	270,077
	\$ 153,638	\$ 144,424	\$ 459,859	\$ 391,136

23. Cost of goods sold

Cost of goods sold is comprised of:

	For the three months ended February 28,		For the nine months ended February 28,	
	2021	2020	2021	2020
Cannabis costs	\$ 31,463	\$ 31,822	\$ 100,168	\$ 61,905
Beverage alcohol costs	7,716	—	8,064	—
Acquisition mark-up on inventory sold	1,035	—	1,035	—
Distribution costs	75,658	76,911	225,741	235,498
	\$ 115,872	\$ 108,733	\$ 335,008	\$ 297,403

24. General and administrative expenses

	For the three months ended February 28,		For the nine months ended February 28,	
	2021	2020	2021	2020
Executive compensation	\$ 2,376	\$ 2,355	\$ 8,528	\$ 6,602
Consulting fees	1,354	1,251	6,239	9,156
Office and general	4,273	5,186	14,453	11,787
Professional fees	1,967	761	4,654	4,694
Salaries and wages	11,021	13,324	33,544	26,935
Insurance	3,912	3,406	11,489	8,601
Travel and accommodation	812	1,332	2,364	3,701
Rent	380	305	968	825
	\$ 26,095	\$ 27,920	\$ 82,239	\$ 72,301

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25. Share-based compensation

Share-based compensation is comprised of:

	For the three months ended February 28,		For the nine months ended February 28,	
	2021	2020	2021	2020
Stock options vested during the period	\$ 901	\$ 2,632	\$ 3,691	\$ 9,693
Deferred share units vested in the period	212	220	1,577	806
Deferred share units revalued in the period	4,039	(149)	4,289	(491)
Restricted share units vested in the period	2,700	2,773	9,108	7,423
Restricted share units revalued in the period	28,419	(350)	35,462	214
	\$ 36,271	\$ 5,126	\$ 54,127	\$ 17,645

During the period, the Company issued 150,000 deferred share units to directors of the Company under the terms of the Company's Omnibus Long-Term Incentive Plan.

During the period, the Company issued 2,674,986 restricted share units to employees, consultants and officers under the terms of the Company's Omnibus Long-Term Incentive Plan. Nil vested immediately and the remaining vest over two years.

During the period, the Company issued 50,000 stock options to officers of the Company, under the terms of the Company's Omnibus Long-Term Incentive Plan.

As at February 28, 2021, the Company had 345,738 deferred share units and 3,705,813 restricted share units outstanding, of which 308,238 deferred share units and 914,391 restricted share units were vested.

26. Finance Income (expense), net

Finance income (expense), net is comprised of:

	For the three months ended February 28,		For the nine months ended February 28,	
	2021	2020	2021	2020
Interest income	\$ 428	\$ 5,294	\$ 1,260	\$ 11,934
Interest expense	(10,453)	(12,646)	(24,562)	(29,549)
	\$ (10,025)	\$ (7,352)	\$ (23,302)	\$ (17,615)

27. Non-operating income

Non-operating income is comprised of:

	For the three months ended February 28,		For the nine months ended February 28,	
	2021	2020	2021	2020
Non-operating income (loss):				
Foreign exchange (loss) gain	\$ (4,817)	\$ 4,736	\$ (29,247)	\$ (3,660)
Loss on promissory notes receivable	—	(12,000)	—	(12,000)
Loss on long-term investments	(3,389)	(5,403)	(5,272)	(28,144)
Unrealized (loss) gain on convertible debentures	(264,788)	23,145	(352,013)	86,430
Other non-operating items, net	(3,513)	(630)	2,906	(7,907)
	\$ (276,507)	\$ 9,848	\$ (383,626)	\$ 34,719

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28. Gain (loss) on long-term investments

Gain (loss) on long-term investments for the three and nine months ended February 28, 2021 is comprised of:

Investment	Proceeds	Opening fair value / cost	Gain (loss) on disposal	Change in fair value	Total
Level 1 on fair value hierarchy					
Aleafia Health Inc.	\$ 3,066	\$ 3,320	\$ (254)	\$ —	\$ (254)
Rapid Dose Therapeutics Inc.	1,360	1,730	(370)	—	(370)
Fire & Flower Inc.	252	237	15	—	15
Althea Group Holdings Ltd.	4,800	4,266	534	—	534
Level 3 on fair value hierarchy					
IBBZ Krankenhaus GmbH	600	1,993	(1,393)	—	(1,393)
Greenwell Brands GmbH	374	155	219	—	219
Long-term investments (Note 12)	—	—	—	(4,023)	(4,023)
For the period ended					
February 28, 2021	10,452	11,701	(1,249)	(4,023)	(5,272)
Less transactions in previous quarter:					
November 30, 2020	3,318	3,557	(239)	(1,644)	(1,883)
Three months ended					
February 28, 2021	\$ 7,134	\$ 8,144	\$ (1,010)	\$ (2,379)	\$ (3,389)

29. Earnings (loss) per share

The calculation of earnings (loss) per share for the three months ended February 28, 2021 was based on the net (loss) income of \$(360,996) (2020 – \$5,697) and a weighted average number of common shares outstanding of 316,670,951 (2020 – 257,517,234) calculated as follows:

	2021	2020
Basic earnings (loss) per share:		
Net income (loss) for the period	\$ (360,996)	\$ 5,697
Average number of common shares outstanding during the year	316,670,951	257,517,234
Earnings (loss) per share - basic	\$ (1.14)	\$ 0.02
Diluted earnings (loss) per share:		
Net income (loss) for the period	\$ (360,996)	\$ 5,697
Average number of common shares outstanding during the year	316,670,951	257,517,234
"In the money" warrants outstanding during the year	—	101,401
"In the money" options outstanding during the year	—	337,073
	316,670,951	257,955,708
Earnings (loss) per share - diluted	\$ (1.14)	\$ 0.02

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The calculation of earnings (loss) per share for the nine months ended February 28, 2021 was based on the net (loss) of \$(486,689) (2020 – \$14,209) and a weighted average number of common shares outstanding of 299,130,624 (2020 – 253,477,710) calculated as follows:

	2021	2020
Basic (loss) earnings per share:		
Net income (loss) for the period	\$ (486,689)	\$ 14,209
Average number of common shares outstanding during the period	299,130,624	253,477,710
Earnings (loss) per share - basic	\$ (1.63)	\$ 0.06
	2021	2020
Diluted (loss) earnings per share:		
Net income (loss) for the period	\$ (486,689)	\$ 14,209
Average number of common shares outstanding during the period	299,130,624	253,477,710
"In the money" warrants outstanding during the period	—	112,563
"In the money" options outstanding during the period	—	420,393
	299,130,624	254,010,666
Earnings (loss) per share - diluted	\$ (1.63)	\$ 0.06

30. Change in non-cash working capital

Change in non-cash working capital is comprised of:

	For the nine months ended February 28,	
	2021	2020
Decrease (increase) in:		
Accounts receivable	\$ (21,140)	\$ (53,406)
Prepays and other current assets	8,238	(9,564)
Inventory, net of fair value adjustment	(19,629)	(87,230)
Biological assets, net of fair value adjustment	1	(11,735)
Increase (decrease) in:		
Accounts payable and accrued liabilities	(26,137)	58,836
Income taxes payable	14,836	158
	\$ (43,831)	\$ (102,941)

31. Financial risk management and financial instruments**Financial instruments**

The Company has classified its financial instruments as described in Note 3 of the Company's audited financial statements for the year ended May 31, 2020.

The carrying values of accounts receivable, prepaids and other current assets, bank indebtedness and accounts payable and accrued liabilities approximate their fair values due to their short periods to maturity.

The Company's long-term debt of \$25,121 is subject to fixed interest rates. The Company's long-term debt is valued based on discounting the future cash outflows associated with the long-term debt. The discount rate is based on the incremental premium above market rates for Government of Canada securities of similar duration. In each period thereafter, the incremental premium is held constant while the Government of Canada security is based on the then current market value to derive the discount rate. The fair value of the Company's long-term debt in repayment as at February 28, 2021 was \$24,802.

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Fair value hierarchy

Financial instruments recorded at fair value are classified using a fair value hierarchy that reflects the significance of inputs used in making the measurements. Cash and cash equivalents are Level 1. The hierarchy is summarized as follows:

Level 1 quoted prices (unadjusted) in active markets for identical assets and liabilities

Level 2 inputs that are observable for the asset or liability, either directly (prices) or indirectly (derived from prices) from observable market data

Level 3 inputs for assets and liabilities not based upon observable market data

	Level 1	Level 2	Level 3	February 28, 2021
Financial assets at FVTPL				
Cash and cash equivalents	\$ 267,134	\$ —	\$ —	\$ 267,134
Convertible notes receivable	—	—	6,089	6,089
Long-term investments	5,837	—	5,455	11,292
Financial liabilities at FVTPL				
Convertible debentures	—	—	(622,796)	(622,796)
Contingent consideration	—	—	(76,196)	(76,196)
Outstanding, end of the period	\$ 272,971	\$ —	\$ (687,448)	\$ (414,477)

	Level 1	Level 2	Level 3	May 31, 2020
Financial assets at FVTPL				
Cash and cash equivalents	\$ 497,222	\$ —	\$ —	\$ 497,222
Convertible notes receivable	—	—	14,626	14,626
Long-term investments	15,502	—	11,514	27,016
Financial liabilities at FVTPL				
Convertible debentures	—	—	(270,783)	(270,783)
Outstanding, end of the period	\$ 512,724	\$ —	\$ (244,643)	\$ 268,081

The following table presents the changes in level 3 items for the three months ended February 28, 2021:

	Unlisted equity securities	Convertible notes receivable	Convertible debentures	Contingent consideration	Total
Closing balance May 31, 2020	\$ 11,514	\$ 14,626	\$ (270,783)	\$ —	\$ (244,643)
Additions	—	249	—	(76,664)	(76,415)
Disposals	(2,148)	(5,000)	—	—	(7,148)
Unrealized gain (loss) on fair value	(3,911)	(3,786)	(352,013)	468	(359,242)
Closing balance February 28, 2021	\$ 5,455	\$ 6,089	\$ (622,796)	\$ (76,196)	\$ (687,448)

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Financial risk management

The Company has exposure to the following risks from its use of financial instruments: credit; liquidity; currency rate; and, interest rate price.

(a) Credit risk

The maximum credit exposure at February 28, 2021 is the carrying amount of cash and cash equivalents, accounts receivable, prepaids and other current assets, promissory notes receivable and convertible notes receivable. All cash and cash equivalents are placed with major financial institutions.

	Total	0-30 days	31-60 days	61-90 days	90+ days
Trade receivables	81,890	67,971	9,838	1,945	2,136
		83%	12%	2%	3%

(b) Liquidity risk

As at February 28, 2021, the Company's financial liabilities consist of bank indebtedness and accounts payable and accrued liabilities, which have contractual maturity dates within one-year, long-term debt, and convertible debentures which have contractual maturities over the next five years.

Aphria maintains a debt service charge covenant on certain loans secured by its Aphria One facilities that is measured at year-end only. The Company believes that it has sufficient operating room with respect to its financial covenants for the next fiscal year and does not anticipate being in breach of any of its financial covenants.

The Company manages its liquidity risk by reviewing its capital requirements on an ongoing basis. Based on the Company's working capital position at February 28, 2021, management regards liquidity risk to be low.

(c) Currency rate risk

As at February 28, 2021, a portion of the Company's financial assets and liabilities held in United States Dollars ("USD") and Euros consist of cash and cash equivalents, convertible notes receivable, and long-term investments. The Company's objective in managing its foreign currency risk is to minimize its net exposure to foreign currency cash flows by transacting, to the greatest extent possible, with third parties in the functional currency. The Company is exposed to currency rate risk in other comprehensive income, relating to foreign subsidiaries which operate in a foreign currency. The Company does not currently use foreign exchange contracts to hedge its exposure of its foreign currency cash flows as management has determined that this risk is not significant at this point in time.

The Company is exposed to unrealized foreign exchange risk through its cash and cash equivalents. As at February 28, 2021, approximately \$190,000 USD (\$240,000 CAD) of the Company's cash and cash equivalents was in United States dollars. A 1% change in the foreign exchange rate would result in an unrealized gain or loss of approximately \$2,400.

(d) Interest rate price risk

The Company manages interest rate risk by restricting the type of investments and varying the terms of maturity and issuers of marketable securities. Varying the terms to maturity reduces the sensitivity of the portfolio to the impact of interest rate fluctuations.

(e) Capital management

The Company's objectives when managing its capital are to safeguard its ability to continue as a going concern, to meet its capital expenditures for its continued operations, and to maintain a flexible capital structure which optimizes the cost of capital within a framework of acceptable risk. The Company manages its capital structure and adjusts it in light of changes in economic conditions and the risk characteristics of the underlying assets. To maintain or adjust its capital structure, the Company may issue new shares, issue new debt, or acquire or dispose of assets. The Company is not subject to externally imposed capital requirements.

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Management reviews its capital management approach on an ongoing basis and believes that this approach, given the relative size of the Company, is reasonable. There have been no changes to the Company's capital management approach in the year. The Company considers its cash and cash equivalents and marketable securities as capital.

32. Commitments and contingencies

The Company has committed purchase orders outstanding at February 28, 2021 related to capital asset expansion of \$1,840, all of which are expected to be paid within the next year.

The following table presents the future undiscounted payment associated with lease liabilities as of February 28, 2021:

	Years ending February 28,
2022	4,054
2023	3,935
2024	3,885
2025	3,847
2026	3,724
Thereafter	54,039
	\$ 73,484

The Company incurred interest expense associated with its lease liabilities of \$662 and \$834 (2020 - \$80 and \$241) for the three and nine months ended February 28, 2021.

From time to time, the Company and/or its subsidiaries may become defendants in legal actions arising out of the ordinary course and conduct of its business.

As of February 28, 2021, the Company was served statements of claims in class action lawsuits against the Company and certain of its officers and former officers. These claims relate to alleged misconduct in connection with the Company's acquisitions of LATAM Holdings Inc. ("LATAM") and Nuuvera Inc., and the Company's June 2018 securities offering. At the present time, the representative claimants have been identified and selected in both the U.S. and Canada. The U.S. claims include alleged violations of Section 10(b) of the United States Securities Exchange Act of 1934, as amended (the "Exchange Act"), Rule 10b-5 under the Exchange Act and Section 20(a) of the Exchange Act. The Canadian claims include alleged statutory and common law misrepresentation and oppression. The Company intends to vigorously defend itself in each of these actions. With respect to the cases commenced in the U.S., the Company pursued a motion to dismiss the U.S. claim. The Company's motion was denied and the claim was maintained against the Company and certain of its former and current senior officers. The Company is currently pursuing a motion to reconsider during which time, the primary action is stayed pending the decision on the motion to reconsider. In the U.S. action, the Company is self-insured for the costs associated with any award or damages arising from such actions and has entered into indemnity agreements with each of the directors and officers and, subject to certain exemptions, will cover any costs incurred by them in connection with any of the class action claims. Canadian insurance coverage may not be sufficient to fully cover any judgments against the Company. As at February 28, 2021, the Company has not recorded any uninsured amount related to this contingency.

As of July 20, 2020, a proposed class action (the "Langevin Class Action") has been commenced against a number of Canadian licensed producers including the Company and its subsidiary, Broken Coast (collectively, the "Defendants") by Lisa Marie Langevin (the "Plaintiff") on behalf of all persons in Canada who purchased cannabis products that were manufactured, sold, promoted, or distributed by the Defendants and consumed prior to the labelled expiry date of such products on or after June 16, 2010, if such products were used for medicinal purposes and on or after October 17, 2018, if such products were used for recreational purposes (the "Proposed Class"). The Plaintiff specifically alleges that (i) the Defendants marketed medicinal and recreational cannabis products with an advertised content of THC and CBD that was "drastically different" (higher and lower percentages) from the actual amount in the cannabis products and (ii) the Plaintiff suggests that the plastic bottles or caps used to store the cannabis products may have absorbed or degraded the THC or CBD content. The Plaintiff seeks recovery of the money the Proposed Class spent on the Defendants' products that did not contain what they were advertised to contain and compensatory damages for those who suffered physical or mental injuries as a result of the Defendants' mislabeling of the products. Amended pleadings were served on the company on December 12, 2020 adding a new plaintiff to the action. The Company intends to vigorously defend itself in each of these actions. Canadian insurance coverage may not be sufficient to fully cover any judgments against the Company. As at February 28, 2021, the Company has not recorded any uninsured amount related to this contingency.

Aphria Inc.

Notes to the Condensed Interim Consolidated Financial Statements

For the three and nine months ended February 28, 2021 and February 29, 2020

(Unaudited - in thousands of Canadian dollars, except share and per share amounts)

33. Segment reporting

Information reported to the Chief Operating Decision Maker (“CODM”) for the purpose of resource allocation and assessment of segment performance focuses on the nature of the operations. The Company operates in four segments. 1) cannabis operations, which encompasses the production, distribution and sale of both medical and adult-use cannabis, 2) beverage alcohol operations, which encompasses production, distribution and sale of beverage alcohol products, 3) distribution operations, which encompasses the purchase and resale of products to customers and 4) businesses under development which encompass operations in which the Company has not received final licensing or has not commenced commercial sales from operations. Factors considered in determining the operating segments include the Company’s business activities, the management structure directly accountable to the CODM, availability of discrete financial information and strategic priorities within the organizational structure.

Segment net revenue:

	For the three months ended February 28,		For the nine months ended February 28,	
	2021	2020	2021	2020
Cannabis business	\$ 51,735	\$ 55,800	\$ 183,137	\$ 120,569
Distribution business	87,066	88,308	259,768	270,077
Beverage alcohol business	14,808	—	15,689	—
Business under development	29	316	1,265	490
Total	\$ 153,638	\$ 144,424	\$ 459,859	\$ 391,136

Segment net income (loss):

	For the three months ended February 28,		For the nine months ended February 28,	
	2021	2020	2021	2020
Cannabis business	\$ (351,989)	\$ 8,038	\$ (465,519)	\$ 25,958
Distribution business	(5,412)	1,704	(7,830)	319
Beverage alcohol business	(165)	—	134	—
Business under development	(3,431)	(4,045)	(13,474)	(12,068)
Total	\$ (360,997)	\$ 5,697	\$ (486,689)	\$ 14,209

Geographic net revenue:

	For the three months ended February 28,		For the nine months ended February 28,	
	2021	2020	2021	2020
North America	\$ 67,196	\$ 55,815	\$ 198,223	\$ 120,584
Europe	85,191	87,221	257,296	266,072
Latin America	1,251	1,388	4,340	4,480
Total	\$ 153,638	\$ 144,424	\$ 459,859	\$ 391,136

Aphria Inc.

Notes to the Condensed Interim Consolidated Financial Statements

For the three and nine months ended February 28, 2021 and February 29, 2020

(Unaudited - in thousands of Canadian dollars, except share and per share amounts)

Geographic capital assets:

	February 28, 2021	May 31, 2020
North America	\$ 553,218	\$ 519,768
Europe	85,072	61,143
Latin America	6,421	6,252
Total	\$ 644,711	\$ 587,163

Major customers are defined as customers that each individually account for greater than 10% of the Company's annual revenues. As of February 28, 2021, there was a total of 3 major customers within the cannabis business segment (2020 – nil) that represented over \$146,000 in the Company's net revenue.

34. Subsequent events

The following event occurred subsequent to February 28, 2021:

- a) On April 6th, 2021, the Company renegotiated its supply agreement with the 51% majority-owned subsidiary, Aphria Diamond. Under the terms of the amended agreement, the company maintains the exclusive supply of cannabis products, over a larger offering of cannabis products on more favourable pricing terms than previously agreed between the parties, wherein such favourable pricing is effective as of June 1, 2020. The transaction will be accounted for through equity and adjustments to non-controlling interest amounts in the period the agreement was reached.

DISCLAIMER FOR TILRAY Inc.

Ernst & Young LLP (“EY”) prepared the comments to the Unaudited Pro Forma Condensed Combined Financial Statements of Tilray (the “Report”) only for Tilray Inc. (the “Client”) pursuant to an agreement solely between EY and Client. EY did not perform its services on behalf of or to serve the needs of any other person or entity. Accordingly, EY expressly disclaims any duties or obligations to any other person or entity based on its use of the attached Report comments. Any other person or entity must perform its own due diligence inquiries and procedures for all purposes, including, but not limited to, satisfying itself as to the financial condition and control environment of Client, as well as the appropriateness of the accounting for any particular situation addressed by the Report comments.

EY did not perform an audit, review, examination or other form of attestation (as those terms are identified by Chartered Professional Accountants of Canada (“CPA Canada”), the American Institute of Certified Public Accountants (“AICPA”) or by the Public Company Accounting Oversight Board) of Client’s financial statements. Accordingly, EY did not express any form of assurance on Client’s accounting matters, financial statements, any financial or other information or internal controls. EY did not conclude on the appropriate accounting treatment based on specific facts or recommend which accounting policy / treatment Client should select or adopt.

The observations relating to accounting matters that EY provided to Client were designed to assist Client in reaching its own conclusions and do not constitute our concurrence with or support of Client’s accounting or reporting. Client alone is responsible for the preparation of its financial statements, including all of the judgments inherent in preparing them.

This information is not intended or written to be used, and it may not be used, for the purpose of avoiding penalties that may be imposed on a taxpayer.

PURPOSE:

The attached document was provided by Aphria Inc. to Tilray Inc. for inclusion in an 8K and registration statement related to the merger of the two entities. EY has updated select notes to reflect the change in valuation date from February 3, 2021 to April 21, 2021. This document should be read in conjunction with the document ‘2.01.01.1 – Draft – TIL – Pro Forma Update Workbook’. Number changes are highlighted in green and text changes are blacklined. Note: EY will not be updating the quantification of any of the pro-forma adjustments that have been prepared by or updated by Aphria.

UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL INFORMATION

On December 15, 2020, Tilray, Inc. (“Tilray”) and Aphria Inc. (“Aphria”), entered into an Arrangement Agreement, under which the businesses of the two companies will be combined pursuant to a Plan of Arrangement (the “merger transaction”).

The following unaudited pro forma condensed combined financial statements (the “pro forma financial statements”) are based on the historical consolidated financial statements of Tilray and Aphria, as adjusted to give effect to the merger transaction. The unaudited pro forma condensed combined balance sheet as at February 28, 2021 (the “pro forma balance sheet”) gives effect to the merger transaction as if it had occurred on February 28, 2021. The unaudited pro forma condensed combined statement of net loss for the nine months ended February 28, 2021 and for the year ended May 31, 2020 (the “pro forma statements of net loss”) gives effect to the merger transaction as if it had occurred on June 1, 2020 and June 1, 2019, respectively.

The transaction accounting adjustments consist of those necessary to account for the merger transaction as a reverse acquisition in accordance with generally accepted accounting principles in the United States of America (“US GAAP”).

The pro forma financial statements do not necessarily reflect what the combined company’s financial condition or results of operations would have been had the merger transaction occurred on the dates indicated. They also may not be useful in predicting the future financial condition and results of operations of the combined company. The actual financial condition and results of operations of the combined company may differ significantly from the pro forma amounts reflected herein due to a variety of factors.

Unaudited Pro Forma Condensed Combined Balance Sheet
February 28, 2021
(in '000 of United States dollars)

	Aphria adjusted historical February 28, 2021 (note 6)	Tilray historical December 31, 2020	Transaction accounting adjustments	Notes (note 4)	Pro forma combined February 28, 2021
Assets					
Current assets					
Cash and cash equivalents	\$ 210,590	\$ 189,702	\$ 76,106	H	\$ 476,398
Accounts receivable, net	64,557	29,033	—		93,590
Prepays and other current assets	39,345	34,640	—		73,985
Inventory	176,275	93,645	27,355	C	297,275
Current portion of convertible notes receivable	4,800	—	—		4,800
Total current assets	495,567	347,020	103,461		946,048
Capital assets/Property and equipment, net	508,655	217,544	1,764	D	727,963
Intangible assets, net	527,949	186,445	876,555	F	1,590,949
Promissory notes receivable and other assets	2,365	4,356	—		6,721
Equity method investments	—	9,300	—		9,300
Other investments	8,902	14,369	—		23,271
Goodwill	587,078	166,915	1,730,062	G	2,484,055
Total assets	\$ 2,130,516	\$ 945,949	\$ 2,711,842		\$ 5,788,307
Liabilities					
Current liabilities					
Accounts payable	\$ 45,895	\$ 17,776	\$ —		\$ 63,671
Accrued expenses and other current liabilities	42,914	39,946	24,467	K	114,150
			6,823	L	
Income taxes payable	16,749	—	—		16,749
Warrant liability	—	120,647	(30,182)	H	90,465
Current portion of lease liabilities/ Accrued lease obligations	1,384	2,913	—		4,297
Current portion of long-term debt	20,307	—	—		20,307
Total current liabilities	127,249	181,282	1,108		309,639
Long-term liabilities					
Lease liabilities/ Accrued lease obligations	35,478	30,623	—		66,101
Long-term debt	183,962	48,470	2,028	J	234,460
Convertible debentures/ Convertible notes, net of issuance costs	490,970	257,789	(23,000)	I	725,759
Contingent consideration	60,068	—	—		60,068
Other liabilities	—	4,612	—		4,612
Deferred tax liability, net	24,217	49,274	217,778	M	291,269
Total liabilities	921,944	572,050	197,914		1,691,908
Shareholders' equity					
Common stock ⁽¹⁾	1,641,138	16	27	B	43
			(1,641,138)	B	
Warrants	284	—	—		284
Additional paid-in capital	37,316	1,095,781	2,932,875	A,B	4,612,703
			(1,095,781)	B	
			1,390	I	
			1,641,122	B	
Accumulated other comprehensive (loss) income	(7,505)	8,205	(8,205)	B	(7,505)
Accumulated deficit	(509,512)	(730,103)	730,103	B	(555,977)
			(24,467)	K	
			(6,823)	L	
			(15,175)	M	
Total shareholders' equity	1,161,721	373,899	2,513,928		4,049,548
Non-controlling interests	46,851	—	—		46,851
Total liabilities and shareholders' equity	\$ 2,130,516	\$ 945,949	\$ 2,711,842		\$ 5,788,307

(1) Consists of Aphria common shares and Tilray Class 2 common stock

Unaudited Pro Forma Condensed Combined Statement of Net Loss
For the 9 months Ended February 28, 2021
(in '000 of United States dollars, except per share and share amounts)

	Aphria 9 month period ending February 28, 2021 (note 6)	Tilray Constructed 9 month period ending December 31, 2020 (note 7)	Transaction accounting adjustments	Notes (note 4)	Pro Forma Combined
Revenue	\$ 363,633	\$ 158,380	\$ —		\$ 522,013
Cost of goods sold	268,493	144,229	27,355	C	440,035
			(42)	D	
Gross profit	95,140	14,151	(27,313)		81,978
Operating expenses:					
General and administrative	64,342	59,116	6,823	L	130,281
Share-based compensation	10,786	—	(8,859)	L	1,927
Selling/Sales and marketing	17,056	36,218	—		53,274
Depreciation and amortization	17,693	10,131	(598)	D	48,149
			20,923	F	
Marketing and promotion	11,751	—	—		11,751
Research and development	447	3,050	—		3,497
Impairment	—	31,275	—		31,275
Loss from equity method investments	—	4,235	—		4,235
Transaction costs	28,680	—	24,467	K	53,147
Total operating expenses	150,755	144,025	42,756		337,536
Operating loss	(55,615)	(129,874)	(70,069)		(255,558)
Finance/Interest income (expense), net	(17,119)	(30,073)	3,944	I	(43,003)
			245	J	
Foreign exchange (gain) loss, net	—	41,238	—		41,238
Change in fair value of warrant liability	—	(28,308)	—		(28,308)
Gain on debt conversion	—	61,118	—		61,118
Non-operating/Other income (expense), net	(289,473)	(5,682)	—		(295,155)
Loss before income taxes	(362,207)	(91,581)	(65,880)		(519,668)
Income taxes (recovery)	(12,946)	(4,631)	(12,397)	M	(29,267)
			707	M	
Net loss	\$ (349,261)	\$ (86,950)	\$ (54,190)		\$ (490,401)
Weighted average number of common shares - basic		132,562,924	278,297,241	Note 5	410,860,165
Weighted average number of common shares - diluted		132,562,924	278,297,241	Note 5	410,860,165
Loss per share - basic		\$ (0.66)			\$ (1.19)
Loss per share - diluted		\$ (0.66)			\$ (1.19)

Unaudited Pro Forma Condensed Combined Statement of Net Loss
For the Year Ended May 31, 2020
(in '000 of United States dollars, except per share and share amounts)

	Aphria 12 month period ending May 31, 2020 (note 6)	Tilray Constructed 12 month period ending March 31, 2020 (note 7)	Transaction accounting adjustments	Notes (note 4)	Pro Forma Combined
Revenue	\$ 405,326	\$ 196,043	\$ —		\$ 601,369
Cost of goods sold	332,854	214,116	27,355	C	574,269
			(56)	D	
Gross profit	72,472	(18,073)	(27,299)		27,100
Operating expenses:					
General and administrative	75,710	120,264	6,823	L	202,797
Share-based compensation	18,079	—	(8,610)	L	9,469
Selling/Sales and marketing	15,697	73,949	—		89,646
Depreciation and amortization	15,138	13,333	(798)	D	55,571
			27,898	F	
Marketing and promotion	15,266	—	—		15,266
Research and development	1,916	9,016	—		10,932
Impairment	50,679	141,909	—		192,588
Loss from equity method investments	—	6,252	—		6,252
Acquisition-related (income) expenses, net	—	(35,851)	—		(35,851)
Transaction costs	4,299	—	37,028	K	41,327
Total operating expenses	196,784	328,872	62,341		587,997
Operating loss	(124,312)	(346,945)	(89,640)		(560,897)
Finance/Interest income (expense), net	(19,371)	(34,463)	5,258	I	(48,249)
			327	J	
Foreign exchange (gain) loss, net	—	(21,946)	—		(21,946)
Change in fair value of warrant liability	—	(71,978)	—		(71,978)
Gain on debt conversion	—	—	—		—
Non-operating/Other income (expense), net	14,195	(5,995)	—		8,200
Loss before income taxes	(129,488)	(481,327)	(84,055)		(694,870)
Income taxes (recovery)	(8,352)	(5,404)	(13,727)	M	(22,013)
			5,470	M	
Net loss	\$ (121,136)	\$ (475,923)	\$ (75,798)		\$ (672,857)
Weighted average number of common shares - basic		100,529,641	278,297,241	Note 5	378,826,882
Weighted average number of common shares - diluted		100,529,641	278,297,241	Note 5	378,826,882
Loss per share - basic		\$ (4.73)			\$ (1.78)
Loss per share - diluted		\$ (4.73)			\$ (1.78)

NOTES TO THE UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL INFORMATION

(in '000 of United States dollars, except for shares, warrants, per share amounts and per warrant amounts, unless otherwise noted)

1. Basis of Presentation

The pro forma financial statements are based on the historical consolidated financial statements of Tilray and Aphria, adjusted to give effect to the merger transaction, and should be read in conjunction with the historical financial statements from which they are derived. Pro forma adjustments are limited to the transaction accounting adjustments that reflect the accounting for the merger transaction in accordance with US GAAP.

The pro forma financial statements were prepared using the purchase method of accounting. The merger transaction is accounted for as a reverse acquisition in which Tilray is the legal acquirer and Aphria is the acquirer for accounting purposes. Accordingly, the pro forma financial statements represent a continuation of the financial statements of Aphria; the assets and liabilities of Aphria are presented at their historical carrying values and the assets and liabilities of Tilray are recognized on the effective date of the merger transaction and measured at fair value.

The pro forma financial statements are presented in United States dollars ("USD") and prepared in accordance with US GAAP. Since Aphria's historical consolidated financial statements are presented in Canadian dollars ("CAD" or "C\$") and prepared in accordance with International Financial Reporting Standards ("IFRS"), the historical financial information of Aphria used in the pro forma financial statements has been reconciled to US GAAP and translated into USD (note 6). For comparative purposes certain line items were renamed or reclassified to conform with the pro forma financial presentation.

The pro forma balance sheet gives effect to the merger transaction as if it had occurred on February 28, 2021. The pro forma statements of net loss gives effect to the merger transaction as if it had occurred on June 1, 2020 and June 1, 2019 for the nine months ended February 28, 2021 and year ended May 31, 2020, respectively.

The pro forma balance sheet combines the audited consolidated balance sheet of Tilray as at December 31, 2020 with the unaudited condensed consolidated statement of financial position (balance sheet) of Aphria as at February 28, 2021. As the ending date of the fiscal period for Aphria differs from that of Tilray by more than 93 days, the unaudited pro forma statement of operations (statement of net loss) for the nine months ended February 28, 2021 was derived by combining financial information from the unaudited condensed interim consolidated statements of net loss and comprehensive loss of Aphria for the nine months ended February 28, 2021 with financial information of Tilray for the nine months ended December 31, 2020, which was constructed by subtracting: (i) the financial information from the unaudited consolidated statement of operations for the three months ended March 31, 2020; from (ii) the financial information from the audited consolidated statement of operations for the year ended December 30, 2020 (note 7). The unaudited pro forma statement of operations (statement of net loss) for the year ended May 31, 2020 was derived by combining financial information from the audited consolidated statements of net loss and comprehensive loss of Aphria for the year ended May 31, 2020 with financial information of Tilray for the year ended March 31, 2020, which was constructed by subtracting: (i) the financial information from the unaudited consolidated statement of operations for the three months ended March 31, 2019; from (ii) the financial information from the audited consolidated statement of operations for the year ended December 30, 2019; and adding (iii) the financial information from the unaudited consolidated statement of operations for the three months ended March 31, 2020 (note 7).

The assumptions and estimates underlying the adjustments to the pro forma financial statements are described in the accompanying notes.

The pro forma adjustments are preliminary, subject to further revision as additional information becomes available and additional analyses are performed. The pro forma adjustments have been made solely for the purpose of providing unaudited pro forma combined financial information and actual adjustment, when recorded, may differ materially.

The pro forma financial statements have been prepared for illustrative purposes only and may not be indicative of the operating results or financial condition that would have been achieved if the merger transaction had been completed on the dates or for the periods presented, nor do they purport to project the results of operations or financial position for any future period or as of any future date. In addition to the pro forma adjustments, various other factors will have an effect on the financial condition and results of operations after the completion of the merger transaction. The actual financial position and results of operations may differ materially from the pro forma amounts reflected herein due to a variety of factors.

The unaudited pro forma financial statements do not reflect operational and administrative cost savings that may be achieved as a result of the merger transaction.

2. Estimated Purchase Price

Tilray is the legal acquirer and, pursuant to the Plan of Arrangement, will (i) exchange each outstanding Aphria common share for 0.8381 of a Tilray Class 2 common share (the “Exchange Ratio”), and (ii) exchange outstanding equity instruments exercisable into Aphria common shares for instruments with similar terms that are exercisable into Tilray Class 2 common shares, adjusted to reflect the Exchange Ratio.

However, since the merger transaction is being accounted for as a reverse acquisition (note 1), the purchase price is calculated as the fair value of the hypothetical consideration Aphria would have to issue to acquire Tilray’s outstanding equity instruments and obtain the same percentage of ownership interest in the combined entity that will result from the merger transaction.

The estimated purchase price of \$2,932,902 is based on the number of equity instruments of Tilray outstanding at December 31, 2020, adjusted for the exercise of 12,791,000 warrants (note 3, 4H), and Aphria’s closing share price of \$13.88 on April 21, 2021 (the “Measurement Date”). The purchase price will change based on fluctuations in Aphria’s share price and the number of equity instruments of Tilray outstanding on the effective date of the merger transaction. A 10% increase or decrease in Aphria’s share price would increase or decrease both the purchase price and goodwill by approximately \$294,038, respectively, and a 25% increase or decrease in Aphria’s share price would increase or decrease both the purchase price and goodwill by approximately \$735,086, respectively.

The following table summarizes the calculation of the purchase price hypothetically paid by Aphria (in thousands, except warrants, share and per share data):

Tilray Class 2 common stock outstanding at December 31, 2020 adjusted for warrants exercised ⁽¹⁾	171,247,087
Aphria common stock hypothetically issued based on Exchange Ratio	204,327,750
Price per common stock of Aphria on Measurement Date	<u>\$ 13.88</u>
Total estimated fair value of acquired Tilray Class 2 common stock	\$ 2,836,069
Estimated fair value of Tilray stock-based compensation related to the pre-combination service period	\$ 96,833
Total estimated purchase price	<u>\$ 2,932,902</u>

(1) Represents 158,456,087 Tilray Class 2 common stock outstanding at December 31, 2020 and 12,791,000 warrants exercised from Jan 1, 2021 to the Measurement Date (note H)

The estimated fair value of the Tilray stock-based compensation related to the pre-combination service period consisted of \$73,830 related to Tilray stock options and \$23,003 related to restricted share units (“RSUs”). The fair values of the RSUs included in the purchase price are estimated using the market share price of Aphria on the purchase price Measurement Date. The fair values of the options included in the purchase price are calculated using the Black Scholes model, using the following assumptions:

Volatility	100%
Dividend yield	0%
Risk-free interest rate	0.04% to 1.31%
Expected term	0.07 to 7.91 years

3. Preliminary Purchase Price Allocation

A preliminary valuation analysis of the fair value of Tilray's assets and liabilities has been performed at December 31, 2020, with the following exceptions:

- The warrant liability has been valued at the Measurement Date, which reflects the exercise of 12,791,000 warrants between January 1, 2021 and the Measurement Date (note 2, 4H); and
- The cash and cash equivalents balance at December 31, 2020 has been increased by \$76,106 (note 4H) to reflect the cash received upon exercise of the warrants.

The purchase price has been allocated to such assets and liabilities, with the excess allocated to goodwill. The following table summarizes the preliminary purchase price allocation:

Cash and cash equivalents	\$	265,808
Accounts receivable		29,033
Inventory		121,000
Prepayments and other current assets		34,640
Property and equipment		219,308
Intangible assets		1,063,000
Interest in equity investees		9,300
Other investments		14,369
Promissory notes receivable and other assets		4,356
Accounts payable		(17,776)
Accrued expenses and other current liabilities		(39,946)
Accrued lease obligations		(33,536)
Warrant liability		(90,465)
Deferred tax liability		(251,877)
Convertible debentures		(236,179)
Long-term debt		(50,498)
Other liabilities		(4,612)
Goodwill		1,896,977

The preliminary purchase price allocation has been used to prepare the pro forma adjustments (note 4). The purchase price allocation will be finalized following the effective date of the merger transaction when the valuation analysis is complete. The final allocation could differ materially from the preliminary allocation used in the pro forma adjustments.

4. Pro Forma Adjustments

Adjustments to the pro forma financial statements are limited to those that reflect the accounting for the merger transaction in accordance with US GAAP. The pro forma financial statements give effect to the merger transaction as if it had occurred on February 28, 2021 for purposes of the pro forma balance sheet and June 1, 2020 for purposes of the pro forma statement of net loss for the nine months ended February 28, 2021 and June 1, 2019 for purposes of the pro forma statement of net loss for the year ended May 31, 2020.

The pro forma adjustments are as follows:

A – Purchase price

Records the purchase price consideration, which is the fair value of the equity interests hypothetically issued by Aphria to acquire Tilray (note 2).

B – Equity

Eliminates Tilray's historical equity balances and reallocates Aphria's equity balances so the equity structure appearing in the pro forma balance sheet reflects the legal equity structure of Tilray, including the equity interests issued by Tilray to effect the merger transaction.

The following table summarizes how the equity balances in the pro forma balance sheet were determined:

	Common stock	Additional paid-in capital	Warrants	Accumulated other comprehensive (loss) income	Accumulated deficit	Total
Aphria as at February 28, 2021	\$ 1,641,138	\$ 37,316	\$ 284	\$ (7,505)	\$ (509,512)	\$ 1,161,721
Total estimated purchase price (note 2, 4A)	27	2,932,875	—	—	—	2,932,902
Tilray as at December 31, 2020	16	1,095,781	—	8,205	(730,103)	373,899
Eliminate Tilray as at December 31, 2020	—	(1,095,781)	—	(8,205)	730,103	(373,883)
Reallocate balance to reflect Tilray structure	(1,641,138)	1,641,122	—	—	—	(16)
Equity component of Tilray convertible notes (note 4I)	—	1,390	—	—	—	1,390
Accumulated deficit impact of pro forma adjustments (note 4K, 4L, 4M)	—	—	—	—	(46,465)	(46,465)
Pro forma – February 28, 2021	<u>\$ 43</u>	<u>\$ 4,612,703</u>	<u>\$ 284</u>	<u>\$ (7,505)</u>	<u>\$ (555,977)</u>	<u>\$ 4,049,548</u>

The \$27 pro forma balance as part of the total estimated purchase price represents the \$0.0001 par value of the estimated 265,506,241 of Tilray Class 2 common stock issued on the merger transaction.

C – Inventory

Increases Tilray's inventory to a fair value of approximately \$121,000, an increase of \$27,355 from the carrying value. The fair value was determined based on the estimated selling price of the inventory, less the remaining manufacturing and selling costs and a normal profit margin on those manufacturing and selling efforts. After the merger transaction, the \$27,355 step-up in inventory value will increase cost of sales as the inventory is sold, which is reflected in the pro forma statements of net loss and represents a nonrecurring charge for the nine months ended February 28, 2019 and the year ended May 31, 2020. The fair value calculation is preliminary and subject to change.

D – Capital assets

Included in the opening Tilray capital assets is \$199,559 of property and equipment, net and \$17,985 of operating lease, right-of-use assets. Increases Tilray's capital assets to an estimated fair value of approximately \$217,544, an overall increase of \$1,764 from the carrying value. The overall increase represents an estimated increase of \$2,110 relating to finance lease right-of-use assets and an increase of \$274 relating to operating lease right-of-use assets (note 4E) offset by an estimated decrease of \$620 to capital assets. The estimated useful lives, excluding land, range from 4 to 27 years. The estimated fair value of property and equipment, excluding finance lease right-of-use assets is determined primarily using an income approach, which requires a forecast of expected future cash flows. After the merger transaction, the estimated impact of the combined change in the value and useful lives of property plant and equipment will be an estimated decrease in amortization expense in the pro forma statement of net loss recognized as follows:

	Year ended May 31, 2020 CAD	9 months ended February 28, 2021 CAD
Cost of sales	\$ (56)	\$ (42)
Depreciation and amortization expenses	(798)	(598)

The estimated fair value and estimated useful life calculations are preliminary and subject to change. The preliminary estimates of fair value and estimated useful lives will likely differ from the final amounts after completing a detailed valuation analysis, and the difference could have a material effect on the accompanying pro forma financial statements. A 10% change in the estimated fair value of property and equipment, excluding finance lease right-of-use assets, would cause a corresponding increase or decrease in the balance of goodwill. A 10% change would also cause the annual amortization expense in the pro forma statement of net loss to increase or decrease by approximately \$646, assuming a weighted average useful life of depreciable property and equipment of 18.4 years.

E – Leases

Included in Tilray's capital assets carrying value (note 4D) is \$13,167 and \$17,985 related to finance lease right-of-use assets and operating lease right-of-use assets, respectively. The carrying value has been adjusted to the corresponding carrying value of finance and operating lease liabilities of \$15,277 and \$18,259, respectively, resulting in a pro forma increase of \$2,110 and \$274. The corresponding impact to amortization expense on the finance lease right-of-use assets are included in capital assets (note 4D). The finance and operating lease liabilities, and corresponding right-of-use assets may differ from the final amounts after completing the detailed incremental borrowing rate analysis.

F – Intangible assets

Increases Tilray's intangible assets to an estimated fair value of approximately \$1,063,000, an increase of \$876,555 from the carrying value. As part of the preliminary valuation analysis, the identified intangible assets include distribution channels, customer relationships, know how, developed technology, licenses, brands and trademarks. The fair value of identifiable intangible assets is determined primarily using an income approach, which requires a forecast of expected future cash flows. For purposes of the preliminary fair value, the mid point of the estimated range has been used. After the merger transaction, the \$876,555 increase in the value of intangible assets will increase amortization expense over the respective estimated useful lives, which is reflected in the pro forma income statement through a \$20,923 and \$27,898 increase in amortization expenses for the nine months ended February 28, 2021 and year ended May 31, 2020, respectively.

The following table summarizes the estimated fair values (mid point) of Tilray's identifiable intangible assets and, where applicable, their estimated useful lives:

	<u>Estimated fair value</u>	<u>Estimated useful life (years)</u>
Definite-lived intangible assets		
Distribution channels	\$ 137,000	15
Customer relationships	85,000	15
Know how	47,000	2
Developed technology	6,000	10
	<u>275,000</u>	
Indefinite-lived intangible assets		
Licenses	660,000	Indefinite
Brands	116,000	Indefinite
Trademarks	12,000	Indefinite
	<u>788,000</u>	
	<u>\$ 1,063,000</u>	

The preliminary estimates of fair value and estimated useful lives will likely differ from the final amounts after completing a detailed valuation analysis, and the difference could have a material effect on the accompanying pro forma financial statements. A 10% change in the estimated fair value of intangible assets would cause a corresponding increase or decrease in the balance of goodwill. A 10% change would also cause the annual amortization expense in the pro forma statement of net loss to increase or decrease by approximately \$3,890, assuming an overall weighted average useful life of definite-lived intangible assets of 12.7 years.

G – Goodwill

Adjusts goodwill in the pro forma balance sheet as follows:

Reversal of Tilray's historical goodwill	\$ (166,915)
Goodwill recognized in purchase accounting	1,896,977
Pro forma increase to goodwill	<u>\$ 1,730,062</u>

H – Warrant liability

Decreases Tilray's warrant liability to an estimated fair value of approximately \$90,465, a decrease of \$30,182 from the carrying value to reflect the estimated fair value at the Measurement Date. The 19,000,000 outstanding warrants at December 31, 2020 are reduced for the additional exercise of 12,791,000 warrants at a price of \$5.95 from January 1, 2021 to the Measurement Date. The resulting increase in cash on exercise of \$76,106 is an adjustment to the carrying value of cash in the purchase price allocation. The remaining 6,209,000 warrants outstanding on the Measurement Date have an estimated fair value of \$14.57 per warrant, using Tilray's market share price on the Measurement Date as an input.

I – Convertible notes

Adjusts the carrying value of the liability component of the convertible notes from \$257,789 in Tilray's historical balance sheet to an estimated fair value of \$234,789, a decrease of \$23,000. The fair value is determined using the expected cash flows, discounted by the estimated interest rate of similar nonconvertible debt based on current market rates. The combined instrument's fair value of \$236,179 is adjusted to present the equity component of \$1,390 in equity (note 4B), with the remaining \$234,789 recorded as a liability. The equity component is not remeasured as long as it continues to meet the conditions for equity classification. The adjusted debt discount is to be amortized as additional non-cash interest expense over the remaining term of the convertible notes using the interest method with an effective rate of 11.7 % per annum.

The change in the value of the convertible notes is estimated to decrease finance expense over the term of the notes, which is reflected in the pro forma statement of net loss through a \$3,944 and \$5,258 decrease in finance expenses for the nine months ended February 28, 2021 and year ended May 31, 2020, respectively.

J – Long-term debt

Adjusts the carrying value of Tilray's Senior Facility from \$48,470 in Tilray's historical balance sheet to \$50,498, an increase of \$2,028. The adjustment reflects removal of the unamortized transaction costs which are not recognized in a business combination.

The change in the value of the long-term debt is estimated to decrease finance expense over the term of the notes, which is reflected in the pro forma income statement through a \$245 and \$327 decrease in finance expenses for the nine months ended February 28, 2021 and year ended May 31, 2020, respectively.

K – Transaction costs

Recognizes in the pro forma balance sheet and pro forma statement of net loss for the nine months ended February 28, 2021 \$24,467 of nonrecurring transaction costs directly related to the merger transaction that are expected to be incurred by Aphria and Tilray subsequent to February 28, 2021 and December 31, 2020, respectively. Also recognizes \$37,028 of transaction costs in the pro forma statement of net loss for the year ended May 31, 2020, which is comprised of the \$24,467 referred to above and \$12,561 expensed in the historical financial statements of Aphria and Tilray for the nine months ended February 28, 2021 and December 31, 2020, respectively.

The following table summarizes the nonrecurring transaction costs related to the merger transaction included in each of the pro forma statements of net loss:

	<u>Aphria</u>	<u>Tilray</u>	<u>Total</u>
Expensed in historical financial statements	\$ 10,329	\$ 2,232	\$ 12,561
Estimated future costs	13,838	10,629	24,467
Total recognized in pro forma statements of net loss	<u>\$ 24,167</u>	<u>\$ 12,861</u>	<u>\$ 37,028</u>

L – Compensation arrangements

Recognized in the pro forma balance sheet and both of the pro forma income statements is \$6,823 of nonrecurring compensation costs related to severance payments and retention payments. This pro forma adjustment excludes any related severance or other compensation costs which may be triggered upon an announcement of a new executive team or other headcount restructuring that may result from the merger transaction.

The following table summarizes the nonrecurring compensation costs related to the merger transaction included in each of the pro forma income statements:

	<u>Aphria</u>	<u>Tilray</u>	<u>Total</u>
Expensed in historical financial statements	\$ —	\$ —	\$ —
Accrued in pro forma adjustment	—	6,823	6,823
Total recognized in pro forma statement of net loss	<u>\$ —</u>	<u>\$ 6,823</u>	<u>\$ 6,823</u>

Also recognized in the pro forma statement of net loss is compensation costs related to the difference between Tilray's historical share-based compensation expense and the estimated share-based compensation expense related to replacement stock options and restricted stock units hypothetically issued by Aphria as consideration. The portion of the fair value of the replacement share-based awards related to compensation costs will be recognized ratably over post-merger service periods ranging from 0 to 3 years. The stock-based compensation expense is estimated to decrease by \$8,859 and \$8,610 for the nine months ended February 28, 2021 and year ended May 31, 2020, respectively, which is reflected in the pro forma income statements.

The total pro forma adjustment to stock-based compensation expense excludes the impact of accelerated vesting of Aphria's stock-based awards that is subject to the approval by Aphria's Board of Directors, which has not yet occurred, the final compensation costs could differ materially from those included in the pro forma adjustments.

M – Income taxes

The pro forma income tax adjustments to the pro forma balance sheet results in an overall increase in the deferred income tax liability of \$217,778 relating to the following:

- Increase of \$202,603 related to Tilray's increase in taxable temporary differences due primarily to fair value increases in inventory, property and equipment, and intangibles, offset by a partial reversal of the valuation allowance on net operating losses carrying forward in several legal entities and jurisdictions; and
 - Increase of \$15,175 related to restrictions on Aphria's losses in several legal entities and jurisdictions, and valuation allowances due to the impact of the merger transaction.
-

The pro forma income tax adjustments to the pro forma statement of net loss are comprised of the following amounts:

(a) Tax impact of pro forma adjustments:

	Year ended May 31, 2020	9 months ended February 28, 2021
Pro forma adjustments		
C - Inventory (cost of sales)	\$ 27,355	\$ 27,355
D - Property and equipment (depreciation expense)	(854)	(640)
F - Intangible assets (amortization expense)	27,898	20,923
I - Convertible debt (interest expense)	(5,258)	(3,944)
J - Long-term debt (interest expense)	(327)	(245)
K - Transaction costs	37,028	24,467
L - Compensation	(1,787)	(2,036)
	<u>67,569</u>	<u>(9,533)</u>
M - Deferred tax expense (recovery)	(9,533)	(7,706)
M - Income taxes - benefit of current year losses	(4,194)	(4,691)
	<u>\$ (13,727)</u>	<u>\$ (12,397)</u>

The \$13,727 for the year ended May 31, 2020 and the \$12,397 for the nine months ended February 28, 2021 deferred tax recovery is comprised of the following:

- \$9,533 and 7,706, respectively, which relates to the tax-effect of pro-forma adjustments, C, D, F. The remaining pro-forma statement of loss adjustments are not tax-effected due to the amounts being non-deductible for tax purposes, or the benefit of the deductible expense cannot be recognized due to a valuation allowance in the legal entity and jurisdiction to which it relates; and
- \$4,194 and \$4,691, respectively, which relates to the deferred tax asset that can be recognized for a portion of the current period loss.

(b) Reversal of \$707 and \$5,470 of deferred tax recoveries recorded by Aphria during the nine months ended February 28, 2021 and the twelve months ended May 31, 2020 which would either not be eligible for recovery or require a valuation allowance as a result of the merger transaction.

5. Pro Forma Loss Per Share

	Year ended May 31, 2020	9 months ended February 28, 2021
Historical Tilray basic weighted average shares	100,529,641	132,562,924
Adjustment for warrants exercised (note 3, 4H)	12,791,000	12,791,000
Incremental shares issued in merger transaction (note 4B)	265,506,241	265,506,241
Pro forma combined basic and diluted weighted average shares	<u>378,826,882</u>	<u>410,860,165</u>

On a pro forma basis, the combined company incurred a net loss for the nine months ended February 28, 2021 and the year ended May 31, 2020. As such, all potential shares are excluded from the calculation of pro forma diluted loss per share because they are anti-dilutive.

6. Adjustments to the Historical Financial Information of Aphria

The historical financial information of Aphria was prepared in accordance with IFRS as issued by the IASB and presented in CAD. The historical financial information was translated from CAD to USD using the following historical exchange rates:

	CAD to USD
Period end exchange rate as at February 28, 2021	0.7883
Average exchange rate for the nine months ended February 28, 2021	0.7620
Average exchange rate for the year ended May 31, 2020	0.7460

The table below presents the conversion from IFRS to US GAAP adjustments of Aphria's adjusted unaudited condensed consolidated statement of financial position as at February 28, 2021:

Adjusted Unaudited Condensed Consolidated Statement of Financial Position (Balance Sheet) of Aphria (in '000)

	As at February 28, 2021 IFRS - CAD	IFRS to US GAAP differences CAD	Notes (note 6)	As at February 28, 2021 US GAAP - CAD	As at February 28, 2021 US GAAP - USD
Assets					
Current assets					
Cash and cash equivalents	\$ 267,134	\$ —		\$ 267,134	\$ 210,590
Accounts receivable, net	81,890	—		81,890	64,557
Prepays and other current assets	34,732	15,178	vi	49,910	39,346
Inventory	313,794	(90,189)	i	223,605	176,275
Biological assets	27,065	(27,065)	i	—	—
Current portion of convertible notes receivable	6,089	—		6,089	4,800
Total current assets	730,704	(102,076)		628,628	495,568
Capital assets	644,711	518	iii	645,229	508,655
Intangible assets	669,703	—		669,703	527,949
Promissory notes receivable and other assets	3,000	—		3,000	2,365
Other investments	11,292	—		11,292	8,902
Goodwill	745,908	(1,200)	vii	744,708	587,078
Total assets	\$ 2,805,318	\$ (102,758)		\$ 2,702,560	\$ 2,130,517
Liabilities					
Current liabilities					
Accounts payable	\$ 58,218	\$ —		\$ 58,218	\$ 45,895
Accrued expenses and other current liabilities	110,012	(55,575)	ii	54,437	42,914
Income taxes payable	21,246	—		21,246	16,749
Current portion of lease liabilities	1,756	—		1,756	1,384
Current portion of long-term debt	25,759	—		25,759	20,307
Total current liabilities	216,991	(55,575)		161,416	127,249
Long-term liabilities					
Lease liabilities	45,004	—		45,004	35,478
Long-term debt	233,356	—		233,356	183,962
Convertible debentures	622,796	—		622,796	490,970
Contingent consideration	76,196	—		76,196	60,068
Deferred tax liability, net	44,625	(13,906)	vi	30,719	24,217
Total liabilities	1,238,968	(69,481)		1,169,487	921,944
Shareholders' equity					
Common stock	2,079,173	2,610	ii	2,081,783	1,641,138
Warrants	360	—		360	284
Additional paid-in capital ⁽¹⁾	29,661	17,674	ii	47,335	37,316
Accumulated other comprehensive loss	(6,047)	(3,473)	v	(9,520)	(7,505)
Accumulated deficit	(595,182)	(88,033)	i	(646,316)	(509,512)
		35,291	ii		
		381	iii		
		(1,046)	iv		
		3,473	v		
		(1,200)	vii		
Total shareholders' equity	1,507,965	(34,323)		1,473,642	1,161,721
Non-controlling interests	58,385	1,046	iv	59,431	46,851
Total liabilities and shareholders' equity	\$ 2,805,318	\$ (102,758)		\$ 2,702,560	\$ 2,130,516

(1) Historically reported as contributed surplus.

Adjusted Unaudited Condensed Consolidated Statements of Operations (Statements of Loss) of Aphria
(in '000)

	Nine months ended February 28, 2021 IFRS - CAD	IFRS to US GAAP differences CAD	Notes (note 6)	Presentation reclassification	Nine months ended February 28, 2021 US GAAP - CAD	Nine months ended February 28, 2021 US GAAP - USD
Revenue	\$ 459,859	\$ —		\$ 17,336	\$ 477,195	\$ 363,633
Cost of goods sold	335,008	—	i	17,336	352,344	268,493
Gross profit before fair value adjustments	124,851	—		—	124,851	95,140
Fair value adjustment on sale of inventory	102,600	(102,600)	i	—	—	—
Fair value adjustment on growth of biological assets	(124,209)	124,209	i	—	—	—
Gross profit	146,460	(21,609)		—	124,851	95,140
Operating expenses:						
General and administrative	82,239	2,197	iii	—	84,436	64,342
Share-based compensation	54,127	(39,973)	ii	—	14,154	10,786
Selling	22,383	—		—	22,383	17,056
Amortization	24,848	(1,630)	iii	—	23,218	17,693
Marketing and promotion	15,421	—		—	15,421	11,751
Research and development	586	—		—	586	447
Transaction costs	37,637	—		—	37,637	28,680
	237,241	(39,406)		—	197,835	150,755
Operating loss	(90,781)	17,797		—	(72,984)	(55,615)
Finance income (expense), net	(23,302)	837	iii	—	(22,465)	(17,119)
Non-operating income, net	(383,626)	3,750	v	—	(379,876)	(289,473)
Loss before income taxes	(497,709)	22,384		—	(475,325)	(362,207)
Income taxes (recovery)	(11,020)	(6,041)	vi	—	(16,989)	(12,946)
		72	vi			
Net loss	\$ (486,689)	\$ 28,353		\$ —	\$ (458,336)	\$ (349,261)

Adjusted Unaudited Condensed Consolidated Statements of Operations (Statements of Loss) of Aphria
(in '000)

	Year ended May 31, 2020 IFRS - CAD	IFRS to US GAAP differences CAD	Notes (note 6)	Presentation reclassification	Year ended May 31, 2020 US GAAP - CAD	Year ended May 31, 2020 US GAAP - USD
Revenue	\$ 543,339	\$ —		\$ 31,611	\$ 574,950	\$ 405,326
Cost of goods sold	409,580	5,000	i	31,611	446,191	332,854
Gross profit before fair value adjustments	133,759	(5,000)		—	128,759	72,472
Fair value adjustment on sale of inventory	57,039	(57,039)	i	—	—	—
Fair value adjustment on growth of biological assets	(115,255)	115,255	i	—	—	—
Gross profit	191,975	(63,216)		—	128,759	72,472
Operating expenses:						
General and administrative	99,977	1,512	iii	—	101,489	75,710
Share-based compensation	22,500	1,735	ii	—	24,235	18,079
Amortization	21,747	(1,455)	iii	—	20,292	15,138
Selling	21,042	—		—	21,042	15,697
Marketing and promotion	20,464	—		—	20,464	15,266
Research and development	2,568	—		—	2,568	1,916
Impairment	63,971	75	iii	—	67,935	50,679
		3,889	iv			
Transaction costs	5,763	—		—	5,763	4,299
	258,032	5,756		—	263,788	196,784
Operating loss	(66,057)	(68,972)		—	(135,029)	(124,312)
Finance income (expense), net	(26,347)	380	iii	—	(25,967)	(19,371)
Non-operating income, net	11,687	7,341	v	—	19,028	14,195
Loss before income taxes	(80,717)	(61,251)		—	(141,968)	(129,488)
Income taxes (recovery)	3,917	(15,179)	vi	—	(11,196)	(8,352)
		66	vi			
Net loss	\$ (84,634)	\$ (46,138)		\$ —	\$ (130,772)	\$ (121,136)

IFRS differs in certain material respects from US GAAP. The following material adjustments have been made to reflect Aphria's historical consolidated statement of loss on a US GAAP basis for purposes of the unaudited pro forma financial information (expressed in thousands of CAD):

i – Inventory and biological assets

Cannabis plants are accounted for as biological assets and agricultural products under IFRS and US GAAP, respectively. Under IFRS, biological assets are accounted for at fair value less costs to sell and are revalued at each subsequent reporting date up to the point of harvest, upon which time they are transferred into inventories. Any change in fair value is recognized in the period of change within profit or loss. Under US GAAP, agricultural products are accounted for at cost in accordance with guidance on property, plant and equipment or inventories depending on their nature.

The following table reflects the removal of the fair value adjustment that was included in the cost basis of inventories and biological assets under IFRS to reflect cannabis plants at cost in accordance with Accounting Standards Codification 330, *Inventory* as required under US GAAP and includes a corresponding impact to accumulated deficit:

	As at February 28, 2021 CAD
Inventory	\$ (90,189)
Biological assets	(27,065)
Deferred tax liability, net	(29,221)
Accumulated deficit	(88,033)

The following table reflects the removal of the changes in fair value recognized in the period of change within the statement of operations:

	Year ended May 31, 2020 CAD	9 months ended February 28, 2021 CAD
Cost of goods sold	\$ 5,000	\$ —
Fair value adjustment on sale of inventory	(57,039)	(102,600)
Fair value adjustment on growth of biological assets	115,255	124,209
Income taxes (recovery)	(15,179)	(6,041)

ii – Share-based payments

Under US GAAP, Restricted Stock Units (“RSUs”) and Deferred Stock Units (“DSUs”) that can be settled in either cash or equity at the option of Aphria should be classified as equity. Currently, Aphria classifies its RSUs and DSUs as liabilities. Under US GAAP, Aphria measures and recognizes compensation expense for these awards on a straight-line basis over the requisite service period for each separately vesting portion of the award as if the award was, in substance, multiple awards based on their grant date fair value.

The following table reflects the removal of the RSU and DSU liability in accrued expenses and other current liabilities and the reclassification of the awards to equity:

	As at February 28, 2021 CAD
Accrued expenses and other current liabilities	\$ (55,575)
Common stock	2,610
Additional paid-in capital	17,674
Accumulated deficit	35,291

This adjustment also reflects the impact to share-based compensation of C\$1,735 for the year ended May 31, 2020 and (C\$39,973) for the nine months ended February 28, 2021.

iii – Leases

Under US GAAP, at lease commencement, a lessee classifies a lease as a finance lease or an operating lease (unless the short-term lease recognition exemption is elected). Under IFRS, lessees do not classify leases and all leases are treated under a single model (unless the short-term leases or leases of low-value asset recognition exemptions are elected). For operating leases under US GAAP, the subsequent measurement of the lease liability is based on the present value of the remaining lease payments using the discount rate determined at lease commencement (which would result in the same amount of lease liability as in IFRS), while the right-of-use asset is remeasured at the amount of the lease liability, adjusted for the remaining balance of any lease incentives received, cumulative prepaid or accrued rents, unamortized initial direct costs and any impairment. This treatment under US GAAP generally results in straight-line expense being incurred over the lease term and recorded to general and administrative expenses. IFRS generally yields front-loaded expense recognition. Under IFRS, a constant interest rate is applied to the lease liability, interest expense decreases as cash payments are made during the lease term and the lease liability decreases. Therefore, more interest expense is incurred in the early periods and less in the later periods. This trend in the interest expense, combined with straight-line depreciation of the right-of-use asset, results in a front-loaded expense recognition pattern.

The following table reflects the adjustments to the right-of-use asset for operating leases under US GAAP, the corresponding impact to accumulated deficit and reclassifies the right-of-use asset from property and equipment, net to operating lease, right-of-use assets:

	As at February 28, 2021 CAD
Capital assets	\$ 518
Deferred tax liability, net	137
Accumulated deficit	381

For the operating leases under US GAAP, the following table reflects the removal of amortization and interest expense recognized under IFRS and instead includes the straight-line operating lease expense as calculated under US GAAP in general and administrative expenses. Furthermore, additional impairment was recognized for the year ended May 31, 2020 under US GAAP for leases that were fully impaired under IFRS as a result of the adjustments to the associated right-of-use assets:

	Year ended May 31, 2020 CAD	9 months ended February 28, 2021 CAD
General and administrative expenses	\$ 1,512	\$ 2,197
Amortization expenses	(1,455)	(1,630)
Impairment of assets	75	—
Finance income (expense), net	(380)	(837)
Income taxes (recovery)	66	72

iv – Non-controlling interest on acquisition

Under US GAAP, non-controlling interest is measured at fair value on acquisition date. Under IFRS, Aphria measures non-controlling interest at the proportionate share of the fair value of the acquiree's net identifiable assets and goodwill recorded on consolidation by Aphria would only reflect the acquirer's share. This approach does not exist under US GAAP and the adjustment reflects the increase in non-controlling interests and accumulated deficit of C\$1,046 as of February 28, 2021. As a result of the different approach in recognizing non-controlling interest there is an increase in impairment for the year ended May 31, 2020 of C\$3,889.

v – Investments in debt securities

US GAAP requires the use of three categories for the classification and measurement of debt securities based on the entity's investment intent: held-to-maturity ("HTM") - measured at amortized cost, trading - measured at fair value through profit or loss ("FVTPL"), available-for-sale ("AFS") - measured at fair value through other comprehensive income ("FVOCI"). Under US GAAP, Aphria will classify its investments in debt securities as available-for-sale, measured at FVOCI. Since amounts were previously recognized at FVTPL under IFRS, this will result in a presentation reclassification difference.

This adjustment reflects the reversal of gains and losses recorded by Aphria for its investments in debt securities from non-operating income (expense), net into other comprehensive income of (C\$7,341) for the year ended May 31, 2020; (C\$3,750) for the nine months ended February 28, 2021. This also results in a reclassification of amounts recognized in accumulated deficit to accumulated other comprehensive loss of C\$3,473 as of February 28, 2021.

vi – Income taxes

For the purposes of the IFRS to US GAAP adjustments Aphria's effective income tax rate was 26.5% for the year ended May 31, 2020 and for the nine months ended February 28, 2021. The effective income tax rate was used in determining adjustments to:

- Deferred tax liability of (C\$13,906) as of February 28, 2021 as a result of the removal of the fair value adjustment of (C\$27,065) from biological assets and inventory offset by an increase to the right-of-use asset under US GAAP C\$94 and a reclassification of income taxes on intercompany transfers of inventory of C\$15,178 that remain within the consolidated group from deferred tax liability to prepaids and other current assets and C\$137 from adjustment to leases. Under US GAAP, income tax expense paid by the transferor on intercompany profits from the transfer or sale of inventory within a consolidated group are deferred on consolidation, resulting in the recognition of a prepaid asset for the taxes paid rather than deferred taxes as required under IFRS.
- Deferred income tax recoveries of C\$15,179 for the year ended May 31, 2020 and C\$6,041 for the nine months ended February 28, 2021 as a result of the removal of the fair value adjustments from biological assets and inventory under US GAAP.
- Income taxes of C\$66 for the year ended May 31, 2020 and C\$72 for the nine months ended February 28, 2021 as a result of decreases to operating lease expense under US GAAP.

vii – Cannway Pharmaceuticals Inc.

In the fiscal year ending May 31, 2016, Aphria acquired 100% of the issued and outstanding shares of Cannway Pharmaceuticals Inc. Under IFRS, Aphria treated this transaction as a business combination and accordingly recorded goodwill of C\$1,200. Under US GAAP, the transaction did not meet the definition of a business and is considered an asset acquisition. This adjustment reflects the removal of goodwill and includes a corresponding impact to accumulated deficit as the asset is fully amortized as of February 28, 2021.

7. Adjustments to the Historical Financial Information of Tilray

The historical financial information of Tilray was prepared in accordance with US GAAP as issued by the FASB and presented in USD. Tilray's fiscal year end is December 31 and historical financial information was used to present pro forma financial statements based on the fiscal year of Aphria being May 31. The constructed statements of net loss reclassify previously disclosed amounts to conform with Tilray's presentation as of December 31, 2020.

Adjusted Unaudited Condensed Consolidated Statements of Net Loss of Tilray (in '000 USD)

	Year ended December 31, 2020	3 months ended March 31, 2020	Constructed 9 months ended December 31, 2020
Revenue	\$ 210,482	\$ 52,102	\$ 158,380
Cost of sales	185,827	41,598	144,229
Gross profit	<u>24,655</u>	<u>10,504</u>	<u>14,151</u>
General and administrative expenses	85,883	26,767	59,116
Sales and marketing expenses	54,666	18,448	36,218
Research and development expenses	4,411	1,361	3,050
Depreciation and amortization expenses	13,722	3,591	10,131
Impairment of assets	61,114	29,839	31,275
Loss from equity method investments	5,983	1,748	4,235
Operating loss	<u>(201,124)</u>	<u>(71,250)</u>	<u>(129,874)</u>
Foreign exchange (gain) loss, net	(13,169)	28,069	(41,238)
Change in fair value of warrant liability	100,286	71,978	28,308
Gain on debt conversion	(61,118)	—	(61,118)
Interest expenses, net	39,219	9,146	30,073
Other expense (income), net	10,333	4,651	5,682
Loss before income taxes	<u>(276,675)</u>	<u>(185,094)</u>	<u>(91,581)</u>
Deferred income tax recoveries	(5,376)	(1,272)	(4,104)
Current income tax (recoveries) expenses	(226)	301	(527)
Net loss	<u>\$ (271,073)</u>	<u>\$ (184,123)</u>	<u>\$ (86,950)</u>
Net loss per share - basic and diluted	<u>\$ (2.15)</u>	<u>\$ (1.73)</u>	<u>\$ (0.66)</u>
Weighted average shares used in computation of net loss per share - basic and diluted	<u>126,041,710</u>	<u>106,463,352</u>	<u>132,562,924</u>

Adjusted Unaudited Condensed Consolidated Statements of Net Loss of Tilray
(in '000 USD)

	Year ended December 31, 2019	3 months ended March 31, 2019	3 months ended March 31, 2020	Constructed 12 months ended March 31, 2020
Revenue	\$ 166,979	\$ 23,038	\$ 52,102	\$ 196,043
Cost of sales	190,475	17,957	41,598	214,116
Gross profit (loss)	<u>(23,496)</u>	<u>5,081</u>	<u>10,504</u>	<u>(18,073)</u>
General and administrative expenses	110,903	17,406	26,767	120,264
Sales and marketing expenses	63,813	8,312	18,448	73,949
Research and development expenses	9,172	1,517	1,361	9,016
Depreciation and amortization expenses	11,607	1,865	3,591	13,333
Impairment of assets	112,070	—	29,839	141,909
Acquisition-related (income) expenses, net	(31,427)	4,424	—	(35,851)
Loss from equity method investments	4,504	—	1,748	6,252
Operating loss	<u>(304,138)</u>	<u>(28,443)</u>	<u>(71,250)</u>	<u>(346,945)</u>
Foreign exchange (gain) loss, net	(5,944)	179	28,069	21,946
Change in fair value of warrant liability	—	—	71,978	71,978
Gain on debt conversion	—	—	—	—
Interest expenses, net	34,690	8,744	9,146	35,092
Finance income from ABG	(764)	(135)	—	(629)
Other expense (income), net	(2,501)	(3,845)	4,651	5,995
Loss before income taxes	<u>(329,619)</u>	<u>(33,386)</u>	<u>(185,094)</u>	<u>(481,327)</u>
Deferred income tax recoveries	(8,847)	(3,777)	(1,272)	(6,342)
Current income tax (recoveries) expenses	397	(240)	301	938
Net loss	<u>\$ (321,169)</u>	<u>\$ (29,369)</u>	<u>\$ (184,123)</u>	<u>\$ (475,923)</u>
Net loss per share - basic and diluted	<u>\$ (3.20)</u>	<u>\$ (0.31)</u>	<u>\$ (1.73)</u>	<u>\$ (4.73)</u>
Weighted average shares used in computation of net loss per share - basic and diluted	<u>100,455,677</u>	<u>94,875,351</u>	<u>106,463,352</u>	<u>100,529,641</u>

Explanatory Note

As previously disclosed in the Current Reports on Form 8-K filed by Tilray, Inc., a Delaware corporation (“**Tilray**”), with the Securities and Exchange Commission on December 21, 2020 and February 22, 2021, Tilray entered into an Arrangement Agreement on December 15, 2020, as amended on February 19, 2021 (the “**Arrangement Agreement**”), with Aphria Inc., a corporation existing under the laws of the Province of Ontario (“**Aphria**”), pursuant to which Tilray agreed to acquire all of the issued and outstanding common shares of Aphria pursuant to a plan of arrangement (the “**Plan of Arrangement**”) under the Business Corporations Act (Ontario) (the “**Arrangement**”). The Arrangement was consummated on April 30, 2021 (the “**Closing Date**”). This Exhibit 99.5 provides certain information about Tilray and its board of directors and management following the consummation of the Arrangement.

Officers of Tilray

The following provides biographical information regarding the officers of Tilray immediately following the Arrangement.

<u>Name</u>	<u>Age</u>	<u>Business Experience, Public Company Directorships Held</u>
Irwin D. Simon	62	<p>Irwin D. Simon is President, Chief Executive Officer and Chairperson of the Board of Directors of Tilray. Mr. Simon is a business executive who founded The Hain Celestial Group, Inc. (NASDAQ: HAIN), a leading organic and natural products company in 1993. As Founder, President, Chief Executive Officer and Chairman, Mr. Simon led The Hain Celestial Group, Inc. for more than 25 years and grew the business to \$3 billion in net sales with operations in North America, Europe, Asia, and the Middle East. Mr. Simon has more than 30 years of business experience spanning many domestic and international leadership and operating roles.</p> <p>Mr. Simon is currently a director of MDC Partners Inc. (NASDAQ: MDCA) and Whole Earth Brands, Inc. (NASDAQ: FREE).</p>
Carl. A. Merton	51	<p>Carl Merton is Tilray’s Chief Financial Officer and has over 20 years of financial and business experience, having spent almost 12 years combined with Ernst & Young LLP and KPMG LLP prior to serving as Vice-President, Special Projects at Atlas Tube Canada ULC, Chief Financial Officer of Reko International Group Inc. (TSXV: REK) and Chief Financial Officer of Aphria Inc. Mr. Merton is a Chartered Professional Accountant, Chartered Accountant and is a Fellow of the Canadian Institute of Chartered Business Valuators (the “CICBV”). As the Chief Financial Officer of Aphria, Mr. Merton is responsible for leading strategic discussions, acquisitions and divestitures, budgeting, financing, financial reporting and internal controls. Mr. Merton holds an Honours Bachelor of Commerce in Sports Administration from Laurentian University. In addition Mr. Merton, is currently a member of the Board of Directors of Motor City Community Credit Union, is the Chair of their Audit Committee, serves as an external member of the Audit Committee of the Greater Windsor & Essex County District School Board and has served as a past Chair of both the CICBV and the International Association of Professional Business Valuators.</p>
Denise M. Faltischek	48	<p>Denise Faltischek is Chief Strategy Officer at Tilray. Before joining Tilray, she served as Chief Strategy Officer at Aphria and led Aphria’s global strategy, a pivotal role in establishing Aphria as a global cannabis leader. An executive with extensive consumer-packaged goods experience, Ms. Faltischek also served as Executive Vice President and Chief Strategy Officer at The Hain Celestial Group, Inc. (NASDAQ: HAIN), a leading organic and natural products company with operations in North America, Europe, Asia, and the Middle East. At Hain Celestial, Ms. Faltischek led the successful completion of more than 50 acquisitions and strategic transactions. As Chief Strategy Officer, Ms. Faltischek collaborates with Mr. Simon on Tilray’s global strategy as Tilray scales its operations internationally and explores further opportunities in the United States as well as overseeing its acquisitions and other strategic transactions. Ms. Faltischek also oversees Tilray’s international businesses. She is a director and the chair of the Nominating and Governance Committee of Whole Earth Brands, Inc. (NASDAQ: FREE), a global industry-leading platform, focused on the “better for you” consumer packaged goods and ingredients space.</p>
James (Jim) Meiers	63	<p>Jim Meiers is Head of Canada at Tilray, Inc. He joins Tilray from Aphria, where he led Aphria’s operations and manufacturing facilities across Canada. Prior to Aphria, Mr. Meiers led operations at The Hain Celestial Group, Inc. (NASDAQ: HAIN), a leading natural and organic products company with operations in North America, Europe, Asia, and the Middle East. Over his 14-year tenure at The Hain Celestial Group, Inc., he held various executive roles including President Celestial Seasonings, Hain Celestial Personal Care, CEO Hain Pure Protein and Chief Supply Chain Officer of Hain Grocery & Snacks. Mr. Meiers has over 30 years of supply chain experience and general management for consumer-packaged goods companies, including H.J. Heinz (NASDAQ: KHC) and Kraft Foods Group (NASDAQ: KRFT).</p>

Executive Compensation

Irwin D. Simon – President & Chief Executive Officer

Prior to January 14, 2020, Mr. Simon was an independent contractor pursuant to an independent contractor agreement with Aphria for a limited term. Effective January 14, 2020, Mr. Simon agreed to become a full time employee of Aphria and entered into an employment agreement setting forth the terms and conditions of his employment, which provided for an annual base salary of US\$1,000,000, monthly car allowance of US\$1,000, annual bonus of up to 350% of base salary, subject to approval of the board of directors, and RSUs pursuant to the Aphria Omnibus Long-Term Incentive Plan (“**OLIP**”), or any other equity plan as may be approved by the board of directors, of up to 200% of base salary, to be determined by the board of directors. In consideration of entering this employment agreement, Mr. Simon received a signing cash bonus equal to US\$1,110,000 and US\$7,000,000 granted as RSUs that vest over three years.

The Aphria Board awarded Mr. Simon the signing bonus and RSU award in recognition of Mr. Simon’s leadership and experience building successful companies as critical to Aphria’s continued success. The RSU award served the additional purpose of increasing Mr. Simon’s equity ownership in Aphria in order to align his interests with Aphria’s shareholders, and in recognition of the large equity stakes held by the CEOs of other cannabis issuers. Mr. Simon’s

employment agreement also included, among other things, provisions regarding, confidentiality, non-competition and non-solicitation, as well as eligibility for Aphria's benefit plans. In the event that Mr. Simon is terminated without cause, he will be entitled to a payment equal to eighteen months' base salary (including continued payment of his health and welfare plan \$2,500 per month stipend), and accelerated vesting of any unvested RSUs. In the event Mr. Simon is terminated without cause within 30 days following a "Change of Control" (as defined in his employment agreement), he will be entitled to receive a lump sum payment equal to two times his base salary and two times the amount of average annual bonus, if any, paid in the last two years, and the accelerated vesting of any unvested RSUs.

Effective June 1, 2020, Mr. Simon's employment agreement was amended to provide for an annual base salary of US\$1,300,000, maximum annual cash bonus of 350% of base salary, and annual equity award of 200% of base salary.

Aphria additionally agreed to cover premiums of up to US\$100,000 per year for a US\$6,000,000 life insurance policy while Mr. Simon is employed by the company. The new terms also provided that in the event Mr. Simon is terminated without cause up to six months before a Change of Control or within 30 days following a Change of Control, he will be entitled to receive a lump sum payment equal to two and a half times his base salary and two and a half times his highest bonus, if any, paid over the last two years and a pro-rated annual equity award as if target performance had been achieved, if the Change of Control takes place after the first quarter of such fiscal year in which the Change of Control occurs. In the event Mr. Simon receives severance upon his termination without cause and subsequently is entitled to enhanced severance due to a later Change of Control, Mr. Simon will receive the additional Change of Control severance amount with no duplication of benefits. Such enhanced Change of Control severance includes a continuation of benefits, including car allowance and office lease, for a period of 2.5 years. Mr. Simon also received US\$500,000 paid in cash consideration for a contract extension through to June 2023. The revisions to Mr. Simon's employment agreement were intended to ensure the long term retention of Mr. Simon in view of his breadth of experience in the consumer packaged goods sector, making him an attractive candidate to non-cannabis competitors and thereby providing him with significant optionality for alternate and lucrative employment. More importantly, the Aphria Board intended to recognize Mr. Simon's involvement in the impressive financial performance of Aphria during Mr. Simon's first year as CEO, despite a challenging economic climate created by the economic shutdowns and regulatory slowdowns arising from COVID-19.

Carl A. Merton – Chief Financial Officer

On January 1, 2020, Aphria entered into a new employment agreement with Mr. Merton for an indefinite term setting forth the terms and conditions of his employment, which provided for annual base salary of C\$425,000, monthly car allowance of \$1,000, monthly gas allowance of up to \$500, annual bonus of up to 100% of base salary, to be approved by the board of directors, and RSUs pursuant to the OLIP or any other equity plan as may be approved by the board of directors, of up to 175% of base salary, subject to achievement. Mr. Merton's employment agreement also includes, among other things, provisions regarding confidentiality, non-competition, and non-solicitation as well as eligibility for company benefit plans.

In the event that Mr. Merton is terminated without cause, he will be entitled to a payment equal to nine months' base salary, plus one additional month per year of service, up to eighteen months' base salary and all unvested equity will vest. In the event Mr. Merton is terminated without cause within two years following a "Change of Control" (as defined in his employment agreement and which includes a change in the effective control of Aphria which occurs on the date that the Chief Executive Officer ceases to be the Chief Executive Officer), he will be entitled to receive a lump sum payment equal to two times his nine months' base salary, plus one additional month per year of service, up to eighteen months' base salary, and two times the amount of annual bonus, if any, paid in the immediately preceding financial year.

James Meiers – Head of Canada

Mr. Meiers has historically provided services to Aphria pursuant to a consulting agreement between Aphria, Mr. Meiers and his holding company JRM Management Consulting Company, LLC ("**JRM**") effective as of May 13, 2019, and amended June 1, 2020. The consulting agreement was for a fixed term that ended on May 31, 2020, and was extended for an additional twelve month period. Until May 31, 2020, JRM received US\$20,000 each month in consideration of its consulting services, and from June 1, 2020 onward JRM received US\$27,083.00 each month in consideration of its consulting services.

As of June 1, 2020, Mr. Meiers is eligible to receive (i) a cash bonus of up to 100% of Mr. Meiers's then current annual compensation and (ii) up to 150% of Mr. Meiers's then current annual compensation in RSUs. Additionally, Aphria granted 300,000 stock options on June 19, 2019 pursuant to the OLIP that immediately vested and made an award of 75,000 RSUs in connection with Mr. Meiers's agreement. The consulting agreement also includes, among other things, provisions regarding confidentiality. The consulting agreement may be terminated upon 30 days' notice by any party. It may also be terminated by Aphria, without notice or further payment of any kind, if Mr. Meiers materially fails to perform the services contemplated by the consulting agreement or otherwise fails to comply with any material provision of the consulting agreement, following written notice. Pursuant to a severance and change in control agreement between Mr. Meiers and Aphria, in the event that Mr. Meiers is terminated for any reason other than for cause, Mr. Meiers is entitled to a severance payment in an amount equal to his then current annual compensation and its annual bonus awarded in the preceding fiscal year, and vesting of any unvested equity awards.

In the event that Mr. Meiers is terminated without cause within 18 months following a "Change in Control" (as defined in the severance and change in control agreement and which includes a change in the effective control of Aphria which occurs on the date that the Chief Executive Officer ceases to be the Chief Executive Officer), Mr. Meiers will be entitled to receive a lump sum payment equal to two times Mr. Meiers's then current annual compensation and two times Mr. Meiers's annual bonus awarded in the preceding fiscal year and the accelerated vesting of all equity awards.

Denise M. Faltischek – Chief Strategy Officer

Ms. Faltischek has historically provided services to Aphria pursuant to a consulting agreement between Aphria, Ms. Faltischek and her holding company, Avenel Consulting, Inc. ("**Avenel**"), effective as of September 12, 2019 and amended September 11, 2020. The initial term of the consulting agreement was twelve months, and automatically renews each year for an additional twelve month period. From September 12, 2019 until May 31, 2020, Ms. Faltischek received US\$20,000 each month in consideration of her consulting services, and effective June 1, 2020 onward, Ms. Faltischek received US\$27,083.00 each month in consideration of her consulting services. As of June 1, 2020, Ms. Faltischek is eligible to receive (i) a cash bonus of up to 100% of Ms. Faltischek's then current annual compensation and (ii) up to 150% of Ms. Faltischek's then current annual compensation in RSUs. Additionally, Aphria granted 300,000 stock options on October 11, 2019, pursuant to the OLIP that immediately vested and issued 75,000 RSUs in connection with Ms. Faltischek's agreement.

The consulting agreement also includes, among other things, provisions regarding confidentiality. The consulting agreement may be terminated upon 30 days' notice by any party. It may also be terminated by Aphria, without notice or further payment of any kind, if Ms. Faltischek materially fails to perform the services contemplated by the consulting agreement or otherwise fails to comply with any material provision of the consulting agreement, following written notice.

Pursuant to a severance and change in control agreement between Ms. Faltischek and Aphria, in the event that Ms. Faltischek is terminated for any reason other than for cause, Ms. Faltischek is entitled to a severance payment in an amount equal to her then current annual compensation and its annual bonus awarded in the preceding fiscal year, and vesting of any unvested equity awards. In the event that Ms. Faltischek is terminated without cause within 18 months following a "Change in Control" (as defined in the severance and change in control agreement and which includes a change in the effective control of Aphria which occurs on the date that the Chief Executive Officer ceases to be the Chief Executive Officer), Avenel will be entitled to receive a lump sum payment equal to two times Ms. Faltischek's then current annual compensation and two times Ms. Faltischek's annual bonus awarded in the preceding fiscal year and accelerated vesting of all equity awards.
