

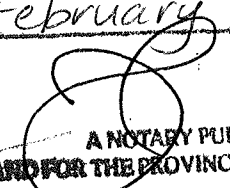
TRUST DEED dated as of 17 August 1999.

BETWEEN:

THE ARCTIC GROUP INC.,  
a corporation incorporated under the laws of Alberta  
(the "Corporation")

- and -

MONTREAL TRUST COMPANY,  
a trust company incorporated under the laws of Canada  
(the "Trustee")

This is Exhibit "FF" referred to  
in the affidavit of  
Keith McMahon  
sworn before me this 21<sup>st</sup> day of  
February 2012  
  
A NOTARY PUBLIC  
BOARD FOR THE PROVINCE OF MANITOBA

**RECITALS:**

A. The Corporation wishes to raise money for its corporate purposes and/or secure certain of its obligations, and with a view to doing so wishes to create and issue Debentures in the manner provided in this Trust Deed.

B. All necessary resolutions of the directors of the Corporation have been duly enacted, passed and/or confirmed and other proceedings taken and conditions complied with to make the creation and issue of the Debentures proposed to be issued hereunder and this Trust Deed and the execution thereof legal, valid and binding on the Corporation in accordance with the laws relating to the Corporation.

**THEREFORE, THE PARTIES HAVE AGREED AS FOLLOWS:**

**1. FORM AND ISSUE OF DEBENTURES**

**1.1 Limitation of Issue**

The Debentures to be issued under and secured by this Deed are limited to an aggregate principal amount of five hundred million Canadian dollars (Cdn.\$500,000,000) and may be issued in one or more series. The Debentures shall be designated as "Series A Debentures", "Series B Debentures", and so on if two or more series are issued, but the designation of different series of Debentures need not be consecutive so that, for example, Series C Debentures may be issued without Series B Debentures having been issued. Except with respect to the letter A, series of Debentures may also be designated with two or more letters, such as "Series BB Debentures" and "Series CCC Debentures". In addition, further Debentures in any series may be issued from time to time despite the issuance of Debentures in a subsequent series. Debentures of all series shall be designated collectively as "Debentures" and shall be subject to the terms and conditions of this Deed. No Debenture may be issued without the prior written consent of the Holders (as defined below), which consent, in the case of the Subordinated Holders, shall not be unreasonably withheld. For greater certainty, the limit of the aggregate principal amount of Debentures which may be issued hereunder shall not be reduced by the principal amount of Debentures which have been returned to the Trustee for cancellation or discharge in accordance with the terms hereof.

**1.2 Forms, Terms and Place of Payment**

Each Debenture shall be fully registered and substantially in the form set out in Schedule A to this Deed, shall be payable on demand in lawful money of Canada at the address of the holder or holders specified in the Debenture (the "Holders", which shall mean one or more persons holding

one or more Debentures) and the Debentures shall bear interest from the date of each respective debenture at the rate of twenty-five per cent (25%) per annum, or at such other rate as may be agreed upon by the Corporation and the Holders from time to time, payable on demand, both before and after maturity and default, with interest on overdue interest at the same rate. Each Debenture may, but need not, be under the seal of the Corporation, shall be signed by any officer or director of the Corporation and shall be certified by the Trustee and delivered by the Trustee to or to the order of the Corporation upon receipt by the Trustee of an order in writing signed by any officer or director of the Corporation. No Debenture shall be issued, or, if issued, shall be obligatory or entitle the Holder to the benefit hereof, until it has been certified by or on behalf of the Trustee substantially in the form of the certificate set out in Schedule "A" to this Deed, or in some other form approved by the Trustee, and such certification by the Trustee upon any Debenture shall be conclusive evidence as against the Corporation that the Debenture so certified has been duly issued hereunder and is a valid obligation of the Corporation and that the Holder is entitled to the benefit hereof. The certificate of the Trustee shall not be construed as a representation or warranty of the Trustee as to the validity or security of the Trust Deed or the Debentures. Nothing in this Deed or the Debentures shall make the Trustee responsible or liable for the Corporation's obligations to pay the principal of or interest on the Debentures.

### 1.3 Pledge of Debentures

Each Debenture shall be pledged, hypothecated, issued or charged by the Corporation as security for payment by the Corporation of certain or all debts and liabilities, including debts and liabilities in any currency, present or future, direct or indirect, absolute or contingent, matured or not, for a current or running account or not, at any time owing by the Corporation to the Holder thereof or remaining unpaid by the Corporation to the Holder thereof, whether arising from dealings between the Holder thereof and the Corporation or from any other dealings or proceedings by which the Holder thereof may be or become in any manner whatever a creditor of the Corporation, and wherever incurred, and whether incurred by the Corporation alone or with another or others, and whether as principal or surety, including expenses and all interest, commissions, legal and other costs, charges and expenses (the "obligations secured", it being understood and agreed that the term "obligations secured" as used in this Deed shall mean, as the context may require, such obligations of the Corporation owing to a particular Holder or Holders hereunder or the aggregate of such obligations of the Corporation owing to all the Holders hereunder from time to time). To the extent of any inconsistency between the terms and conditions of a Debenture and the terms and conditions of any of the obligations secured, the terms and conditions of the latter shall prevail.

### 1.4 Terms of Issue

The Debentures may be issued to such persons, in such amounts not exceeding the maximum amount set forth in Section 1.1 less the principal amount of Debentures outstanding (which, for greater certainty, shall not include any Debentures previously delivered to the Trustee for cancellation or discharge), for such consideration and on such terms as the directors of the Corporation may determine. Each series of Debentures issued under this Deed shall rank in respect of their entitlement to payment and all voting and other rights relating to the Debentures in priority according to the alphabetical order of their respective series. Accordingly, all Series A Debentures, whenever issued or certified, shall have priority over Series B Debentures, which shall in turn have priority over Series C Debentures and so on. Series of Debentures designated with different numbers of the same letter shall rank in priority according to the number of letters in the designation so that, for example, Series BBB Debentures shall have priority over Series BB Debentures. Debentures within a series shall rank *pari passu* without discrimination, preference or priority of one Debenture of such series over another and the Holders of Debentures of such series shall be secured equally and rateably according to the principal amount and interest from time to time owing with respect to each Debenture of such series (having regard to the obligations secured by such Debenture, rather than the face amount of such Debenture pledged in accordance with Section 1.3 above) regardless of their respective dates of issue or certification of each Debenture of such series. The Holders of the series of Debentures having the highest ranking for the time being are referred to in this Trust Deed as the "Senior Holders".

The priorities contained herein in connection with the obligations secured shall apply in all events and circumstances regardless of:

- (a) the date that any loan, advance, or other accommodation is made to the Corporation or any debt, liability or obligation is incurred by the Corporation; or
- (b) the date of any default by the Corporation; or
- (c) any priority granted by any principle of law or any statute; or
- (d) any other factor of legal relevance other than this Trust Deed;

No power that is exercised by the Holders, or any of them, shall detract from the rights of the other Holders under the terms of the respective obligations secured in the case of Debentures that have been pledged in accordance with Section 1.3.

#### **1.5 Registration and Transfer**

The Corporation shall cause to be kept by the Trustee at its office in the City of Toronto, in the Province of Ontario a register in which shall be entered the names and addresses of the Holders and principal amount of each Debenture. No transfer of a Debenture shall be valid unless made on such register by the registered holder or its successors or assigns or its or their attorney duly appointed by an instrument in writing, in form and execution satisfactory to the Trustee, and upon compliance with such reasonable requirements as the Trustee may prescribe. The ownership of the Debentures shall be proved by such register. The registered Holders shall be considered to be the owners thereof for all purposes of this Deed and shall be entitled to the principal monies and interest evidenced by the Debentures without regard to any set-off, counterclaim, equities or compensation between the Corporation and the Holders' transferors or any previous holders thereof.

#### **1.6 Cancellation, Retirement Etc. of Debentures**

Any Holder may deliver to the Trustee from time to time one or more of the Debentures issued pursuant to this Deed and held by it for cancellation or retirement (subject to the principal amount outstanding thereon and any interest, charges and expenses related thereto having been repaid in full to the Holder) or replacement, consolidation or subdivision, or to evidence a reduction of the principal amount outstanding from time to time. Subject to the limitation set forth in Section 1.1, upon receipt of such Debentures and a resolution of the Holder delivering such Debentures evidencing its intentions with respect to such cancellation, retirement, replacement, reduction, subdivision or consolidation, the Trustee shall forthwith notify the Corporation and the Corporation upon receipt of such Debentures shall forthwith issue in accordance with the terms and conditions of this Deed such additional, replacement, subdivided or consolidated Debentures as may be requested by the Holders in the aforesaid resolution, or the Trustee may endorse any Debenture with a notation of the reduction of the amount thereof. Upon issuance of such additional, replacement, subdivided or consolidated Debentures, or endorsement of reduction of any existing Debenture, as appropriate, the Corporation shall cause to be made such entries in the register provided for in Section 1.5 and the Trustee shall certify such Debentures, subject to receipt of such documentation as the Trustee may require, acting reasonably.

#### **1.7 Replacement of Debentures**

In case any of the Debentures shall be mutilated or defaced or be lost, destroyed or stolen, the Corporation, subject to applicable law, shall issue a new Debenture pursuant to this Deed and thereupon the Trustee shall certify and deliver such new Debenture of like date, tenor and series as the one mutilated, defaced, lost, destroyed or stolen in exchange therefor and upon cancellation of such mutilated or defaced Debenture and in lieu of and in substitution for such lost, destroyed or stolen Debenture, and the new Debenture shall be entitled to the security hereof and rank equally in accordance with its terms with all other Debentures of the same series issued hereunder.

The applicant for the issue of a new Debenture pursuant to this Section 1.7 shall bear the cost of the issue thereof and in case of loss, destruction or theft shall, as a condition precedent to the issue thereof, furnish to the Corporation and to the Trustee such evidence of ownership and of the loss, destruction or theft of the Debenture so lost, destroyed or stolen as shall be satisfactory to the Corporation and the Trustee in their discretion and such applicant may also be required to furnish an indemnity in amount and form satisfactory to the Corporation and the Trustee in their discretion, and shall pay the reasonable charges of the Corporation and the Trustee in connection therewith.

## 2. CHARGING PROVISIONS

### 2.1 Fixed and Floating Charges and Security Interest

In consideration of the premises and of one dollar (\$1) to the Corporation now paid by the Trustee (receipt whereof is hereby acknowledged) and for the purpose of securing the due payment in lawful money of Canada of the Debentures in the principal amount of five hundred million dollars (\$500,000,000) and of interest thereon from the formal date hereof at the rate of twenty-five per cent (25%) per annum, calculated monthly and payable on demand, both before and after maturity and default, with interest on overdue interest at the same rate, and the payment of any additional amounts from time to time due hereunder to the Trustee, including but not limited to an additional amount equal to twenty-five per cent (25%) of the principal amount for costs of realization and other accessories, the Corporation hereby:

- (a) grants, assigns, mortgages and charges as and by way of a fixed and specific mortgage and charge to and in favour of the Trustee, and grants to the Trustee a security interest in, all of its present and after-acquired real and personal property, including but not limited to:
  - (i) all freehold real and immovable property now or hereafter owned or acquired by the Corporation including but not limited to the lands and premises described in Schedule B hereto, together with all buildings, erections and fixtures now or hereafter constructed or placed thereon,
  - (ii) all leasehold property now or hereafter leased by the Corporation including but not limited to the leasehold property described in Schedule C hereto, together with all buildings, erections and fixtures now or hereafter constructed or placed thereon,
  - (iii) all inventory, goods, furniture, equipment, machinery, vehicles, aircraft and other tangible personal property now or hereafter owned by or acquired by the Corporation and all replacements, attachments and accessories thereto from time to time,
  - (iv) all intangible property now or hereafter owned or acquired by the Corporation, including, but not limited to, all contract rights, chattel paper, warehouse receipts, bills of lading, documents of title, insurance policies, instruments, securities, accounts, book debts, receivables which are not book debts, choses in action, licenses, permits, franchises, leases, client lists, goodwill, patents, trademarks, trade names, copyrights, other industrial and intellectual property and the undertaking of the Corporation; and
- (b) charges as and by way of a floating charge to and in favour of the Trustee for the benefit of the Holders, and grants to the Trustee for the benefit of the Holders a security interest in all of the present and after-acquired property, undertaking and assets of the Corporation for the time being, both real and personal, movable and immovable of whatsoever nature and kind now owned or hereafter acquired (except such property and assets as are validly and effectively subject to any fixed and specific mortgages and charges created hereby), including its goodwill and uncalled capital.

Without the necessity of any further act of the Corporation or the Trustee, the mortgages, charges and security interests constituted hereby shall automatically extend to and include:



- (c) any and all renewals, replacements, substitutions, accessions, proceeds, products, additions, amendments, modifications, extensions or consolidations of or to the assets and property heretofore described;
- (d) any and all right, title and interest of the Corporation hereafter acquired in or to any real or personal property or asset of any nature whatsoever; and
- (e) any and all of the Corporation's right, title, interest, property, claims, demands, judgments, awards, proceeds and settlements or payments, including interest thereon, and the right to receive the same, at law as well as in equity or otherwise, as a result of or by way of: (i) insurance proceeds payable under all insurance policies of the Corporation or (ii) any injury or damage to or any taking, expropriation, requisitioning, conversion (voluntary or involuntary) or decrease in the value of any property or asset of the Corporation of any nature whatsoever.

The Corporation's undertaking and all its property and assets, present and future, are herein called the "mortgaged property".

## **2.2 Reservation of Last Day of Leasehold Terms**

The charge of the mortgaged property contained in Section 2.1 shall not extend or apply to the last day of the term of any lease or any agreement therefor now held or hereafter acquired by the Corporation, but should such charge become enforceable the Corporation shall thereafter stand possessed of such last day and shall hold it in trust to assign the same to any person acquiring such term or the part thereof charged in the course of any enforcement of the charge or any realization of the subject matter thereof.

## **2.3 Contracts, Rights or Licences**

The charge of the mortgaged property contained in Section 2.1 shall not extend or apply to any contract, right or licence of the Corporation, if pursuant to the terms of such contract, right or licence such contract, right or licence would automatically terminate if it was part of the mortgaged property, or would be terminable at the option of the other party to or of the grantor thereof, but should such charge become enforceable, the Corporation shall thereafter stand possessed of such contract, right or licence and shall hold it in trust to assign the same or dispose of the same to any person as requested by the Trustee. In order that the full value of all such contracts, rights and licences may be realized for the benefit of the Holders, the Corporation shall at its expense and at the request of the Trustee from time to time, take all such action and do or cause to be done all such things as shall, in the reasonable opinion of the Trustee (with advice of counsel as the Trustee considers appropriate), be necessary or proper in order that all such contracts, rights and licences shall enure to the benefit of the Holders and, to the extent reasonably possible, become subject to the charge constituted by this Deed.

## **2.4 Charge Valid Irrespective of Advance**

The security constituted hereby or intended so to be shall be effective whether the monies hereby secured or any part thereof shall be advanced before or after or at the same time as the execution and delivery of this Deed or the issue or certification of any of the Debentures.

## **2.5 Attachment**

The Corporation acknowledges that value has been given to the Corporation by the Holders in connection with the Corporation's execution and delivery of this Deed. The Corporation and the Holders have not agreed to postpone the time for attachment of the security constituted hereby which is intended to attach, as to all of the mortgaged property in which the Corporation has an interest at the time of the execution of this Deed, at such time, and as to all of the mortgaged property in which the Corporation acquires an interest after the execution of this Deed, at the time the Corporation acquires such interest.

## 2.6 Effect of Charges

The security created hereby will entitle the Trustee to have and to hold the mortgaged property and all rights hereby conferred unto the Trustee, its successors and assigns, forever; but in trust, nevertheless, and with the powers and authorities and subject to the terms and conditions mentioned and set forth herein.

## 2.7 Possession until Default

Until the security hereby constituted becomes enforceable and the Trustee determines to enforce the same, the Corporation is permitted in the same manner and to the same extent and with the same effect as if this Deed had not been executed, but subject to the express terms hereof and any other agreement between the Corporation and a Holder which relates to any obligations secured, to possess, operate, manage, use and enjoy the mortgaged property (other than any cash or investments on deposit with the Trustee) and freely to control the conduct of its business and to collect, take, retain and use the rents, incomes, profits and issues thereof.

## 2.8 Further Assurances

The Corporation hereby covenants and agrees that it will at all times do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, deeds, mortgages, transfers, assignments and assurances as the Trustee or the Holders may reasonably require for the better accomplishing and effectuating the purpose of this Deed, including the execution and delivery of indentures supplemental hereto more particularly describing the mortgaged property or to correct or amplify the description of the mortgaged property or to better assure, convey and confirm unto the Trustee any of the mortgaged property. Upon the execution of any supplemental indenture under this Section, this Deed shall be modified in accordance therewith, and each such supplemental indenture shall form part of this Deed for all purposes. Notwithstanding anything herein contained, the Trustee will not be bound to take any conveyance, assignment or transfer pursuant hereto of any property or assets that, in the opinion of counsel to the Trustee, is of an onerous character, but the Corporation shall hold any such property or assets in trust for the Trustee.

## 2.9 Liability of Trustee

Neither the Trustee nor any receiver shall (i) be responsible or liable for any debts contracted by it, for damages to persons or property, for salaries or for non-fulfilment of contracts during any period when the Trustee or any receiver shall manage or be in possession of the mortgaged property; (ii) be liable to account as mortgagee in possession or to account for anything except actual receipts or be liable for any loss on realization or for any default or omission for which a mortgagee in possession may be liable; (iii) be bound to do, observe or perform or to see to the observance or performance by the Corporation of any obligations or covenants imposed upon the Corporation; or (iv) in the case of any chattel paper, security or instrument, be obligated to preserve rights against any other persons. The Corporation hereby waives any provision of applicable law permitted to be waived by it which imposes higher or greater obligations upon the Trustee or any receiver than aforesaid.

## 2.10 Applicable Laws Exception

All rights, remedies, and powers provided herein may be exercised only to the extent that the exercise thereof does not violate any mandatory provision of applicable law and all the provisions of this Deed are intended to be subject to all mandatory provisions of applicable law which may be controlling in the premises and to be limited to the extent necessary so that they will not render this Deed invalid, unenforceable or not entitled to be recorded, registered or filed under any mandatory provisions of applicable law. If any mandatory provision of applicable law shall provide for different or additional requirements than or to those specified herein as prerequisites to or incidental to the realization, sale or foreclosure of the security or any part thereof, then, to that extent, such laws

shall be deemed to have been set forth herein at length, and any conflicting provisions hereof shall be disregarded, and the method of realization, sale or foreclosure of the security required by any such laws shall, insofar as may be necessary, be substituted herein as the method of realization, sale or foreclosure in lieu of that set forth above. Any provision hereof contrary to mandatory provisions of applicable law shall be deemed to be ineffective and shall be severable from and not invalidate any other provision of this Deed.

#### **2.11 Waivers of Applicable Laws**

- (a) To the extent not prohibited by applicable law, the Corporation hereby waives its rights, if any, under all provisions of applicable law that would in any manner, limit, restrict or otherwise affect the Trustee's rights and remedies hereunder or impose any additional obligations on the Trustee. The Corporation waives the right to receive any financing statement or any verification statement issued by any registry that confirms registration of a financing statement relating to this Deed.
- (b) To the full extent that it may lawfully do so, the Corporation hereby:
  - (i) waives and disclaims any benefit of, and shall not have or assert any right under any statute or rule of law pertaining to, the marshalling of assets or any other matter whatever, to defeat, reduce or affect the rights of the Trustee under the terms of this Deed to a sale of the mortgaged property or any part thereof or for the collection of all amounts secured by this Deed; and
  - (ii) agrees that it shall not have or assert any right or equity of redemption or any right under any statute or otherwise to redeem the mortgaged property or any part thereof after the sale hereunder to any person whether such sale is by the Trustee, any receiver or otherwise, notwithstanding, that the Trustee may have purchased same.

### **3. COVENANTS**

The Corporation hereby covenants and agrees with the Trustee for the benefit of each Holder:

#### **3.1 Principal and Interest**

That it will pay or cause to be paid, when due, the principal, interest and all other amounts secured by the Debentures.

#### **3.2 Not to Encumber**

That it will not, without the prior written approval of the Trustee or the Holders (which may be evidenced from time to time by a resolution of the Holders or, for any particular Holder, by the terms of any agreement to which the Holder and the Corporation are parties that relates to the terms of obligations secured by a pledge of the Debenture in favour of that Holder), create or permit to exist any mortgage, hypothec, charge, lien, encumbrance or other security interest or lease upon or affecting the mortgaged property or any part thereof.

#### **3.3 Comply with Environmental Law**

That it will operate its business and all of the mortgaged property in compliance with all applicable laws intended to protect the environment ("Environmental Laws").

#### **3.4 Reporting Requirements**

That it will immediately notify the Trustee after becoming aware of any release or upon the discovery of any contaminant at, upon, under, over, within or with respect to the mortgaged property which will give rise to a material report, inquiry or investigation relating to the requirements of any applicable Environmental Law and will promptly forward to the Trustee copies of all orders, notices, permits, applications or other communications and reports received from any governmental authority in connection with any applicable Environmental Law affecting or relating to the mortgaged property or the operations or activities of the Corporation or any of its subsidiaries.

#### **3.5 Preserve and Protect the Mortgaged Property**

That it will diligently maintain, use and operate the mortgaged property and shall carry on and conduct its business in a proper and efficient manner so as to preserve and protect the mortgaged property and the earnings, incomes, rents, issues and profits thereof.

#### **3.6 Governmental Requirements**

That it will duly observe and conform to all valid requirements of any governmental authority relative to any of the mortgaged property and all covenants, terms and conditions upon or under which the mortgaged property is held.

The Corporation represents and warrants to the Trustee (such representations being also for the benefit of each Holder):

#### **3.7 Absence of Hazardous Materials**

That to its knowledge (i) there are no Hazardous Materials located on, above or below the surface of any land which it occupies or controls, except those being stored in compliance with applicable laws, or contained in the soil or water constituting such land, except in compliance with applicable laws, (ii) no release, spill, leak, emission, discharge, leaching, dumping or disposal of Hazardous Materials has occurred on or from such land which, in any such case, could materially and adversely affect its financial condition, the mortgaged property or its operations or its ability to perform its obligations under the Deed, and (iii) no land that it occupies or controls has been used as a landfill or waste disposal site.

#### **3.8 Compliance with Environmental Law**

That the Corporation's business and the mortgaged property are operated in substantial compliance with applicable Environmental Laws intended to protect the environment (including, without limitation, laws respecting the disposal or emission of Hazardous Materials), to the best of its knowledge after reasonable inquiry there are no breaches thereof, and no enforcement actions in respect thereof are threatened or pending which, in any such case, could materially and adversely affect the mortgaged property or its ability to perform its obligations under this Deed.

That the Corporation shall include in any lease of any part of the mortgaged property to a third party conditions, warranties and representations substantially in the form of the conditions, warranties and representations concerning Hazardous Materials and Environmental Laws contained in this Deed.

For the purposes of this Deed, "Hazardous Materials" means any hazardous substance or any pollutant or contaminant, toxic or dangerous waste, substance or material, as defined in or regulated by any applicable law, regulation or governmental authority from time to time, including, without limitation, asbestos and polychlorinated biphenyls.

#### **3.9 Expenses, Remuneration and Indemnity**

The Corporation shall pay to the Trustee upon demand both before and after default the amount of all reasonable costs, charges, borrowings, expenses and fees of the Trustee incurred in

connection with the administration of this Deed including expenses arising in connection with Section 8.1, the repossession, holding, repairing, processing, preparing for disposition and disposing of any of the mortgaged property (including reasonable legal expenses on a solicitor and his own client basis and other expenses including expenses arising in connection with Section 8.1), together with interest from the date of demand at a rate per annum equal to the then-current rate charged by the Trustee from time to time. All amounts owing to the Trustee under or in connection with this Deed shall be secured by the mortgages and charges created in this Deed and be payable in priority to amounts secured by the Debentures.

Without limiting the foregoing, the Corporation covenants that it will pay to the Trustee reasonable remuneration for its services hereunder and will pay or reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in the administration or execution of the trusts hereby created (including the reasonable compensation and the disbursements of its counsel and all other advisers and assistants not regularly in its employ), including, without limitation, all costs incurred by the Trustee in complying with any laws applicable to trustees as a result of its acting hereunder both before any default hereunder and thereafter until all the duties of the Trustee under the trusts hereof shall be finally and fully performed, except any such expense, disbursement or advance as may arise from its negligence or wilful default. Any amount due under this Section shall bear interest from the date of demand for payment at a rate per annum equal to the rate referred to in the preceding paragraph, payable on demand. After default, all amounts so payable and the interest thereon shall be payable out of any funds coming into the possession of the Trustee or its successors in the trusts hereunder in priority to any payment of the principal of or interest or premium on the Debentures.

The Corporation hereby indemnifies the Trustee, its directors, officers, employees, and agents, and any successors and assigns against any loss, expense, claim, liability or asserted liability (including strict liability) incurred as a result of the administration of the trust created hereby, the exercise by the Trustee of any rights hereunder, the performance of any remediation by the Trustee or its agent for bodily injury, property damage, abatement, or remediation, environmental damage or impairment or any other injury or damage or any diminution in value of the mortgaged property resulting from or relating, directly or indirectly, to: (i) the presence or release of any contaminants, by any means or for any reason, on the mortgaged property, whether or not release or presence of the contaminants was under the control, care or management of the Corporation, or of a previous owner, or of a tenant, or (ii) any contaminant present on or released from any contiguous property to the mortgaged property, or (iii) the breach or alleged breach of any Environmental Laws by the Corporation, save and except that the Trustee shall only be responsible for its own negligence and wilful misconduct.

The Corporation shall at all times indemnify the Trustee, its directors, officers, employees, and agents, and any successors and assigns and save them harmless against all actions, proceedings, liability, claims, damages, reasonable costs and expenses, including legal costs whatsoever arising from the performance of its duties hereunder (unless arising from negligence, bad faith or wilful misconduct on their part) and including any action or liability brought against or incurred by any of them in relation to or arising out of any breach by the Corporation of its obligations under this Deed or by the failure of the Trustee or its agents to do such acts as may be necessary to register, perfect, release or discharge the security created hereby as the same may be registered, filed or recorded in any public office.

The agreements in this Section shall survive the termination of this Deed and the repayment of the obligations secured.

### 3.10 Registrations and Deliveries

The Corporation agrees that:

- (a) forthwith after the execution of this Deed and after the execution of each instrument supplemental or ancillary hereto, it shall register, file or record the same and/or, if applicable, a financing statement or other prescribed statement in respect thereof as

may from time to time be required by the Trustee, the Senior Holders or any other Holder where such registration, filing or recording may be necessary or desirable or of advantage in preserving or protecting the security constituted by this Deed in favour of the Trustee, the Senior Holder or such other Holder;

- (b) from time to time, it shall renew such registration, filing or recording as required to maintain the security constituted hereby as valid and effective security;
- (c) promptly after such registration, filing, recording or renewal, the Corporation shall cause to be delivered to the Trustee certificates establishing such registration, filing, recording or renewal and opinion of counsel satisfactory to the Trustee, acting reasonably, evidencing that the provisions of this Section 3.10 have been complied with in respect of this Deed or such supplemental or ancillary instrument, as the case may be;
- (d) forthwith after the execution of this Deed and after the execution of each instrument supplemental or ancillary hereto, it shall deliver to the Trustee such other documents as may be reasonably required by the Trustee to be delivered to preserve, protect and perfect the security constituted hereby and represented by such documents of title, security certificates and other documents; and
- (e) in the event that the security constituted hereby becomes enforceable as herein provided and the Trustee shall become bound to enforce the same, the Corporation will from time to time execute all such assurances and do all such things as the Trustee may reasonably require for facilitating the realization of the mortgaged property of the Corporation and for exercising all of the powers, authorities and discretion conferred on the Trustee and for confirming to any purchaser of such mortgaged property or any part thereof, whether sold by the Trustee herein or by judicial proceedings, the title to the property so sold, and it will give all notices and directions which the Trustee may consider necessary or expedient.

The Corporation shall not change its name or amalgamate with another corporation under a different name without giving at least 10 days' prior notice to the Trustee of the new name and the date upon which such change of name or amalgamation is to take effect. Within 5 business days of the change of name or amalgamation, the Corporation shall provide the Trustee with a true copy of the articles of amendment or articles of amalgamation effecting the change of name and a certificate confirming the correct name of the Corporation and that all appropriate registrations, filings or recordings have been made on behalf of the Trustee to fully and effectively maintain the perfection and priority of the security created hereby.

In the event of the amalgamation of the Corporation, this Deed, the Debentures and all other security delivered by the Corporation in connection with this Deed shall be binding on the amalgamated corporation and charge its present and future undertaking, property and assets to secure present and future debts, liabilities and obligations of the Corporation and of the amalgamated corporation to the Trustee and the Holders, all as if the amalgamated corporation had originally executed and delivered those documents.

### **3.11 Proceeds of Unauthorized Sale in Trust**

The Corporation shall, in the event the mortgaged property or any part thereof is sold or disposed of prior to the full discharge of this Deed by the Trustee, in any manner not authorized by this Deed, hold all proceeds of such sale or disposition received by the Corporation as trustee for the Trustee until the Corporation has been fully released from this Deed by the Trustee.

### **3.12 Removal of Mortgaged Property**

Prior to the removal of any of the mortgaged property from the province in which it is situated at the date of this Deed or to leasehold property, the Corporation shall effect such further

registrations and obtain such other consents and give such other security, at the sole cost and expense of the Corporation, as may be required or desirable to protect or preserve the security hereby created, and the Corporation shall forthwith notify the Trustee of the intended removal and the action proposed to be taken.

### 3.13 Performance of Covenants by Trustee

If the Corporation shall fail to perform any covenant on its part herein contained, the Trustee may in its absolute discretion perform any such covenant capable of being performed by it, but the Trustee shall be under no obligation to do so. If any such covenant requires the payment of money or if the mortgaged property or any part thereof shall become subject to any charge ranking in priority to the security hereof, the Trustee may in its absolute discretion make such payment and/or pay or discharge such charge, but shall be under no obligation to do so. All sums so paid by the Trustee shall be payable by the Corporation on demand together with interest from the date of demand at the rate referred to in Section 3.9 and shall constitute a charge upon the mortgaged property. No such performance or payment shall relieve the Corporation from any default hereunder or any consequences of such default.

### 3.14 Appointment of Monitor

If in the opinion of the Senior Holders, acting reasonably, a material adverse change has occurred in the financial condition of the Corporation, or if the Senior Holders in good faith believe that the ability of the Corporation to pay any of its obligations or to perform any other covenant contained herein has become impaired or if a default has occurred, the Trustee shall, upon written direction by the Senior Holders, by written notice to the Corporation, appoint a monitor (the "Monitor") to investigate any or a particular aspect of the Corporation or its business and affairs for the purpose of reporting to the Trustee. The Corporation shall give the Monitor its full co-operation, including full access to facilities, assets and records of the Corporation and to its creditors, customers, contractors, officers, directors, employees, auditors, legal counsel and agents. The Monitor shall have no responsibility for the affairs of the Corporation nor shall it participate in the management of the Corporation's affairs and shall incur no liability in respect thereof or otherwise in connection with the Corporation, its business and affairs or the mortgaged property. The Monitor shall act solely on behalf of the Trustee and shall have no contractual relationship with the Corporation as a consultant or otherwise. The appointment of a Monitor shall not be regarded as an act of enforcement of this Deed. All reasonable fees and expenses of the Monitor (including legal fees and disbursements on a solicitor and own client basis) shall be paid by the Corporation upon submission to it of a written invoice therefor. The Trustee may at its option upon the security hereby constituted becoming enforceable appoint or seek to have appointed the Monitor as receiver, liquidator, or trustee in bankruptcy of the Corporation or the mortgaged property or any part thereof.

### 3.15 Insurance

That it will cause all its property which is of a character usually insured by businesses operating properties of a similar nature to be properly insured and kept insured with reputable insurers against loss or damage by fire or other hazards of the nature and to the extent that such properties are usually insured by businesses operating properties of a similar nature in the same or similar localities and shall maintain such insurance with loss if any payable to the Trustee and shall deliver to the Trustee evidence of such insurance satisfactory to the Trustee. Proceeds of insurance shall be dealt with by the Trustee in accordance with resolutions of the Senior Holders, or in the absence of such resolutions, in accordance with Section 5.4.

### 3.16 Taxes and Other Charges

That it shall pay all rents, taxes, rates, levies, assessments and government fees or dues levied, assessed or imposed in respect of the mortgaged property or any part thereof (collectively "Taxes") as and when the same shall become due and payable and shall pay all charges, liens and other encumbrances on the mortgaged property (collectively "Charges") as and when the same shall become due and payable. If the Corporation does not pay any Taxes or Charges as and when the

same shall become due and payable, the Trustee may, at its option, elect to pay any such amounts and charge to the Corporation all amounts so paid as additional amounts secured under this Deed, together with interest thereon from the date of payment by the Trustee of any such amounts at a rate per annum equal to the then-current rate charged by the Trustee from time to time.

### 3.17 Information

That it will furnish to the Trustee such information (including an annual certificate of compliance) with respect to the mortgaged property and the insurance thereon as the Trustee may from time to time require, and shall give written notice to the Trustee of all litigation before any court, administrative board or other tribunal affecting the Corporation or its property. An annual certificate of compliance means a certificate signed by the president or a vice-president of the Corporation, confirming compliance with the covenants set forth in this Article 3 and specifically that (i) no default as described in Section 4.1 of this Deed has occurred and is continuing and no event has occurred and is continuing which, with the passage of time or giving of notice, or both, would constitute such a default, and (ii) all the covenants of the Corporation contained in this Article 3 and all of the conditions contained in this Deed to be complied with by the Corporation have been fully complied with to the date thereof.

## 4. DEFAULT

### 4.1 Security Becoming Enforceable

The security hereby constituted shall immediately become enforceable and the floating charge created pursuant to Section 2.1(b) hereof shall become a fixed and specific mortgage, charge, pledge, assignment, security interest and hypothec on the property charged thereby if:

- (a) payment of part or all of the obligations secured by a pledge of a Senior Debenture is demanded in accordance with any agreement to which the Corporation is a party relating to such obligations secured, and payment is not made on demand;
- (b) the Corporation makes default of any other covenant or condition of this Deed for the benefit of the Senior Holders or the Trustee and default continues for a period of 30 days after the Trustee sends notice to the Corporation to correct the default; or
- (c) payment of the principal amount and interest accrued on all Debentures has been demanded by the Trustee pursuant to Section 5.1(b) if any Holder of Debentures other than a Senior Holder (a "Subordinated Holder", where Debentures held by the Subordinated Holders are the "Subordinated Debentures") has proceeded in accordance with Section 5.1(b) of this Deed.

### 4.2 Waiver

The Trustee (on the direction of the Senior Holders) or the Senior Holders may by notice to the Corporation waive any default of the Corporation on such terms and conditions as the Senior Holders may determine, but no such waiver shall be taken to affect any subsequent default or the rights of the Senior Holders arising therefrom nor shall it detract from the rights of any Subordinate Holder under the terms of any agreement relating to its obligations secured with respect to such default. No waiver of any default by a Subordinate Holder shall in any way affect the rights of the Senior Holders with respect to such default.

## 5. REMEDIES IN CASE OF DEFAULT

### 5.1 Demand Payment

- (a) If the security hereby constituted becomes enforceable as provided in Sections 4.1(a) or (b), the Trustee upon being so directed by resolution of the Senior Holders shall demand payment of the



principal amount of and interest accrued on all Debentures and the same shall forthwith become immediately due and payable to the Trustee.

(b) If (i) payment of part or all of the obligations, which for greater certainty shall include, without limitation, any principal amount together with accrued interest, that is secured by a pledge of a Subordinated Debenture (the "Defaulted Debenture") is demanded in accordance with any agreement to which the Subordinated Holder or Holders of the Defaulted Debenture (the "Demanding Holder") and the Corporation are parties relating to such obligations secured, and payment is not made on demand, (ii) the Demanding Holder (or any agent duly authorized to do so on behalf of such Holder) gives written notice of the demand for payment of such obligations secured to the Trustee (who shall immediately forward such notice to all of the other Holders), (iii) the Demanding Holder (or any agent duly authorized to so act on behalf of such Holder) provides to the Trustee (x) a certificate by the Demanding Holder certifying that the Demanding Holder is entitled under the terms of an agreement to which the Demanding Holder (or such agent) and all Senior Holders (or an agent on their behalf) are party (the "Intercreditor Agreement"), to require that payment of the Debentures be demanded and the security hereby constituted be enforced notwithstanding the priority of the Senior Holders, and (y) a resolution of the Demanding Holder directing that the Trustee demand payment of the principal amount of and interest on all Debentures, (which certificate and resolution shall immediately be forwarded by the Trustee to all of the other Holders), and (iv) at least 5 business days have passed after the Demanding Holder (or any agent duly authorized to so act on behalf of such Holder) has given to the Trustee the certificate and resolution referred to in (iii) above and the Trustee has forwarded copies thereof to all of the other Holders, then the Trustee, upon being so directed by the Demanding Holder (or any agent duly authorized to so act on behalf of such Holder) shall demand payment of the principal amount of and interest accrued on all Debentures and the same shall forthwith become immediately due and payable to the Trustee.

(c) In the event that the Senior Holders have duly exercised their rights under Section 5.1(a) hereof (whether or not a Subordinated Holder has duly exercised its rights under Section 5.1(b) hereof), it is agreed that:

- (i) the Trustee shall have regard to the instructions and directions of the Senior Holder only in exercising rights and remedies under this Deed and shall have no duty or obligation hereunder to act in accordance with the instructions or directions of any other Holder; and
- (ii) in giving the Trustee instructions and directions in pursuance of its rights under paragraph (i) above, the Senior Holders shall act in good faith, and not with the sole purpose of defeating, delaying, hindering or otherwise impeding the repayment of the Subordinated Holders, but nothing in this Deed shall impose on the Senior Holders any greater duty to the Subordinated Holders or the Corporation than is owed by a senior creditor to a junior creditor or to a debtor in the absence of any express provision.

(d) In the event that a Subordinated Holder (or an agent duly authorized by a Subordinated Holder) has duly exercised its rights pursuant to Section 5.1(b) hereof and no Senior Holder has exercised its rights under Section 5.1(a) hereof, then (but for so long only as no Senior Holder has exercised its rights under Section 5.1(a) hereof):

- (i) the Trustee shall have regard to the instructions and directions of the Subordinated Holder only in exercising rights and remedies under this Deed and shall have no duty or obligation hereunder to act in accordance with the instructions or directions of any other Holder;
- (ii) in giving the Trustee instructions and directions in pursuance of its rights under paragraph (i) above, the Subordinated Holder shall act in good faith; and

- (iii) while nothing shall prevent the Senior Holders from exercising their rights under Section 5.1(a) hereof if they are entitled to do so as between the Corporation and themselves, until they have done so, the Senior Holders shall not do any of the following without the consent of the Subordinated Holders: (A) give instructions and directions to the Trustee relating to the exercise of those rights and remedies being exercised by the Subordinated Holders in accordance with this Section 5.1(d), (B) direct the Trustee to waive any defaults pursuant to Section 4.2 of this Deed, (C) unreasonably withhold or delay its consent to the appointment of a replacement Trustee requested by the Subordinated Holders, or (D) exercise any of the rights set out in Sections 9.1(a), (b), (e) and (f) of this Deed.

## 5.2 Remedies

If the security hereby constituted becomes enforceable as herein provided, and the Corporation has failed to pay to the Trustee on demand the principal amount of and interest accrued on the Debentures:

- (a) the Trustee may in its discretion take possession of the whole or any part of the mortgaged property and carry on all or any part of the business of the Corporation relating to the mortgaged property and borrow money on the security of the mortgaged property in priority to the security hereby created for the purpose of maintenance, preservation or protection of the mortgaged property or for the carrying on of all or any part of the business of the Corporation relating to the mortgaged property and in so acting the Trustee shall have the power to exclude the Corporation, its servants and agents from the mortgaged property;
- (b) whether or not the Trustee has exercised any or all of its rights under Section 5.2(a), the Trustee may sell, lease or otherwise dispose of the whole or any part of the mortgaged property at public auction, by private tender or private sale, either for cash or upon credit and upon such terms and conditions as the Trustee may determine, and the Trustee may execute and deliver to any purchaser of the mortgaged property or any part thereof good and sufficient deeds and documents for the same, and, without limiting the powers granted to the Trustee, the Trustee is irrevocably constituted the attorney of the Corporation for the purpose of making any such sale and executing such deeds and documents (which appointment, being coupled with an interest, shall survive the bankruptcy of the Corporation);
- (c) the Trustee may also exercise any of the other rights to which the Trustee or the Holders are entitled including the right to take proceedings in any court of competent jurisdiction for the appointment of a receiver or receiver and manager (a "receiver"), for the sale of the mortgaged property or any part thereof or for foreclosure, and the right to take any other action, suit, remedy or proceeding authorized or permitted under this Deed or by law or in equity in order to enforce the security constituted by this Deed; and
- (d) the Trustee may also by instrument in writing appoint a receiver of the mortgaged property or of any part thereof and may remove any receiver so appointed and appoint another in his stead, and such receiver shall have the same rights, powers and authorities as are conferred on the Trustee by this Section 5.2. In addition the following provisions shall apply:
  - (i) such appointment shall be made in writing signed by the Trustee and such writing shall be conclusive evidence for all purposes of such appointment; the Trustee may from time to time in the same manner remove any receiver so appointed and appoint another in its stead; in making any such appointment the Trustee shall be deemed to be acting as the attorney for the Corporation and the Corporation hereby consents to the appointment of a receiver;

- (ii) any such appointment may be limited to any part or parts of the mortgaged property, or may extend to the whole thereof;
- (iii) every receiver may, in the discretion of the Trustee, be vested with all or any of the powers, rights, benefits, discretions, protection and relief of the Trustee hereunder and shall be vested with all of the powers and protections afforded to a receiver under applicable law;
- (iv) the Trustee may from time to time fix the reasonable remuneration of the receiver and direct the payment thereof, in priority to the other obligations secured hereby, out of the mortgaged property, the income therefrom or the proceeds thereof;
- (v) the Trustee may from time to time require any receiver to give security for the performance of its duties and may fix the nature and amount thereof, but the Trustee shall not be bound to require such security;
- (vi) every such receiver may, with the consent in writing of the Trustee, borrow money for the purpose of carrying on the business of the Corporation in respect of any part of the mortgaged property or for the maintenance, protection or preservation of the mortgaged property or any part thereof, and any receiver may issue certificates (in this Section called "Receiver's Certificates"), for such sums as will in the opinion of the Trustee be sufficient for carrying out the foregoing, and such Receiver's Certificates may be payable either to order or bearer and may be payable at such time or times as the Trustee may consider expedient, and shall bear such interest as shall therein be declared and the Receiver may sell, pledge or otherwise dispose of the same in such manner as the Trustee may consider advisable and may pay such commission on the sale thereof as the Trustee may consider reasonable, and the amounts from time to time payable by virtue of such Receiver's Certificates shall at the option of the Trustee form a charge upon the mortgaged property in priority to this Deed;
- (vii) every receiver shall, regarding its acts or omissions, be deemed the agent of the Corporation, and in no event the agent of the Trustee and the Trustee shall not, in making or consenting to such appointment, incur any liability to any receiver for its remuneration or otherwise howsoever;
- (viii) except as may be otherwise directed by the Trustee, all monies from time to time received by any receiver shall be paid over to the Trustee; and
- (ix) the Trustee may pay over to any receiver any monies constituting part of the mortgaged property to the extent that the same may be applied for the purposes hereof by such receiver and the Trustee may from time to time determine what funds any receiver shall be at liberty to keep on hand with a view to the performance of its duties as such receiver.

In the exercise of their rights, powers and authorities hereunder, the Trustee and any receiver appointed by the Trustee shall be the agent of the Corporation, and the Trustee and the Holders shall not be in any way responsible for any misconduct or negligence of any such receiver, nor shall the Holders be in any way responsible for any misconduct or negligence of the Trustee.

### 5.3 Public Sale

The Trustee, the Holders or any agent or representative thereof, may become purchasers at any public sale of the mortgaged property, whether made under a power of sale provided for in this Deed or pursuant to judicial proceedings.

#### 5.4 Application of Proceeds of Realization of Security

Except as otherwise provided in this Deed, by law or by order of a court or by any resolution of the Holders, any and all monies arising from the enforcement of any remedy provided for herein, including, without limitation, the carrying on of the business of the Corporation and the sale or other realization of the whole or any part of the mortgaged property, whether under any sale by the Trustee or by judicial process or otherwise, shall be paid over to the Trustee, shall be held by the Trustee and, together with any other monies then or thereafter in the hands of the Trustee available for the purpose, shall be applied by the Trustee as follows:

- (a) firstly, if and to the extent that the Trustee deems that it is in the interest of the Holders generally and the same is not inconsistent with any resolution of the Senior Holders, to pay all charges and liens on the mortgaged property ranking (or capable of ranking) in priority to the security constituted by this Deed or to keep in good standing any such prior lien;
- (b) secondly, to pay all amounts due to the Trustee hereunder, including without limitation, costs, charges and expenses referred to in Section 3.9;
- (c) thirdly, to pay the outstanding principal amount secured by the Senior Debentures, to pay all interest secured by the Senior Debentures including interest on overdue interest accrued but unpaid to the date of the demand for payment of the amounts secured by such Senior Debentures and to pay all interest including interest on overdue interest accruing after the date of demand for payment and remaining unpaid of such amounts rateably and proportionately, having regard to the amount of the obligations secured by such Senior Debentures, rather than the face amount of any Senior Debenture that has been pledged in accordance with Section 1.3 above;
- (d) fourthly, after payment of all amounts secured by, and cancellation of, all Senior Debentures, to pay, in order as they succeed to being Senior Debentures, all amounts secured by each series of Subordinated Debentures in the same manner as in Section 5.4 (c) above;
- (e) fifthly, in payment of all other amounts at any time and from time to time remaining outstanding and unpaid under this Deed; and
- (f) sixthly, the surplus, if any, of such money shall be paid to the Corporation or its assigns or otherwise in accordance with applicable law.

#### 5.5 Duty to Inquire

No person dealing with the Trustee, its agents or any receiver appointed pursuant hereto (or pursuant to any agreement to which the Corporation and one or more of the Holders are parties) shall be concerned to inquire whether the powers which the Trustee, its agents or any receiver appointed pursuant hereto (or pursuant to any agreement to which the Corporation and one or more of the Holders are parties) is purporting to exercise have become enforceable, or whether any money remains due upon the security constituted by this Deed, or as to the necessity or expediency of the stipulations and conditions subject to which any sale shall be made, or otherwise as to the propriety or regularity of any sale or any other dealing by the Trustee with the mortgaged property or any part thereof or to see to the application of any money paid to the Trustee; and, in the absence of fraud on the part of such person, such dealings shall be deemed to be within the powers conferred on the Trustee and to be valid and effective accordingly.

#### 5.6 Possession

The Corporation shall on demand by the Trustee or any receiver yield up possession of the mortgaged property or any part thereof as demanded by the Trustee whenever the Trustee shall have a right to exercise any rights or remedies under Section 5.2 and put no obstacle in the way of, but

facilitate by all legal means, the actions of the Trustee or any receiver hereunder and not interfere with the carrying out of the powers hereby granted to the Trustee or any appointed receiver.

#### 5.7 Remedies Not Exclusive

No right, power or remedy herein conferred upon or reserved to the Trustee or any receiver is intended to be exclusive of any other right, power or remedy or remedies, and each and every right, power and remedy shall, to the extent permitted by applicable law, be cumulative and shall be in addition to every other right, power or remedy given hereunder or now or hereafter existing at law, in equity or by statute. No delay or omission of the Trustee in the exercise of any right, power or remedy accruing upon any default shall impair any such right, power or remedy or shall be construed to be a waiver of any such default or an acquiescence therein. Every right, power and remedy given to the Trustee or to a receiver by this Deed or under applicable law may be exercised from time to time and as often as may be deemed expedient by the Trustee or such receiver, as applicable.

#### 5.8 Power of Attorney

The Corporation hereby irrevocably constitutes and appoints the Trustee its true and lawful attorney and agent, with full power and authority in the Corporation's name, place and stead from time to time to do all acts and things and execute and deliver all share transfers, certificates, proxies, resolutions, consents, assignments, transfers, conveyances and agreements, in such form as the Trustee considers necessary or desirable to do all things which the Corporation is required to sign, execute and do hereunder if the Corporation has failed to sign, execute or do the same and generally to use the name of the Corporation, as applicable, in the exercise of all or any of the powers hereby conferred on the Trustee, with full powers of substitution and revocation; provided that this power of attorney may not be exercised by the Trustee until the security constituted hereby shall have become enforceable. Such appointment and power of attorney is hereby declared by the Corporation to be an irrevocable power coupled with an interest.

#### 5.9 Restriction on Corporation and its Officers and Directors

Upon the Corporation receiving notice from the Trustee of the taking of possession of the mortgaged property or the appointment of a receiver, all the powers, functions, rights and privileges of each of the directors and officers of the Corporation with respect to the properties, business and undertaking of the Corporation shall cease unless specifically continued by the written consent of the Trustee.

### 6. DISCHARGE

6.1 Subject to Section 7, this Deed and the rights hereby granted (other than the Trustee's rights under Section 3.9 above) shall cease, determine and be void, and the Trustee shall at the request and expense of the Corporation cancel and discharge the mortgages and charges of this Deed (including the additional security provided for in Section 10 (the "Additional Security")) and execute and deliver to the Corporation such deeds or other instruments as shall be requisite therefor, if the Corporation first satisfies the Trustee that it has paid the principal amount and interest secured by the Debentures and has otherwise observed and performed the terms and conditions of this Deed and the Additional Security and has otherwise satisfied all obligations secured, or that all of the Debentures have been validly cancelled as contemplated in Section 1.6.

6.2 The registrar of any registration division in which any mortgaged property is situate shall discharge and cancel the registration of any mortgage, pledge or charge, or transfer or giving in payment created hereby or by the Additional Security or hereafter created under the provisions hereof upon the registration of any discharge, release or document to that effect signed by the Trustee, without being obliged to see that any of the conditions of this Deed or of the Additional Security have been fulfilled.

## 7. CONTINUING AND ADDITIONAL SECURITY

7.1 The Debentures and the security created by this Deed shall be effective whether or not any monies or liabilities secured by this Deed are advanced or incurred before or after the date of this Deed, and shall not be considered as satisfied or discharged by any intermediate payment of the whole or part of the obligations secured by the pledge of the Debentures issued under this Deed but shall constitute and be a continuing security to the Holders for a current or running account and shall be in addition to and not in substitution for any other security now or hereafter held by the Holders or any of them. The remedies of the Trustee under this Deed may be exercised from time to time separately or in combination and are in addition to and not in substitution for any other rights of the Trustee or the Holders however created.

## 8. TRUSTEE

### 8.1 Acceptance by Trustee

The Trustee hereby accepts the trusts declared and provided in this Deed and agrees to perform the trusts upon the terms and conditions of this Deed, subject to the following:

- (a) the Trustee may appoint such agents and employ or retain, in relation to this Deed, such lawyers, accountants, valuers, engineers, architects, appraisers, or such other experts as it may reasonably require in the circumstances and for the purpose of discharging its duties hereunder and shall be entitled to pay reasonable compensation for the advice or assistance so obtained, but nevertheless the Trustee shall not be obliged to act on any advice or assistance so obtained. The Trustee may act and shall be protected in acting in good faith on the opinion or the advice of or information obtained from any counsel (including where appropriate counsel acting for the Corporation or any Holder acceptable to the Trustee), accountant, valuator, engineer, architect, appraiser or other expert or advisor, in each case selected by the Trustee using reasonable care, in relation to any matter arising in connection with the administration of this Deed;
- (b) in respect of any direction, authorization, statement of fact, copy of by-law, resolution or other proceeding or writing which the Trustee may require from the Corporation, the Trustee shall be entitled to accept and act upon the same, provided the said documents bear the signature of any officer or director of the Corporation;
- (c) the Trustee shall be accountable only for reasonable diligence in respect of the trusts hereby conferred upon it and shall not be accountable for any act or default of any agent or other person engaged by the Trustee for the performance of any duty or duties hereunder (except employees of the Trustee), provided the Trustee shall have selected such agent or person with reasonable care;
- (d) subject to any resolution of the Holders (or the Senior Holders where specified in this Deed), the Trustee shall as regards all the trusts, powers, authorities and discretion vested in it have absolute and uncontrolled discretion as to the exercise thereof, whether in relation to the manner or as to the mode and time for the exercise thereof, and in the absence of fraud, negligence or wilful misconduct, it shall in no way be responsible for any loss, costs, damages or inconvenience that may result from the exercise or non-exercise thereof;
- (e) the Trustee shall not be bound to take any steps to enforce any of the covenants on the part of the Corporation contained in the Debentures, except insofar as it may be required to do so by the Senior Holders (or the Subordinated Holders pursuant to Section 5.1(b)) in writing upon being furnished with an indemnity reasonably satisfactory to the Trustee;

- (f) the obligation of the Trustee to commence or continue any act, action or proceedings for the purpose of realizing the collateral or for the enforcement of any covenant or obligation under or arising out of these presents or the Debentures shall, at the option of the Trustee, be conditional upon the Holders furnishing, when requested in writing by the Trustee, sufficient funds to commence or continue such action or proceedings and an indemnity satisfactory to the Trustee to protect and hold harmless the Trustee against costs, charges and expenses and liabilities to be incurred thereby and any loss and damage it may sustain by reason thereof;
- (g) the Trustee may, but shall not be obliged to, enter onto the mortgaged property to take such actions as the Trustee may in its sole discretion deem necessary or advisable to clean up, remediate, encapsulate, remove, resolve, or minimize the impact of, or otherwise deal with, any contaminants or breaches of Environmental Laws which could in the opinion of the Trustee jeopardize the security interest in the mortgaged property created by this Deed;
- (h) the Trustee shall have no responsibility to supervise or have control over the conduct of the Corporation's environmental practices, nor shall any action or inaction by the Trustee be construed as exercising care, control or management over the mortgaged property; and
- (i) nothing in this Deed shall be deemed to make the Trustee responsible for failure to obtain or maintain adequate or any insurance coverage for the mortgaged property or to ensure that such insurance is obtained and maintained by the Corporation, or for any loss arising from any defects in any policy or because of the failure of any insurer to pay for any loss or damage insured against, and the Trustee shall be entitled to request, and rely absolutely upon, a certificate of an officer of the Corporation that the insurance carried by the Corporation from time to time is in compliance with all relevant requirements of this Deed.

#### 8.2 Trustee not Required to Give Security

The Trustee shall not be required to give any bond or security in respect of the execution of the trusts and powers of this Deed or otherwise in respect of this Deed.

#### 8.3 Protection of Trustee

By way of supplement to the provisions of any law for the time being relating to trustees, it is expressly declared and agreed as follows:

- (a) the Trustee shall not be liable for or by reason of any failure or defect of title to, or encumbrance upon, the mortgaged property;
- (b) the Trustee shall not be liable for or by reason of any statements of fact or recitals in this Deed, or in the Debentures (except in the Certificate of the Trustee thereon) or in any document ancillary or supplemental hereto or thereto, or required to verify the same, but all such statements or recitals are and shall be deemed to be made by the Corporation;
- (c) nothing herein or in the Debentures shall impose any obligation on the Trustee or any Holders to see to or to require evidence of the registration or filing or renewal of this Deed, any of the Debentures or any other instrument ancillary or supplemental hereto or thereto or any other deed or writing by way of mortgage or charge upon the mortgaged property or any part thereof or to procure any further, other or additional instrument of further assurance or to do any other act for the continuance of the security hereof or encumbrance or for giving notice of the existence of such security or for extending or supplementing the same;

- (d) the Trustee shall not be bound to give notice to any person or persons of the execution hereof, or the security constituted hereby or in any way to interfere with the conduct of the business of the Corporation, unless and until the security hereby constituted shall have become enforceable and the Trustee shall have become bound to enforce the same;
- (e) the Trustee shall not incur any liability or responsibility whatever in consequence of permitting or suffering the Corporation, its successors or assigns, to retain or be in possession of any part of its mortgaged property and to use and enjoy the same unless herein or in the Debentures expressly otherwise provided; nor shall the Trustee be or become responsible or liable for any destruction, deterioration, loss, injury or damage which may be done or occur to the mortgaged property by the Corporation, its agents or servants, or by any other person or be in any way responsible for the consequences of any breach on the part of the Corporation of, or to inquire as to the performance by the Corporation of, any of the covenants herein or in the Debentures contained or of any acts of the agents or servants of the Corporation;
- (f) unless otherwise required by law, the Trustee shall not be liable by reason of any entry into possession of the mortgaged property or any part thereof to account as mortgagee in possession or for anything except actual receipts or be liable for any loss on realization or for any default or omission for which a mortgagee in possession might be liable save such as may be caused by its own fraud, negligence or wilful misconduct;
- (g) the Trustee on its own behalf or in any other capacity, may buy, lend upon and deal in shares in the capital stock of the Corporation and generally may contract and enter into financial transactions with the Corporation without being liable to account for any profit made thereby;
- (h) none of the provisions contained in this Deed shall require the Trustee to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers unless indemnified in accordance with this Deed;
- (i) the Trustee may, before commencing or at any time during the continuance of any such act, action or proceeding, require the Holders at whose instance it is acting to deposit with the Trustee the Debentures held by them, for which Debentures the Trustee shall issue receipts;
- (j) the Trustee shall not be responsible or liable in any manner whatsoever for the sufficiency, correctness, genuineness or validity of any security deposited with it, including any stock transfer power of attorney; and
- (k) in the exercise of its rights, duties and obligations hereunder the Trustee may, if acting in good faith, rely, as to the truth of the statements and accuracy of the opinions expressed therein, upon statutory declarations, opinions, reports or certificates furnished pursuant to any covenant, condition or requirement of this Deed or required by the Trustee to be furnished to it in the exercise of its rights and duties hereunder, provided that the Trustee examines such statutory declarations, opinions, reports or certificates and determines, acting in good faith, that they comply with any applicable requirements of this Deed.

#### 8.4 Trustee's Obligation to Act

Unless and until the Trustee is required to do so under the terms of this Deed, the Trustee shall not be bound to give any notice or to take any act, action or proceeding by virtue of the powers conferred on it by this Deed; nor shall the Trustee be required to take notice of an event of default under this Deed, other than in payment of any monies required by any provisions hereof to be paid



to it. Unless and until notified in writing of such events of default or such default and in the absence of any such notice, the Trustee may assume that the Corporation is not in default hereunder and that no default has been made with respect to the payment of principal or interest under the Debentures or in the observance of performance or any of the covenants, agreements or conditions contained herein.

The right and obligation of the Trustee to commence or continue an act, action or proceeding for the purpose of enforcing any rights of the Trustee or the Holders hereunder shall be conditional on (i) the Trustee receiving a resolution from the Senior Holders (or the Subordinated Holders (or an agent on their behalf) pursuant to Section 5.1(b) exercised in accordance with Section 5.1(d)) and (ii) compliance with Section 8.1 (f).

#### **8.5 Resignation of Trustee**

The Trustee may resign its trust and be discharged from all further duties and liabilities hereunder by giving to the Corporation not less than 30 days' notice in writing or such shorter notice as the Corporation may accept as sufficient. The Senior Holders shall have the power at any time to remove the Trustee and to appoint a new Trustee. In the event of the Trustee resigning or being removed as aforesaid or being dissolved, becoming bankrupt, going into liquidation or otherwise becoming incapable of acting hereunder, the Corporation shall forthwith appoint a new Trustee unless a new Trustee has already been appointed by the Senior Holders; failing such appointment by the Corporation, the retiring Trustee (at the Corporation's expense) or any Senior Holder may apply to a Judge of the Court of Queen's Bench of Manitoba, on such notice as such Judge may direct, for the appointment of a new Trustee, but any new Trustee so appointed by the Corporation or by the Court shall be subject to removal as aforesaid by the Senior Holders. Any new Trustee appointed under these provisions shall be a corporation authorized to carry on the business of a trust company in the Province of Manitoba.

#### **8.6 Powers of New Trustee**

Any new Trustee appointed hereunder shall execute an instrument accepting such appointment hereunder and deliver one counterpart or notarial copy thereof to the Corporation and one counterpart or notarial copy thereof to the Trustee last in office and the Holders shown on the Trustee's register, and thereupon such new Trustee without further act, deed or conveyance shall become vested with all estates, properties, rights, powers and trusts of its predecessor in the trusts hereunder, with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of the successor Trustee or of the Corporation, the Trustee ceasing to act shall execute and deliver an instrument or instruments assigning and transferring to such successor Trustee, upon the trusts herein expressed, all the said property and assets and all rights, powers and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver all property and money held by such Trustee to the successor Trustee so appointed in its place. Should any deed, conveyance or instrument in writing from the Corporation be required by any new Trustee for more fully and certainly vesting in and confirming to it such estates, properties, rights, powers and trusts, then any and all such deeds, conveyances and instruments in writing shall, on request of said new Trustee, be made, executed, acknowledged and delivered by the Corporation. At the request of the Corporation or the new Trustee, the retiring Trustee, upon payment of the amounts, if any, due to it pursuant to Section 3.9, shall duly assign, transfer and deliver to the new Trustee all property and money held and all records kept by the retiring Trustee hereunder or in connection herewith.

#### **8.7 Corporate Re-organization of Trustee**

Any company into which the Trustee may be merged or with which it may be consolidated or amalgamated, or any company resulting from any merger, consolidation or amalgamation to which the Trustee shall be a party, shall be the successor Trustee under this Deed without the execution of any instrument or any further act.

#### 8.8 Evidence

The Corporation shall furnish to the Trustee evidence of compliance with the conditions provided for in this Trust Deed relating to any action or step required or permitted to be taken by the Corporation or the Trustee under this Trust Deed or as a result of any obligation imposed under this Trust Deed, including, without limitation, the issue, certification and delivery of Debentures hereunder, the satisfaction and discharge of this Trust Deed and the taking of any other action to be taken by the Trustee at the request of or on the application of the Corporation, forthwith if and when:

- (i) such evidence is required by any other Section of this Trust Deed to be furnished to the Trustee in accordance with the terms of this Section; or
- (ii) the Trustee, in the exercise of its rights and duties under this Trust Deed, gives the Corporation written notice requiring it to furnish such evidence in relation to any particular action or obligation specified in such notice.

Such evidence shall consist of:

- (A) a certificate of an officer of the Corporation stating that any such condition has been complied with in accordance with the terms of this Trust Deed;
- (B) in the case of any such condition compliance with which is, by the terms of this Trust Deed, made subject to review by legal counsel, an opinion of counsel to the Trustee that such condition has been complied with in accordance with the terms of this Trust Deed; and
- (C) in the case of any such condition compliance with which is, by the terms of this Trust Deed, made subject to review or examination by an auditor or accountant, an opinion or report of the auditors of the Corporation or any accountant licenced under the applicable laws of the Province of Manitoba based on the examinations or enquiries required to be made under the terms of this Trust Deed, in each case approved by the Trustee, that such condition has been complied with in accordance with the terms of this Trust Deed.

Whenever such evidence relates to a matter other than the issue, certification and delivery of Debentures, the satisfaction and discharge of this Trust Deed or the taking of any other action to be taken by the Trustee at the request or on the application of the Corporation, and except as otherwise specifically provided herein, such evidence may consist of a report or opinion of any solicitor, auditor, accountant, engineer or appraiser or any other person whose qualifications give authority to a statement made by him, provided that if such report or opinion is furnished by a director, officer or employee of the Corporation it shall be in the form of a certificate satisfactory to the Trustee (acting reasonably). Such evidence shall be, so far as appropriate, in accordance with the immediately preceding paragraph of this section.

Each statutory declaration, certificate, opinion or report furnished to the Trustee as evidence of compliance with a condition provided for in this Trust Deed shall include a statement by the person giving the evidence:

- (a) declaring that he has read and understands the provisions of this Trust Deed relating to the condition in question;
- (b) describing the nature and scope of the examination or investigation upon which he based the statutory declaration, certificate, statement or opinion; and
- (c) declaring that he has made such examination or investigation as he believes is necessary to enable him to make the statements or give the opinions contained or expressed herein.

Upon the demand of the Trustee, the Corporation shall furnish the Trustee with evidence in such form as the Trustee may reasonably require as to compliance with any condition contained in this Trust Deed relating to any action required or permitted to be taken by the Corporation or as to any other matter referred to herein.

#### 8.9 Action By Trustee to Protect Interests

The Trustee shall have power to institute and to maintain such actions and proceedings as it may consider necessary or expedient to preserve, protect or enforce its interests and the interests of the Holders.

#### 8.10 Duties of Trustee

The Trustee, in exercising its powers and discharging its duties hereunder, shall:

- (i) act honestly and in good faith with a view to the best interests of the Holders;
- (ii) exercise the care, diligence and skill of a reasonably prudent trustee; and
- (iii) act reasonably wherever such standard is stipulated herein and otherwise shall act as required by law.

### 9. RESOLUTIONS OF HOLDERS

#### 9.1 Powers of the Holders

The powers of the Holders shall be exercisable by the Senior Holders only, except (i) as expressly provided in Sections 3.2, 3.10(a), 5.1(b) and 5.1(d) of this Deed, and (ii) as to matters set forth in paragraphs (c), (d), (e) and (g) below which shall be also exercisable by Subordinated Holders as described in those paragraphs, and include but are not limited to the following powers exercisable from time to time by resolution of the Senior Holders:

- (a) the power to require the Trustee to refrain from enforcing any covenant on the part of the Corporation herein or to refrain from exercising any of the powers set forth herein and conferred on the Trustee or to direct the Trustee to waive any default or defaults on the part of the Corporation on such terms as may be deemed advisable or to cancel any declaration or waiver previously made by the Trustee under this Deed;
- (b) power to remove a Trustee from office and to appoint a new Trustee;
- (c) power to assent to any judgment, compromise or arrangement by the Corporation with any creditor, creditors or class or classes of creditors or with the holder(s) of any shares or securities of the Corporation, which shall also require the approval of the Holders of each series of Subordinated Debentures in respect of any judgment, compromise or arrangement affecting their respective Debentures;
- (d) power to assent to any modification of or change in or addition to or deletion from the rights of the Holders or the provisions contained in this Deed or any instrument ancillary or supplementary hereto or thereto or any agreement forming part of the mortgaged property which shall be agreed by the Corporation and to authorize the Trustee to concur in and execute any indenture supplemental to this Deed or any agreement supplemental to any instrument embodying any such modification, change, addition, deletion or to concur in and execute any deeds, documents, or writings authorized by such resolution, which shall also require the approval of the Holders of each series of Subordinated Debentures in respect of any such modification, change, addition, deletion affecting their respective Debentures;

- (e) power to approve the release of the Corporation and of the whole or any part of the mortgaged property from the security constituted hereby, which shall also require the approval of the Holders of each series of Subordinated Debentures;
- (f) power to authorize the Trustee to execute and deliver such form of priority agreement as may reasonably be requested by the Corporation to evidence the priority of any permitted liens which are permitted by the terms of any agreements entered into with all of the Holders to rank prior to the security constituted hereby; and
- (g) power to issue additional Debentures pursuant to Section 1.1, which shall also require the approval of the Holders of each series of Subordinated Debentures, which consent, in the case of the Subordinated Holders, shall not be unreasonably withheld.

The powers of the Holders shall be deemed to be several and cumulative and not dependent on each other and the exercise of any one or more of such powers, or in any combination of such powers, from time to time, shall not be deemed to exhaust the rights of the Holders to exercise such power or powers, or combination of powers thereafter from time to time.

#### 9.2 Resolutions of the Holders

The powers specified in Section 9.1 of this Deed and every other power conferred upon the Senior Holders or Subordinated Holders, as the case may be, by any provisions of this Deed or the Debentures or any agreement ancillary or supplemental hereto or thereto shall be exercised by resolution passed in the following manner:

- (a) the substance of any resolution may be embodied in an instrument in writing and such resolution shall be deemed to have been passed when such instrument has been executed by the Senior Holders or Subordinated Holders, as the case may be, holding an aggregate of more than 66 2/3% of the principal amount of all of the outstanding Debentures in the relevant series;
- (b) any such instrument, and any requisition or other instrument to be executed by any Holders under any provisions of this Deed, may be executed in counterparts and any of the Holders may execute the same in person or by agent or attorney duly authorized in writing;
- (c) at the request of the Trustee, the date and execution by any of the Holders or agent or attorney of any such instrument and the execution by any of the Holders of any power of attorney shall be proved by the certificate of any notary public that the person signing the same has acknowledged to him the execution thereof, by affidavit or statutory declaration of a witness to such execution, or by the signature of the Holder as witnessed by any officer of any bank or trust company; such proof shall be conclusive in favour of the Trustee with regard to any action taken or suffered by the Trustee under such instrument. No such instrument shall be effective until delivery thereof to the Trustee; and
- (d) the Trustee shall give notice to all Holders of each resolution of the Senior Holders or Subordinated Holders passed as aforesaid.

#### 9.3 Effect of Resolutions of Holders

Any resolution passed as provided in Section 9.2 shall be binding upon the Holders and each of them, and the Trustee (subject to the provisions for its indemnity, if any, set forth in this Deed) shall be bound to give effect thereto accordingly.

**10. ADDITIONAL SECURITY**

10.1 To more effectively secure the due payment in lawful money of Canada of the obligations secured and all other amounts owing under or in connection with this Deed and the Debentures, the Corporation shall issue for the benefit of the Holders and as additional security such pledges of shares, deeds of hypothec and other security documents as may be agreed to by the Corporation, in a form and substance required by the Holders and the Trustee. Such additional security documents shall be in favour of the Trustee, who shall hold the same for and on behalf of the Holders from time to time. The provisions of this Deed, including without limitation, Sections 3.9, 7, 8 and 9, shall apply with respect to such additional security documents.

**11. NOTICE**

11.1 Any notices to be given under this Deed shall be given to the parties at the addresses set out below, or to the Holders at the addresses specified in the Trustee's records. Notice shall be deemed to have been effectually given when such notice is delivered personally to the addressee by hand or by fax with receipt confirmed or on the third business day after such notice is mailed by prepaid registered mail to the addressee. Subject to the right of each party to change its address by notice to the other parties from time to time, the addresses of the parties are as follows:

The Arctic Group Inc.  
625 Henry Avenue  
Winnipeg, Manitoba  
R3A 0V1

Attention: Chief Executive Officer  
Fax No.: (204) 783-9857

Montreal Trust Company  
151 Front Street West  
Suite 605  
Toronto, Ontario  
M5J 2N1

Attention: Manager, Corporate Trust Department  
Fax no.: 416-981-9777

**12. DATE OF DEED**

12.1 This Deed may be referred to as bearing the formal date of 17 August 1999, notwithstanding the actual date of its execution.

**13. EFFECT OF HEADINGS**

13.1 The headings and marginal notes of the Sections in this Deed are inserted for convenience of reference only and shall not affect the interpretation of this Deed.

**14. GOVERNING LAW**

14.1 The Deed shall be governed by and construed in accordance with the laws of the Province of Manitoba and the Federal laws of Canada applicable therein.

**15. MISCELLANEOUS**

15.1 No land which is charged or mortgaged under this Deed is farm land within the definition of subsection 1(1) of the *Farm Lands Ownership Act* (Manitoba).

15.2 The Corporation hereby agrees that *The Land Contracts (Actions) Act* of the Province of Saskatchewan shall have no application to any action, as in *The Land Contracts (Actions) Act* defined, with respect to the within Deed or with respect to any mortgage, charge or other security given by the Corporation pursuant to this Deed or to any indenture, instrument or agreement entered into by the Corporation at any time hereafter, supplemental or ancillary to or in implementation of this Deed and all of the benefits of the said Act are hereby waived. To the extent permitted by law, the Corporation expressly waives its rights under the *Alberta Insurance Act* and the *Fire Prevention (Metropolis) Act*, 1774 (GEO III, Ch. 78).

15.3 *The Limitation of Civil Rights Act* of the Province of Saskatchewan shall have no application to:

- (a) this Deed;
- (b) any mortgage, charge or other security for the payment of money made, given or created by this Deed;
- (c) any agreement or instrument renewing or extending or collateral to this Deed or renewing or extending or collateral to any mortgage, charge or other security referred to or mentioned in subparagraph (b) of this Section; or
- (d) the rights, powers or remedies of the Trustee under this Deed or any mortgage, charge, other security, agreement or instrument referred to or mentioned in subparagraph (b) or (c) of this Section.

15.4 For purposes of Section 198.1 of the *Land Title Act* (British Columbia), the floating charge created by Section 2.1 on any present or future real or immovable property or interest therein (for purposes of this Section 15.4 collectively referred to as the "Real Property") will become a fixed charge on such Real Property upon the earlier of (a) a demand for payment being made pursuant to Section 5.1 and the Trustee upon being so directed by resolution of the Senior Holders or Subordinated Holders (if they act under Section 5.1(b)) giving written notice to the Corporation that such floating charge has become a fixed charge on such Real Property, and (b) the occurrence of any other event which by operation of law would result in such floating charge becoming a fixed charge on real property. The right of consolidation shall apply to this Trust Deed notwithstanding Section 27 of the Property Law Act of British Columbia or any similar statutory provision in force from time to time.

15.5 The Corporation acknowledges receipt of a true copy of this Deed.

15.6 The Corporation expressly waives the right to receive a copy of any financing statement or confirmation statement or financing change statement which may be registered by the Trustee in connection with this Deed or any verification statement issued with respect thereto where such waiver is not otherwise prohibited by law.

THE PARTIES REQUIRE THAT THIS DEED, THE DEBENTURES AND ALL NOTICES, DOCUMENTS AND ACTIONS GIVEN, DELIVERED OR INSTITUTED PURSUANT TO THIS DEED BE DRAWN IN ENGLISH. LES PARTIES EXIGENT QUE LE PRESENT ACTE, LES OBLIGATIONS ET TOUS LES AVIS, DOCUMENTS, OU ACTIONS DONNES, PASSES OU INTENTES EN VERTU DU PRESENT ACTE SOIENT REDIGES EN ANGLAIS.

IN WITNESS OF WHICH the parties have signed this Deed.

**THE ARCTIC GROUP INC.**

By: 

Name: Robert Nagy  
Title: President

c/s

**MONTREAL TRUST COMPANY**

By: 

Name: \_\_\_\_\_  
Title: CORPORATE TRUST OFFICER  
c/s

By: 

Name: \_\_\_\_\_  
Title: SANDY STEPHENS  
Senior Corporate Trust Officer

## SCHEDULE A

Series ♦ No. ♦

♦ % DEBENTURE

\$ ♦

The Arctic Group Inc. (the "Corporation"), for value received, promises to pay on demand to the registered holder of this Debenture at ♦, ♦ DOLLARS (\$♦) in lawful money of Canada, and to pay interest thereon from the date hereof at the same place in like money at the rate of ♦ per cent (♦%) per annum, calculated monthly and payable on demand, both before and after maturity and default, with interest on overdue interest at the same rate.

This Debenture is issued under and secured by a Trust Deed dated as of ♦ 1999 (the "Trust Deed") executed by the Corporation in favour of Montreal Trust Company as Trustee, and this Debenture is subject to the terms and provisions of the Trust Deed.

This Debenture may be transferred by the holder only in accordance with the Pledge Agreement (the "Pledge Agreement") and upon compliance with the provisions of Section 1.5 of the Trust Deed. In the event of any conflict between the terms of the Pledge Agreement and the terms of this Debenture, the terms of the Pledge Agreement shall prevail.

This Debenture shall not become a binding obligation of the Corporation until it shall have been certified by the Trustee under the Trust Deed.

IN WITNESS OF WHICH the Corporation has caused this Debenture to be signed by its duly authorized signing officer and to be dated ♦.

THE ARCTIC GROUP INC.

c/s

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

## TRUSTEE'S CERTIFICATE

This Debenture is a Debenture issued under the Trust Deed within-mentioned.

Dated: ♦

MONTREAL TRUST COMPANY

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



THIS SCHEDULE IS ATTACHED TO AND FORMS PART OF A TRUST DEED  
BETWEEN THE ARCTIC GROUP INC. AND MONTREAL TRUST COMPANY DATED  
AS OF THE 17TH DAY OF AUGUST, 1999.

THE ARCTIC GROUP INC.

By:

Name:

Title:

*[Signature]*  
Name: *Robert N. Noy*  
Title: *President*

**SCHEDULE B**

The Arctic Group Inc. (the "Company"), being the registered and beneficial owner of the land described below, subject however to such mortgages, encumbrances, liens and interests as are notified by memorandum underwritten, covenants with Montreal Trust Company that it will pay to Montreal Trust Company the principal amount hereby secured and interest thereon as hereinbefore provided, together with all other amounts secured by means of this Trust Deed, and for the better securing to Montreal Trust Company repayment of all such amounts, the Company hereby mortgages to Montreal Trust Company its estate and interest in the said land. The Company hereby covenants with Montreal Trust Company that it has done no act to encumber the land and that on default Montreal Trust Company shall have quiet possession of the land, free from all encumbrances save and except those noted on the memorandum underwritten and that the Company: (1) has a good title to the said land; (2) has the right to mortgage the land; and (3) will execute such further assurances of the land as may be requisite.

**REAL PROPERTY OWNED BY THE ARCTIC GROUP INC.**

**Manitoba**

Civic Address: 625 Henry Avenue, Winnipeg, Manitoba

**Parcel One**

Title No.: 1603439

Legal Description: Lot 12 Block 35 Plan 331 WLTO (W Div) in RL 35 Parish of St John.

Prior Encumbrances: Mortgage No. 1997742

Mortgage No. 2260374

**Parcel Two**

Title No.: 1603440

Legal Description: All that portion of Lot 1 Block 41 Plan 331 WLTO (W Div) which lies to the SE of the Southeastern Limit of those portions of Lots 1 and 2 in said Block 41 shown as Parcel 2 and coloured pink on Plan 2547 WLTO, together with a right of way for all purposes and as appurtenant to the land above described over and upon said Parcel 2, in RL 35 Parish of St John

Prior Encumbrances: Mortgage No. 1997742

Mortgage No. 2260374

**Parcel Three**

Title No.: 1603438

Legal Description: Lots 8 to 11 Block 35 Plan 331 WLTO (W Div) in RL 35 Parish of St John

Prior Encumbrances: Mortgage No. 1997742

Mortgage No. 2260374

Alberta

Civic Address: 412 41 Av NE, Calgary, Alberta

Title No.: 981 406 325

Ref. No.: 861 065 382

Legal Description: Plan Calgary 7410938 Block Thirteen (13)

That portion of Lot "A" which lies to the West of the Easterly Fifty Four and Thirty Hundredths (54.30) metres in perpendicular width throughout containing 0.203 Hectare more or less excepting thereout all mines and minerals

Prior Encumbrances: Utility Right of Way No. 8896IE  
Utility Right of Way No. 741 102 966  
Zoning Regulations No. 771 147 064  
Easement No. 861 065 383  
Builder's Lien No. 911 133 266  
Mortgage No. 941 178 326  
Mortgage No. 981 147 361

THIS SCHEDULE IS ATTACHED TO AND FORMS PART OF A TRUST DEED  
BETWEEN THE ARCTIC GROUP INC. AND MONTREAL TRUST COMPANY DATED  
AS OF THE 17TH DAY OF AUGUST, 1999.

THE ARCTIC GROUP INC.

By: \_\_\_\_\_

Name: Robert Noy  
Title: President

**SCHEDULE C**

**REAL PROPERTY LEASED BY THE ARCTIC GROUP INC.**

British Columbia

A leasehold interest in the following property, pursuant to a lease dated the 1st day of November, 1990  
between Shogun.Compu-Time Ltd. as Landlord and Pacific Ice Company Inc. as Tenant:

Civic Address: 9679 - 186th Street, Surrey British Columbia  
Parcel Identifier: 007 144 431  
Legal Description: Lot A (AA60615), District Lot 99, Group 2, New Westminster  
District, Plan 54762  
Prior Encumbrances: Nil

Saskatchewan

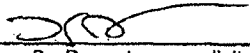
A leasehold interest in the following property, pursuant to a lease between Fred's Enterprises Ltd. as  
Landlord and Jacyn Enterprises Ltd. as Tenant:

Civic Address: 1625 McAra Street, Regina, Saskatchewan  
Title No.: 87R08068  
Ref. No. 79R04450  
87R08067  
Legal Description: Lot K  
Block 96  
Regina, Saskatchewan  
Plan 87R08061  
Minerals Included  
Prior Encumbrances: Caveat No. 98RA09592  
Personal Property Security Act Notice No. 98RA10097

THIS SCHEDULE IS ATTACHED TO AND FORMS PART OF A TRUST DEED  
BETWEEN THE ARCTIC GROUP INC. AND MONTREAL TRUST COMPANY DATED  
AS OF THE 17<sup>TH</sup> DAY OF AUGUST, 1999.

The registration of this instrument does not contravene the provisions of The Farm Lands Ownership Act  
because:

- a) the within land is not farm land as defined in The Farm Lands Ownership Act; or  
b) ~~the interest in farm land is being mortgaged/encumbered pursuant to a bona fide debt obligation;~~  
or  
c) other (specify section of the Farm Lands Ownership Act):

  
Timothy S. Dewart, as solicitor  
and agent for Montreal Trust  
Company.



**THIS FIRST SUPPLEMENTAL TRUST DEED** made as of the 22<sup>nd</sup> day of March, 2002

**AMONG:**

**ARCTIC GLACIER INC.,**  
a company duly amalgamated under the laws of Alberta  
(hereinafter referred to as the "Company")

**PARTY OF THE FIRST PART**

**AND:**

**MONTREAL TRUST COMPANY,**  
a trust company existing under the laws of Canada  
(hereinafter referred to as "Montreal Trust")

**PARTY OF THE SECOND PART**

**AND:**

**COMPUTERSHARE TRUST COMPANY  
OF CANADA,**  
a trust company existing under the laws of Canada  
(hereinafter referred to as "Computershare")

**PARTY OF THE THIRD PART**

**WHEREAS** by Trust Deed made as of August 17, 1999, between The Arctic Group Inc. (the "Predecessor") and Montreal Trust, as Trustee, (which Trust Deed and any and all deeds heretofore supplemental thereto are herein collectively referred to as the "Trust Deed"), provision was made for the issue by the Predecessor of Debentures (as defined therein), subject to the terms and conditions contained in the Trust Deed;

**AND WHEREAS** Arctic Glacier Inc. ("Pre-Amalco Glacier") is a corporation incorporated on January 14, 2002 under the *Business Corporations Act* (Alberta), S.A. 2000, c. B-9, as amended;

**AND WHEREAS** Pre-Amalco Glacier duly amalgamated (the "Amalgamation") with the Predecessor effective March 22, 2002, with the amalgamated entity continuing as the Company under the name Arctic Glacier Inc.;

**AND WHEREAS** as a result of the Amalgamation, the Company continues to be liable for all of the liabilities, obligations and duties of each of the Predecessor and Pre-Amalco Glacier, including, without limitation, all liabilities, obligations and duties of the Predecessor under the Trust Deed, as if the Company were an original party thereto;

**AND WHEREAS** Computershare and Montreal Trust represent that Computershare acquired the stock transfer and corporate trust businesses of Montreal Trust pursuant to an Asset Purchase Agreement dated as of June 30, 2000, and pursuant thereto Montreal Trust agreed to transfer to Computershare, and Computershare agreed to accept, the appointment as Trustee under the Trust Deed, subject to the agreement of the Company;

**AND WHEREAS** Computershare represents that it is duly qualified to be Trustee under the Trust Deed;

**AND WHEREAS** to give effect to the foregoing, Montreal Trust desires to, in accordance with the terms of the Trust Deed, resign as Trustee thereunder and to be discharged from the trusts thereof, and to assign and transfer to Computershare all of its estates, properties, moneys, records, rights, powers and trusts under the Trust Deed;

**AND WHEREAS** the Company is prepared to accept such resignation and to appoint Computershare as the successor Trustee under the Trust Deed, and Computershare is prepared to accept such appointment;

**AND WHEREAS** the parties wish to execute this First Supplemental Trust Deed for the purpose of providing for the recognition of the Company in the Trust Deed with respect to the Company's continuing liability for the interests, liabilities, obligations and duties of the Predecessor thereunder, and for the purpose of providing for the resignation of Montreal Trust as trustee and for its replacement by Computershare, all with effect as of March 22, 2002 (hereinafter, the "Transfer Date");

**NOW, THEREFORE, THIS FIRST SUPPLEMENTAL TRUST DEED WITNESSES** that in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the parties covenant and agree as follows:

1. Each of Montreal Trust, Computershare and the Company hereby confirms the accuracy, truthfulness and completeness of each of the above recitals to which it is a party and acknowledges that same are being relied upon by the parties in entering and executing this First Supplemental Trust Deed;
2. Montreal Trust hereby waives any required notice pursuant to the Trust Deed with respect to any previous change of name or amalgamation involving the Predecessor or the Company and acknowledges and confirms that each of the Predecessor and the Company has complied with all requirements of the Trust Deed, for notice to the Trustee in respect of the Amalgamation.
3. The Trust Deed is hereby amended to recognize the continuation of the Predecessor as the Company, under the name Arctic Glacier Inc.
4. Montreal Trust hereby resigns as Trustee under, and is hereby discharged from the trusts of, the Trust Deed, effective as of the Transfer Date. The Company hereby accepts such resignation, waiving any required period of notice that may be set forth in the Trust Deed.

5. The Company hereby appoints Computershare as successor Trustee under the Trust Deed in the place and stead of Montreal Trust and with like effect as if originally named as Trustee under the Trust Deed, effective as of the Transfer Date, and Computershare hereby accepts such appointment. The parties hereby agree that Montreal Trust shall not be responsible for any liabilities that may arise pursuant to Computershare's administration of the trusteeship after the Transfer Date. For greater certainty, however, nothing in this First Supplemental Trust Deed shall in any way release Montreal Trust from or affect its liabilities, duties or obligations under the Trust Deed arising prior to the Transfer Date.

6. Montreal Trust hereby transfers and assigns to Computershare and Computershare hereby accepts such transfer and assignment, upon the trusts expressed in the Trust Deed, all the rights, powers and trusts of Montreal Trust under the Trust Deed, effective as of the Transfer Date.

7. Montreal Trust agrees to transfer and deliver to Computershare, and Computershare agrees to accept such transfer and delivery of, any and all records, documents, monies and other property that may be held by Montreal Trust in connection with the Trust Deed. Such transfers, deliveries and acceptances shall be made as soon as practicable upon, after, or in anticipation of, the Transfer Date as may be agreed between such parties.

8. Notwithstanding any of the foregoing, the resignation, discharge, appointment, transfers, assignments and other agreements provided for herein will not be effective unless this First Supplemental Trust Deed has been executed by all of the parties hereto, whether upon the original instrument, by facsimile or in counterparts, or any combination thereof, and unless all preconditions to such resignation, discharge, appointment, transfers, assignments and other agreements as may be set forth in the Trust Deed have been fulfilled.

9. Any provision in the Trust Deed specifying the addresses of the parties is hereby amended to record the respective addresses of the parties as follows:

Arctic Glacier Inc.  
625 Henry Avenue  
Winnipeg, Manitoba  
R3A 0V1

Attention: President  
Fax No.: (204) 783-9857

Computershare Trust Company of Canada  
100 University Avenue  
9th Floor, North Tower  
Toronto, Ontario  
M5J 2Y1

Attention: Manager, Corporate Trust Department  
Fax: (416) 981-9777



10. Each party hereto agrees to execute and deliver all such documents and instruments and do such other acts as may be necessary or advisable to give effect to the terms hereof.
11. This First Supplemental Trust Deed is supplemental to the Trust Deed and shall be read in conjunction therewith. Except only insofar as the same may be inconsistent with the express provisions of this First Supplemental Trust Deed, all the provisions of the Trust Deed shall apply to and shall have effect in the same manner as if they and the provisions of this First Supplemental Trust Deed were contained in one instrument. The form of any Debentures to be certified by the Trustee from and after the Transfer Date shall be amended, stamped or legended to identify Computershare as the successor Trustee and the Company as the issuer but the validity of any Debentures certified prior to the Transfer Date shall not be affected by the appointment of Computershare as successor trustee.
12. Computershare as successor Trustee hereby accepts the trusts in the Trust Deed declared and provided and agrees to perform the same upon the terms and conditions herein and in the Trust Deed set forth.
13. This First Supplemental Trust Deed shall enure to the benefit of and be binding upon the parties hereto and their successors and permitted assigns.

IN WITNESS WHEREOF this First Supplemental Trust Deed has been duly executed by the parties hereto as of the date first above written.

ARCTIC GLACIER INC.

Per: TLZ

Per: \_\_\_\_\_

MONTREAL TRUST COMPANY

Per: T. Vitell

Per: Michael Bant

COMPUTERSHARE TRUST COMPANY  
OF CANADA

Per: T. Vitell

Per: Michael Bant



THIS SECOND SUPPLEMENTAL TRUST DEED made as of the 6<sup>th</sup> day of December, 2004

AMONG: ARCTIC GLACIER INC.,  
a company duly amalgamated under the laws of Alberta  
(hereinafter referred to as the "Company")

PARTY OF THE FIRST PART

AND: COMPUTERSHARE TRUST COMPANY  
OF CANADA,  
a trust company existing under the laws of Canada  
(hereinafter referred to as the "Trustee")

PARTY OF THE SECOND PART

WHEREAS by Trust Deed made as of August 17, 1999, between The Arctic Group Inc. (the "Predecessor") and Montréal Trust Company, as predecessor to the Trustee, (which Trust Deed and any and all deeds heretofore supplemental thereto are herein collectively referred to as the "Trust Deed"), provision was made for the issue by the Predecessor of Debentures (as defined therein), subject to the terms and conditions contained in the Trust Deed;

AND WHEREAS by a First Supplemental Trust Deed made as of March 22, 2002, the Trustee was appointed Trustee under the Trust Deed in replacement for Montréal Trust Company and the Company was recognized as the successor to the Predecessor by amalgamation;

AND WHEREAS pursuant to the Trust Deed, the Company has agreed, among other things, to grant, assign, mortgage and charge as and by way of a fixed and specific mortgage and charge to and in favour of the Trustee, and grant to the Trustee as security interest in, all of its present and after-acquired real and personal property, including but not limited to all freehold real and immovable property now or hereafter owned or acquired by the Company;

AND WHEREAS the Company has acquired since the date of the Trust Deed additional freehold real and immovable property in Manitoba (the "Additional Property");

AND WHEREAS the parties wish to execute this Second Supplemental Trust Deed in order to supplement the Trust Deed by mortgaging and charging the Company's interest in the Additional Property in favour of the Trustee.

NOW, THEREFORE, THIS SECOND SUPPLEMENTAL TRUST DEED WITNESSES that in consideration of the premises and other good and valuable consideration, the receipt

and sufficiency of which are hereby acknowledged by the parties hereto, the parties covenant and agree as follows:

1. Each of the Trustee and the Company hereby confirms the accuracy, truthfulness and completeness of each of the above recitals to which it is a party and acknowledges that same are being relied upon by the parties in entering and executing this Second Supplemental Trust Deed;
2. For the purpose of securing the due payment in lawful money of Canada of the Debentures (as defined in the Trust Deed) in the principal amount of five hundred million dollars \$500,000,000.00 and of interest thereon at the rate of twenty-five percent (25%) per annum, calculated monthly and payable on demand, both before and after maturity and default, with interest on over due interest at the same rate, and the payment of any additional amounts from time to time due thereunder to the Trustee, including but not limited to an additional amount equal to twenty-five percent (25%) of the principal amount for costs of realization and other accessories the Company hereby grants, assigns, mortgages and charges, as and by way of a fixed and specific mortgage and charge, to and in favour of the Trustee, all of the Company's present and future rights, entitlements and interests, in and to the Additional Property described in Schedule "A" hereto.
3. Each party hereto agrees to execute and deliver all such documents and instruments and do such other acts as may be necessary or advisable to give effect to the terms hereof.
4. Each party hereto hereby ratifies and confirms the Trust Deed as supplemented by this Second Supplemental Trust Deed and agrees that it shall continue in full force and effect.
5. This Second Supplemental Trust Deed is supplemental to the Trust Deed and shall be read in conjunction therewith. Except only insofar as the same may be inconsistent with the express provisions of this Second Supplemental Trust Deed, all the provisions of the Trust Deed shall apply to and shall have effect in the same manner as if they and the provisions of this Second Supplemental Trust Deed were contained in one instrument. Without limiting the generality of the foregoing, the Company hereby confirms and re-confirms that those certain lands currently covered by Winnipeg Land Titles Office Title No. 2028565, and being registered in the name of and beneficially owned by the Company (legally described as "PARCELS A TO E PLAN 42917 WLTO SAID PARCEL A BEING TOGETHER WITH A RIGHT-OF-WAY FOR ALL PURPOSES AND AS APPURTENANT TO THE LAND ABOVE DESCRIBED OVER AND UPON PARCEL 2 PLAN 2547 WLTO IN RL 35 PARISH OF ST JOHN") are now and continue to be subject to the fixed and specific mortgage and charge constituted by the Trust Deed, and the Company hereby mortgages and charges and re-mortgages and re-charges the same to and in favour of the Trustee to secure the liabilities, indebtedness and obligations of the Company described in paragraph 2 above.
6. This Second Supplemental Trust Deed shall enure to the benefit of and be binding upon the parties hereto and their successors and permitted assigns.

7. This Second Supplemental Trust Deed may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, and such counterparts together shall constitute one and the same agreement. For the purposes of this Section, the delivery of a facsimile copy of an executed counterpart of this Second Supplemental Trust Deed shall be deemed to be valid execution and delivery of this Second Supplemental Trust Deed, but the party delivering a facsimile copy shall deliver an original copy of this Second Supplemental Trust Deed as soon as possible after delivering the facsimile copy.

IN WITNESS WHEREOF this Second Supplemental Trust Deed has been duly executed by the parties hereto as of the date first above written.

ARCTIC GLACIER INC.

Per: 

Position: President

Per: 

Position: Secretary

(c/s)

COMPUTERSHARE TRUST COMPANY  
OF CANADA

Per: 

Position: Scott Markham  
Professional Corporate Trust (c/s)

Per: 

Position: Ann Samuel  
Administrator, Corporate Trust

Address for Service of Arctic Glacier Inc.:

Arctic Glacier Inc.  
625 Henry Avenue  
Winnipeg, MB R3A 0V1  
Attention: President

Address for Service of Computershare Trust Company of Canada:

Computershare Trust Company of Canada  
100 University Avenue  
9<sup>th</sup> Floor, North Tower  
Toronto, ON M5J 2Y1  
Attention: Manager, Corporate Trust Department

THIS IS SCHEDULE "A" to a Supplemental Trust Deed made as of the 6<sup>th</sup> day of December, 2004 comprising one page.

1. WLTO Title No. 2030254.

FIRSTLY: LOT 3 AND ALL THOSE PORTIONS OF LOTS 1 AND 2 BLOCK 41 PLAN NO. 331 WLTO (W DIV)  
LYING TO THE NW OF THOSE PORTIONS OF SAID LOTS 1 AND 2 SHEWN AS PARCEL 2 PLAN NO. 2547 WLTO  
LOT 35 PARISH OF ST JOHN

SECONDLY: ALL THOSE PORTIONS OF SAID LOTS 1 AND 2 SHEWN AS PARCEL 2 ON SAID PLAN NO. 2547 WLTO  
SUBJECT TO A RIGHT-OF-WAY FOR ALL PURPOSE AND AS APPURTENANT TO THAT PORTION OF SAID LOT 1, LYING TO THE SE OF SAID PARCEL 2 AND APPURTENANT TO BLOCK 7 PLAN 94 WLTO (W DIV) OVER AND UPON THE WHOLE OF SAID PARCEL 2

SUBJECT TO: Nil

2. WLTO Title No. 2030253

ELY 20 FEET OF LOT 4 BLOCK 41 PLAN 331 WLTO (W DIV)  
IN RL 35 PRISH OF ST JOHN

SUBJECT TO: Nil

This Schedule forms part of a Supplemental Trust Deed between ARCTIC GLACIER INC. and COMPUTERSHARE TRUST COMPANY OF CANADA dated December 6<sup>th</sup>, 2004.

ARCTIC GLACIER INC.

Per: 

Position: President

(c/s)

Per: 

Position: Secretary

COMPUTERSHARE TRUST COMPANY  
OF CANADA

Per: 

Position: Professional, Corporate Trust

(c/s)

Per: 

Position: Samuel  
Administrator, Corporate Trust

CANADA )  
 )  
PROVINCE OF MANITOBA )  
 )  
TO WIT )  
 )

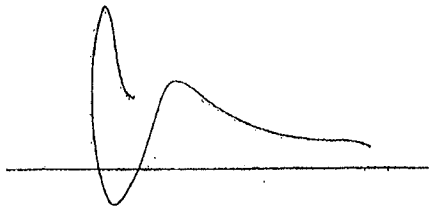
IN THE MATTER OF a Supplemental  
Trust Deed between ARCTIC  
GLACIER INC. and  
COMPUTERSHARE TRUST  
COMPANY OF CANADA to which  
this declaration is attached, and IN  
THE MATTER OF *The Farmlands  
Ownership Act* (Manitoba)

I, EDWARD D. BROWN, of the City of Winnipeg, in the Province of Manitoba, Barrister-  
at-Law,

DO SOLEMNLY DECLARE:

1. THAT I am the solicitor and agent for COMPUTERSHARE TRUST COMPANY OF CANADA, one of the parties to the Supplemental Trust Deed attached hereto. I am of the full age of eighteen years.
2. THAT the registration of the said Supplemental Trust Deed against the lands described in Schedule "A" described therein does not contravene the provisions of *The Farmlands Ownership Act* (Manitoba) because said land so described in said Schedule "A" is not farmland as defined in *The Farmlands Ownership Act* (Manitoba).
4. THAT I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of *The Canada Evidence Act*.

DECLARED BEFORE ME )  
at the City of Winnipeg )  
in the Province of Manitoba )  
this \_\_\_\_\_ day of \_\_\_\_\_ )  
2004. )  
\_\_\_\_\_ )





DATED the 6<sup>th</sup> day of December, 2004

BETWEEN:

ARCTIC GLACIER INC.

OF THE FIRST PART

- and -

COMPUTERSHARE TRUST COMPANY  
OF CANADA

OF THE SECOND PART

---

SECOND SUPPLEMENTAL TRUST DEED

---

PITBLADO  
Barristers and Solicitors  
2500 - 360 Main Street  
Winnipeg, MB R3C 4H6

Phone: 956-3503  
Facsimile: 957-0227

Edward D. Brown

File No. 24049/94

CANADA )  
PROVINCE OF MANITOBA )  
TO WIT )

IN THE MATTER OF: a certain instrument  
entitled "SECOND SUPPLEMENTAL  
TRUST DEED" dated December 6, 2004  
(the "Supplemental Trust Deed") between  
"Arctic Glacier Inc." ("Company") and  
COMPUTERSHARE TRUST COMPANY OF  
CANADA ("Trustee"), the Supplemental  
Trust Deed mortgaging certain lands and  
premises described in Schedule A thereto  
(the "Lands")

I, Robert Nagy of the City of Winnipeg, in the  
Province of Manitoba,

DO SOLEMNLY DECLARE AS FOLLOWS:

1. THAT I am the President of the Company, and as such, I have a  
personal knowledge of the matters herein stated by me. I am of the full age of eighteen years.

2. THAT:

- (a) the Lands are registered in the Company's name under *The Real Property Act* (Manitoba) in the Winnipeg Land Titles Office, and the Company owns or is entitled to own the Lands beneficially for itself and does not hold the same or any interest of the same in trust for any other person or persons whatsoever;
- (b) the Lands are free and clear of all mortgages, charges, claims and other interests, whether or not the same are registered or capable of being registered in a public registry office or office of public record (the expressions "mortgages, charges, claims and interests" herein to include any of the same which arise or are capable of arising involuntarily or by reason of operation of law);
- (c) all real property taxes (including local improvement levies and school taxes) levied against the Lands or any portion or portions thereof, have been paid in full to December 31, 2003;
- (d) to the best of my knowledge, all buildings and improvements now situated on or forming part of the Lands are situated within the boundaries of the Lands, and, there are no encroachments from neighbouring or adjacent properties across the boundaries of the Lands, onto the Lands;
- (e) I have no knowledge of any work or other similar orders issued by any governmental authority having jurisdiction with respect to the Lands or any portion or portions thereof and I have no knowledge of any notifications or demands made to the Company or to any other person or persons indicating any non-compliance by the Lands or any portion or portions thereof with the requirements of any governmental authority. For the purposes hereof, "governmental authority" includes, without limitation, fire control and prevention, building, zoning, health, workplace health and safety governmental authorities and any governmental authority dealing with, monitoring or regulating environmental hazards, dangers and conditions, EXCEPTING ONLY AS FOLLOWS: (IF NO EXCEPTIONS, PUT "NIL")

" NIL "

- (f) To the best of my knowledge, the Lands and all buildings and other improvements thereon comply with the requirements of all governmental authorities having jurisdiction with respect to the same ("governmental authority" having the meaning given to it in the immediately preceding subparagraph hereof), and, without limiting the generality of the foregoing, the Lands and all buildings and improvements thereon comply with all applicable zoning by-laws and town planning schemes, EXCEPTING ONLY AS FOLLOWS: (IF NO EXCEPTIONS, PUT "NIL")

" NIL "

- (g) all accounts rendered by any person providing work, services or materials to or for the improvement of the Lands have been paid in full what is owed to them as at the date of this Declaration, EXCEPTING ONLY AS FOLLOWS: (IF NO EXCEPTIONS, PUT "NIL")

"NIL"

3. THAT execution and delivery of the Supplemental Trust Deed by the Company, and compliance with and performance by the Company of its obligations hereunder do not and shall not:

- (a) violate or contravene any provision or requirement of any law, statute, rule, regulation, judgment or order to which the Company is subject; or
- (b) violate or contravene any provision or requirement of or constitute an act of default under any indenture, agreement or obligation to which the Company is a party or by which the Company is bound.

4. THAT no permit or consent from and no filing with any governmental agency is required on the Company's part as a condition precedent to the valid execution and delivery of the Supplemental Trust Deed to the Trustee other than such permits and consents as have already been obtained, done and given and which are now in full force and effect.

5. THAT there are no suits, actions, litigations, arbitrations or governmental proceedings pending or threatened against the Company in connection with the business or affairs (financial or otherwise) of the Company, nor is the Company subject to any existing judgment, order or decree which will or might materially adversely affect the Company in the operation or ownership of the Lands, or which would prevent, hamper or render illegal or unenforceable the transactions contemplated and provided for in the Supplemental Trust Deed;

6. THAT the Company has insured its rights, interests and estates in and to the Lands, such insurance having been effected in the same manner and to the same degree as would a prudent owner of similar property insure, and, in accordance with the Trustee's requirements for insurance, and:

- (a) all premiums applicable to all such insurance have been paid in full and I am not aware of any unremedied breach or default under the terms of any such insurance whether by the insurers or the insured; and
- (b) the losses payable under the aforementioned insurance are payable to or will be made payable to the Trustee as the holder of first ranking security on the Lands, subject to and with the benefit of a mortgagee's insurance endorsement in a form approved by The Insurance Bureau of Canada.

7. THAT I am providing this Declaration to the Trustee, to the Trustee's solicitors, and to the Company's solicitors, and I acknowledge and agree that all of the Trustee and said solicitors may rely upon same.

DECLARED BEFORE ME at the  
City of Winnipeg  
in the Province of Manitoba  
this 6<sup>th</sup> day of December 2004.

A Notary Public/Commissioner for Oaths  
in and for the Province of Manitoba.  
My Commission expires:

CHRISTOPHER J. HOESCHEN  
A NOTARY PUBLIC  
FOR THE PROVINCE OF MANITOBA  
1000 - 330 ST. MARY AVENUE  
WINNIPEG, MANITOBA R3C 3Z5  
8267720121040.04



**SUPPLEMENTAL DEED OF HYPOTHEC**

ON THE eighth (8th) day of February Two Thousand and Ten (2010).

BEFORE Mtre. Tamar Chamelian the undersigned notary for the Province of Quebec, practicing in the City and District of Montreal

**APPEARED:**

**COMPUTERSHARE TRUST COMPANY OF CANADA**, a legal person duly constituted, having an office at 100 University Avenue, 8th Floor, South Tower, Toronto, Ontario, M5J 2Y1, herein acting as fondé de pouvoir under Article 2692 of the Civil code of Quebec as appointed under the Initial Deed of Hypothec (as defined hereafter), acting and represented by Carole Bédard, Professional, Corporate Trust and Vito Scalia, its Administrator, Corporate Trust, hereunto duly authorized as they so declare:

(Notice of the address of Computershare Trust Company of Canada has been registered at the Registry Office for the Registration Division of Montreal under number 6048481 and at the Register of Personal and Movable Real rights under number 026054)

**OF THE FIRST PART**

**AND:**

**ARCTIC GLACIER INC.**, a legal person duly constituted under the laws of Alberta, having its registered office at 1900. 715 5 Avenue S.W., Calgary, Alberta T2P 2X6, herein acting and represented by Alain Lalonde, its representative, duly authorized by a resolution of its Board of Directors, a copy of which is annexed hereto after having been acknowledged as true and signed for the purpose of identification by the said representative in the presence of the undersigned notary;

**OF THE SECOND PART**

**WHICH PARTIES DECLARED AS FOLLOWS:**

**WHEREAS** the Grantor (as hereafter defined) and the Attorney (as hereafter defined) have, on the 22<sup>nd</sup> day of March 2002, before Mtre. Steven Collins, Notary, under number 1455 of his minutes, executed a deed of hypothec (the "Initial Deed of Hypothec") whereby the Grantor has hypothecated in favour of the Attorney the universality

of its present and future property, moveable and immoveable, real and personal, corporeal and incorporeal, tangible and intangible, now owned or hereafter acquired, of any nature whatsoever and wheresoever situated, the whole as more fully described under said Initial Deed of Hypothec;

WHEREAS the Initial Deed of Hypothec was registered at the Register of Personal and Movable Real Rights on March 22, 2002 under number 02-0112501-0001 and at the Land Registry office for the Registration Division of Montreal on March 22, 2002 under number 5331878;

WHEREAS the Grantor and the Attorney now wish to amend the Initial Deed of Hypothec and the Attorney requests that the Grantor rehypothecates, for purposes intended, the Charged Property (as defined in the Initial Deed of Hypothec), the whole in accordance with the provisions hereof;

NOW, THEREFORE, THE PARTIES HERETO HAVE AGREED AS FOLLOWS:

1. INTERPRETATION

1.1 Capitalized words used herein and defined in the Initial Deed of Hypothec shall have the meaning ascribed thereunder. The following words and phrases, wherever used in this Supplemental Deed or in the accompanying Schedules or in any deeds supplemental hereto, shall, unless there be something in the context inconsistent therewith, have the following meanings:

1.1.1 "Attorney" means the party of the first part, Computershare Trust Company of Canada, duly appointed as *fondé de pouvoir* pursuant to Section 2 of the Initial Deed of Hypothec, and its successors and assigns in the powers and duties created thereunder;

1.1.2 "Grantor" means Arctic Glacier Inc., the party of the second part, its successors and assigns, and shall include any corporation resulting from the amalgamation of Arctic Glacier Inc. with any other Person or Persons.

1.2 Words importing the singular only shall include the plural and vice versa; words importing the masculine gender shall include the feminine gender; and words importing individuals shall include firms, partnerships and corporations, and vice-versa.

1.3 The division of this Supplemental Deed into Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation hereof.

## 2. AMENDMENTS TO INITIAL DEED OF HYPOTHEC

The Initial Deed of Hypothec is amended as follows:

- 2.1 Section 1.1.10 of the Initial Deed of Hypothec is amended to now read as follows:

"1.1.10 "Hypothec" shall have the meaning ascribed thereto in Section 3 hereof and shall also include any pledge of Securities in favour of the Attorney; ".

- 2.2 Section 3.1.8 of the Initial Deed of Hypothec is amended to now read as follows:

"3.1.8 all shares, limited partnership units, trust units, stock, warrants, bonds, debentures, debenture stock and other securities, financial assets and security entitlements (as such terms are defined in the *Act respecting the transfer of securities and the establishment of security entitlements* (Québec)) in which the Grantor now or hereafter has an interest, and any part thereof, including on the date hereof, the shares of its subsidiaries, if any, together with any renewals thereof, substitutions therefor and additions thereto and all certificates and instruments evidencing or representing such securities and any and all other property that may at any time be received or receivable by or otherwise distributed to or acquired by the Grantor in any manner in respect of, or in substitution for, or in addition to, or in exchange for, or on account of, any of the foregoing, including, without limitation, any shares or other securities or interests resulting from the subdivision, consolidation, change, conversion or reclassification of any of the securities, or the occurrence of any event which results in the substitution or exchange of such interests, as well as all those which are delivered by the Grantor to the Attorney or to a third party on its behalf from time to time (collectively, the "Securities");".

- 2.3 The following Section 7A is added to the Initial Deed of Hypothec, immediately before Section 8 thereof:

### "7A ADDITIONAL PROVISIONS TO THE HYPOTHEC ON CLAIMS, RENTS AND SECURITIES

7A1 The following provisions apply to all claims owed to the Grantor and hypothecated in favour of the Attorney.

- 7A1.1 The Grantor shall have authority to collect the claims hypothecated in favour of the Attorney pursuant to this Deed (the "Hypothecated Claims"), as they fall due. The Attorney may

withdraw this authorization by written notice following the occurrence of an Event of Default which is continuing. Notwithstanding the foregoing, the Attorney may at any time take all necessary steps to set up this Hypothec against the debtors of the Hypothecated Claims. In such event, the Grantor undertakes to remit to the Attorney, upon request, all titles, documents, registers, invoices and accounts evidencing the Hypothecated Claims or relating thereto, whatever the nature of their medium and whatever the form in which they are accessible, whether written, graphic, taped, filmed, computerized, or other.

Following the withdrawal of the authorization to collect Hypothecated Claims, as provided above, any payment received by the Grantor on account of any Hypothecated Claim shall be received for the Attorney's account, shall not entitle the Grantor to the amounts collected and shall be kept separate from the Grantor's other property at all times and remitted forthwith by the Grantor to the Attorney without compensation.

7A1.2 Following the withdrawal of the authorization to collect Hypothecated Claims, as provided above, the Attorney may, at its discretion, verify the existence and status of the Hypothecated Claims at any time. For such purposes, the Grantor shall provide the necessary assistance and information and shall take such action in this respect as the Attorney may reasonably request: in particular, it shall allow the Attorney and its agents to enter the premises occupied by the Grantor and to consult the Grantor's accounting books and registers as well as any document relating to the Hypothecated Claims and make copies thereof. The Grantor specifically authorizes the Attorney to communicate with any third party in order to obtain or transmit any information relating to the Hypothecated Claims and to the Grantor for the purpose of verifying and collecting said Claims in accordance with this Section 7A1.2. The debtors of said Hypothecated Claims shall not be obliged to enquire into the state of accounts between the Attorney and the Grantor and shall receive a valid discharge for any payment so made to the Attorney. Any withdrawal of the authorization to collect Hypothecated Claims given hereunder may be further cancelled by the Attorney, whereupon the Hypothecated Claims shall again become payable to the Grantor, unless and until a subsequent withdrawal of authorization to collect Hypothecated Claims is given by the Attorney.



7A2 With respect to any Immovable Hypothecated Property hereunder:

7A2.1 the Grantor shall comply with any and all provisions of the Trust Deed pertaining to immovable (real) property, including, but not limited to, provide the Attorney with all documents and information it reasonably requires with respect to the Immovable Hypothecated Property, including, without limitation, copies of leases and lists of tenants if required.

7A 2.2 In addition to Section 7A2.1 above:

The Attorney hereby authorizes the Grantor to collect all rents deriving or produced by the Immovable Hypothecated Property; however, the Grantor shall not collect in advance more than one month of rent nor shall it renounce to the payment of more than one month of rent. Such authorization may be revoked by the Attorney in accordance with what is provided for by law following the occurrence of an Event of Default which is continuing; in such a case, the Attorney may exercise as it deems appropriate, to the exclusion of the Grantor, all rights, claims, privileges and hypothecs (legal or conventional) of the Grantor in order to maintain, renew, grant or terminate any lease, and to further protect or collect rentals and revenues from the Immovable Hypothecated Property.

Following the occurrence of an Event of Default which is continuing, the Attorney shall have the right to bring an action for recovery of rentals provided the Attorney impleads the Grantor, it being understood that the Attorney shall be under no obligation to exercise such right and shall not be liable for any loss or damage which may result from its failure to collect such rentals.

7A3 The following additional provisions to the Hypothec on Securities shall apply:

7A3.1 If not already pledged and delivered, the Grantor pledges and delivers to the Attorney, concurrently herewith, the certificates representing all shares and other interests held in the entities identified in Schedule "C" hereof under the heading "Pledged Shares" (the "Pledged Shares") endorsed in blank or accompanied by a stock transfer power of attorney executed in blank as well as a certified copy of a resolution of the board of directors of each issuer of such Pledged Shares, or such other appropriate authority, in form and substance satisfactory to the Attorney, having regard to the applicable constating documents of such issuer, approving the transfer(s) contemplated by this Deed, including any prospective transfer of such Pledged Shares

by the Attorney upon realization on the Hypothec and this pledge.

If, at any time on or after the date hereof, the Grantor creates or acquires or otherwise becomes the holder of any Securities in any subsidiary, the Grantor shall, as promptly as reasonably practicable and to the extent permitted by applicable law, deliver, hypothecate and pledge to the Attorney, by delivering same to it or its then designated nominee, such share certificates and other instruments endorsed in blank or accompanied by appropriate powers of attorney for transfer in blank, duly executed, representing such Securities, along with a certified copy of a resolution of the board of directors of each issuer of such Securities, or such other appropriate authority, in form and substance satisfactory to the Attorney having regard to the applicable, constating documents of such issuer, approving the transfer(s) contemplated by this Deed, including any prospective transfer of the Securities by the Attorney upon realization on the Hypothec and this pledge. Once so delivered, they will be deemed to be "Pledged Shares" for the purposes hereof.

Should the additional delivery and pledge of Securities described in the immediately preceding paragraph not be possible by reason of such Securities being uncertificated or for any other reason, the Grantor shall cause the issuer thereof, as promptly as reasonably practicable:

7A3.1.1 to register the Attorney, or its agent or nominee, as the Attorney may direct, as the registered owner of such Securities; or

7A3.1.2 cause to be delivered to the Attorney an irrevocable agreement of the issuer of such Securities satisfactory to the Attorney that the issuer will comply with instructions that are originated by the Attorney without the further consent of the Grantor and sufficient to provide the Attorney "control" of the securities and financial assets (within the meaning of the *Act respecting the transfer of securities and the establishment of security entitlements* (Québec)) and maintain first priority of the Hypothec on such securities and financial assets.

The Grantor represents and warrants to the Attorney as follows and acknowledges that the Attorney is relying on the representations and warranties:

7A3.1.3 it is the registered and beneficial owner of, and has good title to, the Pledged Shares;

7A3.1.4 it has caused each issuer of the Pledged Shares to record on their books and records that the Pledged Shares are subject to a pledge in favour of the Attorney or its nominee under this Deed; and

7A3.1.6 each issuer of the Pledged Shares that is a partnership or a limited liability company (i) confirms that the terms of the Pledged Shares issued by it provide that each such Pledged Share is a "Security" within the meaning of the *Act respecting the transfer of securities and the establishment of security entitlements* (Québec) or equivalent, (ii) agrees that it will take no action to cause or permit any such Pledged Shares to fail to constitute a "Security" and (iii) agrees that such equity interests will at all times be certificated.

7A3.2 The Attorney may request, after the occurrence of an Event of Default which is continuing, that the Grantor cause, and the Grantor shall then cause, such of the Securities to be registered in the name of the Attorney or its nominee and, if then requested by the Attorney, transfer such Securities into the name of the Attorney or its nominee, so that the Attorney or its nominee may appear as the sole owner of record of such Securities or if any such Securities are at any time registered or recorded in records maintained by or on behalf of the issuer thereof in the name of a clearing agency or a custodian or of a nominee of either, the Grantor will cause an appropriate entry to be made in the records of the clearing agency or custodian to record the interest of the Attorney in such Securities or instruments created pursuant to this Deed.

7A3.3 Until the occurrence of an Event of Default which is continuing, the Attorney shall deliver promptly to the Grantor all notices or other communications received by the Attorney in respect to any Securities. After the occurrence of an Event of Default which is continuing, the Grantor waives all rights to receive any notices or communications received by the Attorney or its nominee in respect of the Securities.

7A3.4 Until the occurrence of an Event of Default which is continuing, the Grantor shall be entitled to exercise all voting rights in respect of the Securities and to give consents, waivers, directions, notices and ratifications and to take other action in respect thereof, provided however that no votes shall be cast or consent, waiver, direction, notice or ratification given or action taken which would:

7A3.4.1 be prejudicial to the Attorney's Hypothec;

7A3.4.2 impair or reduce the value of or restrict the transferability of the Securities; or

7A3.4.3 be inconsistent with or violate any provisions of this Deed, the Trust Deed or any other agreement between the Grantor and a Debentureholder.

7A3.5 Until the occurrence of an Event of Default which is continuing, if any of the Securities are registered in the Attorney's, its agent's or nominee's name, the Attorney, on the Grantor's written request, shall execute and deliver or cause its agent or nominee to execute and deliver to the Grantor suitable proxies, voting powers or powers of attorney in favour of the Grantor or its nominee or nominees for voting, giving consents, waivers, directions, notices or ratifications or taking any other action the Grantor is permitted to take in respect of the Securities.

7A3.6 Until the occurrence of an Event of Default which is continuing, the Grantor shall be entitled to receive and deal with (except as restricted by this Deed, the Trust Deed or any other agreement between the Grantor and a Debentureholder) any distributions or dividends at any time payable on or with respect to the Securities, and the Attorney shall immediately deliver to the Grantor any distributions or dividends received by the Attorney.

7A3.7 Upon the occurrence of an Event of Default which is continuing, the Grantor's rights pursuant to Sections 7A3.3, 7A3.4, 7A3.5 and 7A3.6 shall cease and the Attorney may enforce and exercise any of the Grantor's rights with respect to the Securities. Upon an Event of Default which is continuing, the Grantor shall and shall be deemed to hold all Securities not under the control of the Attorney as mandatary, separate and apart from other property and assets of the Grantor, for the benefit of the Attorney, until all Obligations Secured have been paid in full, and shall forthwith transfer control of such Securities to the Attorney, or its nominee or agent, as the Attorney may direct. The Attorney and its nominee shall not have any duty of care with respect to the Securities other than to use the same care in the custody and preservation of the Securities as it would with its own property. The Attorney or its nominee may take no steps to defend or preserve the Grantor's rights against the claims or demands of others. The Attorney or its nominee, however, shall use its reasonable best efforts to give the Grantor notice of any claim or demand of which it becomes aware to permit such Grantor to have a reasonable opportunity to defend or contest the claim or demand.

Any and all money and other property paid over to or received by the Attorney pursuant to Section 7A3 shall be retained by the Attorney as additional Charged Property hereunder and applied in accordance with the provisions hereof.

7A3.8 Notwithstanding any provision to the contrary herein or elsewhere, the Attorney shall be entitled to sell, transfer or otherwise dispose of the whole or part of the hypothecated Securities constituting securities or security entitlements within the meaning of the Act respecting the transfer of securities and the establishment of security entitlements (Québec) without having to give the Grantor prior notice of the exercise of its rights, obtain the surrender of the hypothecated Securities or observe the time limits prescribed by the Civil Code of Québec provided that, in each case, the Attorney has "control" of same (within the meaning of the Act respecting the transfer of securities and the establishment of security entitlements (Québec)) or in the absence of said control, they are, or are of a type, dealt with or traded on securities exchanges or financial markets."

2.4 Section 8.11 of the Initial Deed of Hypothec is amended to now read as follows:

"8.11 The moneys and other proceeds arising from any sale or realization of the whole or any part of the Charged Property, whether under any sale by the Attorney or by judicial process or otherwise together with any other moneys or other proceeds then in the hands of the Attorney and available for such purpose, shall be applied to the payment of the Debentures and other moneys owing to the Attorney and the Debentureholders in accordance with and in the manner set forth in the Trust Deed."

2.5 Section 12.1 of the Initial Deed of Hypothec is amended to now read as follows:

"12.1 Notice to the Grantor - Any notice or demand to the Grantor required or permitted to be given or made hereunder shall be in writing addressed to the party for whom it is intended and shall be served personally on a director, officer or responsible employee of the addressee or sent by telecopier to the addresses set forth above or, as applicable, beside their respective signatures to the Trust Deed or to such other mailing or telecopier address as each party may from time to time notify another as aforesaid. Unless the law deems a particular notice to be received earlier, a notice shall not be deemed received until actual receipt thereof by the other party."

### 3. REHYPOTHECATION

For all purposes intended and without affecting or impairing in any manner the rights of the Attorney under the Initial Deed of Hypothec, the Grantor hereby rehypothecates, in favour of the Attorney, the universality of its present and future property, moveable and immoveable, real and personal, corporeal and incorporeal, tangible and intangible, now owned or hereafter acquired, of any nature whatsoever and wheresoever situated, the whole, including without limitation the following (collectively, the "Charged Property"):

- 3.1.1 the immovable property described in Schedule A to the Initial Deed of Hypothec which is again described herein in Schedule A to this Supplemental Deed and all other present and future immovable property and rights now owned or hereafter acquired by the Grantor, together with any and all servitudes, rights of way, benefits and rights connected therewith or pertaining thereto, together with all constructions and works of a permanent nature now or hereafter located thereon and forming an integral part thereof and with all buildings, plants and improvements now or hereafter thereon erected, as well as all heating, refrigerating and lighting fixtures and other equipment, elevators, fixtures, accessories and furnitures now or hereafter attached thereto or placed therein or thereon (hereinafter called the "Immovable Hypothecated Property");
- 3.1.2 all present and future leases, agreements to lease, offers to lease, options to lease and other rights to occupy premises (hereinafter collectively called "Leases" and individually called a "Lease") of the Immovable Hypothecated Property, or any part thereof, and all present and future rents, revenues and other claims arising out of any Leases or other rights or contracts in respect of the Immovable Hypothecated Property, including, without limitation, any indemnity which may be payable pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of any Lease, and the continuing right to demand, sue for, recover, receive and give receipts for such rents, revenues, other claims and indemnity;
- 3.1.3 all movable property which is now or at any time hereafter permanently physically attached or joined to the Immovable Hypothecated Property or which is now or at any time hereafter located in or on the Immovable Hypothecated Property and which ensures the utility of the Immovable Hypothecated Property or which is used by

the Grantor for the operation of its enterprise or the pursuit of its activities;

3.1.4 the indemnities or proceeds now or hereafter payable under any present or future insurance contract on the Immoveable Hypothecated Property, under any present or future insurance contract on any of the property mentioned in paragraphs 3.1.2 and 3.1.3 above and under any present or future insurance contract on any other of the Charged Property;

3.1.5 all present and future machinery, equipment, tools, implements, furniture, rolling stock, vehicles, spare parts and additions of the Grantor;

3.1.6 all present and future property in stock and inventory of the Grantor whether in its possession, in transit or held on its behalf, including, without limitation, all movable property in reserve, raw materials, goods in process, finished products, packaging materials, property held by third parties pursuant to a rental, leasing, franchise, licence or other agreement entered into with or on behalf of the Grantor, property evidenced by bill of lading, animals, wares, as well as any other property held for sale, lease or processing in the manufacture or transformation of property intended for sale, for lease, or for use in providing a service by the Grantor in the ordinary course of operation of its enterprise;

3.1.7 all present and future claims of the Grantor of any nature or kind, whatever their cause, whether or not evidenced by any title, and whether or not such title is negotiable, bill of exchange or draft, and whether or not they constitute book debts or trade accounts receivable, including, without limitation, all customer accounts, accounts receivable, rights of action, demands, judgments, contract rights, amounts on deposit, proceeds of sale, assignment or lease of any property rights or titles, any indemnities payable under any contract of insurance whether or not such insurance is on property forming part of the Charged Property and proceeds of expropriation, the whole which are now due or which may become due to the Grantor, together with all judgments and all other rights, benefits, guarantees and securities for the said claims which now or may hereafter exist in favour of the Grantor, and together with all books and accounts, titles, letters, invoices, papers and documents

in any way evidencing or relating to all or any of the claims;

3.1.8 all shares, limited partnership units, trust units, stock, warrants, bonds, debentures, debenture stock and other securities, financial assets and security entitlements (as such terms are defined in the *Act respecting the transfer of securities and the establishment of security entitlements* (Québec)) in which the Grantor now or hereafter has an interest, and any part thereof, including on the date hereof, the shares of its subsidiaries, if any, together with any renewals thereof, substitutions therefor and additions thereto and all certificates and instruments evidencing or representing such securities and any and all other property that may at any time be received or receivable by or otherwise distributed to or acquired by the Grantor in any manner in respect of, or in substitution for, or in addition to, or in exchange for, or on account of, any of the foregoing, including, without limitation, any shares or other securities or interests resulting from the subdivision, consolidation, change, conversion or reclassification of any of the securities, or the occurrence of any event which results in the substitution or exchange of such interests, as well as all those which are delivered by the Grantor to the Attorney or to a third party on its behalf from time to time (collectively, the "Securities");

3.1.9 all present and future goodwill, trademarks, patents and patent rights, copyrights, inventions, industrial designs, trade secrets, know-how, other intangible or incorporeal property, monies, agreements and rights under agreements of the Grantor, and all its present and future enterprise and undertaking;

3.1.10 the proceeds of any sale, assignment, lease or other disposition of any of the present and future property of the Grantor, any claim resulting from such a sale, assignment, lease or other disposition, as well as any property acquired in replacement thereof (nothing herein shall be interpreted as permitting the Grantor to dispose of the Charged Property in contravention of the provisions of this Deed);

3.1.11 any present and future rights attached to any of the present and future property of the Grantor, as well as the fruits and revenues thereof;



3.1.12 any indemnity or proceeds of expropriation now or hereafter payable in respect of the Charged Property; and

3.1.13 all present and future titles, documents, records, receipts, invoices, accounts and data of the Grantor evidencing or relating to any of the present and future property of the Grantor, including, without limitation, computer disks, tapes and related electronic data processing media, rights of the Grantor to retrieve the same from third parties, delivery receipts, catalogs, insurance certificates and the like.

The amount for which this hypothec is granted is a principal amount of FIVE HUNDRED MILLION CANADIAN DOLLARS (CDN\$500,000,000) plus interest thereon from the date hereof at the rate of 25% per annum, calculated semi-annually, not in advance, and is to secure the Obligations Secured. Any future obligation hereby secured shall be deemed to be one in respect of which the Grantor has once again obligated itself hereunder according to provisions of Article 2797 of the *Civil Code of Québec*.

The hypothec created above is in addition to and not in substitution of or in replacement for any other hypothec or security held by the Attorney and shall not create novation of the Hypothec constituted under the Initial Deed of Hypothec.

For the purposes hereof, "Obligations Secured" shall mean the due payment of the principal of the Debentures (as defined in the Initial Deed of Hypothec) and all interest thereon, together with the payment of all sums due or to become due by the Grantor under or pursuant to this Deed and the Initial Deed of Hypothec and the due performance and observance by the Grantor of all obligations provided for under or pursuant to this Deed and the Initial Deed of Hypothec.

#### 4. EFFECT OF THIS SUPPLEMENTAL DEED

This Supplemental Deed is declared to be supplemental to the Initial Deed of Hypothec and is to form an integral part thereof and shall have effect as though incorporated in the Initial Deed of Hypothec, the expressions "this Deed", "these presents", "herein", "hereby", "hereon", "hereunder" and similar expressions, when used in the Initial Deed of Hypothec, shall henceforth include the present Supplemental Deed.

#### 5. SCHEDULES

5.1 The Following is Schedule A to this Supplemental Deed:

Schedule A

(A) An immovable proper fronting on Reading Street, in the City of Montreal, known and designated as Lot ONE MILLION THREE HUNDRED AND EIGHTY-TWO THOUSAND AND THREE HUNDRED AND FIFTY-FIVE (1 382 355) of the Cadastre du Quebec, Registration Division of Montreal.

With the building bearing civic numbers 2655, 2675 and 2677 Reading Street, Montreal, Quebec, H3K 1P6.

And with and subject to all servitudes, active or passive, which may affect or benefit the property, and namely those in favour of COMMUNAUTE URBAINE DE MONTREAL (CUM) in virtue of two deeds registered at the Registry Office for the said Registration Division under the numbers 2633432 and 4501773, and a servitude of right of way and view in virtue of that certain deed registered under the number 2098288.

(B) Another property fronting on Reading Street, in the City of Montreal, known and designated as Lot ONE MILLION THREE HUNDRED AND EIGHTY-TWO THOUSAND THREE HUNDRED AND THIRTEEN (1 382 313) of the Cadastre du Quebec, Registration Division of Montreal.

With the building bearing civic number 2760 Reading Street, Montreal, Quebec, H3K 1P5.

5.2 The Following is Schedule C to the Initial Deed of Hypothec:

Schedule C

Hypothecated Securities

Pledged Shares

Issuer	Pledgor	Number and Type of Securities
Arctic Glacier International Inc.	Arctic Glacier Inc.	400 common shares
3084435 Nova Scotia Company	Arctic Glacier Inc.	10,000 common shares
101049005 Saskatchewan Ltd.	Arctic Glacier Inc.	1,000 common shares

**6. GOVERNING LAW**

This Supplemental Deed shall be governed by and construed in accordance with the laws of the Province of Quebec and the laws of Canada applicable therein.

**7. ENGLISH LANGUAGE**

The parties hereby confirm their express wish that the present Supplemental Deed and all documents and agreements directly and indirectly related thereto be drawn up in English. Notwithstanding such express wish, the parties agree that any of such documents and agreements or any part thereof or of this Supplemental Deed may be drawn up in French.

Les parties reconnaissent leur volonté expresse que le présent acte ainsi que tous les documents et conventions qui s'y rattachent directement ou indirectement soient rédigés en langue anglaise. Nonobstant telle volonté expresse, les parties conviennent que n'importe quel desdits documents et conventions ou toute partie de ceux-ci ou de cet acte puissent être rédigés en français.

**WHEREOF ACTE:**

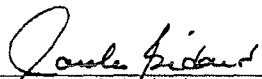
**DONE AND PASSED** in the City of Montréal, Province of Québec, on the date hereinabove set forth, under number TWO HUNDRED AND FIFTY-SIX (256) of the original of the minutes of the undersigned notary.

**AND** after the parties had declared to have taken cognizance of these presents and to have exempted the said Notary from reading them or causing them to be read, the said duly authorized representatives of the Grantor and the Attorney respectively have signed these presents, all in the presence of the said Notary who has also signed.

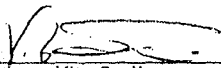
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Thorvaldson LLP  
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Room)  
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COMPUTERSHARE TRUST COMPANY OF  
CANADA

Per:

  
Name: Carole Bedard  
Title: Professional, Corporate  
Trust

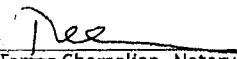
Per:

  
Name: Vito Scalia  
Title: Administrator, Corporate  
Trust

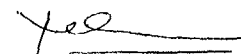
ARCTIC GLACIER INC.

Per:

  
Name: Alain Lalonde  
Title: Representative

  
Tamar Chametian, Notary

TRUE COPY OF THE ORIGINAL  
REMAINING IN MY OFFICE





**TRUST DEED** dated as of October 18, 2010.

**BETWEEN:**

**ARCTIC GLACIER INC.,**  
a corporation duly amalgamated under the laws of Alberta  
(the "Corporation")

- and -

**COMPUTERSHARE TRUST COMPANY OF CANADA,**  
a trust company incorporated under the laws of Canada  
(the "Trustee")

**RECITALS:**

A. The Corporation wishes to raise money for its corporate purposes and/or secure certain of its obligations, and with a view to doing so wishes to create and issue Debentures in the manner provided in this Trust Deed.

B. All necessary resolutions of the directors of the Corporation have been duly enacted, passed and/or confirmed and other proceedings taken and conditions complied with to make the creation and issue of the Debentures proposed to be issued hereunder and this Trust Deed and the execution thereof legal, valid and binding on the Corporation in accordance with the laws relating to the Corporation.

**THEREFORE, THE PARTIES HAVE AGREED AS FOLLOWS:**

**1. FORM AND ISSUE OF DEBENTURES**

**1.1 Limitation of Issue**

The Debentures to be issued under and secured by this Deed are limited to an aggregate principal amount of five hundred million Canadian dollars (Cdn. \$500,000,000) and may be issued in one or more series. The Debentures shall be designated as "Series A Debentures", "Series B Debentures", and so on if two or more series are issued, but the designation of different series of Debentures need not be consecutive so that, for example, Series C Debentures may be issued without Series B Debentures having been issued. Except with respect to the letter A, series of Debentures may also be designated with two or more letters, such as "Series BB Debentures" and "Series CCC Debentures". In addition, further Debentures in any series may be issued from time to time despite the issuance of Debentures in a subsequent series. Debentures of all series shall be designated collectively as "Debentures" and shall be subject to the terms and conditions of this Deed. No Debenture may be issued without the prior written consent of the Holders (as defined below), which consent, in the case of the Subordinated Holders, shall not be unreasonably

withheld. For greater certainty, the limit of the aggregate principal amount of Debentures which may be issued hereunder shall not be reduced by the principal amount of Debentures which have been returned to the Trustee for cancellation or discharge in accordance with the terms hereof.

## 1.2 Forms, Terms and Place of Payment

Each Debenture shall be fully registered and substantially in the form set out in Schedule A to this Deed, shall be payable on demand in lawful money of Canada at the address of the holder or holders specified in the Debenture (the "Holders", which shall mean one or more persons holding one or more Debentures) and the Debentures shall bear interest from the date of each respective debenture at the rate of twenty-five per cent (25%) per annum, or at such other rate as may be agreed upon by the Corporation and the Holders from time to time, payable on demand, both before and after maturity and default, with interest on overdue interest at the same rate. Each Debenture may, but need not, be under the seal of the Corporation, shall be signed by any officer or director of the Corporation and shall be certified by the Trustee and delivered by the Trustee to or to the order of the Corporation upon receipt by the Trustee of an order in writing signed by any officer or director of the Corporation. No Debenture shall be issued, or, if issued, shall be obligatory or entitle the Holder to the benefit hereof, until it has been certified by or on behalf of the Trustee substantially in the form of the certificate set out in Schedule "A" to this Deed, or in some other form approved by the Trustee, and such certification by the Trustee upon any Debenture shall be conclusive evidence as against the Corporation that the Debenture so certified has been duly issued hereunder and is a valid obligation of the Corporation and that the Holder is entitled to the benefit hereof. The certificate of the Trustee shall not be construed as a representation or warranty of the Trustee as to the validity or security of the Trust Deed or the Debentures. Nothing in this Deed or the Debentures shall make the Trustee responsible or liable for the Corporations obligations to pay the principal of or interest on the Debentures.

## 1.3 Pledge of Debentures

Each Debenture shall be pledged, hypothecated, issued or charged by the Corporation as security for payment by the Corporation of certain or all debts and liabilities, including debts and liabilities in any currency, present or future, direct or indirect, absolute or contingent, matured or not, for a current or running account or not, at any time owing by the Corporation to the Holder thereof or remaining unpaid by the Corporation to the Holder thereof, whether arising from dealings between the Holder thereof and the Corporation or from any other dealings or proceedings by which the Holder thereof may be or become in any manner whatever a creditor of the Corporation, and wherever incurred, and whether incurred by the Corporation alone or with another or others, and whether as principal or surety, including expenses and all interest, commissions, legal and other costs, charges and expenses (the "obligations secured", it being understood and agreed that the term "obligations secured" as used in this Deed shall mean, as the context may require, such obligations of the Corporation owing to a particular Holder or Holders hereunder or the aggregate of such obligations of the Corporation owing to all the Holders hereunder from time to time). To the extent of any inconsistency between the terms and conditions of a Debenture and the terms and conditions of any of the obligations secured, the terms and conditions of the latter shall prevail.

## 1.4 Terms of Issue

The Debentures may be issued to such persons, in such amounts not exceeding the maximum amount set forth in Section 1.1 less the principal amount of Debentures outstanding (which, for greater certainty, shall not include any Debentures previously delivered to the Trustee for cancellation or discharge), for such consideration and on such terms as the directors of the Corporation may determine. Each series of Debentures issued under this Deed shall rank in respect of their entitlement to payment and all voting and other rights relating to the Debentures in priority according to the alphabetical order of their respective series. Accordingly, all Series A Debentures, whenever issued or certified, shall have priority over Series B Debentures, which shall in turn

have priority over Series C Debentures and so on. Series of Debentures designated with different numbers of the same letter shall rank in priority according to the number of letters in the designation so that, for example, Series BBB Debentures shall have priority over Series BB Debentures. Debentures within a series shall rank *pari passu* without discrimination, preference or priority of one Debenture of such series over another and the Holders of Debentures of such series shall be secured equally and rateably according to the principal amount and interest from time to time owing with respect to each Debenture of such series (having regard to the obligations secured by such Debenture, rather than the face amount of such Debenture pledged in accordance with Section 1.3 above) regardless of their respective dates of issue or certification of each Debenture of such series. The Holders of the series of Debentures having the highest ranking for the time being are referred to in this Trust Deed as the "Senior Holders".

The priorities contained herein in connection with the obligations secured shall apply in all events and circumstances regardless of:

- (a) the date that any loan, advance, or other accommodation is made to the Corporation or any debt, liability or obligation is incurred by the Corporation; or
- (b) the date of any default by the Corporation; or
- (c) any priority granted by any principle of law or any statute; or
- (d) any other factor of legal relevance other than this Trust Deed.

No power that is exercised by the Holders, or any of them, shall detract from the rights of the other Holders under the terms of the respective obligations secured in the case of Debentures that have been pledged in accordance with Section 1.3.

#### **1.5 Registration and Transfer**

The Corporation shall cause to be kept by the Trustee at its office in the City of Toronto, in the Province of Ontario a register in which shall be entered the names and addresses of the Holders and principal amount of each Debenture. No transfer of a Debenture shall be valid unless made on such register by the registered holder or its successors or assigns or its or their attorney duly appointed by an instrument in writing, in form and execution satisfactory to the Trustee, and upon compliance with such reasonable requirements as the Trustee may prescribe. The ownership of the Debentures shall be proved by such register. The registered Holders shall be considered to be the owners thereof for all purposes of this Deed and shall be entitled to the principal monies and interest evidenced by the Debentures without regard to any set-off, counterclaim, equities or compensation between the Corporation and the Holders' transferors or any previous holders thereof.

#### **1.6 Cancellation, Retirement Etc. of Debentures**

Any Holder may deliver to the Trustee from time to time one or more of the Debentures issued pursuant to this Deed and held by it for cancellation or retirement (subject to the principal amount outstanding thereon and any interest, charges and expenses related thereto having been repaid in full to the Holder) or replacement, consolidation or subdivision, or to evidence a reduction of the principal amount outstanding from time to time. Subject to the limitation set forth in Section 1.1, upon receipt of such Debentures and a resolution of the Holder delivering such Debentures evidencing its intentions with respect to such cancellation, retirement, replacement, reduction, subdivision or consolidation, the Trustee shall forthwith notify the Corporation and the Corporation upon receipt of such Debentures shall forthwith issue in accordance with the terms and conditions of this Deed such additional, replacement, subdivided or consolidated Debentures as may be requested by the Holders in the aforesaid resolution, or the Trustee may endorse any Debenture with a notation of the reduction of the amount thereof. Upon issuance of such



additional, replacement, subdivided or consolidated Debentures, or endorsement or reduction of any existing Debenture, as appropriate, the Corporation shall cause to be made such entries in the register provided for in Section 1.5 and the Trustee shall certify such Debentures, subject to receipt of such documentation as the Trustee may require, acting reasonably.

#### 1.7 Replacement of Debentures

In case any of the Debentures shall be mutilated or defaced or be lost, destroyed or stolen, the Corporation, subject to applicable law, shall issue a new Debenture pursuant to this Deed and thereupon the Trustee shall certify and deliver such new Debenture of like date, tenor and series as the one mutilated, defaced, lost, destroyed or stolen in exchange therefore and upon cancellation of such mutilated or defaced Debenture and in lieu of and in substitution for such lost, destroyed or stolen Debenture, and the new Debenture shall be entitled to the security hereof and rank equally in accordance with its terms with all other Debentures of the same series issued hereunder.

The applicant for the issue of a new Debenture pursuant to this Section 1.7 shall bear the cost of the issue thereof and in case of loss, destruction or theft shall, as a condition precedent to the issue thereof, furnish to the Corporation and to the Trustee such evidence of ownership and of the loss, destruction or theft of the Debenture so lost, destroyed or stolen as shall be satisfactory to the Corporation and the Trustee in their discretion and such applicant may also be required to furnish an indemnity in amount and form satisfactory to the Corporation and the Trustee in their discretion, and shall pay the reasonable charges of the Corporation and the Trustee in connection therewith.

### 2. CHARGING PROVISIONS

#### 2.1 Fixed and Floating Charges and Security Interest

In consideration of the premises and of one dollar (\$1) to the Corporation now paid by the Trustee (receipt whereof is hereby acknowledged) and for the purpose of securing the due payment in lawful money of Canada of the Debentures in the principal amount of five hundred million dollars (\$500,000,000) and of interest thereon from the formal date hereof at the rate of twenty-five per cent (25%) per annum, calculated monthly and payable on demand, both before and after maturity and default, with interest on overdue interest at the same rate, and the payment of any additional amounts from time to time due hereunder to the Trustee, including but not limited to an additional amount equal to twenty-five per cent (25%) of the principal amount for costs of realization and other accessories, the Corporation hereby:

- (a) grants, assigns, mortgages and charges as and by way of a fixed and specific mortgage and charge to and in favour of the Trustee, and grants to the Trustee a security interest in, all of its present and after-acquired real and personal property, including but not limited to:
  - (i) all freehold real and immovable property now or hereafter owned or acquired by the Corporation together with all buildings, erections and fixtures now or hereafter constructed or placed thereon,
  - (ii) all leasehold property now or hereafter leased by the Corporation including but not limited to the leasehold property described in Schedule C hereto, together with all buildings, erections and fixtures now or hereafter constructed or placed thereon,
  - (iii) all inventory, goods, furniture, equipment, machinery, vehicles, aircraft and other tangible personal property now or hereafter owned by or acquired by the Corporation and all replacements, attachments and accessories thereto from time to time,

- (iv) all intangible property now or hereafter owned or acquired by the Corporation, including, but not limited to, all contract rights, chattel paper, warehouse receipts, bills of lading, documents of title, insurance policies, instruments, securities, accounts, book debts, receivables which are not book debts, choses in action, licenses, permits, franchises, leases, client lists, goodwill, patents, trademarks, trade names, copyrights, other industrial and intellectual property and the undertaking of the Corporation; and
- (b) charges as and by way of a floating charge to and in favour of the Trustee for the benefit of the Holders, and grants to the Trustee for the benefit of the Holders a security interest in all of the present and after-acquired property, undertaking and assets of the Corporation for the time being, both real and personal, movable and immovable of whatsoever nature and kind now owned or hereafter acquired (except such property and assets as are validly and effectively subject to any fixed and specific mortgages and charges created hereby), including its goodwill and uncalled capital.

Without the necessity of any further act of the Corporation or the Trustee, the mortgages, charges and security interests constituted hereby shall automatically extend to and include:

- (c) any and all renewals, replacements, substitutions, accessions, proceeds, products, additions, amendments, modifications, extensions or consolidations of or to the assets and property heretofore described;
- (d) any and all right, title and interest of the Corporation hereafter acquired in or to any real or personal property or asset of any nature whatsoever; and
- (e) any and all of the Corporation's right, title, interest, property, claims, demands, judgments, awards, proceeds and settlements or payments, including interest thereon, and the right to receive the same, at law as well as in equity or otherwise, as a result of or by way of: (i) insurance proceeds payable under all insurance policies of the Corporation or (ii) any injury or damage to or any taking, expropriation, requisitioning, conversion (voluntary or involuntary) or decrease in the value of any property or asset of the Corporation of any nature whatsoever.

The Corporation's undertaking and all its property and assets, present and future, are herein called the "mortgaged property".

## 2.2 Reservation of Last Day of Leasehold Terms

The charge of the mortgaged property contained in Section 2.1 shall not extend or apply to the last day of the term of any lease or any agreement therefor now held or hereafter acquired by the Corporation, but should such charge become enforceable, the Corporation shall thereafter stand possessed of such last day and shall hold it in trust to assign the same to any person acquiring such term or the part thereof charged in the course of any enforcement of the charge or any realization of the subject matter thereof.

## 2.3 Contracts, Rights or Licences

The charge of the mortgaged property contained in Section 2.1 shall not extend or apply to any contract, right or licence of the Corporation, if pursuant to the terms of such contract, right or licence such contract, right or licence would automatically terminate if it was part of the mortgaged property, or would be terminable at the option of the other party to or of the grantor thereof, but should such charge become enforceable, the Corporation shall thereafter stand possessed of such contract, right or licence and shall hold it in trust to assign the same or dispose of the same to any person as requested by the Trustee. In order that the full value of all such

contracts, rights and licences may be realized for the benefit of the Holders, the Corporation shall at its expense and at the request of the Trustee from time to time, take all such action and do or cause to be done all such things as shall, in the reasonable opinion of the Trustee (with advice of counsel as the Trustee considers appropriate), be necessary or proper in order that all such contracts, rights and licences shall enure to the benefit of the Holders and, to the extent reasonably possible, become subject to the charge constituted by this Deed.

#### **2.4 Charge Valid Irrespective of Advance**

The security constituted hereby or intended so to be shall be effective whether the monies hereby secured or any part thereof shall be advanced before or after or at the same time as the execution and delivery of this Deed or the issue or certification of any of the Debentures.

#### **2.5 Attachment**

The Corporation acknowledges that value has been given to the Corporation by the Holders in connection with the Corporation's execution and delivery of this Deed. The Corporation and the Holders have not agreed to postpone the time for attachment of the security constituted hereby which is intended to attach, as to all of the mortgaged property in which the Corporation has an interest at the time of the execution of this Deed, at such time, and as to all of the mortgaged property in which the Corporation acquires an interest after the execution of this Deed, at the time the Corporation acquires such interest.

#### **2.6 Effect of Charges**

The security created hereby will entitle the Trustee to have and to hold the mortgaged property and all rights hereby conferred unto the Trustee, its successors and assigns, forever, but in trust, nevertheless, and with the powers and authorities and subject to the terms and conditions mentioned and set forth herein.

#### **2.7 Possession until Default**

Until the security hereby constituted becomes enforceable and the Trustee determines to enforce the same, the Corporation is permitted in the same manner and to the same extent and with the same effect as if this Deed had not been executed, but subject to the express terms hereof and any other agreement between the Corporation and a Holder which relates to any obligations secured, to possess, operate, manage, use and enjoy the mortgaged property (other than any cash or investments on deposit with the Trustee) and freely to control the conduct of its business and to collect, take, retain and use the rents, incomes, profits and issues thereof.

#### **2.8 Further Assurances**

The Corporation hereby covenants and agrees that it will at all times do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, deeds, mortgages, transfers, assignments and assurances as the Trustee or the Holders may reasonably require for the better accomplishing and effectuating the purpose of this Deed, including the execution and delivery of indentures supplemental hereto more particularly describing the mortgaged property or to correct or amplify the description of the mortgaged property or to better assure, convey and confirm unto the Trustee any of the mortgaged property. Upon the execution of any supplemental indenture under this Section, this Deed shall be modified in accordance therewith, and each such supplemental indenture shall form part of this Deed for all purposes. Notwithstanding anything herein contained, the Trustee will not be bound to take any conveyance, assignment or transfer pursuant hereto of any property or assets that, in the opinion of counsel to the Trustee, is of an onerous character, but the Corporation shall hold any such property or assets in trust for the Trustee.

## 2.9 Liability of Trustee

Neither the Trustee nor any receiver shall (i) be responsible or liable for any debts contracted by it, for damages to persons or property, for salaries or for non-fulfilment of contracts during any period when the Trustee or any receiver shall manage or be in possession of the mortgaged property; (ii) be liable to account as mortgagee in possession or to account for anything except actual receipts or be liable for any loss on realization or for any default or omission for which a mortgagee in possession may be liable; (iii) be bound to do, observe or perform or to see to the observance or performance by the Corporation of any obligations or covenants imposed upon the Corporation; or (iv) in the case of any chattel paper, security or instrument, be obligated to preserve rights against any other persons. The Corporation hereby waives any provision of applicable law permitted to be waived by it which imposes higher or greater obligations upon the Trustee or any receiver than aforesaid.

## 2.10 Applicable Laws Exception

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

## 2.11 Waivers of Applicable Laws

- (a) To the extent not prohibited by applicable law, the Corporation hereby waives its rights, if any, under all provisions of applicable law that would in any manner, limit, restrict or otherwise affect the Trustee's rights and remedies hereunder or impose any additional obligations on the Trustee. The Corporation waives the right to receive any financing statement or any verification statement issued by any registry that confirms registration of a financing statement relating to this Deed.
- (b) To the full extent that it may lawfully do so, the Corporation hereby:
  - (i) waives and disclaims any benefit of, and shall not have or assert any right under any statute or rule of law pertaining to, the marshalling of assets or any other matter whatever, to defeat, reduce or affect the rights of the Trustee under the terms of this Deed to a sale of the mortgaged property or any part thereof or for the collection of all amounts secured by this Deed; and
  - (ii) agrees that it shall not have or assert any right or equity of redemption or any right under any statute or otherwise to redeem the mortgaged property or any part thereof after the sale hereunder to any person whether such sale is by the Trustee, any receiver or otherwise, notwithstanding, that the Trustee may have purchased same.

### 3. COVENANTS

The Corporation hereby covenants and agrees with the Trustee for the benefit of each Holder:

#### 3.1 Principal and Interest

That it will pay or cause to be paid, when due, the principal, interest and all other amounts secured by the Debentures,

#### 3.2 Not to Encumber

That it will not, without the prior written approval of the Trustee or the Holders (which may be evidenced from time to time by a resolution of the Holders or, for any particular Holder, by the terms of any agreement to which the Holder and the Corporation are parties that relates to the terms of obligations secured by a pledge of the Debenture in favour of that Holder), create or permit to exist any mortgage, hypothec, charge, lien, encumbrance or other security interest or lease upon or affecting the mortgaged property or any part thereof.

#### 3.3 Comply with Environmental Law

That it will operate its business and all of the mortgaged property in compliance with all applicable laws intended to protect the environment ("Environmental Laws").

#### 3.4 Reporting Requirements

That it will immediately notify the Trustee after becoming aware of any release or upon the discovery of any contaminant at, upon, under, over, within or with respect to the mortgaged property which will give rise to a material report, inquiry or investigation relating to the requirements of any applicable Environmental Law and will promptly forward to the Trustee copies of all orders, notices, permits, applications or other communications and reports received from any governmental authority in connection with any applicable Environmental Law affecting or relating to the mortgaged property or the operations or activities of the Corporation or any of its subsidiaries.

#### 3.5 Preserve and Protect the Mortgaged Property

That it will diligently maintain, use and operate the mortgaged property and shall carry on and conduct its business in a proper and efficient manner so as to preserve and protect the mortgaged property and the earnings, incomes, rents, issues and profits thereof.

#### 3.6 Governmental Requirements

That it will duly observe and conform to all valid requirements of any governmental authority relative to any of the mortgaged property and all covenants, terms and conditions upon or under which the mortgaged property is held.

The Corporation represents and warrants to the Trustee (such representations being also for the benefit of each Holder);

#### 3.7 Absence of Hazardous Materials

That to its knowledge (i) there are no Hazardous Materials located on, above or below the surface of any land which it occupies or controls, except those being stored in compliance with

applicable laws, or contained in the soil or water constituting such land, except in compliance with applicable laws, (ii) no release, spill, leak, emission, discharge, leaching, dumping or disposal of Hazardous Materials has occurred on or from such land which, in any such case, could materially and adversely affect its financial condition, the mortgaged property or its operations or its ability to perform its obligations under the Deed, and (iii) no land that it occupies or controls has been used as a landfill or waste disposal site.

### **3.8 Compliance with Environmental Law**

That the Corporation's business and the mortgaged property are operated in substantial compliance with applicable Environmental Laws intended to protect the environment (including, without limitation, laws respecting the disposal or emission of Hazardous Materials), to the best of its knowledge after reasonable inquiry there are no breaches thereof, and no enforcement actions in respect thereof are threatened or pending which, in any such case, could materially and adversely affect the mortgaged property or its ability to perform its obligations under this Deed.

That the Corporation shall include in any lease of any part of the mortgaged property to a third party conditions, warranties and representations substantially in the form of the conditions, warranties and representations concerning Hazardous Materials and Environmental Laws contained in this Deed.

For the purposes of this Deed, "Hazardous Materials" means any hazardous substance or any pollutant or contaminant, toxic or dangerous waste, substance or material, as defined in or regulated by any applicable law, regulation or governmental authority from time to time, including, without limitation, asbestos and polychlorinated biphenyls.

### **3.9 Expenses, Remuneration and Indemnity**

The Corporation shall pay to the Trustee upon demand both before and after default the amount of all reasonable costs, charges, borrowings, expenses and fees of the Trustee incurred in connection with the administration of this Deed including expenses arising in connection with Section 8.1, the repossession, holding, repairing, processing, preparing for disposition and disposing of any of the mortgaged property (including reasonable legal expenses on a solicitor and his own client basis and other expenses including expenses arising in connection with Section 8.1), together with interest from the date of demand at a rate per annum equal to the then-current rate charged by the Trustee from time to time. All amounts owing to the Trustee under or in connection with this Deed shall be secured by the mortgages and charges created in this Deed and be payable in priority to amounts secured by the Debentures.

Without limiting the foregoing, the Corporation covenants that it will pay to the Trustee reasonable remuneration for its services hereunder and will pay or reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in the administration or execution of the trusts hereby created (including the reasonable compensation and the disbursements of its counsel and all other advisers and assistants not regularly in its employ), including, without limitation, all costs incurred by the Trustee in complying with any laws applicable to trustees as a result of its acting hereunder both before any default hereunder and thereafter until all the duties of the Trustee under the trusts hereof shall be finally and fully performed, except any such expense, disbursement or advance as may arise from its negligence or wilful default. Any amount due under this Section shall bear interest from the date of demand for payment at a rate per annum equal to the rate referred to in the preceding paragraph, payable on demand. After default, all amounts so payable and the interest thereon shall be payable out of any funds coming into the possession of the Trustee or its successors in the trusts hereunder in priority to any payment of the principal of or interest or premium on the Debentures.

The Corporation hereby indemnifies the Trustee, its directors, officers, employees, and agents, and any successors and assigns against any loss, expense, claim, liability or asserted liability (including strict liability) incurred as a result of the administration of the trust created hereby, the exercise by the Trustee of any rights hereunder, the performance of any remediation by the Trustee or its agent for bodily injury, property damage, abatement, or remediation, environmental damage or impairment or any other injury or damage or any diminution in value of the mortgaged property resulting from or relating, directly or indirectly, to: (i) the presence or release of any contaminants, by any means or for any reason, on the mortgaged property, whether or not release or presence of the contaminants was under the control, care or management of the Corporation, or of a previous owner, or of a tenant, or (ii) any contaminant present on or released from any contiguous property to the mortgaged property, or (iii) the breach or alleged breach of any Environmental Laws by the Corporation, save and except that the Trustee shall only be responsible for its own negligence and wilful misconduct.

The Corporation shall at all times indemnify the Trustee, its directors, officers, employees, and agents, and any successors and assigns and save them harmless against all actions, proceedings, liability, claims, damages, reasonable costs and expenses, including legal costs whatsoever arising from the performance of its duties hereunder (unless arising from negligence, bad faith or wilful misconduct on their part) and including any action or liability brought against or incurred by any of them in relation to or arising out of any breach by the Corporation of its obligations under this Deed or by the failure of the Trustee or its agents to do such acts as may be necessary to register, perfect, release or discharge the security created hereby as the same may be registered, filed or recorded in any public office.

The agreements in this Section shall survive the termination of this Deed and the repayment of the obligations secured.

### 3.10 Registrations and Deliveries

The Corporation agrees that:

- (a) forthwith after the execution of this Deed and after the execution of each instrument supplemental or ancillary hereto, it shall register, file or record the same and/or, if applicable, a financing statement or other prescribed statement in respect thereof as may from time to time be required by the Trustee, the Senior Holders or any other Holder where such registration, filing or recording may be necessary or desirable or of advantage in preserving or protecting the security constituted by this Deed in favour of the Trustee, the Senior Holder or such other Holder;
- (b) from time to time, it shall renew such registration, filing or recording as required to maintain the security constituted hereby as valid and effective security;
- (c) promptly after such registration, filing, recording or renewal, the Corporation shall cause to be delivered to the Trustee certificates establishing such registration, filing, recording or renewal and opinion of counsel satisfactory to the Trustee, acting reasonably, evidencing that the provisions of this Section 3.10 have been complied with in respect of this Deed or such supplemental or ancillary instrument, as the case may be;
- (d) forthwith after the execution of this Deed and after the execution of each instrument supplemental or ancillary hereto, it shall deliver to the Trustee such other documents as may be reasonably required by the Trustee to be delivered to preserve, protect and perfect the security constituted hereby and represented by such documents of title, security certificates and other documents; and

- (e) in the event that the security constituted hereby becomes enforceable as herein provided and the Trustee shall become bound to enforce the same, the Corporation will from time to time execute all such assurances and do all such things as the Trustee may reasonably require for facilitating the realization of the mortgaged property of the Corporation and for exercising all of the powers, authorities and discretion conferred on the Trustee and for confirming to any purchaser of such mortgaged property or any part thereof, whether sold by the Trustee herein or by judicial proceedings, the title to the property so sold, and it will give all notices and directions which the Trustee may consider necessary or expedient.

The Corporation shall not change its name or amalgamate with another corporation under a different name without giving at least 10 days' prior notice to the Trustee of the new name and the date upon which such change of name or amalgamation is to take effect. Within 5 business days of the change of name or amalgamation, the Corporation shall provide the Trustee with a true copy of the articles of amendment or articles of amalgamation effecting the change of name and a certificate confirming the correct name of the Corporation and that all appropriate registrations, filings or recordings have been made on behalf of the Trustee to fully and effectively maintain the perfection and priority of the security created hereby.

In the event of the amalgamation of the Corporation, this Deed, the Debentures and all other security delivered by the Corporation in connection with this Deed shall be binding on the amalgamated corporation and charge its present and future undertaking, property and assets to secure present and future debts, liabilities and obligations of the Corporation and of the amalgamated corporation to the Trustee and the Holders, all as if the amalgamated corporation had originally executed and delivered those documents.

### **3.11 Proceeds of Unauthorized Sale in Trust**

The Corporation shall, in the event the mortgaged property or any part thereof is sold or disposed of prior to the full discharge of this Deed by the Trustee, in any manner not authorized by this Deed, hold all proceeds of such sale or disposition received by the Corporation as trustee for the Trustee until the Corporation has been fully released from this Deed by the Trustee.

### **3.12 Removal of Mortgaged Property**

Prior to the removal of any of the mortgaged property from the province in which it is situated at the date of this Deed or to leasehold property, the Corporation shall effect such further registrations and obtain such other consents and give such other security, at the sole cost and expense of the Corporation, as may be required or desirable to protect or preserve the security hereby created, and the Corporation shall forthwith notify the Trustee of the intended removal and the action proposed to be taken.

### **3.13 Performance of Covenants by Trustee**

If the Corporation shall fail to perform any covenant on its part herein contained, the Trustee may in its absolute discretion perform any such covenant capable of being performed by it, but the Trustee shall be under no obligation to do so. If any such covenant requires the payment of money or if the mortgaged property or any part thereof shall become subject to any charge ranking in priority to the security hereof, the Trustee may in its absolute discretion make such payment and/or pay or discharge such charge, but shall be under no obligation to do so. All sums so paid by the Trustee shall be payable by the Corporation on demand together with interest from the date of demand at the rate referred to in Section 3.9 and shall constitute a charge upon the mortgaged property. No such performance or payment shall relieve the Corporation from any default hereunder or any consequences of such default.



### 3.14 Appointment of Monitor

If in the opinion of the Senior Holders, acting reasonably, a material adverse change has occurred in the financial condition of the Corporation, or if the Senior Holders in good faith believe that the ability of the Corporation to pay any of its obligations or to perform any other covenant contained herein has become impaired or if a default has occurred, the Trustee shall, upon written direction by the Senior Holders, by written notice to the Corporation, appoint a monitor (the "Monitor") to investigate any or a particular aspect of the Corporation or its business and affairs for the purpose of reporting to the Trustee. The Corporation shall give the Monitor its full co-operation, including full access to facilities, assets and records of the Corporation and to its creditors, customers, contractors, officers, directors, employees, auditors, legal counsel and agents. The Monitor shall have no responsibility for the affairs of the Corporation nor shall it participate in the management of the Corporation's affairs and shall incur no liability in respect thereof or otherwise in connection with the Corporation, its business and affairs or the mortgaged property. The Monitor shall act solely on behalf of the Trustee and shall have no contractual relationship with the Corporation as a consultant or otherwise. The appointment of a Monitor shall not be regarded as an act of enforcement of this Deed. All reasonable fees and expenses of the Monitor (including legal fees and disbursements on a solicitor and own client basis) shall be paid by the Corporation upon submission to it of a written invoice therefor. The Trustee may at its option upon the security hereby constituted becoming enforceable appoint or seek to have appointed the Monitor as receiver, liquidator, or trustee in bankruptcy of the Corporation or the mortgaged property or any part thereof.

### 3.15 Insurance

That it will cause all its property which is of a character usually insured by businesses operating properties of a similar nature to be properly insured and kept insured with reputable insurers against loss or damage by fire or other hazards of the nature and to the extent that such properties are usually insured by businesses operating properties of a similar nature in the same or similar localities and shall maintain such insurance with loss if any payable to the Trustee and shall deliver to the Trustee evidence of such insurance satisfactory to the Trustee. Proceeds of insurance shall be dealt with by the Trustee in accordance with resolutions of the Senior Holders, or in the absence of such resolutions, in accordance with Section 5.4.

### 3.16 Taxes and Other Charges

That it shall pay all rents, taxes, rates, levies, assessments and government fees or dues levied, assessed or imposed in respect of the mortgaged property or any part thereof (collectively "Taxes") as and when the same shall become due and payable and shall pay all charges, liens and other encumbrances on the mortgaged property (collectively "Charges") as and when the same shall become due and payable. If the Corporation does not pay any Taxes or Charges as and when the same shall become due and payable, the Trustee may, at its option, elect to pay any such amounts and charge to the Corporation all amounts so paid as additional amounts secured under this Deed, together with interest thereon from the date of payment by the Trustee of any such amounts at a rate per annum equal to the then-current rate charged by the Trustee from time to time.

### 3.17 Information

That it will furnish to the Trustee such information (including an annual certificate of compliance) with respect to the mortgaged property and the insurance thereon as the Trustee may from time to time require, and shall give written notice to the Trustee of all litigation before any court, administrative board or other tribunal affecting the Corporation or its property. An annual certificate of compliance means a certificate signed by the president or a vice-president of the Corporation, confirming compliance with the covenants set forth in this Article 3 and specifically that (i) no default as described in Section 4.1 of this Deed has occurred and is continuing and no

event has occurred and is continuing which, with the passage of time or giving of notice, or both, would constitute such a default, and (ii) all the covenants of the Corporation contained in this Article 3 and all of the conditions contained in this Deed to be complied with by the Corporation have been fully complied with to the date thereof.

#### 4. **DEFAULT**

##### 4.1 **Security Becoming Enforceable**

The security hereby constituted shall immediately become enforceable and the floating charge created pursuant to Section 2.1(b) hereof shall become a fixed and specific mortgage, charge, pledge, assignment, security interest and hypothec on the property charged thereby if:

- (a) payment of part or all of the obligations secured by a pledge of a Senior Debenture is demanded in accordance with any agreement to which the Corporation is a party relating to such obligations secured, and payment is not made on demand;
- (b) the Corporation makes default of any other covenant or condition of this Deed for the benefit of the Senior Holders or the Trustee and default continues for a period of 30 days after the Trustee sends notice to the Corporation to correct the default; or
- (c) payment of the principal amount and interest accrued on all Debentures has been demanded by the Trustee pursuant to Section 5.1(b) if any Holder of Debentures other than a Senior Holder (a "Subordinated Holder", where Debentures held by the Subordinated Holders are the "Subordinated Debentures") has proceeded in accordance with Section 5.1(b) of this Deed.

##### 4.2 **Waiver**

The Trustee (on the direction of the Senior Holders) or the Senior Holders may by notice to the Corporation waive any default of the Corporation on such terms and conditions as the Senior Holders may determine, but no such waiver shall be taken to affect any subsequent default or the rights of the Senior Holders arising therefrom nor shall it detract from the rights of any Subordinate Holder under the terms of any agreement relating to its obligations secured with respect to such default. No waiver of any default by a Subordinate Holder shall in any way affect the rights of the Senior Holders with respect to such default.

#### 5. **REMEDIES IN CASE OF DEFAULT**

##### 5.1 **Demand Payment**

(a) If the security hereby constituted becomes enforceable as provided in Sections 4.1(a) or (b), the Trustee upon being so directed by resolution of the Senior Holders shall demand payment of the principal amount of and interest accrued on all Debentures and the same shall forthwith become immediately due and payable to the Trustee.

(b) If (i) payment of part or all of the obligations, which for greater certainty shall include, without limitation, any principal amount together with accrued interest, that is secured by a pledge of a Subordinated Debenture (the "Defaulted Debenture") is demanded in accordance with any agreement to which the Subordinated Holder or Holders of the Defaulted Debenture (the "Demanding Holder") and the Corporation are parties relating to such obligations secured, and payment is not made on demand, (ii) the Demanding Holder (or any agent duly authorized to do so on behalf of such Holder) gives written notice of the demand for payment of such obligations secured to the Trustee (who shall immediately forward such notice to all of the other Holders), (iii)

the Demanding Holder (or any agent duly authorized to so act on behalf of such Holder) provides to the Trustee (x) a certificate by the Demanding Holder certifying that the Demanding Holder is entitled under the terms of an agreement to which the Demanding Holder (or such agent) and all Senior Holders (or an agent on their behalf) are party (the "Intercreditor Agreement"), to require that payment of the Debentures be demanded and the security hereby constituted be enforced notwithstanding the priority of the Senior Holders, and (y) a resolution of the Demanding Holder directing that the Trustee demand payment of the principal amount of and interest on all Debentures, (which certificate and resolution shall immediately be forwarded by the Trustee to all of the other Holders), and (iv) at least 5 business days have passed after the Demanding Holder (or any agent duly authorized to so act on behalf of such Holder) has given to the Trustee the certificate and resolution referred to in (iii) above and the Trustee has forwarded copies thereof to all of the other Holders, then the Trustee, upon being so directed by the Demanding Holder (or any agent duly authorized to so act on behalf of such Holder) shall demand payment of the principal amount of and interest accrued on all Debentures and the same shall forthwith become immediately due and payable to the Trustee.

(c) In the event that the Senior Holders have duly exercised their rights under Section 5.1(a) hereof (whether or not a Subordinated Holder has duly exercised its rights under Section 5.1(b) hereof), it is agreed that:

(i) the Trustee shall have regard to the instructions and directions of the Senior Holder only in exercising rights and remedies under this Deed and shall have no duty or obligation hereunder to act in accordance with the instructions or directions of any other Holder; and

(ii) in giving the Trustee instructions and directions in pursuance of its rights under paragraph (i) above, the Senior Holders shall act in good faith, and not with the sole purpose of defeating, delaying, hindering or otherwise impeding the repayment of the Subordinated Holders, but nothing in this Deed shall impose on the Senior Holders any greater duty to the Subordinated Holders or the Corporation than is owed by a senior creditor to a junior creditor or to a debtor in the absence of any express provision.

(d) In the event that a Subordinated Holder (or an agent duly authorized by a Subordinated Holder) has duly exercised its rights pursuant to Section 5.1(b) hereof and no Senior Holder has exercised its rights under Section 5.1(a) hereof, then (but for so long only as no Senior Holder has exercised its rights under Section 5.1 (a) hereof):

(i) the Trustee shall have regard to the instructions and directions of the Subordinated Holder only in exercising rights and remedies under this Deed and shall have no duty or obligation hereunder to act in accordance with the instructions or directions of any other Holder;

(ii) in giving the Trustee instructions and directions in pursuance of its rights under paragraph (i) above, the Subordinated Holder shall act in good faith; and

(iii) while nothing shall prevent the Senior Holders from exercising their rights under Section 5.1(a) hereof if they are entitled to do so as between the Corporation and themselves, until they have done so, the Senior Holders shall not do any of the following without the consent of the Subordinated Holders: (A) give instructions and directions to the Trustee relating to the exercise of those rights and remedies being exercised by the Subordinated Holders in accordance with this Section 5.1(d), (B) direct the Trustee to waive any defaults pursuant to Section 4.2 of this Deed, (C) unreasonably withhold or delay its consent to the appointment of a replacement Trustee requested by the Subordinated Holders, or (D) exercise any of the rights set out in Sections 9.1(a), (b), (e) and (f) of this Deed.

## 5.2 Remedies

If the security hereby constituted becomes enforceable as herein provided, and the Corporation has failed to pay to the Trustee on demand the principal amount of and interest accrued on the Debentures:

- (a) the Trustee may in its discretion take possession of the whole or any part of the mortgaged property and carry on all or any part of the business of the Corporation relating to the mortgaged property and borrow money on the security of the mortgaged property in priority to the security hereby created for the purpose of maintenance, preservation or protection of the mortgaged property or for the carrying on of all or any part of the business of the Corporation relating to the mortgaged property and in so acting the Trustee shall have the power to exclude the Corporation, its servants and agents from the mortgaged property;
- (b) whether or not the Trustee has exercised any or all of its rights under Section 5.2 (a), the Trustee may sell, lease or otherwise dispose of the whole or any part of the mortgaged property at public auction, by private tender or private sale, either for cash or upon credit and upon such terms and conditions as the Trustee may determine, and the Trustee may execute and deliver to any purchaser of the mortgaged property or any part thereof good and sufficient deeds and documents for the same, and, without limiting the powers granted to the Trustee, the Trustee is irrevocably constituted the attorney of the Corporation for the purpose of making any such sale and executing such deeds and documents (which appointment, being coupled with an interest, shall survive the bankruptcy of the Corporation);
- (c) the Trustee may also exercise any of the other rights to which the Trustee or the Holders are entitled including the right to take proceedings in any court of competent jurisdiction for the appointment of a receiver or receiver and manager (a receiver), for the sale of the mortgaged property or any part thereof or for foreclosure, and the right to take any other action, suit, remedy or proceeding authorized or permitted under this Deed or by law or in equity in order to enforce the security constituted by this Deed; and
- (d) the Trustee may also by instrument in writing appoint a receiver of the mortgaged property or of any part thereof and may remove any receiver so appointed and appoint another in his stead, and such receiver shall have the same rights, powers and authorities as are conferred on the Trustee by this Section 5.2. In addition the following provisions shall apply:
  - (i) such appointment shall be made in writing signed by the Trustee and such writing shall be conclusive evidence for all purposes of such appointment; the Trustee may from time to time in the same manner remove any receiver so appointed and appoint another in its stead; in making any such appointment the Trustee shall be deemed to be acting as the attorney for the Corporation and the Corporation hereby consents to the appointment of a receiver;
  - (ii) any such appointment may be limited to any part or parts of the mortgaged property or may extend to the whole thereof;
  - (iii) every receiver may, in the discretion of the Trustee, be vested with all or any of the powers, rights, benefits, discretions, protection and relief

of the Trustee hereunder and shall be vested with all of the powers and protections afforded to a receiver under applicable law;

- (iv) the Trustee may from time to time fix the reasonable remuneration of the receiver and direct the payment thereof, in priority to the other obligations secured hereby, out of the mortgaged property, the income therefrom or the proceeds thereof;
- (v) the Trustee may from time to time require any receiver to give security for the performance of its duties and may fix the nature and amount thereof, but the Trustee shall not be bound to require such security;
- (vi) every such receiver may, with the consent in writing of the Trustee, borrow money for the purpose of carrying on the business of the Corporation in respect of any part of the mortgaged property or for the maintenance, protection or preservation of the mortgaged property or any part thereof, and any receiver may issue certificates (in this Section called "Receiver's Certificates"), for such sums as will in the opinion of the Trustee be sufficient for carrying out the foregoing, and such Receiver's Certificates may be payable either to order or bearer and may be payable at such time or times as the Trustee may consider expedient, and shall bear such interest as shall therein be declared and the Receiver may sell, pledge or otherwise dispose of the same in such manner as the Trustee may consider advisable and may pay such commission on the sale thereof as the Trustee may consider reasonable, and the amounts from time to time payable by virtue of such Receiver's Certificates shall at the option of the Trustee form a charge upon the mortgaged property in priority to this Deed;
- (vii) every receiver shall, regarding its acts or omissions, be deemed the agent of the Corporation, and in no event the agent of the Trustee and the Trustee shall not, in making or consenting to such appointment, incur any liability to any receiver for its remuneration or otherwise howsoever;
- (viii) except as may be otherwise directed by the Trustee, all monies from time to time received by any receiver shall be paid over to the Trustee; and
- (ix) the Trustee may pay over to any receiver any monies constituting part of the mortgaged property to the extent that the same may be applied for the purposes hereof by such receiver and the Trustee may from time to time determine what funds any receiver shall be at liberty to keep on hand with a view to the performance of its duties as such receiver.

In the exercise of their rights, powers and authorities hereunder, the Trustee and any receiver appointed by the Trustee shall be the agent of the Corporation, and the Trustee and the Holders shall not be in any way responsible for any misconduct or negligence of any such receiver, nor shall the Holders be in any way responsible for any misconduct or negligence of the Trustee.

### 5.3 Public Sale

The Trustee, the Holders or any agent or representative thereof, may become purchasers at any public sale of the mortgaged property, whether made under a power of sale provided for in this Deed or pursuant to judicial proceedings.

#### 5.4 Application of Proceeds of Realization of Security

Except as otherwise provided in this Deed, by law or by order of a court or by any resolution of the Holders, any and all monies arising from the enforcement of any remedy provided for herein, including, without limitation, the carrying on of the business of the Corporation and the sale or other realization of the whole or any part of the mortgaged property, whether under any sale by the Trustee or by judicial process or otherwise, shall be paid over to the Trustee, shall be held by the Trustee and, together with any other monies then or thereafter in the hands of the Trustee available for the purpose, shall be applied by the Trustee as follows:

- (a) firstly, if and to the extent that the Trustee deems that it is in the interest of the Holders generally and the same is not inconsistent with any resolution of the Senior Holders, to pay all charges and liens on the mortgaged property ranking (or capable of ranking) in priority to the security constituted by this Deed or to keep in good standing any such prior lien;
- (b) secondly, to pay all amounts due to the Trustee hereunder, including without limitation, costs, charges and expenses referred to in Section 3.9;
- (c) thirdly, to pay the outstanding principal amount secured by the Senior Debentures, to pay all interest secured by the Senior Debentures including interest on overdue interest accrued but unpaid to the date of the demand for payment of the amounts secured by such Senior Debentures and to pay all interest including interest on overdue interest accruing after the date of demand for payment and remaining unpaid of such amounts rateably and proportionately, having regard to the amount of the obligations secured by such Senior Debentures, rather than the face amount of any Senior Debenture that has been pledged in accordance with Section 1.3 above;
- (d) fourthly, after payment of all amounts secured by, and cancellation of, all Senior Debentures, to pay, in order as they succeed to being Senior Debentures, all amounts secured by each series of Subordinated Debentures in the same manner as in Section 5.4 (c) above;
- (e) fifthly, in payment of all other amounts at any time and from time to time remaining outstanding and unpaid under this Deed; and
- (f) sixthly, the surplus, if any, of such money shall be paid to the Corporation or its assigns or otherwise in accordance with applicable law.

#### 5.5 Duty to Inquire

No person dealing with the Trustee, its agents or any receiver appointed pursuant hereto (or pursuant to any agreement to which the Corporation and one or more of the Holders are parties) shall be concerned to inquire whether the powers which the Trustee, its agents or any receiver appointed pursuant hereto (or pursuant to any agreement to which the Corporation and one or more of the Holders are parties) is purporting to exercise have become enforceable, or whether any money remains due upon the security constituted by this Deed, or as to the necessity or expediency of the stipulations and conditions subject to which any sale shall be made, or otherwise as to the propriety or regularity of any sale or any other dealing by the Trustee with the mortgaged property or any part thereof or to see to the application of any money paid to the Trustee; and, in the absence of fraud on the part of such person, such dealings shall be deemed to be within the powers conferred on the Trustee and to be valid and effective accordingly.

## 5.6 Possession

The Corporation shall on demand by the Trustee or any receiver yield up possession of the mortgaged property or any part thereof as demanded by the Trustee whenever the Trustee shall have a right to exercise any rights or remedies under Section 5.2 and put no obstacle in the way of, but facilitate by all legal means, the actions of the Trustee or any receiver hereunder and not interfere with the carrying out of the powers hereby granted to the Trustee or any appointed receiver.

## 5.7 Remedies Not Exclusive

No right, power or remedy herein conferred upon or reserved to the Trustee or any receiver is intended to be exclusive of any other right, power or remedy or remedies, and each and every right, power and remedy shall, to the extent permitted by applicable law, be cumulative and shall be in addition to every other right, power or remedy given hereunder or now or hereafter existing at law, in equity or by statute. No delay or omission of the Trustee in the exercise of any right, power or remedy accruing upon any default shall impair any such right, power or remedy or shall be construed to be a waiver of any such default or an acquiescence therein. Every right, power and remedy given to the Trustee or to a receiver by this Deed or under applicable law may be exercised from time to time and as often as may be deemed expedient by the Trustee or such receiver, as applicable.

## 5.8 Power of Attorney

The Corporation hereby irrevocably constitutes and appoints the Trustee its true and lawful attorney and agent, with full power and authority in the Corporation's name, place and stead from time to time to do all acts and things and execute and deliver all share transfers, certificates, proxies, resolutions, consents, assignments, transfers, conveyances and agreements, in such form as the Trustee considers necessary or desirable to do all things which the Corporation is required to sign, execute and do hereunder if the Corporation has failed to sign, execute or do the same and generally to use the name of the Corporation, as applicable, in the exercise of all or any of the powers hereby conferred on the Trustee, with full powers of substitution and revocation; provided that this power of attorney may not be exercised by the Trustee until the security constituted hereby shall have become enforceable. Such appointment and power of attorney is hereby declared by the Corporation to be an irrevocable power coupled with an interest.

## 5.9 Restriction on Corporation and its Officers and Directors

Upon the Corporation receiving notice from the Trustee of the taking of possession of the mortgaged property or the appointment of a receiver, all the powers, functions, rights and privileges of each of the directors and officers of the Corporation with respect to the properties, business and undertaking of the Corporation shall cease unless specifically continued by the written consent of the Trustee.

## 6. DISCHARGE

6.1 Subject to Section 7, this Deed and the rights hereby granted (other than the Trustee's rights under Section 3.9 above) shall cease, determine and be void, and the Trustee shall at the request and expense of the Corporation cancel and discharge the mortgages and charges of this Deed (including the additional security provided for in Section 10 (the "Additional Security")) and execute and deliver to the Corporation such deeds or other instruments as shall be requisite therefor, if the Corporation first satisfies the Trustee that it has paid the principal amount and interest secured by the Debentures and has otherwise observed and performed the terms and conditions of this Deed and the Additional Security and has otherwise satisfied all obligations secured, or that all of the Debentures have been validly cancelled as contemplated in Section 1.6.

6.2 The registrar of any registration division in which any mortgaged property is situate shall discharge and cancel the registration of any mortgage, pledge or charge, or transfer or giving in payment created hereby or by the Additional Security or hereafter created under the provisions hereof upon the registration of any discharge, release or document to that effect signed by the Trustee, without being obliged to see that any of the conditions of this Deed or of the Additional Security have been fulfilled.

## 7. CONTINUING AND ADDITIONAL SECURITY

7.1 The Debentures and the security created by this Deed shall be effective whether or not any monies or liabilities secured by this Deed are advanced or incurred before or after the date of this Deed, and shall not be considered as satisfied or discharged by any intermediate payment of the whole or part of the obligations secured by the pledge of the Debentures issued under this Deed but shall constitute and be a continuing security to the Holders for a current or running account and shall be in addition to and not in substitution for any other security now or hereafter held by the Holders or any of them. The remedies of the Trustee under this Deed may be exercised from time to time separately or in combination and are in addition to and not in substitution for any other rights of the Trustee or the Holders however created.

## 8. TRUSTEE

### 8.1 Acceptance by Trustee

The Trustee hereby accepts the trusts declared and provided in this Deed and agrees to perform the trusts upon the terms and conditions of this Deed, subject to the following:

- (a) the Trustee may appoint such agents and employ or retain, in relation to this Deed, such lawyers, accountants, valuers, engineers, architects, appraisers, or such other experts as it may reasonably require in the circumstances and for the purpose of discharging its duties hereunder and shall be entitled to pay reasonable compensation for the advice or assistance so obtained, but nevertheless the Trustee shall not be obliged to act on any advice or assistance so obtained. The Trustee may act and shall be protected in acting in good faith on the opinion or the advice of or information obtained from any counsel (including where appropriate counsel acting for the Corporation or any Holder acceptable to the Trustee), accountant, valuator, engineer, architect, appraiser or other expert or advisor, in each case selected by the Trustee using reasonable care, in relation to any matter arising in connection with the administration of this Deed;
- (b) in respect of any direction, authorization, statement of fact, copy of by-law, resolution or other proceeding or writing which the Trustee may require from the Corporation, the Trustee shall be entitled to accept and act upon the same, provided the said documents bear the signature of any officer or director of the Corporation;
- (c) the Trustee shall be accountable only for reasonable diligence in respect of the trusts hereby conferred upon it and shall not be accountable for any act or default of any agent or other person engaged by the Trustee for the performance of any duty or duties hereunder (except employees of the Trustee), provided the Trustee shall have selected such agent or person with reasonable care;
- (d) subject to any resolution of the Holders (or the Senior Holders where specified in this Deed), the Trustee shall as regards all the trusts, powers, authorities and discretion vested in it have absolute and uncontrolled discretion as to the exercise thereof whether in relation to the manner or as to the mode and time for



the exercise thereof and in the absence of fraud, negligence or wilful misconduct, it shall in no way be responsible for any loss, costs, damages or inconvenience that may result from the exercise or non-exercise thereof;

- (e) the Trustee shall not be bound to take any steps to enforce any of the covenants on the part of the Corporation contained in the Debentures, except insofar as it may be required to do so by the Senior Holders (or the Subordinated Holders pursuant to Section 5.1(b)) in writing upon being furnished with an indemnity reasonably satisfactory to the Trustee;
- (f) the obligation of the Trustee to commence or continue any act, action or proceedings for the purpose of realizing the collateral or for the enforcement of any covenant or obligation under or arising out of these presents or the Debentures shall, at the option of the Trustee, be conditional upon the Holders furnishing, when requested in writing by the Trustee, sufficient funds to commence or continue such action or proceedings and an indemnity satisfactory to the Trustee to protect and hold harmless the Trustee against costs, charges and expenses and liabilities to be incurred thereby and any loss and damage it may sustain by reason thereof;
- (g) the Trustee may, but shall not be obliged to, enter onto the mortgaged property to take such actions as the Trustee may in its sole discretion deem necessary or advisable to clean up, remediate, encapsulate, remove, resolve, or minimize the impact of, or otherwise deal with, any contaminants or breaches of Environmental Laws which could in the opinion of the Trustee jeopardize the security interest in the mortgaged property created by this Deed;
- (h) the Trustee shall have no responsibility to supervise or have control over the conduct of the Corporation's environmental practices, nor shall any action or inaction by the Trustee be construed as exercising care, control or management over the mortgaged property; and
- (i) nothing in this Deed shall be deemed to make the Trustee responsible for failure to obtain or maintain adequate or any insurance coverage for the mortgaged property or to ensure that such insurance is obtained and maintained by the Corporation, or for any loss arising from any defects in any policy or because of the failure of any insurer to pay for any loss or damage insured against, and the Trustee shall be entitled to request, and rely absolutely upon, a certificate of an officer of the Corporation that the insurance carried by the Corporation from time to time is in compliance with all relevant requirements of this Deed.

## 8.2 Trustee not Required to Give Security

The Trustee shall not be required to give any bond or security in respect of the execution of the trusts and powers of this Deed or otherwise in respect of this Deed.

## 8.3 Protection of Trustee

By way of supplement to the provisions of any law for the time being relating to trustees, it is expressly declared and agreed as follows:

- (a) the Trustee shall not be liable for or by reason of any failure or defect of title to, or encumbrance upon, the mortgaged property;
- (b) the Trustee shall not be liable for or by reason of any statements of fact or recitals in this Deed, or in the Debentures (except in the Certificate of the

Trustee thereon) or in any document ancillary or supplemental hereto or thereto, or required to verify the same, but all such statements or recitals are and shall be deemed to be made by the Corporation;

- (c) nothing herein or in the Debentures shall impose any obligation on the Trustee or any Holders to see to or to require evidence of the registration or filing or renewal of this Deed, any of the Debentures or any other instrument ancillary or supplemental hereto or thereto or any other deed or writing by way of mortgage or charge upon the mortgaged property or any part thereof or to procure any further, other or additional instrument of further assurance or to do any other act for the continuance of the security hereof or encumbrance or for giving notice of the existence of such security or for extending or supplementing the same;
- (d) the Trustee shall not be bound to give notice to any person or persons of the execution hereof or the security constituted hereby or in any way to interfere with the conduct of the business of the Corporation, unless and until the security hereby constituted shall have become enforceable and the Trustee shall have become bound to enforce the same;
- (e) the Trustee shall not incur any liability or responsibility whatever in consequence of permitting or suffering the Corporation, its successors or assigns, to retain or be in possession of any part of its mortgaged property and to use and enjoy the same unless herein or in the Debentures expressly otherwise provided; nor shall the Trustee be or become responsible or liable for any destruction, deterioration, loss, injury or damage which may be done or occur to the mortgaged property by the Corporation, its agents or servants, or by any other person or be in any way responsible for the consequences of any breach on the part of the Corporation of, or to inquire as to the performance by the Corporation of, any of the covenants herein or in the Debentures contained or of any acts of the agents or servants of the Corporation;
- (f) unless otherwise required by law, the Trustee shall not be liable by reason of any entry into possession of the mortgaged property or any part thereof to account as mortgagee in possession or for anything except actual receipts or be liable for any loss on realization or for any default or omission for which a mortgagee in possession might be liable save such as may be caused by its own fraud, negligence or wilful misconduct;
- (g) the Trustee on its own behalf or in any other capacity, may buy, lend upon and deal in shares in the capital stock of the Corporation and generally may contract and enter into financial transactions with the Corporation without being liable to account for any profit made thereby;
- (h) none of the provisions contained in this Deed shall require the Trustee to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers unless indemnified in accordance with this Deed;
- (i) the Trustee may, before commencing or at any time during the continuance of any such act, action or proceeding, require the Holders at whose instance it is acting to deposit with the Trustee the Debentures held by them, for which Debentures the Trustee shall issue receipts;
- (j) the Trustee shall not be responsible or liable in any manner whatsoever for the sufficiency, correctness, genuineness or validity of any security deposited with it, including any stock transfer power of attorney; and

- (k) in the exercise of its rights, duties and obligations hereunder the Trustee may, if acting in good faith, rely, as to the truth of the statements and accuracy of the opinions expressed therein, upon statutory declarations, opinions, reports or certificates furnished pursuant to any covenant, condition or requirement of this Deed or required by the Trustee to be furnished to it in the exercise of its rights and duties hereunder, provided that the Trustee examines such statutory declarations, opinions, reports or certificates and determines, acting in good faith, that they comply with any applicable requirements of this Deed.

#### 8.4 Trustee's Obligation to Act

Unless and until the Trustee is required to do so under the terms of this Deed, the Trustee shall not be bound to give any notice or to take any act, action or proceeding by virtue of the powers conferred on it by this Deed, nor shall the Trustee be required to take notice of an event of default under this Deed, other than in payment of any monies required by any provisions hereof to be paid to it. Unless and until notified in writing of such events of default or such default and in the absence of any such notice, the Trustee may assume that the Corporation is not in default hereunder and that no default has been made with respect to the payment of principal or interest under the Debentures or in the observance of performance or any of the covenants, agreements or conditions contained herein.

The right and obligation of the Trustee to commence or continue an act, action or proceeding for the purpose of enforcing any rights of the Trustee or the Holders hereunder shall be conditional on (i) the Trustee receiving a resolution from the Senior Holders (or the Subordinated Holders (or an agent on their behalf) pursuant to Section 5.1(b) exercised in accordance with Section 5.1(d)) and (ii) compliance with Section 8.1 (f).

#### 8.5 Resignation of Trustee

The Trustee may resign its trust and be discharged from all further duties and liabilities hereunder by giving to the Corporation not less than 30 days' notice in writing or such shorter notice as the Corporation may accept as sufficient. The Senior Holders shall have the power at any time to remove the Trustee and to appoint a new Trustee. In the event of the Trustee resigning or being removed as aforesaid or being dissolved, becoming bankrupt, going into liquidation or otherwise becoming incapable of acting hereunder, the Corporation shall forthwith appoint a new Trustee unless a new Trustee has already been appointed by the Senior Holders; failing such appointment by the Corporation, the retiring Trustee (at the Corporation's expense) or any Senior Holder may apply to a Judge of the Court of Queen's Bench of Manitoba, on such notice as such Judge may direct, for the appointment of a new Trustee, but any new Trustee so appointed by the Corporation or by the Court shall be subject to removal as aforesaid by the Senior Holders. Any new Trustee appointed under these provisions shall be a corporation authorized to carry on the business of a trust company in the Province of Manitoba.

#### 8.6 Powers of New Trustee

Any new Trustee appointed hereunder shall execute an instrument accepting such appointment hereunder and deliver one counterpart or notarial copy thereof to the Corporation and one counterpart or notarial copy thereof to the Trustee last in office and the Holders shown on the Trustee's register, and thereupon such new Trustee without further act, deed or conveyance shall become vested with all estates, properties, rights, powers and trusts of its predecessor in the trusts hereunder, with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of the successor Trustee or of the Corporation, the Trustee ceasing to act shall execute and deliver an instrument or instruments assigning and transferring to such successor Trustee, upon the trusts herein expressed, all the said property and assets and all rights, powers and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver all property

and money held by such Trustee to the successor Trustee so appointed in its place. Should any deed, conveyance or instrument in writing from the Corporation be required by any new Trustee for more fully and certainly vesting in and confirming to it such estates, properties, rights, powers and trusts, then any and all such deeds, conveyances and instruments in writing shall, on request of said new Trustee, be made, executed, acknowledged and delivered by the Corporation. At the request of the Corporation or the new Trustee, the retiring Trustee, upon payment of the amounts, if any, due to it pursuant to Section 3.9, shall duly assign, transfer and deliver to the new Trustee all property and money held and all records kept by the retiring Trustee hereunder or in connection herewith.

#### 8.7 Corporate Re-organization of Trustee

Any company into which the Trustee may be merged or with which it may be consolidated or amalgamated, or any company resulting from any merger, consolidation or amalgamation to which the Trustee shall be a party, shall be the successor Trustee under this Deed without the execution of any instrument or any further act.

#### 8.8 Evidence

The Corporation shall furnish to the Trustee evidence of compliance with the conditions provided for in this Trust Deed relating to any action or step required or permitted to be taken by the Corporation or the Trustee under this Trust Deed or as a result of any obligation imposed under this Trust Deed, including, without limitation, the issue, certification and delivery of Debentures hereunder, the satisfaction and discharge of this Trust Deed and the taking of any other action to be taken by the Trustee at the request of or on the application of the Corporation, forthwith if and when:

- (i) such evidence is required by any other Section of this Trust Deed to be furnished to the Trustee in accordance with the terms of this Section; or
- (ii) the Trustee, in the exercise of its rights and duties under this Trust Deed, gives the Corporation written notice requiring it to furnish such evidence in relation to any particular action or obligation specified in such notice.

Such evidence shall consist of:

- (A) a certificate of an officer of the Corporation stating that any such condition has been complied with in accordance with the terms of this Trust Deed;
- (B) in the case of any such condition compliance with which is, by the terms of this Trust Deed, made subject to review by legal counsel, an opinion of counsel to the Trustee that such condition has been complied with in accordance with the terms of this Trust Deed; and
- (C) in the case of any such condition compliance with which is, by the terms of this Trust Deed, made subject to review or examination by an auditor or accountant, an opinion or report of the auditors of the Corporation or any accountant licenced under the applicable laws of the Province of Manitoba based on the examinations or enquiries required to be made under the terms of this Trust Deed, in each case approved by the Trustee, that such condition has been complied with in accordance with the terms of this Trust Deed.

Whenever such evidence relates to a matter other than the issue, certification and delivery of Debentures, the satisfaction and discharge of this Trust Deed or the taking of any other action to be taken by the Trustee at the request or on the application of the Corporation, and except as otherwise specifically provided herein, such evidence may consist of a report or opinion of any

solicitor, auditor, accountant, engineer or appraiser or any other person whose qualifications give authority to a statement made by him, provided that if such report or opinion is furnished by a director, officer or employee of the Corporation it shall be in the form of a certificate satisfactory to the Trustee (acting reasonably). Such evidence shall be, so far as appropriate, in accordance with the immediately preceding paragraph of this section.

Each statutory declaration, certificate, opinion or report furnished to the Trustee as evidence of compliance with a condition provided for in this Trust Deed shall include a statement by the person giving the evidence:

- (a) declaring that he has read and understands the provisions of this Trust Deed relating to the condition in question;
- (b) describing the nature and scope of the examination or investigation upon which he based the statutory declaration, certificate, statement or opinion; and
- (c) declaring that he has made such examination or investigation as he believes is necessary to enable him to make the statements or give the opinions contained or expressed herein.

Upon the demand of the Trustee, the Corporation shall furnish the Trustee with evidence in such form as the Trustee may reasonably require as to compliance with any condition contained in this Trust Deed relating to any action required or permitted to be taken by the Corporation or as to any other matter referred to herein.

#### 8.9 Action By Trustee to Protect Interests

The Trustee shall have power to institute and to maintain such actions and proceedings as it may consider necessary or expedient to preserve, protect or enforce its interests and the interests of the Holders.

#### 8.10 Duties of Trustee

The Trustee, in exercising its powers and discharging its duties hereunder, shall:

- (i) act honestly and in good faith with a view to the best interests of the Holders;
- (ii) exercise the care, diligence and skill of a reasonably prudent trustee; and
- (ii) act reasonably wherever such standard is stipulated herein and otherwise shall act as required by law.

### 9. RESOLUTIONS OF HOLDERS

#### 9.1 Powers of the Holders

The powers of the Holders shall be exercisable by the Senior Holders only, except (i) as expressly provided in Sections 3.2, 3.10(a), 5.1(b) and 5.1(d) of this Deed, and (ii) as to matters set forth in paragraphs (c), (d), (e) and (g) below which shall be also exercisable by Subordinated Holders as described in those paragraphs, and include but are not limited to the following powers exercisable from time to time by resolution of the Senior Holders:

- (a) the power to require the Trustee to refrain from enforcing any covenant on the part of the Corporation herein or to refrain from exercising any of the powers set forth herein and conferred on the Trustee or to direct the Trustee to waive any default or defaults on the part of the Corporation on such terms as may be

deemed advisable or to cancel any declaration or waiver previously made by the Trustee under this Deed;

- (b) power to remove a Trustee from office and to appoint a new Trustee;
- (c) power to assent to any judgment, compromise or arrangement by the Corporation with any creditor, creditors or class or classes of creditors or with the holder(s) of any shares or securities of the Corporation, which shall also require the approval of the Holders of each series of Subordinated Debentures in respect of any judgment, compromise or arrangement affecting their respective Debentures;
- (d) power to assent to any modification of or change in or addition to or deletion from the rights of the Holders of the provisions contained in this Deed or any instrument ancillary or supplementary hereto or thereto or any agreement forming part of the mortgaged property which shall be agreed by the Corporation and to authorize the Trustee to concur in and execute any indenture supplemental to this Deed or any agreement supplemental to any instrument embodying any such modification, change, addition, deletion or to concur in and execute any deeds, documents, or writings authorized by such resolution, which shall also require the approval of the Holders of each series of Subordinated Debentures in respect of any such modification, change, addition, deletion affecting their respective Debentures;
- (e) power to approve the release of the Corporation and of the whole or any part of the mortgaged property from the security constituted hereby, which shall also require the approval of the Holders of each series of Subordinated Debentures;
- (f) power to authorize the Trustee to execute and deliver such form of priority agreement as may reasonably be requested by the Corporation to evidence the priority of any permitted liens which are permitted by the terms of any agreements entered into with all of the Holders to rank prior to the security constituted hereby; and
- (f) power to issue additional Debentures pursuant to Section 1.1, which shall also require the approval of the Holders of each series of Subordinated Debentures, which consent, in the case of the Subordinated Holders, shall not be unreasonably withheld,

The powers of the Holders shall be deemed to be several and cumulative and not dependent on each other and the exercise of any one or more of such powers, or in any combination of such powers, from time to time, shall not be deemed to exhaust the rights of the Holders to exercise such power or powers, or combination of powers thereafter from time to time.

## 9.2 Resolutions of the Holders

The powers specified in Section 9.1 of this Deed and every other power conferred upon the Senior Holders or Subordinated Holders, as the case may be, by any provisions of this Deed or the Debentures or any agreement ancillary or supplemental hereto or thereto shall be exercised by resolution passed in the following manner:

- (a) the substance of any resolution may be embodied in an instrument in writing and such resolution shall be deemed to have been passed when such instrument has been executed by the Senior Holders or Subordinated Holders, as the case may be, holding an aggregate of more than 66 2/3% of the principal amount of all of the outstanding Debentures in the relevant series;

- (b) any such instrument, and any requisition or other instrument to be executed by any Holders under any provisions of this Deed, may be executed in counterparts and any of the Holders may execute the same in person or by agent or attorney duly authorized in writing;
- (c) at the request of the Trustee, the date and execution by any of the Holders or agent or attorney of any such instrument and the execution by any of the Holders of any power of attorney shall be proved by the certificate of any notary public that the person signing the same has acknowledged to him the execution thereof, by affidavit or statutory declaration of a witness to such execution, or by the signature of the Holder as witnessed by any officer of any bank or trust company; such proof shall be conclusive in favour of the Trustee with regard to any action taken or suffered by the Trustee under such instrument. No such instrument shall be effective until delivery thereof to the Trustee; and
- (d) the Trustee shall give notice to all Holders of each resolution of the Senior Holders or Subordinated Holders passed as aforesaid.

### 9.3 Effect of Resolutions of Holders

Any resolution passed as provided in Section 9.2 shall be binding upon the Holders and each of them, and the Trustee (subject to the provisions for its indemnity, if any, set forth in this Deed) shall be bound to give effect thereto accordingly.

## 10. ADDITIONAL SECURITY

10.1 To more effectively secure the due payment in lawful money of Canada of the obligations secured and all other amounts owing under or in connection with this Deed and the Debentures, the Corporation shall issue for the benefit of the Holders and as additional security such pledges of shares, deeds of hypothec and other security documents as may be agreed to by the Corporation, in a form and substance required by the Holders and the Trustee. Such additional security documents shall be in favour of the Trustee, who shall hold the same for and on behalf of the Holders from time to time. The provisions of this Deed, including without limitation, Sections 3.9, 7, 8 and 9, shall apply with respect to such additional security documents.

## 11. NOTICE

11.1 Any notices to be given under this Deed shall be given to the parties at the addresses set out below, or to the Holders at the addresses specified in the Trustee's records. Notice shall be deemed to have been effectually given when such notice is delivered personally to the addressee by hand or by fax with receipt confirmed or on the third business day after such notice is mailed by prepaid registered mail to the addressee. Subject to the right of each party to change its address by notice to the other parties from time to time, the addresses of the parties are as follows:

Arctic Glacier Inc.  
625 Henry Avenue  
Winnipeg, Manitoba R3A 0V1

Attention: Chief Executive Officer  
Fax No.: (204) 783-9857

Computershare Trust Company of Canada  
100 University Avenue  
9th Floor, North Tower  
Toronto, Ontario M5J 2Y1

Attention: Manager, Corporate Trust Department  
 Fax no.: 416-981-9777

## 12. DATE OF DEED

12.1 This Deed may be referred to as bearing the formal date of October 18, 2010, notwithstanding the actual date of its execution.

## 13. EFFECT OF HEADINGS

13.1 The headings and marginal notes of the Sections in this Deed are inserted for convenience of reference only and shall not affect the interpretation of this Deed.

## 14. GOVERNING LAW

14.1 The Deed shall be governed by and construed in accordance with the laws of the Province of Saskatchewan and the Federal laws of Canada applicable therein.

## 15. MISCELLANEOUS

15.1 No land which is charged or mortgaged under this Deed is farm land within the definition of subsection 1(1) of the *Farm Lands Ownership Act* (Manitoba).

15.2(a) The Corporation hereby agrees that *The Land Contracts (Actions) Act* of the Province of Saskatchewan shall have no application to any action, as in *The Land Contracts (Actions) Act* defined, with respect to the within Deed or with respect to any mortgage, charge or other security given by the Corporation pursuant to this Deed or to any indenture, instrument or agreement entered into by the Corporation at any time hereafter, supplemental or ancillary to or in implementation of this Deed and all of the benefits of the said Act are hereby waived.

15.2(b) To the extent permitted by law, the Corporation expressly waives its rights under the *Alberta Insurance Act* and the *Fire Prevention (Metropolis) Act*, 1774 (GEO III, Ch. 78).

15.3 *The Limitation of Civil Rights Act* of the Province of Saskatchewan shall have no application to:

- (a) this Deed;
- (b) any mortgage, charge or other security for the payment of money made, given or created by this Deed;
- (c) any agreement or instrument renewing or extending or collateral to this Deed or renewing or extending or collateral to any mortgage, charge or other security referred to or mentioned in subparagraph (b) of this Section; or
- (d) the rights, powers or remedies of the Trustee under this Deed or any mortgage, charge, other security, agreement or instrument referred to or mentioned in subparagraph (b) or (c) of this Section.

15.4 For purposes of Section 198.1 of the *Land Title Act* (British Columbia), the floating charge created by Section 2.1 on any present or future real or immovable property or interest therein (for purposes of this Section 15.4 collectively referred to as the "Real Property") will become a fixed charge on such Real Property upon the earlier of (a) a demand for payment being made pursuant to Section 5.1 and the Trustee upon being so directed by resolution of the Senior Holders or Subordinated Holders (if they act under Section 5.1(b)) giving written notice to the Corporation that such floating charge has become a fixed charge on such Real Property, and (b)





TRUST DEED dated as of 17 August 1999.

BETWEEN:

**MARTIN DORFMAN HOLDINGS LTD.,**  
a corporation incorporated under the laws of Alberta

(the "Corporation")

- and -

**MONTREAL TRUST COMPANY,**  
a trust company incorporated under the laws of Canada

(the "Trustee")

**RECITALS:**

A. The Corporation wishes to raise money for its corporate purposes and/or secure certain of its obligations, and with a view to doing so wishes to create and issue Debentures in the manner provided in this Trust Deed.

B. All necessary resolutions of the directors of the Corporation have been duly enacted, passed and/or confirmed and other proceedings taken and conditions complied with to make the creation and issue of the Debentures proposed to be issued hereunder and this Trust Deed and the execution thereof legal, valid and binding on the Corporation in accordance with the laws relating to the Corporation.

**THEREFORE, THE PARTIES HAVE AGREED AS FOLLOWS:**

**1. FORM AND ISSUE OF DEBENTURES**

**1.1 Limitation of Issue**

The Debentures to be issued under and secured by this Deed are limited to an aggregate principal amount of five hundred million Canadian dollars (Cdn.\$500,000,000) and may be issued in one or more series. The Debentures shall be designated as "Series A Debentures", "Series B Debentures", and so on if two or more series are issued, but the designation of different series of Debentures need not be consecutive so that, for example, Series C Debentures may be issued without Series B Debentures having been issued. Except with respect to the letter A, series of Debentures may also be designated with two or more letters, such as "Series BB Debentures" and "Series CCC Debentures". In addition, further Debentures in any series may be issued from time to time despite the issuance of Debentures in a subsequent series. Debentures of all series shall be designated collectively as "Debentures" and shall be subject to the terms and conditions of this Deed. No Debenture may be issued without the prior written consent of the Holders (as defined below), which consent, in the case of the Subordinated Holders, shall not be unreasonably withheld. For greater certainty, the limit of the aggregate principal amount of Debentures which may be issued hereunder shall not be reduced by the principal amount of Debentures which have been returned to the Trustee for cancellation or discharge in accordance with the terms hereof.

**1.2 Forms, Terms and Place of Payment**

Each Debenture shall be fully registered and substantially in the form set out in Schedule A to this Deed, shall be payable on demand in lawful money of Canada at the address of the holder or holders specified in the Debenture (the "Holders", which shall mean one or more persons holding

one or more Debentures) and the Debentures shall bear interest from the date of each respective debenture at the rate of twenty-five per cent (25%) per annum, or at such other rate as may be agreed upon by the Corporation and the Holders from time to time, payable on demand, both before and after maturity and default, with interest on overdue interest at the same rate. Each Debenture may, but need not, be under the seal of the Corporation, shall be signed by any officer or director of the Corporation and shall be certified by the Trustee and delivered by the Trustee to or to the order of the Corporation upon receipt by the Trustee of an order in writing signed by any officer or director of the Corporation. No Debenture shall be issued, or, if issued, shall be obligatory or entitle the Holder to the benefit hereof, until it has been certified by or on behalf of the Trustee substantially in the form of the certificate set out in Schedule "A" to this Deed, or in some other form approved by the Trustee, and such certification by the Trustee upon any Debenture shall be conclusive evidence as against the Corporation that the Debenture so certified has been duly issued hereunder and is a valid obligation of the Corporation and that the Holder is entitled to the benefit hereof. The certificate of the Trustee shall not be construed as a representation or warranty of the Trustee as to the validity or security of the Trust Deed or the Debentures. Nothing in this Deed or the Debentures shall make the Trustee responsible or liable for the Corporation's obligations to pay the principal of or interest on the Debentures.

### 1.3 Pledge of Debentures

Each Debenture shall be pledged, hypothecated, issued or charged by the Corporation as security for payment by the Corporation of certain or all debts and liabilities, including debts and liabilities in any currency, present or future, direct or indirect, absolute or contingent, matured or not, for a current or running account or not, at any time owing by the Corporation to the Holder thereof or remaining unpaid by the Corporation to the Holder thereof, whether arising from dealings between the Holder thereof and the Corporation or from any other dealings or proceedings by which the Holder thereof may be or become in any manner whatever a creditor of the Corporation, and wherever incurred, and whether incurred by the Corporation alone or with another or others, and whether as principal or surety, including expenses and all interest, commissions, legal and other costs, charges and expenses (the "obligations secured", it being understood and agreed that the term "obligations secured" as used in this Deed shall mean, as the context may require, such obligations of the Corporation owing to a particular Holder or Holders hereunder or the aggregate of such obligations of the Corporation owing to all the Holders hereunder from time to time). To the extent of any inconsistency between the terms and conditions of a Debenture and the terms and conditions of any of the obligations secured, the terms and conditions of the latter shall prevail.

### 1.4 Terms of Issue

The Debentures may be issued to such persons, in such amounts not exceeding the maximum amount set forth in Section 1.1 less the principal amount of Debentures outstanding (which, for greater certainty, shall not include any Debentures previously delivered to the Trustee for cancellation or discharge), for such consideration and on such terms as the directors of the Corporation may determine. Each series of Debentures issued under this Deed shall rank in respect of their entitlement to payment and all voting and other rights relating to the Debentures in priority according to the alphabetical order of their respective series. Accordingly, all Series A Debentures, whenever issued or certified, shall have priority over Series B Debentures, which shall in turn have priority over Series C Debentures and so on. Series of Debentures designated with different numbers of the same letter shall rank in priority according to the number of letters in the designation so that, for example, Series BBB Debentures shall have priority over Series BB Debentures. Debentures within a series shall rank *pari passu* without discrimination, preference or priority of one Debenture of such series over another and the Holders of Debentures of such series shall be secured equally and rateably according to the principal amount and interest from time to time owing with respect to each Debenture of such series (having regard to the obligations secured by such Debenture, rather than the face amount of such Debenture pledged in accordance with Section 1.3 above) regardless of their respective dates of issue or certification of each Debenture of such series. The Holders of the series of Debentures having the highest ranking for the time being are referred to in this Trust Deed as the "Senior Holders".

The priorities contained herein in connection with the obligations secured shall apply in all events and circumstances regardless of:

- (a) the date that any loan, advance, or other accommodation is made to the Corporation or any debt, liability or obligation is incurred by the Corporation; or
- (b) the date of any default by the Corporation; or
- (c) any priority granted by any principle of law or any statute; or
- (d) any other factor of legal relevance other than this Trust Deed.

No power that is exercised by the Holders, or any of them, shall detract from the rights of the other Holders under the terms of the respective obligations secured in the case of Debentures that have been pledged in accordance with Section 1.3.

#### 1.5 Registration and Transfer

The Corporation shall cause to be kept by the Trustee at its office in the City of Toronto, in the Province of Ontario a register in which shall be entered the names and addresses of the Holders and principal amount of each Debenture. No transfer of a Debenture shall be valid unless made on such register by the registered holder or its successors or assigns or its or their attorney duly appointed by an instrument in writing, in form and execution satisfactory to the Trustee, and upon compliance with such reasonable requirements as the Trustee may prescribe. The ownership of the Debentures shall be proved by such register. The registered Holders shall be considered to be the owners thereof for all purposes of this Deed and shall be entitled to the principal monies and interest evidenced by the Debentures without regard to any set-off, counterclaim, equities or compensation between the Corporation and the Holders' transferors or any previous holders thereof.

#### 1.6 Cancellation, Retirement Etc. of Debentures

Any Holder may deliver to the Trustee from time to time one or more of the Debentures issued pursuant to this Deed and held by it for cancellation or retirement (subject to the principal amount outstanding thereon and any interest, charges and expenses related thereto having been repaid in full to the Holder) or replacement, consolidation or subdivision, or to evidence a reduction of the principal amount outstanding from time to time. Subject to the limitation set forth in Section 1.1, upon receipt of such Debentures and a resolution of the Holder delivering such Debentures evidencing its intentions with respect to such cancellation, retirement, replacement, reduction, subdivision or consolidation, the Trustee shall forthwith notify the Corporation and the Corporation upon receipt of such Debentures shall forthwith issue in accordance with the terms and conditions of this Deed such additional, replacement, subdivided or consolidated Debentures as may be requested by the Holders in the aforesaid resolution, or the Trustee may endorse any Debenture with a notation of the reduction of the amount thereof. Upon issuance of such additional, replacement, subdivided or consolidated Debentures, or endorsement of reduction of any existing Debenture, as appropriate, the Corporation shall cause to be made such entries in the register provided for in Section 1.5 and the Trustee shall certify such Debentures, subject to receipt of such documentation as the Trustee may require, acting reasonably.

#### 1.7 Replacement of Debentures

In case any of the Debentures shall be mutilated or defaced or be lost, destroyed or stolen, the Corporation, subject to applicable law, shall issue a new Debenture pursuant to this Deed and thereupon the Trustee shall certify and deliver such new Debenture of like date, tenor and series as the one mutilated, defaced, lost, destroyed or stolen in exchange therefor and upon cancellation of such mutilated or defaced Debenture and in lieu of and in substitution for such lost, destroyed or stolen Debenture, and the new Debenture shall be entitled to the security hereof and rank equally in accordance with its terms with all other Debentures of the same series issued hereunder.

The applicant for the issue of a new Debenture pursuant to this Section 1.7 shall bear the cost of the issue thereof and in case of loss, destruction or theft shall, as a condition precedent to the issue thereof, furnish to the Corporation and to the Trustee such evidence of ownership and of the loss, destruction or theft of the Debenture so lost, destroyed or stolen as shall be satisfactory to the Corporation and the Trustee in their discretion and such applicant may also be required to furnish an indemnity in amount and form satisfactory to the Corporation and the Trustee in their discretion, and shall pay the reasonable charges of the Corporation and the Trustee in connection therewith.

## 2. CHARGING PROVISIONS

### 2.1 Fixed and Floating Charges and Security Interest

In consideration of the premises and of one dollar (\$1) to the Corporation now paid by the Trustee (receipt whereof is hereby acknowledged) and for the purpose of securing the due payment in lawful money of Canada of the Debentures in the principal amount of five hundred million dollars (\$500,000,000) and of interest thereon from the formal date hereof at the rate of twenty-five per cent (25%) per annum, calculated monthly and payable on demand, both before and after maturity and default, with interest on overdue interest at the same rate, and the payment of any additional amounts from time to time due hereunder to the Trustee, including but not limited to an additional amount equal to twenty-five per cent (25%) of the principal amount for costs of realization and other accessories, the Corporation hereby:

- (a) grants, assigns, mortgages and charges as and by way of a fixed and specific mortgage and charge to and in favour of the Trustee for the benefit of the Holders, and grants to the Trustee for the benefit of the Holders a security interest in, all of its present and after-acquired real and personal property, including but not limited to:
  - (i) all freehold real and immovable property now or hereafter owned or acquired by the Corporation including but not limited to the lands and premises described in Schedule B hereto, together with all buildings, erections and fixtures now or hereafter constructed or placed thereon,
  - (ii) all leasehold property now or hereafter leased by the Corporation including but not limited to the leasehold property described in Schedule C hereto, together with all buildings, erections and fixtures now or hereafter constructed or placed thereon,
  - (iii) all inventory, goods, furniture, equipment, machinery, vehicles, aircraft and other tangible personal property now or hereafter owned by or acquired by the Corporation and all replacements, attachments and accessories thereto from time to time,
  - (iv) all intangible property now or hereafter owned or acquired by the Corporation, including, but not limited to, all contract rights, chattel paper, warehouse receipts, bills of lading, documents of title, insurance policies, instruments, securities, accounts, book debts, receivables which are not book debts, choses in action, licenses, permits, franchises, leases, client lists, goodwill, patents, trademarks, trade names, copyrights, other industrial and intellectual property and the undertaking of the Corporation; and
- (b) charges as and by way of a floating charge to and in favour of the Trustee for the benefit of the Holders, and grants to the Trustee for the benefit of the Holders a security interest in all of the present and after-acquired property, undertaking and assets of the Corporation for the time being, both real and personal, movable and immovable of whatsoever nature and kind now owned or hereafter acquired (except such property and assets as are validly and effectively subject to any fixed and specific mortgages and charges created hereby), including its goodwill and uncalled capital.

Without the necessity of any further act of the Corporation or the Trustee, the mortgages, charges and security interests constituted hereby shall automatically extend to and include:

- (c) any and all renewals, replacements, substitutions, accessions, proceeds, products, additions, amendments, modifications, extensions or consolidations of or to the assets and property heretofore described;
- (d) any and all right, title and interest of the Corporation hereafter acquired in or to any real or personal property or asset of any nature whatsoever; and
- (e) any and all of the Corporation's right, title, interest, property, claims, demands, judgments, awards, proceeds and settlements or payments, including interest thereon, and the right to receive the same, at law as well as in equity or otherwise, as a result of or by way of: (i) insurance proceeds payable under all insurance policies of the Corporation or (ii) any injury or damage to or any taking, expropriation, requisitioning, conversion (voluntary or involuntary) or decrease in the value of any property or asset of the Corporation of any nature whatsoever.

The Corporation's undertaking and all its property and assets, present and future, are herein called the "mortgaged property".

## **2.2 Reservation of Last Day of Leasehold Terms**

The charge of the mortgaged property contained in Section 2.1 shall not extend or apply to the last day of the term of any lease or any agreement therefor now held or hereafter acquired by the Corporation, but should such charge become enforceable the Corporation shall thereafter stand possessed of such last day and shall hold it in trust to assign the same to any person acquiring such term or the part thereof charged in the course of any enforcement of the charge or any realization of the subject matter thereof.

## **2.3 Contracts, Rights or Licences**

The charge of the mortgaged property contained in Section 2.1 shall not extend or apply to any contract, right or licence of the Corporation, if pursuant to the terms of such contract, right or licence such contract, right or licence would automatically terminate if it was part of the mortgaged property, or would be terminable at the option of the other party to or of the grantor thereof, but should such charge become enforceable, the Corporation shall thereafter stand possessed of such contract, right or licence and shall hold it in trust to assign the same or dispose of the same to any person as requested by the Trustee. In order that the full value of all such contracts, rights and licences may be realized for the benefit of the Holders, the Corporation shall at its expense and at the request of the Trustee from time to time, take all such action and do or cause to be done all such things as shall, in the reasonable opinion of the Trustee (with advice of counsel as the Trustee considers appropriate), be necessary or proper in order that all such contracts, rights and licences shall enure to the benefit of the Holders and, to the extent reasonably possible, become subject to the charge constituted by this Deed.

## **2.4 Charge Valid Irrespective of Advance**

The security constituted hereby or intended so to be shall be effective whether the monies hereby secured or any part thereof shall be advanced before or after or at the same time as the execution and delivery of this Deed or the issue or certification of any of the Debentures.

## **2.5 Attachment**

The Corporation acknowledges that value has been given to the Corporation by the Holders in connection with the Corporation's execution and delivery of this Deed. The Corporation and the Holders have not agreed to postpone the time for attachment of the security constituted hereby which is intended to attach, as to all of the mortgaged property in which the Corporation has an interest at the time of the execution of this Deed, at such time, and as to all of the mortgaged property in which the Corporation acquires an interest after the execution of this Deed, at the time the Corporation acquires such interest.

## **2.6 Effect of Charges**

The security created hereby will entitle the Trustee to have and to hold the mortgaged property and all rights hereby conferred unto the Trustee, its successors and assigns, forever, but in trust, nevertheless, and with the powers and authorities and subject to the terms and conditions mentioned and set forth herein.

## **2.7 Possession until Default**

Until the security hereby constituted becomes enforceable and the Trustee determines to enforce the same, the Corporation is permitted in the same manner and to the same extent and with the same effect as if this Deed had not been executed, but subject to the express terms hereof and any other agreement between the Corporation and a Holder which relates to any obligations secured, to possess, operate, manage, use and enjoy the mortgaged property (other than any cash or investments on deposit with the Trustee) and freely to control the conduct of its business and to collect, take, retain and use the rents, incomes, profits and issues thereof.

## **2.8 Further Assurances**

The Corporation hereby covenants and agrees that it will at all times do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, deeds, mortgages, transfers, assignments and assurances as the Trustee or the Holders may reasonably require for the better accomplishing and effectuating the purpose of this Deed, including the execution and delivery of indentures supplemental hereto more particularly describing the mortgaged property or to correct or amplify the description of the mortgaged property or to better assure, convey and confirm unto the Trustee any of the mortgaged property. Upon the execution of any supplemental indenture under this Section, this Deed shall be modified in accordance therewith, and each such supplemental indenture shall form part of this Deed for all purposes. Notwithstanding anything herein contained, the Trustee will not be bound to take any conveyance, assignment or transfer pursuant hereto of any property or assets that, in the opinion of counsel to the Trustee, is of an onerous character, but the Corporation shall hold any such property or assets in trust for the Trustee.

## **2.9 Liability of Trustee**

Neither the Trustee nor any receiver shall (i) be responsible or liable for any debts contracted by it, for damages to persons or property, for salaries or for non-fulfilment of contracts during any period when the Trustee or any receiver shall manage or be in possession of the mortgaged property; (ii) be liable to account as mortgagee in possession or to account for anything except actual receipts or be liable for any loss on realization or for any default or omission for which a mortgagee in possession may be liable; (iii) be bound to do, observe or perform or to see to the observance or performance by the Corporation of any obligations or covenants imposed upon the Corporation; or (iv) in the case of any chattel paper, security or instrument, be obligated to preserve rights against any other persons. The Corporation hereby waives any provision of applicable law permitted to be waived by it which imposes higher or greater obligations upon the Trustee or any receiver than aforesaid.

## **2.10 Applicable Laws Exception**

All rights, remedies, and powers provided herein may be exercised only to the extent that the exercise thereof does not violate any mandatory provision of applicable law and all the provisions of this Deed are intended to be subject to all mandatory provisions of applicable law which may be controlling in the premises and to be limited to the extent necessary so that they will not render this Deed invalid, unenforceable or not entitled to be recorded, registered or filed under any mandatory provisions of applicable law. If any mandatory provision of applicable law shall provide for different or additional requirements than or to those specified herein as prerequisites to or incidental to the realization, sale or foreclosure of the security or any part thereof, then, to that extent, such laws

shall be deemed to have been set forth herein at length, and any conflicting provisions hereof shall be disregarded, and the method of realization, sale or foreclosure of the security required by any such laws shall, insofar as may be necessary, be substituted herein as the method of realization, sale or foreclosure in lieu of that set forth above. Any provision hereof contrary to mandatory provisions of applicable law shall be deemed to be ineffective and shall be severable from and not invalidate any other provision of this Deed.

#### **2.11 Waivers of Applicable Laws**

- (a) To the extent not prohibited by applicable law, the Corporation hereby waives its rights, if any, under all provisions of applicable law that would in any manner, limit, restrict or otherwise affect the Trustee's rights and remedies hereunder or impose any additional obligations on the Trustee. The Corporation waives the right to receive any financing statement or any verification statement issued by any registry that confirms registration of a financing statement relating to this Deed.
- (b) To the full extent that it may lawfully do so, the Corporation hereby:
  - (i) waives and disclaims any benefit of, and shall not have or assert any right under any statute or rule of law pertaining to, the marshalling of assets or any other matter whatever, to defeat, reduce or affect the rights of the Trustee under the terms of this Deed to a sale of the mortgaged property or any part thereof or for the collection of all amounts secured by this Deed; and
  - (ii) agrees that it shall not have or assert any right or equity of redemption or any right under any statute or otherwise to redeem the mortgaged property or any part thereof after the sale hereunder to any person whether such sale is by the Trustee, any receiver or otherwise, notwithstanding, that the Trustee may have purchased same.

### **3. COVENANTS**

The Corporation hereby covenants and agrees with the Trustee for the benefit of each Holder:

#### **3.1 Principal and Interest**

That it will pay or cause to be paid, when due, the principal, interest and all other amounts secured by the Debentures.

#### **3.2 Not to Encumber**

That it will not, without the prior written approval of the Trustee or the Holders (which may be evidenced from time to time by a resolution of the Holders or, for any particular Holder, by the terms of any agreement to which the Holder and the Corporation are parties that relates to the terms of obligations secured by a pledge of the Debenture in favour of that Holder), create or permit to exist any mortgage, hypothec, charge, lien, encumbrance or other security interest or lease upon or affecting the mortgaged property or any part thereof.

#### **3.3 Comply with Environmental Law**

That it will operate its business and all of the mortgaged property in compliance with all applicable laws intended to protect the environment ("Environmental Laws").



#### **3.4 Reporting Requirements**

That it will immediately notify the Trustee after becoming aware of any release or upon the discovery of any contaminant at, upon, under, over, within or with respect to the mortgaged property which will give rise to a material report, inquiry or investigation relating to the requirements of any applicable Environmental Law and will promptly forward to the Trustee copies of all orders, notices, permits, applications or other communications and reports received from any governmental authority in connection with any applicable Environmental Law affecting or relating to the mortgaged property or the operations or activities of the Corporation or any of its subsidiaries.

#### **3.5 Preserve and Protect the Mortgaged Property**

That it will diligently maintain, use and operate the mortgaged property and shall carry on and conduct its business in a proper and efficient manner so as to preserve and protect the mortgaged property and the earnings, incomes, rents, issues and profits thereof.

#### **3.6 Governmental Requirements**

That it will duly observe and conform to all valid requirements of any governmental authority relative to any of the mortgaged property and all covenants, terms and conditions upon or under which the mortgaged property is held.

The Corporation represents and warrants to the Trustee (such representations being also for the benefit of each Holder):

#### **3.7 Absence of Hazardous Materials**

That to its knowledge (i) there are no Hazardous Materials located on, above or below the surface of any land which it occupies or controls, except those being stored in compliance with applicable laws, or contained in the soil or water constituting such land, except in compliance with applicable laws, (ii) no release, spill, leak, emission, discharge, leaching, dumping or disposal of Hazardous Materials has occurred on or from such land which, in any such case, could materially and adversely affect its financial condition, the mortgaged property or its operations or its ability to perform its obligations under the Deed, and (iii) no land that it occupies or controls has been used as a landfill or waste disposal site.

#### **3.8 Compliance with Environmental Law**

That the Corporation's business and the mortgaged property are operated in substantial compliance with applicable Environmental Laws intended to protect the environment (including, without limitation, laws respecting the disposal or emission of Hazardous Materials), to the best of its knowledge after reasonable inquiry there are no breaches thereof, and no enforcement actions in respect thereof are threatened or pending which, in any such case, could materially and adversely affect the mortgaged property or its ability to perform its obligations under this Deed.

That the Corporation shall include in any lease of any part of the mortgaged property to a third party conditions, warranties and representations substantially in the form of the conditions, warranties and representations concerning Hazardous Materials and Environmental Laws contained in this Deed.

For the purposes of this Deed, "Hazardous Materials" means any hazardous substance or any pollutant or contaminant, toxic or dangerous waste, substance or material, as defined in or regulated by any applicable law, regulation or governmental authority from time to time, including, without limitation, asbestos and polychlorinated biphenyls.

#### **3.9 Expenses, Remuneration and Indemnity**

The Corporation shall pay to the Trustee upon demand both before and after default the amount of all reasonable costs, charges, borrowings, expenses and fees of the Trustee incurred in

connection with the administration of this Deed including expenses arising in connection with Section 8.1, the repossession, holding, repairing, processing, preparing for disposition and disposing of any of the mortgaged property (including reasonable legal expenses on a solicitor and his own client basis and other expenses including expenses arising in connection with Section 8.1), together with interest from the date of demand at a rate per annum equal to the then-current rate charged by the Trustee from time to time. All amounts owing to the Trustee under or in connection with this Deed shall be secured by the mortgages and charges created in this Deed and be payable in priority to amounts secured by the Debentures.

Without limiting the foregoing, the Corporation covenants that it will pay to the Trustee reasonable remuneration for its services hereunder and will pay or reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in the administration or execution of the trusts hereby created (including the reasonable compensation and the disbursements of its counsel and all other advisers and assistants not regularly in its employ), including, without limitation, all costs incurred by the Trustee in complying with any laws applicable to trustees as a result of its acting hereunder both before any default hereunder and thereafter until all the duties of the Trustee under the trusts hereof shall be finally and fully performed, except any such expense, disbursement or advance as may arise from its negligence or wilful default. Any amount due under this Section shall bear interest from the date of demand for payment at a rate per annum equal to the rate referred to in the preceding paragraph, payable on demand. After default, all amounts so payable and the interest thereon shall be payable out of any funds coming into the possession of the Trustee or its successors in the trusts hereunder in priority to any payment of the principal of or interest or premium on the Debentures.

The Corporation hereby indemnifies the Trustee, its directors, officers, employees, and agents, and any successors and assigns against any loss, expense, claim, liability or asserted liability (including strict liability) incurred as a result of the administration of the trust created hereby, the exercise by the Trustee of any rights hereunder, the performance of any remediation by the Trustee or its agent for bodily injury, property damage, abatement, or remediation, environmental damage or impairment or any other injury or damage or any diminution in value of the mortgaged property resulting from or relating, directly or indirectly, to: (i) the presence or release of any contaminants, by any means or for any reason, on the mortgaged property, whether or not release or presence of the contaminants was under the control, care or management of the Corporation, or of a previous owner, or of a tenant, or (ii) any contaminant present on or released from any contiguous property to the mortgaged property, or (iii) the breach or alleged breach of any Environmental Laws by the Corporation, save and except that the Trustee shall only be responsible for its own negligence and wilful misconduct.

The Corporation shall at all times indemnify the Trustee, its directors, officers, employees, and agents, and any successors and assigns and save them harmless against all actions, proceedings, liability, claims, damages, reasonable costs and expenses, including legal costs whatsoever arising from the performance of its duties hereunder (unless arising from negligence, bad faith or wilful misconduct on their part) and including any action or liability brought against or incurred by any of them in relation to or arising out of any breach by the Corporation of its obligations under this Deed or by the failure of the Trustee or its agents to do such acts as may be necessary to register, perfect, release or discharge the security created hereby as the same may be registered, filed or recorded in any public office.

The agreements in this Section shall survive the termination of this Deed and the repayment of the obligations secured.

### **3.10 Registrations and Deliveries**

The Corporation agrees that:

- (a) forthwith after the execution of this Deed and after the execution of each instrument supplemental or ancillary hereto, it shall register, file or record the same and/or, if applicable, a financing statement or other prescribed statement in respect thereof as

may from time to time be required by the Trustee, the Senior Holders or any other Holder where such registration, filing or recording may be necessary or desirable or of advantage in preserving or protecting the security constituted by this Deed in favour of the Trustee, the Senior Holder or such other Holder;

- (b) from time to time, it shall renew such registration, filing or recording as required to maintain the security constituted hereby as valid and effective security;
- (c) promptly after such registration, filing, recording or renewal, the Corporation shall cause to be delivered to the Trustee certificates establishing such registration, filing, recording or renewal and opinion of counsel satisfactory to the Trustee, acting reasonably, evidencing that the provisions of this Section 3.10 have been complied with in respect of this Deed or such supplemental or ancillary instrument, as the case may be;
- (d) forthwith after the execution of this Deed and after the execution of each instrument supplemental or ancillary hereto, it shall deliver to the Trustee such other documents as may be reasonably required by the Trustee to be delivered to preserve, protect and perfect the security constituted hereby and represented by such documents of title, security certificates and other documents; and
- (e) in the event that the security constituted hereby becomes enforceable as herein provided and the Trustee shall become bound to enforce the same, the Corporation will from time to time execute all such assurances and do all such things as the Trustee may reasonably require for facilitating the realization of the mortgaged property of the Corporation and for exercising all of the powers, authorities and discretion conferred on the Trustee and for confirming to any purchaser of such mortgaged property or any part thereof, whether sold by the Trustee herein or by judicial proceedings, the title to the property so sold, and it will give all notices and directions which the Trustee may consider necessary or expedient.

The Corporation shall not change its name or amalgamate with another corporation under a different name without giving at least 10 days' prior notice to the Trustee of the new name and the date upon which such change of name or amalgamation is to take effect. Within 5 business days of the change of name or amalgamation, the Corporation shall provide the Trustee with a true copy of the articles of amendment or articles of amalgamation effecting the change of name and a certificate confirming the correct name of the Corporation and that all appropriate registrations, filings or recordings have been made on behalf of the Trustee to fully and effectively maintain the perfection and priority of the security created hereby.

In the event of the amalgamation of the Corporation, this Deed, the Debentures and all other security delivered by the Corporation in connection with this Deed shall be binding on the amalgamated corporation and charge its present and future undertaking, property and assets to secure present and future debts, liabilities and obligations of the Corporation and of the amalgamated corporation to the Trustee and the Holders, all as if the amalgamated corporation had originally executed and delivered those documents.

### **3.11 Proceeds of Unauthorized Sale in Trust**

The Corporation shall, in the event the mortgaged property or any part thereof is sold or disposed of prior to the full discharge of this Deed by the Trustee, in any manner not authorized by this Deed, hold all proceeds of such sale or disposition received by the Corporation as trustee for the Trustee until the Corporation has been fully released from this Deed by the Trustee.

### **3.12 Removal of Mortgaged Property**

Prior to the removal of any of the mortgaged property from the province in which it is situated at the date of this Deed or to leasehold property, the Corporation shall effect such further

registrations and obtain such other consents and give such other security, at the sole cost and expense of the Corporation, as may be required or desirable to protect or preserve the security hereby created, and the Corporation shall forthwith notify the Trustee of the intended removal and the action proposed to be taken.

### 3.13 Performance of Covenants by Trustee

If the Corporation shall fail to perform any covenant on its part herein contained, the Trustee may in its absolute discretion perform any such covenant capable of being performed by it, but the Trustee shall be under no obligation to do so. If any such covenant requires the payment of money or if the mortgaged property or any part thereof shall become subject to any charge ranking in priority to the security hereof, the Trustee may in its absolute discretion make such payment and/or pay or discharge such charge, but shall be under no obligation to do so. All sums so paid by the Trustee shall be payable by the Corporation on demand together with interest from the date of demand at the rate referred to in Section 3.9 and shall constitute a charge upon the mortgaged property. No such performance or payment shall relieve the Corporation from any default hereunder or any consequences of such default.

### 3.14 Appointment of Monitor

If in the opinion of the Senior Holders, acting reasonably, a material adverse change has occurred in the financial condition of the Corporation, or if the Senior Holders in good faith believe that the ability of the Corporation to pay any of its obligations or to perform any other covenant contained herein has become impaired or if a default has occurred, the Trustee shall, upon written direction by the Senior Holders, by written notice to the Corporation, appoint a monitor (the "Monitor") to investigate any or a particular aspect of the Corporation or its business and affairs for the purpose of reporting to the Trustee. The Corporation shall give the Monitor its full co-operation, including full access to facilities, assets and records of the Corporation and to its creditors, customers, contractors, officers, directors, employees, auditors, legal counsel and agents. The Monitor shall have no responsibility for the affairs of the Corporation nor shall it participate in the management of the Corporation's affairs and shall incur no liability in respect thereof or otherwise in connection with the Corporation, its business and affairs or the mortgaged property. The Monitor shall act solely on behalf of the Trustee and shall have no contractual relationship with the Corporation as a consultant or otherwise. The appointment of a Monitor shall not be regarded as an act of enforcement of this Deed. All reasonable fees and expenses of the Monitor (including legal fees and disbursements on a solicitor and own client basis) shall be paid by the Corporation upon submission to it of a written invoice therefor. The Trustee may at its option upon the security hereby constituted becoming enforceable appoint or seek to have appointed the Monitor as receiver, liquidator, or trustee in bankruptcy of the Corporation or the mortgaged property or any part thereof.

### 3.15 Insurance

That it will cause all its property which is of a character usually insured by businesses operating properties of a similar nature to be properly insured and kept insured with reputable insurers against loss or damage by fire or other hazards of the nature and to the extent that such properties are usually insured by businesses operating properties of a similar nature in the same or similar localities and shall maintain such insurance with loss if any payable to the Trustee and shall deliver to the Trustee evidence of such insurance satisfactory to the Trustee. Proceeds of insurance shall be dealt with by the Trustee in accordance with resolutions of the Senior Holders, or in the absence of such resolutions, in accordance with Section 5.4.

### 3.16 Taxes and Other Charges

That it shall pay all rents, taxes, rates, levies, assessments and government fees or dues levied, assessed or imposed in respect of the mortgaged property or any part thereof (collectively "Taxes") as and when the same shall become due and payable and shall pay all charges, liens and other encumbrances on the mortgaged property (collectively "Charges") as and when the same shall become due and payable. If the Corporation does not pay any Taxes or Charges as and when the

same shall become due and payable, the Trustee may, at its option, elect to pay any such amounts and charge to the Corporation all amounts so paid as additional amounts secured under this Deed, together with interest thereon from the date of payment by the Trustee of any such amounts at a rate per annum equal to the then-current rate charged by the Trustee from time to time.

### 3.17 Information

That it will furnish to the Trustee such information (including an annual certificate of compliance) with respect to the mortgaged property and the insurance thereon as the Trustee may from time to time require, and shall give written notice to the Trustee of all litigation before any court, administrative board or other tribunal affecting the Corporation or its property. An annual certificate of compliance means a certificate signed by the president or a vice-president of the Corporation, confirming compliance with the covenants set forth in this Article 3 and specifically that (i) no default as described in Section 4.1 of this Deed has occurred and is continuing and no event has occurred and is continuing which, with the passage of time or giving of notice, or both, would constitute such a default, and (ii) all the covenants of the Corporation contained in this Article 3 and all of the conditions contained in this Deed to be complied with by the Corporation have been fully complied with to the date thereof.

## 4. DEFAULT

### 4.1 Security Becoming Enforceable

The security hereby constituted shall immediately become enforceable and the floating charge created pursuant to Section 2.1(b) hereof shall become a fixed and specific mortgage; charge, pledge, assignment, security interest and hypothec on the property charged thereby if:

- (a) payment of part or all of the obligations secured by a pledge of a Senior Debenture is demanded in accordance with any agreement to which the Corporation is a party relating to such obligations secured, and payment is not made on demand;
- (b) the Corporation makes default of any other covenant or condition of this Deed for the benefit of the Senior Holders or the Trustee and default continues for a period of 30 days after the Trustee sends notice to the Corporation to correct the default; or
- (c) payment of the principal amount and interest accrued on all Debentures has been demanded by the Trustee pursuant to Section 5.1(b) if any Holder of Debentures other than a Senior Holder (a "Subordinated Holder", where Debentures held by the Subordinated Holders are the "Subordinated Debentures") has proceeded in accordance with Section 5.1(b) of this Deed.

### 4.2 Waiver

The Trustee (on the direction of the Senior Holders) or the Senior Holders may by notice to the Corporation waive any default of the Corporation on such terms and conditions as the Senior Holders may determine, but no such waiver shall be taken to affect any subsequent default or the rights of the Senior Holders arising therefrom nor shall it detract from the rights of any Subordinate Holder under the terms of any agreement relating to its obligations secured with respect to such default. No waiver of any default by a Subordinate Holder shall in any way affect the rights of the Senior Holders with respect to such default.

## 5. REMEDIES IN CASE OF DEFAULT

### 5.1 Demand Payment

- (a) If the security hereby constituted becomes enforceable as provided in Sections 4.1(a) or (b), the Trustee upon being so directed by resolution of the Senior Holders shall demand payment of the

principal amount of and interest accrued on all Debentures and the same shall forthwith become immediately due and payable to the Trustee.

(b) If (i) payment of part or all of the obligations, which for greater certainty shall include, without limitation, any principal amount together with accrued interest, that is secured by a pledge of a Subordinated Debenture (the "Defaulted Debenture") is demanded in accordance with any agreement to which the Subordinated Holder or Holders of the Defaulted Debenture (the "Demanding Holder") and the Corporation are parties relating to such obligations secured; and payment is not made on demand, (ii) the Demanding Holder (or any agent duly authorized to do so on behalf of such Holder) gives written notice of the demand for payment of such obligations secured to the Trustee (who shall immediately forward such notice to all of the other Holders), (iii) the Demanding Holder (or any agent duly authorized to so act on behalf of such Holder) provides to the Trustee (x) a certificate by the Demanding Holder certifying that the Demanding Holder is entitled under the terms of an agreement to which the Demanding Holder (or such agent) and all Senior Holders (or an agent on their behalf) are party (the "Intercreditor Agreement"), to require that payment of the Debentures be demanded and the security hereby constituted be enforced notwithstanding the priority of the Senior Holders, and (y) a resolution of the Demanding Holder directing that the Trustee demand payment of the principal amount of and interest on all Debentures, (which certificate and resolution shall immediately be forwarded by the Trustee to all of the other Holders), and (iv) at least 5 business days have passed after the Demanding Holder (or any agent duly authorized to so act on behalf of such Holder) has given to the Trustee the certificate and resolution referred to in (iii) above and the Trustee has forwarded copies thereof to all of the other Holders, then the Trustee, upon being so directed by the Demanding Holder (or any agent duly authorized to so act on behalf of such Holder) shall demand payment of the principal amount of and interest accrued on all Debentures and the same shall forthwith become immediately due and payable to the Trustee.

(c) In the event that the Senior Holders have duly exercised their rights under Section 5.1(a) hereof (whether or not a Subordinated Holder has duly exercised its rights under Section 5.1(b) hereof), it is agreed that:

- (i) the Trustee shall have regard to the instructions and directions of the Senior Holder only in exercising rights and remedies under this Deed and shall have no duty or obligation hereunder to act in accordance with the instructions or directions of any other Holder; and
- (ii) in giving the Trustee instructions and directions in pursuance of its rights under paragraph (i) above, the Senior Holders shall act in good faith, and not with the sole purpose of defeating, delaying, hindering or otherwise impeding the repayment of the Subordinated Holders, but nothing in this Deed shall impose on the Senior Holders any greater duty to the Subordinated Holders or the Corporation than is owed by a senior creditor to a junior creditor or to a debtor in the absence of any express provision.

(d) In the event that a Subordinated Holder (or an agent duly authorized by a Subordinated Holder) has duly exercised its rights pursuant to Section 5.1(b) hereof and no Senior Holder has exercised its rights under Section 5.1(a) hereof, then (but for so long only as no Senior Holder has exercised its rights under Section 5.1(a) hereof):

- (i) the Trustee shall have regard to the instructions and directions of the Subordinated Holder only in exercising rights and remedies under this Deed and shall have no duty or obligation hereunder to act in accordance with the instructions or directions of any other Holder;
- (ii) in giving the Trustee instructions and directions in pursuance of its rights under paragraph (i) above, the Subordinated Holder shall act in good faith; and

- (iii) while nothing shall prevent the Senior Holders from exercising their rights under Section 5.1(a) hereof if they are entitled to do so as between the Corporation and themselves, until they have done so, the Senior Holders shall not do any of the following without the consent of the Subordinated Holders: (A) give instructions and directions to the Trustee relating to the exercise of those rights and remedies being exercised by the Subordinated Holders in accordance with this Section 5.1(d), (B) direct the Trustee to waive any defaults pursuant to Section 4.2 of this Deed, (C) unreasonably withhold or delay its consent to the appointment of a replacement Trustee requested by the Subordinated Holders, or (D) exercise any of the rights set out in Sections 9.1(a), (b), (e) and (f) of this Deed.

## 5.2 Remedies

If the security hereby constituted becomes enforceable as herein provided, and the Corporation has failed to pay to the Trustee on demand the principal amount of and interest accrued on the Debentures:

- (a) the Trustee may in its discretion take possession of the whole or any part of the mortgaged property and carry on all or any part of the business of the Corporation relating to the mortgaged property and borrow money on the security of the mortgaged property in priority to the security hereby created for the purpose of maintenance, preservation or protection of the mortgaged property or for the carrying on of all or any part of the business of the Corporation relating to the mortgaged property and in so acting the Trustee shall have the power to exclude the Corporation, its servants and agents from the mortgaged property;
- (b) whether or not the Trustee has exercised any or all of its rights under Section 5.2(a), the Trustee may sell, lease or otherwise dispose of the whole or any part of the mortgaged property at public auction, by private tender or private sale, either for cash or upon credit and upon such terms and conditions as the Trustee may determine, and the Trustee may execute and deliver to any purchaser of the mortgaged property or any part thereof good and sufficient deeds and documents for the same, and, without limiting the powers granted to the Trustee, the Trustee is irrevocably constituted the attorney of the Corporation for the purpose of making any such sale and executing such deeds and documents (which appointment, being coupled with an interest, shall survive the bankruptcy of the Corporation);
- (c) the Trustee may also exercise any of the other rights to which the Trustee or the Holders are entitled including the right to take proceedings in any court of competent jurisdiction for the appointment of a receiver or receiver and manager (a "receiver"), for the sale of the mortgaged property or any part thereof or for foreclosure, and the right to take any other action, suit, remedy or proceeding authorized or permitted under this Deed or by law or in equity in order to enforce the security constituted by this Deed; and
- (d) the Trustee may also by instrument in writing appoint a receiver of the mortgaged property or of any part thereof and may remove any receiver so appointed and appoint another in his stead, and such receiver shall have the same rights, powers and authorities as are conferred on the Trustee by this Section 5.2. In addition the following provisions shall apply:
  - (i) such appointment shall be made in writing signed by the Trustee and such writing shall be conclusive evidence for all purposes of such appointment; the Trustee may from time to time in the same manner remove any receiver so appointed and appoint another in its stead; in making any such appointment the Trustee shall be deemed to be acting as the attorney for the Corporation and the Corporation hereby consents to the appointment of a receiver;

- (ii) any such appointment may be limited to any part or parts of the mortgaged property or may extend to the whole thereof;
- (iii) every receiver may, in the discretion of the Trustee, be vested with all or any of the powers, rights, benefits, discretions, protection and relief of the Trustee hereunder and shall be vested with all of the powers and protections afforded to a receiver under applicable law;
- (iv) the Trustee may from time to time fix the reasonable remuneration of the receiver and direct the payment thereof, in priority to the other obligations secured hereby, out of the mortgaged property, the income therefrom or the proceeds thereof;
- (v) the Trustee may from time to time require any receiver to give security for the performance of its duties and may fix the nature and amount thereof, but the Trustee shall not be bound to require such security;
- (vi) every such receiver may, with the consent in writing of the Trustee, borrow money for the purpose of carrying on the business of the Corporation in respect of any part of the mortgaged property or for the maintenance, protection or preservation of the mortgaged property or any part thereof, and any receiver may issue certificates (in this Section called "Receiver's Certificates"), for such sums as will in the opinion of the Trustee be sufficient for carrying out the foregoing, and such Receiver's Certificates may be payable either to order or bearer and may be payable at such time or times as the Trustee may consider expedient, and shall bear such interest as shall therein be declared and the Receiver may sell, pledge or otherwise dispose of the same in such manner as the Trustee may consider advisable and may pay such commission on the sale thereof as the Trustee may consider reasonable, and the amounts from time to time payable by virtue of such Receiver's Certificates shall at the option of the Trustee form a charge upon the mortgaged property in priority to this Deed;
- (vii) every receiver shall, regarding its acts or omissions, be deemed the agent of the Corporation, and in no event the agent of the Trustee and the Trustee shall not, in making or consenting to such appointment, incur any liability to any receiver for its remuneration or otherwise howsoever;
- (viii) except as may be otherwise directed by the Trustee, all monies from time to time received by any receiver shall be paid over to the Trustee; and
- (ix) the Trustee may pay over to any receiver any monies constituting part of the mortgaged property to the extent that the same may be applied for the purposes hereof by such receiver and the Trustee may from time to time determine what funds any receiver shall be at liberty to keep on hand with a view to the performance of its duties as such receiver.

In the exercise of their rights, powers and authorities hereunder, the Trustee and any receiver appointed by the Trustee shall be the agent of the Corporation, and the Trustee and the Holders shall not be in any way responsible for any misconduct or negligence of any such receiver, nor shall the Holders be in any way responsible for any misconduct or negligence of the Trustee.

### 5.3 Public Sale

The Trustee, the Holders or any agent or representative thereof, may become purchasers at any public sale of the mortgaged property, whether made under a power of sale provided for in this Deed or pursuant to judicial proceedings.



#### 5.4 Application of Proceeds of Realization of Security

Except as otherwise provided in this Deed, by law or by order of a court or by any resolution of the Holders, any and all monies arising from the enforcement of any remedy provided for herein, including, without limitation, the carrying on of the business of the Corporation and the sale or other realization of the whole or any part of the mortgaged property, whether under any sale by the Trustee or by judicial process or otherwise, shall be paid over to the Trustee, shall be held by the Trustee and, together with any other monies then or thereafter in the hands of the Trustee available for the purpose, shall be applied by the Trustee as follows:

- (a) firstly, if and to the extent that the Trustee deems that it is in the interest of the Holders generally and the same is not inconsistent with any resolution of the Senior Holders, to pay all charges and liens on the mortgaged property ranking (or capable of ranking) in priority to the security constituted by this Deed or to keep in good standing any such prior lien;
- (b) secondly, to pay all amounts due to the Trustee hereunder, including without limitation, costs, charges and expenses referred to in Section 3.9;
- (c) thirdly, to pay the outstanding principal amount secured by the Senior Debentures, to pay all interest secured by the Senior Debentures including interest on overdue interest accrued but unpaid to the date of the demand for payment of the amounts secured by such Senior Debentures and to pay all interest including interest on overdue interest accruing after the date of demand for payment and remaining unpaid of such amounts rateably and proportionately, having regard to the amount of the obligations secured by such Senior Debentures, rather than the face amount of any Senior Debenture that has been pledged in accordance with Section 1.3 above;
- (d) fourthly, after payment of all amounts secured by, and cancellation of, all Senior Debentures, to pay, in order as they succeed to being Senior Debentures, all amounts secured by each series of Subordinated Debentures in the same manner as in Section 5.4 (c) above;
- (e) fifthly, in payment of all other amounts at any time and from time to time remaining outstanding and unpaid under this Deed; and
- (f) sixthly, the surplus, if any, of such money shall be paid to the Corporation or its assigns or otherwise in accordance with applicable law.

#### 5.5 Duty to Inquire

No person dealing with the Trustee, its agents or any receiver appointed pursuant hereto (or pursuant to any agreement to which the Corporation and one or more of the Holders are parties) shall be concerned to inquire whether the powers which the Trustee, its agents or any receiver appointed pursuant hereto (or pursuant to any agreement to which the Corporation and one or more of the Holders are parties) is purporting to exercise have become enforceable, or whether any money remains due upon the security constituted by this Deed, or as to the necessity or expediency of the stipulations and conditions subject to which any sale shall be made, or otherwise as to the propriety or regularity of any sale or any other dealing by the Trustee with the mortgaged property or any part thereof or to see to the application of any money paid to the Trustee; and, in the absence of fraud on the part of such person, such dealings shall be deemed to be within the powers conferred on the Trustee and to be valid and effective accordingly.

#### 5.6 Possession

The Corporation shall on demand by the Trustee or any receiver yield up possession of the mortgaged property or any part thereof as demanded by the Trustee whenever the Trustee shall have a right to exercise any rights or remedies under Section 5.2 and put no obstacle in the way of, but

facilitate by all legal means, the actions of the Trustee or any receiver hereunder and not interfere with the carrying out of the powers hereby granted to the Trustee or any appointed receiver.

**5.7 Remedies Not Exclusive**

No right, power or remedy herein conferred upon or reserved to the Trustee or any receiver is intended to be exclusive of any other right, power or remedy or remedies, and each and every right, power and remedy shall, to the extent permitted by applicable law, be cumulative and shall be in addition to every other right, power or remedy given hereunder or now or hereafter existing at law, in equity or by statute. No delay or omission of the Trustee in the exercise of any right, power or remedy accruing upon any default shall impair any such right, power or remedy or shall be construed to be a waiver of any such default or an acquiescence therein. Every right, power and remedy given to the Trustee or to a receiver by this Deed or under applicable law may be exercised from time to time and as often as may be deemed expedient by the Trustee or such receiver, as applicable.

**5.8 Power of Attorney**

The Corporation hereby irrevocably constitutes and appoints the Trustee its true and lawful attorney and agent, with full power and authority in the Corporation's name, place and stead from time to time to do all acts and things and execute and deliver all share transfers, certificates, proxies, resolutions, consents, assignments, transfers, conveyances and agreements, in such form as the Trustee considers necessary or desirable to do all things which the Corporation is required to sign, execute and do hereunder if the Corporation has failed to sign, execute or do the same and generally to use the name of the Corporation, as applicable, in the exercise of all or any of the powers hereby conferred on the Trustee, with full powers of substitution and revocation; provided that this power of attorney may not be exercised by the Trustee until the security constituted hereby shall have become enforceable. Such appointment and power of attorney is hereby declared by the Corporation to be an irrevocable power coupled with an interest.

**5.9 Restriction on Corporation and its Officers and Directors**

Upon the Corporation receiving notice from the Trustee of the taking of possession of the mortgaged property or the appointment of a receiver, all the powers, functions, rights and privileges of each of the directors and officers of the Corporation with respect to the properties, business and undertaking of the Corporation shall cease unless specifically continued by the written consent of the Trustee.

**6. DISCHARGE**

6.1 Subject to Section 7, this Deed and the rights hereby granted (other than the Trustee's rights under Section 3.9 above) shall cease, determine and be void, and the Trustee shall at the request and expense of the Corporation cancel and discharge the mortgages and charges of this Deed (including the additional security provided for in Section 10 (the "Additional Security")) and execute and deliver to the Corporation such deeds or other instruments as shall be requisite therefor, if the Corporation first satisfies the Trustee that it has paid the principal amount and interest secured by the Debentures and has otherwise observed and performed the terms and conditions of this Deed and the Additional Security and has otherwise satisfied all obligations secured, or that all of the Debentures have been validly cancelled as contemplated in Section 1.6.

6.2 The registrar of any registration division in which any mortgaged property is situate shall discharge and cancel the registration of any mortgage, pledge or charge, or transfer or giving in payment created hereby or by the Additional Security or hereafter created under the provisions hereof upon the registration of any discharge, release or document to that effect signed by the Trustee, without being obliged to see that any of the conditions of this Deed or of the Additional Security have been fulfilled.

## 7. CONTINUING AND ADDITIONAL SECURITY

7.1 The Debentures and the security created by this Deed shall be effective whether or not any monies or liabilities secured by this Deed are advanced or incurred before or after the date of this Deed, and shall not be considered as satisfied or discharged by any intermediate payment of the whole or part of the obligations secured by the pledge of the Debentures issued under this Deed but shall constitute and be a continuing security to the Holders for a current or running account and shall be in addition to and not in substitution for any other security now or hereafter held by the Holders or any of them. The remedies of the Trustee under this Deed may be exercised from time to time separately or in combination and are in addition to and not in substitution for any other rights of the Trustee or the Holders however created.

## 8. TRUSTEE

### 8.1 Acceptance by Trustee

The Trustee hereby accepts the trusts declared and provided in this Deed and agrees to perform the trusts upon the terms and conditions of this Deed, subject to the following:

- (a) the Trustee may appoint such agents and employ or retain, in relation to this Deed, such lawyers, accountants, valuers, engineers, architects, appraisers, or such other experts as it may reasonably require in the circumstances and for the purpose of discharging its duties hereunder and shall be entitled to pay reasonable compensation for the advice or assistance so obtained, but nevertheless the Trustee shall not be obliged to act on any advice or assistance so obtained. The Trustee may act and shall be protected in acting in good faith on the opinion or the advice of or information obtained from any counsel (including where appropriate counsel acting for the Corporation or any Holder acceptable to the Trustee), accountant, valuator, engineer, architect, appraiser or other expert or advisor, in each case selected by the Trustee using reasonable care, in relation to any matter arising in connection with the administration of this Deed;
- (b) in respect of any direction, authorization, statement of fact, copy of by-law, resolution or other proceeding or writing which the Trustee may require from the Corporation, the Trustee shall be entitled to accept and act upon the same, provided the said documents bear the signature of any officer or director of the Corporation;
- (c) the Trustee shall be accountable only for reasonable diligence in respect of the trusts hereby conferred upon it and shall not be accountable for any act or default of any agent or other person engaged by the Trustee for the performance of any duty or duties hereunder (except employees of the Trustee), provided the Trustee shall have selected such agent or person with reasonable care;
- (d) subject to any resolution of the Holders (or the Senior Holders where specified in this Deed), the Trustee shall as regards all the trusts, powers, authorities and discretion vested in it have absolute and uncontrolled discretion as to the exercise thereof, whether in relation to the manner or as to the mode and time for the exercise thereof, and in the absence of fraud, negligence or wilful misconduct, it shall in no way be responsible for any loss, costs, damages or inconvenience that may result from the exercise or non-exercise thereof;
- (e) the Trustee shall not be bound to take any steps to enforce any of the covenants on the part of the Corporation contained in the Debentures, except insofar as it may be required to do so by the Senior Holders (or the Subordinated Holders pursuant to Section 5.1(b)) in writing upon being furnished with an indemnity reasonably satisfactory to the Trustee;

- (f) the obligation of the Trustee to commence or continue any act, action or proceedings for the purpose of realizing the collateral or for the enforcement of any covenant or obligation under or arising out of these presents or the Debentures shall, at the option of the Trustee, be conditional upon the Holders furnishing, when requested in writing by the Trustee, sufficient funds to commence or continue such action or proceedings and an indemnity satisfactory to the Trustee to protect and hold harmless the Trustee against costs, charges and expenses and liabilities to be incurred thereby and any loss and damage it may sustain by reason thereof;
- (g) the Trustee may, but shall not be obliged to, enter onto the mortgaged property to take such actions as the Trustee may in its sole discretion deem necessary or advisable to clean up, remediate, encapsulate, remove, resolve, or minimize the impact of, or otherwise deal with, any contaminants or breaches of Environmental Laws which could in the opinion of the Trustee jeopardize the security interest in the mortgaged property created by this Deed;
- (h) the Trustee shall have no responsibility to supervise or have control over the conduct of the Corporation's environmental practices, nor shall any action or inaction by the Trustee be construed as exercising care, control or management over the mortgaged property; and
- (i) nothing in this Deed shall be deemed to make the Trustee responsible for failure to obtain or maintain adequate or any insurance coverage for the mortgaged property or to ensure that such insurance is obtained and maintained by the Corporation, or for any loss arising from any defects in any policy or because of the failure of any insurer to pay for any loss or damage insured against, and the Trustee shall be entitled to request, and rely absolutely upon, a certificate of an officer of the Corporation that the insurance carried by the Corporation from time to time is in compliance with all relevant requirements of this Deed.

## 8.2 Trustee not Required to Give Security

The Trustee shall not be required to give any bond or security in respect of the execution of the trusts and powers of this Deed or otherwise in respect of this Deed.

## 8.3 Protection of Trustee

By way of supplement to the provisions of any law for the time being relating to trustees, it is expressly declared and agreed as follows:

- (a) the Trustee shall not be liable for or by reason of any failure or defect of title to, or encumbrance upon, the mortgaged property;
- (b) the Trustee shall not be liable for or by reason of any statements of fact or recitals in this Deed, or in the Debentures (except in the Certificate of the Trustee thereon) or in any document ancillary or supplemental hereto or thereto, or required to verify the same, but all such statements or recitals are and shall be deemed to be made by the Corporation;
- (c) nothing herein or in the Debentures shall impose any obligation on the Trustee or any Holders to see to or to require evidence of the registration or filing or renewal of this Deed, any of the Debentures or any other instrument ancillary or supplemental hereto or thereto or any other deed or writing by way of mortgage or charge upon the mortgaged property or any part thereof or to procure any further, other or additional instrument of further assurance or to do any other act for the continuance of the security hereof or encumbrance or for giving notice of the existence of such security or for extending or supplementing the same;

- (d) the Trustee shall not be bound to give notice to any person or persons of the execution hereof or the security constituted hereby or in any way to interfere with the conduct of the business of the Corporation, unless and until the security hereby constituted shall have become enforceable and the Trustee shall have become bound to enforce the same;
- (e) the Trustee shall not incur any liability or responsibility whatever in consequence of permitting or suffering the Corporation, its successors or assigns, to retain or be in possession of any part of its mortgaged property and to use and enjoy the same unless herein or in the Debentures expressly otherwise provided; nor shall the Trustee be or become responsible or liable for any destruction, deterioration, loss, injury or damage which may be done or occur to the mortgaged property by the Corporation, its agents or servants, or by any other person or be in any way responsible for the consequences of any breach on the part of the Corporation of, or to inquire as to the performance by the Corporation of, any of the covenants herein or in the Debentures contained or of any acts of the agents or servants of the Corporation;
- (f) unless otherwise required by law, the Trustee shall not be liable by reason of any entry into possession of the mortgaged property or any part thereof to account as mortgagee in possession or for anything except actual receipts or be liable for any loss on realization or for any default or omission for which a mortgagee in possession might be liable save such as may be caused by its own fraud, negligence or wilful misconduct;
- (g) the Trustee on its own behalf or in any other capacity, may buy, lend upon and deal in shares in the capital stock of the Corporation and generally may contract and enter into financial transactions with the Corporation without being liable to account for any profit made thereby;
- (h) none of the provisions contained in this Deed shall require the Trustee to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers unless indemnified in accordance with this Deed;
- (i) the Trustee may, before commencing or at any time during the continuance of any such act, action or proceeding, require the Holders at whose instance it is acting to deposit with the Trustee the Debentures held by them, for which Debentures the Trustee shall issue receipts;
- (j) the Trustee shall not be responsible or liable in any manner whatsoever for the sufficiency, correctness, genuineness or validity of any security deposited with it, including any stock transfer power of attorney; and
- (k) in the exercise of its rights, duties and obligations hereunder the Trustee may, if acting in good faith, rely, as to the truth of the statements and accuracy of the opinions expressed therein, upon statutory declarations, opinions, reports or certificates furnished pursuant to any covenant, condition or requirement of this Deed or required by the Trustee to be furnished to it in the exercise of its rights and duties hereunder, provided that the Trustee examines such statutory declarations, opinions, reports or certificates and determines, acting in good faith, that they comply with any applicable requirements of this Deed.

#### 8.4 Trustee's Obligation to Act

Unless and until the Trustee is required to do so under the terms of this Deed, the Trustee shall not be bound to give any notice or to take any act, action or proceeding by virtue of the powers conferred on it by this Deed; nor shall the Trustee be required to take notice of an event of default under this Deed, other than in payment of any monies required by any provisions hereof to be paid

to it. Unless and until notified in writing of such events of default or such default and in the absence of any such notice, the Trustee may assume that the Corporation is not in default hereunder and that no default has been made with respect to the payment of principal or interest under the Debentures or in the observance of performance or any of the covenants, agreements or conditions contained herein.

The right and obligation of the Trustee to commence or continue an act, action or proceeding for the purpose of enforcing any rights of the Trustee or the Holders hereunder shall be conditional on (i) the Trustee receiving a resolution from the Senior Holders (or the Subordinated Holders (or an agent on their behalf) pursuant to Section 5.1(b) exercised in accordance with Section 5.1(d)) and (ii) compliance with Section 8.1 (f).

#### **8.5 Resignation of Trustee**

The Trustee may resign its trust and be discharged from all further duties and liabilities hereunder by giving to the Corporation not less than 30 days' notice in writing or such shorter notice as the Corporation may accept as sufficient. The Senior Holders shall have the power at any time to remove the Trustee and to appoint a new Trustee. In the event of the Trustee resigning or being removed as aforesaid or being dissolved, becoming bankrupt, going into liquidation or otherwise becoming incapable of acting hereunder, the Corporation shall forthwith appoint a new Trustee unless a new Trustee has already been appointed by the Senior Holders; failing such appointment by the Corporation, the retiring Trustee (at the Corporation's expense) or any Senior Holder may apply to a Judge of the Court of Queen's Bench of Manitoba, on such notice as such Judge may direct, for the appointment of a new Trustee, but any new Trustee so appointed by the Corporation or by the Court shall be subject to removal as aforesaid by the Senior Holders. Any new Trustee appointed under these provisions shall be a corporation authorized to carry on the business of a trust company in the Province of Manitoba.

#### **8.6 Powers of New Trustee**

Any new Trustee appointed hereunder shall execute an instrument accepting such appointment hereunder and deliver one counterpart or notarial copy thereof to the Corporation and one counterpart or notarial copy thereof to the Trustee last in office and the Holders shown on the Trustee's register, and thereupon such new Trustee without further act, deed or conveyance shall become vested with all estates, properties, rights, powers and trusts of its predecessor in the trusts hereunder, with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of the successor Trustee or of the Corporation, the Trustee ceasing to act shall execute and deliver an instrument or instruments assigning and transferring to such successor Trustee, upon the trusts herein expressed, all the said property and assets and all rights, powers and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver all property and money held by such Trustee to the successor Trustee so appointed in its place. Should any deed, conveyance or instrument in writing from the Corporation be required by any new Trustee for more fully and certainly vesting in and confirming to it such estates, properties, rights, powers and trusts, then any and all such deeds, conveyances and instruments in writing shall, on request of said new Trustee, be made, executed, acknowledged and delivered by the Corporation. At the request of the Corporation or the new Trustee, the retiring Trustee, upon payment of the amounts, if any, due to it pursuant to Section 3.9, shall duly assign, transfer and deliver to the new Trustee all property and money held and all records kept by the retiring Trustee hereunder or in connection herewith.

#### **8.7 Corporate Re-organization of Trustee**

Any company into which the Trustee may be merged or with which it may be consolidated or amalgamated, or any company resulting from any merger, consolidation or amalgamation to which the Trustee shall be a party, shall be the successor Trustee under this Deed without the execution of any instrument or any further act.

#### 8.8 Evidence

The Corporation shall furnish to the Trustee evidence of compliance with the conditions provided for in this Trust Deed relating to any action or step required or permitted to be taken by the Corporation or the Trustee under this Trust Deed or as a result of any obligation imposed under this Trust Deed, including, without limitation, the issue, certification and delivery of Debentures hereunder, the satisfaction and discharge of this Trust Deed and the taking of any other action to be taken by the Trustee at the request of or on the application of the Corporation, forthwith if and when:

- (i) such evidence is required by any other Section of this Trust Deed to be furnished to the Trustee in accordance with the terms of this Section; or
- (ii) the Trustee, in the exercise of its rights and duties under this Trust Deed, gives the Corporation written notice requiring it to furnish such evidence in relation to any particular action or obligation specified in such notice.

Such evidence shall consist of:

- (A) a certificate of an officer of the Corporation stating that any such condition has been complied with in accordance with the terms of this Trust Deed;
- (B) in the case of any such condition compliance with which is, by the terms of this Trust Deed, made subject to review by legal counsel, an opinion of counsel to the Trustee that such condition has been complied with in accordance with the terms of this Trust Deed; and
- (C) in the case of any such condition compliance with which is, by the terms of this Trust Deed, made subject to review or examination by an auditor or accountant, an opinion or report of the auditors of the Corporation or any accountant licenced under the applicable laws of the Province of Manitoba based on the examinations or enquiries required to be made under the terms of this Trust Deed, in each case approved by the Trustee, that such condition has been complied with in accordance with the terms of this Trust Deed.

Whenever such evidence relates to a matter other than the issue, certification and delivery of Debentures, the satisfaction and discharge of this Trust Deed or the taking of any other action to be taken by the Trustee at the request or on the application of the Corporation, and except as otherwise specifically provided herein, such evidence may consist of a report or opinion of any solicitor, auditor, accountant, engineer or appraiser or any other person whose qualifications give authority to a statement made by him, provided that if such report or opinion is furnished by a director, officer or employee of the Corporation it shall be in the form of a certificate satisfactory to the Trustee (acting reasonably). Such evidence shall be, so far as appropriate, in accordance with the immediately preceding paragraph of this section.

Each statutory declaration, certificate, opinion or report furnished to the Trustee as evidence of compliance with a condition provided for in this Trust Deed shall include a statement by the person giving the evidence:

- (a) declaring that he has read and understands the provisions of this Trust Deed relating to the condition in question;
- (b) describing the nature and scope of the examination or investigation upon which he based the statutory declaration, certificate, statement or opinion; and
- (c) declaring that he has made such examination or investigation as he believes is necessary to enable him to make the statements or give the opinions contained or expressed herein.

Upon the demand of the Trustee, the Corporation shall furnish the Trustee with evidence in such form as the Trustee may reasonably require as to compliance with any condition contained in this Trust Deed relating to any action required or permitted to be taken by the Corporation or as to any other matter referred to herein.

#### **8.9 Action By Trustee to Protect Interests**

The Trustee shall have power to institute and to maintain such actions and proceedings as it may consider necessary or expedient to preserve, protect or enforce its interests and the interests of the Holders.

#### **8.10 Duties of Trustee**

The Trustee, in exercising its powers and discharging its duties hereunder, shall:

- (i) act honestly and in good faith with a view to the best interests of the Holders;
- (ii) exercise the care, diligence and skill of a reasonably prudent trustee; and
- (iii) act reasonably wherever such standard is stipulated herein and otherwise shall act as required by law.

### **9. RESOLUTIONS OF HOLDERS**

#### **9.1 Powers of the Holders**

The powers of the Holders shall be exercisable by the Senior Holders only, except (i) as expressly provided in Sections 3.2, 3.10(a), 5.1(b) and 5.1(d) of this Deed, and (ii) as to matters set forth in paragraphs (c), (d), (e) and (g) below which shall be also exercisable by Subordinated Holders as described in those paragraphs, and include but are not limited to the following powers exercisable from time to time by resolution of the Senior Holders:

- (a) the power to require the Trustee to refrain from enforcing any covenant on the part of the Corporation herein or to refrain from exercising any of the powers set forth herein and conferred on the Trustee or to direct the Trustee to waive any default or defaults on the part of the Corporation on such terms as may be deemed advisable or to cancel any declaration or waiver previously made by the Trustee under this Deed;
- (b) power to remove a Trustee from office and to appoint a new Trustee;
- (c) power to assent to any judgment, compromise or arrangement by the Corporation with any creditor, creditors or class or classes of creditors or with the holder(s) of any shares or securities of the Corporation, which shall also require the approval of the Holders of each series of Subordinated Debentures in respect of any judgment, compromise or arrangement affecting their respective Debentures;
- (d) power to assent to any modification of or change in or addition to or deletion from the rights of the Holders or the provisions contained in this Deed or any instrument ancillary or supplementary hereto or thereto or any agreement forming part of the mortgaged property which shall be agreed by the Corporation and to authorize the Trustee to concur in and execute any indenture supplemental to this Deed or any agreement supplemental to any instrument embodying any such modification, change, addition, deletion or to concur in and execute any deeds, documents, or writings authorized by such resolution, which shall also require the approval of the Holders of each series of Subordinated Debentures in respect of any such modification, change, addition, deletion affecting their respective Debentures;



- (e) power to approve the release of the Corporation and of the whole or any part of the mortgaged property from the security constituted hereby, which shall also require the approval of the Holders of each series of Subordinated Debentures;
- (f) power to authorize the Trustee to execute and deliver such form of priority agreement as may reasonably be requested by the Corporation to evidence the priority of any permitted liens which are permitted by the terms of any agreements entered into with all of the Holders to rank prior to the security constituted hereby; and
- (g) power to issue additional Debentures pursuant to Section 1.1, which shall also require the approval of the Holders of each series of Subordinated Debentures, which consent, in the case of the Subordinated Holders, shall not be unreasonably withheld.

The powers of the Holders shall be deemed to be several and cumulative and not dependent on each other and the exercise of any one or more of such powers, or in any combination of such powers, from time to time, shall not be deemed to exhaust the rights of the Holders to exercise such power or powers, or combination of powers thereafter from time to time.

#### 9.2 Resolutions of the Holders

The powers specified in Section 9.1 of this Deed and every other power conferred upon the Senior Holders or Subordinated Holders, as the case may be, by any provisions of this Deed or the Debentures or any agreement ancillary or supplemental hereto or thereto shall be exercised by resolution passed in the following manner:

- (a) the substance of any resolution may be embodied in an instrument in writing and such resolution shall be deemed to have been passed when such instrument has been executed by the Senior Holders or Subordinated Holders, as the case may be, holding an aggregate of more than 66 2/3% of the principal amount of all of the outstanding Debentures in the relevant series;
- (b) any such instrument, and any requisition or other instrument to be executed by any Holders under any provisions of this Deed, may be executed in counterparts and any of the Holders may execute the same in person or by agent or attorney duly authorized in writing;
- (c) at the request of the Trustee, the date and execution by any of the Holders or agent or attorney of any such instrument and the execution by any of the Holders of any power of attorney shall be proved by the certificate of any notary public that the person signing the same has acknowledged to him the execution thereof, by affidavit or statutory declaration of a witness to such execution, or by the signature of the Holder as witnessed by any officer of any bank or trust company; such proof shall be conclusive in favour of the Trustee with regard to any action taken or suffered by the Trustee under such instrument. No such instrument shall be effective until delivery thereof to the Trustee; and
- (d) the Trustee shall give notice to all Holders of each resolution of the Senior Holders or Subordinated Holders passed as aforesaid.

#### 9.3 Effect of Resolutions of Holders

Any resolution passed as provided in Section 9.2 shall be binding upon the Holders and each of them, and the Trustee (subject to the provisions for its indemnity, if any, set forth in this Deed) shall be bound to give effect thereto accordingly.

#### 10. ADDITIONAL SECURITY

10.1 To more effectively secure the due payment in lawful money of Canada of the obligations secured and all other amounts owing under or in connection with this Deed and the Debentures, the Corporation shall issue for the benefit of the Holders and as additional security such pledges of shares, deeds of hypothec and other security documents as may be agreed to by the Corporation, in a form and substance required by the Holders and the Trustee. Such additional security documents shall be in favour of the Trustee, who shall hold the same for and on behalf of the Holders from time to time. The provisions of this Deed, including without limitation, Sections 3.9, 7, 8 and 9, shall apply with respect to such additional security documents.

#### 11. NOTICE

11.1 Any notices to be given under this Deed shall be given to the parties at the addresses set out below, or to the Holders at the addresses specified in the Trustee's records. Notice shall be deemed to have been effectually given when such notice is delivered personally to the addressee by hand or by fax with receipt confirmed or on the third business day after such notice is mailed by prepaid registered mail to the addressee. Subject to the right of each party to change its address by notice to the other parties from time to time, the addresses of the parties are as follows:

Martin Dorfman Holdings Ltd.  
c/o The Arctic Group Inc.  
625 Henry Avenue  
Winnipeg, Manitoba  
R3A 0V1

Attention: President  
Fax No.: (204) 783-9857

Montreal Trust Company  
151 Front Street West  
Suite 605  
Toronto, Ontario  
M5J 2N1

Attention: Manager, Corporate Trust Department  
Fax no.: 416-981-9777

#### 12. DATE OF DEED

12.1 This Deed may be referred to as bearing the formal date of 17 August 1999, notwithstanding the actual date of its execution.

#### 13. EFFECT OF HEADINGS

13.1 The headings and marginal notes of the Sections in this Deed are inserted for convenience of reference only and shall not affect the interpretation of this Deed.

#### 14. GOVERNING LAW

14.1 The Deed shall be governed by and construed in accordance with the laws of the Province of Manitoba and the Federal laws of Canada applicable therein.

#### 15. MISCELLANEOUS

15.1 No land which is charged or mortgaged under this Deed is farm land within the definition of subsection 1(1) of the *Farm Lands Ownership Act* (Manitoba).

15.2 The Corporation hereby agrees that *The Land Contracts (Actions) Act* of the Province of Saskatchewan shall have no application to any action, as in *The Land Contracts (Actions) Act* defined, with respect to the within Deed or with respect to any mortgage, charge or other security given by the Corporation pursuant to this Deed or to any indenture, instrument or agreement entered into by the Corporation at any time hereafter, supplemental or ancillary to or in implementation of this Deed and all of the benefits of the said Act are hereby waived. To the extent permitted by law, the Corporation expressly waives its rights under the *Alberta Insurance Act* and the *Fire Prevention (Metropolis) Act*, 1774 (GEO III, Ch. 78).

15.3 *The Limitation of Civil Rights Act* of the Province of Saskatchewan shall have no application to;

- (a) this Deed;
- (b) any mortgage, charge or other security for the payment of money made, given or created by this Deed;
- (c) any agreement or instrument renewing or extending or collateral to this Deed or renewing or extending or collateral to any mortgage, charge or other security referred to or mentioned in subparagraph (b) of this Section; or
- (d) the rights, powers or remedies of the Trustee under this Deed or any mortgage, charge, other security, agreement or instrument referred to or mentioned in subparagraph (b) or (c) of this Section.

15.4 For purposes of Section 198.1 of the *Land Title Act* (British Columbia), the floating charge created by Section 2.1 on any present or future real or immovable property or interest therein (for purposes of this Section 15.4 collectively referred to as the "Real Property") will become a fixed charge on such Real Property upon the earlier of (a) a demand for payment being made pursuant to Section 5.1 and the Trustee upon being so directed by resolution of the Senior Holders or Subordinated Holders (if they act under Section 5.1(b)) giving written notice to the Corporation that such floating charge has become a fixed charge on such Real Property, and (b) the occurrence of any other event which by operation of law would result in such floating charge becoming a fixed charge on real property. The right of consolidation shall apply to this Trust Deed notwithstanding Section 27 of the *Property Law Act* of British Columbia or any similar statutory provision in force from time to time.

15.5 The Corporation acknowledges receipt of a true copy of this Deed.

15.6 The Corporation expressly waives the right to receive a copy of any financing statement or confirmation statement or financing change statement which may be registered by the Trustee in connection with this Deed or any verification statement issued with respect thereto where such waiver is not otherwise prohibited by law.

THE PARTIES REQUIRE THAT THIS DEED, THE DEBENTURES AND ALL NOTICES, DOCUMENTS AND ACTIONS GIVEN, DELIVERED OR INSTITUTED PURSUANT TO THIS DEED BE DRAWN IN ENGLISH. LES PARTIES EXIGENT QUE LE PRESENT ACTE, LES OBLIGATIONS ET TOUS LES AVIS, DOCUMENTS, OU ACTIONS DONNES, PASSES OU INTENTES EN VERTU DU PRESENT ACTE SOIENT REDIGES EN ANGLAIS.

IN WITNESS OF WHICH the parties have signed this Deed.

MARTIN DORFMAN HOLDINGS LTD.

By: 

Name: Robert Nagy  
Title: President

c/s

MONTREAL TRUST COMPANY

By: 

Name:  
Title: RENATO DIDONE  
CORPORATE TRUST OFFICER

By: 

Name:  
Title: SANDY STEPHENS  
Senior Corporate Trust Officer

## SCHEDULE A

Series ♦ No. ♦

♦ % DEBENTURE

\$ ♦

Martin Dorfman Holdings Ltd. (the "Corporation"), for value received, promises to pay on demand to the registered holder of this Debenture at ♦, ♦ DOLLARS (\$♦) in lawful money of Canada, and to pay interest thereon from the date hereof at the same place in like money at the rate of ♦ per cent (♦%) per annum, calculated monthly and payable on demand, both before and after maturity and default, with interest on overdue interest at the same rate.

This Debenture is issued under and secured by a Trust Deed dated as of ♦ 1999 (the "Trust Deed") executed by the Corporation in favour of Montreal Trust Company as Trustee, and this Debenture is subject to the terms and provisions of the Trust Deed.

This Debenture may be transferred by the holder only in accordance with the Pledge Agreement (the "Pledge Agreement") and upon compliance with the provisions of Section 1.5 of the Trust Deed. In the event of any conflict between the terms of the Pledge Agreement and the terms of this Debenture, the terms of the Pledge Agreement shall prevail.

This Debenture shall not become a binding obligation of the Corporation until it shall have been certified by the Trustee under the Trust Deed.

IN WITNESS OF WHICH the Corporation has caused this Debenture to be signed by its duly authorized signing officer and to be dated ♦.

MARTIN DORFMAN HOLDINGS LTD.

By: \_\_\_\_\_ c/s  
Name:  
Title:

## TRUSTEE'S CERTIFICATE

This Debenture is a Debenture issued under the Trust Deed within-mentioned.

Dated: ♦

MONTREAL TRUST COMPANY

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

THIS SCHEDULE IS ATTACHED TO AND FORMS PART OF A TRUST DEED  
BETWEEN MARTIN DORFMAN HOLDINGS LTD. AND MONTREAL TRUST  
COMPANY DATED AS OF THE 17TH DAY OF AUGUST, 1999.

MARTIN DORFMAN HOLDINGS LTD.

By:

Name: Robert Namy  
Title: President

**SCHEDULE B**

Martin Dorfman Holdings Ltd. (the "Company"), being the registered and beneficial owner of the land described below, subject however to such mortgages, encumbrances, liens and interests as are notified by memorandum underwritten, covenants with Montreal Trust Company that it will pay to Montreal Trust Company the principal amount hereby secured and interest thereon as hereinbefore provided, together with all other amounts secured by means of this Trust Deed, and for the better securing to Montreal Trust Company repayment of all such amounts, the Company hereby mortgages to Montreal Trust Company its estate and interest in the said land. The Company hereby covenants with Montreal Trust Company that it has done no act to encumber the land and that on default Montreal Trust Company shall have quiet possession of the land, free from all encumbrances save and except those noted on the memorandum underwritten and that the Company: (1) has a good title to the said land; (2) has the right to mortgage the land; and (3) will execute such further assurances of the land as may be requisite.

**REAL PROPERTY OWNED BY MARTIN DORFMAN HOLDINGS LTD.**

Alberta

Parcel One

Civic Address: 12136 - 121A Street, Edmonton, Alberta

Title No.: 882 075 196

Legal Description: Plan RN64 (LXIV)  
Block Twenty Four (24)  
Lots Nine (9) and Ten (10)  
Excepting thereout:  
The most Westerly ten (10) feet in uniform width throughout of said Lots, taken for Lane, as shown on Road Plan 2199NY excepting thereout all mines and minerals

Prior Encumbrances: Mortgage No. 982 281 839

Parcel Two

Civic Address: 12132 - 121A Street, Edmonton, Alberta

Title No.: 872 079 030

Legal Description: Plan RN64  
Block Twenty Four (24)  
Lot Eight (8)  
Excepting thereout:  
The Westerly ten (10) feet throughout of the said Lot excepting thereout all mines and minerals

Prior Encumbrances: Mortgage No. 982 281 838

THIS SCHEDULE IS ATTACHED TO AND FORMS PART OF A TRUST DEED  
BETWEEN MARTIN DORFMAN HOLDINGS LTD. AND MONTREAL TRUST  
COMPANY DATED AS OF THE 17TH DAY OF AUGUST, 1999.

MARTIN DORFMAN HOLDINGS LTD.

By: \_\_\_\_\_

Name: Robert May  
Title: President

**SCHEDULE C**

REAL PROPERTY LEASED BY MARTIN DORFMAN HOLDINGS LTD.

Alberta

**Parcel One**

Portion of roadway at 122 Avenue and 121A Street, Edmonton, Alberta, pursuant to a Lease Agreement  
between The City of Edmonton as Lessor and Martin Dorfman Holdings Ltd. as successor to 783094  
Alberta Ltd. as Lessee by virtue of amalgamation.

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**AFFIDAVIT OF VALUE**

I, \_\_\_\_\_, of the \_\_\_\_\_ of \_\_\_\_\_, in the Province of \_\_\_\_\_, MAKE OATH AND SAY AS FOLLOWS:

1. I am \_\_\_\_\_ of Montreal Trust Company, the Trustee in the attached Trust Deed of The Arctic Group Inc. in favour of Montreal Trust Company.

2. The said Trust Deed, which is in the principal amount of \$500,000,000.00 contains fixed and specific charges on certain equipment, together with the freehold interest of The Arctic Group Inc. in the following lands located in Alberta:

Civic Address: 412 41 Av NE, Calgary, Alberta

Title No.: 981 406 325

Ref. No.: 861 065 382

Legal Description: Plan Calgary 7410938 Block Thirteen (13)

That portion of Lot "A" which lies to the West of the Easterly Fifty Four and Thirty Hundredths (54.30) metres in perpendicular width throughout containing 0.203 Hectare more or less excepting thereout all mines and minerals

3. Notwithstanding the principal amount of the Trust Deed is \$500,000,000.00, to the best of my knowledge and belief, the value of the freehold interest in the above described lands located in Alberta is \$1,000,000.00.

4. I make this Affidavit in support of a request to the Registrar's of the South Alberta Land Titles Office that registration fees be assessed on the basis of the \$1,000,000.00 value of the freehold interest of the lands in Alberta, rather than upon the \$500,000,000.00 principal amount of the said Trust Deed.

SWORN before me at the City of \_\_\_\_\_ )  
Winnipeg in the Province of \_\_\_\_\_ )  
Manitoba this \_\_\_\_\_ day of \_\_\_\_\_ )  
1999 \_\_\_\_\_ )

\_\_\_\_\_  
A Notary Public in and for the  
Province of Manitoba



THIS SCHEDULE IS ATTACHED TO AND FORMS PART OF A TRUST DEED  
BETWEEN MARTIN DORFMAN HOLDINGS LTD. AND MONTREAL TRUST  
COMPANY DATED AS OF THE 17TH DAY OF AUGUST, 1999.

MARTIN DORFMAN HOLDINGS LTD.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SCHEDULE B**

Martin Dorfman Holdings Ltd. (the "Company"), being the registered and beneficial owner of the land described below, subject however to such mortgages, encumbrances, liens and interests as are notified by memorandum underwritten, covenants with Montreal Trust Company that it will pay to Montreal Trust Company the principal amount hereby secured and interest thereon as hereinbefore provided, together with all other amounts secured by means of this Trust Deed, and for the better securing to Montreal Trust Company repayment of all such amounts, the Company hereby mortgages to Montreal Trust Company its estate and interest in the said land. The Company hereby covenants with Montreal Trust Company that it has done no act to encumber the land and that on default Montreal Trust Company shall have quiet possession of the land, free from all encumbrances save and except those noted on the memorandum underwritten and that the Company: (1) has a good title to the said land; (2) has the right to mortgage the land; and (3) will execute such further assurances of the land as may be requisite.

**REAL PROPERTY OWNED BY MARTIN DORFMAN HOLDINGS LTD.**

**Alberta**

**Parcel One**

Civic Address: 12136 - 121A Street, Edmonton, Alberta

Title No.: 882 075 196

Legal Description: Plan RN64 (LX1V)  
Block Twenty Four (24)  
Lots Nine (9) and Ten (10)  
Excepting thereout:  
The most Westerly ten (10) feet in uniform width throughout of said Lots, taken for Lane, as shown on Road Plan 2199NY excepting thereout all mines and minerals

Prior Encumbrances: Mortgage No. 982 281 839

**Parcel Two**

Civic Address: 12132 - 121A Street, Edmonton, Alberta

Title No.: 872 079 030

Legal Description: Plan RN64  
Block Twenty Four (24)  
Lot Eight (8)  
Excepting thereout:  
The Westerly ten (10) feet throughout of the said Lot excepting thereout all mines and minerals

Prior Encumbrances: Mortgage No. 982 281 838

*[Handwritten signature]*

09/20/2013  
REGISTRATION OFFICE  
LAWSON

DIRECTION

TO: MONTREAL TRUST COMPANY (the "Trustee")

RE: Parcel 1 - Plan RN64 (LX1V) Block Twenty Four (24) Lots Nine (9) and Ten (10) Excepting thereout: The most Westerly ten (10) feet in uniform width throughout of said Lots, taken for Lane, as shown on Road Plan 2199NY excepting thereout all mines and minerals; and

Parcel 2 - Plan RN64 Block Twenty Four (24) Lot Eight (8) Excepting thereout: The Westerly ten (10) feet throughout of the said Lot excepting thereout all mines and minerals

(Parcels 1 and 2 referred to collectively hereinafter as the "Land")

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Whereas:

- A. Martin Dorfman Holdings Ltd. (the "Company") is the registered owner of the Land;
- B. The Company and the Trustee have entered into a trust indenture dated as of August 17, 1999 under which the Company may issue debentures with an aggregate principal amount of \$500,000,000 (Canadian) (the "Trust Deed");
- C. The Bank of Nova Scotia ("BNS") is the holder of a \$200,000,000 Series A Debenture issued by the Company under the Trust Deed;
- D. BNS wishes the Trustee to register the Trust Deed against the Land in the applicable Alberta Land Titles Office and, for that purpose, BNS wishes to direct the Trustee as to the value of the Company's freehold interest in the Land;

Therefore, BNS hereby directs the Trustee:

- 1. to register the Trust Deed against the Land in the applicable Alberta Land Titles Office; and
- 2. that, to the knowledge of BNS, the value of the Company's freehold interest in the Land located in Alberta is \$1,000,000 (Canadian), and BNS hereby declares that the value of the Land is \$1,000,000 (Canadian), recognizing that the Trustee will be relying upon its declaration in registering the Trust Deed against the Land;

THE BANK OF NOVA SCOTIA

By: *R. J. Harden*  
Name:  
Title:

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



**THIS FIRST SUPPLEMENTAL TRUST DEED** made as of the 22<sup>nd</sup> day of March, 2002

**AMONG:** **ARCTIC GLACIER INC.,**  
a company duly amalgamated under the laws of Alberta  
(hereinafter referred to as the "Company")

**PARTY OF THE FIRST PART**

**AND:** **MONTREAL TRUST COMPANY,**  
a trust company existing under the laws of Canada  
(hereinafter referred to as "Montreal Trust")

**PARTY OF THE SECOND PART**

**AND:** **COMPUTERSHARE TRUST COMPANY**  
**OF CANADA,**  
a trust company existing under the laws of Canada  
(hereinafter referred to as "Computershare")

**PARTY OF THE THIRD PART**

**WHEREAS** by Trust Deed made as of August 17, 1999, between Martin Dorfman Holdings Ltd. (the "Subsidiary") and Montreal Trust, as Trustee, (which Trust Deed and any and all deeds heretofore supplemental thereto are herein collectively referred to as the "Trust Deed"), provision was made for the issue by the Subsidiary of Debentures (as defined therein), subject to the terms and conditions contained in the Trust Deed;

**AND WHEREAS** the Company represents that pursuant to a resolution regarding the dissolution of the Subsidiary effective June 30, 2000 and a Distribution Agreement made as of June 30, 2000, the Subsidiary has assigned, conveyed and transferred to The Arctic Group Inc. (the "Predecessor") all of the properties, assets, rights, interests and undertaking of any kind and nature whatsoever of the Subsidiary and the Predecessor has unconditionally assumed all of the liabilities, obligations and duties of the Subsidiary and agreed to perform, satisfy and discharge such liabilities, obligations and duties in accordance with the terms thereof;

**AND WHEREAS** Arctic Glacier Inc. ("Pre-Amalco Glacier") is a corporation incorporated on January 14, 2002 under the *Business Corporations Act* (Alberta), S.A. 2000, c. B-9, as amended;

**AND WHEREAS** Pre-Amalco Glacier duly amalgamated (the "Amalgamation") with the Predecessor effective March 22, 2002, with the amalgamated entity continuing as the Company under the name Arctic Glacier Inc.;

**AND WHEREAS** as a result of the Amalgamation, the Company continues to be liable for all of the liabilities, obligations and duties of each of the Predecessor and Pre-Amalco Glacier, including, without limitation, all liabilities, obligations and duties under the Trust Deed assumed and undertaken by the Predecessor from the Subsidiary, as if the Company were an original party to the Trust Deed;

**AND WHEREAS** the parties desire to provide for the inclusion and recognition of the Company in the Trust Deed with respect to the Company's continuing liability for the interests, liabilities, obligations and duties of the Subsidiary thereunder;

**AND WHEREAS** Computershare and Montreal Trust represent that Computershare acquired the stock transfer and corporate trust businesses of Montreal Trust pursuant to an Asset Purchase Agreement dated as of June 30, 2000 (the "Purchase Agreement"), and pursuant thereto Montreal Trust agreed to transfer to Computershare, and Computershare agreed to accept the transfer of, the appointment as Trustee under the Trust Deed, subject to the agreement of the Company as successor to the Subsidiary;

**AND WHEREAS** Computershare represents that it is duly qualified to be Trustee under the Trust Deed;

**AND WHEREAS** to give effect to the foregoing, Montreal Trust desires to, in accordance with the terms of the Trust Deed, resign as Trustee thereunder and be discharged from the trusts thereof, and to assign and transfer to Computershare all of its estates, properties, moneys, records, rights, powers and trusts under the Trust Deed;

**AND WHEREAS** the Company is prepared to accept such resignation and to appoint Computershare as the successor Trustee under the Trust Deed, and Computershare is prepared to accept such appointment;

**AND WHEREAS** the parties wish to execute this First Supplemental Trust Deed for the purpose of providing for the inclusion and recognition of the Company in the Trust Deed in the place and stead of the Subsidiary and for the purpose of providing for the resignation of Montreal Trust as Trustee and for its replacement by Computershare, all with effect as of March 22, 2002 (hereinafter, the "Transfer Date");

**NOW, THEREFORE, THIS FIRST SUPPLEMENTAL TRUST DEED WITNESSES** that in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the parties covenant and agree as follows:

1. Each of Montreal Trust, Computershare and the Company hereby confirms the accuracy, truthfulness and completeness of each of the above recitals to which it is a party and

acknowledges that same are being relied upon by the parties in entering and executing this First Supplemental Trust Deed;

2. The Company hereby replaces the Subsidiary on and after the Effective Date as a party to the Trust Deed, assumes all of the liabilities, obligations and duties of the Subsidiary under the Trust Deed and to perform, satisfy and discharge such liabilities, obligations and duties as if it were an original party to the Trust Deed in accordance with the terms thereof in the place and stead of the Subsidiary;

3. The Company shall be entitled to all of the rights, privileges and benefits of the Subsidiary under the Trust Deed on and after the Effective Date;

4. Montreal Trust hereby waives any required notice pursuant to the Trust Deed with respect to any previous change of name or amalgamation involving the Subsidiary or the Company and acknowledges and confirms that the Company has complied with all requirements of the Trust Deed for notice to the Trustee in respect of the Amalgamation;

5. Montreal Trust hereby resigns as Trustee under, and is hereby discharged from the trusts of, the Trust Deed, effective as of the Transfer Date. The Company hereby accepts such resignation, waiving any required period of notice that may be set forth in the Trust Deed.

6. The Company hereby appoints Computershare as successor Trustee under the Trust Deed in the place and stead of Montreal Trust and with like effect as if originally named as Trustee under the Trust Deed, effective as of the Transfer Date, and Computershare hereby accepts such appointment. The parties hereby agree that Montreal Trust shall not be responsible for any liabilities that may arise pursuant to Computershare's administration of the trusteeship after the Transfer Date. For greater certainty, however, nothing in this First Supplemental Trust Deed shall in any way release Montreal Trust from or affect its liabilities, duties or obligations under the Trust Deed arising prior to the Transfer Date.

7. Montreal Trust hereby transfers and assigns to Computershare, and Computershare hereby accepts such transfer and assignment, upon the trusts expressed in the Trust Deed, all the rights, powers and trusts of Montreal Trust under the Trust Deed, effective as of the Transfer Date.

8. Montreal Trust agrees to transfer and deliver to Computershare, and Computershare agrees to accept such transfer and delivery of, any and all records, documents, monies and other property that may be held by Montreal Trust in connection with the Trust Deed. Such transfers, deliveries and acceptances shall be made as soon as practicable upon, after, or in anticipation of, the Transfer Date as may be agreed between such parties.

9. Notwithstanding any of the foregoing, the resignation, discharge, appointment, transfers, assignments and other agreements provided for herein will not be effective unless this First Supplemental Trust Deed has been executed by all of the parties hereto, whether upon the original instrument, by facsimile or in counterparts, or any combination thereof, and unless all preconditions to such resignation, discharge, appointment, transfers, assignments and other agreements as may be set forth in the Trust Deed have been fulfilled.

10. Any provision in the Trust Deed specifying the addresses of the parties is hereby amended to record the respective addresses of the parties as follows:

Arctic Glacier Inc.  
625 Henry Avenue  
Winnipeg, Manitoba  
R3A 0V1

Attention: President  
Fax No.: (204) 783-9857

Computershare Trust Company of Canada  
100 University Avenue  
9th Floor, North Tower  
Toronto, Ontario  
M5J 2Y1


Attention: Manager, Corporate Trust Department  
Fax: (416) 981-9777

11. Each party hereto agrees to execute and deliver all such documents and instruments and do such other acts as may be necessary or advisable to give effect to the terms hereof.
12. This First Supplemental Trust Deed is supplemental to the Trust Deed and shall be read in conjunction therewith. Except only insofar as the same may be inconsistent with the express provisions of this First Supplemental Trust Deed, all the provisions of the Trust Deed shall apply to and shall have effect in the same manner as if they and the provisions of this First Supplemental Trust Deed were contained in one instrument. The form of any Demand Debentures to be certified by the Trustee from and after the Transfer Date shall be amended, stamped or legended to identify Computershare as the successor trustee and the Company as the issuer but the validity of any Debentures certified prior to the Transfer Date shall not be affected by the appointment of Computershare as successor trustee.
13. Computershare as successor Trustee hereby accepts the trusts in the Trust Deed declared and provided and agrees to perform the same upon the terms and conditions herein and in the Trust Deed set forth.
14. This First Supplemental Trust Deed shall enure to the benefit of and be binding upon the parties hereto and their successors and permitted assigns.



IN WITNESS WHEREOF this First Supplemental Trust Deed has been duly executed by the parties hereto as of the date first above written.

**ARCTIC GLACIER INC.**

Per: 

Per: \_\_\_\_\_


**MONTREAL TRUST COMPANY**

Per: 

Per: 

**COMPUTERSHARE TRUST COMPANY  
OF CANADA**

Per: 

Per: 



**TRUST DEED** dated as of 17 August 1999.

**BETWEEN:**

**3149030 CANADA LIMITED,**  
a corporation incorporated under the laws of Ontario  
(the "Corporation")

- and -

**MONTREAL TRUST COMPANY,**  
a trust company incorporated under the laws of Canada  
(the "Trustee")

**RECITALS:**

A. The Corporation wishes to raise money for its corporate purposes and/or secure certain of its obligations, and with a view to doing so wishes to create and issue Debentures in the manner provided in this Trust Deed.

B. All necessary resolutions of the directors of the Corporation have been duly enacted, passed and/or confirmed and other proceedings taken and conditions complied with to make the creation and issue of the Debentures proposed to be issued hereunder and this Trust Deed and the execution thereof legal, valid and binding on the Corporation in accordance with the laws relating to the Corporation.

**THEREFORE, THE PARTIES HAVE AGREED AS FOLLOWS:**

**1. FORM AND ISSUE OF DEBENTURES**

**1.1 Limitation of Issue**

The Debentures to be issued under and secured by this Deed are limited to an aggregate principal amount of five hundred million Canadian dollars (Cdn.\$500,000,000) and may be issued in one or more series. The Debentures shall be designated as "Series A Debentures", "Series B Debentures", and so on if two or more series are issued, but the designation of different series of Debentures need not be consecutive so that, for example, Series C Debentures may be issued without Series B Debentures having been issued. Except with respect to the letter A, series of Debentures may also be designated with two or more letters, such as "Series BB Debentures" and "Series CCC Debentures". In addition, further Debentures in any series may be issued from time to time despite the issuance of Debentures in a subsequent series. Debentures of all series shall be designated collectively as "Debentures" and shall be subject to the terms and conditions of this Deed. No Debenture may be issued without the prior written consent of the Holders (as defined below), which consent, in the case of the Subordinated Holders, shall not be unreasonably withheld. For greater certainty, the limit of the aggregate principal amount of Debentures which may be issued hereunder shall not be reduced by the principal amount of Debentures which have been returned to the Trustee for cancellation or discharge in accordance with the terms hereof.

**1.2 Forms, Terms and Place of Payment**

Each Debenture shall be fully registered and substantially in the form set out in Schedule A to this Deed, shall be payable on demand in lawful money of Canada at the address of the holder or holders specified in the Debenture (the "Holders", which shall mean one or more persons holding

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one or more Debentures) and the Debentures shall bear interest from the date of each respective debenture at the rate of twenty-five per cent (25%) per annum, or at such other rate as may be agreed upon by the Corporation and the Holders from time to time, payable on demand, both before and after maturity and default, with interest on overdue interest at the same rate. Each Debenture may, but need not, be under the seal of the Corporation, shall be signed by any officer or director of the Corporation and shall be certified by the Trustee and delivered by the Trustee to or to the order of the Corporation upon receipt by the Trustee of an order in writing signed by any officer or director of the Corporation. No Debenture shall be issued, or, if issued, shall be obligatory or entitle the Holder to the benefit hereof, until it has been certified by or on behalf of the Trustee substantially in the form of the certificate set out in Schedule "A" to this Deed, or in some other form approved by the Trustee, and such certification by the Trustee upon any Debenture shall be conclusive evidence as against the Corporation that the Debenture so certified has been duly issued hereunder and is a valid obligation of the Corporation and that the Holder is entitled to the benefit hereof. The certificate of the Trustee shall not be construed as a representation or warranty of the Trustee as to the validity or security of the Trust Deed or the Debentures. Nothing in this Deed or the Debentures shall make the Trustee responsible or liable for the Corporation's obligations to pay the principal of or interest on the Debentures.

### 1.3 Pledge of Debentures

Each Debenture shall be pledged, hypothecated, issued or charged by the Corporation as security for payment by the Corporation of certain or all debts and liabilities, including debts and liabilities in any currency, present or future, direct or indirect, absolute or contingent, matured or not, for a current or running account or not, at any time owing by the Corporation to the Holder thereof or remaining unpaid by the Corporation to the Holder thereof, whether arising from dealings between the Holder thereof and the Corporation or from any other dealings or proceedings by which the Holder thereof may be or become in any manner whatever a creditor of the Corporation, and wherever incurred, and whether incurred by the Corporation alone or with another or others, and whether as principal or surety, including expenses and all interest, commissions, legal and other costs, charges and expenses (the "obligations secured", it being understood and agreed that the term "obligations secured" as used in this Deed shall mean, as the context may require, such obligations of the Corporation owing to a particular Holder or Holders hereunder or the aggregate of such obligations of the Corporation owing to all the Holders hereunder from time to time). To the extent of any inconsistency between the terms and conditions of a Debenture and the terms and conditions of any of the obligations secured, the terms and conditions of the latter shall prevail.

### 1.4 Terms of Issue

The Debentures may be issued to such persons, in such amounts not exceeding the maximum amount set forth in Section 1.1 less the principal amount of Debentures outstanding (which, for greater certainty, shall not include any Debentures previously delivered to the Trustee for cancellation or discharge), for such consideration and on such terms as the directors of the Corporation may determine. Each series of Debentures issued under this Deed shall rank in respect of their entitlement to payment and all voting and other rights relating to the Debentures in priority according to the alphabetical order of their respective series. Accordingly, all Series A Debentures, whenever issued or certified, shall have priority over Series B Debentures, which shall in turn have priority over Series C Debentures and so on. Series of Debentures designated with different numbers of the same letter shall rank in priority according to the number of letters in the designation so that, for example, Series BBB Debentures shall have priority over Series BB Debentures. Debentures within a series shall rank *pari passu* without discrimination, preference or priority of one Debenture of such series over another and the Holders of Debentures of such series shall be secured equally and rateably according to the principal amount and interest from time to time owing with respect to each Debenture of such series (having regard to the obligations secured by such Debenture, rather than the face amount of such Debenture pledged in accordance with Section 1.3 above) regardless of their respective dates of issue or certification of each Debenture of such series. The Holders of the series of Debentures having the highest ranking for the time being are referred to in this Trust Deed as the "Senior Holders".

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The priorities contained herein in connection with the obligations secured shall apply in all events and circumstances regardless of:

- (a) the date that any loan, advance, or other accommodation is made to the Corporation or any debt, liability or obligation is incurred by the Corporation; or
- (b) the date of any default by the Corporation; or
- (c) any priority granted by any principle of law or any statute; or
- (d) any other factor of legal relevance other than this Trust Deed.

No power that is exercised by the Holders, or any of them, shall detract from the rights of the other Holders under the terms of the respective obligations secured in the case of Debentures that have been pledged in accordance with Section 1.3.

#### 1.5 Registration and Transfer

The Corporation shall cause to be kept by the Trustee at its office in the City of Toronto, in the Province of Ontario a register in which shall be entered the names and addresses of the Holders and principal amount of each Debenture. No transfer of a Debenture shall be valid unless made on such register by the registered holder or its successors or assigns or its or their attorney duly appointed by an instrument in writing, in form and execution satisfactory to the Trustee, and upon compliance with such reasonable requirements as the Trustee may prescribe. The ownership of the Debentures shall be proved by such register. The registered Holders shall be considered to be the owners thereof for all purposes of this Deed and shall be entitled to the principal monies and interest evidenced by the Debentures without regard to any set-off, counterclaim, equities or compensation between the Corporation and the Holders' transferors or any previous holders thereof.

#### 1.6 Cancellation, Retirement Etc. of Debentures

Any Holder may deliver to the Trustee from time to time one or more of the Debentures issued pursuant to this Deed and held by it for cancellation or retirement (subject to the principal amount outstanding thereon and any interest, charges and expenses related thereto having been repaid in full to the Holder) or replacement, consolidation or subdivision, or to evidence a reduction of the principal amount outstanding from time to time. Subject to the limitation set forth in Section 1.1, upon receipt of such Debentures and a resolution of the Holder delivering such Debentures evidencing its intentions with respect to such cancellation, retirement, replacement, reduction, subdivision or consolidation, the Trustee shall forthwith notify the Corporation and the Corporation upon receipt of such Debentures shall forthwith issue in accordance with the terms and conditions of this Deed such additional, replacement, subdivided or consolidated Debentures as may be requested by the Holders in the aforesaid resolution, or the Trustee may endorse any Debenture with a notation of the reduction of the amount thereof. Upon issuance of such additional, replacement, subdivided or consolidated Debentures, or endorsement of reduction of any existing Debenture, as appropriate, the Corporation shall cause to be made such entries in the register provided for in Section 1.5 and the Trustee shall certify such Debentures, subject to receipt of such documentation as the Trustee may require, acting reasonably.

#### 1.7 Replacement of Debentures

In case any of the Debentures shall be mutilated or defaced or be lost, destroyed or stolen, the Corporation, subject to applicable law, shall issue a new Debenture pursuant to this Deed and thereupon the Trustee shall certify and deliver such new Debenture of like date, tenor and series as the one mutilated, defaced, lost, destroyed or stolen in exchange therefor and upon cancellation of such mutilated or defaced Debenture and in lieu of and in substitution for such lost, destroyed or stolen Debenture, and the new Debenture shall be entitled to the security hereof and rank equally in accordance with its terms with all other Debentures of the same series issued hereunder.

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The applicant for the issue of a new Debenture pursuant to this Section 1.7 shall bear the cost of the issue thereof and in case of loss, destruction or theft shall, as a condition precedent to the issue thereof, furnish to the Corporation and to the Trustee such evidence of ownership and of the loss, destruction or theft of the Debenture so lost, destroyed or stolen as shall be satisfactory to the Corporation and the Trustee in their discretion and such applicant may also be required to furnish an indemnity in amount and form satisfactory to the Corporation and the Trustee in their discretion, and shall pay the reasonable charges of the Corporation and the Trustee in connection therewith.

## 2. CHARGING PROVISIONS

### 2.1 Fixed and Floating Charges and Security Interest

In consideration of the premises and of one dollar (\$1) to the Corporation now paid by the Trustee (receipt whereof is hereby acknowledged) and for the purpose of securing the due payment in lawful money of Canada of the Debentures in the principal amount of five hundred million dollars (\$500,000,000) and of interest thereon from the formal date hereof at the rate of twenty-five per cent (25%) per annum, calculated monthly and payable on demand, both before and after maturity and default, with interest on overdue interest at the same rate, and the payment of any additional amounts from time to time due hereunder to the Trustee, including but not limited to an additional amount equal to twenty-five per cent (25%) of the principal amount for costs of realization and other accessories, the Corporation hereby:

- (a) grants, assigns, mortgages and charges as and by way of a fixed and specific mortgage and charge to and in favour of the Trustee for the benefit of the Holders, and grants to the Trustee for the benefit of the Holders a security interest in, all of its present and after-acquired real and personal property, including but not limited to:
  - (i) all freehold real and immovable property now or hereafter owned or acquired by the Corporation including but not limited to the lands and premises described in Schedule B hereto, together with all buildings, erections and fixtures now or hereafter constructed or placed thereon,
  - (ii) all leasehold property now or hereafter leased by the Corporation including but not limited to the leasehold property described in Schedule C hereto, together with all buildings, erections and fixtures now or hereafter constructed or placed thereon,
  - (iii) all inventory, goods, furniture, equipment, machinery, vehicles, aircraft and other tangible personal property now or hereafter owned by or acquired by the Corporation and all replacements, attachments and accessories thereto from time to time,
  - (iv) all intangible property now or hereafter owned or acquired by the Corporation, including, but not limited to, all contract rights, chattel paper, warehouse receipts, bills of lading, documents of title, insurance policies, instruments, securities, accounts, book debts, receivables which are not book debts, choses in action, licenses, permits, franchises, leases, client lists, goodwill, patents, trademarks, trade names, copyrights, other industrial and intellectual property and the undertaking of the Corporation; and
- (b) charges as and by way of a floating charge to and in favour of the Trustee for the benefit of the Holders, and grants to the Trustee for the benefit of the Holders a security interest in all of the present and after-acquired property, undertaking and assets of the Corporation for the time being, both real and personal, movable and immovable of whatsoever nature and kind now owned or hereafter acquired (except such property and assets as are validly and effectively subject to any fixed and specific mortgages and charges created hereby), including its goodwill and uncalled capital.

Without the necessity of any further act of the Corporation or the Trustee, the mortgages, charges and security interests constituted hereby shall automatically extend to and include:

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- (c) any and all renewals, replacements, substitutions, accessions, proceeds, products, additions, amendments, modifications, extensions or consolidations of or to the assets and property heretofore described;
- (d) any and all right, title and interest of the Corporation hereafter acquired in or to any real or personal property or asset of any nature whatsoever; and
- (e) any and all of the Corporation's right, title, interest, property, claims, demands, judgments, awards, proceeds and settlements or payments, including interest thereon, and the right to receive the same, at law as well as in equity or otherwise, as a result of or by way of: (i) insurance proceeds payable under all insurance policies of the Corporation or (ii) any injury or damage to or any taking, expropriation, requisitioning, conversion (voluntary or involuntary) or decrease in the value of any property or asset of the Corporation of any nature whatsoever.

The Corporation's undertaking and all its property and assets, present and future, are herein called the "mortgaged property".

#### 2.2 Reservation of Last Day of Leasehold Terms

The charge of the mortgaged property contained in Section 2.1 shall not extend or apply to the last day of the term of any lease or any agreement therefor now held or hereafter acquired by the Corporation, but should such charge become enforceable the Corporation shall thereafter stand possessed of such last day and shall hold it in trust to assign the same to any person acquiring such term or the part thereof charged in the course of any enforcement of the charge or any realization of the subject matter thereof.

#### 2.3 Contracts, Rights or Licences

The charge of the mortgaged property contained in Section 2.1 shall not extend or apply to any contract, right or licence of the Corporation, if pursuant to the terms of such contract, right or licence such contract, right or licence would automatically terminate if it was part of the mortgaged property, or would be terminable at the option of the other party to or of the grantor thereof, but should such charge become enforceable, the Corporation shall thereafter stand possessed of such contract, right or licence and shall hold it in trust to assign the same or dispose of the same to any person as requested by the Trustee. In order that the full value of all such contracts, rights and licences may be realized for the benefit of the Holders, the Corporation shall at its expense and at the request of the Trustee from time to time, take all such action and do or cause to be done all such things as shall, in the reasonable opinion of the Trustee (with advice of counsel as the Trustee considers appropriate), be necessary or proper in order that all such contracts, rights and licences shall enure to the benefit of the Holders and, to the extent reasonably possible, become subject to the charge constituted by this Deed.

#### 2.4 Charge Valid Irrespective of Advance

The security constituted hereby or intended so to be shall be effective whether the monies hereby secured or any part thereof shall be advanced before or after or at the same time as the execution and delivery of this Deed or the issue or certification of any of the Debentures.

#### 2.5 Attachment

The Corporation acknowledges that value has been given to the Corporation by the Holders in connection with the Corporation's execution and delivery of this Deed. The Corporation and the Holders have not agreed to postpone the time for attachment of the security constituted hereby which is intended to attach, as to all of the mortgaged property in which the Corporation has an interest at the time of the execution of this Deed, at such time, and as to all of the mortgaged property in which the Corporation acquires an interest after the execution of this Deed, at the time the Corporation acquires such interest.

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## 2.6 Effect of Charges

The security created hereby will entitle the Trustee to have and to hold the mortgaged property and all rights hereby conferred unto the Trustee, its successors and assigns, forever, but in trust, nevertheless, and with the powers and authorities and subject to the terms and conditions mentioned and set forth herein.

## 2.7 Possession until Default

Until the security hereby constituted becomes enforceable and the Trustee determines to enforce the same, the Corporation is permitted in the same manner and to the same extent and with the same effect as if this Deed had not been executed, but subject to the express terms hereof and any other agreement between the Corporation and a Holder which relates to any obligations secured, to possess, operate, manage, use and enjoy the mortgaged property (other than any cash or investments on deposit with the Trustee) and freely to control the conduct of its business and to collect, take, retain and use the rents, incomes, profits and issues thereof.

## 2.8 Further Assurances

The Corporation hereby covenants and agrees that it will at all times do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, deeds, mortgages, transfers, assignments and assurances as the Trustee or the Holders may reasonably require for the better accomplishing and effectuating the purpose of this Deed, including the execution and delivery of indentures supplemental hereto more particularly describing the mortgaged property or to correct or amplify the description of the mortgaged property or to better assure, convey and confirm unto the Trustee any of the mortgaged property. Upon the execution of any supplemental indenture under this Section, this Deed shall be modified in accordance therewith, and each such supplemental indenture shall form part of this Deed for all purposes. Notwithstanding anything herein contained, the Trustee will not be bound to take any conveyance, assignment or transfer pursuant hereto of any property or assets that, in the opinion of counsel to the Trustee, is of an onerous character, but the Corporation shall hold any such property or assets in trust for the Trustee.

## 2.9 Liability of Trustee

Neither the Trustee nor any receiver shall (i) be responsible or liable for any debts contracted by it, for damages to persons or property, for salaries or for non-fulfilment of contracts during any period when the Trustee or any receiver shall manage or be in possession of the mortgaged property; (ii) be liable to account as mortgagee in possession or to account for anything except actual receipts or be liable for any loss on realization or for any default or omission for which a mortgagee in possession may be liable; (iii) be bound to do, observe or perform or to see to the observance or performance by the Corporation of any obligations or covenants imposed upon the Corporation; or (iv) in the case of any chattel paper, security or instrument, be obligated to preserve rights against any other persons. The Corporation hereby waives any provision of applicable law permitted to be waived by it which imposes higher or greater obligations upon the Trustee or any receiver than aforesaid.

## 2.10 Applicable Laws Exception

All rights, remedies, and powers provided herein may be exercised only to the extent that the exercise thereof does not violate any mandatory provision of applicable law and all the provisions of this Deed are intended to be subject to all mandatory provisions of applicable law which may be controlling in the premises and to be limited to the extent necessary so that they will not render this Deed invalid, unenforceable or not entitled to be recorded, registered or filed under any mandatory provisions of applicable law. If any mandatory provision of applicable law shall provide for different or additional requirements than or to those specified herein as prerequisites to or incidental to the realization, sale or foreclosure of the security or any part thereof, then, to that extent, such laws



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shall be deemed to have been set forth herein at length, and any conflicting provisions hereof shall be disregarded, and the method of realization, sale or foreclosure of the security required by any such laws shall, insofar as may be necessary, be substituted herein as the method of realization, sale or foreclosure in lieu of that set forth above. Any provision hereof contrary to mandatory provisions of applicable law shall be deemed to be ineffective and shall be severable from and not invalidate any other provision of this Deed.

#### 2.11 Waivers of Applicable Laws

- (a) To the extent not prohibited by applicable law, the Corporation hereby waives its rights, if any, under all provisions of applicable law that would in any manner, limit, restrict or otherwise affect the Trustee's rights and remedies hereunder or impose any additional obligations on the Trustee. The Corporation waives the right to receive any financing statement or any verification statement issued by any registry that confirms registration of a financing statement relating to this Deed.
- (b) To the full extent that it may lawfully do so, the Corporation hereby:
  - (i) waives and disclaims any benefit of, and shall not have or assert any right under any statute or rule of law pertaining to, the marshalling of assets or any other matter whatever, to defeat, reduce or affect the rights of the Trustee under the terms of this Deed to a sale of the mortgaged property or any part thereof or for the collection of all amounts secured by this Deed; and
  - (ii) agrees that it shall not have or assert any right or equity of redemption or any right under any statute or otherwise to redeem the mortgaged property or any part thereof after the sale hereunder to any person whether such sale is by the Trustee, any receiver or otherwise, notwithstanding that the Trustee may have purchased same.

### 3. COVENANTS

The Corporation hereby covenants and agrees with the Trustee for the benefit of each Holder:

#### 3.1 Principal and Interest

That it will pay or cause to be paid, when due, the principal, interest and all other amounts secured by the Debentures.

#### 3.2 Not to Encumber

That it will not, without the prior written approval of the Trustee or the Holders (which may be evidenced from time to time by a resolution of the Holders or, for any particular Holder, by the terms of any agreement to which the Holder and the Corporation are parties that relates to the terms of obligations secured by a pledge of the Debenture in favour of that Holder), create or permit to exist any mortgage, hypothec, charge, lien, encumbrance or other security interest or lease upon or affecting the mortgaged property or any part thereof.

#### 3.3 Comply with Environmental Law

That it will operate its business and all of the mortgaged property in compliance with all applicable laws intended to protect the environment ("Environmental Laws").

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### 3.4 Reporting Requirements

That it will immediately notify the Trustee after becoming aware of any release or upon the discovery of any contaminant at, upon, under, over, within or with respect to the mortgaged property which will give rise to a material report, inquiry or investigation relating to the requirements of any applicable Environmental Law and will promptly forward to the Trustee copies of all orders, notices, permits, applications or other communications and reports received from any governmental authority in connection with any applicable Environmental Law affecting or relating to the mortgaged property or the operations or activities of the Corporation or any of its subsidiaries.

### 3.5 Preserve and Protect the Mortgaged Property

That it will diligently maintain, use and operate the mortgaged property and shall carry on and conduct its business in a proper and efficient manner so as to preserve and protect the mortgaged property and the earnings, incomes, rents, issues and profits thereof.

### 3.6 Governmental Requirements

That it will duly observe and conform to all valid requirements of any governmental authority relative to any of the mortgaged property and all covenants, terms and conditions upon or under which the mortgaged property is held.

The Corporation represents and warrants to the Trustee (such representations being also for the benefit of each Holder):

### 3.7 Absence of Hazardous Materials

That to its knowledge (i) there are no Hazardous Materials located on, above or below the surface of any land which it occupies or controls, except those being stored in compliance with applicable laws, or contained in the soil or water constituting such land, except in compliance with applicable laws, (ii) no release, spill, leak, emission, discharge, leaching, dumping or disposal of Hazardous Materials has occurred on or from such land which, in any such case, could materially and adversely affect its financial condition, the mortgaged property or its operations or its ability to perform its obligations under the Deed, and (iii) no land that it occupies or controls has been used as a landfill or waste disposal site.

### 3.8 Compliance with Environmental Law

That the Corporation's business and the mortgaged property are operated in substantial compliance with applicable Environmental Laws intended to protect the environment (including, without limitation, laws respecting the disposal or emission of Hazardous Materials), to the best of its knowledge after reasonable inquiry there are no breaches thereof, and no enforcement actions in respect thereof are threatened or pending which, in any such case, could materially and adversely affect the mortgaged property or its ability to perform its obligations under this Deed.

That the Corporation shall include in any lease of any part of the mortgaged property to a third party conditions, warranties and representations substantially in the form of the conditions, warranties and representations concerning Hazardous Materials and Environmental Laws contained in this Deed.

For the purposes of this Deed, "Hazardous Materials" means any hazardous substance or any pollutant or contaminant, toxic or dangerous waste, substance or material, as defined in or regulated by any applicable law, regulation or governmental authority from time to time, including, without limitation, asbestos and polychlorinated biphenyls.

### 3.9 Expenses, Remuneration and Indemnity

The Corporation shall pay to the Trustee upon demand both before and after default the amount of all reasonable costs, charges, borrowings, expenses and fees of the Trustee incurred in

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connection with the administration of this Deed including expenses arising in connection with Section 8.1, the repossession, holding, repairing, processing, preparing for disposition and disposing of any of the mortgaged property (including reasonable legal expenses on a solicitor and his own client basis and other expenses including expenses arising in connection with Section 8.1), together with interest from the date of demand at a rate per annum equal to the then-current rate charged by the Trustee from time to time. All amounts owing to the Trustee under or in connection with this Deed shall be secured by the mortgages and charges created in this Deed and be payable in priority to amounts secured by the Debentures.

Without limiting the foregoing, the Corporation covenants that it will pay to the Trustee reasonable remuneration for its services hereunder and will pay or reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in the administration or execution of the trusts hereby created (including the reasonable compensation and the disbursements of its counsel and all other advisers and assistants not regularly in its employ), including, without limitation, all costs incurred by the Trustee in complying with any laws applicable to trustees as a result of its acting hereunder both before any default hereunder and thereafter until all the duties of the Trustee under the trusts hereof shall be finally and fully performed, except any such expense, disbursement or advance as may arise from its negligence or wilful default. Any amount due under this Section shall bear interest from the date of demand for payment at a rate per annum equal to the rate referred to in the preceding paragraph, payable on demand. After default, all amounts so payable and the interest thereon shall be payable out of any funds coming into the possession of the Trustee or its successors in the trusts hereunder in priority to any payment of the principal of or interest or premium on the Debentures.

The Corporation hereby indemnifies the Trustee, its directors, officers, employees, and agents, and any successors and assigns against any loss, expense, claim, liability or asserted liability (including strict liability) incurred as a result of the administration of the trust created hereby, the exercise by the Trustee of any rights hereunder, the performance of any remediation by the Trustee or its agent for bodily injury, property damage, abatement, or remediation, environmental damage or impairment or any other injury or damage or any diminution in value of the mortgaged property resulting from or relating, directly or indirectly, to: (i) the presence or release of any contaminants, by any means or for any reason, on the mortgaged property, whether or not release or presence of the contaminants was under the control, care or management of the Corporation, or of a previous owner, or of a tenant, or (ii) any contaminant present on or released from any contiguous property to the mortgaged property, or (iii) the breach or alleged breach of any Environmental Laws by the Corporation, save and except that the Trustee shall only be responsible for its own negligence and wilful misconduct.

The Corporation shall at all times indemnify the Trustee, its directors, officers, employees, and agents, and any successors and assigns and save them harmless against all actions, proceedings, liability, claims, damages, reasonable costs and expenses, including legal costs whatsoever arising from the performance of its duties hereunder (unless arising from negligence, bad faith or wilful misconduct on their part) and including any action or liability brought against or incurred by any of them in relation to or arising out of any breach by the Corporation of its obligations under this Deed or by the failure of the Trustee or its agents to do such acts as may be necessary to register, perfect, release or discharge the security created hereby as the same may be registered, filed or recorded in any public office.

The agreements in this Section shall survive the termination of this Deed and the repayment of the obligations secured.

### 3.10 Registrations and Deliveries

The Corporation agrees that:

- (a) forthwith after the execution of this Deed and after the execution of each instrument supplemental or ancillary hereto, it shall register, file or record the same and/or, if applicable, a financing statement or other prescribed statement in respect thereof as

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may from time to time be required by the Trustee, the Senior Holders or any other Holder where such registration, filing or recording may be necessary or desirable or of advantage in preserving or protecting the security constituted by this Deed in favour of the Trustee, the Senior Holder or such other Holder;

- (b) from time to time, it shall renew such registration, filing or recording as required to maintain the security constituted hereby as valid and effective security;
- (c) promptly after such registration, filing, recording or renewal, the Corporation shall cause to be delivered to the Trustee certificates establishing such registration, filing, recording or renewal and opinion of counsel satisfactory to the Trustee, acting reasonably, evidencing that the provisions of this Section 3.10 have been complied with in respect of this Deed or such supplemental or ancillary instrument, as the case may be;
- (d) forthwith after the execution of this Deed and after the execution of each instrument supplemental or ancillary hereto, it shall deliver to the Trustee such other documents as may be reasonably required by the Trustee to be delivered to preserve, protect and perfect the security constituted hereby and represented by such documents of title, security certificates and other documents; and
- (e) in the event that the security constituted hereby becomes enforceable as herein provided and the Trustee shall become bound to enforce the same, the Corporation will from time to time execute all such assurances and do all such things as the Trustee may reasonably require for facilitating the realization of the mortgaged property of the Corporation and for exercising all of the powers, authorities and discretion conferred on the Trustee and for confirming to any purchaser of such mortgaged property or any part thereof, whether sold by the Trustee herein or by judicial proceedings, the title to the property so sold, and it will give all notices and directions which the Trustee may consider necessary or expedient.

The Corporation shall not change its name or amalgamate with another corporation under a different name without giving at least 10 days' prior notice to the Trustee of the new name and the date upon which such change of name or amalgamation is to take effect. Within 5 business days of the change of name or amalgamation, the Corporation shall provide the Trustee with a true copy of the articles of amendment or articles of amalgamation effecting the change of name and a certificate confirming the correct name of the Corporation and that all appropriate registrations, filings or recordings have been made on behalf of the Trustee to fully and effectively maintain the perfection and priority of the security created hereby.

In the event of the amalgamation of the Corporation, this Deed, the Debentures and all other security delivered by the Corporation in connection with this Deed shall be binding on the amalgamated corporation and charge its present and future undertaking, property and assets to secure present and future debts, liabilities and obligations of the Corporation and of the amalgamated corporation to the Trustee and the Holders, all as if the amalgamated corporation had originally executed and delivered those documents.

### 3.11 Proceeds of Unauthorized Sale in Trust

The Corporation shall, in the event the mortgaged property or any part thereof is sold or disposed of prior to the full discharge of this Deed by the Trustee, in any manner not authorized by this Deed, hold all proceeds of such sale or disposition received by the Corporation as trustee for the Trustee until the Corporation has been fully released from this Deed by the Trustee.

### 3.12 Removal of Mortgaged Property

Prior to the removal of any of the mortgaged property from the province in which it is situated at the date of this Deed or to leasehold property, the Corporation shall effect such further

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registrations and obtain such other consents and give such other security, at the sole cost and expense of the Corporation, as may be required or desirable to protect or preserve the security hereby created, and the Corporation shall forthwith notify the Trustee of the intended removal and the action proposed to be taken.

### 3.13 Performance of Covenants by Trustee

If the Corporation shall fail to perform any covenant on its part herein contained, the Trustee may in its absolute discretion perform any such covenant capable of being performed by it, but the Trustee shall be under no obligation to do so. If any such covenant requires the payment of money or if the mortgaged property or any part thereof shall become subject to any charge ranking in priority to the security hereof, the Trustee may in its absolute discretion make such payment and/or pay or discharge such charge, but shall be under no obligation to do so. All sums so paid by the Trustee shall be payable by the Corporation on demand together with interest from the date of demand at the rate referred to in Section 3.9 and shall constitute a charge upon the mortgaged property. No such performance or payment shall relieve the Corporation from any default hereunder or any consequences of such default.

### 3.14 Appointment of Monitor

If in the opinion of the Senior Holders, acting reasonably, a material adverse change has occurred in the financial condition of the Corporation, or if the Senior Holders in good faith believe that the ability of the Corporation to pay any of its obligations or to perform any other covenant contained herein has become impaired or if a default has occurred, the Trustee shall, upon written direction by the Senior Holders, by written notice to the Corporation, appoint a monitor (the "Monitor") to investigate any or a particular aspect of the Corporation or its business and affairs for the purpose of reporting to the Trustee. The Corporation shall give the Monitor its full co-operation, including full access to facilities, assets and records of the Corporation and to its creditors, customers, contractors, officers, directors, employees, auditors, legal counsel and agents. The Monitor shall have no responsibility for the affairs of the Corporation nor shall it participate in the management of the Corporation's affairs and shall incur no liability in respect thereof or otherwise in connection with the Corporation, its business and affairs or the mortgaged property. The Monitor shall act solely on behalf of the Trustee and shall have no contractual relationship with the Corporation as a consultant or otherwise. The appointment of a Monitor shall not be regarded as an act of enforcement of this Decd. All reasonable fees and expenses of the Monitor (including legal fees and disbursements on a solicitor and own client basis) shall be paid by the Corporation upon submission to it of a written invoice therefor. The Trustee may at its option upon the security hereby constituted becoming enforceable appoint or seek to have appointed the Monitor as receiver, liquidator, or trustee in bankruptcy of the Corporation or the mortgaged property or any part thereof.

### 3.15 Insurance

That it will cause all its property which is of a character usually insured by businesses operating properties of a similar nature to be properly insured and kept insured with reputable insurers against loss or damage by fire or other hazards of the nature and to the extent that such properties are usually insured by businesses operating properties of a similar nature in the same or similar localities and shall maintain such insurance with loss if any payable to the Trustee and shall deliver to the Trustee evidence of such insurance satisfactory to the Trustee. Proceeds of insurance shall be dealt with by the Trustee in accordance with resolutions of the Senior Holders, or in the absence of such resolutions, in accordance with Section 5.4.

### 3.16 Taxes and Other Charges

That it shall pay all rents, taxes, rates, levies, assessments and government fees or dues levied, assessed or imposed in respect of the mortgaged property or any part thereof (collectively "Taxes") as and when the same shall become due and payable and shall pay all charges, liens and other encumbrances on the mortgaged property (collectively "Charges") as and when the same shall become due and payable. If the Corporation does not pay any Taxes or Charges as and when the

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same shall become due and payable, the Trustee may, at its option, elect to pay any such amounts and charge to the Corporation all amounts so paid as additional amounts secured under this Deed, together with interest thereon from the date of payment by the Trustee of any such amounts at a rate per annum equal to the then-current rate charged by the Trustee from time to time.

### 3.17 Information

That it will furnish to the Trustee such information (including an annual certificate of compliance) with respect to the mortgaged property and the insurance thereon as the Trustee may from time to time require, and shall give written notice to the Trustee of all litigation before any court, administrative board or other tribunal affecting the Corporation or its property. An annual certificate of compliance means a certificate signed by the president or a vice-president of the Corporation, confirming compliance with the covenants set forth in this Article 3 and specifically that (i) no default as described in Section 4.1 of this Deed has occurred and is continuing and no event has occurred and is continuing which, with the passage of time or giving of notice, or both, would constitute such a default, and (ii) all the covenants of the Corporation contained in this Article 3 and all of the conditions contained in this Deed to be complied with by the Corporation have been fully complied with to the date thereof.

## 4. DEFAULT

### 4.1 Security Becoming Enforceable

The security hereby constituted shall immediately become enforceable and the floating charge created pursuant to Section 2.1(b) hereof shall become a fixed and specific mortgage, charge, pledge, assignment, security interest and hypothec on the property charged thereby if:

- (a) payment of part or all of the obligations secured by a pledge of a Senior Debenture is demanded in accordance with any agreement to which the Corporation is a party relating to such obligations secured, and payment is not made on demand;
- (b) the Corporation makes default of any other covenant or condition of this Deed for the benefit of the Senior Holders or the Trustee and default continues for a period of 30 days after the Trustee sends notice to the Corporation to correct the default; or
- (c) payment of the principal amount and interest accrued on all Debentures has been demanded by the Trustee pursuant to Section 5.1(b) if any Holder of Debentures other than a Senior Holder (a "Subordinated Holder", where Debentures held by the Subordinated Holders are the "Subordinated Debentures") has proceeded in accordance with Section 5.1(b) of this Deed.

### 4.2 Waiver

The Trustee (on the direction of the Senior Holders) or the Senior Holders may by notice to the Corporation waive any default of the Corporation on such terms and conditions as the Senior Holders may determine, but no such waiver shall be taken to affect any subsequent default or the rights of the Senior Holders arising therefrom nor shall it detract from the rights of any Subordinate Holder under the terms of any agreement relating to its obligations secured with respect to such default. No waiver of any default by a Subordinate Holder shall in any way affect the rights of the Senior Holders with respect to such default.

## 5. REMEDIES IN CASE OF DEFAULT

### 5.1 Demand Payment

- (a) If the security hereby constituted becomes enforceable as provided in Sections 4.1(a) or (b), the Trustee upon being so directed by resolution of the Senior Holders shall demand payment of the

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principal amount of and interest accrued on all Debentures and the same shall forthwith become immediately due and payable to the Trustee.

(b) If (i) payment of part or all of the obligations, which for greater certainty shall include, without limitation, any principal amount together with accrued interest, that is secured by a pledge of a Subordinated Debenture (the "Defaulted Debenture") is demanded in accordance with any agreement to which the Subordinated Holder or Holders of the Defaulted Debenture (the "Demanding Holder") and the Corporation are parties relating to such obligations secured, and payment is not made on demand, (ii) the Demanding Holder (or any agent duly authorized to do so on behalf of such Holder) gives written notice of the demand for payment of such obligations secured to the Trustee (who shall immediately forward such notice to all of the other Holders), (iii) the Demanding Holder (or any agent duly authorized to so act on behalf of such Holder) provides to the Trustee (x) a certificate by the Demanding Holder certifying that the Demanding Holder is entitled under the terms of an agreement to which the Demanding Holder (or such agent) and all Senior Holders (or an agent on their behalf) are party (the "Intercreditor Agreement"), to require that payment of the Debentures be demanded and the security hereby constituted be enforced notwithstanding the priority of the Senior Holders, and (y) a resolution of the Demanding Holder directing that the Trustee demand payment of the principal amount of and interest on all Debentures, (which certificate and resolution shall immediately be forwarded by the Trustee to all of the other Holders), and (iv) at least 5 business days have passed after the Demanding Holder (or any agent duly authorized to so act on behalf of such Holder) has given to the Trustee the certificate and resolution referred to in (iii) above and the Trustee has forwarded copies thereof to all of the other Holders, then the Trustee, upon being so directed by the Demanding Holder (or any agent duly authorized to so act on behalf of such Holder) shall demand payment of the principal amount of and interest accrued on all Debentures and the same shall forthwith become immediately due and payable to the Trustee.

(c) In the event that the Senior Holders have duly exercised their rights under Section 5.1(a) hereof (whether or not a Subordinated Holder has duly exercised its rights under Section 5.1(b) hereof), it is agreed that:

- (i) the Trustee shall have regard to the instructions and directions of the Senior Holder only in exercising rights and remedies under this Deed and shall have no duty or obligation hereunder to act in accordance with the instructions or directions of any other Holder; and
- (ii) in giving the Trustee instructions and directions in pursuance of its rights under paragraph (i) above, the Senior Holders shall act in good faith, and not with the sole purpose of defeating, delaying, hindering or otherwise impeding the repayment of the Subordinated Holders, but nothing in this Deed shall impose on the Senior Holders any greater duty to the Subordinated Holders or the Corporation than is owed by a senior creditor to a junior creditor or to a debtor in the absence of any express provision.

(d) In the event that a Subordinated Holder (or an agent duly authorized by a Subordinated Holder) has duly exercised its rights pursuant to Section 5.1(b) hereof and no Senior Holder has exercised its rights under Section 5.1(a) hereof, then (but for so long only as no Senior Holder has exercised its rights under Section 5.1(a) hereof):

- (i) the Trustee shall have regard to the instructions and directions of the Subordinated Holder only in exercising rights and remedies under this Deed and shall have no duty or obligation hereunder to act in accordance with the instructions or directions of any other Holder;
- (ii) in giving the Trustee instructions and directions in pursuance of its rights under paragraph (i) above, the Subordinated Holder shall act in good faith; and

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- (iii) while nothing shall prevent the Senior Holders from exercising their rights under Section 5.1(a) hereof if they are entitled to do so as between the Corporation and themselves, until they have done so, the Senior Holders shall not do any of the following without the consent of the Subordinated Holders: (A) give instructions and directions to the Trustee relating to the exercise of those rights and remedies being exercised by the Subordinated Holders in accordance with this Section 5.1(d), (B) direct the Trustee to waive any defaults pursuant to Section 4.2 of this Deed, (C) unreasonably withhold or delay its consent to the appointment of a replacement Trustee requested by the Subordinated Holders, or (D) exercise any of the rights set out in Sections 9.1(a), (b), (e) and (f) of this Deed.

## 5.2 Remedies

If the security hereby constituted becomes enforceable as herein provided, and the Corporation has failed to pay to the Trustee on demand the principal amount of and interest accrued on the Debentures:

- (a) the Trustee may in its discretion take possession of the whole or any part of the mortgaged property and carry on all or any part of the business of the Corporation relating to the mortgaged property and borrow money on the security of the mortgaged property in priority to the security hereby created for the purpose of maintenance, preservation or protection of the mortgaged property or for the carrying on of all or any part of the business of the Corporation relating to the mortgaged property and in so acting the Trustee shall have the power to exclude the Corporation, its servants and agents from the mortgaged property;
- (b) whether or not the Trustee has exercised any or all of its rights under Section 5.2(a), the Trustee may sell, lease or otherwise dispose of the whole or any part of the mortgaged property at public auction, by private tender or private sale, either for cash or upon credit and upon such terms and conditions as the Trustee may determine, and the Trustee may execute and deliver to any purchaser of the mortgaged property or any part thereof good and sufficient deeds and documents for the same, and, without limiting the powers granted to the Trustee, the Trustee is irrevocably constituted the attorney of the Corporation for the purpose of making any such sale and executing such deeds and documents (which appointment, being coupled with an interest, shall survive the bankruptcy of the Corporation);
- (c) the Trustee may also exercise any of the other rights to which the Trustee or the Holders are entitled including the right to take proceedings in any court of competent jurisdiction for the appointment of a receiver or receiver and manager (a "receiver"), for the sale of the mortgaged property or any part thereof or for foreclosure, and the right to take any other action, suit, remedy or proceeding authorized or permitted under this Deed or by law or in equity in order to enforce the security constituted by this Deed; and
- (d) the Trustee may also by instrument in writing appoint a receiver of the mortgaged property or of any part thereof and may remove any receiver so appointed and appoint another in his stead, and such receiver shall have the same rights, powers and authorities as are conferred on the Trustee by this Section 5.2. In addition the following provisions shall apply:
- (i) such appointment shall be made in writing signed by the Trustee and such writing shall be conclusive evidence for all purposes of such appointment; the Trustee may from time to time in the same manner remove any receiver so appointed and appoint another in its stead; in making any such appointment the Trustee shall be deemed to be acting as the attorney for the Corporation and the Corporation hereby consents to the appointment of a receiver;



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- (ii) any such appointment may be limited to any part or parts of the mortgaged property or may extend to the whole thereof;
- (iii) every receiver may, in the discretion of the Trustee, be vested with all or any of the powers, rights, benefits, discretions, protection and relief of the Trustee hereunder and shall be vested with all of the powers and protections afforded to a receiver under applicable law;
- (iv) the Trustee may from time to time fix the reasonable remuneration of the receiver and direct the payment thereof, in priority to the other obligations secured hereby, out of the mortgaged property, the income therefrom or the proceeds thereof;
- (v) the Trustee may from time to time require any receiver to give security for the performance of its duties and may fix the nature and amount thereof, but the Trustee shall not be bound to require such security;
- (vi) every such receiver may, with the consent in writing of the Trustee, borrow money for the purpose of carrying on the business of the Corporation in respect of any part of the mortgaged property or for the maintenance, protection or preservation of the mortgaged property or any part thereof, and any receiver may issue certificates (in this Section called "Receiver's Certificates"), for such sums as will in the opinion of the Trustee be sufficient for carrying out the foregoing, and such Receiver's Certificates may be payable either to order or bearer and may be payable at such time or times as the Trustee may consider expedient, and shall bear such interest as shall therein be declared and the Receiver may sell, pledge or otherwise dispose of the same in such manner as the Trustee may consider advisable and may pay such commission on the sale thereof as the Trustee may consider reasonable, and the amounts from time to time payable by virtue of such Receiver's Certificates shall at the option of the Trustee form a charge upon the mortgaged property in priority to this Deed;
- (vii) every receiver shall, regarding its acts or omissions, be deemed the agent of the Corporation, and in no event the agent of the Trustee and the Trustee shall not, in making or consenting to such appointment, incur any liability to any receiver for its remuneration or otherwise howsoever;
- (viii) except as may be otherwise directed by the Trustee, all monies from time to time received by any receiver shall be paid over to the Trustee; and
- (ix) the Trustee may pay over to any receiver any monies constituting part of the mortgaged property to the extent that the same may be applied for the purposes hereof by such receiver and the Trustee may from time to time determine what funds any receiver shall be at liberty to keep on hand with a view to the performance of its duties as such receiver.

In the exercise of their rights, powers and authorities hereunder, the Trustee and any receiver appointed by the Trustee shall be the agent of the Corporation, and the Trustee and the Holders shall not be in any way responsible for any misconduct or negligence of any such receiver, nor shall the Holders be in any way responsible for any misconduct or negligence of the Trustee.

### 5.3 Public Sale

The Trustee, the Holders or any agent or representative thereof, may become purchasers at any public sale of the mortgaged property, whether made under a power of sale provided for in this Deed or pursuant to judicial proceedings.

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#### 5.4 Application of Proceeds of Realization of Security

Except as otherwise provided in this Deed, by law or by order of a court or by any resolution of the Holders, any and all monies arising from the enforcement of any remedy provided for herein, including, without limitation, the carrying on of the business of the Corporation and the sale or other realization of the whole or any part of the mortgaged property, whether under any sale by the Trustee or by judicial process or otherwise, shall be paid over to the Trustee, shall be held by the Trustee and, together with any other monies then or thereafter in the hands of the Trustee available for the purpose, shall be applied by the Trustee as follows:

- (a) firstly, if and to the extent that the Trustee deems that it is in the interest of the Holders generally and the same is not inconsistent with any resolution of the Senior Holders, to pay all charges and liens on the mortgaged property ranking (or capable of ranking) in priority to the security constituted by this Deed or to keep in good standing any such prior lien;
- (b) secondly, to pay all amounts due to the Trustee hereunder, including without limitation, costs, charges and expenses referred to in Section 3.9;
- (c) thirdly, to pay the outstanding principal amount secured by the Senior Debentures, to pay all interest secured by the Senior Debentures including interest on overdue interest accrued but unpaid to the date of the demand for payment of the amounts secured by such Senior Debentures and to pay all interest including interest on overdue interest accruing after the date of demand for payment and remaining unpaid of such amounts rateably and proportionately, having regard to the amount of the obligations secured by such Senior Debentures, rather than the face amount of any Senior Debenture that has been pledged in accordance with Section 1.3 above;
- (d) fourthly, after payment of all amounts secured by, and cancellation of, all Senior Debentures, to pay, in order as they succeed to being Senior Debentures, all amounts secured by each series of Subordinated Debentures in the same manner as in Section 5.4 (c) above;
- (e) fifthly, in payment of all other amounts at any time and from time to time remaining outstanding and unpaid under this Deed; and
- (f) sixthly, the surplus, if any, of such money shall be paid to the Corporation or its assigns or otherwise in accordance with applicable law.

#### 5.5 Duty to Inquire

No person dealing with the Trustee, its agents or any receiver appointed pursuant hereto (or pursuant to any agreement to which the Corporation and one or more of the Holders are parties) shall be concerned to inquire whether the powers which the Trustee, its agents or any receiver appointed pursuant hereto (or pursuant to any agreement to which the Corporation and one or more of the Holders are parties) is purporting to exercise have become enforceable, or whether any money remains due upon the security constituted by this Deed, or as to the necessity or expediency of the stipulations and conditions subject to which any sale shall be made, or otherwise as to the propriety or regularity of any sale or any other dealing by the Trustee with the mortgaged property or any part thereof or to see to the application of any money paid to the Trustee; and, in the absence of fraud on the part of such person, such dealings shall be deemed to be within the powers conferred on the Trustee and to be valid and effective accordingly.

#### 5.6 Possession

The Corporation shall on demand by the Trustee or any receiver yield up possession of the mortgaged property or any part thereof as demanded by the Trustee whenever the Trustee shall have a right to exercise any rights or remedies under Section 5.2 and put no obstacle in the way of, but

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facilitate by all legal means, the actions of the Trustee or any receiver hereunder and not interfere with the carrying out of the powers hereby granted to the Trustee or any appointed receiver.

#### 5.7 Remedies Not Exclusive

No right, power or remedy herein conferred upon or reserved to the Trustee or any receiver is intended to be exclusive of any other right, power or remedy or remedies, and each and every right, power and remedy shall, to the extent permitted by applicable law, be cumulative and shall be in addition to every other right, power or remedy given hereunder or now or hereafter existing at law, in equity or by statute. No delay or omission of the Trustee in the exercise of any right, power or remedy accruing upon any default shall impair any such right, power or remedy or shall be construed to be a waiver of any such default or an acquiescence therein. Every right, power and remedy given to the Trustee or to a receiver by this Deed or under applicable law may be exercised from time to time and as often as may be deemed expedient by the Trustee or such receiver, as applicable.

#### 5.8 Power of Attorney

The Corporation hereby irrevocably constitutes and appoints the Trustee its true and lawful attorney and agent, with full power and authority in the Corporation's name, place and stead from time to time to do all acts and things and execute and deliver all share transfers, certificates, proxies, resolutions, consents, assignments, transfers, conveyances and agreements, in such form as the Trustee considers necessary or desirable to do all things which the Corporation is required to sign, execute and do hereunder if the Corporation has failed to sign, execute or do the same and generally to use the name of the Corporation, as applicable, in the exercise of all or any of the powers hereby conferred on the Trustee, with full powers of substitution and revocation; provided that this power of attorney may not be exercised by the Trustee until the security constituted hereby shall have become enforceable. Such appointment and power of attorney is hereby declared by the Corporation to be an irrevocable power coupled with an interest.

#### 5.9 Restriction on Corporation and its Officers and Directors

Upon the Corporation receiving notice from the Trustee of the taking of possession of the mortgaged property or the appointment of a receiver, all the powers, functions, rights and privileges of each of the directors and officers of the Corporation with respect to the properties, business and undertaking of the Corporation shall cease unless specifically continued by the written consent of the Trustee.

### 6. DISCHARGE

6.1 Subject to Section 7, this Deed and the rights hereby granted (other than the Trustee's rights under Section 3.9 above) shall cease, determine and be void, and the Trustee shall at the request and expense of the Corporation cancel and discharge the mortgages and charges of this Deed (including the additional security provided for in Section 10 (the "Additional Security")) and execute and deliver to the Corporation such deeds or other instruments as shall be requisite therefor, if the Corporation first satisfies the Trustee that it has paid the principal amount and interest secured by the Debentures and has otherwise observed and performed the terms and conditions of this Deed and the Additional Security and has otherwise satisfied all obligations secured, or that all of the Debentures have been validly cancelled as contemplated in Section 1.6.

6.2 The registrar of any registration division in which any mortgaged property is situate shall discharge and cancel the registration of any mortgage, pledge or charge, or transfer or giving in payment created hereby or by the Additional Security or hereafter created under the provisions hereof upon the registration of any discharge, release or document to that effect signed by the Trustee, without being obliged to see that any of the conditions of this Deed or of the Additional Security have been fulfilled.

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## 7. CONTINUING AND ADDITIONAL SECURITY

7.1 The Debentures and the security created by this Deed shall be effective whether or not any monies or liabilities secured by this Deed are advanced or incurred before or after the date of this Deed, and shall not be considered as satisfied or discharged by any intermediate payment of the whole or part of the obligations secured by the pledge of the Debentures issued under this Deed but shall constitute and be a continuing security to the Holders for a current or running account and shall be in addition to and not in substitution for any other security now or hereafter held by the Holders or any of them. The remedies of the Trustee under this Deed may be exercised from time to time separately or in combination and are in addition to and not in substitution for any other rights of the Trustee or the Holders however created.

## 8. TRUSTEE

### 8.1 Acceptance by Trustee

The Trustee hereby accepts the trusts declared and provided in this Deed and agrees to perform the trusts upon the terms and conditions of this Deed, subject to the following:

- (a) the Trustee may appoint such agents and employ or retain, in relation to this Deed, such lawyers, accountants, valuers, engineers, architects, appraisers, or such other experts as it may reasonably require in the circumstances and for the purpose of discharging its duties hereunder and shall be entitled to pay reasonable compensation for the advice or assistance so obtained, but nevertheless the Trustee shall not be obliged to act on any advice or assistance so obtained. The Trustee may act and shall be protected in acting in good faith on the opinion or the advice of or information obtained from any counsel (including where appropriate counsel acting for the Corporation or any Holder acceptable to the Trustee), accountant, valuator, engineer, architect, appraiser or other expert or advisor, in each case selected by the Trustee using reasonable care, in relation to any matter arising in connection with the administration of this Deed;
- (b) in respect of any direction, authorization, statement of fact, copy of by-law, resolution or other proceeding or writing which the Trustee may require from the Corporation, the Trustee shall be entitled to accept and act upon the same, provided the said documents bear the signature of any officer or director of the Corporation;
- (c) the Trustee shall be accountable only for reasonable diligence in respect of the trusts hereby conferred upon it and shall not be accountable for any act or default of any agent or other person engaged by the Trustee for the performance of any duty or duties hereunder (except employees of the Trustee), provided the Trustee shall have selected such agent or person with reasonable care;
- (d) subject to any resolution of the Holders (or the Senior Holders where specified in this Deed), the Trustee shall as regards all the trusts, powers, authorities and discretion vested in it have absolute and uncontrolled discretion as to the exercise thereof, whether in relation to the manner or as to the mode and time for the exercise thereof, and in the absence of fraud, negligence or wilful misconduct, it shall in no way be responsible for any loss, costs, damages or inconvenience that may result from the exercise or non-exercise thereof;
- (e) the Trustee shall not be bound to take any steps to enforce any of the covenants on the part of the Corporation contained in the Debentures, except insofar as it may be required to do so by the Senior Holders (or the Subordinated Holders pursuant to Section 5.1(b)) in writing upon being furnished with an indemnity reasonably satisfactory to the Trustee;

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- (f) the obligation of the Trustee to commence or continue any act, action or proceedings for the purpose of realizing the collateral or for the enforcement of any covenant or obligation under or arising out of these presents or the Debentures shall, at the option of the Trustee, be conditional upon the Holders furnishing, when requested in writing by the Trustee, sufficient funds to commence or continue such action or proceedings and an indemnity satisfactory to the Trustee to protect and hold harmless the Trustee against costs, charges and expenses and liabilities to be incurred thereby and any loss and damage it may sustain by reason thereof;
- (g) the Trustee may, but shall not be obliged to, enter onto the mortgaged property to take such actions as the Trustee may in its sole discretion deem necessary or advisable to clean up, remediate, encapsulate, remove, resolve, or minimize the impact of, or otherwise deal with, any contaminants or breaches of Environmental Laws which could in the opinion of the Trustee jeopardize the security interest in the mortgaged property created by this Deed;
- (h) the Trustee shall have no responsibility to supervise or have control over the conduct of the Corporation's environmental practices, nor shall any action or inaction by the Trustee be construed as exercising care, control or management over the mortgaged property; and
- (i) nothing in this Deed shall be deemed to make the Trustee responsible for failure to obtain or maintain adequate or any insurance coverage for the mortgaged property or to ensure that such insurance is obtained and maintained by the Corporation, or for any loss arising from any defects in any policy or because of the failure of any insurer to pay for any loss or damage insured against, and the Trustee shall be entitled to request, and rely absolutely upon, a certificate of an officer of the Corporation that the insurance carried by the Corporation from time to time is in compliance with all relevant requirements of this Deed.

## 8.2 Trustee not Required to Give Security

The Trustee shall not be required to give any bond or security in respect of the execution of the trusts and powers of this Deed or otherwise in respect of this Deed.

## 8.3 Protection of Trustee

By way of supplement to the provisions of any law for the time being relating to trustees, it is expressly declared and agreed as follows:

- (a) the Trustee shall not be liable for or by reason of any failure or defect of title to, or encumbrance upon, the mortgaged property;
- (b) the Trustee shall not be liable for or by reason of any statements of fact or recitals in this Deed, or in the Debentures (except in the Certificate of the Trustee thereon) or in any document ancillary or supplemental hereto or thereto, or required to verify the same, but all such statements or recitals are and shall be deemed to be made by the Corporation;
- (c) nothing herein or in the Debentures shall impose any obligation on the Trustee or any Holders to see to or to require evidence of the registration or filing or renewal of this Deed, any of the Debentures or any other instrument ancillary or supplemental hereto or thereto or any other deed or writing by way of mortgage or charge upon the mortgaged property or any part thereof or to procure any further, other or additional instrument of further assurance or to do any other act for the continuance of the security hereof or encumbrance or for giving notice of the existence of such security or for extending or supplementing the same;

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- (d) the Trustee shall not be bound to give notice to any person or persons of the execution hereof or the security constituted hereby or in any way to interfere with the conduct of the business of the Corporation, unless and until the security hereby constituted shall have become enforceable and the Trustee shall have become bound to enforce the same;
- (e) the Trustee shall not incur any liability or responsibility whatever in consequence of permitting or suffering the Corporation, its successors or assigns, to retain or be in possession of any part of its mortgaged property and to use and enjoy the same unless herein or in the Debentures expressly otherwise provided; nor shall the Trustee be or become responsible or liable for any destruction, deterioration, loss, injury or damage which may be done or occur to the mortgaged property by the Corporation, its agents or servants, or by any other person or be in any way responsible for the consequences of any breach on the part of the Corporation of, or to inquire as to the performance by the Corporation of, any of the covenants herein or in the Debentures contained or of any acts of the agents or servants of the Corporation;
- (f) unless otherwise required by law, the Trustee shall not be liable by reason of any entry into possession of the mortgaged property or any part thereof to account as mortgagee in possession or for anything except actual receipts or be liable for any loss on realization or for any default or omission for which a mortgagee in possession might be liable save such as may be caused by its own fraud, negligence or wilful misconduct;
- (g) the Trustee on its own behalf or in any other capacity, may buy, lend upon and deal in shares in the capital stock of the Corporation and generally may contract and enter into financial transactions with the Corporation without being liable to account for any profit made thereby;
- (h) none of the provisions contained in this Deed shall require the Trustee to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers unless indemnified in accordance with this Deed;
- (i) the Trustee may, before commencing or at any time during the continuance of any such act, action or proceeding, require the Holders at whose instance it is acting to deposit with the Trustee the Debentures held by them, for which Debentures the Trustee shall issue receipts;
- (j) the Trustee shall not be responsible or liable in any manner whatsoever for the sufficiency, correctness, genuineness or validity of any security deposited with it, including any stock transfer power of attorney; and
- (k) in the exercise of its rights, duties and obligations hereunder the Trustee may, if acting in good faith, rely, as to the truth of the statements and accuracy of the opinions expressed therein, upon statutory declarations, opinions, reports or certificates furnished pursuant to any covenant, condition or requirement of this Deed or required by the Trustee to be furnished to it in the exercise of its rights and duties hereunder, provided that the Trustee examines such statutory declarations, opinions, reports or certificates and determines, acting in good faith, that they comply with any applicable requirements of this Deed.

#### 8.4 Trustee's Obligation to Act

Unless and until the Trustee is required to do so under the terms of this Deed, the Trustee shall not be bound to give any notice or to take any act, action or proceeding by virtue of the powers conferred on it by this Deed; nor shall the Trustee be required to take notice of an event of default under this Deed, other than in payment of any monies required by any provisions hereof to be paid

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to it. Unless and until notified in writing of such events of default or such default and in the absence of any such notice, the Trustee may assume that the Corporation is not in default hereunder and that no default has been made with respect to the payment of principal or interest under the Debentures or in the observance of performance or any of the covenants, agreements or conditions contained herein.

The right and obligation of the Trustee to commence or continue an act, action or proceeding for the purpose of enforcing any rights of the Trustee or the Holders hereunder shall be conditional on (i) the Trustee receiving a resolution from the Senior Holders (or the Subordinated Holders (or an agent on their behalf) pursuant to Section 5.1(b) exercised in accordance with Section 5.1(d)) and (ii) compliance with Section 8.1 (f).

#### 8.5 Resignation of Trustee

The Trustee may resign its trust and be discharged from all further duties and liabilities hereunder by giving to the Corporation not less than 30 days' notice in writing or such shorter notice as the Corporation may accept as sufficient. The Senior Holders shall have the power at any time to remove the Trustee and to appoint a new Trustee. In the event of the Trustee resigning or being removed as aforesaid or being dissolved, becoming bankrupt, going into liquidation or otherwise becoming incapable of acting hereunder, the Corporation shall forthwith appoint a new Trustee unless a new Trustee has already been appointed by the Senior Holders; failing such appointment by the Corporation, the retiring Trustee (at the Corporation's expense) or any Senior Holder may apply to a Judge of the Court of Queen's Bench of Manitoba, on such notice as such Judge may direct, for the appointment of a new Trustee, but any new Trustee so appointed by the Corporation or by the Court shall be subject to removal as aforesaid by the Senior Holders. Any new Trustee appointed under these provisions shall be a corporation authorized to carry on the business of a trust company in the Province of Manitoba.

#### 8.6 Powers of New Trustee

Any new Trustee appointed hereunder shall execute an instrument accepting such appointment hereunder and deliver one counterpart or notarial copy thereof to the Corporation and one counterpart or notarial copy thereof to the Trustee last in office and the Holders shown on the Trustee's register, and thereupon such new Trustee without further act, deed or conveyance shall become vested with all estates, properties, rights, powers and trusts of its predecessor in the trusts hereunder, with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of the successor Trustee or of the Corporation, the Trustee ceasing to act shall execute and deliver an instrument or instruments assigning and transferring to such successor Trustee, upon the trusts herein expressed, all the said property and assets and all rights, powers and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver all property and money held by such Trustee to the successor Trustee so appointed in its place. Should any deed, conveyance or instrument in writing from the Corporation be required by any new Trustee for more fully and certainly vesting in and confirming to it such estates, properties, rights, powers and trusts, then any and all such deeds, conveyances and instruments in writing shall, on request of said new Trustee, be made, executed, acknowledged and delivered by the Corporation. At the request of the Corporation or the new Trustee, the retiring Trustee, upon payment of the amounts, if any, due to it pursuant to Section 3.9, shall duly assign, transfer and deliver to the new Trustee all property and money held and all records kept by the retiring Trustee hereunder or in connection herewith.

#### 8.7 Corporate Re-organization of Trustee

Any company into which the Trustee may be merged or with which it may be consolidated or amalgamated, or any company resulting from any merger, consolidation or amalgamation to which the Trustee shall be a party, shall be the successor Trustee under this Deed without the execution of any instrument or any further act.

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**8.8 Evidence**

The Corporation shall furnish to the Trustee evidence of compliance with the conditions provided for in this Trust Deed relating to any action or step required or permitted to be taken by the Corporation or the Trustee under this Trust Deed or as a result of any obligation imposed under this Trust Deed, including, without limitation, the issue, certification and delivery of Debentures hereunder, the satisfaction and discharge of this Trust Deed and the taking of any other action to be taken by the Trustee at the request of or on the application of the Corporation, forthwith if and when:

- (i) such evidence is required by any other Section of this Trust Deed to be furnished to the Trustee in accordance with the terms of this Section; or
- (ii) the Trustee, in the exercise of its rights and duties under this Trust Deed, gives the Corporation written notice requiring it to furnish such evidence in relation to any particular action or obligation specified in such notice.

Such evidence shall consist of:

- (A) a certificate of an officer of the Corporation stating that any such condition has been complied with in accordance with the terms of this Trust Deed;
- (B) in the case of any such condition compliance with which is, by the terms of this Trust Deed, made subject to review by legal counsel, an opinion of counsel to the Trustee that such condition has been complied with in accordance with the terms of this Trust Deed; and
- (C) in the case of any such condition compliance with which is, by the terms of this Trust Deed, made subject to review or examination by an auditor or accountant, an opinion or report of the auditors of the Corporation or any accountant licenced under the applicable laws of the Province of Manitoba based on the examinations or enquiries required to be made under the terms of this Trust Deed, in each case approved by the Trustee, that such condition has been complied with in accordance with the terms of this Trust Deed.

Whenever such evidence relates to a matter other than the issue, certification and delivery of Debentures, the satisfaction and discharge of this Trust Deed or the taking of any other action to be taken by the Trustee at the request or on the application of the Corporation, and except as otherwise specifically provided herein, such evidence may consist of a report or opinion of any solicitor, auditor, accountant, engineer or appraiser or any other person whose qualifications give authority to a statement made by him, provided that if such report or opinion is furnished by a director, officer or employee of the Corporation it shall be in the form of a certificate satisfactory to the Trustee (acting reasonably). Such evidence shall be, so far as appropriate, in accordance with the immediately preceding paragraph of this section.

Each statutory declaration, certificate, opinion or report furnished to the Trustee as evidence of compliance with a condition provided for in this Trust Deed shall include a statement by the person giving the evidence:

- (a) declaring that he has read and understands the provisions of this Trust Deed relating to the condition in question;
- (b) describing the nature and scope of the examination or investigation upon which he based the statutory declaration, certificate, statement or opinion; and
- (c) declaring that he has made such examination or investigation as he believes is necessary to enable him to make the statements or give the opinions contained or expressed herein.



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Upon the demand of the Trustee, the Corporation shall furnish the Trustee with evidence in such form as the Trustee may reasonably require as to compliance with any condition contained in this Trust Deed relating to any action required or permitted to be taken by the Corporation or as to any other matter referred to herein.

#### 8.9 Action By Trustee to Protect Interests

The Trustee shall have power to institute and to maintain such actions and proceedings as it may consider necessary or expedient to preserve, protect or enforce its interests and the interests of the Holders.

#### 8.10 Duties of Trustee

The Trustee, in exercising its powers and discharging its duties hereunder, shall:

- (i) act honestly and in good faith with a view to the best interests of the Holders;
- (ii) exercise the care, diligence and skill of a reasonably prudent trustee; and
- (iii) act reasonably wherever such standard is stipulated herein and otherwise shall act as required by law.

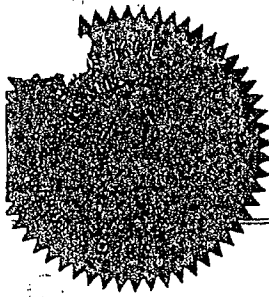
### 9. RESOLUTIONS OF HOLDERS

#### 9.1 Powers of the Holders

The powers of the Holders shall be exercisable by the Senior Holders only, except (i) as expressly provided in Sections 3.2, 3.10(a), 5.1(b) and 5.1(d) of this Deed, and (ii) as to matters set forth in paragraphs (c), (d), (e) and (g) below which shall be also exercisable by Subordinated Holders as described in those paragraphs, and include but are not limited to the following powers exercisable from time to time by resolution of the Senior Holders:

- (a) the power to require the Trustee to refrain from enforcing any covenant on the part of the Corporation herein or to refrain from exercising any of the powers set forth herein and conferred on the Trustee or to direct the Trustee to waive any default or defaults on the part of the Corporation on such terms as may be deemed advisable or to cancel any declaration or waiver previously made by the Trustee under this Deed;
- (b) power to remove a Trustee from office and to appoint a new Trustee;
- (c) power to assent to any judgment, compromise or arrangement by the Corporation with any creditor, creditors or class or classes of creditors or with the holder(s) of any shares or securities of the Corporation, which shall also require the approval of the Holders of each series of Subordinated Debentures in respect of any judgment, compromise or arrangement affecting their respective Debentures;
- (d) power to assent to any modification of or change in or addition to or deletion from the rights of the Holders or the provisions contained in this Deed or any instrument ancillary or supplementary hereto or thereto or any agreement forming part of the mortgaged property which shall be agreed by the Corporation and to authorize the Trustee to concur in and execute any indenture supplemental to this Deed or any agreement supplemental to any instrument embodying any such modification, change, addition, deletion or to concur in and execute any deeds, documents, or writings authorized by such resolution, which shall also require the approval of the Holders of each series of Subordinated Debentures in respect of any such modification, change, addition, deletion affecting their respective Debentures;





## DEED OF HYPOTHEC

ON THE nineteenth (19<sup>th</sup>) day of August, Nineteen hundred and ninety-nine (1999)

B E F O R E M<sup>re</sup> Jean Mousseau, the undersigned notary for the Province of Québec, practising at Montréal.

APPEARED: MONTREAL TRUST COMPANY, a trust company organized under a Special Act of the Legislature of the Province of Québec referred to as An Act to amalgamate Montreal Trust Company, Crédit Foncier and Crédit Foncier Trust Company as at January 1, 1987 (1986, Chapter 135) and continued as a trust company under the Federal Trust and Loan Companies Act by way of Letters Patent of Continuance issued as at August 17<sup>th</sup>, 1994, having its head office at 1800 McGill College Avenue, in the City of Montréal, Province of Québec, herein acting and represented by Louis Lochhead, its Assistant Vice-President and by Martine Guay, its Trust Officer, duly authorized as they so declare.

(Notice of address of Montreal Trust Company has been registered at the Registry Office for the Registration Division of Montreal under number 106687)

### OF THE FIRST PART

AND: 3149030 CANADA LIMITED, a legal person being a corporation constituted under the laws of Canada, having its registered office at 200 Portage Avenue, 4<sup>th</sup> Floor, Winnipeg, Province of Manitoba, R3C 3X2, herein acting and represented by Alain Lalonde, its Assistant-Secretary, duly authorized by resolutions of its Board of Directors passed on the seventeenth (17<sup>th</sup>) day of August, nineteen hundred and ninety-nine (1999), a certified copy of which is annexed hereto after having been acknowledged true and signed for the purpose of identification by

*AA, inspect  
99/08/20 / JAL*

Certificat d'inscription  
Circonscription foncière de: Montréal

Régistré  
1999-08-20

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the said representative in the presence of the undersigned notary.

OF THE SECOND PART

WHICH PARTIES DECLARED AS FOLLOWS:

WHEREAS the Grantor (as hereafter defined) has, under its governing law and constating documents, the power to issue, re-issue, sell or pledge debt obligations of the Grantor and to mortgage, hypothecate, pledge or otherwise create a security interest in all or any property of the Grantor, now owned or subsequently acquired, to secure any obligation of the Grantor;

WHEREAS pursuant to the terms of the Trust Deed, the Grantor is authorized to issue Debentures (as hereafter defined) in one or more series up to an aggregate principal amount of five hundred million Canadian dollars (Cdn\$500,000,000);

WHEREAS all necessary corporate proceedings and resolutions have been duly taken and passed by the Grantor and all other actions have been taken to authorize the execution of this Deed and the securing of the Debentures in conformity therewith;

WHEREAS the foregoing recitals are made as representations and statements of fact by the Grantor and not by the Attorney (as hereafter defined);

NOW, THEREFORE, THE PARTIES HERETO HAVE AGREED AS FOLLOWS:

1. INTERPRETATION

1.1 The following words and phrases, wherever used in this Deed or in the accompanying Schedules or in any deeds supplemental hereto, shall, unless there be something in the context inconsistent therewith, have the following meanings:

1.1.1 "Administrative Agent": means The Bank of Nova Scotia, as administrative agent under the Credit Agreement;

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- 1.1.2 "Attorney": means the party of the first part, Montreal Trust Company, duly appointed as *fondé de pouvoir* pursuant to Section 2 hereof and its successors and assigns in the powers and duties created hereunder;
- 1.1.3 "Canadian Dollars" or "Cdn\$": means the legal currency of Canada;
- 1.1.4 "Charged Property": means all property of the Grantor, movable and immovable, corporeal and incorporeal, tangible and intangible, present and future, subjected or intended to be subjected to the hypothec created or intended to be created herein;
- 1.1.5 "Credit Agreement": means the credit agreement dated as of August 17, 1999 between The Arctic Group Inc., as borrower, certain subsidiaries of the borrower, as restricted parties, The Bank of Nova Scotia, as Administrative Agent and as lender, and other lenders who may be or become parties thereto from time to time ;
- 1.1.6 "Debentures": means collectively the debentures of any series issued from time to time by the Grantor in favour of the Debentureholders pursuant to the terms of the Trust Deed and "Debenture" means any one of the Debentures;
- 1.1.7 "Debentureholders": means, at any time, the lawful holder (or holders, if more than one) at such time of the Debentures; for the time being, the Administrative Agent, Citicorp North America Inc. and Roynat Capital Inc. are the only Debentureholders and "Debentureholder" means any one of the Debentureholders;
- 1.1.8 "Debentureholders' Instrument": means a resolution passed by the Debentureholders in accordance with the terms of the Trust Deed;
- 1.1.9 "Event of Default": shall have the meaning ascribed thereto in Section 7.1;
- 1.1.10 "Grantor": means 3149030 Canada Limited, the party of the second part, and its successors and assigns and shall include any corporation resulting from the amalgamation of 3149030 Canada Limited with any other Person or Persons;
- 1.1.11 "Hypothec": shall have the meaning ascribed thereto in Section 3 hereof;
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- 1.1.12 "Obligations Secured": shall mean the due payment of the principal of the Debentures and all interest thereon, together with the payment of all sums due or to become due by the Grantor under or pursuant to this Deed and the due performance and observance by the Grantor of all obligations provided for under or pursuant to this Deed;
- 1.1.13 "Permitted Encumbrances": shall mean the rights and encumbrances described in Schedule B hereto;
- 1.1.14 "Person": means any legal or natural person, corporation, company, firm, joint venture, partnership, whether general, limited or undeclared, trust, association, unincorporated organization, governmental authority or other entity of whatever nature;
- 1.1.15 "this Deed", "these presents", "herein", "hereby", "hereof", "hereunder" and similar expressions mean or refer to this Deed, and the accompanying Schedules and to any deed, notice or document supplemental or complementary hereto, including any and every deed of hypothec, application for registration, notice under article 2949 of the *Civil Code of Quebec*, or other instrument or charge which is supplementary or ancillary hereto or in implementation hereof and the expression "Section" followed by a number means and refers to the specified section of this Deed.
- 1.1.16 "Trust Deed": means the Trust Deed dated as of August 17, 1999 entered into between the Grantor and the Trustee pursuant to which the Grantor is authorized to issue and pledge the Debentures;
- 1.1.17 "Trustee": means Montreal Trust Company, in its capacity as trustee pursuant to the Trust Deed, and its successors and assigns in such function appointed pursuant to the Trust Deed.
- 1.2 Words importing the singular only shall include the plural and vice-versa; words importing the masculine gender shall include the feminine gender; and words importing individuals shall include firms, partnerships and corporations, and vice versa.
- 1.3 The division of this Deed into Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation hereof.
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## **2. APPOINTMENT OF THE FONDÉ DE POUVOIR**

### **2.1 Appointment of the Fondé de Pouvoir**

The Grantor hereby appoints by these presents the Attorney to act as *fondé de pouvoir* of the Debentureholders, as contemplated by article 2692 of the *Civil Code of Québec*, to take, receive, and hold on behalf of, and for the benefit of the Debentureholders, all rights and hypothecs created hereby as continuing security for the payment of the Debentures, and to exercise any and all powers and rights and to perform any and all duties conferred upon it hereunder or by a Debentureholders' Instrument.

### **2.2 Acceptance of Appointment**

The Attorney hereby accepts its appointment as *fondé de pouvoir* and agrees to take, receive and hold the rights and hypothecs and security interests created hereby and to exercise any and all powers and rights and to perform any and all duties conferred upon it hereunder or by a Debentureholders' Instrument, all as provided in Section 2.1.

## **3. HYPOTHEC: DESCRIPTION OF CHARGED PROPERTY**

### **3.1 Charging Provisions:**

The Grantor hereby hypothecates in favour of the Attorney the universality of all of its present and future property, moveable and immovable, real and personal, corporeal and incorporeal, tangible and intangible, now owned or hereafter acquired, of any nature whatsoever and wheresoever situated and the undertaking of the Grantor (the hypothec herein created is referred to as the "Hypothec"), the whole including, without limitation, the following universalities of present and future property:

- 3.1.1 all present and future immovable property and rights now owned or hereafter acquired by the Grantor including, without limitation, the freehold real and immovable property and rights described in Schedule A hereto, together with any and all servitudes, rights of way, benefits and rights connected therewith or pertaining thereto, together with all constructions and works of a permanent nature now or hereafter located thereon and forming an integral part thereof and with all buildings, plants and improvements now or hereafter thereon erected, as well as all heating, refrigerating and lighting fixtures and other equipment, elevators, fixtures, accessories and furnitures now or hereafter attached thereto or placed therein or

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thereon (hereinafter called the "Immovable Hypothecated Property");

- 3.1.2 all present and future leases, agreements to lease, offers to lease, options to lease and other rights to occupy premises (hereinafter collectively called "Leases" and individually called a "Lease") of the Immovable Hypothecated Property, or any part thereof, and all present and future rents, revenues and other claims arising out of any Leases or other rights or contracts in respect of the Immovable Hypothecated Property, including, without limitation, any indemnity which may be payable pursuant to the *Bankruptcy and Insolvency Act* in respect of any Lease, and the continuing right to demand, sue for, recover, receive and give receipts for such rents, revenues, other claims and indemnity;
  - 3.1.3 all movable property which is now or at any time hereafter permanently physically attached or joined to the Immovable Hypothecated Property or which is now or at any time hereafter located in or on the Immovable Hypothecated Property and which ensures the utility of the Immovable Hypothecated Property or which is used by the Grantor for the operation of its enterprise or the pursuit of its activities;
  - 3.1.4 the indemnities or proceeds now or hereafter payable under any present or future insurance contract on the Immovable Hypothecated Property, under any present or future insurance contract on any of the property mentioned in paragraphs 3.1.2 and 3.1.3 above and under any present or future insurance contract on any other of the Charged Property;
  - 3.1.5 all present and future machinery, equipment, tools, implements, furniture, rolling stock, vehicles, spare parts and additions of the Grantor;
  - 3.1.6 all present and future property in stock and inventory of the Grantor whether in its possession, in transit or held on its behalf, including, without limitation, all movable property in reserve, raw materials, goods in process, finished products, packaging materials, property held by third parties pursuant to a rental, leasing, franchise, licence or other agreement entered into with or on behalf of the Grantor, property evidenced by bill of lading, animals,
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wares, as well as any other property held for sale, lease or processing in the manufacture or transformation of property intended for sale, for lease, or for use in providing a service by the Grantor in the ordinary course of operation of its enterprise;

- 3.1.7 all present and future claims of the Grantor of any nature or kind, whatever their cause, whether or not evidenced by any title, and whether or not such title is negotiable, bill of exchange or draft, and whether or not they constitute book debts or trade accounts receivable, including, without limitation, all customer accounts, accounts receivable, rights of action, demands, judgments, contract rights, amounts on deposit, proceeds of sale, assignment or lease of any property, rights or titles, any indemnities payable under any contract of insurance whether or not such insurance is on property forming part of the Charged Property and proceeds of expropriation, the whole which are now due or which may become due to the Grantor, together with all judgments and all other rights, benefits, guarantees and securities for the said claims which now or may hereafter exist in favour of the Grantor, and together with all books and accounts, titles, letters, invoices, papers and documents in any way evidencing or relating to all or any of the claims;
- 3.1.8 all present and future shares in the capital stock of a legal person, all present and future bonds, debentures, bills of exchange, promissory notes, negotiable instruments and other evidences of indebtedness, and all present and future options or rights in respect of the foregoing; and any other instrument or title generally called or included as a security (hereinafter collectively referred to as "Securities"), including, without limitation, all Securities issued or received in substitution, renewal, addition or replacement of Securities, or issued or received on the purchase, redemption, conversion, cancellation or other transformation of Securities or issued or received by way of dividend or otherwise to holders of Securities, and all present and future instruments, bills of lading, warehouse receipts, documents or other evidences of title of the Grantor, and all interests of the Grantor in any partnership;
- 3.1.9 all present and future goodwill, trademarks, patents and patent rights, copyrights, inventions, industrial designs, trade secrets, know-how, other intangible property, monies,

agreements and rights under agreements of the Grantor, and all its present and future undertaking;

- 3.1.10 the proceeds of any sale, assignment, lease or other disposition of any of the present and future property of the Grantor, any claim resulting from such a sale, assignment, lease or other disposition, as well as any property acquired in replacement thereof (nothing herein shall be interpreted as permitting the Grantor to dispose of the Charged Property in contravention of the provisions of this Deed);
- 3.1.11 any present and future rights attached to any of the present and future property of the Grantor, as well as the fruits and revenues thereof;
- 3.1.12 any indemnity or proceeds of expropriation now or hereafter payable in respect of the Charged Property; and
- 3.1.13 all present and future titles, documents, records, receipts, invoices, accounts and data of the Grantor evidencing or relating to any of the present and future property of the Grantor, including, without limitation, computer disks, tapes and related electronic data processing media, rights of the Grantor to retrieve the same from third parties, delivery receipts, catalogs, insurance certificates and the like.

### **3.2 Replacement Property:**

All Charged Property which is acquired, transformed or manufactured after the date of this Deed shall be charged by the Hypothec, whether or not such property has been acquired in replacement of other Charged Property which may have been alienated by the Grantor in the ordinary course of business, and whether or not such property results from a transformation, mixture or combination of any Charged Property, and in the case of Securities, whether or not they have been issued pursuant to the purchase, redemption, conversion or cancellation or any other transformation of the charged securities and without the Attorney being required to register or re-register any notice whatsoever, the object of the Hypothec being a universality of present and future property.

### **3.3 Charge Valid Irrespective of Advance of Moneys:**

The Hypothec hereby created shall be and be deemed to be effective and shall have effect, whether or not any moneys thereby secured or any part thereof shall be advanced before or after or at the same time as the issue of

the Debentures intended to be hereby secured or before or after or upon the date of the execution of this Deed.

### 3.4 Negative Pledge

The Grantor covenants that it shall not, without the consent in writing of the Debentureholders, create, assume, incur or permit the existence of any mortgage, hypothec, prior claim, charge, lien or other encumbrance upon the Charged Property or any part thereof except Permitted Encumbrances. Until the occurrence of an Event of Default, the Grantor may use the Charged Property in any lawful manner not inconsistent with this Deed, the Credit Agreement and any other agreement between the Grantor and any Debentureholder.

### 4. AMOUNT OF THE HYPOTHEC

The amount for which the Hypothec is granted is a principal amount of five hundred million Canadian dollars (Cdn\$500,000,000) plus interest thereon from the date hereof at the rate of twenty-five percent (25%) per annum, calculated semi-annually, not in advance, to secure the due payment of the principal of the Debentures and all interest thereon, and an additional principal amount of one hundred million Canadian dollars (Cdn\$100,000,000) plus interest thereon from the date hereof at the rate of twenty-five percent (25%) per annum calculated semi-annually, not in advance, to secure the due payment and performance of all other obligations which the Hypothec is granted to secure.

### 5. OBLIGATIONS SECURED

The Hypothec is granted to secure the due payment and performance by the Grantor of the Obligations Secured.

Any future obligation hereby secured shall be deemed to be one in respect of which the Grantor has once again obligated itself hereunder according to the provisions of article 2797 of the *Civil Code of Québec*.

### 6. COVENANTS

The Grantor hereby covenants with the Attorney for the benefit of the Debentureholders:

- 6.1 **Expense** – to pay to the Attorney upon demand the amount of all reasonable expenses incurred in recovering any Obligations Secured or in enforcing the security hereby constituted, including but not limited to, the expenses incurred in connection with the

repossession, holding, repairing, processing, preparing for disposition, and disposing of any of the Charged Property (including reasonable legal and other expenses), with interest thereon from the date of the incurring of such expenses at the rate of 3% per annum above the prime lending rate of the Administrative Agent from time to time in effect; and

- 6.2 **Taxes and Other Charges** - to pay all rents, taxes, levies, assessments and government fees or dues levied, assessed or imposed in respect of the Charged Property or any part thereof (collectively "Taxes") as and when the same shall become due and payable and to pay all charges, liens and other encumbrances on the Charged Property (collectively "Charges") as and when the same shall become due and payable. If the Grantor does not pay any Taxes or Charges as and when the same shall become due and payable, the Attorney may, at its option, elect to pay any such amounts and charge to the Grantor all amounts so paid as additional amounts secured under this Deed, together with interest thereon from the date of payment by the Attorney of any such amounts at the rate of 3% per annum above the prime lending rate of the Administrative Agent from time to time in effect.

7. **EVENTS OF DEFAULT**

- 7.1 The Grantor shall be in default hereunder and the security hereby constituted shall become enforceable, upon the occurrence, without notice or other formality, of any one of the following events (each an "Event of Default"):

- 7.1.1 if the Grantor defaults in the payment of the Obligations Secured; or
- 7.1.2 if the Grantor defaults in performance of any covenant or condition of this Deed and the default continues beyond any applicable grace period.

8. **ATTORNEY'S RIGHTS IN CASE OF DEFAULT**

- 8.1 In the event that the security hereby constituted shall have become enforceable, the Attorney shall, upon receipt of a Debentureholders' Instrument, by notice in writing to the Grantor, demand payment of the moneys secured hereby or owing by the Grantor hereunder and the same shall forthwith be and become immediately due and payable by the Grantor to the Attorney and the Grantor shall forthwith pay to the Attorney for the benefit of

the Debentureholders all such principal, interest and other moneys. Any such payment then made by the Grantor shall be deemed to have been made in discharge of its obligations hereunder or under the Debentures, and any money so received by the Attorney shall be applied in the same manner as if they were proceeds of realization of the Charged Property.

- 8.2 In the event that the security hereby constituted shall have become enforceable and the Grantor shall have failed to pay the Attorney, on demand, the principal of and interest on all amounts secured hereby or owing by the Grantor hereunder, the Attorney may, upon receipt of a Debentureholders' Instrument, proceed to realize the security created by this Deed and to exercise any right, recourse or remedy of the Attorney and of the Debentureholders under this Deed or provided for by law, including without limitation any of the hypothecary rights and recourses provided for under the *Civil Code of Québec*.
- 8.3 No Debentureholder shall have any right to institute any action or proceeding or to exercise any other remedy authorized by this Deed, by law or by equity for the purpose of enforcing payment of principal or interest or of realizing any security, or by reason of jeopardy of security, or for the execution of any power hereunder other than in accordance with the terms hereof, unless a Debentureholders' Instrument shall have been tendered to the Attorney and the Attorney shall have failed to act within a reasonable time thereafter. In such case, but not otherwise, any Debentureholder acting on behalf of itself and all other Debentureholders (if more than one) shall be entitled to take proceedings such as the Attorney might have taken pursuant to the Debentureholders' Instrument, for the equal benefit of all Debentureholders (if more than one), but subject to the terms of the Trust Deed.
- 8.4 After the occurrence of an Event of Default, whichever hypothecary rights or recourses the Attorney may decide to exercise or whichever other rights or recourses the Attorney may wish to exercise in law or in equity, in addition to any rights provided by law, the following provisions shall apply:
- 8.4.1 in order to protect or to realize the value of the Charged Property, the Attorney may, in its discretion, at the Grantor's expense:
- (a) pursue the transformation of the Charged Property or any work in process or unfinished goods

comprised in the Charged Property and complete the manufacture or processing thereof or proceed with any operations to which such property are submitted by the Grantor in the ordinary course of its business and acquire property for such purposes;

- (b) alienate or dispose of any Charged Property which may be obsolete, may perish or is likely to depreciate rapidly;
  - (c) use for its benefit all information obtained while exercising its rights;
  - (d) perform any of the Grantor's obligations;
  - (e) exercise any right attached to the Charged Property;
  - (f) take physical possession of any and all of the Charged Property, and anything found therein, with the right for that purpose to enter without legal process upon any Charged Property or any premises where the Charged Property may be found, and maintain such possession on the Grantor's premises or remove any or all of the Charged Property to such other places as the Attorney shall deem appropriate;
  - (g) use any equipment, machinery, process, information, records, computer programs and intellectual property of the Grantor;
  - (h) maintain, repair, restore or renovate, and begin or terminate, any construction work related to the Charged Property, the whole at the Grantor's cost;
- 8.4.2 the Attorney shall exercise its rights in good faith in order that, following the exercise thereof, the obligations secured by the Hypothec may be reduced, in a reasonable manner, taking into account all circumstances;
- 8.4.3 the Attorney may, directly or indirectly, purchase or acquire any of the Charged Property;
- 8.4.4 the Attorney, when exercising its rights, may waive any right of the Grantor, with or without consideration therefor;

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- 8.4.5 the Attorney shall not be bound to take inventory, to take out insurance or to furnish any security;
- 8.4.6 the Attorney shall not be bound to continue to carry on the Grantor's enterprise or to make the Charged Property productive, or to maintain such property in operating condition; and
- 8.4.7 the Grantor shall, upon request of the Attorney, move the Charged Property to and render it available to the Attorney at premises designated by the Attorney and which, in its opinion, shall be more suitable in the circumstances.
- 8.5 If the Attorney elects to exercise its hypothecary recourse of taking in payment the Charged Property and the Grantor requires, in accordance with the applicable provisions of the *Civil Code of Québec*, instead that the Attorney sell itself or under judicial authority the Charged Property on which such right is exercised, the Grantor hereby acknowledges that the Attorney shall not be bound to abandon its recourse of taking in payment unless, prior to the expiry of the time period allotted for surrender, the Attorney (i) has been granted a security which it considers satisfactory, guaranteeing that said Charged Property will be sold at a sufficiently high price to enable all moneys secured hereunder to be paid in full, (ii) has been reimbursed of all costs and expenses incurred, including all fees of consultants and legal counsel in connection with this Hypothec and the indebtedness secured hereby, and (iii) has been advanced the necessary sums for the sale of said Charged Property; the Grantor further acknowledges that the Attorney shall have the right to choose the type of sale it may carry out.
- 8.6 Upon notice by the Attorney declaring due and payable all moneys secured hereby or owing by the Grantor hereunder, the Grantor shall surrender the Charged Property to the Attorney.
- 8.7 Where the Attorney itself sells the Charged Property, it shall not be required to obtain any prior assessment by a third party.
- 8.8 The Attorney may choose to sell the Charged Property with legal warranty given by the Grantor or with complete or partial exclusion of such warranty; the sale may also be made for cash or with a term or under such conditions determined by the Attorney; it can be cancelled in case of non-payment of the purchase price and such Charged Property may then be resold.
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- 8.9 In order to exercise any of its rights, the Attorney may use any premises of the Grantor.
- 8.10 Where several creditors are involved, the parties hereto waive the application of articles 1332 to 1338 inclusively of the *Civil Code of Québec*.
- 8.11 The moneys and other proceeds arising from any sale or realization of the whole or any part of the Charged Property, whether under any sale by the Attorney or by judicial process or otherwise, together with any other moneys or other proceeds then in the hands of the Attorney and available for such purpose, shall be applied to the payment of the Debentures and other moneys owing to the Attorney and the Debentureholders in accordance with the instructions of the Administrative Agent.
- 8.12 In the case of any judicial or other proceedings to enforce the security hereby created, the Grantor covenants and agrees with the Attorney that judgment may be rendered against it in favour of the Debentureholders or in favour of the Attorney, as *fondé de pouvoir* for the Debentureholders, for any amount which may remain due in respect of the Debentures after the application payment thereof of the proceeds of the sale of the Charged Property or any part thereof.
- 8.13 No remedy herein conferred upon or reserved to the Attorney is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and in addition to every other remedy hereunder or pursuant to law.
- 8.14 All proceeds and moneys arising from the realization and enforcement of the security interest, charges and hypothecs created under this Deed and the exercise of other rights shall be applied and distributed in accordance with, and in the manner provided in, the Trust Deed.

9. GENERAL PROVISIONS

- 9.1 **Additional Security** - The Hypothec is hereby created in addition to and not in substitution of or in replacement for any other security held or which may hereafter be held by the Attorney and does not affect the Attorney's rights of compensation and set-off.
- 9.2 **Investments** - The Attorney may, at its entire discretion, invest any monies or instruments received or held by it in pursuance of this Deed or deposit them in a non-interest bearing account without



having to comply with any legal provisions concerning the investment of property of others.

- 9.3 Compensation - Provided the obligations secured hereby are due and exigible or the Attorney is entitled to declare them owing and exigible, the Attorney may compensate and set-off these obligations with any and all amounts due to it, in its capacity as *fondé de pouvoir* for the Debentureholders, by the Grantor, on any account whatsoever, whether such amount be exigible or not, and the Attorney shall then be deemed to have exercised such right to compensate and set-off as at the time the decision was taken by it even though the appropriate entries have not yet been made in its records.
- 9.4 Imputation of Payments - The Attorney may, at its entire discretion, impute and apply any amounts collected in the exercise of its rights or received by it prior to or after any Event of Default in any manner as it may choose, without having to comply with legal provisions concerning the imputation of payments. The Attorney may also, at its entire discretion, hold such amounts as Charged Property or choose not to impute them and keep them in a collateral account until such time as any contingent obligation to pay prior claims has ceased to exist.
- 9.5 Delays- The Attorney may grant delays, take or abandon any security, make compromises, grant quittances and releases and generally deal, at its entire discretion, with any matters related to the Charged Property, the whole without limiting the rights of the Attorney and without limiting the liability of the Grantor.
- 9.6 Continuing Security - This Deed shall not be considered as satisfied or discharged by any intermediate payment (as distinct from a final payment) of the whole or part of the Obligations Secured but shall constitute and be a continuing security for a current or running account and shall be in addition to and not in substitution for any other security now or hereafter held by or for the benefit of the Attorney or the Debentureholders.
- 9.7 Discharge - If the Grantor pays to the Attorney the Obligations Secured or if the Obligations Secured are otherwise indefeasibly paid in full in cash and the Grantor otherwise observes and performs the terms and conditions hereof, then the Attorney shall, at the request and at the expense of the Grantor, promptly cancel and discharge the mortgages, hypothecs and charges of this Deed and execute and deliver to the Grantor such deeds and other instruments as shall be requisite therefor.

- 9.8 **Notice of Default** - The mere lapse of time provided for the Grantor to perform its obligations or the arrival of the term shall automatically create a default, without any obligation for the Attorney to serve any notice or prior notice to the Grantor.
- 9.9 **Cumulative Rights** - The exercise by the Attorney of any of its rights shall not preclude it from exercising any other right under this Deed or at law; the rights of the Attorney shall be cumulative and not alternative. The non-exercise by the Attorney of one of its rights shall not constitute a waiver of any subsequent exercise of such right. The Attorney may exercise its rights under this Deed without any obligation to exercise any right against any other Person liable for payment of the obligations secured hereunder and without having to realize any other security which secures such obligations.
- 9.10 **Irrevocable Mandate** - The Grantor hereby appoints the Attorney its irrevocable attorney and mandatary, with full powers of substitution, for the purpose of performing any and all acts and executing any and all deeds, transfers, assignments, proxies or other documents which the Attorney may deem necessary or useful for the exercise of the rights of the Attorney or which the Grantor neglects or refuses to execute or to carry out.
- 9.11 **Grantor to Execute Confirmatory Deeds** - In case of any sale under the provisions of this Deed or at law, whether by the Attorney or under judicial proceedings, the Grantor agrees that it will execute and deliver to the purchaser on demand any instrument reasonably necessary to confirm to the purchaser the title of the property so sold and, in case of any such sale, the Attorney is hereby irrevocably authorized by the Grantor to execute on its behalf and in its name any such confirmatory instrument.
- 9.12 **Performance** - In the event the Grantor fails to observe or perform any of its obligations or undertakings under this Deed, the Attorney may, but shall not be obligated to, perform the same and any fee, costs or expenses incurred in so doing shall be forthwith due and payable by the Grantor to the Attorney, with interest at the rate of 3% per annum above the prime lending rate of the Administrative Agent in effect from time to time, and payment of the same shall be secured by the Hypothec created hereunder.
- 9.13 **Delegation** - The Attorney may, at its entire discretion, appoint any Person or Persons for the purpose of exercising any of its rights or actions or for the performance of any of its obligations

under or resulting from this Deed at law or in equity; in such case, the Attorney may provide such Person with any information relating to the Grantor or the Charged Property.

- 9.14 **Title Deeds** - All titles of ownership, land surveys, certificates of location and other documents relating to any immovables comprised in the Charged Property shall be remitted to the Attorney who is entitled to keep them until a final release and discharge of this Hypothec is obtained in accordance with Section 9.7.
- 9.15 **Liability** - The Attorney shall not be liable for material injuries or damages resulting from its fault, unless such fault is gross or wilful.
- 9.16 **Successors** - The rights hereby conferred upon the Attorney shall benefit all its successors, including any entity resulting from the merger of the Attorney with any other Person or Persons, without the execution or filing of any instruments or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.
- 9.17 **Not a Floating Hypothec or Trust** - The Hypothec is not and shall not be construed as a floating hypothec within the meaning of articles 2715 et. seq. of the *Civil Code of Québec* nor shall this Deed be deemed as creating a trust within the meaning of article 1260 of the *Civil Code of Québec*.
- 9.18 **Severance** - In the event that any provision of this Deed is declared null and void or is deemed not to have been written, the other provisions of this Deed shall be severable from such provision and shall continue to have full force and effect.
- 9.19 **Formal Date** - This Deed shall bear formal date of the 17<sup>th</sup> day of August, nineteen hundred and ninety-nine (1999) notwithstanding the actual date of execution thereof.

10. **CONCERNING THE ATTORNEY**

- 10.1 By way of supplement to the provisions of law relating to *fondés de pouvoir*, it is expressly agreed that:

10.1.1 the Attorney shall only be accountable for reasonable diligence in the management of its duties and rights hereunder, and shall not be liable for any action taken or

omitted by it in connection herewith unless caused by its gross negligence or wilful misconduct;

10.1.2 Except as otherwise provided herein, the Attorney shall, with respect to all rights, powers and authorities vested in it, have absolute and uncontrolled discretion as to the exercise thereof, whether in relation to the manner or as to the mode and time for the exercise thereof, and in the absence of fraud, it shall not be in any way responsible for any loss, costs, damages or inconvenience that may result from the exercise or non-exercise thereof;

10.1.3 the Attorney shall have the right in its discretion to proceed in its name as Attorney hereunder to the enforcement of the security hereby constituted by any remedy provided herein or by law, whether by legal proceedings or otherwise, but it shall not be bound to do or to take any act or action in virtue of the powers conferred on it by these presents unless and until it shall have been required to do so by way of a Debentureholders' Instrument; the Attorney shall not be responsible or liable, otherwise than as a *fondé de pouvoir*, for any debts contracted by it, for damages to Persons or property or for salaries or non-fulfilment of contracts during any period for which the Attorney managed the Charged Property upon entry, as herein provided, nor shall the Attorney be liable to account for anything except actual revenues or be liable for any loss on realization or for any default or omission for which a mortgagee in possession might be liable; the obligation of the Attorney to commence or continue any act, action or proceeding under this Deed shall, at the option of the Attorney, be conditional upon the Debentureholders furnishing, when required, sufficient funds to commence or continue such action or proceeding and indemnity reasonably satisfactory to the Attorney;

10.1.4 in the event of the Grantor making an authorized assignment, or a custodian, trustee or liquidator being appointed in respect of the Grantor or its assets under the *Bankruptcy and Insolvency Act* (Canada) or any analogous act or proceeding, or any legislation which replaces or supplements the foregoing, the Attorney may, if directed to do so by a Debentureholders' Instrument, file and prove a claim, value security and vote and act at all meetings of creditors and otherwise in bankruptcy, insolvency or

similar proceedings, as agent on behalf of the Debentureholders;

10.1.5 the Attorney shall be obliged to act and shall act and be fully protected in acting upon a Debentureholders' Instrument in connection with any proceedings, act, power, right, matter or thing relating to or conferred by or to be done under this Deed;

10.1.6 no Person dealing with the Attorney or its agent shall be concerned to enquire whether the security constituted hereby has become enforceable, or whether the powers which the Attorney is purporting to exercise have become exercisable, or whether any moneys remain due upon the security of this Deed or the Debentures, or as to the necessity or expediency of the stipulations and conditions subject to which any sale shall be made, or otherwise as to the propriety or regularity of any sale or of any other dealing by the Attorney with the Charged Property or any part thereof, or to see to the application of any moneys paid to the Attorney;

10.1.7 all rights of action under this Deed may be enforced by the Attorney without the possession of the Debentures hereby secured or the production thereof;

10.1.8 the Attorney may at any time resign or be removed from office by the Debentureholders without the consent or concurrence of the Grantor. Any new or successor Attorney without further act shall be vested and have all rights, powers and authorities granted to the Attorney hereunder and be subject in all respects to the terms, conditions and provisions hereof to the same extent as if originally acting as Attorney hereunder, provided that any new or successor Attorney hereunder shall always be a trust company duly licensed under the laws of the Province of Québec and having one or more offices in the Province of Québec; the Grantor hereby ratifies the appointment of any such new or successor Attorney;

10.1.9 the Grantor hereby covenants and agrees to pay to the Attorney its fee for its services as *fondé de pouvoir* hereunder in accordance with the tariffs and terms applied by the Attorney, the Grantor acknowledging that it has been informed of such tariffs and terms presently in effect, and shall, upon demand, reimburse all amounts which may have

been paid by the Attorney for any expenses whatsoever reasonably incurred by the Attorney in execution of the rights hereby created or in the course of such execution.

**11. DEBENTUREHOLDERS' INSTRUMENTS;  
SUPPLEMENTAL DEEDS**

- 11.1 Amendments, Waivers; etc. - The Debentureholders may, by Debentureholders' Instrument, direct or authorize the Attorney to (a) exercise, or refrain from exercising, any power, right, remedy or authority given by this Deed, (b) waive any default on the part of the Grantor in complying with any provision of this Deed either unconditionally or upon any conditions specified in such Debentureholders' Instrument, (c) assent to any compromise or arrangement with any creditor or creditors of the Grantor, (d) assent to any modification of or change in or addition to the provisions of this Deed, (e) grant any approval or consent herein provided to be given by the Debentureholders or make any determination herein provided to be made by the Debentureholders, (f) sanction any scheme of reorganization, consolidation, merger or amalgamation of the Grantor on such terms as may be provided in such Debentureholders' Instrument, (g) amend, alter or repeal any previous Debentureholders' Instrument, and (h) sign such other deeds, instruments or take such other action or refrain from taking any action as may be specified in such Debentureholders' Instrument. Every Debentureholders' Instrument shall be binding on all the Debentureholders (if more than one), whether signatories thereto or not, and each and every Debentureholder and the Attorney shall be bound to give effect accordingly to every such Debentureholders' Instrument.
- 11.2 Supplemental Deed - The Attorney may also, with the consent or concurrence of the Debentureholders by Debentureholders' Instrument, by supplemental deed or indenture or otherwise, concur with the Grantor in making any changes or corrections in this Deed which it shall have been advised by counsel are required for the purpose of curing or correcting any ambiguity or defective or inconsistent provisions or clerical omission or mistake or manifest error contained herein or in any deed or indenture supplemental or ancillary hereto, provided that in the opinion of the Attorney the rights of the Attorney and of the Debentureholders are in no way prejudiced thereby.

## **12. NOTICES**

### **12.1 Notice to the Grantor**

Any notice or demand to the Grantor required or permitted to be given or made hereunder shall be in writing addressed to the party for whom it is intended and shall be served personally on a director, officer or responsible employee of the addressee or sent by telecopier to the addresses set forth above or, as applicable, beside their respective signatures to the Credit Agreement or to such other mailing or telecopier address as each party may from time to time notify another as aforesaid. Unless the law deems a particular notice to be received earlier, a notice shall not be deemed received until actual receipt thereof by the other party.

### **12.2 Notice to the Attorney**

Any notice to the Attorney under the provisions hereof shall be valid and effective if delivered to an officer of the Attorney at the Attorney's office at Corporate Trust Services, 1800 McGill College Avenue, Montréal, Province of Québec, H3A 3K9, or if sent by telecopier or if mailed by registered letter postage prepaid addressed to the said address to the attention of: Assistant Vice-President (telecopier number (514) 982-7677), and any notice so delivered or sent by telecopier shall be deemed to be validly received when delivered or sent and any notice so given by registered mail shall be deemed to have been effectively received five (5) days after mailing same. The Attorney may from time to time notify the Grantor and the Debentureholders of a change in address or telecopier number which thereafter, until changed by like notice, shall be the address or telecopier number of the Attorney for all purposes of the Deed.

### **12.3 Notice to Debentureholders**

Any notice to the Debentureholders under the provisions hereof shall be valid and effective if delivered to each Debentureholder at its last address notified by the Debentureholder to the Grantor or ~~its~~ the Attorney, as applicable, and, unless the law or an agreement between the person giving the notice and the applicable Debentureholder deems a particular notice to be received earlier, notice shall not be deemed to be received until actual receipt thereof by the Debentureholder.

## **13. SCHEDULES**

The following are the schedules referred to in this Deed and such schedules form an integral part of this Deed:

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13.1 Schedule A

**FREEHOLD, REAL AND IMMOVABLE PROPERTY**

A) An immovable property fronting on Reading Street, in the City of Montréal, known and designated as Lot ONE MILLION THREE HUNDRED AND EIGHTY-TWO THOUSAND THREE HUNDRED AND FIFTY-FIVE (1382355) of the Cadastre du Québec, Registration Division of Montréal.

With the building bearing civic numbers 2655, 2675 and 2677 Reading Street, Montréal, Québec, H3K 1P6.

And with and subject to all servitudes, active or passive, which may affect or benefit the property, and namely those in favour of COMMUNAUTÉ URBAINE DE MONTRÉAL (CUM) in virtue of two deeds registered at said Registry Office under the numbers 2633432 and 4501773, and a servitude of right of way and view in virtue of that certain deed registered under the number 2098288.

B) Another property fronting on Reading Street, in the City of Montréal, known and designated as Lot ONE MILLION THREE HUNDRED AND EIGHTY-TWO THOUSAND THREE HUNDRED AND THIRTEEN (1382313) of the Cadastre du Québec, Registration Division of Montréal.

With the building bearing civic number 2760 Reading Street, Montréal, Québec, H3K 1P5.

13.2 Schedule B

**PERMITTED ENCUMBRANCES**

**(A) Movable Property:**

There are no Permitted Encumbrances against movable property.

**(B) Immovable Property:**

***SERVITUDES***

With respect to the property described in paragraph (A) of Schedule A hereto

- 1) The central part of the said property may still be affected by a servitude of right of passage running from Reading Street to



the rear thereof on a width of approximately 60 feet, as such servitude is described in the report on title dated August 18, 1999 by Desjardins Lapointe Mousseau Bélanger to the Attorney and McMaster Gervais concerning the Immovable Hypothecated Property.

- 2) A servitude of right of way and of view and a restriction to build affects part of former lot 3399-207 situated on the South-West side of this property. This servitude was granted in favour of former lots 3399-202, 3399-203, 3399-204 and 3399-205 which now form part of the said property. The deed was executed before Julien J. Mackay, notary, on October 18, 1968, registered under the number 2098288; this servitude is now extinguished by confusion;
- 3) Underground rights of way and weight limitation servitudes were expropriated by the Montreal Urban Community as appears from the deeds registered under the numbers 2633432 and 4501773. These servitudes affect the underground portion of the East part of the building bearing civic number 2655 Reading Street and the land to the East thereof: this underground piece of land is now described as lot 1728973 of the Cadastre du Québec. These servitudes were acquired in order to run an underground subway line between the elevation 3,05 meters and -16,76 meters compared to sea level. The servitude also limits the weight of any building to a maximum uniformed load of 10 000 pounds per square feet.

#### LEASES

- 4) The property described in paragraph (B) of Schedule A hereto is affected by a lease granted by Thibault & Brunelle Ltée to Mediacom Inc. in virtue of a deed executed before Sylvie Beaupré, notary, on May 6, 1989 and registered under number 3713282. This lease is for 10 years starting at the beginning of the construction and affects the whole roof of the building. It grants to the lessee an exclusive right to erect on the roof any type of construction or anchors for the purposes of installing signs.

#### 14. GOVERNING LAW

This Deed shall be governed by and construed in accordance with the laws of the Province of Québec and the laws of Canada applicable therein.

15. ENGLISH LANGUAGE

The parties hereby confirm their express wish that the present Deed and all documents and agreements directly and indirectly related thereto be drawn up in English. Notwithstanding such express wish, the parties agree that any of such documents and agreements or any part thereof or of this Deed may be drawn up in French.

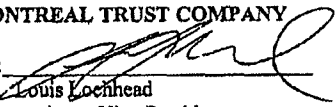
Les parties reconnaissent leur volonté expresse que le présent acte ainsi que tous les documents et conventions qui s'y rattachent directement ou indirectement soient rédigés en langue anglaise. Nonobstant telle volonté expresse, les parties conviennent que n'importe quel desdits documents et conventions ou toute partie de ceux-ci ou de cet acte puissent être rédigés en français.


WHEREOF ACTE:

DONE AND PASSED in the City of Montréal, Province of Québec, on the date hereinabove set forth, under the number Ten thousand eight hundred and eighty-one (10881) \_\_\_\_\_  
of the original of the minutes of the undersigned notary.

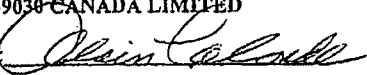
AND after the parties had declared to have taken cognizance of these presents and to have exempted the said Notary from reading them or causing them to be read, the said duly authorized officers of the Grantor and the Attorney respectively have signed these presents, all in the presence of the said Notary who has also signed.

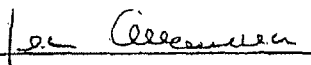
MONTREAL TRUST COMPANY

Per:   
Louis Lochhead  
Assistant Vice-President

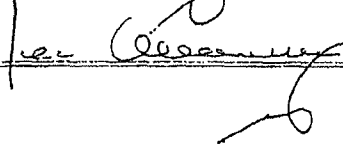
Per:   
Martine Guay  
Trust Officer

3149030 CANADA LIMITED

Per: 

  
MTRE JEAN MOUSSEAU, NOTARY

A true copy of the original hereof remaining of record in my office.



N° 10881

August 19, 1999

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DEED OF HYPOTHEC

by

3149030 CANADA LIMITED

in favour of

MONTREAL TRUST COMPANY

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2nd Copy

JEAN MOUSSEAU, Notary  
99L07500038



Desjardins Lapointe Mousseau Bélanger

Conseillers juridiques et notaires  
Legal advisors and notaries

600, rue de la Cauchetière ouest, bureau 2185  
Montréal (Québec) H3B 4L8  
Téléphone : (514) 875-5404 Télécopieur : (514) 875-5647



**THIS FIRST SUPPLEMENTAL TRUST DEED** made as of the 22<sup>nd</sup> day of March, 2002

**AMONG:** **ARCTIC GLACIER INC.,**  
a company duly amalgamated under the laws of Alberta  
(hereinafter referred to as the "Company")

**PARTY OF THE FIRST PART**

**AND:** **MONTREAL TRUST COMPANY,**  
a trust company existing under the laws of Canada  
(hereinafter referred to as "Montreal Trust")

**PARTY OF THE SECOND PART**

**AND:** **COMPUTERSHARE TRUST COMPANY  
OF CANADA,**  
a trust company existing under the laws of Canada  
(hereinafter referred to as "Computershare")

**PARTY OF THE THIRD PART**

**WHEREAS** by Trust Deed made as of August 17, 1999, between 3149030 Canada Limited (the "Subsidiary") and Montreal Trust, as Trustee, (which Trust Deed and any and all deeds heretofore supplemental thereto are herein collectively referred to as the "Trust Deed"), provision was made for the issue by the Subsidiary of Debentures (as defined therein), subject to the terms and conditions contained in the Trust Deed;

**AND WHEREAS** the Company represents that pursuant to a resolution regarding the dissolution of the Subsidiary effective June 30, 2000 and a Distribution Agreement made as of June 30, 2000, the Subsidiary has assigned, conveyed and transferred to The Arctic Group Inc. (the "Predecessor") all of the properties, assets, rights, interests and undertaking of any kind and nature whatsoever of the Subsidiary and the Predecessor has unconditionally assumed all of the liabilities, obligations and duties of the Subsidiary and agreed to perform, satisfy and discharge such liabilities, obligations and duties in accordance with the terms thereof;

**AND WHEREAS** Arctic Glacier Inc. ("Pre-Amalco Glacier") is a corporation incorporated on January 14, 2002 under the *Business Corporations Act* (Alberta), S.A. 2000, c. B-9, as amended;

**AND WHEREAS** Pre-Amalco Glacier duly amalgamated (the "Amalgamation") with the Predecessor effective March 22, 2002, with the amalgamated entity continuing as the Company under the name Arctic Glacier Inc.;

**AND WHEREAS** as a result of the Amalgamation, the Company continues to be liable for all of the liabilities, obligations and duties of each of the Predecessor and Pre-Amalco Glacier, including, without limitation, all liabilities, obligations and duties under the Trust Deed assumed and undertaken by the Predecessor from the Subsidiary, as if the Company were an original party to the Trust Deed;

**AND WHEREAS** the parties desire to provide for the inclusion and recognition of the Company in the Trust Deed with respect to the Company's continuing liability for the interests, liabilities, obligations and duties of the Subsidiary thereunder;

**AND WHEREAS** Computershare and Montreal Trust represent that Computershare acquired the stock transfer and corporate trust businesses of Montreal Trust pursuant to an Asset Purchase Agreement dated as of June 30, 2000 (the "Purchase Agreement"), and pursuant thereto Montreal Trust agreed to transfer to Computershare, and Computershare agreed to accept the transfer of, the appointment as Trustee under the Trust Deed, subject to the agreement of the Company as successor to the Subsidiary;

**AND WHEREAS** Computershare represents that it is duly qualified to be Trustee under the Trust Deed;

**AND WHEREAS** to give effect to the foregoing, Montreal Trust desires to, in accordance with the terms of the Trust Deed, resign as Trustee thereunder and be discharged from the trusts thereof, and to assign and transfer to Computershare all of its estates, properties, moneys, records, rights, powers and trusts under the Trust Deed;

**AND WHEREAS** the Company is prepared to accept such resignation and to appoint Computershare as the successor Trustee under the Trust Deed, and Computershare is prepared to accept such appointment;

**AND WHEREAS** the parties wish to execute this First Supplemental Trust Deed for the purpose of providing for the inclusion and recognition of the Company in the Trust Deed in the place and stead of the Subsidiary and for the purpose of providing for the resignation of Montreal Trust as Trustee and for its replacement by Computershare, all with effect as of March 22, 2002 (hereinafter, the "Transfer Date");

**NOW, THEREFORE, THIS FIRST SUPPLEMENTAL TRUST DEED WITNESSES** that in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the parties covenant and agree as follows:

1. Each of Montreal Trust, Computershare and the Company hereby confirms the accuracy, truthfulness and completeness of each of the above recitals to which it is a party and

acknowledges that same are being relied upon by the parties in entering and executing this First Supplemental Trust Deed;

2. The Company hereby replaces the Subsidiary on and after the Effective Date as a party to the Trust Deed, assumes all of the liabilities, obligations and duties of the Subsidiary under the Trust Deed and to perform, satisfy and discharge such liabilities, obligations and duties as if it were an original party to the Trust Deed in accordance with the terms thereof in the place and stead of the Subsidiary;

3. The Company shall be entitled to all of the rights, privileges and benefits of the Subsidiary under the Trust Deed on and after the Effective Date;

4. Montreal Trust hereby waives any required notice pursuant to the Trust Deed with respect to any previous change of name or amalgamation involving the Subsidiary or the Company and acknowledges and confirms that the Company has complied with all requirements of the Trust Deed, for notice to the Trustee in respect of the Amalgamation;

5. Montreal Trust hereby resigns as Trustee under, and is hereby discharged from the trusts of, the Trust Deed, effective as of the Transfer Date. The Company hereby accepts such resignation, waiving any required period of notice that may be set forth in the Trust Deed.

6. The Company hereby appoints Computershare as successor Trustee under the Trust Deed in the place and stead of Montreal Trust and with like effect as if originally named as Trustee under the Trust Deed, effective as of the Transfer Date, and Computershare hereby accepts such appointment. The parties hereby agree that Montreal Trust shall not be responsible for any liabilities that may arise pursuant to Computershare's administration of the trusteeship after the Transfer Date. For greater certainty, however, nothing in this First Supplemental Trust Deed shall in any way release Montreal Trust from or affect its liabilities, duties or obligations under the Trust Deed arising prior to the Transfer Date.

7. Montreal Trust hereby transfers and assigns to Computershare, and Computershare hereby accepts such transfer and assignment, upon the trusts expressed in the Trust Deed, all the rights, powers and trusts of Montreal Trust under the Trust Deed, effective as of the Transfer Date.

8. Montreal Trust agrees to transfer and deliver to Computershare, and Computershare agrees to accept such transfer and delivery of, any and all records, documents, monies and other property that may be held by Montreal Trust in connection with the Trust Deed. Such transfers, deliveries and acceptances shall be made as soon as practicable upon, after, or in anticipation of, the Transfer Date as may be agreed between such parties.

9. Notwithstanding any of the foregoing, the resignation, discharge, appointment, transfers, assignments and other agreements provided for herein will not be effective unless this First Supplemental Trust Deed has been executed by all of the parties hereto, whether upon the original instrument, by facsimile or in counterparts, or any combination thereof, and unless all preconditions to such resignation, discharge, appointment, transfers, assignments and other agreements as may be set forth in the Trust Deed have been fulfilled.

10. Any provision in the Trust Deed specifying the addresses of the parties is hereby amended to record the respective addresses of the parties as follows:

Arctic Glacier Inc.  
625 Henry Avenue  
Winnipeg, Manitoba  
R3A 0V1

Attention: President  
Fax No.: (204) 783-9857

Computershare Trust Company of Canada  
100 University Avenue  
9th Floor, North Tower  
Toronto, Ontario  
M5J 2Y1

Attention: Manager, Corporate Trust Department  
Fax: (416) 981-9777

11. Each party hereto agrees to execute and deliver all such documents and instruments and do such other acts as may be necessary or advisable to give effect to the terms hereof.
12. This First Supplemental Trust Deed is supplemental to the Trust Deed and shall be read in conjunction therewith. Except only insofar as the same may be inconsistent with the express provisions of this First Supplemental Trust Deed, all the provisions of the Trust Deed shall apply to and shall have effect in the same manner as if they and the provisions of this First Supplemental Trust Deed were contained in one instrument. The form of any Demand Debentures to be certified by the Trustee from and after the Transfer Date shall be amended, stamped or legended to identify Computershare as the successor trustee and the Company as the issuer but the validity of any Debentures certified prior to the Transfer Date shall not be affected by the appointment of Computershare as successor trustee.
13. Computershare as successor Trustee hereby accepts the trusts in the Trust Deed declared and provided and agrees to perform the same upon the terms and conditions herein and in the Trust Deed set forth.
14. This First Supplemental Trust Deed shall enure to the benefit of and be binding upon the parties hereto and their successors and permitted assigns.



IN WITNESS WHEREOF this First Supplemental Trust Deed has been duly executed by the parties hereto as of the date first above written.

ARCTIC GLACIER INC.

Per: Itan

Per: \_\_\_\_\_

MONTREAL TRUST COMPANY

Per: T. Vitell

Per: Michael Benoit

COMPUTERSHARE TRUST COMPANY  
OF CANADA

Per: T. Vitell

Per: Michael Benoit



2

TRUST DEED dated as of 17 August 1999.

BETWEEN:

**CATARACT ICE LIMITED,**  
a corporation incorporated under the laws of Ontario  
(the "Corporation")

- and -

**MONTREAL TRUST COMPANY,**  
a trust company incorporated under the laws of Canada  
(the "Trustee")

**RECITALS:**

A. The Corporation wishes to raise money for its corporate purposes and/or secure certain of its obligations, and with a view to doing so wishes to create and issue Debentures in the manner provided in this Trust Deed.

B. All necessary resolutions of the directors of the Corporation have been duly enacted, passed and/or confirmed and other proceedings taken and conditions complied with to make the creation and issue of the Debentures proposed to be issued hereunder and this Trust Deed and the execution thereof legal, valid and binding on the Corporation in accordance with the laws relating to the Corporation.

**THEREFORE, THE PARTIES HAVE AGREED AS FOLLOWS:**

**1. FORM AND ISSUE OF DEBENTURES**

**1.1 Limitation of Issue**

The Debentures to be issued under and secured by this Deed are limited to an aggregate principal amount of five hundred million Canadian dollars (Cdn.\$500,000,000) and may be issued in one or more series. The Debentures shall be designated as "Series A Debentures", "Series B Debentures", and so on if two or more series are issued, but the designation of different series of Debentures need not be consecutive so that, for example, Series C Debentures may be issued without Series B Debentures having been issued. Except with respect to the letter A, series of Debentures may also be designated with two or more letters, such as "Series BB Debentures" and "Series CCC Debentures". In addition, further Debentures in any series may be issued from time to time despite the issuance of Debentures in a subsequent series. Debentures of all series shall be designated collectively as "Debentures" and shall be subject to the terms and conditions of this Deed. No Debenture may be issued without the prior written consent of the Holders (as defined below), which consent, in the case of the Subordinated Holders, shall not be unreasonably withheld. For greater certainty, the limit of the aggregate principal amount of Debentures which may be issued hereunder shall not be reduced by the principal amount of Debentures which have been returned to the Trustee for cancellation or discharge in accordance with the terms hereof.

**1.2 Forms, Terms and Place of Payment**

Each Debenture shall be fully registered and substantially in the form set out in Schedule A to this Deed, shall be payable on demand in lawful money of Canada at the address of the holder or holders specified in the Debenture (the "Holders", which shall mean one or more persons holding

one or more Debentures) and the Debentures shall bear interest from the date of each respective debenture at the rate of twenty-five per cent (25%) per annum, or at such other rate as may be agreed upon by the Corporation and the Holders from time to time, payable on demand, both before and after maturity and default, with interest on overdue interest at the same rate. Each Debenture may, but need not, be under the seal of the Corporation, shall be signed by any officer or director of the Corporation and shall be certified by the Trustee and delivered by the Trustee to or to the order of the Corporation upon receipt by the Trustee of an order in writing signed by any officer or director of the Corporation. No Debenture shall be issued, or, if issued, shall be obligatory or entitle the Holder to the benefit hereof, until it has been certified by or on behalf of the Trustee substantially in the form of the certificate set out in Schedule "A" to this Deed, or in some other form approved by the Trustee, and such certification by the Trustee upon any Debenture shall be conclusive evidence as against the Corporation that the Debenture so certified has been duly issued hereunder and is a valid obligation of the Corporation and that the Holder is entitled to the benefit hereof. The certificate of the Trustee shall not be construed as a representation or warranty of the Trustee as to the validity or security of the Trust Deed or the Debentures. Nothing in this Deed or the Debentures shall make the Trustee responsible or liable for the Corporation's obligations to pay the principal of or interest on the Debentures.

### 1.3 Pledge of Debentures

Each Debenture shall be pledged, hypothecated, issued or charged by the Corporation as security for payment by the Corporation of certain or all debts and liabilities, including debts and liabilities in any currency, present or future, direct or indirect, absolute or contingent, matured or not, for a current or running account or not, at any time owing by the Corporation to the Holder thereof or remaining unpaid by the Corporation to the Holder thereof, whether arising from dealings between the Holder thereof and the Corporation or from any other dealings or proceedings by which the Holder thereof may be or become in any manner whatever a creditor of the Corporation, and wherever incurred, and whether incurred by the Corporation alone or with another or others, and whether as principal or surety, including expenses and all interest, commissions, legal and other costs, charges and expenses (the "obligations secured", it being understood and agreed that the term "obligations secured" as used in this Deed shall mean, as the context may require, such obligations of the Corporation owing to a particular Holder or Holders hereunder or the aggregate of such obligations of the Corporation owing to all the Holders hereunder from time to time). To the extent of any inconsistency between the terms and conditions of a Debenture and the terms and conditions of any of the obligations secured, the terms and conditions of the latter shall prevail.

### 1.4 Terms of Issue

The Debentures may be issued to such persons, in such amounts not exceeding the maximum amount set forth in Section 1.1 less the principal amount of Debentures outstanding (which, for greater certainty, shall not include any Debentures previously delivered to the Trustee for cancellation or discharge), for such consideration and on such terms as the directors of the Corporation may determine. Each series of Debentures issued under this Deed shall rank in respect of their entitlement to payment and all voting and other rights relating to the Debentures in priority according to the alphabetical order of their respective series. Accordingly, all Series A Debentures, whenever issued or certified, shall have priority over Series B Debentures, which shall in turn have priority over Series C Debentures and so on. Series of Debentures designated with different numbers of the same letter shall rank in priority according to the number of letters in the designation so that, for example, Series BBB Debentures shall have priority over Series BB Debentures. Debentures within a series shall rank pari passu without discrimination, preference or priority of one Debenture of such series over another and the Holders of Debentures of such series shall be secured equally and rateably according to the principal amount and interest from time to time owing with respect to each Debenture of such series (having regard to the obligations secured by such Debenture, rather than the face amount of such Debenture pledged in accordance with Section 1.3 above) regardless of their respective dates of issue or certification of each Debenture of such series. The Holders of the series of Debentures having the highest ranking for the time being are referred to in this Trust Deed as the "Senior Holders".

The priorities contained herein in connection with the obligations secured shall apply in all events and circumstances regardless of:

- (a) the date that any loan, advance, or other accommodation is made to the Corporation or any debt, liability or obligation is incurred by the Corporation; or
- (b) the date of any default by the Corporation; or
- (c) any priority granted by any principle of law or any statute; or
- (d) any other factor of legal relevance other than this Trust Deed.

No power that is exercised by the Holders, or any of them, shall detract from the rights of the other Holders under the terms of the respective obligations secured in the case of Debentures that have been pledged in accordance with Section 1.3.

#### 1.5 Registration and Transfer

The Corporation shall cause to be kept by the Trustee at its office in the City of Toronto, in the Province of Ontario a register in which shall be entered the names and addresses of the Holders and principal amount of each Debenture. No transfer of a Debenture shall be valid unless made on such register by the registered holder or its successors or assigns or its or their attorney duly appointed by an instrument in writing, in form and execution satisfactory to the Trustee, and upon compliance with such reasonable requirements as the Trustee may prescribe. The ownership of the Debentures shall be proved by such register. The registered Holders shall be considered to be the owners thereof for all purposes of this Deed and shall be entitled to the principal monies and interest evidenced by the Debentures without regard to any set-off, counterclaim, equities or compensation between the Corporation and the Holders' transferors or any previous holders thereof.

#### 1.6 Cancellation, Retirement Etc. of Debentures

Any Holder may deliver to the Trustee from time to time one or more of the Debentures issued pursuant to this Deed and held by it for cancellation or retirement (subject to the principal amount outstanding thereon and any interest, charges and expenses related thereto having been repaid in full to the Holder) or replacement, consolidation or subdivision, or to evidence a reduction of the principal amount outstanding from time to time. Subject to the limitation set forth in Section 1.1, upon receipt of such Debentures and a resolution of the Holder delivering such Debentures evidencing its intentions with respect to such cancellation, retirement, replacement, reduction, subdivision or consolidation, the Trustee shall forthwith notify the Corporation and the Corporation upon receipt of such Debentures shall forthwith issue in accordance with the terms and conditions of this Deed such additional, replacement, subdivided or consolidated Debentures as may be requested by the Holders in the aforesaid resolution, or the Trustee may endorse any Debenture with a notation of the reduction of the amount thereof. Upon issuance of such additional, replacement, subdivided or consolidated Debentures, or endorsement of reduction of any existing Debenture, as appropriate, the Corporation shall cause to be made such entries in the register provided for in Section 1.5 and the Trustee shall certify such Debentures, subject to receipt of such documentation as the Trustee may require, acting reasonably.

#### 1.7 Replacement of Debentures

In case any of the Debentures shall be mutilated or defaced or be lost, destroyed or stolen, the Corporation, subject to applicable law, shall issue a new Debenture pursuant to this Deed and thereupon the Trustee shall certify and deliver such new Debenture of like date, tenor and series as the one mutilated, defaced, lost, destroyed or stolen in exchange therefor and upon cancellation of such mutilated or defaced Debenture and in lieu of and in substitution for such lost, destroyed or stolen Debenture, and the new Debenture shall be entitled to the security hereof and rank equally in accordance with its terms with all other Debentures of the same series issued hereunder.

The applicant for the issue of a new Debenture pursuant to this Section 1.7 shall bear the cost of the issue thereof and in case of loss, destruction or theft shall, as a condition precedent to the issue thereof, furnish to the Corporation and to the Trustee such evidence of ownership and of the loss, destruction or theft of the Debenture so lost, destroyed or stolen as shall be satisfactory to the Corporation and the Trustee in their discretion and such applicant may also be required to furnish an indemnity in amount and form satisfactory to the Corporation and the Trustee in their discretion, and shall pay the reasonable charges of the Corporation and the Trustee in connection therewith.

## 2. CHARGING PROVISIONS

### 2.1 Fixed and Floating Charges and Security Interest

In consideration of the premises and of one dollar (\$1) to the Corporation now paid by the Trustee (receipt whereof is hereby acknowledged) and for the purpose of securing the due payment in lawful money of Canada of the Debentures in the principal amount of five hundred million dollars (\$500,000,000) and of interest thereon from the formal date hereof at the rate of twenty-five per cent (25%) per annum, calculated monthly and payable on demand, both before and after maturity and default, with interest on overdue interest at the same rate, and the payment of any additional amounts from time to time due hereunder to the Trustee, including but not limited to an additional amount equal to twenty-five per cent (25%) of the principal amount for costs of realization and other accessories, the Corporation hereby:

- (a) grants, assigns, mortgages and charges as and by way of a fixed and specific mortgage and charge to and in favour of the Trustee for the benefit of the Holders, and grants to the Trustee for the benefit of the Holders a security interest in, all of its present and after-acquired real and personal property, including but not limited to:
  - (i) all freehold real and immovable property now or hereafter owned or acquired by the Corporation including but not limited to the lands and premises described in Schedule B hereto, together with all buildings, erections and fixtures now or hereafter constructed or placed thereon,
  - (ii) all leasehold property now or hereafter leased by the Corporation including but not limited to the leasehold property described in Schedule C hereto, together with all buildings, erections and fixtures now or hereafter constructed or placed thereon,
  - (iii) all inventory, goods, furniture, equipment, machinery, vehicles, aircraft and other tangible personal property now or hereafter owned by or acquired by the Corporation and all replacements, attachments and accessories thereto from time to time,
  - (iv) all intangible property now or hereafter owned or acquired by the Corporation, including, but not limited to, all contract rights, chattel paper, warehouse receipts, bills of lading, documents of title, insurance policies, instruments, securities, accounts, book debts, receivables which are not book debts, choses in action, licenses, permits, franchises, leases, client lists, goodwill, patents, trademarks, trade names, copyrights, other industrial and intellectual property and the undertaking of the Corporation; and
- (b) charges as and by way of a floating charge to and in favour of the Trustee for the benefit of the Holders, and grants to the Trustee for the benefit of the Holders a security interest in all of the present and after-acquired property, undertaking and assets of the Corporation for the time being, both real and personal, movable and immovable of whatsoever nature and kind now owned or hereafter acquired (except such property and assets as are validly and effectively subject to any fixed and specific mortgages and charges created hereby), including its goodwill and uncalled capital.

Without the necessity of any further act of the Corporation or the Trustee, the mortgages, charges and security interests constituted hereby shall automatically extend to and include:

- (c) any and all renewals, replacements, substitutions, accessions, proceeds, products, additions, amendments, modifications, extensions or consolidations of or to the assets and property heretofore described;
- (d) any and all right, title and interest of the Corporation hereafter acquired in or to any real or personal property or asset of any nature whatsoever; and
- (e) any and all of the Corporation's right, title, interest, property, claims, demands, judgments, awards, proceeds and settlements or payments, including interest thereon, and the right to receive the same, at law as well as in equity or otherwise, as a result of or by way of: (i) insurance proceeds payable under all insurance policies of the Corporation or (ii) any injury or damage to or any taking, expropriation, requisitioning, conversion (voluntary or involuntary) or decrease in the value of any property or asset of the Corporation of any nature whatsoever.

The Corporation's undertaking and all its property and assets, present and future, are herein called the "mortgaged property".

## 2.2 Reservation of Last Day of Leasehold Terms

The charge of the mortgaged property contained in Section 2.1 shall not extend or apply to the last day of the term of any lease or any agreement therefor now held or hereafter acquired by the Corporation, but should such charge become enforceable the Corporation shall thereafter stand possessed of such last day and shall hold it in trust to assign the same to any person acquiring such term or the part thereof charged in the course of any enforcement of the charge or any realization of the subject matter thereof.

## 2.3 Contracts, Rights or Licences

The charge of the mortgaged property contained in Section 2.1 shall not extend or apply to any contract, right or licence of the Corporation, if pursuant to the terms of such contract, right or licence such contract, right or licence would automatically terminate if it was part of the mortgaged property, or would be terminable at the option of the other party to or of the grantor thereof, but should such charge become enforceable, the Corporation shall thereafter stand possessed of such contract, right or licence and shall hold it in trust to assign the same or dispose of the same to any person as requested by the Trustee. In order that the full value of all such contracts, rights and licences may be realized for the benefit of the Holders, the Corporation shall at its expense and at the request of the Trustee from time to time, take all such action and do or cause to be done all such things as shall, in the reasonable opinion of the Trustee (with advice of counsel as the Trustee considers appropriate), be necessary or proper in order that all such contracts, rights and licences shall enure to the benefit of the Holders and, to the extent reasonably possible, become subject to the charge constituted by this Deed.

## 2.4 Charge Valid Irrespective of Advance

The security constituted hereby or intended so to be shall be effective whether the monies hereby secured or any part thereof shall be advanced before or after or at the same time as the execution and delivery of this Deed or the issue or certification of any of the Debentures.

## 2.5 Attachment

The Corporation acknowledges that value has been given to the Corporation by the Holders in connection with the Corporation's execution and delivery of this Deed. The Corporation and the Holders have not agreed to postpone the time for attachment of the security constituted hereby which is intended to attach, as to all of the mortgaged property in which the Corporation has an interest at the time of the execution of this Deed, at such time, and as to all of the mortgaged property in which the Corporation acquires an interest after the execution of this Deed, at the time the Corporation acquires such interest.

## 2.6 Effect of Charges

The security created hereby will entitle the Trustee to have and to hold the mortgaged property and all rights hereby conferred unto the Trustee, its successors and assigns, forever, but in trust, nevertheless, and with the powers and authorities and subject to the terms and conditions mentioned and set forth herein.

## 2.7 Possession until Default

Until the security hereby constituted becomes enforceable and the Trustee determines to enforce the same, the Corporation is permitted in the same manner and to the same extent and with the same effect as if this Deed had not been executed, but subject to the express terms hereof and any other agreement between the Corporation and a Holder which relates to any obligations secured, to possess, operate, manage, use and enjoy the mortgaged property (other than any cash or investments on deposit with the Trustee) and freely to control the conduct of its business and to collect, take, retain and use the rents, incomes, profits and issues thereof.

## 2.8 Further Assurances

The Corporation hereby covenants and agrees that it will at all times do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, deeds, mortgages, transfers, assignments and assurances as the Trustee or the Holders may reasonably require for the better accomplishing and effectuating the purpose of this Deed, including the execution and delivery of indentures supplemental hereto more particularly describing the mortgaged property or to correct or amplify the description of the mortgaged property or to better assure, convey and confirm unto the Trustee any of the mortgaged property. Upon the execution of any supplemental indenture under this Section, this Deed shall be modified in accordance therewith, and each such supplemental indenture shall form part of this Deed for all purposes. Notwithstanding anything herein contained, the Trustee will not be bound to take any conveyance, assignment or transfer pursuant hereto of any property or assets that, in the opinion of counsel to the Trustee, is of an onerous character, but the Corporation shall hold any such property or assets in trust for the Trustee.

## 2.9 Liability of Trustee

Neither the Trustee nor any receiver shall (i) be responsible or liable for any debts contracted by it, for damages to persons or property, for salaries or for non-fulfilment of contracts during any period when the Trustee or any receiver shall manage or be in possession of the mortgaged property; (ii) be liable to account as mortgagee in possession or to account for anything except actual receipts or be liable for any loss on realization or for any default or omission for which a mortgagee in possession may be liable; (iii) be bound to do, observe or perform or to see to the observance or performance by the Corporation of any obligations or covenants imposed upon the Corporation; or (iv) in the case of any chattel paper, security or instrument, be obligated to preserve rights against any other persons. The Corporation hereby waives any provision of applicable law permitted to be waived by it which imposes higher or greater obligations upon the Trustee or any receiver than aforesaid.

## 2.10 Applicable Laws Exception

All rights, remedies, and powers provided herein may be exercised only to the extent that the exercise thereof does not violate any mandatory provision of applicable law and all the provisions of this Deed are intended to be subject to all mandatory provisions of applicable law which may be controlling in the premises and to be limited to the extent necessary so that they will not render this Deed invalid, unenforceable or not entitled to be recorded, registered or filed under any mandatory provisions of applicable law. If any mandatory provision of applicable law shall provide for different or additional requirements than or to those specified herein as prerequisites to or incidental to the realization, sale or foreclosure of the security or any part thereof, then, to that extent, such laws



shall be deemed to have been set forth herein at length, and any conflicting provisions hereof shall be disregarded, and the method of realization, sale or foreclosure of the security required by any such laws shall, insofar as may be necessary, be substituted herein as the method of realization, sale or foreclosure in lieu of that set forth above. Any provision hereof contrary to mandatory provisions of applicable law shall be deemed to be ineffective and shall be severable from and not invalidate any other provision of this Deed.

#### 2.11 Waivers of Applicable Laws

- (a) To the extent not prohibited by applicable law, the Corporation hereby waives its rights, if any, under all provisions of applicable law that would in any manner, limit, restrict or otherwise affect the Trustee's rights and remedies hereunder or impose any additional obligations on the Trustee. The Corporation waives the right to receive any financing statement or any verification statement issued by any registry that confirms registration of a financing statement relating to this Deed.
- (b) To the full extent that it may lawfully do so, the Corporation hereby:
  - (i) waives and disclaims any benefit of, and shall not have or assert any right under any statute or rule of law pertaining to, the marshalling of assets or any other matter whatever, to defeat, reduce or affect the rights of the Trustee under the terms of this Deed to a sale of the mortgaged property or any part thereof or for the collection of all amounts secured by this Deed; and
  - (ii) agrees that it shall not have or assert any right or equity of redemption or any right under any statute or otherwise to redeem the mortgaged property or any part thereof after the sale hereunder to any person whether such sale is by the Trustee, any receiver or otherwise, notwithstanding, that the Trustee may have purchased same.

### 3. COVENANTS

The Corporation hereby covenants and agrees with the Trustee for the benefit of each Holder:

#### 3.1 Principal and Interest

That it will pay or cause to be paid, when due, the principal, interest and all other amounts secured by the Debentures.

#### 3.2 Not to Encumber

That it will not, without the prior written approval of the Trustee or the Holders (which may be evidenced from time to time by a resolution of the Holders or, for any particular Holder, by the terms of any agreement to which the Holder and the Corporation are parties that relates to the terms of obligations secured by a pledge of the Debenture in favour of that Holder), create or permit to exist any mortgage, hypothec, charge, lien, encumbrance or other security interest or lease upon or affecting the mortgaged property or any part thereof.

#### 3.3 Comply with Environmental Law

That it will operate its business and all of the mortgaged property in compliance with all applicable laws intended to protect the environment ("Environmental Laws").

#### 3.4 Reporting Requirements

That it will immediately notify the Trustee after becoming aware of any release or upon the discovery of any contaminant at, upon, under, over, within or with respect to the mortgaged property which will give rise to a material report, inquiry or investigation relating to the requirements of any applicable Environmental Law and will promptly forward to the Trustee copies of all orders, notices, permits, applications or other communications and reports received from any governmental authority in connection with any applicable Environmental Law affecting or relating to the mortgaged property or the operations or activities of the Corporation or any of its subsidiaries.

#### 3.5 Preserve and Protect the Mortgaged Property

That it will diligently maintain, use and operate the mortgaged property and shall carry on and conduct its business in a proper and efficient manner so as to preserve and protect the mortgaged property and the earnings, incomes, rents, issues and profits thereof.

#### 3.6 Governmental Requirements

That it will duly observe and conform to all valid requirements of any governmental authority relative to any of the mortgaged property and all covenants, terms and conditions upon or under which the mortgaged property is held.

The Corporation represents and warrants to the Trustee (such representations being also for the benefit of each Holder):

#### 3.7 Absence of Hazardous Materials

That to its knowledge (i) there are no Hazardous Materials located on, above or below the surface of any land which it occupies or controls, except those being stored in compliance with applicable laws, or contained in the soil or water constituting such land, except in compliance with applicable laws, (ii) no release, spill, leak, emission, discharge, leaching, dumping or disposal of Hazardous Materials has occurred on or from such land which, in any such case, could materially and adversely affect its financial condition, the mortgaged property or its operations or its ability to perform its obligations under the Deed, and (iii) no land that it occupies or controls has been used as a landfill or waste disposal site.

#### 3.8 Compliance with Environmental Law

That the Corporation's business and the mortgaged property are operated in substantial compliance with applicable Environmental Laws intended to protect the environment (including, without limitation, laws respecting the disposal or emission of Hazardous Materials), to the best of its knowledge after reasonable inquiry there are no breaches thereof, and no enforcement actions in respect thereof are threatened or pending which, in any such case, could materially and adversely affect the mortgaged property or its ability to perform its obligations under this Deed.

That the Corporation shall include in any lease of any part of the mortgaged property to a third party conditions, warranties and representations substantially in the form of the conditions, warranties and representations concerning Hazardous Materials and Environmental Laws contained in this Deed.

For the purposes of this Deed, "Hazardous Materials" means any hazardous substance or any pollutant or contaminant, toxic or dangerous waste, substance or material, as defined in or regulated by any applicable law, regulation or governmental authority from time to time, including, without limitation, asbestos and polychlorinated biphenyls.

#### 3.9 Expenses, Remuneration and Indemnity

The Corporation shall pay to the Trustee upon demand both before and after default the amount of all reasonable costs, charges, borrowings, expenses and fees of the Trustee incurred in

connection with the administration of this Deed including expenses arising in connection with Section 8.1, the repossession, holding, repairing, processing, preparing for disposition and disposing of any of the mortgaged property (including reasonable legal expenses on a solicitor and his own client basis and other expenses including expenses arising in connection with Section 8.1), together with interest from the date of demand at a rate per annum equal to the then-current rate charged by the Trustee from time to time. All amounts owing to the Trustee under or in connection with this Deed shall be secured by the mortgages and charges created in this Deed and be payable in priority to amounts secured by the Debentures.

Without limiting the foregoing, the Corporation covenants that it will pay to the Trustee reasonable remuneration for its services hereunder and will pay or reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in the administration or execution of the trusts hereby created (including the reasonable compensation and the disbursements of its counsel and all other advisers and assistants not regularly in its employ), including, without limitation, all costs incurred by the Trustee in complying with any laws applicable to trustees as a result of its acting hereunder both before any default hereunder and thereafter until all the duties of the Trustee under the trusts hereof shall be finally and fully performed, except any such expense, disbursement or advance as may arise from its negligence or wilful default. Any amount due under this Section shall bear interest from the date of demand for payment at a rate per annum equal to the rate referred to in the preceding paragraph, payable on demand. After default, all amounts so payable and the interest thereon shall be payable out of any funds coming into the possession of the Trustee or its successors in the trusts hereunder in priority to any payment of the principal of or interest or premium on the Debentures.

The Corporation hereby indemnifies the Trustee, its directors, officers, employees, and agents, and any successors and assigns against any loss, expense, claim, liability or asserted liability (including strict liability) incurred as a result of the administration of the trust created hereby, the exercise by the Trustee of any rights hereunder, the performance of any remediation by the Trustee or its agent for bodily injury, property damage, abatement, or remediation, environmental damage or impairment or any other injury or damage or any diminution in value of the mortgaged property resulting from or relating, directly or indirectly, to: (i) the presence or release of any contaminants, by any means or for any reason, on the mortgaged property, whether or not release or presence of the contaminants was under the control, care or management of the Corporation, or of a previous owner, or of a tenant, or (ii) any contaminant present on or released from any contiguous property to the mortgaged property, or (iii) the breach or alleged breach of any Environmental Laws by the Corporation, save and except that the Trustee shall only be responsible for its own negligence and wilful misconduct.

The Corporation shall at all times indemnify the Trustee, its directors, officers, employees, and agents, and any successors and assigns and save them harmless against all actions, proceedings, liability, claims, damages, reasonable costs and expenses, including legal costs whatsoever arising from the performance of its duties hereunder (unless arising from negligence, bad faith or wilful misconduct on their part) and including any action or liability brought against or incurred by any of them in relation to or arising out of any breach by the Corporation of its obligations under this Deed or by the failure of the Trustee or its agents to do such acts as may be necessary to register, perfect, release or discharge the security created hereby as the same may be registered, filed or recorded in any public office.

The agreements in this Section shall survive the termination of this Deed and the repayment of the obligations secured.

### 3.10 Registrations and Deliveries

The Corporation agrees that:

- (a) forthwith after the execution of this Deed and after the execution of each instrument supplemental or ancillary hereto, it shall register, file or record the same and/or, if applicable, a financing statement or other prescribed statement in respect thereof as

may from time to time be required by the Trustee, the Senior Holders or any other Holder where such registration, filing or recording may be necessary or desirable or of advantage in preserving or protecting the security constituted by this Deed in favour of the Trustee, the Senior Holder or such other Holder;

- (b) from time to time, it shall renew such registration, filing or recording as required to maintain the security constituted hereby as valid and effective security;
- (c) promptly after such registration, filing, recording or renewal, the Corporation shall cause to be delivered to the Trustee certificates establishing such registration, filing, recording or renewal and opinion of counsel satisfactory to the Trustee, acting reasonably, evidencing that the provisions of this Section 3.10 have been complied with in respect of this Deed or such supplemental or ancillary instrument, as the case may be;
- (d) forthwith after the execution of this Deed and after the execution of each instrument supplemental or ancillary hereto, it shall deliver to the Trustee such other documents as may be reasonably required by the Trustee to be delivered to preserve, protect and perfect the security constituted hereby and represented by such documents of title, security certificates and other documents; and
- (e) in the event that the security constituted hereby becomes enforceable as herein provided and the Trustee shall become bound to enforce the same, the Corporation will from time to time execute all such assurances and do all such things as the Trustee may reasonably require for facilitating the realization of the mortgaged property of the Corporation and for exercising all of the powers, authorities and discretion conferred on the Trustee and for confirming to any purchaser of such mortgaged property or any part thereof, whether sold by the Trustee herein or by judicial proceedings, the title to the property so sold, and it will give all notices and directions which the Trustee may consider necessary or expedient.

The Corporation shall not change its name or amalgamate with another corporation under a different name without giving at least 10 days' prior notice to the Trustee of the new name and the date upon which such change of name or amalgamation is to take effect. Within 5 business days of the change of name or amalgamation, the Corporation shall provide the Trustee with a true copy of the articles of amendment or articles of amalgamation effecting the change of name and a certificate confirming the correct name of the Corporation and that all appropriate registrations, filings or recordings have been made on behalf of the Trustee to fully and effectively maintain the perfection and priority of the security created hereby.

In the event of the amalgamation of the Corporation, this Deed, the Debentures and all other security delivered by the Corporation in connection with this Deed shall be binding on the amalgamated corporation and charge its present and future undertaking, property and assets to secure present and future debts, liabilities and obligations of the Corporation and of the amalgamated corporation to the Trustee and the Holders, all as if the amalgamated corporation had originally executed and delivered those documents.

### 3.11 Proceeds of Unauthorized Sale in Trust

The Corporation shall, in the event the mortgaged property or any part thereof is sold or disposed of prior to the full discharge of this Deed by the Trustee, in any manner not authorized by this Deed, hold all proceeds of such sale or disposition received by the Corporation as trustee for the Trustee until the Corporation has been fully released from this Deed by the Trustee.

### 3.12 Removal of Mortgaged Property

Prior to the removal of any of the mortgaged property from the province in which it is situated at the date of this Deed or to leasehold property, the Corporation shall effect such further

registrations and obtain such other consents and give such other security, at the sole cost and expense of the Corporation, as may be required or desirable to protect or preserve the security hereby created, and the Corporation shall forthwith notify the Trustee of the intended removal and the action proposed to be taken.

### 3.13 Performance of Covenants by Trustee

If the Corporation shall fail to perform any covenant on its part herein contained, the Trustee may in its absolute discretion perform any such covenant capable of being performed by it, but the Trustee shall be under no obligation to do so. If any such covenant requires the payment of money or if the mortgaged property or any part thereof shall become subject to any charge ranking in priority to the security hereof, the Trustee may in its absolute discretion make such payment and/or pay or discharge such charge, but shall be under no obligation to do so. All sums so paid by the Trustee shall be payable by the Corporation on demand together with interest from the date of demand at the rate referred to in Section 3.9 and shall constitute a charge upon the mortgaged property. No such performance or payment shall relieve the Corporation from any default hereunder or any consequences of such default.

### 3.14 Appointment of Monitor

If in the opinion of the Senior Holders, acting reasonably, a material adverse change has occurred in the financial condition of the Corporation, or if the Senior Holders in good faith believe that the ability of the Corporation to pay any of its obligations or to perform any other covenant contained herein has become impaired or if a default has occurred, the Trustee shall, upon written direction by the Senior Holders, by written notice to the Corporation, appoint a monitor (the "Monitor") to investigate any or a particular aspect of the Corporation or its business and affairs for the purpose of reporting to the Trustee. The Corporation shall give the Monitor its full co-operation, including full access to facilities, assets and records of the Corporation and to its creditors, customers, contractors, officers, directors, employees, auditors, legal counsel and agents. The Monitor shall have no responsibility for the affairs of the Corporation nor shall it participate in the management of the Corporation's affairs and shall incur no liability in respect thereof or otherwise in connection with the Corporation, its business and affairs or the mortgaged property. The Monitor shall act solely on behalf of the Trustee and shall have no contractual relationship with the Corporation as a consultant or otherwise. The appointment of a Monitor shall not be regarded as an act of enforcement of this Deed. All reasonable fees and expenses of the Monitor (including legal fees and disbursements on a solicitor and own client basis) shall be paid by the Corporation upon submission to it of a written invoice therefor. The Trustee may at its option upon the security hereby constituted becoming enforceable appoint or seek to have appointed the Monitor as receiver, liquidator, or trustee in bankruptcy of the Corporation or the mortgaged property or any part thereof.

### 3.15 Insurance

That it will cause all its property which is of a character usually insured by businesses operating properties of a similar nature to be properly insured and kept insured with reputable insurers against loss or damage by fire or other hazards of the nature and to the extent that such properties are usually insured by businesses operating properties of a similar nature in the same or similar localities and shall maintain such insurance with loss if any payable to the Trustee and shall deliver to the Trustee evidence of such insurance satisfactory to the Trustee. Proceeds of insurance shall be dealt with by the Trustee in accordance with resolutions of the Senior Holders, or in the absence of such resolutions, in accordance with Section 5.4.

### 3.16 Taxes and Other Charges

That it shall pay all rents, taxes, rates, levies, assessments and government fees or dues levied, assessed or imposed in respect of the mortgaged property or any part thereof (collectively "Taxes") as and when the same shall become due and payable and shall pay all charges, liens and other encumbrances on the mortgaged property (collectively "Charges") as and when the same shall become due and payable. If the Corporation does not pay any Taxes or Charges as and when the

same shall become due and payable, the Trustee may, at its option, elect to pay any such amounts and charge to the Corporation all amounts so paid as additional amounts secured under this Deed, together with interest thereon from the date of payment by the Trustee of any such amounts at a rate per annum equal to the then-current rate charged by the Trustee from time to time.

### 3.17 Information

That it will furnish to the Trustee such information (including an annual certificate of compliance) with respect to the mortgaged property and the insurance thereon as the Trustee may from time to time require, and shall give written notice to the Trustee of all litigation before any court, administrative board or other tribunal affecting the Corporation or its property. An annual certificate of compliance means a certificate signed by the president or a vice-president of the Corporation, confirming compliance with the covenants set forth in this Article 3 and specifically that (i) no default as described in Section 4.1 of this Deed has occurred and is continuing and no event has occurred and is continuing which, with the passage of time or giving of notice, or both, would constitute such a default, and (ii) all the covenants of the Corporation contained in this Article 3 and all of the conditions contained in this Deed to be complied with by the Corporation have been fully complied with to the date thereof.

## 4. DEFAULT

### 4.1 Security Becoming Enforceable

The security hereby constituted shall immediately become enforceable and the floating charge created pursuant to Section 2.1(b) hereof shall become a fixed and specific mortgage, charge, pledge, assignment, security interest and hypothec on the property charged thereby if:

- (a) payment of part or all of the obligations secured by a pledge of a Senior Debenture is demanded in accordance with any agreement to which the Corporation is a party relating to such obligations secured, and payment is not made on demand;
- (b) the Corporation makes default of any other covenant or condition of this Deed for the benefit of the Senior Holders or the Trustee and default continues for a period of 30 days after the Trustee sends notice to the Corporation to correct the default; or
- (c) payment of the principal amount and interest accrued on all Debentures has been demanded by the Trustee pursuant to Section 5.1(b) if any Holder of Debentures other than a Senior Holder (a "Subordinated Holder", where Debentures held by the Subordinated Holders are the "Subordinated Debentures") has proceeded in accordance with Section 5.1(b) of this Deed.

### 4.2 Waiver

The Trustee (on the direction of the Senior Holders) or the Senior Holders may by notice to the Corporation waive any default of the Corporation on such terms and conditions as the Senior Holders may determine, but no such waiver shall be taken to affect any subsequent default or the rights of the Senior Holders arising therefrom nor shall it detract from the rights of any Subordinate Holder under the terms of any agreement relating to its obligations secured with respect to such default. No waiver of any default by a Subordinate Holder shall in any way affect the rights of the Senior Holders with respect to such default.

## 5. REMEDIES IN CASE OF DEFAULT

### 5.1 Demand Payment

- (a) If the security hereby constituted becomes enforceable as provided in Sections 4.1(a) or (b), the Trustee upon being so directed by resolution of the Senior Holders shall demand payment of the

principal amount of and interest accrued on all Debentures and the same shall forthwith become immediately due and payable to the Trustee.

(b) If (i) payment of part or all of the obligations, which for greater certainty shall include, without limitation, any principal amount together with accrued interest, that is secured by a pledge of a Subordinated Debenture (the "Defaulted Debenture") is demanded in accordance with any agreement to which the Subordinated Holder or Holders of the Defaulted Debenture (the "Demanding Holder") and the Corporation are parties relating to such obligations secured; and payment is not made on demand, (ii) the Demanding Holder (or any agent duly authorized to do so on behalf of such Holder) gives written notice of the demand for payment of such obligations secured to the Trustee (who shall immediately forward such notice to all of the other Holders), (iii) the Demanding Holder (or any agent duly authorized to so act on behalf of such Holder) provides to the Trustee (x) a certificate by the Demanding Holder certifying that the Demanding Holder is entitled under the terms of an agreement to which the Demanding Holder (or such agent) and all Senior Holders (or an agent on their behalf) are party (the "Intercreditor Agreement"), to require that payment of the Debentures be demanded and the security hereby constituted be enforced notwithstanding the priority of the Senior Holders, and (y) a resolution of the Demanding Holder directing that the Trustee demand payment of the principal amount of and interest on all Debentures, (which certificate and resolution shall immediately be forwarded by the Trustee to all of the other Holders), and (iv) at least 5 business days have passed after the Demanding Holder (or any agent duly authorized to so act on behalf of such Holder) has given to the Trustee the certificate and resolution referred to in (iii) above and the Trustee has forwarded copies thereof to all of the other Holders, then the Trustee, upon being so directed by the Demanding Holder (or any agent duly authorized to so act on behalf of such Holder) shall demand payment of the principal amount of and interest accrued on all Debentures and the same shall forthwith become immediately due and payable to the Trustee.

(c) In the event that the Senior Holders have duly exercised their rights under Section 5.1(a) hereof (whether or not a Subordinated Holder has duly exercised its rights under Section 5.1(b) hereof), it is agreed that:

- (i) the Trustee shall have regard to the instructions and directions of the Senior Holder only in exercising rights and remedies under this Deed and shall have no duty or obligation hereunder to act in accordance with the instructions or directions of any other Holder; and
- (ii) in giving the Trustee instructions and directions in pursuance of its rights under paragraph (i) above, the Senior Holders shall act in good faith, and not with the sole purpose of defeating, delaying, hindering or otherwise impeding the repayment of the Subordinated Holders, but nothing in this Deed shall impose on the Senior Holders any greater duty to the Subordinated Holders or the Corporation than is owed by a senior creditor to a junior creditor or to a debtor in the absence of any express provision.

(d) In the event that a Subordinated Holder (or an agent duly authorized by a Subordinated Holder) has duly exercised its rights pursuant to Section 5.1(b) hereof and no Senior Holder has exercised its rights under Section 5.1(a) hereof, then (but for so long only as no Senior Holder has exercised its rights under Section 5.1(a) hereof):

- (i) the Trustee shall have regard to the instructions and directions of the Subordinated Holder only in exercising rights and remedies under this Deed and shall have no duty or obligation hereunder to act in accordance with the instructions or directions of any other Holder;
- (ii) in giving the Trustee instructions and directions in pursuance of its rights under paragraph (i) above, the Subordinated Holder shall act in good faith; and

- (iii) while nothing shall prevent the Senior Holders from exercising their rights under Section 5.1(a) hereof if they are entitled to do so as between the Corporation and themselves, until they have done so, the Senior Holders shall not do any of the following without the consent of the Subordinated Holders: (A) give instructions and directions to the Trustee relating to the exercise of those rights and remedies being exercised by the Subordinated Holders in accordance with this Section 5.1(d), (B) direct the Trustee to waive any defaults pursuant to Section 4.2 of this Deed, (C) unreasonably withhold or delay its consent to the appointment of a replacement Trustee requested by the Subordinated Holders, or (D) exercise any of the rights set out in Sections 9.1(a), (b), (e) and (f) of this Deed.

## 5.2 Remedies

If the security hereby constituted becomes enforceable as herein provided, and the Corporation has failed to pay to the Trustee on demand the principal amount of and interest accrued on the Debentures:

- (a) the Trustee may in its discretion take possession of the whole or any part of the mortgaged property and carry on all or any part of the business of the Corporation relating to the mortgaged property and borrow money on the security of the mortgaged property in priority to the security hereby created for the purpose of maintenance, preservation or protection of the mortgaged property or for the carrying on of all or any part of the business of the Corporation relating to the mortgaged property and in so acting the Trustee shall have the power to exclude the Corporation, its servants and agents from the mortgaged property;
- (b) whether or not the Trustee has exercised any or all of its rights under Section 5.2(a), the Trustee may sell, lease or otherwise dispose of the whole or any part of the mortgaged property at public auction, by private tender or private sale, either for cash or upon credit and upon such terms and conditions as the Trustee may determine, and the Trustee may execute and deliver to any purchaser of the mortgaged property or any part thereof good and sufficient deeds and documents for the same, and, without limiting the powers granted to the Trustee, the Trustee is irrevocably constituted the attorney of the Corporation for the purpose of making any such sale and executing such deeds and documents (which appointment, being coupled with an interest, shall survive the bankruptcy of the Corporation);
- (c) the Trustee may also exercise any of the other rights to which the Trustee or the Holders are entitled including the right to take proceedings in any court of competent jurisdiction for the appointment of a receiver or receiver and manager (a "receiver"), for the sale of the mortgaged property or any part thereof or for foreclosure, and the right to take any other action, suit, remedy or proceeding authorized or permitted under this Deed or by law or in equity in order to enforce the security constituted by this Deed; and
- (d) the Trustee may also by instrument in writing appoint a receiver of the mortgaged property or of any part thereof and may remove any receiver so appointed and appoint another in his stead, and such receiver shall have the same rights, powers and authorities as are conferred on the Trustee by this Section 5.2. In addition the following provisions shall apply:
  - (i) such appointment shall be made in writing signed by the Trustee and such writing shall be conclusive evidence for all purposes of such appointment; the Trustee may from time to time in the same manner remove any receiver so appointed and appoint another in its stead; in making any such appointment the Trustee shall be deemed to be acting as the attorney for the Corporation and the Corporation hereby consents to the appointment of a receiver;



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- (ii) any such appointment may be limited to any part or parts of the mortgaged property or may extend to the whole thereof;
  - (iii) every receiver may, in the discretion of the Trustee, be vested with all or any of the powers, rights, benefits, discretions, protection and relief of the Trustee hereunder and shall be vested with all of the powers and protections afforded to a receiver under applicable law;
  - (iv) the Trustee may from time to time fix the reasonable remuneration of the receiver and direct the payment thereof, in priority to the other obligations secured hereby, out of the mortgaged property, the income therefrom or the proceeds thereof;
  - (v) the Trustee may from time to time require any receiver to give security for the performance of its duties and may fix the nature and amount thereof, but the Trustee shall not be bound to require such security;
  - (vi) every such receiver may, with the consent in writing of the Trustee, borrow money for the purpose of carrying on the business of the Corporation in respect of any part of the mortgaged property or for the maintenance, protection or preservation of the mortgaged property or any part thereof, and any receiver may issue certificates (in this Section called "Receiver's Certificates"), for such sums as will in the opinion of the Trustee be sufficient for carrying out the foregoing, and such Receiver's Certificates may be payable either to order or bearer and may be payable at such time or times as the Trustee may consider expedient, and shall bear such interest as shall therein be declared and the Receiver may sell, pledge or otherwise dispose of the same in such manner as the Trustee may consider advisable and may pay such commission on the sale thereof as the Trustee may consider reasonable, and the amounts from time to time payable by virtue of such Receiver's Certificates shall at the option of the Trustee form a charge upon the mortgaged property in priority to this Deed;
  - (vii) every receiver shall, regarding its acts or omissions, be deemed the agent of the Corporation, and in no event the agent of the Trustee and the Trustee shall not, in making or consenting to such appointment, incur any liability to any receiver for its remuneration or otherwise howsoever;
  - (viii) except as may be otherwise directed by the Trustee, all monies from time to time received by any receiver shall be paid over to the Trustee; and
  - (ix) the Trustee may pay over to any receiver any monies constituting part of the mortgaged property to the extent that the same may be applied for the purposes hereof by such receiver and the Trustee may from time to time determine what funds any receiver shall be at liberty to keep on hand with a view to the performance of its duties as such receiver.

In the exercise of their rights, powers and authorities hereunder, the Trustee and any receiver appointed by the Trustee shall be the agent of the Corporation, and the Trustee and the Holders shall not be in any way responsible for any misconduct or negligence of any such receiver, nor shall the Holders be in any way responsible for any misconduct or negligence of the Trustee.

### 5.3 Public Sale

The Trustee, the Holders or any agent or representative thereof, may become purchasers at any public sale of the mortgaged property, whether made under a power of sale provided for in this Deed or pursuant to judicial proceedings.

#### 5.4 Application of Proceeds of Realization of Security

Except as otherwise provided in this Deed, by law or by order of a court or by any resolution of the Holders, any and all monies arising from the enforcement of any remedy provided for herein, including, without limitation, the carrying on of the business of the Corporation and the sale or other realization of the whole or any part of the mortgaged property, whether under any sale by the Trustee or by judicial process or otherwise, shall be paid over to the Trustee, shall be held by the Trustee and, together with any other monies then or thereafter in the hands of the Trustee available for the purpose, shall be applied by the Trustee as follows:

- (a) firstly, if and to the extent that the Trustee deems that it is in the interest of the Holders generally and the same is not inconsistent with any resolution of the Senior Holders, to pay all charges and liens on the mortgaged property ranking (or capable of ranking) in priority to the security constituted by this Deed or to keep in good standing any such prior lien;
- (b) secondly, to pay all amounts due to the Trustee hereunder, including without limitation, costs, charges and expenses referred to in Section 3.9;
- (c) thirdly, to pay the outstanding principal amount secured by the Senior Debentures, to pay all interest secured by the Senior Debentures including interest on overdue interest accrued but unpaid to the date of the demand for payment of the amounts secured by such Senior Debentures and to pay all interest including interest on overdue interest accruing after the date of demand for payment and remaining unpaid of such amounts rateably and proportionately, having regard to the amount of the obligations secured by such Senior Debentures, rather than the face amount of any Senior Debenture that has been pledged in accordance with Section 1.3 above;
- (d) fourthly, after payment of all amounts secured by, and cancellation of, all Senior Debentures, to pay, in order as they succeed to being Senior Debentures, all amounts secured by each series of Subordinated Debentures in the same manner as in Section 5.4 (c) above;
- (e) fifthly, in payment of all other amounts at any time and from time to time remaining outstanding and unpaid under this Deed; and
- (f) sixthly, the surplus, if any, of such money shall be paid to the Corporation or its assigns or otherwise in accordance with applicable law.

#### 5.5 Duty to Inquire

No person dealing with the Trustee, its agents or any receiver appointed pursuant hereto (or pursuant to any agreement to which the Corporation and one or more of the Holders are parties) shall be concerned to inquire whether the powers which the Trustee, its agents or any receiver appointed pursuant hereto (or pursuant to any agreement to which the Corporation and one or more of the Holders are parties) is purporting to exercise have become enforceable, or whether any money remains due upon the security constituted by this Deed, or as to the necessity or expediency of the stipulations and conditions subject to which any sale shall be made, or otherwise as to the propriety or regularity of any sale or any other dealing by the Trustee with the mortgaged property or any part thereof or to see to the application of any money paid to the Trustee; and, in the absence of fraud on the part of such person, such dealings shall be deemed to be within the powers conferred on the Trustee and to be valid and effective accordingly.

#### 5.6 Possession

The Corporation shall on demand by the Trustee or any receiver yield up possession of the mortgaged property or any part thereof as demanded by the Trustee whenever the Trustee shall have a right to exercise any rights or remedies under Section 5.2 and put no obstacle in the way of, but

facilitate by all legal means, the actions of the Trustee or any receiver hereunder and not interfere with the carrying out of the powers hereby granted to the Trustee or any appointed receiver.

#### 5.7 Remedies Not Exclusive

No right, power or remedy herein conferred upon or reserved to the Trustee or any receiver is intended to be exclusive of any other right, power or remedy or remedies, and each and every right, power and remedy shall, to the extent permitted by applicable law, be cumulative and shall be in addition to every other right, power or remedy given hereunder or now or hereafter existing at law, in equity or by statute. No delay or omission of the Trustee in the exercise of any right, power or remedy accruing upon any default shall impair any such right, power or remedy or shall be construed to be a waiver of any such default or an acquiescence therein. Every right, power and remedy given to the Trustee or to a receiver by this Deed or under applicable law may be exercised from time to time and as often as may be deemed expedient by the Trustee or such receiver, as applicable.

#### 5.8 Power of Attorney

The Corporation hereby irrevocably constitutes and appoints the Trustee its true and lawful attorney and agent, with full power and authority in the Corporation's name, place and stead from time to time to do all acts and things and execute and deliver all share transfers, certificates, proxies, resolutions, consents, assignments, transfers, conveyances and agreements, in such form as the Trustee considers necessary or desirable to do all things which the Corporation is required to sign, execute and do hereunder if the Corporation has failed to sign, execute or do the same and generally to use the name of the Corporation, as applicable, in the exercise of all or any of the powers hereby conferred on the Trustee, with full powers of substitution and revocation; provided that this power of attorney may not be exercised by the Trustee until the security constituted hereby shall have become enforceable. Such appointment and power of attorney is hereby declared by the Corporation to be an irrevocable power coupled with an interest.

#### 5.9 Restriction on Corporation and its Officers and Directors

Upon the Corporation receiving notice from the Trustee of the taking of possession of the mortgaged property or the appointment of a receiver, all the powers, functions, rights and privileges of each of the directors and officers of the Corporation with respect to the properties, business and undertaking of the Corporation shall cease unless specifically continued by the written consent of the Trustee.

#### 6. DISCHARGE

6.1 Subject to Section 7, this Deed and the rights hereby granted (other than the Trustee's rights under Section 3.9 above) shall cease, determine and be void, and the Trustee shall at the request and expense of the Corporation cancel and discharge the mortgages and charges of this Deed (including the additional security provided for in Section 10 (the "Additional Security")) and execute and deliver to the Corporation such deeds or other instruments as shall be requisite therefor, if the Corporation first satisfies the Trustee that it has paid the principal amount and interest secured by the Debentures and has otherwise observed and performed the terms and conditions of this Deed and the Additional Security and has otherwise satisfied all obligations secured, or that all of the Debentures have been validly cancelled as contemplated in Section 1.6.

6.2 The registrar of any registration division in which any mortgaged property is situate shall discharge and cancel the registration of any mortgage, pledge or charge, or transfer or giving in payment created hereby or by the Additional Security or hereafter created under the provisions hereof upon the registration of any discharge, release or document to that effect signed by the Trustee, without being obliged to see that any of the conditions of this Deed or of the Additional Security have been fulfilled.

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## 7. CONTINUING AND ADDITIONAL SECURITY

7.1 The Debentures and the security created by this Deed shall be effective whether or not any monies or liabilities secured by this Deed are advanced or incurred before or after the date of this Deed, and shall not be considered as satisfied or discharged by any intermediate payment of the whole or part of the obligations secured by the pledge of the Debentures issued under this Deed but shall constitute and be a continuing security to the Holders for a current or running account and shall be in addition to and not in substitution for any other security now or hereafter held by the Holders or any of them. The remedies of the Trustee under this Deed may be exercised from time to time separately or in combination and are in addition to and not in substitution for any other rights of the Trustee or the Holders however created.

## 8. TRUSTEE

### 8.1 Acceptance by Trustee

The Trustee hereby accepts the trusts declared and provided in this Deed and agrees to perform the trusts upon the terms and conditions of this Deed, subject to the following:

- (a) the Trustee may appoint such agents and employ or retain, in relation to this Deed, such lawyers, accountants, valuers, engineers, architects, appraisers, or such other experts as it may reasonably require in the circumstances and for the purpose of discharging its duties hereunder and shall be entitled to pay reasonable compensation for the advice or assistance so obtained, but nevertheless the Trustee shall not be obliged to act on any advice or assistance so obtained. The Trustee may act and shall be protected in acting in good faith on the opinion or the advice of or information obtained from any counsel (including where appropriate counsel acting for the Corporation or any Holder acceptable to the Trustee), accountant, valuator, engineer, architect, appraiser or other expert or advisor, in each case selected by the Trustee using reasonable care, in relation to any matter arising in connection with the administration of this Deed;
- (b) in respect of any direction, authorization, statement of fact, copy of by-law, resolution or other proceeding or writing which the Trustee may require from the Corporation, the Trustee shall be entitled to accept and act upon the same, provided the said documents bear the signature of any officer or director of the Corporation;
- (c) the Trustee shall be accountable only for reasonable diligence in respect of the trusts hereby conferred upon it and shall not be accountable for any act or default of any agent or other person engaged by the Trustee for the performance of any duty or duties hereunder (except employees of the Trustee), provided the Trustee shall have selected such agent or person with reasonable care;
- (d) subject to any resolution of the Holders (or the Senior Holders where specified in this Deed), the Trustee shall as regards all the trusts, powers, authorities and discretion vested in it have absolute and uncontrolled discretion as to the exercise thereof, whether in relation to the manner or as to the mode and time for the exercise thereof, and in the absence of fraud, negligence or wilful misconduct, it shall in no way be responsible for any loss, costs, damages or inconvenience that may result from the exercise or non-exercise thereof;
- (e) the Trustee shall not be bound to take any steps to enforce any of the covenants on the part of the Corporation contained in the Debentures, except insofar as it may be required to do so by the Senior Holders (or the Subordinated Holders pursuant to Section 5.1(b)) in writing upon being furnished with an indemnity reasonably satisfactory to the Trustee;

- (f) the obligation of the Trustee to commence or continue any act, action or proceedings for the purpose of realizing the collateral or for the enforcement of any covenant or obligation under or arising out of these presents or the Debentures shall, at the option of the Trustee, be conditional upon the Holders furnishing, when requested in writing by the Trustee, sufficient funds to commence or continue such action or proceedings and an indemnity satisfactory to the Trustee to protect and hold harmless the Trustee against costs, charges and expenses and liabilities to be incurred thereby and any loss and damage it may sustain by reason thereof;
- (g) the Trustee may, but shall not be obliged to, enter onto the mortgaged property to take such actions as the Trustee may in its sole discretion deem necessary or advisable to clean up, remediate, encapsulate, remove, resolve, or minimize the impact of, or otherwise deal with, any contaminants or breaches of Environmental Laws which could in the opinion of the Trustee jeopardize the security interest in the mortgaged property created by this Deed;
- (h) the Trustee shall have no responsibility to supervise or have control over the conduct of the Corporation's environmental practices, nor shall any action or inaction by the Trustee be construed as exercising care, control or management over the mortgaged property; and
- (i) nothing in this Deed shall be deemed to make the Trustee responsible for failure to obtain or maintain adequate or any insurance coverage for the mortgaged property or to ensure that such insurance is obtained and maintained by the Corporation, or for any loss arising from any defects in any policy or because of the failure of any insurer to pay for any loss or damage insured against, and the Trustee shall be entitled to request, and rely absolutely upon, a certificate of an officer of the Corporation that the insurance carried by the Corporation from time to time is in compliance with all relevant requirements of this Deed.

## 8.2 Trustee not Required to Give Security

The Trustee shall not be required to give any bond or security in respect of the execution of the trusts and powers of this Deed or otherwise in respect of this Deed.

## 8.3 Protection of Trustee

By way of supplement to the provisions of any law for the time being relating to trustees, it is expressly declared and agreed as follows:

- (a) the Trustee shall not be liable for or by reason of any failure or defect of title to, or encumbrance upon, the mortgaged property;
- (b) the Trustee shall not be liable for or by reason of any statements of fact or recitals in this Deed, or in the Debentures (except in the Certificate of the Trustee thereon) or in any document ancillary or supplemental hereto or thereto, or required to verify the same, but all such statements or recitals are and shall be deemed to be made by the Corporation;
- (c) nothing herein or in the Debentures shall impose any obligation on the Trustee or any Holders to see to or to require evidence of the registration or filing or renewal of this Deed, any of the Debentures or any other instrument ancillary or supplemental hereto or thereto or any other deed or writing by way of mortgage or charge upon the mortgaged property or any part thereof or to procure any further, other or additional instrument of further assurance or to do any other act for the continuance of the security hereof or encumbrance or for giving notice of the existence of such security or for extending or supplementing the same;

- (d) the Trustee shall not be bound to give notice to any person or persons of the execution hereof or the security constituted hereby or in any way to interfere with the conduct of the business of the Corporation, unless and until the security hereby constituted shall have become enforceable and the Trustee shall have become bound to enforce the same;
- (e) the Trustee shall not incur any liability or responsibility whatever in consequence of permitting or suffering the Corporation, its successors or assigns, to retain or be in possession of any part of its mortgaged property and to use and enjoy the same unless herein or in the Debentures expressly otherwise provided; nor shall the Trustee be or become responsible or liable for any destruction, deterioration, loss, injury or damage which may be done or occur to the mortgaged property by the Corporation, its agents or servants, or by any other person or be in any way responsible for the consequences of any breach on the part of the Corporation of, or to inquire as to the performance by the Corporation of, any of the covenants herein or in the Debentures contained or of any acts of the agents or servants of the Corporation;
- (f) unless otherwise required by law, the Trustee shall not be liable by reason of any entry into possession of the mortgaged property or any part thereof to account as mortgagee in possession or for anything except actual receipts or be liable for any loss on realization or for any default or omission for which a mortgagee in possession might be liable save such as may be caused by its own fraud, negligence or wilful misconduct;
- (g) the Trustee on its own behalf or in any other capacity, may buy, lend upon and deal in shares in the capital stock of the Corporation and generally may contract and enter into financial transactions with the Corporation without being liable to account for any profit made thereby;
- (h) none of the provisions contained in this Deed shall require the Trustee to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers unless indemnified in accordance with this Deed;
- (i) the Trustee may, before commencing or at any time during the continuance of any such act, action or proceeding, require the Holders at whose instance it is acting to deposit with the Trustee the Debentures held by them, for which Debentures the Trustee shall issue receipts;
- (j) the Trustee shall not be responsible or liable in any manner whatsoever for the sufficiency, correctness, genuineness or validity of any security deposited with it, including any stock transfer power of attorney; and
- (k) in the exercise of its rights, duties and obligations hereunder the Trustee may, if acting in good faith, rely, as to the truth of the statements and accuracy of the opinions expressed therein, upon statutory declarations, opinions, reports or certificates furnished pursuant to any covenant, condition or requirement of this Deed or required by the Trustee to be furnished to it in the exercise of its rights and duties hereunder, provided that the Trustee examines such statutory declarations, opinions, reports or certificates and determines, acting in good faith, that they comply with any applicable requirements of this Deed.

#### 8.4 Trustee's Obligation to Act

Unless and until the Trustee is required to do so under the terms of this Deed, the Trustee shall not be bound to give any notice or to take any act, action or proceeding by virtue of the powers conferred on it by this Deed; nor shall the Trustee be required to take notice of an event of default under this Deed, other than in payment of any monies required by any provisions hereof to be paid

to it. Unless and until notified in writing of such events of default or such default and in the absence of any such notice, the Trustee may assume that the Corporation is not in default hereunder and that no default has been made with respect to the payment of principal or interest under the Debentures or in the observance of performance or any of the covenants, agreements or conditions contained herein.

The right and obligation of the Trustee to commence or continue an act, action or proceeding for the purpose of enforcing any rights of the Trustee or the Holders hereunder shall be conditional on (i) the Trustee receiving a resolution from the Senior Holders (or the Subordinated Holders (or an agent on their behalf) pursuant to Section 5.1(b) exercised in accordance with Section 5.1(d)) and (ii) compliance with Section 8.1 (f).

#### 8.5 Resignation of Trustee

The Trustee may resign its trust and be discharged from all further duties and liabilities hereunder by giving to the Corporation not less than 30 days' notice in writing or such shorter notice as the Corporation may accept as sufficient. The Senior Holders shall have the power at any time to remove the Trustee and to appoint a new Trustee. In the event of the Trustee resigning or being removed as aforesaid or being dissolved, becoming bankrupt, going into liquidation or otherwise becoming incapable of acting hereunder, the Corporation shall forthwith appoint a new Trustee unless a new Trustee has already been appointed by the Senior Holders; failing such appointment by the Corporation, the retiring Trustee (at the Corporation's expense) or any Senior Holder may apply to a Judge of the Court of Queen's Bench of Manitoba, on such notice as such Judge may direct, for the appointment of a new Trustee, but any new Trustee so appointed by the Corporation or by the Court shall be subject to removal as aforesaid by the Senior Holders. Any new Trustee appointed under these provisions shall be a corporation authorized to carry on the business of a trust company in the Province of Manitoba.

#### 8.6 Powers of New Trustee

Any new Trustee appointed hereunder shall execute an instrument accepting such appointment hereunder and deliver one counterpart or notarial copy thereof to the Corporation and one counterpart or notarial copy thereof to the Trustee last in office and the Holders shown on the Trustee's register, and thereupon such new Trustee without further act, deed or conveyance shall become vested with all estates, properties, rights, powers and trusts of its predecessor in the trusts hereunder, with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of the successor Trustee or of the Corporation, the Trustee ceasing to act shall execute and deliver an instrument or instruments assigning and transferring to such successor Trustee, upon the trusts herein expressed, all the said property and assets and all rights, powers and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver all property and money held by such Trustee to the successor Trustee so appointed in its place. Should any deed, conveyance or instrument in writing from the Corporation be required by any new Trustee for more fully and certainly vesting in and confirming to it such estates, properties, rights, powers and trusts, then any and all such deeds, conveyances and instruments in writing shall, on request of said new Trustee, be made, executed, acknowledged and delivered by the Corporation. At the request of the Corporation or the new Trustee, the retiring Trustee, upon payment of the amounts, if any, due to it pursuant to Section 3.9, shall duly assign, transfer and deliver to the new Trustee all property and money held and all records kept by the retiring Trustee hereunder or in connection herewith.

#### 8.7 Corporate Re-organization of Trustee

Any company into which the Trustee may be merged or with which it may be consolidated or amalgamated, or any company resulting from any merger, consolidation or amalgamation to which the Trustee shall be a party, shall be the successor Trustee under this Deed without the execution of any instrument or any further act.

#### 8.8 Evidence

The Corporation shall furnish to the Trustee evidence of compliance with the conditions provided for in this Trust Deed relating to any action or step required or permitted to be taken by the Corporation or the Trustee under this Trust Deed or as a result of any obligation imposed under this Trust Deed, including, without limitation, the issue, certification and delivery of Debentures hereunder, the satisfaction and discharge of this Trust Deed and the taking of any other action to be taken by the Trustee at the request of or on the application of the Corporation, forthwith if and when:

- (i) such evidence is required by any other Section of this Trust Deed to be furnished to the Trustee in accordance with the terms of this Section; or
- (ii) the Trustee, in the exercise of its rights and duties under this Trust Deed, gives the Corporation written notice requiring it to furnish such evidence in relation to any particular action or obligation specified in such notice.

Such evidence shall consist of:

- (A) a certificate of an officer of the Corporation stating that any such condition has been complied with in accordance with the terms of this Trust Deed;
- (B) in the case of any such condition compliance with which is, by the terms of this Trust Deed, made subject to review by legal counsel, an opinion of counsel to the Trustee that such condition has been complied with in accordance with the terms of this Trust Deed; and
- (C) in the case of any such condition compliance with which is, by the terms of this Trust Deed, made subject to review or examination by an auditor or accountant, an opinion or report of the auditors of the Corporation or any accountant licenced under the applicable laws of the Province of Manitoba based on the examinations or enquiries required to be made under the terms of this Trust Deed, in each case approved by the Trustee, that such condition has been complied with in accordance with the terms of this Trust Deed.

Whenever such evidence relates to a matter other than the issue, certification and delivery of Debentures, the satisfaction and discharge of this Trust Deed or the taking of any other action to be taken by the Trustee at the request or on the application of the Corporation, and except as otherwise specifically provided herein, such evidence may consist of a report or opinion of any solicitor, auditor, accountant, engineer or appraiser or any other person whose qualifications give authority to a statement made by him, provided that if such report or opinion is furnished by a director, officer or employee of the Corporation it shall be in the form of a certificate satisfactory to the Trustee (acting reasonably). Such evidence shall be, so far as appropriate, in accordance with the immediately preceding paragraph of this section.

Each statutory declaration, certificate, opinion or report furnished to the Trustee as evidence of compliance with a condition provided for in this Trust Deed shall include a statement by the person giving the evidence:

- (a) declaring that he has read and understands the provisions of this Trust Deed relating to the condition in question;
- (b) describing the nature and scope of the examination or investigation upon which he based the statutory declaration, certificate, statement or opinion; and
- (c) declaring that he has made such examination or investigation as he believes is necessary to enable him to make the statements or give the opinions contained or expressed herein.



Upon the demand of the Trustee, the Corporation shall furnish the Trustee with evidence in such form as the Trustee may reasonably require as to compliance with any condition contained in this Trust Deed relating to any action required or permitted to be taken by the Corporation or as to any other matter referred to herein.

#### 8.9 Action By Trustee to Protect Interests

The Trustee shall have power to institute and to maintain such actions and proceedings as it may consider necessary or expedient to preserve, protect or enforce its interests and the interests of the Holders.

#### 8.10 Duties of Trustee

The Trustee, in exercising its powers and discharging its duties hereunder, shall:

- (i) act honestly and in good faith with a view to the best interests of the Holders;
- (ii) exercise the care, diligence and skill of a reasonably prudent trustee; and
- (iii) act reasonably wherever such standard is stipulated herein and otherwise shall act as required by law.

### 9. RESOLUTIONS OF HOLDERS

#### 9.1 Powers of the Holders

The powers of the Holders shall be exercisable by the Senior Holders only, except (i) as expressly provided in Sections 3.2, 3.10(a), 5.1(b) and 5.1(d) of this Deed, and (ii) as to matters set forth in paragraphs (c), (d), (e) and (g) below which shall be also exercisable by Subordinated Holders as described in those paragraphs, and include but are not limited to the following powers exercisable from time to time by resolution of the Senior Holders:

- (a) the power to require the Trustee to refrain from enforcing any covenant on the part of the Corporation herein or to refrain from exercising any of the powers set forth herein and conferred on the Trustee or to direct the Trustee to waive any default or defaults on the part of the Corporation on such terms as may be deemed advisable or to cancel any declaration or waiver previously made by the Trustee under this Deed;
- (b) power to remove a Trustee from office and to appoint a new Trustee;
- (c) power to assent to any judgment, compromise or arrangement by the Corporation with any creditor, creditors or class or classes of creditors or with the holder(s) of any shares or securities of the Corporation, which shall also require the approval of the Holders of each series of Subordinated Debentures in respect of any judgment, compromise or arrangement affecting their respective Debentures;
- (d) power to assent to any modification of or change in or addition to or deletion from the rights of the Holders or the provisions contained in this Deed or any instrument ancillary or supplementary hereto or thereto or any agreement forming part of the mortgaged property which shall be agreed by the Corporation and to authorize the Trustee to concur in and execute any indenture supplemental to this Deed or any agreement supplemental to any instrument embodying any such modification, change, addition, deletion or to concur in and execute any deeds, documents, or writings authorized by such resolution, which shall also require the approval of the Holders of each series of Subordinated Debentures in respect of any such modification, change, addition, deletion affecting their respective Debentures;

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- (e) power to approve the release of the Corporation and of the whole or any part of the mortgaged property from the security constituted hereby, which shall also require the approval of the Holders of each series of Subordinated Debentures;
  - (f) power to authorize the Trustee to execute and deliver such form of priority agreement as may reasonably be requested by the Corporation to evidence the priority of any permitted liens which are permitted by the terms of any agreements entered into with all of the Holders to rank prior to the security constituted hereby; and
  - (g) power to issue additional Debentures pursuant to Section 1.1, which shall also require the approval of the Holders of each series of Subordinated Debentures, which consent, in the case of the Subordinated Holders, shall not be unreasonably withheld.

The powers of the Holders shall be deemed to be several and cumulative and not dependent on each other and the exercise of any one or more of such powers, or in any combination of such powers, from time to time, shall not be deemed to exhaust the rights of the Holders to exercise such power or powers, or combination of powers thereafter from time to time.

#### 9.2 Resolutions of the Holders

The powers specified in Section 9.1 of this Deed and every other power conferred upon the Senior Holders or Subordinated Holders, as the case may be, by any provisions of this Deed or the Debentures or any agreement ancillary or supplemental hereto or thereto shall be exercised by resolution passed in the following manner:

- (a) the substance of any resolution may be embodied in an instrument in writing and such resolution shall be deemed to have been passed when such instrument has been executed by the Senior Holders or Subordinated Holders, as the case may be, holding an aggregate of more than 66 2/3% of the principal amount of all of the outstanding Debentures in the relevant series;
- (b) any such instrument, and any requisition or other instrument to be executed by any Holders under any provisions of this Deed, may be executed in counterparts and any of the Holders may execute the same in person or by agent or attorney duly authorized in writing;
- (c) at the request of the Trustee, the date and execution by any of the Holders or agent or attorney of any such instrument and the execution by any of the Holders of any power of attorney shall be proved by the certificate of any notary public that the person signing the same has acknowledged to him the execution thereof, by affidavit or statutory declaration of a witness to such execution, or by the signature of the Holder as witnessed by any officer of any bank or trust company; such proof shall be conclusive in favour of the Trustee with regard to any action taken or suffered by the Trustee under such instrument. No such instrument shall be effective until delivery thereof to the Trustee; and
- (d) the Trustee shall give notice to all Holders of each resolution of the Senior Holders or Subordinated Holders passed as aforesaid.

#### 9.3 Effect of Resolutions of Holders

Any resolution passed as provided in Section 9.2 shall be binding upon the Holders and each of them, and the Trustee (subject to the provisions for its indemnity, if any, set forth in this Deed) shall be bound to give effect thereto accordingly.

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#### 10. ADDITIONAL SECURITY

10.1 To more effectively secure the due payment in lawful money of Canada of the obligations secured and all other amounts owing under or in connection with this Deed and the Debentures, the Corporation shall issue for the benefit of the Holders and as additional security such pledges of shares, deeds of hypothec and other security documents as may be agreed to by the Corporation, in a form and substance required by the Holders and the Trustee. Such additional security documents shall be in favour of the Trustee, who shall hold the same for and on behalf of the Holders from time to time. The provisions of this Deed, including without limitation, Sections 3.9, 7, 8 and 9, shall apply with respect to such additional security documents.

#### 11. NOTICE

11.1 Any notices to be given under this Deed shall be given to the parties at the addresses set out below, or to the Holders at the addresses specified in the Trustee's records. Notice shall be deemed to have been effectually given when such notice is delivered personally to the addressee by hand or by fax with receipt confirmed or on the third business day after such notice is mailed by prepaid registered mail to the addressee. Subject to the right of each party to change its address by notice to the other parties from time to time, the addresses of the parties are as follows:

Cataract Ice Limited  
c/o The Arctic Group Inc.  
625 Henry Avenue  
Winnipeg, Manitoba  
R3A 0V1

Attention: President  
Fax No.: (204) 783-9857

Montreal Trust Company  
151 Front Street West  
Suite 605  
Toronto, Ontario  
M5J 2N1

Attention: Manager, Corporate Trust Department  
Fax no.: 416-981-9777

#### 12. DATE OF DEED

12.1 This Deed may be referred to as bearing the formal date of 17 August 1999, notwithstanding the actual date of its execution.

#### 13. EFFECT OF HEADINGS

13.1 The headings and marginal notes of the Sections in this Deed are inserted for convenience of reference only and shall not affect the interpretation of this Deed.

#### 14. GOVERNING LAW

14.1 The Deed shall be governed by and construed in accordance with the laws of the Province of Manitoba and the Federal laws of Canada applicable therein.

#### 15. MISCELLANEOUS

15.1 No land which is charged or mortgaged under this Deed is farm land within the definition of subsection 1(1) of the *Farm Lands Ownership Act* (Manitoba).

15.2 The Corporation hereby agrees that *The Land Contracts (Actions) Act* of the Province of Saskatchewan shall have no application to any action, as in *The Land Contracts (Actions) Act* defined, with respect to the within Deed or with respect to any mortgage, charge or other security given by the Corporation pursuant to this Deed or to any indenture, instrument or agreement entered into by the Corporation at any time hereafter, supplemental or ancillary to or in implementation of this Deed and all of the benefits of the said Act are hereby waived. To the extent permitted by law, the Corporation expressly waives its rights under the *Alberta Insurance Act* and the *Fire Prevention (Metropolis) Act*, 1774 (GEO III, Ch. 78).

15.3 *The Limitation of Civil Rights Act* of the Province of Saskatchewan shall have no application to:

- (a) this Deed;
- (b) any mortgage, charge or other security for the payment of money made, given or created by this Deed;
- (c) any agreement or instrument renewing or extending or collateral to this Deed or renewing or extending or collateral to any mortgage, charge or other security referred to or mentioned in subparagraph (b) of this Section; or
- (d) the rights, powers or remedies of the Trustee under this Deed or any mortgage, charge, other security, agreement or instrument referred to or mentioned in subparagraph (b) or (c) of this Section.

15.4 For purposes of Section 198.1 of the *Land Title Act* (British Columbia), the floating charge created by Section 2.1 on any present or future real or immovable property or interest therein (for purposes of this Section 15.4 collectively referred to as the "Real Property") will become a fixed charge on such Real Property upon the earlier of (a) a demand for payment being made pursuant to Section 5.1 and the Trustee upon being so directed by resolution of the Senior Holders or Subordinated Holders (if they act under Section 5.1(b)) giving written notice to the Corporation that such floating charge has become a fixed charge on such Real Property, and (b) the occurrence of any other event which by operation of law would result in such floating charge becoming a fixed charge on real property. The right of consolidation shall apply to this Trust Deed notwithstanding Section 27 of the Property Law Act of British Columbia or any similar statutory provision in force from time to time.

15.5 The Corporation acknowledges receipt of a true copy of this Deed.

15.6 The Corporation expressly waives the right to receive a copy of any financing statement or confirmation statement or financing change statement which may be registered by the Trustee in connection with this Deed or any verification statement issued with respect thereto where such waiver is not otherwise prohibited by law.

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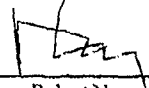
- 27 -

THE PARTIES REQUIRE THAT THIS DEED, THE DEBENTURES AND ALL NOTICES, DOCUMENTS AND ACTIONS GIVEN, DELIVERED OR INSTITUTED PURSUANT TO THIS DEED BE DRAWN IN ENGLISH. LES PARTIES EXIGENT QUE LE PRESENT ACTE, LES OBLIGATIONS ET TOUS LES AVIS, DOCUMENTS, OU ACTIONS DONNES, PASSES OU INTENTES EN VERTU DU PRESENT ACTE SOIENT REDIGES EN ANGLAIS.

IN WITNESS OF WHICH the parties have signed this Deed.

CATARACT ICE LIMITED

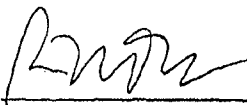
By:

  
Name: Robert Nagy  
Title: President

c/s

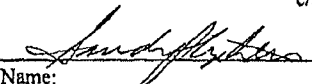
MONTREAL TRUST COMPANY

By:

  
Name: RENATO DIDONE  
Title: CORPORATE TRUST OFFICER

c/s

By:

  
Name: SANDY STEPHENS  
Title: Senior Corporate Trust Officer

SCHEDULE A

Series ♦ No. ♦

♦% DEBENTURE

5 ♦

Cataract Ice Limited (the "Corporation"), for value received, promises to pay on demand to the registered holder of this Debenture at ♦, ♦ DOLLARS (\$♦) in lawful money of Canada, and to pay interest thereon from the date hereof at the same place in like money at the rate of ♦ per cent (♦%) per annum, calculated monthly and payable on demand, both before and after maturity and default, with interest on overdue interest at the same rate.

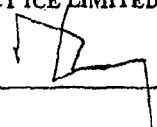
This Debenture is issued under and secured by a Trust Deed dated as of ♦ 1999 (the "Trust Deed") executed by the Corporation in favour of Montreal Trust Company as Trustee, and this Debenture is subject to the terms and provisions of the Trust Deed.

This Debenture may be transferred by the holder only in accordance with the Pledge Agreement (the "Pledge Agreement") and upon compliance with the provisions of Section 1.5 of the Trust Deed. In the event of any conflict between the terms of the Pledge Agreement and the terms of this Debenture, the terms of the Pledge Agreement shall prevail.

This Debenture shall not become a binding obligation of the Corporation until it shall have been certified by the Trustee under the Trust Deed.

IN WITNESS OF WHICH the Corporation has caused this Debenture to be signed by its duly authorized signing officer and to be dated ♦.

CATARACT ICE LIMITED

By:  c/s  
Name:  
Title:

TRUSTEE'S CERTIFICATE

This Debenture is a Debenture issued under the Trust Deed within-mentioned.

Dated: ♦

MONTREAL TRUST COMPANY

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

## SCHEDULE "B"

This Schedule is attached to and forms part of a certain Trust Deed dated August 17, 1999, given by CATARACT ICE LIMITED in favour of MONTREAL TRUST COMPANY.

Owned Property:**Firstly: 4388 Park Street, Niagara Falls**

Northerly 75 feet of Lot 8 in Block "CC", according to a plan registered in the Registry Office for the Registry Division of Welland as Zimmerman & Benedict Plan for the Town of Niagara Falls now known as Plan No. 999 and Plan No. 1000 for the City of Niagara Falls, City of Niagara Falls, Regional Municipality of Niagara, as described in Instrument No. 535140.

**Secondly: 4364 Park Street, Niagara Falls**

Part of Lot 9, in Block "K" on the east side of Ontario Avenue, Zimmerman and Benedict Plan formerly Town of Niagara Falls, County of Welland, now known as Plan 999 and 1000 City of Niagara Falls, Regional Municipality of Niagara, as described in Instrument No. 507174.

**Thirdly: 4389 Park Street, Niagara Falls**

Part of Lots 1, 2 and 3 in Block "I", Part of Lots 7 and 8 in Block "DD", Zimmerman and Benedict Plans, now known as Plan 999 and 1000, formerly Town of Niagara Falls, and part of Ontario Avenue, Corporation Plan 35, Village of Niagara Falls, now known as Plan 1002, designated as Parts 1 and 2 on Reference Plan 59R-3568, City of Niagara Falls, Regional Municipality of Niagara.

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SCHEDULE "C"

This Schedule is attached to and forms part of a certain Trust Deed dated August 17, 1999,  
given by CATARACT ICE LIMITED in favour of MONTREAL TRUST COMPANY.

Leased Property:

5881 Thorold Stone Road, Niagara Falls, Ontario

A:\DESC1.WPD



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SCHEDULE "B"

This Schedule is attached to and forms part of a certain Trust Deed dated August 17, 1999, given by CATARACT ICE LIMITED in favour of MONTREAL TRUST COMPANY.

Owned Property:

**Firstly: 4388 Park Street, Niagara Falls**

Northerly 75 feet of Lot 8 in Block "CC", according to a plan registered in the Registry Office for the Registry Division of Welland as Zimmerman & Benedict Plan for the Town of Niagara Falls now known as Plan No. 999 and Plan No. 1000 for the City of Niagara Falls, City of Niagara Falls, Regional Municipality of Niagara, as described in Instrument No. 535140.

**Secondly: 4364 Park Street, Niagara Falls**

Part of Lot 9, in Block "K" on the east side of Ontario Avenue, Zimmerman and Benedict Plan formerly Town of Niagara Falls, County of Welland, now known as Plan 999 and 1000 City of Niagara Falls, Regional Municipality of Niagara, as described in Instrument No. 507174.

**Thirdly: 4389 Park Street, Niagara Falls**

Part of Lots 1, 2 and 3 in Block "T", Part of Lots 7 and 8 in Block "DD", Zimmerman and Benedict Plans, now known as Plan 999 and 1000, formerly Town of Niagara Falls, and part of Ontario Avenue, Corporation Plan 35, Village of Niagara Falls, now known as Plan 1002, designated as Parts 1 and 2 on Reference Plan 59R-3568, City of Niagara Falls, Regional Municipality of Niagara.



**THIS FIRST SUPPLEMENTAL TRUST DEED** made as of the 22<sup>nd</sup> day of March, 2002

**AMONG:**

**ARCTIC GLACIER INC.,**  
a company duly amalgamated under the laws of Alberta  
(hereinafter referred to as the "Company")

**PARTY OF THE FIRST PART**

**AND:**

**MONTREAL TRUST COMPANY,**  
a trust company existing under the laws of Canada  
(hereinafter referred to as "Montreal Trust")

**PARTY OF THE SECOND PART**

**AND:**

**COMPUTERSHARE TRUST COMPANY  
OF CANADA,**  
a trust company existing under the laws of Canada  
(hereinafter referred to as "Computershare")

**PARTY OF THE THIRD PART**

**WHEREAS** by Trust Deed made as of August 17, 1999, between Cataract Ice Limited (the "Subsidiary") and Montreal Trust, as Trustee, (which Trust Deed and any and all deeds heretofore supplemental thereto are herein collectively referred to as the "Trust Deed"), provision was made for the issue by the Subsidiary of Debentures (as defined therein), subject to the terms and conditions contained in the Trust Deed;

**AND WHEREAS** the Company represents that pursuant to a resolution regarding the dissolution of the Subsidiary effective June 30, 2000 and a Distribution Agreement made as of June 30, 2000, the Subsidiary has assigned, conveyed and transferred to The Arctic Group Inc. (the "Predecessor") all of the properties, assets, rights, interests and undertaking of any kind and nature whatsoever of the Subsidiary and the Predecessor has unconditionally assumed all of the liabilities, obligations and duties of the Subsidiary and agreed to perform, satisfy and discharge such liabilities, obligations and duties in accordance with the terms thereof;

**AND WHEREAS** Arctic Glacier Inc. ("Pre-Amalco Glacier") is a corporation incorporated on January 14, 2002 under the *Business Corporations Act* (Alberta), S.A. 2000, c. B-9, as amended;

**AND WHEREAS** Pre-Amalco Glacier duly amalgamated (the "Amalgamation") with the Predecessor effective March 22, 2002, with the amalgamated entity continuing as the Company under the name Arctic Glacier Inc.;

**AND WHEREAS** as a result of the Amalgamation, the Company continues to be liable for all of the liabilities, obligations and duties of each of the Predecessor and Pre-Amalco Glacier, including, without limitation, all liabilities, obligations and duties under the Trust Deed assumed and undertaken by the Predecessor from the Subsidiary, as if the Company were an original party to the Trust Deed;

**AND WHEREAS** the parties desire to provide for the inclusion and recognition of the Company in the Trust Deed with respect to the Company's continuing liability for the interests, liabilities, obligations and duties of the Subsidiary thereunder;

**AND WHEREAS** Computershare and Montreal Trust represent that Computershare acquired the stock transfer and corporate trust businesses of Montreal Trust pursuant to an Asset Purchase Agreement dated as of June 30, 2000 (the "Purchase Agreement"), and pursuant thereto Montreal Trust agreed to transfer to Computershare, and Computershare agreed to accept the transfer of, the appointment as Trustee under the Trust Deed, subject to the agreement of the Company as successor to the Subsidiary;

**AND WHEREAS** Computershare represents that it is duly qualified to be Trustee under the Trust Deed;

**AND WHEREAS** to give effect to the foregoing, Montreal Trust desires to, in accordance with the terms of the Trust Deed, resign as Trustee thereunder and be discharged from the trusts thereof, and to assign and transfer to Computershare all of its estates, properties, moneys, records, rights, powers and trusts under the Trust Deed;

**AND WHEREAS** the Company is prepared to accept such resignation and to appoint Computershare as the successor Trustee under the Trust Deed, and Computershare is prepared to accept such appointment;

**AND WHEREAS** the parties wish to execute this First Supplemental Trust Deed for the purpose of providing for the inclusion and recognition of the Company in the Trust Deed in the place and stead of the Subsidiary and for the purpose of providing for the resignation of Montreal Trust as Trustee and for its replacement by Computershare, all with effect as of March 22, 2002 (hereinafter, the "Transfer Date");

**NOW, THEREFORE, THIS FIRST SUPPLEMENTAL TRUST DEED WITNESSES** that in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the parties covenant and agree as follows:

1. Each of Montreal Trust, Computershare and the Company hereby confirms the accuracy, truthfulness and completeness of each of the above recitals to which it is a party and

acknowledges that same are being relied upon by the parties in entering and executing this First Supplemental Trust Deed;

2. The Company hereby replaces the Subsidiary on and after the Effective Date as a party to the Trust Deed, assumes all of the liabilities, obligations and duties of the Subsidiary under the Trust Deed and to perform, satisfy and discharge such liabilities, obligations and duties as if it were an original party to the Trust Deed in accordance with the terms thereof in the place and stead of the Subsidiary;

3. The Company shall be entitled to all of the rights, privileges and benefits of the Subsidiary under the Trust Deed on and after the Effective Date;

4. Montreal Trust hereby waives any required notice pursuant to the Trust Deed with respect to any previous change of name or amalgamation involving the Subsidiary or the Company and acknowledges and confirms that the Company has complied with all requirements of the Trust Deed for notice to the Trustee in respect of the Amalgamation;

5. Montreal Trust hereby resigns as Trustee under, and is hereby discharged from the trusts of, the Trust Deed, effective as of the Transfer Date. The Company hereby accepts such resignation, waiving any required period of notice that may be set forth in the Trust Deed.

6. The Company hereby appoints Computershare as successor Trustee under the Trust Deed in the place and stead of Montreal Trust and with like effect as if originally named as Trustee under the Trust Deed, effective as of the Transfer Date, and Computershare hereby accepts such appointment. The parties hereby agree that Montreal Trust shall not be responsible for any liabilities that may arise pursuant to Computershare's administration of the trusteeship after the Transfer Date. For greater certainty, however, nothing in this First Supplemental Trust Deed shall in any way release Montreal Trust from or affect its liabilities, duties or obligations under the Trust Deed arising prior to the Transfer Date.

7. Montreal Trust hereby transfers and assigns to Computershare, and Computershare hereby accepts such transfer and assignment, upon the trusts expressed in the Trust Deed, all the rights, powers and trusts of Montreal Trust under the Trust Deed, effective as of the Transfer Date.

8. Montreal Trust agrees to transfer and deliver to Computershare, and Computershare agrees to accept such transfer and delivery of, any and all records, documents, monies and other property that may be held by Montreal Trust in connection with the Trust Deed. Such transfers, deliveries and acceptances shall be made as soon as practicable upon, after, or in anticipation of, the Transfer Date as may be agreed between such parties.

9. Notwithstanding any of the foregoing, the resignation, discharge, appointment, transfers, assignments and other agreements provided for herein will not be effective unless this First Supplemental Trust Deed has been executed by all of the parties hereto, whether upon the original instrument, by facsimile or in counterparts, or any combination thereof, and unless all preconditions to such resignation, discharge, appointment, transfers, assignments and other agreements as may be set forth in the Trust Deed have been fulfilled.

10. Any provision in the Trust Deed specifying the addresses of the parties is hereby amended to record the respective addresses of the parties as follows:

Arctic Glacier Inc.  
625 Henry Avenue  
Winnipeg, Manitoba  
R3A 0V1

Attention: President  
Fax No.: (204) 783-9857

Computershare Trust Company of Canada  
100 University Avenue  
9th Floor, North Tower  
Toronto, Ontario  
M5J 2Y1

Attention: Manager, Corporate Trust Department  
Fax: (416) 981-9777

11. Each party hereto agrees to execute and deliver all such documents and instruments and do such other acts as may be necessary or advisable to give effect to the terms hereof.
12. This First Supplemental Trust Deed is supplemental to the Trust Deed and shall be read in conjunction therewith. Except only insofar as the same may be inconsistent with the express provisions of this First Supplemental Trust Deed, all the provisions of the Trust Deed shall apply to and shall have effect in the same manner as if they and the provisions of this First Supplemental Trust Deed were contained in one instrument. The form of any Demand Debentures to be certified by the Trustee from and after the Transfer Date shall be amended, stamped or legended to identify Computershare as the successor trustee and the Company as the issuer but the validity of any Debentures certified prior to the Transfer Date shall not be affected by the appointment of Computershare as successor trustee.
13. Computershare as successor Trustee hereby accepts the trusts in the Trust Deed declared and provided and agrees to perform the same upon the terms and conditions herein and in the Trust Deed set forth.
14. This First Supplemental Trust Deed shall enure to the benefit of and be binding upon the parties hereto and their successors and permitted assigns.

IN WITNESS WHEREOF this First Supplemental Trust Deed has been duly executed by the parties hereto as of the date first above written.

ARCTIC GLACIER INC.

Per: ML

Per: \_\_\_\_\_

MONTREAL TRUST COMPANY

Per: T. Vitell

Per: Michael B. Carter

COMPUTERSHARE TRUST COMPANY  
OF CANADA

Per: T. Vitell

Per: Michael B. Carter





TRUST DEED dated as of 17 August 1999.

B E T W E E N:

1179554 ONTARIO INC.,  
a corporation incorporated under the laws of Ontario  
(the "Corporation")

- and -

MONTREAL TRUST COMPANY,  
a trust company incorporated under the laws of Canada  
(the "Trustee")

RECITALS:

A. The Corporation wishes to raise money for its corporate purposes and/or secure certain of its obligations, and with a view to doing so wishes to create and issue Debentures in the manner provided in this Trust Deed.

B. All necessary resolutions of the directors of the Corporation have been duly enacted, passed and/or confirmed and other proceedings taken and conditions complied with to make the creation and issue of the Debentures proposed to be issued hereunder and this Trust Deed and the execution thereof legal, valid and binding on the Corporation in accordance with the laws relating to the Corporation.

THEREFORE, THE PARTIES HAVE AGREED AS FOLLOWS:

1. FORM AND ISSUE OF DEBENTURES

1.1 Limitation of Issue

The Debentures to be issued under and secured by this Deed are limited to an aggregate principal amount of five hundred million Canadian dollars (Cdn.\$500,000,000) and may be issued in one or more series. The Debentures shall be designated as "Series A Debentures", "Series B Debentures", and so on if two or more series are issued, but the designation of different series of Debentures need not be consecutive so that, for example, Series C Debentures may be issued without Series B Debentures having been issued. Except with respect to the letter A, series of Debentures may also be designated with two or more letters, such as "Series BB Debentures" and "Series CCC Debentures". In addition, further Debentures in any series may be issued from time to time despite the issuance of Debentures in a subsequent series. Debentures of all series shall be designated collectively as "Debentures" and shall be subject to the terms and conditions of this Deed. No Debenture may be issued without the prior written consent of the Holders (as defined below), which consent, in the case of the Subordinated Holders, shall not be unreasonably withheld. For greater certainty, the limit of the aggregate principal amount of Debentures which may be issued hereunder shall not be reduced by the principal amount of Debentures which have been returned to the Trustee for cancellation or discharge in accordance with the terms hereof.

1.2 Forms, Terms and Place of Payment

Each Debenture shall be fully registered and substantially in the form set out in Schedule A to this Deed, shall be payable on demand in lawful money of Canada at the address of the holder or holders specified in the Debenture (the "Holders", which shall mean one or more persons holding

one or more Debentures) and the Debentures shall bear interest from the date of each respective debenture at the rate of twenty-five per cent (25%) per annum, or at such other rate as may be agreed upon by the Corporation and the Holders from time to time, payable on demand, both before and after maturity and default, with interest on overdue interest at the same rate. Each Debenture may, but need not, be under the seal of the Corporation, shall be signed by any officer or director of the Corporation and shall be certified by the Trustee and delivered by the Trustee to or to the order of the Corporation upon receipt by the Trustee of an order in writing signed by any officer or director of the Corporation. No Debenture shall be issued, or, if issued, shall be obligatory or entitle the Holder to the benefit hereof, until it has been certified by or on behalf of the Trustee substantially in the form of the certificate set out in Schedule "A" to this Deed, or in some other form approved by the Trustee, and such certification by the Trustee upon any Debenture shall be conclusive evidence as against the Corporation that the Debenture so certified has been duly issued hereunder and is a valid obligation of the Corporation and that the Holder is entitled to the benefit hereof. The certificate of the Trustee shall not be construed as a representation or warranty of the Trustee as to the validity or security of the Trust Deed or the Debentures. Nothing in this Deed or the Debentures shall make the Trustee responsible or liable for the Corporation's obligations to pay the principal of or interest on the Debentures.

#### 1.3 Pledge of Debentures

Each Debenture shall be pledged, hypothecated, issued or charged by the Corporation as security for payment by the Corporation of certain or all debts and liabilities, including debts and liabilities in any currency, present or future, direct or indirect, absolute or contingent, matured or not, for a current or running account or not, at any time owing by the Corporation to the Holder thereof or remaining unpaid by the Corporation to the Holder thereof, whether arising from dealings between the Holder thereof and the Corporation or from any other dealings or proceedings by which the Holder thereof may be or become in any manner whatever a creditor of the Corporation, and wherever incurred, and whether incurred by the Corporation alone or with another or others, and whether as principal or surety, including expenses and all interest, commissions, legal and other costs, charges and expenses (the "obligations secured", it being understood and agreed that the term "obligations secured" as used in this Deed shall mean, as the context may require, such obligations of the Corporation owing to a particular Holder or Holders hereunder or the aggregate of such obligations of the Corporation owing to all the Holders hereunder from time to time). To the extent of any inconsistency between the terms and conditions of a Debenture and the terms and conditions of any of the obligations secured, the terms and conditions of the latter shall prevail.

#### 1.4 Terms of Issue

The Debentures may be issued to such persons, in such amounts not exceeding the maximum amount set forth in Section 1.1 less the principal amount of Debentures outstanding (which, for greater certainty, shall not include any Debentures previously delivered to the Trustee for cancellation or discharge), for such consideration and on such terms as the directors of the Corporation may determine. Each series of Debentures issued under this Deed shall rank in respect of their entitlement to payment and all voting and other rights relating to the Debentures in priority according to the alphabetical order of their respective series. Accordingly, all Series A Debentures, whenever issued or certified, shall have priority over Series B Debentures, which shall in turn have priority over Series C Debentures and so on. Series of Debentures designated with different numbers of the same letter shall rank in priority according to the number of letters in the designation so that, for example, Series BBB Debentures shall have priority over Series BB Debentures. Debentures within a series shall rank pari passu without discrimination, preference or priority of one Debenture of such series over another and the Holders of Debentures of such series shall be secured equally and rateably according to the principal amount and interest from time to time owing with respect to each Debenture of such series (having regard to the obligations secured by such Debenture, rather than the face amount of such Debenture pledged in accordance with Section 1.3 above) regardless of their respective dates of issue or certification of each Debenture of such series. The Holders of the series of Debentures having the highest ranking for the time being are referred to in this Trust Deed as the "Senior Holders".

The priorities contained herein in connection with the obligations secured shall apply in all events and circumstances regardless of:

- (a) the date that any loan, advance, or other accommodation is made to the Corporation or any debt, liability or obligation is incurred by the Corporation; or
- (b) the date of any default by the Corporation; or
- (c) any priority granted by any principle of law or any statute; or
- (d) any other factor of legal relevance other than this Trust Deed.

No power that is exercised by the Holders, or any of them, shall detract from the rights of the other Holders under the terms of the respective obligations secured in the case of Debentures that have been pledged in accordance with Section 1.3.

#### 1.5 Registration and Transfer

The Corporation shall cause to be kept by the Trustee at its office in the City of Toronto, in the Province of Ontario a register in which shall be entered the names and addresses of the Holders and principal amount of each Debenture. No transfer of a Debenture shall be valid unless made on such register by the registered holder or its successors or assigns or its or their attorney duly appointed by an instrument in writing, in form and execution satisfactory to the Trustee, and upon compliance with such reasonable requirements as the Trustee may prescribe. The ownership of the Debentures shall be proved by such register. The registered Holders shall be considered to be the owners thereof for all purposes of this Deed and shall be entitled to the principal monies and interest evidenced by the Debentures without regard to any set-off, counterclaim, equities or compensation between the Corporation and the Holders' transferors or any previous holders thereof.

#### 1.6 Cancellation, Retirement Etc. of Debentures

Any Holder may deliver to the Trustee from time to time one or more of the Debentures issued pursuant to this Deed and held by it for cancellation or retirement (subject to the principal amount outstanding thereon and any interest, charges and expenses related thereto having been repaid in full to the Holder) or replacement, consolidation or subdivision, or to evidence a reduction of the principal amount outstanding from time to time. Subject to the limitation set forth in Section 1.1, upon receipt of such Debentures and a resolution of the Holder delivering such Debentures evidencing its intentions with respect to such cancellation, retirement, replacement, reduction, subdivision or consolidation, the Trustee shall forthwith notify the Corporation and the Corporation upon receipt of such Debentures shall forthwith issue in accordance with the terms and conditions of this Deed such additional, replacement, subdivided or consolidated Debentures as may be requested by the Holders in the aforesaid resolution, or the Trustee may endorse any Debenture with a notation of the reduction of the amount thereof. Upon issuance of such additional, replacement, subdivided or consolidated Debentures, or endorsement of reduction of any existing Debenture, as appropriate, the Corporation shall cause to be made such entries in the register provided for in Section 1.5 and the Trustee shall certify such Debentures, subject to receipt of such documentation as the Trustee may require, acting reasonably.

#### 1.7 Replacement of Debentures

In case any of the Debentures shall be mutilated or defaced or be lost, destroyed or stolen, the Corporation, subject to applicable law, shall issue a new Debenture pursuant to this Deed and thereupon the Trustee shall certify and deliver such new Debenture of like date, tenor and series as the one mutilated, defaced, lost, destroyed or stolen in exchange therefor and upon cancellation of such mutilated or defaced Debenture and in lieu of and in substitution for such lost, destroyed or stolen Debenture, and the new Debenture shall be entitled to the security hereof and rank equally in accordance with its terms with all other Debentures of the same series issued hereunder.

The applicant for the issue of a new Debenture pursuant to this Section 1.7 shall bear the cost of the issue thereof and in case of loss, destruction or theft shall, as a condition precedent to the issue thereof, furnish to the Corporation and to the Trustee such evidence of ownership and of the loss, destruction or theft of the Debenture so lost, destroyed or stolen as shall be satisfactory to the Corporation and the Trustee in their discretion and such applicant may also be required to furnish an indemnity in amount and form satisfactory to the Corporation and the Trustee in their discretion, and shall pay the reasonable charges of the Corporation and the Trustee in connection therewith.

## 2. CHARGING PROVISIONS

### 2.1 Fixed and Floating Charges and Security Interest

In consideration of the premises and of one dollar (\$1) to the Corporation now paid by the Trustee (receipt whereof is hereby acknowledged) and for the purpose of securing the due payment in lawful money of Canada of the Debentures in the principal amount of five hundred million dollars (\$500,000,000) and of interest thereon from the formal date hereof at the rate of twenty-five per cent (25%) per annum, calculated monthly and payable on demand, both before and after maturity and default, with interest on overdue interest at the same rate, and the payment of any additional amounts from time to time due hereunder to the Trustee, including but not limited to an additional amount equal to twenty-five per cent (25%) of the principal amount for costs of realization and other accessories, the Corporation hereby:

- (a) grants, assigns, mortgages and charges as and by way of a fixed and specific mortgage and charge to and in favour of the Trustee for the benefit of the Holders, and grants to the Trustee for the benefit of the Holders a security interest in, all of its present and after-acquired real and personal property, including but not limited to:
  - (i) all freehold real and immovable property now or hereafter owned or acquired by the Corporation including but not limited to the lands and premises described in Schedule B hereto, together with all buildings, erections and fixtures now or hereafter constructed or placed thereon,
  - (ii) all leasehold property now or hereafter leased by the Corporation including but not limited to the leasehold property described in Schedule C hereto, together with all buildings, erections and fixtures now or hereafter constructed or placed thereon,
  - (iii) all inventory, goods, furniture, equipment, machinery, vehicles, aircraft and other tangible personal property now or hereafter owned by or acquired by the Corporation and all replacements, attachments and accessories thereto from time to time,
  - (iv) all intangible property now or hereafter owned or acquired by the Corporation, including, but not limited to, all contract rights, chattel paper, warehouse receipts, bills of lading, documents of title, insurance policies, instruments, securities, accounts, book debts, receivables which are not book debts, choses in action, licenses, permits, franchises, leases, client lists, goodwill, patents, trademarks, trade names, copyrights, other industrial and intellectual property and the undertaking of the Corporation; and
- (b) charges as and by way of a floating charge to and in favour of the Trustee for the benefit of the Holders, and grants to the Trustee for the benefit of the Holders a security interest in all of the present and after-acquired property, undertaking and assets of the Corporation for the time being, both real and personal, movable and immovable of whatsoever nature and kind now owned or hereafter acquired (except such property and assets as are validly and effectively subject to any fixed and specific mortgages and charges created hereby), including its goodwill and uncalled capital.

Without the necessity of any further act of the Corporation or the Trustee, the mortgages, charges and security interests constituted hereby shall automatically extend to and include:

- (c) any and all renewals, replacements, substitutions, accessions, proceeds, products, additions, amendments, modifications, extensions or consolidations of or to the assets and property heretofore described;
- (d) any and all right, title and interest of the Corporation hereafter acquired in or to any real or personal property or asset of any nature whatsoever; and
- (e) any and all of the Corporation's right, title, interest, property, claims, demands, judgments, awards, proceeds and settlements or payments, including interest thereon, and the right to receive the same, at law as well as in equity or otherwise, as a result of or by way of: (i) insurance proceeds payable under all insurance policies of the Corporation or (ii) any injury or damage to or any taking, expropriation, requisitioning, conversion (voluntary or involuntary) or decrease in the value of any property or asset of the Corporation of any nature whatsoever.

The Corporation's undertaking and all its property and assets, present and future, are herein called the "mortgaged property".

## **2.2 Reservation of Last Day of Leasehold Terms**

The charge of the mortgaged property contained in Section 2.1 shall not extend or apply to the last day of the term of any lease or any agreement therefor now held or hereafter acquired by the Corporation, but should such charge become enforceable the Corporation shall thereafter stand possessed of such last day and shall hold it in trust to assign the same to any person acquiring such term or the part thereof charged in the course of any enforcement of the charge or any realization of the subject matter thereof.

## **2.3 Contracts, Rights or Licences**

The charge of the mortgaged property contained in Section 2.1 shall not extend or apply to any contract, right or licence of the Corporation, if pursuant to the terms of such contract, right or licence such contract, right or licence would automatically terminate if it was part of the mortgaged property, or would be terminable at the option of the other party to or of the grantor thereof, but should such charge become enforceable, the Corporation shall thereafter stand possessed of such contract, right or licence and shall hold it in trust to assign the same or dispose of the same to any person as requested by the Trustee. In order that the full value of all such contracts, rights and licences may be realized for the benefit of the Holders, the Corporation shall at its expense and at the request of the Trustee from time to time, take all such action and do or cause to be done all such things as shall, in the reasonable opinion of the Trustee (with advice of counsel as the Trustee considers appropriate), be necessary or proper in order that all such contracts, rights and licences shall enure to the benefit of the Holders and, to the extent reasonably possible, become subject to the charge constituted by this Deed.

## **2.4 Charge Valid Irrespective of Advance**

The security constituted hereby or intended so to be shall be effective whether the monies hereby secured or any part thereof shall be advanced before or after or at the same time as the execution and delivery of this Deed or the issue or certification of any of the Debentures.

## **2.5 Attachment**

The Corporation acknowledges that value has been given to the Corporation by the Holders in connection with the Corporation's execution and delivery of this Deed. The Corporation and the Holders have not agreed to postpone the time for attachment of the security constituted hereby which is intended to attach, as to all of the mortgaged property in which the Corporation has an interest at the time of the execution of this Deed, at such time, and as to all of the mortgaged property in which the Corporation acquires an interest after the execution of this Deed, at the time the Corporation acquires such interest.

## **2.6 Effect of Charges**

The security created hereby will entitle the Trustee to have and to hold the mortgaged property and all rights hereby conferred unto the Trustee, its successors and assigns, forever, but in trust, nevertheless, and with the powers and authorities and subject to the terms and conditions mentioned and set forth herein.

## **2.7 Possession until Default**

Until the security hereby constituted becomes enforceable and the Trustee determines to enforce the same, the Corporation is permitted in the same manner and to the same extent and with the same effect as if this Deed had not been executed, but subject to the express terms hereof and any other agreement between the Corporation and a Holder which relates to any obligations secured, to possess, operate, manage, use and enjoy the mortgaged property (other than any cash or investments on deposit with the Trustee) and freely to control the conduct of its business and to collect, take, retain and use the rents, incomes, profits and issues thereof.

## **2.8 Further Assurances**

The Corporation hereby covenants and agrees that it will at all times do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, deeds, mortgages, transfers, assignments and assurances as the Trustee or the Holders may reasonably require for the better accomplishing and effectuating the purpose of this Deed, including the execution and delivery of indentures supplemental hereto more particularly describing the mortgaged property or to correct or amplify the description of the mortgaged property or to better assure, convey and confirm unto the Trustee any of the mortgaged property. Upon the execution of any supplemental indenture under this Section, this Deed shall be modified in accordance therewith, and each such supplemental indenture shall form part of this Deed for all purposes. Notwithstanding anything herein contained, the Trustee will not be bound to take any conveyance, assignment or transfer pursuant hereto of any property or assets that, in the opinion of counsel to the Trustee, is of an onerous character, but the Corporation shall hold any such property or assets in trust for the Trustee.

## **2.9 Liability of Trustee**

Neither the Trustee nor any receiver shall (i) be responsible or liable for any debts contracted by it, for damages to persons or property, for salaries or for non-fulfilment of contracts during any period when the Trustee or any receiver shall manage or be in possession of the mortgaged property; (ii) be liable to account as mortgagee in possession or to account for anything except actual receipts or be liable for any loss on realization or for any default or omission for which a mortgagee in possession may be liable; (iii) be bound to do, observe or perform or to see to the observance or performance by the Corporation of any obligations or covenants imposed upon the Corporation; or (iv) in the case of any chattel paper, security or instrument, be obligated to preserve rights against any other persons. The Corporation hereby waives any provision of applicable law permitted to be waived by it which imposes higher or greater obligations upon the Trustee or any receiver than aforesaid.

## **2.10 Applicable Laws Exception**

All rights, remedies, and powers provided herein may be exercised only to the extent that the exercise thereof does not violate any mandatory provision of applicable law and all the provisions of this Deed are intended to be subject to all mandatory provisions of applicable law which may be controlling in the premises and to be limited to the extent necessary so that they will not render this Deed invalid, unenforceable or not entitled to be recorded, registered or filed under any mandatory provisions of applicable law. If any mandatory provision of applicable law shall provide for different or additional requirements than or to those specified herein as prerequisites to or incidental to the realization, sale or foreclosure of the security or any part thereof, then, to that extent, such laws

shall be deemed to have been set forth herein at length, and any conflicting provisions hereof shall be disregarded, and the method of realization, sale or foreclosure of the security required by any such laws shall, insofar as may be necessary, be substituted herein as the method of realization, sale or foreclosure in lieu of that set forth above. Any provision hereof contrary to mandatory provisions of applicable law shall be deemed to be ineffective and shall be severable from and not invalidate any other provision of this Deed.

#### **2.11 Waivers of Applicable Laws**

- (a) To the extent not prohibited by applicable law, the Corporation hereby waives its rights, if any, under all provisions of applicable law that would in any manner, limit, restrict or otherwise affect the Trustee's rights and remedies hereunder or impose any additional obligations on the Trustee. The Corporation waives the right to receive any financing statement or any verification statement issued by any registry that confirms registration of a financing statement relating to this Deed.
- (b) To the full extent that it may lawfully do so, the Corporation hereby:
  - (i) waives and disclaims any benefit of, and shall not have or assert any right under any statute or rule of law pertaining to, the marshalling of assets or any other matter whatever, to defeat, reduce or affect the rights of the Trustee under the terms of this Deed to a sale of the mortgaged property or any part thereof or for the collection of all amounts secured by this Deed; and
  - (ii) agrees that it shall not have or assert any right or equity of redemption or any right under any statute or otherwise to redeem the mortgaged property or any part thereof after the sale hereunder to any person whether such sale is by the Trustee, any receiver or otherwise, notwithstanding, that the Trustee may have purchased same.

### **3. COVENANTS**

The Corporation hereby covenants and agrees with the Trustee for the benefit of each Holder:

#### **3.1 Principal and Interest**

That it will pay or cause to be paid, when due, the principal, interest and all other amounts secured by the Debentures.

#### **3.2 Not to Encumber**

That it will not, without the prior written approval of the Trustee or the Holders (which may be evidenced from time to time by a resolution of the Holders or, for any particular Holder, by the terms of any agreement to which the Holder and the Corporation are parties that relates to the terms of obligations secured by a pledge of the Debenture in favour of that Holder), create or permit to exist any mortgage, hypothec, charge, lien, encumbrance or other security interest or lease upon or affecting the mortgaged property or any part thereof.

#### **3.3 Comply with Environmental Law**

That it will operate its business and all of the mortgaged property in compliance with all applicable laws intended to protect the environment ("Environmental Laws").

#### **3.4 Reporting Requirements**

That it will immediately notify the Trustee after becoming aware of any release or upon the discovery of any contaminant at, upon, under, over, within or with respect to the mortgaged property which will give rise to a material report, inquiry or investigation relating to the requirements of any applicable Environmental Law and will promptly forward to the Trustee copies of all orders, notices, permits, applications or other communications and reports received from any governmental authority in connection with any applicable Environmental Law affecting or relating to the mortgaged property or the operations or activities of the Corporation or any of its subsidiaries.

#### **3.5 Preserve and Protect the Mortgaged Property**

That it will diligently maintain, use and operate the mortgaged property and shall carry on and conduct its business in a proper and efficient manner so as to preserve and protect the mortgaged property and the earnings, incomes, rents, issues and profits thereof.

#### **3.6 Governmental Requirements**

That it will duly observe and conform to all valid requirements of any governmental authority relative to any of the mortgaged property and all covenants, terms and conditions upon or under which the mortgaged property is held.

The Corporation represents and warrants to the Trustee (such representations being also for the benefit of each Holder):

#### **3.7 Absence of Hazardous Materials**

That to its knowledge (i) there are no Hazardous Materials located on, above or below the surface of any land which it occupies or controls, except those being stored in compliance with applicable laws, or contained in the soil or water constituting such land, except in compliance with applicable laws, (ii) no release, spill, leak, emission, discharge, leaching, dumping or disposal of Hazardous Materials has occurred on or from such land which, in any such case, could materially and adversely affect its financial condition, the mortgaged property or its operations or its ability to perform its obligations under the Deed, and (iii) no land that it occupies or controls has been used as a landfill or waste disposal site.

#### **3.8 Compliance with Environmental Law**

That the Corporation's business and the mortgaged property are operated in substantial compliance with applicable Environmental Laws intended to protect the environment (including, without limitation, laws respecting the disposal or emission of Hazardous Materials), to the best of its knowledge after reasonable inquiry there are no breaches thereof, and no enforcement actions in respect thereof are threatened or pending which, in any such case, could materially and adversely affect the mortgaged property or its ability to perform its obligations under this Deed.

That the Corporation shall include in any lease of any part of the mortgaged property to a third party conditions, warranties and representations substantially in the form of the conditions, warranties and representations concerning Hazardous Materials and Environmental Laws contained in this Deed.

For the purposes of this Deed, "Hazardous Materials" means any hazardous substance or any pollutant or contaminant, toxic or dangerous waste, substance or material, as defined in or regulated by any applicable law, regulation or governmental authority from time to time, including, without limitation, asbestos and polychlorinated biphenyls.

#### **3.9 Expenses, Remuneration and Indemnity**

The Corporation shall pay to the Trustee upon demand both before and after default the amount of all reasonable costs, charges, borrowings, expenses and fees of the Trustee incurred in



connection with the administration of this Deed including expenses arising in connection with Section 8.1, the repossession, holding, repairing, processing, preparing for disposition and disposing of any of the mortgaged property (including reasonable legal expenses on a solicitor and his own client basis and other expenses including expenses arising in connection with Section 8.1), together with interest from the date of demand at a rate per annum equal to the then-current rate charged by the Trustee from time to time. All amounts owing to the Trustee under or in connection with this Deed shall be secured by the mortgages and charges created in this Deed and be payable in priority to amounts secured by the Debentures.

Without limiting the foregoing, the Corporation covenants that it will pay to the Trustee reasonable remuneration for its services hereunder and will pay or reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in the administration or execution of the trusts hereby created (including the reasonable compensation and the disbursements of its counsel and all other advisers and assistants not regularly in its employ), including, without limitation, all costs incurred by the Trustee in complying with any laws applicable to trustees as a result of its acting hereunder both before any default hereunder and thereafter until all the duties of the Trustee under the trusts hereof shall be finally and fully performed, except any such expense, disbursement or advance as may arise from its negligence or wilful default. Any amount due under this Section shall bear interest from the date of demand for payment at a rate per annum equal to the rate referred to in the preceding paragraph, payable on demand. After default, all amounts so payable and the interest thereon shall be payable out of any funds coming into the possession of the Trustee or its successors in the trusts hereunder in priority to any payment of the principal of or interest or premium on the Debentures.

The Corporation hereby indemnifies the Trustee, its directors, officers, employees, and agents, and any successors and assigns against any loss, expense, claim, liability or asserted liability (including strict liability) incurred as a result of the administration of the trust created hereby, the exercise by the Trustee of any rights hereunder, the performance of any remediation by the Trustee or its agent for bodily injury, property damage, abatement, or remediation, environmental damage or impairment or any other injury or damage or any diminution in value of the mortgaged property resulting from or relating, directly or indirectly, to: (i) the presence or release of any contaminants, by any means or for any reason, on the mortgaged property, whether or not release or presence of the contaminants was under the control, care or management of the Corporation, or of a previous owner, or of a tenant, or (ii) any contaminant present on or released from any contiguous property to the mortgaged property, or (iii) the breach or alleged breach of any Environmental Laws by the Corporation, save and except that the Trustee shall only be responsible for its own negligence and wilful misconduct.

The Corporation shall at all times indemnify the Trustee, its directors, officers, employees, and agents, and any successors and assigns and save them harmless against all actions, proceedings, liability, claims, damages, reasonable costs and expenses, including legal costs whatsoever arising from the performance of its duties hereunder (unless arising from negligence, bad faith or wilful misconduct on their part) and including any action or liability brought against or incurred by any of them in relation to or arising out of any breach by the Corporation of its obligations under this Deed or by the failure of the Trustee or its agents to do such acts as may be necessary to register, perfect, release or discharge the security created hereby as the same may be registered, filed or recorded in any public office.

The agreements in this Section shall survive the termination of this Deed and the repayment of the obligations secured.

### 3.10 Registrations and Deliveries

The Corporation agrees that:

- (a) forthwith after the execution of this Deed and after the execution of each instrument supplemental or ancillary hereto, it shall register, file or record the same and/or, if applicable, a financing statement or other prescribed statement in respect thereof as

may from time to time be required by the Trustee, the Senior Holders or any other Holder where such registration, filing or recording may be necessary or desirable or of advantage in preserving or protecting the security constituted by this Deed in favour of the Trustee, the Senior Holder or such other Holder;

- (b) from time to time, it shall renew such registration, filing or recording as required to maintain the security constituted hereby as valid and effective security;
- (c) promptly after such registration, filing, recording or renewal, the Corporation shall cause to be delivered to the Trustee certificates establishing such registration, filing, recording or renewal and opinion of counsel satisfactory to the Trustee, acting reasonably, evidencing that the provisions of this Section 3.10 have been complied with in respect of this Deed or such supplemental or ancillary instrument, as the case may be;
- (d) forthwith after the execution of this Deed and after the execution of each instrument supplemental or ancillary hereto, it shall deliver to the Trustee such other documents as may be reasonably required by the Trustee to be delivered to preserve, protect and perfect the security constituted hereby and represented by such documents of title, security certificates and other documents; and
- (e) in the event that the security constituted hereby becomes enforceable as herein provided and the Trustee shall become bound to enforce the same, the Corporation will from time to time execute all such assurances and do all such things as the Trustee may reasonably require for facilitating the realization of the mortgaged property of the Corporation and for exercising all of the powers, authorities and discretion conferred on the Trustee and for confirming to any purchaser of such mortgaged property or any part thereof, whether sold by the Trustee herein or by judicial proceedings, the title to the property so sold, and it will give all notices and directions which the Trustee may consider necessary or expedient.

The Corporation shall not change its name or amalgamate with another corporation under a different name without giving at least 10 days' prior notice to the Trustee of the new name and the date upon which such change of name or amalgamation is to take effect. Within 5 business days of the change of name or amalgamation, the Corporation shall provide the Trustee with a true copy of the articles of amendment or articles of amalgamation effecting the change of name and a certificate confirming the correct name of the Corporation and that all appropriate registrations, filings or recordings have been made on behalf of the Trustee to fully and effectively maintain the perfection and priority of the security created hereby.

In the event of the amalgamation of the Corporation, this Deed, the Debentures and all other security delivered by the Corporation in connection with this Deed shall be binding on the amalgamated corporation and charge its present and future undertaking, property and assets to secure present and future debts, liabilities and obligations of the Corporation and of the amalgamated corporation to the Trustee and the Holders, all as if the amalgamated corporation had originally executed and delivered those documents.

### **3.11 Proceeds of Unauthorized Sale in Trust**

The Corporation shall, in the event the mortgaged property or any part thereof is sold or disposed of prior to the full discharge of this Deed by the Trustee, in any manner not authorized by this Deed, hold all proceeds of such sale or disposition received by the Corporation as trustee for the Trustee until the Corporation has been fully released from this Deed by the Trustee.

### **3.12 Removal of Mortgaged Property**

Prior to the removal of any of the mortgaged property from the province in which it is situated at the date of this Deed or to leasehold property, the Corporation shall effect such further

registrations and obtain such other consents and give such other security, at the sole cost and expense of the Corporation, as may be required or desirable to protect or preserve the security hereby created, and the Corporation shall forthwith notify the Trustee of the intended removal and the action proposed to be taken.

### 3.13 Performance of Covenants by Trustee

If the Corporation shall fail to perform any covenant on its part herein contained, the Trustee may in its absolute discretion perform any such covenant capable of being performed by it, but the Trustee shall be under no obligation to do so. If any such covenant requires the payment of money or if the mortgaged property or any part thereof shall become subject to any charge ranking in priority to the security hereof, the Trustee may in its absolute discretion make such payment and/or pay or discharge such charge, but shall be under no obligation to do so. All sums so paid by the Trustee shall be payable by the Corporation on demand together with interest from the date of demand at the rate referred to in Section 3.9 and shall constitute a charge upon the mortgaged property. No such performance or payment shall relieve the Corporation from any default hereunder or any consequences of such default.

### 3.14 Appointment of Monitor

If in the opinion of the Senior Holders, acting reasonably, a material adverse change has occurred in the financial condition of the Corporation, or if the Senior Holders in good faith believe that the ability of the Corporation to pay any of its obligations or to perform any other covenant contained herein has become impaired or if a default has occurred, the Trustee shall, upon written direction by the Senior Holders, by written notice to the Corporation, appoint a monitor (the "Monitor") to investigate any or a particular aspect of the Corporation or its business and affairs for the purpose of reporting to the Trustee. The Corporation shall give the Monitor its full co-operation, including full access to facilities, assets and records of the Corporation and to its creditors, customers, contractors, officers, directors, employees, auditors, legal counsel and agents. The Monitor shall have no responsibility for the affairs of the Corporation nor shall it participate in the management of the Corporation's affairs and shall incur no liability in respect thereof or otherwise in connection with the Corporation, its business and affairs or the mortgaged property. The Monitor shall act solely on behalf of the Trustee and shall have no contractual relationship with the Corporation as a consultant or otherwise. The appointment of a Monitor shall not be regarded as an act of enforcement of this Deed. All reasonable fees and expenses of the Monitor (including legal fees and disbursements on a solicitor and own client basis) shall be paid by the Corporation upon submission to it of a written invoice therefor. The Trustee may at its option upon the security hereby constituted becoming enforceable appoint or seek to have appointed the Monitor as receiver, liquidator, or trustee in bankruptcy of the Corporation or the mortgaged property or any part thereof.

### 3.15 Insurance

That it will cause all its property which is of a character usually insured by businesses operating properties of a similar nature to be properly insured and kept insured with reputable insurers against loss or damage by fire or other hazards of the nature and to the extent that such properties are usually insured by businesses operating properties of a similar nature in the same or similar localities and shall maintain such insurance with loss if any payable to the Trustee and shall deliver to the Trustee evidence of such insurance satisfactory to the Trustee. Proceeds of insurance shall be dealt with by the Trustee in accordance with resolutions of the Senior Holders, or in the absence of such resolutions, in accordance with Section 5.4.

### 3.16 Taxes and Other Charges

That it shall pay all rents, taxes, rates, levies, assessments and government fees or dues levied, assessed or imposed in respect of the mortgaged property or any part thereof (collectively "Taxes") as and when the same shall become due and payable and shall pay all charges, liens and other encumbrances on the mortgaged property (collectively "Charges") as and when the same shall become due and payable. If the Corporation does not pay any Taxes or Charges as and when the

same shall become due and payable, the Trustee may, at its option, elect to pay any such amounts and charge to the Corporation all amounts so paid as additional amounts secured under this Deed, together with interest thereon from the date of payment by the Trustee of any such amounts at a rate per annum equal to the then-current rate charged by the Trustee from time to time.

### 3.17 Information

That it will furnish to the Trustee such information (including an annual certificate of compliance) with respect to the mortgaged property and the insurance thereon as the Trustee may from time to time require, and shall give written notice to the Trustee of all litigation before any court, administrative board or other tribunal affecting the Corporation or its property. An annual certificate of compliance means a certificate signed by the president or a vice-president of the Corporation, confirming compliance with the covenants set forth in this Article 3 and specifically that (i) no default as described in Section 4.1 of this Deed has occurred and is continuing and no event has occurred and is continuing which, with the passage of time or giving of notice, or both, would constitute such a default, and (ii) all the covenants of the Corporation contained in this Article 3 and all of the conditions contained in this Deed to be complied with by the Corporation have been fully complied with to the date thereof.

## 4. DEFAULT

### 4.1 Security Becoming Enforceable

The security hereby constituted shall immediately become enforceable and the floating charge created pursuant to Section 2.1(b) hereof shall become a fixed and specific mortgage, charge, pledge, assignment, security interest and hypothec on the property charged thereby if:

- (a) payment of part or all of the obligations secured by a pledge of a Senior Debenture is demanded in accordance with any agreement to which the Corporation is a party relating to such obligations secured, and payment is not made on demand;
- (b) the Corporation makes default of any other covenant or condition of this Deed for the benefit of the Senior Holders or the Trustee and default continues for a period of 30 days after the Trustee sends notice to the Corporation to correct the default; or
- (c) payment of the principal amount and interest accrued on all Debentures has been demanded by the Trustee pursuant to Section 5.1(b) if any Holder of Debentures other than a Senior Holder (a "Subordinated Holder", where Debentures held by the Subordinated Holders are the "Subordinated Debentures") has proceeded in accordance with Section 5.1(b) of this Deed.

### 4.2 Waiver

The Trustee (on the direction of the Senior Holders) or the Senior Holders may by notice to the Corporation waive any default of the Corporation on such terms and conditions as the Senior Holders may determine, but no such waiver shall be taken to affect any subsequent default or the rights of the Senior Holders arising therefrom nor shall it detract from the rights of any Subordinate Holder under the terms of any agreement relating to its obligations secured with respect to such default. No waiver of any default by a Subordinate Holder shall in any way affect the rights of the Senior Holders with respect to such default.

## 5. REMEDIES IN CASE OF DEFAULT

### 5.1 Demand Payment

- (a) If the security hereby constituted becomes enforceable as provided in Sections 4.1(a) or (b), the Trustee upon being so directed by resolution of the Senior Holders shall demand payment of the

principal amount of and interest accrued on all Debentures and the same shall forthwith become immediately due and payable to the Trustee.

(b) If (i) payment of part or all of the obligations, which for greater certainty shall include, without limitation, any principal amount together with accrued interest, that is secured by a pledge of a Subordinated Debenture (the "Defaulted Debenture") is demanded in accordance with any agreement to which the Subordinated Holder or Holders of the Defaulted Debenture (the "Demanding Holder") and the Corporation are parties relating to such obligations secured, and payment is not made on demand, (ii) the Demanding Holder (or any agent duly authorized to do so on behalf of such Holder) gives written notice of the demand for payment of such obligations secured to the Trustee (who shall immediately forward such notice to all of the other Holders), (iii) the Demanding Holder (or any agent duly authorized to so act on behalf of such Holder) provides to the Trustee (x) a certificate by the Demanding Holder certifying that the Demanding Holder is entitled under the terms of an agreement to which the Demanding Holder (or such agent) and all Senior Holders (or an agent on their behalf) are party (the "Intercreditor Agreement"), to require that payment of the Debentures be demanded and the security hereby constituted be enforced notwithstanding the priority of the Senior Holders, and (y) a resolution of the Demanding Holder directing that the Trustee demand payment of the principal amount of and interest on all Debentures, (which certificate and resolution shall immediately be forwarded by the Trustee to all of the other Holders), and (iv) at least 5 business days have passed after the Demanding Holder (or any agent duly authorized to so act on behalf of such Holder) has given to the Trustee the certificate and resolution referred to in (iii) above and the Trustee has forwarded copies thereof to all of the other Holders, then the Trustee, upon being so directed by the Demanding Holder (or any agent duly authorized to so act on behalf of such Holder) shall demand payment of the principal amount of and interest accrued on all Debentures and the same shall forthwith become immediately due and payable to the Trustee.

(c) In the event that the Senior Holders have duly exercised their rights under Section 5.1(a) hereof (whether or not a Subordinated Holder has duly exercised its rights under Section 5.1(b) hereof), it is agreed that:

- (i) the Trustee shall have regard to the instructions and directions of the Senior Holder only in exercising rights and remedies under this Deed and shall have no duty or obligation hereunder to act in accordance with the instructions or directions of any other Holder; and
- (ii) in giving the Trustee instructions and directions in pursuance of its rights under paragraph (i) above, the Senior Holders shall act in good faith, and not with the sole purpose of defeating, delaying, hindering or otherwise impeding the repayment of the Subordinated Holders, but nothing in this Deed shall impose on the Senior Holders any greater duty to the Subordinated Holders or the Corporation than is owed by a senior creditor to a junior creditor or to a debtor in the absence of any express provision.

(d) In the event that a Subordinated Holder (or an agent duly authorized by a Subordinated Holder) has duly exercised its rights pursuant to Section 5.1(b) hereof and no Senior Holder has exercised its rights under Section 5.1(a) hereof, then (but for so long only as no Senior Holder has exercised its rights under Section 5.1(a) hereof):

- (i) the Trustee shall have regard to the instructions and directions of the Subordinated Holder only in exercising rights and remedies under this Deed and shall have no duty or obligation hereunder to act in accordance with the instructions or directions of any other Holder;
- (ii) in giving the Trustee instructions and directions in pursuance of its rights under paragraph (i) above, the Subordinated Holder shall act in good faith; and

- (iii) while nothing shall prevent the Senior Holders from exercising their rights under Section 5.1(a) hereof if they are entitled to do so as between the Corporation and themselves, until they have done so, the Senior Holders shall not do any of the following without the consent of the Subordinated Holders: (A) give instructions and directions to the Trustee relating to the exercise of those rights and remedies being exercised by the Subordinated Holders in accordance with this Section 5.1(d), (B) direct the Trustee to waive any defaults pursuant to Section 4.2 of this Deed, (C) unreasonably withhold or delay its consent to the appointment of a replacement Trustee requested by the Subordinated Holders, or (D) exercise any of the rights set out in Sections 9.1(a), (b), (e) and (f) of this Deed.

## 5.2 Remedies

If the security hereby constituted becomes enforceable as herein provided, and the Corporation has failed to pay to the Trustee on demand the principal amount of and interest accrued on the Debentures:

- (a) the Trustee may in its discretion take possession of the whole or any part of the mortgaged property and carry on all or any part of the business of the Corporation relating to the mortgaged property and borrow money on the security of the mortgaged property in priority to the security hereby created for the purpose of maintenance, preservation or protection of the mortgaged property or for the carrying on of all or any part of the business of the Corporation relating to the mortgaged property and in so acting the Trustee shall have the power to exclude the Corporation, its servants and agents from the mortgaged property;
- (b) whether or not the Trustee has exercised any or all of its rights under Section 5.2(a), the Trustee may sell, lease or otherwise dispose of the whole or any part of the mortgaged property at public auction, by private tender or private sale, either for cash or upon credit and upon such terms and conditions as the Trustee may determine, and the Trustee may execute and deliver to any purchaser of the mortgaged property or any part thereof good and sufficient deeds and documents for the same, and, without limiting the powers granted to the Trustee, the Trustee is irrevocably constituted the attorney of the Corporation for the purpose of making any such sale and executing such deeds and documents (which appointment, being coupled with an interest, shall survive the bankruptcy of the Corporation);
- (c) the Trustee may also exercise any of the other rights to which the Trustee or the Holders are entitled including the right to take proceedings in any court of competent jurisdiction for the appointment of a receiver or receiver and manager (a "receiver"), for the sale of the mortgaged property or any part thereof or for foreclosure, and the right to take any other action, suit, remedy or proceeding authorized or permitted under this Deed or by law or in equity in order to enforce the security constituted by this Deed; and
- (d) the Trustee may also by instrument in writing appoint a receiver of the mortgaged property or of any part thereof and may remove any receiver so appointed and appoint another in his stead, and such receiver shall have the same rights, powers and authorities as are conferred on the Trustee by this Section 5.2. In addition the following provisions shall apply:
  - (i) such appointment shall be made in writing signed by the Trustee and such writing shall be conclusive evidence for all purposes of such appointment; the Trustee may from time to time in the same manner remove any receiver so appointed and appoint another in its stead; in making any such appointment the Trustee shall be deemed to be acting as the attorney for the Corporation and the Corporation hereby consents to the appointment of a receiver;

- (ii) any such appointment may be limited to any part or parts of the mortgaged property or may extend to the whole thereof;
- (iii) every receiver may, in the discretion of the Trustee, be vested with all or any of the powers, rights, benefits, discretions, protection and relief of the Trustee hereunder and shall be vested with all of the powers and protections afforded to a receiver under applicable law;
- (iv) the Trustee may from time to time fix the reasonable remuneration of the receiver and direct the payment thereof, in priority to the other obligations secured hereby, out of the mortgaged property, the income therefrom or the proceeds thereof;
- (v) the Trustee may from time to time require any receiver to give security for the performance of its duties and may fix the nature and amount thereof, but the Trustee shall not be bound to require such security;
- (vi) every such receiver may, with the consent in writing of the Trustee, borrow money for the purpose of carrying on the business of the Corporation in respect of any part of the mortgaged property or for the maintenance, protection or preservation of the mortgaged property or any part thereof, and any receiver may issue certificates (in this Section called "Receiver's Certificates"), for such sums as will in the opinion of the Trustee be sufficient for carrying out the foregoing, and such Receiver's Certificates may be payable either to order or bearer and may be payable at such time or times as the Trustee may consider expedient, and shall bear such interest as shall therein be declared and the Receiver may sell, pledge or otherwise dispose of the same in such manner as the Trustee may consider advisable and may pay such commission on the sale thereof as the Trustee may consider reasonable, and the amounts from time to time payable by virtue of such Receiver's Certificates shall at the option of the Trustee form a charge upon the mortgaged property in priority to this Deed;
- (vii) every receiver shall, regarding its acts or omissions, be deemed the agent of the Corporation, and in no event the agent of the Trustee and the Trustee shall not, in making or consenting to such appointment, incur any liability to any receiver for its remuneration or otherwise howsoever;
- (viii) except as may be otherwise directed by the Trustee, all monies from time to time received by any receiver shall be paid over to the Trustee; and
- (ix) the Trustee may pay over to any receiver any monies constituting part of the mortgaged property to the extent that the same may be applied for the purposes hereof by such receiver and the Trustee may from time to time determine what funds any receiver shall be at liberty to keep on hand with a view to the performance of its duties as such receiver.

In the exercise of their rights, powers and authorities hereunder, the Trustee and any receiver appointed by the Trustee shall be the agent of the Corporation, and the Trustee and the Holders shall not be in any way responsible for any misconduct or negligence of any such receiver, nor shall the Holders be in any way responsible for any misconduct or negligence of the Trustee.

### 5.3 Public Sale

The Trustee, the Holders or any agent or representative thereof, may become purchasers at any public sale of the mortgaged property, whether made under a power of sale provided for in this Deed or pursuant to judicial proceedings.

#### 5.4 Application of Proceeds of Realization of Security

Except as otherwise provided in this Deed, by law or by order of a court or by any resolution of the Holders, any and all monies arising from the enforcement of any remedy provided for herein, including, without limitation, the carrying on of the business of the Corporation and the sale or other realization of the whole or any part of the mortgaged property, whether under any sale by the Trustee or by judicial process or otherwise, shall be paid over to the Trustee, shall be held by the Trustee and, together with any other monies then or thereafter in the hands of the Trustee available for the purpose, shall be applied by the Trustee as follows:

- (a) firstly, if and to the extent that the Trustee deems that it is in the interest of the Holders generally and the same is not inconsistent with any resolution of the Senior Holders, to pay all charges and liens on the mortgaged property ranking (or capable of ranking) in priority to the security constituted by this Deed or to keep in good standing any such prior lien;
- (b) secondly, to pay all amounts due to the Trustee hereunder, including without limitation, costs, charges and expenses referred to in Section 3.9;
- (c) thirdly, to pay the outstanding principal amount secured by the Senior Debentures, to pay all interest secured by the Senior Debentures including interest on overdue interest accrued but unpaid to the date of the demand for payment of the amounts secured by such Senior Debentures and to pay all interest including interest on overdue interest accruing after the date of demand for payment and remaining unpaid of such amounts rateably and proportionately, having regard to the amount of the obligations secured by such Senior Debentures, rather than the face amount of any Senior Debenture that has been pledged in accordance with Section 1.3 above;
- (d) fourthly, after payment of all amounts secured by, and cancellation of, all Senior Debentures, to pay, in order as they succeed to being Senior Debentures, all amounts secured by each series of Subordinated Debentures in the same manner as in Section 5.4 (c) above;
- (e) fifthly, in payment of all other amounts at any time and from time to time remaining outstanding and unpaid under this Deed; and
- (f) sixthly, the surplus, if any, of such money shall be paid to the Corporation or its assigns or otherwise in accordance with applicable law.

#### 5.5 Duty to Inquire

No person dealing with the Trustee, its agents or any receiver appointed pursuant hereto (or pursuant to any agreement to which the Corporation and one or more of the Holders are parties) shall be concerned to inquire whether the powers which the Trustee, its agents or any receiver appointed pursuant hereto (or pursuant to any agreement to which the Corporation and one or more of the Holders are parties) is purporting to exercise have become enforceable, or whether any money remains due upon the security constituted by this Deed, or as to the necessity or expediency of the stipulations and conditions subject to which any sale shall be made, or otherwise as to the propriety or regularity of any sale or any other dealing by the Trustee with the mortgaged property or any part thereof or to see to the application of any money paid to the Trustee; and, in the absence of fraud on the part of such person, such dealings shall be deemed to be within the powers conferred on the Trustee and to be valid and effective accordingly.

#### 5.6 Possession

The Corporation shall on demand by the Trustee or any receiver yield up possession of the mortgaged property or any part thereof as demanded by the Trustee whenever the Trustee shall have a right to exercise any rights or remedies under Section 5.2 and put no obstacle in the way of, but



facilitate by all legal means, the actions of the Trustee or any receiver hereunder and not interfere with the carrying out of the powers hereby granted to the Trustee or any appointed receiver.

#### **5.7 Remedies Not Exclusive**

No right, power or remedy herein conferred upon or reserved to the Trustee or any receiver is intended to be exclusive of any other right, power or remedy or remedies, and each and every right, power and remedy shall, to the extent permitted by applicable law, be cumulative and shall be in addition to every other right, power or remedy given hereunder or now or hereafter existing at law, in equity or by statute. No delay or omission of the Trustee in the exercise of any right, power or remedy accruing upon any default shall impair any such right, power or remedy or shall be construed to be a waiver of any such default or an acquiescence therein. Every right, power and remedy given to the Trustee or to a receiver by this Deed or under applicable law may be exercised from time to time and as often as may be deemed expedient by the Trustee or such receiver, as applicable.

#### **5.8 Power of Attorney**

The Corporation hereby irrevocably constitutes and appoints the Trustee its true and lawful attorney and agent, with full power and authority in the Corporation's name, place and stead from time to time to do all acts and things and execute and deliver all share transfers, certificates, proxies, resolutions, consents, assignments, transfers, conveyances and agreements, in such form as the Trustee considers necessary or desirable to do all things which the Corporation is required to sign, execute and do hereunder if the Corporation has failed to sign, execute or do the same and generally to use the name of the Corporation, as applicable, in the exercise of all or any of the powers hereby conferred on the Trustee, with full powers of substitution and revocation; provided that this power of attorney may not be exercised by the Trustee until the security constituted hereby shall have become enforceable. Such appointment and power of attorney is hereby declared by the Corporation to be an irrevocable power coupled with an interest.

#### **5.9 Restriction on Corporation and its Officers and Directors**

Upon the Corporation receiving notice from the Trustee of the taking of possession of the mortgaged property or the appointment of a receiver, all the powers, functions, rights and privileges of each of the directors and officers of the Corporation with respect to the properties, business and undertaking of the Corporation shall cease unless specifically continued by the written consent of the Trustee.

### **6. DISCHARGE**

6.1 Subject to Section 7, this Deed and the rights hereby granted (other than the Trustee's rights under Section 3.9 above) shall cease, determine and be void, and the Trustee shall at the request and expense of the Corporation cancel and discharge the mortgages and charges of this Deed (including the additional security provided for in Section 10 (the "Additional Security")) and execute and deliver to the Corporation such deeds or other instruments as shall be requisite therefor, if the Corporation first satisfies the Trustee that it has paid the principal amount and interest secured by the Debentures and has otherwise observed and performed the terms and conditions of this Deed and the Additional Security and has otherwise satisfied all obligations secured, or that all of the Debentures have been validly cancelled as contemplated in Section 1.6.

6.2 The registrar of any registration division in which any mortgaged property is situate shall discharge and cancel the registration of any mortgage, pledge or charge, or transfer or giving in payment created hereby or by the Additional Security or hereafter created under the provisions hereof upon the registration of any discharge, release or document to that effect signed by the Trustee, without being obliged to see that any of the conditions of this Deed or of the Additional Security have been fulfilled.

## 7. CONTINUING AND ADDITIONAL SECURITY

7.1 The Debentures and the security created by this Deed shall be effective whether or not any monies or liabilities secured by this Deed are advanced or incurred before or after the date of this Deed, and shall not be considered as satisfied or discharged by any intermediate payment of the whole or part of the obligations secured by the pledge of the Debentures issued under this Deed but shall constitute and be a continuing security to the Holders for a current or running account and shall be in addition to and not in substitution for any other security now or hereafter held by the Holders or any of them. The remedies of the Trustee under this Deed may be exercised from time to time separately or in combination and are in addition to and not in substitution for any other rights of the Trustee or the Holders however created.

## 8. TRUSTEE

### 8.1 Acceptance by Trustee

The Trustee hereby accepts the trusts declared and provided in this Deed and agrees to perform the trusts upon the terms and conditions of this Deed, subject to the following:

- (a) the Trustee may appoint such agents and employ or retain, in relation to this Deed, such lawyers, accountants, valuers, engineers, architects, appraisers, or such other experts as it may reasonably require in the circumstances and for the purpose of discharging its duties hereunder and shall be entitled to pay reasonable compensation for the advice or assistance so obtained, but nevertheless the Trustee shall not be obliged to act on any advice or assistance so obtained. The Trustee may act and shall be protected in acting in good faith on the opinion or the advice of or information obtained from any counsel (including where appropriate counsel acting for the Corporation or any Holder acceptable to the Trustee), accountant, valuator, engineer, architect, appraiser or other expert or advisor, in each case selected by the Trustee using reasonable care, in relation to any matter arising in connection with the administration of this Deed;
- (b) in respect of any direction, authorization, statement of fact, copy of by-law, resolution or other proceeding or writing which the Trustee may require from the Corporation, the Trustee shall be entitled to accept and act upon the same, provided the said documents bear the signature of any officer or director of the Corporation;
- (c) the Trustee shall be accountable only for reasonable diligence in respect of the trusts hereby conferred upon it and shall not be accountable for any act or default of any agent or other person engaged by the Trustee for the performance of any duty or duties hereunder (except employees of the Trustee), provided the Trustee shall have selected such agent or person with reasonable care;
- (d) subject to any resolution of the Holders (or the Senior Holders where specified in this Deed), the Trustee shall as regards all the trusts, powers, authorities and discretion vested in it have absolute and uncontrolled discretion as to the exercise thereof, whether in relation to the manner or as to the mode and time for the exercise thereof, and in the absence of fraud, negligence or wilful misconduct, it shall in no way be responsible for any loss, costs, damages or inconvenience that may result from the exercise or non-exercise thereof;
- (e) the Trustee shall not be bound to take any steps to enforce any of the covenants on the part of the Corporation contained in the Debentures, except insofar as it may be required to do so by the Senior Holders (or the Subordinated Holders pursuant to Section 5.1(b)) in writing upon being furnished with an indemnity reasonably satisfactory to the Trustee;

- (f) the obligation of the Trustee to commence or continue any act, action or proceedings for the purpose of realizing the collateral or for the enforcement of any covenant or obligation under or arising out of these presents or the Debentures shall, at the option of the Trustee, be conditional upon the Holders furnishing, when requested in writing by the Trustee, sufficient funds to commence or continue such action or proceedings and an indemnity satisfactory to the Trustee to protect and hold harmless the Trustee against costs, charges and expenses and liabilities to be incurred thereby and any loss and damage it may sustain by reason thereof;
- (g) the Trustee may, but shall not be obliged to, enter onto the mortgaged property to take such actions as the Trustee may in its sole discretion deem necessary or advisable to clean up, remediate, encapsulate, remove, resolve, or minimize the impact of, or otherwise deal with, any contaminants or breaches of Environmental Laws which could in the opinion of the Trustee jeopardize the security interest in the mortgaged property created by this Deed;
- (h) the Trustee shall have no responsibility to supervise or have control over the conduct of the Corporation's environmental practices, nor shall any action or inaction by the Trustee be construed as exercising care, control or management over the mortgaged property; and
- (i) nothing in this Deed shall be deemed to make the Trustee responsible for failure to obtain or maintain adequate or any insurance coverage for the mortgaged property or to ensure that such insurance is obtained and maintained by the Corporation, or for any loss arising from any defects in any policy or because of the failure of any insurer to pay for any loss or damage insured against, and the Trustee shall be entitled to request, and rely absolutely upon, a certificate of an officer of the Corporation that the insurance carried by the Corporation from time to time is in compliance with all relevant requirements of this Deed.

## 8.2 Trustee not Required to Give Security

The Trustee shall not be required to give any bond or security in respect of the execution of the trusts and powers of this Deed or otherwise in respect of this Deed.

## 8.3 Protection of Trustee

By way of supplement to the provisions of any law for the time being relating to trustees, it is expressly declared and agreed as follows:

- (a) the Trustee shall not be liable for or by reason of any failure or defect of title to, or encumbrance upon, the mortgaged property;
- (b) the Trustee shall not be liable for or by reason of any statements of fact or recitals in this Deed, or in the Debentures (except in the Certificate of the Trustee thereon) or in any document ancillary or supplemental hereto or thereto, or required to verify the same, but all such statements or recitals are and shall be deemed to be made by the Corporation;
- (c) nothing herein or in the Debentures shall impose any obligation on the Trustee or any Holders to see to or to require evidence of the registration or filing or renewal of this Deed, any of the Debentures or any other instrument ancillary or supplemental hereto or thereto or any other deed or writing by way of mortgage or charge upon the mortgaged property or any part thereof or to procure any further, other or additional instrument of further assurance or to do any other act for the continuance of the security hereof or encumbrance or for giving notice of the existence of such security or for extending or supplementing the same;

- (d) the Trustee shall not be bound to give notice to any person or persons of the execution hereof or the security constituted hereby or in any way to interfere with the conduct of the business of the Corporation, unless and until the security hereby constituted shall have become enforceable and the Trustee shall have become bound to enforce the same;
- (e) the Trustee shall not incur any liability or responsibility whatever in consequence of permitting or suffering the Corporation, its successors or assigns, to retain or be in possession of any part of its mortgaged property and to use and enjoy the same unless herein or in the Debentures expressly otherwise provided; nor shall the Trustee be or become responsible or liable for any destruction, deterioration, loss, injury or damage which may be done or occur to the mortgaged property by the Corporation, its agents or servants, or by any other person or be in any way responsible for the consequences of any breach on the part of the Corporation of, or to inquire as to the performance by the Corporation of, any of the covenants herein or in the Debentures contained or of any acts of the agents or servants of the Corporation;
- (f) unless otherwise required by law, the Trustee shall not be liable by reason of any entry into possession of the mortgaged property or any part thereof to account as mortgagee in possession or for anything except actual receipts or be liable for any loss on realization or for any default or omission for which a mortgagee in possession might be liable save such as may be caused by its own fraud, negligence or wilful misconduct;
- (g) the Trustee on its own behalf or in any other capacity, may buy, lend upon and deal in shares in the capital stock of the Corporation and generally may contract and enter into financial transactions with the Corporation without being liable to account for any profit made thereby;
- (h) none of the provisions contained in this Deed shall require the Trustee to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers unless indemnified in accordance with this Deed;
- (i) the Trustee may, before commencing or at any time during the continuance of any such act, action or proceeding, require the Holders at whose instance it is acting to deposit with the Trustee the Debentures held by them, for which Debentures the Trustee shall issue receipts;
- (j) the Trustee shall not be responsible or liable in any manner whatsoever for the sufficiency, correctness, genuineness or validity of any security deposited with it, including any stock transfer power of attorney; and
- (k) in the exercise of its rights, duties and obligations hereunder the Trustee may, if acting in good faith, rely, as to the truth of the statements and accuracy of the opinions expressed therein, upon statutory declarations, opinions, reports or certificates furnished pursuant to any covenant, condition or requirement of this Deed or required by the Trustee to be furnished to it in the exercise of its rights and duties hereunder, provided that the Trustee examines such statutory declarations, opinions, reports or certificates and determines, acting in good faith, that they comply with any applicable requirements of this Deed.

#### 8.4 Trustee's Obligation to Act

Unless and until the Trustee is required to do so under the terms of this Deed, the Trustee shall not be bound to give any notice or to take any act, action or proceeding by virtue of the powers conferred on it by this Deed; nor shall the Trustee be required to take notice of an event of default under this Deed, other than in payment of any monies required by any provisions hereof to be paid

to it. Unless and until notified in writing of such events of default or such default and in the absence of any such notice, the Trustee may assume that the Corporation is not in default hereunder and that no default has been made with respect to the payment of principal or interest under the Debentures or in the observance of performance or any of the covenants, agreements or conditions contained herein.

The right and obligation of the Trustee to commence or continue an act, action or proceeding for the purpose of enforcing any rights of the Trustee or the Holders hereunder shall be conditional on (i) the Trustee receiving a resolution from the Senior Holders (or the Subordinated Holders (or an agent on their behalf) pursuant to Section 5.1(b) exercised in accordance with Section 5.1(d)) and (ii) compliance with Section 8.1 (f).

#### **8.5 Resignation of Trustee**

The Trustee may resign its trust and be discharged from all further duties and liabilities hereunder by giving to the Corporation not less than 30 days' notice in writing or such shorter notice as the Corporation may accept as sufficient. The Senior Holders shall have the power at any time to remove the Trustee and to appoint a new Trustee. In the event of the Trustee resigning or being removed as aforesaid or being dissolved, becoming bankrupt, going into liquidation or otherwise becoming incapable of acting hereunder, the Corporation shall forthwith appoint a new Trustee unless a new Trustee has already been appointed by the Senior Holders; failing such appointment by the Corporation, the retiring Trustee (at the Corporation's expense) or any Senior Holder may apply to a Judge of the Court of Queen's Bench of Manitoba, on such notice as such Judge may direct, for the appointment of a new Trustee, but any new Trustee so appointed by the Corporation or by the Court shall be subject to removal as aforesaid by the Senior Holders. Any new Trustee appointed under these provisions shall be a corporation authorized to carry on the business of a trust company in the Province of Manitoba.

#### **8.6 Powers of New Trustee**

Any new Trustee appointed hereunder shall execute an instrument accepting such appointment hereunder and deliver one counterpart or notarial copy thereof to the Corporation and one counterpart or notarial copy thereof to the Trustee last in office and the Holders shown on the Trustee's register, and thereupon such new Trustee without further act, deed or conveyance shall become vested with all estates, properties, rights, powers and trusts of its predecessor in the trusts hereunder, with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of the successor Trustee or of the Corporation, the Trustee ceasing to act shall execute and deliver an instrument or instruments assigning and transferring to such successor Trustee, upon the trusts herein expressed, all the said property and assets and all rights, powers and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver all property and money held by such Trustee to the successor Trustee so appointed in its place. Should any deed, conveyance or instrument in writing from the Corporation be required by any new Trustee for more fully and certainly vesting in and confirming to it such estates, properties, rights, powers and trusts, then any and all such deeds, conveyances and instruments in writing shall, on request of said new Trustee, be made, executed, acknowledged and delivered by the Corporation. At the request of the Corporation or the new Trustee, the retiring Trustee, upon payment of the amounts, if any, due to it pursuant to Section 3.9, shall duly assign, transfer and deliver to the new Trustee all property and money held and all records kept by the retiring Trustee hereunder or in connection herewith.

#### **8.7 Corporate Re-organization of Trustee**

Any company into which the Trustee may be merged or with which it may be consolidated or amalgamated, or any company resulting from any merger, consolidation or amalgamation to which the Trustee shall be a party, shall be the successor Trustee under this Deed without the execution of any instrument or any further act.

#### 8.8 Evidence

The Corporation shall furnish to the Trustee evidence of compliance with the conditions provided for in this Trust Deed relating to any action or step required or permitted to be taken by the Corporation or the Trustee under this Trust Deed or as a result of any obligation imposed under this Trust Deed, including, without limitation, the issue, certification and delivery of Debentures hereunder, the satisfaction and discharge of this Trust Deed and the taking of any other action to be taken by the Trustee at the request of or on the application of the Corporation, forthwith if and when:

- (i) such evidence is required by any other Section of this Trust Deed to be furnished to the Trustee in accordance with the terms of this Section; or
- (ii) the Trustee, in the exercise of its rights and duties under this Trust Deed, gives the Corporation written notice requiring it to furnish such evidence in relation to any particular action or obligation specified in such notice.

*Such evidence shall consist of:*

- (A) a certificate of an officer of the Corporation stating that any such condition has been complied with in accordance with the terms of this Trust Deed;
- (B) in the case of any such condition compliance with which is, by the terms of this Trust Deed, made subject to review by legal counsel, an opinion of counsel to the Trustee that such condition has been complied with in accordance with the terms of this Trust Deed; and
- (C) in the case of any such condition compliance with which is, by the terms of this Trust Deed, made subject to review or examination by an auditor or accountant, an opinion or report of the auditors of the Corporation or any accountant licenced under the applicable laws of the Province of Manitoba based on the examinations or enquiries required to be made under the terms of this Trust Deed, in each case approved by the Trustee, that such condition has been complied with in accordance with the terms of this Trust Deed.

Whenever such evidence relates to a matter other than the issue, certification and delivery of Debentures, the satisfaction and discharge of this Trust Deed or the taking of any other action to be taken by the Trustee at the request or on the application of the Corporation, and except as otherwise specifically provided herein, such evidence may consist of a report or opinion of any solicitor, auditor, accountant, engineer or appraiser or any other person whose qualifications give authority to a statement made by him, provided that if such report or opinion is furnished by a director, officer or employee of the Corporation it shall be in the form of a certificate satisfactory to the Trustee (acting reasonably). Such evidence shall be, so far as appropriate, in accordance with the immediately preceding paragraph of this section.

Each statutory declaration, certificate, opinion or report furnished to the Trustee as evidence of compliance with a condition provided for in this Trust Deed shall include a statement by the person giving the evidence:

- (a) declaring that he has read and understands the provisions of this Trust Deed relating to the condition in question;
- (b) describing the nature and scope of the examination or investigation upon which he based the statutory declaration, certificate, statement or opinion; and
- (c) declaring that he has made such examination or investigation as he believes is necessary to enable him to make the statements or give the opinions contained or expressed herein.

Upon the demand of the Trustee, the Corporation shall furnish the Trustee with evidence in such form as the Trustee may reasonably require as to compliance with any condition contained in this Trust Deed relating to any action required or permitted to be taken by the Corporation or as to any other matter referred to herein.

#### **8.9 Action By Trustee to Protect Interests**

The Trustee shall have power to institute and to maintain such actions and proceedings as it may consider necessary or expedient to preserve, protect or enforce its interests and the interests of the Holders.

#### **8.10 Duties of Trustee**

The Trustee, in exercising its powers and discharging its duties hereunder, shall:

- (i) act honestly and in good faith with a view to the best interests of the Holders;
- (ii) exercise the care, diligence and skill of a reasonably prudent trustee; and
- (iii) act reasonably wherever such standard is stipulated herein and otherwise shall act as required by law.

### **9. RESOLUTIONS OF HOLDERS**

#### **9.1 Powers of the Holders**

The powers of the Holders shall be exercisable by the Senior Holders only, except (i) as expressly provided in Sections 3.2, 3.10(a), 5.1(b) and 5.1(d) of this Deed, and (ii) as to matters set forth in paragraphs (c), (d), (e) and (g) below which shall be also exercisable by Subordinated Holders as described in those paragraphs, and include but are not limited to the following powers exercisable from time to time by resolution of the Senior Holders:

- (a) the power to require the Trustee to refrain from enforcing any covenant on the part of the Corporation herein or to refrain from exercising any of the powers set forth herein and conferred on the Trustee or to direct the Trustee to waive any default or defaults on the part of the Corporation on such terms as may be deemed advisable or to cancel any declaration or waiver previously made by the Trustee under this Deed;
- (b) power to remove a Trustee from office and to appoint a new Trustee;
- (c) power to assent to any judgment, compromise or arrangement by the Corporation with any creditor, creditors or class or classes of creditors or with the holder(s) of any shares or securities of the Corporation, which shall also require the approval of the Holders of each series of Subordinated Debentures in respect of any judgment, compromise or arrangement affecting their respective Debentures;
- (d) power to assent to any modification of or change in or addition to or deletion from the rights of the Holders or the provisions contained in this Deed or any instrument ancillary or supplementary hereto or thereto or any agreement forming part of the mortgaged property which shall be agreed by the Corporation and to authorize the Trustee to concur in and execute any indenture supplemental to this Deed or any agreement supplemental to any instrument embodying any such modification, change, addition, deletion or to concur in and execute any deeds, documents, or writings authorized by such resolution, which shall also require the approval of the Holders of each series of Subordinated Debentures in respect of any such modification, change, addition, deletion affecting their respective Debentures;

- (e) power to approve the release of the Corporation and of the whole or any part of the mortgaged property from the security constituted hereby, which shall also require the approval of the Holders of each series of Subordinated Debentures;
- (f) power to authorize the Trustee to execute and deliver such form of priority agreement as may reasonably be requested by the Corporation to evidence the priority of any permitted liens which are permitted by the terms of any agreements entered into with all of the Holders to rank prior to the security constituted hereby; and
- (g) power to issue additional Debentures pursuant to Section 1.1, which shall also require the approval of the Holders of each series of Subordinated Debentures, which consent, in the case of the Subordinated Holders, shall not be unreasonably withheld.

The powers of the Holders shall be deemed to be several and cumulative and not dependent on each other and the exercise of any one or more of such powers, or in any combination of such powers, from time to time, shall not be deemed to exhaust the rights of the Holders to exercise such power or powers, or combination of powers thereafter from time to time.

#### 9.2 Resolutions of the Holders

The powers specified in Section 9.1 of this Deed and every other power conferred upon the Senior Holders or Subordinated Holders, as the case may be, by any provisions of this Deed or the Debentures or any agreement ancillary or supplemental hereto or thereto shall be exercised by resolution passed in the following manner:

- (a) the substance of any resolution may be embodied in an instrument in writing and such resolution shall be deemed to have been passed when such instrument has been executed by the Senior Holders or Subordinated Holders, as the case may be, holding an aggregate of more than 66 2/3% of the principal amount of all of the outstanding Debentures in the relevant series;
- (b) any such instrument, and any requisition or other instrument to be executed by any Holders under any provisions of this Deed, may be executed in counterparts and any of the Holders may execute the same in person or by agent or attorney duly authorized in writing;
- (c) at the request of the Trustee, the date and execution by any of the Holders or agent or attorney of any such instrument and the execution by any of the Holders of any power of attorney shall be proved by the certificate of any notary public that the person signing the same has acknowledged to him the execution thereof, by affidavit or statutory declaration of a witness to such execution, or by the signature of the Holder as witnessed by any officer of any bank or trust company; such proof shall be conclusive in favour of the Trustee with regard to any action taken or suffered by the Trustee under such instrument. No such instrument shall be effective until delivery thereof to the Trustee; and
- (d) the Trustee shall give notice to all Holders of each resolution of the Senior Holders or Subordinated Holders passed as aforesaid.

#### 9.3 Effect of Resolutions of Holders

Any resolution passed as provided in Section 9.2 shall be binding upon the Holders and each of them, and the Trustee (subject to the provisions for its indemnity, if any, set forth in this Deed) shall be bound to give effect thereto accordingly.



**10. ADDITIONAL SECURITY**

10.1 To more effectively secure the due payment in lawful money of Canada of the obligations secured and all other amounts owing under or in connection with this Deed and the Debentures, the Corporation shall issue for the benefit of the Holders and as additional security such pledges of shares, deeds of hypothec and other security documents as may be agreed to by the Corporation, in a form and substance required by the Holders and the Trustee. Such additional security documents shall be in favour of the Trustee, who shall hold the same for and on behalf of the Holders from time to time. The provisions of this Deed, including without limitation, Sections 3.9, 7, 8 and 9, shall apply with respect to such additional security documents.

**11. NOTICE**

11.1 Any notices to be given under this Deed shall be given to the parties at the addresses set out below, or to the Holders at the addresses specified in the Trustee's records. Notice shall be deemed to have been effectually given when such notice is delivered personally to the addressee by hand or by fax with receipt confirmed or on the third business day after such notice is mailed by prepaid registered mail to the addressee. Subject to the right of each party to change its address by notice to the other parties from time to time, the addresses of the parties are as follows:

1179554 Ontario Inc.  
c/o The Arctic Group Inc.  
625 Henry Avenue  
Winnipeg, Manitoba  
R3A 0V1

Attention: President  
Fax No.: (204) 783-9857

Montreal Trust Company  
151 Front Street West  
Suite 605  
Toronto, Ontario  
M5J 2N1

Attention: Manager, Corporate Trust Department  
Fax no.: 416-981-9777

**12. DATE OF DEED**

12.1 This Deed may be referred to as bearing the formal date of 17 August 1999, notwithstanding the actual date of its execution.

**13. EFFECT OF HEADINGS**

13.1 The headings and marginal notes of the Sections in this Deed are inserted for convenience of reference only and shall not affect the interpretation of this Deed.

**14. GOVERNING LAW**

14.1 The Deed shall be governed by and construed in accordance with the laws of the Province of Manitoba and the Federal laws of Canada applicable therein.

**15. MISCELLANEOUS**

15.1 No land which is charged or mortgaged under this Deed is farm land within the definition of subsection 1(1) of the *Farm Lands Ownership Act* (Manitoba).

15.2 The Corporation hereby agrees that *The Land Contracts (Actions) Act* of the Province of Saskatchewan shall have no application to any action, as in *The Land Contracts (Actions) Act* defined, with respect to the within Deed or with respect to any mortgage, charge or other security given by the Corporation pursuant to this Deed or to any indenture, instrument or agreement entered into by the Corporation at any time hereafter, supplemental or ancillary to or in implementation of this Deed and all of the benefits of the said Act are hereby waived. To the extent permitted by law, the Corporation expressly waives its rights under the *Alberta Insurance Act* and the *Fire Prevention (Metropolis) Act*, 1774 (GEO III, Ch. 78).

15.3 *The Limitation of Civil Rights Act* of the Province of Saskatchewan shall have no application to:

- (a) this Deed;
- (b) any mortgage, charge or other security for the payment of money made, given or created by this Deed;
- (c) any agreement or instrument renewing or extending or collateral to this Deed or renewing or extending or collateral to any mortgage, charge or other security referred to or mentioned in subparagraph (b) of this Section; or
- (d) the rights, powers or remedies of the Trustee under this Deed or any mortgage, charge, other security, agreement or instrument referred to or mentioned in subparagraph (b) or (c) of this Section.

15.4 For purposes of Section 198.1 of the *Land Title Act* (British Columbia), the floating charge created by Section 2.1 on any present or future real or immovable property or interest therein (for purposes of this Section 15.4 collectively referred to as the "Real Property") will become a fixed charge on such Real Property upon the earlier of (a) a demand for payment being made pursuant to Section 5.1 and the Trustee upon being so directed by resolution of the Senior Holders or Subordinated Holders (if they act under Section 5.1(b)) giving written notice to the Corporation that such floating charge has become a fixed charge on such Real Property, and (b) the occurrence of any other event which by operation of law would result in such floating charge becoming a fixed charge on real property. The right of consolidation shall apply to this Trust Deed notwithstanding Section 27 of the Property Law Act of British Columbia or any similar statutory provision in force from time to time.

15.5 The Corporation acknowledges receipt of a true copy of this Deed.

15.6 The Corporation expressly waives the right to receive a copy of any financing statement or confirmation statement or financing change statement which may be registered by the Trustee in connection with this Deed or any verification statement issued with respect thereto where such waiver is not otherwise prohibited by law.

THE PARTIES REQUIRE THAT THIS DEED, THE DEBENTURES AND ALL NOTICES, DOCUMENTS AND ACTIONS GIVEN, DELIVERED OR INSTITUTED PURSUANT TO THIS DEED BE DRAWN IN ENGLISH. LES PARTIES EXIGENT QUE LE PRESENT ACTE, LES OBLIGATIONS ET TOUS LES AVIS, DOCUMENTS, OU ACTIONS DONNES, PASSES OU INTENTES EN VERTU DU PRESENT ACTE SOIENT REDIGES EN ANGLAIS.

IN WITNESS OF WHICH the parties have signed this Deed.

1179554 ONTARIO INC.

By: 

Name: Robert Nagy  
Title: President

c/s

MONTREAL TRUST COMPANY

By: 

Name: RENATO DIDONE  
Title: CORPORATE TRUST OFFICER

c/s

By: 

Name: SANDY STEPHENS  
Title: Senior Corporate Trust Officer

## SCHEDULE A

Series ♦ No. ♦

♦ % DEBENTURE

\$ ♦

1179554 Ontario Inc. (the "Corporation"), for value received, promises to pay on demand to the registered holder of this Debenture at ♦, ♦ DOLLARS (\$♦) in lawful money of Canada, and to pay interest thereon from the date hereof at the same place in like money at the rate of ♦ per cent (♦%) per annum, calculated monthly and payable on demand, both before and after maturity and default, with interest on overdue interest at the same rate.

This Debenture is issued under and secured by a Trust Deed dated as of ♦ 1999 (the "Trust Deed") executed by the Corporation in favour of Montreal Trust Company as Trustee, and this Debenture is subject to the terms and provisions of the Trust Deed.

This Debenture may be transferred by the holder only in accordance with the Pledge Agreement (the "Pledge Agreement") and upon compliance with the provisions of Section 1.5 of the Trust Deed. In the event of any conflict between the terms of the Pledge Agreement and the terms of this Debenture, the terms of the Pledge Agreement shall prevail.

This Debenture shall not become a binding obligation of the Corporation until it shall have been certified by the Trustee under the Trust Deed.

IN WITNESS OF WHICH the Corporation has caused this Debenture to be signed by its duly authorized signing officer and to be dated ♦.

1179554 ONTARIO INC.

c/s

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

## TRUSTEE'S CERTIFICATE

This Debenture is a Debenture issued under the Trust Deed within-mentioned.

Dated: ♦

MONTREAL TRUST COMPANY

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

SCHEDULE "B"

This Schedule is attached to and forms part of a certain Trust Deed dated August <sup>17</sup>, 1999, given by 1179554 ONTARIO INC. in favour of MONTREAL TRUST COMPANY.

Owned Property:

Civic Address: 200 Statesman Drive, Mississauga

Legal Description: Property Identifier No. 14029-1113

Parcel Block 33-1, Section 43M-957, City of Mississauga, Regional Municipality of Peel;

TOGETHER WITH a benefit of right-of-way, in common with others, in, over, along and upon a strip of land over that part of Lot 11, Concession 1, East of Hurontario Street, designated as part 4 on Reference Plan 43R-16717 as in Instrument No. LT81032;

SUBJECT TO easements in favour of Mississauga Hydro-Electric Commission and Bell Canada over that part of Block 33, Plan 43M-957, designated as part 33 on Plan 43R-17489 for the purposes set out in Instrument No. LT1098087.

SCHEDULE "C"

This Schedule is attached to and forms part of a certain Trust Deed dated August 17, 1999,  
given by 1179554 ONTARIO INC. in favour of MONTREAL TRUST COMPANY.

Leased Property:

Unit #22B – Jutland Road, Toronto, Ontario

A:\DESC2.WPD



TRUST DEED dated as of 17 August 1999.

B E T W E E N:

1334202 ONTARIO INC.,  
a corporation incorporated under the laws of Ontario  
(the "Corporation")

- and -

MONTREAL TRUST COMPANY,  
a trust company incorporated under the laws of Canada  
(the "Trustee")

**RECITALS:**

A. The Corporation wishes to raise money for its corporate purposes and/or secure certain of its obligations, and with a view to doing so wishes to create and issue Debentures in the manner provided in this Trust Deed.

B. All necessary resolutions of the directors of the Corporation have been duly enacted, passed and/or confirmed and other proceedings taken and conditions complied with to make the creation and issue of the Debentures proposed to be issued hereunder and this Trust Deed and the execution thereof legal, valid and binding on the Corporation in accordance with the laws relating to the Corporation.

**THEREFORE, THE PARTIES HAVE AGREED AS FOLLOWS:**

**1. FORM AND ISSUE OF DEBENTURES**

**1.1 Limitation of Issue**

The Debentures to be issued under and secured by this Deed are limited to an aggregate principal amount of five hundred million Canadian dollars (Cdn.\$500,000,000) and may be issued in one or more series. The Debentures shall be designated as "Series A Debentures", "Series B Debentures", and so on if two or more series are issued, but the designation of different series of Debentures need not be consecutive so that, for example, Series C Debentures may be issued without Series B Debentures having been issued. Except with respect to the letter A, series of Debentures may also be designated with two or more letters, such as "Series BB Debentures" and "Series CCC Debentures". In addition, further Debentures in any series may be issued from time to time despite the issuance of Debentures in a subsequent series. Debentures of all series shall be designated collectively as "Debentures" and shall be subject to the terms and conditions of this Deed. No Debenture may be issued without the prior written consent of the Holders (as defined below), which consent, in the case of the Subordinated Holders, shall not be unreasonably withheld. For greater certainty, the limit of the aggregate principal amount of Debentures which may be issued hereunder shall not be reduced by the principal amount of Debentures which have been returned to the Trustee for cancellation or discharge in accordance with the terms hereof.

**1.2 Forms, Terms and Place of Payment**

Each Debenture shall be fully registered and substantially in the form set out in Schedule A to this Deed, shall be payable on demand in lawful money of Canada at the address of the holder or holders specified in the Debenture (the "Holders", which shall mean one or more persons holding



one or more Debentures) and the Debentures shall bear interest from the date of each respective debenture at the rate of twenty-five per cent (25%) per annum, or at such other rate as may be agreed upon by the Corporation and the Holders from time to time, payable on demand, both before and after maturity and default, with interest on overdue interest at the same rate. Each Debenture may, but need not, be under the seal of the Corporation, shall be signed by any officer or director of the Corporation and shall be certified by the Trustee and delivered by the Trustee to or to the order of the Corporation upon receipt by the Trustee of an order in writing signed by any officer or director of the Corporation. No Debenture shall be issued, or, if issued, shall be obligatory or entitle the Holder to the benefit hereof, until it has been certified by or on behalf of the Trustee substantially in the form of the certificate set out in Schedule "A" to this Deed, or in some other form approved by the Trustee, and such certification by the Trustee upon any Debenture shall be conclusive evidence as against the Corporation that the Debenture so certified has been duly issued hereunder and is a valid obligation of the Corporation and that the Holder is entitled to the benefit hereof. The certificate of the Trustee shall not be construed as a representation or warranty of the Trustee as to the validity or security of the Trust Deed or the Debentures. Nothing in this Deed or the Debentures shall make the Trustee responsible or liable for the Corporation's obligations to pay the principal of or interest on the Debentures.

### 1.3 Pledge of Debentures

Each Debenture shall be pledged, hypothecated, issued or charged by the Corporation as security for payment by the Corporation of certain or all debts and liabilities, including debts and liabilities in any currency, present or future, direct or indirect, absolute or contingent, matured or not, for a current or running account or not, at any time owing by the Corporation to the Holder thereof or remaining unpaid by the Corporation to the Holder thereof, whether arising from dealings between the Holder thereof and the Corporation or from any other dealings or proceedings by which the Holder thereof may be or become in any manner whatever a creditor of the Corporation, and wherever incurred, and whether incurred by the Corporation alone or with another or others, and whether as principal or surety, including expenses and all interest, commissions, legal and other costs, charges and expenses (the "obligations secured", it being understood and agreed that the term "obligations secured" as used in this Deed shall mean, as the context may require, such obligations of the Corporation owing to a particular Holder or Holders hereunder or the aggregate of such obligations of the Corporation owing to all the Holders hereunder from time to time). To the extent of any inconsistency between the terms and conditions of a Debenture and the terms and conditions of any of the obligations secured, the terms and conditions of the latter shall prevail.

### 1.4 Terms of Issue

The Debentures may be issued to such persons, in such amounts not exceeding the maximum amount set forth in Section 1.1 less the principal amount of Debentures outstanding (which, for greater certainty, shall not include any Debentures previously delivered to the Trustee for cancellation or discharge), for such consideration and on such terms as the directors of the Corporation may determine. Each series of Debentures issued under this Deed shall rank in respect of their entitlement to payment and all voting and other rights relating to the Debentures in priority according to the alphabetical order of their respective series. Accordingly, all Series A Debentures, whenever issued or certified, shall have priority over Series B Debentures, which shall in turn have priority over Series C Debentures and so on. Series of Debentures designated with different numbers of the same letter shall rank in priority according to the number of letters in the designation so that, for example, Series BBB Debentures shall have priority over Series BB Debentures. Debentures within a series shall rank *pari passu* without discrimination, preference or priority of one Debenture of such series over another and the Holders of Debentures of such series shall be secured equally and rateably according to the principal amount and interest from time to time owing with respect to each Debenture of such series (having regard to the obligations secured by such Debenture, rather than the face amount of such Debenture pledged in accordance with Section 1.3 above) regardless of their respective dates of issue or certification of each Debenture of such series. The Holders of the series of Debentures having the highest ranking for the time being are referred to in this Trust Deed as the "Senior Holders".

The priorities contained herein in connection with the obligations secured shall apply in all events and circumstances regardless of:

- (a) the date that any loan, advance, or other accommodation is made to the Corporation or any debt, liability or obligation is incurred by the Corporation; or
- (b) the date of any default by the Corporation; or
- (c) any priority granted by any principle of law or any statute; or
- (d) any other factor of legal relevance other than this Trust Deed.

No power that is exercised by the Holders, or any of them, shall detract from the rights of the other Holders under the terms of the respective obligations secured in the case of Debentures that have been pledged in accordance with Section 1.3.

#### 1.5 Registration and Transfer

The Corporation shall cause to be kept by the Trustee at its office in the City of Toronto, in the Province of Ontario a register in which shall be entered the names and addresses of the Holders and principal amount of each Debenture. No transfer of a Debenture shall be valid unless made on such register by the registered holder or its successors or assigns or its or their attorney duly appointed by an instrument in writing, in form and execution satisfactory to the Trustee, and upon compliance with such reasonable requirements as the Trustee may prescribe. The ownership of the Debentures shall be proved by such register. The registered Holders shall be considered to be the owners thereof for all purposes of this Deed and shall be entitled to the principal monies and interest evidenced by the Debentures without regard to any set-off, counterclaim, equities or compensation between the Corporation and the Holders' transferors or any previous holders thereof.

#### 1.6 Cancellation, Retirement Etc. of Debentures

Any Holder may deliver to the Trustee from time to time one or more of the Debentures issued pursuant to this Deed and held by it for cancellation or retirement (subject to the principal amount outstanding thereon and any interest, charges and expenses related thereto having been repaid in full to the Holder) or replacement, consolidation or subdivision, or to evidence a reduction of the principal amount outstanding from time to time. Subject to the limitation set forth in Section 1.1, upon receipt of such Debentures and a resolution of the Holder delivering such Debentures evidencing its intentions with respect to such cancellation, retirement, replacement, reduction, subdivision or consolidation, the Trustee shall forthwith notify the Corporation and the Corporation upon receipt of such Debentures shall forthwith issue in accordance with the terms and conditions of this Deed such additional, replacement, subdivided or consolidated Debentures as may be requested by the Holders in the aforesaid resolution, or the Trustee may endorse any Debenture with a notation of the reduction of the amount thereof. Upon issuance of such additional, replacement, subdivided or consolidated Debentures, or endorsement of reduction of any existing Debenture, as appropriate, the Corporation shall cause to be made such entries in the register provided for in Section 1.5 and the Trustee shall certify such Debentures, subject to receipt of such documentation as the Trustee may require, acting reasonably.

#### 1.7 Replacement of Debentures

In case any of the Debentures shall be mutilated or defaced or be lost, destroyed or stolen, the Corporation, subject to applicable law, shall issue a new Debenture pursuant to this Deed and thereupon the Trustee shall certify and deliver such new Debenture of like date, tenor and series as the one mutilated, defaced, lost, destroyed or stolen in exchange therefor and upon cancellation of such mutilated or defaced Debenture and in lieu of and in substitution for such lost, destroyed or stolen Debenture, and the new Debenture shall be entitled to the security hereof and rank equally in accordance with its terms with all other Debentures of the same series issued hereunder.

The applicant for the issue of a new Debenture pursuant to this Section 1.7 shall bear the cost of the issue thereof and in case of loss, destruction or theft shall, as a condition precedent to the issue thereof, furnish to the Corporation and to the Trustee such evidence of ownership and of the loss, destruction or theft of the Debenture so lost, destroyed or stolen as shall be satisfactory to the Corporation and the Trustee in their discretion and such applicant may also be required to furnish an indemnity in amount and form satisfactory to the Corporation and the Trustee in their discretion, and shall pay the reasonable charges of the Corporation and the Trustee in connection therewith.

## 2. CHARGING PROVISIONS

### 2.1 Fixed and Floating Charges and Security Interest

In consideration of the premises and of one dollar (\$1) to the Corporation now paid by the Trustee (receipt whereof is hereby acknowledged) and for the purpose of securing the due payment in lawful money of Canada of the Debentures in the principal amount of five hundred million dollars (\$500,000,000) and of interest thereon from the formal date hereof at the rate of twenty-five per cent (25%) per annum, calculated monthly and payable on demand, both before and after maturity and default, with interest on overdue interest at the same rate, and the payment of any additional amounts from time to time due hereunder to the Trustee, including but not limited to an additional amount equal to twenty-five per cent (25%) of the principal amount for costs of realization and other accessories, the Corporation hereby:

- (a) grants, assigns, mortgages and charges as and by way of a fixed and specific mortgage and charge to and in favour of the Trustee for the benefit of the Holders, and grants to the Trustee for the benefit of the Holders a security interest in, all of its present and after-acquired real and personal property, including but not limited to:
  - (i) all freehold real and immovable property now or hereafter owned or acquired by the Corporation including but not limited to the lands and premises described in Schedule B hereto, together with all buildings, erections and fixtures now or hereafter constructed or placed thereon,
  - (ii) all leasehold property now or hereafter leased by the Corporation including but not limited to the leasehold property described in Schedule C hereto, together with all buildings, erections and fixtures now or hereafter constructed or placed thereon,
  - (iii) all inventory, goods, furniture, equipment, machinery, vehicles, aircraft and other tangible personal property now or hereafter owned by or acquired by the Corporation and all replacements, attachments and accessories thereto from time to time,
  - (iv) all intangible property now or hereafter owned or acquired by the Corporation, including, but not limited to, all contract rights, chattel paper, warehouse receipts, bills of lading, documents of title, insurance policies, instruments, securities, accounts, book debts, receivables which are not book debts, choses in action, licenses, permits, franchises, leases, client lists, goodwill, patents, trademarks, trade names, copyrights, other industrial and intellectual property and the undertaking of the Corporation; and
- (b) charges as and by way of a floating charge to and in favour of the Trustee for the benefit of the Holders, and grants to the Trustee for the benefit of the Holders a security interest in all of the present and after-acquired property, undertaking and assets of the Corporation for the time being, both real and personal, movable and immovable of whatsoever nature and kind now owned or hereafter acquired (except such property and assets as are validly and effectively subject to any fixed and specific mortgages and charges created hereby), including its goodwill and uncalled capital.

Without the necessity of any further act of the Corporation or the Trustee, the mortgages, charges and security interests constituted hereby shall automatically extend to and include:

- (c) any and all renewals, replacements, substitutions, accessions, proceeds, products, additions, amendments, modifications, extensions or consolidations of or to the assets and property heretofore described;
- (d) any and all right, title and interest of the Corporation hereafter acquired in or to any real or personal property or asset of any nature whatsoever; and
- (e) any and all of the Corporation's right, title, interest, property, claims, demands, judgments, awards, proceeds and settlements or payments, including interest thereon, and the right to receive the same, at law as well as in equity or otherwise, as a result of or by way of: (i) insurance proceeds payable under all insurance policies of the Corporation or (ii) any injury or damage to or any taking, expropriation, requisitioning, conversion (voluntary or involuntary) or decrease in the value of any property or asset of the Corporation of any nature whatsoever.

The Corporation's undertaking and all its property and assets, present and future, are herein called the "mortgaged property".

## **2.2 Reservation of Last Day of Leasehold Terms**

The charge of the mortgaged property contained in Section 2.1 shall not extend or apply to the last day of the term of any lease or any agreement therefor now held or hereafter acquired by the Corporation, but should such charge become enforceable the Corporation shall thereafter stand possessed of such last day and shall hold it in trust to assign the same to any person acquiring such term or the part thereof charged in the course of any enforcement of the charge or any realization of the subject matter thereof.

## **2.3 Contracts, Rights or Licences**

The charge of the mortgaged property contained in Section 2.1 shall not extend or apply to any contract, right or licence of the Corporation, if pursuant to the terms of such contract, right or licence such contract, right or licence would automatically terminate if it was part of the mortgaged property, or would be terminable at the option of the other party to or of the grantor thereof, but should such charge become enforceable, the Corporation shall thereafter stand possessed of such contract, right or licence and shall hold it in trust to assign the same or dispose of the same to any person as requested by the Trustee. In order that the full value of all such contracts, rights and licences may be realized for the benefit of the Holders, the Corporation shall at its expense and at the request of the Trustee from time to time, take all such action and do or cause to be done all such things as shall, in the reasonable opinion of the Trustee (with advice of counsel as the Trustee considers appropriate), be necessary or proper in order that all such contracts, rights and licences shall enure to the benefit of the Holders and, to the extent reasonably possible, become subject to the charge constituted by this Deed.

## **2.4 Charge Valid Irrespective of Advance**

The security constituted hereby or intended so to be shall be effective whether the monies hereby secured or any part thereof shall be advanced before or after or at the same time as the execution and delivery of this Deed or the issue or certification of any of the Debentures.

## **2.5 Attachment**

The Corporation acknowledges that value has been given to the Corporation by the Holders in connection with the Corporation's execution and delivery of this Deed. The Corporation and the Holders have not agreed to postpone the time for attachment of the security constituted hereby which is intended to attach, as to all of the mortgaged property in which the Corporation has an interest at the time of the execution of this Deed, at such time, and as to all of the mortgaged property in which the Corporation acquires an interest after the execution of this Deed, at the time the Corporation acquires such interest.

## **2.6 Effect of Charges**

The security created hereby will entitle the Trustee to have and to hold the mortgaged property and all rights hereby conferred unto the Trustee, its successors and assigns, forever, but in trust, nevertheless, and with the powers and authorities and subject to the terms and conditions mentioned and set forth herein.

## **2.7 Possession until Default**

Until the security hereby constituted becomes enforceable and the Trustee determines to enforce the same, the Corporation is permitted in the same manner and to the same extent and with the same effect as if this Deed had not been executed, but subject to the express terms hereof and any other agreement between the Corporation and a Holder which relates to any obligations secured, to possess, operate, manage, use and enjoy the mortgaged property (other than any cash or investments on deposit with the Trustee) and freely to control the conduct of its business and to collect, take, retain and use the rents, incomes, profits and issues thereof.

## **2.8 Further Assurances**

The Corporation hereby covenants and agrees that it will at all times do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, deeds, mortgages, transfers, assignments and assurances as the Trustee or the Holders may reasonably require for the better accomplishing and effectuating the purpose of this Deed, including the execution and delivery of indentures supplemental hereto more particularly describing the mortgaged property or to correct or amplify the description of the mortgaged property or to better assure, convey and confirm unto the Trustee any of the mortgaged property. Upon the execution of any supplemental indenture under this Section, this Deed shall be modified in accordance therewith, and each such supplemental indenture shall form part of this Deed for all purposes. Notwithstanding anything herein contained, the Trustee will not be bound to take any conveyance, assignment or transfer pursuant hereto of any property or assets that, in the opinion of counsel to the Trustee, is of an onerous character, but the Corporation shall hold any such property or assets in trust for the Trustee.

## **2.9 Liability of Trustee**

Neither the Trustee nor any receiver shall (i) be responsible or liable for any debts contracted by it, for damages to persons or property, for salaries or for non-fulfilment of contracts during any period when the Trustee or any receiver shall manage or be in possession of the mortgaged property; (ii) be liable to account as mortgagee in possession or to account for anything except actual receipts or be liable for any loss on realization or for any default or omission for which a mortgagee in possession may be liable; (iii) be bound to do, observe or perform or to see to the observance or performance by the Corporation of any obligations or covenants imposed upon the Corporation; or (iv) in the case of any chattel paper, security or instrument, be obligated to preserve rights against any other persons. The Corporation hereby waives any provision of applicable law permitted to be waived by it which imposes higher or greater obligations upon the Trustee or any receiver than aforesaid.

## **2.10 Applicable Laws Exception**

All rights, remedies, and powers provided herein may be exercised only to the extent that the exercise thereof does not violate any mandatory provision of applicable law and all the provisions of this Deed are intended to be subject to all mandatory provisions of applicable law which may be controlling in the premises and to be limited to the extent necessary so that they will not render this Deed invalid, unenforceable or not entitled to be recorded, registered or filed under any mandatory provisions of applicable law. If any mandatory provision of applicable law shall provide for different or additional requirements than or to those specified herein as prerequisites to or incidental to the realization, sale or foreclosure of the security or any part thereof, then, to that extent, such laws

shall be deemed to have been set forth herein at length, and any conflicting provisions hereof shall be disregarded, and the method of realization, sale or foreclosure of the security required by any such laws shall, insofar as may be necessary, be substituted herein as the method of realization, sale or foreclosure in lieu of that set forth above. Any provision hereof contrary to mandatory provisions of applicable law shall be deemed to be ineffective and shall be severable from and not invalidate any other provision of this Deed.

#### **2.11 Waivers of Applicable Laws**

- (a) To the extent not prohibited by applicable law, the Corporation hereby waives its rights, if any, under all provisions of applicable law that would in any manner, limit, restrict or otherwise affect the Trustee's rights and remedies hereunder or impose any additional obligations on the Trustee. The Corporation waives the right to receive any financing statement or any verification statement issued by any registry that confirms registration of a financing statement relating to this Deed.
- (b) To the full extent that it may lawfully do so, the Corporation hereby:
  - (i) waives and disclaims any benefit of, and shall not have or assert any right under any statute or rule of law pertaining to, the marshalling of assets or any other matter whatever, to defeat, reduce or affect the rights of the Trustee under the terms of this Deed to a sale of the mortgaged property or any part thereof or for the collection of all amounts secured by this Deed; and
  - (ii) agrees that it shall not have or assert any right or equity of redemption or any right under any statute or otherwise to redeem the mortgaged property or any part thereof after the sale hereunder to any person whether such sale is by the Trustee, any receiver or otherwise, notwithstanding, that the Trustee may have purchased same.

### **3. COVENANTS**

The Corporation hereby covenants and agrees with the Trustee for the benefit of each Holder:

#### **3.1 Principal and Interest**

That it will pay or cause to be paid, when due, the principal, interest and all other amounts secured by the Debentures.

#### **3.2 Not to Encumber**

That it will not, without the prior written approval of the Trustee or the Holders (which may be evidenced from time to time by a resolution of the Holders or, for any particular Holder, by the terms of any agreement to which the Holder and the Corporation are parties that relates to the terms of obligations secured by a pledge of the Debenture in favour of that Holder), create or permit to exist any mortgage, hypothec, charge, lien, encumbrance or other security interest or lease upon or affecting the mortgaged property or any part thereof.

#### **3.3 Comply with Environmental Law**

That it will operate its business and all of the mortgaged property in compliance with all applicable laws intended to protect the environment ("Environmental Laws").

#### **3.4 Reporting Requirements**

That it will immediately notify the Trustee after becoming aware of any release or upon the discovery of any contaminant at, upon, under, over, within or with respect to the mortgaged property which will give rise to a material report, inquiry or investigation relating to the requirements of any applicable Environmental Law and will promptly forward to the Trustee copies of all orders, notices, permits, applications or other communications and reports received from any governmental authority in connection with any applicable Environmental Law affecting or relating to the mortgaged property or the operations or activities of the Corporation or any of its subsidiaries.

#### **3.5 Preserve and Protect the Mortgaged Property**

That it will diligently maintain, use and operate the mortgaged property and shall carry on and conduct its business in a proper and efficient manner so as to preserve and protect the mortgaged property and the earnings, incomes, rents, issues and profits thereof.

#### **3.6 Governmental Requirements**

That it will duly observe and conform to all valid requirements of any governmental authority relative to any of the mortgaged property and all covenants, terms and conditions upon or under which the mortgaged property is held.

The Corporation represents and warrants to the Trustee (such representations being also for the benefit of each Holder):

#### **3.7 Absence of Hazardous Materials**

That to its knowledge (i) there are no Hazardous Materials located on, above or below the surface of any land which it occupies or controls, except those being stored in compliance with applicable laws, or contained in the soil or water constituting such land, except in compliance with applicable laws, (ii) no release, spill, leak, emission, discharge, leaching, dumping or disposal of Hazardous Materials has occurred on or from such land which, in any such case, could materially and adversely affect its financial condition, the mortgaged property or its operations or its ability to perform its obligations under the Deed, and (iii) no land that it occupies or controls has been used as a landfill or waste disposal site.

#### **3.8 Compliance with Environmental Law**

That the Corporation's business and the mortgaged property are operated in substantial compliance with applicable Environmental Laws intended to protect the environment (including, without limitation, laws respecting the disposal or emission of Hazardous Materials), to the best of its knowledge after reasonable inquiry there are no breaches thereof, and no enforcement actions in respect thereof are threatened or pending which, in any such case, could materially and adversely affect the mortgaged property or its ability to perform its obligations under this Deed.

That the Corporation shall include in any lease of any part of the mortgaged property to a third party conditions, warranties and representations substantially in the form of the conditions, warranties and representations concerning Hazardous Materials and Environmental Laws contained in this Deed.

For the purposes of this Deed, "Hazardous Materials" means any hazardous substance or any pollutant or contaminant, toxic or dangerous waste, substance or material, as defined in or regulated by any applicable law, regulation or governmental authority from time to time, including, without limitation, asbestos and polychlorinated biphenyls.

#### **3.9 Expenses, Remuneration and Indemnity**

The Corporation shall pay to the Trustee upon demand both before and after default the amount of all reasonable costs, charges, borrowings, expenses and fees of the Trustee incurred in

connection with the administration of this Deed including expenses arising in connection with Section 8.1, the repossession, holding, repairing, processing, preparing for disposition and disposing of any of the mortgaged property (including reasonable legal expenses on a solicitor and his own client basis and other expenses including expenses arising in connection with Section 8.1), together with interest from the date of demand at a rate per annum equal to the then-current rate charged by the Trustee from time to time. All amounts owing to the Trustee under or in connection with this Deed shall be secured by the mortgages and charges created in this Deed and be payable in priority to amounts secured by the Debentures.

Without limiting the foregoing, the Corporation covenants that it will pay to the Trustee reasonable remuneration for its services hereunder and will pay or reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in the administration or execution of the trusts hereby created (including the reasonable compensation and the disbursements of its counsel and all other advisers and assistants not regularly in its employ), including, without limitation, all costs incurred by the Trustee in complying with any laws applicable to trustees as a result of its acting hereunder both before any default hereunder and thereafter until all the duties of the Trustee under the trusts hereof shall be finally and fully performed, except any such expense, disbursement or advance as may arise from its negligence or wilful default. Any amount due under this Section shall bear interest from the date of demand for payment at a rate per annum equal to the rate referred to in the preceding paragraph, payable on demand. After default, all amounts so payable and the interest thereon shall be payable out of any funds coming into the possession of the Trustee or its successors in the trusts hereunder in priority to any payment of the principal of or interest or premium on the Debentures.

The Corporation hereby indemnifies the Trustee, its directors, officers, employees, and agents, and any successors and assigns against any loss, expense, claim, liability or asserted liability (including strict liability) incurred as a result of the administration of the trust created hereby, the exercise by the Trustee of any rights hereunder, the performance of any remediation by the Trustee or its agent for bodily injury, property damage, abatement, or remediation, environmental damage or impairment or any other injury or damage or any diminution in value of the mortgaged property resulting from or relating, directly or indirectly, to: (i) the presence or release of any contaminants, by any means or for any reason, on the mortgaged property, whether or not release or presence of the contaminants was under the control, care or management of the Corporation, or of a previous owner, or of a tenant, or (ii) any contaminant present on or released from any contiguous property to the mortgaged property, or (iii) the breach or alleged breach of any Environmental Laws by the Corporation, save and except that the Trustee shall only be responsible for its own negligence and wilful misconduct.

The Corporation shall at all times indemnify the Trustee, its directors, officers, employees, and agents, and any successors and assigns and save them harmless against all actions, proceedings, liability, claims, damages, reasonable costs and expenses, including legal costs whatsoever arising from the performance of its duties hereunder (unless arising from negligence, bad faith or wilful misconduct on their part) and including any action or liability brought against or incurred by any of them in relation to or arising out of any breach by the Corporation of its obligations under this Deed or by the failure of the Trustee or its agents to do such acts as may be necessary to register, perfect, release or discharge the security created hereby as the same may be registered, filed or recorded in any public office.

The agreements in this Section shall survive the termination of this Deed and the repayment of the obligations secured.

### 3.10 Registrations and Deliveries

The Corporation agrees that:

- (a) forthwith after the execution of this Deed and after the execution of each instrument supplemental or ancillary hereto, it shall register, file or record the same and/or, if applicable, a financing statement or other prescribed statement in respect thereof as



may from time to time be required by the Trustee, the Senior Holders or any other Holder where such registration, filing or recording may be necessary or desirable or of advantage in preserving or protecting the security constituted by this Deed in favour of the Trustee, the Senior Holder or such other Holder;

- (b) from time to time, it shall renew such registration, filing or recording as required to maintain the security constituted hereby as valid and effective security;
- (c) promptly after such registration, filing, recording or renewal, the Corporation shall cause to be delivered to the Trustee certificates establishing such registration, filing, recording or renewal and opinion of counsel satisfactory to the Trustee, acting reasonably, evidencing that the provisions of this Section 3.10 have been complied with in respect of this Deed or such supplemental or ancillary instrument, as the case may be;
- (d) forthwith after the execution of this Deed and after the execution of each instrument supplemental or ancillary hereto, it shall deliver to the Trustee such other documents as may be reasonably required by the Trustee to be delivered to preserve, protect and perfect the security constituted hereby and represented by such documents of title, security certificates and other documents; and
- (e) in the event that the security constituted hereby becomes enforceable as herein provided and the Trustee shall become bound to enforce the same, the Corporation will from time to time execute all such assurances and do all such things as the Trustee may reasonably require for facilitating the realization of the mortgaged property of the Corporation and for exercising all of the powers, authorities and discretion conferred on the Trustee and for confirming to any purchaser of such mortgaged property or any part thereof, whether sold by the Trustee herein or by judicial proceedings, the title to the property so sold, and it will give all notices and directions which the Trustee may consider necessary or expedient.

The Corporation shall not change its name or amalgamate with another corporation under a different name without giving at least 10 days' prior notice to the Trustee of the new name and the date upon which such change of name or amalgamation is to take effect. Within 5 business days of the change of name or amalgamation, the Corporation shall provide the Trustee with a true copy of the articles of amendment or articles of amalgamation effecting the change of name and a certificate confirming the correct name of the Corporation and that all appropriate registrations, filings or recordings have been made on behalf of the Trustee to fully and effectively maintain the perfection and priority of the security created hereby.

In the event of the amalgamation of the Corporation, this Deed, the Debentures and all other security delivered by the Corporation in connection with this Deed shall be binding on the amalgamated corporation and charge its present and future undertaking, property and assets to secure present and future debts, liabilities and obligations of the Corporation and of the amalgamated corporation to the Trustee and the Holders, all as if the amalgamated corporation had originally executed and delivered those documents.

### **3.11 Proceeds of Unauthorized Sale in Trust**

The Corporation shall, in the event the mortgaged property or any part thereof is sold or disposed of prior to the full discharge of this Deed by the Trustee, in any manner not authorized by this Deed, hold all proceeds of such sale or disposition received by the Corporation as trustee for the Trustee until the Corporation has been fully released from this Deed by the Trustee.

### **3.12 Removal of Mortgaged Property**

Prior to the removal of any of the mortgaged property from the province in which it is situated at the date of this Deed or to leasehold property, the Corporation shall effect such further

registrations and obtain such other consents and give such other security, at the sole cost and expense of the Corporation, as may be required or desirable to protect or preserve the security hereby created, and the Corporation shall forthwith notify the Trustee of the intended removal and the action proposed to be taken.

### **3.13 Performance of Covenants by Trustee**

If the Corporation shall fail to perform any covenant on its part herein contained, the Trustee may in its absolute discretion perform any such covenant capable of being performed by it, but the Trustee shall be under no obligation to do so. If any such covenant requires the payment of money or if the mortgaged property or any part thereof shall become subject to any charge ranking in priority to the security hereof, the Trustee may in its absolute discretion make such payment and/or pay or discharge such charge, but shall be under no obligation to do so. All sums so paid by the Trustee shall be payable by the Corporation on demand together with interest from the date of demand at the rate referred to in Section 3.9 and shall constitute a charge upon the mortgaged property. No such performance or payment shall relieve the Corporation from any default hereunder or any consequences of such default.

### **3.14 Appointment of Monitor**

If in the opinion of the Senior Holders, acting reasonably, a material adverse change has occurred in the financial condition of the Corporation, or if the Senior Holders in good faith believe that the ability of the Corporation to pay any of its obligations or to perform any other covenant contained herein has become impaired or if a default has occurred, the Trustee shall, upon written direction by the Senior Holders, by written notice to the Corporation, appoint a monitor (the "Monitor") to investigate any or a particular aspect of the Corporation or its business and affairs for the purpose of reporting to the Trustee. The Corporation shall give the Monitor its full co-operation, including full access to facilities, assets and records of the Corporation and to its creditors, customers, contractors, officers, directors, employees, auditors, legal counsel and agents. The Monitor shall have no responsibility for the affairs of the Corporation nor shall it participate in the management of the Corporation's affairs and shall incur no liability in respect thereof or otherwise in connection with the Corporation, its business and affairs or the mortgaged property. The Monitor shall act solely on behalf of the Trustee and shall have no contractual relationship with the Corporation as a consultant or otherwise. The appointment of a Monitor shall not be regarded as an act of enforcement of this Deed. All reasonable fees and expenses of the Monitor (including legal fees and disbursements on a solicitor and own client basis) shall be paid by the Corporation upon submission to it of a written invoice therefor. The Trustee may at its option upon the security hereby constituted becoming enforceable appoint or seek to have appointed the Monitor as receiver, liquidator, or trustee in bankruptcy of the Corporation or the mortgaged property or any part thereof.

### **3.15 Insurance**

That it will cause all its property which is of a character usually insured by businesses operating properties of a similar nature to be properly insured and kept insured with reputable insurers against loss or damage by fire or other hazards of the nature and to the extent that such properties are usually insured by businesses operating properties of a similar nature in the same or similar localities and shall maintain such insurance with loss if any payable to the Trustee and shall deliver to the Trustee evidence of such insurance satisfactory to the Trustee. Proceeds of insurance shall be dealt with by the Trustee in accordance with resolutions of the Senior Holders, or in the absence of such resolutions, in accordance with Section 5.4.

### **3.16 Taxes and Other Charges**

That it shall pay all rents, taxes, rates, levies, assessments and government fees or dues levied, assessed or imposed in respect of the mortgaged property or any part thereof (collectively "Taxes") as and when the same shall become due and payable and shall pay all charges, liens and other encumbrances on the mortgaged property (collectively "Charges") as and when the same shall become due and payable. If the Corporation does not pay any Taxes or Charges as and when the

same shall become due and payable, the Trustee may, at its option, elect to pay any such amounts and charge to the Corporation all amounts so paid as additional amounts secured under this Deed, together with interest thereon from the date of payment by the Trustee of any such amounts at a rate per annum equal to the then-current rate charged by the Trustee from time to time.

### 3.17 Information

That it will furnish to the Trustee such information (including an annual certificate of compliance) with respect to the mortgaged property and the insurance thereon as the Trustee may from time to time require, and shall give written notice to the Trustee of all litigation before any court, administrative board or other tribunal affecting the Corporation or its property. An annual certificate of compliance means a certificate signed by the president or a vice-president of the Corporation, confirming compliance with the covenants set forth in this Article 3 and specifically that (i) no default as described in Section 4.1 of this Deed has occurred and is continuing and no event has occurred and is continuing which, with the passage of time or giving of notice, or both, would constitute such a default, and (ii) all the covenants of the Corporation contained in this Article 3 and all of the conditions contained in this Deed to be complied with by the Corporation have been fully complied with to the date thereof.

## 4. DEFAULT

### 4.1 Security Becoming Enforceable

The security hereby constituted shall immediately become enforceable and the floating charge created pursuant to Section 2.1(b) hereof shall become a fixed and specific mortgage, charge, pledge, assignment, security interest and hypothec on the property charged thereby if:

- (a) payment of part or all of the obligations secured by a pledge of a Senior Debenture is demanded in accordance with any agreement to which the Corporation is a party relating to such obligations secured, and payment is not made on demand;
- (b) the Corporation makes default of any other covenant or condition of this Deed for the benefit of the Senior Holders or the Trustee and default continues for a period of 30 days after the Trustee sends notice to the Corporation to correct the default; or
- (c) payment of the principal amount and interest accrued on all Debentures has been demanded by the Trustee pursuant to Section 5.1(b) if any Holder of Debentures other than a Senior Holder (a "Subordinated Holder", where Debentures held by the Subordinated Holders are the "Subordinated Debentures") has proceeded in accordance with Section 5.1(b) of this Deed.

### 4.2 Waiver

The Trustee (on the direction of the Senior Holders) or the Senior Holders may by notice to the Corporation waive any default of the Corporation on such terms and conditions as the Senior Holders may determine, but no such waiver shall be taken to affect any subsequent default or the rights of the Senior Holders arising therefrom nor shall it detract from the rights of any Subordinate Holder under the terms of any agreement relating to its obligations secured with respect to such default. No waiver of any default by a Subordinate Holder shall in any way affect the rights of the Senior Holders with respect to such default.

## 5. REMEDIES IN CASE OF DEFAULT

### 5.1 Demand Payment

- (a) If the security hereby constituted becomes enforceable as provided in Sections 4.1(a) or (b), the Trustee upon being so directed by resolution of the Senior Holders shall demand payment of the

principal amount of and interest accrued on all Debentures and the same shall forthwith become immediately due and payable to the Trustee.

(b) If (i) payment of part or all of the obligations, which for greater certainty shall include, without limitation, any principal amount together with accrued interest, that is secured by a pledge of a Subordinated Debenture (the "Defaulted Debenture") is demanded in accordance with any agreement to which the Subordinated Holder or Holders of the Defaulted Debenture (the "Demanding Holder") and the Corporation are parties relating to such obligations secured, and payment is not made on demand, (ii) the Demanding Holder (or any agent duly authorized to do so on behalf of such Holder) gives written notice of the demand for payment of such obligations secured to the Trustee (who shall immediately forward such notice to all of the other Holders), (iii) the Demanding Holder (or any agent duly authorized to so act on behalf of such Holder) provides to the Trustee (x) a certificate by the Demanding Holder certifying that the Demanding Holder is entitled under the terms of an agreement to which the Demanding Holder (or such agent) and all Senior Holders (or an agent on their behalf) are party (the "Intercreditor Agreement"), to require that payment of the Debentures be demanded and the security hereby constituted be enforced notwithstanding the priority of the Senior Holders, and (y) a resolution of the Demanding Holder directing that the Trustee demand payment of the principal amount of and interest on all Debentures, (which certificate and resolution shall immediately be forwarded by the Trustee to all of the other Holders), and (iv) at least 5 business days have passed after the Demanding Holder (or any agent duly authorized to so act on behalf of such Holder) has given to the Trustee the certificate and resolution referred to in (iii) above and the Trustee has forwarded copies thereof to all of the other Holders, then the Trustee, upon being so directed by the Demanding Holder (or any agent duly authorized to so act on behalf of such Holder) shall demand payment of the principal amount of and interest accrued on all Debentures and the same shall forthwith become immediately due and payable to the Trustee.

(c) In the event that the Senior Holders have duly exercised their rights under Section 5.1(a) hereof (whether or not a Subordinated Holder has duly exercised its rights under Section 5.1(b) hereof), it is agreed that:

- (i) the Trustee shall have regard to the instructions and directions of the Senior Holder only in exercising rights and remedies under this Deed and shall have no duty or obligation hereunder to act in accordance with the instructions or directions of any other Holder; and
- (ii) in giving the Trustee instructions and directions in pursuance of its rights under paragraph (i) above, the Senior Holders shall act in good faith, and not with the sole purpose of defeating, delaying, hindering or otherwise impeding the repayment of the Subordinated Holders, but nothing in this Deed shall impose on the Senior Holders any greater duty to the Subordinated Holders or the Corporation than is owed by a senior creditor to a junior creditor or to a debtor in the absence of any express provision.

(d) In the event that a Subordinated Holder (or an agent duly authorized by a Subordinated Holder) has duly exercised its rights pursuant to Section 5.1(b) hereof and no Senior Holder has exercised its rights under Section 5.1(a) hereof, then (but for so long only as no Senior Holder has exercised its rights under Section 5.1(a) hereof):

- (i) the Trustee shall have regard to the instructions and directions of the Subordinated Holder only in exercising rights and remedies under this Deed and shall have no duty or obligation hereunder to act in accordance with the instructions or directions of any other Holder;
- (ii) in giving the Trustee instructions and directions in pursuance of its rights under paragraph (i) above, the Subordinated Holder shall act in good faith; and

- (iii) while nothing shall prevent the Senior Holders from exercising their rights under Section 5.1(a) hereof if they are entitled to do so as between the Corporation and themselves, until they have done so, the Senior Holders shall not do any of the following without the consent of the Subordinated Holders: (A) give instructions and directions to the Trustee relating to the exercise of those rights and remedies being exercised by the Subordinated Holders in accordance with this Section 5.1(d), (B) direct the Trustee to waive any defaults pursuant to Section 4.2 of this Deed, (C) unreasonably withhold or delay its consent to the appointment of a replacement Trustee requested by the Subordinated Holders, or (D) exercise any of the rights set out in Sections 9.1(a), (b), (e) and (f) of this Deed.

## 5.2 Remedies

If the security hereby constituted becomes enforceable as herein provided, and the Corporation has failed to pay to the Trustee on demand the principal amount of and interest accrued on the Debentures:

- (a) the Trustee may in its discretion take possession of the whole or any part of the mortgaged property and carry on all or any part of the business of the Corporation relating to the mortgaged property and borrow money on the security of the mortgaged property in priority to the security hereby created for the purpose of maintenance, preservation or protection of the mortgaged property or for the carrying on of all or any part of the business of the Corporation relating to the mortgaged property and in so acting the Trustee shall have the power to exclude the Corporation, its servants and agents from the mortgaged property;
- (b) whether or not the Trustee has exercised any or all of its rights under Section 5.2(a), the Trustee may sell, lease or otherwise dispose of the whole or any part of the mortgaged property at public auction, by private tender or private sale, either for cash or upon credit and upon such terms and conditions as the Trustee may determine, and the Trustee may execute and deliver to any purchaser of the mortgaged property or any part thereof good and sufficient deeds and documents for the same, and, without limiting the powers granted to the Trustee, the Trustee is irrevocably constituted the attorney of the Corporation for the purpose of making any such sale and executing such deeds and documents (which appointment, being coupled with an interest, shall survive the bankruptcy of the Corporation);
- (c) the Trustee may also exercise any of the other rights to which the Trustee or the Holders are entitled including the right to take proceedings in any court of competent jurisdiction for the appointment of a receiver or receiver and manager (a "receiver"), for the sale of the mortgaged property or any part thereof or for foreclosure, and the right to take any other action, suit, remedy or proceeding authorized or permitted under this Deed or by law or in equity in order to enforce the security constituted by this Deed; and
- (d) the Trustee may also by instrument in writing appoint a receiver of the mortgaged property or of any part thereof and may remove any receiver so appointed and appoint another in his stead, and such receiver shall have the same rights, powers and authorities as are conferred on the Trustee by this Section 5.2. In addition the following provisions shall apply:
  - (i) such appointment shall be made in writing signed by the Trustee and such writing shall be conclusive evidence for all purposes of such appointment; the Trustee may from time to time in the same manner remove any receiver so appointed and appoint another in its stead; in making any such appointment the Trustee shall be deemed to be acting as the attorney for the Corporation and the Corporation hereby consents to the appointment of a receiver;

- (ii) any such appointment may be limited to any part or parts of the mortgaged property or may extend to the whole thereof;
- (iii) every receiver may, in the discretion of the Trustee, be vested with all or any of the powers, rights, benefits, discretions, protection and relief of the Trustee hereunder and shall be vested with all of the powers and protections afforded to a receiver under applicable law;
- (iv) the Trustee may from time to time fix the reasonable remuneration of the receiver and direct the payment thereof, in priority to the other obligations secured hereby, out of the mortgaged property, the income therefrom or the proceeds thereof;
- (v) the Trustee may from time to time require any receiver to give security for the performance of its duties and may fix the nature and amount thereof, but the Trustee shall not be bound to require such security;
- (vi) every such receiver may, with the consent in writing of the Trustee, borrow money for the purpose of carrying on the business of the Corporation in respect of any part of the mortgaged property or for the maintenance, protection or preservation of the mortgaged property or any part thereof, and any receiver may issue certificates (in this Section called "Receiver's Certificates"); for such sums as will in the opinion of the Trustee be sufficient for carrying out the foregoing, and such Receiver's Certificates may be payable either to order or bearer and may be payable at such time or times as the Trustee may consider expedient, and shall bear such interest as shall therein be declared and the Receiver may sell, pledge or otherwise dispose of the same in such manner as the Trustee may consider advisable and may pay such commission on the sale thereof as the Trustee may consider reasonable, and the amounts from time to time payable by virtue of such Receiver's Certificates shall at the option of the Trustee form a charge upon the mortgaged property in priority to this Deed;
- (vii) every receiver shall, regarding its acts or omissions, be deemed the agent of the Corporation, and in no event the agent of the Trustee and the Trustee shall not, in making or consenting to such appointment, incur any liability to any receiver for its remuneration or otherwise howsoever;
- (viii) except as may be otherwise directed by the Trustee, all monies from time to time received by any receiver shall be paid over to the Trustee; and
- (ix) the Trustee may pay over to any receiver any monies constituting part of the mortgaged property to the extent that the same may be applied for the purposes hereof by such receiver and the Trustee may from time to time determine what funds any receiver shall be at liberty to keep on hand with a view to the performance of its duties as such receiver.

In the exercise of their rights, powers and authorities hereunder, the Trustee and any receiver appointed by the Trustee shall be the agent of the Corporation, and the Trustee and the Holders shall not be in any way responsible for any misconduct or negligence of any such receiver, nor shall the Holders be in any way responsible for any misconduct or negligence of the Trustee.

### 5.3 Public Sale

The Trustee, the Holders or any agent or representative thereof, may become purchasers at any public sale of the mortgaged property, whether made under a power of sale provided for in this Deed or pursuant to judicial proceedings.

#### 5.4 Application of Proceeds of Realization of Security

Except as otherwise provided in this Deed, by law or by order of a court or by any resolution of the Holders, any and all monies arising from the enforcement of any remedy provided for herein, including, without limitation, the carrying on of the business of the Corporation and the sale or other realization of the whole or any part of the mortgaged property, whether under any sale by the Trustee or by judicial process or otherwise, shall be paid over to the Trustee, shall be held by the Trustee and, together with any other monies then or thereafter in the hands of the Trustee available for the purpose, shall be applied by the Trustee as follows:

- (a) firstly, if and to the extent that the Trustee deems that it is in the interest of the Holders generally and the same is not inconsistent with any resolution of the Senior Holders, to pay all charges and liens on the mortgaged property ranking (or capable of ranking) in priority to the security constituted by this Deed or to keep in good standing any such prior lien;
- (b) secondly, to pay all amounts due to the Trustee hereunder, including without limitation, costs, charges and expenses referred to in Section 3.9;
- (c) thirdly, to pay the outstanding principal amount secured by the Senior Debentures, to pay all interest secured by the Senior Debentures including interest on overdue interest accrued but unpaid to the date of the demand for payment of the amounts secured by such Senior Debentures and to pay all interest including interest on overdue interest accruing after the date of demand for payment and remaining unpaid of such amounts rateably and proportionately, having regard to the amount of the obligations secured by such Senior Debentures, rather than the face amount of any Senior Debenture that has been pledged in accordance with Section 1.3 above;
- (d) fourthly, after payment of all amounts secured by, and cancellation of, all Senior Debentures, to pay, in order as they succeed to being Senior Debentures, all amounts secured by each series of Subordinated Debentures in the same manner as in Section 5.4 (c) above;
- (e) fifthly, in payment of all other amounts at any time and from time to time remaining outstanding and unpaid under this Deed; and
- (f) sixthly, the surplus, if any, of such money shall be paid to the Corporation or its assigns or otherwise in accordance with applicable law.

#### 5.5 Duty to Inquire

No person dealing with the Trustee, its agents or any receiver appointed pursuant hereto (or pursuant to any agreement to which the Corporation and one or more of the Holders are parties) shall be concerned to inquire whether the powers which the Trustee, its agents or any receiver appointed pursuant hereto (or pursuant to any agreement to which the Corporation and one or more of the Holders are parties) is purporting to exercise have become enforceable, or whether any money remains due upon the security constituted by this Deed, or as to the necessity or expediency of the stipulations and conditions subject to which any sale shall be made, or otherwise as to the propriety or regularity of any sale or any other dealing by the Trustee with the mortgaged property or any part thereof or to see to the application of any money paid to the Trustee; and, in the absence of fraud on the part of such person, such dealings shall be deemed to be within the powers conferred on the Trustee and to be valid and effective accordingly.

#### 5.6 Possession

The Corporation shall on demand by the Trustee or any receiver yield up possession of the mortgaged property or any part thereof as demanded by the Trustee whenever the Trustee shall have a right to exercise any rights or remedies under Section 5.2 and put no obstacle in the way of, but

facilitate by all legal means, the actions of the Trustee or any receiver hereunder and not interfere with the carrying out of the powers hereby granted to the Trustee or any appointed receiver.

#### **5.7 Remedies Not Exclusive**

No right, power or remedy herein conferred upon or reserved to the Trustee or any receiver is intended to be exclusive of any other right, power or remedy or remedies, and each and every right, power and remedy shall, to the extent permitted by applicable law, be cumulative and shall be in addition to every other right, power or remedy given hereunder or now or hereafter existing at law, in equity or by statute. No delay or omission of the Trustee in the exercise of any right, power or remedy accruing upon any default shall impair any such right, power or remedy or shall be construed to be a waiver of any such default or an acquiescence therein. Every right, power and remedy given to the Trustee or to a receiver by this Deed or under applicable law may be exercised from time to time and as often as may be deemed expedient by the Trustee or such receiver, as applicable.

#### **5.8 Power of Attorney**

The Corporation hereby irrevocably constitutes and appoints the Trustee its true and lawful attorney and agent, with full power and authority in the Corporation's name, place and stead from time to time to do all acts and things and execute and deliver all share transfers, certificates, proxies, resolutions, consents, assignments, transfers, conveyances and agreements, in such form as the Trustee considers necessary or desirable to do all things which the Corporation is required to sign, execute and do hereunder if the Corporation has failed to sign, execute or do the same and generally to use the name of the Corporation, as applicable, in the exercise of all or any of the powers hereby conferred on the Trustee, with full powers of substitution and revocation; provided that this power of attorney may not be exercised by the Trustee until the security constituted hereby shall have become enforceable. Such appointment and power of attorney is hereby declared by the Corporation to be an irrevocable power coupled with an interest.

#### **5.9 Restriction on Corporation and its Officers and Directors**

Upon the Corporation receiving notice from the Trustee of the taking of possession of the mortgaged property or the appointment of a receiver, all the powers, functions, rights and privileges of each of the directors and officers of the Corporation with respect to the properties, business and undertaking of the Corporation shall cease unless specifically continued by the written consent of the Trustee.

### **6. DISCHARGE**

6.1 Subject to Section 7, this Deed and the rights hereby granted (other than the Trustee's rights under Section 3.9 above) shall cease, determine and be void, and the Trustee shall at the request and expense of the Corporation cancel and discharge the mortgages and charges of this Deed (including the additional security provided for in Section 10 (the "Additional Security")) and execute and deliver to the Corporation such deeds or other instruments as shall be requisite therefor, if the Corporation first satisfies the Trustee that it has paid the principal amount and interest secured by the Debentures and has otherwise observed and performed the terms and conditions of this Deed and the Additional Security and has otherwise satisfied all obligations secured, or that all of the Debentures have been validly cancelled as contemplated in Section 1.6.

6.2 The registrar of any registration division in which any mortgaged property is situate shall discharge and cancel the registration of any mortgage, pledge or charge, or transfer or giving in payment created hereby or by the Additional Security or hereafter created under the provisions hereof upon the registration of any discharge, release or document to that effect signed by the Trustee, without being obliged to see that any of the conditions of this Deed or of the Additional Security have been fulfilled.



## 7. CONTINUING AND ADDITIONAL SECURITY

7.1 The Debentures and the security created by this Deed shall be effective whether or not any monies or liabilities secured by this Deed are advanced or incurred before or after the date of this Deed, and shall not be considered as satisfied or discharged by any intermediate payment of the whole or part of the obligations secured by the pledge of the Debentures issued under this Deed but shall constitute and be a continuing security to the Holders for a current or running account and shall be in addition to and not in substitution for any other security now or hereafter held by the Holders or any of them. The remedies of the Trustee under this Deed may be exercised from time to time separately or in combination and are in addition to and not in substitution for any other rights of the Trustee or the Holders however created.

## 8. TRUSTEE

### 8.1 Acceptance by Trustee

The Trustee hereby accepts the trusts declared and provided in this Deed and agrees to perform the trusts upon the terms and conditions of this Deed, subject to the following:

- (a) the Trustee may appoint such agents and employ or retain, in relation to this Deed, such lawyers, accountants, valuers, engineers, architects, appraisers, or such other experts, as it may reasonably require in the circumstances and for the purpose of discharging its duties hereunder and shall be entitled to pay reasonable compensation for the advice or assistance so obtained, but nevertheless the Trustee shall not be obliged to act on any advice or assistance so obtained. The Trustee may act and shall be protected in acting in good faith on the opinion or the advice of or information obtained from any counsel (including where appropriate counsel acting for the Corporation or any Holder acceptable to the Trustee), accountant, valuator, engineer, architect, appraiser or other expert or advisor, in each case selected by the Trustee using reasonable care, in relation to any matter arising in connection with the administration of this Deed;
- (b) in respect of any direction, authorization, statement of fact, copy of by-law, resolution or other proceeding or writing which the Trustee may require from the Corporation, the Trustee shall be entitled to accept and act upon the same, provided the said documents bear the signature of any officer or director of the Corporation;
- (c) the Trustee shall be accountable only for reasonable diligence in respect of the trusts hereby conferred upon it and shall not be accountable for any act or default of any agent or other person engaged by the Trustee for the performance of any duty or duties hereunder (except employees of the Trustee), provided the Trustee shall have selected such agent or person with reasonable care;
- (d) subject to any resolution of the Holders (or the Senior Holders where specified in this Deed), the Trustee shall as regards all the trusts, powers, authorities and discretion vested in it have absolute and uncontrolled discretion as to the exercise thereof, whether in relation to the manner or as to the mode and time for the exercise thereof, and in the absence of fraud, negligence or wilful misconduct, it shall in no way be responsible for any loss, costs, damages or inconvenience that may result from the exercise or non-exercise thereof;
- (e) the Trustee shall not be bound to take any steps to enforce any of the covenants on the part of the Corporation contained in the Debentures, except insofar as it may be required to do so by the Senior Holders (or the Subordinated Holders pursuant to Section 5.1(b)) in writing upon being furnished with an indemnity reasonably satisfactory to the Trustee;

- (f) the obligation of the Trustee to commence or continue any act, action or proceedings for the purpose of realizing the collateral or for the enforcement of any covenant or obligation under or arising out of these presents or the Debentures shall, at the option of the Trustee, be conditional upon the Holders furnishing, when requested in writing by the Trustee, sufficient funds to commence or continue such action or proceedings and an indemnity satisfactory to the Trustee to protect and hold harmless the Trustee against costs, charges and expenses and liabilities to be incurred thereby and any loss and damage it may sustain by reason thereof;
- (g) the Trustee may, but shall not be obliged to, enter onto the mortgaged property to take such actions as the Trustee may in its sole discretion deem necessary or advisable to clean up, remediate, encapsulate, remove, resolve, or minimize the impact of, or otherwise deal with, any contaminants or breaches of Environmental Laws which could in the opinion of the Trustee jeopardize the security interest in the mortgaged property created by this Deed;
- (h) the Trustee shall have no responsibility to supervise or have control over the conduct of the Corporation's environmental practices, nor shall any action or inaction by the Trustee be construed as exercising care, control or management over the mortgaged property; and
- (i) nothing in this Deed shall be deemed to make the Trustee responsible for failure to obtain or maintain adequate or any insurance coverage for the mortgaged property or to ensure that such insurance is obtained and maintained by the Corporation, or for any loss arising from any defects in any policy or because of the failure of any insurer to pay for any loss or damage insured against, and the Trustee shall be entitled to request, and rely absolutely upon, a certificate of an officer of the Corporation that the insurance carried by the Corporation from time to time is in compliance with all relevant requirements of this Deed.

## 8.2 Trustee not Required to Give Security

The Trustee shall not be required to give any bond or security in respect of the execution of the trusts and powers of this Deed or otherwise in respect of this Deed.

## 8.3 Protection of Trustee

By way of supplement to the provisions of any law for the time being relating to trustees, it is expressly declared and agreed as follows:

- (a) the Trustee shall not be liable for or by reason of any failure or defect of title to, or encumbrance upon, the mortgaged property;
- (b) the Trustee shall not be liable for or by reason of any statements of fact or recitals in this Deed, or in the Debentures (except in the Certificate of the Trustee thereon) or in any document ancillary or supplemental hereto or thereto, or required to verify the same, but all such statements or recitals are and shall be deemed to be made by the Corporation;
- (c) nothing herein or in the Debentures shall impose any obligation on the Trustee or any Holders to see to or to require evidence of the registration or filing or renewal of this Deed, any of the Debentures or any other instrument ancillary or supplemental hereto or thereto or any other deed or writing by way of mortgage or charge upon the mortgaged property or any part thereof or to procure any further, other or additional instrument of further assurance or to do any other act for the continuance of the security hereof or encumbrance or for giving notice of the existence of such security or for extending or supplementing the same;

- (d) the Trustee shall not be bound to give notice to any person or persons of the execution hereof or the security constituted hereby or in any way to interfere with the conduct of the business of the Corporation, unless and until the security hereby constituted shall have become enforceable and the Trustee shall have become bound to enforce the same;
- (e) the Trustee shall not incur any liability or responsibility whatever in consequence of permitting or suffering the Corporation, its successors or assigns, to retain or be in possession of any part of its mortgaged property and to use and enjoy the same unless herein or in the Debentures expressly otherwise provided; nor shall the Trustee be or become responsible or liable for any destruction, deterioration, loss, injury or damage which may be done or occur to the mortgaged property by the Corporation, its agents or servants, or by any other person or be in any way responsible for the consequences of any breach on the part of the Corporation of, or to inquire as to the performance by the Corporation of, any of the covenants herein or in the Debentures contained or of any acts of the agents or servants of the Corporation;
- (f) unless otherwise required by law, the Trustee shall not be liable by reason of any entry into possession of the mortgaged property or any part thereof to account as mortgagee in possession or for anything except actual receipts or be liable for any loss on realization or for any default or omission for which a mortgagee in possession might be liable save such as may be caused by its own fraud, negligence or wilful misconduct;
- (g) the Trustee on its own behalf or in any other capacity, may buy, lend upon and deal in shares in the capital stock of the Corporation and generally may contract and enter into financial transactions with the Corporation without being liable to account for any profit made thereby;
- (h) none of the provisions contained in this Deed shall require the Trustee to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers unless indemnified in accordance with this Deed;
- (i) the Trustee may, before commencing or at any time during the continuance of any such act, action or proceeding, require the Holders at whose instance it is acting to deposit with the Trustee the Debentures held by them, for which Debentures the Trustee shall issue receipts;
- (j) the Trustee shall not be responsible or liable in any manner whatsoever for the sufficiency, correctness, genuineness or validity of any security deposited with it, including any stock transfer power of attorney; and
- (k) in the exercise of its rights, duties and obligations hereunder the Trustee may, if acting in good faith, rely, as to the truth of the statements and accuracy of the opinions expressed therein, upon statutory declarations, opinions, reports or certificates furnished pursuant to any covenant, condition or requirement of this Deed or required by the Trustee to be furnished to it in the exercise of its rights and duties hereunder, provided that the Trustee examines such statutory declarations, opinions, reports or certificates and determines, acting in good faith, that they comply with any applicable requirements of this Deed.

#### 8.4 Trustee's Obligation to Act

Unless and until the Trustee is required to do so under the terms of this Deed, the Trustee shall not be bound to give any notice or to take any act, action or proceeding by virtue of the powers conferred on it by this Deed; nor shall the Trustee be required to take notice of an event of default under this Deed, other than in payment of any monies required by any provisions hereof to be paid

to it. Unless and until notified in writing of such events of default or such default and in the absence of any such notice, the Trustee may assume that the Corporation is not in default hereunder and that no default has been made with respect to the payment of principal or interest under the Debentures or in the observance of performance or any of the covenants, agreements or conditions contained herein.

The right and obligation of the Trustee to commence or continue an act, action or proceeding for the purpose of enforcing any rights of the Trustee or the Holders hereunder shall be conditional on (i) the Trustee receiving a resolution from the Senior Holders (or the Subordinated Holders (or an agent on their behalf) pursuant to Section 5.1(b) exercised in accordance with Section 5.1(d)) and (ii) compliance with Section 8.1 (f).

#### **8.5 Resignation of Trustee**

The Trustee may resign its trust and be discharged from all further duties and liabilities hereunder by giving to the Corporation not less than 30 days' notice in writing or such shorter notice as the Corporation may accept as sufficient. The Senior Holders shall have the power at any time to remove the Trustee and to appoint a new Trustee. In the event of the Trustee resigning or being removed as aforesaid or being dissolved, becoming bankrupt, going into liquidation or otherwise becoming incapable of acting hereunder, the Corporation shall forthwith appoint a new Trustee unless a new Trustee has already been appointed by the Senior Holders; failing such appointment by the Corporation, the retiring Trustee (at the Corporation's expense) or any Senior Holder may apply to a Judge of the Court of Queen's Bench of Manitoba, on such notice as such Judge may direct, for the appointment of a new Trustee, but any new Trustee so appointed by the Corporation or by the Court shall be subject to removal as aforesaid by the Senior Holders. Any new Trustee appointed under these provisions shall be a corporation authorized to carry on the business of a trust company in the Province of Manitoba.

#### **8.6 Powers of New Trustee**

Any new Trustee appointed hereunder shall execute an instrument accepting such appointment hereunder and deliver one counterpart or notarial copy thereof to the Corporation and one counterpart or notarial copy thereof to the Trustee last in office and the Holders shown on the Trustee's register, and thereupon such new Trustee without further act, deed or conveyance shall become vested with all estates, properties, rights, powers and trusts of its predecessor in the trusts hereunder, with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of the successor Trustee or of the Corporation, the Trustee ceasing to act shall execute and deliver an instrument or instruments assigning and transferring to such successor Trustee, upon the trusts herein expressed, all the said property and assets and all rights, powers and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver all property and money held by such Trustee to the successor Trustee so appointed in its place. Should any deed, conveyance or instrument in writing from the Corporation be required by any new Trustee for more fully and certainly vesting in and confirming to it such estates, properties, rights, powers and trusts, then any and all such deeds, conveyances and instruments in writing shall, on request of said new Trustee, be made, executed, acknowledged and delivered by the Corporation. At the request of the Corporation or the new Trustee, the retiring Trustee, upon payment of the amounts, if any, due to it pursuant to Section 3.9, shall duly assign, transfer and deliver to the new Trustee all property and money held and all records kept by the retiring Trustee hereunder or in connection herewith.

#### **8.7 Corporate Re-organization of Trustee**

Any company into which the Trustee may be merged or with which it may be consolidated or amalgamated, or any company resulting from any merger, consolidation or amalgamation to which the Trustee shall be a party, shall be the successor Trustee under this Deed without the execution of any instrument or any further act.

#### 8.8 Evidence

The Corporation shall furnish to the Trustee evidence of compliance with the conditions provided for in this Trust Deed relating to any action or step required or permitted to be taken by the Corporation or the Trustee under this Trust Deed or as a result of any obligation imposed under this Trust Deed, including, without limitation, the issue, certification and delivery of Debentures hereunder, the satisfaction and discharge of this Trust Deed and the taking of any other action to be taken by the Trustee at the request of or on the application of the Corporation, forthwith if and when:

- (i) such evidence is required by any other Section of this Trust Deed to be furnished to the Trustee in accordance with the terms of this Section; or
- (ii) the Trustee, in the exercise of its rights and duties under this Trust Deed, gives the Corporation written notice requiring it to furnish such evidence in relation to any particular action or obligation specified in such notice.

Such evidence shall consist of:

- (A) a certificate of an officer of the Corporation stating that any such condition has been complied with in accordance with the terms of this Trust Deed;
- (B) in the case of any such condition compliance with which is, by the terms of this Trust Deed, made subject to review by legal counsel, an opinion of counsel to the Trustee that such condition has been complied with in accordance with the terms of this Trust Deed; and
- (C) in the case of any such condition compliance with which is, by the terms of this Trust Deed, made subject to review or examination by an auditor or accountant, an opinion or report of the auditors of the Corporation or any accountant licenced under the applicable laws of the Province of Manitoba based on the examinations or enquiries required to be made under the terms of this Trust Deed, in each case approved by the Trustee, that such condition has been complied with in accordance with the terms of this Trust Deed.

Whenever such evidence relates to a matter other than the issue, certification and delivery of Debentures, the satisfaction and discharge of this Trust Deed or the taking of any other action to be taken by the Trustee at the request or on the application of the Corporation, and except as otherwise specifically provided herein, such evidence may consist of a report or opinion of any solicitor, auditor, accountant, engineer or appraiser or any other person whose qualifications give authority to a statement made by him, provided that if such report or opinion is furnished by a director, officer or employee of the Corporation it shall be in the form of a certificate satisfactory to the Trustee (acting reasonably). Such evidence shall be, so far as appropriate, in accordance with the immediately preceding paragraph of this section.

Each statutory declaration, certificate, opinion or report furnished to the Trustee as evidence of compliance with a condition provided for in this Trust Deed shall include a statement by the person giving the evidence:

- (a) declaring that he has read and understands the provisions of this Trust Deed relating to the condition in question;
- (b) describing the nature and scope of the examination or investigation upon which he based the statutory declaration, certificate, statement or opinion; and
- (c) declaring that he has made such examination or investigation as he believes is necessary to enable him to make the statements or give the opinions contained or expressed herein.

Upon the demand of the Trustee, the Corporation shall furnish the Trustee with evidence in such form as the Trustee may reasonably require as to compliance with any condition contained in this Trust Deed relating to any action required or permitted to be taken by the Corporation or as to any other matter referred to herein.

#### **8.9 Action By Trustee to Protect Interests**

The Trustee shall have power to institute and to maintain such actions and proceedings as it may consider necessary or expedient to preserve, protect or enforce its interests and the interests of the Holders.

#### **8.10 Duties of Trustee**

The Trustee, in exercising its powers and discharging its duties hereunder, shall:

- (i) act honestly and in good faith with a view to the best interests of the Holders;
- (ii) exercise the care, diligence and skill of a reasonably prudent trustee; and
- (iii) act reasonably wherever such standard is stipulated herein and otherwise shall act as required by law.

### **9. RESOLUTIONS OF HOLDERS**

#### **9.1 Powers of the Holders**

The powers of the Holders shall be exercisable by the Senior Holders only, except (i) as expressly provided in Sections 3.2, 3.10(a), 5.1(b) and 5.1(d) of this Deed, and (ii) as to matters set forth in paragraphs (c), (d), (e) and (g) below which shall be also exercisable by Subordinated Holders as described in those paragraphs, and include but are not limited to the following powers exercisable from time to time by resolution of the Senior Holders:

- (a) the power to require the Trustee to refrain from enforcing any covenant on the part of the Corporation herein or to refrain from exercising any of the powers set forth herein and conferred on the Trustee or to direct the Trustee to waive any default or defaults on the part of the Corporation on such terms as may be deemed advisable or to cancel any declaration or waiver previously made by the Trustee under this Deed;
- (b) power to remove a Trustee from office and to appoint a new Trustee;
- (c) power to assent to any judgment, compromise or arrangement by the Corporation with any creditor, creditors or class or classes of creditors or with the holder(s) of any shares or securities of the Corporation, which shall also require the approval of the Holders of each series of Subordinated Debentures in respect of any judgment, compromise or arrangement affecting their respective Debentures;
- (d) power to assent to any modification of or change in or addition to or deletion from the rights of the Holders or the provisions contained in this Deed or any instrument ancillary or supplementary hereto or thereto or any agreement forming part of the mortgaged property which shall be agreed by the Corporation and to authorize the Trustee to concur in and execute any indenture supplemental to this Deed or any agreement supplemental to any instrument embodying any such modification, change, addition, deletion or to concur in and execute any deeds, documents, or writings authorized by such resolution, which shall also require the approval of the Holders of each series of Subordinated Debentures in respect of any such modification, change, addition, deletion affecting their respective Debentures;

- (e) power to approve the release of the Corporation and of the whole or any part of the mortgaged property from the security constituted hereby, which shall also require the approval of the Holders of each series of Subordinated Debentures;
- (f) power to authorize the Trustee to execute and deliver such form of priority agreement as may reasonably be requested by the Corporation to evidence the priority of any permitted liens which are permitted by the terms of any agreements entered into with all of the Holders to rank prior to the security constituted hereby; and
- (g) power to issue additional Debentures pursuant to Section 1.1, which shall also require the approval of the Holders of each series of Subordinated Debentures, which consent, in the case of the Subordinated Holders, shall not be unreasonably withheld.

The powers of the Holders shall be deemed to be several and cumulative and not dependent on each other and the exercise of any one or more of such powers, or in any combination of such powers, from time to time, shall not be deemed to exhaust the rights of the Holders to exercise such power or powers, or combination of powers thereafter from time to time.

#### 9.2 Resolutions of the Holders

The powers specified in Section 9.1 of this Deed and every other power conferred upon the Senior Holders or Subordinated Holders, as the case may be, by any provisions of this Deed or the Debentures or any agreement ancillary or supplemental hereto or thereto shall be exercised by resolution passed in the following manner:

- (a) the substance of any resolution may be embodied in an instrument in writing and such resolution shall be deemed to have been passed when such instrument has been executed by the Senior Holders or Subordinated Holders, as the case may be, holding an aggregate of more than 66 2/3% of the principal amount of all of the outstanding Debentures in the relevant series;
- (b) any such instrument, and any requisition or other instrument to be executed by any Holders under any provisions of this Deed, may be executed in counterparts and any of the Holders may execute the same in person or by agent or attorney duly authorized in writing;
- (c) at the request of the Trustee, the date and execution by any of the Holders or agent or attorney of any such instrument and the execution by any of the Holders of any power of attorney shall be proved by the certificate of any notary public that the person signing the same has acknowledged to him the execution thereof, by affidavit or statutory declaration of a witness to such execution, or by the signature of the Holder as witnessed by any officer of any bank or trust company; such proof shall be conclusive in favour of the Trustee with regard to any action taken or suffered by the Trustee under such instrument. No such instrument shall be effective until delivery thereof to the Trustee; and
- (d) the Trustee shall give notice to all Holders of each resolution of the Senior Holders or Subordinated Holders passed as aforesaid.

#### 9.3 Effect of Resolutions of Holders

Any resolution passed as provided in Section 9.2 shall be binding upon the Holders and each of them, and the Trustee (subject to the provisions for its indemnity, if any, set forth in this Deed) shall be bound to give effect thereto accordingly.

SCHEDULE "B"

This Schedule is attached to and forms part of a certain Trust Deed dated August 17, 1999, given by 1334202 ONTARIO INC. in favour of MONTREAL TRUST COMPANY.

Owned Property:

Civic Address: 745 Park Avenue West, Chatham, Ontario

Property Identifier No. (PIN): 00527-0010

In the Municipality of Chatham-Kent, formerly in the City of Chatham in the County of Kent, and being composed of part of Lot 20 on the First or Front Concession from the River Thames, in the geographic Township of Raleigh, described as follows:

COMMENCING at a point in the southeast limit of Lot 20, said point being distant southwesterly along said southeasterly limit 540 feet from the easterly angle of said Lot 20;

THENCE northwesterly parallel with the northeasterly limit of said lot a distance of 286.50 feet more or less to the southeast limit of the right-of-way of the Canadian National Railway Company;

THENCE southwesterly along said last mentioned limit a distance of 1,257 feet more or less to a point, said point being distant northeasterly parallel with the southeasterly limit of said lot 200 feet from the southwest limit of said lot;

THENCE southeasterly parallel with the southwesterly limit of said Lot a distance of 94 feet more or less to the northwest limit of the right-of-way of the Hydro Electric Power Commission, as shown on a plan attached to and described in Instrument Number 20253;

THENCE northeasterly along said last mentioned limit a distance of 1,200 feet more or less to the southeast limit of said Lot 20;

THENCE northeasterly along the southeast limit of said Lot a distance of 98.72 feet to the point of commencement.

Together with a certain right-of-way over Part of Lot 20, Concession 1, E.B., designated as Part 1 on Plan 24R-5753, as described in Instrument No. 573211 and subject to the terms and conditions therein described.

As previously described in 590170.



SCHEDULE "B"

This Schedule is attached to and forms part of a certain Trust Deed dated August 17, 1999, given by 1334202 ONTARIO INC. in favour of MONTREAL TRUST COMPANY.

Owned Property:

Civic Address: 545 Glengarry Crescent, Fergus, Ontario

Property Identifier No. (PIN): 71130 - 0045

Part of Lot 9, Concession 1, Township of West Garafraxa, designated as Part 1, Plan 60R-1718, and Parts 2 and 3, Plan 60R-2605; formerly Town of Fergus, now Township of Centre Wellington, County of Wellington

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SCHEDULE "B"

This Schedule is attached to and forms part of a certain Trust Deed dated August 17, 1999, given by 1334202 ONTARIO INC. in favour of MONTREAL TRUST COMPANY.

Owned Property:

Civic Address: 6 McKinstry Street, and 77 Brant Street, Hamilton, Ontario

Property Identifier No. (PIN): 17192-0005

Part of Reserve Number 3, Plan 32 and Part of Sherman's Inlet, City of Hamilton, Regional Municipality of Hamilton-Wentworth, more particularly described as follows:

Firstly:

All and singular that certain parcel or tract of land and premises, situate, lying and being composed of part of Reserve Number 3, as shown on plan of survey made for J.T. Gilkinson registered as Plan Number 32, City of Hamilton, Regional Municipality of Hamilton-Wentworth and which may be more particularly described as follows, that is to say:

COMMENCING at a stake planted in the production southerly of the easterly limit of McKinstry Street distant 8 feet 11 inches measured southerly along the said production of the easterly limit of McKinstry Street from the production easterly of the Northerly limit of Brant Street;

THENCE Northerly along the easterly limit of McKinstry Street 120.34 feet more or less to its intersection by a line drawn parallel and 2.00 feet northerly measured perpendicularly therefrom the northern face of the north block foundation wall of a semi-circular corrugated steel shell building presently known as Nos. 2-4-6 McKinstry Street;

THENCE easterly along said 2.0 feet northerly parallel line 128.36 feet more or less to a standard iron bar making the westerly limit of the T.H. & B. spur line, said point being 15 feet from the centre line of track;

THENCE in a southerly and westerly direction along the westerly limit of said spur line right of way (having a full perpendicular width of 30 feet, being 15 feet on either side of centre line of track) to its intersection with the southerly limit of Reserve #3, said point of intersection being distant 8 feet 11 inches southerly measured perpendicularly from the easterly production of the northerly limit of Brant Street and 10 feet easterly from the point of commencement;

THENCE westerly and parallel to the aforesaid easterly production of the northern limit of Brant Street 10 feet to the point of commencement.

TOGETHER with a parcel of land having a width of 1.00 feet fronting on McKinstry Street with a depth of 16.0 feet immediately adjoining the northern limit of the above-described parcel.

The above described lands being shown on the plan of Joseph G. Flaherty O.L.S. annexed to Instrument No. 252832 H.L. and dated September 30, 1963.

As described in Instrument No. 319263 A.B.

Secondly:

Part of Reserve No. 3 in the J.T. Gilkinson Survey, Registered Plan No. 32, City of Hamilton, Regional Municipality of Hamilton-Wentworth designated as Part 2, Plan 62R-7060.

SAVE AND EXCEPT that Part of Reserve No. 3 in the J.T. Gilkinson Survey Registered Plan No. 32 designated as Part 1, Plan 62R-7413.

TOGETHER WITH the right of ingress and egress over the said lands described as Part 1 on Plan 62R-7413, until such lands are incorporated into the road allowance.

RESERVING unto The Toronto, Hamilton and Buffalo Railway Company and excepting therefrom any mines, ores, metals, coal, slate, mineral oils, gas or other minerals in or under the said lands.

As described in Instrument No. 306923 C.D.

Thirdly:

Part of Reserve No. 3, Plan No. 32 and Part of Sherman's Inlet, Sherman's Inlet being part of Lot 9, Concession 1, former Township of Barton, designated as Part 1, Plan 62R-9795, City of Hamilton, Regional Municipality of Hamilton-Wentworth.

As described in Instrument No. VM11104.

Civic Address: 200 Saunders Road, Barrie, Ontario

Legal Description: Parcel Identifier No. 58728-0118  
58728-0187

Firstly, Parcel 9-4, Section 51-INN-11, being part of Lot 9, Concession 11, Geographic Township of Innisfil, now City of Barrie, County of Simcoe, designated as Parts 1 and 2 on Reference Plan 51R-16592

Secondly, Parcel 9-8, Section 51-INN-11, being part of Lot 9, Concession 11, Township of Innisfil, now City of Barrie, County of Simcoe, designated as Part 2 on Reference Plan 51R-21651

Civic Address: 745 Park Avenue West, Chatham, Ontario

Property Identifier No. (PIN): 00527-0010

In the Municipality of Chatham-Kent, formerly in the City of Chatham in the County of Kent, and being composed of part of Lot 20 on the First or Front Concession from the River Thames, in the geographic Township of Raleigh, described as follows:

COMMENCING at a point in the southeast limit of Lot 20, said point being distant southwesterly along said southeasterly limit 540 feet from the easterly angle of said Lot 20;

THENCE northwesterly parallel with the northeasterly limit of said lot a distance of 286.50 feet more or less to the southeast limit of the right-of-way of the Canadian National Railway Company;

THENCE southwesterly along said last mentioned limit a distance of 1,257 feet more or less to a point, said point being distant northeasterly parallel with the southeasterly limit of said lot 200 feet from the southwest limit of said lot;

THENCE southeasterly parallel with the southwesterly limit of said Lot a distance of 94 feet more or less to the northwest limit of the right-of-way of the Hydro Electric Power Commission, as shown on a plan attached to and described in Instrument Number 20253;

THENCE northeasterly along said last mentioned limit a distance of 1,200 feet more or less to the southeast limit of said Lot 20;

THENCE northeasterly along the southeast limit of said Lot a distance of 98.72 feet to the point of commencement.

Together with a certain right-of-way over Part of Lot 20, Concession 1, E.B., designated as Part 1 on Plan 24R-5753, as described in Instrument No. 573211 and subject to the terms and conditions therein described.

As previously described in 590170.

Civic Address: 545 Glengarry Crescent, Fergus, Ontario

Property Identifier No. (PIN): 71130 -0045

Part of Lot 9, Concession 1, Township of West Garafraxa, designated as Part 1, Plan 60R-1718, and Parts 2 and 3, Plan 60R-2605; formerly Town of Fergus, now Township of Centre Wellington, County of Wellington

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SCHEDULE "C"

This Schedule is attached to and forms part of a certain Trust Deed dated August 17, 1999,  
given by 1334202 ONTARIO INC. in favour of MONTREAL TRUST COMPANY.

Leased Property:

344 Main Street, Sauble Beach, Ontario

200 Binnington Court, Kingston, Ontario





**THIS FIRST SUPPLEMENTAL TRUST DEED** made as of the 22nd day of March, 2002

**AMONG:**

**ARCTIC GLACIER INC.,**  
a company duly amalgamated under the laws of Alberta  
  
(hereinafter referred to as the "Company")

**PARTY OF THE FIRST PART**

**AND:**

**MONTREAL TRUST COMPANY,**  
a trust company existing under the laws of Canada

(hereinafter referred to as "Montreal Trust")

**PARTY OF THE SECOND PART**

**AND:**

**COMPUTERSHARE TRUST COMPANY  
OF CANADA,**  
a trust company existing under the laws of Canada

(hereinafter referred to as "Computershare")

**PARTY OF THE THIRD PART**

**WHEREAS** Montreal Trust is party as Trustee to several Trust Deeds (each such Trust Deed and any and all deeds heretofore supplemental thereto is herein individually referred to as a "Trust Deed" and collectively as the "Trust Deeds"), made as of August 17, 1999 separately with each of 1334202 Ontario Inc., 1179554 Ontario Inc., 884213 Ontario Inc., The Ice Shoppe Inc. and Polar Ice Company Limited (each individually a "Subsidiary" and collectively the "Subsidiaries");

**AND WHEREAS** by each of the Trust Deeds provision was made for the issue by each of the Subsidiaries of Debentures (as defined therein), subject to the terms and conditions contained in the respective Trust Deed;

**AND WHEREAS** the Company represents that 1334202 Ontario Inc., 1179554 Ontario Inc., 884213 Ontario Inc. and The Ice Shoppe Inc. were duly amalgamated effective January 1, 2000 to form 1393508 Ontario Inc.;

**AND WHEREAS** as a result of the January 1, 2000 amalgamation described in the preceding recital, 1393508 Ontario Inc. continued to be liable for all of the liabilities, obligations and duties of each of 1334202 Ontario Inc., 1179554 Ontario Inc., 884213 Ontario Inc. and The Ice Shoppe.

Inc., including, without limitation, all liabilities, obligations and duties of each such party under the corresponding Trust Deed as if it were an original to each of them;

**AND WHEREAS** the Company represents that Polar Ice Company Limited was duly amalgamated with 1393508 Ontario Inc. effective January 4, 2000 to form 1394332 Ontario Inc.;

**AND WHEREAS** as a result of the January 4, 2000 amalgamation described in the preceding recital, 1394332 Ontario Inc. continued to be liable for all of the liabilities, obligations and duties of each of 1393508 Ontario Inc. and Polar Ice Company Limited, including, without limitation, all liabilities, obligations and duties (i) of Polar Ice Company Limited under the corresponding Trust Deed; and (ii) of 1393508 Ontario Inc. under each of the other Trust Deeds, in each case as if 1394332 Ontario Inc. were an original party to each of them;

**AND WHEREAS** the Company represents that pursuant to a resolution regarding the dissolution of 1394332 Ontario Inc. effective June 30, 2000 and a Distribution Agreement made as of June 30, 2000, such Subsidiary assigned, conveyed and transferred to The Arctic Group Inc. (the "Predecessor") all of the properties, assets, rights, interests and undertaking of any kind and nature whatsoever of such Subsidiary and the Predecessor assumed and undertook all of the liabilities, obligations and duties of such Subsidiary;

**AND WHEREAS** Arctic Glacier Inc. ("Pre-Amalco Glacier") is a corporation incorporated on January 14, 2002 under the *Business Corporations Act* (Alberta), S.A. 2000, c. B-9, as amended;

**AND WHEREAS** Pre-Amalco Glacier duly amalgamated (the "Amalgamation") with the Predecessor effective March 22, 2002, with the amalgamated entity continuing as the Company under the name Arctic Glacier Inc.;

**AND WHEREAS** as a result of the Amalgamation, the Company continues to be liable for all of the liabilities, obligations and duties of each of the Predecessor and Pre-Amalco Glacier, including, without limitation, all liabilities, obligations and duties of the Predecessor under each Trust Deed, as if the Company were an original party to each of them;

**AND WHEREAS** the parties desire to provide for the inclusion and recognition of the Company in the Trust Deeds with respect to the Company's continuing liability for all the interests, liabilities, obligations and duties of the Subsidiaries under the Trust Deeds;

**AND WHEREAS** Computershare and Montreal Trust represent that Computershare acquired the stock transfer and corporate trust businesses of Montreal Trust pursuant to an Asset Purchase Agreement dated as of June 30, 2000, and pursuant thereto Montreal Trust has agreed to transfer to Computershare, and Computershare agreed to accept the transfer of, the appointment as trustee under the Trust Deed, subject to the agreement of the Company as successor to the Subsidiary and the Predecessors;

**AND WHEREAS** Computershare represents that it is duly qualified to be Trustee under each of the Trust Deeds;

**AND WHEREAS** to give effect to the foregoing, Montreal Trust desires to, in accordance with the terms of the Trust Deeds, resign as Trustee thereunder and to be discharged from the trusts thereof, and to assign and transfer to Computershare all of its estates, properties, moneys, records, rights, powers and trusts under each of the Trust Deeds;

**AND WHEREAS** the Company is prepared to accept such resignations and to appoint Computershare as the successor Trustee under each of the Trust Deeds, and Computershare is prepared to accept such appointments;

**AND WHEREAS** the parties wish to execute this First Supplemental Trust Deed for the purpose of providing for the inclusion and recognition of the Company in each of the Trust Deeds in the place and stead of the corresponding Subsidiary and for the purpose of providing for the resignation of Montreal Trust as Trustee and for its replacement by Computershare under each of the Trust Deeds, all with effect as of March 22, 2002 (hereinafter, the "Transfer Date");

**NOW, THEREFORE, THIS FIRST SUPPLEMENTAL TRUST DEED WITNESSES** that in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the parties covenant and agree as follows:

1. Each of Montreal Trust, Computershare and the Company hereby confirms the accuracy, truthfulness and completeness of each of the above recitals to which it is a party and acknowledges that same are being relied upon by the parties in entering and executing this First Supplemental Trust Deed;
2. The Company hereby replaces each of the Subsidiaries on and after the Effective Date as a party to the respective Trust Deed, assumes all of the liabilities, obligations and duties of each such Subsidiary under the respective Trust Deed and agrees to perform, satisfy and discharge such obligations as if it were an original party to each said Trust Deed in accordance with the terms thereof in the place and stead of the Subsidiary;
3. The Company shall be entitled to all of the rights, privileges and benefits of the Subsidiary under each of the Trust Deeds on and after the Effective Date;
4. Montreal Trust hereby waives any required notice pursuant to the Trust Deed with respect to any previous change of name or amalgamation involving the Subsidiaries, the Predecessor or the Company and acknowledges that the Company has complied with all requirements of each of the Trust Deeds, for notice to the Trustee in respect of the Amalgamation;
5. Montreal Trust hereby resigns as Trustee under, and is hereby discharged from the trusts of each of the Trust Deeds, effective as of the Transfer Date. The Company hereby accepts such resignations, waiving any required period of notice that may be set forth in any of the Trust Deeds.
6. The Company hereby appoints Computershare as successor Trustee under each of the Trust Deeds in the place and stead of Montreal Trust and with like effect as if originally named

as Trustee under the Trust Deeds, effective as of the Transfer Date, and Computershare hereby accepts such appointments. The parties hereby agree that Montreal Trust shall not be responsible for any liabilities that may arise pursuant to Computershare's administration of the trusteeship after the Transfer Date. For greater certainty, however, nothing in this First Supplemental Trust Deed shall in any way release Montreal Trust from or affect its liabilities, duties or obligations under any of the Trust Deeds arising prior to the Transfer Date.

7. Montreal Trust hereby transfers and assigns to Computershare, and Computershare hereby accepts such transfer and assignment, upon the trusts expressed in the respective Trust Deed, all the rights, powers and trusts of Montreal Trust under all or any of the Trust Deeds, effective as of the Transfer Date.

8. Montreal Trust agrees to transfer and deliver to Computershare, and Computershare agrees to accept such transfer and delivery of, any and all records, documents, monies and other property that may be held by Montreal Trust in connection with all or any of the Trust Deeds. Such transfers, deliveries and acceptances shall be made as soon as practicable upon, after, or in anticipation of, the Transfer Date as may be agreed between such parties.

9. Notwithstanding any of the foregoing, the resignations, discharges, appointments, transfers, assignments and other agreements provided for herein will not be effective unless this First Supplemental Trust Deed has been executed by all of the parties hereto, whether upon the original instrument, by facsimile or in counterparts, or any combination thereof, and unless all preconditions to such resignations, discharges, appointments, transfers, assignments and other agreements as may be set forth in the Trust Deeds have been fulfilled.

10. Any provision in the Trust Deeds specifying the addresses of the parties is hereby amended to record the respective addresses of the parties as follows:

Arctic Glacier Inc.  
625 Henry Avenue  
Winnipeg, Manitoba  
R3A 0V1

Attention: President  
Fax No.: (204) 783-9857

Computershare Trust Company of Canada  
100 University Avenue  
9th Floor, North Tower  
Toronto, Ontario  
M5J 2Y1


Attention: Manager, Corporate Trust Department  
Fax: (416) 981-9777

11. Each party hereto agrees to execute and deliver all such documents and instruments and do such other acts as may be necessary or advisable to give effect to the terms hereof.

12. This First Supplemental Trust Deed is supplemental to each of the Trust Deeds and shall be read in conjunction therewith. Except only insofar as the same may be inconsistent with the express provisions of this First Supplemental Trust Deed, all the provisions of each of the Trust Deeds shall apply to and shall have effect in the same manner as if they and the provisions of this First Supplemental Trust Deed were contained in one instrument. The form of any Debentures to be certified by the Trustee from and after the Transfer Date shall be amended, stamped or legended to identify Computershare as the successor Trustee and the Company as the issuer but the validity of any Debentures certified prior to the Transfer Date shall not be affected by the appointment of Computershare as successor Trustee.
13. Computershare as successor Trustee hereby accepts the trusts in each of the Trust Deeds declared and provided and agrees to perform the same upon the terms and conditions herein and in the Trust Deeds set forth.
14. This First Supplemental Trust Deed shall enure to the benefit of and be binding upon the parties hereto and their successors and permitted assigns.


IN WITNESS WHEREOF this First Supplemental Trust Deed has been duly executed by the parties hereto as of the date first above written.


ARCTIC GLACIER INC.

Per: 

Per: \_\_\_\_\_

MONTREAL TRUST COMPANY

Per: 

Per: 

COMPUTERSHARE TRUST COMPANY  
OF CANADA

Per: 

Per: 