

**INTACT FINANCIAL CORPORATION**

**- and -**

**COMPUTERSHARE TRUST COMPANY OF CANADA**

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**TRUST INDENTURE**

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**MARCH 31, 2021**

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## TRUST INDENTURE

This trust indenture is made as of March 31, 2021.

### BETWEEN

**INTACT FINANCIAL CORPORATION**, a corporation existing under the laws of Canada (the “**Corporation**”)

-and-

**COMPUTERSHARE TRUST COMPANY OF CANADA**, a trust company existing under the laws of Canada (the “**Trustee**”)

**WHEREAS** the Corporation wishes to create and issue Notes in the manner provided in this Indenture;

**AND WHEREAS** all necessary resolutions of the directors of the Corporation have been duly passed and other proceedings taken and conditions complied with to make this Indenture and the execution thereof legal, valid and binding on the Corporation in accordance with applicable laws relating to 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 THIS TRUST INDENTURE WITNESSES** and it is hereby covenanted, agreed and declared as follows.

### **ARTICLE 1** **INTERPRETATION**

#### **1.01 Definitions**

In this Indenture and in the Notes, unless there is something in the subject matter or context inconsistent therewith, the following expressions have the respective meanings indicated:

“**Affiliate**” means, with respect to any Person, any other Person which, directly or indirectly through one or more Persons, Controls, is Controlled by, or is under common Control with, such Person.

“**Authorized Investments**” means (a) short-term, interest-bearing or discount debt obligations issued or guaranteed by the Government of Canada or a Province or a Canadian chartered bank (which may include an Affiliate or related party of the Trustee), provided that each such obligation is rated at least R1 (middle) by DBRS Limited or any equivalent rating by another rating agency; and (b) each other investment as may be authorized as such in a Supplemental Indenture with respect to a Series.

“**Book Entry Only Notes**” means Notes of a Series which, in accordance with the terms applicable to such Series, are to be held only by or on behalf of the Depository.

**“Business Day”** means any day which is not a Saturday, Sunday or statutory holiday and on which commercial banks and foreign exchange markets settle payments and are open for general business (including dealings in foreign currency deposits and foreign exchange) in Toronto, Ontario and any other city specified herein.

**“CDS”** means CDS Clearing and Depository Services Inc. and its successors.

**“Central Register”** has the meaning ascribed to such term in Section 4.01.

**“Certified Resolution”** means a copy of a resolution certified by an officer of the Corporation to have been duly passed by the Directors and to be in full force and effect on the date of such certification.

**“Control”, “Controlled”** and similar expressions mean a relationship between two Persons wherein one of such Persons has the power, through the ownership of Securities, by contract or otherwise, to direct the management and policies of the other of such Persons, and includes, in the case of a corporation, the ownership, either directly or indirectly through one or more Persons, of Securities of such corporation carrying more than 50% of the votes that may be cast to elect the directors of such corporation either under all circumstances or under some circumstances that have occurred and are continuing, other than Securities held as collateral for a *bona fide* debt, provided that such votes, if exercised, are sufficient to elect a majority of the directors of such corporation.

**“Corporate Trust Office”** means the corporate trust office of the Trustee at which, at any particular time, its corporate trust business relative to this Indenture is administered, which office, at the date hereof, is located at 100 University Avenue, 8<sup>th</sup> Floor, Toronto, Ontario.

**“Corporation”** means Intact Financial Corporation and its successors and assigns.

**“Counsel”** means a barrister or solicitor or firm of barristers and solicitors (who may be counsel for the Corporation) retained by the Trustee or retained by the Corporation and acceptable to the Trustee, acting reasonably.

**“Creditors”** has the meaning ascribed to such term in Section 9.05(f).

**“Depository”** means CDS or such other Person as is designated in writing by the Corporation to act as depository in respect of a Series of Book Entry Only Notes.

**“Directors”** means the directors of the Corporation or, whenever duly empowered by a resolution of the directors of the Corporation, a committee of the directors of the Corporation, and reference to action by the Directors means action by the directors of the Corporation or action by any such committee.

**“Event of Default”** has the meaning ascribed to such term in Section 8.01.

**“Extraordinary Resolution”** has the meaning ascribed to such term in Section 11.13.

**“Generally Accepted Accounting Principles”** means, as at any date of determination, generally accepted accounting principles in Canada, from time to time, and includes International Financial Reporting Standards, as adopted by the International Accounting Standards Board as the same may be in effect in Canada.

**“Global Note”** means a Note representing the aggregate principal amount of a Series of Notes.

**“Governmental Authority”** means any domestic or foreign legislative, executive, judicial or administrative body or Person having or purporting to have jurisdiction in the relevant circumstances.

**“Government Securities”** means, unless otherwise specified with respect to any Series of Notes, Securities which are (a) direct obligations of the government which issued the currency in which the Notes of a particular Series are payable or (b) obligations of a person controlled or supervised by and acting as an agency or instrumentality of the government which issued the currency in which the Notes of such Series are payable, the payment of which is unconditionally guaranteed by such government, which, in either case, are full faith and credit obligations of such government payable in such currency and are not callable or redeemable at the option of the issuer thereof.

**“Indenture Legislation”** means the provisions, if any, of the *Canada Business Corporations Act*, the *Business Corporations Act* (Ontario) and any other statute of Canada or a province thereof, and of the regulations under any such statute, relating to trust indentures providing for the issue of debt obligations by corporations and to the rights, duties and obligations of trustees under such 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 Indenture or the Corporation.

**“Insolvency Statutes”** has the meaning ascribed to such term in Section 9.05(f).

**“Insolvent”** has the meaning ascribed to such term in Section 9.05(f)(i).

**“Interest Payment Date”** means, for each Series of interest-bearing Notes, a date on which interest is due and payable in accordance with the terms pertaining to such Series.

**“Maturity Date”** means, with respect to any Note, the date on which the principal of such Note becomes due and payable as therein or herein provided, whether at the Stated Maturity thereof or by declaration of acceleration, call for redemption or otherwise.

**“Noteholder”** or **“Holder”** means, at a particular time, a Person entered in a Register as a holder of one or more Notes outstanding at such time.

**“Noteholders’ Request”** means, in respect of one or more particular Series, an instrument signed in one or more counterparts by Noteholders holding not less than 25% of the aggregate principal amount of the outstanding Notes of such Series or, in respect of all Notes, an instrument signed in one or more counterparts by Noteholders holding not less than 25% of the aggregate principal amount of all outstanding Notes, in each case requesting or directing the Trustee to take or refrain from taking the action or proceeding specified therein.

**“Notes”** means any notes, debentures or other instruments of indebtedness, which shall in each case constitute subordinated indebtedness of the Corporation, issued or to be issued under this Indenture for the time being outstanding and entitled to the benefits of this Indenture.



**“Officers’ Certificate”**, **“Order of the Corporation”** and **“Request of the Corporation”** mean, respectively, a written certificate, order and request signed in the name of the Corporation by any two authorized officers of the Corporation in their capacities as officers of the Corporation and not in their personal capacities.

**“Opinion of Counsel”** means an opinion in writing signed by Counsel containing the information specified in this Indenture (it being understood that such opinion may be based upon reasonable assumptions and given in reliance upon certificates of fact or representations of the Corporation or other persons having relevant knowledge and be subject to reasonable qualifications in the circumstances).

**“Ordinary Resolution”** has the meaning ascribed to such term in Section 11.12.

**“Paying Agent”** means a Person authorized by the Corporation to pay the principal, Premium or interest payable in respect of any Notes on behalf of the Corporation, and may include the Corporation and the Trustee.

**“Person”** means any individual, partnership, limited partnership, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, government or Governmental Authority, however, designated or constituted.

**“Premium”** means, with respect to any Note at a particular time, the excess, if any, of the then applicable redemption price of such Note over the principal amount of such Note.

**“Record Date”** means the date specified for determining Holders entitled to receive interest on Notes.

**“Register”** has the meaning ascribed to such term in Section 4.01.

**“Registrar”** means the Trustee or a Person other than the Trustee designated by the Corporation to keep a Register.

**“Securities”** means any stock, shares, units, instalment receipts, voting trust certificates, bonds, Notes, notes, other evidences of indebtedness, or other documents or instruments commonly known as securities or any certificates of interest, shares or participations in temporary or interim certificates for, receipts for, guarantees of, or warrants, options or rights to subscribe for, purchase or acquire any of the foregoing.

**“Senior Creditor”** means a holder or holders of Senior Indebtedness and includes any representative or representatives or trustee or trustees of any such holder and such other lenders providing advances to the Corporation pursuant to Senior Indebtedness.

**“Senior Indebtedness”** means obligations (other than non-recourse obligations, the Notes or any other obligations specifically designated as being subordinate in right of payment to Senior Indebtedness) of, or guaranteed or assumed by, the Corporation for borrowed money or evidenced by bonds, debentures or notes or obligations of the Corporation for or in respect of bankers’ acceptances (including the face amount thereof), letters of credit and letters of guarantee (including all reimbursement obligations in respect of each of the foregoing) or other similar instruments, and amendments, renewals, extensions, modifications and refundings of any such indebtedness or obligation.

**“Series”** means a series of Notes which, unless otherwise specified in a Supplemental Indenture or a Terms Schedule, consists of those Notes which have identical terms and were or are to be issued at the same time, regardless of whether such Notes are designated as a series.

**“Stated Maturity”** means the date specified in a Note as the fixed date on which the principal of such Note is due and payable.

**“Subsidiary”** has the meaning attributed to such term in the *Canada Business Corporations Act*.

**“Successor”** has the meaning ascribed to such term in Section 10.01.

**“Supplemental Indenture”** means an indenture supplemental to this Indenture pursuant to which, among other things, Notes may be authorized for issue or the provisions of this Indenture may be amended.

**“Terms Schedule”** has the meaning ascribed to such term in Section 3.01(c).

**“Transaction”** has the meaning ascribed to such term in Section 10.01.

**“Trustee”** means Computershare Trust Company of Canada or its successor or successors for the time being as trustee hereunder.

## 1.02 Meaning of “outstanding” for Certain Purposes

Every Note certified and delivered by the Trustee hereunder shall be deemed to be outstanding until it is cancelled or delivered to the Trustee for cancellation or money for the payment thereof has been set aside pursuant to Article 9, provided that:

- (a) if a new Note has been issued in substitution for a Note that has been mutilated, lost, stolen or destroyed, only one of such Notes shall be counted for the purpose of determining the aggregate principal amount of Notes outstanding,
- (b) Notes that have been partially redeemed, purchased or converted shall be deemed to be outstanding only to the extent of the unredeemed, unpurchased or unconverted part of the principal amount thereof, and
- (c) for the purpose of any provision of this Indenture entitling Holders of outstanding Notes to vote, sign consents, requisitions or other instruments or take any other action under this Indenture or to constitute a quorum at any meeting of Noteholders, Notes owned directly or indirectly by the Corporation or any Affiliate of the Corporation shall be disregarded, provided that:
  - (i) for the purpose of determining whether the Trustee shall be protected in relying on any such vote, consent, requisition or other instrument or action or on the Noteholders present or represented at any meeting of Noteholders constituting a quorum, only the Notes which the Trustee knows are so owned shall be so disregarded, and

- (ii) Notes so owned that have been pledged in good faith other than to the Corporation, a Subsidiary or an Affiliate of the Corporation shall not be disregarded if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to vote, sign consents, requisitions or other instruments or take such other actions free from the control of the Corporation, any Subsidiary or any Affiliate of the Corporation.

### **1.03 Interpretation Not Affected by Headings**

The division of this Indenture into Articles, Sections and clauses, 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.

### **1.04 Extended Meanings**

In this Indenture, unless otherwise expressly provided herein or unless the context otherwise requires, words importing the singular number include the plural and vice versa; words importing gender include the masculine, feminine and neuter genders; references to "**Indenture**", "**this Indenture**", "**hereto**", "**herein**", "**hereof**", "**hereby**", "**hereunder**" and similar expressions refer to this trust indenture, and not to any particular Article, Section, clause or other portion hereof, and include all amendments hereto, modifications or restatements hereof, and any and every Supplemental Indenture and Terms Schedule; words and terms denoting inclusiveness (such as "**include**" or "**includes**" or "**including**"), whether or not so stated, are not limited by and do not imply limitation of their context or the words or phrases which precede or succeed them; and the expressions "**Article**", "**Section**" and "**clause**" followed by a number, letter, or combination of numbers and letters refer to the specified Article, Section or clause of this Indenture.

### **1.05 Day Not a Business Day**

If any day on or before which any action is required to be taken under this Indenture is not a Business Day, then such action is required to be taken on or before the requisite time on the first Business Day thereafter.

### **1.06 Currency**

Except as otherwise provided herein, all references in this Indenture to "**Canadian dollars**", "**dollars**" and "**\$**" are to lawful money of Canada.

### **1.07 Other Currencies**

For the purpose of making any computation under this Indenture, any currency other than Canadian dollars shall be converted into Canadian dollars at the exchange rate quoted by the Bank of Canada on the date on which such computation is to be made.

### **1.08 Statutes**

Each reference in this Indenture to a statute is deemed to be a reference to such statute as amended, re-enacted or replaced from time to time.

### **1.09 Invalidity of Provisions**

Each provision in this Indenture or in a Note is distinct and severable and a declaration of invalidity or unenforceability of any such provision by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof or thereof.

### **1.10 Applicable Law**

This Indenture and the Notes shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable in the Province of Ontario.

### **1.11 No Conflict with Supplemental Indentures**

The terms and provisions of a Supplemental Indenture or Terms Schedule for a Series may modify or amend any of the terms and provisions of this Indenture, but solely as applied to such Series. The insertion of the phrase "in a Terms Schedule or Supplemental Indenture", "unless otherwise specified in the related Terms Schedule or Supplemental Indenture" or similar phrases in this Indenture, or the absence of any such phrase, shall not limit the scope of or otherwise affect the preceding sentence or Section 2.02. For greater certainty, if a term or provision contained in this Indenture shall conflict or be inconsistent with a term or provision of a Terms Schedule or Supplemental Indenture for a Series, such Terms Schedule or Supplemental Indenture shall govern with respect to such Series; provided, however, that the terms and provisions of such Terms Schedule or Supplemental Indenture may modify or amend the terms and provisions of this Indenture solely as applied to such Series.

### **1.12 Language**

In the event of any contradiction, discrepancy or difference between the English language version and the French or other language version of the text of a Note, the English language version of such text shall govern.

## **ARTICLE 2** **THE NOTES**

### **2.01 No Fixed Limitation**

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

### **2.02 Issuance in Series**

Notes may be issued in one or more Series. The Notes of each Series shall be designated in such manner, shall bear such date or dates and mature on such date or dates, shall bear interest, if any, at such rate or rates accruing from and payable on such date or dates, may have such Record Dates for interest payable, may be issued at such times and in such denominations, may be redeemable before maturity in such manner and subject to payment of such Premium, may be payable as to principal, interest and Premium at such place(s) and/or methods and in such currency or currencies, may be payable as to

principal, interest and Premium in Securities of the Corporation or any other Person, may provide for such mandatory redemption, sinking fund or other analogous repayment obligations, may contain such provisions for the exchange or transfer of Notes of different denominations and forms, may have attached thereto or issued therewith Securities entitling the Holders thereof to subscribe for, purchase or acquire Securities of the Corporation or any other Person upon such terms, may give the Holders thereof the right to convert Notes into Securities of the Corporation or any other Person upon such terms, may be defeasible at the option of the Corporation, and may contain such other provisions as may be determined by the Corporation and set forth in a Terms Schedule or, to such extent as the Corporation may deem appropriate, in a Supplemental Indenture pertaining to the Notes of such Series. At the option of the Corporation, the maximum principal amount of Notes of any Series may be limited, such limitation to be expressed in the Terms Schedule or Supplemental Indenture providing for the issuance of the Notes of such Series, and any such limitation may be increased at any time by the Corporation.

### **2.03 Form of Notes**

The Notes of any Series may be of different denominations and forms and may contain such variations of tenor and effect as are incidental to such differences of denomination and form, including variations in the provisions for the exchange of Notes of different denominations or forms and in the provisions for the registration or transfer of Notes, and any Series of Notes may consist of Notes having different dates of issue, different dates of maturity, different rates of interest, different redemption prices, different sinking fund provisions, and partly of Notes carrying the benefit of a sinking fund and partly of Notes with no sinking fund provided therefor.

Subject to the foregoing provisions and subject to any limitation as to the maximum principal amount of Notes of any particular Series, any Note may be issued as part of any Series of Notes previously issued.

The Notes and the registration panel and certificate of the Trustee endorsed thereon will be in the English language (or, if the Corporation so determines, in the English and French languages) and will be substantially in the form annexed to the related Terms Schedule or Supplemental Indenture with such additions, deletions, substitutions and variations as the Trustee may approve and will bear such distinguishing letters and numbers as the Trustee may approve, such approval to be conclusively evidenced by its certification thereof.

The Notes of any Series may be engraved, lithographed, printed, mimeographed or typewritten, or partly in one form and partly in another, as the Corporation may determine, provided that if a Note is issued in mimeographed or typewritten form, the Corporation, on the demand of the Holder thereof, shall make available within a reasonable time after such demand, without expense to such Holder, an engraved, lithographed or printed Note in exchange therefor.

### **2.04 Form of Legend for Global Notes**

Except as otherwise provided in a Terms Schedule or Supplemental Indenture applicable to a Series of Notes or as otherwise required pursuant to any book-entry only system in which the Notes of any Series will be deposited, every Global Note delivered under this Indenture will bear a legend in substantially the following form:

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF [NAME OF DEPOSITORY] (THE "DEPOSITORY") TO INTACT FINANCIAL CORPORATION OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IN RESPECT THEREOF IS REGISTERED IN THE NAME OF [NAME IN WHICH GLOBAL NOTE TO BE REGISTERED] OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY (AND ANY PAYMENT IS MADE TO THE DEPOSITORY, OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL SINCE THE REGISTERED HOLDER HEREOF, [NAME IN WHICH GLOBAL NOTE TO BE REGISTERED], HAS A PROPERTY INTEREST IN THE SECURITIES REPRESENTED BY THIS CERTIFICATE HEREIN AND IT IS A VIOLATION OF ITS RIGHTS FOR ANOTHER PERSON TO HOLD, TRANSFER OR DEAL WITH THIS CERTIFICATE.

## **2.05 Notes to Rank Equally**

The Notes of each Series shall rank equally and *pari passu* with each other and with the Notes of every other Series (regardless of their actual dates or terms of issue). The Notes shall be direct, unsecured, subordinated obligations of the Corporation, ranking subordinate to Senior Indebtedness of the Corporation and equally and rateably with all other subordinated indebtedness of the Corporation from time to time issued and outstanding, except for indebtedness that, by its terms, ranks subordinate to the Notes.

## **2.06 Book Entry Only Notes**

Except as otherwise provided in a Terms Schedule or Supplemental Indenture applicable to a Series of Notes, each Series of Notes shall be issued as Book Entry Only Notes represented by a Global Note registered in the name of the Depository or a nominee of the Depository.

Beneficial owners of Book Entry Only Notes shall have no right to receive definitive Notes until such time, if any, as:

- (a) the Depository notifies the Corporation that it is unwilling or unable to continue to act as depository in connection with such Notes and the Corporation is unable to locate a qualified successor,
- (b) the Depository ceases to be a clearing agency or otherwise ceases to be eligible to be a depository and the Corporation is unable to locate a qualified successor, or
- (c) the Corporation determines that such Notes shall no longer be held as Book Entry Only Notes,

following which Notes in fully registered form shall be issued to the beneficial owners of such Notes or their nominees.

## **2.07 Signatures on Notes**

All Notes shall be signed (either manually or by facsimile signature or other electronic signature) by any two of the Chief Executive Officer, the President and a Senior Vice-President or any one of them together with a Vice-President, the Secretary, the Treasurer, the Controller, an Assistant Secretary or an Assistant Treasurer of the Corporation, and such other officers as may be designated by the Corporation. A facsimile signature or other electronic signature on any Note shall for all purposes of this Indenture be deemed to be the signature of the individual whose signature it purports to be and to have been signed at the time such facsimile or other electronic signature was reproduced, and each Note so signed shall be valid and binding upon the Corporation notwithstanding that any individual whose signature (either manually or by facsimile or other electronic means) appears on a Note is not at the date of this Indenture or at the date of the Note or at the date of the certification and delivery thereof an officer of the Corporation.

## **2.08 Certification**

No Note shall be issued or, if issued, shall be obligatory or entitle the Holder thereof to the benefit hereof until it has been certified by or on behalf of the Trustee (by manual signature or by facsimile or other electronic signature) substantially in the form set out in a Terms Schedule or Supplemental Indenture or in some other form acceptable to the Trustee. Such certificate on any Note shall be conclusive evidence that such Note has been duly issued hereunder and is a valid obligation of the Corporation.

The certificate of the Trustee signed on a Note shall not be construed as a representation or warranty by the Trustee as to the validity of this Indenture or of such Note or its issuance, and the Trustee shall not be liable for the use made of such Note or the proceeds of issuance thereof. The certificate of the Trustee signed on any Note shall, however, be a representation and warranty by the Trustee that such Note has been duly certified by or on behalf of the Trustee pursuant to the provisions of this Indenture.

## **2.09 Concerning Interest**

Except as otherwise provided in a Terms Schedule or Supplemental Indenture applicable to a Series of Notes,

- (a) each Note of a Series, whether issued originally or in exchange or in substitution for previously issued Notes, shall bear interest from and including the later of
  - (i) its date of issue and
  - (ii) the last Interest Payment Date to which interest shall have been paid or made available for payment on the outstanding Notes of such Series;
- (b) subject to accrual of any interest on unpaid interest from time to time, interest on each Note shall cease to accrue from the earlier of the Maturity Date of such Note and, if such Note is called for redemption, the redemption date fixed for such Note, unless, in each case, upon due presentation and surrender of such Note for payment on or after such Maturity Date or redemption date, as the case may be, such payment is improperly withheld or refused; and

- (c) if the date for payment of any amount of principal or interest in respect of a Note is not a Business Day at the place of payment, then payment shall be made on the next Business Day at such place and the Holder of such Note shall not be entitled to any further interest or other payment in respect of the delay.

Wherever in this Indenture or a Note there is mention, in any context, of the payment of interest, such mention is deemed to include the payment of interest on amounts in default to the extent that, in such context, such interest is, was or would be payable pursuant to this Indenture or such Note, and express mention of interest on amounts in default in any of the provisions of this Indenture shall not be construed as excluding such interest in those provisions of this Indenture in which such express mention is not made.

Except as otherwise provided in a Terms Schedule or Supplemental Indenture applicable to a Series of Notes, the Corporation shall pay the interest due upon the principal amount of an interest-bearing Note (except interest payable on maturity or redemption of such Note which, at the option of the Corporation, may be paid only upon presentation of such Note for payment) by electronic funds transfer or by forwarding or causing to be forwarded by prepaid ordinary mail (or in the event of mail service interruption, by such other means as the Trustee and the Corporation determine to be appropriate) a cheque for such interest (less any tax required by law to be deducted or withheld) payable on the applicable Interest Payment Date to the Holder of such Note on the Record Date for such payment at the address appearing on the Register unless otherwise directed in writing by such Holder or, in the case of joint Holders, payable to all such joint Holders and addressed to one of them at the last address appearing in the applicable Register and negotiable at par at each of the places at which interest upon such Note is payable. Any electronic transfer instructions received by the Trustee shall remain in effect until revoked by the Holder. The forwarding of such cheque or electronic funds transfer shall satisfy and discharge the liability for the interest on such Note to the extent of the sum represented thereby (plus the amount of any tax deducted or withheld) unless such cheque is not paid on presentation at any of the places at which such interest is payable or such electronic funds are not received on or prior to the applicable Interest Payment Date. In the event of the non-receipt of any such cheque by the applicable Noteholder or the loss, theft or destruction thereof, the Corporation, upon being furnished with evidence of such non-receipt, loss, theft or destruction and indemnity reasonably satisfactory to it, shall issue or cause to be issued to such Noteholder a replacement cheque for the amount of such cheque. Notwithstanding the foregoing, the Corporation, at its option, may cause the amount payable in respect of interest to be paid to a Noteholder in any other manner acceptable to the Trustee.

If payment of interest is made by cheque, such cheque shall be forwarded at least three Business Days prior to the applicable Interest Payment Date, and if payment is made in any other manner, such payment shall be made in a manner whereby the recipient receives credit for such payment on the applicable Interest Payment Date.

Unless otherwise provided in the terms of the Notes of or within a Series, where reference is made to a rate of interest "per annum" or a similar expression is used, the interest will be calculated on the basis of a calendar year of 365 or 366 days, as the case may be.

Unless otherwise specifically provided in the terms of the Notes of or within a Series, interest for any period of less than six months will be computed on the basis of a year of 365 or 366 days, as the case may be.



With respect to any Notes, when interest is computed on the basis of a year (the “**deemed year**”) which contains fewer days than the actual number of days in the calendar year of calculation, such rate of interest will 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 it by the number of days in the deemed year.

For greater clarity, the Trustee shall be entitled to rely on the calculations of the Corporation or any calculation agent that may be appointed by the Corporation pursuant to a Supplemental Indenture or Terms Schedule.

## **2.10 Interim Notes**

Pending the preparation and delivery to the Trustee of definitive Notes of any 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, mimeographed or typewritten Notes, in such forms and in such denominations and with such appropriate omissions, insertions and variations as may be approved by the Trustee and any two officers of the Corporation (whose certification or signature, either manual, electronic or facsimile, on any such interim Notes shall be conclusive evidence of such approval) entitling the Holders thereof to receive definitive Notes of such Series in any authorized denominations and forms when the same are prepared and ready for delivery, without expense to such Holders, but the total amount of interim Notes of any Series so issued shall not exceed the total amount of Notes of such Series for the time being authorized. Forthwith after the issuance of any such interim Notes, the Corporation shall cause to be prepared the appropriate definitive Notes for delivery to the Holders of such interim Notes.

Any interim Notes when duly issued shall, until exchanged for definitive Notes, entitle the Holders thereof to rank for all purposes as Noteholders and otherwise in respect of this Indenture to the same extent and in the same manner as though such exchange had actually been made. When exchanged for definitive Notes, such interim Notes shall forthwith be cancelled by the Trustee.

## **2.11 Issue of Substitutional Notes**

If any Note issued and certified hereunder becomes mutilated or is lost, destroyed or stolen, the Corporation, in its discretion, may issue, and thereupon the Trustee shall certify and deliver, a new Note of like date and tenor as the one mutilated, lost, destroyed or stolen in exchange for and in place of and upon cancellation of such mutilated Note or in lieu of and in substitution for such lost, destroyed or stolen Note. The substituted Note shall be in a form approved by the Trustee and shall be entitled to the benefit hereof and rank equally in accordance with its terms with all other Notes. The applicant for a new Note shall bear the cost of the issue thereof and in case of loss, destruction or theft shall, as a condition precedent to the issue thereof, furnish to the Corporation and to the Trustee such evidence of ownership and of the loss, destruction or theft of the Note so lost, destroyed or stolen as shall be satisfactory to the Corporation and to the Trustee in their discretion, and such applicant shall also furnish indemnity, in amount and form satisfactory to the Corporation and the Trustee in their discretion, and shall pay the reasonable charges of the Corporation and the Trustee in connection therewith.

## **2.12 Option of Holder as to Place of Payment**

Except as herein otherwise provided, all amounts which at any time become payable on account of any Note or any interest or Premium thereon shall be payable at the option of the Holder at any of the places at which the principal and interest in respect of such Note are payable.

## **2.13 Record of Payments**

The Trustee shall maintain accounts and records evidencing each payment of principal of and Premium and interest on Notes, which accounts and records shall constitute, in the absence of manifest error, *prima facie* evidence thereof.

None of the Corporation, the Trustee, any Registrar or any Paying Agent shall be liable or responsible to any Person for any aspect of the records related to or payments made on account of beneficial interests in any Global Note or for maintaining, reviewing, or supervising any records relating to such beneficial interests.

## **2.14 Payment Agreements for Notes**

Despite anything contained in this Indenture, the Corporation may enter into an agreement with the Holder of a Note or with the Person for whom such Holder is acting as nominee, providing for the payment to such Holder of the principal of, Premium (if any) and interest on such Note at a place or places or in a manner other than the place or places or the manner specified in this Indenture and in such Note as the place or places for such payment. Any payment of the principal of, Premium (if any) and interest on any such Note or such other money payable under this Indenture at such other place or places or in such manner pursuant to such agreement will, despite any other provision of this Indenture, be valid and binding on the Corporation, the Trustee and such Noteholder.

## **2.15 Surrender for Cancellation**

If the principal amount due upon any Note shall become payable before the Stated Maturity thereof, the Person presenting such Note for payment shall surrender the same for cancellation and the Corporation shall pay or cause to be paid the interest accrued and unpaid thereon (computed on a *per diem* basis if the date fixed for payment is not an Interest Payment Date).

## **2.16 Right to Receive Indenture**

Each Noteholder is entitled to receive from the Corporation a copy of this Indenture on written request and upon payment of a reasonable copying charge.

## **2.17 Representation Regarding Third Party Interest**

The Corporation hereby represents to the Trustee that any account to be opened by, or interest to be held by, the Trustee in connection with this Indenture, for or to the credit of the Corporation, either (i) is not intended to be used by or on behalf of any third party; or (ii) is intended to be used by or on behalf of a third party in which case the Corporation hereby agrees to complete, execute and deliver forthwith to the Trustee a declaration, in

the Trustee's prescribed form or in such other form as may be reasonably satisfactory to it, as to the particulars of such third party.

**ARTICLE 3**  
**ISSUE AND DELIVERY OF NOTES**

**3.01 Issuance of Notes**

The Corporation may issue, and the Trustee shall certify and have delivered to or to the order of the Corporation, Notes issuable under this Indenture, but only upon receipt by the Trustee of the following:

- (a) a Certified Resolution and/or executed Supplemental Indenture pursuant to which the form and terms of such Notes were established;
- (b) an Officers' Certificate certifying that the Corporation, so far as is known to the persons signing the Officers' Certificate, is not in default under this Indenture, that the terms and conditions for the certification and delivery of such Notes have been complied with, subject to the delivery of any documents or instruments specified in such Officers' Certificate, and that no Event of Default will exist upon such certification and delivery under the provisions of Article 8;
- (c) an Order of the Corporation for the certification and delivery of such Notes specifying the principal amount requested to be certified and delivered and having attached a schedule (a "**Terms Schedule**") specifying the date, principal amount, Maturity Date, interest rate, if any, Interest Payment Dates and place and/or method of delivery for each Note requested to be certified and delivered or, at the option of the Corporation, a Supplemental Indenture in form and terms approved by Counsel providing for the issue of such Notes; and
- (d) an Opinion of Counsel stating:
  - (i) that all requirements imposed by this Indenture or by law governing such Notes in connection with the proposed issue of such Notes have been complied with, subject to the delivery of certain documents or instruments specified in such opinion;
  - (ii) that such Notes, when executed and delivered by the Corporation to the Trustee for certification in accordance with this Indenture, certified and delivered by the Trustee in accordance with this Indenture and issued by the Corporation in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute legal, valid and binding obligations of the Corporation, enforceable in accordance with their terms, subject to laws of general applicability relating to or affecting the enforcement of creditors' rights, to general equitable principles and to such other qualifications as such counsel concludes do not materially affect the rights of Holders of such Notes;
  - (iii) that the Corporation has the corporate power to issue such Notes and has taken all necessary corporate action with respect to such issuance; and

- (iv) that the issuance of such Notes will not contravene the articles or by-laws of the Corporation.

Upon the certification and delivery by the Trustee of Notes in accordance with an Order of the Corporation, the Terms Schedule or Supplemental Indenture attached to such Order of the Corporation shall be deemed to be a Schedule to and form part of this Indenture.

### **3.02 No Notes to be Issued During Default**

No Notes shall be certified and delivered hereunder if at the time of such certification and delivery the Corporation, to the knowledge of the Trustee, is in default hereunder, provided that the Trustee may certify and deliver Notes notwithstanding such knowledge if the Trustee shall be satisfied, relying on the advice or Opinion of Counsel or other experts or advisers, that such default is not material and that the Corporation is taking appropriate action to remedy such default.

## **ARTICLE 4**

### **REGISTRATION, TRANSFER, EXCHANGE AND OWNERSHIP OF NOTES**

#### **4.01 Registers**

The Corporation shall cause to be kept at the Corporate Trust Office, or at such other place as shall be agreed by the Corporation and the Trustee, a central register (the “**Central Register**”) and may cause to be kept in such other place or places, by the Trustee or by such other Registrar or Registrars (if any) as the Corporation may designate, branch registers (each a “**Register**” and collectively with the Central Register the “**Registers**”) in each of which shall be entered the names and latest known addresses of Holders of Notes and the other particulars, as prescribed by law, of the Notes held by each of them and of all transfers of such Notes. Such registration shall be noted on such Notes by the Trustee or other Registrar. Every Registrar (including the Trustee) from time to time shall, when requested in writing so to do by the Corporation or by the Trustee, furnish the Corporation or the Trustee, as the case may be, with a list of the names and addresses of the Holders of Notes entered on the Register kept by such Registrar, showing the principal amount and serial numbers of such Notes held by each Holder. The Registers referred to in this Section 4.01 shall at all reasonable times be open for inspection by the Corporation, the Trustee and any Noteholder.

#### **4.02 Transfer of Notes**

A Holder of a Note may at any time and from time to time have such Note transferred at any of the places at which a Register is kept pursuant to the provisions of Section 4.01. A Holder of a Note may at any time and from time to time have the registration of such Note transferred from the Register in which the registration of such Note appears to another Register maintained in another place authorized for that purpose under the provisions of this Indenture upon payment of a reasonable fee to be fixed by the Corporation and the Trustee.

No transfer of a Note shall be effective as against the Corporation unless:

- (a) such transfer is made by the Holder of the Note or the executor, administrator or other legal representative of, or any attorney for, the Holder, duly appointed by an

instrument in form and execution satisfactory to the Trustee or other Registrar, upon surrender to the Trustee or other Registrar of the Note and a duly executed form of transfer,

- (b) such transfer is made in compliance with applicable law and such requirements as the Trustee or other Registrar may prescribe, and
- (c) such transfer has been duly noted on such Note and on one of the appropriate Registers by the Trustee or other Registrar.

#### **4.03 Restrictions on Transfer of Global Notes**

Notwithstanding any other provision of this Indenture, a Global Note registered in the name of the Depository or a nominee of the Depository may not be transferred by the Depository or such nominee except in the following circumstances or as otherwise specified in a Terms Schedule or Supplemental Indenture relating to such Note:

- (a) such Global Note may be transferred by the Depository to a nominee of the Depository or by a nominee of the Depository to the Depository or to another nominee of the Depository or by the Depository or its nominee to a successor Depository or its nominee;
- (b) such Global Note may be transferred at any time after the Depository for such Global Note has notified the Corporation that it is unwilling or unable or no longer eligible to continue as Depository for such Global Note;
- (c) such Global Note may be transferred at any time after the Corporation has determined, in its sole discretion, that the Notes represented by such Global Note shall no longer be held as Book Entry Only Notes; and
- (d) such Global Note may be transferred at any time after the Trustee has determined that an Event of Default has occurred and is continuing with respect to the Notes of the Series issued in the form of such Global Note, provided that at the time of such transfer such Event of Default has not been waived in accordance with the provisions of this Indenture.

#### **4.04 Transferee Entitled to Registration**

The transferee of a Note shall be entitled, after the appropriate form of transfer is lodged with the Trustee or other Registrar and upon compliance with all other conditions in that behalf required by this Indenture or by law, to be entered on a Register as the Holder of such Note free from all equities or rights of setoff or counterclaim between the Corporation and the transferor or any previous Holder of such Note, except in respect of equities of which the Corporation is required to take notice by statute or by order of a court of competent jurisdiction.

#### **4.05 Closing of Registers**

Except in the case of the Central Register, the Corporation shall have power at any time to close any Register. The Corporation shall transfer the registration of any Notes registered on a Register which the Corporation closes to another existing Register or to a

new Register and thereafter such Notes shall be deemed to be registered on such existing or new Register, as the case may be. If the Register in any place is closed and the records are transferred to a Register in another place, notice of such change shall be given to each Noteholder registered in the Register so closed and the particulars of such change shall be recorded in the Central Register.

Neither the Corporation nor the Trustee nor any Registrar shall be required to:

- (a) effect transfers or exchanges of Notes of any Series on any Interest Payment Date for Notes of that Series or during the ten preceding Business Days, or
- (b) effect transfers or exchanges of Notes of any Series:
  - (i) from the day of any selection by the Trustee of Notes of that Series to be redeemed until the day on which notice of redemption is given pursuant to Section 6.03, or
  - (ii) that have been selected or called for redemption in whole or in part unless, upon due presentation thereof for redemption, such Notes are not redeemed.

#### **4.06 Exchange of Notes**

Subject to Section 4.05, Notes in any authorized form or denomination may be exchanged upon reasonable notice for Notes in any other authorized form or denomination, any such exchange to be for an equivalent aggregate principal amount of Notes of the same Series, carrying the same rate of interest and having the same Maturity Date and the same redemption and sinking fund provisions, if any.

Notes of any Series may be exchanged at the Corporate Trust Office or at such other place or places as may be specified in the Notes of such Series or in the Terms Schedule or Supplemental Indenture providing for the issuance thereof, and at such other place or places as may from time to time be designated by the Corporation. Any Notes tendered for exchange shall be surrendered to the Trustee. The Corporation shall execute and the Trustee shall certify all Notes necessary to carry out such exchanges. All Notes surrendered for exchange shall be cancelled.

Notes issued in exchange for Notes 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, provided that, subject to Section 4.05:

- (a) Notes which have been selected or called for redemption may not be exchanged for Notes of larger denominations, and
- (b) if a Note that has been selected or called for redemption in part is presented for exchange into Notes of smaller denominations, the Trustee shall designate, according to such method as the Trustee shall deem equitable, particular Notes of those issued in exchange, which shall be deemed to have been selected or called for redemption, in whole or in part, and the Trustee shall note thereon a statement to that effect.

#### **4.07 Ownership and Entitlement to Payment**

The Person in whose name a Note is registered shall be deemed to be the beneficial owner thereof for all purposes of this Indenture and payment of or on account of the principal of and Premium and interest on such Note shall be made only to or upon the order in writing of such Person, and each such payment shall be a good and sufficient discharge to the Corporation, the Trustee, any Registrar and any Paying Agent for the amount so paid.

If a Note is registered in the name of more than one Person, the principal, Premium and interest from time to time payable in respect thereof may be paid to the order of all such Persons, failing written instructions from them to the contrary, and each such payment shall be a good and sufficient discharge to the Corporation, the Trustee, any Registrar and any Paying Agent for the amount so paid.

Notwithstanding any other provision of this Indenture, all payments in respect of Notes represented by a Global Note shall be made to the Depository or its nominee for subsequent payment by the Depository or its nominee to holders of interests in such Global Note. The receipt of the Depository or its nominee, as the case may be, of any payments in respect of such Notes is a valid discharge to the Corporation, the Trustee, and any Registrar and Paying Agent. The Corporation, the Trustee and any Registrar and Paying Agent will be entitled to rely on the Depository or its nominee to ensure that such amounts are advanced to holders of interests in such Global Note.

The Holder for the time being of a Note shall be entitled to the principal, Premium and interest evidenced by such Note, free from all equities or rights of setoff or counterclaim between the Corporation and the original or any intermediate Holder thereof, and all Persons may act accordingly. The receipt by any such Holder of any such principal, Premium or interest shall be a good and sufficient discharge to the Corporation, the Trustee, any Registrar and any Paying Agent for the amount so paid, and neither the Corporation nor the Trustee nor any Registrar nor any Paying Agent shall be bound to inquire into the title of any such Holder.

#### **4.08 Evidence of Ownership**

The Corporation and the Trustee may treat the Holder of a Note as the beneficial owner thereof without actual production of such Note for the purpose of any Noteholders' Request, requisition, direction, consent, instrument or other document to be made, signed or given by the Holder of such Note.

#### **4.09 No Notice of Trusts**

Neither the Corporation nor the Trustee nor any Registrar nor any Paying Agent shall be bound to take notice of or see to the performance or observance of any duty owed to a third Person (whether under a trust, express, implied, resulting or constructive, in respect of any Note or otherwise) by the beneficial owner or the Holder of a Note or any Person whom the Corporation or the Trustee treats, as permitted or required by law, as the beneficial owner or the Holder of such Note, and the Corporation, the Trustee or any Registrar may transfer such Note on the direction of the Person so treated or registered as the Holder thereof, whether named as trustee or otherwise, as though that Person was the beneficial owner of such Note.

#### **4.10 Charges for Transfer and Exchange**

For each Note exchanged or transferred, the Trustee or other Registrar, except as otherwise herein provided, may charge a reasonable amount for its services and in addition may charge a reasonable amount for each new Note issued (such amounts to be agreed upon by the Trustee and the Corporation from time to time), and payment of such charges and reimbursement of the Trustee or other Registrar for any stamp taxes or governmental or other charges required to be paid shall be made by the Person requesting such exchange or transfer as a condition precedent thereto.

Notwithstanding the foregoing, no charge (except a charge to reimburse the Trustee or other Registrar for any stamp taxes or governmental or other charges) shall be made to a Noteholder:

- (a) for any exchange or transfer of Notes of a Series applied for within a period of 30 days from the date of the first delivery of Notes of such Series;
- (b) for any exchange of any interim Note that has been issued pursuant to Section 2.10; or
- (c) for any exchange of any Note resulting from a partial redemption pursuant to Section 6.02.

### **ARTICLE 5** **SUBORDINATION**

#### **5.01 Notes Subordinated to Senior Indebtedness**

- (a) The Corporation covenants and agrees, and each Holder of Notes, by the acceptance thereof, covenants and agrees, that the indebtedness represented by the Notes and the payment of the principal of and Premium or interest on each and all of the Notes is hereby expressly subordinated, to the extent and in the manner hereinafter set forth, in right of payment to the prior payment in full of all Senior Indebtedness.
- (b) In the event (i) of any insolvency or bankruptcy proceedings or any receivership, liquidation, reorganization or other similar proceedings in respect of the Corporation or a substantial part of its property, or of any proceedings for liquidation, dissolution or other winding up of the Corporation, whether or not involving insolvency or bankruptcy, (ii) subject to the provisions of Section 5.02 that (A) a default shall have occurred with respect to the payment of principal of or interest on or other monetary amounts due and payable on any Senior Indebtedness, or (B) there shall have occurred an event of default (other than a default in the payment of principal or interest or other monetary amounts due and payable) in respect of any Senior Indebtedness, as defined in the agreement or the instrument under which such Senior Indebtedness is outstanding, permitting the holder or holders thereof to accelerate the maturity thereof (with notice or lapse of time, or both), and such event of default shall have continued beyond the period of grace, if any, in respect thereof, and, in the cases of subclauses (A) and (B) of this clause (ii), such default or event of default shall not have been cured or waived or shall not have ceased to exist, or (iii) that the principal of, any Premium and



accrued interest on the Notes of any series shall have been declared due and payable pursuant to Section 8.03 and such declaration shall not have been rescinded as provided herein, then:

- (i) the holders of all Senior Indebtedness shall first be entitled to receive payment of the full amount due thereon, or provision shall be made for such payment in money or property, before the Holders of any of the Notes are entitled to receive a payment on account of the principal of, Premium or interest on the indebtedness evidenced by the Notes, including, without limitation, any payments made pursuant to any redemption or purchase for cancellation;
- (ii) any payment by, or distribution of assets of, the Corporation of any kind or character, whether in cash, property or Securities, to which the Holders of any of the Notes or the Trustee would be entitled, except for the provisions of this Article, shall be paid or delivered by the Person making such payment or distribution, whether a trustee in bankruptcy, a receiver, receiver and manager or liquidating trustee or otherwise, directly to the holders of such Senior Indebtedness or their representative or representatives or to the trustee or trustees under any indenture under which any instruments evidencing any of such Senior Indebtedness may have been issued, ratably according to the aggregate amounts remaining unpaid on account of such Senior Indebtedness held or represented by each, to the extent necessary to make payment in full of all Senior Indebtedness remaining unpaid after giving effect to any concurrent payment or distribution (or provision therefor) to the holders of such Senior Indebtedness, before any payment or distribution is made to the holders of Notes or to the Trustee under this Indenture; and
- (iii) in the event that, notwithstanding the foregoing, any payment by, or distribution of assets of, the Corporation of any kind or character, whether in cash, property or Securities, in respect of principal of or Premium or interest on the Notes or in connection with any repurchase by the Corporation of the Notes, shall be received by the Trustee or the Holders of any of the Notes before all Senior Indebtedness is paid in full, or provision made for such payment in money or property, such payment or distribution in respect of principal of, Premium or interest on the Notes or in connection with any repurchase by the Corporation of the Notes shall be paid over to the holders of such Senior Indebtedness or their representative or representatives or to the trustee or trustees under any indenture under which any instruments evidencing any such Senior Indebtedness may have been issued, ratably as aforesaid, for application to the payment of all Senior Indebtedness remaining unpaid until all such Senior Indebtedness shall have been paid in full, after giving effect to any concurrent payment or distribution (or provision therefor) to the holders of such Senior Indebtedness.

## **5.02 Disputes with Holders of Certain Senior Indebtedness**

Any failure by the Corporation to make any payment on or perform any other obligation under Senior Indebtedness, other than any indebtedness incurred by the Corporation or

assumed or guaranteed, directly or indirectly, by the Corporation for money borrowed (or any deferral, renewal, extension or refunding thereof) or any indebtedness or obligation as to which the provisions of this Section 5.02 shall have been waived by the Corporation in the instrument or instruments by which the Corporation incurred, assumed, guaranteed or otherwise created such indebtedness or obligation, shall not be deemed a default or event of default under Section 5.01(b) if (a) the Corporation shall be disputing its obligation to make such payment or perform such obligation and (b) either (i) no final judgment relating to such dispute shall have been issued against the Corporation which is in full force and effect and is not subject to further review, including a judgment that has become final by reason of the expiration of the time within which a party may seek further appeal or review, or (ii) in the event of a judgment that is subject to further review or appeal has been issued, the Corporation shall in good faith be prosecuting an appeal or other proceeding for review and a stay of execution shall have been obtained pending such appeal or review.

### **5.03 Subrogation**

Subject to the payment in full of all Senior Indebtedness, the Holders of the Notes shall be subrogated (equally and ratably with the holders of all obligations of the Corporation which by their express terms are subordinated to Senior Indebtedness of the Corporation to the same extent as the Notes are subordinated and which are entitled to like rights of subrogation) to the rights of the holders of Senior Indebtedness to receive payments or distributions of cash, property or Securities of the Corporation applicable to the Senior Indebtedness until all amounts owing on the Notes shall be paid in full, and as between the Corporation, its creditors (other than holders of such Senior Indebtedness) and the Holders of Notes, no such payment or distribution made to the holders of Senior Indebtedness by virtue of this Article that otherwise would have been made to the Holders of Notes shall be deemed to be a payment by the Corporation on account of such Senior Indebtedness, it being understood that the provisions of this Article are and are intended solely for the purpose of defining the relative rights of the Holders, on the one hand, and the holders of Senior Indebtedness, on the other hand.

### **5.04 Obligation of Corporation Unconditional**

- (a) Nothing contained in this Article or elsewhere in this Indenture or in the Notes is intended to or shall impair, as among the Corporation, its creditors (other than the holders of Senior Indebtedness) and the Holders of Notes, the obligation of the Corporation, which is absolute and unconditional, to pay to the Holders of Notes the principal of and interest on the Notes as and when the same shall become due and payable in accordance with their terms, or is intended to or shall affect the relative rights of the Holders of Notes and creditors of the Corporation (other than the holders of Senior Indebtedness), nor shall anything herein or therein prevent the Trustee or any Holder of Notes from exercising all remedies otherwise permitted by this Indenture and applicable law upon default under this Indenture, subject to the rights, if any, under this Article of the holders of Senior Indebtedness in respect of cash, property or Securities of the Corporation received upon the exercise of any such remedy.
- (b) Upon payment or distribution of assets of the Corporation referred to in this Article, the Trustee and the Holders of Notes shall be entitled to rely upon any order or decree made by any court of competent jurisdiction in which any such dissolution,

winding up, liquidation or reorganization proceeding affecting the affairs of the Corporation is pending or upon a certificate of the trustee in bankruptcy, receiver, receiver and manager, assignee for the benefit of creditors, liquidating trustee or agent or other person making any payment or distribution, delivered to the Trustee or to the Holders of Notes, for the purpose of ascertaining the persons entitled to participate in such payment or distribution, the holders of the Senior Indebtedness and other indebtedness of the Corporation, the amount thereof or payable thereon, the amount paid or distributed thereon and all other facts pertinent thereto or to this Article.

#### **5.05 Payments on Notes Permitted**

Nothing contained in this Article or elsewhere in this Indenture or in the Notes shall affect the obligations of the Corporation to make, or prevent the Corporation from making, payment of the principal of or interest on the Notes in accordance with the provisions hereof and thereof, except as otherwise provided in this Article.

#### **5.06 Effectuation of Subordination by Trustee**

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

#### **5.07 Knowledge of Trustee**

Notwithstanding the provisions of this Article or any other provisions of this Indenture, the Trustee shall not be charged with knowledge of the existence of any facts that would prohibit the making of any payment of moneys to or by the Trustee, or the taking of any other action by the Trustee, unless and until the Trustee shall have received written notice thereof mailed or delivered to the Trustee from the Corporation, any Holder of Notes, any paying agent or the holder or representative of any class of Senior Indebtedness; provided that if at least three Business Days prior to the date upon which by the terms hereof any such moneys may become payable for any purpose (including, without limitation, the payment of the principal of or interest on any Notes) the Trustee shall not have received with respect to such moneys the notice provided for in this Section, then, anything herein contained to the contrary notwithstanding, the Trustee shall have full power and authority to receive such moneys and to apply the same to the purpose for which they were received and shall not be affected by any notice to the contrary that may be received by it within three Business Days prior to or on or after such date.

#### **5.08 Trustee May Hold Senior Indebtedness**

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

#### **5.09 Rights of Holders of Senior Indebtedness Not Impaired**

- (a) No right of any present or future holder of any Senior Indebtedness to enforce the subordination herein shall at any time or in any way be prejudiced or impaired by any act or failure to act on the part of the Corporation or by any non-compliance by the Corporation with the terms, provisions and covenants of this Indenture, regardless of any knowledge thereof any such holder may have or be otherwise charged with.
- (b) With respect to the holders of Senior Indebtedness: (i) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Indenture; (ii) the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture; (iii) no implied covenants or obligations shall be read into this Indenture against the Trustee; and (iv) the Trustee shall not be deemed to be a fiduciary as to such holders.

#### **5.10 Article Applicable to Paying Agents**

If at any time any paying agent other than the Trustee shall have been appointed by the Corporation and be then acting hereunder, the term "Trustee" as used in this Article shall in such case (unless the context shall require otherwise) be construed as extending to and including such paying agent within its meaning as fully for all intents and purposes as if such paying agent were named in this Article in addition to or in place of the Trustee; provided, however, that Sections 5.07 and 5.08 shall not apply to the Corporation if it acts as its own paying agent.

#### **5.11 Trustee; Compensation Not Prejudiced**

Nothing in this Article shall apply to claims of, or payments to, the Trustee pursuant to Section 7.02.

#### **5.12 Senior Indebtedness**

For greater certainty, the Corporation covenants and agrees, and each Holder of Notes, by the acceptance thereof, covenants and agrees, that nothing in this Indenture shall restrict the Corporation from issuing, entering into indentures in respect of or in any other manner becoming liable in respect of Senior Indebtedness.

## **ARTICLE 6**

### **REDEMPTION AND PURCHASE OF NOTES**

#### **6.01 General**

The Corporation, when not in default hereunder, shall have the right at its option to redeem, either in whole at any time or in part from time to time before Stated Maturity, Notes of any Series which by their terms are made so redeemable, at such rate or rates of Premium, if any, on such date or dates and on such terms and conditions as shall have been determined at the time of issue of such Notes or thereafter and as shall be expressed in such Notes or in the Supplemental Indenture or Terms Schedule authorizing or providing for the issue thereof or in any applicable notice of redemption.

#### **6.02 Partial Redemption of Notes**

If less than all of the Notes of a Series for the time being outstanding are to be redeemed then, unless otherwise provided in a Terms Schedule or Supplemental Indenture providing for the issue of such Series, the Corporation shall, at least 15 days before the date upon which notice of redemption is to be given to Holders of such Notes, notify the Trustee in writing of the Corporation's intention to redeem Notes of such Series and of the aggregate principal amount of Notes to be redeemed. The Notes so to be redeemed shall be selected by the Trustee on a *pro rata* basis (to the nearest minimum authorized denomination for Notes of such Series established pursuant to Section 2.02) in accordance with the principal amount of Notes of such Series registered in the name of each Holder or by lot or by such other means as the Trustee may deem equitable. For this purpose the Trustee may make regulations with regard to the manner in which such Notes may be so selected, and regulations so made shall be valid and binding upon all Noteholders. Notes in denominations in excess of the minimum authorized denomination for Notes of such Series established pursuant to Section 2.02 may be selected and called for redemption in part only, and, unless the context otherwise requires, reference to Notes in this Article 6 shall be deemed to include any such part of the principal amount of Notes which shall have been so selected and called for redemption. The Holder of any Note called for redemption in part only, upon surrender of such Note for payment, shall be entitled to receive, without expense to such Holder, one or more new Notes for the unredeemed part of the Note so surrendered, and the Trustee shall certify and deliver such new Note or Notes upon receipt of the Note so surrendered.

#### **6.03 Notice of Redemption**

Unless otherwise provided in a Terms Schedule or Supplemental Indenture:

- (a) notice of intention to redeem any Note will be given by the Corporation (i) to the Trustee at least 15 days prior to the notice of intention to redeem is sent to the Holders of the Notes which are to be redeemed (unless a shorter notice is satisfactory to the Trustee), and (ii) to the Holders of the Notes which are to be redeemed, not more than 60 days and not less than 10 days prior to the date fixed for redemption, in the manner provided in Section 12.02;
- (b) a notice of redemption may be conditional and, in such case, such notice of redemption shall specify the details and terms of any event (e.g. a financing, asset disposition or other transaction) or other matter on which such redemption is

conditional (and any such condition may be waived by the Corporation in its sole discretion); and

- (c) the notice of redemption will specify the distinguishing letters and numbers of the Notes to be redeemed and, if a Note is to be redeemed in part only, will specify that part of the principal amount of such Note to be redeemed, and will specify the redemption date, the redemption price and places or method of payment and will state that all interest on the Notes called for redemption will cease from and after such redemption (subject to any applicable conditions to such redemption having been satisfied or waived).

#### **6.04 Notes Due on Redemption Date**

Upon notice of redemption having been given as specified in Section 6.03, but subject to the satisfaction or waiver of any condition to such redemption, all the Notes so called for redemption shall thereupon be and become due and payable at the redemption price and on the redemption date specified, in each case, in such notice, in the same manner and with the same effect as if such date was the Stated Maturity specified in such Notes, and from and after such redemption date, if the money necessary to redeem such Notes shall have been deposited as provided in Section 9.02 and affidavits or other proof satisfactory to the Trustee as to the publication or mailing of such notice shall have been lodged with the Trustee, such Notes shall not be considered as outstanding hereunder and interest upon such Notes shall cease.

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

#### **6.05 Failure to Surrender Notes Called for Redemption**

If the Holder of any Notes called for redemption fails to surrender any of such Notes within 30 days from the date fixed for redemption or does not within such time accept payment of the redemption price or give a receipt for payment (if any) as the Trustee may require, such redemption price will be set aside in trust for such Noteholder, in accordance with Section 13.07, and such setting aside will for all purposes be deemed a payment to the Noteholder of the sum so set aside, and to that extent the Noteholder upon surrender of its Notes has no right except to receive payment out of the money so paid and deposited of the redemption price of such Notes, without interest.

#### **6.06 Purchase of Notes**

Subject to such restrictions on purchase as may be set forth in any Notes or in any Supplemental Indenture or Terms Schedule under which Notes may be issued, at any time when the Corporation is not in default hereunder, the Corporation may purchase all or any Notes in the market or by tender or private contract at any price.

If, upon an invitation for tenders, more Notes are tendered at the same lowest price than the Corporation is prepared to accept, the Notes to be purchased by the Corporation will be selected by the Trustee on a *pro rata* basis, by lot, or by such other means as the Trustee may deem equitable, from the Notes tendered by each tendering Noteholder who tendered at such lowest price. For this purpose the Trustee may make, and from time to

time amend, regulations with respect to the manner in which Notes may be so selected and regulations so made shall be valid and binding upon all Noteholders, notwithstanding the fact that, as a result thereof, one or more of such Notes become subject to purchase in part only. If only part of a Note is purchased, the Holder of such Note upon surrender of such Note for payment shall be entitled to receive without expense to such Noteholder one or more new Notes for the part of the Note so surrendered which is not being purchased, and the Corporation shall execute and the Trustee shall certify and deliver, at the expense of the Corporation, such new Note or Notes upon receipt of the Note so surrendered.

#### **6.07 Cancellation of Notes**

Subject to the provisions of Sections 6.02 and 6.06 as to Notes redeemed or purchased in part, all Notes redeemed or purchased in whole or in part by the Corporation shall not be reissued or resold and shall be forthwith delivered to and cancelled by the Trustee, and no Notes of the same Series shall be issued in substitution therefor.

### **ARTICLE 7 COVENANTS OF THE CORPORATION**

#### **7.01 General Covenants**

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

- (a) the Corporation will, duly and punctually pay or cause to be paid to each Holder of Notes the principal thereof, interest accrued thereon and Premium payable thereon on the dates, at the places or by such method, in the currency, and in the manner specified herein or as otherwise provided in such Notes;
- (b) except as otherwise provided in this Indenture, the Corporation will at all times maintain its corporate existence and the Corporation will carry on and conduct or will cause to be carried on and conducted its business and the business of its Subsidiaries in a proper and efficient manner and will keep or cause to be kept proper books of account and make or cause to be made in such books of account true and accurate entries of all its dealings and transactions in relation to its business and the business of its Subsidiaries, as the case may be, as required in accordance with Generally Accepted Accounting Principles, and at all reasonable times it will furnish or cause to be furnished to the Trustee or its duly authorized agent or attorney such information relating to its business and that of its Subsidiaries as the Trustee may reasonably require and such books of account will at all reasonable times be open for inspection by the Trustee or such agent or attorney;
- (c) the Corporation will furnish to the Trustee a copy of all financial statements, whether annual or interim of the Corporation, and the report, if any, of the Corporation's auditors thereon and of all annual and other regular periodic reports of the Corporation furnished to its shareholders at the same time as they are furnished to such shareholders, provided that notwithstanding the foregoing all financial statements and such auditor and other reports will be deemed to have been provided to the Trustee once filed on the System for Electronic Document

Analysis and Retrieval or any successor system for filing documents with applicable Canadian securities regulatory authorities; and

- (d) the Corporation will duly and punctually perform and carry out all of the acts or things to be done by it as provided in this Indenture.

#### **7.02 Trustee's Remuneration and Expenses**

- (a) The Corporation will pay to the Trustee reasonable remuneration for its services as trustee under this Indenture and will pay all costs, charges and expenses properly incurred by the Trustee in connection with the trusts of this Indenture (including reasonable legal fees and disbursements) and also (in addition to any right of indemnity given to the Trustee by law) will at all times keep the Trustee indemnified against all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted by the Trustee (other than through gross negligence or wilful misconduct of the Trustee) in any way relating to this Indenture.
- (b) Any amount due under this Section 7.02 and unpaid 30 days after demand for such payment will bear interest from the expiration of such 30 day period at a rate charged by the Trustee to its corporate clients. After default, all amounts so payable and the interest thereon will be payable out of any money coming into possession of the Trustee in priority to any payment of the principal of, Premium (if any) and interest on the Notes.

#### **7.03 Not to Extend Time for Payment of Interest or Principal**

Subject to the terms of any Supplemental Indenture or Terms Schedule with respect to a Series of Notes, in order to prevent any accumulation after maturity of unpaid interest or of unpaid Notes, the Corporation will not directly or indirectly extend or assent to the extension of time for payment of interest upon any Notes or of any principal payable in respect of any Notes and it will not directly or indirectly be or become a party to or approve any such arrangement by purchasing or funding interest on the Notes or any principal thereof or in any other manner.

#### **7.04 Trustee May Perform Covenants**

If the Corporation fails to perform any of its covenants contained in this Indenture, the Trustee may in its discretion, but (subject to Section 8.02) need not, notify the Noteholders of such failure or may itself perform any of such covenants capable of being performed by it and, if any such covenant requires the payment of money, it may make such payment with its own money, or with money borrowed by it for such purpose, but will be under no obligation to do so. All sums to be paid in connection with the Trustee's performance of such covenants will be payable by the Corporation in accordance with the provisions of Section 7.02. No such performance by the Trustee of any covenant contained in this Indenture will be deemed to relieve the Corporation from any default or its continuing obligations under this Indenture.



## 7.05 Annual Certificate of Compliance

So long as Notes are outstanding, on or before March 31 of each year and at any other time if requested by the Trustee, the Corporation will furnish to the Trustee an Officers' Certificate stating that the Corporation has complied with all covenants, conditions and other requirements contained in this Indenture, noncompliance with which would, with the giving of notice or the lapse of time or both, constitute an Event of Default under this Indenture or, if such is not the case, specifying the covenant, condition or other requirement which has not been complied with and giving particulars of such noncompliance and the action, if any, the Corporation proposes to take with respect to such noncompliance.

## **ARTICLE 8** **DEFAULT**

### 8.01 Events of Default

In addition to any events specified in a Terms Schedule or Supplemental Indenture relating to a Series of Notes or except as otherwise provided in any such Terms Schedule or Supplemental Indenture, each of the following events shall be an "**Event of Default**" in respect of each Series of Notes:

- (a) the Corporation fails to make payment of the principal of or Premium on any Note when the same becomes due under any provision hereof or of such Note; and
- (b) the Corporation fails to make payment of any interest upon any Note when it becomes due and payable, and any such failure continues for a period of 30 days (subject to any right of the Corporation to defer interest payments as expressed in the Notes of any Series and/or a Supplemental Indenture or Terms Schedule providing for the issue thereof); provided that, for greater certainty, no such default shall be considered to occur as a result of amounts that may be required to be deducted or withheld under the *Income Tax Act* (Canada) or any other applicable taxation statute by the Corporation, the Trustee, the related Registrar or the related Paying Agent from any payment to be made to any Noteholder having been so deducted or withheld and such amounts having been remitted to the appropriate Governmental Authority on behalf of such Noteholder.

### 8.02 Notice of Event of Default

If an Event of Default shall occur and be continuing, the Trustee shall, within 30 days after it becomes aware of the occurrence of such Event of Default, give notice of such Event of Default to the Holders of that Series of Notes in the manner specified in Section 12.02.

If notice of an Event of Default has been given to Noteholders and such Event of Default is thereafter remedied or cured, notice that such Event of Default is no longer continuing shall be given by the Trustee to the Persons to whom notice of such Event of Default was given pursuant to this Section 8.02, such notice to be given within a reasonable time, not to exceed 30 days, after the Trustee becomes aware that such Event of Default has been remedied or cured.

### **8.03 Acceleration**

Subject to the provisions of Section 8.04, if an Event of Default shall occur and be continuing, the Trustee may in its discretion, relying on the Opinion of Counsel, and shall upon receipt of a Noteholders' Request of the applicable Series of Notes, by notice in writing to the Corporation, demand payment of the principal, Premium (if any) and any accrued and unpaid interest up to, but excluding, such date, which shall immediately become due and payable in cash, and may institute legal proceedings for the collection of such aggregate amount in the event the Corporation fails to make payment thereof upon such demand. Such payment, when made, shall be deemed to have been made in discharge of the Corporation's obligations under this Indenture and any amounts so received by the Trustee shall be applied in the manner specified in Section 8.07.

### **8.04 Waiver of Event of Default**

Subject to Section 8.12, upon the happening of an Event of Default,

- (a) the Holders of not less than 66 2/3% of the principal amount of the Notes then outstanding of that Series in respect of which the Event of Default has occurred have the right (in addition to the rights exercisable by Extraordinary Resolutions as provided in Section 11.11), exercisable by instrument signed by such Noteholders, to instruct the Trustee to waive such Event of Default and/or to cancel any declaration made by the Trustee pursuant to Section 8.03, and the Trustee will then waive such Event of Default and/or cancel such declaration upon such terms and conditions as such Noteholders shall prescribe; and
- (b) the Trustee, so long as it has not become bound to declare the principal of and Premium and interest on such Series of Notes then outstanding to be due and payable or to obtain or enforce payment thereof, has the right to waive any Event of Default if, in the Trustee's opinion, the Event of Default has been remedied or cured or in respect of which adequate satisfaction has been made for a cure, and in such event to cancel any such declaration made by the Trustee in the exercise of its discretion, upon such terms and conditions as the Trustee may consider advisable.

No delay or omission of the Trustee or of the Holders of the applicable Series of Notes to exercise any right or power accruing upon the occurrence of an Event of Default shall impair any such right or power or shall be construed to be a waiver of such Event of Default or acquiescence therein, and no act or omission, either of the Trustee or of the Holders of the Series of Notes, shall extend to or be taken in any manner whatsoever to affect any subsequent Event of Default or the rights resulting therefrom.

### **8.05 Enforcement by the Trustee**

Subject to the provisions of Section 8.04, Section 8.12 and to the provisions of any Extraordinary Resolution, if the Corporation fails to pay to the Trustee, forthwith after the same shall have been declared to be due and payable under Section 8.03, the principal of and Premium and interest on all Notes then outstanding for which an Event of Default has occurred together with any other amounts due hereunder, the Trustee shall, upon receipt of a Noteholders' Request and upon being indemnified to its reasonable satisfaction against all costs, expenses and liabilities to be incurred, proceed in its name

as trustee hereunder to obtain or enforce payment of such principal of and Premium and interest on all such Notes then outstanding together with any other amounts due hereunder by such proceedings authorized by this Indenture or by suit at law or in equity as the Trustee in such request shall have been directed to take, or if such request contains no such direction, then by such proceedings authorized by this Indenture or by suit at law or in equity as the Trustee shall deem expedient.

The Trustee shall be entitled and empowered, either in its own name or as trustee of an express trust, or as attorney-in-fact for the Holders of the Notes, or in any one or more of such capacities, to file such proof of debt, amendment of proof of debt, claim, petition or other document as may be necessary or advisable in order to have the claims of the Trustee and of the Holders of the Notes allowed in any insolvency, bankruptcy, liquidation or other judicial proceedings relative to the Corporation or its creditors or relative to or affecting its property. The Trustee is hereby irrevocably appointed (and the successive respective Holders of the Notes by taking and holding Notes shall be conclusively deemed to have so appointed the Trustee) the true and lawful attorney-in-fact of the respective Holders of the Notes with authority to make and file in the respective names of the Holders of the Notes of any Series or on behalf of the Holders of the Notes as a class, subject to deduction from any such claims of the amounts of any claims filed by any of the Holders of the Notes themselves, any proof of debt, amendment of proof of debt, claim, petition or other document in any such proceedings and to receive payment of any sums becoming distributable on account thereof, and to execute any such other documents and to do and perform any and all such acts and things, for and on behalf of such Holders of the Notes, as may be necessary or advisable, in the opinion of the Trustee acting on the advice of Counsel, in order to have the respective claims of the Trustee and of the Holders of the Notes against the Corporation or its property allowed in any such proceeding, and to receive payment of or on account of such claims, provided that nothing contained in this Indenture shall be deemed to give to the Trustee, unless so authorized by Extraordinary Resolution, any right to accept or consent to any plan of reorganization or otherwise by action of any character in such proceeding to waive or change in any way any right of any Noteholder.

The Trustee shall also have power at any time and from time to time to institute and to maintain such suits and proceedings as it may be advised shall be necessary or advisable to preserve and protect its interests and the interests of the Noteholders.

All rights of action hereunder may be enforced by the Trustee without the possession of any of the Notes or the production thereof on the trial or other proceedings relative thereto. Any such suit or proceeding instituted by the Trustee shall be brought in the name of the Trustee as trustee of an express trust, and any recovery of judgment shall be for the rateable benefit of the applicable Holders of the Notes subject to the provisions of this Indenture. In any proceeding brought by the Trustee (and also in any proceeding in which a declaratory judgment of a court may be sought as to the interpretation or construction of any provision of this Indenture to which the Trustee shall be a party), the Trustee shall be held to represent all the Holders of the Notes, and it shall not be necessary to make any Holders of the Notes parties to any such proceeding.

#### **8.06 Suits by Noteholders**

No Holder of any Note shall have any right to institute any action, suit or proceeding at law or in equity for the purpose of enforcing payment of the principal of or any Premium or

interest on the Notes or for the execution of any trust or power hereunder or for the appointment of a liquidator or receiver or for a receiving order under the *Bankruptcy and Insolvency Act* (Canada) or to have the Corporation wound up or to file or prove a claim in any liquidation or bankruptcy proceeding or for any other remedy unless:

- (a) such Holder of a Series of Notes has previously given to the Trustee written notice of a continuing Event of Default with respect to Notes of that Series;
- (b) the Holders of that Series of Notes, by Extraordinary Resolution or by Noteholders' Request, shall have made a request to the Trustee and the Trustee shall have been afforded reasonable opportunity either itself to proceed to exercise the powers conferred upon it or to institute an action, suit or proceeding in its name for such purpose;
- (c) the Noteholders of that Series of Notes, or any of them, shall have furnished to the Trustee, when so requested by the Trustee, an indemnity satisfactory to the Trustee with respect to the costs, expenses and liabilities to be incurred in compliance with such request; and
- (d) the Trustee shall have failed to act within a reasonable time after such notification, request and provision of indemnity.

If a Noteholder has the right to institute proceedings under this Section 8.06, such Noteholder, acting on behalf of itself and all other Noteholders of such Series of Notes (subject to Section 8.12), shall be entitled to commence proceedings in any court of competent jurisdiction in which the Trustee might have commenced proceedings under Section 8.05, but in no event shall any Noteholder or combination of Noteholders have any right to seek any other remedy or institute proceedings out of court. No one or more Noteholders of such Series of Notes shall have any right in any manner whatsoever to enforce any right under this Indenture or under any Note, except in accordance with the conditions and in the manner provided in this Indenture, and that all powers and trusts under this Indenture will be exercised and all proceedings at law will be instituted by the Trustee, except only as provided in this Indenture, and in any event, for the benefit of all Holders of outstanding Notes of that Series.

## **8.07 Application of Money**

Except as herein otherwise expressly provided, any money received by the Trustee or a Noteholder pursuant to the provisions of this Article 8 or as a result of legal or other proceedings, or from any trustee in bankruptcy or liquidator of the Corporation, shall be applied, together with other money in the hands of the Trustee available for such purpose, as follows:

- (a) first, in payment or in reimbursement to the Trustee of its compensation, costs, charges, expenses, borrowings, advances or other amounts furnished or provided by or at the instance of the Trustee in or about the administration and execution of its trusts under, or otherwise in relation to, this Indenture, with interest thereon as herein provided;
- (b) second, subject to the provisions of Section 7.03 and this Section 8.07, in payment of the principal of and Premium and accrued and unpaid interest and interest on

amounts in default on the Notes in respect of which or for the benefit of which such money has been collected, which shall then be outstanding in the priority of principal first and then Premium and then accrued and unpaid interest and interest on amounts in default unless otherwise directed by an Extraordinary Resolution, and in that case in such order or priority as between principal, Premium and interest as may be directed by such resolution; and

- (c) third, in payment of the surplus, if any, of such money to the Corporation or its assigns;

provided, however, that no payment shall be made pursuant to Section 8.07(b) in respect of the principal of or Premium or interest on any Note which the Trustee knows is held, directly or indirectly, by or for the benefit of the Corporation or any Affiliate of the Corporation (other than any Note pledged for value and in good faith to a Person other than the Corporation or any Affiliate of the Corporation, but only to the extent of such Person's interest therein) until the prior payment in full of the principal of and Premium and interest on all Notes of such Series which are not so held.

#### **8.08 Distribution of Proceeds**

Payments to Noteholders pursuant to Section 8.07(b) shall be made as follows:

- (a) at least 21 days' notice of every such payment shall be given in the manner specified in Section 12.02, specifying the time and the place or places at which the Notes are to be presented and the amount of the payment and the application thereof as between principal, Premium and interest;
- (b) payment in respect of any Note shall be made upon presentation thereof at any one of the places specified in such notice and any such Note 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 case upon such indemnity being given as the Trustee shall consider sufficient;
- (c) from and after the date of payment specified in such notice, interest shall accrue only on the amount owing on each Note after giving credit for the amount of the payment specified in such notice unless the Note in respect of which such amount is owing is duly presented on or after the date so specified and payment of such amount is not made; and
- (d) the Trustee shall not be required to make any partial or interim payment to Noteholders unless the amount held by the Trustee, after reserving therefrom such amount as the Trustee may think necessary to provide for the payments referred to in Section 8.07(a), exceeds five per cent of the aggregate principal amount of the Notes of the relevant Series then outstanding, but it may retain the money so received by it and deal with the same as provided in Section 13.07 until the money or investments representing the same, with the income derived therefrom, together with any other money for the time being under its control, will be sufficient for such purpose or until it considers it advisable to apply the same in the manner set out above.

### **8.09 Remedies Cumulative**

No remedy herein conferred upon or reserved to the Trustee or upon or to the Noteholders is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now existing or hereafter to exist by law.

### **8.10 Judgment Against the Corporation**

In case of any judicial or other proceedings to enforce the rights of the Noteholders, judgment may be rendered against the Corporation in favour of the Noteholders or in favour of the Trustee, as trustee for the Noteholders, for any amount which may remain due in respect of the Notes and the interest thereon.

### **8.11 Immunity of Shareholders, Directors and Officers**

The Noteholders and the Trustee hereby waive and release any right, cause of action or remedy now or hereafter existing in any jurisdiction against any past, present or future incorporator, shareholder, director or officer of the Corporation or, subject to Article 10, of any Successor, for the payment of the principal of or Premium or interest on any of the Notes or on any covenant, agreement, representation or warranty by the Corporation herein or in the Notes contained.

### **8.12 Determination of Affected Holders of Notes**

Despite anything to the contrary in this Indenture:

- (a) in exercising their rights under this Article 8, the Noteholders will be treated as a single class, and not as separate Series, except if the Events of Default that are then being considered apply only to one or more Series and not to the Notes generally; and
- (b) if any Event of Default then being considered applies to two or more Series of Notes but not to all Notes, in exercising their rights under this Article 8 the holders of the affected Series of Notes will be treated as a single class, and not as separate Series of Notes.

## **ARTICLE 9** **CANCELLATION AND DISCHARGE**

### **9.01 Cancellation and Destruction**

All Notes surrendered to the Corporation, a Registrar or a Paying Agent for any purpose shall be delivered to the Trustee forthwith. Each such Note and each Note surrendered to the Trustee shall be cancelled by the Trustee forthwith after all payments required in respect thereof to the date of surrender have been made. Subject to applicable law, all Notes cancelled or required to be cancelled under this or any other provision of this Indenture shall be managed by the Trustee in accordance with the Trustee's ordinary practice, and, if required by the Corporation, the Trustee shall furnish to the Corporation a cancellation or destruction certificate in respect of the Notes so cancelled or destroyed.

## **9.02 Non-Presentation of Notes**

If a Noteholder fails to present a Note for payment on the date on which the principal, Premium (if any) and/or the interest on such Note becomes due and payable and does not within such time accept payment in respect of the Note or give such receipt therefor as the Trustee may require (i) the Corporation is entitled to pay to the Trustee and direct it to set aside, (ii) in respect of money held by the Trustee which may or should be applied to the payment of such Notes, the Corporation is entitled to direct the Trustee to set aside, or (iii) if the redemption was pursuant to written notice given by the Trustee, the Trustee may itself set aside, the principal, Premium (if any) and interest, as the case may be, on such Note in trust to be paid to the Noteholder upon due presentation and surrender of the Note in accordance with the provisions of this Indenture; and thereupon, the principal, Premium (if any) and interest payable on or represented by each Note in respect of which such money has been set aside is deemed to have been paid and thereafter such Note will not be considered as outstanding under this Indenture and the Noteholder will thereafter have no right in respect of the Note except the right to receive payment of the money so set aside by the Trustee (without interest) upon due presentation and surrender of the relevant Note, subject always to the provisions of Section 9.03. Any money so set aside may, and, if remaining unclaimed for 60 days will, be invested by the Trustee in accordance with Section 13.07.

## **9.03 Repayment of Unclaimed Money**

Any amount deposited pursuant to Section 9.02 and not claimed by and paid to Holders of Notes as provided in Section 9.02 within six years after the later of the date of such deposit and the applicable Maturity Date shall, subject to applicable law, be repaid to the Corporation by the Trustee on demand, together with any interest accrued thereon, and thereupon the Trustee shall be released from all further liability with respect to such amount and thereafter the Holders of the Notes in respect of which such amount was so repaid to the Corporation shall have no rights in respect thereof except to obtain payment of such money (without interest) from the Corporation.

## **9.04 Discharge**

Upon proof being given to the Trustee that the principal of all the Notes and the Premium thereon, if any, and interest (including interest on amounts in default) thereon and other amounts payable hereunder have been paid or satisfied (including by way of conversion into or exchange for other Securities) or that, all the outstanding Notes having matured or having been duly called for redemption, payment or redemption has been duly and effectually provided for by payment to the Trustee or otherwise, and upon payment of all costs, charges and expenses properly incurred by the Trustee in relation to this Indenture and all interest thereon and the remuneration of the Trustee, or upon provision satisfactory to the Trustee being made therefor, the Trustee shall, at the request and at the expense of the Corporation, execute and deliver to the Corporation such deeds or other instruments as shall be required to evidence the satisfaction and discharge of this Indenture and to release the Corporation from its covenants herein contained other than those relating to the indemnification of the Trustee.

## 9.05 Defeasance

Except as otherwise provided in a Terms Schedule or Supplemental Indenture applicable to a Series of Notes, the Corporation will have the right (the “**Defeasance Option**”) to elect at any time and from time to time to be released from the terms of this Indenture relating to the outstanding Notes of all or any Series specified by the Corporation in a written notice to the Trustee, and upon receipt of such notice the Trustee will, at the request and expense of the Corporation, execute and deliver to the Corporation such instruments necessary to release the Corporation from the terms of this Indenture relating to the Notes of such Series specified in such notice, except those relating to the indemnification of the Trustee, subject to the following:

- (a) the Corporation will have delivered to the Trustee evidence, to the reasonable satisfaction of the Trustee, that the Corporation has:
  - (i) deposited sufficient money or Government Securities with the Trustee for payment of all principal, Premium (if any), interest and other amounts due or to become due on the Notes of such Series, in the currency in which such payments were originally to have been made;
  - (ii) deposited funds with the Trustee or made provision for the payment of all remuneration and expenses of the Trustee to carry out its duties under this Indenture in respect of the Notes of such Series;
  - (iii) deposited funds with the Trustee for the payment of taxes arising with respect to all deposited funds or other provision for payment in respect of the Notes of such Series;

in each case irrevocably, pursuant to the terms of a trust agreement in form and substance satisfactory to the Corporation and the Trustee;

- (b) the Trustee will have received an Opinion of Counsel, which opinion will be satisfactory to the Trustee in its sole discretion, to the effect that the Holders of the Notes of such Series will not recognize income, gain or loss for federal or provincial income tax purposes in Canada or any other jurisdictions where such Notes were offered for sale, if any, as a result of the exercise by the Corporation of the Defeasance Option with respect to such Notes and that such Holders will be subject to taxes in Canada or any other jurisdictions where such Notes were offered for sale, if any, including those in respect of income (including taxable capital gains), in the same amount, in the same manner and at the same time or times as would have been the case if the Defeasance Option had not been exercised in respect of such Notes;
- (c) no Event of Default or event that with notice or lapse of time or both could become an Event of Default will have occurred and be continuing on the date of the deposit referred to in Section 9.05(a)(i);
- (d) such release does not result in a breach or violation of, or constitute a default under, any agreement or instrument to which the Corporation is a party or by which the Corporation is bound;



- (e) the Corporation will have delivered to the Trustee an Officers' Certificate of the Corporation stating that the deposit referred to in Section 9.05(a)(i) was not made by the Corporation with the intent of preferring the Holders of the Notes of such Series over the other creditors of the Corporation or with the intent of defeating, hindering, delaying or defrauding creditors of the Corporation or others;
- (f) the Corporation will have delivered to the Trustee an Officers' Certificate of the Corporation and an Opinion of Counsel, each stating that all conditions precedent provided for or relating to the exercise of such Defeasance Option have been complied with, and such opinion will, in addition, state that the establishment of the trust arrangements with respect to the money or Securities deposited with the Trustee pursuant to this Section 9.05 would not be overridden or set aside by a court upon the application of creditors or a trustee in bankruptcy or other insolvency proceeding of the Corporation (collectively, the "**Creditors**") pursuant to the *Winding-Up and Restructuring Act* (Canada), *Companies' Creditors Arrangement Act* (Canada), *Bankruptcy and Insolvency Act* (Canada), *Assignments and Preferences Act* (Ontario) or *Fraudulent Conveyances Act* (Ontario) (collectively, the "**Insolvency Statutes**"), and would not be held by a court to constitute a preference, transfer-at-undervalue or fraudulent conveyance within the meaning of the Insolvency Statutes; provided that in giving such opinion, Counsel will be entitled to rely as to factual matters, without independent inquiry, on a certificate of two senior officers of the Corporation, which will be delivered to the Trustee, that:
  - (i) the Corporation is not (1) "insolvent" within the meaning of Section 3 of the *Winding-Up and Restructuring Act* (Canada), (2) a "debtor company" as defined in the *Companies' Creditors Arrangement Act* (Canada), (3) an "insolvent person" as defined in the *Bankruptcy and Insolvency Act* (Canada), nor (4) in insolvent circumstances, insolvent or on the eve of insolvency, within the meaning of the *Assignments and Preferences Act* (Ontario) ((1) through (4), collectively, "**Insolvent**"), and no act or proceeding has been taken or is pending in connection with, and the Corporation has not received notice in respect of and is not in the course of, dissolution, liquidation, winding up or reorganization;
  - (ii) the Corporation was not rendered Insolvent by entering into the trust arrangements;
  - (iii) immediately following completion of the establishment of the trust arrangements, the Corporation was not Insolvent;
  - (iv) the Corporation has entered into the trust arrangements in good faith and has transferred all of its right, title and interest in, to and under the funds deposited for valuable consideration that is not conspicuously less than the fair market value of the funds so deposited, including without limitation the release of the Corporation pursuant to this Section 9.05;
  - (v) the Corporation has not entered into the trust arrangements with the intention of defeating, hindering, delaying, defrauding, impeding or obstructing the Creditors or others of their claims against the Corporation or giving the trust or the Trustee a preference over the Creditors or for any

purpose relating in any way to the claims of others against the Corporation, and the trust arrangements do not, in fact, have the effect of giving the trust or the Trustee a preference, nor injure, obstruct, defraud or delay any Creditors;

- (vi) the Corporation is at arm's length with the Trustee and is not a "related person" of the Trustee as such term is defined in the *Bankruptcy and Insolvency Act* (Canada);
- (vii) the Corporation will have deposited the funds with the Trustee in good faith, in the ordinary course of business and without notice of an adverse claim with respect thereto; and
- (viii) such other matters as Counsel may consider appropriate and which are acceptable to the Trustee, acting reasonably.

#### **9.06 Deposited Money Held In Trust**

The Corporation will be deemed to have made due provision for the depositing of funds pursuant to Section 9.05(a)(i) if it deposits or causes to be deposited with the Trustee under the terms of an irrevocable trust agreement in the form satisfactory to the Corporation and the Trustee (each acting reasonably), solely for the benefit of the Holders of a particular Series of Notes stated therein, money or Government Securities denominated in the applicable currency which will be sufficient, in the opinion of a nationally recognized firm of independent chartered accountants or a nationally recognized investment dealer acting reasonably and acceptable to the Trustee, to provide for payment in full of such Series of Notes and all other amounts from time to time due and owing under this Indenture relating to such Series of Notes.

The Trustee will hold in trust all money or Government Securities deposited with it pursuant to this Section 9.06 and will apply the deposited money or Government Securities and the money derived from such Government Securities in accordance with this Indenture to the payment of principal of, Premium (if any) and interest on the applicable Notes.

#### **9.07 Reinstatement**

If the Trustee or Paying Agent is unable to apply any money or Government Securities in accordance with Section 9.06 by reason of any legal proceeding or any order or judgment of any court or Governmental Authority enjoining, restraining or otherwise prohibiting such application, the Corporation's obligations under this Indenture and the Notes will be revived and reinstated as though no money or Government Securities had been deposited pursuant to Section 9.06 until such time as the Trustee or Paying Agent is permitted to apply all such money or Government Securities in accordance with Section 9.06. If the Corporation has made any payment in respect of principal, Premium (if any) or interest on Notes or, as applicable, other amounts because of the reinstatement of its obligations, the Corporation will be subrogated to the rights of the Holders of such Notes to receive such payment from the money or Government Securities held by the Trustee.

**ARTICLE 10**  
**SUCCESSORS**

**10.01 Restrictions on Mergers and Dispositions**

So long as any Notes are outstanding, the Corporation will not enter into any transaction by way of amalgamation (except a vertical short-form amalgamation with one or more of its wholly-owned Subsidiaries), merger, reorganization, consolidation, transfer, sale, lease or otherwise, whereby all or substantially all of the Corporation's undertaking, property and assets would become the property of any other Person or, in the case of any such amalgamation, of the continuing corporation resulting therefrom (the "**Transaction**"), unless:

- (a) such other Person or continuing corporation is a corporation (the "**Successor**") incorporated under the laws of Canada, the United States of America, the United Kingdom or a member country that is in the European Community, or any political subdivision of the foregoing;
- (b) the Successor assumes, prior to or contemporaneously with the completion of the Transaction, under a Supplemental Indenture with the Trustee, all obligations of the Corporation under this Indenture, any Supplemental Indentures and any Notes;
- (c) the Transaction would not cause an Event of Default, including any event which, after notice or lapse of time or both, would become an Event of Default, and no Event of Default has occurred and is then continuing; and
- (d) the Corporation has delivered to the Trustee, an Officers' Certificate of the Corporation and an Opinion of Counsel, each stating that the Transaction and Supplemental Indenture comply with this Article 10 and that all conditions precedent provided in this Indenture relating to the Transaction have been complied with, subject to the delivery of certain documents or instruments specified in such opinion.

**10.02 Vesting of Powers in Successor**

If the conditions of Section 10.01 have been satisfied, other than Section 10.01(b), the Trustee will execute and deliver a Supplemental Indenture as provided for in Article 14 and upon execution and delivery:

- (a) the Successor will succeed to, and be substituted for, and may exercise every right of the Corporation under this Indenture with the same effect as if the Successor had been named as the Corporation in this Indenture, and any act or proceeding under this Indenture required to be performed by any Director or officer of the Corporation may be performed with the same force and effect by the directors or officers of such Successor; and
- (b) the Corporation will be released and discharged from liability under this Indenture and the Trustee may execute any documents which it may be advised are necessary or advisable for effecting or evidencing such release and discharge.

**ARTICLE 11**  
**MEETINGS OF NOTEHOLDERS**

**11.01 Right to Convene Meetings**

The Trustee may at any time and from time to time convene a meeting of Noteholders of any or all Series, and the Trustee shall convene a meeting of Noteholders of any or all Series upon receipt of a request of the Corporation or a Noteholders' Request and upon being funded and indemnified to its reasonable satisfaction by the Corporation or by the Noteholders signing such request against the costs which may be incurred in connection with the calling and holding of such meeting. If the Trustee fails within 30 days after receipt of any such request and such indemnity to give notice convening a meeting, the Corporation or such Noteholders, as the case may be, may convene such meeting. Every such meeting shall be held in Toronto, Ontario, or at such other place or in any manner (including by way of a "virtual" meeting held online or by electronic means) as may be approved or determined by such of the Trustee, the Corporation or the Noteholders as convened the meeting in accordance with this Section 11.01.

**11.02 Notices of Meetings**

At least 21 days' notice of any meeting of the Noteholders of one or more Series or of all Series then outstanding, as the case may be, will be given to the Noteholders in that Series or all Series then outstanding, as the case may be, and a copy of the notice will be sent by mail to the Trustee unless the meeting has been called by the Trustee and to the Corporation unless the meeting has been called by the Corporation. The notice must state the time when and the place where, or the manner in which, the meeting is to be held and briefly the general nature of the business to be transacted at the meeting. It is not necessary for any such notice to set out the terms of any resolution to be proposed at the meeting or any of the provisions of this Article 11.

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 pursuant to this Article 11 does not materially adversely affect the rights of Holders of a particular series of Notes, notice of such meeting may be waived.

**11.03 Chair**

An individual (who need not be a Noteholder) nominated in writing by the Trustee shall be the chair of the meeting. If no individual is so nominated, or if the individual so nominated is unable or unwilling to act or is not present within 15 minutes from the time fixed for the holding of the meeting, the Noteholders present in person or represented by proxy shall choose an individual present to be the chair of the meeting.

**11.04 Quorum**

Subject to the provisions of Section 11.13, the quorum for a meeting of Noteholders of one or more Series shall be one or more Noteholders present in person or represented by proxy and owning or representing at least 25% in principal amount of the Notes then outstanding of the relevant Series. If a quorum is not present within 30 minutes from the time fixed for the holding of a meeting, the meeting, if convened by Noteholders or pursuant to a Noteholders' Request, shall be dissolved, but in any other case the meeting

shall be adjourned to the same day in the next week (unless such day is not a Business Day, in which case it shall be adjourned to the next following Business Day thereafter) at the same time, and no notice shall be required to be given in respect of such adjourned meeting. At the adjourned meeting, the Noteholders present in person or represented by proxy shall constitute a quorum and may transact the business for which the meeting was originally convened notwithstanding that they may not represent at least 25% in principal amount of the Notes then outstanding of the relevant Series.

#### **11.05 Power to Adjourn**

The chair of a meeting at which a quorum of Noteholders is present may, with the consent of the Holders of a majority of the aggregate principal amount of the Notes present or represented thereat, adjourn such meeting, and no notice of such adjournment need be given except such notice, if any, as the meeting may prescribe.

#### **11.06 Show of Hands**

Except as otherwise provided in this Indenture, every resolution submitted to a meeting shall be decided by a majority of the votes cast on a show of hands, and unless a poll is duly demanded as herein provided, a declaration by the chair 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.

#### **11.07 Poll**

On every resolution proposed to be passed as an Extraordinary Resolution and on any other resolution submitted to a meeting in respect of which the chair of the meeting or one or more Noteholders or proxyholders for Noteholders holding at least 5% of the principal amount of the Notes represented at the meeting demands a poll, a poll shall be taken in such manner and either at once or after an adjournment as the chair of the meeting shall direct. If a poll is taken, other than for Extraordinary Resolutions, then such poll will be decided by the votes of the Holders of a majority in principal amount of the Notes represented at the meeting and voted on the poll.

#### **11.08 Voting**

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

#### **11.09 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 relating to meetings of Noteholders as it shall from time to time think fit providing for, without limitation:

- (a) voting by proxy by Noteholders, the form of the instrument appointing a proxyholder (which shall be in writing) and the manner in which it may be executed, and the authority to be provided by any Person signing a proxy on behalf of a Noteholder;
- (b) the deposit of instruments appointing proxyholders at such place or in such manner as the Trustee, the Corporation or the Noteholders 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
- (c) the deposit of instruments appointing proxyholders at an approved place or places other than the place at which the meeting is to be held or in any other manner and enabling particulars of such instruments appointing proxyholders to be mailed, facsimiled or otherwise provided (including by electronic means) before the meeting to the Corporation or to the Trustee 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. Except as such regulations may provide, the only Persons who shall be recognized at a meeting as the Holders of any Notes, or as entitled to vote or, subject to Section 11.10, be present at the meeting in respect thereof, shall be registered Noteholders and Persons whom registered Noteholders have by instrument in writing duly appointed as their proxyholders.

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

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

#### **11.11 Powers Exercisable by Noteholders**

The following powers of Noteholders shall be exercisable from time to time only by Extraordinary Resolution:

- (a) the power to approve any modification, abrogation, alteration, compromise or arrangement of the rights of the Noteholders and/or the Trustee, subject to the Trustee's prior consent, against the Corporation or against its property, whether such rights arise under this Indenture or the Notes or otherwise;
- (b) the power to assent to any modification of or change in or addition to or omission from the provisions contained in this Indenture which shall be agreed to by the Corporation and to authorize the Trustee to concur in and execute any Supplemental Indenture embodying any modification, change, addition or omission;
- (c) the power to approve any transaction by way of amalgamation, merger, reorganization, consolidation, transfer, sale, lease or otherwise, whereby all or substantially all of the Corporation's undertaking, property and assets would become the property of any other Person or, in the case of any such amalgamation,

of the continuing corporation resulting therefrom, provided that no such sanction shall be necessary in respect of any transaction completed in compliance with the provisions of Section 10.01;

- (d) the power to direct or authorize the Trustee (subject to indemnification and funding pursuant to Section 13.03) to exercise any power, right, remedy or authority given to it by this Indenture or the Notes in any manner specified in any such Extraordinary Resolution or to refrain from exercising any such power, right, remedy or authority;
- (e) the power to waive and direct the Trustee to waive any Event of Default and to cancel any declaration made by the Trustee pursuant to Section 8.03 either unconditionally or upon any condition specified in such Extraordinary Resolution;
- (f) the power to restrain any Noteholder from taking or instituting any suit, action or proceeding for the purpose of enforcing payment of the principal of or interest or Premium on any Notes or for the purpose of executing any trust or power hereunder;
- (g) the power to direct any Noteholder 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 8.06, of the costs, charges and expenses reasonably and properly incurred by such Noteholder in connection therewith;
- (h) the 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;
- (i) the power to appoint a committee (and to remove any committee so appointed) with power and authority (subject to such limitations, if any, as may be prescribed in the resolution) to exercise, and to direct the Trustee to exercise, on behalf of the Noteholders, such of the powers of the Noteholders as are exercisable by Extraordinary Resolution or otherwise as shall be included in the resolution appointing the committee. The resolution making such appointment may provide for payment of the expenses and disbursements of and compensation to such committee and the Trustee. Such committee shall consist of such number of individuals as shall be prescribed in the resolution appointing it and the members need not be Noteholders. Every such committee may elect its chair and may make regulations respecting its quorum, the calling of its meetings, the filling of vacancies occurring in its number and its procedure generally. Such regulations may provide that the committee may act at a meeting at which a quorum is present or may act by minutes signed by the number of members thereof necessary to constitute a quorum. All acts of any such committee within the authority delegated to it shall be binding upon all Noteholders. Neither the committee nor any member thereof nor the Trustee shall be liable for any loss arising from or in connection with any action taken or omitted to be taken by them in good faith;
- (j) the power to authorize the distribution in specie of any shares, bonds, Notes or other Securities or obligations and/or cash or other consideration received or the use or disposition of the whole or any part of such shares, bonds, Notes or other

Securities or obligations and/or cash or other consideration in such manner and for such purpose as may be considered advisable and specified in such Extraordinary Resolution;

- (k) the power to approve the exchange of the Notes for or the conversion thereof into shares, bonds, Notes or other Securities or obligations of the Corporation or of any Person formed or to be formed;
- (l) the power to remove the Trustee from office and to appoint a new Trustee or Trustees; and
- (m) the power to amend, alter or repeal any Extraordinary Resolution previously passed or approved by the Noteholders or by any committee appointed pursuant to Section 11.11(i).

Except as otherwise provided in this Indenture, all other powers of and matters to be determined by the Noteholders may be exercised or determined from time to time by Ordinary Resolution.

#### **11.12 Meaning of Ordinary Resolution**

The expression “**Ordinary Resolution**” when used in this Indenture means, except as otherwise provided in this Indenture, a resolution proposed to be passed as an ordinary resolution at a meeting of Noteholders duly convened for the purpose and held in accordance with the provisions of this Article 11 at which a quorum of the Noteholders is present and passed by the affirmative votes of Noteholders present in person or represented by proxy at the meeting who hold more than 50% of the aggregate principal amount of the Notes (or applicable Series of Notes, as the case may be) voted in respect of such resolution.

#### **11.13 Meaning of Extraordinary Resolution**

The expression “**Extraordinary Resolution**” when used in this Indenture means, except as otherwise provided in this Indenture, a resolution proposed to be passed as an extraordinary resolution at a meeting of Noteholders duly convened for the purpose and held in accordance with the provisions of this Article 11 at which the Holders of more than 50% of the aggregate principal amount of the Notes then outstanding (or applicable Series of Notes then outstanding, as the case may be) are present in person or represented by proxy and passed by the affirmative votes of Noteholders present in person or represented by proxy at the meeting who hold not less than 66 2/3% of the aggregate principal amount of the Notes (or applicable Series of Notes, as the case may be) voted in respect of such resolution.

If, at any such meeting, the Holders of more than 50% of the aggregate principal amount of the Notes then outstanding (or applicable Series of Notes then outstanding, as the case may be) are not present in person or represented by proxy within 30 minutes after the time appointed for the meeting, then the meeting, if convened by or on the requisition of Noteholders, shall be dissolved, but in any other case the meeting shall stand adjourned to such date, being not less than 14 nor more than 60 days later, and to such place or manner of holding such adjourned meeting and time as may be appointed by the chair of the meeting. Notice of the time and place or manner of holding of such adjourned meeting



shall be given to the Noteholders in the manner specified in Section 12.02 at least 10 days prior to the date of the adjourned meeting. Such notice shall state that at the adjourned meeting the Noteholders present in person or represented by proxy shall constitute a quorum, but it shall not be necessary to set forth the purposes for which the meeting was originally called or any other particulars. At the adjourned meeting, the Noteholders present in person or represented by proxy shall constitute a quorum and may transact the business for which the meeting was originally convened, and a resolution proposed to be passed as an Extraordinary Resolution at such adjourned meeting and passed by the requisite vote as provided in this Section 11.13 shall be an Extraordinary Resolution within the meaning of this Indenture, notwithstanding that the Holders of more than 50% of the aggregate principal amount of the Notes then outstanding (or applicable Series of Notes then outstanding, as the case may be) are not present in person or represented by proxy at such adjourned meeting.

Votes on an Extraordinary Resolution will always be given on a poll and no demand for a poll on an Extraordinary Resolution will be necessary.

#### **11.14 Powers Cumulative**

Any one or more of the powers or any combination of the powers in this Indenture stated to be exercisable by the Noteholders 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 Noteholders to exercise the same or any other such power or powers or combination of powers thereafter from time to time. No powers exercisable by the Noteholders shall derogate in any way from the rights of the Corporation under or pursuant to this Indenture or any Notes.

#### **11.15 Minutes**

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

#### **11.16 Instruments in Writing**

All actions which may be taken and all powers which may be exercised by the Noteholders at a meeting held as provided in this Article 11 may also be taken and exercised by an instrument in writing signed in one or more counterparts by the Holders of more than 50%, in the case of an Ordinary Resolution, or not less than 66 2/3%, in the case of an Extraordinary Resolution, of the aggregate principal amount of the outstanding Notes (or applicable Series of Notes, as the case may be), and the expressions "Ordinary Resolution" and "Extraordinary Resolution" when used in this Indenture shall include any instrument so signed.

### 11.17 Binding Effect of Resolutions

Every resolution passed in accordance with the provisions of this Article 11 at a meeting of Noteholders shall be binding upon all the Noteholders, whether present at or absent from such meeting, and every instrument in writing signed by Noteholders in accordance with Section 11.16 shall be binding upon all the Noteholders, whether signatories thereto or not, and each and every Noteholder and the Trustee (subject to the provisions for its remuneration and protection herein contained) shall be bound to give effect accordingly to every such resolution and instrument in writing.

### 11.18 Serial Meetings

If any business to be transacted at a meeting of Noteholders or any action to be taken or power to be exercised by instrument in writing pursuant to Section 11.16 especially affects the rights of the Holders of Notes 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 Notes of any other Series, then:

- (a) reference to such fact, indicating the Notes of 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**”;
- (b) the Holders of Notes of a Series so especially affected shall not be bound by any action taken or power exercised at a serial meeting unless in addition to the other provisions of this Article 11:
  - (i) there are present in person or represented by proxy at such meeting Holders of at least 25% (or, for the purpose of passing an Extraordinary Resolution, more than 50%) of the aggregate principal amount of the Notes of such Series then outstanding, subject to the provisions of this Article as to adjourned meetings, and
  - (ii) the resolution is passed by the favourable votes of the Holders of more than 50% (or, in the case of an Extraordinary Resolution, not less than 66 2/3%) of the aggregate principal amount of Notes of such Series voted on the resolution; and
- (c) the Holders of Notes of a Series so especially affected shall not be bound by any action taken or power exercised by instrument in writing under Section 11.16 unless, in addition to the other provisions of this Article 11, such instrument is signed in one or more counterparts by the Holders of more than 50%, in the case of an Ordinary Resolution, or not less than 66 2/3%, in the case of an Extraordinary Resolution, of the aggregate principal amount of the Notes of such Series then outstanding.

Notwithstanding anything herein contained, any covenant or other provision contained herein which is expressed to be effective only so long as any Notes of a particular Series remain outstanding may be modified by the required resolution or consent of the Holders of the Notes of such Series in the same manner as if the Notes of such Series were the only Notes outstanding hereunder. In addition, if any business to be transacted at any meeting or any action to be taken or power to be exercised by instrument in writing does not adversely affect the rights of the Holders of Notes of one or more particular Series, the

provisions of this Article 11 shall apply as if the Notes of such Series were not outstanding and no notice of any such meeting need be given to the Holders of Notes of such Series.

## **ARTICLE 12** **NOTICES**

### **12.01 Notice to the Corporation**

Any notice to the Corporation under the provisions hereof shall be valid and effective if delivered personally to, if sent by e-mail or other means of electronic communication (with receipt confirmed) to or if given by registered first class mail, postage prepaid, addressed to, the Corporation at:

Intact Financial Corporation  
700 University Avenue  
Suite 1500  
Toronto, Ontario  
M5G 0A1

Attention: Mr. Louis Marcotte, Senior Vice President and Chief Financial Officer  
E-mail: **[REDACTED]**

Attention: Frédéric Cotnoir, Senior Vice President, Corporate and Legal Services and Secretary  
E-mail: **[REDACTED]**

and, if delivered personally, will be deemed to have been given and received on the date of delivery, if sent by e-mail or other means of electronic communication, will be deemed to have been given and received on the day of transmittal thereof if given on a Business Day during normal business hours of the recipient or, if given outside of the normal business hours of the recipient, on the next occurring Business Day during which such normal business hours next occur, and if sent by mail, will be deemed to have been given and received on the third Business Day after such letter has been mailed, as the case may be. The Corporation may from time to time notify the Trustee of a change in address which thereafter, until changed by further notice, will be the address of the Corporation for all purposes of this Indenture and any Supplemental Indenture.

### **12.02 Notice to Noteholders**

Unless otherwise expressly provided in this Indenture, any notice to Noteholders under the provisions hereof shall be valid and effective if given in the following manner:

- (a) such notice is sent by ordinary mail postage prepaid addressed to such Holders at their respective addresses appearing on any of the Registers, provided that if, in the case of joint Holders of any Note, more than one address appears in the Register in respect of such joint holding, such notice shall be sent only to the first address so appearing; and
- (b) if for any reason it is impracticable to give any notice by mail, such notice is published once in each of Montreal, Quebec, Toronto, Ontario, and such other cities, if any, at which Registers in respect of such Notes are required to be kept,

each publication to be made in a newspaper of general circulation published in the designated cities and all such publications to be made within a period of seven days, provided that, in the case of the redemption of Notes, such notice shall be published twice in each of the said cities in successive weeks.

Any notice so given by mail shall be deemed to have been given and received on the day on which it is mailed. Any notice so given by publication shall be deemed to have been given and received on the day on which the first publication is completed in all of the cities in which publication is required. In determining under any provisions hereof the date by which 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 Noteholder shall not invalidate any action or proceeding founded thereon.

For greater certainty, in the event that the Depository is the Noteholder, notice to Noteholders will be valid and effective if such notice is delivered only to the Depository in accordance with the notice provisions set out herein or by email with email confirmation of receipt from the Depository.

### **12.03 Notice to the Trustee**

Any notice to the Trustee under the provisions of this Indenture will be valid and effective if delivered personally to, if sent by e-mail or other means of electronic communication to or if given by registered first class mail, postage prepaid, addressed to, the Trustee at:

Computershare Trust Company of Canada  
100 University Avenue  
8th Floor, South Tower  
Toronto, Ontario  
M5J 2Y1

Attention:       Manager, Corporate Trust  
E-mail:           corporatetrust.toronto@computershare.com

and, if delivered personally, will be deemed to have been given and received on the date of delivery, if sent by e-mail or other means of electronic communication, will be deemed to have been given and received on the day of transmittal thereof if given on a Business Day during normal business hours of the recipient or, if given outside of the normal business hours of the recipient, on the next occurring Business Day during which such normal business hours next occur, and if sent by mail, will be deemed to have been given and received on the third Business Day after such letter has been mailed, as the case may be. The Trustee may from time to time notify the Corporation of a change in address which thereafter, until changed by further notice, will be the address of the Trustee for all purposes of this Indenture and any Supplemental Indenture.

### **12.04 When Publication Not Required**

If at any time a notice is required by this Indenture to be published in a particular city and no newspaper of general circulation is then being published and circulated on a daily basis in that city, the Corporation shall not be required to publish such notice in that city.

## **12.05 Waiver of Notice**

Any notice provided for in this Indenture may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Noteholders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waivers.

## **ARTICLE 13 CONCERNING THE TRUSTEE**

### **13.01 Certain Duties and Responsibilities of Trustee**

In the exercise of the rights, powers and duties prescribed or conferred by the terms of this Indenture, the Trustee shall act honestly and in good faith and exercise that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances, and shall duly observe and comply with the provisions of any legislation and regulations which relate to the functions or role of the Trustee as a fiduciary hereunder.

The Trustee shall not be required to exercise any powers and shall not have any responsibilities except as expressly provided in this Indenture and shall have no obligation to recognize, nor have any liability or responsibility arising under, any other document or agreement to which the Trustee is not a party, notwithstanding that reference thereto may be made herein. The permissive rights of the Trustee enumerated herein shall not be construed as duties.

The Trustee shall read and, to the extent required, act upon all of the certificates, opinions and other documents delivered to it under or pursuant to this Indenture in accordance with the provisions of this Indenture.

None of the provisions of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any liability, financial or otherwise, in the performance of any of its duties or in the exercise of any of its rights or powers unless prior to taking any action the Trustee has received satisfactory funding and indemnity.

The Trustee, upon the occurrence or at any time during the continuance of any act, action or proceeding, may require the Noteholders at whose instance it is acting to deposit with it Notes held by them, for which Notes the Trustee shall issue receipts.

Notwithstanding any other provisions of this Indenture to the contrary, every provision of this Indenture that by its terms relieves the Trustee of liability or entitles the Trustee to rely or act upon any evidence submitted to it is subject to the provisions of applicable legislation, this Section 13.01 and Section 13.02.

No provision of this Indenture shall operate to confer any obligation, duty or power on the Trustee in any jurisdiction in which it does not have the legal capacity required to assume, hold or carry out such obligation, duty or power. For the purposes of this Section 13.01, legal capacity includes, without limitation, the capacity to act as a fiduciary in such jurisdiction.

### **13.02 No Conflict of Interest**

The Trustee represents to the Corporation that at the date of the execution and delivery of this Indenture there exists no material conflict of interest in the Trustee's role as a fiduciary hereunder. If at any time a material conflict of interest exists in respect of the Trustee's role as a fiduciary under this Indenture that is not eliminated within 90 days after the Trustee becomes aware that such a material conflict of interest exists, the Trustee shall resign from the trusts under this Indenture by giving notice in writing of such resignation and the nature of such conflict to the Corporation at least 90 days prior to the date upon which such resignation is to take effect, and shall on such date be discharged from all further duties and liabilities hereunder. The validity and enforceability of this Indenture and any Notes shall not be affected in any manner whatsoever by reason only of the existence of a material conflict of interest of the Trustee. If the Trustee contravenes the foregoing provisions of this Section 13.02, any interested party may apply to the Ontario Superior Court for an order that the Trustee be replaced as trustee under this Indenture and any Supplemental Indenture, if applicable.

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

The Trustee shall not be bound to give any notice or take any action or proceeding unless it is required to do so under the terms of this Indenture. The Trustee shall not be required to take notice of an Event of Default under this Indenture, other than in respect of payment of any money required by any provision of this Indenture to be paid to it, unless and until the Trustee is notified in writing of such Event of Default by any Noteholder or the Corporation or unless an officer of the Trustee has specific knowledge of such Event of Default. In the absence of such notice or knowledge, the Trustee may for all purposes of this Indenture assume that no Event of Default has occurred.

The obligation of the Trustee to commence or continue any act, action or proceeding under this Indenture shall be conditional upon receipt by the Trustee of the following:

- (a) an Extraordinary Resolution, Ordinary Resolution, Noteholders' Request, requisition in writing, or such other notice or direction as is required pursuant to this Indenture, specifying the action or proceeding which the Trustee is requested, directed or authorized to take,
- (b) sufficient funds to commence or continue such act, action or proceeding, and
- (c) an indemnity satisfactory to the Trustee to protect and hold harmless the Trustee against the costs, charges, expenses and liabilities to be incurred thereby and any loss and damages it may suffer by reason thereof.

### **13.04 Replacement of Trustee**

The Trustee may resign its trusts 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 Noteholders 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 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 Noteholders. Failing such appointment by the Corporation, the Trustee or any Noteholder may apply to a judge of the Ontario Superior Court of Justice, 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 Noteholders. Any new trustee appointed under any provision of this Section 13.04 shall be a corporation authorized to carry on the business of a trust company in the Province of Ontario and every other jurisdiction where such authorization or qualification is necessary to enable it to act as a trustee under this Indenture. On any new appointment, the new trustee shall be vested with the same powers, rights, duties and responsibilities as if it had been originally named herein as Trustee.

Subject to the foregoing, no resignation or removal of the Trustee or appointment of a successor trustee hereunder shall be effective unless such successor trustee:

- (a) is eligible to act as a trustee,
- (b) certifies that it will not have any material conflict of interest upon becoming the trustee hereunder, and
- (c) executes, acknowledges, and delivers to the Corporation and to the Trustee an instrument accepting such appointment,

and thereupon the resignation or removal of the Trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the Trustee.

Upon the written request of the successor trustee or of the Corporation and upon payment of all outstanding fees and expenses properly payable to the Trustee under this Indenture, the Trustee shall execute and deliver all such assignments, conveyances and other instruments as, in the opinion of Counsel, may be necessary to assign and transfer to such successor trustee the rights and obligations of the Trustee under this Indenture, and shall duly assign, transfer and deliver all property and money held by the Trustee to the successor trustee so appointed in its place. If any deed, conveyance or instrument in writing from the Corporation is required by any new trustee for more fully and certainly vesting in and confirming to it such estates, properties, rights, powers and trusts, then any and all such deeds, conveyances and instruments in writing shall, upon the request of the new or successor trustee, acting reasonably, be made, executed, acknowledged and delivered by the Corporation. The cost of any act, document or other instrument or thing required or permitted under this Section 13.04 shall be at the expense of the Corporation.

### **13.05 Trustee May Deal in Notes**

The Trustee may buy, sell, lend upon and deal in the Notes and generally contract and enter into financial transactions with the Corporation or otherwise, without being liable to account for any profits made thereby.

### **13.06 No Person Dealing with Trustee Need Inquire**

No Person dealing with the Trustee shall be concerned to inquire whether the powers that the Trustee is purporting to exercise have become exercisable, or whether any amount remains due upon the Notes or to see to the application of any amount paid to the Trustee.

### **13.07 Investment of Money Held by Trustee**

Unless otherwise provided in this Indenture, any money held by the Trustee, which under the trusts of this Indenture may or ought to be invested or which may be on deposit with the Trustee, may be invested and reinvested in the name or under the control of the Trustee, upon the written direction of the Corporation, in Authorized Investments.

Any direction by the Corporation to the Trustee must be in writing and provided to the Trustee no later than 9:00 a.m. on the day on which the investment is to be made. Any such direction received after 9:00 a.m. or received on a non-Business Day, will be deemed to have been given prior to 9:00 a.m. on the next Business Day.

If the Trustee does not receive a direction or only a partial direction, the Trustee may hold cash balances on deposit in a Schedule I chartered bank in Canada as selected by the Corporation or with its own deposit department, but the Trustee will not be liable to account for any profit to the Corporation or any other Person. The Trustee will credit the Corporation with interest received on all money invested as provided in this Section 13.07.

### **13.08 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 Indenture or otherwise in respect of this Indenture.

### **13.09 Trustee Not Required to Possess Notes**

All rights of action under this Indenture may be enforced by the Trustee without the possession of any of the Notes or the production thereof on any trial or other proceedings relative thereto.

### **13.10 Evidence of Compliance**

The Corporation shall furnish to the Trustee forthwith evidence of compliance with the conditions precedent specified in this Indenture relating to the issue, certification and delivery of Notes hereunder, the satisfaction and discharge of this Indenture or the taking of any other action to be taken by the Trustee at the request of or on the application of the Corporation and at such other times as the Trustee may reasonably request in writing. Such evidence shall consist of:

- (a) an Officers' Certificate stating that such conditions have been complied with in accordance with the terms of this Indenture, and
- (b) in the case of conditions, compliance with which are by this Indenture subject to review or examination by Counsel or auditors, an Opinion of Counsel or report of the auditors, as applicable, that such conditions have been complied with in accordance with the terms of this Indenture.

### **13.11 Form of Evidence**

Evidence furnished to the Trustee which relates to a matter other than the issue, certification and delivery of Notes or the satisfaction and discharge of this Indenture may consist of or otherwise be in accordance with a report or opinion of any solicitor, auditor,



accountant, engineer or appraiser or any other Person whose qualifications give authority to a statement made by such Person, but if such report or opinion is furnished by a director, officer or employee of the Corporation it shall be in the form of a statutory declaration or a certificate.

Evidence furnished to the Trustee pursuant to Section 13.10 or this Section 13.11 shall include:

- (a) a statement by the Person giving the evidence declaring that such Person has read and understands the provisions hereof relating to the conditions precedent with respect to compliance with which such evidence is being given,
- (b) a statement describing the nature and scope of the examination or investigation upon which the statements or opinions contained in the evidence are based, and
- (c) a statement declaring that, in the belief of the Person giving the evidence, such Person has made such examination or investigation as is necessary to enable such Person to make the statements or give the opinions contained or expressed therein.

### **13.12 Certain Rights of Trustee**

Subject to the provisions of Section 13.01,

- (a) the Trustee may conclusively act and rely as to the truth of the statements and correctness of the opinions expressed in, shall not be bound to make any investigation into the facts or matters of, and shall be fully protected in acting or relying or refraining from acting upon, any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Corporation, personally or by agent or attorney at the sole cost of the Corporation and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation;
- (b) any request or direction of the Corporation shall be sufficiently evidenced by a Request of the Corporation or Order of the Corporation and any resolution of the Directors shall be sufficiently evidenced by a Certified Resolution;
- (c) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence is herein specifically prescribed) may, in the absence of bad faith on its part, rely and act upon an Officers' Certificate;
- (d) the Trustee may employ or retain such agents, counsel, accountants, appraisers, engineers or other experts or advisors as it reasonably requires for the purpose of determining and discharging its rights and duties and administering the trusts

hereunder. The Trustee may act and rely upon and shall be protected in acting and relying in good faith upon the opinion or advice of, or information obtained from, any counsel, accountant, appraiser, engineer or other expert or advisor, whether retained or employed by Corporation or by the Trustee, in relation to any matter arising in the administration of the trusts hereof and the Trustee shall not be responsible for any misconduct on the part of any of them or for any loss occasioned by so acting unless such action was taken in bad faith or such action constitutes gross negligence or willful misconduct;

- (e) the Trustee shall not be liable for any action it takes or omits to take in good faith that it believes to be authorized or within the rights or powers conferred upon it by this Indenture;
- (f) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Noteholders pursuant to this Indenture unless such Noteholders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction, and provisions of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 13.12(g).

### **13.13 Merger, Conversion, Consolidation or Succession to Business**

Any corporation into which the Trustee may be merged or with which it may be amalgamated or consolidated, or any corporation resulting from any merger, amalgamation or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such corporation shall be otherwise qualified and eligible under this Article 13, without the execution or filing of any instrument or any further act on the part of any of the parties hereto.

### **13.14 Action by Trustee to Protect Interests**

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

### **13.15 Protection of Trustee**

The Corporation indemnifies and saves harmless the Trustee and its officers, directors, employees and agents from and against any and all liabilities, losses, costs, claims, actions, causes of action, damages, expenses or demands whatsoever brought against the Trustee or which it may suffer or incur as a result of or arising out of the performance of its duties and obligations under this Indenture, including any and all legal fees and disbursements of whatever kind or nature, except in the event of the gross negligence, willful misconduct or bad faith of the Trustee. This indemnification will survive the termination or discharge of this Indenture or the resignation or removal of the Trustee.

The Trustee shall not be liable for or by reason of any statements of fact in this Indenture or in the Notes (except for the representations contained in Sections 13.02 and 13.16 and

in the certificate of the Trustee on the Notes) or required to verify such statements, and all such statements are and shall be deemed to be made by the Corporation.

The Trustee will not be liable for any action taken or omitted to be taken by it, or any action suffered by it, except in the event of the gross negligence, willful misconduct or bad faith of the Trustee.

The Trustee shall not be bound to give notice to any Person of the execution of this Indenture.

The Trustee shall not incur any liability or responsibility whatever or in any way be responsible for the consequence of any breach on the part of the Corporation of any of the covenants contained in this Indenture or in any Notes or of any acts of the agents or employees of the Corporation.

Neither the Trustee nor any Affiliate of the Trustee shall be appointed a receiver or receiver and manager or liquidator of all or any part of the assets or undertaking of the Corporation.

Nothing in this Indenture shall impose on the Trustee any obligation to see to, or to require evidence of, the registration or filing (or renewal thereof) of this Indenture or any instrument ancillary or supplemental to this Indenture in any jurisdiction.

The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee and each agent, custodian and other Person employed to act hereunder.

#### **13.16 Anti-Money Laundering**

The Trustee shall retain the right not to act and shall not be liable for refusing to act if, due to a lack of information or for any other reason whatsoever, the Trustee, in its sole judgment, acting reasonably, determines that such act might cause it to be in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline. Further, should the Trustee, in its sole judgment, acting reasonably, determine at any time that its acting under this Indenture has resulted in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline, then it shall have the right to resign on ten days' prior written notice to Corporation provided that: (a) the Trustee's written notice shall describe the circumstances of such non-compliance to the extent permitted under applicable anti-money laundering or anti-terrorist legislation, regulations or guidelines; and (b) if such circumstance are rectified to the Trustee's satisfaction, acting reasonably, within such ten day period, then such resignation shall not be effective.

#### **13.17 Authority to Carry on Business**

The Trustee represents to the Corporation that at the date of execution and delivery by it of this Indenture it is authorized to carry on the business of a trust company in each of the provinces of Canada. If the Trustee ceases to be authorized to carry on such business in any province of Canada, the validity and enforceability of this Indenture and the Notes issued under this Indenture shall not be affected in any manner whatsoever by reason only of such event, but within 90 days after ceasing to be authorized to carry on the

business of a trust company in any province of Canada the Trustee either shall become so authorized or shall resign in the manner and with the effect specified in Section 13.04.

### **13.18 Trustee Not Liable in Respect of Depository**

The Trustee shall have no liability whatsoever for:

- (a) any aspect of the records relating to or payments made on account of beneficial ownership interests in the Notes held by and registered in the name of a Depository,
- (b) maintaining, supervising or reviewing any records relating to such beneficial ownership interests, or
- (c) any advice or representation made or given by or with respect to a Depository and made or given herein with respect to rules of such Depository or any action to be taken by a Depository or at the direction of a participant of a Depository.

### **13.19 Global Notes**

Notes issued to a Depository in the form of a Global Note shall be subject to the following:

- (a) the Trustee may deal with such Depository as the authorized representative of the beneficial owners of such Notes;
- (b) the rights of the beneficial owners of such Notes shall be exercised only through such Depository and shall be limited to those established by law and by agreement between the beneficial owners of such Notes and such Depository or direct participants of such Depository;
- (c) such Depository will make book entry transfers among the direct participants of such Depository and will receive and transmit distributions of principal, Premium and interest on the Notes to such direct participants; and
- (d) the direct participants of such Depository shall have no rights under this Indenture or under or with respect to any of the Notes held on their behalf by such Depository, and such Depository may be treated by the Trustee and its agents, employees, officers and directors as the absolute owner of the Notes represented by such Global Note for all purposes whatsoever.

### **13.20 Privacy or Personal Information**

The parties acknowledge that federal and/or provincial legislation that addresses the protection of individuals' personal information (collectively, "**Privacy Laws**") applies to obligations and activities under this Indenture. Despite any other provision of this Indenture, neither party shall take or direct any action that would contravene, or cause the other to contravene, applicable Privacy Laws. The Corporation shall, prior to transferring or causing to be transferred personal information to the Trustee, obtain and retain required consents of the relevant individuals to the collection, use and disclosure of their personal information, or shall have determined that such consents either have previously been given upon which the parties can rely or are not required under the Privacy Laws. The

Trustee shall use commercially reasonable efforts to ensure that its services hereunder comply with Privacy Laws. Specifically, the Trustee agrees: (a) to have a designated chief privacy officer; (b) to maintain policies and procedures to protect personal information and to receive and respond to any privacy complaint or inquiry; (c) to use personal information solely for the purposes of providing its services under or ancillary to this Indenture and not to use it for any other purpose except with the consent of or direction from the Corporation or the individual involved; (d) not to sell or otherwise improperly disclose personal information to any third party; and (e) to employ administrative, physical and technological safeguards to reasonably secure and protect personal information against loss, theft, or unauthorized access, use or modification.

### **13.21 Securities and Exchange Commission Matters**

The Corporation confirms that as at the date of execution of this Indenture it does not have a class of Securities registered pursuant to Section 12 of the U.S. Securities Exchange Act of 1934 (the “**US Securities Exchange Act**”) or have a reporting obligation pursuant to Section 15(d) of the US Securities Exchange Act. The Corporation covenants that in the event that (i) any class of its Securities shall become registered pursuant to Section 12 of the US Securities Exchange Act or the Corporation shall incur a reporting obligation pursuant to Section 15(d) of the US Securities Exchange Act, or (ii) any such registration or reporting obligation shall be terminated by the Corporation in accordance with the US Securities Exchange Act, the Corporation shall promptly deliver to the Trustee an Officers’ Certificate (in a form provided by the Trustee) notifying the Trustee of such registration or termination and such other information as the Trustee may reasonably require at the time. The Corporation acknowledges that the Trustee is relying upon the foregoing representation and covenants in order to meet certain United States Securities and Exchange Commission obligations with respect to those clients who are filing with the United States Securities and Exchange Commission.

### **13.22 Force Majeure**

Except for the payment obligations of the Corporation contained herein, neither party shall be liable to the other, or held in breach of this Indenture, if prevented, hindered, or delayed in the performance or observance of any provision contained herein by reason of act of God, riots, terrorism, acts of war, epidemics, governmental or regulatory action, earthquakes, or any other similar extreme causes in each case affecting the general population (including, but not limited to, mechanical, electronic or communication interruptions, disruptions or failures which in each case affect the general population). Performance times under this Indenture shall be extended for a period of time equivalent to the time lost because of any delay that is properly excusable under this Section, but such extension is not cumulative and shall not apply in circumstances where performance was not due at the relevant time.

### **13.23 Acceptance of Trusts**

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

**ARTICLE 14**  
**SUPPLEMENTAL INDENTURES**

**14.01 Supplemental Indentures**

From time to time the Trustee and the Corporation may, and they shall when required by this Indenture, execute, acknowledge and deliver by their proper officers Supplemental Indentures, which thereafter shall form part of this Indenture, for any one or more of the following purposes:

- (a) adding limitations or restrictions to be observed upon the amount or issue of Notes hereunder, provided that such limitations or restrictions shall not, in the Opinion of Counsel or other experts or advisers, be prejudicial to the interests of the Noteholders;
- (b) adding to the provisions of this Indenture such additional covenants of the Corporation, enforcement provisions and other provisions for the protection of the Holders of any series of Notes;
- (c) providing for Events of Default in addition to those provided for in this Indenture;
- (d) making such provisions as may be necessary or desirable with respect to matters or questions arising hereunder, including the making of any modifications in the form of a Series of Notes which do not affect the substance thereof and which, in the opinion of the Trustee it may be expedient to make, provided that the Trustee, relying on an Opinion of Counsel, is of the opinion that such provisions and modifications will not be prejudicial to the interests of the Noteholders;
- (e) providing for the issue, as permitted hereby, of Notes of any one or more Series;
- (f) evidencing the succession, or successive successions, of successors to the Corporation and the covenants of and obligations assumed by any such successor in accordance with the provisions of this Indenture;
- (g) giving effect to any Extraordinary Resolution or Ordinary Resolution;
- (h) making any modification to any of the provisions of this Indenture or any Series of the Notes or any Supplemental Indenture, which, in the Opinion of Counsel, is of a formal, minor or technical nature;
- (i) making such amendments to the provisions of this Indenture or any Supplemental Indenture, including any of the terms and conditions of any Series of the Notes, which, in the opinion of the Trustee, relying on an Opinion of Counsel, are not materially prejudicial to the interests of the Holders of any Series of Notes and which are necessary or advisable in order to incorporate, reflect or comply with Indenture Legislation;
- (j) making such amendments to this Indenture in respect of the transfer of any Series of Notes, including provision for the exchange of Notes of different denominations, in a manner which, in the opinion of the Trustee, relying on an Opinion of Counsel, is not materially prejudicial to the interests of the Holders of any Series of Notes;

- (k) rectifying any ambiguities, typographical, clerical or other manifest errors or omissions in this Indenture or any Supplemental Indenture, provided that, in the opinion of the Trustee, relying on an Opinion of Counsel, such rectification will not be materially prejudicial to the rights of the Trustee or the interests of the Holders of any series of Notes; and
- (l) for any other purpose not inconsistent with the terms of the Indenture provided that, in the opinion of the Trustee, relying on an Opinion of Counsel, such other purpose will not be materially prejudicial to the interests of the Holders of any Series of Notes.

#### **14.02 Effect of Supplemental Indentures**

Upon the execution of any Supplemental Indenture and, if applicable, certifying in accordance with Section 3.01, this Indenture shall be modified in accordance therewith, such Supplemental Indenture shall form a part of this Indenture for all purposes, and every Holder of Notes shall be bound thereby. Any Supplemental Indenture may contain terms which add to, modify or negate any of the terms contained in this Indenture, and to the extent that there is any difference between the terms of this Indenture and the terms contained in a Supplemental Indenture, the terms contained in the Supplemental Indenture shall be applicable to the Notes to which such Supplemental Indenture relates and the corresponding terms contained in this Indenture shall not be applicable unless otherwise indicated in such Supplemental Indenture.

### **ARTICLE 15** **EVIDENCE OF RIGHTS OF NOTEHOLDERS**

#### **15.01 Evidence of Rights of Noteholders**

Any instrument which this Indenture may require or permit to be signed or executed by the Noteholders may be in any number of concurrent instruments of similar tenor and may be signed or executed by such Noteholders in person or by attorney duly appointed in writing. Proof of the execution of any such instrument, or of a writing appointing any such attorney or of the holding by any Person of Notes shall be sufficient for any purpose of this Indenture if the fact and date of the execution by any Person of such instrument or writing are proved by the certificate of any notary public or other officer authorized to take acknowledgments of deeds to be recorded at the place at which such certificate is made that the Person signing such request or other instrument or writing acknowledged to him the execution thereof, or by an affidavit of a witness of such execution, or in any other manner which the Trustee may consider adequate. For clarity, a notary seal or affidavit of a witness will not satisfy security transfer requirements for transfers and will not negate compliance with the transfer requirements set forth by the Securities Transfer Association of Canada.

The Trustee may, nevertheless, in its discretion, require further proof when it deems further proof desirable or may accept such other proof as it shall consider proper.

The ownership of Notes shall be proved by the Registers as herein provided.

**ARTICLE 16**  
**EXECUTION AND FORMAL DATE**

**16.01 Counterpart Execution**

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

**16.02 Formal Date**

For the purpose of convenience, this Indenture may be referred to as bearing formal date of March 31, 2021, irrespective of the actual date of execution hereof.

*[Remainder of page intentionally left blank]*



**IN WITNESS WHEREOF** the parties hereto have executed this Indenture as of the date first written above.

**INTACT FINANCIAL CORPORATION**

By: (signed) "Charles Brindamour"  
Name: Charles Brindamour  
Title: Chief Executive Officer

By: (signed) "Louis Marcotte"  
Name: Louis Marcotte  
Title: Senior Vice President and Chief  
Financial Officer

**COMPUTERSHARE TRUST COMPANY OF  
CANADA**

By: (signed) "Lisa M. Kudo"  
Name: Lisa M. Kudo  
Title: Corporate Trust Officer

By: (signed) "Mohanie Shivprasad"  
Name: Mohanie Shivprasad  
Title: Associate Trust Officer