

INDENTURE

DATED AS OF THE 2nd DAY OF JUNE, 2017

AMONG

THE WESTAIM CORPORATION

AND

EACH OF THE GUARANTORS

AND

COMPUTERSHARE TRUST COMPANY OF CANADA

**PROVIDING FOR THE ISSUE OF
5% SUBORDINATE PREFERRED SECURITIES**

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THIS INDENTURE made as of the 2nd day of June, 2017.

AMONG:

THE WESTAIM CORPORATION, a corporation incorporated under the laws of the Province of Alberta and having its head office in the City of Toronto, in the Province of Ontario

(hereinafter called “**Westaim**”)

AND:

Each of the Guarantors

AND:

COMPUTERSHARE TRUST COMPANY OF CANADA, a trust company formed under the federal laws of Canada and having an office in the City of Calgary

(hereinafter called the “**Trustee**”)

WITNESSES THAT:

WHEREAS Westaim proposes to borrow funds through the issuance and sale of Preferred Securities (as defined herein), to be constituted and issued as herein provided, which shall evidence the indebtedness of Westaim pursuant to such borrowing;

AND WHEREAS Westaim, under the laws relating thereto, is duly authorized to create and issue, from time to time, the Preferred Securities as provided for herein;

AND WHEREAS the Preferred Securities will be guaranteed on a secured basis by each of the Guarantors;

NOW THEREFORE it is hereby covenanted, agreed and declared as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

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

- (a) “**Additional Preferred Securities**” means Preferred Securities other than the Initial Preferred Securities;
- (b) “**Affiliate**” and “**Associate**” shall have their respective meanings attributed thereto in the *Securities Act* (Alberta);

- (c) “**AFHC**” means Arena Finance Holdings Co., LLC;
- (d) “**AOC**” means Arena Origination Co., LLC;
- (e) “**Applicable Law**” shall mean, at any time, with respect to any Person, property, transaction, event or other matter, as applicable, all laws, rules, statutes, regulations, treaties, orders, judgments and decrees, and all official requests, directives, rules, guidelines, orders, policies, practices and other requirements of any Governmental Authority relating or applicable at such time to such Person, property, transaction, event or other matter, and shall also include any interpretation thereof by any Person having jurisdiction over it or charged with its administration or interpretation;
- (f) “**Applicable Securities Legislation**” means securities laws, including rules, policies and instruments of the Canadian securities regulatory authorities as have jurisdiction over Westaim, together with the rules and regulations of any stock exchange on which Preferred Securities may be listed for trading;
- (g) “**Auditors of Westaim**” means an independent firm of chartered accountants duly appointed as auditors of Westaim from time to time;
- (h) “**Authenticated**” means: (i) with respect to a Certificated Preferred Security, one which has been duly signed by Westaim and authenticated by signature of an authorized officer of the Trustee; and (ii) with respect to the issuance of an Uncertificated Preferred Security, one in respect of which the Trustee has completed all Internal Procedures. “**Authenticate**”, “**Authenticating**” and “**Authentication**” have the appropriate correlative meanings;
- (i) “**Beneficial Holder**” means any person who holds a beneficial interest in a Book-Entry Preferred Security as shown on the books of the Depository or a Depository Participant;
- (j) “**Book-Entry Preferred Security**” means a Preferred Security that is issued to and registered in the name of the Depository, or its nominee, represented by an Uncertificated Preferred Security, or if requested by the Depository, by a Certificated Preferred Security, pursuant to Section 2.7 for purposes of being held by or on behalf of the Depository as custodian for participants in the Depository’s book-entry registration system;
- (k) “**Business Day**” means any day other than a Saturday, Sunday or any other day that the Trustee is not open for business in Toronto, Ontario, or Calgary, Alberta;
- (l) “**Capitalization**” means, in respect of a Person, (i) the Financial Indebtedness of such Person, plus (ii) the Equity of such Person calculated in accordance with GAAP adjusted upwards by the aggregate of all stock note receivables;
- (m) “**Certificated Preferred Security**” means a Preferred Security evidenced by a certificate substantially in the form authorized pursuant to Section 2.2(j)(ii),

except that while a Certificated Preferred Security is retained by or surrendered to Westaim, its transfer agent or the Trustee for reasons other than registration of transfer, other temporary purpose, payment, exchange or acquisition by Westaim, the Preferred Security shall be treated as an Uncertificated Preferred Security; provided, that the Trustee shall not be required to treat any such Preferred Security as an Uncertificated Preferred Security unless such retention or surrender is known to an authorized officer of the Trustee;

- (n) **“Change of Control”** means the occurrence of any of the following events:
- (i) the direct or indirect sale, transfer, conveyance or other disposition (other than by way of a plan of arrangement, merger, amalgamation or consolidation), in one or a series of related transactions, of all or substantially all of the properties or assets of Westaim and the Guarantors, taken as a whole, to any person;
 - (ii) the consummation of any transaction (other than a transaction described in clause (iv) below including the exceptions thereto) the result of which is that any person or group of persons is or becomes the beneficial owner of (with beneficial ownership being defined and calculated pursuant to Section 1.8 of National Instrument 62-104 *Take-Over Bids and Issuer Bids*, as amended, restated, supplemented or replaced from time to time), or controls, directly or indirectly, Common Shares representing more than 50% of the voting power of the total outstanding Common Shares;
 - (iii) a majority of the members of the board of directors of Westaim are not Continuing Directors;
 - (iv) Westaim amalgamates or consolidates with, or merges with or into, any person, or any Person amalgamates or consolidates with, or merges with or into Westaim, in any such event pursuant to a transaction in which the outstanding Common Shares of Westaim are converted into or exchanged for cash, securities or other property, other than any such transaction where (A) the Common Shares outstanding immediately prior to such transaction constitute, or are converted into or exchanged for shares of the surviving, continuing or transferee Person or any parent thereof constituting, a majority of the outstanding shares of such surviving, continuing or transferee Person or any parent thereof (immediately after giving effect to such issuance) and (B) immediately after such transaction, no person becomes the beneficial owner of (with beneficial ownership being defined and calculated pursuant to Section 1.8 of National Instrument 62-104 *Take-Over Bids and Issuer Bids*, as amended, restated, supplemented or replaced from time to time), or controls, directly or indirectly, shares representing more than 50% of the voting power of the total outstanding shares of the surviving, continuing or transferee person or any parent thereof; and

(v) the adoption by the shareholders of Westaim of a Plan of Liquidation.

For purposes of this definition, a person shall not be deemed to have beneficial ownership of securities subject to a stock or share purchase agreement, merger or amalgamation agreement or similar agreement until the consummation of the transactions contemplated by such agreement;

- (o) **“Change of Control Issuer Notice”** has the meaning ascribed thereto in Section 5.9(a);
- (p) **“Change of Control Repayment Offer”** has the meaning ascribed thereto in Section 5.9(a);
- (q) **“Change of Control Repurchase Date”** means the date that is not less than thirty (30) nor more than sixty (60) days after the date of the Change of Control Issuer Notice;
- (r) **“Change of Control Repurchase Notice”** has the meaning ascribed thereto in Section 5.9(b);
- (s) **“Change of Control Repurchase Price”** of any Preferred Security means 100% of the principal amount of the Preferred Security to be purchased, including all accrued and unpaid interest thereon (up to but excluding the Change of Control Repurchase Date);
- (t) **“Collateral”** means:
 - (i) in the case of Westaim, all present and after-acquired personal and real property of Westaim, tangible and intangible, in each case, of every nature and kind and wherever situate, including, without limitation, accounts, general intangibles, goods (including inventory, equipment and fixtures), chattel paper, investment property, documents of title, instruments, money, cash and cash equivalents, trade-marks, copyrights, patents, licenses and other intellectual property or intangibles and all proceeds thereof; and
 - (ii) in the case of HIIG GP and HIIG Holdings, the partnership interests in HIIG owned by each of HIIG GP and HIIG Holdings and all proceeds thereof;
- (u) **“Common Shares”** means the common shares in the capital of Westaim, as constituted from time to time;
- (v) **“Continuing Directors”** means, as of any date of determination, any member of the board of directors of Westaim who:
 - (i) was a member of such board of directors on the date of issue of the Initial Preferred Securities; or

- (ii) was nominated for election or elected to such board of directors with the approval of a majority of the Continuing Directors who were members of such board of directors at the time of such nomination or election;
- (w) “**Counsel**” means a barrister or solicitor or firm of barristers or solicitors retained or employed by the Trustee or retained or employed by Westaim and acceptable to the Trustee;
- (x) “**Current Market Price**” at any date of determination means: (i) the Volume Weighted Average Trading Price per Common Share on the Principal Exchange for the ten (10) consecutive trading days ending on the trading day immediately before such date of determination; or (ii) if such Common Shares are not listed or quoted on the Principal Exchange during all or part of such period during which the Volume Weighted Average Trading Price thereof would otherwise be determined, the Current Market Price of such Common Shares at such date shall be determined by an independent securities dealer chosen by the board of directors of Westaim for such purpose, acting reasonably;
- (y) “**deemed year**” has the meaning ascribed thereto in Section 2.2(e)(iv);
- (z) “**Default**” means any event or condition that constitutes an Event of Default or that would constitute an Event of Default with the giving of notice, passage of time, or both;
- (aa) “**Depository**” means, with respect to the Preferred Securities issued in the form of one or more Book-Entry Preferred Securities, the person designated as a depository by Westaim pursuant to Section 2.7 until a successor depository shall have become appointed by Westaim, and thereafter “Depository” shall mean each person who is then a depository hereunder;
- (bb) “**Depository Participant**” means a broker, dealer, bank, other financial institution or other person for whom, from time to time, a Depository effects book-entry for a Book-Entry Preferred Security deposited with the Depository;
- (cc) “**Equity**” means shareholders’ equity as determined in accordance with GAAP, as the same would be set forth or reflected in a balance sheet of a Person;
- (dd) “**Event of Default**” shall mean any of the events identified in Section 9.1 as being an Event of Default;
- (ee) “**Extraordinary Resolution**” has the meaning ascribed thereto in Section 13.12(a);
- (ff) “**Financial Indebtedness**” means, with respect to a Person, all Indebtedness of such Person which would, in accordance with GAAP, be classified on a balance sheet of such Person as debt for borrowed money and, whether or not so classified, shall include (without duplication):

- (i) money borrowed under any credit facilities;
 - (ii) bonds, subordinated debt, debentures and convertible debentures;
 - (iii) all obligations required to be capitalized under any sale and lease-back transactions and financial lease obligations;
 - (iv) all obligations of such Person in respect of the deferred purchase or acquisition price of property secured by any Purchase Money Security Interests but excluding, in any event, all obligations of Westaim and/or any Westaim Group Member with respect to "earn outs" or similar future payments or transfers of property to any Person from whom Westaim or such other Westaim Group Member acquired all or substantially all of the shares or other equity interest or significant assets of an entity, and which obligations Westaim or such other Westaim Group Member is required to treat as indebtedness pursuant to GAAP;
 - (v) vendor take-back financing obligations; and
 - (vi) the amount of any Indebtedness owed to any broker;
- less,
- (vii) gross unencumbered consolidated cash and cash equivalent balances of such Person provided that, (A) in the case of AFHC and AOC, the amount thereof shall be limited to 25% of the Equity of AFHC and AOC, respectively and (B) in the case of HIIG, amounts described in this clause (vii) shall not be deducted in the calculation of Financial Indebtedness;
 - (viii) the amount of any capitalized obligations under any lease for premises;
 - (ix) the amount of any Indebtedness owed by any broker; and
 - (x) the amount of any Indebtedness that is non-recourse to such Person;
- (gg) “**GAAP**” means, in relation to Westaim or any other Westaim Group Member: (i) the International Financial Reporting Standards as adopted by the Canadian Accounting Standards Board and as applied by Westaim or such other Westaim Group Member (as the case may be) or (ii) United States generally accepted accounting principles as applied by Westaim or such other Westaim Group Member (as the case may be);
- (hh) “**Governmental Authority**” shall mean, when used with respect to any Person, any government, parliament, legislature, regulatory authority, agency, tribunal, department, commission, board, instrumentality, court, arbitration board or arbitrator or other law, regulation or rule-making entity (including a Minister of the Crown, any central bank, Superintendent of Financial Institutions, Principal Exchange, or other comparable authority or agency) having or purporting to have

jurisdiction on behalf of, or pursuant to the laws of, Canada or any country in which such Person is residing, incorporated, continued, amalgamated, merged or otherwise created or established or in which such Person carries on business or holds property, or any province, territory, state, municipality, district or political subdivision of any such country or of any such province, territory or state of such country;

- (ii) “**Guarantors**” means each of HIIG GP and HIIG Holdings;
- (jj) “**HIIG**” means Westaim HIIG Limited Partnership;
- (kk) “**HIIG GP**” means Westaim HIIG GP Inc.;
- (ll) “**HIIG Holdings**” means Westaim HIIG Holdings Inc.;
- (mm) “**HIIG Ltd.**” means Houston International Insurance Group. Ltd.;
- (nn) “**Indebtedness**” means, with respect to a Person, all present and future obligations, indebtedness and liabilities of such Person howsoever arising (whether in contract, pursuant to the terms of securities, or otherwise), and whether direct or indirect, absolute or contingent, matured or not, extended or renewed, wheresoever and howsoever incurred, including all future advances and re-advances, and whether the same is from time to time reduced and thereafter increased or entirely extinguished and thereafter incurred again and whether such Person is bound alone or with others and whether as principal or surety, including all interest, fees, expenses, indemnities and costs and all obligations, contingent or otherwise of the foregoing arising from any guarantee made by a Person in respect thereof;
- (oo) “**Indemnified Parties**” has the meaning ascribed thereto in Section 15.14(b);
- (pp) “**Indenture**”, “**hereto**”, “**herein**”, “**hereby**”, “**hereunder**”, “**hereof**” and similar expressions refer to this indenture and not to any particular article, section, subsection, clause, subdivision or other portion hereof, and includes any and every instrument supplemental or ancillary hereto;
- (qq) “**Initial Preferred Securities**” means the 5,000,000 Preferred Securities issued hereunder on the 2nd day of June, 2017;
- (rr) “**Interest Payment Date**” means, unless otherwise changed at the discretion of Westaim and set forth in a Written Direction to the Trustee, the 15th day of the month which immediately follows an Interest Period, provided that the first Interest Payment Date shall be July 17, 2017;
- (ss) “**Interest Period**” means each calendar quarter in each calendar year (being, for the avoidance of doubt, each quarter ending on March 31, June 30, September 30 and December 31 of each calendar year), provided that the first Interest Period means the period commencing on the date hereof and ending June 30, 2017;

- (tt) **“Internal Procedures”** means, in respect of the making of any one or more entries to, changes in or deletions of any one or more entries in the Master Record at any time (including without limitation, original issuance or registration of transfer of ownership), the minimum number of the Trustee’s internal procedures customary at such time for the entry, change or deletion made to be complete under the operating procedures followed at the time by the Trustee;
- (uu) **“Lien”** means any hypothec, security interest, mortgage, lien, right of preference, pledge, assignment by way of security or any other agreement or encumbrance of any nature that secures the performance of an obligation, and a person is deemed to own subject to a Lien any property or assets that it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, capital or synthetic lease or similar agreement (other than an operating lease) relating to such property or assets;
- (vv) **“Master Record”** means the one set of electronic records and accounts maintained by the Trustee pursuant to Section 2.5;
- (ww) **“Material Adverse Effect”** means a material adverse effect on (a) the business, assets, operations, prospects or financial or other condition of Westaim and the Guarantors considered as a whole, (b) Westaim’s ability to pay any of its obligations under the Indenture, (c) the Trustee’s security interests, on behalf of the Securityholders, on the Collateral, or (d) the Trustee’s or any Securityholder’s rights and remedies considered collectively under the Indenture;
- (xx) **“Maturity Date”** means May 26, 2116;
- (yy) **“Obligors”** means Westaim and the Guarantors and **“Obligor”** means any one of them;
- (zz) **“Officer’s Certificate”** means a certificate of Westaim signed by any one authorized officer or director of Westaim, in their capacity as an officer or director of Westaim, as the case may be, and not in their personal capacity;
- (aaa) **“Ordinary Resolution”** means:
 - (i) a resolution passed by not less than 51% of the votes cast by those Securityholders entitled to vote on such resolution, whether cast in person or by proxy, at a meeting of Securityholders, at which a quorum was present, and otherwise conducted in accordance with the provisions of Article 13 hereof; or
 - (ii) a resolution approved in writing, in one or more counterparts, by Securityholders holding not less than 51% of the votes represented by all outstanding Preferred Securities entitled to be voted on such resolution;
- (bbb) **“Permitted Disposition”** means any sale or other disposition of any Collateral by any Obligor that satisfies the following conditions:

- (i) no Event of Default has occurred and is continuing or will occur as a result of, or immediately following, such disposition; and
- (ii) (A) such Collateral is sold in the ordinary course of business of such Obligor; or (B) such Collateral is publicly-traded securities; or (C) the book value of such Collateral is less than 20% of the total asset value of such Obligor on a consolidated basis, determined at the time of such sale;
- (ccc) **“Person”** or **“person”** includes an individual, corporation, company, partnership, joint venture, association, trust, trustee, trust company, unincorporated organization or government or any agency or political subdivision thereof;
- (ddd) **“Plan of Liquidation”** with respect to any person, means a plan that provides for, contemplates or the effectuation of which is preceded or accompanied by (whether or not substantially contemporaneously, in phases or otherwise): (1) the sale, lease, conveyance or other disposition of all or substantially all of the assets of such person otherwise than as an entirety or substantially as an entirety; and (2) the distribution of all or substantially all of the proceeds of such sale, lease, conveyance or other disposition of all or substantially all of the remaining assets of such person to holders of equity interests of such person;
- (eee) **“Preferred Securities”** means the 5% interest rate subordinate preferred securities of Westaim issued and Authenticated hereunder, or deemed to be issued and Authenticated hereunder, whether by way of Certificated Preferred Securities or Uncertificated Preferred Securities, and for the time being outstanding;
- (fff) **“Principal Exchange”** means, at any particular date of determination, the TSX Venture Exchange, or such other exchange or market on which the greatest volume of Preferred Securities were traded during the period of ten (10) trading days immediately preceding such date of determination, or, if not determinable, the exchange or market designated by Westaim, acting reasonably, on which Preferred Securities are listed or quoted for trading at the relevant time;
- (ggg) **“Purchase Money Security Interests”** has the meaning ascribed thereto in the *Personal Property Security Act* (Ontario);
- (hhh) **“Record Date”** means the last Business Day in each Interest Period or such other date as may be determined from time to time by Westaim and set forth in a Written Direction to the Trustee;
- (iii) **“Redemption Date”** has the meaning ascribed thereto in Section 5.3(a);
- (jjj) **“Redemption Notice”** has the meaning ascribed thereto in Section 5.3(a);
- (kkk) **“Redemption Price”** means, in respect of a Preferred Security, the amount of ten (\$10) dollars, being the principal amount thereof, plus all accrued and unpaid interest on such Preferred Security (including any unpaid deferred interest, if any) up to but excluding the Redemption Date;

- (lll) “**Secured Obligations**” means the Indebtedness of the Obligors arising under or pursuant to this Indenture and the Preferred Securities;
- (mmm) “**Secured Parties**” means, collectively, the Trustee and the Securityholders;
- (nnn) “**Securityholders**” means the persons for the time being entered in the Master Record for Preferred Securities as registered holders of Preferred Securities;
- (ooo) “**Security Interest**” means the Liens created by Section 17.2;
- (ppp) “**Senior Creditor**” means a holder of Senior Indebtedness and includes any representative, agent or trustee of any such holder;
- (qqq) “**Senior Indebtedness**” means all Indebtedness of Westaim and/or any other Westaim Member Group (other than the Preferred Securities) whether outstanding on the date of this Indenture or hereafter, which in each case by the terms of such Indebtedness (whether or not evidenced by an instrument in writing) is not expressed to be *pari passu* with, or subordinate in right of payment to, the Preferred Securities;
- (rrr) “**Senior Security**” means any and all Liens that may be granted as security for the Senior Indebtedness;
- (sss) “**Subscription Notice**” has the meaning ascribed thereto in Section 2.1(b);
- (ttt) “**Subscription Date**” has the meaning ascribed thereto in Section 2.1(b);
- (uuu) “**Subscription Price**” has the meaning ascribed thereto in Section 2.1(b);
- (vvv) “**Subsidiary**” has the meaning ascribed thereto in Section 1.1 of National Instrument 45-106 – *Prospectus Exemptions* as in effect on the date hereof;
- (www) “**Tax Act**” means the *Income Tax Act* (Canada) and the regulations thereunder, all as amended from time to time;
- (xxx) “**Taxes**” includes all present and future taxes, surtaxes, duties, levies, imposts, rates, fees, assessments, withholdings and other charges of any nature (including income, corporate, capital (including large corporations), net worth, sales, consumption, use, transfer, goods and services, value-added, stamp, registration, franchise, withholding, payroll, employment, health, education, employment insurance, pension, excise, business, school, property, occupation, customs, anti-dumping and countervail taxes, surtaxes, duties, levies, imposts, rates, fees, assessments, withholdings and other charges) imposed by any governmental authority, together with any fines, interest, penalties or other additions on, to, in lieu of, for non-collection of or in respect of those taxes, surtaxes, duties, levies, imposts, rates, fees, assessments, withholdings and other charges;
- (yyy) “**Transaction**” has the meaning ascribed thereto in Section 11.1;

- (zzz) “**Transaction Instruction**” means a written order signed by the Securityholder or Securityholders entitled to request that one or more actions be taken, or such other form as may be reasonably acceptable to the Trustee, requesting one or more such actions to be taken in respect of an Uncertificated Preferred Security;
- (aaaa) “**Trustee**” means Computershare Trust Company of Canada and includes any successor or successors or any other trustee subsequently appointed;
- (bbbb) “**Uncertificated Preferred Security**” means, upon mutual consent of Westaim and the Trustee: (i) any Preferred Security which is not a Certificated Preferred Security; and (ii) one or more Certificated Preferred Securities while retained by or surrendered to Westaim, its transfer agent or the Trustee, for reasons other than registration of transfer, other temporary purpose, payment, exchange or acquisition by Westaim provided that the Trustee shall not be required to treat any such Preferred Security as an Uncertificated Preferred Security unless such retention or surrender is known to an authorized officer of the Trustee;
- (cccc) “**United States**” or “**U.S.**” means the United States of America, its territories and possessions, any state of the United States and the District of Columbia;
- (dddd) “**U.S. Person**” means a “U.S. person”, as such term is defined in Rule 902(k) of Regulation S under the U.S. Securities Act;
- (eeee) “**U.S. Purchaser**” means a U.S. Person, a person in the United States or a person purchasing Preferred Securities for the account or benefit of a U.S. Person or a person in the United States that is a Qualified Institutional Buyer (as defined in Rule 144A under the U.S. Securities Act) purchasing originally purchased Preferred Securities from Westaim and executes a U.S. subscription agreement in a form reasonably satisfactory to Westaim;
- (ffff) “**U.S. Securities Act**” means the U.S. Securities Act of 1933, as amended;
- (gggg) “**Volume Weighted Average Trading Price**” means, in respect of the Common Shares, the amount determined by dividing the aggregate sale price of all such shares sold on the Principal Exchange during a particular period by the aggregate number of such shares sold during the particular period, calculated including only trades made on such Principal Exchange during normal trading hours;
- (hhhh) “**Warrants**” means 28,571,430 common share purchase warrants, each entitling the holder thereof to acquire, when vested, and upon due exercise in accordance with the terms thereof, one Common Share for an exercise price of \$3.50;
- (iiii) “**Westaim**” means The Westaim Corporation, a corporation incorporated pursuant to the laws of the Province of Alberta, and includes any successor to, or of, Westaim which shall have complied with the provisions of Article 11 hereof;
- (jjjj) “**Westaim Group Members**” means, collectively, Westaim and the other Obligors and each direct and indirect Subsidiary of Westaim; and

(kkkk) “**Written Direction**” means an instrument in writing signed by any one officer or director of Westaim.

1.2 Meaning of “Outstanding”

Every Preferred Security that is Authenticated by the Trustee hereunder shall be deemed to be outstanding until it is cancelled or redeemed, or the payment therefor shall have been set aside under Section 10.2 or Article 18, provided that:

- (a) Preferred Securities which have been redeemed or purchased, or which are held by Westaim or any other Westaim Group Member, shall be deemed not to be outstanding; and
- (b) when a new Preferred Security has been issued in substitution for a Preferred Security which has been lost, stolen or destroyed, only one of such Preferred Securities shall be counted for the purpose of determining the aggregate number of Preferred Securities outstanding.

1.3 Interpretation

In this Indenture:

- (a) words importing the singular number or masculine gender shall include the plural number or the feminine or neuter genders, and vice versa;
- (b) all references herein to Articles, Sections, subsections or paragraphs refer, unless otherwise specified, to Articles, Sections, subsections or paragraphs of this Indenture; and
- (c) 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.

1.4 Headings, Etc.

The division of this Indenture into Articles, Sections, subsections, paragraphs, 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 of this Indenture or of the Preferred Securities. The Schedules hereto form a part of this Indenture.

1.5 Day not a Business Day

Whenever any payment to be made hereunder shall be due, any period of time would begin or end, any calculation is to be made or any other action is to be taken on, or as of, or from a period ending on, a day other than a Business Day, such payment shall be made, such period of time shall begin or end, such calculation shall be made and such other action shall be taken, as the case may be, unless otherwise specifically provided herein, on or as of the next succeeding Business Day without any additional interest, cost or charge to Westaim.

1.6 Applicable Law

This Indenture and the Preferred Securities shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. With respect to any suit, action or proceedings relating to this Indenture, any supplemental indenture or any of the Preferred Securities, Westaim, the Trustee and each Securityholder irrevocably submit and attorn to the non-exclusive jurisdiction of the courts of the Province of Ontario.

1.7 Monetary References

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

1.8 Invalidity, Etc.

In case any provision of this Indenture shall be invalid, illegal or unenforceable, such provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability and the validity, legality and enforceability of the remaining provisions shall not in any way be affected, prejudiced or impaired thereby.

1.9 Language

Each of the parties hereto hereby acknowledges that it has consented to and requested that this Indenture and all documents relating thereto, including, without limiting the generality of the foregoing, the form of Preferred Security attached hereto as Schedule A, be drawn up in the English language only. Les parties reconnaissent leur volonté expresse que la présente ainsi que tous les documents et contrats s'y rattachant directement ou indirectement soient rédigés en anglais.

1.10 Successors and Assigns

All covenants and agreements in this Indenture by Westaim shall bind its successors and assigns, whether expressed or not. All covenants and agreements of the Trustee in this Indenture shall bind its successors and assigns.

1.11 Entire Agreement

This Indenture constitutes the entire agreement between the parties hereto with respect to the Preferred Securities created hereunder and supersedes, as of the date hereof, all prior memoranda, agreements, negotiations and discussions, whether oral or written, with respect to the Preferred Securities created hereunder.

1.12 Benefits of Indenture

Nothing in this Indenture, express or implied, shall give to any person, other than the parties hereto, the Securityholders, and the Senior Creditors (to the extent provided in Article 6 only), any benefit or any legal or equitable right, remedy or claim under this Indenture.

1.13 Privacy

The parties acknowledge that the Trustee may, in the course of providing services hereunder, collect or receive financial and other personal information about such parties and/or their representatives, as individuals, or about other individuals related to the subject matter hereof, and use such information for the following purposes:

- (a) to provide the services required under this Indenture and other services that may be requested from time to time;
- (b) to help the Trustee manage its servicing relationships with such individuals;
- (c) to meet the Trustee's legal and regulatory requirements; and
- (d) if Social Insurance Numbers are collected by the Trustee, to perform tax reporting and to assist in verification of an individual's identity for security purposes.

Each party acknowledges and agrees that the Trustee may receive, collect, use and disclose personal information provided to it or acquired by it in the course of its acting as agent under this Indenture for the purposes described above and, generally, in the manner and on the terms described in its Privacy Code, which the Trustee shall make available on its website, www.computershare.com, or upon request, including revisions thereto. The Trustee may transfer personal information to other companies in or outside of Canada that provide data processing and storage or other support in order to facilitate the services it provides.

1.14 Calculations

Westaim shall be responsible for making all calculations required hereunder including, without limitation, calculations of the Current Market Price. Westaim shall make such calculations in good faith and, absent manifest error, Westaim's calculations shall be final and binding on the Securityholders and the Trustee.

1.15 Schedules

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

Schedule A - Form of Preferred Securities Certificate

Schedule B - Form of Redemption Notice

ARTICLE 2 THE PREFERRED SECURITIES

2.1 The Preferred Securities

- (a) The Preferred Securities authorized and issued hereunder shall have attached thereto the attributes, and be subject to the conditions and limitations, herein set forth.

- (b) Each Initial Preferred Security will be issued for a principal amount of ten dollars (\$10), representing an aggregate principal amount of \$50,000,000 (for a total of 5,000,000 Initial Preferred Securities). Additional Preferred Securities shall be issued by Westaim, and purchased by the Securityholders, in the discretion of Westaim at any time and from time to time upon written notice by Westaim to the Securityholders (a “**Subscription Notice**”) given not less than twenty (20) Business Days prior to the date selected by Westaim for such subscription by Westaim provided that the date of such notice shall not be later than January 1, 2018 (a “**Subscription Date**”), on substantially the same terms as the subscription agreement for the Initial Preferred Securities, provided that: (i) each Additional Preferred Security will be issued for a principal amount of ten dollars (\$10); (ii) the aggregate principal amount of all Additional Preferred Securities issued on any particular Subscription Date shall not be less than \$25,000,000; and (iii) not more than 5,000,000 Additional Preferred Securities, in aggregate (resulting in total gross proceeds of not more than \$50,000,000), will be issued by Westaim. Each Subscription Notice given hereunder shall include (1) the number of Additional Preferred Securities that the Securityholders, in aggregate, will be required to purchase, (2) the Subscription Date on which payment of the applicable subscription price is required to be made, and (3) the aggregate subscription price required to be paid (the “**Subscription Price**”), which shall be allocated by Hamblin Watsa Investment Counsel Ltd. in its sole discretion, who shall notify the Trustee of such allocation no less than five (5) Business Days prior to the Subscription Date. On each Subscription Date, each Securityholder shall deliver to Westaim (A) a duly completed and validly executed subscription agreement in respect of the Additional Preferred Securities to be acquired by such Securityholder on such Subscription Date, in a form reasonably acceptable to Westaim, and (B) subject to satisfaction by Westaim (or waiver by the relevant Securityholder(s)) of the conditions of closing to be satisfied by Westaim as set forth in each such subscription agreement, the aggregate Subscription Price payable by the Securityholders for such Additional Preferred Securities on such Subscription Date. For the avoidance of doubt, the Trustee will not have any obligation or duty under Section 2.1(b).
- (c) This Indenture is binding upon all Securityholders and, by holding Preferred Securities registered in its name, each Securityholder agrees and is deemed to have agreed to be bound by all of the terms and conditions of this Indenture (including the commitment to acquire Additional Preferred Securities as described in Section 2.1(b)), as the same may be amended from time to time as provided for herein.

2.2 Terms of the Preferred Securities

- (a) **Designation.** The Preferred Securities shall be designated as “Preferred Securities” but may also be referred to as “5.0% Interest Rate Subordinate Preferred Securities”.

- (b) **Principal Amount/Denomination.** Each Preferred Security shall be issued in a denomination of ten dollars (\$10) and shall be deemed to have such denomination irrespective of whether or not stated in or upon the face of any Certificated Preferred Security, and whether issued as a global certificate or otherwise. For all purposes of this Indenture, ten dollars (\$10) shall be the principal amount of each such Preferred Security.
- (c) **Maturity.** The Preferred Securities are secured securities due on the Maturity Date (if outstanding on the Maturity Date) and are, subject to Section 2.2(f), Article 5 and the other provisions set out herein, non-redeemable.
- (d) **Payment of Principal Amount and Rank.** In the event of an Event of Default, Securityholders will be entitled to payment of the principal amount and accrued and unpaid interest (including any unpaid deferred interest, if any) and any other amounts due in respect of each Preferred Security held by such holder, provided that such entitlement to payment will rank as to payment by Westaim:
 - (i) senior to the Common Shares and all payments then owing to holders of such securities in their capacity as such,
 - (ii) senior to or *pari passu* with, as the case may be, any Financial Indebtedness of Westaim then owing and which is expressed by the terms of such Obligation to rank junior to or *pari passu* with, as the case may be, the Preferred Securities, and
 - (iii) junior in right of payment to all outstanding Senior Indebtedness.

Each Preferred Security will rank *pari passu* with each other Preferred Security regardless of its actual date of issue.

- (e) **Interest.**
 - (i) Each Preferred Security issued hereunder, whether originally or upon exchange or in substitution for a previously issued Preferred Security, shall bear simple interest from and including its date of issue at the rate of 5% per annum calculated annually and not in advance, which shall be due and payable on:
 - (A) the applicable Interest Payment Date in accordance with Article 3 hereof;
 - (B) if repurchased in accordance with Section 5.3, the Redemption Date; and
 - (C) if repurchased in accordance with Section 5.9, the Change of Control Repurchase Date.

Interest accruing in respect of the Preferred Securities is cumulative and non-compounding and shall be paid at the times and upon the terms set forth in Article 3 or Article 5 hereof.

- (ii) Interest on overdue interest payable pursuant to Section 2.2(e)(i) above, shall accrue at a rate of 10.0% per annum (“**default interest**”) until such overdue interest, together with all such accrued default interest thereon, has been paid in full; provided that, for greater certainty, default interest shall not accrue or be payable in respect of any interest that has been deferred in accordance with Section 3.2 hereof.
- (iii) Westaim is permitted to defer interest in accordance with and subject to the terms and conditions set forth in Article 3 hereof.
- (iv) Interest shall be calculated on the basis of 365 or 366 days per year (as the case may be). Whenever interest is computed on a 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 shall be expressed as a yearly rate for purposes of the *Interest Act* (Canada) by multiplying such rate of interest by the actual number of days in the calendar year of calculation and dividing it by the number of days in the deemed year.
- (f) **Redemption by Westaim.** The Preferred Securities are redeemable, in whole or in part, at the Redemption Price on the applicable Redemption Date, at the sole option of Westaim, in accordance with the terms of Article 5.
- (g) **Subordinate Nature.** The Preferred Securities shall be subordinate to all Senior Indebtedness of Westaim and/or any other Westaim Group Member in accordance with the provisions of Article 6, and for greater certainty, subject to Section 8.16, nothing contained in this Indenture shall in any way or manner restrict or prevent Westaim and/or any other Westaim Group Member from incurring, directly or indirectly, any additional Indebtedness, including Indebtedness that ranks junior to, *pari passu* with, or senior to the Preferred Securities; nor shall anything herein contained in any way or manner restrict or prevent Westaim and/or any other Westaim Group Member from mortgaging, pledging or charging real or personal property or properties of Westaim or any other Westaim Group Member to secure any Indebtedness.
- (h) **Secured.** The Preferred Securities are direct obligations of Westaim, and secured against the assets of Westaim and the Guarantors pursuant to the Security Interest.
- (i) **Fractional Preferred Securities.** If any person becomes entitled to a fraction of a Preferred Security, such person shall not be entitled to receive a certificate therefor. Fractional Preferred Securities shall not, except to the extent that they may represent in the aggregate one or more whole Preferred Securities held by the same holder, entitle the holder thereof to notice of, or to attend or to vote at,

meetings of Securityholders called pursuant to Article 13 hereof. Subject to the foregoing, fractional Preferred Securities shall have attached thereto the rights, restrictions, conditions and limitations attaching to whole Preferred Securities in the proportion that they bear to a whole Preferred Security.

(j) **Form of Preferred Security.**

- (i) The Preferred Securities shall be issued as Uncertificated Preferred Securities or as Certificated Preferred Securities or in such other form as Westaim may approve.
- (ii) Each Preferred Security shall be issued in substantially the form set out in Schedule A, with such insertions, omissions, substitutions or other variations as shall be required or permitted by this Indenture, and may have imprinted or otherwise reproduced thereon such legend or legends or endorsements, not inconsistent with the provisions of this Indenture, as may be required to comply with any law or with any rules or regulations pursuant thereto or with any rules or regulations of any securities exchange or securities regulatory authority or to conform with general usage, all as may be determined by the persons executing such Preferred Security in accordance with Section 2.8, as conclusively evidenced by their execution of a certificate representing Preferred Securities. Each Preferred Security that is a Certificated Preferred Security shall additionally bear such distinguishing letters and numbers as the Trustee shall approve. Notwithstanding the foregoing, a Preferred Security may be in such other form or forms as may, from time to time, be approved by a resolution of the directors of Westaim or as specified in an Officer's Certificate. The Preferred Securities that are Certificated Preferred Securities may be engraved, lithographed, printed, mimeographed or typewritten or partly in one form and partly in another.
- (iii) Those Preferred Securities issued as Book-Entry Preferred Securities will be registered in the name of the Depository or any nominee of the Depository. A Book-Entry Preferred Security may be exchanged for Preferred Securities in registered form that are not Book-Entry Preferred Securities, or transferred to and registered in the name of a person other than the Depository for such Book-Entry Preferred Securities or a nominee thereof as provided in Section 4.2.

2.3 Issuances of Additional Securities by Westaim

Notwithstanding anything herein contained, Westaim shall not be, and is not hereby, restricted in the issuance of Common Shares or any other securities ranking junior to the Preferred Securities. Subject to (i) Section 8.16 or (ii) approval by Extraordinary Resolution, Westaim shall be permitted to issue any securities of any kind or nature whatsoever ranking *pari passu* with, or senior to, the Preferred Securities.

2.4 Authenticated Preferred Securities and Master Record to Control

- (a) Only such Preferred Securities as shall have been Authenticated shall be enforceable against Westaim and entitled to the benefits of this Indenture at any time or be valid or obligatory for any purpose.
- (b) Authentication by Trustee of any Certificated Preferred Security executed by Westaim shall be conclusive evidence that the holder is entitled to the benefits of this Indenture.
- (c) The Trustee shall Authenticate Uncertificated Preferred Securities (whether upon original issuance, exchange, registration of transfer, partial payment, redemption or otherwise) by completing its Internal Procedures and Westaim shall thereupon be deemed to have duly and validly issued such Uncertificated Preferred Securities under this Indenture. Such Authentication shall be conclusive evidence that such Uncertificated Preferred Security has been duly issued hereunder and that the holder(s) thereof are entitled to the benefits of this Indenture. The Master Record shall be final and conclusive evidence as to all matters relating to Uncertificated Preferred Securities with respect to which this Indenture requires the Trustee to maintain records or accounts. In case of differences between the Master Record at any time and any other time the Master Record at the later time shall be controlling, absent manifest error.
- (d) The Authentication by the Trustee of any Preferred Security issued hereunder shall not be construed as a representation or warranty by the Trustee as to the validity of this Indenture or of such Preferred Security or its issuance (except the due Authentication thereof and any other warranties by law) or as to the performance by Westaim of, and its obligations under, this Indenture and the Trustee shall in no respect be liable or answerable for the use made of the Preferred Securities or any of them or the proceeds thereof.

2.5 Master Record

- (a) The Trustee shall maintain records and accounts electronically concerning the Preferred Securities which shall, at a minimum in respect to each Preferred Security, contain such information as may be required by law or as the Trustee may elect to record. Subject to the requirements of Applicable Securities Legislation, all of such information shall be kept in one set of accounts and records which the Trustee shall designate (in such manner as shall permit it to be so identified as such by an unaffiliated person) as the Master Record for the Preferred Securities. The information to be entered for each account in the Master Record for the Preferred Securities shall, unless otherwise waived by Westaim, include, without limitation:
 - (i) the name and address of the holder of the Preferred Securities held in such account, and, in the case of an Uncertificated Preferred Security, the registration date therefore;

- (ii) the number of, and unpaid principal amount of, Preferred Securities held in such account;
- (iii) the amount, if any, of any principal or interest which has become due thereon but has not been paid;
- (iv) whether such Preferred Security is a Certificated Preferred Security or an Uncertificated Preferred Security and, if a Certificated Preferred Security, the unique number or code assigned to and imprinted thereupon and, if an Uncertificated Preferred Security, the unique number or code assigned thereto if any; and
- (v) whether such Preferred Security has been cancelled (it being understood that payment of principal cancels the paid portion of a Preferred Security automatically without any need for any holder to request cancellation in order to obtain payment).

At all reasonable times the Master Record shall be available in readable format for inspection by Westaim.

- (b) Once a Preferred Security has been Authenticated the information set forth in the Master Record with respect thereto at the time of Authentication may be altered, modified, amended, supplemented or otherwise changed only to reflect payments, redemptions or proper instructions to the Trustee from the holder as provided herein, except that the Trustee may act unilaterally to make purely administrative changes internal to the Trustee and changes to correct errors if, but only if, such changes do not adversely affect the rights of persons who: (i) changed position in reliance on the error; (ii) have acted in good faith and without notice (actual or constructive) of the error; and (iii) are not the holder or former holder affected by the error or the error correction provided, that no error correction may affect the rights of a bona fide purchaser under applicable law. Each person who becomes a holder of a Preferred Security, by their acquisition thereof, shall be deemed to have irrevocably (1) consented to the foregoing authority of the Trustee to make such changes and error corrections and (2) agreed to pay to the Trustee, promptly upon written demand, the full amount of all loss and expense (including without limitation reasonable legal fees of Westaim and the Trustee) plus interest, at an appropriate then prevailing rate of interest to the Trustee, sustained by Westaim or the Trustee as a proximate result of such error if but only if and only to the extent that such present or former holder realized any benefit as a result of such error and could reasonably have prevented, forestalled or minimized such loss and expense by prompt reporting of the error or avoidance of accepting benefits thereof whether or not such error is or should have been timely detected and corrected by the Trustee; provided, that no person who is a bona fide purchaser shall have any such obligation to Westaim or to the Trustee.

2.6 Authentication of Additional Preferred Securities

Westaim may from time to time request the Trustee to Authenticate Additional Preferred Securities by delivering to the Trustee such documents as are reasonably requested by the Trustee and which may include some or all of the documents referred to below in this Section 2.6, whereupon the Trustee shall Authenticate such Preferred Securities and cause the same to be delivered in the case of Certificated Preferred Securities and recorded in the case of Uncertificated Preferred Securities in accordance with the Written Direction referred to below or pursuant to such procedures acceptable to the Trustee as may be specified from time to time by a Written Direction. In Authenticating such Preferred Securities, the Trustee shall be entitled to receive and shall be fully protected in relying upon, unless and until such documents have been superseded or revoked:

- (a) a Written Direction requesting Authentication of such Additional Preferred Securities and setting forth delivery instructions with respect to Certificated Preferred Securities, provided that such Written Direction may authorize Authentication pursuant to electronic instructions from Westaim which electronic instructions shall be promptly confirmed in writing;
- (b) an opinion of Counsel, in form and substance satisfactory to the Trustee, acting reasonably, to the effect that all requirements imposed by this Indenture or by law in connection with the proposed issue of Additional Preferred Securities have been complied with, subject to the delivery of certain documents or instruments specified in such opinion; and
- (c) an Officer's Certificate certifying that no event has occurred or circumstance has arisen that is continuing and that is, or with the giving of notice or passage of time would be, an Event of Default and that no Event of Default will exist upon such Authentication.

2.7 Issue of Book-Entry Preferred Securities

- (a) Westaim may specify that the Preferred Securities are to be issued in whole or in part as one or more Book-Entry Preferred Securities registered in the name of a Depository, or its nominee, designated by Westaim in the Written Direction delivered to the Trustee at the time of issue of such Preferred Securities, and in such event Westaim shall execute and the Trustee shall certify and deliver one or more Book-Entry Preferred Securities that shall:
 - (i) represent an aggregate amount equal to the number of outstanding Preferred Securities to be represented by one or more Book-Entry Preferred Securities;
 - (ii) be delivered by the Trustee to such Depository or pursuant to such Depository's instructions; and
 - (iii) bear a legend substantially to the following effect:

“Unless these Preferred Securities are presented by an authorized representative of CDS Clearing and Depository Services Inc. (“CDS”) to Computershare Trust Company of Canada or its agent for registration of transfer, exchange or payment, and any Preferred Securities issued in respect thereof are registered in the name of CDS & Co., or in such other name as is requested by an authorized representative of CDS (and any payment is made to CDS & Co. or to such other entity as is requested by an authorized representative of CDS), any transfer, pledge or other use hereof for value or otherwise by or to any person is wrongful since the registered holder hereof, CDS & Co., has a property interest in the securities represented by this certificate and it is a violation of its rights for another person to hold, transfer or deal with such securities.”

- (b) Each Depository designated for a Book-Entry Preferred Security must, at the time of its designation and at all times while it serves as such Depository, be a clearing agency registered or designated under the securities legislation of the jurisdiction where the Depository has its principal offices.

2.8 Execution of Preferred Securities

All Certificated Preferred Securities shall be signed (either manually or by facsimile signature) by any one authorized officer of Westaim, holding office at the time of signing. A facsimile signature upon a Certificated Preferred Security shall for all purposes of this Indenture be deemed to be the signature of the person whose signature it purports to be. Notwithstanding that any person whose signature, either manual or in facsimile, appears on a Certificated Preferred Security as an officer may no longer hold such office at the date of issue of the Certificated Preferred Security or at the date of the Authentication thereof, such Certificated Preferred Security shall be valid and binding upon Westaim and entitled to the benefits of this Indenture.

2.9 Mutilation, Loss, Theft or Destruction

In case any of the Certificated Preferred Securities issued hereunder shall become mutilated, destroyed, stolen or lost, the Securityholder seeking a replacement Certificated Preferred Security shall furnish to Westaim and the Trustee, as a condition precedent to the issue of such replacement Certificated Preferred Security, such evidence of ownership and of mutilation, destruction, theft or loss as shall be satisfactory to Westaim and the Trustee in their respective discretion, and such Securityholder shall also be required to furnish a surety bond satisfactory to the Trustee and an indemnity in amount and form satisfactory to Westaim and the Trustee in their respective discretion. All expenses and reasonable charges associated with procuring such surety bond and such indemnity and with the preparation, countersignature and delivery of a replacement Certificated Preferred Security shall be borne by the holder of the Preferred Security that was mutilated, destroyed, stolen or lost. The substituted Certificated Preferred Security shall be entitled to the benefits of this Indenture and rank equally in accordance with its terms with all other Certificated Preferred Securities issued or to be issued hereunder.

2.10 Compliance with U.S. Securities Law

The Initial Preferred Securities have not been, and neither the Initial Preferred Securities nor any Additional Preferred Securities will be, registered under the United States Securities Act of 1933, as amended. If Preferred Securities are issued and sold in the United States, Westaim will comply with applicable securities laws within the United States, which may include, among other things, the requirement to legend any certificates, as applicable, representing Preferred Securities which are issued into the United States or otherwise become subject to U.S. law.

2.11 Withholding

- (a) Westaim will be entitled to deduct and withhold any applicable taxes or similar charges (including interest, penalties or similar amounts in respect thereof) imposed or levied by or on behalf of any government or any authority or agency therein or thereof having power to tax, including pursuant to the Tax Act, from any payment to be made on or in connection with the Preferred Securities and, provided that Westaim forthwith remits such withheld amount to such government, authority or agency and files all required forms in respect thereof and provides copies of such remittance and filing to the Trustee and the relevant Securityholder, the amount of any such deduction or withholding will be considered an amount paid in satisfaction of Westaim's obligations under the Preferred Securities and there is no obligation on Westaim to gross-up amounts paid to a holder in respect of such deductions or withholdings.
- (b) Unless the Trustee remits interest payments on behalf of Westaim under this Indenture, the Trustee shall have no obligation to verify any payments under the Tax Act or any provision of provincial, state, local or foreign tax law and shall be permitted to rely upon written confirmation from Westaim with respect to any applicable withholding tax and tax reporting requirements. The Trustee shall at all times be indemnified and held harmless by Westaim from and against any personal liabilities of the Trustee incurred in connection with the failure of Westaim or its agents to report, remit or withhold taxes as required by the Tax Act or otherwise failing to comply with the Tax Act. This indemnification shall survive the resignation or removal of the Trustee and the termination of this Indenture solely to the extent that such liabilities have been incurred in connection with taxation years occurring during the term of this Indenture.

ARTICLE 3

PAYMENT OF INTEREST AND DEFERRAL THEREOF

3.1 Payment of Interest

- (a) Subject only to the right of Westaim to defer payments of interest in respect of the Preferred Securities pursuant to Section 3.2 below, accrued and unpaid interest on each of the outstanding Preferred Securities for each Interest Period shall be paid on or before the next Interest Payment Date which immediately follows that Interest Period, and shall be paid to each holder of Preferred Securities of record

as of the Record Date pertaining to such Interest Period in an amount, in respect of each Preferred Security held thereby, equal to the interest accrued in respect thereof during such Interest Period.

- (b) Payments in respect of interest hereunder shall be settled in cash, in the lawful money of Canada. Subject to Section 3.1(c), Westaim, either directly or through the Trustee or any agent of the Trustee, shall send or forward by prepaid ordinary mail, electronic transfer of funds or such other means as may be agreed to by the Trustee, each payment of interest hereunder (less any tax required to be withheld therefrom pursuant to Section 2.11(a)) to the order of those Securityholders entitled to such interest payments in accordance with Section 3.1(a), as the case may be, and addressed to each such Securityholder at its last address appearing on the Master Record, unless such holder otherwise directs. The mailing of a cheque (if payment is made by cheque) or the making of such payment by other means shall, to the extent of the sum represented thereby, plus the amount of any tax withheld as aforesaid, satisfy and discharge all liability for interest on such Preferred Securities to which such payment relates, unless in the case of payment by cheque, such cheque is not paid at par upon presentation. In the event of non-receipt of any cheque for, or other payment of, interest by the person to whom it is so sent as aforesaid, Westaim will issue to such person a replacement cheque or other payment for a like amount upon being furnished with such evidence of non-receipt as Westaim shall reasonably require and upon being indemnified to its reasonable satisfaction. Notwithstanding the foregoing, if Westaim is prevented by circumstances beyond its control (including, without limitation, any interruption in mail service) from making payment of any interest due on each Preferred Security in the manner provided above, Westaim may make payment of such interest or make such interest available for payment in any other manner acceptable to the Trustee with the same effect as though payment had been made in the manner provided above. If Westaim makes any payment of interest directly to Securityholders, Westaim shall promptly provide evidence of such payment to the Trustee. If the Trustee is utilized to distribute such payments of interest to Securityholders, Westaim shall deliver the requisite funds by wire transfer to the Trustee by no later than 10 a.m. (Toronto time) four (4) Business Days in advance of the Interest Payment Date. The Trustee shall mail cheques on account of such interest payment to the Securityholders by no later than the third Business Day in advance of the Interest Payment Date.
- (c) Notwithstanding Section 3.1(b), if any Preferred Securities are represented by a Book-Entry Preferred Security, payments of interest on the Book-Entry Preferred Security shall be made by wire transfer to the Depository or its nominee for subsequent payment to Beneficial Holders of interests in that Book-Entry Preferred Security on the relevant Interest Payment Date provided that the Trustee has received all requisite funds from Westaim by wire transfer by no later than 10:00 a.m. (Toronto time) on the Business Day prior to the relevant Interest Payment Date. None of Westaim, the Trustee or any agent of the Trustee for any Preferred Security issued as a Book-Entry Preferred Security will 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 Book-Entry Preferred Security or for maintaining, reviewing, or supervising any records relating to such beneficial interests.

3.2 Deferral of Interest

- (a) Westaim shall have the right to defer payment of all or any part of the accrued interest otherwise coming due on an Interest Payment Date and such deferral may be for a period not to exceed two (2) years from the date of issuance of the Initial Preferred Securities. For greater certainty, interest shall continue to accrue during any period of time in which payment of interest is deferred (including on the amount of the accrued interest).
- (b) In order to initiate the deferral of payment of all or any part of the interest coming due in respect of the outstanding Preferred Securities which is then coming due on an Interest Payment Date, Westaim shall be required to provide written notice to the Trustee of Westaim's intent to defer interest (such notice is herein referred to as the "**Deferral Notice**") and, to be effective in respect of interest otherwise due on the next following Interest Payment Date, such Deferral Notice must be provided to the Trustee not less than five (5) Business Days prior to such Interest Payment Date. The Deferral Notice must, at a minimum, provide the following information:
 - (i) the period in respect of which interest is to be deferred;
 - (ii) the Interest Period and corresponding Interest Payment Date in respect of which the interest deferral is to commence; and
 - (iii) whether or not the deferral is to be in respect of all or only a portion of the interest accruing in respect of the then outstanding Preferred Securities and, if in respect of a portion only, a statement as to the quantum of the portion which is to be deferred – which may be stated as a percentage, or in such other manner as Westaim determines reasonable to clearly communicate the quantum being deferred.

The Trustee is responsible, upon receipt of a Deferral Notice, to forthwith provide a copy of the Deferral Notice to the Securityholders.

- (c) After deferral of interest has commenced in accordance with the terms hereof, such deferral shall continue until the earlier of: (i) the termination date of such interest deferral as stated in the Deferral Notice; (ii) the date on which payment of all unpaid deferred interest is made in accordance with Section 3.3(a) hereof; and (iii) the date that is two (2) years from the date of issuance of the Initial Preferred Securities.
- (d) Once a Deferral Notice has been given to the Trustee, no subsequent interest deferral notices need be given to the Trustee or to Securityholders for interest to continue to be deferred unless the deferral has ended on one of the bases set forth

in Section 3.2(c), in which event a new Deferral Notice will be required if Westaim desires again to defer all or any part of the interest payable in respect of the outstanding Preferred Securities.

3.3 Payment of Deferred Interest

(a) Payment after Deferral.

- (i) Subject to satisfaction of the condition set forth in Section 3.3(a)(iv) hereof, Westaim has the right, at any time during a period in which interest is being deferred, to pay all or any portion of such interest as at that time stands deferred.
- (ii) If Westaim chooses, in its discretion, to pay any deferred interest pursuant to Section 3.3(a)(i), Westaim shall provide the Trustee with written notice, given not less than five (5) Business Days prior to the date selected for payment by Westaim, which notice shall include (1) the date upon which payment of deferred interest will be made, (2) the intended amount to be paid, and (3) whether the payment is to extinguish all or only a part of the accrued and unpaid deferred interest. If only part of the accrued and unpaid deferred interest will be paid, payment shall be made to the then registered Securityholders on a pro rata basis, based upon the amount of deferred interest owed to each such holder.
- (iii) Payment of deferred interest by Westaim under this Section 3.3(a) shall occur in accordance with the provisions of Section 3.1(b) applied *mutatis mutandis*.
- (iv) Westaim's right to make payment of any deferred interest is subject to Westaim, at the time of payment, not being aware of any reasonable grounds for believing that it is, or would after the payment be, unable to pay its liabilities as they become due. The Trustee shall be entitled, at its request, to receive an Officer's Certificate in support of the foregoing.

ARTICLE 4 REGISTRATION, TRANSFER, EXCHANGE AND OWNERSHIP

4.1 Certificated and Uncertificated Preferred Securities

(a) Upon:

- (i) due presentation for registration of transfer or exchange of any Certificated Preferred Security at the principal office of the Trustee in the city of Toronto or Calgary with a request to register the transfer of or to exchange such Preferred Security; or
- (ii) due presentation at such office of a Transaction Instruction from the holder (or a request, in form satisfactory to the Trustee, on behalf of such

holder without the concurrent request from such holder), to register the transfer of ownership or to exchange any Uncertificated Preferred Security,

then, except as otherwise provided in this Indenture, a director of Westaim shall execute, and the Trustee shall Authenticate and deliver, one or more new Certificated Preferred Securities or the Trustee shall, on behalf of Westaim, Authenticate one or more new Uncertificated Preferred Securities, as the case may be, which the holder making the exchange shall be entitled to receive in like number (and, accordingly, for a like aggregate principal amount) registered in the name of the transferee or transferees or, in the case of an exchange, the holder of the Preferred Security being exchanged.

- (b) All Certificated Preferred Securities presented for registration of transfer, exchange, redemption or payment shall (if so required by Westaim or the Trustee) be duly endorsed by, or be accompanied by a written instrument or instruments of transfer in form reasonably satisfactory to Westaim and the Trustee, duly executed by the holder or his attorney duly authorized in writing. Any Transaction Instruction to register the transfer or exchange or cancel any Uncertificated Preferred Security or to change the name, address or any other information with respect to the holder appearing in the Master Record shall be accompanied or supplemented by such proofs of ownership, identity, signature and agreements as the Trustee may reasonably require.
- (c) The Trustee shall use reasonable procedures to process Transaction Instructions consistent with the requirements of applicable law and regulations, the needs of investors for reasonably prompt transaction services and the needs of issuers to keep expense levels within reasonable limits. Accordingly, no effort by any holder to amend, rescind or revoke a Transaction Instruction with respect to an Uncertificated Preferred Security before Internal Procedures with respect thereto are complete shall be valid or effective unless, pursuant to the reasonable procedures of the Trustee in effect at the time, the attempted amendment, rescission or revocation actually reaches the personnel implementing the original request in time to implement the amendment, rescission or revocation before Internal Procedures on the original request are completed.
- (d) Upon compliance with the provisions of this Section 4.1, the Preferred Securities issued upon registration of transfer or upon replacement pursuant to Section 2.9 or upon exchange pursuant to Section 4.5 or partial redemption or purchase pursuant to Section 5.7 may be issued as either Uncertificated Preferred Securities or Certificated Preferred Securities at the option of the holder of, and in the absence of any exercise of such option such be issued in the same form as, the Preferred Security the transfer of which is being registered or which is being exchanged or substituted for.

4.2 Book-Entry Preferred Securities

- (a) With respect to those Preferred Securities which are issued in whole or in part as one or more Book-Entry Preferred Securities, the Trustee shall record on the Master Record, the name and address of the holder of each such Book-Entry Preferred Security (being the Depository, or its nominee, for such Book-Entry Preferred Securities) as holder thereof and particulars of the Book-Entry Preferred Security held by it, and of all transfers thereof. If any Preferred Securities are at any time not Book-Entry Preferred Securities, the provisions of Section 4.1 shall govern with respect to registrations and transfers of such Preferred Securities.
- (b) Notwithstanding any other provision of this Indenture, a Book-Entry Preferred Security may not be transferred by the registered holder thereof and no Certificated Preferred Securities shall be issued to Beneficial Holders except in the following circumstances or as otherwise specified in an ordinary resolution of the directors of Westaim or an Officer's Certificate:
 - (i) Book-Entry Preferred Securities may be transferred by a Depository to a nominee of such Depository or by a nominee of a Depository to such Depository or to another nominee of such Depository or by a Depository or its nominee to a successor Depository or its nominee;
 - (ii) Book-Entry Preferred Securities may be transferred at any time after the Depository for such Book-Entry Preferred Securities: (i) has notified the Trustee, or Westaim (after being notified by the Depository) has notified the Trustee, that the Depository is unwilling or unable to continue as Depository for such Book-Entry Preferred Securities; or (ii) ceases to be eligible to be a Depository under Section 2.7(b), provided that at the time of such transfer Westaim has not appointed a successor Depository for such Book-Entry Preferred Securities;
 - (iii) Book-Entry Preferred Securities 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 Preferred Securities issued as a Book-Entry Preferred Security, provided that Beneficial Holders representing, in the aggregate, not less than 25% of the number of Preferred Securities advise the Depository in writing, through the Depository Participants, that the continuation of the book-entry registration system for the Preferred Securities is no longer in their best interests and also provided that at the time of such transfer the Trustee has not waived the Event of Default pursuant to Section 9.3;
 - (iv) Book-Entry Preferred Securities may be transferred if required by applicable law;
 - (v) Book-Entry Preferred Securities may be transferred if the book-entry registration system ceases to exist; or

- (vi) any of such Preferred Securities is to be Authenticated to or for the account or benefit of a person in the United States or a U.S. Person.
- (c) With respect to the Book-Entry Preferred Securities, unless and until Certificated Preferred Securities have been issued to Beneficial Holders pursuant to Section 4.2(b):
 - (i) Westaim and the Trustee may deal with the Depository for all purposes (including paying interest on the Preferred Securities) as the sole holder of such Preferred Securities and the authorized representative of the Beneficial Holders;
 - (ii) the rights of the Beneficial Holders shall be exercised only through the Depository and shall be limited to those established by law and agreements between such Beneficial Holders and the Depository or the Depository Participants;
 - (iii) the Depository will make book-entry transfers among the Depository Participants; and
 - (iv) whenever this Indenture requires or permits actions to be taken based upon instruction or directions of Securityholders evidencing a specified percentage of the outstanding Preferred Securities, the Depository shall be deemed to be counted in that percentage only to the extent that it has received instructions to such effect from the Beneficial Holders or the Depository Participant, and has delivered such instructions to the Trustee.
- (d) Whenever a notice or other communication is required to be provided to Securityholders, unless and until Certificated Preferred Securities have been issued to Beneficial Holders pursuant to this Section 4.2, the Trustee shall provide all such notices and communications to the Depository and the Depository shall deliver such notices and communications to such Beneficial Holders in accordance with the Applicable Securities Legislation. Upon the termination of the book-entry registration system on the occurrence of one of the conditions specified in Section 4.2(b), the Trustee shall notify all applicable Beneficial Holders, through the Depository, of the availability of definitive Preferred Security certificates. Upon surrender by the Depository of the certificates representing the Book-Entry Preferred Securities and receipt of new registration instructions from the Depository, the Trustee shall deliver Certificated Preferred Securities to the holders thereof in accordance with the new registration instructions and, thereafter, the registration and transfer of such Preferred Securities will be governed by Section 4.1 and the remaining Sections of this Article 4.

4.3 No Notice of Trusts

Neither Westaim nor the Trustee shall be bound to take notice of or see to the execution of any trust (other than that created by this Indenture) whether express, implied or constructive, in

respect of any Preferred Security, and may transfer the same on the direction of the person registered as the holder thereof, whether named as trustee or otherwise, as though that person were the beneficial owner thereof.

4.4 Registers Open for Inspection

The Trustee shall from time to time when requested to do so by Westaim, in writing, furnish Westaim with a list of names and addresses of holders of registered Preferred Securities entered on the Master Record and showing the number (and, if requested, principal amount) and serial numbers of the Preferred Securities held by each such holder, provided the Trustee shall be entitled to charge a reasonable fee to provide such a list.

4.5 Exchanges of Preferred Securities

- (a) Subject to Section 4.6, Preferred Securities in any authorized form or denomination, other than Book-Entry Preferred Securities, may be exchanged for Preferred Securities in any other authorized form or denomination, of the same date of maturity, bearing the same interest rate and in the same number (and, accordingly, in the same aggregate principal amount) as the Preferred Securities so exchanged.
- (b) In respect of exchanges of Preferred Securities permitted by Section 4.5(a) Preferred Securities may be exchanged only at the principal office of the Trustee in the City of Toronto or Calgary or at such other place or places, if any, as may be specified in the Preferred Securities and at such other place or places as may from time to time be designated by Westaim with the approval of the Trustee. Any Preferred Securities tendered for exchange shall be surrendered to the Trustee. Westaim shall execute, in the case of Certificated Preferred Securities, and the Trustee shall Authenticate all Preferred Securities necessary to carry out exchanges as aforesaid. All Preferred Securities surrendered for exchange shall be cancelled.
- (c) Preferred Securities issued in exchange for Preferred Securities 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.

4.6 Closing of Master Record

Neither Westaim nor the Trustee shall be required to:

- (a) make transfers or exchanges of Preferred Securities on any Interest Payment Date for such Preferred Securities or during the five (5) preceding Business Days;
- (b) make transfers or exchanges of any Preferred Securities on the day on which the Trustee or Westaim makes a selection of Preferred Securities to be redeemed, or during the five (5) preceding Business Days; or

- (c) make transfers or exchanges of any Preferred Securities which have been selected or called for redemption unless upon due presentation thereof for redemption such Preferred Securities shall not be redeemed.

4.7 Charges for Registration, Transfer and Exchange

For each Preferred Security exchanged, registered, transferred or discharged from registration, the Trustee, except as otherwise herein provided, may make a reasonable charge for its services and in addition may charge a reasonable sum for each new Preferred Security issued, and payment of such charges and reimbursement of the Trustee for any stamp taxes or governmental or other charges required to be paid shall be made by the party requesting such exchange, registration, transfer or discharge from registration as a condition precedent thereto.

4.8 Ownership of Preferred Securities

- (a) Unless otherwise required by law, the person in whose name any registered Preferred Security is registered shall for all the purposes of this Indenture be, and be deemed to be, the owner thereof and payment of or on account of the principal of such Preferred Security and interest thereon shall be made to such registered holder.
- (b) The registered holder for the time being of any registered Preferred Security shall be entitled to the principal and/or interest evidenced by such instruments, respectively, free from all equity or rights of set-off or counterclaim between Westaim and the original or any intermediate holder thereof and all persons may act accordingly and the receipt of any such registered holder for any such principal or interest shall be a good discharge to Westaim and/or the Trustee for the same and neither Westaim nor the Trustee shall be bound to inquire into the title of any such registered holder.
- (c) Where Preferred Securities are registered in more than one name, the principal and interest from time to time payable in respect thereof may be paid to the order of all such holders, failing written instructions from them to the contrary, and the receipt of any one of such holders therefor shall be a valid discharge, to the Trustee and to Westaim.
- (d) In the case of the death of one or more joint holders of any Preferred Security the principal and interest from time to time payable thereon may be paid to the order of the survivor or survivors of such registered holders and the receipt of any such survivor or survivors therefor shall be a valid discharge to the Trustee and to Westaim.

4.9 Specified Non-Resident Shareholder Ownership Restriction

Notwithstanding anything to the contrary herein, a Securityholder shall not, directly or indirectly, sell, transfer, exchange, assign, pledge, bequeath, charge, encumber, grant a security interest in or enter into any other arrangement by which possession, legal title or beneficial ownership of the Preferred Securities to another person at any time (including, but not restricted

to, any disposition by agreement, option, right or privilege capable of becoming an agreement or option) unless (a) the person is not a "specified non-resident shareholder" of Westaim for purposes of subsection 18(4) of the Tax Act at that time or (b) the person is a "specified non-resident shareholder" of Westaim at that time but subsection 18(4) of the Tax Act will not apply to interest paid or payable by Westaim on any of the outstanding debts of Westaim to such specified non-resident shareholder and Westaim and the Trustee receive an opinion of Counsel which confirms the inapplicability of subsection 18(4) of the Tax Act as herein contemplated and which is in form and substance acceptable to Westaim and the Trustee, acting reasonably.

4.10 U.S. Securities Law Transfer Restrictions

Notwithstanding any other provision in this Indenture, a U.S. Purchaser may offer, sell, pledge, or otherwise transfer, directly or indirectly, the Preferred Securities only (A) to Westaim or its successor, (B) outside the United States in accordance with Rule 904 of Regulation S under the U.S. Securities Act, or (C) to an affiliate of such U.S. Purchaser, and in each case in compliance with applicable local laws and regulations; provided that, if such Affiliate is in the United States or is a U.S. Person, such transfer shall be subject to receipt by Westaim from such proposed Affiliate transferee of a duly completed and executed QIB Representation Letter in a form reasonably satisfactory to Westaim and the Trustee.

ARTICLE 5 REDEMPTION AND PURCHASE OF PREFERRED SECURITIES

5.1 Westaim Rights of Redemption

- (a) On and after May 26, 2022, Westaim shall have the right, at its sole option, to redeem at the Redemption Price, at any time and from time to time, any of the Preferred Securities, in accordance with the provisions set forth in this Article 5.
- (b) In addition to the redemption right pursuant to Section 5.1(a), at any time on and after May 26, 2020 and prior to May 26, 2022, Westaim shall have the right, at its sole option, to redeem at the Redemption Price, at any time and from time to time during such period, all or any of the Preferred Securities, provided that the Current Market Price was, on any date prior to the date on which the applicable Redemption Notice is given by Westaim, at least \$5.60.

5.2 Partial Redemption

If Westaim gives notice in accordance with Section 5.3 that less than all the Preferred Securities for the time being outstanding are at any time to be redeemed, the Preferred Securities to be so redeemed shall be selected by the Trustee on a pro rata basis to the nearest whole Preferred Security in accordance with the number of Preferred Securities registered in the name of each Securityholder or in such other manner as the Trustee deems equitable, subject to compliance with Applicable Securities Legislation. For this purpose the Trustee may (but need not) make, and from time to time amend, regulations with respect to the manner in which Preferred Securities may be so selected, and regulations so made shall be valid and binding upon all Securityholders, provided that in no circumstance shall redemptions be conducted in a manner that gives rise to fractional interests in one or more Preferred Securities.

5.3 Notice of Redemption

- (a) Notice of redemption (the “**Redemption Notice**”) in respect of any Preferred Securities shall be given by Westaim, in the manner provided in Section 14.3, to the Trustee not more than 60 days nor less than 30 days prior to the date set forth in such notice for the applicable redemption of Preferred Securities (each, a “**Redemption Date**”). Every such Redemption Notice shall specify the number of Preferred Securities called for redemption (and the corresponding aggregate principal amount thereof), the Redemption Date, the Redemption Price and the places of payment and shall state that interest upon the principal amount represented by the Preferred Securities called for redemption shall cease to be payable from and after the Redemption Date. The Redemption Notice for the Preferred Securities shall be substantially in the form of Schedule B. In addition, the Redemption Notice shall specify, in the case of a Book-Entry Preferred Security, that the redemption will take place in such manner as may be agreed upon by the Depository, the Trustee and Westaim.
- (b) The Trustee is responsible, upon receipt of a Redemption Notice, to forthwith provide a copy of the Redemption Notice to the Securityholders in the manner provided in Section 14.2. Each Securityholder shall receive specification of the number of Preferred Securities registered in its name which are being called for redemption.

5.4 Preferred Securities Due on Redemption Dates

Notice having been given as aforesaid, each Preferred Security so called for redemption shall thereupon be and become due and payable on the Redemption Date in an amount equal to the Redemption Price. From and after the Redemption Date, if the monies necessary to redeem such Preferred Securities shall have been deposited as provided in Section 5.5, interest upon the Preferred Securities shall cease and the principal amount thereof shall be deemed to have been repaid and such Preferred Securities shall be deemed to no longer be outstanding. If any question shall arise as to whether any Redemption Notice has been properly given as above provided and such deposit made, such question shall be decided by the Trustee whose decision shall be final and binding upon all parties in interest.

5.5 Deposit of Redemption Monies

Redemption of Preferred Securities shall be satisfied by Westaim depositing with the Trustee or any paying agent to the order of the Trustee, on or before 10:00 a.m. Calgary time no later than the third (3rd) Business Day immediately prior to the Redemption Date specified in such notice, such sums of money as is sufficient to pay the aggregate Redemption Price of the Preferred Securities so called for redemption. Westaim shall also deposit with the Trustee, if requested, a sum of money sufficient to pay any charges or expenses which may be incurred by the Trustee in connection with such redemption. Every such deposit shall be irrevocable. From the sums so deposited the Trustee shall pay or cause to be paid to the holders of such Preferred Securities so called for redemption, upon surrender of such Preferred Securities, the Redemption Price to which they are respectively entitled on redemption.

5.6 Failure to Surrender Preferred Securities Called for Redemption

In case the holder of any Preferred Securities so called for redemption shall fail on or before the Redemption Date to so surrender such holder's Preferred Securities, or shall not within such time accept payment of the redemption monies payable in respect of the holder's Preferred Securities so redeemed, or give such receipt therefor, if any, as the Trustee may require, then such redemption monies may be set aside in trust, either in the deposit department of the Trustee or in a chartered bank, and such setting aside shall for all purposes be deemed a payment to the Securityholder of the sum so set aside and, to that extent, the Preferred Securities shall thereafter not be considered as outstanding hereunder and the Securityholder shall have no other right except to receive payment of the applicable redemption monies so set aside, out of the monies so deposited by Westaim, upon surrender and delivery up, in the case of Certificated Preferred Securities, of such holder's Preferred Securities. In the event that any money required to be deposited hereunder with the Trustee or any depository or paying agent in respect of the redemption of Preferred Securities shall remain so deposited for a period of three (3) years less a day from the Redemption Date, then such monies shall at the end of such period be paid over or delivered over by the Trustee or such depository or paying agent to Westaim on its demand, and thereupon the Trustee shall not be responsible to Securityholders for any amounts owing to them and, subject to applicable law, thereafter the holder of a Preferred Security in respect of which such money was so repaid to Westaim shall have no rights in respect thereof except to obtain payment of the money due from Westaim, subject to any limitation period provided by applicable law. For greater certainty, Westaim shall be solely responsible for compliance with applicable unclaimed property laws for all amounts returned to it in accordance with this Section 5.6.

5.7 Cancellation of Preferred Securities Redeemed or Purchased

Subject to the provisions of Sections 5.2 and 5.8 as to Preferred Securities redeemed or purchased in part, all Certificated Preferred Securities redeemed and paid under this Article 5 may, at the option of Westaim, be delivered to the Trustee for cancellation.

5.8 Purchase of Preferred Securities by Westaim

Westaim may, at any time and from time to time subject to Applicable Securities Legislation, purchase Preferred Securities from the holders thereof (which may include purchases from or through an investment dealer or a firm holding membership on a recognized stock exchange), including by way of tender or by contract, at any price. Any Preferred Securities so purchased may, at the option of Westaim, be delivered to the Trustee for cancellation.

If, upon an invitation for tenders, more Preferred Securities than Westaim wishes to purchase are tendered at the same lowest price that Westaim is prepared to accept, the Preferred Securities to be purchased by Westaim shall be selected by the Trustee on a pro rata basis or in such other manner consented to (if required) by any regulatory authority having jurisdiction (if any) and which the Trustee considers appropriate, from the Preferred Securities tendered by each tendering Securityholder who tendered at such lowest price. For this purpose the Trustee may (but need not) make, and from time to time amend, regulations with respect to the manner in which Preferred Securities may be so selected, and regulations so made shall be valid and

binding upon all Securityholders, provided that in no circumstance shall purchases be conducted in a manner that gives rise to fractional interests in one or more Preferred Securities.

5.9 Repurchase of Preferred Securities at Option of the Securityholder upon a Change of Control

- (a) If a Change of Control occurs at any time that Preferred Securities are outstanding, Westaim shall make an offer, which such offer shall expire no earlier than close of business on the 30th day and not later than the close of business on the 60th day after such offer is first made, to the Securityholders to repurchase for cash all or, at the election of a Securityholder, any portion, of the Preferred Securities of such Securityholder, at the Change of Control Repurchase Price (the **“Change of Control Repayment Offer”**) on the Change of Control Repurchase Date. As promptly as practicable following the Change of Control, but in any event within thirty (30) days after the occurrence of such Change of Control, Westaim shall provide notice of the Change of Control to the Trustee in the manner provided in Section 14.3 (the **“Change of Control Issuer Notice”**). The Change of Control Issuer Notice shall include the form of a Change of Control Repurchase Notice (as defined below) to be completed by the Securityholder and shall state the Change of Control Repayment Offer and the following:
- (i) the events causing such Change of Control;
 - (ii) the date of such Change of Control;
 - (iii) the last date by which the Change of Control Repurchase Notice must be delivered to elect the repurchase option pursuant to this Section 5.9;
 - (iv) the Change of Control Repurchase Date;
 - (v) the Change of Control Repurchase Price;
 - (vi) the Securityholder’s right to require Westaim to purchase all or a portion of the Preferred Securities held by such Securityholder pursuant to the Change of Control Repayment Offer;
 - (vii) the name and address of the Trustee;
 - (viii) the procedures that the Securityholder must follow to exercise rights under this Section 5.9;
 - (ix) the procedures that the Securityholder must follow to withdraw a Change of Control Repurchase Notice;
 - (x) that, unless Westaim fails to pay such Change of Control Repurchase Price, Preferred Securities covered by any Change of Control Repurchase Notice will cease to be outstanding and interest will cease to accrue on and after the Change of Control Repurchase Date; and

- (xi) the Committee of Uniform Securities Identification Procedures (CUSIP) number of the Preferred Securities.

At Westaim's request, the Trustee shall give such Change of Control Issuer Notice in Westaim's name, at Westaim's expense, and within the notice period set out above; provided, that, in all cases, the text of such Change of Control Issuer Notice shall be prepared by Westaim. If any of the Preferred Securities are in the form of a Book-Entry Preferred Security, then Westaim shall modify such notice to the extent necessary to accord with the applicable procedures of the book-entry registration system for the Preferred Securities relating to the purchase of Book-Entry Preferred Securities.

- (b) A Securityholder may exercise its rights specified in Section 5.9 upon delivery of a written notice (which may be delivered by letter, overnight courier, hand delivery, facsimile transmission or in any other written form and, in the case of a Book-Entry Preferred Security, may be delivered electronically or by other means in accordance with the Depository's applicable procedures) of the exercise of such rights (a "**Change of Control Repurchase Notice**") to the Trustee at any time prior to the close of business on the second Business Day next preceding the Change of Control Repurchase Date, subject to extension to comply with all applicable laws.
 - (i) The Change of Control Repurchase Notice shall state: (A) the certificate number of the Preferred Security which the Securityholder will deliver to be purchased (or, if the Preferred Security is a Book-Entry Preferred Security form, any other items required to comply with the applicable procedures), (B) the portion of the principal amount of the Preferred Security which the Securityholder will deliver to be purchased, and (C) that such Preferred Security shall be purchased as of the Change of Control Repurchase Date pursuant to the terms and conditions specified in the Preferred Securities and in this Indenture.
 - (ii) The delivery of a Preferred Security for which a Change of Control Repurchase Notice has been timely delivered to the Trustee, and not validly withdrawn prior to, on or after the Change of Control Repurchase Date (together with all necessary endorsements) at the office of the Trustee shall be a condition to the receipt by the Securityholder of the Change of Control Repurchase Price therefor.
 - (iii) Westaim shall only be obliged to purchase, pursuant to this Section 5.9, a portion of a Preferred Security if the principal amount of such portion is ten dollars (\$10) or an integral multiple of ten dollars (\$10) (unless the purchase from a Securityholder is for all of such Securityholder's Preferred Securities).
- (c) Notwithstanding anything herein to the contrary, any Securityholder delivering to the Trustee the Change of Control Repurchase Notice contemplated by this

Section 5.9 shall have the right to withdraw such Change of Control Repurchase Notice in whole or in a portion thereof that is a principal amount of \$10 or in an integral multiple thereof, by 5:00 p.m. (Calgary time) prior to the close of business on the Business Day prior to the Change of Control Repurchase Date by delivery of a written notice of withdrawal to the Trustee in accordance with the procedures set out in the Change of Control Issuer Notice or, if not set out therein, then in accordance with Section 5.10.

- (d) The Trustee shall promptly notify Westaim of the receipt by it of any Change of Control Repurchase Notice or written withdrawal thereof.
- (e) Anything herein to the contrary notwithstanding, in the case of Book-Entry Preferred Securities, any Change of Control Repurchase Notice may be delivered or withdrawn and such securities may be surrendered or delivered for purchase in accordance with the applicable procedures of the book-entry registration system as in effect from time to time.

5.10 Effect of Change of Control Repurchase Notice

- (a) Upon receipt by the Trustee of a Change of Control Repurchase Notice from a Securityholder containing the information specified in Section 5.9(b)(i), the Securityholder of the Preferred Security in respect of which such Change of Control Repurchase Notice was given shall (unless such Change of Control Repurchase Notice is withdrawn as specified in Section 5.10(b)), thereafter be entitled to receive the Change of Control Repurchase Price with respect to such Preferred Security. The Change of Control Repurchase Price shall be paid to such Securityholder promptly following the later of (1) the Change of Control Repurchase Date, and (2) the time of delivery of such Preferred Security to the Trustee by the Securityholder thereof in the manner required by Section 5.9.
- (b) A Change of Control Repurchase Notice may be withdrawn by means of a written notice (which may be delivered by mail, courier, hand delivery, facsimile transmission or in any other written form and, in the case of Book-Entry Preferred Securities, may be delivered electronically or by other means in accordance with the applicable procedures of the book-entry registration system) of withdrawal delivered by the Securityholder to the Trustee no later than 5:00 p.m. (Calgary time) prior to the close of business on the Business Day immediately prior to the Change of Control Repurchase Date, specifying (1) the principal amount of the Preferred Securities or portion thereof (which must be a principal amount of ten dollars (\$10) or an integral multiple of ten dollars (\$10) in excess thereof (unless such withdrawal is in respect of all of such Securityholder's Preferred Securities)), with respect to which such notice of withdrawal is being submitted, (2) if Certificated Preferred Securities have been issued, the certificate number of the Preferred Securities being withdrawn in whole or in part (or if the Preferred Securities are not Certificated Preferred Securities, such written notice must comply with the applicable procedures of the book-entry registration system), and (3) the portion of the principal amount of the Preferred Securities that will remain

subject to the Change of Control Repurchase Notice, which portion must be a principal amount of ten dollars (\$10) or an integral multiple thereof.

5.11 Deposit of Change of Control Repurchase Price

- (a) On or before 12:00 p.m. (noon) (Calgary time) on the Business Day prior to the applicable Change of Control Repurchase Date, Westaim shall deposit with the Trustee an amount of money (in immediately available funds), sufficient to pay the aggregate Change of Control Repurchase Price of all the Preferred Securities or portions thereof that are to be purchased as of such Change of Control Repurchase Date.
- (b) If the Trustee holds, in accordance with the terms hereof, money sufficient to pay the Change of Control Repurchase Price of any Preferred Security for which a Change of Control Repurchase Notice has been tendered and not withdrawn in accordance with this Indenture then, on the Change of Control Repurchase Date, such Preferred Security will cease to be outstanding, whether or not the Preferred Security is delivered to the Trustee, and interest shall cease to accrue, and the rights of the Securityholder in respect of the Preferred Security shall terminate (other than the right to receive the Change of Control Repurchase Price as aforesaid). Westaim shall publicly announce the principal amount of Preferred Securities repurchased on or as soon as practicable after the Change of Control Repurchase Date. No amount will be paid on account of any Preferred Security so repurchased until the Preferred Security has been presented to the Trustee for cancellation.
- (c) The Trustee will promptly return to the respective Securityholders thereof any Preferred Securities with respect to which a Change of Control Repurchase Notice has been withdrawn in compliance with this Indenture.
- (d) If a Change of Control Repurchase Date falls after an Interest Period and on or before an Interest Payment Date, then interest on the Preferred Securities payable on such Change of Control Repurchase Date will instead be payable to the Securityholders in whose names the Preferred Securities are registered at the close of business at the end of such Interest Period.

5.12 Repayment to Westaim

To the extent that the aggregate amount of cash deposited by Westaim pursuant to Section 5.11 exceeds the aggregate Change of Control Repurchase Price of the Preferred Securities or portions thereof that Westaim is obligated to purchase, then on the Change of Control Repurchase Date, the Trustee shall return any such excess cash to Westaim.

5.13 Preferred Securities Purchased in Part

Any Preferred Security that is to be purchased only in part shall be surrendered at the office of the Trustee, and promptly after the Change of Control Repurchase Date, Westaim shall execute and the Trustee shall Authenticate and deliver to the Securityholder of such Preferred Security,

without service charge, a new Preferred Security or Preferred Securities, in aggregate principal amount equal to, and in exchange for, the portion of the principal amount of the Preferred Security so surrendered that is not purchased.

5.14 No Fractional Interests in Preferred Securities

The holder of Preferred Securities of which only a portion thereof are redeemed or purchased, upon surrender of such Preferred Securities for payment, shall be entitled to receive, as applicable and if necessary and without expense to such holder, one or more new certificates for Preferred Securities representing the unredeemed or unpurchased Preferred Securities, and the Trustee shall, in the case of Certificated Preferred Securities, Authenticate such new Certificated Preferred Securities or, with respect to a Book-Entry Preferred Security, the Depository shall make notations on the Book-Entry Preferred Security of the number and corresponding principal amount thereof so redeemed or purchased, as the case may be.

5.15 Redemption of Preferred Securities In Satisfaction of Warrant Exercise Price

If a Securityholder is also a holder of Warrants, the Securityholder may elect to pay the exercise price owing in respect of any particular due exercise of Warrants by surrendering for cancellation to Westaim the number of Preferred Securities having an aggregate Redemption Price, as of the date on which such exercise price is required to be paid by such Securityholder, that is equal to the aggregate exercise price payable by such Securityholder in respect of such exercised Warrants.

ARTICLE 6 SUBORDINATION OF PREFERRED SECURITIES

6.1 Applicability of Article

- (a) The Secured Obligations evidenced by each of the Preferred Securities issued hereunder, including the principal thereof and interest thereon, are subordinate and subject in right of payment to all Senior Indebtedness (including all payments thereunder) of Westaim (and/or any other Westaim Group Member), to the extent and in the manner hereinafter set forth in the following sections of this Article 6.
- (b) The Security Interest shall rank subordinate to and behind all Senior Security and each of the Trustee and the Securityholders consent to the granting of the Senior Security.
- (c) The Trustee and/or any Securityholder shall promptly, at the request of Westaim, return possession of any Collateral or related document (i) to Westaim if such Collateral or documentation is required to be disposed of by Westaim to another Person in connection with a Permitted Disposition, or (ii) to a Secured Creditor but only to the extent required by such Secured Creditor, subject to the terms of any intercreditor arrangements between such Secured Creditor and the Trustee.

6.2 Order of Payment

- (a) Upon any distribution of the assets of Westaim (and/or any other Westaim Group Member) arising from an Event of Default:
 - (i) all Senior Indebtedness shall first be paid in full, or provision made for such payment that is satisfactory to the Senior Creditors, before any payment is made on account of the principal of or interest on the Secured Obligations evidenced by the Preferred Securities;
 - (ii) any payment or distribution of assets of Westaim (and/or any other Westaim Group Member), whether in cash, property or securities, to which the Securityholders or the Trustee on behalf of such holders would be entitled except for the provisions of this Article 6, shall be paid or delivered by the trustee in bankruptcy, receiver, assignee for the benefit of creditors, or other liquidating agent making such payment or distribution, directly to the Senior Creditors or their representative or representatives, or to the trustee or trustees under any indenture pursuant to which any instruments evidencing any of such Senior Indebtedness may have been issued, to the extent necessary to pay all Senior Indebtedness in full after giving effect to any concurrent payment or distribution, or provision therefor, to such Senior Creditors, taking into account any priorities as between such payments and distributions; and
 - (iii) the Senior Creditors or a receiver or a receiver-manager of Westaim (and/or any other Westaim Group Member) or of all or part of its assets or any other enforcement agent may sell, mortgage, or otherwise dispose of Westaim's (and/or such other Westaim Group Member's) assets in whole or in part, free and clear of all Secured Obligations and without the approval of the Securityholders or the Trustee or any requirement to account to the Trustee or the Securityholders.
- (b) The rights and priority of the Senior Indebtedness and the Senior Security and the subordination pursuant hereto shall not be affected by:
 - (i) the time, sequence or order of creating, granting, executing, delivering of, or registering, perfecting or failing to register or perfect any security notice, caveat, financing statement or other notice in respect of the Security Interest or the Senior Security;
 - (ii) the time or order of the attachment, perfection or crystallization of any security constituted by the Security Interest or the Senior Security;
 - (iii) the taking of any collection, enforcement or realization proceedings pursuant to the Security Interest or the Senior Security;
 - (iv) the date of obtaining of any judgment or order of any bankruptcy court or any court administering bankruptcy, insolvency or similar proceedings as

to the entitlement of the Senior Creditors, or any of them or the Securityholders or any of them to any money or property of Westaim (and/or any other Westaim Group Member);

- (v) the failure to exercise any power or remedy reserved to the Senior Creditors under the Senior Security or to insist upon a strict compliance with any terms thereof;
- (vi) whether the Security Interest or any Senior Security is now perfected, hereafter ceases to be perfected, is avoidable by any trustee in bankruptcy or like official or is otherwise set aside, invalidated or lapses;
- (vii) the date of giving or failing to give notice to or making demand upon Westaim (and/or any other Westaim Group Member); or
- (viii) any other matter whatsoever.

6.3 Subrogation to Rights of Holders of Senior Indebtedness

- (a) Subject to the payment in full of all Senior Indebtedness, to the extent that any payment or distribution of assets of Westaim (and/or any other Westaim Group Member) otherwise payable to the Trustee on account of the Securityholders is made on account of the Senior Indebtedness pursuant to the application of Section 6.2, the Securityholders shall be subrogated to the rights of the Senior Creditors to receive payments and distributions of assets made in respect of or on account of Senior Indebtedness, until the principal and interest on the Preferred Securities shall be paid in full. No payment or distribution of assets to the Securityholders which would be payable or distributable to the Senior Creditors pursuant to this Article 6 shall, as between Westaim (and/or any other Westaim Group Member), their creditors (other than the Senior Creditors) and the Securityholders, be deemed to be a payment by Westaim (and/or any other Westaim Group Member) to or on account of the Securityholders, it being understood that the provisions of this Article 6 are, and are intended, solely for the purpose of defining the relative rights of the Securityholders, on the one hand, and the Senior Creditors, on the other hand.
- (b) The Trustee, for itself and on behalf of each of the Securityholders, hereby waives any and all rights to require a Senior Creditor to pursue or exhaust any rights or remedies with respect to Westaim (and/or any other Westaim Group Member) or any property and assets subject to security in favour of the Senior Creditor or in any other manner to require the marshalling of property, assets or security in connection with the exercise by the Senior Creditors of any rights, remedies or recourses available to them.

6.4 Obligation to Pay Not Impaired

Nothing contained in this Article 6 or elsewhere in this Indenture or in the Preferred Securities is intended to or shall impair, as between Westaim (and/or any other Westaim Group Member),

their creditors (other than the Senior Creditors), and the Securityholders, the obligation of Westaim, which is absolute and unconditional, to pay to the Securityholders the principal of and interest on the Preferred Securities, as and when the same shall become due and payable in accordance with their terms, or affect the relative rights of the Securityholders and creditors of Westaim (other than the Senior Creditors), nor shall anything herein or therein prevent the Trustee or any Securityholder from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, subject to Section 6.6 and any other rights under this Article 6 of the Senior Creditors in respect of cash, property or securities of Westaim (and/or any other Westaim Group Member) received upon the exercise of any such remedy.

6.5 Payment on Preferred Securities Permitted

Nothing contained in this Article 6 or elsewhere in this Indenture shall affect the right of Westaim to make, nor shall it prevent Westaim from making, at any time, any payment of principal or interest on the Preferred Securities, except in the event of an Event of Default (in which case Section 6.2 will be applicable) or as provided in Section 6.6. The fact that any payment of principal or interest is prohibited by this Article 6 shall not prevent the failure to make such payment from being an Event of Default (if applicable) hereunder. Nothing contained in this Article 6 or elsewhere in this Indenture shall prevent the application by the Trustee of any moneys deposited with the Trustee hereunder for the purpose of the payment of or on account of the principal or interest, if any, on the Preferred Securities, except in the event of an Event of Default (in which case Section 6.2 will be applicable) or as provided in Section 6.6 but subject, in both cases, to Section 6.8.

6.6 No Payment if Senior Indebtedness in Default

- (a) Upon the maturity of any Senior Indebtedness by lapse of time, acceleration or otherwise, or upon any enforcement of any Senior Indebtedness, then, except as provided in Section 6.8, all such Senior Indebtedness shall first be paid in full, or shall first have been duly provided for before any payment is made on account of the Preferred Securities.
- (b) In case of a circumstance constituting a default or event of default with respect to any Senior Indebtedness permitting (whether at that time or upon notice, lapse of time, or satisfaction of any other condition precedent) a Senior Creditor to demand payment or accelerate the maturity thereof where the notice of such default or event of default has been given by or on behalf of the holders of Senior Indebtedness to Westaim (and/or any other Westaim Group Member) or Westaim (and/or any other Westaim Group Member) otherwise has knowledge thereof, unless and until such default or event of default shall have been cured or waived or shall have ceased to exist, no payment shall be made by Westaim (except as provided in Section 6.8) with respect to the Preferred Securities and, until 120 days following the date of an Event of Default under this Indenture, neither the Trustee nor the Securityholders shall be entitled to demand, institute proceedings for the collection of (which shall, for certainty include proceedings related to an adjudication or declaration as to the insolvency or bankruptcy of Westaim or any other Westaim Group Member and other similar creditor proceedings), enforce

security or receive any payment or benefit (including without limitation by set-off (other than set-off representing payment of the exercise price for all or any part of any Warrants in accordance with the terms thereof), combination of accounts or otherwise in any manner whatsoever) on account of the Preferred Securities after the happening of such a default or event of default, and unless and until such default or event of default shall have been cured or waived or shall have ceased to exist, such payments shall be held in trust for the benefit of, and, if and when such Senior Indebtedness shall have become due and payable, shall be paid over to, the holders of the Senior Indebtedness or their representative or representatives or to the trustee or trustees under any indenture under which any instruments evidencing an amount of the Senior Indebtedness remaining unpaid until all such Senior Indebtedness shall have been paid in full, after giving effect to any concurrent payment or distribution to the holders of such Senior Indebtedness.

6.7 Confirmation of Subordination

Each Securityholder, by virtue of being a holder of Preferred Securities, is deemed to authorize and direct, and hereby does authorize and direct the Trustee on its behalf to take such action as may be necessary or appropriate to effectuate the subordination as provided in this Article 6 and appoints the Trustee its attorney-in-fact for any and all such purposes. Upon the written request of Westaim, and upon being furnished an Officer's Certificate stating that one or more named persons are Senior Creditors, or the representative or representatives of such holders, or the trustee or trustees under which any instrument evidencing such Senior Indebtedness may have been issued, and specifying the amount and nature of such Senior Indebtedness, the Trustee shall enter into a written agreement or agreements with Westaim (and/or any other Westaim Group Member) (as applicable) and the person or persons named in such Officer's Certificate confirming the subordination of the Preferred Securities and providing, among other things, further assurance that such person or persons are entitled to all the rights and benefits of this Article 6 as the holder or holders, representative or representatives, or trustee or trustees of the Senior Indebtedness specified in such Officer's Certificate and in such agreement. Such agreement shall be conclusive evidence that the indebtedness specified therein is Senior Indebtedness; however, nothing herein shall impair the rights of any holder of Senior Indebtedness who has not entered into such an agreement. For greater certainty, the Trustee is hereby authorized to enter into any such written agreements as may be requested by Westaim under this Section 6.7 and shall not bear any liability to Securityholders or otherwise for doing so.

6.8 Knowledge of Trustee

Notwithstanding the provisions of this Article 6, the Trustee will not be charged with knowledge of the existence of any fact 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 has received written notice thereof from Westaim, any Securityholder or any Senior Creditor, or any representative of any Senior Creditor or of any class of Senior Indebtedness.

6.9 Trustee May Hold Senior Indebtedness

The Trustee is entitled to all the rights set forth in this Article 6 with respect to any Senior Indebtedness at the time held by it or for which it acts as trustee, to the same extent as any Senior Creditor, and nothing in this Indenture deprives the Trustee of any of its rights as such holder.

6.10 Rights of Holders of Senior Indebtedness Not Impaired

No right of any Senior Creditor to enforce the subordination herein will at any time or in any way be prejudiced or impaired by any act or failure to act on the part of Westaim (and/or any other Westaim Group Member) or by any non-compliance by Westaim (and/or any other Westaim Group Member) with the terms, provisions and covenants of this Indenture, regardless of any knowledge thereof which any such Senior Creditor may have or be otherwise charged with.

6.11 Altering the Senior Indebtedness

The Senior Creditors have the right to extend, renew, modify or amend the terms of the Senior Indebtedness or any security therefor and to release, sell or exchange such security and otherwise to deal freely with Westaim (and/or any other Westaim Group Member), all without notice to or consent of the Securityholders or the Trustee and without affecting the liabilities and obligations of the parties to this Indenture or the Securityholders.

6.12 Additional Indebtedness

Except as may be otherwise expressly set forth in Section 8.16, this Indenture does not, and shall not, restrict Westaim (and/or any other Westaim Group Member) from incurring Indebtedness of whatsoever nature or kind (including Senior Indebtedness or Indebtedness ranking *pari passu* with, or junior to, the Preferred Securities) at any time, or from time to time, or from mortgaging, pledging or charging its real or personal property or properties to secure any Indebtedness or other financing.

6.13 Invalidated Payments

If any of the Senior Indebtedness shall be paid in full and subsequently, for whatever reason, such formerly paid or satisfied Senior Indebtedness becomes unpaid or unsatisfied, the terms and conditions of this Article 6 shall be reinstated and the provisions of this Article 6 shall again be operative until all Senior Indebtedness is repaid in full, provided that such reinstatement shall not give the Senior Creditors any rights or recourses against the Trustee or the Securityholders for amounts paid to such Securityholders subsequent to such payment or satisfaction in full and prior to such reinstatement.

ARTICLE 7
REPRESENTATIONS AND WARRANTIES OF WESTAIM

7.1 Representations and Warranties of Westaim

Westaim represents and warrants to the Trustee on the date hereof, for the benefit of the Securityholders, as follows:

- (a) **Existence.** It is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization, and is duly qualified to conduct business and is in good standing in each other jurisdiction where its ownership or lease of property or the conduct of its business requires such qualification except where the failure to be so qualified would not reasonably be expected to have a Material Adverse Effect. Westaim has the power and capacity to own and lease its assets and to carry on its business as presently carried on by it and has the power and capacity to execute and deliver the Indenture and to perform its obligations thereunder.
- (b) **No Breach.** The execution and delivery by it of the Indenture and the performance of its obligations thereunder do not and will not conflict with or result in a breach of any of the terms, conditions or provisions of (A) its constating documents or bylaws, (B) any Applicable Law, (C) any material contractual restriction binding on or affecting it or its properties, (D) any writ, judgment, injunction, determination or award which is binding on it, or (E) result in or require or permit the acceleration of the maturity of any outstanding Financial Indebtedness binding on or affecting it.
- (c) **Authorization.** The execution and delivery of the Indenture and the performance by it of its obligations under the Indenture have been duly authorized by all necessary corporate action, and no governmental approval and no registration, qualification, designation, declaration or filing with any Governmental Authority having jurisdiction over it or its assets, is necessary in connection therewith.
- (d) **Enforceability.** The Indenture has been duly executed and delivered by it and constitutes legal, valid and binding obligations of it enforceable against it in accordance with its terms, subject only to the discretion that a court may exercise in granting equitable remedies and any limitation under laws relating to bankruptcy, insolvency, moratorium, fraudulent preference, reorganization or other laws affecting creditors' rights generally from time to time in effect.
- (e) **No Default.** No Default or Event of Default has occurred and is continuing.
- (f) **Litigation and Other Proceedings.** No action, claim, lawsuit, demand, investigation or proceeding is now pending or, to the knowledge of Westaim, threatened against Westaim, before any Governmental Authority or before any arbitrator or panel of arbitrators, (a) that challenges Westaim's right or power to enter into or perform any of its obligations under the Indenture, or the validity or enforceability of the Indenture or any action taken thereunder, or (b) that has a

reasonable risk of being determined adversely to Westaim and that, if so determined, would reasonably be expected to have a Material Adverse Effect.

- (g) **Taxes.** Westaim has filed all federal, provincial and other material tax returns, reports and statements, including information returns, required by any Governmental Authority to be filed and has paid all material Taxes that are due except where payment thereof is being contested by Westaim in good faith.
- (h) **Compliance with Laws.** Westaim operates its business in compliance with all Applicable Laws, except to the extent that a failure to do so would not and would not reasonably be expected to have a Material Adverse Effect.
- (i) **No Action for Winding up or Bankruptcy.** There has been no voluntary or involuntary action taken either by or against Westaim for its winding up, bankruptcy, receivership, administration or similar or analogous event in respect of all or any material part of its assets or revenues and Westaim is not insolvent and has not ceased generally to pay its debts as such debts become due and will not, in consequence of the transactions contemplated herein, be unable to pay its debts as such debts become due.
- (a) **Material Information.** All material information concerning Westaim and/or its material Subsidiaries filed by or on behalf of Westaim under its profile on SEDAR (including, without limitation, annual reports, annual information forms, quarterly reports, annual and interim financial information, proxy statement and information circulars, current reports and material change reports, press releases and all other documents filed by or on behalf of Westaim under Westaim's profile on SEDAR which, for greater certainty, includes the audited annual financial statements of HIIG Ltd. filed by Westaim under its profile):
 - (i) was true, correct and complete in all material respects as of the date of filing or the effective date of such information; and
 - (ii) did not contain any misrepresentations (as such term is defined under Applicable Securities Legislation), as at the respective dates on which such information was prepared..

7.2 Survival of Representations and Warranties.

The representations and warranties in this Indenture shall be relied upon by the Trustee or the Securityholders, as the case may be, and shall be valid and effective as of the date when given and to such extent shall survive the execution and delivery of this Indenture for so long any Preferred Security shall be outstanding.

7.3 Knowledge.

Wherever any provision in the Indenture or any document in connection herewith refers to the knowledge (or an analogous phrase) of Westaim, such words are intended to signify that Westaim has actual knowledge or awareness of a particular fact or circumstance.

ARTICLE 8 COVENANTS

Westaim hereby covenants and agrees with the Trustee for the benefit of the Trustee and the Securityholders, that so long as any Preferred Securities remain outstanding:

8.1 Information Concerning the Business

Westaim will, at all reasonable times as and when requested, furnish or cause to be furnished to the Trustee, or its duly authorized agent or attorney, such information relating to the business of Westaim as the Trustee may reasonably require for the performance of its duties under this Indenture.

8.2 Payments

Westaim will duly and punctually: (a) pay the interest on the Preferred Securities and (b) make any payments or repayments as required by Section 2.2 or Article 5, in each case in accordance with their terms and the terms of this Indenture.

8.3 Information to Securityholders and Reporting

- (a) Westaim will furnish to the Trustee sufficient copies of: (i) each annual report or annual information form of Westaim; (ii) interim and annual consolidated financial statements, and any associated management's discussion and analysis; and (iii) the report, if any, of the Auditors of Westaim on such annual financial statements, which are, in each case, provided by Westaim to the holders of Common Shares. The Trustee shall forward to all Securityholders (at Westaim's expense) a copy of such documents provided by Westaim to the Trustee, provided that a copy of any such document shall not be required to be provided by Westaim to the Trustee and thereafter by the Trustee to the Securityholder if any such document is filed in respect of Westaim on the System for Electronic Document Analysis and Retrieval (SEDAR) within Canada and, in such event, such document shall for all purposes be deemed to have been provided hereunder to the Securityholders. The timeframes for providing such documents shall be: (i) the earlier of 60 days after the end of each of the first three (3) fiscal quarters of Westaim in the case of the interim financial statements and associated management's discussion and analysis and the date such financial statements are required to be delivered under Applicable Securities Legislation; and (ii) the earlier of 140 days following the end of a fiscal year of Westaim in the case of the annual audited consolidated financial statements, annual information form, report of the Auditors of Westaim and associated management's discussion and analysis

and the date such financial statements are required to be delivered under Applicable Securities Legislation.

- (b) Westaim shall, concurrently with the delivery or deemed delivery of its annual financial statements and at any other time upon request by the Trustee, deliver to the Trustee an Officer's Certificate as to the knowledge of such officer of Westaim who executes the Officer's Certificate compliance with all conditions and covenants in this Indenture certifying that after reasonable investigation and inquiry, Westaim has complied with all covenants, conditions or other requirements contained in this Indenture, the non-compliance with which would, with the giving of notice, lapse of time or otherwise, constitute an Event of Default hereunder, or if such is not the case, setting forth with reasonable particulars the circumstances of any failure to comply and steps taken or proposed to be taken to eliminate such circumstances and remedy such Event of Default, as the case may be.
- (c) Westaim will furnish to the Trustee, who shall provide to the Securityholders, all other continuous disclosure documents that must be sent to its securityholders, as applicable, pursuant to Applicable Securities Legislation in the Provinces of Canada in which it is a "reporting issuer" (or equivalent) within 15 days from the date such documents are sent to its securityholders, as applicable, provided however, that the filing of such documents on Westaim's profile at www.SEDAR.com shall deem Westaim to have complied with this section.
- (d) In the event Westaim is no longer subject to Applicable Securities Legislation, Westaim undertakes to do the following:
 - (i) hold a quarterly conference call to discuss the quarterly and annual information contained in the disclosure documents provided in Section 8.3(a) no later than five (5) Business Days from the time Westaim furnishes such documents to the Trustee;
 - (ii) no fewer than three (3) Business Days prior to the date of the conference call required to be held in accordance with Section 8.3(d)(i), issue a press release to the appropriate wire service for broad dissemination in Canada announcing the time and date of such conference call and directing the Securityholders and Beneficial Holders to contact the investor relations officer of Westaim to obtain reports and information and instructions regarding how to access such conference call; and
 - (iii) either:
 - (A) maintain an unrestricted public website to which Securityholders and Beneficial Holders are given access and to which the continuous disclosure documents described in this Section 8.3 and conference call details are posted, or

- (B) maintain a non-public website to which Securityholders and Beneficial Holders are given access to which the reports and conference call access details are posted, or
- (C) distribute via email (to the extent legally permitted to do so), such reports and conference call details to Securityholders and Beneficial Holders who request to receive such distributions.

8.4 Compliance with Applicable Laws

Westaim will comply with all covenants, conditions, stipulations, requirements and provisions contained in this Indenture, and observe and comply with, in all material respects, all governing laws and other requirements relating to its business and operations.

8.5 Insurance

Westaim will maintain adequate insurance issued by insurers of recognized standing in respect of its material property as is customary in the case of businesses of established reputation engaged in the same or similar businesses, and will provide the Trustee with copies of all insurance policies relating thereto if so requested.

8.6 Maintenance

Westaim will operate its respective property, or, if it is not the operator, use reasonable efforts to ensure that such property is operated, in accordance with sound industry practice and in accordance in all respects with all governing laws.

8.7 Conduct of Business

Other than as permitted by Section 8.14(a), Westaim will do or cause to be done all things necessary to maintain, or cause to be maintained, its existence in its present jurisdiction of organization or incorporation, to maintain its power and capacity to own its properties and assets, and to carry on its business in a commercially reasonable manner in accordance with normal industry standards.

8.8 Preservation of Permits, etc.

Westaim will comply with all governing laws and obtain and maintain all permits, licenses, consents and approvals necessary to the ownership of its property and to the conduct of its business in each jurisdiction where it carries on business or owns property.

8.9 Title

Westaim and the Guarantors will warrant and defend their right, title and interest in and to the Collateral and every part thereof against the claims of all Persons whomsoever and do, observe and perform all of its obligations herein in all material respects.

8.10 Taxes

Westaim shall pay and discharge or cause to be paid and discharged, promptly when due, all Taxes imposed upon it as well as all claims of any kind (including claims for labour, materials, supplies and rent) which, if unpaid, might become a lien thereupon; provided however, that it shall not be required to pay or cause to be paid any such Tax if the amount, applicability or validity thereof shall concurrently be contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been established on the books of Westaim or any other Westaim Group Member in the opinion of Westaim and its auditors.

8.11 Performance of Covenants by Trustee

If Westaim fails to perform any of its covenants contained in this Indenture, the Trustee may notify the Securityholders of such failure on the part of Westaim or may itself perform any of the covenants capable of being performed by it, but shall be under no obligation to do so or to notify the Securityholders. All sums so expended or advanced by the Trustee, acting reasonably, shall be repayable as provided in Section 8.12.

8.12 Pay Trustee's Remuneration

Westaim will pay the Trustee reasonable remuneration for its services as Trustee hereunder and will repay to the Trustee on demand all monies which shall have been paid by the Trustee in connection with the execution of the trusts hereby created and such monies including the Trustee's remuneration, shall be payable out of any funds coming into the possession of the Trustee in priority to payment of any principal on the Preferred Securities or interest thereon, but subject to the rights of the Senior Creditors. Such remuneration shall continue to be payable until the trusts hereof be finally wound up and whether or not the trusts of this Indenture shall be in the course of administration by or under the direction of a court of competent jurisdiction.

8.13 Notice of Default

Westaim shall notify the Trustee, in writing, immediately upon obtaining knowledge of any Default or Event of Default hereunder.

8.14 Preservation of Existence; Operation of Business

- (a) Subject to the express provisions hereof, Westaim will do or cause to be done all things necessary to preserve and keep in full force and effect its existence.
- (b) Westaim will keep or cause to be kept proper books of account in accordance with GAAP.

8.15 Maintain Listing and Securities Laws

- (a) Westaim will use reasonable commercial efforts to maintain the listing of the Common Shares and the Preferred Securities on the TSX Venture Exchange, the Toronto Stock Exchange or another stock exchange or market that is consented to in writing by Ordinary Resolution, and to maintain its status as a "reporting

issuer” (or equivalent) not in default of the requirements of the Applicable Securities Legislation; provided that the foregoing covenant shall not prevent or restrict Westaim from carrying out any Transaction in compliance with Article 11, even if as a result of such transaction Westaim ceases to be a “reporting issuer” in all or any of the provinces of Canada or the Common Shares and the Preferred Securities cease to be listed on the TSX Venture Exchange or any other stock exchange or market, as the case may be.

- (b) Westaim will, at the relevant times and upon exercise of the relevant rights or elections, comply and take all measures necessary to comply at all times with Applicable Securities Legislation including, without limitation, make application for any order, ruling, registration or filing or give any notice required under Applicable Securities Legislation.

8.16 Limitations on Indebtedness

Westaim shall ensure that none of Westaim, AOC, AFHC or HIIG Ltd. (as the case may be) will, directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise (in any such case, “**incur**”), with respect to any Financial Indebtedness that ranks senior to the Secured Obligations; provided however, that Westaim, AOC, AFHC or HIIG Ltd. (as the case may be) may incur such Financial Indebtedness that ranks senior to the Secured Obligations if: (a) (i) in the case of Westaim, the ratio of Financial Indebtedness to Equity of Westaim itself (at the holding company level on a stand-alone basis), as at the date of the most recent financial statements delivered pursuant to Section 8.3 was not greater than 0.50:1.00; (ii) in the case of AOC, the ratio of Financial Indebtedness to Equity of AOC, as at the date of the most recent financial statements delivered pursuant to Section 8.3 was not greater than 2.00:1.00; (iii) in the case of AFHC, the ratio of Financial Indebtedness to Equity of AFHC, as at the date of the most recent financial statements delivered pursuant to Section 8.3, is not greater than 2.00:1.00 and (iv) in the case of HIIG Ltd., the ratio of Financial Indebtedness to Capitalization of HIIG Ltd., as at the date of the most recent financial statements delivered pursuant to Section 8.3 was not greater than 0.35:1.00; in each case calculated on a pro forma basis (including a pro forma application of the proceeds of such Financial Indebtedness) as if such Financial Indebtedness had been incurred as at the date of the most recent financial statements delivered pursuant to Section 8.3; and (b) no Default or Event of Default shall have occurred and be continuing, provided further that Westaim shall not have determined (acting reasonably and in good faith) that the applicable ratios set out in this Section 8.16 would not be satisfied as at the actual date of incurrence of such Financial Indebtedness.

8.17 Further Instruments and Acts

Upon request of the Trustee, Westaim and the Guarantors will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of this Indenture, including all such acts may be required to maintain the effectiveness, perfection and priority of the Security Interest.

8.18 Negative Covenants

So long as any obligations remain outstanding under the Preferred Securities or this Indenture, and unless the Trustee, on behalf of the Securityholders, otherwise consents in writing, which consent may be withheld by the Trustee's relying on the advice of Counsel (unless expressly stated otherwise), Westaim covenants and agrees that it will not do or permit any of the following:

- (a) so long as Fairfax Financial Holdings Limited and/or any of its Affiliates own more than 51% in principal amount of the outstanding Preferred Securities (but not otherwise), directly or indirectly sell, assign, transfer, convey, surrender, exchange, lease, sub-lease or otherwise dispose of all or any part of the Collateral except as part of a Permitted Disposition;
- (b) enter into directly or indirectly any transaction or group of related transactions (including the purchase, lease, sale or exchange of properties of any kind or the rendering of any service) with any Affiliate (other than another Westaim Group Member), except in the ordinary course and pursuant to the reasonable requirements of its business and upon fair and reasonable terms no less favourable to it than would be obtainable in a comparable arm's-length transaction with a Person not an Affiliate; or
- (c) change its name or the location of its chief executive office without giving the Trustee 15 days' prior notice thereof.

ARTICLE 9 DEFAULT

9.1 Events of Default

If and when any one or more of the following events (herein called an "**Event of Default**") shall happen with respect to the Preferred Securities, namely:

- (a) a default by Westaim in payment of interest on any Preferred Securities when due and payable and the continuance of such default for ten (10) days provided, however, that in no event does a deferral of interest in accordance with Article 3 constitute a default in payment of interest on any Preferred Securities;
- (b) (i) a default by Westaim in performing or observing the covenants prescribed in Section 8.16 or 8.18; or (ii) a default by Westaim or a Guarantor in performing or observing any of the other material covenants, agreements or obligations of Westaim or such Guarantor as described herein, and, in each case, the continuance of such default for thirty (30) days after written notice to Westaim by the Trustee or by the Securityholders of not less than 25% in principal amount of outstanding Preferred Securities requiring the same to be remedied;
- (c) the failure by Westaim to make a Change of Control Repayment Offer upon the occurrence of a Change of Control;

- (d) a decree, judgment, or order by a court having jurisdiction in the premises shall have been entered adjudging any Westaim Group Member bankrupt or insolvent or approving as properly filed a petition seeking reorganization, readjustment, arrangement, composition or similar relief for any Westaim Group Member, under the *Bankruptcy and Insolvency Act* (Canada), *Companies' Creditors Arrangement Act* (Canada) or any other similar bankruptcy, insolvency or analogous applicable law and such decree, judgment or order of a court having jurisdiction in the premises for the appointment of a receiver or liquidator or trustee or assignee in bankruptcy or insolvency of any Westaim Group Member or of a substantial part of its property, or for the winding up or liquidation of its affairs, shall have remained in force for a period of thirty (30) consecutive days; or any substantial part of the property of any Westaim Group Member shall be sequestered or attached and shall not be returned to the possession of such Westaim Group Member or released from such attachment, as the case may be, whether by filing of a bond, or stay or otherwise, within thirty (30) consecutive days thereafter;
- (e) any Westaim Group Member shall institute proceedings to be adjudicated a voluntary bankrupt, or shall consent to the filing of a bankruptcy proceeding against it, or shall file a petition or answer or consent seeking reorganization, readjustment, arrangement, composition or similar relief under the *Bankruptcy and Insolvency Act* (Canada), *Companies' Creditors Arrangement Act* (Canada) or any other similar bankruptcy, insolvency or analogous applicable law or shall consent to the filing of any such petition, or shall consent to the appointment of a receiver or liquidator or trustee or assignee in bankruptcy or insolvency for it or of a substantial part of its property, or shall make an assignment for the benefit of creditors, or shall be unable, or admit in writing its inability, to pay its debts generally as they become due, or corporate action shall be taken by any Westaim Group Member in furtherance of any of the aforesaid actions;
- (f) a resolution is passed for the winding-up or liquidation of any Westaim Group Member except in the course of carrying out or pursuant to a transaction in respect of which the conditions of Section 11.1 are duly observed and performed; and
- (g) any Security Interest shall be held in any judicial proceeding to be unenforceable or invalid or shall cease for any reason to be in full force and effect or any Guarantor, or any Person acting on behalf of a Guarantor, shall deny or disaffirm its obligations under its Security Interest;

then, and in each and every such case which has happened and is continuing (other than an Event of Default specified in clause (d) or (e) above and subject to the provisions of Sections 6.6 and 9.3), the Trustee may, in its discretion, and shall, upon the written request of the Securityholders of not less than 51% in principal amount of the outstanding Preferred Securities at such time (or a written request of the Depository Participants having received instructions from the Beneficial Holders holding at least 51% of the outstanding Preferred Securities), declare the principal together with accrued interest on

all such Preferred Securities to be due and payable immediately, by a notice in writing to Westaim (and to the Trustee if given by the Securityholders), and upon any such declaration such principal amount, together with accrued and unpaid interest thereon, shall become immediately due and payable. If the Trustee fails to notify in writing Westaim pursuant to the terms hereof, the Securityholders having provided the written request to the Trustee may do so. If an Event of Default specified in clause (d) or (e) occurs and is continuing, then the principal of, together with accrued interest on, all outstanding Preferred Securities shall become due and payable without any declaration or other act on the part of either the Trustee or any Securityholder.

9.2 Notice of Events of Default

If an Event of Default shall occur and be continuing the Trustee shall, within 30 days after it receives written notice of the occurrence of such Event of Default, give notice of such Event of Default to the Securityholders in the manner provided in Section 14.2.

9.3 Waiver of Default

Upon the happening of any Event of Default that is continuing hereunder:

- (a) the Securityholders shall have the power (in addition to the powers exercisable by Extraordinary Resolution as hereinafter provided) by requisition in writing by Securityholders holding not less than 25% of the number of Preferred Securities then outstanding, to instruct the Trustee to waive any Event of Default and the Trustee shall thereupon waive the Event of Default upon such terms and conditions as shall be prescribed in such requisition; and
- (b) the Trustee shall have power to waive any Event of Default, upon such terms and conditions as the Trustee may deem advisable, if in the Trustee's opinion the same shall have been cured or adequate satisfaction made therefor.

No such act or omission either of the Trustee or of the Securityholders shall extend to or be taken in any manner whatsoever to affect any subsequent Event of Default or the rights resulting therefrom.

9.4 Enforcement by the Trustee

- (a) Subject to the provisions of Section 9.3 and to the provisions of any Extraordinary Resolution that may be passed by the Securityholders, if the Trustee determines in its discretion, or is requested by the Securityholders under Section 9.1, to take any action or proceeding as a result of an Event of Default then, upon being funded and indemnified to its reasonable satisfaction against all costs, expenses and liabilities to be incurred, the Trustee may proceed in its name as trustee hereunder to take such proceedings authorized by law or equity as the Trustee in such Securityholder request shall have been directed to take, or if such request contains no such direction or if the Trustee shall act without such request, then by such proceedings authorized by law or in equity as the Trustee shall deem expedient.

- (b) In furtherance of the rights of the Trustee set forth in this Indenture, 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 Securityholders, 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 Securityholders allowed in any insolvency, bankruptcy, liquidation or other judicial proceedings relative to Westaim or its creditors or relative to or affecting its property. The Trustee is hereby irrevocably appointed (and the successive respective Securityholders by taking and holding the same shall be conclusively deemed to have so appointed the Trustee) the true and lawful attorney-in-fact of the respective Securityholders with authority to make and file in the respective names of the Securityholders or on behalf of the Securityholders as a class, subject to deduction from any such claims of the amounts of any claims filed by any of the Securityholders 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 papers and documents and to do and perform any and all such acts and things for and on behalf of such Securityholders, as may be necessary or advisable in the opinion of the Trustee, in order to have the respective claims of the Trustee and of the Securityholders against Westaim or its property allowed in any such proceeding, and to receive payment of or on account of such claims.
- (c) All rights of action hereunder may be enforced by the Trustee without the possession of any of the Preferred Securities or the production thereof on the trial or other proceedings relating 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 Securityholders subject to the provisions of this Indenture. In any proceeding brought by the Trustee (and also any proceeding in which a declaratory judgment of a court may be sought as to the interpretation or construction of any provision of this Indenture, to which the Trustee shall be a party) the Trustee shall be held to represent all the Securityholders, and it shall not be necessary to make any Securityholders parties to any such proceeding.

9.5 No Suits by Securityholders

No holder of any Preferred Security shall have any right to institute any action, suit or proceeding at law or in equity for the purpose of enforcing any right(s) of a Securityholder hereunder unless: (a) such holder shall previously have given to the Trustee written notice of the happening of an Event of Default hereunder; (b) the Securityholders by Ordinary Resolution or by written instrument signed by Securityholders holding not less than 51% of the number of Preferred Securities then outstanding shall have made a request to the Trustee and the Trustee shall have been afforded reasonable opportunity either itself to proceed to exercise the powers hereinbefore granted or to institute an action, suit or proceeding in its name for such purpose; (c) the Securityholders or any of them shall have furnished to the Trustee, when so requested by the Trustee, sufficient funds and security and indemnity satisfactory to it against the costs,

expenses and liabilities to be incurred therein or thereby; and (d) the Trustee shall have failed to act within a reasonable time after such notification, request and offer of indemnity and such notification, request and offer of indemnity are hereby declared in every such case, at the option of the Trustee, to be conditions precedent to any such proceeding or for any other remedy hereunder by or on behalf of the holder of any Preferred Securities.

9.6 Application of Monies by Trustee

- (a) Except as herein otherwise expressly provided, any monies received by the Trustee from Westaim as a result of legal or other proceedings or from any trustee in bankruptcy or liquidator of Westaim, shall, subject to the rights of Senior Creditors, be applied, together with any other monies in the hands of the Trustee available for such purpose, as follows:
 - (i) first, in payment or in reimbursement to the Trustee of its compensation, costs, charges, expenses, borrowings, advances or other monies furnished or provided by or at the instance of the Trustee in or about the execution of its trusts under, or otherwise in relation to, this Indenture, with interest thereon as herein provided;
 - (ii) second, but subject as hereinafter in this Section 9.6 provided, in payment, ratably and proportionately to the Securityholders, in such order or priority as between principal and interest as may be reasonably determined by the Trustee having regard to all of the circumstances; and
 - (iii) thereafter, in payment of the surplus, if any, of such monies to Westaim or its assigns;

provided, however, that no payment shall be made pursuant to clause (ii) above in respect of the principal or interest on any Preferred Security held, directly or indirectly, by or for the benefit of Westaim or any other Westaim Group Member (other than any Preferred Security pledged for value and in good faith to a person other than Westaim or any other Westaim Group Member but only to the extent of such person's interest therein) except subject to the prior payment in full of the principal and interest (if any) on all Preferred Securities which are not so held.

- (b) The Trustee shall not be bound to apply or make any partial or interim payment of any monies coming into its hands if the amount so received by it, after reserving thereout such amount as the Trustee may think necessary to provide for the payments mentioned in Section 9.6(a), is insufficient to make a distribution of at least 2.0% of the aggregate principal amount of the outstanding Preferred Securities, but it may retain the money so received by it and invest or deposit the same as provided in Section 15.8 until the money or the investments representing the same, with the income derived therefrom, together with any other monies for the time being under its control shall make it advisable to apply the same in the manner hereinbefore set forth. The foregoing shall, however, not apply to a final payment in distribution hereunder.

9.7 Notice of Payment by Trustee

Not less than 10 days' notice shall be given in the manner provided in Section 14.2 by the Trustee to the Securityholders of any payment to be made under this Article 9. Such notice shall state the time when and place where such payment is to be made and also the liability under this Indenture to which it is to be applied.

9.8 Trustee May Demand Production of Preferred Securities

The Trustee shall have the right to demand production of the Preferred Securities in respect of which any payment is to be made and may cause to be endorsed on the same a memorandum of the amount so paid and the date of payment, but the Trustee may, in its discretion, dispense with such production and endorsement, upon such indemnity being given to it and to Westaim as the Trustee shall deem sufficient.

9.9 Remedies Cumulative

Subject to any limitation on rights and remedies set forth in this Indenture, no remedy herein conferred upon or reserved to the Trustee, or upon or to the Securityholders 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 or by equity.

9.10 Judgment Against Westaim

Westaim covenants and agrees with the Trustee that, in case of any judicial or other proceedings to enforce the rights of the Securityholders as herein permitted, judgment may be rendered against it in favour of the Securityholders or in favour of the Trustee, as trustee for the Securityholders.

9.11 Immunity

The Securityholders 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 officer, director, employee or agent of Westaim or any other Westaim Group Member (or of any successor thereof) or any holder of securities of Westaim, in each case in such capacity, for the payment of the principal or interest on any of the Preferred Securities or on any covenant, agreement, representation or warranty by Westaim or any other Westaim Group Member herein or in the Preferred Securities contained.

ARTICLE 10 SATISFACTION AND DISCHARGE

10.1 Cancellation and Destruction

All Preferred Securities shall forthwith after payment of all obligations outstanding thereunder be:

- (a) in the case of Certificated Preferred Securities, delivered to the Trustee and cancelled by it; and
- (b) in the case of Uncertificated Preferred Securities, be cancelled by way of a Transaction Instruction.

All Preferred Securities cancelled or required to be cancelled under this or any other provision of this Indenture shall be destroyed by the Trustee and, if required by Westaim, the Trustee shall furnish to it a destruction certificate setting out the designating numbers (as and if applicable) of the Preferred Securities so destroyed.

10.2 Non-Presentation of Preferred Securities

In case the holder of any Certificated Preferred Security shall fail to present the same for payment on the date on which the principal, interest (if any) or other monies thereon (such as the Redemption Price, in the case of redemption by Westaim), or represented thereby, becomes payable under this Indenture, or such holder shall not accept payment on account thereof and give such receipt therefor, if any, as the Trustee may require:

- (a) Westaim shall be entitled to pay or deliver to the Trustee and direct it to set aside; or
- (b) in respect of monies in the hands of the Trustee which may or should be applied to the payment of the Preferred Securities, Westaim shall be entitled to direct the Trustee to set aside; or
- (c) if the redemption was pursuant to notice given by the Trustee, the Trustee may itself set aside;

the principal, interest (if any) or others monies thereon, as the case may be, in trust to be paid to the holder of such Certificated Preferred Security upon due presentation or surrender thereof in accordance with the provisions of this Indenture; and thereupon the principal, interest (if any) or other monies payable on or represented by each Certificated Preferred Security in respect whereof such monies have been set aside shall be deemed to have been paid and the holder thereof shall thereafter have no right in respect thereof except that of receiving delivery and payment of the monies so set aside by the Trustee upon due presentation and surrender thereof, subject always to the provisions of Section 10.3.

10.3 Repayment of Unclaimed Monies

Subject to applicable law, any monies set aside under Section 10.2 and not claimed by and paid to Securityholders as provided in Section 10.2 within three (3) years less a day after the date of such setting aside shall be repaid and delivered to Westaim by the Trustee and thereupon the Trustee shall be released from all further liability with respect to such monies and thereafter the Securityholders in respect of which such monies were so repaid to Westaim shall have no rights in respect thereof except to obtain payment of the money due from Westaim, subject to any limitation period provided by applicable law. For greater certainty, Westaim shall be solely

responsible for compliance with applicable unclaimed property laws for all amounts returned to it in accordance with this Section 10.3.

10.4 Discharge

The Trustee shall at the written request of Westaim release and discharge this Indenture and execute and deliver such instruments as it shall be advised by Counsel are requisite for that purpose and to release Westaim from its covenants herein contained (other than the provisions relating to the indemnification of the Trustee), upon proof being given to the reasonable satisfaction of the Trustee that the principal and interest on all the Preferred Securities, and all other monies payable hereunder, have been paid or satisfied or have been duly and effectually provided for in accordance with the provisions hereof.

10.5 Satisfaction

- (a) Westaim shall be deemed to have fully paid, satisfied and discharged all of the outstanding Preferred Securities and the Trustee, at the expense of Westaim, shall execute and deliver proper instruments acknowledging the full payment, satisfaction and discharge of such Preferred Securities, when, with respect to all of the outstanding Preferred Securities, Westaim has deposited or caused to be deposited, with the Trustee, funds or property in trust for the purpose of making payment on such Preferred Securities sufficient to pay, satisfy and discharge the entire amount of principal and accrued and unpaid interest outstanding in respect to such Preferred Securities up to the earlier to occur of the events described in (A) Section 5.1(a) and (B) provided that the Current Market Price was, on any date prior to the date on which the deposit is made, at least \$5.60, Section 5.1(b), assuming in each case that Westaim has exercised its redemption rights described in the applicable section.
- (b) Upon the satisfaction of the conditions set forth in Section 10.5(a) with respect to all the outstanding Preferred Securities, the terms and conditions of the Preferred Securities, including the terms and conditions with respect thereto set forth in this Indenture shall no longer be binding upon or applicable to Westaim.
- (c) Any funds or obligations deposited with the Trustee pursuant to this Section 10.5 shall be denominated in the currency or denomination of the Preferred Securities in respect of which such deposit is made.

10.6 Continuance of Rights, Duties and Obligations

Where trust funds or trust property have been deposited pursuant to Section 10.5, the Securityholders and Westaim shall continue to have and be subject to their respective rights, duties and obligations under Article 2 and Article 6.

ARTICLE 11 MATERIAL TRANSACTIONS

11.1 Restrictions on Certain Transactions.

Westaim shall not, without the approval of Securityholders by Ordinary Resolution, enter into any transaction or series of transactions, or become party to any transaction whereby directly or indirectly all or substantially all of its property and assets would become the property and assets of any other person (other than, in each case, where that other person is an Affiliate of Westaim), and whether occurring by way of reorganization, dissolution, winding-up, liquidation, merger, consolidation, amalgamation, arrangement, transfer, lease or otherwise (herein a “**Transaction**”), unless Westaim shall have, at or prior to the effective date of such Transaction, delivered to the Trustee an Officer’s Certificate stating that:

- (a) the board of directors of Westaim has determined that the terms of such Transaction will not materially impair any of the rights and powers of the Trustee and of the Securityholders hereunder; and
- (b) to the best of the information and belief of the officer so certifying, after giving effect to such Transaction, no Event of Default, and no event which after notice or lapse of time or both would become an Event of Default, shall have occurred and be continuing.

11.2 Successor Substituted

Provided that Section 11.1 is complied with by Westaim, the Trustee shall take all such requisite action in connection with this Indenture, including releasing all or part of its Security Interest, as applicable, and executing any supplemental indenture hereto or other document, in order to give effect to the Transaction in accordance with its terms.

ARTICLE 12 COMPULSORY ACQUISITION

12.1 Definitions

In this Article:

- (a) “**Dissenting Securityholders**” means a Securityholder who does not accept an Offer referred to in Section 12.2 and includes any assignee of the Preferred Security of a Securityholder to whom such an Offer is made, whether or not such assignee is recognized under this Indenture;
- (b) “**Offer**” means an offer to acquire outstanding Preferred Securities where, as of the date of the offer to acquire, the Preferred Securities that are subject to the offer to acquire, together with the Offeror’s Preferred Securities, constitute in the aggregate 20% or more of the number of outstanding Preferred Securities;
- (c) “**offer to acquire**” includes an acceptance of an offer to sell;

- (d) **“Offeror”** means a person, or two or more persons acting jointly or in concert, who make an Offer to acquire Preferred Securities;
- (e) **“Offeror’s Notice”** means the notice described in Section 12.3; and
- (f) **“Offeror’s Preferred Securities”** means Preferred Securities beneficially owned, or over which control or direction is exercised, on the date of an Offer by the Offeror, any Affiliate or Associate of the Offeror or any person acting jointly or in concert with the Offeror.

12.2 Offer for Preferred Securities

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

- (a) within the time provided in the Offer for its acceptance or within 120 days after the date the Offer is made, whichever period is the shorter, the Offer is accepted by Securityholders representing at least 90% of the total number of outstanding Preferred Securities, other than the Offeror’s Preferred Securities;
- (b) the Offeror is bound to take up and pay for, or has taken up and paid for the Preferred Securities of the Securityholders who accepted the Offer; and
- (c) the Offeror complies with Sections 12.3 and 12.5;

the Offeror is entitled to acquire, and the Dissenting Securityholders are required to sell to the Offeror, the Preferred Securities held by the Dissenting Securityholder for the same consideration per Preferred Security payable or paid, as the case may be, under the Offer.

12.3 Offeror’s Notice to Dissenting Shareholders

Where an Offeror is entitled to acquire Preferred Securities held by Dissenting Securityholders pursuant to Section 12.2 and the Offeror wishes to exercise such right, the Offeror shall send by registered mail within 30 days after the date of termination of the Offer a notice (the **“Offeror’s Notice”**) to each Dissenting Securityholder stating that:

- (a) Securityholders holding at least 90% of the total number of all outstanding Preferred Securities, other than Offeror’s Preferred Securities, have accepted the Offer;
- (b) the Offeror is bound to take up and pay for, or has taken up and paid for, the Preferred Securities of the Securityholders who accepted the Offer;
- (c) Dissenting Securityholders must transfer their respective Preferred Securities to the Offeror on the terms on which the Offeror acquired the Preferred Securities of the Securityholders who accepted the Offer within 21 days after the date of the sending of the Offeror’s Notice; and

- (d) Dissenting Securityholders must send their respective Preferred Security certificate(s) to the Trustee within 21 days after the date of the sending of the Offeror's Notice.

12.4 Delivery of Preferred Security Certificates

A Dissenting Securityholder to whom an Offeror's Notice is sent pursuant to Section 12.3 shall, within 21 days after the sending of the Offeror's Notice, send such Dissenting Securityholder's Preferred Security certificate(s) to the Trustee duly endorsed for transfer.

12.5 Payment of Consideration to Trustee

Within 21 days after the Offeror sends an Offeror's Notice pursuant to Section 12.3, the Offeror shall pay or transfer to the Trustee, or to such other person as the Trustee may direct, the cash or other consideration that is payable to Dissenting Securityholders pursuant to Section 12.2. The acquisition by the Offeror of all Preferred Securities held by all Dissenting Securityholders shall be effective as of the time of such payment or transfer.

12.6 Consideration to be held in Trust

The Trustee, or the person directed by the Trustee, shall hold in trust for the Dissenting Securityholders the cash or other consideration they or it receives under Section 12.5. The Trustee, or such persons, shall deposit cash in a separate account in a Canadian chartered bank, or other body corporate, any of whose deposits are insured by the Canada Deposit Insurance Corporation, and shall place other consideration in the custody of a Canadian chartered bank or such other body corporate.

12.7 Completion of Transfer of Preferred Securities to Offeror

Within 30 days after the date of the sending of an Offeror's Notice pursuant to Section 12.3, the Trustee, if the Offeror has complied with Section 12.5, shall:

- (a) do all acts and things and execute and cause to be executed all instruments as in the Trustee's opinion may be necessary or desirable to cause the transfer of the Preferred Securities of the Dissenting Securityholders to the Offeror;
- (b) send to each Dissenting Securityholder who has complied with Section 12.4 the consideration to which such Dissenting Securityholder is entitled under this Article 12; and
- (c) send to each Dissenting Securityholder who has not complied with Section 12.4 a notice stating that:
 - (i) such Dissenting Securityholder's Preferred Securities have been transferred to the Offeror;
 - (ii) the Trustee or some other person designated in such notice is holding in trust the consideration for such Preferred Securities; and

- (iii) the Trustee, or such other person, will send the consideration to such Dissenting Securityholder as soon as possible after receiving such Dissenting Securityholder's Preferred Security certificate(s) or such other documents as the Trustee or such other person may require in lieu thereof;

and the Trustee is hereby appointed the agent and attorney of the Dissenting Securityholders for the purposes of giving effect to the foregoing provisions.

12.8 Communication of Offer to Westaim

An Offeror cannot make an Offer for Preferred Securities unless, concurrent with the communication of the Offer to any Securityholder, a copy of the Offer is provided to Westaim.

ARTICLE 13 MEETINGS OF PREFERRED SECURITYHOLDERS

13.1 Right to Convene Meeting

The Trustee or Westaim may at any time and from time to time, and the Trustee shall, on receipt of a written request of Westaim or a written request signed by the holders of not less than 25% of the number of Preferred Securities then outstanding and upon receiving funding and being indemnified to its reasonable satisfaction by Westaim or by the Securityholders signing such request against the costs which may be incurred in connection with the calling and holding of such meeting, convene a meeting of the Securityholders. In the event of the Trustee failing, within 10 days after receipt of any such request and such funding of indemnity, to give notice convening a meeting, Westaim or such Securityholders, as the case may be, may convene such meeting. Every such meeting shall be held in the City of Toronto or at such other place as may be approved or determined by the Trustee.

13.2 Notice of Meetings

At least 21 days' notice of any meeting shall be given to the Securityholders in the manner provided in Section 14.2 and a copy of such notice shall be sent by post to the Trustee, unless the meeting has been called by it. Such notice shall state the time when and the place where the meeting is to be held and shall state briefly the general nature of the business to be transacted thereat and it shall not be necessary for any such notice to set out the terms of any resolution to be proposed or any of the provisions of this Article 13. The accidental omission to give notice of a meeting to any holder of Preferred Securities shall not invalidate any resolution passed at any such meeting. A holder may waive notice of a meeting either before or after the meeting.

13.3 Chairman

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

13.4 Quorum

At any meeting of the Securityholders (including where an Extraordinary Resolution is proposed to be passed) a quorum shall consist of Securityholders present in person or by proxy and representing at least 25% of the number of outstanding Preferred Securities. If a quorum of the Securityholders shall not be present within 30 minutes from the time fixed for holding any meeting, the meeting, if summoned by the Securityholders or pursuant to a request of the Securityholders, shall be dissolved, but in any other case the meeting shall be adjourned to the next day in the same week (unless such day is not a Business Day in which case it shall be adjourned to the next following Business Day thereafter) at the same time and place and no notice shall be required to be given in respect of such adjourned meeting. At the adjourned meeting, the Securityholders present in person or by proxy shall constitute a quorum and may transact the business for which the meeting was originally convened notwithstanding that they may not represent 25% of the number of outstanding Preferred Securities. Any business may be brought before or dealt with at an adjourned meeting which might have been brought before or dealt with at the original meeting in accordance with the notice calling the same. No business shall be transacted at any meeting unless the required quorum is present at the commencement of business except as may otherwise be provided in this Section 13.4.

13.5 Power to Adjourn

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

13.6 Show of Hands

Every question submitted to a meeting shall, subject to Section 13.7, be decided in the first place by a vote given on a show of hands except that votes on Extraordinary Resolutions shall be given in the manner hereinafter provided. At any such meeting, unless a poll is duly demanded as herein provided, a declaration by the chairman that a resolution has been carried or carried unanimously or by a particular majority or lost or not carried by a particular majority shall be conclusive evidence of the fact. The chairman of any meeting shall be entitled, both on a show of hands and on a poll, to vote in respect of the Preferred Securities, if any, held by such chairman.

13.7 Poll

On every Extraordinary Resolution, and on any other question submitted to a meeting when demanded by the chairman or by one or more Securityholders or proxies for Securityholders, a poll shall be taken in such manner and either at once or after an adjournment as the chairman shall direct. Questions other than Extraordinary Resolutions shall, if a poll be taken, be decided by Ordinary Resolution.

13.8 Voting

On a show of hands every person who is present and entitled to vote, whether as a Securityholder or as proxy for one or more Securityholders or both, shall have one vote. On a poll each

Securityholder 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 Preferred Security of which he shall then be the holder. Only whole Preferred Securities are entitled to a vote. A proxy need not be a Securityholder. In the case of joint holders of a Preferred Security, any one of them present in person or by proxy at the meeting may vote in the absence of the other or others but in case more than one of them is present in person or by proxy, they shall vote together in respect of the Preferred Securities of which they are joint holders.

Any resolution proposed to be passed at a meeting of Securityholders (including an adjourned meeting) duly convened and held in accordance with the provisions of this Article 13 shall, except in the case of those matters expressly required to be approved by Extraordinary Resolution, be considered duly passed if passed by Ordinary Resolution.

13.9 Proxies

A Securityholder may be present and vote at any meeting of Securityholders by an authorized representative. Westaim (in case it convenes the meeting) or the Trustee (in any other case) for the purpose of enabling the Securityholders to be present and vote at any meeting without producing their Preferred Securities, and of enabling them to be present and vote at any such meeting by proxy and of lodging instruments appointing such proxies at some place other than the place where the meeting is to be held, may from time to time make and vary such regulations as it shall think fit providing for and governing any or all of the following matters:

- (a) the form of the instrument appointing a proxy, which shall be in writing, and the manner in which the same shall be executed and the production of the authority of any person signing on behalf of a Securityholder;
- (b) the deposit of instruments appointing proxies at such place as the Trustee, Westaim or the Securityholder 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 must be deposited; and
- (c) the deposit of instruments appointing proxies at some approved place or places other than the place at which the meeting is to be held and enabling particulars of such instruments appointing proxies to be mailed, faxed or sent by other electronic means before the meeting to Westaim or to the Trustee at the place where the same is to be held and for the voting of proxies so deposited as though the instruments themselves were produced at the meeting.

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

13.10 Persons Entitled to Attend Meetings

Westaim and the Trustee, by their respective officers and directors, the Auditors of Westaim and the legal advisers of Westaim, the Trustee and any Securityholder may attend any meeting of the Securityholders, but shall have no vote as such.

13.11 Powers Exercisable by Extraordinary Resolution

Unless otherwise provided in this Indenture, in addition to the powers conferred upon them by any other provisions of this Indenture or by law, a meeting of the Securityholders shall have the following powers exercisable from time to time by Extraordinary Resolution, subject to any required receipt of approval from any applicable regulatory authority (including any stock exchange on which the securities of Westaim are listed):

- (a) power to direct or authorize the Trustee to exercise any power, right, remedy or authority given to it by this Indenture in any manner specified in any such Extraordinary Resolution or to refrain from exercising any such power, right, remedy or authority;
- (b) power to appoint a committee with power and authority (subject to such limitations, if any, as may be prescribed in the Extraordinary Resolution) to exercise, and to direct the Trustee to exercise, on behalf of the Securityholders, such of the powers of the Securityholders as are exercisable by Extraordinary Resolution or other resolution 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. Such committee shall consist of such number of persons as shall be prescribed in the resolution appointing it and the members need not be themselves Securityholders. Every such committee may elect its chairman 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 Securityholders. Neither the committee nor any member thereof shall be liable for any loss arising from or in connection with any action taken or omitted to be taken by them in good faith;
- (c) power to remove the Trustee from office and to appoint a new Trustee provided that no such removal shall be effective unless and until a new Trustee shall have become bound by this Indenture; and
- (d) power to amend, alter or repeal any Extraordinary Resolution previously passed or sanctioned by the Securityholders or by any committee appointed pursuant to Section 13.11(b).

Notwithstanding the foregoing provisions of this Section 13.11 none of such provisions shall in any manner allow or permit any amendment, modification, abrogation or addition to the

provisions of Article 6 which could reasonably be expected to detrimentally affect the rights, remedies, recourse or the priority of the Senior Creditors, or the rights and obligations of the Trustee, without, in each case, the consent of such Senior Creditors or the Trustee, as the case may be.

13.12 Meaning of “Extraordinary Resolution”

- (a) The expression “Extraordinary Resolution” when used in this Indenture means, subject as hereinafter in this Article 13 provided, a resolution proposed to be passed as an Extraordinary Resolution at a meeting of Securityholders (including an adjourned meeting) duly convened for the purpose and held in accordance with the provisions of this Article 13 and passed thereat by the favourable votes of the holders of not less than 66 $\frac{2}{3}$ % of the number of Preferred Securities present or represented by proxy at the meeting and voted upon on a poll on such resolution.
- (b) Votes on an Extraordinary Resolution shall always be given on a poll and no demand for a poll on an Extraordinary Resolution shall be necessary.

13.13 Powers Cumulative

Any one or more of the powers in this Indenture stated to be exercisable by the Securityholders by Extraordinary Resolution or otherwise may be exercised from time to time and the exercise of any one or more of such powers from time to time shall not be deemed to exhaust the rights of the Securityholders to exercise the same or any other such power or powers thereafter from time to time.

13.14 Minutes

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

13.15 Instruments in Writing

All actions which may be taken and all powers that may be exercised by the Securityholders at a meeting held as hereinbefore in this Article 13 provided may also be taken and exercised by:

- (a) in the case of matters requiring approval by Extraordinary Resolution, the holders of not less than 66 $\frac{2}{3}$ % of the number of outstanding Preferred Securities by an instrument in writing signed in one or more counterparts and the expression “Extraordinary Resolution” when used in this Indenture shall include an instrument so signed; or

- (b) in the case of matters requiring approval by Ordinary Resolution, the holders of not less than 51% of the number of outstanding Preferred Securities by an instrument in writing signed in one or more counterparts and the expression “Ordinary Resolution” when used in this Indenture shall include an instrument so signed.

13.16 Binding Effect of Resolutions

Every Ordinary Resolution and every Extraordinary Resolution passed in accordance with the provisions of this Article 13 at a meeting of Securityholders shall be binding upon all the Securityholders, whether present at or absent from such meeting, and every instrument in writing signed by Securityholders in accordance with Section 13.15 shall be binding upon all the Securityholders, whether signatories thereto or not, and each and every Securityholder and the Trustee (subject to the provisions for its indemnity herein contained) shall be bound to give effect accordingly to every such Ordinary Resolution, Extraordinary Resolution and instrument in writing.

13.17 Evidence of Rights of Securityholders

- (a) Any request, direction, notice, consent or other instrument which this Indenture may require or permit to be signed or executed by the Securityholders may be in any number of concurrent instruments of similar tenor signed or executed by such Securityholders.
- (b) The Trustee may, in its discretion, require proof of execution in cases where it deems proof desirable and may accept such proof as it shall consider proper.

ARTICLE 14 NOTICES

14.1 Notice to Westaim

Any notice to Westaim or any other Obligor under the provisions of this Indenture shall be valid and effective if delivered to Westaim at: 70 York Street, Suite 1700, Toronto, Ontario, M5J 1S9, Attention: Robert Kittel, and a copy (which shall not constitute notice) delivered to Baker & McKenzie LLP, 181 Bay Street, Suite 2100, Toronto, Ontario, M5J 2T3, Attention: Kevin Rooney, or if given by registered letter, postage prepaid, to such offices and so addressed and if mailed, shall be deemed to have been effectively given three (3) days following the mailing thereof. Westaim may from time to time notify the Trustee in writing of a change of address which thereafter, until changed by like notice, shall be the address of Westaim for all purposes of this Indenture.

14.2 Notice to Securityholders

- (a) All notices to be given hereunder with respect to the Preferred Securities shall be deemed to be validly given to the holders thereof if sent by first class mail, postage prepaid, by courier, by letter or circular addressed to such holders at their post office addresses appearing in any of the registers hereinbefore mentioned and

shall be deemed to have been effectively given three (3) days following the day of mailing. Accidental error or omission in giving notice or accidental failure to mail notice to any Securityholder or the inability of Westaim or the Trustee to give or mail any notice due to anything beyond the reasonable control of Westaim or the Trustee shall not invalidate any action or proceeding founded thereon.

- (b) If any notice given in accordance with the foregoing paragraph would be unlikely to reach the Securityholders to whom it is addressed in the ordinary course of post by reason of an interruption in mail service, whether at the place of dispatch or receipt or both, Westaim or the Trustee on behalf of Westaim (but at the cost of Westaim) shall give such notice by publication at least once in the City of Toronto, such publication to be made in a daily newspaper of general circulation in such city.
- (c) Any notice given to Securityholders by publication shall be deemed to have been given on the day on which publication shall have been effected in the newspaper in which publication was required.
- (d) All notices with respect to any Preferred Security may be given to whichever one of the holders thereof (if more than one) is named first in the registers hereinbefore mentioned, and any notice so given shall be sufficient notice to all holders of any persons interested in such Preferred Security.

14.3 Notice to Trustee

Any notice to the Trustee under the provisions of this Indenture shall be valid and effective if delivered to the Trustee at its principal office in the City of Calgary, at 600, 530 - 8th Avenue SW Calgary, Alberta, T2P 3S8, Attention: Manager, Corporate Trust or if given by registered letter, postage prepaid, to such office and so addressed and, if mailed, shall be deemed to have been effectively given three (3) days following the mailing thereof.

14.4 Mail Service Interruption

If by reason of any interruption of mail service, actual or threatened, any notice to be given to the Trustee or Westaim would reasonably be unlikely to reach its destination by the time notice by mail is deemed to have been given, such notice shall be valid and effective only if personally delivered at the appropriate address in accordance with Section 14.1 or Section 14.3, as applicable.

ARTICLE 15 CONCERNING THE TRUSTEE

15.1 No Conflict of Interest

The Trustee represents to Westaim that at the date of execution and delivery by it of this Indenture there exists no material conflict of interest in the role of the Trustee as a fiduciary hereunder but if, notwithstanding the provisions of this Section 15.1, such a material conflict of interest exists, or hereafter arises, the validity and enforceability of this Indenture, and the

Preferred Securities issued hereunder, shall not be affected in any manner whatsoever by reason only that such material conflict of interest exists or arises but the Trustee shall, within 30 days after ascertaining that it has a material conflict of interest, either eliminate such material conflict of interest or resign in the manner and with the effect specified in Section 15.2. Securityholders acknowledge and agree that the fact that the Trustee or an Affiliate of the Trustee is, or may be, the registrar and transfer agent for Westaim and/or the trustee under any distribution or interest reinvestment plan or other plan or arrangement of Westaim shall not in and of itself constitute a material conflict of interest in the role of the Trustee as a fiduciary hereunder.

15.2 Replacement of Trustee

- (a) The Trustee may resign its trust and be discharged from all further duties and liabilities hereunder by giving to Westaim 90 days' notice in writing or such shorter notice as Westaim may accept as sufficient. If at any time a material conflict of interest exists in the Trustee's role as a fiduciary hereunder the Trustee shall, within 30 days after ascertaining that such a material conflict of interest exists, either eliminate such material conflict of interest or resign in the manner and with the effect specified in this Section 15.2. The validity and enforceability of this Indenture and of the Preferred Securities issued hereunder shall not be affected in any manner whatsoever by reason only that such a material conflict of interest exists. 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, Westaim shall forthwith appoint a new Trustee unless a new Trustee has already been appointed by the Securityholders. Failing such appointment by Westaim, the retiring Trustee or any Securityholder may apply to any court in the Province of Ontario, on such notice as such court may direct at Westaim's expense, for the appointment of a new Trustee but any new Trustee so appointed by Westaim or by such court shall be subject to removal as aforesaid by the Securityholders and the appointment of such new Trustee shall be effective only upon such new Trustee becoming bound by this Indenture. Any new Trustee appointed under any provision of this Section 15.2 shall be a corporation authorized to carry on the business of a trust company in one or more of the Provinces of Canada. 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.
- (b) Any entity into which the Trustee may be merged or, with or to which it may be consolidated, amalgamated or sold, or any entity resulting from any merger, consolidation, sale or amalgamation to which the Trustee shall be a party, shall be the successor trustee under this Indenture without the execution of any instrument or any further act. Nevertheless, upon the written request of the successor Trustee or of Westaim, and upon being fully paid all fees and expenses owing hereunder, the Trustee ceasing to act shall execute and deliver an instrument assigning and transferring to such successor Trustee, upon the trusts herein expressed, all the rights, powers and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver all property and money held by such Trustee to the successor Trustee so appointed in its place. Should any deed, conveyance or instrument in

writing from Westaim be required by any new Trustee for more fully and certainly vesting in and confirming to it such estates, properties, rights, powers and trusts, then any and all such deeds, conveyances and instruments in writing shall on request of said new Trustee, be made, executed, acknowledged and delivered by Westaim.

15.3 Duties of Trustee

In the exercise of the rights, duties and obligations 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.

15.4 Reliance Upon Declarations, Opinions, Etc.

- (a) In the exercise of its rights, duties and obligations hereunder the Trustee may rely, as to the truth of the statements and accuracy of the opinions expressed therein, upon statutory declarations, opinions, reports or certificates furnished pursuant to any covenant, condition or requirement of this Indenture or required by the Trustee to be furnished to it in the exercise of its rights and duties hereunder, provided that in the case of reliance on a report or opinion of any solicitor, auditor, accountant, engineer or appraiser or any other person whose qualifications give authority to a statement made by him, the Trustee believes in good faith that such person is, in the circumstances, appropriately qualified to provide such report or opinion which is being relied upon.
- (b) Without restricting the foregoing, the Trustee may rely on an opinion of Counsel satisfactory to the Trustee notwithstanding that it is delivered by a solicitor or firm which acts as solicitors for Westaim.
- (c) Westaim shall, whenever the Trustee so requires, furnish the Trustee with evidence by way of statutory declaration, opinion, report or certificate as specified by the Trustee as to any action or step required or permitted to be taken by Westaim or as a result of any obligation imposed by this Indenture.

15.5 Officer's Certificates Evidence

Except as otherwise specifically provided or prescribed by this Indenture, whenever in the administration of the provisions of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or omitting any action hereunder, the Trustee, if acting in good faith, may rely upon an Officer's Certificate.

15.6 Experts, Advisers and Agents

The Trustee may:

- (a) employ or retain and act and rely on the opinion or advice of or information obtained from any solicitor, auditor, valuator, engineer, surveyor, appraiser or other expert, whether obtained by the Trustee or by Westaim, or otherwise, and

shall not be liable for acting, or refusing to act, on any such opinion or advice and may pay proper and reasonable compensation for all such legal and other advice or assistance as aforesaid; and

- (b) employ such agents and other assistants as it may reasonably require for the proper discharge of its duties hereunder, and may pay reasonable remuneration for all services performed for it (and shall be entitled to receive reasonable remuneration for all services performed by it) in the discharge of the trusts hereof and compensation for all disbursements, costs and expenses made or incurred by it in the discharge of its duties hereunder and in the management of the trusts hereof and any solicitors employed or consulted by the Trustee may, but need not be, solicitors for Westaim.

15.7 Trustee May Deal in Preferred Securities

Subject to Sections 15.1 and 15.3, the Trustee may, in its personal or other capacity, buy, sell, lend upon and deal in the Preferred Securities and generally contract and enter into financial transactions with Westaim or otherwise, without being liable to account for any profits made thereby.

15.8 Investment of Monies Held by Trustee

None of the Securityholders or the Trustee shall be entitled to receive any interest on funds held by the Trustee hereunder. For greater certainty, all interest received on such funds shall be for the benefit of (and be paid on demand to) Westaim.

15.9 Trustee Not Ordinarily Bound

Except as provided in Section 9.2 and as otherwise specifically provided herein, the Trustee shall not, subject to Section 15.3, be bound to give notice to any person of the execution hereof, nor to do, observe or perform or see to the observance or performance by Westaim of any of the obligations herein imposed upon Westaim or of the covenants on the part of Westaim herein contained, nor in any way to supervise or interfere with the conduct of Westaim's business, unless the Trustee shall have been required to do so in writing by the holders of not less than 51% of the number of Preferred Securities then outstanding or by any Extraordinary Resolution of the Securityholders passed in accordance with the provisions contained in Article 13, and then only after it shall have been funded and indemnified to its satisfaction against all actions, proceedings, claims and demands to which it may render itself liable and all costs, charges, damages and expenses which it may incur by so doing.

15.10 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 the premises.

15.11 Trustee Not Bound to Act on Westaim's Request

Except as in this Indenture otherwise specifically provided, the Trustee shall not be bound to act in accordance with any direction or request of Westaim until a duly authenticated copy of the instrument or resolution containing such direction or request shall have been delivered to the Trustee, and the Trustee shall be empowered to act upon any such copy purporting to be authenticated and believed by the Trustee to be genuine.

15.12 Conditions Precedent to Trustee's Obligations to Act Hereunder

- (a) The obligation of the Trustee to commence or continue any act, action or proceeding for the purpose of enforcing the rights of the Trustee and of the Securityholders hereunder shall be conditional upon the Securityholders furnishing when required by notice in writing by the Trustee, sufficient funds to commence or continue such act, action or proceeding and indemnity reasonably satisfactory to the Trustee to protect and hold harmless the Trustee against the costs, charges and expenses and liabilities to be incurred thereby and any loss and damage it may suffer by reason thereof.
- (b) None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers unless indemnified as aforesaid. For greater certainty, without limitation, the Trustee shall disburse monies in accordance with this Indenture only to the extent that such monies have been deposited with the Trustee.
- (c) The Trustee may, before commencing or at any time during the continuance of any such act, action or proceeding require the Securityholders at whose instance it is acting to deposit with the Trustee the Preferred Securities held by them for which Preferred Securities the Trustee shall issue receipts.

15.13 Authority to Carry on Business

The Trustee represents to Westaim 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 the Province of Ontario but if, notwithstanding the provisions of this Section 15.13, it ceases to be so authorized to carry on business, the validity and enforceability of this Indenture and the securities issued hereunder shall not be affected in any manner whatsoever by reason only of such event but the Trustee shall, within 90 days after ceasing to be authorized to carry on the business of trust company in the Province of Ontario, either become so authorized or resign in the manner and with the effect specified in Section 15.2.

15.14 Compensation and Indemnity

- (a) Westaim shall pay to the Trustee from time to time compensation for its services hereunder as agreed separately by Westaim and the Trustee, and shall pay or reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in the administration or execution

of its duties under this Indenture (including the reasonable and documented compensation and disbursements of its Counsel and all other advisers and assistants not regularly in its employ), both before any default hereunder and thereafter until all duties of the Trustee under this Indenture shall be finally and fully performed. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust.

- (b) Westaim hereby agrees to indemnify and hold harmless the Trustee, its affiliates, their officers, directors, employees, agents, successors and assigns (the "**Indemnified Parties**") from and against any and all liabilities whatsoever, losses, damages, penalties, claims, demands, actions, suits, proceedings, costs, charges, assessments, judgments, expenses and disbursements, including reasonable legal fees and disbursements of whatever kind and nature which may at any time be imposed on or incurred by or asserted against the Indemnified Parties, or any of them, whether at law or in equity, in any way caused by or arising, directly or indirectly, in respect of any act, deed, matter or thing whatsoever made, done, acquiesced in or omitted in or about or in relation to the execution of the Indemnified Parties' duties, or any other services that the Trustee may provide in connection with or in any way relating to this Indenture. Westaim agrees that its liability hereunder shall be absolute and unconditional regardless of the correctness of any representations of any third parties and regardless of any liability of third parties to the Indemnified Parties, and shall accrue and become enforceable without prior demand or any other precedent action or proceeding; provided that Westaim shall not be required to indemnify the Indemnified Parties in the event of the gross negligence, misconduct, bad faith or fraud of the Trustee, and this provision shall survive the resignation or removal of the Trustee or the termination or discharge of this Indenture. The Trustee shall notify Westaim promptly of any claim for which it may seek indemnity. Westaim shall defend the claim, at its expense, and the Trustee shall cooperate in the defence. The Trustee will have the right to retain separate counsel to act on its own behalf, provided that the fees and disbursements of such counsel will be paid by the Trustee unless Westaim consents to the retention of such counsel or unless the named parties to any action or proceeding include both Westaim and the Trustee and representation of both Westaim and the Trustee by the same counsel would be inappropriate due to the actual or potential differing interests between them (such as the availability of different defences). Westaim need not pay for any settlement made without its consent, which consent must not be unreasonably withheld.
- (c) Westaim need not reimburse any expense or indemnify against any loss or liability incurred by the Trustee through its own gross negligence, misconduct, fraud or bad faith.

15.15 Anti-Money Laundering and Anti-Terrorist Legislation

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, determine at any time that its acting under this Indenture has resulted in its being in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline, then it shall have the right to resign on 30 days' written notice to Westaim, provided that the Trustee's written notice shall describe the circumstances of such non-compliance; and if such circumstances are rectified to the Trustee's satisfaction within such 30 day period, then such resignation shall not be effective.

15.16 Force Majeure

Except for the payment obligations of Westaim 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 action or judicial order, earthquakes, or any other similar causes (including, but not limited to, mechanical, electronic or communication interruptions, disruptions or failures). Performance times under this Indenture shall be extended for a period of time equivalent to the time lost because of any delay that is excusable under this Section 15.16.

15.17 Acceptance of Trust

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

ARTICLE 16 SUPPLEMENTAL INDENTURES AND AMENDMENTS

16.1 Supplemental Indentures

From time to time the Trustee and, when authorized by a resolution of the directors of Westaim, Westaim may, and they shall when required by this Indenture, execute, acknowledge and deliver by their proper officers, deeds or indentures supplemental hereto which thereafter shall form part hereof for any one or more of the following purposes:

- (a) making such provisions not inconsistent with this Indenture as may be necessary or desirable with respect to matters or questions arising hereunder, including the making of any modifications in the form of the Preferred Securities which do not affect the substance thereof and which in the opinion of the Trustee relying on an opinion of Counsel will not be prejudicial to the interests of the Securityholders;
- (b) evidencing and giving effect to any amendments to this Indenture;
- (c) evidencing the succession, or successive successions, of others to Westaim and the covenants of and obligations assumed by any such successor in accordance with the provisions of this Indenture;

- (d) giving effect to any Extraordinary Resolution passed as provided in Article 13; and
- (e) for any other purpose not inconsistent with the terms of this Indenture.

Unless the supplemental indenture requires the consent or concurrence of Securityholders by Extraordinary Resolution, the consent or concurrence of Securityholders shall not be required in connection with the execution, acknowledgement or delivery of a supplemental indenture.

16.2 Amendments

- (a) Westaim may, without the consent, approval or concurrence of the Trustee or the Securityholders, by supplemental indenture or otherwise, amend any of the provisions of this Indenture related to matters of any foreign law or in connection with the issuance of Preferred Securities into a foreign jurisdiction in order to ensure, in either case, compliance by Westaim with applicable law in such foreign jurisdiction. Notwithstanding any other provision of this Indenture, neither the Trustee nor any Securityholder may amend any of the provisions of this Indenture without the prior written consent of Westaim.
- (b) Further, Westaim may, without the consent, approval or concurrence of the Trustee or the Securityholders, by supplemental indenture or otherwise, amend this Indenture for any of the following purposes:
 - (i) making any changes or corrections in this Indenture as are required for the purpose of curing or correcting any ambiguity or defective or inconsistent provisions or clerical omissions or mistakes or manifest errors contained herein or in any indenture supplemental hereto, provided that in the opinion of Counsel to the Trustee or the board of directors of Westaim (relying, if necessary, upon an opinion of Counsel) the rights of the Securityholders herein contained, considered together as a class and not individually, are not materially adversely affected;
 - (ii) making amendments hereto as are required to undertake or give proper effect to any transaction of any nature involving Westaim for which consent or approval of the Securityholders is not required hereunder, provided that the board of directors of Westaim has determined that the amendments are such as will not materially adversely affect the rights of the Securityholders herein contained, considered together as a class and not individually;
 - (iii) making amendments hereto as are required, in the opinion of Counsel to the Trustee or the board of directors of Westaim, in order to modify, supplement, cure or correct any of the provisions herein where they principally pertain to procedural or administrative matters in respect of the Authentication of Preferred Securities as well as the registration and transfer of Certificated Preferred Securities, Uncertificated Preferred

Securities or Book-Entry Preferred Securities, and such other similar matters (as principally set forth in Articles 2 and 4 hereof); or

- (iv) making any amendments hereto for any purpose, provided that, in the opinion of Counsel to the Trustee or the board of directors of Westaim (relying, if necessary, upon an opinion of Counsel), the rights of the Securityholders herein contained, considered together as a class and not individually, are not materially adversely affected.

ARTICLE 17 GUARANTEE AND SECURITY INTEREST

17.1 Guarantee

- (a) Each Guarantor hereby irrevocably and unconditionally guarantees to the Trustee the punctual, complete and irrevocable payment when due (whether at stated maturity, on demand or otherwise), and at all times thereafter, and the performance of, all of the Secured Obligations. Upon demand, following an Event of Default, each Guarantor agrees to make immediate payment and performance to the Trustee of all Secured Obligations due and payable on demand by the Trustee in accordance with Section 9.1 upon such Guarantor. The Trustee shall not be bound to exhaust recourse against Westaim or any other Person prior to being entitled to enforce its rights against any Guarantor.
- (b) If any amount demanded hereunder is not recoverable from a Guarantor on the basis of a guarantee, then, notwithstanding any other provision hereof, such Guarantor will indemnify and save harmless the Trustee from and against any and all losses, damages, costs, expenses or liabilities suffered or incurred by any of the Secured Parties resulting or arising from or relating to any failure of Westaim or any other Guarantor to unconditionally and irrevocably pay in full or fully perform the Secured Obligations as and when due provided that the amount of such indemnification shall not exceed the amount of such Secured Obligations and any amounts due and owing under this Indenture.
- (c) The obligations of the Guarantors hereunder shall not be affected or impaired by any act, omission, matter or thing whatsoever, occurring before, upon or after any demand for payment hereunder (and whether or not known to any Guarantor, Westaim or any Secured Party) which, but for this provision, might constitute a whole or partial defence to a claim against the Guarantor hereunder or might operate to release or otherwise exonerate any Guarantor from any of its obligations hereunder or otherwise affect such obligations, whether occasioned by default of the Trustee or otherwise. Each Guarantor hereby waives notice of acceptance hereof, notice of any liability of such Guarantor hereunder, notice or proof of reliance by the Secured Parties upon the obligations of such Guarantor hereunder, and diligence, presentment, demand for payment on Westaim or any Guarantor, protest, notice of dishonour or non-payment of any of the Secured

Obligations, or other notice or formalities to any Guarantor or Westaim of any kind whatsoever.

- (d) The guarantee and indemnity herein shall be reinstated if at any time any payment of any Secured Obligations is rescinded or must otherwise be returned by any Person as a result of any proceedings of or affecting any Obligor or any other Person or for any other reason whatsoever, all as though such payment had not been made.
- (e) No Guarantor shall have any right of subrogation to the Secured Parties or be otherwise entitled to claim the benefit of any Security Interest, if any, held by the Secured Parties in respect of the Secured Obligations, until the Trustee has received full and final payment and performance of all Secured Obligations.
- (f) Any amounts which may not be recoverable from a Guarantor as guarantor under this guarantee shall be recoverable from such Guarantor as principal debtor in respect thereof and shall be paid to the Trustee by such Guarantor after demand therefor.
- (g) Each Guarantor covenants and agrees with the Trustee that, in the case of any judicial or other proceeding to enforce the rights and remedies of the Trustee hereunder (or any part hereof), judgment may be rendered against each Guarantor in favour of the Trustee for any amount owing under this guarantee (or for which any Guarantor may be liable hereunder after the application to the payment thereof of the proceeds of any sale of any of the property of a Guarantor) and such judgment shall not create a merger with any other right or amount owing to the Secured Parties under this guarantee or under this Indenture.
- (h) No loss of or in respect of any Security Interest for the Secured Obligations or any part thereof, whether occasioned through the fault of any Secured Parties or otherwise, shall discharge, diminish or in any way affect the liability of any Guarantor hereunder. No Secured Party nor any of their respective directors, officers, employees or agents or any receiver or receiver-manager appointed by any of them or by a court shall have any liability, whether in tort, contract or otherwise, for any neglect or any act taken or omitted to be taken by them in connection with the Secured Obligations or any part thereof or any Security Interest for the Secured Obligations or any part thereof including without limitation any of the matters described above in this Article 17, except in each case and with respect to a particular Person, such Person's negligence or misconduct.
- (i) Each Guarantor agrees and confirms to the Secured Parties that the liabilities and obligations of the Guarantors under this Indenture are joint and several as between each Guarantor, whether incurred before or after the date hereof.

17.2 Security Interest

- (a) As continuing security for the Secured Obligations of Westaim and the Guarantors hereunder, each Obligor hereby grants to the Trustee, a security interest over the Collateral.
- (b) Each Obligor acknowledges conclusively that it intends the Security Interest in the Collateral to attach immediately upon the execution of this Indenture, except in the case of Collateral in which such Obligor subsequently acquires rights, in which case, the Security Interest shall attach contemporaneously with the time at which such Obligor acquires rights therein without the need for any further act, deed or consideration. The Security Interest shall be effective and shall attach as of the date hereof whether the monies hereby secured or any part thereof shall become owing by such Obligor before or after or upon the date of execution of this Indenture. Each Obligor acknowledges conclusively that value has been given.
- (c) In the event the validity and effectiveness of the Security Interest over any of the Collateral requires the consent, approval or waiver of a third party in order to be effective as against such third party, the Security Interest with respect to any such Collateral shall be effective as against the Obligors and shall be effective as against such third party when the applicable consent, approval or waiver is obtained, retroactively, to the fullest extent legally possible, to the later of the date hereof or the date such consent, approval or waiver is obtained or becomes effective, as applicable, and until such consent, approval or waiver is obtained, such Obligor shall (subject to the other terms hereof) stand possessed of such Collateral upon trust to assign and dispose thereof as the Secured Parties shall for such purposes direct.
- (d) The last day of any term reserved by any real estate lease, oral or written, or any agreement therefor, now held or hereafter acquired by Westaim, is hereby excepted out of the Security Interest and does not and shall not form part of the Collateral, but Westaim shall stand possessed of the reversion remaining in such leasehold premises for the time being demised as aforesaid upon trust to assign and dispose thereof as the Trustee shall direct and upon any sale of the leasehold premises, or any part thereof, the Trustee, for the purpose of vesting the aforesaid reversion of any such term or any renewal thereof in any purchaser or purchasers thereof, shall be entitled by deed or writing to appoint such purchaser or purchasers or any other person or persons as trustee or trustees of the aforesaid reversion of any such term or any renewal thereof in the place of Westaim and to vest same accordingly in the new trustee or trustees so appointed freed and discharged from any obligation respecting same.
- (e) Each Obligor hereby covenants and agrees that it will at all times do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, deeds, mortgages, security agreements, debentures, transfers, assignments and assurances as the Secured Parties may reasonably

require for better accomplishing and effectuating the purpose of this Security Interest as a result of a change in applicable law.

- (f) The Secured Parties may grant time, renewals, extensions, indulgences, releases and discharges to, take security from or abstain from taking security from or from perfecting the Collateral of, cease or refrain from giving credit or making loans or advances to, accept compositions from, compound, compromise, settle, grant releases and discharges to and otherwise deal with, the Obligors and with the Collateral as the Secured Parties may see fit, and may apply all monies at any time received from the Secured Parties or from the Collateral upon such part of the Secured Obligations as the Secured Parties deem best and change any such application in whole or in part from time to time as they may see fit, the whole without in any way limiting the rights of the Trustee under this Indenture, and no loss of or in respect of or resulting from the enforcement of the Collateral received by the Secured Parties from the Obligors, unless occasioned by the fault or negligence of any Secured Party or otherwise, shall in any way limit the rights of the Secured Parties under this Indenture.
- (g) To the extent not prohibited by applicable law, each Obligor hereby waives its rights, if any, under all provisions of applicable law that would in any manner, limit, restrict or otherwise affect the Trustee's rights and remedies hereunder or impose any additional obligations on the Secured Parties. Each Obligor waives the right to receive any notice, financing statement or any verification statement issues by any registry that confirm registration of a requisite notice or financing statement relating to this Indenture.

17.3 Release of Security Interest

The Trustee will, at the sole expense of Westaim, forthwith upon request by Westaim, execute and deliver to Westaim and any third party as requested by Westaim, such releases, terminations, discharges and/or letters of no interest in respect of the Security Interest as Westaim may reasonably request:

- (a) in order to permit Westaim or any other Westaim Group Member to effect a Permitted Disposition free and clear of the Security Interest; and/or
- (b) at any time after all of the Secured Obligations have been discharged or terminated.

ARTICLE 18 DEFEASANCE

18.1 Defeasance

Westaim has the right (the “**defeasance option**”) to be released from its obligations under this Indenture by providing a written notice to the Trustee, and upon receipt of such notice the Trustee shall, at the request and expense of Westaim, execute and deliver to Westaim such deeds

and other instruments as shall be necessary to release Westaim from the terms of this Indenture, except those relating to the indemnification of the Trustee, subject to the following:

- (a) Westaim shall have delivered to the Trustee evidence that Westaim has:
 - (i) deposited sufficient funds for payment of all principal, interest and other amounts due or to become due on the Preferred Securities on the earlier to occur of the events described in (A) Section 5.1(a) and (B) provided that the Current Market Price was, on any date prior to the date on which the deposit is made, at least \$5.60, Section 5.1(b), assuming in each case that Westaim has exercised its redemption rights described in the applicable section;
 - (ii) deposited funds or made provision for the payment of all remuneration and expenses of the Trustee to carry out its duties under this Indenture; and
 - (iii) deposited funds for the payment of taxes arising with respect to all deposited funds or other provision for payment in respect of the Preferred Securities;

in each case irrevocably, pursuant to the terms of an agreement in form and substance satisfactory to Westaim and the Trustee (each acting reasonably);

- (b) the Trustee shall have received an opinion or opinions of Westaim's Counsel to the effect that the Securityholders will not be subject to any additional Canadian Taxes as a result of the exercise by Westaim of the defeasance option with respect to the Preferred Securities and that such Securityholders will be subject to Taxes, if any, including those in respect of income (including taxable capital gains), on 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 the Preferred Securities;
- (c) no Event of Default shall have occurred and be continuing on the date of the deposit referred to in Section 18.1(a);
- (d) such release does not result in a breach or violation of or constitute a default under any material agreement or instrument to which Westaim is a party or by which Westaim is bound;
- (e) Westaim shall have delivered to the Trustee an Officers' Certificate stating that the deposit referred to in Section 18.1(a) was not made by Westaim with the intent of preferring the Securityholders over the other creditors of Westaim or with the intent of defeating, hindering, delaying or defrauding creditors of Westaim or others; and

- (f) Westaim shall have delivered to the Trustee an Officers' Certificate and an opinion of Westaim's Counsel stating that all conditions precedent provided for or relating to the exercise of such defeasance option have been complied with.

Westaim shall be deemed to have deposited funds pursuant to Section 18.1(a) if it deposits or causes to be deposited with the Trustee money or securities denominated in the currency in which principal is payable constituting direct obligations of Canada (or a Province thereof) or an agency or instrumentality of Canada, which will be sufficient, in the opinion of a firm of independent chartered accountants or an investment dealer acceptable to the Trustee, to provide for the payments described in subclauses (i), (ii) and (iii) of Section 18.1(a) above.

The Trustee shall hold in trust all money or securities deposited with it pursuant to this Section 18.1 and shall apply the deposited money and the money derived from such securities in accordance with this Indenture (including each of Section 5.1(a) and Section 5.1(b) as applicable) to the payment of principal of and interest on the Preferred Securities and, as applicable, other amounts.

If the Trustee is unable to apply any money or securities in accordance with this Section 18.1 by reason of any legal proceeding or any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, Westaim's obligations under this Indenture and the Preferred Securities shall be revived and reinstated as though no money or securities had been deposited pursuant to this Section 18.1 until such time as the Trustee is permitted to apply all such money or securities in accordance with this Section 18.1, provided that if Westaim has made any payment in respect of principal or interest on the Preferred Securities or, as applicable, other amounts because of the reinstatement of its obligations, Westaim shall be subrogated to the rights of the Securityholders to receive such payment from the money or securities held by the Trustee.

ARTICLE 19 EXECUTION AND FORMAL DATE

19.1 Execution

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

19.2 Formal Date

For the purpose of convenience this Indenture may be referred to as bearing the formal date of June 2, 2017 irrespective of the actual date of execution hereof.

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

***[REMAINDER OF PAGE INTENTIONALLY BLANK –
NEXT PAGE IS EXECUTION PAGE]***

THE WESTAIM CORPORATION

Per: (Signed) “*J. Cameron MacDonald*”
Name: J. Cameron MacDonald
Title: Chief Executive Officer

Per: (Signed) “*Robert T. Kittel*”
Name: Robert T. Kittel
Title: Chief Operating Officer

**COMPUTERSHARE TRUST
COMPANY OF CANADA, as Trustee**

Per: (Signed) “*Beatriz Fedozzi*”
Name: Beatriz Fedozzi
Title: Corporate Trust Officer

Per: (Signed) “*Shannon Grover*”
Name: Shannon Grover
Title: Manager, Corporate Trust

WESTAIM HIIG GP INC.

Per: (Signed) “*J. Cameron MacDonald*”
Name: J. Cameron MacDonald
Title: Chief Executive Officer

Per: (Signed) “*Robert T. Kittel*”
Name: Robert T. Kittel
Title: Chief Operating Officer

WESTAIM HIIG HOLDINGS INC.

Per: (Signed) "J. Cameron MacDonald"
Name: J. Cameron MacDonald
Title: Chief Executive Officer

Per: (Signed) "Robert T. Kittel"
Name: Robert T. Kittel
Title: Chief Operating Officer

SCHEDULE A

Form of Subordinate Preferred Securities Certificate

For all Preferred Securities, include the following legend until such time as it is no longer required in accordance with applicable Canadian securities laws:

UNLESS PERMITTED UNDER SECURITIES LEGISLATION, THE HOLDER OF THIS SECURITY MUST NOT TRADE THE SECURITY BEFORE [●], 2017.

For all Preferred Securities registered in the name of Depository, include the following legend:

UNLESS THESE PREFERRED SECURITIES ARE PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF CDS CLEARING AND DEPOSITORY SERVICES INC. (“CDS”) TO COMPUTERSHARE TRUST COMPANY OF CANADA OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY PREFERRED SECURITIES ISSUED IN RESPECT THEREOF ARE REGISTERED IN THE NAME OF CDS & CO., OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF CDS (AND ANY PAYMENT IS MADE TO CDS & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF CDS), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL SINCE THE REGISTERED HOLDER HEREOF, CDS & CO., HAS A PROPERTY INTEREST IN THE SECURITIES REPRESENTED BY THIS CERTIFICATE AND IT IS A VIOLATION OF ITS RIGHTS FOR ANOTHER PERSON TO HOLD, TRANSFER OR DEAL WITH SUCH SECURITIES.

THE WESTAIM CORPORATION

INCORPORATED UNDER THE BUSINESS CORPORATIONS ACT (ALBERTA)

Fully Paid 5% Subordinate Preferred Securities

Certificate No. _____

Preferred Securities: _____

CUSIP: ●

ISIN: ●

THIS CERTIFIES THAT, _____

is the registered holder of _____ fully paid 5% Subordinate Preferred Securities (“Preferred Securities”) issued by The Westaim Corporation (the “Corporation”).

The Preferred Securities represented by this certificate (“Certificate”) are issued upon the terms and subject to the conditions of an indenture made as of June 2, 2017 (which indenture as the same may be amended, supplemented, restated or replaced is herein referred to as the “Indenture”), made between the Corporation and Computershare Trust Company of Canada (the “Trustee”), as trustee under the terms of such Indenture, and such Indenture is binding upon all holders of Preferred Securities (“Securityholders”) and, by holding Preferred Securities registered in its name, the holder agrees to be bound by the terms and conditions of the Indenture. The Indenture is an important document which embodies all of the rights, privileges, restrictions and conditions pertaining to the Preferred Securities, including matters pertaining to the payment of principal and interest in respect of the Preferred Securities. A copy of the Indenture pursuant to which this Certificate and the Preferred Securities represented hereby is issued may be obtained from the head office of the Corporation by any Securityholder, upon demand, subject to payment of reasonable reproduction costs and any other expenses reasonably incurred by the Trustee or the Corporation in connection therewith.

This Certificate shall not be valid for any purpose until it shall have been executed by or on behalf of the Corporation and countersigned and registered by the Trustee.

IN WITNESS WHEREOF the Corporation has caused this Certificate to be signed by its duly authorized officers dated ●.

THE WESTAIM CORPORATION

By: _____
Specimen Name
Specimen Title

By: _____
Specimen Name
Specimen Title

Countersigned and Registered by:

Computershare Trust Company of Canada
Calgary, Alberta, Canada

By: _____
Authorized Officer

SCHEDULE B

Form of Redemption Notice

THE WESTAIM CORPORATION

SUBORDINATE PREFERRED SECURITIES

REDEMPTION NOTICE

To: Holders of 5% Subordinate Preferred Securities (the “**Preferred Securities**”) of The Westaim Corporation (the “**Corporation**”)

Note: All capitalized terms used herein have the meaning ascribed thereto in the Indenture mentioned below, unless otherwise indicated.

Notice is hereby given pursuant to Section 5.3 of the indenture (the “**Indenture**”) dated as of June 2, 2017 among the Corporation, the Guarantors and Computershare Trust Company of Canada (the “**Trustee**”), that a total of [●] Preferred Securities of the Corporation will be redeemed as of [●] (the “**Redemption Date**”). The number of Preferred Securities being redeemed from any particular holder of Preferred Securities (“**Securityholder**”) will be communicated by the Trustee to such Securityholder.

The amount payable for each Preferred Security being hereby called for redemption is an amount of \$[●] plus an amount equal to all accrued and unpaid interest to but excluding the Redemption Date (the “**Redemption Price**”).

The aggregate Redemption Price for all Preferred Securities being redeemed will be deposited by the Corporation with the Trustee. The Redemption Price payable to a holder of Preferred Securities will be payable upon presentation and surrender, at the following office, of the Preferred Securities held by such holder and called for redemption:

Computershare Trust Company of Canada
600, 530 - 8th Avenue SW
Calgary, Alberta
T2P 3S8
Attention: Manager, Corporate Trust

The interest accruing on the Preferred Securities called for redemption shall cease to be payable from and after the Redemption Date, unless payment of the Redemption Price shall not be made upon presentation for surrender of such Preferred Securities at the above-mentioned corporate trust office.

DATED: _____

THE WESTAIM CORPORATION

Per: _____