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**WHITEMUD RESOURCES INC.**  
**10.0% SECURED SUBORDINATED DEBENTURES**  
**DUE DECEMBER 31, 2012**

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**INDENTURE**

**DATED AS OF •, 2011**

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**OLYMPIA TRUST COMPANY,**  
**AS TRUSTEE**

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THIS INDENTURE dated as of •, 2011 is between Whitemud Resources Inc., a corporation duly incorporated under the laws of the Province of Alberta, Canada (the "**Company**"), as represented by Deloitte & Touche Inc., and Olympia Trust Company, a trust company existing under the laws of Alberta, as Trustee (the "**Trustee**").

In consideration of the purchase of the Debentures (as defined herein) by the Holders thereof, both parties agree as follows for the benefit of the other and for the equal and ratable benefit of the Holders of the Company's 10.0% Secured Subordinated Debentures Due December 31, 2012.

## **ARTICLE I**

### **DEFINITIONS AND INCORPORATION BY REFERENCE**

#### **1.1 Definitions.**

"**Acceleration Notice**" means a written notice delivered pursuant to Article 9.3 declaring all Indebtedness of the Company outstanding to the Debentureholders to be due and payable.

"**Accredited Investor**" has the meaning ascribed thereto in Rule 501(a) of Regulation D under the Securities Act.

"**Affiliate**" means any person which, directly or indirectly, controls, is controlled by or is under common control with another person; and, for the purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" or "under common control with") means the power to direct or cause the direction of the management and policies of any person, whether through the ownership of shares or by contract or otherwise.

"**Agent**" means any Registrar or Paying Agent.

"**Applicable Laws**" or "**applicable law**" means, in relation to any person, transaction or event:

- (a) all applicable provisions of laws, statutes, rules and regulations from time to time in effect of any Governmental Authority; and
- (b) all Governmental Authorizations to which the person is a party or by which it or its property is bound or having application to the transaction or event.

"**Applicable Securities Legislation**" means applicable securities laws (including rules, regulations, policies and instruments enacted thereunder) in each of the Provinces of Canada where the Debentures are offered and sold by the Company or where the Company is currently a reporting issuer.

"**Approved Securities**" means obligations maturing within one year from their date of purchase or other acquisition by the Company or any of its Subsidiaries and which are:

- (a) issued by the Government of Canada or an instrumentality or agency thereof and guaranteed fully as to principal, premium, if any, and interest by the Government of Canada;

- (b) issued by a province of Canada, or an instrumentality or agency thereof, which has a long term debt rating of at least A by S&P, A2 by Moody's, or A by DBRS; or
- (c) term deposits, guaranteed investment certificates, certificates of deposit, bankers' acceptances or bearer deposit notes, in each case, of any Canadian chartered bank or other Canadian financial institution which has a long term debt rating of at least A+ by S&P, A1 by Moody's, or A (high) by DBRS.

**"Attributable Debt"** means, in respect of any lease (whether characterized as an operating lease under generally accepted accounting principles or not) entered into by a person or any of the Subsidiaries thereof as lessee, the present value (discounted at the rate of interest implicit in such transaction, determined in accordance with generally accepted accounting principles) of the lease payments of the lessee, including all rent and payments to be made by the lessee in connection with the return of the leased property, during the remaining term of the lease (including any period for which such lease has been extended or may, at the option of the lessor, be extended) but excluding for certainty, (a) amounts required to be paid on account of insurance, taxes, assessments, utility, operating and labour costs and similar charges and (b) amounts payable by a lessee in connection with the exercise of any end-of-term purchase option, early buy-out-option or any similar amounts payable at the election of the lessee.

**"Beneficial Ownership"** has the same meaning as set forth in the *Securities Act* (Alberta).

**"Board of Directors"** means either the board of directors of the Company or any committee of the Board of Directors authorized to act for it with respect to this Indenture.

**"Business Day"** means any day other than a Saturday, Sunday or statutory holiday in, or a day when banks are closed in Calgary, Alberta.

**"Capital Stock"** of any Person means any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) equity of such Person, but excluding any debt securities convertible into such equity.

**"cash"** means such coin or currency of Canada as at any time of payment is legal tender for the payment of public and private debts.

**"Certificated Debenture"** means a Debenture that is in substantially the form attached as Exhibit "A" but that does not include the information called for by footnote 1 thereof.

**"Charge"** means the Security Interest created by or intended to be created by this Indenture which shall be subordinated to all Permitted Encumbrances.

**"Collateral"** means, subject to the Senior Indebtedness, the whole, or any item or part, of the property, assets, rights and undertaking of the Company from time to time subjected or intended to be subjected to the Charge and any reference herein to the Collateral shall, unless the context otherwise requires, be deemed to be a reference to all of the Collateral or any part thereof.

**"Company"** means the party named as such in the first paragraph of this Indenture until a successor replaces it pursuant to the applicable provisions of this Indenture, and thereafter **"Company"** shall mean such successor Company.

**"Company Debenture"** means the fixed and floating charge demand debenture to be entered into between the Company and the Trustee providing for a floating charge to and in favour of the Trustee, on behalf of the Holders, charging all of the undertaking, property and assets of the Company, both present and future and a fixed charge to and in favour of the Trustee, on behalf of the Holders, charging all of the Company's Mineral Rights and Mineral Leases in the form attached as Exhibit "C" hereto.

**"Company Pledge"** means the debenture pledge agreement to be entered into by the Company in favour of the Trustee, on behalf of the Holders whereby the Company Debenture is pledged to the Trustee in the form attached as Exhibit "C" hereto.

**"Corporate Trust Office"** means the office of the Trustee at which at any particular time the trust created by this Indenture shall be administered, which office at the date of the execution of this Indenture is located at 2300, 125 – 9<sup>th</sup> Avenue S.E., Calgary, Alberta, T2G 0P6; Attention: Corporate Trust Department, or at any other time at such other address as the Trustee may designate from time to time by notice to the Holders and the Company.

**"Currency Hedging Agreement"** means any currency swap agreement, cross currency agreement, forward agreement, floor, cap or collar agreement, futures or options, insurance or other similar agreement or arrangement, or any combination thereof, entered into by the Company or any of its Subsidiaries where the subject matter of the same is currency exchange rates or the price, value or amount payable thereunder is dependent or based upon currency exchange rates or fluctuations in currency exchange rates as in effect from time to time.

**"CWB Commitment Letter"** means the commitment letter dated July 23, 2009 between the Company, as borrower, and Canadian Western Bank, as lender, pursuant to which Canadian Western Bank agreed to make the following credit facilities available to the Company:

- (a) the CWB Segment (1) Facility;
- (b) the CWB Segment (2) Facility;
- (c) MBNA corporate MasterCard facility in the maximum amount of CAD\$15,000;
- (d) the CWB Loan Segment (4) Facility; and
- (e) a revolving line of credit with a maximum available limit of CAD\$2,000,000.

**"CWB Loan Segment (4) Facility"** means the non-revolving demand the loan made by Canadian Western Bank to the Company in the aggregate principal amount of \$2,000,000, designated as "Loan Segment (4): Demand Non Revolving Loan #1 (DNR#1)" in section 1.4 of the CWB Commitment Letter.

**"CWB Segment (1) Facility"** means the letter of credit / guarantee facility in the amount of US\$1,200,000 in favour of GE Rail Services made by Canadian Western Bank and designated



as "Segment (1): Letter of Credit / Guarantee facility in the amount of \$1,200,000 USD in favour of GE Rail Services" in section 1.1 of the CWB Commitment Letter.

**"CWB Segment (2) Facility"** means the letter of credit / guarantee facility in the amount of CAD\$50,000 in favour of the Government of Saskatchewan made by Canadian Western Bank and designated as "Segment (2): Letter of Credit / Guarantee facility in the amount of \$50,000 CDN in favour of the Government of Saskatchewan" in section 1.2 of the CWB Commitment Letter.

**"DBRS"** means DBRS Limited and any successors thereto.

**"Debentures"** means the up to \$13,000,000 aggregate principal amount of **10.0%** Secured Subordinated Debentures due December 31, 2012, or any of them (each a **"Debenture"**), as amended or supplemented from time to time, that are issued under this Indenture.

**"Debt"** means, with respect to any Person, without duplication, the aggregate of the following amounts, each calculated in accordance with GAAP unless the context otherwise requires: (i) all obligations (including, without limitation, by way of overdrafts and drafts or orders accepted representing extensions of credit) that would be considered to be indebtedness for borrowed money and all obligations, whether or not with respect to the borrowing of money, that are evidenced by bonds, debentures, notes or other similar instruments; (ii) the face amount of all bankers' acceptances and similar instruments; and (iii) the amount of the contingent liability under any guarantee of any part or all of an obligation of another Person of a type included in items (i) or (ii) including the amount of all contingent liabilities in respect of letters of credit, letters of guarantee and similar instruments issued to support any such items. For greater certainty, trade payables incurred in the ordinary course of such Person's business shall not constitute Debt.

**"Default"** means, when used with respect to the Debentures, any event that is or, after notice or passage of time, or both, would be, an Event of Default.

**"Documents"** means the CWB Commitment Letter, debentures, debenture pledge agreements, pledge agreements, assignments and other security agreements executed and delivered, or required to be executed and delivered pursuant to the CWB Commitment Letter, and all certificates, notices, instruments and other documents delivered or to be delivered by the Company or any of its Subsidiaries to the Senior Creditors, or any of them, in relation to the CWB Commitment Letter or the credit facility pursuant thereto and, when used in relation to any person, the term **"Documents"** shall mean and refer to the Documents executed and delivered by such person.

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

**"Environmental Matters"** means: (a) condition or substance, heat, energy, sound, vibration, radiation or odour that may affect any component of the earth and its surrounding atmosphere or affect human health or any plant, animal or other living organism; and (b) any waste, toxic substance, containment or dangerous good or the deposit, release or discharge of any thereof into any component of the earth and its surrounding atmosphere.

**"Exchange Act"** means the *Securities Exchange Act of 1934*, as amended, and the rules and regulations promulgated thereunder, as in effect from time to time.

**"Final Maturity Date"** means December 31, 2012.

**"Financial Assistance"** means, with respect to any person, and without duplication, any loan, guarantee, indemnity, assurance, acceptance, extension of credit, loan purchase, share purchase, equity or capital contribution, investment or other form of direct or indirect financial assistance or support of any other person or any obligation (contingent or otherwise) primarily for the purpose of enabling another person to incur or pay any Indebtedness or to comply with agreements relating thereto or otherwise to assure or protect creditors of the other person against loss in respect of Indebtedness of the other person and includes any guarantee of or indemnity in respect of the Indebtedness of the other person and any absolute or contingent obligation to (directly or indirectly):

- (a) advance or supply funds for the payment or purchase of any Indebtedness of any other person;
- (b) purchase, sell or lease (as lessee or lessor) any property, assets, goods, services, materials or supplies primarily for the purpose of enabling any person to make payment of Indebtedness or to assure the holder thereof against loss;
- (c) guarantee, indemnify, hold harmless or otherwise become liable to any creditor of any other person from or against any losses, liabilities or damages in respect of Indebtedness;
- (d) make a payment to another for goods, property or services regardless of the non-delivery or non-furnishing thereof to the Company or any of its Subsidiaries (as applicable); or
- (e) make an advance, loan or other extension of credit to or to make any subscription for equity, equity or capital contribution, or investment in or to maintain the capital, working capital, solvency or general financial condition of another person.

The amount of any Financial Assistance is the amount of any loan or direct or indirect financial assistance or support, without duplication, given, or all Indebtedness of the obligor to which the Financial Assistance relates, unless the Financial Assistance is limited to a determinable amount, in which case the amount of the Financial Assistance is the determinable amount.

**"Financial Instruments"** means any Interest Hedging Agreement or Currency Hedging Agreement.

**"Financial Instrument Obligations"** means obligations arising under Financial Instruments entered into by the Company or any of its Subsidiaries to the extent of the net amount due or accruing due by the Company or any of its Subsidiaries thereunder.

**"GAAP"** means, at any time, accounting principles generally accepted in Canada as recommended in the Handbook of the Canadian Institute of Chartered Accountants at the relevant time applied on a consistent basis (except for changes made with the prior written consent of the Trustee and approved by the Company's independent auditors in accordance with promulgations of the Canadian Institute of Chartered Accountants).

**"General Security Agreement"** means the general security agreement to be entered into between the Company and the Trustee, on behalf of the Holders, providing for, *inter alia*, a Security Interest on all of the Company's present and after acquired real and personal property in the form attached as Exhibit "C" hereto.

**"Governmental Authority"** means any federal, provincial, state, regional, municipal or local government or any department, agency, board, tribunal or authority thereof or other political subdivision thereof and any entity or person exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, government or the operation thereof.

**"Governmental Authorization"** means an authorization, order, permit, approval, grant, license, consent, right, franchise, privilege, certificate, judgment, writ, injunction, award, determination, direction, decree or demand or the like issued or granted by law or by rule or regulation of any Governmental Authority.

**"Holder", "Debentureholder" or "Holder of a Debenture"** means the person in whose name a Debenture is registered on the Registrar's books.

**"Indebtedness"** means, with respect to any person ("X"), all obligations, liabilities and indebtedness of X and its Subsidiaries which would, in accordance with generally accepted accounting principles, be classified upon a consolidated balance sheet of X as liabilities of X and its Subsidiaries and, whether or not so classified, shall include (without duplication):

- (a) indebtedness of X and its Subsidiaries for borrowed money;
- (b) obligations of X and its Subsidiaries arising pursuant or in relation to: (i) bankers' acceptances (including payment and reimbursement obligations in respect thereof), or (ii) letters of credit and letters of guarantee supporting obligations which would otherwise constitute Indebtedness within the meaning of this definition or indemnities issued in connection therewith;
- (c) obligations of X and its Subsidiaries with respect to drawings under all other letters of credit and letters of guarantee;
- (d) obligations of X and its Subsidiaries under guarantees, indemnities, assurances, legally binding comfort letters or other contingent obligations relating to the indebtedness or other obligations of any other person which would otherwise constitute Indebtedness within the meaning of this definition (if such other person was X or a subsidiary thereof) and all Financial Assistance including, without

limitation, endorsements of bills of exchange (other than for collection or deposit in the ordinary course of business);

- (e) (i) all indebtedness of X and its Subsidiaries representing the deferred purchase price of any property to the extent that such indebtedness is or remains unpaid after the expiry of the customary time period for payment, provided however that such time period shall in no event exceed 90 days, and (ii) all obligations of X and its Subsidiaries created or arising under any: (A) conditional sales agreement or other title retention agreement which is not a lease or (B) capital lease;
- (f) all Attributable Debt of X and its Subsidiaries other than in respect of (i) leases of office space or (ii) operating leases, in each case entered into in the ordinary course of business (and for certainty, no Sale-Leaseback shall be considered to be entered into in the ordinary course of business);
- (g) Prepaid Obligations of X and its Subsidiaries;
- (h) all other long-term obligations (including the current portion thereof) upon which interest charges are customarily paid prior to default by X; and
- (i) all indebtedness of other persons secured by a Security Interest on any asset of X and its Subsidiaries, whether or not such indebtedness is assumed thereby; provided that the amount of such indebtedness shall be the lesser of (i) the fair market value of such asset at such date of determination, and (ii) the amount of such indebtedness shall only be Indebtedness to the extent recorded as a liability in accordance with generally accepted accounting principles,

but shall exclude each of the following, determined (as required) in accordance with generally accepted accounting principles:

- (j) accounts payable to trade creditors and accrued liabilities incurred in the ordinary course of business;
- (k) current taxes payable and future taxes;
- (l) dividends or other equity distributions payable;
- (m) preferred shares and other equity interests which are not redeemable at the option of the holder prior to the Maturity Date;
- (n) accrued interest not yet due and payable;
- (o) liabilities in respect of deferred reclamation costs, allowances for dismantlement and site restoration and other deferred credits and liabilities; and
- (p) such other similar liabilities as may be agreed by the Senior Creditors from time to time,

provided that, unless otherwise expressly provided or the context otherwise requires, references herein to "Indebtedness" shall be and shall be deemed to be references to Indebtedness of the Company and its Subsidiaries.

**"Indenture"** means this Indenture as amended or supplemented from time to time pursuant to the terms of this Indenture.

**"Indenture Legislation"** means the provisions, if any, of any statute of Canada or a province thereof, and the respective regulations thereunder, relating to trust indentures and/or to the rights, duties and obligations of trustees under trust indentures and of companies issuing debt obligations under trust indentures, to the extent that such provisions are at the time in force and applicable to this Indenture.

**"Interest Expense"** means, for any period, without duplication, interest expense of the Company and its Subsidiaries determined on a consolidated basis in accordance with generally accepted accounting principles as the same would be set forth or reflected in a consolidated statement of income of the Company and its Subsidiaries and, in any event and without limitation, the determination thereof shall include (without duplication):

- (a) all interest of the Company and its Subsidiaries accrued or payable in respect of such period, including capitalized interest and imputed interest with respect to lease obligations;
- (b) all fees of the Company and its Subsidiaries (including administration, standby and commitment fees (if applicable), acceptance and stamping fees in respect of bankers' acceptances and fees payable in respect of letters of credit, letters of guarantee and similar instruments) accrued or payable in respect of such period, prorated (as required) over such period;
- (c) any difference between the face amount and the discount proceeds of any bankers' acceptances, commercial paper and other obligations of the Company or any of its Subsidiaries issued at a discount, prorated (as required) over such period; and
- (d) all net amounts charged or credited to interest expense under any Interest Hedging Agreements in respect of such period.

**"Interest Hedging Agreement"** means any interest swap agreement, forward rate agreement, floor, cap or collar agreement, futures or options, insurance or other similar agreement or arrangement, or any combination thereof, entered into by the Company or any of its Subsidiaries where the subject matter of the same is interest rates or the price, value or amount payable thereunder is dependent or based upon the interest rates or fluctuations in interest rates in effect from time to time (but, for certainty, shall exclude conventional floating rate debt).

**"Interest Obligation"** means the obligation of the Company to pay interest on the Debentures, as and when the same becomes due.

**"Interest Payment Date"** means, commencing December 31, 2011, June 30 and December 31 of each year.

"**Kasten**" means Kasten Energy Inc., a corporation continued under the laws of the Province of Alberta.

"**Material Adverse Effect**" means a material adverse effect on:

- (a) the financial condition of the Company and its Subsidiaries on a consolidated basis and taken as a whole;
- (b) the ability of the Company or any of its Subsidiaries to observe or perform its obligations under Documents to which it is a party or the validity or enforceability thereof or any material portion thereof; or

the property, business, operations, liabilities or capitalization of the Company and its Subsidiaries on a consolidated basis and taken as a whole.

"**Mineral Rights**" means all of the right, title, estate and interest, whether contingent or absolute, legal or beneficial, present or future, vested or not, and whether or not an "interest in land", of the Company and its Subsidiaries in and to any of the following, by whatever name the same are known:

- (a) the mineral rights, claims, mineral claims and tenements as of the date hereof;
- (b) any other mineral rights, claims, mineral claims and tenements from time to time;
- (c) any leases, permits, easements, licences, claims, subleases, rights of way or other rights to carry out or conduct mining operations connected with the mineral rights, claims, mineral claims and tenements referred to in paragraphs (a) or (b) issued or transferred to or held by or on behalf of the Company or in which the Company has or acquires any interest or shares therein;

and includes:

- (d) any applications for, or mineral rights, claims, mineral claims and tenements issued in place of, those referred to above; and
- (e) the mineral rights, claims, mineral claims and tenements referred to above as renewed, extended, modified or varied from time to time;

and for the purposes of this Indenture the terms "mine", "claim" and "mineral claim" shall have the meanings set forth in the *Energy and Mines Act* (Saskatchewan).

"**Mineral Leases**" means, collectively, any and all documents of title including, without limitation, leases, reservations, permits, licences, assignments, trust declarations, participation, exploration, farm-out, farm-in, royalty, purchase or other agreements by virtue of which the Company or any of its Subsidiaries is entitled to work, win, carry away, explore, develop and extract mines and minerals.

"**Moody's**" means Moody's Investors Service, Inc. and any successors thereto.

"**Obligations**" means any and all Indebtedness of the Company to the Trustee and/or any Debentureholders under this Indenture and the Debentures;

**"Officer"** means the Chief Executive Officer, the President, any Vice President, the Chief Financial Officer or the Chief Operating Officer of the Company.

**"Officers' Certificate"** means a certificate signed on behalf of the Company by two Officers.

**"Opinion of Counsel"** means a written opinion from legal counsel reasonably acceptable to the Trustee. The counsel may be counsel to the Company or the Trustee.

**"Permitted Contest"** means action taken by or on behalf of the Company or any of its Subsidiaries in good faith by appropriate proceedings diligently pursued to contest a tax, claim or Security Interest, provided that:

- (a) the person to which the tax, claim or Security Interest being contested is relevant (and, in the case of any Subsidiaries, the Company on a consolidated basis) has established reasonable reserves therefor if and to the extent required by generally accepted accounting principles;
- (b) proceeding with such contest does not have, and would not reasonably be expected to have, a Material Adverse Effect; and
- (c) proceeding with such contest will not create a material risk of sale, forfeiture or loss of, or interference with the use or operation of, a material part of the assets of the Company and its Subsidiaries.

**"Permitted Debt"** means:

- (a) Senior Indebtedness;
- (b) all indebtedness and other obligations of the Company and its Subsidiaries under this Indenture and the Debentures;
- (c) Purchase Money Obligations of the Company or its Subsidiaries;
- (d) obligations or amounts owed to trade creditors, suppliers and service providers that accruals in relation thereto in the ordinary course of business, in each case due and payable or outstanding for less than one year; and
- (e) Third Charge Secured Debt.

**"Permitted Encumbrances"** means as at any particular time any of the following encumbrances on the property or any part of the property of the Company or any Subsidiaries:

- (a) liens for taxes, assessments or governmental charges not at the time due or delinquent or, if due or delinquent, the validity of which is being contested at the time by a Permitted Contest;
- (b) deemed liens and trusts arising by operation of law in connection with workers' compensation, employment insurance and other social security legislation, in each case, which secure obligations not at the time due or delinquent or, if due or

delinquent, the validity of which is being contested at the time by a Permitted Contest;

- (c) liens under or pursuant to any judgment rendered, or claim filed, against the Company or any Subsidiaries, which the Company or any Subsidiaries (as applicable) shall be contesting at the time by a Permitted Contest;
- (d) undetermined or inchoate liens and charges incidental to construction or current operations which have not at such time been filed pursuant to law against the Company or any Subsidiaries or which relate to obligations not due or delinquent or, if so filed or if due or delinquent, the validity of which is being contested at the time by a Permitted Contest;
- (e) liens incurred or created in the ordinary course of business and in accordance with sound industry practice in respect of the exploration, development or operation of Mineral Rights, related production or processing facilities in which such person has an interest or the transmission of property as security in favour of any other person conducting the exploration, development, operation or transmission of the property to which such liens relate, for the Company's or any Subsidiary's portion of the costs and expenses of such exploration, development, operation or transmission, provided that such costs or expenses are not due or delinquent or, if due or delinquent, the validity of which is being contested at the time by a Permitted Contest;
- (f) easements, rights of way, servitudes or other similar rights in land (including, without in any way limiting the generality of the foregoing, rights of way and servitudes for railways, sewers, drains, gas and oil and other pipelines, gas and water mains, electric light and power and telecommunication, telephone or telegraph or cable television conduits, poles, wires and cables) granted to or reserved or taken by other persons which individually or in the aggregate do not materially detract from the value of the land concerned or materially impair its use in the operation of the business of the Company and its Subsidiaries, taken as a whole;
- (g) security given by the Company or any of its Subsidiaries to a public utility or any municipality or governmental or other public authority when required by such utility or municipality or other authority in connection with the operations of the Company or any of its Subsidiaries (as applicable), all in the ordinary course of its business which individually or in the aggregate do not materially detract from the value of the asset concerned or materially impair its use in the operation of the business of the Company and any of its Subsidiaries, taken as a whole;
- (h) the reservation in any original grants from the Crown of any land or interests therein and statutory exceptions and reservations to title;
- (i) royalties, net profits and other interests and obligations arising in accordance with standard industry practice and in the ordinary course of business, under Mineral Leases in which the Company or any Subsidiaries have any interest;
- (j) Security Interests in favour of any Senior Creditor;



- (k) Security Interests in favour of Kasten;
- (l) the Security;
- (m) any operating lease entered into in the ordinary course of business (which, for certainty, shall not include any operating leases entered into in connection with any Sale-Leaseback);
- (n) bankers' liens, rights of set-off and other similar liens existing solely with respect to cash and Approved Securities on deposit in one or more accounts maintained by the Company or any of its Subsidiaries, in each case, granted in the ordinary course of business in favour of a Senior Creditor with which such accounts are maintained, securing amounts owing to such Senior Creditor with respect to cash management and operating account arrangements, including those involving pooled accounts and netting arrangements;
- (o) Security Interests securing Attributable Debt, provided that such Security Interests shall attach only to the property subject to the lease giving rise to such Attributable Debt (and the proceeds thereof);
- (p) Security Interests securing a Purchase Money Obligation, provided that such Security Interests shall attach only to the property acquired in connection with which such Purchase Money Obligation was incurred (and proceeds thereof);
- (q) landlords' liens or any other rights of distress reserved in or exercisable under any lease of real property for rent and for compliance with the terms of such lease; provided that such lien does not attach generally to all or substantially all of the undertaking, assets and property of the Company or any Subsidiaries;
- (r) deposits to secure performance of (i) bids, tenders, contracts (other than contracts for the payment of money) or (ii) leases of real property (other than Mineral Leases) entered into in the ordinary course of business, in each case, to which the Company or any of its Subsidiaries is a party;
- (s) Security Interests resulting from the deposit of cash or Approved Securities as security when the Company or any of its Subsidiaries is required to do so by a Governmental Authority or by normal business practice in connection with contracts, licenses or tenders or similar matters in the ordinary course of business and for the purpose of carrying on the same, or to secure workers' compensation, surety or appeal bonds or to secure costs of litigation when required by Applicable Law;
- (t) minor defects of title which, individually and in the aggregate, do not materially affect the right of ownership of the Company or any of its Subsidiaries in the Mineral Rights or the right of the Company or any of its Subsidiaries to utilize the Mineral Rights to conduct its business;
- (u) Security Interests granted under the CWB Commitment Letter or under any credit agreement or other document or instrument evidencing, establishing or governing

Senior Indebtedness as described in the definition thereof and those to be discharged in accordance with Section 7.10 hereof; and

- (v) any extension, renewal or replacement (or successive extensions, renewals or replacements), as a whole or in part, of any Security Interest referred to in the preceding subparagraphs (a) to (t) inclusive of this definition, so long as any such extension, renewal or replacement of such Security Interest is limited to all or any part of the same property that secured the Security Interest extended, renewed or replaced (plus improvements on such property) and the indebtedness or obligation secured thereby is not increased;

provided that nothing in this definition shall in and of itself cause the Debentures hereunder to rank subordinate to any such Permitted Encumbrance or cause any Security Interests in favour of the Senior Creditors or any agent or other representative on behalf of the Senior Creditors to rank subordinate to any such Permitted Encumbrance.

**"Permitted Hedging"** means Financial Instruments:

- (a) which are entered into in the ordinary course of business and for hedging purposes and not for speculative purposes (determined, where relevant, by reference to generally accepted accounting principles); for certainty, Interest Hedging Agreements having as a subject matter principal amounts (either individually or in the aggregate, but determined on a net basis taking into account transactions or agreements entered into to reverse the position or limit the exposure under an existing Interest Hedging Agreement) greater than the aggregate liability of the Company and its Subsidiaries for borrowed money shall be deemed to be for speculative purposes; and
- (b) which have a term of 2 years or less (for certainty, for all purposes relating hereto and to the Documents, (i) the term of any Financial Instrument shall commence on the date that the Financial Instrument in question is entered into notwithstanding the fact that the effective date of such Financial Instrument, or other date from which payments or deliveries are to be made or determined thereunder, is subsequent to the date such Financial Instrument is entered into and (ii) without limiting the foregoing, and in addition thereto, the term of a swap transaction or other transaction entered into pursuant to or governed by a Master Agreement published by the International Swaps and Derivatives Association, Inc. (including by International Swap Dealers Association, Inc.) or any successor thereto shall commence on the trade date thereof); and
- (c) which, taken in the aggregate with other outstanding Financial Instruments and as determined at the time such Financial Instrument is entered into, shall not result in the Company and its Subsidiaries having entered into Currency Hedging Agreements or Interest Hedging Agreements in excess of 50% of the underlying exposure of the Company and its Subsidiaries to the risk hedged or sought to be hedged by such Financial Instruments.

**"Person"** or **"person"** means any individual, partnership, limited partnership, association, body corporate, trust, trustee, executor, administrator, legal representative, government,

regulatory authority, or other entity or any syndicate or group that would be deemed to be a "person" under the *Securities Act* (Alberta).

**"Principal Sum"** means Twelve Million Canadian dollars (\$13,000,000) or such lesser principal amount as is outstanding under this Indenture or, if applicable, the principal amount which is owing under a Debenture from time to time;

**"Purchase Money Obligation"** means any monetary obligation created or assumed as part of the purchase price of any real property, tangible personal property or fixture, whether or not secured, any extensions, renewals or refundings of any such obligation, provided that the principal amount of such obligation outstanding on the date of such extension, renewal or refunding is not increased and further provided that any security given in respect of such obligation shall not extend to any property other than the property acquired in connection with which such obligation was created or assumed and fixed improvements, if any, erected or constructed thereon and the proceeds thereof.

**"Realization Event"** means the occurrence of an Event of Default and, except in the case of an Event of Default under Section 9.1(a)(xi) or 9.1(a)(xii) (where a demand is not required), the demand for payment of the Principal Sum by the Trustee;

**"Receiver"** means any receiver, manager, or receiver and manager of the Collateral or any part thereof or the business and undertaking of the Company, or any part thereof, whether appointed by the Trustee under this Indenture or by a court pursuant to Applicable Law;

**"Regular Record Date"** means, with respect to each Interest Payment Date and commencing December 31, 2011, June 30 or December 31 (or on the next Business Day, if such date is not a Business Day), as the case may be, next preceding such Interest Payment Date.

**"Regulation S"** means Regulation S under the Securities Act.

**"Restricted Debenture"** means a Debenture required to bear either the Restrictive Legend or U.S. Restrictive Legend.

**"Rule 144"** means Rule 144 under the Securities Act or any successor to such Rule.

**"Rule 144A"** means Rule 144A under the Securities Act or any successor to such Rule.

**"S&P"** means the Standard & Poor's Rating Group (a division of The McGraw Hill Companies, Inc.) and any successors thereto.

**"Sale-Leaseback"** means an arrangement, transaction or series of arrangements or transactions under which title to any real property, tangible personal property or fixture is transferred by the Company or any of its Subsidiaries (a "transferor") to another person which leases or otherwise grants the right to use such property to the transferor (or nominee of the transferor) and, whether or not in connection therewith, the transferor also acquires a right or is subject to an obligation to acquire such property or a material portion thereof, and regardless of the accounting treatment of such arrangement, transaction or series of arrangements or transactions.

"**Securities Act**" means the *Securities Act of 1933*, as amended, and the rules and regulations promulgated thereunder, as in effect from time to time.

"**Security**" means the Security Documents and any and all Security Interests at any time and from time to time created or arising under or pursuant to the same.

"**Security Documents**" means collectively:

- (a) the General Security Agreement;
- (b) the Company Debenture;
- (c) the Company Pledge; and
- (d) such other agreements, instruments and documents as the Trustee may reasonably require to ensure that the Holders have a Security Interest, subject only to Senior Indebtedness and Senior Security, over all of the present and after-acquired real and personal property of the Company,

all in the forms attached as Exhibit "C" hereto.

"**Security Interests**" means mortgages, charges, pledges, hypothecs, assignments by way of security, conditional sales or other title retentions, security created under the *Bank Act* (Canada), liens, encumbrances, security interests or other interests in property, howsoever created or arising, whether fixed or floating, perfected or not, which secure payment or performance of an obligation and, including, in any event:

- (a) deposits or transfers of cash, marketable securities or other financial assets under any agreement or arrangement whereby such cash, securities or assets may be withdrawn, returned or transferred only upon fulfillment of any condition as to the discharge of any other indebtedness or other obligation to any creditor;
- (b) (i) rights of set-off or (ii) any other right of or arrangement of any kind with any creditor, which in either such case are made, created or entered into, as the case may be, for the purpose of or having the effect (directly or indirectly) of (A) securing Indebtedness, (B) preferring some holders of Indebtedness over other holders of Indebtedness or (C) having the claims of any creditor be satisfied prior to the claims of other creditors with or from the proceeds of any properties, assets or revenues of any kind now owned or later acquired (other than, with respect to (C) only, rights of set-off granted or arising in the ordinary course of business);
- (c) the rights of lessors under: (i) capital leases, (ii) Sale-Leasebacks and (iii) any other leases other than (A) leases of office space or (B) operating leases, in each case entered into in the ordinary course of business; and
- (d) absolute assignments of accounts receivable, except for absolute assignments of accounts receivable made in conjunction with a sale of related Mineral Rights.

"**Senior Creditor**" means Kasten, being the successor holder of the Senior Indebtedness (having acquired the Senior Indebtedness from Canadian Western Bank), or any further

successor holder from time to time of Senior Indebtedness, and includes any agent or agents, representative or representatives or trustee or trustees of Kasten or any such holder of Senior Indebtedness.

**"Senior Indebtedness"** means the principal, interest and other amounts in respect of all indebtedness, liabilities and obligations of the Company and any of its Subsidiaries (whether outstanding as at the date hereof or hereafter created, incurred, assumed or guaranteed) to:

- (a) Kasten (having acquired the Senior Indebtedness from Canadian Western Bank) under the CWB Commitment Letter and the other Documents executed and delivered thereunder, up to the maximum principal amounts set out in Section 1 of the CWB Commitment Letter, and otherwise on the terms set out in the CWB Commitment Letter, but excluding all indebtedness, liabilities and obligations of the Company to Kasten in respect of the CWB Loan Segment (4) Facility; and
- (b) any other Senior Creditor under any credit facilities established to refinance or replace any the credit facilities under the CWB Commitment Letter except for the CWB Loan Segment (4) Facility, up to the maximum principal amounts set out in Section 1 of the CWB Commitment Letter, and otherwise on the terms substantially the same as those set out in the CWB Commitment Letter, and further provided that the interest rates and all fees and other amounts payable thereunder shall not exceed the interest rates and all fees and other amounts payable by the Company pursuant to the CWB Commitment Letter, and that all other terms thereof be no more onerous on the Company than those terms contained in the CWB Commitment Letter.

**"Senior Security"** means all mortgages, liens, pledges, charges (whether fixed or floating), security interests or other encumbrances of any kind, contingent or absolute, held by or on behalf of any Senior Creditor from time to time and in any manner securing any Senior Indebtedness.

**"Subordination Agreement"** means the subordination agreement dated August 6, 2009 between the Borrower, the Trustee, on behalf of the Holders, and Canadian Western Bank, as attached hereto as Exhibit "B", as the same may be amended, modified, supplemented, restated or replaced from time to time and which has been assigned to the Senior Creditor.

**"Subsidiary"** means, with respect to any person ("X"):

- (a) any corporation of which at least a majority of the outstanding shares having by the terms thereof ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether at the time shares of any other class or classes of such corporation might have voting power by reason of the happening of any contingency, unless the contingency has occurred and then only for as long as it continues) is at the time directly, indirectly or beneficially owned or controlled by X or one or more of its Subsidiaries, or X and one or more of its Subsidiaries;
- (b) any partnership of which, at the time, X, or one or more of its Subsidiaries, or X and one or more of its Subsidiaries: (i) directly, indirectly or beneficially own or control more than 50% of the income, capital, beneficial or ownership interests

(however designated) thereof; and (ii) is a general partner, in the case of limited partnerships, or is a partner or has authority to bind the partnership, in all other cases; or

- (c) any other person of which at least a majority of the income, capital, beneficial or ownership interests (however designated) are at the time directly, indirectly or beneficially owned or controlled by X, or one or more of its Subsidiaries, or X and one or more of its Subsidiaries,

provided that, unless otherwise expressly provided or the context otherwise requires, references herein to "**Subsidiary**" or "**Subsidiaries**" shall be and shall be deemed to be references to Subsidiaries of the Company.

"**Tax Act**" means the *Income Tax Act* (Canada) and the regulations enacted thereunder.

"**Third Charge Secured Debt**" means the third charge secured debt owed by the Corporation to Kasten, being funds loaned by Kasten to the Company pursuant to the proposal being filed by the Company under Part III Division I of the *Bankruptcy and Insolvency Act*;

"**Trading Day**" means a day during which the principal securities market on which the applicable securities are traded is open for trading and at least one board lot of the securities is traded on such market. A "**Trading Day**" only includes those days that have a scheduled closing time of 2:00 p.m. (Calgary time) or the then standard closing time for regular trading on such market.

"**Trustee**" means Olympia Trust Company or such other successor that replaces it in accordance with the provisions of this Indenture, and thereafter means the successor.

"**Trust Officer**" means, with respect to the Trustee, any employee or officer assigned to the Corporate Trust Office, and also, with respect to a particular matter, any other employee or officer to whom such matter is referred because of such employee's or officer's knowledge of and familiarity with the particular subject.

"**TSX**" means the Toronto Stock Exchange, a division of TSX Inc., through which the senior listing operations of TSX Group Inc. are conducted.

"**TSXV**" means the TSX Venture Exchange Inc., a division of TSX Inc., through which the junior listing operations of TSX Group Inc. are conducted.

"**United States**" means the United States of America, its territories and possessions, any State of the United States, and the District of Columbia.

"**U.S. Person**" means a U.S. person as that term is defined in Regulation S under the Securities Act.

"**Vice President**" when used with respect to the Company or the Trustee, means any vice president, whether or not designated by a number or a word or words added before or after the title "vice president."

## 1.2 Other Definitions.

Term	Defined in Section
"Additional Amounts"	7.8
"Bankruptcy Law"	9.1
"CBCA"	11.2
"Company Order"	2.2
"Debenture Documents"	6.15
"Debenture Liabilities"	6.1
"Deemed Interest Period"	2.15
"Event of Default"	9.1
"Excluded Holder"	7.8
"Extraordinary Resolution"	13.16
"Government Obligations"	11.2
"Notice of Default"	9.1
"Paying Agent"	2.5
"Primary Registrar"	2.5
"Receiver"	9.1
"Redemption Date"	3.3
"Redemption Price"	3.1
"Redemption Price Calculation Date"	3.3
"Registrar"	2.5
"Restrictive Legend"	2.13
"Taxes"	7.8
"U.S. Restrictive Legend"	2.13

## 1.3 Rules of Construction.

- (a) Unless the context otherwise requires:
- (i) a term has the meaning assigned to it;
  - (ii) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;
  - (iii) words in the singular include the plural, and words in the plural include the singular;
  - (iv) all references to "dollars" and "\$" are to lawful money of Canada;
  - (v) provisions apply to successive events and transactions;
  - (vi) the term "merger" includes a statutory share exchange and the term "merged" has a correlative meaning;
  - (vii) the masculine gender includes the feminine and the neuter;
  - (viii) references to agreements and other instruments include subsequent amendments thereto; and

- (ix) all "Article", "Exhibit" and "Section" references are to Articles, Exhibits and Sections, respectively, of or to this Indenture unless otherwise specified herein, and the terms "herein," "hereof" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision.

## **ARTICLE II** **THE DEBENTURES**

### **2.1 Form and Dating.**

The Debentures and the Trustee's certificate of authentication shall be substantially in the respective forms set forth in Exhibit "A" (and, for certainty, shall in all events contain the legend regarding the subordination and postponement of the Debentures and the Security to the Senior Indebtedness and Senior Security), which Exhibit is incorporated in and made part of this Indenture. The Debentures may have notations, legends or endorsements required by applicable law, stock exchange, automated quotation system or depository rule or regulation or usage. The Company shall provide any such notations, legends or endorsements to the Trustee in writing. Each Debenture shall be dated the date of its authentication. The Debentures are being issued by the Company in a transaction exempt from, or not subject to, the prospectus requirements of the Applicable Securities Legislation.

- (a) United States Certificated Debentures. The Debentures have not been and will not be registered under the Securities Act. All Debentures issued and sold in the United States or to, or for the account or benefit of, a U.S. Person, shall be offered and sold pursuant to Regulation D under the Securities Act and shall be issued in the form of one or more Certificated Debentures and bearing both the Restrictive Legend and U.S. Restrictive Legend which shall be delivered in accordance with the delivery instructions provided by the Holder in its subscription agreement for such Debentures.
- (b) Canadian Certificated Debentures. Debentures issued in Canada pursuant to exemptions from the prospectus requirements of Applicable Securities Legislation, and, in Canada and elsewhere outside the United States, in accordance with Rule 903 of Regulation S (where applicable) shall be issued in the form of one or more Certificated Debentures and bearing the Restrictive Legend which shall be delivered in accordance with the delivery instructions provided by the Holder in its subscription agreement for such Debentures.

### **2.2 Execution and Authentication.**

- (a) The aggregate principal amount of Debentures which may be authenticated and delivered under this Indenture is limited to \$13,000,000, except as provided in Sections 2.8 and 2.9.
- (b) An Officer shall sign the Debentures for the Company by manual or facsimile signature. Typographic and other minor errors or defects in any such facsimile signature shall not affect the validity or enforceability of any Debenture that has been authenticated and delivered by the Trustee.



- (c) If an Officer whose signature is on a Debenture no longer holds that office at the time the Trustee authenticates the Debenture, the Debenture shall be valid nevertheless.
- (d) A Debenture shall not be valid until an authorized signatory of the Trustee by manual signature signs the certificate of authentication on the Debenture. The signature shall be conclusive evidence that the Debenture has been authenticated under this Indenture.
- (e) The Trustee shall authenticate and make available for delivery Debentures for original issue in the aggregate principal amount of up to \$13,000,000 upon receipt of: (i) a written order or orders of the Company signed by an Officer of the Company, which shall include a statement to the effect that the conditions set forth in this Section 2.2 relating to the issue, certification and delivery of such Debentures have been complied with (a "**Company Order**"). The Company Order shall specify the principal amount of Debentures to be authenticated and shall further specify the name of the registered Holders, the principal amount of Debentures to be issued, the date on which each original issue of Debentures is to be authenticated and the applicable legends to be placed on such Debentures.
- (f) The Debentures shall be issuable only in registered form without coupons and only in denominations of \$1,000 principal amount and any integral multiple thereof.

### **2.3 No Notice of Trusts.**

Neither the Company nor the Trustee shall be bound to take notice of or see to the execution of any trust (other than that created by this Indenture) whether express, implied or constructive, in respect of any Debenture, and may transfer the same on the direction of the person registered as the Holder thereof, whether named as trustee or otherwise, as though that person were the beneficial owner thereof.

### **2.4 Ownership of Debentures.**

- (a) Unless otherwise required by law, the person in whose name any registered Debenture is registered shall for all the purposes of this Indenture be and be deemed to be the owner thereof and payment of or on account of the principal of, interest, and premium, if any, on such Debenture and shall be made to such registered Holder.
- (b) Where Debentures are registered in more than one name, the principal, interest and premium, if any, from time to time payable in respect thereof may be paid to the order of all such Holders jointly, failing written instructions from them to the contrary, and the receipt of any one of such Holders therefor shall be a valid discharge, to the Trustee and to the Company.
- (c) In the case of the death of one or more joint holders of any Debenture the principal, interest and premium, if any, from time to time payable thereon may be paid to the order of the survivor or survivors of such registered holders and the

receipt of any such survivor or survivors therefor shall be a valid discharge to the Trustee and to the Company.

- (d) The Trustee may assume for the purposes of this Indenture that any address of the Holder appearing in the register maintained by the Trustee is the Holder's actual address.

## **2.5 Registrar and Paying Agent.**

- (a) Subject to Section 2.5(b), the Company shall maintain one or more offices or agencies where Debentures may be presented for registration of transfer or for exchange (each, a "**Registrar**"), one or more offices or agencies where Debentures may be presented for payment (each, a "**Paying Agent**") and one or more offices or agencies where notices and demands to or upon the Company in respect of the Debentures and this Indenture may be served. The Company will at all times maintain a Paying Agent, Registrar and offices or agencies where notices and demands to or upon the Company in respect of the Debentures and this Indenture may be served in the City of Calgary. One of the Registrars (the "**Primary Registrar**") shall keep a register of the Debentures and of their transfer.
- (b) The Company hereby designates the Trustee as Paying Agent (at its office in Calgary, Alberta) and Registrar. The Paying Agent and Registrar will not be changed by the Company without the prior written consent of the Trustee, such consent not to be unreasonably withheld.

## **2.6 Paying Agent to Hold Money in Trust.**

In accordance with Sections 3.4 hereof, within three (3) Business Days prior to the due date of the payment of principal of, or interest on, any Debentures, the Company shall deposit with the Paying Agent a sum sufficient to pay such principal or interest so becoming due. Subject to Section 11.2, a Paying Agent shall hold in trust for the benefit of Holders of Debentures or the Trustee all cash held by the Paying Agent for the payment of principal of, or interest or premium on, the Debentures, as applicable, and shall notify the Trustee in writing of any failure by the Company (or any other obligor on the Debentures) to make any such payment or delivery. If the Company or an Affiliate of the Company acts as Paying Agent, it shall, before 9:00 a.m., Calgary time, on each due date of the principal of, or interest or premium on, any Debentures, segregate the cash and hold it as a separate trust fund. The Company at any time may require a Paying Agent to pay and deliver all cash held by it to the Trustee, and the Trustee may at any time during the continuance of any Default, upon written request to a Paying Agent, require such Paying Agent to pay and deliver forthwith to the Trustee all sums so held in trust by such Paying Agent. Upon doing so, the Paying Agent (other than the Company) shall have no further liability for the money.

## **2.7 Lists of Holders of Debentures.**

The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Holders of Debentures. If the Trustee is not the Primary Registrar, the Company shall furnish to the Trustee within three (3) Business Days after the Regular Record Date and at such other times as the Trustee may request in

writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of Holders of Debentures.

## **2.8 Transfer and Exchange.**

- (a) Subject to compliance with any applicable additional requirements contained in Section 2.13, when a Debenture is presented to a Registrar with a request to register a transfer thereof or to exchange such Debenture for an equal principal amount of Debentures of other authorized denominations, the Registrar shall register the transfer or make the exchange as requested; provided, however, that every Debenture presented or surrendered for registration of transfer or exchange shall be duly endorsed or accompanied by an assignment form and, if applicable, a transfer certificate each in the form included in Exhibit "A", and completed in a manner satisfactory to the Registrar and duly executed by the Holder thereof or its attorney duly authorized in writing. To permit registration of transfers and exchanges, upon surrender of any Debenture for registration of transfer or exchange at an office or agency maintained pursuant to Section 2.5, the Company shall execute and the Trustee shall authenticate Debentures of a like aggregate principal amount at the Registrar's request. Any exchange or transfer shall be without charge, except that the Company or the Registrar may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto; provided that no tax or other governmental charge shall apply to any exchange pursuant to Sections 3.6 or 12.4.
- (b) Neither the Company, the Registrar and the Trustee shall not be obligated to exchange or register a transfer of any Debenture or portion thereof during the period commencing on the Regular Record Date and ending on the Interest Payment Date.
- (c) All Debentures issued upon any transfer or exchange of Debentures shall be valid obligations of the Company, evidencing the same debt and entitled to the same benefits under this Indenture, as the Debentures surrendered upon such transfer or exchange.
- (d) Any Registrar appointed pursuant to Section 2.5 shall provide to the Trustee such information as the Trustee may reasonably require in connection with the delivery by such Registrar of Debentures upon transfer or exchange of Debentures.
- (e) The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Debenture other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

## **2.9 Replacement Debentures.**

- (a) If any mutilated Debenture is surrendered to the Company, a Registrar or the Trustee, and/or the Company, a Registrar and the Trustee receive evidence to their

satisfaction of the ownership, destruction, loss or theft of any Debenture, and there is delivered to the Company, the applicable Registrar and the Trustee such security or indemnity as will be required by each of them to save each of them harmless, then, in the absence of notice to the Company, such Registrar or the Trustee that such Debenture has been acquired by a bona fide purchaser, the Company shall execute, and upon its written request the Trustee shall authenticate and deliver, in exchange for any such mutilated Debenture or in lieu of any such destroyed, lost or stolen Debenture, a new Debenture of like tenor and principal amount, bearing a number not contemporaneously outstanding. Notwithstanding the foregoing, no Debenture shall be delivered as a replacement for any Debenture which has been mutilated or defaced otherwise than upon surrender of the mutilated or defaced Debenture, and no Debenture shall be delivered as a replacement for any Debenture which has been lost, stolen or destroyed unless the applicant for the replacement Debenture has furnished to the Company and the Trustee evidence, satisfactory in form and substance to the Company and the Trustee, of its ownership of, and of such loss, theft or destruction of, such Debenture and has provided such a surety bond and indemnity to the Company and the Trustee, in amount, form and substance satisfactory to each of them.

- (b) If any such mutilated, destroyed, lost or stolen Debenture has become or is about to become due and payable, or is about to be purchased by the Company pursuant to Article III, the Company in its discretion may, instead of issuing a new Debenture, pay or purchase such Debenture, as the case may be.
- (c) Upon the issuance of any new Debentures under this Section 2.9, the Company or the Trustee may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other reasonable expenses (including the reasonable fees and expenses of the Trustee or the Registrar) in connection therewith.
- (d) Every new Debenture issued pursuant to this Section 2.9 in lieu of any mutilated, destroyed, lost or stolen Debenture shall constitute an original additional contractual obligation of the Company, whether or not the mutilated, destroyed, lost or stolen Debenture shall be at any time enforceable by anyone, and shall be entitled to all benefits of this Indenture equally and proportionately with any and all other Debentures duly issued hereunder.
- (e) The provisions of this Section 2.9 are (to the extent lawful) exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Debentures.

## **2.10 Outstanding Debentures.**

- (a) Debentures outstanding at any time are all Debentures authenticated by the Trustee, except for those cancelled by it, those purchased pursuant to Article III, those delivered to the Trustee for cancellation or surrendered for transfer or exchange and those described in this Section 2.10 as not outstanding.
- (b) If a Debenture is replaced pursuant to Section 2.9, it ceases to be outstanding.

- (c) If a Paying Agent holds in respect of the outstanding Debentures on the Final Maturity Date cash sufficient to pay the principal of (including premium, if any) and accrued interest on Debentures (or portions thereof, as the case may be) payable on that date, then on and after such Final Maturity Date, such Debentures (or portions thereof, as the case may be) shall cease to be outstanding and interest on them shall cease to accrue.
- (d) Any Debentures issued pursuant to this Indenture shall be cancelled by the Trustee upon their purchase.

### **2.11 Concurrence in any Notice, Direction, Waiver or Consent.**

In determining whether the Holders of the required principal amount of Debentures have concurred in any notice, direction, waiver or consent, Debentures owned by the Company or any other obligor on the Debentures or by any Affiliate of the Company or of such other obligor shall be disregarded, except that, for purposes of determining whether the Trustee shall be protected in relying on any such notice, direction, waiver or consent, only Debentures which the Trustee, relying conclusively on an Officers' Certificate, actually knows are so owned shall be so disregarded. Debentures so owned which have been pledged in good faith shall not be disregarded if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to the Debentures and that the pledgee is not the Company or any other obligor on the Debentures or any Affiliate of the Company or of such other obligor.

### **2.12 Cancellation.**

The Company at any time may deliver Debentures to the Trustee for cancellation. The Registrar and the Paying Agent shall forward to the Trustee or its agent any Debentures surrendered to them for transfer, exchange, purchase or payment. The Trustee and no one else shall cancel, in accordance with its standard procedures, all Debentures surrendered for transfer, exchange, purchase, payment or cancellation and shall dispose of the cancelled Debentures in accordance with its customary procedures or, upon request, deliver the cancelled Debentures to the Company. All Debentures which are purchased or otherwise acquired by the Company or any of its Subsidiaries prior to the Final Maturity Date pursuant to Article III shall be delivered to the Trustee for cancellation, and the Company may not hold or resell such Debentures or issue any new Debentures to replace any such Debentures.

### **2.13 Legend; Additional Transfer and Exchange Requirements.**

- (a) No transfer of a Debenture to any Person shall be effective under this Indenture or the Debentures unless and until such Debenture has been registered in the name of such Person.
- (b) Upon the transfer, exchange or replacement of Debentures not bearing the Restrictive Legend or U.S. Restrictive Legend, the Registrar shall deliver Debentures that do not bear the Restrictive Legend or U.S. Restrictive Legend.
- (c) Debentures bearing the U.S. Restrictive Legend set forth in Section 2.13(e) shall not be offered, sold or otherwise transferred, except (i) to the Company, (ii) outside the United States in accordance with Rule 904 of Regulation S and in compliance with applicable local laws and regulations, (iii) in accordance with the

exemption from registration under the Securities Act provided by (A) Rules 144 or (B) 144A thereunder, if available, and in compliance with any applicable state securities laws, (iv) pursuant to an effective registration statement under the Securities Act and in compliance with any applicable state securities laws, or (v) in a transaction that does not require registration under the Securities Act or applicable state securities laws and, in the case of subparagraphs (iii)(A) or (v) the seller has furnished to the Company an opinion to such effect from counsel or other evidence of exemption, in either case reasonably satisfactory to the Company prior to such offer, sale or transfer.

- (d) Subject to Section 2.13(a), every Debenture, at the time of initial issuance, shall be subject to the restrictions on transfer provided in the following legend (the "**Restrictive Legend**") until such date as the Restrictive Legend is no longer required by applicable law:

UNLESS PERMITTED UNDER SECURITIES LEGISLATION, THE HOLDER OF THIS SECURITY MUST NOT TRADE THE SECURITY BEFORE •, 2011. WITHOUT PRIOR WRITTEN APPROVAL OF THE TSX VENTURE EXCHANGE AND COMPLIANCE WITH ALL APPLICABLE SECURITIES LEGISLATION, THE SECURITIES REPRESENTED BY THIS CERTIFICATE MAY NOT BE SOLD, TRANSFERRED, HYPOTHECATED OR OTHERWISE TRADED ON OR THROUGH THE FACILITIES OF THE TSX VENTURE EXCHANGE OR OTHERWISE IN CANADA OR TO OR FOR THE BENEFIT OF A CANADIAN RESIDENT UNTIL •, 2011.

- (e) Subject to Section 2.13(a), every Debenture issued to a Holder resident in the United States of America shall, in addition to the restrictions provided in the Restrictive Legend, be subject to the restrictions on transfer provided in the following legend ("**U.S. Restrictive Legend**") until such date as the U.S. Restrictive Legend is no longer required by applicable law.

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "1933 ACT") OR UNDER ANY STATE SECURITIES LAWS. THE HOLDER HEREOF, BY PURCHASING THESE SECURITIES, AGREES FOR THE BENEFIT OF WHITEMUD RESOURCES INC. (THE "COMPANY") THAT SUCH SECURITIES MAY BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED ONLY (A) TO THE COMPANY, (B) OUTSIDE THE UNITED STATES IN ACCORDANCE WITH RULE 904 OF REGULATIONS UNDER THE 1933 ACT, (C) IN ACCORDANCE WITH (I) RULE 144A UNDER THE 1933 ACT, IF AVAILABLE, OR (II) RULE 144 UNDER THE 1933 ACT, IF AVAILABLE, (D) IN ACCORDANCE WITH ANOTHER EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE 1933 ACT, OR (E) UNDER AN EFFECTIVE REGISTRATION STATEMENT UNDER THE 1933 ACT, AND, IN EACH CASE IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS IN A TRANSACTION

THAT DOES NOT REQUIRE REGISTRATION UNDER THE 1933 ACT OR ANY APPLICABLE STATE SECURITIES LAWS, AND, IN THE CASE OF SUBPARAGRAPH (C)(II) OR (D), THE SELLER FURNISHES TO THE COMPANY AN OPINION OF COUNSEL OF RECOGNIZED STANDING IN FORM AND SUBSTANCE SATISFACTORY TO THE COMPANY TO SUCH EFFECT. DELIVERY OF THIS CERTIFICATE MAY NOT CONSTITUTE "GOOD DELIVERY" IN SETTLEMENT OF TRANSACTIONS ON STOCK EXCHANGES IN CANADA.

- (f) Upon the transfer, exchange or replacement of Debentures bearing the Restrictive Legend and/or the U.S. Restrictive Legend, the Registrar shall deliver only Debentures that bear the Restrictive Legend and/or the U.S. Restrictive Legend, as applicable.
  - (i) *U.S. Restrictive Legend Removal.* Notwithstanding the first sentence in Section 2.13(f), the U.S. Restrictive Legend may be removed upon compliance with Sections 2.13(g)(B), (i) or (j).
  - (ii) *Restrictive Legend Removal.* Notwithstanding the first sentence in Section 2.13(f), the Restrictive Legend may be removed upon transfer or exchange of the Debenture after December 7, 2009 or upon compliance with Section 2.13(g)(A).
- (g) (A) Upon the transfer or exchange of Debentures bearing the Restrictive Legend, the Registrar shall deliver Debentures that do not bear the Restrictive Legend, where such Debentures have been sold or exchanged pursuant to a prospectus under Applicable Securities Legislation, and the Holder selling such Debentures has delivered to the Registrar evidence in form and substance satisfactory to it to such effect.

(B) Upon the transfer or exchange of Debentures bearing the U.S. Restrictive Legend, the Registrar shall deliver Debentures that do not bear the U.S. Restrictive Legend where such Debentures have been sold or exchanged pursuant to an effective registration statement under the Securities Act and the Holder selling such Debentures has delivered to the Registrar evidence in form and substance satisfactory to it to such effect.
- (h) The Registrar shall register the transfer or exchange of any Restricted Debenture that bears the U.S. Restrictive Legend, if the Debenture is being transferred or exchanged to a qualified institutional buyer in compliance with, and as defined in, Rule 144A (or any successor provision thereto), provided that such transfer is being made by a proposed transferor who has delivered to the Company and the Registrar evidence of compliance with Rule 144A in form and substance satisfactory to the Company and such transfer or exchange otherwise complies with Applicable Securities Legislation.
- (i) The Registrar shall register the transfer or exchange of any Restricted Debenture that bears the U.S. Restrictive Legend, if the Debenture is being transferred or

exchanged pursuant to Rule 904 of Regulation S (or any successor provision thereto) at a time when the Company is a “foreign issuer” as defined in Regulation S, provided that such transfer is being made by a proposed transferor who has delivered to the Registrar a certificate or such other form or evidence satisfactory to the Registrar and the Company, which may include an opinion of counsel, and such transfer or exchange otherwise complies with Applicable Securities Legislation.

- (j) The Registrar shall register the transfer or exchange of any Restricted Debenture that bears the U.S. Restrictive Legend, if the Debenture is being transferred or exchanged pursuant to, and in accordance with, an exemption from registration provided by Rule 144 under the Securities Act, provided the transferor has furnished to the Registrar and the Company an opinion of counsel of recognized standing, in form and substance satisfactory to the Company and the Trustee, to the effect that the U.S. Restrictive Legend is no longer required under applicable requirements of the Securities Act and such transfer or exchange otherwise complies with Applicable Securities Legislation.
- (k) The Registrar shall register the transfer or exchange of any Restricted Debenture that bears the U.S. Restrictive Legend, if the Debenture is being transferred or exchanged pursuant to, and in accordance with, an exemption from registration under the Securities Act (other than as provided by Rules 903, 904, 144 or 144A), provided the transferor has furnished to the Registrar and the Company an opinion of counsel of recognized standing, in form and substance satisfactory to the Company and the Trustee to such effect and such transfer or exchange otherwise complies with Applicable Securities Legislation.
- (l) The Registrar shall register the transfer or exchange of any Restricted Debenture that bears the Restrictive Legend, if the Debenture is being transferred or exchanged pursuant to, and in accordance with, an exemption from the registration and prospectus requirements under the Applicable Securities Legislation, provided the transferor has furnished to the Registrar and the Company evidence satisfactory to the Company and the Trustee, in their sole discretion, to the effect that such transfer or exchange is permitted pursuant to Applicable Securities Legislation and such transfer or exchange otherwise complies with applicable United States securities laws.

As used in Sections 2.13(b) through (l), the term "transfer" encompasses any sale, pledge, transfer, hypothecation or other disposition of any Debenture.

## **2.14 Computation of Interest.**

Interest shall accrue from the date of issue of the Debentures on the outstanding principal amount at the rate of ten percent (10%) per annum calculated semi-annually, on the portion of the principal amount that remains unpaid, through the day before the relevant Interest Payment Date in each year, both before and after maturity, default or judgment, and be payable (other than the first interest payment) in semi-annual instalments on the 30<sup>th</sup> day of June and the 31<sup>st</sup> day December of each year, commencing on December 31, 2011 and ending on the Final Maturity Date (provided that all amounts owing in respect of such Debentures have been paid in full), or



such earlier date on which any such Debentures are redeemed pursuant to the terms hereof. Interest for any period shorter than a full semi-annual period shall be calculated on the basis of the actual number of days for which the principal is outstanding computed on the basis of a year of 365 days or 366 days in the case of a leap year.

### **2.15 Interest Act (Canada).**

For purposes only of disclosure under the *Interest Act* (Canada), any rate of interest which is calculated with reference to a period (the "**Deemed Interest Period**") that is less than the actual number of days in the calendar year of calculation is, for the purposes of the *Interest Act* (Canada), equivalent to an annual rate based on a calendar year calculated by multiplying such rate by the actual number of days in the calendar year in which the Deemed Interest Period ends and dividing by the number of days in the Deemed Interest Period.

### **2.16 Debentures to Rank Pari Passu**

The Debentures may be issued in such amounts, to such Persons and on such terms not inconsistent with the provisions of this Indenture. Each Debenture as soon as issued or negotiated, subject to the terms hereof (including, without limitation, Article VI), will be a general secured obligation of the Company. Each Debenture shall rank *pari passu* to each other Debenture. Each Debenture shall entitle the Holder to the benefits hereof, equally and proportionately, without discrimination, preference or priority whatsoever, as if all of the Debentures had been issued and negotiated simultaneously.

## **ARTICLE III REDEMPTION AND PURCHASE**

### **3.1 Redemption of Debentures.**

At any time prior to Maturity, , the Company may at its option redeem the Debentures in whole at any time, or in part from time to time, on giving not more than 60 days nor less than 30 days prior notice to the Holders of the Debentures. The Debentures shall be redeemable at a redemption price equal to their principal amount plus accrued and unpaid interest (the "**Redemption Price**"), payable in cash.

### **3.2 Notice to Trustee.**

If any Debentures for the time being outstanding are to be redeemed, the Company shall, at least 30 days and not more than 60 days before the date upon which notice of redemption is to be given to Holders of such Debentures, notify the Trustee in writing of the Company's intention to redeem Debentures and of the aggregate principal amount of Debentures to be redeemed. If less than all of the Debentures for the time being outstanding are to be redeemed, the Debentures to be redeemed shall be selected by the Trustee on a pro rata basis (to the nearest multiple of \$1,000) in accordance with the principal amount of Debentures registered in the name of each Holder or by such other means as the Trustee may deem equitable and expedient. For this purpose, the Trustee may make regulations with regard to the manner in which such Debentures may be so selected, and regulations so made shall be valid and binding upon all Holders. Certificates representing Debentures in denominations in excess of \$1,000 may be selected and called for redemption in part only (such part being \$1,000 or an integral multiple thereof) and,

unless the context otherwise requires, reference to Debentures in Article 3 shall be deemed to include any such part of the principal amount of Debentures which shall have been so selected and called for redemption. The Holder of any Debentures called for redemption in part only, upon surrender of such Debentures for payment, shall be entitled to receive, without expense to such Holder, one or more new Debentures for the unredeemed part of the Debentures so surrendered, and the Trustee shall certify and deliver such new Debenture or Debentures upon receipt of the Debentures so surrendered.

### **3.3 Notice of Redemption.**

Notice of intention to redeem any Debentures shall be given by or on behalf of the Company to the Holders of the Debentures which are to be redeemed not more than 60 days and not less than 30 days prior to the date fixed for redemption (the “**Redemption Date**”), in the manner provided in Section 15.1. Every notice of redemption shall specify the stated maturity of the Debentures called for redemption, the Redemption Date, the Redemption Price (or, where applicable only, the date upon which the Redemption Price shall be calculated in connection with the Debentures called for redemption (the “**Redemption Price Calculation Date**”)), and the place or places of payment, and shall state that all interest thereon shall cease from and after the Redemption Date. In addition, unless all the outstanding Debentures are to be redeemed, the notice of redemption shall specify:

- (a) in the case of a notice mailed to a Holder, the distinguishing letters and numbers of the Debentures, if applicable, which are to be redeemed (or of such thereof as are registered in the name of such Holder);
- (b) in the case of a published notice, the distinguishing letters and numbers of the Debentures which are to be redeemed, if applicable, or, if such Debentures are selected by terminal digit or other similar system, such particulars as may be sufficient to identify the Debentures so selected;
- (c) in all cases, the principal amount of each Debenture to be redeemed or, if any such Debenture is to be redeemed in part only, the principal amount of such part.

If a notice of redemption specifies a Redemption Price Calculation Date for any Debentures, the Company shall deliver to the Trustee, not later than the fifth Business Day prior to the Redemption Date for such Debentures, an Officer’s Certificate that specifies the Redemption Price of such Debentures.

### **3.4 Debentures Due on Redemption Date.**

Upon notice of redemption having been given as specified in Section 3.3, all the Debentures so called for redemption shall thereupon be and become due and payable at the Redemption Price and on the Redemption Date specified in such notice, in the same manner and with the same effect as if such date was the stated maturity specified in such Debentures, anything therein or herein to the contrary notwithstanding, and from and after such Redemption Date, if the money necessary to redeem such Debentures shall have been deposited as provided in Section 7.1 and affidavits or other proof satisfactory to the Trustee as to the publication or mailing of such notice shall have been lodged with the Trustee, such Debentures shall not be considered as outstanding hereunder and interest upon such Debentures shall cease.

If any question shall arise as to whether any notice has been given as required or any deposit has been made, such question shall be decided by the Trustee, whose decision shall be final and binding upon all parties in interest.

### **3.5 Debentures Purchased in Part.**

Any Debenture that is to be purchased only in part shall be surrendered at the office of a Paying Agent, the Company shall execute and the Trustee shall authenticate and deliver to the Holder of such Debenture, without service charge, a new Debenture or Debentures, of such authorized denomination or denominations as may be requested by such Holder, in aggregate principal amount equal to, and in exchange for, the portion of the principal amount of the Debenture so surrendered that is not purchased. No Debenture shall be purchased in part unless the principal amount redeemed is \$1,000 or any integral thereof.

### **3.6 Compliance with Securities Laws Upon Purchase of Debentures.**

In connection with any offer to purchase Debentures under Section 3.1, the Company shall (a) if applicable, comply with Rule 13e-4 and Rule 14e-1 (or any successor to either such Rule), and any other applicable tender offer rules under the Exchange Act, (b) file the related Schedule TO (or any successor or similar schedule, form or report) if required under the Exchange Act, and (c) otherwise comply with all Canadian federal and provincial laws and United States securities laws in connection with such offer to purchase or purchase of Debentures, all so as to permit the rights of the Holders and obligations of the Company under Article III to be exercised in the time and in the manner specified therein. To the extent that compliance with any such laws, rules and regulations would result in a conflict with any of the terms hereof, this Indenture is hereby modified to the extent required for the Company to comply with such laws, rules and regulations.

### **3.7 Surrender for Cancellation.**

The Company shall surrender any Debenture purchased by the Company pursuant to Section 3.1 or Section 3.8 or otherwise to the Trustee for cancellation. Any Debentures surrendered to the Trustee for cancellation may not be reissued or resold by the Company and will be cancelled promptly in accordance with Section 2.12.

### **3.8 Purchase of Debentures in Open Market.**

The Company may repurchase Debentures in open market or by tender at any price or by private agreement.

## **ARTICLE IV**

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**ARTICLE V**  
**SECURITY**

**5.1 Security for Debentures**

To secure the prompt and complete payment and performance when due of all of its obligations under this Indenture and the Debentures, the Company has executed and delivered, or caused to be executed and delivered, to the Trustee the Security Documents.

**5.2 Registration**

Subject to the Subordination Agreement, the Company will ensure that this Indenture and all documents, caveats, security notices, financing statements and financing change statements in respect thereof, including the Security Documents, are promptly filed and re-filed and registered as often as may be required by Applicable Law or as may be necessary or desirable to perfect and preserve the Security as a Security Interest and to the extent practicable, to conform to the security delivered pursuant to Senior Indebtedness under the CWB Commitment Letter, subject only to Permitted Encumbrances and will promptly provide the Trustee with evidence (satisfactory to the Trustee) of such filing, registration and deposit after the making thereof.

**ARTICLE VI**  
**SUBORDINATION OF SECURITIES**

**6.1 Applicability of Article.**

- (a) The indebtedness, liabilities and obligations of the Company hereunder or under the Debentures, whether on account of principal, interest, premium or otherwise (collectively the "**Debenture Liabilities**"), shall be subordinated and postponed and subject in right of payment, to the extent and in the manner hereinafter set forth in the following sections of this Article VI, to the full and final payment in cash of all Senior Indebtedness, to the extent of the Senior Indebtedness outstanding from time to time, provided always that until a demand for payment of any Senior Indebtedness is made by a Senior Creditor in writing and delivered to the Company, with a copy to the Trustee, the Company shall be entitled to make, and each Holder and the Trustee shall be entitled to receive, all regularly scheduled payments coming due under this Indenture and the Debentures and the Documents executed and delivered thereunder, and the Company shall be entitled to perform all of its obligations in respect thereof.
- (b) The Security shall rank subordinate to and shall be postponed to the Senior Security with respect to all of the property, assets and undertaking of the Company and its Subsidiaries and, in each case, each Holder of any such Debenture by his acceptance thereof agrees to and shall be bound by the provisions of this Article VI and of the Subordination Agreement.

**6.2 Order of Payment.**

In the event of any dissolution, winding-up, liquidation, bankruptcy, insolvency, receivership, creditor enforcement, realization or reorganization or other similar

proceedings relating to the Company, any of the Subsidiaries or any of their respective property (whether voluntary or involuntary, partial or complete) or any other marshaling of the assets and liabilities of the Company or any of such Subsidiaries (other than any directly or indirectly wholly-owned Subsidiaries of the Company):

- (a) all Senior Indebtedness shall first be paid in full in cash, or provision made for such payment in full in cash, before any further payment is made on account of Debenture Liabilities;
- (b) any payment or distribution of assets of the Company or any of such Subsidiaries, whether in cash, property or securities, to which the Holders or the Trustee on behalf of such Holders would be entitled except for the provisions of this Article VI, shall be paid or delivered by the trustee in bankruptcy, receiver, assignee for the benefit of creditors, or other liquidating agent making such payment or distribution, directly to the holder of Senior Indebtedness or its representative or representatives, or to the trustee or trustees under any indenture pursuant to which any instruments evidencing any of such Senior Indebtedness may have been issued, to the extent necessary to pay all Senior Indebtedness in full in cash after giving effect to any concurrent payment or distribution, or provision therefor, to the holder of such Senior Indebtedness; and
- (c) the Senior Creditor or a receiver or a receiver-manager of the Company, or of all or part of their respective assets or any other enforcement agent may sell, mortgage, or otherwise dispose of the assets of the Company in whole or in part, free and clear of all Debenture Liabilities and without the approval of the Holders or the Trustee or any requirement to account to the Trustee or the Holders.

The rights and priority of the Senior Indebtedness and the subordination pursuant hereto shall not be affected by:

- (i) the time, sequence or order of creating, granting, executing, delivering, or registering, perfecting or failing to register or perfect any security notice, caveat, financing statement or other notice in respect of the Senior Security or the Security;
- (ii) the time or order of the attachment, perfection or crystallization of any security constituted by the Senior Security or the Security;
- (iii) the taking of any collection, enforcement or realization proceedings pursuant to the Senior Security or the Security;
- (iv) the date of obtaining of any judgment or order of any bankruptcy court or any court administering bankruptcy, insolvency or similar proceedings as to the entitlement of the Senior Creditor or the Holders or other trustee or any of them to any money or property of the Company;
- (v) the failure to exercise any power or remedy reserved to the Senior Creditor under the Senior Security or to insist upon a strict compliance with any terms thereof;

- (vi) whether any Senior Security is now perfected, hereafter ceases to be perfected, is avoidable by any trustee in bankruptcy or like official or is otherwise set aside, invalidated or lapses;
- (vii) the date of giving or failing to give notice to or making demand upon the Company; or
- (viii) any other matter whatsoever.

### **6.3 Subrogation to Rights of Holders of Senior Indebtedness.**

Subject to the prior payment in full in cash of all Senior Indebtedness, the Holders shall be subrogated to the rights of the Senior Creditor to receive payments or distributions of assets of the Company and its Subsidiaries, to the extent of the application thereto of such payments or other assets which would have been received by the Holders but for the provisions hereof, until the principal of, premium and interest on the Debentures shall be paid in full, and no such payments or distributions to the Holders of cash, property or securities, which otherwise would be payable or distributable to the Senior Creditor, shall, as between the Company, its creditors other than the Senior Creditor, and the Holders, be deemed to be a payment by the Company to the Senior Creditor or on account of the Senior Indebtedness, it being understood that the provisions of this Article VI are and are intended solely for the purpose of defining the relative rights of the Holders, on the one hand, and the Senior Creditor, on the other hand.

The Trustee, for itself and on behalf of each of the Holders, hereby waives any and all rights to require the Senior Creditor to pursue or exhaust any rights or remedies with respect to the Company, its Subsidiaries or any property and assets subject to the Senior Security or in any other manner to require the marshaling of property, assets or security in connection with the exercise by the Senior Creditor of any rights, remedies or recourses available to them.

### **6.4 Obligation to Pay Not Impaired.**

Subject to the Subordination Agreement, nothing contained in this Article VI or elsewhere in this Indenture or in the Debentures is intended to or shall impair, as between the Company, its creditors other than the Senior Creditor, and the Holders, the obligation of the Company, which is absolute and unconditional, to pay to the Holders the principal of and interest on the Debentures, as and when the same shall become due and payable in accordance with their terms, or affect the relative rights of the Holders and creditors of the Company other than the Senior Creditor, nor shall anything herein or therein prevent the Trustee or the Holders from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, subject to the rights, if any, under this Article VI of the Senior Creditor.

### **6.5 No Payment if Senior Indebtedness Demanded or in Default.**

In addition to and without limiting the provisions of the Subordination Agreement, and for the avoidance of doubt, upon any of the Senior Indebtedness becoming due and payable, whether upon the maturity of any Senior Indebtedness by lapse of time, demand for payment, acceleration or otherwise, or any other enforcement of any Senior

Indebtedness, then all such Senior Indebtedness shall first be paid in full in cash, or shall first have been duly provided for, before any further payment is made by the Company or any of its Subsidiaries on account of the Debenture Liabilities. The fact that any payment hereunder is prohibited by this Section 6.5 shall not prevent the failure to make such payment from being an Event of Default hereunder.

#### **6.6 Payment on Debentures Permitted.**

Subject to the Subordination Agreement, nothing contained in this Article VI or elsewhere in this Indenture, or in any of the Debentures, shall affect the obligation of the Company to make, or prevent the Company from making, at any time except as prohibited by Section 6.2 or Section 6.5, any payment of principal of or interest on the Debentures or of any required Redemption Price or any other amount due and payable under the Debentures or any Security Documents. The fact that any such payment is prohibited by the Subordination Agreement, Section 6.2 or Section 6.5 shall not prevent the failure to make such payment from being an Event of Default hereunder. Nothing contained in this Article VI or elsewhere in this Indenture, or in any of the Debentures, shall, except as prohibited by the Subordination Agreement, Section 6.2 or Section 6.5, the application by the Trustee of any monies deposited with the Trustee hereunder for the purpose, to the payment of or on account of the Debenture Liabilities.

#### **6.7 Confirmation of Subordination.**

Each Holder of Debentures by his acceptance thereof authorizes and directs the Trustee on his behalf to take such action as may be necessary or appropriate to effect the subordination as provided in this Article VI and appoints the Trustee his attorney-in-fact for any and all such purposes. Such power of attorney, being coupled with an interest, shall be irrevocable. Upon request of the Company, and upon being furnished an Officers' Certificate stating that one or more named persons are Senior Creditors and specifying the amount and nature of the Senior Indebtedness of such Senior Creditor, the Trustee shall enter into a written agreement or agreements with the Company and the person or persons named in such Officers' Certificate providing that such person or persons are entitled to all the rights and benefits of this Article VI as a Senior Creditor and for such other matters, such as an agreement not to amend the provisions of this Article VI and the definitions used herein without the consent of such Senior Creditor, as the Senior Creditor may reasonably request. Such agreement shall be conclusive evidence that the indebtedness specified therein is Senior Indebtedness, however, nothing herein shall impair the rights of any Senior Creditor who has not entered into such an agreement.

#### **6.8 Knowledge of Trustee.**

Notwithstanding the provisions of this Article VI or any provision in this Indenture or in the Debentures contained, the Trustee will not be charged with knowledge of any Senior Indebtedness or of any default in the payment thereof, or of the existence of any other fact that would prohibit the making of any payment of monies to or by the Trustee, or the taking of any other action by the Trustee, unless and until the Trustee has received written notice thereof from the Company, any Holder or any Senior Creditor; provided that such notice to the Trustee shall be deemed to be notice to the Holders.

**6.9 Trustee May Hold Senior Indebtedness.**

The Trustee is entitled to all the rights set forth in this Article VI with respect to any Senior Indebtedness at the time held by it, to the same extent as any other holder of Senior Indebtedness, and nothing in this Indenture deprives the Trustee of any of its rights as such holder.

**6.10 Rights of Holders of Senior Indebtedness Not Impaired.**

No right of any present or future holder of any Senior Indebtedness to enforce the subordination herein will at any time or in any way be prejudiced or impaired by any act or failure to act on the part of the Company or any of its Subsidiaries or by any non-compliance by the Company with the terms, provisions and covenants of this Indenture, regardless of any knowledge thereof which any such holder may have or be otherwise charged with.

**6.11 Altering the Senior Indebtedness.**

The holder of the Senior Indebtedness shall have the right to extend, renew, restate, replace, modify or amend the terms of the Senior Indebtedness or any security therefor and to release, sell or exchange such security and otherwise to deal freely with the Company and its Subsidiaries, all without notice to or consent of the Holders or the Trustee and without affecting the liabilities and obligations of the parties to this Indenture or the Holders or the Trustee, provided always that the Senior Indebtedness, as extended, renewed, restated, replaced, modified or amended, shall not exceed the aggregate principal amounts referred to in Section 1 of the CWB Commitment Letter, and that all fees, interest and other terms associated with the Senior Indebtedness, as extended, renewed, restated, replaced, modified or amended, including the security granted therefor, is no more onerous on the Company than the terms contained in the CWB Commitment Letter.

**6.12 Invalidated Payments.**

In the event that any of the Senior Indebtedness shall be paid in full and subsequently, for whatever reason, such formerly paid or satisfied Senior Indebtedness becomes unpaid or unsatisfied, the terms and conditions of this Article VI shall be reinstated and the provisions of this Article shall again be operative until all Senior Indebtedness is repaid in full, provided that such reinstatement shall not give the Senior Creditors any rights or recourses against the Trustee or the Holders for amounts paid to the Holders subsequent to such payment or satisfaction in full and prior to such reinstatement.

**6.13 Contesting Security.**

The Trustee, for itself and on behalf of the Holders, agrees that it shall not contest or bring into question the validity, perfection or enforceability of the Senior Indebtedness or any of the Senior Security, or the relative priority of the Senior Security.



#### **6.14 No Set-off**

Each of the Company and the Trustee, for itself and on behalf of each Holder, agrees that it shall have no rights of set-off or counterclaim with respect to the principal of and interest on the Debentures at any time when any payment of, or in respect of, such amounts to the Trustee or the Holder is prohibited by this Article VI or is otherwise required to be paid to the Senior Creditors or their representative or to the trustee or trustees under any indenture pursuant to which any instruments evidencing any of the Senior Indebtedness may have been issued, as their interests may appear.

#### **6.15 Subordination Agreement**

In addition to the provisions of this Article VI, the Trustee, for itself and on behalf of the Holders, acknowledges and agrees that that Debentures shall be subordinated and postponed to the Senior Indebtedness and the Security shall be subordinated and postponed to the Senior Security pursuant to, and in accordance with, the terms of the Subordination Agreement and all rights, remedies and privileges of the Holders under the Debenture Documents (defined below) shall be subject to the Subordination Agreement. The Trustee shall have the authority to enter into, execute, deliver and observe and perform such Subordination Agreement both for itself, and on behalf of the Holders.

The provisions of the Subordination Agreement shall be in addition to and shall not be limited by the provisions of this Article VI, the other provisions of this Indenture or any provisions of the Debentures, any subscription agreement in respect of the Debentures, the Security Documents or any other document or instrument relating to any of the foregoing (collectively, the "**Debenture Documents**"). In the event of any conflict or inconsistency between the provisions of the Subordination Agreement and the provisions of this Indenture and the other Debenture Documents, the Subordination Agreement will prevail and govern notwithstanding any provision hereof or of any of the other Debenture Documents to the contrary.

### **ARTICLE VII** **COVENANTS**

#### **7.1 Payment of Debentures.**

- (a) The Company shall promptly make all payments in respect of the Debentures on the dates and in the manner provided in the Debentures and this Indenture. Subject to payments made under Section 7.1(b), a payment of principal or interest shall be considered paid on the date it is due if the Paying Agent (other than the Company) holds by 9:00 a.m., Calgary time, on that date money deposited by or on behalf of the Company sufficient to make the payment. Subject to Section 12.1, accrued and unpaid interest on any Debenture that is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid in cash to the Person in whose name that Debenture is registered at the close of business on the Regular Record Date for such interest at the office or agency of the Company maintained for such purpose. The principal amount, together with accrued and unpaid interest thereon shall be considered paid on the applicable date due if on such date the Trustee or the Paying Agent holds, in accordance with

this Indenture, money sufficient to pay all such amounts then due. The Company shall, to the fullest extent permitted by law, pay interest in immediately available funds on overdue principal amount and interest at the annual rate borne by the Debentures compounded semi-annually, which interest shall accrue from the date such overdue amount was originally due to the date payment of such amount, including interest thereon, has been made or duly provided for. All such interest shall be payable on demand.

- (b) As interest becomes due on each Debenture, the Company shall, on or before 9:00 a.m., Calgary Time, on the third (3<sup>th</sup>) Business Day immediately prior to the applicable Interest Payment Date, deliver to the Trustee a certified cheque, bank draft or wire transfer in an amount sufficient to pay such interest as is payable in respect of such Debentures. Upon receipt of such interest payment from the Company, the Trustee, on behalf of the Company, shall then, subject to Section 7.1(c), send or forward by prepaid ordinary mail, electronic transfer of funds or such other means as may be agreed to by the Trustee, payment of such interest (less any tax required to be withheld therefrom, if applicable) to the order of the registered holder of such Debenture appearing on the Register maintained by the Trustee addressed to the holder at the holder's last address appearing on the Register, unless such holder otherwise directs. If payment is made to the holder by cheque, such cheque shall be forwarded at least two (2) Business Days prior to each applicable Interest Payment Date and if payment is made by other means (such as electronic transfer of funds, provided the Trustee must receive confirmation of its receipt of funds prior to being required to wire funds to holders), such payment shall be made in a manner whereby the holder receives credit for such payment on the date such interest on such Debenture becomes due. The mailing of such cheque or the making of such payment by other means shall, to the extent of the sum represented thereby, plus the amount of any tax withheld as aforesaid, satisfy and discharge all liability for interest on such Debenture, unless in the case of payment by cheque, such cheque is not paid at par on presentation.
- (c) Payment of the principal of and interest, if any, on the Debentures to a Holder with an aggregate principal amount in excess of \$2,000,000 will be paid by wire transfer in immediately available funds at the election of such Holder if such Holder has provided wire transfer instructions to the Trustee at least 10 Business Days prior to the payment date. Any wire transfer instructions received by the Trustee will remain in effect until revoked by the Holder. Principal amount payments on a Debenture will be made only upon surrender to the Trustee of the Debenture.

## **7.2 Reporting Requirements.**

- (a) The Company shall file with the Trustee within 15 days after the filing thereof with securities commissions or similar regulatory authorities in each of the provinces of Canada, copies of all reports and other information and documents that the Company is required to file with such securities commissions or similar regulatory authorities and deliver to the Holders; provided however that any reports, information and documents filed on The System for Electronic Document

Analysis and Retrieval (SEDAR) shall be deemed to be filed with the Trustee and deemed to be delivered by the Trustee and the Company to the Holders. The Company will provide copies of such reports, information and documents to Holders upon request.

- (b) The Company shall, and shall cause its Subsidiaries to, deliver to the Trustee as soon as practicable after the receipt by the Company or any of the Subsidiaries thereof, copies of all agreements executed from time to time in favour of any Senior Creditor or its agents, including, for certainty, any amendments, replacements or supplements to the CWB Commitment Letter.
- (c) Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates). For greater certainty, the Trustee is not obligated to deliver any reports, information or documents received pursuant to this Section 7.2 to Holders unless directed to do so by an Officers' Certificate.

### **7.3 Compliance Certificates.**

The Company shall deliver to the Trustee, semi-annually and not less than 10 days prior to each Interest Payment Date or at any other time at the request of the Trustee, acting reasonably, an Officers' Certificate as to the signers' knowledge of the Company's compliance with all conditions and covenants on its part contained in this Indenture and in the Security Documents and stating whether or not the signers know of any Default or Event of Default. If such signers know of such a Default or Event of Default, the Officers' Certificate shall describe the Default or Event of Default and the efforts to remedy the same. For the purposes of this Section 7.3, compliance shall be determined without regard to any grace period or requirement of notice provided pursuant to the terms of this Indenture.

### **7.4 Further Instruments and Acts.**

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

### **7.5 Maintenance of Corporate Existence.**

Subject to Article VIII, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence.

### **7.6 Rule 144A Information Requirement.**

So long as the Debentures are "restricted securities" within the meaning of Rule 144, the Company covenants and agrees that it shall, during any period in which it is not subject to Section 13 or 15(d) under the Exchange Act, nor exempt from those requirements by virtue of Rule 12g3-2(b) thereunder, upon the request of any Holder or beneficial Holder of the Debentures make available to such Holder or beneficial Holder of Debentures which continue to

be Restricted Debentures in connection with any sale thereof and any prospective purchaser of Debentures designated by such Holder or beneficial Holder, the information required pursuant to Rule 144A(d)(4) under the Securities Act and it will take such further action as any Holder or beneficial Holder of such Debentures may reasonably request, all to the extent required from time to time to enable such Holder or beneficial Holder to sell its Debentures without registration under the Securities Act within the limitation of the exemption provided by Rule 144A, as such rule may be amended from time to time. Whether a person is a beneficial Holder shall be determined by the Company in accordance with the *Securities Act* (Alberta).

#### **7.7 Stay, Extension and Usury Laws.**

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

#### **7.8 Payment of Additional Amounts.**

All payments made by or on behalf of the Company under or with respect to the Debentures (including, without limitation, any penalties, interest and other liabilities related thereto) will be made free and clear of and without withholding or deduction for, or on account of, any present or future tax, duty, levy, impost, assessment or other governmental charge (including, without limitation, penalties, interest and other liabilities related thereto) imposed or levied by or on behalf of any Canadian federal or provincial taxing authority having power to tax, including without limitation any such charges or taxes imposed under Part XIII of the Tax Act (or any successor legislation of similar effect) ("**Taxes**"), unless the Company or the Trustee is required by law or the interpretation or administration thereof, to withhold or deduct any amounts for, or on account of, Taxes. If the Company or the Trustee is so required to withhold or deduct any amount for or on account of Taxes from any payment made under or with respect to the Debentures, the Company will pay as additional interest such additional amounts ("**Additional Amounts**"), as may be necessary so that the net amount received by each Holder after such withholding or deduction (including any withholding or deduction required to be made in respect of Additional Amounts) will not be less than the amount the Holder would have received if such Taxes had not been withheld or deducted and similar payment (the term "**Additional Amounts**" shall also include any such similar payments) will also be made by the Company to Holders (other than Excluded Holders) of Debentures that are not subject to withholding but are required to pay Taxes other than net income tax directly on amounts otherwise subject to withholding; provided, however, that no Additional Amounts will be payable with respect to:

- (a) a payment made to a Holder or former Holder of Debentures (an "**Excluded Holder**") in respect of the beneficial owner thereof:

- (i) with which the Company does not deal at arm's length (within the meaning of the Tax Act (or any successor legislation of similar effect)) at the time of making such payment;
  - (ii) that is subject to such Taxes by reason of its failure to comply with any certification, identification, information, documentation or other reporting requirement if compliance is required by law, regulation, administrative practice or an applicable treaty as a precondition to exemption from, or a reduction in the rate of deduction or withholding of, such Taxes (provided that in the case of any imposition or change in any such certification, identification, information, documentation or other reporting requirement which applies generally to Holders of Debentures who are not residents of Canada, at least sixty (60) days prior to the effective date of any such imposition or change, the Company shall give written notice, in the manner provided in this Indenture, to the Trustee and the Holders of the Debentures then outstanding of such imposition or change, as the case may be, and provide the Trustee and such Holders with such forms or documentation, if any, as may be required to comply with such certification, identification, information, documentation, or other reporting requirement); or
  - (iii) that is subject to such Taxes by reason of its carrying on business in or otherwise being connected with Canada or any province or territory thereof otherwise than by the mere holding of such Debentures or the receipt of payments or exercise of any enforcement rights, thereunder; or
- (b) any estate, inheritance, gift, sales, excise, transfer, personal property or similar tax, assessment or governmental charge ("**Excluded Taxes**").

The Company will furnish the Trustee, within three (3) Business Days following a Regular Record Date, an Officers' Certificate setting out all Holders of who are subject to Taxes and Excluded Holders of which the Company is aware of as at such date. Concurrently with the payment of interest by the Company pursuant to Section 7.1(b), the Company will pay all Additional Amounts to the Trustee, and the Trustee will (i) make such withholding or deduction from the interest amount and (ii) remit the full amount deducted or withheld to the relevant authority in accordance with applicable law. If for any reason the Trustee determines that Taxes are payable and, accordingly, the Company is obliged to pay Additional Amounts in respect of such Taxes, the Company shall pay to the Trustee all such Additional Amounts in respect of such Taxes unless the Company provides the Trustee with a legal opinion, in form and terms satisfactory to the Trustee, confirming that Taxes are not payable and that the Trustee would not be liable under any such applicable law for failure to withhold or deduct, and remit such amounts on account of Taxes.

The Trustee will furnish to the Company, within thirty (30) days after the date the payment of any Taxes required to be paid hereunder is due pursuant to applicable law in respect of such Debentures, written confirmation, or such other form of evidence required by the Company, acting reasonably, of such payment by the Trustee. The Trustee shall be entitled to rely on an Officers' Certificate for the calculation of any Additional Amounts.

The Company will indemnify and hold harmless the Trustee and Holder of any Debentures (other than an Excluded Holder or with respect to Excluded Taxes) and upon written request reimburse the Trustee and each such Holder for the amount of:

- (c) any Taxes so levied or imposed and paid by such Holder as a result of any failure to withhold or deduct any amounts for, or on account of, Taxes under this Section 7.8;
- (d) any liability (including penalties, interest and expenses) arising therefrom or with respect thereto; and
- (e) any Taxes levied or imposed and paid by the Holder with respect to any reimbursement under clause (c) or (d) above.

Whenever in this Indenture there is mentioned, in any context, the payment of principal and interest or any other amount payable under or with respect to any Debenture, such mention shall be deemed to include mention of the payment of Additional Amounts provided for in this Section to the extent that, in such context, Additional Amounts are, were or would be payable in respect thereof.

Anything in this Indenture to the contrary notwithstanding, the covenants and provisions of this Section 7.8 shall survive any termination or discharge of this Indenture, and the repayment of all or any of the Debentures, and shall remain in full force and effect.

#### **7.9 Maintenance of Office or Agency.**

The Company will maintain an office or agency of the Trustee, Registrar and Paying Agent where Debentures may be presented or surrendered for payment, where Debentures may be surrendered for registration of transfer or purchase and where notices and demands to or upon the Company in respect of the Debentures and this Indenture may be served. The Corporate Trust Office shall initially be one such office or agency for all of the aforesaid purposes. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the address of the Trustee set forth in Section 15.1.

#### **7.10 Use of Funds.**

The Company shall use the net proceeds from the issuance of the Debentures as follows:

- (a) for the repayment in full of all indebtedness and obligations of the Company to Canadian Western Bank in respect of the CWB Loan Segment (4) Facility;
- (b) for repayment or reduction of short-term indebtedness due to existing creditors of the Company; and
- (c) for general working capital purposes of the Company that advance the Company's metakaolin product to commercial feasibility.

### **7.11 Restriction on Debt Incurrence and Negative Pledge.**

The Company shall not, and shall not permit its Subsidiaries to:

- (a) incur any Debt, other than Permitted Debt and Senior Indebtedness; or
- (b) create, assume or permit to exist any Security Interests on any of its property, undertaking or assets, other than Permitted Encumbrances.

### **7.12 Non-Arm's Length Transactions.**

Neither the Company nor any of the Subsidiaries shall make any payment to, or sell, lease or transfer or otherwise dispose of any of its properties or assets to, or purchase any assets or property from, any Affiliate (except as between or among any of the Company and its Subsidiaries) unless (a) such transaction is on terms that are no less favourable to the Company than those that would have been obtained in a comparable transaction with a person that is not an affiliate and (b) the Company delivers to the Trustee, for further delivery to the Holders:

- (i) If such transaction is in excess of \$50,000, an Officers' Certificate certifying that the transaction complies with the Indenture and was approved by a majority of the disinterested members of the board along with a certified copy of such resolution; and
- (ii) If such transaction is in excess of \$200,000, along with the Officers' Certificate must deliver an opinion as to the fairness of the transaction from a financial point of view issued by an accounting, appraisal or investment banking firm of nation standing in Canada or the United States.

### **7.13 Prepayment of Senior Indebtedness**

Upon each release by the Senior Creditor, being the successor holder of the Senior Indebtedness (having acquired the Senior Indebtedness from Canadian Western Bank) of all or any portion of the cash security securing the CWB Segment (1) Facility or the CWB Segment (2) Facility (collectively, the "**Cash Collateral**"), the Company shall forthwith pay 100% of all such Cash Collateral released to the Senior Creditor, to be applied in prepayment also of all outstanding Senior Indebtedness.

### **7.14 Insurance**

The Company will maintain in full force and effect such policies of insurance, including public liability and property damage insurance, in such amounts issued by insurers of recognized standing covering its properties and operations as are customarily maintained by Persons engaged in the same or similar business in the localities where its properties and operations are located and will provide to the Trustee annually confirmation of such insurance policies including a statement that the loss payee is the Trustee.

**ARTICLE VIII**  
**CONSOLIDATION; MERGER; CONVEYANCE; TRANSFER OR LEASE**

**8.1 Company may Consolidate, etc., Only on Certain Terms.**

- (a) The Company may not, without the consent of the Holders by Extraordinary Resolution, consolidate with or amalgamate or merge with or into any Person (other than any directly or indirectly wholly-owned Subsidiaries of the Company) or sell, convey, transfer or lease all or substantially all of the properties and assets of the Company to another Person (other than any directly or indirectly wholly-owned Subsidiaries of the Company) unless:
- (i) the Person formed by such consolidation or into which the Company is amalgamated or merged, or the Person which acquires by sale, conveyance, transfer or lease all or substantially all of the properties and assets of the Company, is a corporation incorporated and existing under the laws of Canada or any province or territory thereof or the laws of the United States or any state thereof and such Person (if other than the Company or the continuing corporation resulting from the amalgamation of the Company with another corporation under the laws of Canada or any province or territory thereof) expressly assumes, by an indenture supplemental hereto, executed and delivered to the Trustee, in form satisfactory to the Trustee, the obligations of the Company under the Debentures and this Indenture and the performance or observance of every covenant and provision of this Indenture and the Debentures required on the part of the Company to be performed or observed by supplemental indenture satisfactory in form to the Trustee, executed and delivered to the Trustee, by the Person (if other than the Company or the continuing corporation resulting from the amalgamation of the Company with another corporation under the laws of Canada or any province or territory thereof) formed by such consolidation or into which the Company shall have been merged or by the Person which shall have acquired the Company's properties and assets;
  - (ii) after giving effect to such transaction, no Event of Default, and no event which, after notice or lapse of time or both, would become an Event of Default, shall have occurred and be continuing; and
  - (iii) if the Company or the continuing corporation resulting from the amalgamation of the Company with another corporation under the laws of Canada or any province or territory thereof will not be the resulting, continuing or surviving corporation, the Company shall have, at or prior to the effective date of such consolidation, amalgamation, merger or sale, conveyance, transfer or lease, delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger or transfer complies with this Article and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture complies with this Article, and that all



conditions precedent herein provided for relating to such transaction have been complied with.

- (b) For purposes of the foregoing, the sale, conveyance, transfer or lease (in a single transaction or a series of related transactions) of the properties and assets of one or more Subsidiaries of the Company (other than to the Company or any other wholly-owned Subsidiaries of the Company), which, if such properties or assets were directly owned by the Company, would constitute all or substantially all of the properties and assets of the Company and its Subsidiaries, taken as a whole, shall be deemed to be the sale, conveyance, transfer or lease of all or substantially all of the properties and assets of the Company.

## **8.2 Successor Substituted.**

Upon any consolidation of the Company with, or amalgamation or merger of the Company into, any other Person or any sale, conveyance, transfer or lease of all or substantially all of the properties and assets of the Company and its Subsidiaries, taken as a whole, in accordance with Section 8.1, the successor Person formed by such consolidation or into which the Company is amalgamated or merged or to which such sale, conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor Person had been named as the Company herein, and thereafter, except in the case of a lease, and except for obligations the predecessor Person may have under a supplemental indenture entered into pursuant to Section 8.1(a)(iii), the predecessor Person shall be relieved of all obligations and covenants under this Indenture and the Debentures.

## **ARTICLE IX** **DEFAULT AND REMEDIES**

### **9.1 Events of Default.**

- (a) An "Event of Default" shall occur if:
  - (i) the Company shall fail to pay when due the principal amount on or in respect of any Debenture when the same becomes due and payable whether at the Final Maturity Date, acceleration or otherwise; or
  - (ii) the Company shall fail to pay an installment of cash interest in respect of accrued interest on any of the Debentures, which failure continues for five (5) Business Days after the date when due; or
  - (iii) the Company or its Subsidiaries, as applicable, shall fail to perform or observe in any material respect any other term, covenant or agreement contained in the Debentures, this Indenture or the Security Documents, including, without limitation, the restriction contained at Section 7.11, and provided that, except with respect to breaches of Section 8.1, such default is not cured, waived, rescinded or annulled within a period of 30 days after the earlier of the Notice of Default delivered pursuant to Section 9.1(b) of the Indenture or receipt by the Company of a notice of such failure; or

- (iv) the Company defaults in the payment of principal when due, upon maturity, demand or otherwise on, or fails to make any payment or take any action that results in acceleration of, other indebtedness of the Company for borrowed money where the aggregate principal amount with respect to which the default or acceleration has occurred exceeds \$200,000 and such default or acceleration has not been rescinded or annulled or such indebtedness repaid within a period of 30 days after receipt of a Notice of Default, provided that if any such default or acceleration is cured, waived, rescinded or annulled, then the Event of Default by reason thereof shall be deemed not to have occurred; or
- (v) if and for so long as any Senior Indebtedness (including, for certainty, any credit facilities established under the CWB Commitment Letter or any other credit agreement or other instrument or document to refinance or replace such credit facility) is made available to the Company, an event of default has occurred and is continuing thereunder or any demand for payment is made by or on behalf of the Senior Creditor thereunder; or
- (vi) if one or more final judgments, decrees or orders, after available appeals have been exhausted, shall be awarded against the Company or any of its Subsidiaries for an aggregate amount in excess of \$100,000 and the Company or its Subsidiaries have not either satisfied such judgments, decrees or orders or provided security for any of such judgments, decrees or orders within 20 days of such judgment, decree or order being awarded; or
- (vii) except in accordance with Section 8.1, if the Company ceases to carry on business; or
- (viii) if any of this Indenture, the Debentures or any Security or any material provision of any of the foregoing shall at any time for any reason cease to be in full force and effect, be declared to be void or voidable (and the same is not forthwith effectively rectified or replaced by the Company) or shall be repudiated, or the validity or enforceability thereof shall at any time be contested by the Company or the Company shall deny that it has any or any further liability or obligation thereunder, or at any time it shall be unlawful or impossible for them to perform any of their respective obligations under this Indenture, the Debentures or the Security; or
- (ix) the Company pursuant to or within the meaning of any Bankruptcy Law:
  - (A) commences as a debtor a voluntary case or proceeding; or
  - (B) consents to the entry of an order for relief against it in an involuntary case or proceeding or the commencement of any case against it; or
  - (C) consents to the appointment of a Receiver of it or for all or substantially all of its property; or

- (D) makes a general assignment for the benefit of its creditors;  
or
  - (E) files a petition in bankruptcy or answer or consent seeking reorganization or relief; or
  - (F) consents to the filing of such a petition or the appointment of or taking possession by a Receiver; or
- (x) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:
- (A) grants substantive relief against the Company in an involuntary case or proceeding or adjudicates the Company insolvent or bankrupt; or
  - (B) appoints a Receiver of the Company or for all or substantially all of the property of the Company; or
  - (C) orders the winding up or liquidation of the Company;

and in each case the order or decree remains unstayed and in effect for 30 consecutive days.

The term "**Bankruptcy Law**" means the *Bankruptcy and Insolvency Act* (Canada) (or any successor thereto), the *Companies' Creditors Arrangement Act* (Canada) (or any successor thereto), or *Title 11, United States Code* (or any successor thereto) or any similar Canadian federal or provincial, United States or foreign law for the relief of debtors. The term "**Receiver**" means any receiver (interim or otherwise), trustee, assignee, liquidator, sequestrator or similar official under any Bankruptcy Law.

- (b) The Company will deliver to the Trustee, within 5 Business Days after becoming aware of the occurrence of a Default or Event of Default, written notice thereof ("**Notice of Default**") and the Trustee shall provide such Notice of Default to the Holders in accordance with Section 9.2 hereof.

The Trustee shall not be charged with knowledge of any Event of Default unless written notice thereof shall have been given to the Trustee by the Company, a Paying Agent (if other than the Trustee), any Holder or any agent of any Holder.

## **9.2 Notice of Default or Events of Default.**

If a Default or an Event of Default occurs and is continuing and if it is known to the Trustee, the Trustee shall mail to each Holder of a Debenture (and to beneficial owners as required by applicable law) notice of all uncured Defaults or Events of Default known to it within 30 days after it becomes known to the Trustee. However, the Trustee may withhold the notice if and for so long the Trustee in good faith determines that withholding notice is in the interests of Holders of Debentures, provided the Trustee gives notice to the Company in writing, and except in the case of a Default or an Event of Default in payment of the principal of, or

premium, if any, or interest on any Debenture when due or in the payment of any purchase obligation.

### **9.3 Acceleration**

Upon the occurrence of an Event of Default which is continuing, the Trustee may, and shall if so required by the Debentureholders acting by Extraordinary Resolution, by notice in writing to the Corporation declare the Principal Sum and all accrued Interest thereon and other amounts owing hereunder and under the Debentures to be immediately due and payable and the same shall become immediately due and payable and the Company shall forthwith pay the same to the Trustee failing which all rights and remedies of the Trustee and the Debentureholders hereunder or at law or equity in respect of such non-payment shall become enforceable; provided that upon the occurrence of an Event of Default specified in Section 9.1(a)(xi) or 9.1(a)(xii), all Indebtedness hereunder shall automatically become due and payable without any requirement that notice be given to the Company.

### **9.4 Remedies – General**

Upon the occurrence of an Enforcement by the Trustee, the Trustee, for and on behalf of the Debentureholders, may, in its absolute discretion:

- (a) exercise such rights and remedies as are provided by the PPSA with respect to the Collateral or any part thereof that constitutes personal property and all other rights and remedies recognized under Applicable Law against the Company or in respect of the Collateral or any part thereof for the enforcement of full payment and performance of all the Obligations;
- (b) either with or without notice, enter into and upon the Company's premises and take possession of all or any part of the Collateral with full power to exclude the Company and additionally shall have full power and authority;
  - (i) to carry on, manage and conduct the business operations of the Company respecting such Collateral and the power to borrow money in its own name or advance its own money for the purpose of such business operations, the maintenance and preservation of such Collateral or any part thereof and the making of such replacements thereof and additions thereto as it shall deem desirable and the payment of taxes, wages and other charges ranking in priority to the Charge; and
  - (ii) to receive the revenues, incomes, issues and profits of such Collateral and to pay therefrom the costs, charges and expenses of the Trustee in carrying on the said business operations or otherwise, and all taxes, assessments and other charges against such Collateral ranking in priority to the Charge the payment of which may be necessary to preserve such Collateral, and to apply the remainder of the monies so received in the same manner as if the same arose from a sale or realization of such Collateral;
- (c) either after entry as aforesaid or after other entries, or without any entry, sell or dispose of the Collateral, either as a whole or in separate parcels, by private

contract, at public auction, by public tender, by lease or by deferred payment arrangement;

- (d) make any such sale or disposition of the Collateral either for cash or upon credit and upon such reasonable conditions as to upset or reserve bid or price and terms of payment as it may deem proper; to rescind or vary any contract or sale that may have been entered into and re-sell with or under any of the powers conferred herein; to adjourn such sale from time to time; and to execute and deliver to the purchaser or purchasers of the Collateral or any part thereof, good and sufficient deed or deeds for the same, and any such sale or disposition made as aforesaid shall be a perpetual bar at law and in equity against the Company and all other Persons claiming the Collateral or any part or parcel thereof, by, from, through, or under the Company. The Trustee and any Debentureholder may become a purchaser at any sale of the Collateral or any part thereof;
- (e) with or without entry or sale as aforesaid, in its discretion, proceed to protect and enforce its rights under this Indenture by sale under judgment order in any judicial proceeding or by foreclosure or a suit or suits in equity or at law or otherwise whether for the specific performance of any covenant or agreement contained in this Indenture or in aid of the execution of any power granted in this Indenture or in aid of the execution of this Indenture or for the filing of such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claim of the Trustee lodged in any bankruptcy, winding up or other judicial proceeding, or for the enforcement of any other legal or equitable remedy as the Trustee shall deem most effective to protect and enforce any of the rights or duties of the Trustee; or
- (f) in lieu of appointing a Receiver as provided in Article 9.8, apply to any court or courts of competent jurisdiction for the appointment of a Receiver of the Collateral or any part thereof, with such powers as the court or courts making such appointment or appointments shall confer.

## **9.5 Waiver of Default**

Upon the happening of any Event of Default hereunder:

- (a) the Debentureholders shall have the power (in addition to the powers exercisable by Extraordinary Resolution as hereinafter provided) by Extraordinary Resolution to instruct the Trustee to waive any Event of Default and rescind and cancel any Acceleration Notice, and the Trustee shall thereupon waive the Event of Default on such terms and conditions as shall be prescribed in such requisition provided:
  - (i) the rescission would not conflict with any judgment or decree;
  - (ii) all existing Events of Default have been cured or waived except non-payment of the Principal Sum or Interest that has become due solely because of the Acceleration Notice;

- (iii) interest on overdue instalments of Interest and any overdue Principal Sum which has become due, otherwise than by such Acceleration Notice, has been paid;
  - (iv) the Company has paid the Trustee its reasonable compensation and reimbursed the Trustee for its expenses, disbursements and advances; and
  - (v) in the event of the cure or waiver of an Event of Default of the type described in Article 9.1(a)(xi) or 9.1(a)(xii), the Trustee shall have received an officers' certificate and an opinion of Counsel that such Event of Default has been cured; and
- (b) the Trustee, so long as it has not become bound to declare the Principal Sum and Interest on the Debentures outstanding to be due and payable, or to obtain or enforce payment of the same, shall have the power to waive any Event of Default if, in the Trustee's reasonable opinion, the same shall have been cured or adequate satisfaction made therefore, and in such event to cancel any such declaration theretofore made by the Trustee in the exercise of its discretion, upon such terms and conditions as the Trustee may deem advisable;

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

## **9.6 Enforcement by the Trustee**

- (a) Subject to the provisions of Article 9.11 and to the provisions of any Extraordinary Resolution that may be passed by the Debentureholders, in the event the Company shall fail to pay to the Trustee, forthwith after the same shall have been declared to be due and payable under Article 9.3, the Obligations, the Trustee shall pursuant to an Extraordinary Resolution, and upon being indemnified and funded to its reasonable satisfaction against all costs, expenses and liabilities to be incurred, but subject to Article 6, proceed in its name as Trustee hereunder to obtain or enforce payment of the Obligations by such proceedings authorized by this Indenture or by law or equity as the Trustee in such request shall have been directed to take, or if such request contains no such direction, or if the Trustee shall act without such request, then by such proceedings authorized by this Indenture or by suit at law or in equity as the Trustee shall deem expedient.
- (b) The Trustee shall be entitled and empowered, either in its own name or as trustee of an express trust, or as attorney in fact for the Trustee, or in any one or more of such capacities, but subject to Article 6, to file such proof of debt, amendment of proof of debt, claim, petition or other document as may be necessary or advisable in order to have the claims of the Trustee and of the Debentureholders allowed in any Creditor Proceedings. The Trustee is hereby irrevocably appointed (and the successive respective Debentureholders by taking and holding Debentures shall be conclusively deemed to have so appointed the Trustee) the true and lawful attorney in fact of the respective Debentureholders with authority to make and file

in the respective names of the Debentureholders or on behalf of the Debentureholders as a class, subject to deduction from any such claims of the amounts of any claims filed by any of the Debentureholders themselves, any proof of debt, amendment of proof of debt, claim, petition or other document in any Creditor Proceedings and to receive payment of any sums becoming distributable on account thereof, and to execute any such acts and things for and on behalf of such Debentureholders as may be necessary or advisable in the opinion of the Trustee, in order to have the respective claims of the Trustee and of the Debentureholders against the Company or its property allowed in any such proceeding, and to receive payment of or on account of such claims, provided, however, that (i) nothing contained in this Indenture shall be deemed to give to the Trustee, unless so authorized by Extraordinary Resolution, any right to accept or consent to any plan of reorganization or otherwise by action of any character in such proceeding to waive or change in any way any right of the Debentureholders, and (ii) all such rights shall be subject to Article 6.

- (c) The Trustee shall also have power at any time and from time to time, but subject to Article 6, to institute and to maintain such suits and proceedings as it may be advised shall be necessary or advisable to preserve and protect its interest and the interests of the Debentureholders.
- (d) All rights of action hereunder may be enforced, subject to Article 6, by the Trustee without the possession of any of the Debentures or the production thereof in the trial or other proceedings relative thereto. Any such suit or proceeding instituted by the Trustee shall be brought in the name of the Trustee as trustee of an express trust, and any recovery of judgment shall be for the rateable benefit of the Debentureholders subject to the provisions of this Indenture. In any proceeding brought by the Trustee (and also any proceeding in which a declaratory judgment of a court may be sought as to the interpretation or construction of any provision of this Indenture, to which the Trustee shall be a party) the Trustee shall be held to represent all of the Debentureholders, and it shall not be necessary to make any Debentureholders party to any such proceeding.

## **9.7 No Suits by Debentureholders**

No Debentureholder shall have any right to institute any action, suit or proceeding at law or in equity for the purposes of enforcing payment of the Principal Sum or Interest on the Debentures or for the execution of any trust or power hereunder or for the appointment of a liquidator or receiver or for a receiving order under the *Bankruptcy and Insolvency Act* (Canada) or to have the Company wound up or to file or prove a claim in any liquidation or bankruptcy proceeding or for any other remedy hereunder, unless: (i) such Debentureholder shall previously have given to the Trustee written notice of the happening of an Event of Default hereunder; (ii) the Debentureholders by Extraordinary Resolution shall have made a request to the Trustee and the Trustee shall have been afforded reasonable opportunity either itself to proceed to exercise the powers hereinbefore granted or to institute an action, suit or proceeding in its name for such purpose; (iii) the Debentureholders or any of them shall have furnished to the Trustee, when so requested by the Trustee, sufficient funds or security therefore and an indemnity satisfactory to the Trustee to cover the costs, expenses and liabilities to be incurred therein or thereby; (iv) the

Trustee shall have failed to act within a reasonable time of receipt of such notification, request and offer of funds and indemnity and such notification, request and offer of funds and indemnity are hereby declared in every such case, at the option of the Trustee, to be conditions precedent to any such proceedings; and (v) the bringing of such action, suit or proceeding would not be contrary to Article 6 .

## **9.8 Receiver**

Upon the occurrence of a Realization Event, the Trustee may in its absolute discretion appoint a Receiver of the Collateral or any part thereof and upon any such appointment by the Trustee the following provisions shall apply:

- (a) such appointment shall be made in writing signed by the Trustee and such writing shall be conclusive evidence for all purposes of such appointment; the Trustee may from time to time in the same manner remove any Receiver so appointed and appoint another in its stead; in making any such appointment the Trustee shall be deemed to be acting as the attorney for the Company and the Company hereby consents to the appointment of a Receiver;
- (b) any such appointment may be limited to any part or parts of the Collateral or may extend to the whole thereof;
- (c) every Receiver may, in the discretion of the Trustee, be vested with all or any of the powers, rights, benefits, discretions, protection and relief of the Trustee hereunder and shall be vested with all of the powers and protections afforded to a Receiver under Applicable Law;
- (d) the Trustee may from time to time fix the reasonable remuneration of the Receiver and direct the payment thereof, in priority to the other Obligations, out of the Collateral, the income therefrom or the proceeds thereof;
- (e) the Trustee may from time to time require any Receiver to give security for the performance of its duties and may fix the nature and amount thereof, but the Trustee shall not be bound to require such security;
- (f) every such Receiver may, with the consent in writing of the Trustee, borrow money for the purpose of carrying on the business of the Company in respect of any part of the Collateral or for the maintenance, protection or preservation of the Collateral or any part thereof, and any Receiver may issue certificates (in this Article called "Receiver's Certificates"), for such sums as will in the opinion of the Trustee be sufficient for carrying out the foregoing, and such Receiver's Certificates may be payable either to order or bearer and may be payable at such time or times as the Trustee may consider expedient, and shall bear such interest as shall therein be declared and the Receiver may sell, pledge or otherwise dispose of the same in such manner as the Trustee may consider advisable and may pay such commission on the sale thereof as the Trustee may consider reasonable, and the amounts from time to time payable by virtue of such Receiver's Certificates shall at the option of the Trustee form a charge upon the Collateral in priority to this Indenture;



- (g) every Receiver shall, regarding its acts or omissions, be deemed the agent of the Company, and in no event the agent of the Trustee and the Trustee shall not, in making or consenting to such appointment, incur any liability to any Receiver for its remuneration or otherwise howsoever;
- (h) except as may be otherwise directed by the Trustee, all monies from time to time received by any Receiver shall be paid over to the Trustee at the place where this Indenture is payable; and
- (i) the Trustee may pay over to any Receiver any monies constituting part of the Collateral to the extent that the same may be applied for the purposes hereof by such Receiver and the Trustee may from time to time determine what funds any Receiver shall be at liberty to keep on hand with a view to the performance of its duties as such Receiver.

## **9.9 Judgment**

The Company covenants and agrees with the Trustee that, in the case of any judicial or other proceeding to enforce the Charge or any part thereof, judgment may be rendered against the Company in favour of the Trustee for any amount remaining due under this Indenture or for which the Company may be liable hereunder, after the application to the payment thereof of the proceeds of any sale of the Collateral or any part thereof. The covenant of the Company to pay Interest at the rate provided in this Indenture shall not merge in any such judgment and such judgment shall bear interest at the rate set forth in this Indenture until such judgment and all interest thereon has been paid in full.

## **9.10 Collection Suit by Trustee.**

If an Event of Default described in Section 9.1(a) occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Company or another obligor on the Debentures for the whole amount owing with respect to the Debentures and such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

## **9.11 Trustee may File Proofs of Claim.**

Subject to the other provisions of this Indenture, the Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and the Holders allowed in any judicial proceedings relative to the Company (or any other obligor on the Debentures), its creditors or its property and shall be entitled and empowered to collect and receive any money or other property payable or deliverable on any such claims and to distribute the same, and any Receiver in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 10.6, and to the extent that such payment of the reasonable compensation, expenses, disbursements and advances in any such proceedings shall

be denied for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other property which the Holders may be entitled to receive in such proceedings, whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to, or, on behalf of any Holder, to authorize, accept or adopt any plan of reorganization, arrangement, adjustment or composition affecting the Debentures or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

#### **9.12 Priorities.**

- (a) If the Trustee collects any money pursuant to this Article IX, subject to Article VI and the provisions of the Subordination Agreement, it shall pay out the money in the following order:
  - (i) first, to the Trustee for amounts due under Section 10.6;
  - (ii) second, to Holders for amounts due and unpaid on the Debentures for the principal amount and interest ratably, without preference or priority of any kind, according to such respective amounts due and payable on the Holders' Debentures;
  - (iii) third, to such other Person or Persons, if any, to the extent entitled thereto; and
  - (iv) fourth, the balance, if any, to the Company.
- (b) The Trustee may fix a record date and payment date for any payment to Holders pursuant to this Section 9.12.

#### **9.13 Appointment of Co-Trustee.**

It is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction denying or restricting the right of banking corporations or associations to transact business as trustee in such jurisdiction. It is recognized that in case of litigation under this Indenture, and in particular in case of the enforcement thereof on default, or in the case the Trustee deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein granted to the Trustee or hold title to the properties, in trust, as herein granted or take any action which may be desirable or necessary in connection therewith, it may be necessary that the Trustee appoint an individual or institution as a separate or co-trustee. The following provisions of this Section are adopted to these ends.

In the event that the Trustee appoints an additional individual or institution as a separate or co-trustee, each and every remedy, power, right, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Indenture to be exercised by or vested in or conveyed to the Trustee with respect thereto shall be exercisable by and vest in such separate or co-trustee but only to the extent necessary to enable such separate or co-trustee to exercise such powers, rights and remedies, and only to the extent that the Trustee by the laws of any jurisdiction is incapable of exercising such powers, rights and remedies and every covenant

and obligation necessary to the exercise thereof by such separate or co-trustee shall run to and be enforceable by either of them.

Should any instrument in writing from the Company be required by the separate or co-trustee so appointed by the Trustee for more fully and certainly vesting in and confirming to it such properties, rights, powers, trusts, duties and obligations, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Company; provided, that if an Event of Default shall have occurred and be continuing, if the Company does not execute any such instrument within fifteen (15) days after request therefor, the Trustee shall be empowered as an attorney-in-fact for the Company to execute any such instrument in the Company's name and stead. In case any separate or co-trustee or a successor to either shall die, become incapable of acting, resign or be removed, all the estates, properties, rights, powers, trusts, duties and obligations of such separate or co-trustee, so far as permitted by law, shall vest in and be exercised by the Trustee until the appointment of a new trustee or successor to such separate or co-trustee.

Every separate trustee and co-trustee shall, to the extent permitted by law, be appointed and act subject to the following provisions and conditions:

- (a) all rights and powers, conferred or imposed upon the Trustee shall be conferred or imposed upon and may be exercised or performed by such separate trustee or co-trustee to the extent provided herein; and
- (b) no trustee hereunder shall be personally liable by reason of any act or omission of any other trustee hereunder.

Any notice, request or other writing given to the Trustee shall be deemed to have been given to each of the then separate trustees and co-trustees, as effectively as if given to each of them. Every instrument appointing any separate trustee or co-trustee shall refer to this Indenture and the conditions of this Article.

Any separate trustee or co-trustee may at any time appoint the Trustee as its agent or attorney-in-fact with full power and authority, to the extent not prohibited by law, to do any lawful act under or in respect of this Indenture on its behalf and in its name. If any separate trustee or co-trustee shall die, become incapable of acting, resign or be removed, all of its estates, properties, rights, remedies and trusts shall vest in and be exercised by the Trustee, to the extent permitted by law, without the appointment of a new or successor Trustee.

## **ARTICLE X** **TRUSTEE**

### **10.1 Indenture Legislation.**

- (a) If and to the extent that any provision of this Indenture limits, qualifies or conflicts with a mandatory requirement of Indenture Legislation, such mandatory requirement shall prevail.
- (b) The Company agrees that it will at all times in relation to this Indenture and any action to be taken hereunder observe and comply with and be entitled to the

benefits of Indenture Legislation. The Trustee agrees that it will at all times in relation to this Indenture and any action to be taken hereunder observe and comply with and be entitled to the benefits of Indenture Legislation.

## 10.2 Obligations of Trustee.

- (a) The Trustee shall exercise such of the rights and powers vested in it by this Indenture and use the same degree of care and skill in its exercise as a prudent corporate trustee would exercise or use in respect of corporate debt instruments. Subject to the foregoing, the Trustee shall be liable only for an act or failure to act arising from or in connection with its own gross negligence, willful misconduct or fraud.
- (b) The Trustee shall not be bound to give any notice or do or take any act, action or proceeding by virtue of the powers conferred on it hereby unless and until it shall have been required to do so under the terms hereof; nor shall the Trustee be required to take notice of any default hereunder, unless and until notified in writing of such default, which notice shall distinctly specify the default desired to be brought to the attention of the Trustee and in the absence of any such notice the Trustee may for all purposes of this Indenture conclusively assume that no default has been made in the observance or performance of any of the representations, warranties, covenants, agreements or conditions contained herein. Any such notice shall in no way limit any discretion herein given to the Trustee to determine whether or not the Trustee shall take action with respect to any default.

The Trustee may in the exercise of its rights, duties and obligations hereunder, if it is acting in good faith, act on and rely as to the truth of the statements and the accuracy of the opinions expressed within and shall be protected in acting and relying upon the advice, certificate, consent, direction, instruction, notice, opinion, report, request, resolution, statement, statutory declaration or other paper or document required by or delivered in connection with this Indenture. The Trustee may but need not, in its sole discretion, require reasonable evidence of the due execution of any of the foregoing before acting or relying thereon.

- (c) The Trustee may not be relieved from liability for its own gross negligent action, its own gross negligent failure to act, or its own willful misconduct, except that:
  - (i) this paragraph does not limit the effect of Section 10.1(b); and
  - (ii) the Trustee shall not be liable for any error of judgment made in good faith.
- (d) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers unless the Trustee shall have received adequate funding and indemnity in its opinion against potential costs and liabilities incurred by it relating thereto.
- (e) Every provision of this Indenture that in any way relates to the Trustee is subject to subsections (a), (b), (c) and (d) of this Section 10.2.

- (f) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Company. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

### **10.3 Rights of Trustee.**

- (a) Subject to Section 10.1:
  - (i) The Trustee may act and rely conclusively on any document believed by it to be genuine and to have been signed or presented by the proper person. The Trustee need not investigate any fact or matter stated in the document.
  - (ii) Before the Trustee acts or refrains from acting, it may require an Officers' Certificate or an Opinion of Counsel, which shall conform to Section 15.3(b). The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such Officers' Certificate or opinion.
  - (iii) The Trustee may act through its agents and shall not be responsible for the misconduct or negligence of any agent appointed with due care.
  - (iv) The Trustee shall not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers.
  - (v) The Trustee may employ or retain such counsel, accountant, appraisers, engineers or other experts or advisors as it reasonably requires for the purpose of determining and discharging its duties and administering the trusts hereunder and may pay reasonable remuneration for all services so performed by any of them, without taxation of costs of any counsel or advisor, and shall not be responsible for any misconduct on the part of any of them. Any reasonable remuneration so paid by the Trustee shall be repaid to the Trustee in accordance with Section 10.6.

The Trustee may act and rely and shall be protected in acting and relying in good faith on the opinion or advice of or information obtained from any counsel, accountant, appraiser, engineer or other expert or advisor, whether retained or employed by the Company or by the Trustee, in relation to any matter arising in the administration of the trusts hereof.
  - (vi) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders pursuant to this Indenture, unless such Holders shall have provided funding and indemnity satisfactory to the Trustee against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction. Before commencing any such action requested by the Holders, the Trustee may require the Holders on whose behalf it is acting to deposit with the Trustee the Debentures held by them and the Trustee shall issue receipts for such Debentures.

- (vii) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney at the sole cost of the Company, and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation.
- (viii) The Trustee shall not be deemed to have notice of any Default or Event of Default unless written notice of any event which is in fact such a Default or Event of Default is received by the Trustee at the Corporate Trust Office, and such notice references the Debentures and this Indenture.
- (ix) The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, including, without limitation as Paying Agent and Registrar, and to each agent, custodian and other Person employed to act hereunder.
- (x) The Trustee shall not be required to exercise any powers and shall not have any responsibilities except as expressly provided in this Indenture and shall have no obligation to recognize nor have any liability or responsibility arising under any other document or agreement to which the Trustee is not a party, notwithstanding that reference thereto may be made herein.

#### **10.4 Individual Rights of Trustee.**

The Trustee in its individual or any other capacity may become the owner or pledgee of Debentures and may otherwise deal with the Company or an Affiliate of the Company with the same rights it would have if it were not Trustee. Any Agent may do the same with like rights. However, the Trustee is subject to Section 10.9.

#### **10.5 Trustee's Disclaimer.**

The Trustee makes no representation as to the validity or adequacy of this Indenture or the Debentures or of any recitals or statements of fact herein. It shall not be accountable for the Company's use of the Debentures or any proceeds from the Debentures and it shall not be responsible for any statement in the Debentures other than its certificate of authentication.

#### **10.6 Compensation and Indemnity.**

- (a) The Company shall pay to the Trustee from time to time such compensation as agreed to from time to time by the Company and the Trustee, in writing, for its services (which compensation shall not be limited by any provision of law in

regard to the compensation of a trustee of an express trust). The Company shall reimburse the Trustee upon request for all reasonable disbursements, expenses and advances incurred or made by it. Such expenses may include the reasonable compensation, disbursements and expenses of the Trustee's agents and counsel.

- (b) Subject to Section 10.6(c), the Company shall indemnify the Trustee or any predecessor Trustee (which for purposes of this Section 10.6 shall include its officers, directors, employees and agents) for, and hold it harmless against, any and all loss, liability or expense including taxes (other than taxes based upon, measured by or determined by the income of the Trustee), incurred by it in connection with the acceptance or administration of its duties under this Indenture or any action or failure to act as authorized or within the discretion or rights or powers conferred upon the Trustee hereunder including the reasonable costs and expenses of the Trustee and its counsel in defending (including reasonable legal fees and expenses) itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder. Without limiting the generality of the foregoing, the obligation to indemnify, defend and save harmless in accordance herewith shall apply in respect of liabilities suffered by, imposed upon, incurred or in any way connected with or arising from, directly or indirectly, any Environmental Laws. The Trustee shall notify the Company promptly of any claim asserted against the Trustee for which it may seek indemnity. The Company need not pay for any settlement effected without its prior written consent, which shall not be unreasonably withheld.
- (c) The Company need not reimburse the Trustee for any expense or indemnify it against any loss or liability incurred by it resulting from its gross negligence, willful misconduct or fraud.
- (d) The obligations of the Company under this Section 10.6 shall survive the satisfaction and discharge or termination of this Indenture or the resignation or removal of the Trustee.
- (e) When the Trustee incurs expenses or renders services after an Event of Default specified in clause (vii) of Section 9.1(a) occurs, the expenses and the compensation for the services are intended to constitute expenses of administration under any Bankruptcy Law. The provisions of this Section shall survive the termination of this Indenture.

## **10.7 Replacement of Trustee.**

- (a) The Trustee may resign by so notifying the Company at least 45 days prior to such resignation (or such shorter notice as the Company may accept). The Holders of a majority in aggregate principal amount of the Debentures then outstanding may remove the Trustee by so notifying the Trustee and the Company in writing and may, with the Company's written consent, appoint a successor Trustee. The Company may remove the Trustee at any time at least 45 days prior to such removal (or such shorter notice as the Trustee may accept), so long as no Default or Event of Default has occurred and is continuing, and appoint a successor Trustee in accordance with this Section 10.7.

- (b) If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, the Company shall promptly appoint a successor Trustee. The removal of a Trustee by the Company or by Holders shall not be effective until a successor Trustee shall have delivered the written acceptance of its appointment as described below.
- (c) If a successor Trustee does not take office within 45 days after the retiring Trustee resigns or is removed, the retiring Trustee, the Company or the Holders of 10% in principal amount of the Debentures then outstanding may petition any court of competent jurisdiction for the appointment of a successor Trustee at the expense of the Company.
- (d) If the Trustee fails to comply with Section 10.9, any Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.
- (e) A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Immediately after that and following the payment of all outstanding fees and expenses owed to the Trustee under this Indenture, the retiring Trustee shall transfer all property held by it as Trustee to the successor Trustee and be released from its obligations (exclusive of any liabilities that the retiring Trustee may have incurred while acting as Trustee) hereunder, the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. A successor Trustee shall mail notice of its succession to each Holder.
- (f) A retiring Trustee shall not be liable for the acts or omissions of any successor Trustee after its succession.
- (g) Notwithstanding replacement of the Trustee pursuant to this Section 10.7, the Company's obligations under Section 10.6 shall continue for the benefit of the retiring Trustee.

#### **10.8 Successor Trustee by Merger, etc.**

If the Trustee consolidates with, merges or converts into, or transfers all or substantially all of its corporate trust business (including the administration of this Indenture) to, another corporation, the resulting, surviving or transferee corporation, without any further act, shall be the successor Trustee; provided such transferee corporation shall qualify and be eligible under Section 10.9. Such successor Trustee shall promptly mail notice of its succession to the Company and each Holder (and to beneficial owners as required by applicable law).

#### **10.9 Eligibility; Disqualification.**

- (a) For so long as required by applicable Canadian law, there shall be a Trustee under this Indenture. The Trustee shall at all times be a company organized under the laws of Canada or any province thereof and authorized under such laws to carry on trust business therein.



- (b) If at any time the Trustee shall cease to satisfy any requirements of this Section 10.9, it shall resign immediately in the manner and with the effect specified in this Article X.

#### **10.10 Protection of Trustee**

- (a) By way of supplement to any Applicable Law from time to time relating to trustees and in addition to any other provision of this Indenture for the relief of the Trustee, it is expressly agreed that:
  - (i) the Trustee shall not be liable for or by reason of any statements of fact or recitals in this Indenture or in the Debentures (except any representations and warranties which are stated as being given by the Trustee in its personal capacity) or required to verify the same, but all such statements or recitals are and shall be deemed to be made by the Company;
  - (ii) the Trustee shall not be bound to give to any Person notice of the execution of this Indenture unless and until Default and a declaration of acceleration has occurred, and the Trustee has determined or become obliged to enforce the same;
  - (iii) the Trustee shall not incur any liability or be in any way responsible for the consequence of any breach on the part of the Company of any of the covenants contained in this Indenture or of any acts of the agents or servants of the Company;
  - (iv) the Company will indemnify and hold harmless the Trustee and upon written request reimburse the Trustee for the amount of: (A) any taxes levied or imposed and paid by the Trustee as a result of payments made under or with respect to the Debentures; (B) any liability (including penalties and interest) arising therefrom or with respect thereto paid by the Trustee as a result of payments made under or with respect to the Debentures; and (C) any taxes levied or imposed and paid by the Trustee with respect to reimbursement under (A) and (B) above, but excluding any taxes on the Trustee's net income arising from fees for acting as the trustee hereunder or in respect to the Trustee's capital;
  - (v) the Trustee shall not be liable by reason of the statements or implications of fact or law contained in or arising out of anything contained in this Indenture or any subscription agreement for the Debentures or in the Debentures or be required to verify the same, but all statements or implications shall be deemed to have been made by the Company only;
  - (vi) the Trustee may, in the exercise of all or any of the trusts, powers and discretion vested in it under this Indenture, act by the responsible officers of the Trustee; the Trustee may delegate to any Person the performance of any of the trusts and powers vested in it by this Indenture, and any delegation may be made upon such terms and conditions and subject to such regulations as the Trustee may think to be in the best interest of the Holders;

- (vii) the Trustee shall not be required to take notice or be deemed to have notice or actual knowledge of any matter under this Indenture, unless the Trustee shall have received from the Company or a Holder written notice stating the matter in respect of which the Trustee should have notice or actual knowledge;
- (viii) the Trustee shall not be bound to act in accordance with any direction or request of the Company until an executed copy of the document containing the direction or request has been delivered to the Trustee, and the Trustee shall be fully empowered to act and shall be fully protected from all liability in acting upon any document purporting to be a Debenture and believed by the Trustee to be genuine;
- (ix) the Trustee shall not be responsible for any error made or act done by it resulting from reliance upon the signature of any Person on behalf of the Company or of any Person on whose signature the Trustee may be called upon to act or refrain from acting under this Indenture; and
- (x) the Trustee shall retain the right not to act and shall not be liable for refusing to act if, due to a lack of information or for any other reason whatsoever, the Trustee, in its sole judgment, determines that such act might cause it to be in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline. Further, should the Trustee, in its sole judgment, determine at any time that its acting under this Indenture has resulted in its being in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline, then it shall have the right to resign on 10 days written notice to the Company provided: (A) that the Trustee's written notice shall describe the circumstances of such non-compliance; and (B) that if such circumstances are rectified to the Trustee's satisfaction within such 10-day period, then such resignation shall not be effective.

## **ARTICLE XI**

### **SATISFACTION AND DISCHARGE OF INDENTURE**

#### **11.1 Satisfaction and Discharge of Indenture.**

- (a) This Indenture shall cease to be of further force and effect (except as to any surviving rights of registration of transfer or exchange of Debentures herein expressly provided for and except as further provided below), and the Trustee, on demand of and at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when either:
  - (i) all Debentures theretofore authenticated and delivered (other than (A) Debentures which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 2.9 and (B) Debentures for whose payment has theretofore been deposited in trust and thereafter repaid to the Company as provided in Section 11.3) have been delivered to the Trustee for cancellation; or

(ii) all such Debentures not theretofore delivered to the Trustee for cancellation,

(A) have become due and payable; or

(B) will become due and payable at the Final Maturity Date within one year;

provided in the case of clause (A) or (B), that:

(C) the Company has deposited with the Trustee or a Paying Agent (other than the Company or any of its Affiliates) as trust funds in trust for the purpose of and in an amount of money sufficient to pay and discharge the entire indebtedness on such Debentures not theretofore delivered to the Trustee for cancellation, for principal and interest to the date of such deposit (in the case of Debentures which have become due and payable) or to the Final Maturity Date. In the event that the Company is required to purchase the Debentures as provided in Article III, the Company shall have the right to withdraw its funds previously deposited with the Trustee or Paying Agent pursuant to the immediately preceding sentence;

(D) the Company has paid or caused to be paid all other sums payable hereunder by the Company; and

(E) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent herein relating to the satisfaction and discharge of this Indenture have been complied with.

(b) Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company, if money shall have been deposited with the Trustee pursuant to clause (C) of Section 11.1(a), the provisions of Sections 2.5, 2.6, 2.7, 2.8, 2.9, 2.13 and 13.12 and this Article XI, shall survive until the Final Maturity Date or until the Debentures have been paid in full or otherwise delivered to the Trustee for cancellation. Provided that the indemnity in Section 10.6 shall not be extinguished by the payment of the Debentures.

## **11.2 Application of Trust Money.**

(a) Subject to the provisions of Section 11.3, the Trustee or a Paying Agent shall hold in trust, for the benefit of the Holders, all money deposited with it pursuant to Section 11.1 and shall apply the deposited money in accordance with this Indenture and the Debentures to the payment of the principal of and shall likewise apply the deposited money to payment of interest on the Debentures in accordance with this Indenture and the Debentures.

- (b) Upon receipt of a direction from the Company, the Trustee shall invest any proceeds or funds received hereunder in Government Obligations in its name in accordance with such direction. Any direction from the Company to the Trustee shall be in writing and shall be provided to the Trustee no later than 7:00 a.m. (Calgary time) on the day on which the investment is to be made. Any such direction received by the Trustee after 7:00 a.m. (Calgary time) or received on a non-Business Day shall be deemed to have been given prior to 7:00 a.m. the next Business Day. For the purpose hereof, "**Government Obligations**" means short term interest bearing or discount debt obligations issued or guaranteed by the Government of Canada or a Province of Canada.

In the event that the Trustee does not receive a direction or only a partial direction, the Trustee may hold cash balances constituting part or all of the proceeds or funds and may, but need not, invest same in its deposit department or the deposit department of one of its Affiliates; but the Trustee and its Affiliates shall not be liable to account for any profit to any parties to this Indenture or to any other person or entity other than at a rate, if any, established from time to time by the Trustee or one of its Affiliates. For the purpose of this Section, "**Affiliate**" means affiliated companies within the meaning of the *Canada Business Corporations Act* ("**CBCA**").

### **11.3 Repayment to Company.**

- (a) The Trustee and each Paying Agent shall promptly pay to the Company upon written request any excess money (without interest) deposited with them pursuant to Section 11.1(a) held by them at any time.
- (b) The Trustee and each Paying Agent shall, subject to applicable abandonment property laws, remit to the Company upon request any money held by them for the payment of principal or interest that remains unclaimed for five years after a right to such money (without interest) has matured; provided, however, that the Trustee or such Paying Agent, before being required to make any such remittance, may at the expense of the Company cause to be mailed to each Holder entitled to such money, notice that such money remains unclaimed and that after a date specified therein, which shall be at least 30 days from the date of such mailing, any unclaimed balance of such money, then remaining will be remitted to the Company. After remittance to the Company, Holders entitled to money must look to the Company for payment as general creditors unless an applicable abandoned property law designates another person.

### **11.4 Reinstatement.**

- (a) If the Trustee or any Paying Agent is unable to apply any money in accordance with Section 11.2 by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the Company's obligations under this Indenture and the Debentures shall be revived and reinstated as though no deposit had occurred pursuant to Section 11.1 until such time as the Trustee or such Paying Agent is permitted to apply all such money in accordance with Section

11.2; provided, however, that if the Company has made any payment of the principal of or interest in cash on any Debentures because of the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Debentures to receive any such payment from the money held by the Trustee or such Paying Agent.

- (b) If pursuant to the last sentence of Section 11.1(a)(ii)(C), the Company withdraws its previously deposited funds as a result of its obligation to purchase Debentures, the Company's obligations under this Indenture and the Debentures in respect of such Debentures shall be revived and reinstated as though no deposit has occurred pursuant to Section 11.1.

## **ARTICLE XII**

### **AMENDMENTS; SUPPLEMENTS AND WAIVERS**

#### **12.1 Without Consent of Holders.**

- (a) The Company and the Trustee may amend or supplement this Indenture or the Debentures without notice to or consent of any Holder of a Debenture for the purpose of:
  - (i) evidencing a successor to the Company and the assumption by that successor of the Company's obligations under this Indenture and the Debentures;
  - (ii) adding to the Company's covenants for the benefit of the Holders or surrendering any right or power conferred upon the Company;
  - (iii) securing the Company's obligations in respect of the Debentures;
  - (iv) adding a guarantor of the Debentures;
  - (v) evidencing and providing for the acceptance of the appointment of a successor Trustee in accordance with Article X;
  - (vi) complying with any requirements in order to effect or maintain the qualification of this Indenture under Indenture Legislation;
  - (vii) curing any ambiguity, omission, inconsistency or correcting or supplementing any defective provision contained in this Indenture;
  - (viii) modifying any other provisions of this Indenture in any manner that will not adversely affect the interests of the Holders in any material respect; or
  - (ix) upon receipt by the Trustee of an Officers' Certificate detailing the required amendments, conforming the Security to the security delivered pursuant to Senior Indebtedness under the CWB Commitment Letter, whether by way of amendment, replacement, supplement or release of such security.

## 12.2 With Consent of Holders.

- (a) Subject to Section 12.1, the Company and the Trustee may amend or supplement this Indenture or the Debentures with the written consent of the Holders of at least a majority in aggregate principal amount of the Debentures then outstanding or by the adoption of a resolution at a meeting of Holders by at least a majority in aggregate principal amount of the Debentures represented at the meeting. However, subject to Section 12.3, without the written consent of the Holders of not less than 90% of the aggregate principal amount of Debentures then outstanding an amendment, supplement or waiver may not:
  - (i) alter the manner of calculation or rate of accrual of interest on any Debenture or change the time of payment of any installment of interest on, any Debenture;
  - (ii) make any of the Debentures payable in money or securities other than that stated in the Debentures;
  - (iii) change the stated maturity of any Debenture;
  - (iv) reduce the principal amount with respect to any Debenture;
  - (v) impair the right to institute suit for the enforcement of any payment on or with respect to any Debenture; or
  - (vi) change the provisions in this Section 12.2(a) that relate to modifying or amending this Indenture.
- (b) Without limiting the provisions of Section 12.2(a) hereof, the Holders of a majority in principal amount of the Debentures then outstanding may, on behalf of all the Holders of all Debentures, (i) waive compliance by the Company with the restrictive provisions of this Indenture, and (ii) waive any past Default or Event of Default under this Indenture and its consequences, except an uncured failure to pay when due the principal amount, accrued and unpaid interest or in respect of any provision which under this Indenture cannot be modified or amended without the consent of the Holders of not less than 90% of the aggregate principal amount of Debentures then outstanding.
- (c) Notwithstanding anything to the contrary contained in this Section 12.2, this Indenture may not be amended or supplemented in respect of any event described in Section 12.2(a)(i) to (viii) inclusive in a manner which adversely affects the rights of Holders without the prior written consent of the TSXV or such other exchange on which the Debentures are then listed provided such consent is required by the TSXV or such other exchange on which the Debentures are then listed.
- (d) After an amendment, supplement or waiver under this Section 12.2 becomes effective, the Company shall promptly mail to the Holders affected thereby a notice briefly describing the amendment, supplement or waiver. Any failure of

the Company to mail such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such amendment, supplement or waiver.

### **12.3 Revocation and Effect of Consents.**

- (a) Until an amendment, supplement or waiver becomes effective, a consent to it by a Holder is a continuing consent by the Holder and every subsequent Holder of a Debenture or portion of a Debenture that evidences the same debt as the consenting Holder's Debenture, even if notation of the consent is not made on any Debenture. However, any such Holder or subsequent Holder may revoke the consent as to its Debenture or portion of a Debenture if the Trustee receives the written notice of revocation before the date the amendment, supplement or waiver becomes effective.
- (b) After an amendment, supplement or waiver becomes effective in accordance with the approvals required by this Indenture, it shall bind every Holder of a Debenture and every subsequent Holder of a Debenture or portion of a Debenture that evidences the same debt as the consenting Holder's Debenture.

### **12.4 Notation on or Exchange of Debentures.**

If an amendment, supplement or waiver changes the terms of a Debenture, the Trustee may require the Holder of the Debenture to deliver the Debenture to the Trustee. The Trustee may place an appropriate notation on the Debenture about the changed terms and return it to the Holder. Alternatively, if the Company or the Trustee so determines, the Company in exchange for the Debenture may issue and the Trustee shall authenticate a new Debenture that reflects the changed terms.

### **12.5 Trustee to Sign Amendments, Etc.**

The Trustee shall sign any amendment or supplemental indenture authorized pursuant to this Article XII if the amendment or supplemental indenture does not adversely affect in any material respect the rights, duties, liabilities or immunities of the Trustee. If it does, the Trustee may, in its sole discretion, but need not sign it. In signing or refusing to sign such amendment or supplemental indenture, the Trustee shall be entitled to receive and, subject to Section 10.1, shall be fully protected in relying upon, an Opinion of Counsel stating that such amendment or supplemental indenture is authorized or permitted by this Indenture.

### **12.6 Effect of Supplemental Indentures.**

Upon the execution of any supplemental indenture under this Article XII, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Debentures theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

**ARTICLE XIII**  
**MEETINGS OF HOLDERS**

**13.1 Right to Convene Meetings.**

The Trustee may at any time and from time to time convene a meeting of the Holders, and the Trustee shall convene a meeting of the Holders upon receipt of a request of the Company or a written request signed by the Holders of not less than 25% of the principal amount on the Debentures then outstanding and upon being funded and indemnified to its reasonable satisfaction by the Company or by the Holders signing such request against the costs which may be incurred in connection with the calling and holding of such meeting. If the Trustee fails within 30 days after receipt of any such request and such funding and indemnity to give notice convening a meeting, the Company or such Holders, as the case may be, may convene such meeting. Every such meeting shall be held in Calgary, Alberta, or at such other place as may be approved or determined by the Trustee, the Company or the Holders as convened in accordance with this Section 13.1.

**13.2 Notices of Meetings.**

Notice of a meeting of Holders shall be given to the Holders in the manner specified in Section 15.1 at least 25 days prior to the date of the meeting, and a copy of any notice sent by mail to Holders shall be sent by mail to the Trustee (unless the meeting has been called by it) and to the Company (unless the meeting has been called by it). A notice of a meeting of Holders shall state the time and place at which the meeting is to be held and shall state briefly the general nature of the business to be transacted thereat, and it shall not be necessary for any such notice to set out the terms of any resolution to be proposed or any of the provisions of this Article XIII.

**13.3 Chairman.**

The Holders present in person or represented by proxy shall choose an individual present to be the chairman of the meeting who need not be a Holder.

**13.4 Quorum.**

The quorum for a meeting of Holders shall be Holders present in person or represented by proxy and owning or representing at least 25% of the aggregate principal amount of the Debentures then outstanding. If a quorum is not present within 30 minutes from the time fixed for the holding of a meeting, the meeting, if convened by the Holders, shall be dissolved, but in any other case the meeting shall be adjourned to the same day in the next week (unless such day is not a Business Day, in which case it shall be adjourned to the next following Business Day thereafter) at the same time and place, and no notice shall be required to be given in respect of such adjourned meeting. At the adjourned meeting, the Holders present in person or represented by proxy shall constitute a quorum and may transact the business for which the meeting was originally convened notwithstanding that they may not represent at least 25% of the aggregate principal amount of the Debentures then outstanding.

**13.5 Power to Adjourn.**

The chairman of a meeting at which a quorum of Holders is present may, with the consent of the Holders of a majority of the aggregate principal amount of the Debentures present



or represented thereat, adjourn such meeting, and no notice of such adjournment need be given except such notice, if any, as the meeting may prescribe.

### **13.6 Show of Hands.**

Except as otherwise provided in this Indenture, every resolution submitted to a meeting shall be decided by a majority of the votes cast on a show of hands, and unless a poll is duly demanded as herein provided, a declaration by the chairman that a resolution has been carried or carried unanimously or by a particular majority or lost or not carried by a particular majority shall be conclusive evidence of the fact. The chairman of any meeting shall be entitled, both on a show of hands and on a poll, to vote in respect of the Debentures, if any, held by him.

### **13.7 Poll.**

On any resolution submitted to a meeting in respect of which the chairman of the meeting or one or more Holders or proxyholders for Holders holding at least \$130,000 principal amount of Debentures after a vote by show of hands, demands a poll, a poll shall be taken in such manner and either at once or after an adjournment as the chairman of the meeting shall direct.

### **13.8 Voting.**

On a show of hands, every Person who is present and entitled to vote, whether as a Holder or as proxyholder for one or more Holders or both, shall have one vote. On a poll, each Holder present in person or represented by a proxy duly appointed by an instrument in writing shall be entitled to one vote in respect of each \$1,000 principal amount of Debentures held by such Holder on the record date fixed for the meeting. A proxyholder need not be a Holder. In the case of joint Holders of a Debenture, any one of them present in person or represented by proxy at the meeting may vote in the absence of the other or others, but if more than one of them are present in person or represented by proxy, they shall vote together in respect of the Debentures of which they are joint Holders.

### **13.9 Company and Trustee May Be Represented.**

The Company and the Trustee, by their respective officers, directors and employees, and the legal advisers of the Company and the Trustee may attend any meeting of the Holders, but shall have no voting rights.

### **13.10 Minutes.**

Minutes of all resolutions and proceedings at every meeting of Holders 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 Company, and any such minutes, if signed by the chairman of the meeting at which such resolutions were passed or proceedings had, or by the chairman of the next succeeding meeting of the Holders, shall be prima facie evidence of the matters therein stated and, unless the contrary is proved, every such meeting, in respect of the proceedings of which minutes shall have been made, shall be deemed to have been duly held and convened, and all resolutions passed thereat or proceedings had shall be deemed to have been duly passed and had.

### **13.11 Instruments in Writing**

All actions which may be taken and all powers which may be exercised by the Holders at a meeting held as provided in this Article XIII may also be taken and exercised by an instrument in writing signed in one or more counterparts by the Holders of more than 66 2/3%, of the aggregate principal amount of the outstanding Debentures, except where this Indenture would otherwise require a greater vote and threshold of Holders, in which case such higher aggregate principal amount of Debentures shall be required, and the reference to resolutions when used in this Indenture shall include any instrument so signed.

### **13.12 Binding Effect of Resolutions.**

Every resolution passed in accordance with the provisions of this Article XIII at a meeting of Holders shall be binding upon all the Holders, whether present at or absent from such meeting, and each and every Holder and the Trustee (subject to the provisions for its remuneration, indemnification and protection herein contained) shall be bound to give effect accordingly to every such resolution.

### **13.13 Record Date for Vote or Consent of Holders of Debentures.**

The Company (or, in the event deposits have been made pursuant to Section 11.1, the Trustee) may set a record date for purposes of determining the identity of Holders entitled to vote or consent to any action by vote or consent authorized or permitted under this Indenture, which record date shall not be more than 30 days prior to the date of the commencement of solicitation of such action. Notwithstanding the provisions of Section 12.3, if a record date is fixed, those persons who were Holders of Debentures at the close of business on such record date (or their duly designated proxies), and only those persons, shall be entitled to take such action by vote or consent or to revoke any vote or consent previously given, whether or not such persons continue to be Holders after such record date.

### **13.14 Rules by Trustee, Paying Agent and Registrar.**

The Trustee, or the Company with the approval of the Trustee, may from time to time make such other reasonable rules (not inconsistent with the terms of this Indenture) for action by or at a meeting of Holders. Any Registrar and Paying Agent may make reasonable rules for its functions.

### **13.15 Powers Exercisable by Extraordinary Resolution.**

Subject to receipt of all regulatory approvals required by Applicable Securities Law in addition to the powers conferred upon them by any other provision of this Indenture or by Applicable Law, but subject to the provisions of Article 12.1 and the rights of Debentureholders generally under this Indenture, a meeting of the Debentureholders shall have the following powers exercisable from time to time by Extraordinary Resolution:

- (a) power to sanction any modification, abrogation, alteration, compromise or arrangement of the rights of the Debentureholders or the Trustee (with the prior written consent of the Trustee) against the Corporation, whether such rights arise under this Indenture, the Debentures or otherwise;

- (b) power to assent to any modification of or change in or addition to or omission from the provisions contained in this Indenture or any Debenture (collectively, "amendments"), as agreed to by the Corporation, and to authorize the Trustee to concur in and execute any indenture supplemental hereto or thereto embodying any amendment; provided that the rights of the Trustee hereunder shall not be prejudiced thereby;
- (c) power to sanction any scheme for the reconstruction or reorganization of the Corporation or for the consolidation, amalgamation or merger of the Corporation with any other corporation or for the sale, lease, transfer or other disposition of the undertaking, property and assets of the Corporation or any part thereof;
- (d) power to direct or authorize the Trustee to exercise any power, right, remedy or authority given to it by this Indenture in any manner specified in any such Extraordinary Resolution or to refrain from exercising any such power, right, remedy or authority;
- (e) power to waive and direct the Trustee to waive any Event of Default hereunder or cancel any Acceleration Notice delivered by the Trustee either unconditionally or upon any condition specified in such Extraordinary Resolution;
- (f) 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;
- (g) power to direct any Debentureholder who has brought any action, suit or proceeding to stay or discontinue or otherwise deal with the same, upon payment of the costs, charges and expenses reasonably and properly incurred by such Debentureholder in connection therewith if the taking of such suit, action or proceeding shall have been permitted by Article 9.7;
- (h) power to assent to any compromise or arrangement with any creditor or creditors of any class or classes of creditors, whether secured or otherwise, and with holders of any shares or other securities of the Corporation;
- (i) power to appoint a committee with power and authority (subject to such limitations, if any, as may be prescribed in any such Extraordinary Resolution) to exercise, and to direct the Trustee to exercise, on behalf of the Debentureholders, such of the powers of the Debentureholders as are exercisable by extraordinary or other resolution as shall be included in the resolution appointing the committee. The Extraordinary Resolution making such appointment may provide for payment of the expenses and disbursements of and compensation to such committee. Such committee shall consist of such number of Persons as shall be prescribed in the resolution appointing it and the members need not be Debentureholders. Every such committee may elect its chairperson and may make regulations respecting its quorum, the calling of its meetings, the filing of vacancies occurring in its number, and its procedure generally. Such regulations may provide that the committee may act at a meeting at which a quorum is present or may act by minutes signed by the number of members thereof necessary to constitute a

quorum. All acts of any such committee within the authority delegated to it shall be binding upon all Debentureholders. Neither the committee nor any member thereof shall be liable for any loss arising from or in connection with any action taken or omitted to be taken by it in good faith;

- (j) power to authorize, subject to Article 6, the distribution in specie of any shares, bonds, debentures or other securities or obligations or cash or other consideration received hereunder or the use or disposal of the whole or any part of such shares, bonds, debentures or other securities or obligations or cash or other consideration in such manner and for such purpose as may be deemed advisable and specified in such Extraordinary Resolution;
- (k) power to authorize the Trustee or any other Person or Persons to (i) bid at any sale of the Corporation's properties or assets or any part thereof; (ii) borrow the monies required to make any deposit at said sale or pay the balance of the purchase price and to hypothecate, mortgage, pledge, charge, cede and transfer the property or assets so purchased as security for the repayment of the monies so borrowed and interest thereon, or itself, himself or themselves, as the case may be, to advance such monies (in which event it, he or they shall have a lien upon the property or assets so purchased for the amount so advanced and interest thereon); (iii) hold any property or assets to be purchased (subject to any hypothec, mortgage, pledge, charge or lien to secure any monies so borrowed or advanced) in trust for all the Debentureholders at the time of such sale pro rata in proportion to the amounts due to them thereon respectively for principal and interest before such sale, and to sell, transfer and convey the whole or any part or parts of the property or assets so purchased for such consideration in cash or in the shares, bonds, debentures or other securities or obligations pursuant to the provisions of Article 13.15(j); (iv) until the sale, transfer or conveyance of the whole of such property or assets so purchased, to maintain and operate such part of said property and assets as has not been disposed of, and for such purposes to borrow monies and to hypothecate, mortgage, pledge, charge, cede and transfer the property or assets so purchased, or any part thereof, as security for the repayment of the monies so borrowed and interest thereon, or itself, himself or themselves, as the case may be, to advance such monies (in which event it, he or they shall have a lien upon the property or assets so purchased for the amount so advanced and interest thereon); and (v) otherwise deal with such property and assets and the proceeds of any sale, transfer or conveyance thereof as the Debentureholders may by such Extraordinary Resolution direct;
- (l) power to remove the Trustee from office and to appoint a new trustee or trustees;
- (m) power to authorize the Corporation and the Trustee to grant extensions of time for payment of interest on any of the Debentures whether or not the interest, the payment with respect to which is extended, is at the time due or overdue;
- (n) power to amend, alter or repeal any Extraordinary Resolution previously passed or sanctioned by the Debentureholders or by any committee appointed pursuant to Article 13.15;

- (o) subject to Article 6, power to authorize the Trustee to issue an Acceleration; and
- (p) power to authorize the Corporation to transfer its intellectual property to a low tax jurisdiction.

Notwithstanding anything to the contrary herein contained, no modification or amendment of this Indenture may be made without the consent of the Debentureholders by Extraordinary Resolution to:

- (q) reduce the Principal Sum of the Debentures;
- (r) reduce the rate of or change or have the effect of changing the time for payment of Interest, including defaulted interest, on any Debentures;
- (s) reduce the principal of or change or have the effect of changing the fixed maturity of any Debentures;
- (t) make any Debentures payable in any currency other than that stated in the Debentures;
- (u) make any change in provisions of this Indenture protecting the right of each Debentureholder to receive payment of the Principal Sum and Interest on such Debenture on or after the Maturity Date thereof or to bring suit to enforce such payment, or permitting Debentureholders by Extraordinary Resolution to waive Events of Default;
- (v) modify or change any provision of this Indenture or the related definitions affecting the ranking of the Debentures in a manner which adversely affects the Debentureholders; or
- (w) amend Article 13.15 or 13.16.

### **13.16 Meaning of Extraordinary Resolutions.**

- (a) The expression "**Extraordinary Resolution**" when used in this Indenture means, subject as hereinafter in this Article provided, a resolution proposed to be passed as an Extraordinary Resolution at a meeting of Debentureholders (including an adjourned meeting) duly convened for the purpose and held in accordance with the provisions of this Article 13 at which the Debentureholders of not less than Twenty-Five percent (25%) in principal amount of the Debentures outstanding are present in Person or by proxy and passed by the affirmative votes of the Debentureholders of not less than Sixty-Six and Two-Thirds percent (66 2/3%) of the principal amount of Debentures represented at the meeting and voted on a poll upon such resolution.
- (b) 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 13 provided may also be taken and exercised by the Debentureholders of not less than Fifty percent (50%) in principal amount of the outstanding Debentures in the case of such actions and powers not requiring an Extraordinary Resolution and not less

than Sixty-Six and Two-Thirds percent (66 2/3%) of the principal amount of the outstanding Debentures in the case of such actions and powers requiring an Extraordinary Resolution, by an instrument in writing signed in one or more counterparts and the expression Extraordinary Resolution when used in this Indenture shall include an instrument so signed.

- (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.

## **ARTICLE XIV**

### **COMPULSORY ACQUISITION**

#### **14.1 Definitions.**

In this Article:

- (a) "**Associate**", and in this Article XIV, "**Affiliate**", shall have their respective meanings set forth in the Securities Act (Alberta);
- (b) "**Dissenting Holders**" means a Holder who does not accept an Offer referred to in Section 14.2 and includes any assignee of the Security of a Holder to whom such an Offer is made, whether or not such assignee is recognized under this Indenture;
- (c) "**Offer**" means an offer to acquire outstanding Debentures where, as of the date of the offer to acquire, the Debentures that are subject to the offer to acquire, together with the Offeror's Debentures, constitute in the aggregate 20% or more of the outstanding principal amount of the Debentures;
- (d) "**offer to acquire**" includes an acceptance of an offer to sell;
- (e) "**Offeror**" means a person, or two or more persons acting jointly or in concert, who make an offer to acquire Debentures;
- (f) "**Offeror's Debentures**" means Debentures beneficially owned, or over which control or direction is exercised, on the date of an offer by the Offeror, any Affiliate or Associate of the Offeror or any person or company acting jointly or in concert with the Offeror; and
- (g) "**Offeror's Notice**" means the notice described in section 14.3.

#### **14.2 Offer for Debentures.**

If an Offer for all of the outstanding Debentures (other than Debentures held by or on behalf of the Offeror or an Affiliate or Associate of the Offeror) is made and:

- (a) within the time provided in the Offer for its acceptance or within 45 days after the date the Offer is made, whichever period is the shorter, the Offer is accepted by holders representing at least 90% of the outstanding principal amount of the Debentures, other than the Offeror's Debentures;

- (b) the Offeror is bound to take up and pay for, or has taken up and paid for the Debentures of the Holders who accepted the Offer; and
- (c) the Offeror complies with Sections 14.3 and 14.5;

the Offeror is entitled to acquire, and the Dissenting Holders are required to sell to the Offeror, the Debentures held by the Dissenting Holder for the same consideration per Debenture payable or paid, as the case may be, under the Offer.

#### **14.3 Offeror's Notice to Dissenting Holders.**

Where an Offeror is entitled to acquire Debentures held by Dissenting Holders pursuant to Section 14.2 and the Offeror wishes to exercise such right, the Offeror shall send by registered mail within 30 days after the date of termination of the Offer a notice (the "**Offeror's Notice**") to each Dissenting Holder stating that:

- (a) Holders holding at least 90% of the principal amount of all outstanding Debentures, other than Offeror's Debentures, have accepted the Offer;
- (b) the Offeror is bound to take up and pay for, or has taken up and paid for, the Debentures of the Holders who accepted the Offer;
- (c) Dissenting Holders must transfer their respective Debentures to the Offeror on the terms on which the Offeror acquired the Debentures of the Holders who accepted the Offer within 21 days after the date of the sending of the Offeror's Notice; and
- (d) Dissenting Holders must send their respective Debenture certificate(s) to the Trustee within 21 days after the date of the sending of the Offeror's Notice.

#### **14.4 Delivery of Debenture Certificates.**

A Dissenting Holder to whom an Offeror's Notice is sent pursuant to Section 14.3 shall, within 21 days after the sending of the Offeror's Notice, send his or her Debenture certificate(s) to the Trustee duly endorsed for transfer.

#### **14.5 Payment of Consideration to Trustee.**

Within 21 days after the Offeror sends an Offeror's Notice pursuant to Section 14.3, the Offeror shall pay or transfer to the Trustee, or to such other person as the Trustee may direct, the cash or other consideration that is payable to Dissenting Holders pursuant to Section 14.2. The acquisition by the Offeror of all Debentures held by all Dissenting Holders shall be effective as of the time of such payment or transfer.

#### **14.6 Consideration to be held in Trust.**

The Trustee, or the person directed by the Trustee, shall hold in trust for the Dissenting Holders the cash or other consideration they or it received under Section 14.5. The Trustee, or such persons, shall deposit cash in a separate account in a Canadian chartered bank, or other body corporate, any of whose deposits are insured by the Canada Deposit Insurance Corporation,

and shall place other consideration in the custody of a Canadian chartered bank or such other body corporate.

#### **14.7 Completion of Transfer of Securities to Offeror.**

Within 30 days after the date of the sending of an Offeror's Notice pursuant to Section 14.3, the Trustee, if the Offeror has complied with Section 14.5, shall:

- (a) do all acts and things and execute and cause to be executed all instruments as in the Trustee's opinion may be necessary or desirable to cause the transfer of the Debentures of the Dissenting Holders to the Offeror;
- (b) send to each Dissenting Holder who has complied with Section 14.4 the consideration to which such Dissenting Holder is entitled under this Article 14; and
- (c) send to each Dissenting Holder who has not complied with Section 14.4 a notice stating that:
  - (i) his or her Debentures have been transferred to the Offeror;
  - (ii) the Trustee or some other person designated in such notice are holding in trust the consideration for such Debentures;
  - (iii) the Trustee, or such other person, will send the consideration to such Dissenting Holder as soon as possible after receiving such Dissenting Holder's Debenture certificate(s) or such other documents as the Trustee or such other person may require in lieu thereof; and
  - (iv) the Trustee is hereby appointed the agent and attorney of the Dissenting Holders for the purposes of giving effect to the foregoing provisions.

#### **14.8 Communication of Offer to Company.**

An Offeror cannot make an Offer for Debentures unless, concurrent with the communication of the Offer to any Holder, a copy of the Offer is provided to the Company.

### **ARTICLE XV MISCELLANEOUS**

#### **15.1 Notices.**

Any demand, authorization notice, request, consent or communication shall be given in writing and delivered in person or mailed by first-class mail, postage prepaid, addressed as follows or transmitted by facsimile transmission (confirmed by delivery in person or mail by first-class mail, postage prepaid, or by guaranteed overnight courier) to the following facsimile numbers:



If to the Company, to:

Whitemud Resources Inc.  
c/o Burstall Winger LLP  
Suite 1600, 333 – 7 Avenue S.W.  
Calgary, Alberta T2P 2Z1  
Attention: Chief Financial Officer  
Facsimile No.: (403) 265-8565

with a copy to:

Burstall Winger LLP  
Suite 1600, 333 – 7 Avenue S.W.  
Calgary, Alberta T2P 2Z1  
Attention: Doug Stuve  
Facsimile No: (403) 265-8565  
Telephone No: (403) 234-3337

if to the Trustee, to:

Olympia Trust Company  
2300, 125 - 9<sup>th</sup> Avenue S.E.  
Calgary, Alberta T2G 0P6  
Attention: Manager, Corporate and Shareholder Services  
Facsimile No: (403) 265-1455  
Telephone No: (403) 261-0900

and any such notice or communication delivered in accordance with the foregoing shall be deemed to have been received on the date of delivery or, if transmitted by facsimile transmission, the day of transmission or, if such day is not a Business Day, on the first Business Day following the day of transmission; provided that if such notice or communication is delivered or transmitted by facsimile transmission after 4 p.m. (Calgary time), such notice will be deemed to be received on the next Business Day.

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

Any notice or communication mailed to a Holder of a Debenture (and to beneficial owners as required by applicable law) shall be mailed by first-class mail or delivered by an overnight delivery service to it at its address shown on the register kept by the Primary Registrar.

Failure to mail a notice or communication to a Holder of a Debenture or any defect in it shall not affect its sufficiency with respect to other Holders of Debentures. If a notice or communication to a Holder of a Debenture is mailed in the manner provided above, it is duly given, whether or not the addressee receives it.

If the Company mails any notice to a Holder of a Debenture, it shall mail a copy to the Trustee and each Registrar and Paying Agent.

## **15.2 Mail Service Interruption.**

If by reason of any interruption of mail service, actual or threatened, any notice or communication to be given to the Trustee or the Company would reasonably be unlikely to reach its destination by the time notice or communication by mail is deemed to have been given pursuant to Section 15.1, such notice or communication shall be valid and effective only if delivered in person or by hand delivery at the appropriate address in accordance with Section 15.1.

## **15.3 Certificate and Opinion as to Conditions Precedent.**

- (a) Upon any request or application by the Company to the Trustee to take any action under this Indenture, the Company shall furnish to the Trustee at the request of the Trustee:
  - (i) an Officers' Certificate stating that, in the opinion of the signers, all conditions precedent (including any covenants, compliance with which constitutes a condition precedent), if any, provided for in this Indenture relating to the proposed action have been complied with; and
  - (ii) an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent (including any covenants, compliance with which constitutes a condition precedent) have been complied with.
- (b) Each Officers' Certificate and Opinion of Counsel with respect to compliance with a condition or covenant provided for in this Indenture shall include:
  - (i) a statement that the person making such certificate or opinion has read such covenant or condition;
  - (ii) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;
  - (iii) a statement that, in the opinion of such person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been complied with; and
  - (iv) a statement as to whether or not, in the opinion of such person, such condition or covenant has been complied with;

provided, however, that with respect to matters of fact an Opinion of Counsel may rely on an Officers' Certificate or certificates of public officials.

## **15.4 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.

### **15.5 Governing Law.**

This Indenture and the Debentures shall be governed by, and construed in accordance with, the laws of the Province of Alberta and the federal laws of Canada applicable therein. The Company has submitted to the non-exclusive jurisdiction of any court of the Province of Alberta for purposes of all legal actions and proceedings instituted in connection with the Indenture and the Debentures.

### **15.6 No Adverse Interpretation of Other Agreements.**

This Indenture may not be used to interpret another indenture, loan or debt agreement of the Company or a subsidiary of the Company. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

### **15.7 No Recourse Against Others.**

All liability described in paragraph 18 of the Debentures of any director, officer, employee or shareholder, as such, of the Company hereby is waived and released by each of the Holders.

### **15.8 Benefits of Indenture.**

Nothing in this Indenture or in the Debentures, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder, any paying agent, the Holders of Debentures (and each such person who becomes a Holder of Debentures) the Trustee, any benefit or any legal or equitable right, remedy or claim under this Indenture.

### **15.9 Successors.**

All agreements of the Company in this Indenture and the Debentures shall bind its successors and permitted assigns. All agreements of the Trustee in this Indenture shall bind its successors and assigns.

### **15.10 Table of Contents, Headings, Etc.**

The table of contents, cross-reference sheet and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

### **15.11 Choice of Language.**

The parties hereby acknowledge that they have expressly required this Indenture and all notices, statements of account and other documents required or permitted to be given or entered into pursuant hereto to be drawn up in the English language only. Les parties reconnaissent avoir expressément demandé que la présente Convention ainsi que tout avis, tout état de compte et tout autre document à être ou pouvant être donné ou conclu en vertu des dispositions des présentes, soit rédigés en anglais seulement.

### **15.12 Other Currencies.**

For the purpose of making any computation under this Indenture, any currency other than Canadian dollars shall be converted into Canadian dollars at the applicable Bank of Canada noon rate of exchange for purchases or sales of Canadian dollars as applicable in the circumstances on the date on which such computation is to be made.

### **15.13 Severability.**

If, in any jurisdiction, any provision of this Indenture or its application to any party or circumstance is restricted, prohibited or unenforceable, such provision shall, as to such jurisdiction, be ineffective only to the extent of such restriction, prohibition or unenforceability without invalidating the remaining provisions of this Indenture and without affecting the validity or enforceability of such provision in any other jurisdiction or without affecting its application to other party or circumstances.

### **15.14 No Conflict of Interest.**

The Trustee represents to the Company that at the date of the execution and delivery of this Indenture there exists no material conflict of interest in the Trustee's role as a fiduciary hereunder. If at any time a material conflict of interest exists in respect of the Trustee's role as a fiduciary under this Indenture that is not eliminated within 90 days after the Trustee becomes aware that such a material conflict of interest exists, the Trustee shall resign from the trusts under this Indenture by giving notice in writing of such resignation and the nature of such conflict to the Company at least 21 days prior to the date upon which such resignation is to take effect, and shall on such date, subject to Article X, be discharged from all further duties and liabilities hereunder. The validity and enforceability of this Indenture and any Debentures shall not be affected in any manner whatsoever by reason only of the existence of a material conflict of interest of the Trustee.

### **15.15 Assignment and Enurement.**

The parties hereto acknowledge and agree, and any beneficiaries hereunder are hereby deemed to have acknowledged and agreed that the Trustee may, without the consent of any other party, assign all of its rights and duties under this Indenture, and under any ancillary agreements executed in connection herewith, to such federal trust company as may result from the Trustee being continued as a trust company pursuant to the terms of the *Trust and Loan Companies Act* (Canada). Any such assignment shall be effective without the need for any further notice or advice to, or approval of, the parties hereto and without any further act or formality whatsoever.

### **15.16 Acceptance of Trusts.**

The Trustee hereby accepts the trusts in this Indenture declared and provided for and agrees to perform the same upon the terms and conditions set forth in this Indenture and in trust for the Holders from time to time, subject to the terms and conditions of this Indenture.

### **15.17 Counterparts and Formal Date.**

This Indenture may be executed in several counterparts, each of which, when so executed shall be deemed to be an original, and such counterparts together shall constitute one and the

same instrument and notwithstanding their date of execution shall be deemed to bear date as of •, 2011.

**IN WITNESS WHEREOF**, the parties hereto have hereunto set their hands as of the date and year first above written.

**WHITEMUD RESOURCES INC.**

**OLYMPIA TRUST COMPANY**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT "A"**  
**FORM OF DEBENTURE AND ASSIGNMENT FORM**

UNLESS PERMITTED UNDER SECURITIES LEGISLATION, THE HOLDER OF THIS SECURITY MUST NOT TRADE THE SECURITY BEFORE •, 2011.

WITHOUT PRIOR WRITTEN APPROVAL OF THE TSX VENTURE EXCHANGE AND COMPLIANCE WITH ALL APPLICABLE SECURITIES LEGISLATION, THE SECURITIES REPRESENTED BY THIS CERTIFICATE MAY NOT BE SOLD, TRANSFERRED, HYPOTHECATED OR OTHERWISE TRADED ON OR THROUGH THE FACILITIES OF THE TSX VENTURE EXCHANGE OR OTHERWISE IN CANADA OR TO OR FOR THE BENEFIT OF A CANADIAN RESIDENT UNTIL •, 2011.

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "1933 ACT") OR UNDER ANY STATE SECURITIES LAWS. THE HOLDER HEREOF, BY PURCHASING THESE SECURITIES, AGREES FOR THE BENEFIT OF WHITEMUD RESOURCES INC. (THE "COMPANY") THAT SUCH SECURITIES MAY BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED ONLY (A) TO THE COMPANY, (B) OUTSIDE THE UNITED STATES IN ACCORDANCE WITH RULE 904 OF REGULATION S UNDER THE 1933 ACT, (C) IN ACCORDANCE WITH (I) RULE 144A UNDER THE 1933 ACT, IF AVAILABLE, OR (II) RULE 144 UNDER THE 1933 ACT, IF AVAILABLE, (D) IN ACCORDANCE WITH ANOTHER EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE 1933 ACT, OR (E) UNDER AN EFFECTIVE REGISTRATION STATEMENT UNDER THE 1933 ACT, AND, IN EACH CASE IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS IN A TRANSACTION THAT DOES NOT REQUIRE REGISTRATION UNDER THE 1933 ACT OR ANY APPLICABLE STATE SECURITIES LAWS, AND, IN THE CASE OF SUBPARAGRAPH (C)(II) OR (D), THE SELLER FURNISHES TO THE COMPANY AN OPINION OF COUNSEL OF RECOGNIZED STANDING IN FORM AND SUBSTANCE SATISFACTORY TO THE COMPANY TO SUCH EFFECT. DELIVERY OF THIS CERTIFICATE MAY NOT CONSTITUTE "GOOD DELIVERY" IN SETTLEMENT OF TRANSACTIONS ON STOCK EXCHANGES IN CANADA.<sup>1</sup>

**THE DEBENTURES REPRESENTED HEREBY AND ALL RIGHTS, REMEDIES AND PRIVILEGES OF THE HOLDERS HEREUNDER, UNDER SUCH SECURITY AND UNDER THE INDENTURE REFERRED TO HEREIN ARE SUBJECT TO A SUBORDINATION AGREEMENT DATED AUGUST 6, 2009 BETWEEN THE COMPANY AND CANADIAN WESTERN BANK (AS DEFINED IN THE INDENTURE REFERRED TO HEREIN) AND OLYMPIA TRUST COMPANY AND SUCH OBLIGATIONS AND SECURITY ARE SUBORDINATE AND POSTPONED TO THE SENIOR INDEBTEDNESS AND SENIOR SECURITY, EACH AS DEFINED IN THE INDENTURE REFERRED TO HEREIN.**

**WHITEMUD RESOURCES INC.**  
**10.0% Secured Subordinated Debentures due December 31, 2012**

No. \_\_\_\_\_ **Principal Amount: \$** \_\_\_\_\_

Whitemud Resources Inc., an Alberta corporation, promises to pay to ♦ (the "**Holder**") or registered assigns the principal amount set forth above on **December 31, 2012**.

This Debenture shall bear interest as specified in this Debenture. Additional provisions of this Debenture are set forth in this Debenture and the Indenture. In the event of any inconsistency between this Debenture and the terms of the Indenture the terms of the Indenture shall govern.

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<sup>1</sup> This paragraph to be included only if the Debenture is issued to a Holder resident in the United States of America or a U.S. Person.

Dated: •, 2011

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

**WHITEMUD RESOURCES INC.**

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

Dated: •, 2011

Trustee's Certificate of Authentication: This is one of the Debentures referred to in the within mentioned Indenture.

**OLYMPIA TRUST COMPANY**, as Trustee

By: \_\_\_\_\_  
Authorized Signatory

**WHITEMUD RESOURCES INC.**  
**10.0% SECURED SUBORDINATED DEBENTURES**  
**DUE DECEMBER 31, 2012**

**1. INTEREST**

Whitemud Resources Inc., an Alberta corporation (the "**Company**", which term shall include any successor corporation under the Indenture hereinafter referred to), promises to pay interest on the principal amount of this Debenture at the rate of 10.0% per annum calculated from the date of issue hereof. Commencing on December 31, 2011, the Company shall pay interest semi-annually in arrears on June 30 and December 31 of each year (each an "**Interest Payment Date**"). Each payment of interest will include interest accrued through the day before the relevant Interest Payment Date (or purchase date). Interest on the Debentures shall be computed by the Company semi-annually, provided that interest for any period shorter than a full semi-annual period shall be computed on the basis of a 365-day year (except in the case of a leap year, in which case interest shall be computed on the basis of a 366 day year).

No sinking fund is provided for the Debentures.

**2. MATURITY**

The Debentures will mature on December 31, 2012.

**3. METHOD OF PAYMENT**

Commencing on December 31, 2011, the Company shall cause interest to be paid on this Debenture (except defaulted interest) on June 30 or December 31 (or on the next Business Day, if such date is not a Business Day), as the case may be, to the person who is the Holder of this Debenture at the close of business on June 15 or December 15 (or on the next Business Day, if such date is not a Business Day), as the case may be, (each, a "**Regular Record Date**") next preceding the related Interest Payment Date. The Holder must surrender this Debenture to a Paying Agent to collect payment of principal. The Company will pay principal and interest in the lawful currency of Canada. The Company may pay principal and interest in respect of any Debenture by cheque or wire payable in such money; provided, however, that a Holder with an aggregate principal amount in excess of \$2,000,000 will be paid by wire transfer in immediately available funds at the election of such Holder if such Holder has provided wire transfer instructions to the Trustee at least 10 Business Days prior to the applicable payment date. The Company may mail an interest cheque to the Holder's registered address.

Any wire transfer instructions received by the Trustee will remain in effect until revoked by the Holder.

**4. PAYING AGENT AND REGISTRAR**

Initially, Olympia Trust Company (the "**Trustee**", which term shall include any successor trustee under the Indenture hereinafter referred to) will act as Paying Agent and Registrar. Subject to the prior consent of the Trustee, the Company may change any Paying Agent and Registrar without notice to the Holder. The Company or any of its Subsidiaries may, subject to certain limitations set forth in the Indenture, act as Paying Agent or Registrar.



## **5. INDENTURE, LIMITATIONS**

This Debenture is one of a duly authorized issue of Debentures of the Company designated as its 10.0% Subordinated Secured Debentures due December 31, 2012 (the "**Debentures**"), issued under an Indenture dated as of •, 2011 (together with any supplemental indentures thereto, the "**Indenture**"), between the Company and the Trustee. The terms of this Debenture include those stated in the Indenture and those required by or made part of the Indenture by reference to indenture legislation. This Debenture is subject to all such terms, and the Holder of this Debenture is referred to the Indenture and said legislation for a statement of them. In the event of any contradiction or inconsistency between the provisions of the Indenture and this Debenture, the provisions of the Indenture shall prevail.

The Debentures are subordinated secured obligations of the Company limited to \$13,000,000 aggregate principal amount. The Indenture does not limit other debt of the Company provided such debt is Permitted Debt or Senior Indebtedness, as defined in the Indenture.

## **6. SUBORDINATION**

The indebtedness evidenced by this Debenture, and by all other Debentures now or hereafter certified and delivered under the Indenture, is a direct secured obligation of the Company, and is subordinated in right of payment, to the extent and in the manner provided in the Indenture, to the prior payment of all Senior Indebtedness, and the Security ranks subordinate and is postponed to the Senior Security whether outstanding at the date of the Indenture or thereafter created, incurred, assumed or guaranteed.

## **7. ADDITIONAL AMOUNTS**

The Company will pay to the Holders such Additional Amounts as may become payable under Section 7.8 of the Indenture.

## **8. REDEMPTION**

Prior to Maturity Date, the Debentures may be redeemed in whole or in part from time to time at the option of the Company on not more than 60 days and not less than 30 days prior notice, at a price equal to their principal amount plus accrued and unpaid interest.

## **9. Deliberately left blank**

## **10. DENOMINATIONS, TRANSFER, EXCHANGE**

The Debentures are in registered form, without coupons, in denominations of \$1,000 principal amount and integral multiples of \$1,000 principal amount. A Holder may register the transfer of or exchange Debentures in accordance with the Indenture. The Registrar may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and to pay any taxes or other governmental charges that may be imposed in relation thereto by law or permitted by the Indenture.

## **11. PERSONS DEEMED OWNERS**

The Holder of a Debenture may be treated as the owner of it for all purposes.

## **12. MERGER OR CONSOLIDATION**

The Company may not, without the consent of the Holders by Extraordinary Resolution, consolidate with or amalgamate or merge with or into any Person or sell, convey, transfer or lease all or substantially all of the properties and assets of the Company to another Person unless: (a) the Person formed by such consolidation or into which the Company is amalgamated or merged, or the Person which acquires by sale, conveyance, transfer or lease all or substantially all of the properties and assets of the Company is a corporation incorporated and existing under the laws of Canada or any province or territory thereof or the laws of the United States or any state thereof and such corporation (if other than the Company or the continuing corporation resulting from the amalgamation of the Company with another corporation under the laws of Canada or any province or territory thereof) expressly assumes, by an indenture supplemental to the Indenture, executed and delivered to the Trustee, in form satisfactory to the Trustee, the obligations of the Company under the Debentures and the Indenture and the performance or observance of every covenant and provision of the Indenture and the Debentures required on the part of the Company to be performed or observed by supplemental indenture satisfactory in form to the Trustee, executed and delivered to the Trustee, by the Person (if other than the Company or the continuing corporation resulting from the amalgamation of the Company with another corporation under the laws of Canada or any province or territory thereof) formed by such consolidation or into which the Company shall have been merged or by the Person which shall have acquired the Company's properties and assets; (b) after giving effect to such transaction, no Event of Default, and no event which, after notice or lapse of time or both, would become an Event of Default, shall have occurred and be continuing; and (c) if the Company will not be the resulting, continuing or surviving corporation, the Company shall have, at or prior to the effective date of such consolidation, amalgamation, merger or sale, conveyance, transfer or lease, delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger or transfer complies with Article VIII of the Indenture and, if a supplemental indenture to the Indenture is required in connection with such transaction, such supplemental indenture complies with Article VIII of the Indenture, and that all conditions precedent herein provided for relating to such transaction have been complied with; provided however, for purposes of the foregoing, the sale, conveyance, transfer or lease (in a single transaction or a series of related transactions) of the properties and assets of one or more Subsidiaries of the Company (other than to the Company, or another wholly-owned subsidiary of the Company), which, if such properties or assets were directly owned by the Company, would constitute all or substantially all of the properties and assets of the Company and its Subsidiaries, taken as a whole, shall be deemed to be the sale, conveyance, transfer or lease of all or substantially all of the properties and assets of the Company.

## **13. UNCLAIMED MONEY**

If money for the payment of principal, or money for the payment of interest remains unclaimed for five years, the Trustee and any Paying Agent will remit the money (without interest) back to the Company at its written request, subject to applicable unclaimed property law and the provisions of the Indenture. After that, Holders entitled to money must look to the Company for payment as general creditors unless an applicable abandoned property law designates another person.

#### **14. AMENDMENT, SUPPLEMENT AND WAIVER**

Subject to certain exceptions, which require the consent of the holders of not less than 90% of the aggregate principal amount of the Debentures outstanding as set forth in the Indenture, the Indenture or the Debentures may be amended or supplemented with the consent of the Holders of at least a majority in aggregate principal amount of the Debentures then outstanding, and an existing Default or Event of Default and its consequence or compliance with any provision of the Indenture or the Debentures may be waived in a particular instance with the consent of the Holders of a majority in aggregate principal amount of the Debentures then outstanding. Without the consent of or notice to any Holder, the Company and the Trustee may amend or supplement the Indenture or the Debentures to, among other things, cure any ambiguity, defect or inconsistency or make any other change that does not adversely affect the rights of the Holders in any material respect.

#### **15. SUCCESSOR ENTITY**

When a successor corporation assumes all the obligations of its predecessor under the Debentures and the Indenture in accordance with the terms and conditions of the Indenture, the predecessor corporation (except in certain circumstances specified in the Indenture) shall be released from those obligations.

#### **16. DEFAULTS AND REMEDIES**

Under the Indenture, an Event of Default shall occur if:

- (a) the Company shall fail to pay when due the principal amount on or in respect of any Debenture when the same becomes due and payable whether at the Final Maturity Date, acceleration or otherwise; or
- (b) the Company shall fail to pay an installment of cash interest, if any, on any of the Debentures, which failure continues for five (5) Business Days after the date when due; or
- (c) the Company or its Subsidiaries, as applicable, shall fail to perform or observe in any material respect any other term, covenant or agreement contained in the Debentures, this Indenture or the Security Documents, including, without limitation, the restriction contained at Section 7.11 of the Indenture; or
- (d) the Company defaults in the payment of principal when due, upon maturity, demand or otherwise on, or fails to make any payment or take any action that results in acceleration of, other indebtedness of the Company for borrowed money where the aggregate principal amount with respect to which the default or acceleration has occurred exceeds \$200,000 and such default or acceleration has not been rescinded or annulled or such indebtedness repaid within a period of 30 days after receipt of a Notice of Default, provided that if any such default or acceleration is cured, waived, rescinded or annulled, then the Event of Default by reason thereof shall be deemed not to have occurred; or
- (e) if and for so long as any Senior Indebtedness (including, for certainty, any credit facilities established under the CWB Commitment Letter or any other credit

agreement or other instrument or document to refinance or replace such credit facility) is made available to the Company, an event of default has occurred and is continuing thereunder or any demand for payment is made by or on behalf of the Senior Creditor thereunder; or

- (f) if one or more final judgments, decrees or orders, after available appeals have been exhausted, shall be awarded against the Company or any of its Subsidiaries for an aggregate amount in excess of \$100,000 and the Company or its Subsidiaries have not either satisfied such judgments, decrees or orders or provided security for any of such judgments, decrees or orders within 20 days of such judgment, decree or order being awarded; or
- (g) except in accordance with Section 8.1 of the Indenture, if the Company ceases to carry on business; or
- (h) if any of the Indenture, the Debentures or any Security or any material provision of any of the foregoing shall at any time for any reason cease to be in full force and effect, be declared to be void or voidable (and the same is not forthwith effectively rectified or replaced by the Company) or shall be repudiated, or the validity or enforceability thereof shall at any time be contested by the Company or the Company shall deny that it has any or any further liability or obligation thereunder, or at any time it shall be unlawful or impossible for them to perform any of their respective obligations under this Indenture, the Debentures or the Security; or
- (i) the Company pursuant to or within the meaning of any Bankruptcy Law:
  - (i) commences as a debtor a voluntary case or proceeding; or
  - (ii) consents to the entry of an order for relief against it in an involuntary case or proceeding or the commencement of any case against it; or
  - (iii) consents to the appointment of a Receiver of it or for all or substantially all of its property; or
  - (iv) makes a general assignment for the benefit of its creditors; or
  - (v) files a petition in bankruptcy or answer or consent seeking reorganization or relief; or
  - (vi) consents to the filing of such a petition or the appointment of or taking possession by a Receiver; or
- (j) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:
  - (i) grants substantive relief against the Company in an involuntary case or proceeding or adjudicates the Company insolvent or bankrupt; or

- (ii) appoints a Receiver of the Company or for all or substantially all of the property of the Company; or
- (iii) orders the winding up or liquidation of the Company;

and in each case the order or decree remains unstayed and in effect for 30 consecutive days.

The term "**Bankruptcy Law**" means the *Bankruptcy and Insolvency Act* (Canada) (or any successor thereto), the *Companies' Creditors Arrangement Act* (Canada) (or any successor thereto), or *Title 11, United States Code* (or any successor thereto) or any similar Canadian federal or provincial, United States or foreign law for the relief of debtors. The term "**Receiver**" means any receiver (interim or otherwise), trustee, assignee, liquidator, sequestrator or similar official under any Bankruptcy Law.

If a Default or an Event of Default occurs and is continuing and if it is known to the Trustee, the Trustee shall mail to each Holder of a Debenture (and to beneficial owners as required by applicable law) notice of all uncured Defaults or Events of Default known to it within 30 days after it becomes known to the Trustee. However, the Trustee may withhold the notice if and for so long the Trustee in good faith determines that withholding notice is in the interests of Holders of Debentures, provided the Trustee gives notice to the Company in writing, and except in the case of a Default or an Event of Default in payment of the principal of, or premium, if any, or interest on any Debenture when due or in the payment of any purchase obligation.

Upon the occurrence of an Event of Default which is continuing, the Trustee may, and shall if so required by the Debentureholders acting by Extraordinary Resolution, by notice in writing to the Corporation declare the Principal Sum and all accrued Interest thereon and other amounts owing hereunder and under the Debentures to be immediately due and payable and the same shall become immediately due and payable and the Company shall forthwith pay the same to the Trustee failing which all rights and remedies of the Trustee and the Debentureholders hereunder or at law or equity in respect of such non-payment shall become enforceable; provided that upon the occurrence of an Event of Default specified in either of clauses (i) or (j) above, all Indebtedness hereunder shall automatically become due and payable without any requirement that notice be given to the Company.

## **17. NO RECOURSE AGAINST OTHERS**

A director, officer, employee or shareholder, as such, of the Company shall not have any liability for any obligations of the Company under the Debentures or the Indenture nor for any claim based on, in respect of or by reason of such obligations or their creation. The Holder of this Debenture by accepting this Debenture waives and releases all such liability. The waiver and release are part of the consideration for the issuance of this Debenture.

## **18. AUTHENTICATION**

This Debenture shall not be valid until the Trustee or an authenticating agent manually or by facsimile signs the certificate of authentication on the other side of this Debenture.

## **19. ABBREVIATIONS AND DEFINITIONS**

Customary abbreviations may be used in the name of the Holder or an assignee, such as: TEN COM (= tenants in common), TEN ENT (= tenants by the entireties), JT TEN (= joint tenants with right of survivorship and not as tenants in common), CUST (= Custodian) and UGMA (= Uniform Gifts to Minors Act).

All terms defined in the Indenture and used in this Debenture but not specifically defined herein are defined in the Indenture and are used herein as so defined.

## **20. INDENTURE TO CONTROL; GOVERNING LAW**

In the case of any conflict between the provisions of this Debenture and the Indenture, the provisions of the Indenture shall control. This Indenture and the Debentures shall be governed by, and construed in accordance with, the laws of the Province of Alberta and the federal laws of Canada applicable therein. The Company has submitted to the non-exclusive jurisdiction of any court of the Province of Alberta for purposes of all legal actions and proceedings instituted in connection with the Indenture and the Debentures.

The Company will furnish to any Holder, upon written request and without charge, a copy of the Indenture. Requests may be made to: Whitemud Resources Inc., c/o Burstall Winger LLP, Suite 1600, 333 - 7 Ave. S.W., Calgary, Alberta T2P 2Z1, Attention: Chief Financial Officer, Facsimile No: (403) 265-8565 Telephone No.: (403) 234-3337.

**SCHEDULE 1**

**ASSIGNMENT FORM**

To assign this Debenture, fill in the form below:

I or we assign and transfer this Debenture  
to

\_\_\_\_\_

\_\_\_\_\_  
(Insert assignee's Soc. Sec. or tax I.D. no.)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
(Print or type assignee's name, address and postal code)

and irrevocably appoint

\_\_\_\_\_

agent to transfer this Debenture on the books of the Company. The agent may substitute another to act for him or her.

Your signature

Date: \_\_\_\_\_

\_\_\_\_\_  
(sign exactly as your name appears on the other side of this Debenture)

\*Signature guaranteed by:

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

\_\_\_\_\_

The signature must be guaranteed by a Canadian Schedule 1 chartered bank or a member of an acceptable Medallion Guarantee Program or any other guarantee program acceptable to the Registrar.

If the Debenture bears a U.S. Restrictive Legend then this Assignment Form must be accompanied by either (i) in the case of an assignment of the Debenture outside the United States under Rule 904 of Regulation S under the United States Securities Act of 1933, as amended (the "Securities Act"), at a time when the Company is a "foreign issuer", as defined in Regulation S, a

declaration substantially in the form set forth in Schedule 2 hereto or such other form as the Company may from time to time prescribe, or (ii) in all other cases, an opinion of counsel or other evidence of exemption, in either case reasonably satisfactory to the Company, to the effect that the transfer is exempt from registration under the Securities Act.

The undersigned assignee hereby acknowledges that the Debenture transferred to the undersigned in accordance with the foregoing, the security securing the obligations of the Company thereunder and all rights, remedies and privileges of the undersigned as a holder of such Debenture thereunder, under such security and under the indenture governing such Debenture are subject to a subordination agreement dated August 6, 2009 between the Company, Canadian Western Bank and Olympia Trust Company and such obligations and security are subordinate and postponed to the Senior Indebtedness and Senior Security (each as defined in such indenture).

Assignee's signature

Date: \_\_\_\_\_



**SCHEDULE 2**

**FORM OF CERTIFICATE OF EXCHANGE OR TRANSFER  
FOR DEBENTURES BEARING A U.S. RESTRICTIVE LEGEND**

TO: Whitemud Resources Inc.  
c/o Burstall Winger LLP  
Suite 1600, 333 - 7 Ave. S.W.  
Calgary, Alberta T2P 2Z1

Attention: Chief Financial Officer

- and -

Olympia Trust Company  
2300, 125 – 9<sup>th</sup> Avenue SE  
Calgary, Alberta T2G 0P6

as trustee

for the 10.0% Secured Subordinated Debentures due December 31, 2012  
of Whitemud Resources Inc.

**Re: 10.0% Secured Subordinated Debentures due December 31, 2012**

Reference is hereby made to the Indenture dated as of •, 2011 (the "**Indenture**"), among Whitemud Resources Inc., a corporation duly organized under the laws of Alberta (the "**Company**"), and Olympia Trust Company, a trust company organized and existing under the laws of Canada, as Trustee (the "**Trustee**"). Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

\_\_\_\_\_ (the "**Transferor**") owns and proposes to exchange or transfer (the "**Transfer**") \_\_\_\_\_ principal amount of 10.0% Secured Subordinated Debentures due December 31, 2012 (the "**Debentures**") of Whitemud Resources Inc. (the "**Company**") held as a beneficial interest in the form of the Debenture in the name of the Transferor. The Transferor has requested an exchange or transfer of such Debentures for an equivalent beneficial interest in the unrestricted Debenture. In connection with the Transfer, the Transferor hereby certifies to the Company and Olympia Trust Company (the "**Transfer Agent**") as follows:

The Transfer to which this declaration relates is being made in reliance on Rule 904 of Regulation S under the United States Securities Act of 1933, as amended (the "**Securities Act**") and certifies that (a) the Transferor is not an affiliate of the Company (as that term is defined in Rule 405 under the Securities Act), (b) the offer of such securities was not made to a person in the United States and either (i) at the time the buy order was originated, the buyer was outside the United States, or the seller and any person acting on its behalf reasonably believed that the buyer was outside the United States, or (ii) the transaction was executed in, on or through the facilities of the TSXV and neither the seller nor any person acting on its behalf knows that the transaction has been prearranged with a buyer in the United States, (c) neither the Transferor nor any affiliate of the Transferor nor any person acting on any of their behalf has engaged or will

engage in any directed selling efforts in the United States in connection with the offer and sale of such securities, (d) the sale is bona fide and not for the purpose of "washing off" the resale restrictions imposed because the securities are "restricted securities" (as such term is defined in Rule 144(a)(3) under the Securities Act, (e) the Transferor does not intend to replace such securities with fungible unrestricted securities and (f) the contemplated sale is not a transaction, or part of a series of transactions which, although in technical compliance with Regulation S under the Securities Act, is part of a plan or scheme to evade the registration provisions of the Securities Act. Terms used herein have the meanings given to them by Regulation S under the Securities Act.

This Certificate and the statements contained herein are made for the benefit of the Company and the Transfer Agent in connection with the Transfer of the Debentures contemplated hereby. The Transferor undertakes to inform the Company and the Transfer Agent promptly upon becoming aware of any development or occurrence that would render any of the foregoing representations inaccurate or incomplete prior to the completion of the Transfer.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Name of Seller

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

**[Name]**

**[Title]**

**EXHIBIT "B"**  
**SUBORDINATION AGREEMENT**

C-1

**EXHIBIT "C"**  
**SECURITY DOCUMENTS**