

## TRUST INDENTURE

**THIS TRUST INDENTURE** made as of the 15th day of December, 2002 .

### **BETWEEN:**

**HOMBURG SHARECO INC.,**  
a company incorporated under the laws of the Province of Nova Scotia ,  
(hereinafter referred to as the "Corporation"),

- and -

**STICHTING HOMBURG MORTGAGE BOND,**  
a foundation incorporated under the laws of the Netherlands,  
(hereinafter referred to as the "Trustee").

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

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

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

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

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

### **ARTICLE I**

#### **INTERPRETATION**

##### **1.1 Definitions**

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

(a) "this Trust Indenture", "this indenture", "herein", "hereby", "hereof", "hereunder", and similar expressions mean or refer to this Trust Indenture and any indenture, deed of instrument supplemental or ancillary hereto as a whole and are not limited to any particular Article, Section or other subdivision hereof;

- (b) "Affiliate" means an affiliated body corporate as defined in the CBCA;
- (c) "Bonds" means Bonds of the Corporation issued or to be issued hereunder for the time being outstanding and entitled to the benefit of the security hereby created;
- (d) "Bondholders' Request" means an instrument signed in one or more counterparts by the holder or holders of not less than 10% in principal amount of the Bonds outstanding for the time being requesting the Trustee to take some action or proceeding specified therein;
- (e) "Business Day" means any day upon which chartered banks are open for business in Halifax, Nova Scotia;
- (f) "CAD" and "\$" means lawful money of Canada;
- (g) "Cash" means lawful money of Canada or Euros, as the case may be, and any amounts thereof represented by certificates of deposit or other acknowledgments of indebtedness maturing within one year of any Canadian chartered bank;
- (h) "CBCA" means the *Canada Business Corporations Act*, R.S.C. 1985, c.C-44, as the same is amended from time to time;
- (i) "Certificate of the Corporation", "Written Order of the Corporation" and "Written Request of the Corporation" mean, respectively, a certificate, written order and written request under the seal of the Corporation signed in the name of the Corporation by the President or any Vice President together with the Secretary or an Assistant Secretary of the Corporation;
- (j) "Certified Resolution" means a copy of a resolution certified by the President, any Vice-President or the Secretary of the Corporation under its seal to have been duly passed by the directors of the Corporation and to be in full force and effect on the date of such certification, unamended;
- (k) "Corporation" means Homburg Shareco Inc. and any successor corporation which shall have complied with the provisions of Article XVIII;
- (l) "Corporation's auditors" means an independent firm of chartered accountants duly appointed as auditors of the Corporation and acceptable to the Trustee;
- (m) "Counsel" means a barrister or solicitor or firm of barristers and solicitors (who may be counsel for the Corporation) acceptable to the Trustee;
- (n) "director" means a director of the Corporation for the time being and "directors" or "board of directors" means the board of directors of the Corporation or whenever duly empowered the executive committee, if any, of the board of directors of the Corporation, and reference to action by the directors means action by the directors of the Corporation as a board or action by the executive committee of the board;

- (o) "Event of Default" has the meaning specified in Section 13.1;
- (p) "Guarantee Agreement" means the guarantee of the Guarantor referred to in Section 8.10;
- (q) "Guarantor" means Homburg Invest Inc.;
- (r) "Homburg CAD Mortgage Bond 1" has the meaning specified in Section 3.1(c);
- (s) "Homburg Euro Mortgage Bond 1" has the meaning specified in Section 3.1(d);
- (t) "Homburg Mortgage Bond 1" includes bonds designated as Homburg Euro Mortgage Bond 1 bonds and bonds designated as Homburg CAD Mortgage Bond 1;
- (u) "Homburg Mortgage Bond 1 Collateral" means certain assets of the Corporation described in Appendix C annexed hereto;
- (v) "Homburg Mortgage Bond 1 Issue Date" has the meaning specified in Section 3.1(b);
- (w) "Minor Title Defects" means title defects or irregularities which, in the opinion of Counsel, are of a minor nature and in the aggregate will not materially impair the use of the property for the purposes for which it is held or materially affect the security for the Bonds, including, without limitation, irregularities or deficiencies in the recorded evidence of title to real or immovable property which in the opinion of Counsel can be cured by proceedings within the exclusive power of the Corporation or which in the opinion of Counsel are not of a very serious under the facts and circumstances of the case;
- (x) "Mortgaged Premises" at any time means all property and assets which are at that time charged or intended to be charged by the Corporation with the payment of the moneys intended to be secured hereby;
- (y) "Trustee" means Stichting Homburg Mortgage Bond or its successor for the time being in the trusts hereby created.

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

## **1.2 Meaning of "Outstanding" for Certain Purposes**

Every Bond certified and delivered by the Trustee hereunder shall be deemed to be outstanding until it shall be cancelled or delivered to the Trustee for cancellation or moneys for

the payment thereof shall be set aside under Section 4.9 or Article XIV, as the case may be, provided that:

(a) Bonds which have been partially redeemed shall be deemed to be outstanding only to the extent of the unredeemed part of the principal amount thereof;

(b) where a new Bond has been issued in substitution for a Bond which has been lost, stolen or destroyed, only one of them shall be counted for the purpose of determining the aggregate principal amount of Bonds outstanding; and

(c) for the purposes of any provision of this Trust Indenture entitling holders of outstanding Bonds to vote, sign consents, requisitions or other instruments or take any other action under this Trust Indenture, Bonds owned directly or indirectly, legally or equitably by the Corporation or any Affiliate shall be disregarded except that:

(i) for the purpose of determining whether the Trustee shall be protected in relying on any such vote, consent, requisition or other action, only the Bonds which the Trustee knows are so owned shall be so disregarded; and

(ii) Bonds so owned which have been pledged in good faith other than to the Corporation or an Affiliate shall not be so disregarded if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to vote such Bonds in his discretion free from the control of the Corporation and its Affiliates.

### **1.3 *Interpretations Not Affected by Headings, etc.***

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

### **1.4 *Applicable Law***

This Trust Indenture and the Bonds shall be construed in accordance with the laws of the Province of Nova Scotia and the federal laws of Canada applicable therein, and shall be treated in all respects as Nova Scotia contracts.

### **1.5 *Appendices***

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

- Appendix A - Form of Homburg CAD Mortgage Bond 1
- Appendix B - Form of Homburg Euro Mortgage Bond 1
- Appendix C – Homburg Mortgage Bond 1 Collateral
- Appendix D – Guarantee Agreement

## **1.6 Meaning of certain terms**

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

## **ARTICLE II**

### **THE BONDS**

#### **2.1 *No Fixed Limitation***

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

#### **2.2 *Issuance in Series***

The Bonds may be issued in one or more series, subject to compliance with the provisions and conditions hereinafter set forth. Subject to the provisions hereof, the Bonds of each such series (other than the Homburg Mortgage Bond 1 bonds hereinafter mentioned, which shall have the attributes set out in this Trust Indenture) shall bear such date or dates and mature on such date or dates, shall bear interest at such rate or rates, may be issued in such denominations, may be redeemable before maturity in such manner and subject to payment of such premium, or without premium, may be payable as to principal, interest and premium, if any, at such place or places and in such currency or currencies, may be repayable at the option of the holder on such date or dates, may provide for such sinking fund, if any may contain such provisions for the interchange or transfer of Bonds of the same series of different denominations or forms, may have attached thereto and/or issued therewith warrants entitling the holders to subscribe for or purchase shares or other securities of the Corporation or otherwise upon such terms, may give the holders thereof the right to convert the same into shares or other securities of the Corporation or otherwise upon such terms and may contain such other provisions, not inconsistent with the provisions of this Trust Indenture, as may be determined by resolution of the directors passed at or prior to the time of issue thereof and expressed in an indenture supplemental hereto providing for the issuance of the Bonds of such series and (to such extent as the directors may deem appropriated) in the Bonds of such series. At the option of the Corporation, the maximum principal amount of Bonds of any series may be limited, such limitation to be expressed in the supplemental indenture providing for the issuance of the Bonds of such series and in the Bonds of such series.

#### **2.3 *Form of Bonds***

The Bonds of any series may be of different denominations and forms (either coupon Bonds or fully registered Bonds or both) and may contain such variations of tenor and effect, not

inconsistent with the provisions of this Trust Indenture, as are incidental to such differences of denomination and form, including variations in the provisions for the exchange of Bonds of different denominations or forms and in the provisions for the registration or transfer of Bonds and any series of Bonds (other than the Homburg Mortgage Bond 1 bonds) may consist of Bonds having different dates of issue, different dates of maturity, different rates of interest, different redemption prices (if any) and different sinking fund provisions (if any) and may consist partly of Bonds carrying the benefit of a sinking fund and partly of Bonds with no sinking fund. The Bonds of each particular series shall be designated and numbered in any manner prescribed by the Corporation with the approval of the Trustee.

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

All series of Bonds (other than the Homburg Mortgage Bond 1 bonds) which may at any time be issued hereunder and the coupons, if any, appertaining thereto and the certificate of the Trustee endorsed on such Bonds may be in such form or forms as the directors shall by resolution determine at the time of the first issue of any series or part of a series of such Bonds and as shall be approved by the Trustee.

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

#### **2.4 *Signature on Bonds and Coupons***

All Bonds shall be under the seal of the Corporation or a facsimile thereof (which shall be deemed to be the seal of the Corporation) and shall be signed (either manually or by facsimile signature) by the President or a Vice-President and by the Secretary or the Treasurer or an Assistant Secretary or an Assistant Treasurer of the Corporation holding office at the time of signing. Interest coupons attached to coupon Bonds shall have reproduced thereon the facsimile signature of the present or any future Secretary or the present or any future Treasurer of the Corporation. A facsimile signature upon any of the Bonds and/or coupons shall for all purposes of this Trust Indenture be deemed to be the signature of the person whose signature it purports to be and to have been signed at the time such facsimile signature is reproduced and notwithstanding that any person whose signature, either manual or in facsimile, may appear on the Bonds or coupons is not at the date of this Trust Indenture or at the date of the Bonds or at the date of the certifying and delivery thereof, the President, a Vice-President, the Secretary, the Treasurer, an Assistant Secretary or an Assistant Treasurer, as the case may be, of the

Corporation, such Bonds or coupons shall be valid and binding upon the Corporation and entitled to the security of this indenture.

## **2.5 Certification**

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

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

## **2.6 Interim Bonds**

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

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

## **2.7 *Bonds Not Equally Secured***

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

## **2.8 *Pledge of Bonds***

All or any of the Bonds may be pledged, hypothecated or charged from time to time by the Corporation as security for advances or loans to or for indebtedness or other obligations or liabilities of the Corporation, and, when redelivered to the Corporation or its nominees on or without payment, satisfaction, release or discharge in whole or in part of any such advances, loans, indebtedness, obligations or liabilities shall be forthwith delivered to the Trustee and shall be cancelled by it, and no Bonds shall be issued in substitution therefor except upon due compliance by the Corporation with the provisions of Section 3.6.

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

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

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

## **2.10 *Commencement of Interest***

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



(b) The interest payable on each interest payment date shall be deemed to have accrued from day to day during the six-month period ending with the preceding day. Any provision herein for the payment of interest accrued to a specified date shall accordingly mean interest accrued to the end of the preceding day. Interest for any period of less than six months shall be computed, in the case of Bonds denominated in Canadian dollars, on the basis of a year of 365 days and, in the case of Bonds denominated in Euros, on the basis of a year of 360 days.

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

### **2.11 Registration of Bonds**

(a) The Corporation shall cause to be kept registers hereinafter referred to in which shall be entered the names and addresses of the holders of Bonds and particulars of the Bonds held by them respectively and of all transfers of Bonds. No transfer of a Bond shall be valid unless made on the appropriate register or on one of the appropriate registers by the registered holder or his executors or administrators or other legal representatives or his or their attorney duly appointed by an instrument in writing in form and execution satisfactory to the Trustee, upon compliance with such reasonable requirements as the Trustee and/or other registrar may prescribe, and unless such transfer shall have been duly noted on such Bond by the Trustee or other registrar.

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

(b) The registers referred to in this Section shall:

(i) with respect to the Homburg Mortgage Bond 1 bonds, be kept by and at the principal office of the Trustee or its agent at Soest, The Netherlands, and at such other place or places and by the Trustee and by such other registrar or registrars, if any, as the Corporation with the approval of the Trustee may designate; and

(ii) with respect to any other series of Bonds, be kept at such place or places and by the Trustee and/or by such other registrar or registrars, if any, as the Corporation with the approval of the Trustee may designate.

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

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

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

### **2.12 Exchanges of Bonds**

(a) Bonds of any denomination may be exchanged for Bonds of any other authorized denomination or denominations, any such exchange to be for an equivalent aggregate principal amount of Bonds of the same series, carrying the same rate of interest and having the same maturity date, the same redemption and sinking fund provisions, if any, and the same conversion, purchase or other rights, if any. Notwithstanding the foregoing, Homburg CAD Mortgage Bond 1 bonds shall not be exchangeable for Homburg Euro Mortgage Bond 1 bonds and Homburg Euro Mortgage Bond 1 bonds shall not be exchangeable for Homburg CAD Mortgage Bond 1 bonds. All exchanges of Homburg Mortgage Bond 1 bonds permitted hereby shall be made only at the principal office of the Trustee at Soest, The Netherlands or at such other office of the Trustee or at the office of such other registrar or registrars as may from time to time be designated by the Corporation for such purpose with the approval of the Trustee or such other registrar. Exchanges of Bonds of any other series shall be made at such place or places as shall be designated by the Corporation for that purpose at the time of the creation and issue thereof or from time to time thereafter. Any Bonds tendered for exchange shall be surrendered to the Trustee or appropriate registrar.

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

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

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

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

### **2.14 *Closing of Registers***

(a) The Corporation, with the approval of the Trustee, may at any time close any register for any series of Bonds other than those kept at the principal offices of the Trustee at Soest, The Netherlands for Homburg Mortgage Bond 1 bonds, and transfer the registration of any Bonds registered thereon to another register and thereafter such Bonds shall be deemed to be registered on such other register.

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

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

(a) The person in whose name any Bond shall be registered shall be deemed and regarded as the owner thereof for all purposes of this Trust Indenture and payment of or on account of the principal of and premium, if any, on such Bond shall be made only to or upon the order in writing of such registered holder and such payment shall be a good and sufficient discharge to the Corporation and the Trustee for the amount so paid. As the interest on Bonds becomes due (except interest payable at maturity or on redemption, which shall be paid upon presentation and surrender of such Bonds for payment) the Corporation shall, at least three days prior to each date on which interest on such Bonds becomes due, forward or cause to be forwarded by prepaid post or courier (or in the event of mail service interruption, by such other means as the Trustee and the Corporation shall determine to be appropriate) to the Trustee a cheque for the interest amount (or, at the Corporation's option, such interest amount may be forwarded to the Trustee by wire transfer), which cheque or wire transfer must be received by the Trustee at least two (2) Business Days prior to each date on which interest on such Bonds is due, and the Trustee shall forward one (1) Business Day prior to each date on which interest on the Bonds is due a cheque or wire transfer in the amount of the interest payable (less any tax required by law to be deducted or withheld) to the persons registered as holders of the Bonds on the date (the "Record Date") which is ten (10) Business Days prior to the date on which interest is due (by prepaid mail or by courier in the case of any payment of interest by cheque and in accordance with the wire

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

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

(c) INTENTIONALLY DELETED.

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

(e) Where Bonds are registered in more than one name, the principal moneys, premium (if any) and interest from time to time payable in respect thereof may be paid by cheque payable to the order of all such holders, failing joint written instructions from them to the contrary, and

the receipt of any one of such holders thereof shall be a valid discharge to the Trustee and any registrar and to the Corporation.

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

### **2.16 *Place of Payment***

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

## **ARTICLE III**

### **ISSUE AND DELIVERY OF BONDS**

#### **3.1 *Form and Terms of Homburg Mortgage Bond 1 bonds***

(a) The first series of Bonds to be issued hereunder shall be designated as "Homburg Mortgage Bond 1" (herein called the "Homburg Mortgage Bond 1 bonds"). The aggregate principal amount of Homburg Mortgage Bond 1 bonds that may be issued and outstanding hereunder is limited to \$20,000,000 in lawful money of Canada or the equivalent thereof in Euros calculated at the rate of exchange for buying Canadian dollars quoted by ABN AMRO Bank at 10:00 o'clock a.m. (Halifax time) on the Homburg Mortgage Bond 1 Issue Date, provided that if the Issue Date is not a business day, the rate of exchange for buying Canadian dollars quoted by ABN AMRO Bank at 10:00 o'clock a.m. (Halifax time) on the immediately preceding business day shall be used.

(b) The Homburg Mortgage Bond 1 bonds shall be dated as of December 15, 2002 (the "Homburg Mortgage Bond 1 Issue Date").

(c) Homburg Mortgage Bond 1 bonds denominated in Canadian dollars shall be designated "Homburg CAD Mortgage Bond 1" and shall bear interest (subject to the provisions of Section 2.10) from the Homburg Mortgage Bond 1 Issue Date at the rate of 10% per annum payable (after as well as before maturity, default and judgment, with interest on overdue interest and premium (if any) at the said rate) on December 31, 2002 and thereafter half-yearly on June 30th and December 31<sup>st</sup> in each year; and shall mature on December 15, 2009.

(d) Homburg Mortgage Bond 1 bonds denominated in Euros shall be designated "Homburg Euro Mortgage Bond 1" and shall bear interest (subject to the provisions of Section 2.10) from the Homburg Mortgage Bond 1 Issue Date at the rate of 8.5% per annum payable (after as well as before maturity, default and judgment, with interest on overdue interest and

premium (if any) at the said rate) on December 31, 2002 and thereafter half-yearly on June 30th and December 31st in each year; and shall mature on December 15, 2009.

(e) The principal of the Homburg CAD Mortgage Bond 1 bonds and the interest and premium, if any, thereon and all sums which may at any time become payable thereon, whether at maturity or on redemption or otherwise, shall be payable in lawful money of Canada at the address of the registered holder as shown on the appropriate register or, at the option of the registered holder, at ABN AMRO Bank at its Soest, The Netherlands branch. The Bondholder shall bear all currency exchange risks associated with receipt of such payments in Canadian Dollars.

(f) The principal of the Homburg Euro Mortgage Bond 1 bonds and the interest and premium, if any, thereon and all sums which may at any time become payable thereon, whether at maturity or on redemption or otherwise, shall be payable in Euros at the address of the registered holder as shown on the appropriate register or, at the option of the registered holder, at ABN AMRO Bank at its Soest, The Netherlands branch. The Bondholder shall bear all currency exchange risks associated with receipt of such payments in Euros.

(g) The Homburg Mortgage Bond 1 bonds shall be issuable as fully registered Bonds in denominations of CAD \$20,000 (or the equivalent thereof in Euros calculated at the rate of exchange for buying Canadian dollars quoted by ABN AMRO Bank at 10:00 o'clock a.m. (Halifax time) on the Homburg Mortgage Bond 1 Issue Date in the case of the Homburg Euro Mortgage Bond 1 bonds, provided that if the Issue Date is not a business day, the rate of exchange for buying Canadian dollars quoted by ABN AMRO Bank at 10:00 o'clock a.m. (Halifax time) on the immediately preceding business day shall be used); the Homburg CAD Mortgage Bond 1 bonds shall be substantially in the form set out in Appendix A and shall bear such distinguishing letters and numbers as the Trustee shall approve; the Homburg Euro Mortgage Bond 1 bonds shall be substantially in the form set out in Appendix B and shall bear such distinguishing letters and numbers as the Trustee shall approve.

### **3.2 INTENTIONALLY DELETED**

### **3.3 INTENTIONALLY DELETED**

### **3.4 *Issue of Homburg Mortgage Bond 1***

Homburg Mortgage Bond 1 bonds in the aggregate principal amount of \$20,000,000 in lawful money of Canada or the equivalent thereof in Euros calculated at the rate of exchange for buying Canadian dollars quoted by ABN AMRO Bank at 10:00 o'clock a.m. (Halifax time) on the Homburg Mortgage Bond 1 Issue Date (provided that if the Issue Date is not a business day, the rate of exchange for buying Canadian dollars quoted by ABN AMRO Bank at 10:00 o'clock a.m. (Halifax time) on the immediately preceding business day shall be used) shall be executed by the Corporation and delivered to the Trustee. Upon receipt by the Trustee of an opinion of Counsel to the effect that all legal requirements have been met in respect of the issue of such Homburg Mortgage Bond 1 bonds, the said CAD \$20,000,000 (or equivalent thereof in Euros)

aggregate principal amount of Homburg Mortgage Bond 1 bonds shall be certified by the Trustee and delivered to or to the Written Order of the Corporation without any further act or formality of the part of the Corporation.

The Trustee shall have no duty or responsibility with respect to the issue or application of the Homburg Mortgage Bond 1 bonds so certified and delivered or of the proceeds thereof.

### **3.5 INTENTIONALLY DELETED**

### **3.6 *Issue to Additional Bonds***

Bonds other than the Homburg Mortgage Bond 1 bonds (herein called the "Additional Bonds") may from time to time be executed and issued by the Corporation and certified by the Trustee hereunder subject to the provisions of this Section and the requirements and restrictions provided in this indenture.

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

(a) a Certificate of the Corporation stating that no default exists in respect of any of the covenants, agreements or provisions of this indenture or the Guarantee;

(b) a written direction of the Corporation requesting the certification of such Additional Bonds in the principal amount applied for and specifying the person or persons to whom such Additional Bonds shall be delivered;

(c) a Certified Resolution authorizing the issue and requesting the certification of Additional Bonds of such series in the principal amount applied for and specifying the series thereof and the particulars and provisions to be expressed in or which are to relate to such Additional Bonds in accordance with the provisions hereof;

(d) a supplemental indenture in form and terms approved by Counsel providing for the issuance of such Additional Bonds; and

(e) an opinion of Counsel that all legal requirements in respect of the proposed issue of Additional Bonds have been met.

### **3.7 *No Additional Bonds to be Issued During Default***

No Additional Bonds shall be certified and delivered if the Corporation is at the time, to the knowledge of the Trustee, in default under any of the provisions hereof, or if at the time to the knowledge of the Trustee any event has occurred which with the passing of time would

become an event of default hereunder. Any certification and delivery of any Additional Bonds by the Trustee shall be conclusive evidence of the absence of knowledge on the part of the Trustee of any such default at the time of such certification and delivery.

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

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

## **ARTICLE IV**

### **REDEMPTION OF BONDS**

#### **4.1 *General***

The Corporation shall have the right, at its option, to redeem either in whole at any time or in part from time to time before maturity Bonds issued hereunder of any series or part of a series which by their terms are made so redeemable, at such rate or rates of premium, if any, and at such date or dates and on such terms and conditions as shall have been determined at the time of issue of such Bonds and as shall be expressed in this Trust Indenture and/or in the Bonds and/or in the supplemental indenture authorizing or providing for the issue thereof.

#### **4.2 *Optional Redemption of Homburg Mortgage Bond 1 bonds***

The Homburg Mortgage Bond 1 bonds shall be redeemable at any time on or after December 16, 2007 and prior to maturity, in whole at any time or in part from time to time at the option of the Corporation on not less than 30 day's notice at a redemption price equal to 100% of the principal amount thereof, together in each case with accrued and unpaid interest to the date fixed for redemption.

#### **4.3 *INTENTIONALLY DELETED***

#### **4.4 *Partial Redemption of Homburg Mortgage Bond 1 bonds***

(a) If less than all of the Homburg Mortgage Bond 1 bonds for the time being outstanding are to be redeemed (which partial redemption shall only occur on or after December 16, 2007 and prior to maturity), the Corporation shall in each such case, at least 15 days before the date on which the notice of redemption is required to be given, notify the Trustee in writing of its intention to redeem Homburg Mortgage Bond 1 bonds and of the aggregate principal amount of Homburg Mortgage Bond 1 bonds so to be redeemed. The Trustee shall thereupon select the



Homburg Mortgage Bond 1 bonds to be redeemed on a *pro rata* basis to the nearest multiple of CAD \$1,000 (or the equivalent thereof in Euros in the case of Homburg Euro Mortgage Bond 1 bonds calculated at the rate of exchange for buying Canadian dollars quoted by ABN AMRO Bank at 10:00 o'clock a.m. (Halifax time) on the date fixed for redemption) in accordance with the principal amount of Homburg Mortgage Bond 1 bonds registered in the name of each holder, but in no case shall a Bond be redeemed in part unless the principal amount redeemed is CAD \$1,000 (or the equivalent thereof in Euros in the case of Homburg Euro Mortgage Bond 1 bonds calculated in the manner set forth in this Section 4.4(a)) or a multiple thereof. For this purpose the Trustee may make regulations with regard to the manner in which such Bonds may be so selected and regulations so made shall be valid and binding upon all holders of Bonds.

(b) If as a result of any such redemption, one or more Homburg Mortgage Bond 1 bonds of denominations in excess of CAD \$1,000 (or the equivalent thereof in Euros in the case of Homburg Euro Mortgage Bond 1 bonds calculated in accordance with Section 4.4(a)) shall become subject to redemption in part only (such part being CAD \$1,000 (or the equivalent thereof in Euros in the case of Homburg Euro Mortgage Bond 1 bonds calculated in accordance with Section 4.4(a)) or a multiple thereof), the holder of any such Bond, upon surrender of such Bond in accordance with Section 2.12, shall be entitled to receive, without expense to the holder, one or more Homburg Mortgage Bond 1 bonds for the unredeemed part of the principal amount of such Bond so surrendered.

#### **4.5 INTENTIONALLY DELETED**

#### **4.6 *Notice of Redemption***

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

(a) notice of intention to redeem such Bond shall be given to each holder of such Bond by letter or circular sent postage prepaid, addressed to him at his last address appearing upon one of the registers hereinbefore mentioned and mailed, in the case of all Bonds, not less than 30 days and not more than 60 days prior to the date specified for redemption; provided always that the accidental omission to mail any such letter or circular to or the non-receipt of any such letter or circular by any such holder or holders shall not invalidate or otherwise prejudicially affect the redemption of such Bonds;

(b) every notice of redemption shall designate the series and maturity date of the Bonds so called for redemption, and unless all of the Bonds or all of the Bonds of a series or all of the Bonds of one maturity so designated for the time being outstanding are to be redeemed, state the designating numbers of the Bonds so called for redemption and in case a Bond is to be redeemed in part, only that part of the principal amount thereof so to be redeemed, and shall specify the redemption date, the redemption price and places of payment and shall state that in case the Bonds specified in such notice be not presented for redemption on such redemption date, all interest thereon shall cease from and after the said date.

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

#### **4.7 *Bonds Due on Redemption Dates***

Notice having been given as aforesaid, all the Bonds so called for redemption shall thereupon be and become due and payable at the redemption price, on the redemption date specified in such notice, at any of the places where the principal of such Bonds is expressed to be payable in the same manner and with the same effect as if it were the date of maturity specified in such Bonds respectively, anything therein or herein to the contrary notwithstanding, and from and after such redemption date, if the moneys necessary to redeem such Bonds shall have been deposited as provided in Section 4.8 and the Trustee shall have been furnished with affidavits or other proof satisfactory to it as to the mailing of such notices, interest on the said Bonds shall cease. In case any question shall arise as to whether any notice has been given as above provided and such deposit made, such question shall be decided by the Trustee whose decision shall be final and binding upon all parties in interest.

#### **4.8 *Deposit of Redemption Moneys***

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

#### **4.9 *Failure to Surrender Bonds Called for Redemption***

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

#### **4.10 *Cancellation of Bonds***

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

#### **4.11 *Surrender of Bonds for Cancellation***

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

#### **4.12 *Redemption on Liquidation***

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

#### **4.13 *Purchase of Homburg Mortgage Bond 1 bonds***

The Corporation, when not in default hereunder, may at any time on or after December 16, 2002 but prior to maturity purchase Homburg Mortgage Bond 1 bonds in the open market or by tender or by private contract at a price not exceeding 100% of the principal amount thereof plus accrued and unpaid interest to the date of purchase and reasonable costs of purchase. Any purchase of Homburg CAD Mortgage Bond 1 bonds pursuant to this Section 4.13 shall be subject to the provisions of Section 3.1(e) and any purchase of Homburg Euro Mortgage Bond 1 bonds pursuant to this Section 4.13 shall be subject to the provisions of Section 3.1(f). All Homburg Mortgage Bond 1 bonds so purchased shall forthwith be delivered to the Trustee and shall be cancelled by it and no Bonds shall be issued in substitution therefor.

#### **4.14 INTENTIONALLY DELETED**

### **ARTICLE V**

**INTENTIONALLY DELETED**

**ARTICE VI**

**INTENTIONALLY DELETED**

**ARTICLE VII**

**INTENTIONALLY DELETED**

**ARTICLE VIII**

**SECURITY**

**8.1 *Homburg Mortgage Bond 1 Collateral***

In consideration of the premises and of the sum of \$1.00 now paid by the trustee to the Corporation (the receipt whereof is hereby acknowledge) and to secure the due payments of all principal of and all interest and premium (if any) on the Homburg Mortgage Bond 1 bonds from time to time issued and certified hereunder and of all other moneys for the time being and from time to time owing on the Homburg Mortgage Bond 1 bonds, the Corporation hereby assigns and transfers the Homburg Mortgage Bond 1 Collateral to the Trustee to be held by the Trustee on behalf of the holders of the Homburg Mortgage Bond 1 bonds in accordance with the terms hereof. The Corporation hereby covenants that it will not created, issue, incur, assume or allow to exist any mortgage, hypothec, charge, pledge, lien, security interest or other encumbrance upon the Homburg Mortgage Bond 1 Collateral or any part thereof ranking or purporting to rank in priority to or pari passu with the assignment and transfer hereby created.

The Trustee shall be the joint and several creditor (“hoofdelijk schuldeiser”) together with each Homburg Mortgage Bond 1 bondholder) of each obligation of the Corporation towards any such Homburg Mortgage Bond 1 bondholder hereunder and that accordingly the Trustee will have its own independent right to demand performance by the Corporation of such obligation and the Trustee will hold the Homburg Mortgage Bond 1 Collateral to secure its rights as joint and several creditor of such obligations. However, any discharge of the Corporation for any such obligation to the Trustee or a Homburg Mortgage Bond 1 bondholder shall to the same extent discharge the Corporation vis-à-vis the other party, and a Homburg Mortgage Bond 1 bondholder and the Trustee shall not by virtue of this Clause, be entitled to pursue the Corporation for the same obligation.

Without limiting or affecting the Trustee’s rights against the Corporation (whether under this Clause or under any other provision of the Trust Indenture), the Trustee agrees with each

Homburg Mortgage Bond 1 bondholder that, subject to what is set out in the next sentence, any amounts that the Trustee receives in the exercise of its rights as a joint and several creditor will be received by it for the benefit of, and with the purpose of passing it on to, the Homburg Mortgage Bond 1 bondholders. However, for the avoidance of doubt, nothing in the previous sentence shall in any way limit the Trustee's right to act in order to protect or preserve rights hereunder, as contemplated by the provisions of this Trust Indenture (or to perform any act reasonably incidental to any of the foregoing).

## **8.2 INTENTIONALLY DELETED**

### **8.3 *Habendum***

To have and to hold the Mortgaged Premises and all the rights hereby conferred unto the Trustee, its successors and assigns, forever, but in trust, nevertheless, for the uses and purposes and with the powers and authorities and subject to the terms and conditions mentioned and set forth in this Trust Indenture.

### **8.4 *Limited Recourse***

Neither the Trustee nor the holders of the Homburg Mortgage Bond 1 bonds shall have any claim whatsoever against any of the assets of the Corporation other than the Homburg Bond 1 Collateral and the recourse of the Trustee and the holders of the Homburg Mortgage Bond 1 bonds against the Corporation in respect of the payment of all principal, premium, if any, interest and any other amounts owing under the Homburg Mortgage Bond 1 bonds shall be limited to the amount, if any, recoverable in respect of the Homburg Mortgage Bond 1 Collateral.

### **8.5 *Bonds Separately Secured***

All of the Homburg Mortgage Bond 1 bonds shall be equally and rateably entitled to the benefits of the Homburg Mortgage Bond 1 Collateral.

### **8.6 *Security Effective Notwithstanding Date of Advance***

The mortgages and charges hereby created or provided to be created shall be and shall be deemed to be effective and shall take effect whether the moneys hereby secured or any part thereof be advanced before or after or at the same time as the issue of any of the Bonds intended to be secured thereby or before or after or upon the date of the execution of this Trustee Indenture.

### **8.7 *Title and Registration***

The Corporation hereby covenants with the Trustee:

(a) that it will forthwith and from time to time do, execute, acknowledge and deliver all acts, deeds, trust deeds of hypothec, mortgage and pledge, documents, instruments, assurances

and things which, in the opinion of Counsel or of the Trustee, are necessary or advisable to assign the Homburg Mortgage Bond 1 Collateral to the Trustee and to enable the Trustee to register the charges herein all public offices of registration to preserve, protect and perfect the security herein and its priority; and

(b) that, after the security hereby created shall have become enforceable and the Trustee shall have determined or become bound to enforce the same, it will from time to time execute and do all such assurances and things as the Trustee may reasonably require for facilitating the realization of the Mortgaged Premises and for exercising all the powers, authorities and discretions hereby conferred upon the Trustee and for confirming to any purchaser of any of the Mortgaged Premises, whether sold by the Trustee hereunder or by judicial proceedings, the title to the property so sold, and that it will execute all notices and directions as the Trustee may consider expedient.

#### **8.8 *Defeasance***

These presents are upon this express condition, that if the Corporation shall well and truly pay to the holders of the Bonds, the principal thereof and premium, if any, and interest thereon (including interest on amount in default) as the same shall respectively become due and payable and shall also pay all other sums payable hereunder by the Corporation and secured hereby and shall keep, perform and observe the covenants in the Bonds and in this Trust Indenture agreed to kept, performed and observed by or on the part of the Corporation, then these presents and the estate and rights hereby granted shall cease and become utterly null and void and the Mortgaged Premises shall revert to and revest in the Corporation without any release, acquittance, reconveyance, re-entry or other act or formality whatsoever; provided, however, that the Trustee shall execute all such documents and instruments as the Corporation may reasonably require in order to evidence the aforesaid release.

#### **8.9 *Partial Defeasance***

Upon payment to the holders of the Homburg Mortgage Bond 1 bonds of the principal thereof, premium, if any, and interest thereon (including interest on amount in default) the Homburg Mortgage Bond 1 Collateral shall revert to and revest in the Corporation and the Trustee shall execute such documents and instruments as the Corporation may reasonably require in order to evidence such partial release.

#### **8.10 *Guarantee***

The obligations of the Corporation under the Bonds will be guaranteed pursuant to a guarantee substantially in the form set out in Appendix D (the "Guarantee Agreement") executed by the Guarantor. If an Event of Default pursuant to section 13.1 shall have occurred and is continuing, the Trustee shall forthwith, and in any event not less than two(2) Business Days following such Event of Default, provide notice to the Guarantor of such Event of Default and shall demand payment from the Guarantor in respect of any such Event of Default.

**ARTICLE IX**

**INTENTIONALLY DELETED**

**ARTICLE X**

**INTENTIONALLY DELETED**

**ARTICLE XI**

**INTENTIONALLY DELETED**

**ARTICLE XII**

**COVENANTS OF THE CORPORATION**

**12.1 General Covenants**

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

(a) *Authority to Charge.* That the Corporation has good right and lawful authority to charge its undertaking, properties and assets as provided in and by this Trust Indenture.

(b) *To Pay Principal, Premium and Interest.* That the Corporation will well, duly and punctually pay or cause to be paid to every Bondholder the principal of and interest accrued on the Bonds of which he is the holder, and premium, if any, thereon on the dates, at the places, in the moneys and in the manner mentioned herein and in the Bonds.

(c) *To Maintain Corporate Existence.* That the Corporation will at all times maintain its corporate existence.

(d) *To Maintain Security.* That the Corporation will fully and effectually maintain and keep maintained the security hereby created as a valid and effective security at all times so long as, in the case of the Homburg Mortgage Bond 1 Collateral, any of the Homburg Mortgage Bond 1 bonds shall be outstanding.

(e) *To Pay Trustee.* That the Corporation will pay to the Trustee reasonable remuneration for its services hereunder and will pay or reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in the administration or execution of the trusts hereby created (including the reasonable compensation

and the disbursements of its counsel and all other advisers and assistants not regularly in its employ), both before any default hereunder and thereafter until all duties of the Trustee under the trust hereof shall be finally and fully performed, except any such expense, disbursement or advance as may arise from its negligence or bad faith.

(f) *Not to Sell Bonds When in Default.* That, if the Corporation should be in default in the fulfilment of any of its obligations hereunder at any time, it will not, while such default shall continue, issue, sell, pledge or otherwise dispose of any Bonds.

## **12.2 INTENTIONALLY DELETED**

### **12.3 *Special Covenants for Homburg Mortgage Bond 1 bonds***

The Corporation covenants that so long as any of the Homburg Mortgage Bond 1 bonds remains outstanding the Corporation will not create, issue, incur, assume or allow to exist any mortgage, hypothec, pledge, charge, lien, encumbrance, security interest or other security, whether fixed or floating, on the Homburg Mortgage Bond 1 Collateral other than the charge herein provided.

## **ARTICLE XIII**

### **DEFAULT AND ENFORCEMENT**

#### **13.1 *Events of Default***

The security hereby constituted shall become enforceable, subject to the terms herein contained, in each and every one of the events following (herein sometimes referred to as "Events of Default"):

(a) if the Corporation makes default in payment of the principal of or premium (if any) on any Bond secured hereby when the same becomes due under any provision hereof or of such Bond;

(b) if the Corporation makes default in payment of any interest due on any Bond secured hereby and such default as to interest shall have continued for a period of 30 days;

(c) if default shall be made in the due observance or performance of the covenants contained in Section 12.3;

(d) if default shall be made in the due observance or performance of the covenants contained in Section 8.7 and such default shall have continued for a period of 30 days after notice thereof from the Trustee;



(e) if an Event of Default, or other event entitling the Corporation or its representatives to declare a default under the any of the Mortgaged Premises, shall have occurred and be continuing whether or not a declaration of default shall have been made and the Corporation hereby covenants with the Trustee that it will promptly advise the Trustee in writing upon becoming aware of the occurrence of any such default or other event;

(f) if an order shall be made or an effective resolution be passed for the winding-up or liquidation of the Corporation or the Guarantor except, in the case of the Corporation, in the course of carrying out or pursuant to a transaction in respect of which the conditions of Article XVIII are duly observed and performed;

(g) if the Corporation or the Guarantor shall make a general assignment for the benefit of its creditors or a notice of intention to make a proposal or a proposal under the *Bankruptcy and Insolvency Act* (Canada), or shall become insolvent or be declared or adjudged bankrupt, or a receiving order be made against the Corporation or the Guarantor, or if a liquidator, trustee in bankruptcy, receiver, receiver and manager or any other officer with similar powers shall be appointed to the Corporation or the Guarantor or of the Mortgaged Premises or any part thereof which is, in the opinion of the Trustee, a substantial part thereof, or if the Corporation or the Guarantor shall propose a compromise, arrangement or reorganization under the *Companies' Creditors Arrangement Act* (Canada) or any similar legislation of any jurisdiction providing for the reorganization or winding-up of corporations or business entities or providing for an agreement, composition, extension or adjustment with its creditors;

(h) if the Corporation shall fail or neglect to carry out, perform or observe any other covenant or condition contained herein or in the Guarantee on its part or the Guarantor's part to be observed and performed and, after notice in writing has been given by the Trustee to the Corporation specifying such default and requiring the Corporation to put or cause to be put an end to the same, the Corporation shall fail to make good such default within a period of 45 days, unless the Trustee (having regard to the subject matter of the neglect or non-observance) shall have agreed to a longer period, and in such event, within the period agreed to by the Trustee;

(i) if the Guarantee ceases to be in full force and effect or is declared null and void or is unenforceable or is found to be invalid or the Guarantor denies liability under the Guarantee.

### **13.2 Acceleration on Default**

Subject to Section 13.17 hereof, in case the security hereby constituted shall become enforceable as hereinbefore provided, the Trustee may in its discretion and shall upon receipt of a Bondholders' Request, subject to the provisions of Section 13.3, declare the principal and interest of all Bonds then outstanding and other moneys secured hereby to be due and payable and the same shall forthwith become immediately due and payable to the Trustee, anything therein or herein to the contrary notwithstanding, and the Corporation shall forthwith pay to the Trustee for the benefit of the Bondholders the principal of and accrued and unpaid interest and interest on amounts in default on such Bonds (and, where such a declaration is based upon a

voluntary winding-up or liquidation of the Corporation, the premium, if any, on the Bonds then outstanding which would have been payable upon the redemption thereof by and at the option of the Corporation on the date of such declaration) and all other moneys secured hereby, together with subsequent interest thereon at the rate borne by the Bonds from the date of the said declaration until payment is received by the Trustee, such subsequent interest to be payable at the times and places and in the moneys mentioned in and according to the tenor of the Bonds. Such payment when made shall be deemed to have been made in discharge of the Corporation's obligations hereunder and any moneys so received by the Trustee shall be applied in the same manner as if they were proceeds of realization of the Mortgaged Premises.

### **13.3 *Waiver of Default***

In case the security hereby constituted shall have become enforceable otherwise than by default in payment of any principal moneys at maturity:

(a) the holders of not less than 66 2/3% of the principal amount of the Bonds then outstanding shall have power (in addition to and subject to the powers exercisable by Extraordinary Resolution as hereinafter provided) by instrument in writing to instruct the Trustee to waive the default and/or to annul any declaration made by the Trustee pursuant to Section 13.2 and the Trustee shall thereupon waive the default and/or annul such declaration upon such terms and conditions as such Bondholders shall prescribe; and

(b) the Trustee, so long as it has not become bound to enforce the security hereunder, shall have power to waive the default if, in the Trustee's opinion, the same have been cured or adequate satisfaction made therefor, and in such event to annul any such declaration therefor made by the Trustee in the exercise of its discretion, upon such terms and conditions as to the Trustee may seem advisable,

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

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

Subject to Section 13.17 hereof, whenever the security hereby constituted shall have become enforceable and so long as the said security shall remain enforceable, but subject to the provisions of this Section and of Section 13.3 and to the provisions of any Extraordinary Resolution that may be passed by the Bondholders as hereinafter provided:

(a) the Trustee in the exercise of its discretion may proceed to realize the security by this Trust Indenture created and to enforce the rights of the Trustee and of the Bondholders by the appointment of a receiver or receiver and manager under the provisions of Section 13.7 or by sale under the provisions of Section 13.8 or by proceedings in any court of competent

jurisdiction for the appointment of a receiver or receiver and manager or for sale of the Mortgaged Premises or any part thereof or for foreclosure; or by any other action, suit, remedy or proceeding authorized or permitted by this Trust Indenture or by law or by equity; and 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 and of the Bondholders lodged in any bankruptcy, winding-up or other judicial proceedings relative to the Corporation; and no such remedy for the realization of the security hereof or for the enforcement of the rights of the Trustee or of the Bondholders shall be exclusive of or dependent on any such other remedy by any one or more of such remedies may from time to time be exercised independently or in combination;

(b) all rights of action hereunder may be enforced by the Trustee without the possession of any of the Bonds or the production thereof at the trial or other proceedings relative thereto; and

(c) upon receipt of a Bondholders' Request and upon being indemnified to its satisfaction as provided in Section 16.2 the Trustee shall exercise or take such one or more of the aforesaid remedies as such Bondholders' Request may direct or, if such Bondholders' Request contains no direction, as the Trustee may deem expedient; provided that if any such Bondholders' Request directs the Trustee to take proceedings out of court, the Trustee may in its discretion take judicial proceedings in lieu thereof.

### **13.5 *Enforcement by Bondholders***

No Bondholders shall have any right to institute any action or proceeding or to exercise any other remedy authorized by this Trust Indenture or by law or by equity for the purpose of enforcing payment of principal or interest or of realizing the security, or by reason of jeopardy of security, or for the execution of any trust or power hereunder, unless the requisition and indemnity referred to in Section 13.4 have been tendered to the Trustee and the Trustee shall have failed to act within a reasonable time thereafter; in such but not otherwise, any Bondholders acting on behalf of himself and all other Bondholders shall be entitled to take proceedings in any court of competent jurisdiction such as the Trustee might have taken under Section 13.4 but in no event shall any Bondholder or combination of Bondholders have any right to exercise the power of sale conferred hereby on the Trustee or to appoint a receiver or receiver and manager or to exercise or taken any other remedy or proceedings out of court; it being understood and intended no one or more holders of Bonds shall have any right in any manner whatsoever to affect, disturb or prejudice the security hereby created by this or their action, or to enforce any right hereunder or under any Bond except subject to the conditions and in the manner herein provided, and that all powers and trusts hereunder shall be exercised and all proceedings at law shall be instituted, had and maintained by the Trustee, except only as herein provided, and in any event for the equal benefit of all holders of such outstanding Bonds.

### **13.6 INTENTIONALLY DELETED**

### **13.7 *Appointment of Receiver***

Whenever the Trustee shall determine under the provisions of Section 13.4 to appoint a receiver (which term used herein includes a receiver and manager) the following provisions shall apply:

(a) such appointment shall be made by an instrument in writing signed by an officer of the Trustee under its corporate seal or otherwise, which instrument shall be evidence for all purposes of such appointment. The Trustee may from time to time in the same manner remove or replace any receiver so appointed and appoint another in his stead. In making any such appointment the Trustee shall be deemed to be acting as the attorney of the Corporation;

(b) any such appointment may be limited to any part or parts of the Mortgaged Premises or may extend to the whole thereof;

(c) every such receiver may in the discretion of the Trustee be vested with all or any of the powers and discretions of the Trustee;

(d) the Trustee may from time to time fix the remuneration of every such receiver and direct the payment thereof out of the Mortgaged Premises, the income therefrom or the proceeds thereof;

(e) the Trustee may from time to time require any such receiver to give security for the performance of his duties and may fix the nature and amount thereof, but 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 purposes of carrying on the business of the Corporation or for the maintenance, protection or preservation of the Mortgaged Premises or any part thereof, and the receiver may issue certificates (herein called "receiver's certificates") for such sums as will, in the opinion of the Trustee, be sufficient for obtaining upon the security of the Mortgaged Premises or any part thereof the amounts from time to time required, and such receiver's certificates may be payable either to order or to bearer and may be payable at such time or times as to the Trustee may appear expedient, and shall bear interest as shall therein be declared, and the receiver may sell, pledge or otherwise dispose of the same in such manner as to the Trustee may seem advisable, and may pay such commission on the sale thereof as to the Trustee may appear reasonable, and the amounts from time to time payable by virtue of such receiver's certificates shall form a charge upon the Mortgaged Premises in priority to the Bonds;

(g) every such receiver shall, so far as concerns responsibility for his acts or omissions, be deemed the agent of the Corporation, and in no event the agent of the Trustee, and the Trustee shall not, in making or consenting to such appointment, incur any liability to the receiver for his remuneration or otherwise howsoever;

(h) except as may be otherwise directed by the Trustee, all moneys from time to time received by such receiver shall be paid over to the Trustee to be held by it on the trusts of these presents; and

(i) the Trustee may pay over to such receiver any moneys constituting part of the Mortgaged Premises to the intent that the same may be applied for the purposes hereof by such receiver, and the Trustee may from time to time determine what funds the receiver shall be at liberty to keep in hand with a view to the performance of his duty as such receiver.

### **13.8 *Sale by Trustee***

In case the Trustee shall have determined under the provisions of Section 13.4 to realize the security hereby constituted by sale, the Trustee shall have the right with or without entry to sell and dispose of all or any part of the Mortgaged Premises en bloc or in parcels, at public auction or by tender or by private contract and at such time or times and on such terms and conditions, which shall include in case of sale by auction or tender a reasonable reserve bid, as the Trustee shall determine, having first given such notice of the time and place of such sale as it may think proper, which notice shall in any case include advertisements published once in each of three consecutive weeks in the City of Halifax, Nova Scotia, each such publication to be made in a daily newspaper of general circulation published in the English language in the designated city. In the event of no bid at the auction or by tender reaching the reserve bid, the Trustee may thereafter sell by auction or by tender without reserve bid or may sell by private contract. It shall be lawful for the Trustee to make any such sale, whether by auction, tender or private contract, either for cash or upon credit or partly for one and partly for the other, upon such reasonable conditions as to terms of payment as it may deem proper; also to rescind or vary any contract of sale that may have been entered into and resell with or under any of the powers conferred herein; also to stop, suspend or adjourn any sale from time to time and hold the sale as adjourned without further notice; also to deliver to the purchaser or purchasers of the Mortgaged Premises or any part thereof good and sufficient deed or deeds for the same.

### **13.9 *Applying Bonds in Payment***

Upon any sale of the Mortgaged Premises or any part thereof, whether made under the power of sale herein contained or pursuant to foreclosure or other judicial proceedings, the Trustee or any one or more of the Bondholders or any agent or representative thereof may become purchasers and may, in paying the purchase price, deliver any of the Bonds in place of cash to the amount which would, upon distribution of the net proceeds of such sale be payable thereon; and in case the amount to payable thereon shall be less than the amount due thereon, such Bonds shall be returned after being properly marked or stamped to show such partial payment; provided, however, that any such purchaser shall pay in cash so much as shall be necessary to provide for the payments mentioned in subsection (a) of Section 13.10.

### **13.10 *Application of Proceeds of Sale or Realization***

Except as otherwise herein provided, the moneys arising from any sale or other realization of the whole or any part of the Mortgaged Premises, whether under any sale by the Trustee or by judicial process or otherwise, shall be held by the Trustee and by it applied,

together with any other moneys then or thereafter in the hands of the Trustee available for the purpose, as follows:

(a) firstly, in payment of all charges on the Mortgaged Premises (except those subject to which such sale or realization shall have been made) ranking in priority to the Bonds;

(b) secondly, but subject to subsection (e) of Section 12.1 in payment rateably and proportionately to the holders of the outstanding Bonds of the amounts due thereon, first for principal, then for premium (if any) and then for interest, including interest on amounts overdue, unless otherwise directed by Extraordinary Resolution and in that case in such order of priority as between principal, premium and interest as may be directed by such resolution; and

(c) the surplus (if any) of such moneys shall be paid to the Corporation or its assigns.

### **13.11 *Distribution of Proceeds***

Payments to holders of Bonds pursuant to subsection (b) of Section 13.10 shall be made in the following manner:

(a) at least 15 days' notice of every such payment shall be given in the manner provided in Article XVII specifying the time when and the place or places where the Bonds are to be presented and the amount of the payment and application thereof as between principal, premium and interest;

(b) payment of any Bond shall be made upon presentation thereof at any one of the places specified in such notice and any such Bond thereby paid in full shall be surrendered, otherwise a memorandum of such payment shall be endorsed thereon; but the Trustee may in its discretion dispense with presentation and surrender or endorsement in any special case upon such indemnity being given as it shall deem sufficient;

(c) from and after the day of payment specified in the notice, interest shall accrue only on the amount owing on each Bond after giving credit for the amount of the payment specified in such notice unless it be duly presented on or after the date so specified and payment of such amount be not made; and

(d) the Trustee shall not be required to make any interim payment to Bondholders unless the moneys in its hands, after reserving thereout such amount as the Trustee may think necessary to provide for the payments mentioned in subsection (a) of Section 13.10, exceed 2% of the principal amount of the outstanding Bonds.

### **13.12 *Persons Dealing with Trustee***

No person dealing with the Trustee or its agent shall be concerned to enquire whether the security hereby constituted has become enforceable, or whether the powers which the Trustee is purporting to exercise have become exercisable, or whether any money remains due upon the

security of these presents or the Bonds, or as to the necessity or expediency of the stipulations and conditions subject to which any sale shall be made, or otherwise as to the propriety or regularity of any sale or of any other dealing by the Trustee with the Mortgage Premises, or to see to the application of any money paid to the Trustee.

### **13.13 *Immunity of Shareholders, etc,***

The Bondholders and the Trustee hereby waive and release any right, cause of action or remedy now or hereafter existing in any jurisdiction against any past, present or future incorporator shareholders, director or officer of the Corporation or of any successor corporation for the payment of the principal of or premium or interest on any of the Bonds.

### **13.14 *Surrender by the Corporation***

The Corporation binds and obliges itself to yield up possession of its property and the conduct of its business and undertaking to the Trustee or to any receiver or receiver and manager appointed by the Trustee on demand by the Trustee whenever the Trustee shall have a right of entry under the foregoing provisions and agrees to put no obstacle in the way of, but to facilitate by all legal means, the actions of the Trustee hereunder and not to interfere with the carrying out of the powers hereby granted to it, and in the event of the security becoming enforceable, as herein provided, the Corporation shall and hereby does consent to the appointment in such case of a liquidator or receiver or receiver and manager with all such powers as the Trustee is hereby vested with, if so required by the Trustee. The Corporation hereby binds itself in the said event to consent to any petition or application presented to the Court by the Trustee in order to effect the intent of this Trust Indenture, and the Corporation shall not, after receiving due notice from the Trustee that it has taken possession of the said property, business and undertaking by virtue hereof, continue in possession of the said property or in the said business and undertaking unless with the express written consent and authority of the Trustee and shall forthwith, by and through its officers and directors, execute such documents and transfers as may be necessary to place the Trustee in legal possession of the said property, business and undertaking. After receipt of such notice, all the powers, functions, rights and privileges of each and every one of the directors and officers of the Corporation shall cease and determine with respect to the Mortgaged Premises unless specifically contained in writing by the Trustee or unless the property shall have been restored to the Corporation as herein provided.

### **13.15 *Trustee Appointed Attorney***

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

### **13.16 *Judgment against the Corporation***

The Corporation covenants and agrees with the Trustee that, in case of any judicial or other proceedings to enforce the security hereby created, judgement may be rendered against it in favour of the Bondholders or in favour of the Trustee, as trustee for the Bondholders, for any amount which may remain due in respect of the Bonds and the interest thereon and any other moneys owing hereunder after the application to the payment thereof of the proceeds of any sale of the Mortgaged Premises or any part thereof.

### **13.17 *Default and Enforcement against one Series of Bonds***

Notwithstanding anything contained herein if the security hereby constitutes shall become enforceable pursuant to an Event of Default described in Section 13.1(a), (b), (c), (d) or (e), and such Event of Default pertains to one or more particular series of Bonds, the provisions of this Article shall be read and construed and shall apply as if the Bonds of such one or more particular series of Bonds were the only Bonds outstanding hereunder and such Event of Default shall not affect any other series of Bonds then outstanding.

## **ARTICLE XIV**

### **SATISFACTION AND DISCHARGE**

#### **14.1 *Cancellation and Destruction***

All matured Bonds shall forthwith after payment thereof be delivered to the Trustee and cancelled by it. All Bonds cancelled or required to be cancelled under this or any other provision of this Trust Indenture shall be destroyed by the Trustee and if required by the Corporation the Trustee shall furnish to it a destruction certificate in respect of the Bonds so destroyed.

#### **14.2 *Non-Presentation of Bonds***

Subject to the provisions of Article IV, in case the holder of any Bond shall fail to present the same for payment on the date on which the principal thereof and premium, if any, thereon and/or the interest thereon becomes payable either at maturity or otherwise or shall not accept payment on account thereof and give such receipt therefor, if any, as the Trustee may require:

- (a) the Corporation shall be entitled to pay to the Trustee and direct it to set aside; or
- (b) in respect of moneys in the hands of the Trustee which may or should be applied to the payment of the Bonds, the Corporation shall be entitled to direct the Trustee to set aside; or



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

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

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

#### **14.4 *Discharge***

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

## **ARTICLE XV**

### **MEETINGS OF BONDHOLDERS**

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

The trustee may at any time and from time to time and shall on receipt of a Written Request of the Corporation or a Bondholders' Request convene a meeting of the Bondholders. In the event of the Trustee failing within ten days after receipt of any such request to give notice convening a meeting, the Corporation or such Bondholders, as the case may be, may convene

such meeting. Every such meeting shall be held at Soest, The Netherlands or at such other place as may be approved or determined by the Trustee. If at any time the Trustee has no directors, the Corporation or such Bondholders, as the case may be, may convene a meeting at which one or more directors of the Trustee are appointed in accordance with the Articles of Association of the Trustee.

### **15.2 *Notice of Meetings***

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

### **15.3 *Chairman***

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

### **15.4 *Quorum***

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

### **15.5 *Power to Adjourn***

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

### **15.6 *Show of Hands***

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

### **15.7 Poll**

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

### **15.8 Voting**

On a show of hands every person who is present and entitled to vote, whether as a Bondholder or as proxy for one or more Bondholders, or both, shall have one vote. On a poll each Bondholder present in person or represented by proxy duly appointed by an instrument in writing shall be entitled to one vote in respect of each CAD \$1,000 principal amount of Bonds (or the equivalent thereof in Euros) of which he shall then be the holder. A proxy need not be a Bondholder. In the case of joint registered holders of a Bond, any one of them present in person or by proxy at the meeting may vote in the absence of the other or others; but in case more than one of them be present in person or by proxy, they shall vote together in respect of the Bonds of which they are joint registered holders.

### **15.9 Regulations**

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

(a) the deposit of instruments appointing proxies at such place as the Trustee, the Corporation or the Bondholders convening the meeting, as the case may be, may in the notice convening the meeting direct and the time, if any, before the holding of the meeting or any adjournment thereof by which the same shall be deposited; and

(b) the deposit of instruments appointing proxies at some approved place or places other than the place at which the meeting is to be held and enabling particulars of such instruments appointing proxies to be mailed or telecopied before the meeting to the Corporation or to the

Trustee at the place where the same is to be held and for the voting of proxies so deposited as though the instruments themselves were produced at the meeting.

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

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

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

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

In addition to the powers conferred upon them by Section 16.9 or any other provisions of this Trust Indenture or by law, a meeting of the Bondholders shall have the following powers exercisable from time to time by Extraordinary Resolution:

(a) power to sanction and agree to any modification, abrogation, alteration, compromise or arrangement of the rights of the Bondholders and/or the Trustee against the Corporation or against the undertaking, property and assets or any part thereof of the Corporation, whether such rights arise under this Trust Indenture, the Guarantee or the Bond of otherwise;

(b) power to direct or authorize the Trustee to exercise any power, right, remedy or authority given to it by this Trust Indenture, the Guarantee or the Bonds in any manner specified in such Extraordinary Resolution or to refrain from exercising any such power, right, remedy or authority;

(c) power to waive and direct the Trustee to waive any default on the part of the Corporation complying with any provision of this Trust Indenture, the Guarantee or the Bonds either unconditionally or upon any conditions specified in such Extraordinary Resolution, whether or not the security hereof shall have become enforceable by reason of such default;

(d) power to restrain any Bondholder from taking or instituting any suit, action or proceeding for the purpose of enforcing payment of the principal of or interest or premium on the Bonds, or for the execution of any trust or power hereunder;

(e) power to direct any Bondholder who, as such, has brought any action, suit or proceeding to stay or discontinue or otherwise deal with the same upon payment, if the taking of such suit, action or proceeding shall have been permitted by Section 13.5, of the costs, charges and expenses reasonably and properly incurred by such Bondholder in connection therewith;

(f) power to assent to any compromise or arrangement with any creditor or creditors or any class or classes of creditors, whether secured or otherwise, and with holders of any shares or other securities of the Corporation;

(g) power to sanction the exchange of Bonds for or the conversion of Bonds into shares, bonds, Bonds, notes or any other securities or obligations of the Corporation or any other corporation;

(h) power to assent to any modification of or change in or omission from the provisions contained herein or any deed or instrument supplemental hereto or in the Guarantee which shall be agreed to by the Corporation and to authorize the Trustee to concur in and execute any deed or instrument supplemental hereto or thereto embodying such modification, change or omission;

(i) power to sanction any scheme for the reorganization of the Corporation or for the consolidation, amalgamation or merger of the Corporation with any other corporation and for the selling or leasing of the undertaking, property and assets of the Corporation or any part thereof, if such reorganization, consolidation, amalgamation or merger otherwise would or might be prohibited hereby or by the Guarantee;

(j) power to authorize the Trustee to accept in satisfaction or part satisfaction for the sale or transfer by the Trustee of all or any part of the Mortgaged Premises any shares, bonds, Bonds, mortgages, Bond stock or any other securities of any corporation formed or to be formed;

(k) power to authorize the Trustee or any other person to do all or any of the following, namely:

(i) to bid or tender at any sale of the Mortgaged Premises or any part thereof;

(ii) to tender in payment or part payment on account of the purchase price of any property so purchased all or any part of the Bonds or to set off the amount or any part thereof due upon all or any of the Bonds against such purchase price and to give to the Corporation a valid discharge in respect of the Bonds so tendered or the amount so set off;

(iii) to borrow the moneys required to make any deposit at said sale or to pay the balance of the purchase price and to grant, mortgage, pledge, charge and transfer the property so purchased and any or all Bonds not so tendered or any part or parts of such property or Bonds as security for the repayment of the moneys so borrowed and interest thereon, or itself, himself or themselves, as the case may be, to advance such moneys in which event it, he or they shall have a lien, charge or privilege upon or a right of retention of the property so purchased and on or of the Bonds not so tendered for the amount so advanced and interest thereon;

(iv) to hold any property so purchased and Bonds not so tendered (subject to any mortgage, charge, lien of transfer or to such right of retention to secure any moneys so

borrowed or advanced) in trust for all the holders of the Bonds at the time of such tender *pro rata* in proportion to the amounts due to them thereon respectively for principal, premium and interest before the making of such tender;

(v) to sell, transfer and convey the whole or any part or parts of the property so purchased for such consideration in cash or in the shares, bonds, Bonds or other securities of any corporation formed or to be formed, or partly in cash and partly in such securities, and upon such terms and conditions as may be determined by such Extraordinary Resolution or, failing such determination by such Extraordinary Resolution as it, he or they may deem expedient and, subject to such terms and conditions, to dispose of such cash, shares, bonds, Bonds or other securities pursuant to the provisions of subsection (m) below; and

(vi) until the sale, transfer and conveyance of the whole of such property so purchased, to maintain and operate such part of said property as has not been disposed of and for such purposes to borrow moneys and to grant, mortgage, pledge, charge and transfer the property so purchased, or any part or parts thereof, as security for the repayment of the moneys so borrowed, with interest thereon, or itself, himself or themselves, as the case may be, to advance such moneys, in which event it, he or they shall have a lien or charge or privilege upon or right of retention of the property so purchased for the amounts so advanced and interest thereon and otherwise to deal with such property and the proceeds of any sale, transfer or conveyance thereof as such Extraordinary Resolution may direct;

(l) power to sanction the distribution of any shares or securities or the use or disposal of the whole or any part of such shares or securities or any cash in such manner and for such purposes as may be deemed advisable;

(m) power to appoint and remove a committee (herein sometimes called a "Bondholders' committee") to consult with the Trustee and to delegate to such Bondholders' committee (subject to such limitations, if any, as may be prescribed in such Extraordinary Resolution) all or any of the powers which the Bondholders could exercise by Extraordinary Resolution under the foregoing subsections (b), (c), (d), (e), (i), (j), (k), (l) and (m). The Extraordinary Resolution making such appointment may provide for payment of the expenses and disbursements of and compensation to such Bondholders' committee. Such Bondholders' committee shall consist of such number of persons as shall be prescribed in the Extraordinary Resolution appointing it, and the members need not be themselves Bondholders. Subject to the Extraordinary Resolution appointing it, every such Bondholders' committee may elect its chairman and may make regulations respecting its quorum, the calling of meetings, the filling of vacancies occurring in its number, the manner in which it may act and its procedure generally; and such regulations may provide that the committee may act at a meeting at which a quorum is present or may act by minutes signed by a majority of the members thereof or the number of members thereof necessary to constitute a quorum, whichever is the greater. All acts of any such Bondholders' committee within the authority delegated to it shall be binding upon all Bondholders; and

(n) power to amend, alter or repeal any Extraordinary Resolution previously passed or sanctioned by the Bondholders.

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

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

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

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

### **15.13 *Powers Cumulative***

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

### **15.14 *Minutes***

Minutes of all resolutions and proceedings at every meeting as aforesaid shall be made and duly entered in books to be from time to time provided for that purpose by the Trustee at the expense of the Corporation, and any such minutes as aforesaid, if signed by the chairman of the

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

#### **15.15 *Instruments in Writing***

Subject to Section 15.17, all actions which may be taken and all powers that may be exercised by the Bondholders at a meeting held as hereinbefore in this Article XV provided may also be taken and exercised by the holders of 662/3% of the principal amount of all the outstanding Bonds, by an instrument in writing signed in one or more counterparts, and the expression "Extraordinary Resolution" when used in this Trust Indenture shall include an instrument so signed.

#### **15.16 *Binding Effect of Resolutions***

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

#### **15.17 *Serial Meetings***

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

(i) reference to such fact, indicating each series so especially affected, shall be made in the notice of such meeting and the meeting shall be and is herein called a "serial meeting"; and

(ii) the holders of Bonds of a series so especially affected shall not be bound by any action taken at a serial meeting or by any instrument in writing under Section 15.15 unless in addition to the other provisions of this Article XV:

(A) in the case of action taken at a serial meeting, there are present in person or by proxy at the said meeting holders of at least 25% (or for the purpose of passing an



Extraordinary Resolution, 25%) in principal amount of the outstanding Bonds of the series so especially affected, subject to the provisions of this Article XV as to adjourned meetings, and the resolution is passed by the favourable votes of the holders of at least a majority (or in the case of an Extraordinary Resolution not less than 662/3%) of the principal amount of Bonds of the series so especially affected, voted on the resolution; or

(B) in the case of action taken or power exercised by instrument in writing under Section 15.15, such instrument is signed in one or more counterparts by the holders of 662/3% of the principal amount of outstanding Bonds of the series so especially affected.

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

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

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

## **ARTICLE XVI**

### **CONCERNING THE TRUSTEE**

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

(a) The expression "indenture legislation" means the provisions of any statute of Canada or any province thereof, and of any regulations under any such statute, relating to trust indentures

and to the rights, duties and obligations of trustees under trust indentures and of corporations issuing debt obligations under trust indentures, to the extent that such provisions are at the time in force and applicable to this Trust Indenture or the Corporation.

(b) The Corporation and the Trustee agree that each will at all times in relation to this Trust Indenture and any action to be taken hereunder observe and comply with and be entitled to the benefits of indenture legislation.

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

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

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

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

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

#### **16.3 *Evidence***

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

(b) Proof of the execution of an instrument in writing, including a Bondholders' Request, by Bondholders may be made by the certificate of a notary public or other officer with similar

powers, that the person signing such instrument acknowledged to him the execution thereof, or by an affidavit of a witness to such execution or in any other manner which the Trustee may consider adequate.

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

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

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

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

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

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

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

(i) may deposit the same in the name of the Trustee in any Canadian chartered bank at the rate of interest (if any) from time to time current on similar deposits; or

(ii) may, with the approval of the Corporation, and shall, if so directed by it: (A) deposit the same in the deposit department of the Trustee or of any other loan or trust company authorized to accept deposits under the laws of Ontario; or (B) invest and reinvest the same or any part thereof in any bonds or other indebtedness of or fully guaranteed by the Government of Canada or obligations maturing not more than one year from the date of investment of any Canadian chartered bank or loan or trust company.

(c) Unless the security hereby constituted shall have become enforceable and the Trustee shall have determined or shall have become bound to enforce the same, all interest or other

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

**16.6 *Action by Trustee to Protect Security***

The Trustee shall have power to institute and to maintain such actions and proceedings as it may consider necessary or expedient to prevent any impairment of the security hereunder by any acts of the Corporation or of others or to preserve or protect its interests and the security and interests of the Bondholders in respect of the Mortgaged Premises or in respect of the income, earnings, rents, issues and profits thereof.

**16.7 *Trustee Not Required to Give Security***

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

**16.8 *Protection of the Trustee***

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

(a) The Trustee shall not be liable for or by reason of:

(i) any failure or defect of title to, or encumbrance upon, the Mortgaged Premises; or

(ii) any failure of or defect in the registration or filing of or renewal of this Trust Indenture (including any instruments ancillary or supplemental thereto) or any other deed or writing delivered hereunder by way of mortgage or charge upon the Mortgaged Premises or any part thereof or upon any other property of the Corporation.

(b) The Trustee shall not be liable for or by reason of any statements of fact or recitals in this Trust Indenture or in the Bonds (except in the certificate of the Trustee thereon) or required to verify the same, but all such statements or recitals are and shall be deemed to be made by the Corporation.

(c) Nothing herein contained shall impose any obligation on the Trustee to see or to require evidence of the registration or filing (or renewal thereof) of this Trust Indenture or any Guarantee (including any instruments ancillary or supplemental thereto) or any other deed or writing delivered hereunder by way of mortgage or charge upon the Mortgaged Premises or any part thereof or upon any other property of the Corporation, or to procure any further, other or

additional instrument of further assurance, or to do any other act for the continuance of the lien hereof or for giving notice of the existence of such lien for extending or supplementing the same.

(d) In the exercise of its rights and duties hereunder:

(i) the Trustee may permit and suffer and shall be protected in permitting and suffering in good faith the Corporation, its successors or assigns, to retain or be in possession of any part of the Mortgaged Premises pursuant to Article IX and to use and enjoy the same unless otherwise expressly provided herein; provided that the Trustee, when so acting, shall not be or become responsible or liable for any destruction, deterioration, loss, injury or damage which may be done or occur to the Mortgaged Premises by the Corporation, its servants or by any other person; and

(ii) the Trustee shall not be in any way responsible for the consequence of any breach on the part of the Corporation of any of the Corporation's covenants herein contained or of any acts of the agents or servants of the Corporation.

(e) The Trustee shall not be bound to give notice to any person or persons of the execution hereof or of the mortgage or charge created hereby or in any way to interfere with the conduct of the Corporation's business, unless and until the security hereby constituted shall have become enforceable and the Trustee shall have determined or become bound to enforce the time.

(f) The Trustee shall not nor shall its agents or attorneys be liable by reason of an entry into possession of the Mortgaged Premises or any part thereof to account as mortgage in possession or for anything except actual receipts or be liable for any loss on realization or for any default or omission for which a mortgagee in possession might be liable save such as may be caused by its own negligence or wilful misconduct.

#### **16.9 *Replacement of the Trustee***

The Trustee may resign its trust and be discharged from all further duties and liabilities hereunder by giving to the Corporation at least 90 days' notice in writing or such shorter notice as the Corporation may accept as sufficient. The Bondholders by Extraordinary Resolution shall have power at any time to remove the Trustee and to appoint a new Trustee. In the event of the Trustee resigning or being removed as aforesaid or being dissolved, becoming bankrupt, going into liquidation or otherwise becoming incapable of acting hereunder, the Corporation shall forthwith appoint a new Trustee unless a new Trustee has already been appointed by the Bondholders; failing such appointment by the Corporation, the retiring Trustee or any Bondholders may apply to a Judge of the Supreme Court of Nova Scotia, on such notice as such Judge may direct, for the appointment of a new Trustee; but any new Trustee so appointed by the Corporation or by the Court shall be subject to removal as aforesaid by the Bondholders. Any new Trustee appointed under any provision of this Section shall be a corporation authorized and qualified to carry on the business of a trust company in The Netherlands and in every other jurisdiction where such authorization or qualification is necessary to enable it to act as Trustee hereunder. On any new appointment the new Trustee shall be vested with the same powers,

rights, duties and obligations as if it had been originally named herein as Trustee, without any further assurance, conveyance, act or deed; but there shall be immediately executed, at the expense of the Corporation, all such conveyances or other instruments as may in the opinion of Counsel, be necessary or advisable for the purpose of assuring to the new Trustee a full estate in the premises. Any corporation into which the Trustee may be merged or with which it may be consolidated or amalgamated, or any corporation resulting from any merger, consolidation or amalgamation to which the Trustee shall be a party, shall be the successor Trustee under this Trust Indenture without the execution of any instrument or any further act.

#### **16.10 *Conflict of Interest***

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

#### **16.11 *Acceptance of Trust***

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

### **ARTICLE XVII**

#### **NOTICES**

#### **17.1 *Notice to the Corporation***

Any notice to the Corporation under the provisions hereof shall be valid and effective if delivered to an officer of the Corporation or if given by registered letter postage prepaid addressed to Suite 200, 11 Akerley Boulevard, Dartmouth, Nova Scotia, B3B 1V1 and any notice so delivered shall be deemed to be validly given when delivered and any notice so given by registered mail shall be deemed to have been effectively given on the second business day following the day of mailing. The Corporation may from time to time notify the Trustee of a change in address which thereafter, until changed by like notice, shall be the address of the Corporation for all purposes of this Trust Indenture.

#### **17.2 *Notice to the Trustee***

Any notice to the Trustee under the provisions hereof shall be valid and effective if delivered to an officer of the Trustee or if given by registered letter postage prepaid addressed to Beekeringhstraat 36, 3762 EX Soest, The Netherlands, and any notice so delivered shall be deemed to be validly given when delivered and any notice so given by registered mail shall be

deemed to have been effectively given on the second business day following the day of mailing. The Trustee may from time to time notify the Corporation of a change in address which thereafter, until changed by like notice, shall be the address of the Trustee for all purposes of this Trust Indenture.

### **17.3 *Notice to Bondholders***

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

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

## **ARTICLE XVIII**

### **SUCCESSOR CORPORATIONS**

#### **18.1 *Certain Requirements***

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

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

(b) such transaction shall, to the satisfaction of the Trustee and in the opinion of Counsel, be upon such terms as substantially to preserve and not to impair any of the rights and powers of the Trustee or of the Bondholders hereunder and upon terms as are in no way prejudicial to the interests of the Bondholders; and

(c) no condition or event shall exist as to the Corporation or the successor corporation either at the time of or immediately after such consolidation, amalgamation, merger, transfer or sale and after giving full effect thereto or immediately after the successor corporation complying with the provisions of subsection (a) above which constitutes or would constitute, after notice or lapse of time or both, a default or an Event of Default hereunder.

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

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

## **ARTICLE XIX**

### **SUPPLEMENTAL DEEDS**

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

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

(a) charging as and by way of a floating charge to or in favour of the Trustee any property now owned or hereafter acquired by the Corporation and in the case of property in Quebec, hypothecating, pledging and charging and ceding and transferring such property in favour of the Trustee;

(b) evidencing the succession of successor companies to the Corporation and the covenants of and obligations assumed by such successor companies in accordance with the provisions of Article XVIII;

(c) giving effect to any Extraordinary Resolution passed as provided in Article XV;

(d) providing for the issue, as permitted hereby, of Bonds of any one or more series other than or in addition to the Homburg Mortgage Bond I bonds;

(e) making such provisions not inconsistent with this Trust Indenture as may be necessary or desirable with respect to matters or questions arising hereunder or for the purpose of obtaining



a listing or quotation of the Bonds on any stock exchange or bourse, provided that such provisions are not, in the opinion of the Trustee, prejudicial to the interests of the Bondholders;

(f) adding to or altering the provisions hereof in respect of the registration and transfer of Bonds; making provision for the issue of Bonds of denominations other than those herein provided for and for the exchange of Bonds of different denominations; and making any modification in the forms of the Bonds which does not affect the substance thereof;

(g) making any addition to, deletion from or alteration of the provisions of this Trust Indenture which the Corporation may deem necessary or advisable and which, in the opinion of the Trustee, does not materially and adversely affect the interest of the holders of the Bonds;

(h) adding to the limitations or restrictions herein specified further limitations or restrictions, thereafter to be observed, upon the dealing with the Mortgaged Premises; and adding to the covenants or the Corporation herein contained for the protection of the Bondholders or adding to the Events of Default herein specified; provided that such further limitations, restrictions, covenants or Events of Default are not, in the opinion of the Trustee, prejudicial to the interests of the Bondholders;

(i) amending Article XVI in such manner as the Corporation and the Trustee (upon the advice of Counsel) may deem necessary or advisable in order to avoid conflict between such Article XVI and indenture legislation; and

(j) for any other purpose required by or not inconsistent with the terms of this Trust Indenture, provided that in the opinion of the Trustee the rights of the Trustee or of the Bondholders are in no way prejudiced thereby.

## **19.2 *Correction of Manifest Errors***

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

## **ARTICLE XX**

### **EXECUTION**

#### **20.1 *Counterparts and Formal Date***

This Trust Indenture may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument and notwithstanding their date of execution shall be deemed to bear date as of December 15, 2002.

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

**HOMBURG SHARECO INC.**

by \_\_\_\_\_ C.S.  
\*  
\*

**STICHTING HOMBURG MORTGAGE  
BOND**

by \_\_\_\_\_ C.S.  
\*

(520029.12)

## APPENDIX A

### Form of Homburg CAD Mortgage Bond 1

1.1 The Homburg CAD Mortgage Bond 1 bonds, the certificate of the Trustee and the registration panel shall be in both the English language and the Dutch language, in the forms provided in Sections 1.2 and 1.3.

1.2 The English language portions of the text of the Homburg CAD Mortgage Bond 1 bonds, the certificate of the Trustee and the registration panel shall be substantially as follows:

No. CAD \$20,000

**HOMBURG SHARECO INC.**  
(Incorporated under the Companies Act (Nova Scotia))

Homburg CAD Mortgage Bond 1

Due: December 15, 2009.

**HOMBURG SHARECO INC.** (hereinafter called the "Corporation") for value received hereby acknowledges itself indebted and promises to pay to the registered holder hereof on December 15, 2009 or on such earlier date as the principal amount hereof may become due in accordance with the provisions of the Trust Indenture hereinafter mentioned, the principal sum of TWENTY THOUSAND DOLLARS in lawful money of Canada, together with such further amount, if any, as may be payable by way of premium, on presentation and surrender of this Bond at ABN AMRO Bank at its Soest, The Netherlands branch at the holder's option, and to pay interest on the principal amount hereof from December 15, 2002, or from the last interest payment date to which interest has been paid or made available for payment on the outstanding Bonds, whichever is later, at any of the said places, in like money half-yearly on June 30th and December 31st in each year, at the rate of 10% per annum, (unless this Bond shall have been previously redeemed in accordance with the provisions of the Trust Indenture); and should the Corporation at any time make default in the payment of any principal, premium or interest, to pay interest on the amount in default at the same rate after as well as before maturity, default or judgement, in like money, at any of the said places and half-yearly on the same dates. Interest hereon shall be payable (except at maturity or on redemption when interest may at the option of the Corporation be paid on surrender hereof) by cheque or wire transfer to the registered holder hereof as provided in the Trust Indenture and the mailing of such cheque or such wire transfer shall satisfy and discharge the liability for interest on this Bond to the extent of the sum represented thereby plus the amount of any tax which the Corporation is required to and does withhold therefrom unless such cheque be not paid on presentation.

This Bond is one of a series designated as Homburg Mortgage Bond 1 (herein sometimes called the "Homburg Mortgage Bond 1 bonds") of the Corporation issued and to be issued under and secured by a trust indenture (herein called the "Trust Indenture") dated as of December 15, 2002 and made between the Corporation and Stichting Homburg Mortgage Bond (hereinafter called the "Trustee"), as Trustee.

The aggregate principal amount of Bonds which may be issued under the Trust Indenture is (subject to the restrictions conditions and limitations set out in the Trust Indenture) unlimited

and may consist of several series payable in different currencies, bearing different rates of interest and varying as to the terms on which they may be redeemed and otherwise as specified in the Trust Indenture. Bonds which have been authorized for issue are:

(a) CAD \$20,000,000 (or equivalent thereof in Euros calculated at the rate of exchange for buying Canadian dollars quoted by ABN AMRO Bank at 10:00 o'clock a.m. (Halifax time) on the Homburg Mortgage Bond 1 Issue Date (as defined in the Trust Indenture, provided that if the Issue Date is not a business day, the rate of exchange for buying Canadian dollars quoted by ABN AMRO Bank at 10:00 o'clock a.m. (Halifax time) on the immediately preceding business day shall be used)) aggregate principal amount of Homburg Mortgage Bond 1 bonds maturing on December 15, 2009 (of which this is one).

This Bond and all other Homburg Mortgage Bond 1 bonds now or hereafter certified and issued under the Trust Indenture rank *pari passu* and are secured equally and rateably by the Homburg Mortgage Bond 1 Collateral (as defined in the Trust Indenture) and the recourse of the holders of the Homburg Mortgage Bond 1 bonds against the Corporation is limited to the amount, if any, recoverable in respect of the Homburg Mortgage Bond 1 Collateral. Reference is hereby made to the Trust Indenture for particulars of the nature and extent of the security created thereby, the rights of the holders of the Bonds and of the Corporation and of the Trustee in respect thereof and the terms and conditions upon which the Bonds are issued, secured and held, to all of which the holder of this Bond by acceptance hereof assents.

The Bonds are issuable in denominations of CAD \$20,000 (or the equivalent thereof in Euros calculated at the rate of exchange for buying Canadian dollars quoted by ABN AMRO Bank at 10:00 o'clock a.m. (Halifax time) on the Homburg Mortgage Bond 1 Issue Date (as defined in the Trust Indenture, provided that if the Issue Date is not a business day, the rate of exchange for buying Canadian dollars quoted by ABN AMRO Bank at 10:00 o'clock a.m. (Halifax time) on the immediately preceding business day shall be used)).

This Bond is subject to redemption in part (such part being CAD \$1,000 or a multiple thereof) and notation of such partial redemption may be made on the reverse hereof all as more fully provided in the Trust Indenture.

Except as hereinafter provided, the Homburg Mortgage Bond 1 bonds are redeemable at any time on or after December 16, 2007 and prior to maturity, in whole at any time or in part from time to time at the option of the Corporation, on not less than 30 days notice at a redemption price equal to 100% of the principal amount thereof, together with accrued and unpaid interest to the date fixed for redemption.

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

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

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

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

IN WITNESS WHEREOF HOMBURG SHARECO INC. has caused its corporate seal to be hereunto affixed and this Bond to be signed by its President and its Secretary as of December 15, 2002.

**HOMBURG SHARECO INC.**

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

**TRUSTEE'S CERTIFICATE**

This Bond is one of the Homburg Mortgage Bond 1 bonds referred to in the Trust Indenture within mentioned.

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

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

Date and Place of Registration	In Whose Name Registered	Signature of Trustee or Other Registrar
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1.3 The Dutch language portions of the text of the Homburg CAD Mortgage Bond 1 bonds, the certificate of the Trustee and the registration panel shall be substantially as follows:

[insert Dutch translation of Homburg CAD Mortgage Bond 1 bond form]

## APPENDIX B

### Form of Homburg Euro Mortgage Bond 1

1.1 The Homburg Euro Mortgage Bond 1 bonds, the certificate of the Trustee and the registration panel shall be in both the English language and the Dutch language, in the forms provided in Sections 1.2 and 1.3.

1.2 The English language portions of the text of the Homburg Euro Mortgage Bond 1 bonds, the certificate of the Trustee and the registration panel shall be substantially as follows:

No. €12,800.

**HOMBURG SHARECO INC.**  
(Incorporated under the Companies Act (*Nova Scotia*))

Homburg Euro Mortgage Bond 1

Due: December 15, 2009.

**HOMBURG SHARECO INC.** (hereinafter called the "Corporation") for value received hereby acknowledges itself indebted and promises to pay to the registered holder hereof on December 15, 2009 or on such earlier date as the principal amount hereof may become due in accordance with the provisions of the Trust Indenture hereinafter mentioned, the principal sum of TWELVE THOUSAND EIGHT HUNDRED EUROS, together with such further amount, if any, as may be payable by way of premium, on presentation and surrender of this Bond at ABN AMRO Bank at its Soest, The Netherlands branch at the holder's option, and to pay interest on the principal amount hereof from December 15, 2002, or from the last interest payment date to which interest has been paid or made available for payment on the outstanding Bonds, whichever is later, at any of the said places, in like money half-yearly on June 30<sup>th</sup> and December 31<sup>st</sup> in each year, at the rate of 8.5% per annum, (unless this Bond shall have been previously redeemed in accordance with the provisions of the Trust Indenture); and should the Corporation at any time make default in the payment of any principal, premium or interest, to pay interest on the amount in default at the same rate after as well as before maturity, default or judgement, in like money, at any of the said places and half-yearly on the same dates. Interest hereon shall be payable (except at maturity or on redemption when interest may at the option of the Corporation be paid on surrender hereof) by cheque or wire transfer to the registered holder hereof as provided in the Trust Indenture and the mailing of such cheque or wire transfer shall satisfy and discharge the liability for interest on this Bond to the extent of the sum represented thereby plus the amount of any tax which the Corporation is required to and does withhold therefrom unless such cheque be not paid on presentation.

This Bond is one of a series designated as Homburg Mortgage Bond 1 bonds (herein sometimes called the "Homburg Mortgage Bond 1 bonds") of the Corporation issued and to be issued under and secured by a trust indenture (herein called the "Trust Indenture") dated as of December 15, 2002 and made between the Corporation and Stichting Homburg Mortgage Bond (hereinafter called the "Trustee"), as Trustee.

The aggregate principal amount of Bonds which may be issued under the Trust Indenture is (subject to the restrictions conditions and limitations set out in the Trust Indenture) unlimited and may consist of several series payable in different currencies, bearing different rates of interest and varying as to the terms on which they may be redeemed and otherwise as specified in the Trust Indenture. Bonds which have been authorized for issue are:

(a) CAD \$20,000,000 (or equivalent thereof in Euros calculated at the rate of exchange for buying Canadian dollars quoted by ABN AMRO Bank at 10:00 o'clock a.m. (Halifax time) on the Homburg Mortgage Bond 1 Issue Date (as defined in the Trust Indenture, provided that if the Issue Date is not a business day, the rate of exchange for buying Canadian dollars quoted by ABN AMRO Bank at 10:00 o'clock a.m. (Halifax time) on the immediately preceding business day shall be used)) aggregate principal amount of Homburg Mortgage Bond 1 bonds maturing on December 15, 2009 (of which this is one)

This Bond and all other Homburg Mortgage Bond 1 bonds now or hereafter certified and issued under the Trust Indenture rank *pari passu* and are secured equally and rateably by the Homburg Mortgage Bond 1 Collateral (as defined in the Trust Indenture) and the recourse of the holders of the Homburg Mortgage Bond 1 bonds against the Corporation is limited to the amount, if any, recoverable in respect of the Homburg Mortgage Bond 1 Collateral. Reference is hereby made to the Trust Indenture for particulars of the nature and extent of the security created thereby, the rights of the holders of the Bonds and of the Corporation and of the Trustee in respect thereof and the terms and conditions upon which the Bonds are issued, secured and held, to all of which the holder of this Bond by acceptance hereof assents.

The Bonds are issuable in denominations of CAD \$20,000 (or the equivalent thereof in Euros calculated at the rate of exchange for buying Canadian dollars quoted by ABN AMRO Bank at 10:00 o'clock a.m. (Halifax time) on the Homburg Mortgage Bond 1 Issue Date (as defined in the Trust Indenture, provided that if the Issue Date is not a business day, the rate of exchange for buying Canadian dollars quoted by ABN AMRO Bank at 10:00 o'clock a.m. (Halifax time) on the immediately preceding business day shall be used)).

This Bond is subject to redemption in part (such part being the Euro equivalent of CAD \$1,000 or a multiple thereof) and notation of such partial redemption may be made on the reverse hereof all as more fully provided in the Trust Indenture.

Except as hereinafter provided, the Homburg Mortgage Bond 1 bonds are redeemable at any time on or after December 16, 2007 and prior to maturity, in whole at any time or in part from time to time at the option of the Corporation, on not less than 30 days notice at a redemption price equal to 100% of the principal amount thereof, together with accrued and unpaid interest to the date fixed for redemption.

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

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

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

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

IN WITNESS WHEREOF HOMBURG SHARECO INC. has caused its corporate seal to be hereunto affixed and this Bond to be signed by its President and its Secretary as of December 15, 2002.

**HOMBURG SHARECO INC.**

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

**TRUSTEE'S CERTIFICATE**

This Bond is one of the Homburg Mortgage Bond 1 bonds referred to in the Trust Indenture within mentioned.

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

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

Date and Place of Registration	In Whose Name Registered	Signature of Trustee or Other Registrar
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1.3 The Dutch language portions of the text of the Homburg Euro Mortgage Bond 1 bonds, the certificate of the Trustee and the registration panel shall be substantially as follows:



[insert here Dutch translation of Homburg Euro Mortgage Bond 1 bond form]

(520029.9)

## APPENDIX C

The Homburg Mortgage Bond 1 Collateral consists of:

1. An Assignment of a Second Mortgage dated \_\_\_\_\_, 2003, in the principal amount of Canadian \$10,000,000 granted by Homco Realty Fund (11) Limited Partnership and Homco Realty Fund (18) Limited Partnership to Homburg Shareco Inc. mortgaging the lands and premises known as Vintage Tower I and the premises under construction known as Vintage Tower II, Calgary, Alberta (the "Vintage Properties", such mortgage to be subject to a prior ranking first mortgage in the principal amount of Canadian \$9,388,000. **This second mortgage also contains a provision automatically postponing the priority of the charge contained in the second mortgage to all advances made by the present holder of the first mortgage on the Vintage Properties or any successor first mortgage lender in respect of the Vintage Properties up to a maximum principal amount of Canadian \$19,388,000;** and
  
2. An Assignment of a Second Mortgage dated \_\_\_\_\_, 2003, in the principal amount of Canadian \$10,000,000 granted by Homco Realty Fund (31) Limited Partnership to Homburg Shareco Inc. mortgaging the lands and premises described below, such mortgage to be subject only to a prior ranking first mortgage in the principal amount of Canadian \$13,750,000:  
  
Warehouse, Price Street, Moncton, New Brunswick  
Warehouse, Henri Dunant Street, Moncton, New Brunswick  
Warehouse, Carr Crescent, Gander, Newfoundland  
Retail, Wright Street, Sackville, New Brunswick  
Retail, Record Street, Moncton, New Brunswick  
Retail, Port Hawkesbury, Nova Scotia  
Office Building, Halifax Street, Moncton, New Brunswick

## APPENDIX D

### GUARANTEE AGREEMENT

**GUARANTEE AGREEMENT** dated as of December 15, 2002, made by Homburg Invest Inc., an Alberta corporation (the "Guarantor"), in favor of Stichting Homburg Mortgage Bond (the "Trustee"), as trustee under that certain Trust Indenture dated as of December 15, 2002 (the "Agreement") between Homburg Shareco Inc., a Nova Scotia company (the "Company") and the Trustee pursuant to which the Company has today, and may from time to time in the future, issue bonds (the "Bonds").

**WHEREAS**, it is a condition precedent to the purchase of the Bonds by the purchasers thereof that the Guarantor execute this Guarantee Agreement;

**WHEREAS**, the Company is a wholly owned subsidiary of the Guarantor;

**NOW THEREFORE**, in consideration of the premises, the Guarantor hereby agrees as follows:

**SECTION 1. Defined Terms.** The following terms, as used herein, shall have the following meanings:

(a) "**Business Day**" means any day of the year other than a Saturday, Sunday or other day on which banks are required or authorized to close in Halifax, Nova Scotia.

(b) "**Governmental Entity**" means any (i) federal, provincial, state, municipal, local or other government, governmental or public department, central bank, court, commission, board, bureau, agency or instrumentality, domestic or foreign, or (ii) any subdivision or authority of any of the foregoing.

(c) "**Holders**" means the Persons entered in the registers for the Bonds as holders thereof, such registers being maintained pursuant to the Agreement.

(d) "**Person**" means any individual, corporation, partnership, association, trust, limited liability company or any other entity or organization.

**SECTION 2. Guarantee.** The Guarantor hereby unconditionally and irrevocably guarantees, as principal and not merely as surety, the full and punctual payment when due (whether at stated maturity, upon acceleration or otherwise) of the principal, premium, if any, Additional Amounts (as defined herein), if any, and interest on each Bond and all other amounts payable by the Company under the Agreement; provided, however, that the payment of interest on overdue installments of interest is guaranteed only to the extent permitted by law (such amounts, the "**Guaranteed Obligations**"). All payments to be made by the Guarantor pursuant to this Section 2 shall be made on or before five (5) business days following receipt of demand therefor by the Trustee or, to the extent permitted by Section 14 hereof, any Holder.

**SECTION 3. Guarantee Absolute.** The Guarantor agrees that the guarantee contained in this Guarantee Agreement is a guarantee of payment and not of collection or collectibility, and that the Guarantor's obligation to pay the Guaranteed Obligations hereunder shall be primary, absolute and unconditional and, without limiting the generality of the foregoing, shall not be released, discharged or otherwise affected by:

- (i) any extension of the time or times for the payment of the Guaranteed Obligations, renewal, settlement, compromise, waiver or release in respect of any obligation of the Company under the Agreement or any Bond, by operation of law or otherwise;
- (ii) any modification or amendment of or supplement to the Agreement or any Bond;
- (iii) any change in the corporate existence, structure or ownership of the Company, or any insolvency, bankruptcy, reorganization or other similar proceeding affecting the Company or its assets or any resulting release or discharge of any obligation of the Company contained in the Agreement or any Bond;
- (iv) the existence of any claim, set-off or other rights which the Guarantor may have at any time against the Company, the Trustee, any Holder or any other Person, whether in connection herewith or any unrelated transactions;
- (v) any invalidity, illegality, irregularity or unenforceability for any reason of the Agreement or any Bond or in any part thereof as regards the Company, or any provision of applicable law or regulation purporting to prohibit the payment by the Company of the principal of or interest on any Bond or any other amount payable by the Company under the Agreement;
- (vi) any other act or omission to act or delay of any kind by the Company, the Trustee, any Holder or any other Person or any other circumstance whatsoever which might, but for the provisions of this paragraph, constitute a legal or equitable discharge or defense of the Guarantor's obligations hereunder;
- (vii) any contest by the Company or any Person as to the amount of the Guaranteed Obligations;
- (vii) the absence of any action to enforce the Agreement or the Bonds;
- (viii) the recovery of any judgment against the Company or any action to enforce the same;
- (ix) any dealings with the security which the Trustee or any Holder holds or may hold pursuant to the terms and conditions of the Agreement, including the taking,

giving up or exchange of securities, the variation or realization thereof and the granting or releases and discharges; or

(x) any invalidity, non-perfection or unenforceability of any security held by the Trustee or any Holder in support of the Guaranteed Obligations, or any irregularity or defect in the manner or procedure by which the Trustee or any Holder realizes on such security.

**SECTION 4. Fees.** The Company agrees to pay to the Guarantor, in respect of each year that the guarantee provided under this Guarantee Agreement is outstanding, an annual guarantee fee (the "Fee") equal to .25% of the maximum amount of the Guaranteed Obligations outstanding at any time during that year. The Fee will be due and payable on (i) the day immediately prior to each anniversary date of the date the Guarantee Agreement is entered into, provided that the Guarantee Agreement remains in full force and effect on that anniversary date; and (ii) the date the Guarantee Agreement is terminated in which event the Fee will be prorated over the number of days in the year for which the Guarantee Agreement was in full force and effect.

**SECTION 5. Representations and Warranties.** The Guarantor hereby represents and warrants as of the date hereof that:

**Authorization; No Contravention.** The execution, delivery and performance by the Guarantor of this Guarantee Agreement (i) are within its powers, have been duly authorized by all necessary corporate action, require no action by or in respect of, or filing with, any governmental body, agency or official, and do not contravene its constituent documents, and (ii) do not contravene, or constitute a default under, any provision of applicable law or regulation, as amended from time to time, or of any judgment, injunction, order, decree, agreement or other instrument binding upon the Guarantor or result in or require the creation or imposition of any lien on any asset of the Guarantor other than any contravention, default or lien which would not have a material adverse effect on the ability of the Guarantor to perform its obligations under this Guarantee Agreement.

**Binding Effect.** This Guarantee Agreement constitutes the legal, valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms, except as such enforceability may be limited by the effect of any bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally or by general principles of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity).

**Litigation.** There is no action, suit or proceeding pending against the Guarantor or, to the knowledge of the Guarantor, threatened against the Guarantor before any court or arbitrator or any governmental body, agency or official in which there is a reasonable possibility of an adverse decision (i) which would have a material adverse effect on the ability of the Guarantor to perform its obligations under this Guarantee Agreement, or (ii) which in any manner draws into question the enforceability or validity of this Guarantee Agreement.

**SECTION 6. Manner of Payment.** All payments to be made by the Guarantor hereunder shall be made to the Trustee for application in accordance with Section 13.10 of the Agreement.

**SECTION 7. Enforcement of Guarantee.** The Guarantor agrees that the Trustee or any Holder (but subject always to the provisions of Section 13 hereof) need not seek or exhaust their recourse against the Company or any other Person or realize on any security they may hold in respect of the Guaranteed Obligations before being entitled to payment under this Guarantee Agreement.

**SECTION 8. Waiver.** The Guarantor hereby irrevocably waives promptness, diligence, acceptance hereof, presentment, demand, protest and any and all other notice not provided for herein and any requirement that at any time the Trustee, any Holder (but subject always to the provisions of Section 13 hereof) or any other Person exhaust any right or take any action against the Company or any other Person and any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge, release or defense of the Guarantor or that might otherwise limit recourse against the Guarantor.

**SECTION 9. Waiver of Subrogation.** Until payment in full of the Guaranteed Obligations, the Guarantor irrevocably waives any and all rights to which it may be entitled, by operation of law or otherwise, upon making any payment hereunder to be subrogated to the rights of the payee against the Company with respect to such payment or otherwise to be reimbursed, indemnified or exonerated by the Company in respect thereof.

**SECTION 10. Notices.** All notices and other communications provided for or permitted hereunder shall be made as follows:

If to the Guarantor:                   Homburg Invest Inc.  
Suite 200, 11 Akerley Boulevard  
Dartmouth, Nova Scotia, Canada B3B 1V1  
Attention:  
Fax No.: (902) 469-6776

If to the Company, the Trustee or any Holder as specified in Article 17 of the Agreement.

**SECTION 11. No Waiver; Remedies.** No failure on the part of the Trustee or any Holder (but subject always to the provisions of Section 13 hereof) to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

**SECTION 12. Continuing Guarantee; Reinstatement in Certain Circumstances.**  
The guarantee contained in this Guarantee Agreement is a continuing guarantee and the

Guarantor's obligations hereunder shall (i) remain in full force and effect until the indefeasible payment in full of the Guaranteed Obligations, (ii) be binding upon the Guarantor and its successors and assigns, and (iii) inure to the benefit of and be enforceable by the Trustee and, subject always to the provisions of Section 13 hereof, any Holder and their respective successors and permitted assigns; provided, however, that this Guarantee Agreement shall not be construed to create any right in any Person other than the Trustee and, subject always to the provisions of Section 13 hereof, any Holder and their respective successors and permitted assigns or to be a contract in whole or in part for the benefit of any Person other than the Trustee and, subject to the provisions of Section 13 hereof, the Holders and their respective successors and permitted assigns. If at any time any payment of any of the Guaranteed Obligations is rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy or reorganization of the Company or otherwise, the obligations of the Guarantor hereunder with respect to such payment shall be reinstated as though such payment had been due but not made at such time.

**SECTION 13. Stay of Acceleration.** If acceleration of the time for payment of any Guaranteed Obligation is stayed upon the insolvency, bankruptcy or reorganization of the Company, all such amounts otherwise subject to acceleration under the terms of the Agreement shall nonetheless be payable by the Guarantor hereunder to the Trustee or, to the extent permitted by Section 13 hereof, the Holders forthwith on demand.

**SECTION 14. Holders May Not Enforce.** No Holder shall have the right to institute any suit, action or proceeding against the Guarantor for any default hereunder except in the manner and subject to the conditions, *mutatis mutandis*, set forth in Section 13.5 of the Agreement, it being understood and intended that no one or more of the Holders shall have any right in any manner whatsoever to enforce any right hereunder or pursuant hereto by any action except as aforesaid and that all powers and trusts hereunder shall be exercised and all proceedings at law or in equity shall be instituted, had and maintained by the Trustee, except as aforesaid.

**SECTION 15. Expenses.** The Guarantor shall pay, or reimburse, the Trustee and the Holders for all costs and expenses including, without limitation, reasonable attorneys' fees and disbursements reasonably incurred by it in connection with the enforcement of this Guarantee Agreement; provided, however, that the Guarantor shall only be required to pay, or reimburse, for the reasonable attorneys' fees and disbursements for one counsel for the Trustee and the Holders.

**SECTION 16. No Withholding.** Any and all payments made by the Guarantor pursuant to the provisions of this Guarantee Agreement shall be made without withholding or deduction for, or on account of, any current or future taxes imposed by or on behalf of Canada or any political subdivision thereof unless such taxes are required by law or by the administration thereof to be withheld or deducted, in which case the Guarantor shall pay such amounts ("Additional Amounts") as may be necessary, so that the net amount received by the Holder (including Additional Amounts) after such withholding or deduction will not be less than the amount the Holder would have received if such taxes had not been withheld or deducted,

provided, however, that no such Additional Amounts will be payable in respect of, among others, the following:

(a) any tax, assessment or other governmental charge which would not have been so imposed but for (i) the existence of any present or former connection between such Holder (or between a fiduciary, settlor or beneficiary of, or a person holding power over such Holder, if such Holder is an estate or trust or a member or shareholder of such Holder, if such Holder is a partnership or corporation) and Canada, including, without limitation, such Holder (or such fiduciary, settlor, beneficiary, person holding a power over, such Holder) being or having been a citizen or resident or treated as a resident thereof or being or having been engaged in a trade or business or present therein or having had a permanent establishment therein, or (ii) such Holder's current or former status as a personal holding company, a foreign personal holding company, a controlled foreign corporation that is related to the Guarantor through stock ownership, a foreign tax-exempt organization for Canadian tax purposes or as a corporation which accumulates earnings to avoid Canadian income tax;

(b) any tax, assessment or other governmental charge which would not have been so imposed but for the presentation by the Holder of any Bond for payment on a date more than 60 days after the date on which such payment became due and payable or the date on which payment thereof is duly provided for, whichever occurs later;

(c) any estate, inheritance, gift, sales, transfer, personal property or any similar tax, assessment or other governmental charge;

(d) any tax, assessment or other governmental charge which is payable otherwise than by deduction or withholding from payments of, or payments under the Guarantee in respect of principal, interest or any Additional Amount on any Bond;

(e) any tax, assessment or other governmental charge imposed on interest received by any person holding, actually or constructively, 10% or more of the total combined voting power of all classes of stock of the Guarantor entitled to vote;

(f) any tax, assessment or other governmental charge imposed on a Holder that is a non-resident of Canada for the purposes of the Income Tax Act (Canada); or

(g) any tax, assessment or governmental charge imposed by reason of the failure of the Holder or beneficial owner of the Bond to deliver upon reasonable demand by the Guarantor, any form or document that may be required or reasonably requested in order to allow the Guarantor to make a payment to the Holder without any deduction or withholding for or on account of any tax.

The provisions of this Section 15 shall survive the termination of this Guarantee Agreement.



**SECTION 17. Judgment Currency.** If for the purposes of obtaining judgment in any court it is necessary to convert all or any part of the Guaranteed Obligations or any other amount due to the Trustee or any Holder in respect of the Guarantor's obligations under this Guarantee Agreement in any currency (the "Original Currency") into Euros (the "Other Currency"), the Guarantor, to the fullest extent that it may effectively do so, agrees that the rate of exchange used shall be that at which, in accordance with normal banking procedures, the Trustee or any Holder, as the case may be, could purchase the Original Currency with the Other Currency on the Business Day preceding that on which final judgment is paid or satisfied.

The obligations of the Guarantor in respect of any sum due in the Original Currency from it to the Trustee or any Holder shall, notwithstanding any judgment in any Other Currency, be discharged only to the extent that on the Business Day following receipt by the Trustee or any Holder of any sum adjudged to be so due in such Other Currency the Trustee or any Holder may, in accordance with its normal banking procedures, purchase the Original Currency with such Other Currency. If the amount of the Original Currency so purchased is less than the sum originally due to the Trustee or any Holder in the Original Currency, the Guarantor agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Trustee or any Holder against such loss, and if the amount of the Original Currency so purchased exceeds the sum originally due to the Trustee or any Holder in the Original Currency, the Trustee or any Holder, as the case may be, agrees to remit such excess to the Guarantor.

**SECTION 18. Governing Law.** This Guarantee Agreement shall be governed by, and construed in accordance with, the laws of the Province of Nova Scotia, without regard to the choice-of-law principles of Nova Scotia that would require the application of the laws of a jurisdiction other than Nova Scotia.

**SECTION 19. Severability.** Any provision of this Guarantee Agreement which is illegal, invalid, prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such illegality, invalidity, prohibition or unenforceability without invalidating the remaining provisions hereof and any such illegality, invalidity, prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**SECTION 20. Entire Agreement.** This Guarantee Agreement embodies the entire agreement of the Guarantor with respect to the subject matter hereof and supersedes any prior written or oral agreements and understandings relating to the subject matter hereof and thereof.

IN WITNESS WHEREOF, the Guarantor has caused this Guarantee Agreement to be duly executed and delivered by its officers thereunto duly authorized as of the date first above written.

**HOMBURG INVEST INC.**

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