

**R-3**

**THIS TRUST INDENTURE** made as of the 28<sup>th</sup> day of February 2009;

**BETWEEN:**

**HOMBURG INVEST INC.**, a corporation incorporated under the laws of the Province of Alberta, Canada

(hereinafter referred to as the "**Corporation**")

- and -

**STICHTING HOMBURG CAPITAL SECURITIES** established under the laws of The Netherlands and registered with the Chamber of Commerce and Industry and managed by Homburg Trust Services B.V., a trust office with a license as defined under the Register Act on the Supervision of Trust Offices in The Netherlands

(hereinafter referred to as the "**Trustee**")

**WHEREAS** the Corporation is desirous of raising funds for its general corporate purposes and with a view to so doing is desirous of creating and issuing Debentures, the issuance of which is provided for by this Trust Indenture;

**AND WHEREAS** the Corporation, under the laws relating thereto, is duly authorized to create and issue the Debentures to be issued as herein provided;

**AND WHEREAS** all necessary resolutions of the Corporation have been duly passed and other proceedings taken, consents obtained and conditions complied with to make the creation and issue of the Debentures proposed to be issued hereunder and this Indenture and the execution thereof legal and valid and binding on the Corporation;

**AND WHEREAS** the foregoing recitals are made as representations and statements of fact by the Corporation and not by the Trustee;

**NOW THEREFORE** it is covenanted and agreed as follows:

## **ARTICLE I INTERPRETATION**

### **1.1 Definitions**

In this Trust Indenture (including the recitals hereto) and in the Debentures, the following expressions shall have the following meanings, namely:

- (a) "**this Trust Indenture**", "**this Indenture**", "**herein**", "**hereby**", "**hereof**", "**hereunder**" and similar expressions mean or refer to this Trust Indenture and any indenture or deed of instrument supplemental or ancillary hereto as a whole and are not limited to any particular Article, Section or other subdivision hereof;
- (b) "**ABCA**" means the *Business Corporations Act* (Alberta) and its regulations, as the same may be amended from time to time;
- (c) "**Additional Debentures**" means Debentures of any one or more series, other than the first series of Debentures being the Initial Debentures, issued under this Indenture;

- (d) **"Affiliate"** means an affiliated body corporate as defined in the ABCA;
- (e) **"Applicable Laws"** means all laws, statutes, ordinances, decrees, judgments, codes, standards, acts, orders, by-laws, rules, regulations and all licenses, permits, approvals, consents and authorities required to be obtained from any Governmental Authority;
- (f) **"Applicable Securities Laws"** means applicable securities laws in The Netherlands, Germany and each of the provinces and territories of Canada and any jurisdiction in which the purchaser of Debentures resides;
- (g) **"Business Day"** means any day that is not a Saturday, Sunday or other day on which commercial banks in Halifax, Nova Scotia, Canada or Amsterdam, The Netherlands are authorized or required by law to remain closed;
- (h) **"CAD"** and **"\$"** mean lawful money of Canada;
- (i) **"Cash"** means lawful money of Canada, the United States of America or Euros, as the case may be, and any amounts thereof represented by certificates of deposit or other acknowledgments of indebtedness maturing within one year of any Canadian chartered bank;
- (j) **"Certificate of the Corporation"**, **"Written Order of the Corporation"** and **"Written Request of the Corporation"** mean, respectively, a certificate, written order and written request under the seal of the Corporation signed in the name of the Corporation by the President or any Vice President together with the Secretary of the Corporation;
- (k) **"Certified Resolution"** means a copy of a resolution certified by the President, any Vice-President or the Secretary of the Corporation to have been duly passed by the directors of the Corporation and to be in full force and effect on the date of such certification, unamended;
- (l) **"Change in Law"** means (i) the adoption of any law, rule or regulation after the date of this Indenture, (ii) any change in any law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the date of this Indenture, or (iii) compliance by the Corporation with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Indenture;
- (m) **"Class A Preferred Shares"** means the non-participating Class A Preferred Shares, issuable in one or more series, in the capital of the Corporation, as created and issued from time to time by the board of directors of the Corporation;
- (n) **"Class A Series • Preferred Shares"** means the series of the Class A Preferred Shares in the capital of the Corporation having the rights, privileges, restrictions and conditions set out in the Articles of the Corporation for such series, as amended from time to time, such share provisions being in substantially the form set out in Appendix B to this Indenture;
- (o) **"Corporation"** means Homburg Invest Inc. and any successor corporation which shall have complied with the provisions of Article XVIII;
- (p) **"Corporation's auditors"** means an independent firm of chartered accountants duly appointed as auditors of the Corporation;

- (q) **"Counsel"** means a barrister or solicitor or firm of barristers and solicitors (who may be counsel for the Corporation);
- (r) **"Debentures"** means the debentures, notes or other evidences of indebtedness of the Corporation issued and certified hereunder, or deemed to be issued and certified hereunder, including without limitation, the Initial Debentures, and for the time being outstanding, whether in definitive or interim form;
- (s) **"Debentureholder"** or **"holders"** means a holder of Debentures;
- (t) **"Debentureholders' Request"** means an instrument signed in one or more counterparts by the holder or holders of not less than 10% in principal amount of the Debentures outstanding for the time being requesting the Trustee to take some action or proceeding specified therein;
- (u) **"director"** means a director of the Corporation for the time being and **"directors"** or **"board of directors"** means the board of directors of the Corporation or, whenever duly empowered, the executive committee, if any, of the board of directors of the Corporation, and reference to action by the directors means action by the directors of the Corporation as a board or action by a committee of the board;
- (v) **"EUR"** and **"€"** mean lawful money of The Netherlands;
- (w) **"Event of Default"** has the meaning specified in Section 13.1;
- (x) **"Governmental Authority"** means the government of Canada, of The Netherlands or of any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, including any supra-national bodies such as the European Union or the European Central Bank and including a Minister of the Crown and any other comparable authority or agency;
- (y) **"Homburg Capital Securities A"** has the meaning specified in Section 3.1(a);
- (z) **"Homburg Capital Securities A Issue Date"** has the meaning specified in Section 3.1(b);
- (aa) **"Initial Debentures"** means the 99-year unsecured debentures of the Issuer having a fixed interest rate of 9.5 % per year and issued or to be issued by the Corporation under this Indenture for the time being outstanding;
- (bb) **"Interest Payment Date"** has the meaning specified in Section 3.1(c);
- (cc) **"Issue Price"** means the price at which a fixed number of Class A Preferred Shares, in series, are to be issued by the Corporation should the Corporation determine to exercise its option to pay interest on the Debentures, in whole or in part, in Class A Preferred Shares, (such issue price being also the stated capital amount and aggregate redemption value amount of the Class A Preferred Shares at the time of issue), being equal in the aggregate to the amount of interest payable (including all accrued and unpaid interest) on the Debentures at the time of issuance of the Class A Preferred Shares;
- (dd) **"Issuance Right"** has the meaning specified in Section 3.3(a);

- (ee) **"Maturity Date"** has the meaning specified in Section 3.1(c);
- (ff) **"Paying Agent"** means Stichting Homburg Capital Securities or its replacement;
- (gg) **"Senior Indebtedness"** means all indebtedness, liabilities and obligations of the Corporation (other than the Debentures), whether outstanding on the date of this Indenture or thereafter incurred, and including, for greater certainty, claims of trade and other creditors of the Corporation, which by the terms of the instrument creating or evidencing such indebtedness is not expressed to be *pari passu* with or subordinate in right of payment to the Debentures;
- (hh) **"Trustee"** means Stichting Homburg Capital Securities or its successor for the time being in the trusts hereby created.

Words importing the singular number include the plural and vice versa, and words importing the masculine gender include the feminine and neuter genders and words importing persons shall include individuals, corporations, partnerships, trusts, associations and other entities.

## 1.2 Meaning of "Outstanding" for Certain Purposes

Every Debenture certified and delivered by the Trustee hereunder shall be deemed to be outstanding until it shall be cancelled or delivered to the Trustee for cancellation or funds for the payment thereof shall be set aside under Section 4.9 or Article XIV, as the case may be, provided that:

- (a) where a new Debenture has been issued in substitution for a Debenture which has been lost, stolen or destroyed, only one of them shall be counted for the purpose of determining the aggregate principal amount of Debentures outstanding; and
- (b) for the purposes of any provision of this Trust Indenture entitling holders of outstanding Debentures to vote, sign consents, requisitions or other instruments or take any other action under this Trust Indenture, Debentures owned directly or indirectly, legally or equitably, by the Corporation or any Affiliate shall be disregarded except that:
  - (i) for the purpose of determining whether the Trustee shall be protected in relying on any such vote, consent, requisition or other action, only the Debentures which the Trustee knows are so owned shall be so disregarded; and
  - (ii) Debentures so owned which have been pledged in good faith other than to the Corporation or an Affiliate shall not be so disregarded if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to vote such Debentures in his discretion free from the control of the Corporation and its Affiliates.

## 1.3 Interpretations Not Affected by Headings, etc.

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

## 1.4 Governing Law

This Trust Indenture and the Debentures shall be construed in accordance with the laws of the Province of Nova Scotia, Canada, and shall be treated as a Nova Scotia contract.

### **1.5 Meaning of Certain Terms**

Any reference herein to this Trust Indenture is a reference to this Trust Indenture as amended, re-stated, novated or supplemented from time to time. The term amendment shall, in the case hereof, also be held to include any amendment of the conditions under which the Debentures hereby are issued.

### **1.6 Day not a Business Day**

In the event that any day on or before which any action required to be taken hereunder is not a Business Day, then such action shall be required to be taken on or before the requisite time on the next succeeding day that is a Business Day. For greater certainty, whenever any payment of principal or interest to be made hereunder shall be stated to be due on a day which is not a Business Day, then the Debentureholder shall not be entitled to payment of the amount due until the next succeeding Business Day and will not be entitled to interest or other payment in respect of such delay.

### **1.7 Monetary References**

Whenever any amounts of money are referred to herein, such amounts shall be deemed to be in lawful Euro unless otherwise expressed.

### **1.8 Invalidity, Etc.**

Any provision hereof which is prohibited or unenforceable shall be ineffective only to the extent of such prohibition or unenforceability, without invalidating the remaining provisions hereof.

### **1.9 Language**

Each of the parties hereto hereby acknowledges that it has consented to and requested that this Indenture and all documents relating thereto, including, without limiting the generality of the foregoing, the form of Debenture attached hereto as Schedule A, be drawn up in the English language only.

### **1.10 Appendices**

The following Appendices are incorporated into and form part of this Trust Indenture:

Appendix A – Form of the Initial Debentures

Appendix B – Form of the Terms for the Series of Class A Preferred Shares to be created

## **ARTICLE II THE DEBENTURES**

### **2.1 No Fixed Limitation**

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

### **2.2 Issuance in Series**

The Debentures may be issued in one or more series, subject to compliance with the provisions and conditions hereinafter set forth. Subject to the provisions hereof, the Debentures of each such series (other than the Homburg Capital Securities A hereinafter mentioned, which shall have the terms set out in this Trust Indenture) shall bear such date or dates, shall bear interest at such rate or rates, may be issued in such denominations, may be redeemable in such manner, may be payable as to principal and interest,

at such place or places and in such currency or currencies, may provide for such sinking fund, if any, may contain such provisions for the interchange or transfer of Debentures of the same series of different denominations or forms, may have attached thereto and/or issued therewith warrants entitling the holders to subscribe for or purchase shares or other securities of the Corporation or otherwise upon such terms, may give the holders thereof the right to convert the same into shares or other securities of the Corporation or otherwise upon such terms and may contain such other provisions not inconsistent with the provisions of this Trust Indenture as may be determined by resolution of the directors passed at or prior to the time of issue thereof and expressed in an indenture supplemental hereto providing for the issuance of the Debentures of such series and (to such extent as the directors may deem appropriate) in the Debentures of such series. At the option of the Corporation, the maximum principal amount of Debentures of any series may be limited, such limitation to be expressed in the supplemental indenture providing for the issuance of the Debentures of such series and in the Debentures of such series.

### **2.3 Form of Debentures**

The Debentures of any series may be of different denominations and forms (either coupon Debentures or fully registered Debentures or both) and may contain such variations of tenor and effect, not inconsistent with the provisions of this Trust Indenture, as are incidental to such differences of denomination and form, including variations in the provisions for the exchange of Debentures of different denominations or forms and in the provisions for the registration or transfer of Debentures, and any series of Debentures (other than the Homburg Capital Securities A) may consist of Debentures having different dates of issue, different rates of interest, different redemption prices (if any) and different sinking fund provisions (if any) and may consist partly of Debentures carrying the benefit of a sinking fund and partly of Debentures with no sinking fund. The Debentures of each particular series shall be designated and numbered in any manner prescribed by the Corporation with the approval of the Trustee.

Subject to the foregoing provisions and subject to any limitations as to the maximum principal amount of Debentures of any particular series, any of the Debentures may be issued as part of any series of Debentures previously issued, in which case they shall bear the same designation and designating letters as have been applied to such similar prior issue and shall be numbered consecutively upwards in respect of each denomination of Debentures in like manner and following the numbers of the Debentures of such prior issue.

All series of Debentures (other than the Homburg Capital Securities A) which may at any time be issued hereunder and the coupons, if any, appertaining thereto and the certificate of the Trustee endorsed on such Debentures may be in such form or forms as the directors shall by resolution determine at the time of the first issue of any series or part of a series of such Debentures and as shall be approved by the Trustee.

The Debentures of any series may be engraved, lithographed, printed or typewritten, or partly in one form and partly in another, as the Corporation may determine; provided that if the Debentures of any series are issued in typewritten form, the Corporation will on demand of any holder or holders thereof make available within a reasonable time after such demand without expense to such holder or holders Debentures which are engraved, lithographed or printed in exchange therefore.

### **2.4 Signature on Debentures and Coupons**

All Debentures shall be under the seal of the Corporation or a facsimile thereof (which shall be deemed to be the seal of the Corporation) and shall be signed (either manually or by facsimile signature) by the President or a Vice-President and by the Secretary or the Treasurer or an Assistant Secretary or an Assistant Treasurer of the Corporation holding office at the time of signing. Interest coupons attached to coupon Debentures shall have reproduced thereon the facsimile signature of the present or any future Secretary or the present or any future Treasurer of the Corporation. A facsimile signature upon any of the Debentures and/or coupons shall for all purposes of this Trust Indenture be deemed to be the signature of the person whose signature it purports to be and to have been signed at the time such facsimile signature is reproduced, and notwithstanding that any person whose signature, either manual or in facsimile, may

appear on the Debentures or coupons is not at the date of this Trust Indenture, or at the date of the Debentures or at the date of the certifying and delivery thereof, the President, a Vice-President, the Secretary, the Treasurer, an Assistant Secretary or an Assistant Treasurer, as the case may be, of the Corporation, such Debentures or coupons shall be valid and binding upon the Corporation and entitled to the security of this Indenture.

## **2.5 Certification**

No Debenture shall be issued or, if issued, shall be obligatory, or shall entitle the holder to the benefits of this Indenture, until it has been certified by or on behalf of the Trustee substantially in the form set out in Appendix A hereto or in some other form approved by the Trustee. Such certificate on any Debenture shall be conclusive evidence that such Debenture is duly issued, is a valid obligation of the Corporation and is secured hereby and entitled to the benefits hereof.

The certificate of the Trustee signed on the Debentures or interim Debentures shall not be construed as a representation or warranty by the Trustee as to the validity of this Trust Indenture or of such Debentures or their issuance and the Trustee shall in no respect be liable or answerable for the use made of such Debentures or any of them or the proceeds thereof. The certificate of the Trustee signed on the Debentures or interim Debentures shall, however, be a representation and warranty by the Trustee that such Debentures or interim Debentures have been duly certified by or on behalf of the Trustee pursuant to the provisions of this Trust Indenture.

## **2.6 Interim Debentures**

Pending the preparation and delivery to the Trustee of definitive Debentures of any series or part of a series, the Corporation may execute in lieu thereof (but subject to the same provisions, conditions and limitations as herein set forth) and the Trustee may certify interim printed or typewritten Debentures, in such form and in such denominations and with such appropriate omissions, insertions and variations as may be approved by the Trustee and the Secretary or the Treasurer or an Assistant Secretary or an Assistant Treasurer of the Corporation (whose certification or signature, either manual or in facsimile, as the case may be, on any such interim Debenture shall be conclusive evidence of such approval), entitling the holders thereof to definitive Debentures of such series or part of a series in any authorized denominations and forms when the same are prepared and ready for delivery, without expense to the holders, but the total amount of interim Debentures of any series or part of a series so issued shall not exceed the total amount of Debentures of such series or part of a series for the time being authorized. Forthwith after the issuance of any such interim Debentures, the Corporation shall cause to be prepared the appropriate definitive Debentures for delivery to the holders of such interim Debentures.

Any such interim Debentures when duly issued shall, until exchanged for definitive Debentures, entitle the holders thereof to rank for all purposes as Debenture holders and otherwise in respect of this Indenture to the same extent and in the same manner as though the said exchange had actually been made. When exchanged for definitive Debentures, such interim Debentures shall forthwith be cancelled by the Trustee. Any interest paid upon interim Debentures without coupons shall be noted thereon by the Paying Agent at the time of payment unless paid by warrant or cheque to the registered holder thereof.

## **2.7 Debentures Not Equally Secured**

The Debentures may be issued in such amounts, to such persons, on such terms not inconsistent with the provisions of this Trust Indenture and either at par or at a discount as the directors may determine. The security for Debentures issued hereunder, if any, shall be limited to specific assets of the Corporation and Debentures of different series are not equally and rateably secured hereby.

## **2.8 Pledge of Debentures**



All or any of the Debentures may be pledged, hypothecated or charged from time to time by the Corporation as security for advances or loans to or for indebtedness or other obligations or liabilities of the Corporation and, when redelivered to the Corporation or its nominee(s) on or without payment, satisfaction, release or discharge in whole or in part of any such advances, loans, indebtedness, obligations or liabilities, shall be forthwith delivered to the Trustee and shall be cancelled by it, and no Debentures shall be issued in substitution therefore except upon due compliance by the Corporation with the provisions of Section 3.5.

## **2.9 Issue in Substitution for Lost Debentures**

(a) In case any of the Debentures issued and certified hereunder shall become mutilated or be lost, stolen or destroyed, the Corporation in its discretion may issue and thereupon the Trustee shall certify and deliver a new Debenture of like date and tenor upon surrender and cancellation of the mutilated Debenture, or in the case of a lost, destroyed or stolen Debenture, in lieu of and in substitution for the same, and the substituted Debenture shall be in a form approved by the Trustee and shall be entitled to the security hereof and rank equally in accordance with its terms with all other Debentures issued or to be issued hereunder.

(b) The applicant for a new Debenture pursuant to this section 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 loss, destruction or theft of the Debenture so lost, destroyed or stolen as shall be satisfactory to the Corporation and to the Trustee in their discretion and such applicant may also be required to furnish 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.

## **2.10 Commencement of Interest**

(a) All Debentures issued hereunder, whether originally or in exchange or substitution for previously issued Debentures, shall bear interest from their date (or from such other date as may be expressed in such Debentures) or from the last interest payment date to which full interest shall have been paid or made available for payment on the outstanding Debentures of the same series and having the same interest payment dates, whichever shall be later.

(b) The interest payable on each interest payment date shall be deemed to have accrued from day to day during each three-month period in the calendar year ending with the preceding day. Any provision herein for the payment of interest accrued to a specified date shall accordingly mean interest accrued to the end of the preceding day. Interest for any period of less than three months shall be computed, in the case of Debentures denominated in Canadian dollars, on the basis of a year of 365 days and, in the case of Debentures denominated in United States dollars or Euros, on the basis of a year of 365 days.

(c) Whenever interest is computed on the basis of a year (the "**deemed year**") which contains fewer than the actual number of days in the calendar year of calculation, such rate of interest shall be expressed as a yearly rate for purposes of the *Interest Act* (Canada) by multiplying such rate of interest by the actual number of days in the calendar year of calculation and dividing such product by the number of days in the deemed year.

## **2.11 Registration of Debentures**

(a) The Corporation shall cause to be kept registers hereinafter referred to in which shall be entered the names and addresses of the holders of Debentures and particulars of the Debentures held by such holders respectively and of all transfers of Debentures. No transfer of a Debenture shall be valid unless made on the appropriate register or on one of the appropriate registers by the registered holder or his executors or administrators or other legal representatives or his or their attorney duly appointed by an

instrument in writing in form and execution satisfactory to the Trustee, upon compliance with such reasonable requirements as the Trustee and/or other registrar may prescribe, and unless such transfer shall have been duly noted on such Debenture by the Trustee or other registrar.

If Debentures of any series are in a form requiring surrender thereof upon transfer of such Debentures, such Debentures shall be surrendered to the Trustee or other registrar and the Trustee or other registrar shall issue a new Debenture in exchange therefore. If Debentures of any series are in a form requiring transfers to be noted on such Debentures, upon any transfer such transfers shall be duly noted on such Debentures by the Trustee or other registrar.

- (b) The registers referred to in this section shall:
- (i) with respect to the Homburg Capital Securities A, be kept by and at the principal office of the Trustee or its agent at Beckeringhstraat 36, 3762 EX Soest, The Netherlands, and at such other place or places and by the Trustee and by such other registrar or registrars, if any, as the Corporation with the approval of the Trustee may designate;
  - (ii) with respect to any other series of Debentures, be kept at such place or places and by the Trustee and/or by such other registrar or registrars, if any, as the Corporation with the approval of the Trustee may designate; and
  - (iii) with respect to any Homburg Capital Securities A and other series of Debentures be available in electronic form for examination in the Province of Alberta, Canada in compliance with all Applicable Laws.

(c) The registered holder of a Debenture may at any time and from time to time have such Debenture transferred at any of the places at which a register is kept for such Debenture pursuant to the provisions of this section, in accordance with such reasonable regulations as the Trustee may prescribe.

The registered holder of a Debenture may at any time and from time to time have the registration of such Debenture transferred from the register in which the registration thereof appears to another register maintained in another place authorized for that purpose under the provisions of this Trust Indenture upon payment of a reasonable fee to be fixed by the Trustee.

(d) The Trustee and/or any registrar for any of the Debentures and/or the Corporation shall not be charged with notice of or be bound to see to the execution of any trust, whether express, implied or constructive, in respect of any Debenture and may transfer the same on the direction of the registered holder thereof, whether named as trustee or otherwise, as though that person were the beneficial owner thereof.

## **2.12 Exchanges of Debentures**

(a) Debentures of any denomination may be exchanged for Debentures of any other authorized denomination or denominations, any such exchange to be for an equivalent aggregate principal amount of Debentures of the same series, carrying the same rate of interest and having the same redemption and sinking fund provisions, if any, and the same conversion, purchase or other rights, if any. Notwithstanding the foregoing, Debentures denominated in Euros shall not be exchangeable for Debentures denominated in CAD or lawful money of the United States of America and vice versa. All exchanges of Homburg Capital Securities A permitted hereby shall be made only at the principal office of the Trustee at Beckeringhstraat 36, 3762 EX Soest, The Netherlands or at such other office of the Trustee or at the office of such other registrar or registrars as may from time to time be designated by the Corporation for such purpose with the approval of the Trustee or such other registrar. Exchanges of Debentures of any other series shall be made at such place or places as shall be designated by the

Corporation for that purpose at the time of the creation and issue thereof or from time to time thereafter. Any Debentures tendered for exchange shall be surrendered to the Trustee or appropriate registrar.

(b) Debentures issued in exchange for Debentures which at the time of such issue have been selected or called for redemption at a later date shall be deemed to have been selected or called for redemption in the same manner and shall have noted thereon a statement to that effect.

(c) Except as otherwise provided herein, upon any exchange of Debentures of any denomination or form for other Debentures and upon any registration of Debentures and upon any discharge from any such registration and upon any transfer of registered Debentures (other than an exchange of interim Debentures for other interim Debentures or for definitive Debentures or the initial registration of definitive Debentures issued in exchange for bearer interim Debentures), the Trustee or other registrar may make a sufficient charge to reimburse it for any stamp or security transfer tax or other governmental charge required to be paid and, in addition, a reasonable charge for its services, and may charge a reasonable sum for every Debenture issued upon such exchange, registration or transfer, and payment of the said charges shall be made by the party requesting such exchange, registration, discharge from registration or transfer as a condition precedent thereto.

### **2.13 Registers Open for Inspection**

The registers hereinbefore referred to shall at all reasonable times be open for inspection by the Corporation, the Trustee or any Debentureholder in accordance with applicable law. Every registrar (including the Trustee) shall from time to time when requested so to do by the Corporation or by the Trustee furnish the Corporation or the Trustee with a list of the names and addresses of holders of registered Debentures entered on the register kept by such registrar and showing the principal amount and serial numbers of the Debentures held by each such holder.

### **2.14 Closing of Registers**

(a) The Corporation, with the approval of the Trustee, may at any time close any register for any series of Debentures other than those kept at the principal offices of the Trustee at Beckeringsstraat 36, 3762 EX Soest, The Netherlands for Homburg Capital Securities A and transfer the registration of any Debentures registered thereon to another register and thereafter such Debentures shall be deemed to be registered on such other register.

(b) Neither the Corporation nor the Trustee nor any registrar shall be required (i) to make transfers or exchanges of Debentures on any interest payment date or during the 15 preceding Business Days, (ii) to make transfers or exchanges of any Debentures on the day of any selection by the Trustee of Debentures to be redeemed or during the 15 preceding Business Days, or (iii) to make transfers or exchanges of any Debentures which have been selected or called for redemption unless upon due presentation thereof for redemption such Debentures shall not be redeemed.

### **2.15 Ownership of Debentures and Persons Entitled to Payment**

(a) The person in whose name any Debenture shall be registered shall be deemed and regarded as the owner thereof for all purposes of this Trust Indenture and payment of or on account of the principal on such Debenture shall be made only to or upon the order in writing of such registered holder and such payment shall be a good and sufficient discharge to the Corporation and the Trustee for the amount so paid. As the interest on Debentures becomes due (except interest payable on redemption, which shall be paid upon presentation and surrender of such Debentures for payment), unless the Corporation has elected to pay interest on the Homburg Capital Securities A in accordance with Section 3.3, the Corporation shall, at least three days prior to each date on which interest on such Debentures becomes due, forward or cause to be forwarded to the Trustee by wire transfer the interest amount, which wire transfer must be received by the Trustee at least two (2) Business Days prior to each date on which interest on such Debentures is due, and the Trustee shall forward one (1) Business Day prior to each

date on which interest on the Debentures is due a cheque or wire transfer in the amount of the interest payable (less any Tax required by law to be deducted or withheld) to the persons registered as holders of the Debentures on the date (the "**Record Date**") which is ten (10) Business Days prior to the date on which interest is due (by prepaid mail or by courier in the case of any payment of interest by cheque and in accordance with the wire instructions of the Debentureholder on file with the Trustee in the case of any payment of interest by wire transfer) such that it is received by the holders of the Debentures on the date on which the interest is due. In the case of joint holders, the cheque or wire transfer shall be payable to all such joint holders and shall be sent by the Trustee to the registered address or wire instructions on file with the Trustee of one of such joint holders. The forwarding of such cheque or wire transfer shall satisfy and discharge the liability for interest upon such Debentures to the extent of the sum or sums represented thereby (plus the amount of any tax deducted as required) unless, in the case of payment by cheque, such cheque be not paid on presentation; provided that in the event of the non-receipt of such cheque by the registered holder or loss or destruction thereof, the Trustee upon being furnished with reasonable evidence of such non-receipt, loss or destruction and indemnity reasonably satisfactory to it shall issue to such registered holder a replacement cheque for the amount of such cheque. Neither the Trustee nor the Corporation shall be liable to any Debentureholder for any non-receipt of any interest payment by reason of the address or wire instructions of such Debentureholder on file with the Trustee being incorrect or incomplete. In no circumstances shall the Trustee be liable to the Debentureholders for any interest payment which is received by the Debentureholders after the date on which interest on the Debentures is due if such liability arises due to a delay caused by the Trustee receiving funds after the times required by this Section 2.15. The Corporation shall be liable for any such delay and shall hold the Trustee harmless and indemnify the Trustee for any claim made or action taken against the Trustee by the Debentureholders as a result of such delay.

(b) The registered holder for the time being of any Debenture shall be entitled to the principal moneys and interest evidenced by such instruments respectively, free from all equities or rights of set-off or counterclaim between the Corporation and the original or any intermediate holder thereof, and all persons may act accordingly and a transferee of a Debenture shall, after the appropriate form of transfer is lodged with the registrar and upon compliance with all other conditions in that behalf required by this Indenture or by any conditions endorsed on the Debenture or by law, be entitled to be entered on any one of the said registers as the owner of such Debenture free from all equities or rights of set-off or counterclaim between the Corporation and the transferor or any previous holder thereof, save in respect of equities of which the Corporation is required to take notice by statute or by order of a court of competent jurisdiction.

(c) Delivery to the Corporation by a holder of a Debenture or the receipt of such holder for the principal moneys and interest evidenced by such instruments respectively shall be a good discharge to the Corporation, which shall not be bound to enquire into the title of such holder, save as ordered by a court of competent jurisdiction or as required by statute. Neither the Corporation, the Trustee nor any registrar shall be bound to see to the execution of any trust affecting the ownership of any Debenture nor be affected by notice of any equity that may be subsisting in respect thereof.

(d) Where Debentures are registered in more than one name, the principal moneys and interest from time to time payable in respect thereof may be paid by cheque payable to the order of all such holders, failing joint written instructions from them to the contrary, and the receipt of any one of such holders thereof shall be a valid discharge to the Trustee and any registrar and to the Corporation.

(e) In the case of the death of one or more joint registered holders, the principal moneys of and interest on Debentures may be paid to the survivor or survivors of such registered holders whose receipt therefor shall constitute a valid discharge to the Trustee and any registrar and to the Corporation.

## **2.16 Place of Payment**

Except as otherwise herein provided, all sums which may at any time become payable, whether on a declaration or on redemption or otherwise, on account of any Debenture or any interest thereon shall be payable at the address appearing on the appropriate register as hereinbefore mentioned.

## 2.17 Payments Free of Taxes

All payments of principal and interest by the Corporation will be made without withholding or deduction for, or on account of, any present or future taxes, duties, assessments or charges of whatever nature imposed or levied by or on behalf of the Government of Canada or any province, territory or political division thereof or any authority or agency therein or thereof having power to tax or any political division thereof or any authority or agency therein or thereof having power to tax, unless the withholding or deduction of such taxes, duties, assessments or charges is required by law or by the interpretation or administration thereof. In that event, the Corporation will (a) make such withholdings or deduction and remit the amount so withheld or deducted to the relevant Governmental Authority in accordance with Applicable Law; and (b) pay such additional amounts as may be necessary in order that the net amount receivable by a Debentureholder, after such withholding or deduction shall equal the respective amount of principal or interest which would have been receivable in respect of the Debentures, in the absence of such withholding or deduction, except that no such additional amount shall be payable with respect to any Debenture:

- (i) to, or to a third party on behalf of, a Debentureholder who is liable to such taxes, duties, assessments or charges in respect of such Debenture by reason of such Debentureholder having some connection with Canada other than the mere holding or use outside Canada, or ownership as a non-resident of Canada, of such Debenture;
- (ii) to, or to a third party on behalf of, a Debentureholder, in respect of whom such tax, duty, assessment or governmental charge is required to be withheld or deducted by reason of such Debentureholder's failure to comply with any certification, identification, documentation or other reporting requirement concerning the nationality, residence, identity or connection with Canada of such if (a) compliance is required by law as a precondition to, exemption from, or reduction in the rate of, the tax, assessment or other charge and (b) the Corporation has given the Debentureholder or, if such Debentureholder is not the beneficial owner of the Debenture in question, the beneficial owner of such Debentures, at least 30 days' notice that the Debentureholder or beneficial owner will be required to provide such certification, identification, documentation or other requirement;
- (iii) presented for payment more than 30 days after the Relevant Date except to the extent that the holder thereof would have been entitled to such additional amount on presenting the same for payment on or before such thirtieth day;
- (iv) where such withholding or deduction is imposed on a payment to an individual and is required to be made pursuant to European Council Directive 2003/48/EC or any other Directive implementing the conclusions of the ECOFIN Council meeting of 26-27 November, 2000 on the taxation of savings income or any law implementing or complying with, or introduced in order to conform to, such Directives;
- (v) presented for payment by or on behalf of a Debentureholder who would have been able to avoid such withholding or deduction by presenting the relevant Debenture, receipt or coupon to another Paying Agent in a Member State of the European Union;
- (vi) to, or to a third party on behalf of, a Debentureholder in respect of whom such tax, duty, assessment or governmental charge is required to be withheld or deducted by reason of such Debentureholder not dealing at arm's length (within the meaning of the Income Tax Act (Canada)) with Homburg Invest.

As used herein, the "**Relevant Date**" means:

- (A) the date on which such payment first becomes due; or

- (B) if the full amount of the moneys payable has not been received by the Paying Agent on or prior to such due date, the date on which, the full amount of such moneys having been so received, notice to that effect shall have been given to the Debentureholders in accordance with Section 17.3.

If the Corporation becomes subject generally at any time to any taxing jurisdiction other than or in addition to Canada, references in this Section 2.17 to Canada shall be read and construed as references to Canada and/or to such other jurisdiction(s).

Any reference in this Section 2.17 to "**principal**" and/or "**interest**" in respect of the Debenture shall be deemed also to refer to any additional amounts which may be payable under this Section 2.17.

### ARTICLE III ISSUE AND DELIVERY OF DEBENTURES

#### 3.1 Form and Terms of Homburg Capital Securities A

(a) The first series of Debentures to be issued hereunder shall be designated as "Homburg Capital Securities A" (herein called the "**Homburg Capital Securities A**"). The aggregate principal amount of Homburg Capital Securities A that may be issued and outstanding hereunder is a minimum of EUR 25,000,000 to a maximum of EUR 75,000,000.

(b) The Homburg Capital Securities A shall be dated as of 28 February 2009 (the "**Homburg Capital Securities A Issue Date**").

(c) The Homburg Capital Securities A shall bear interest (subject to the provisions of Section 2.10) from the Homburg Capital Securities A Issue Date at the rate of 9.5% per annum payable (after as well as before default and judgment, with interest on overdue interest at the said rate) quarterly in arrears on 31 March, 30 June, 30 September and 31 December in each year (the "**Interest Payment Date**"), and shall mature on 27 February 2108 (the "**Maturity Date**").

(d) Except as provided in Section 3.3, the principal of the Homburg Capital Securities A and the interest thereon and all sums which may at any time become payable thereon, whether on redemption or otherwise, shall be payable in Euros at the address of the registered holder as shown on the appropriate register. The Debentureholder shall bear all currency exchange risks associated with receipt of such payments in Euros.

(e) The Homburg Capital Securities A shall be issuable as fully registered Debentures in denominations of EUR 1,000. The Homburg Capital Securities A shall be substantially in the form set out in Appendix A and shall bear such distinguishing letters and numbers as the Trustee shall approve.

#### 3.2 Issue of Homburg Capital Securities A

Homburg Capital Securities A in the aggregate principal amount of a maximum of EUR 75,000,000 and a minimum of EUR 25,000,000 shall be executed by the Corporation and delivered to the Trustee. Upon receipt by the Trustee of an opinion of Counsel to the effect that all legal requirements have been met in respect of the issue of such Homburg Capital Securities A, the said EUR 25,000,000 to EUR 75,000,000 aggregate principal amount of Homburg Capital Securities A shall be certified by the Trustee and delivered to or to the written order of the Corporation without any further act or formality on the part of the Corporation.

The Trustee shall have no duty or responsibility with respect to the issue or application of the Homburg Capital Securities A so certified and delivered or of the proceeds thereof.

#### 3.3 Right to Pay Interest on Homburg Capital Securities A in Class A Preferred Shares

(a) Subject to the other provisions of this Section 3.3, the Corporation may, at its option and subject to Applicable Law, elect to satisfy its obligation to pay interest on the Homburg Capital Securities A by issuing and delivering on the Interest Payment Date a fixed number of Class A Preferred Shares determined by dividing the Issue Price by EUR 1 (which represents the subscription price for each Class A Preferred Share) (the "**Issuance Right**").

(b) The Corporation's right to exercise the Issuance Right shall be conditional upon the following conditions being met on the Business Day preceding the Interest Payment Date:

- (i) no Event of Default shall have occurred and be continuing;

- (ii) the board of directors shall have approved the amendment to the Articles of the Corporation to create a Series of Class A Preferred Shares;
- (iii) the Registrar of Corporations in the Province of Alberta shall have issued a Certificate of Amendment; and
- (iv) the receipt by the Trustee of an opinion of Counsel to the effect that such Series of Class A Preferred Shares to be delivered in connection with the Issuance Right have been duly authorized and, when issued and delivered pursuant to the terms of this Indenture and the Articles of the Corporation in payment of interest on the Homburg Capital Securities A, will be validly issued as fully paid and non-assessable.

**1.1** If the foregoing conditions are not satisfied prior to the close of business on the Business Day preceding the Interest Payment Date, the Corporation shall pay interest on the Initial Debentures in cash in accordance with Section 2.15.

(c) In the event that the Corporation duly exercises its Issuance Right, the Corporation shall on the Interest Payment Date make the delivery to the Trustee for delivery to and on account of the holders of Homburg Capital Securities A certificates representing the Series of Class A Preferred Shares to which such holders are entitled.

(d) A holder shall be treated as the shareholder of record of the respective Series of Class A Preferred Shares issued on due exercise by the Corporation pursuant to the Issuance Right effective immediately after the close of business on the Interest Payment Date, and shall be entitled to all substitutions therefor, all income earned thereon or accretions thereto and all dividends or distributions (including unit dividends and dividends or distributions in kind) thereon and arising thereafter, and in the event that the Trustee receives the same, it shall hold the same in trust for the benefit of such holder.

(e) The Corporation shall at all times reserve and keep available out of its authorized capital an adequate number of each Series of Class A Preferred Shares (if the number thereof is or becomes limited) solely for the purpose of issue and delivery upon the exercise of the Corporation's Issuance Right as provided herein, and shall issue to Debentureholders to whom a Series of Class A Preferred Shares will be issued pursuant to the exercise of the Issuance Right such number of the Series of Class A Preferred Shares as shall be issuable in such event. If Class A Preferred Shares are issued on more than one Interest Payment Date, each issuance will constitute a separate Series of Class A Preferred Shares, and all Class A Preferred Shares which shall be so issuable shall be duly and validly issued as fully paid and non-assessable.

(f) The Corporation shall comply with all Applicable Laws and Applicable Securities Legislation regulating the issue and delivery of Class A Preferred Shares issued, including upon exercise of the Issuance Right.

### **3.4 Homburg Capital A Securities to Rank Subordinate and *Pari Passu***

The Homburg Capital Securities A will be direct unsecured obligations of the Corporation. In the event of the voluntary or involuntary liquidation, bankruptcy, winding-up, insolvency, receivership or other similar proceedings, the rights of the holders to payment of the principal amount of the Homburg Capital Securities A, accrued interest thereon and any other amounts due in respect of the Homburg Capital Securities A will rank

- i. *pari passu* with all other subordinated indebtedness of the Corporation without any preference among each other Homburg Capital Security A; and
- ii. subordinate to all other Senior Indebtedness of the Corporation.



### **3.5 Issue of Additional Debentures**

Debentures other than the Homburg Capital Securities A (herein called the “**Additional Debentures**”) may from time to time be executed and issued by the Corporation and certified by the Trustee hereunder subject to the provisions of this section and the requirements and restrictions provided in this Indenture.

The Trustee shall certify and deliver to the Written Order of the Corporation Additional Debentures but only upon the receipt of:

- (a) a Certificate of the Corporation stating that no default exists in respect of any of the covenants, agreements or provisions of this Indenture;
- (b) a Written Request of the Corporation requesting the certification of such Additional Debentures in the principal amount applied for and specifying the person or persons to whom such Additional Debentures shall be delivered;
- (c) a Certified Resolution authorizing the issue and requesting the certification of Additional Debentures of such series in the principal amount applied for and specifying the series thereof and the particulars and provisions to be expressed in or which are to relate to such Additional Debentures in accordance with the provisions hereof;
- (d) a supplemental indenture in form and terms approved by Counsel providing for the issuance of such Additional Debentures; and
- (e) an opinion of Counsel that all legal requirements in respect of the proposed issue of Additional Debentures have been met.

### **3.6 No Additional Debentures to be Issued During Default**

No Additional Debentures shall be certified and delivered if the Corporation is at the time, to the knowledge of the Trustee, in default under any of the provisions hereof, or if at the time to the knowledge of the Trustee any event has occurred which, with the passing of time, would become an event of default hereunder. Any certification and delivery of any Additional Debentures by the Trustee shall be conclusive evidence of the absence of knowledge on the part of the Trustee of any such default at the time of such certification and delivery.

### **3.7 Trustee Not Bound to Make Enquiries**

The Trustee, prior to the certification and delivery of any Debentures under any of the provisions of this Indenture, shall not be bound to make any enquiry or investigation into the correctness of the matters set forth in any of the resolutions, opinions, certifications or other documents required by the provisions hereof, but shall be entitled to accept and act upon the said resolutions, opinions, certificates and other documents; provided, however, that the Trustee may in its discretion cause to be made such independent investigation as it may see fit.

## **ARTICLE IV REDEMPTION OF DEBENTURES**

### **4.1 General**

The Corporation shall have the right, at its option, to redeem at any time the whole of the Debentures issued hereunder of any series or part of a series which by their terms are made so redeemable at such rate or rates of and at such date or dates and on such terms and conditions as shall have been determined at the time of issue of such Debentures and as shall be expressed in this Trust

Indenture and/or in the Debentures and/or in the supplemental indenture authorizing or providing for the issue thereof.

#### **4.2 Early Redemption of Homburg Capital Securities A**

The Corporation shall have the right at its option to redeem, either in whole or in part, prior to the Maturity Date, any Homburg Capital Securities A at a redemption price equal to 100% of the principal amount thereof, together in each case with accrued and unpaid interest to the date fixed for redemption, by giving not less than thirty (30) nor more than sixty (60) day's notice, upon the occurrence of any of the following events:

- (a) the termination of equity treatment for accounting purposes in respect of the Corporation's future obligations to pay the interest owing under the terms of the Initial Debentures;
- (b) the termination of equity treatment for accounting purposes under IFRS in respect of a Series of Class A Preferred Shares, subject to a de minimis amount of such Series of Class A Preferred Shares then issued and outstanding;
- (c) any payment in respect of the Homburg Capital Securities A becoming subject to additional amounts pursuant to Section 2.17 (as a result of a Change of Law), provided that no such notice of redemption shall be given earlier than ninety (90) days prior to the earliest date on which the Corporation would be obliged to pay such additional amounts in relation to a payment in respect of the Homburg Capital Securities A in accordance with section 2.17 of this Indenture.

#### **4.3 Optional Redemption of Homburg Capital Securities A**

The Homburg Capital Securities A shall be redeemable on 27 February 2014 and on each Interest Payment Date thereafter, in whole or in part, at the option of the Corporation on not less than thirty (30) and not more than sixty (60) day's notice at a redemption price equal to 100% of the principal amount thereof, together in each case with accrued and unpaid interest to the date fixed for redemption.

#### **4.4 Partial Redemption of Homburg Capital Securities A**

(a) If less than all of the Homburg Capital Securities A for the time being outstanding are to be redeemed (which partial redemption shall only occur on or after 27 February 2014 and prior to the Maturity Date), the Corporation shall in each such case, at least 15 days before the date on which the notice of redemption is required to be given, notify the Trustee in writing of its intention to redeem Homburg Capital Securities A and of the aggregate principal amount of Homburg Capital Securities A so to be redeemed. The Trustee shall thereupon select the Homburg Capital Securities A to be redeemed on a *pro rata* basis to the nearest multiple of EUR 1,000 in accordance with the principal amount of Homburg Capital Securities A registered in the name of each holder, but in no case shall a Debenture be redeemed in part unless the principal amount redeemed is EUR 1,000 or a multiple thereof. For this purpose the Trustee may make regulations with regard to the manner in which such Debentures may be so selected and regulations so made shall be valid and binding upon all holders of Debentures.

(b) If, as a result of any such redemption, one or more Homburg Capital Securities A of denominations in excess of EUR 1,000 shall become subject to redemption in part only (such part being EUR 1,000 or a multiple thereof), the holder of any such Debenture, upon surrender of such Debenture in accordance with Section 2.12, shall be entitled to receive, without expense to the holder, one or more Homburg Capital Securities A for the unredeemed part of the principal amount of such Debenture so surrendered.

#### **4.5 Notice of Redemption**

Notice of intention to redeem any of the Debentures shall be given by or on behalf of the Corporation in the following manner:

- (a) notice of intention to redeem such Debenture shall be given to each holder of such Debenture by letter or circular sent postage prepaid, addressed to him at his last address appearing upon one of the registers hereinbefore mentioned and mailed, in the case of all Debentures, not less than 30 days and not more than 60 days prior to the date specified for redemption; provided always that the accidental omission to mail any such letter or circular to or the non-receipt of any such letter or circular by any such holder or holders shall not invalidate or otherwise prejudicially affect the redemption of such Debentures;
- (b) every notice of redemption shall designate the series of the Debentures so called for redemption and shall specify the redemption date, the redemption price and places of payment and shall state that in case the Debentures specified in such notice be not presented for redemption on such redemption date, all interest thereon shall cease from and after the said date.

Every notice sent by post or published shall be deemed to have been given on the day on which it is posted.

#### **4.6 Debentures Due on Redemption Dates**

Notice having been given as aforesaid, all the Debentures so called for redemption shall thereupon be and become due and payable at the redemption price, on the redemption date specified in such notice and at any of the places where the principal of such Debentures is expressed to be payable, and from and after such redemption date, if the moneys necessary to redeem such Debentures shall have been deposited as provided in Section 4.7 and the Trustee shall have been furnished with affidavits or other proof satisfactory to it as to the mailing of such notices, interest on the said Debentures shall cease. In case any question shall arise as to whether any notice has been given as above provided and such deposit made, such question shall be decided by the Trustee whose decision shall be final and binding upon all parties in interest.

#### **4.7 Deposit of Redemption Moneys**

The Corporation shall provide for every redemption by irrevocably depositing with the Trustee or any paying agent to the order of the Trustee in trust for the holders of the Debentures called for redemption, before the redemption date specified in the notice of redemption, such sums as may be sufficient to pay the redemption price of such Debentures, including accrued interest on the Debentures so called for redemption to the date fixed for redemption. The Corporation shall also deposit with the Trustee if required by it a sum sufficient to pay any charges or expenses which may be incurred by the Trustee in connection with such redemption. From the sums so deposited the Trustee shall pay or cause to be paid to the holders of such Debentures so called for redemption, upon surrender of such Debentures, the principal and interest, if any, to which they are respectively entitled on redemption.

#### **4.8 Failure to Surrender Debentures Called for Redemption**

In case the holder of any Debenture so called for redemption shall fail within 30 days after the date fixed for redemption to surrender his Debenture or shall not within such time accept payment of the other redemption moneys payable in respect thereof and give such receipt therefore, if any, as the Trustee may require, such redemption moneys shall be set aside in trust for such holder, at such rate of interest as the depository may allow, in the deposit department of the Trustee and such setting aside shall for all purposes be deemed a payment to the Debentureholder of the sum so set aside, and to that extent such Debenture shall thereafter not be considered as outstanding hereunder and such Debentureholder shall have no other right except to receive payment out of the moneys so paid and deposited upon surrender and delivery up of his Debenture of the redemption price of such Debenture plus such interest thereon, if any, as the depository may allow.

#### **4.9 Cancellation of Debentures**

Subject to the provisions of Section 4.4 as to Debentures redeemed in part, all Debentures purchased or redeemed in whole or in part under the provisions of this Article shall be forthwith delivered to and cancelled by the Trustee and no Debentures shall be issued in substitution therefore.

#### **4.10 Surrender of Debentures for Cancellation**

If the principal moneys due upon any Debenture issued hereunder shall become payable by redemption or otherwise, the person presenting such Debenture for payment must surrender the same for cancellation, the Corporation nevertheless paying the interest accrued and unpaid thereon if the date fixed for payment be not an interest payment date. All Debentures which shall have been delivered to and cancelled by the Trustee shall be destroyed by the Trustee and if required by the Corporation the Trustee shall furnish to it a destruction certificate setting forth the numbers and denominations of the Debentures so destroyed.

#### **4.11 Redemption on Liquidation**

In the event of proceedings being instituted for the voluntary liquidation of the Corporation (except in the course of carrying out or pursuant to a transaction in respect of which the conditions of Article XV/III are duly observed and performed), all the Debentures shall be redeemed and/or paid by the Corporation at the respective prices at which the Corporation could redeem, purchase or pay the same (at its option, whether or not subject to any condition or conditions pursuant to any covenant or provision requiring redemption) on the date on which the resolution was passed for the winding-up of the Corporation.

#### **4.12 Purchase of Homburg Capital Securities A**

The Corporation, when not in default hereunder, may at any time purchase Homburg Capital Securities A in any manner and at any price; provided that any purchases made by tender must be available to all holders alike. Any purchase of Homburg Capital Securities A pursuant to this Section 4.12 shall be subject to the provisions of Section 3.1(d). All Homburg Capital Securities A so purchased shall forthwith be delivered to the Trustee and shall be cancelled by it and no Debentures shall be issued in substitution therefore.

### **ARTICLE V INTENTIONALLY DELETED**

### **ARTICLE VI INTENTIONALLY DELETED**

### **ARTICLE VII INTENTIONALLY DELETED**

### **ARTICLE VIII SECURITY**

#### **8.1 Debentures Unsecured**

The Homburg Capital Securities A are unsecured subordinated debt obligations of the Corporation.

**ARTICLE IX  
INTENTIONALLY DELETED**

**ARTICLE X  
INTENTIONALLY DELETED**

**ARTICLE XI  
INTENTIONALLY DELETED**

**ARTICLE XII  
COVENANTS OF THE CORPORATION**

**12.1 General Covenants**

The Corporation hereby covenants and agrees with the Trustee for the benefit of the Trustee and the Debentureholders as follows:

- (a) *To Pay Principal and Interest.* That the Corporation will well, duly and punctually pay or cause to be paid to every Debentureholder the principal of and interest accrued on the Debentures of which he is the holder, thereon on the dates, at the places, in the moneys or other manner mentioned herein and in the Debentures.
- (b) *To Maintain Corporate Existence.* That the Corporation will at all times maintain its corporate existence.
- (c) *To Pay Trustee.* That the Corporation will pay to the Trustee reasonable remuneration for the Trustee's services hereunder and will pay or reimburse the Trustee upon the Trustee's 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), both before any default hereunder and thereafter until all duties of the Trustee under the trust hereof shall be finally and fully performed, except any such expense, disbursement or advance as may arise from the Trustee's negligence or bad faith.
- (d) *Not to Sell Debentures When in Default.* That if the Corporation should be in default in the fulfilment of any of its obligations hereunder at any time, it will not, while such default shall continue, issue, sell, pledge or otherwise dispose of any Debentures.

**ARTICLE XIII  
DEFAULT AND ENFORCEMENT**

**13.1 Events of Default**

The following events are herein referred to as "Events of Default":

- (a) if the Corporation makes default in payment of any interest due on any Debenture secured hereby and such default as to interest shall have continued for a period of 30 days;
- (b) if an order shall be made or an effective resolution be passed for the winding-up or liquidation of the Corporation except in the course of carrying out or pursuant to a transaction in respect of which the conditions of Article XVIII are duly observed and performed;

- (c) if the Corporation shall make a general assignment for the benefit of its creditors or a notice of intention to make a proposal or a proposal under the *Bankruptcy and Insolvency Act* (Canada), or shall become insolvent or be declared or adjudged bankrupt, or a receiving order be made against the Corporation, or if a liquidator, trustee in bankruptcy, receiver, receiver and manager or any other officer with similar powers shall be appointed to the Corporation, or if the Corporation shall propose a compromise, arrangement or reorganization under the *Companies' Creditors Arrangement Act* (Canada) or any similar legislation of any jurisdiction providing for the reorganization or winding-up of corporations or business entities or providing for an agreement, composition, extension or adjustment with its creditors;
- (d) if the Corporation shall fail or neglect to carry out, perform or observe any other covenant or condition contained herein on its part to be observed and performed and, after notice in writing has been given by the Trustee to the Corporation specifying such default and requiring the Corporation to put or cause to be put an end to the same, the Corporation shall fail to make good such default within a period of 45 days, unless the Trustee (having regard to the subject matter of the neglect or non-observance) shall have agreed to a longer period, and in such event, within the period agreed to by the Trustee.

### **13.2 Acceleration on Default**

Upon the occurrence of an Event of Default, the Trustee may in its discretion and shall upon receipt of a Debentureholders' Request, subject to the provisions of Section 13.3, declare the principal and interest of all Debentures then outstanding to be due and payable and the same shall forthwith become immediately due and payable to the Trustee, anything herein to the contrary notwithstanding, and the Corporation shall forthwith pay to the Trustee for the benefit of the Debentureholders the principal of and accrued and unpaid interest and interest on amounts in default on such Debentures. Such payment when made shall be deemed to have been made in discharge of the Corporation's obligations hereunder.

### **13.3 Waiver of Default**

Upon the occurrence of an Event of Default:

- (a) the holders of not less than 66 2/3% of the principal amount of the Debentures then outstanding shall have power (in addition to and subject to the powers exercisable by Extraordinary Resolution as hereinafter provided) by instrument in writing to instruct the Trustee to waive the default and/or to annul any declaration made by the Trustee pursuant to Section 13.2 and the Trustee shall thereupon waive the default and/or annul such declaration upon such terms and conditions as such Debentureholders shall prescribe; and
- (b) the Trustee shall have power to waive the default if, in the Trustee's opinion, the same has been cured or adequate satisfaction made therefor, and in such event to annul any such declaration therefor made by the Trustee in the exercise of its discretion, upon such terms and conditions as to the Trustee may seem advisable,

provided that no act or omission either of the Trustee or of the Debentureholders in the premises shall extend to or be taken in any manner whatsoever to affect any subsequent default or the rights resulting therefrom.

### **13.4 Enforcement by the Trustee**

Subject to the provisions of this section and of Section 13.3 and to the provisions of any Extraordinary Resolution that may be passed by the Debentureholders as hereinafter provided:

- (a) all rights of action hereunder may be enforced by the Trustee without the possession of any of the Debentures or the production thereof at the trial or other proceedings relative thereto; and
- (b) upon receipt of a Debentureholders' Request and upon being indemnified to its satisfaction as provided in Section 16.2, the Trustee shall exercise or take such one or more of the aforesaid remedies as such Debentureholders' Request may direct or, if such Debentureholders' Request contains no direction, as the Trustee may deem expedient; provided that if any such Debentureholders' Request directs the Trustee to take proceedings out of court, the Trustee may in its discretion take judicial proceedings in lieu thereof.

### **13.5 Enforcement by Debentureholders**

No Debentureholder shall have any right to institute any action or proceeding or to exercise any other remedy authorized by this Trust Indenture or by law or by equity for the purpose of enforcing payment of principal or interest, or for the execution of any trust or power hereunder, unless the requisition and indemnity referred to in Section 13.4 has been tendered to the Trustee and the Trustee shall have failed to act within a reasonable time thereafter; in such case but not otherwise, any Debentureholder acting on behalf of himself and all other Debentureholders shall be entitled to take proceedings in any court of competent jurisdiction such as the Trustee might have taken under Section 13.4 but in no event shall any Debentureholder or combination of Debentureholders have any right to enforce any right hereunder or under any Debenture except subject to the conditions and in the manner herein provided, and all powers and trusts hereunder shall be exercised and all proceedings at law shall be instituted, had and maintained by the Trustee, except only as herein provided, and in any event for the equal benefit of all holders of such outstanding Debentures.

### **13.6 Immunity of Shareholders, etc.**

The Debentureholders and the Trustee hereby waive and release any right, cause of action or remedy now or hereafter existing in any jurisdiction against any past, present or future incorporator, shareholder, director or officer of the Corporation or of any successor Corporation for the payment of the interest on any of the Debentures.

### **13.7 Trustee Appointed Attorney**

The Corporation hereby irrevocably appoints the Trustee to be the attorney of the Corporation in the name and on behalf of the Corporation to execute and do any deeds, transfers, conveyances, assignments, assurances and things which the Corporation ought to execute and do, and has not executed or done, under the covenants and provisions contained in this Trust Indenture and generally to use the name of the Corporation in the exercise of all or any of the powers hereby conferred on the Trustee.

## **ARTICLE XIV SATISFACTION AND DISCHARGE**

### **14.1 Cancellation and Destruction**

All Debentures cancelled or required to be cancelled under any provision of this Trust Indenture shall be destroyed by the Trustee and if required by the Corporation the Trustee shall furnish to it a destruction certificate in respect of the Debentures so destroyed.

### **14.2 Non-Presentation of Debentures**

Subject to the provisions of Article IV, in case the holder of any Debenture shall fail to present the



same for payment on the date on which the principal thereof and/or the interest thereon becomes payable either on redemption or otherwise or shall not accept payment on account thereof and give such receipt therefor, if any, as the Trustee may require:

- (a) the Corporation shall be entitled to pay to the Trustee and direct it to set aside;
- (b) in respect of moneys in the hands of the Trustee which may or should be applied to the payment of the Debentures, the Corporation shall be entitled to direct the Trustee to set aside; or
- (c) if the redemption was pursuant to notice given by the Trustee, the Trustee may itself set aside the principal moneys and/or the interest, as the case may be, in trust to be paid to the holder of such Debenture upon due presentation or surrender thereof in accordance with the provisions of this Trust Indenture; and thereupon the principal moneys and/or the interest payable on or represented by each Debenture in respect whereof such moneys have been set aside shall be deemed to have been paid and the holder thereof shall thereafter have no right in respect thereof except that of receiving payment of the moneys so set aside by the Trustee upon due presentation and surrender thereof, subject always to the provisions of Section 14.3 hereof.

#### **14.3 Repayment of Unclaimed Moneys**

Any moneys set aside under Section 14.2 hereof and not claimed by and paid to holders of Debentures as therein provided within six years after the date of such setting aside shall be repaid to the Corporation by the Trustee on demand and thereupon the Trustee shall be released from all further liability with respect to such moneys and thereafter the holders of the Debentures in respect of which such moneys were so repaid to the Corporation shall have no rights in respect thereof except to obtain payment of the moneys due thereon from the Corporation.

#### **14.4 Discharge**

The Trustee shall, at the request of the Corporation, release and discharge this Trust Indenture and execute and deliver such instruments as it shall be advised by Counsel are requisite for that purpose and to release the Corporation from its covenants herein (other than the provisions relating to the indemnification of the Trustee) upon proof being given to the reasonable satisfaction of the Trustee that the principal of and interest (including interest on amounts in default, if any) on all the Debentures and all other moneys payable hereunder have been paid or satisfied or that all the outstanding Debentures have been duly called for redemption, payment of the principal of and interest (including interest on amounts in default, if any) on such Debentures and of all other moneys payable hereunder having been duly and effectually provided for in accordance with the provisions hereof.

### **ARTICLE XV MEETINGS OF DEBENTUREHOLDERS**

#### **15.1 Right to Convene Meeting**

The Trustee may at any time and from time to time and shall on receipt of a Written Request of the Corporation or a Debentureholders' Request convene a meeting of the Debentureholders. In the event of the Trustee failing within ten days after receipt of any such request to give notice convening a meeting, the Corporation or such Debentureholders, as the case may be, may convene such meeting. Every such meeting shall be held at Soest or at such other place as may be approved or determined by the Trustee. If at any time the Trustee has no directors, the Corporation or such Debentureholders, as the case may be, may convene a meeting at which one or more directors of the Trustee are appointed in accordance with the constating documents of the Trustee.

## **15.2 Notice of Meetings**

At least fifteen (15) days' notice of any meeting shall be given to the Debentureholders in the manner provided in Section 17.3 and a copy thereof shall be sent by post to the Trustee, unless the meeting has been called by it, and to the Corporation, unless the meeting has been called by it, and the notice shall state briefly the general nature of the business to be transacted thereat and it shall not be necessary for any such notice to set out the terms of any resolution to be proposed or any of the provisions of this Article XV.

## **15.3 Chairman**

Some person, who need not be a Debentureholder, nominated in writing by the Trustee shall be chairman of the meeting and if no person is so nominated, or if the person so nominated is not present within 15 minutes from the time fixed for the holding of the meeting, the Debentureholders present in person or by proxy shall choose some person present to be chairman.

## **15.4 Quorum**

Subject to Sections 15.12 and 15.17, at any meeting of the Debentureholders a quorum shall consist of Debentureholders present in person or by proxy and representing at least 25% in principal amount of the outstanding Debentures. If a quorum of the Debentureholders shall not be present within 30 minutes from the time fixed for holding any meeting, the meeting, if summoned by the Debentureholders or pursuant to a request of the Debentureholders, shall be dissolved, but in any other case the meeting shall be adjourned to the same day in the next week (unless such day is a non-Business Day in which case it shall be adjourned to the next following Business Day thereafter) at the same time and place and no notice shall be required to be given in respect of such adjourned meeting. At the adjourned meeting the Debentureholders present in person or by proxy shall form a quorum and may transact the business for which the meeting was originally convened notwithstanding that they may not represent 25% of the principal amount of the outstanding Debentures.

## **15.5 Power to Adjourn**

The chairman of any meeting at which a quorum of the Debentureholders is present may with the consent of the holders of a majority in principal amount of the Debentures represented thereat adjourn any such meeting and no notice of such adjournment need be given except such notice, if any, as the meeting may prescribe.

## **15.6 Show of Hands**

Every question submitted to a meeting shall be decided in the first place by a majority of the votes given on a show of hands except that votes on Extraordinary Resolutions shall be given in the manner hereinafter provided. At any such meeting, unless a poll is duly demanded as herein provided, a declaration by the chairman that a resolution has been carried or carried unanimously or by a particular majority or lost or not carried by a particular majority shall be conclusive evidence of the fact.

## **15.7 Poll**

On every Extraordinary Resolution, and on any other question submitted to a meeting when demanded after a vote by show of hands by the chairman or by one or more Debentureholders and/or proxies for Debentureholders holding at least EUR 20,000 (or the equivalent thereof in lawful currency of Canada or the United States of America) principal amount of Debentures, a poll shall be taken in such manner and either at once or after an adjournment as the chairman shall direct. Questions other than Extraordinary Resolutions shall, if a poll be taken, be decided by the votes of a majority in principal amount of the Debentures represented at the meeting and voted on the poll.

### **15.8 Voting**

On a show of hands every person who is present and entitled to vote, whether as a Debentureholder or as proxy for one or more Debentureholders, or both, shall have one vote. On a poll each Debentureholder present in person or represented by proxy duly appointed by an instrument in writing shall be entitled to one vote in respect of each EUR 1,000 (or the equivalent thereof in lawful currency of Canada or the United States of America) principal amount of Debentures of which he shall then be the holder. A proxy need not be a Debentureholder. In the case of joint registered holders of a Debenture, any one of them present in person or by proxy at the meeting may vote in the absence of the other or others, but in case more than one of them be present in person or by proxy, they shall vote together in respect of the Debentures of which they are joint registered holders.

### **15.9 Regulations**

The Trustee, or the Corporation with the approval of the Trustee, may from time to time make and from time to time vary such regulations as it shall from time to time think fit providing for and governing:

- (a) the deposit of instruments appointing proxies at such place as the Trustee, the Corporation or the Debentureholders convening the meeting, as the case may be, may in the notice convening the meeting direct and the time, if any, before the holding of the meeting or any adjournment thereof by which the same shall be deposited; and
- (b) the deposit of instruments appointing proxies at some approved place or places other than the place at which the meeting is to be held and enabling particulars of such instruments appointing proxies to be mailed or telecopied before the meeting to the Corporation or to the Trustee at the place where the same is to be held and for the voting of proxies so deposited as though the instruments themselves were produced at the meeting.

Any regulations so made shall be binding and effective and the votes given in accordance therewith shall be valid and shall be counted. Save as such regulations may provide, the only persons who shall be recognized at any meeting as the holders of any Debentures, or as entitled to vote or be present at the meeting, shall be registered Debentureholders and persons whom registered Debentureholders have by instrument in writing duly appointed as their proxies.

### **15.10 Corporation and Trustee May Be Represented**

The Corporation and the Trustee, by their respective officers and directors, and the legal advisers of the Corporation and the Trustee may attend any meeting of the Debentureholders, but shall have no vote as such.

### **15.11 Powers Exercisable by Extraordinary Resolution**

In addition to the powers conferred upon them by Section 16.8 or any other provisions of this Trust Indenture or by law, a meeting of the Debentureholders shall have the following powers exercisable from time to time by Extraordinary Resolution:

- (a) power to sanction and agree to any modification, abrogation, alteration, compromise or arrangement of the rights of the Debentureholders and/or the Trustee against the Corporation or against the undertaking, property and assets or any part thereof of the Corporation, whether such rights arise under this Trust Indenture or the Debentures or otherwise;
- (b) power to direct or authorize the Trustee to exercise any power, right, remedy or authority given to it by this Trust Indenture or the Debentures in any manner specified in such

- Extraordinary Resolution or to refrain from exercising any such power, right, remedy or authority;
- (c) power to waive and direct the Trustee to waive any default on the part of the Corporation complying with any provision of this Trust Indenture or the Debentures either unconditionally or upon any conditions specified in such Extraordinary Resolution;
  - (d) power to restrain any Debentureholder from taking or instituting any suit, action or proceeding for the purpose of enforcing payment of the principal of or interest on the Debentures, or for the execution of any trust or power hereunder;
  - (e) power to direct any Debentureholder who, as such, has brought any action, suit or proceeding to stay or discontinue or otherwise deal with the same upon payment, if the taking of such suit, action or proceeding shall have been permitted by Section 13.5, of the costs, charges and expenses reasonably and properly incurred by such Debentureholder in connection therewith;
  - (f) power to assent to any compromise or arrangement with any creditor or creditors or any class or classes of creditors, whether secured or otherwise, and with holders of any shares or other securities of the Corporation;
  - (g) power to sanction the exchange of Debentures for or the conversion of Debentures into shares, bonds, debentures, notes or any other securities or obligations of the Corporation or any other corporation;
  - (h) power to assent to any modification of or change in or omission from the provisions contained herein or any deed or instrument supplemental hereto which shall be agreed to by the Corporation and to authorize the Trustee to concur in and execute any deed or instrument supplemental hereto or thereto embodying such modification, change or omission;
  - (i) power to sanction any scheme for the reorganization of the Corporation or for the consolidation, amalgamation or merger of the Corporation with any other corporation and for the selling or leasing of the undertaking, property and assets of the Corporation or any part thereof, if such reorganization, consolidation, amalgamation or merger otherwise would or might be prohibited hereby;
  - (j) power to sanction the distribution of any shares or securities or the use or disposal of the whole or any part of such shares or securities or any cash in such manner and for such purposes as may be deemed advisable;
  - (k) power to appoint and remove a committee (herein sometimes called a "**Debentureholders' committee**") to consult with the Trustee and to delegate to such Debentureholders' committee (subject to such limitations, if any, as may be prescribed in such Extraordinary Resolution) all or any of the powers which the Debentureholders could exercise by Extraordinary Resolution under the foregoing subsections (b), (c), (d), (e), (i) and (j). The Extraordinary Resolution making such appointment may provide for payment of the expenses and disbursements of and compensation to such Debentureholders' committee. Such Debentureholders' committee shall consist of such number of persons as shall be prescribed in the Extraordinary Resolution appointing it, and the members need not be themselves Debentureholders. Subject to the Extraordinary Resolution appointing it, every such Debentureholders' committee may elect its chairman and may make regulations respecting its quorum, the calling of meetings, the filling of vacancies occurring in its number, the manner in which it may act and its procedure generally, and such regulations may provide that the committee may

act at a meeting at which a quorum is present or may act by minutes signed by a majority of the members thereof or the number of members thereof necessary to constitute a quorum, whichever is the greater. All acts of any such Debentureholders' committee within the authority delegated to it shall be binding upon all Debentureholders; and

- (l) power to amend, alter or repeal any Extraordinary Resolution previously passed or sanctioned by the Debentureholders.

#### **15.12 Meaning of "Extraordinary Resolution"**

(a) The expression "**Extraordinary Resolution**" when used in this Trust Indenture means, subject as hereinafter in this section provided, and subject to Sections 15.15 and 15.17, a resolution proposed to be passed as an extraordinary resolution at a meeting of Debentureholders (including an adjourned meeting) duly convened for that purpose and held in accordance with the provisions of this Section 15.12 at which the holders of at least 25% in principal amount of the Debentures then outstanding are present in person or by proxy and passed by the favourable votes of the holders of not less than 66 2/3% of the principal amount of Debentures represented at the meeting and voted on a poll upon such resolution.

(b) If, at any such meeting, the holders of 25% in principal amount of the Debentures outstanding are not present in person or by proxy within 30 minutes after the time appointed for the meeting, then the meeting, if convened by or on the requisition of Debentureholders, shall be dissolved, but in any other case it shall stand adjourned to such date, being not less than five (5) nor more than thirty (30) days later, and to such place and time as may be appointed by the chairman. Not less than three (3) days' notice shall be given of the time and place of such adjourned meeting in the manner provided in Section 17.3. Such notice shall state that at the adjourned meeting the Debentureholders present in person or by proxy shall form a quorum but it shall not be necessary to set forth the purposes for which the meeting was originally called or any other particulars. At the adjourned meeting the Debentureholders present in person or by proxy shall form a quorum and may transact the business for which the meeting was originally convened and a resolution proposed at such adjourned meeting and passed by the requisite vote as provided in subsection (a) of this section shall be an Extraordinary Resolution within the meaning of this Indenture, notwithstanding that the holders of 25% in principal amount of the Debentures then outstanding are not present in person or by proxy at such adjourned meeting.

(c) Votes on an Extraordinary Resolution shall always be given on a poll and no demand for a poll on an Extraordinary Resolution shall be necessary.

#### **15.13 Powers Cumulative**

It is hereby declared and agreed that any one or more of the powers and/or any combination of the powers in this Trust Indenture stated to be exercisable by the Debentureholders by Extraordinary Resolution or otherwise may be exercised from time to time and the exercise of any one or more of such powers or any combination of powers from time to time shall not be deemed to exhaust the rights of the Debentureholders to exercise the same or any other such power or powers or combination of powers thereafter from time to time.

#### **15.14 Minutes**

Minutes of all resolutions and proceedings at every meeting as aforesaid shall be made and duly entered in books to be from time to time provided for that purpose by the Trustee at the expense of the Corporation, and any such minutes as aforesaid, if signed by the chairman of the meeting at which such resolutions were passed or proceedings had, or by the chairman of the next succeeding meeting of the Debentureholders, shall be *prima facie* evidence of the matters therein stated and, until the contrary is proved, every such meeting in respect of the proceedings of which minutes shall have been made shall

be deemed to have been duly held and convened, and all resolutions passed thereat or proceedings had to have been duly passed and had.

#### 15.15 Instruments in Writing

Subject to Section 15.17, all actions which may be taken and all powers that may be exercised by the Debentureholders at a meeting held as hereinbefore in this Article XV provided may also be taken and exercised by the holders of 66 2/3% of the principal amount of all the outstanding Debentures by an instrument in writing signed in one or more counterparts, and the expression “**Extraordinary Resolution**” when used in this Trust Indenture shall include an instrument so signed.

#### 15.16 Binding Effect of Resolutions

Subject to Section 15.17, every resolution and every Extraordinary Resolution of Debentureholders passed in accordance with the provisions of this Article XV shall be binding upon all the Debentureholders, whether present at or absent from such meeting, and every instrument in writing signed by Debentureholders in accordance with Section 15.15 shall be binding upon all the Debentureholders, whether signatories thereto or not, and each and every Debentureholder and the Trustee (subject to the provisions for its indemnity herein contained) shall be bound to give effect accordingly to every such resolution, Extraordinary Resolution and instrument in writing.

#### 15.17 Serial Meetings

(a) If any business to be transacted at a meeting of Debentureholders, or any action to be taken or powers to be exercised by instrument in writing under Section 15.15, especially affects the rights of the holders of Debentures of one or more series in a manner or to an extent differing from that in which it affects the rights of the holders of Debentures of any other series (as to which an opinion of Counsel shall be binding on all Debentureholders, the Trustee and the Corporation for all purposes hereof), then:

- (i) reference to such fact, indicating each series so especially affected, shall be made in the notice of such meeting and the meeting shall be and is herein called a “**serial meeting**”; and
- (ii) the holders of Debentures of a series so especially affected shall not be bound by any action taken at a serial meeting or by any instrument in writing under Section 15.15 unless in addition to the other provisions of this Article XV:
  - (A) in the case of action taken at a serial meeting, there are present in person or by proxy at the said meeting holders of at least 25% (or for the purpose of passing an Extraordinary Resolution, 25%) in principal amount of the outstanding Debentures of the series so especially affected, subject to the provisions of this Article XV as to adjourned meetings, and the resolution is passed by the favourable votes of the holders of at least a majority (or in the case of an Extraordinary Resolution not less than 66 2/3%) of the principal amount of Debentures of the series so especially affected voted on the resolution; or
  - (B) in the case of action taken or power exercised by instrument in writing under Section 15.15, such instrument is signed in one or more counterparts by the holders of 66 2/3% of the principal amount of outstanding Debentures of the series so especially affected.

(b) If, in the opinion of Counsel, any business to be transacted at any meeting or any action to be taken or power to be exercised by instrument in writing under Section 15.15 does not adversely affect the rights of the holders of Debentures of one or more particular series, the provisions of this Article XV shall apply as if the Debentures of such series were not outstanding and no notice of any such

meeting need be given to the holders of Debentures of such series.

#### **15.18 Covenants Applicable to One Series of Debentures**

Notwithstanding anything herein contained, if any business to be transacted at any meeting or any action to be taken or power to be exercised by any instrument or assent having the effect of an Extraordinary Resolution relates only to the waiver, amendment, alteration, modification or cancellation of a covenant or provision hereof which by its terms is applicable and has effect only so long as one or more particular series of Debentures remains outstanding, the provisions of this Article shall be read and construed and shall apply as if the Debentures of such one or more particular series of Debentures were the only Debentures outstanding hereunder. A proposal (i) to reduce the principal amount of Debentures of any series or the rate of interest thereon, (ii) to modify or terminate any covenant or agreement which by its terms is effective only so long as Debentures of a particular series are outstanding (notwithstanding that by its terms such covenant or agreement may, in addition, be effective only so long as Debentures of one or more other series are outstanding), or (iii) to reduce with respect to holders of Debentures of any series any percentage stated in Sections 15.12, 15.15 and 15.17, shall be deemed to especially affect the rights of the holders of the Debentures of such series whether or not a similar reduction, modification or termination is proposed with respect to Debentures of any or all series.

### **ARTICLE XVI CONCERNING THE TRUSTEE**

#### **16.1 Trust Indenture Legislation**

(a) The expression “**indenture legislation**” means the provisions of any statute of Canada or any province thereof, and of any regulations under any such statute, relating to trust indentures and to the rights, duties and obligations of trustees under trust indentures and of corporations issuing debt obligations under trust indentures, to the extent that such provisions are at the time in force and applicable to this Trust Indenture or the Corporation.

(b) The Corporation and the Trustee agree that each will at all times in relation to this Trust Indenture and any action to be taken hereunder observe and comply with and be entitled to the benefits of indenture legislation. The Corporation and the Trustee agree and acknowledge that pursuant to Part 7 of the ABCA, the offering and sale by the Corporation of the Initial Debentures would be part of a distribution to the public under subsection 3(2) of the ABCA and, as a result, section 83 of the ABCA would require the appointment under the Trust Indenture of at least one trustee registered under the Loan and Trust Corporations Act (Alberta) (“**LTCA**”). Pursuant to the terms of this Trust Indenture, the Corporation and the Trustee agree that each will at all times in relation to the Trust Indenture observe and comply with Part 7 of the ABCA other than section 83. With respect to section 83, the Corporation and the Trustee agree that the issuance of the Initial Debentures shall be conditional upon receipt of a determination from the Alberta Securities Commission that the issuance of such Initial Debentures is not a distribution to the public under the ABCA or a trustee registered under the LTCA has been engaged to act as co-agent with the Trustee.

(c) If and to the extent that any provision of this Trust Indenture limits, qualifies or conflicts with any mandatory requirement of indenture legislation, such mandatory requirement shall prevail.

#### **16.2 Conditions Precedent to Trustee’s Obligation to Act**

(a) The obligation of the Trustee to commence or continue any act, action or proceeding for the purpose of enforcing any rights of the Trustee or the Debentureholders hereunder shall be conditional upon the Debentureholders furnishing, when required by notice in writing by the Trustee, sufficient funds to commence or continue such act, action or proceeding and indemnity reasonably satisfactory to the Trustee to protect and hold harmless the Trustee against the costs, charges and expenses and liabilities to be incurred thereby and any loss and damage the Trustee may suffer by reason thereof.

(b) None of the provisions contained in this Trust Indenture shall require the Trustee to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties or obligations or in the exercise of any of its rights or powers unless indemnified as aforesaid.

(c) The Trustee may, before commencing or at any time during the continuance of any such act, action or proceeding, require the Debentureholders at whose instance it is acting to deposit with the Trustee the Debentures held by them, for which Debentures the Trustee shall issue receipts.

### **16.3 Evidence**

(a) In addition to the reports, certificates, opinions and other evidence required by this Trust Indenture, the Corporation shall furnish to the Trustee such additional evidence of compliance with any provision hereof, and in such form (including by way of one or more statutory declarations made by any one or more of the President, a Vice-President, the Secretary or the Treasurer of the Corporation), as may be prescribed by indenture legislation or as the Trustee may reasonably require by written notice to the Corporation.

(b) Proof of the execution of an instrument in writing, including a Debentureholders' Request, by Debentureholders may be made by the certificate of a notary public or other officer with similar powers that the person signing such instrument acknowledged to him the execution thereof, or by an affidavit of a witness to such execution or in any other manner which the Trustee may consider adequate.

### **16.4 Delegation; Experts and Advisers**

(a) The Trustee may delegate to any corporation or person the performance of any of the trust and powers vested in it by this Trust Indenture and any such delegation may be made upon such terms and conditions and subject to such regulations, not including, however, any power to sub-delegate, as the Trustee may think to be in the interest of the Debentureholders.

(b) The Trustee may employ or retain such counsel, auditors or accountants (who may be the Corporation's auditors), appraisers, architects, engineers or such other experts or advisers as it may reasonably require for the purpose of discharging its duties hereunder.

(c) The Trustee may pay reasonable remuneration for all services performed for it in the discharge of the trusts hereof by any such agent or attorney, or expert or adviser, without taxation for costs or fees of any counsel, solicitor or attorney.

### **16.5 Documents, Cash, etc. Held by the Trustee**

(a) Any Cash, securities, documents of title or other instruments and other assets that may at any time be deposited with or held by the Trustee in accordance with and subject to the trusts hereof may be placed in the deposit vaults of the Trustee or of any Dutch chartered bank or deposited for safekeeping with any such bank.

(b) Unless herein otherwise expressly provided, pending the application or withdrawal thereof under any of the provisions of this Trust Indenture, any Cash, securities and other assets that may at any time be deposited with or held by the Trustee in accordance with the provisions hereof (including, without limiting the generality of the foregoing, any moneys set aside hereunder pursuant to Section 14.2) shall be held by the Trustee for the exclusive benefit of the Debentureholders, and the Trustee:

- (i) may deposit the same in the name of the Trustee in any Dutch chartered bank at the rate of interest (if any) from time to time current on similar deposits; or
- (ii) may, with the approval of the Corporation, and shall, if so directed by it: (A) deposit the same in the deposit department of the Trustee or of any other loan or trust company



authorized to accept deposits under the laws of The Netherlands; or (B) invest and reinvest the same or any part thereof in any Debentures or other indebtedness of or fully guaranteed by the Government of Canada or obligations maturing not more than one year from the date of investment of any Canadian chartered bank or loan or trust company.

(c) All interest or other income received by the Trustee in respect of such deposits and investments and, after the due application of the amount invested in any of such investments, any profits realized by the Trustee upon the sale thereof shall belong to and be forthwith paid to the Corporation.

#### **16.6 Trustee Not Required to Give Security**

The Trustee shall not be required to give any Debenture or security in respect of the execution of the trusts and powers of this Trust Indenture or otherwise in respect of the premises.

#### **16.7 Protection of the 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 of or defect in the registration or filing of or renewal of this Trust Indenture (including any instruments ancillary or supplemental thereto).

(b) The Trustee shall not be liable for or by reason of any statements of fact or recitals in this Trust Indenture or in the Debentures (except in the certificate of the Trustee thereon) 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 contained shall impose any obligation on the Trustee to see or to require evidence of the registration or filing (or renewal thereof) of this Trust Indenture (including any instruments ancillary or supplemental thereto), or to procure any further, other or additional instrument of further assurance.

(d) In the exercise of its rights and duties hereunder the Trustee shall not be in any way responsible for the consequence of any breach on the part of the Corporation of any of the Corporation's covenants herein contained or of any acts of the agents or servants of the Corporation.

#### **16.8 Replacement of the Trustee**

The Trustee may resign its trust and be discharged from all further duties and liabilities hereunder by giving to the Corporation at least 90 days' notice in writing or such shorter notice as the Corporation may accept as sufficient. The Debentureholders by Extraordinary Resolution shall have 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 Debentureholders; failing such appointment by the Corporation, the retiring Trustee or any Debentureholders may apply to a court in The Netherlands, 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 Debentureholders. Any new Trustee appointed under any provision of this section shall be a corporation authorized and qualified to carry on the business of a trust company in The Netherlands and in every other jurisdiction where such authorization or qualification is necessary to enable it to act as Trustee hereunder. On any new appointment the new Trustee shall be vested with the same powers, rights, duties and obligations as if it had been originally named herein as Trustee, without any further assurance, conveyance, act or deed, but there shall be immediately executed, at the expense of the Corporation, all

such conveyances or other instruments as may, in the opinion of Counsel, be necessary or advisable for the purpose of assuring to the new Trustee a full estate in the premises. Any corporation into which the Trustee may be merged or with which it may be consolidated or amalgamated, or any corporation resulting from any merger, consolidation or amalgamation to which the Trustee shall be a party, shall be the successor Trustee under this Trust Indenture without the execution of any instrument or any further act.

**16.9 Conflict of Interest**

The Trustee represents that at the time of execution and delivery hereof, no material conflict of interest exists in the Trustee's role as a fiduciary hereunder.

**16.10 Acceptance of Trust**

The Trustee hereby accepts the trusts in this Trust Indenture declared and provided for and agrees to perform the same upon the terms and conditions hereinbefore set forth and to hold all the rights, privileges and benefits conferred hereby and by law in trust for the various persons who shall from time to time be Debentureholders, subject to all the terms and conditions herein set forth.

## ARTICLE XVII NOTICES

### 17.1 Notice to the Corporation

Any notice to the Corporation under the provisions hereof shall be valid and effective if delivered to an officer of the Corporation or if given by registered letter postage prepaid addressed to 32 Akerley Boulevard, Dartmouth, Nova Scotia, B3B 1N1, Canada and any notice so delivered shall be deemed to be validly given when delivered and any notice so given by registered mail shall be deemed to have been effectively given on the second Business Day following the day of mailing. The Corporation may from time to time notify the Trustee of a change in address which thereafter, until changed by like notice, shall be the address of the Corporation for all purposes of this Trust Indenture.

### 17.2 Notice to the Trustee

Any notice to the Trustee under the provisions hereof shall be valid and effective if delivered to an officer of the Trustee or if given by registered letter postage prepaid addressed to Stichting Homburg Capital Securities, Beckeringhstraat 36, 3762 EX Soest, The Netherlands, and any notice so delivered shall be deemed to be validly given when delivered and any notice so given by registered mail shall be deemed to have been effectively given on the second Business Day following the day of mailing. The Trustee may from time to time notify the Corporation of a change in address which thereafter, until changed by like notice, shall be the address of the Trustee for all purposes of this Trust Indenture.

### 17.3 Notice to Debentureholders

Unless herein otherwise expressly provided, any notice to be given hereunder to Debentureholders shall be valid and effective if such notice is sent by ordinary surface or air mail postage prepaid addressed to such holders at their respective addresses appearing on any of the registers hereinbefore mentioned, and if, in the case of joint holders of any Debenture, more than one address appears in the register in respect of such joint holding, such notice shall be addressed only to the first address so appearing.

Any notice so given by mail shall be deemed to be given on the day on which it is mailed. In determining under any provisions hereof the date when notice of any meeting, redemption or other event must be given, the date of giving the notice shall be included and the date of the meeting, redemption or other event shall be excluded. Accidental error or omission in giving notice or accidental failure to mail notice to any Debentureholder shall not invalidate any action or proceeding founded thereon.

## ARTICLE XVIII SUCCESSOR CORPORATION

### 18.1 Certain Requirements

The Corporation shall not, directly or indirectly, sell, lease, transfer or otherwise dispose of all or substantially all of its property and assets to any other corporation, and shall not consolidate, amalgamate or merge with any other corporation (any such corporation being herein referred to as a "**successor corporation**") unless:

- (a) the successor corporation shall execute, prior to or contemporaneously with the consummation of such transaction, an indenture supplemental hereto, together with such other instruments as are satisfactory to the Trustee and in the opinion of Counsel are necessary or advisable to evidence the assumption by the successor corporation of the due and punctual payment of all the Debentures and the interest thereon and all other moneys payable hereunder and the covenant of the successor corporation to pay the same and its agreement to observe and perform all the covenants and obligations of the

Corporation under this Indenture;

- (b) such transaction shall, to the satisfaction of the Trustee and in the opinion of Counsel, be upon such terms as substantially to preserve and not to impair any of the rights and powers of the Trustee or of the Debentureholders hereunder and upon terms as are in no way prejudicial to the interests of the Debentureholders; and
- (c) no condition or event shall exist as to the Corporation or the successor corporation, either at the time of or immediately after such consolidation, amalgamation, merger, transfer or sale and after giving full effect thereto or immediately after the successor corporation complying with the provisions of subsection (a) above, which constitutes or would constitute, after notice or lapse of time or both, a default or an Event of Default hereunder.

## **18.2 Vesting of Powers in Successor**

Whenever the conditions of Section 18.1 have been duly observed and performed, the successor corporation shall possess and from time to time may exercise each and every right and power of the Corporation under this Trust Indenture in the name of the Corporation or otherwise and any act or proceeding by any provision of this Trust Indenture required to be done or performed by any directors or officers of the Corporation may be done and performed with like force and effect by the like directors or officers of such successor corporation.

## **ARTICLE XIX SUPPLEMENTAL DEEDS**

### **19.1 Provision for Supplemental Deeds**

From time to time the Corporation (when authorized by a resolution of its directors) and the Trustee may, subject to the provisions of these presents, and they shall, when so directed by these presents, execute and deliver, by their proper officers, deeds or instruments supplemental or ancillary hereto, which thereafter shall form part hereof, for any one or more or all of the following purposes:

- (a) evidencing the succession of successor companies to the Corporation and the covenants of and obligations assumed by such successor companies in accordance with the provisions of Article XVIII;
- (b) giving effect to any Extraordinary Resolution passed as provided in Article XV;
- (c) providing for the issue, as permitted hereby, of Debentures of any one or more series other than or in addition to the Homburg Capital Securities A;
- (d) making such provisions not inconsistent with this Trust Indenture as may be necessary or desirable with respect to matters or questions arising hereunder or for the purpose of obtaining a listing or quotation of the Debentures on any stock exchange or bourse, provided that such provisions are not, in the opinion of the Trustee, prejudicial to the interests of the Debentureholders;
- (e) adding to or altering the provisions hereof in respect of the registration and transfer of Debentures, making provision for the issue of Debentures of denominations other than those herein provided for and for the exchange of Debentures of different denominations, and making any modification in the forms of the Debentures which does not affect the substance thereof;
- (f) making any addition to, deletion from or alteration of the provisions of this Trust Indenture which the Corporation may deem necessary or advisable and which, in the opinion of the

Trustee, does not materially and adversely affect the interest of the holders of the Debentures;

- (g) adding to the covenants of the Corporation herein contained for the protection of the Debentureholders or adding to the Events of Default herein specified; provided that such further covenants or Events of Default are not, in the opinion of the Trustee, prejudicial to the interests of the Debentureholders;
- (h) amending Article XVI in such manner as the Corporation and the Trustee (upon the advice of Counsel) may deem necessary or advisable in order to avoid conflict between such Article XVI and indenture legislation; and
- (i) for any other purpose required by or not inconsistent with the terms of this Trust Indenture, provided that in the opinion of the Trustee the rights of the Trustee or of the Debentureholders are in no way prejudiced thereby.

**19.2 Correction of Manifest Errors**

The Corporation and the Trustee may correct typographical, clerical and other manifest errors in this Trust Indenture provided that such correction shall, in the opinion of the Trustee, in no way prejudice the rights of the Trustee or of the Debentureholders hereunder, and the Corporation and the Trustee may execute all such documents as may be necessary to correct such errors.

**ARTICLE XX  
EXECUTION**

**20.1 Counterparts and Formal Date**

This Trust Indenture may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument and notwithstanding their date of execution shall be deemed to bear date as of 28 February 2009.

**IN WITNESS WHEREOF** the parties hereto have executed these presents under their respective corporate seals and the hands of their proper officers in that behalf.

**HOMBURG INVEST INC**

Per:

  
\_\_\_\_\_  
James F. Miles  
Vice President Finance and CFO

c.s.\*

**APPENDIX A**  
**Form of Homburg Capital Securities A**

1.1 The Homburg Capital Securities A, the certificate of the Trustee and the registration panel shall be in the English language, in the forms provided in Sections 1.2 and 1.3.

1.2 The text of the Homburg Capital Securities A, the certificate of the Trustee and the registration panel shall be substantially as follows:

No. • EUR •

**HOMBURG INVEST INC.**  
(Incorporated under the *Business Corporations Act* (Alberta))  
  
9.5% Unsecured Subordinated Debenture ("**Homburg Capital Securities A**")  
Redeemable after 27 February 2014 and Due 27 February 2108

**HOMBURG INVEST INC.** (hereinafter called the "**Corporation**"), for value received, hereby acknowledges itself indebted and, subject to the provisions of the trust indenture (the "**Trust Indenture**") dated as of 28 February 2009 between the Corporation and Stichting Homburg Capital Securities (the "**Trustee**") promises to pay to the registered holder hereof on 27 February 2108 (the "**Maturity Date**") or on such earlier dates the principal amount hereof may become due in accordance with the provisions of the Trust Indenture the principal sum of EUR 1,000, together with interest thereon, if applicable, on presentation and surrender of this Debenture at the principal office of the Trustee in Soest, The Netherlands in accordance with the terms of the Trust Indenture and, subject as hereinafter provided, to pay interest on the principal amount hereof from the date hereof, or from the last interest payment date to which interest shall have been paid or made available for payment on the outstanding Debentures, whichever is later, at any of the said places, in like money or Class A Preferred Shares quarterly in arrears on 31 March, 30 June, 30 September and 31 December in each year (the "**Interest Payment Date**") and (representing interest payable from the last Interest Payment Date to, but excluding, the Maturity Date on the Maturity Date, at the rate of 9.5% per annum (unless this Debenture shall have been previously redeemed in accordance with the provisions of the Trust Indenture hereinafter mentioned), less any tax required by law to be deducted; and should the Corporation at any time make default in the payment of any interest, to pay interest on the amount in default at the same rate after as well as before default or judgement, in like consideration, at any of the said places and quarterly on the same dates. Capitalized terms used herein and not otherwise defined have the meanings given to them in the Trust Indenture.

Interest payable hereon shall be paid on the Interest Payment Date, at the sole option of the Corporation either by:

(a) Cash by cheque mailed by registered mail or by electronic transfer of funds to the registered holder hereof and, subject to the provisions of the Trust Indenture, the mailing of such cheque or electronic transfer shall satisfy and discharge the liability for interest on this Debenture to the extent of the sum represented thereby (plus the amount of any tax which the Corporation is required to and does withhold therefrom) unless such cheque be not paid on presentation; or

(b) provided the conditions set out in Section 3.3 of the Indenture are satisfied, by the issuance and delivery of a fixed number of Series of Class A Preferred Shares in such amount as determined by the Issue Price and having the attributes set out in Appendix B to the Trust Indenture.

This Debenture is one of the 9.5% unsecured subordinated debentures of the Corporation issued or issuable in one or more series under the provisions of the Trust Indenture.

The Debentures which may be issued under the Trust Indenture are (subject to the restrictions, conditions and limitations set out in the Trust Indenture) unlimited and may consist of several series payable in different currencies, bearing different rates of interest and varying as to the terms on which they may be redeemed and otherwise as specified in the Trust Indenture. Debentures which have been authorized for issue are a minimum of EUR 25,000,000 and a maximum of EUR 75,000,000 aggregate principal amount of Homburg Capital Securities A (of which this is one).

This Debenture and all other Homburg Capital Securities A now or hereafter certified and issued under the Trust Indenture rank *pari passu* and are unsecured obligations of the Corporation. Reference is hereby made to the Indenture for particulars of the rights of the holders of the Debentures and of the Corporation and of the Trustee in respect thereof and the terms and conditions upon which the Debentures are issued and held, to all of which the holder of this Debenture by acceptance hereof assents.

The Debentures are issuable only in denominations of EUR 1,000. Upon compliance with the provisions of the Trust Indenture, Debentures of any denomination may be exchanged for an equal aggregate principal amount of Debentures in any other authorized denomination or denominations.

Except as hereinafter provided, the Homburg Capital Securities A are redeemable at the option of the Corporation on 27 February 2014 and on each Interest Payment Date thereafter, in whole or in part, at the option of the Corporation, on not less than thirty (30) and not more than sixty (60) day's notice at a redemption price equal to 100% of the principal amount thereof, together with accrued and unpaid interest to the date fixed for redemption.

The principal amount hereof may also become or be declared due in the events, in the manner and with the effect provided in the Trust Indenture.

The Trust Indenture contains provisions making binding upon all holders of Debentures outstanding thereunder resolutions passed at meetings of such holders held in accordance with such provisions and instruments in writing signed by the holders of a specified majority of Debentures outstanding.

Upon presentation at the principal office of the Trustee at Stichting Homburg Capital Securities, Beckeringhstraat 36, 3762 EX, Soest, The Netherlands, subject to the provisions of the Trust Indenture and upon compliance with the reasonable requirements of the Trustee, Debentures may be transferred by the registered holder thereof or his executors, administrators or other legal representatives or his or their attorney duly appointed in writing but no such transfer of a Debenture shall be valid unless it has been duly noted thereon.

This Debenture shall not become obligatory for any purpose until it shall have been certified by the Trustee for the time being under the Trust Indenture.

**IN WITNESS WHEREOF** HOMBURG INVEST INC. has caused its corporate seal to be hereunto affixed and this Debenture to be signed by its President as of 28 February 2009.

**HOMBURG INVEST INC.**

by \_\_\_\_\_ c.s.  
\*

TRUSTEE'S CERTIFICATE

This Debenture is one of the Homburg Capital Securities A referred to in the Trust Indenture within mentioned.

\_\_\_\_\_  
\*

(No writing hereon except by the Trustee or other Registrar)

Date and Place  
of Registration

In Whose Name  
Registered

Signature of Trustee  
or Other Registrar



## APPENDIX B

### Form of Terms of each Series of Class A Preferred Shares to be created and issued under the Business Corporations Act (Alberta)

#### I. CLASS A SERIES • PREFERRED SHARES

The Series of Class A Preferred Shares shall consist of a maximum of 750,000,000 shares designated as Class A Series • Preferred shares. The rights, privileges, restrictions and conditions attaching to each Series of Class A Series • Preferred Shares, as a series, are as follows:

##### 1. Definitions

1.1 When used in these Class A Series • Preferred Share provisions, the following words and phrases shall, have the following meanings:

- (a) "Act" means the *Business Corporations Act* (Alberta) and the regulations thereunder, each as amended from time to time;
- (b) "Business Day" means any day that is not a Saturday, Sunday or other day on which commercial banks in Halifax, Nova Scotia, Canada or Amsterdam, The Netherlands are authorized or required by law to remain closed;
- (c) "Debentures" means the unsecured Homburg Capital Securities A issued by the Corporation on or about 28 February 2009;
- (d) "Deemed Redemption Date" has the meaning assigned to such term in paragraph 6.2 of these Class A Series • Preferred Shares provisions;
- (e) "Dividend Rate" means a rate of 9.75% per annum;
- (f) "Issue Date" means the date of the first issue of a Class A Series • Preferred Shares;
- (g) "Redemption Amount" in respect of a Class A Series • Preferred Share shall mean the Subscription Price for such Class A Series • Preferred Share plus an amount equal to all dividends which have at the relevant time accrued on the Class A Series • Preferred Share whether declared or not but which have not then been paid (if any);
- (h) "Redemption Date" has the meaning assigned to such term in paragraph 6.3 of these Class A Series • Preferred Shares provisions;
- (i) "Redemption Event" has the meaning assigned to such term in paragraph 6.2 of these Class A Series • Preferred Shares provisions; and
- (j) "Subscription Price" means the sum of EUR 1 per Class A Series • Preferred Share.

**2. Limited Issuance**

The Corporation shall issue Class A Series • Preferred Shares only pursuant to the terms of the Debentures.

**3. Voting and Amendment Rights**

3.1 Subject to the Act, holders of Class A Series • Preferred Shares shall not be entitled to receive notice of, attend or vote at any meetings of the shareholders of the Corporation.

3.2 The rights, privileges, restrictions and conditions attached to the Class A Series • Preferred Shares may be amended, modified, suspended, altered or repealed but only if consented to, or approved by, the holders of the Class A Series • Preferred Shares in accordance with the requirements of the Act.

**4. Dividends**

4.1 The holders of Class A Series • Preferred Shares shall be entitled, rateably with holders of each other Series of Class A Series • Preferred Shares, to receive and the Corporation shall pay, fixed, preferential, cumulative dividends equal to the Dividend Rate on the Redemption Amount, payable, if, as and when declared by the Board of Directors of the Corporation out of the monies of the Corporation properly applicable to the payment of dividends. Such dividends shall accrue from the Issue Date whether or not they are declared by the Board of Directors. The Board of Directors shall be entitled from time to time to declare part of the preferential cumulative dividend for any calendar year notwithstanding that such dividend for such calendar year shall not be declared in full.

4.2 No dividends shall be declared or paid in any year on the Class A Subordinate Voting Shares, Class B Multiple Voting Shares, the Class B Preferred Shares or any other shares of the Corporation ranking junior to the Class A Series • Preferred Shares from time to time with respect to the payment of dividends, unless all accrued, but unpaid dividends on the Class A Series • Preferred Shares then issued and outstanding shall have been declared and paid or declared and provided for at the date of such declaration.

4.3 The rights of holders of Class A Series • Preferred Shares to dividends in any year shall be limited to the cumulative preferential dividend specified in paragraph 4.1 of these Class A Series • Preferred Shares provisions.

**5. Liquidation**

5.1 In the event of a distribution, holders of Class A Series • Preferred Shares shall be entitled, rateably with the holders of each other Series of Class A Series • Preferred Shares and in priority to the Class A Subordinate Voting Shares, Class B Multiple Voting Shares, Class B Preferred Shares and any other shares ranking junior to the Class A Series • Preferred Shares from time to time with respect to payment on a distribution, to payment of an amount equal to the Redemption Amount for such Class A Series • Preferred Shares and all such amounts shall be paid to the holders of the Class A Series • Preferred Shares before any amounts are paid to the holders of Class A Subordinate Voting Shares, Class B Multiple Voting Shares, Class B Preferred Shares and any other shares ranking junior to the Class A Series • Preferred Shares from time to time with respect to payment on a distribution. The Class A Series • Preferred Shares shall not confer a right to any further participation in the property of the Corporation on a distribution.

**6. Redemption by the Corporation**

6.1 Subject to the Act and paragraph 6.2, the Corporation may, upon giving notice or upon the waiver of such notice as hereinafter provided, redeem at any time the whole or from time to time any part of the then outstanding Class A Series • Preferred Shares on payment or deposit (in accordance with paragraph 6.5 of these Class A Series • Preferred Share terms) of the Redemption Amount for each Class A Series •

Preferred Share to be redeemed. If part only of the Class A Series • Preferred Shares are to be redeemed, the Board of Directors may select the Class A Series • Preferred Shares to be redeemed (i) by lot; (ii) on a *pro rata* basis; or (iii) in such other manner as the Board of Directors may in their discretion select. If part only of the Class A Series • Preferred Shares represented by any certificate are redeemed, a new certificate for the balance shall be issued at the expense of the Corporation.

6.2 The Corporation shall be deemed to redeem, without prior notice to the holders of the Class A Series • Preferred Shares, all the then issued and outstanding Class A Series • Preferred Shares on any date (the "**Deemed Redemption Date**") that the Corporation: (i) elects to pay interest in cash, in whole or in part, in respect of the Debentures; (ii) declares a dividend in any form on the Class A Subordinate Voting Shares, the Class B Multiple Voting Shares, the Class B Preferred Shares or any shares of the Corporation ranking junior to the Class A Series • Preferred Shares; (iii) redeems, purchases, acquires by any means or returns or distributes capital of the Class A Subordinate Voting Shares, Class B Multiple Voting Shares, Class B Preferred Shares or any shares of the Corporation ranking junior to the Class A Series • Preferred Shares or *pari passu* with the Class A Series • Preferred Shares, if any (each a "**Redemption Event**") and, subject to the Act, shall pay or cause to be paid to holders of Class A Series • Preferred Shares so redeemed, within ten (10) Business Days following the Deemed Redemption Date, the Redemption Amount. In the case of a Redemption Event, prior to such payment the Corporation shall provide a written notice setting out the Redemption Amount per Class A Series • Preferred Shares, the Deemed Redemption Date, and the name of the chartered bank or trust company at which the Redemption Amount has been or will be deposited (if the Redemption Amount may be deposited).

6.3 In the case of a redemption of Class A Series • Preferred Shares pursuant to paragraph 6.1 of these Class A Series • Preferred Share terms, the Corporation shall give notice in writing of the intention of the Corporation to redeem such shares (unless notice is waived in any manner by the holder of the Class A Series • Preferred Shares called for redemption) at least 21 days before the date specified for redemption (the date specified for redemption is referred to in these Class A Series • Preferred Shares provisions as the "**Redemption Date**") to each person who at the date of mailing is a holder of Class A Series • Preferred Shares to be redeemed, provided that accidental failure to give such notice to one or more of such shareholders shall not affect the validity of such redemption. Such notice shall set out the Redemption Amount per Class A Series • Preferred Share, the Redemption Date, the name of the chartered bank or trust company at which the Redemption Amount may be deposited (if the Redemption Amount may be deposited pursuant to paragraph 6.5 of these Class A Series • Preferred Shares terms) and, if part only of the Class A Series • Preferred Shares held by the person to whom such notice is addressed is to be redeemed, the number thereof to be redeemed. From and after the Redemption Date specified in such notice, the Class A Series • Preferred Shares shall be deemed to be redeemed.

6.4 Subject to the Act, the Corporation shall pay to the holder of the Class A Series • Preferred Shares to be redeemed the Redemption Amount of each such share on or after the Redemption Date, provided that such holder has presented and surrendered to the Corporation the certificates representing the Class A Series • Preferred Shares so called for redemption. Subject to paragraph 6.5 of these Class A Series • Preferred Shares terms payment for Class A Series • Preferred Shares to be redeemed by the Corporation shall be made by cheque payable at par in Euro funds at any branch of the Corporation's bankers. Such cheques shall be sent in accordance with the Act to holders of such Class A Series • Preferred Shares.

6.5 The Corporation shall have the right at any time after the mailing of the notice referred to in paragraph 6.2 or 6.3, of these Class A Series • Preferred Shares terms, as applicable, to deposit the Redemption Amount for each Class A Series • Preferred Share so called for redemption, or of such of those shares represented by certificates which have not at the date of such deposit been presented and surrendered by the holders thereof in connection with such redemption, to a special account in any chartered bank or in any trust company in The Netherlands named in such notice, to be paid without interest to or to the order of the respective holders of such Class A Series • Preferred Shares called for redemption upon presentation and surrender to such bank or trust company of the certificates representing same. Any such deposit shall constitute payment and satisfaction of the Redemption Amount of the Class A Series •

Preferred Shares in respect whereof this deposit has been made and the rights of the holders thereof shall be limited to receiving, without interest, the Redemption Amount per Class A Series • Preferred Shares so deposited. Any interest allowed on such deposit shall belong to the Corporation. After the Redemption Amount for such Class A Series • Preferred Shares has been deposited with any chartered bank or trust company in The Netherlands or any chartered bank or trust company in Canada or, as aforesaid, notice shall be given to the holders of any Class A Series • Preferred Shares called for redemption who have failed to present and surrender the certificates representing such shares within two months of the Redemption Date that the money has been so deposited and may be obtained by the holders of these Class A Series • Preferred Shares upon presentation and surrender of the certificates representing such shares called for redemption at such bank or trust company.

6.6 From and after a Redemption Date or Deemed Redemption Date, the holders of any Class A Preferred Shares shall not be entitled to exercise any of the rights of the holders of Class A Series • Preferred Shares in respect thereof unless payment or deposit of the Redemption Amount per Class A Series • Preferred Shares shall not be made in accordance with the foregoing provisions, in which event the rights of the holders of such Class A Series • Preferred Shares shall remain unaffected.

## **7. Restricted Payments to the Holders of Shares of Other Classes**

7.1 The Corporation shall not make any Restricted Payment (as defined below) to a holder of Class A Subordinate Voting Shares, Class B Multiple Voting Shares, Class B Preferred Shares, or shares of the Corporation of any class other than Class A Series • Preferred Shares if the Corporation is, or would after making the Restricted Payment be, unable to pay to the holders of Class A Preferred Shares, the Redemption Amount for each Class A Series • Preferred Shares held.

7.2 For the purpose of paragraph 7.1 of these Class A Series • Preferred Shares provisions, the Corporation makes a Restricted Payment when it:

- (a) declares or pays a dividend other than a stock dividend consisting of shares of a class other than Class A Series • Preferred Shares,
- (b) makes any payment to purchase, redeem or otherwise acquire by any means, or return or distribute capital on any of the Corporation's shares of any class other than Class A Series • Preferred Shares, or
- (c) gives financial assistance by means of a loan, guarantee or otherwise.

## **8. Withholding Tax**

8.1 In connection with any dividend or other consideration payable to any holder of Class A Series • Preferred Shares, including in connection with a redemption of Class A Series • Preferred Shares, the Corporation shall be entitled to deduct and withhold any such amounts as the Corporation is required to deduct and withhold with respect to such payment under the *Income Tax Act* (Canada) or any provision of provincial, local or foreign tax law. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes hereof as having been paid to the holder of the Class A Series • Preferred Shares in respect of which such deduction and withholding was made, provided that such withheld amounts are actually remitted to the appropriate taxing authority. To the extent that the amount so required or permitted to be deducted or withheld from any payment or share issuance to a holder exceeds the cash portion of the consideration otherwise payable to the holder, the Corporation is authorized to sell or otherwise dispose of such portion of the consideration as is necessary to provide sufficient funds to the Corporation to enable it to comply with such deduction or withholding requirement and the Corporation shall notify the holder thereof and remit any unapplied balance of the net proceeds of such sale or conversion.