

LUPAKA GOLD CORP.

- and -

COMPUTERSHARE TRUST COMPANY OF CANADA

CONTINGENT VALUE RIGHTS INDENTURE

Dated as of June 7, 2022

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THIS INDENTURE is made as of the 7th day of June 2022 (the “**Effective Date**”)

BETWEEN:

LUPAKA GOLD CORP., a company existing under the laws of British Columbia,

(the “**Issuer**”)

AND:

COMPUTERSHARE TRUST COMPANY OF CANADA, a trust company existing under the laws of Canada and authorized to carry on business in all provinces of Canada,

(the “**Trustee**”)

WHEREAS:

- A. The Issuer is party to the Arbitration Proceedings (as defined herein);
- B. The Issuer now wishes to create and issue to the Registered Shareholders (as defined herein) as of the Record Date (as defined herein) Contingent Value Rights (as defined herein) as constituted and issued in the manner set out in this Indenture;
- C. The Issuer is duly authorized to create and issue the Contingent Value Rights representing the right to receive a portion of the Contingent Value Consideration (as defined herein);
- D. All things necessary have been done and performed to make the Contingent Value Rights, when certified by the Trustee and issued in the manner set out in this Indenture, valid, binding and legal obligations of the Issuer with the benefits, and subject to the terms of this Indenture; and
- E. Whereas the foregoing Recitals are statements made by the Issuer and not by the Trustee.

NOW THEREFORE in consideration of the premises and mutual covenants hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Issuer hereby appoints the Trustee as trustee to hold the rights, interests and benefits contained herein for and on behalf of those persons who from time to time become the holders of Contingent Value Rights issued pursuant to this Indenture, and the parties hereto agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Indenture, the following terms have the meanings assigned below:

“**Accountants**” mean the Persons acting as the accountants of the Issuer including the internal accounting staff of the Issuer;

“Applicable Legislation” means any statute of Canada or a province thereof, and the regulations under any such named or other statute, relating to contingent value rights indentures or to the rights, duties and obligations of trustees under contingent value rights indentures, to the extent that such provisions are at the time in force and applicable to this Indenture;

“Applicable Procedures” means (a) with respect to any transfer or exchange of beneficial ownership interests in, or the exercise of Contingent Value Rights represented by, a Book Entry Contingent Value Right, the applicable rules, procedures or practices of the Depository and the Trustee in effect at the time being, and (b) with respect to any issuance, deposit or withdrawal of Contingent Value Rights from or to an electronic position evidencing a beneficial ownership interest in Contingent Value Rights represented by a Book Entry Contingent Value Right, the rules, procedures or practices followed by the Depository and the Trustee at the time being with respect to the issuance, deposit or withdrawal of such positions;

“Arbitration Award” means any settlement, award, or other payment made or other consideration transferred to the Issuer or any of its affiliates arising out of, in connection with or with respect to the Arbitration Proceedings, including, but not limited to the Proceeds received by the Issuer or its affiliates from a sale, pledge, transfer or other disposition, directly or indirectly, of the Issuer’s rights with respect to the Arbitration Proceedings;

“Arbitration Funding Agreement” means the arbitration funding agreement dated August, 4, 2020 between the Issuer and BWA pursuant to which BWA agreed to advance up to USD\$4,100,000 in support of the Arbitration Proceedings, as it may be amended from time to time;

“Arbitration Proceedings” means that certain arbitration proceeding commenced by the Issuer against the Republic of Peru under the 2009 Canada-Peru Free Trade Agreement pending before the International Centre for Settlement of Investment Disputes (“**ICSID**”) in *Lupaka Gold Corp. v. Republic of Peru* (ICSID Case No. ARB/20/46));

“Auditors” means MNP LLP, or such other firm of chartered accountants duly appointed as auditors of the Issuer, from time to time;

“Authenticated” means Contingent Value Rights in respect of which the Trustee has completed all Internal Procedures such that the particulars of such Contingent Value Rights as required by Section 2.6 are entered in the register of holders of Contingent Value Rights. **“Authenticate”**, **“Authenticating”** and **“Authentication”** have the appropriate correlative meanings;

“Book Entry Contingent Value Rights” means Contingent Value Rights that are to be held electronically or physically by or on behalf of the Depository;

“Business Day” means a day which is not a Saturday, Sunday or civic or statutory holiday, or any other day on which banks are not open for business in Vancouver, British Columbia;

“BWA” means Bench Walk Advisors;

“Contingent Value Consideration” has the meaning provided for in Section 4.2;

“Contingent Value Consideration Account” means an account or accounts required to be established by the Issuer (and which shall be maintained by and subject to the control of the Trustee) for the Contingent Value Rights issued pursuant to and in accordance with this Indenture;

“Contingent Value Right” means a right of a Registered Shareholder as of the Record Date to receive pursuant to this Indenture a portion (if any) of the Contingent Value Consideration;

“Counsel” means a barrister and/or solicitor or a firm of barristers and/or solicitors retained by the Trustee or retained by the Issuer, which may or may not be counsel for the Issuer;

“Court” has the meaning ascribed thereto in Section 11.8;

“Depository” means CDS Clearing and Depository Services Inc. and Depository Trust Clearing Corporation or such other person as is designated in writing by the Issuer to act as depository in respect of the Contingent Value Rights;

“Disposition” has the meaning ascribed thereto in Section 13.1;

“Effective Date” has the meaning ascribed thereto in the Recitals;

“Event of Default” has the meaning provided for in Section 7.1;

“Excluded Amounts” has the meaning provided for in Section 4.2;

“Expiry Date” means the date on which the earliest of the following events shall occur:

- (i) the date on which cheques of the Trustee in the amount of each Holder’s Pro-Rata Share of the Contingent Value Consideration, less any applicable withholding taxes under the Tax Act are mailed to all Holders following the Final Payment Date pursuant to Section 2.3(c) hereof (for greater clarity, the date that the cheques are mailed is on the date of mailing and not on the date that they are received or actually delivered);
- (ii) the date on which the Issuer delivers written notice to the Trustee in accordance with Section 12.2 hereof that the Arbitration Proceedings have been finally determined or abandoned by the Issuer and, in either case, the Issuer (together with its affiliates) has not received any Proceeds and the Issuer has determined, acting reasonably and in good faith, that the Issuer (and its affiliates) will not receive any Proceeds;
- (iii) the date on which the Issuer delivers written notice to the Trustee in accordance with Section 12.2 hereof, together with a statement setting out in reasonable detail the Issuer’s calculations, confirming that the Excluded Amounts exceed the aggregate amount of the Proceeds and the Issuer has determined, acting reasonably and in good faith, that the Issuer (and its affiliates) will not receive any further Proceeds;
- (iv) the date on which the Issuer delivers written notice to the Trustee in accordance with Section 12.2 hereof, together with a statement setting out in reasonable detail the Issuer’s calculations, confirming that a payment is not required pursuant to the application of Section 4.3 hereof and the Issuer has determined, acting reasonably and in good faith, that the Issuer (and its affiliates) will not receive any further Proceeds; and

(v) the date that is ten (10) years following the Effective Date;

“Expiry Time” means 5:00 pm (Vancouver, BC time) on the Expiry Date;

“Final Payment Date” means the Payment Date in connection with which the Issuer shall have delivered written notice to the Trustee in accordance with Section 12.2 hereof confirming that the Issuer, acting reasonably and in good faith, does not anticipate receipt of any additional Proceeds or does anticipate that additional Proceeds may be received but has determined that any such additional Proceeds will not be sufficient to result in any distributable Contingent Value Consideration being payable to the Holders as determined in accordance with Sections 4.2 and 4.3 hereof;

“GAAP” means generally accepted accounting principles in Canada as applicable to the Issuer, but which, unless required under such generally accepted accounting principles, do not include International Financial Reporting Standards;

“Holders” means the persons from time to time entered in the Register as registered owners of the Contingent Value Rights as such names appear on the register of the Trustee;

“Indemnified Parties” has the meaning ascribed thereto in Section 11.11;

“Indenture” means this indenture and all amendments made hereto;

“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 Register at any time (including without limitation, original issuance or registration of permitted transfers 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;

“Issue Date” means the date of issuance of the Contingent Value Rights by the Issuer, being June 7, 2022;

“Issuer” means Lupaka Gold Corp., a British Columbia company and every successor entity, which has complied with the provisions of Section 13.1 of this Indenture;

“Non-Resident Holders” means a Holder that is a non-resident of Canada under the Tax Act;

“Payment Date” means a date declared by the Trustee and the Issuer, each acting reasonably, as a date of payment of the Contingent Value Consideration to the Holders, provided that such date shall not occur more than 45 Business Days following the transfer of any Proceeds by the Issuer to the Trustee;

“Payment Record Date” means the date that is 15 Business Days preceding the applicable Payment Date;

“Person” means an individual, a body corporate, a partnership, a trustee or an unincorporated organization, executor, administrator, legal representative, and pronouns have a similarly extended meaning;

“Proceeds” means the amount of any cash consideration received by the Issuer arising out of, in connection with or with respect to an Arbitration Award; provided that, for the purposes of calculating Proceeds or the Contingent Value Consideration, any consideration received by any affiliate of the Issuer in connection with an Arbitration Award shall be deemed to have been received by the Issuer;

“Pro-Rata Share” means, in respect of each Holder, the portion expressed as a percentage that the number of Contingent Value Rights held by that Holder is of all of the Contingent Value Rights issued and outstanding as at the applicable Payment Record Date;

“Record Date” means May 18, 2022;

“Register” means the register of Holders maintained pursuant to Article 3 of this Indenture;

“Registered Shareholders” means shareholders whose names appear on the records of the Issuer as the registered holders of the issued and outstanding common shares in the capital of the Issuer;

“Special Resolution” means a resolution passed at a meeting of Holders by Holders of not less than two-thirds of the Contingent Value Rights present in person or by proxy at such meeting, or by way of an instrument in writing, signed by Holders of not less than two-thirds of the Contingent Value Rights;

“subsidiary” means: (i) any corporation or company of which at least a majority of the outstanding securities having by the terms thereof ordinary voting power to elect a majority of the board of such corporation or company is at the time directly, indirectly or beneficially owned or controlled by the Issuer; (ii) any partnership of which, at the time, the Issuer directly, indirectly or beneficially owns or controls at least a majority of the voting interests (however designated) thereof, or otherwise controls such partnership; and (iii) any other Person of which at least a majority of the voting interests (however designated) are at the time directly, indirectly or beneficially owned or controlled by the Issuer;

“Successor Person” has the meaning ascribed thereto in Section 13.1(a);

“Tax Act” means the *Income Tax Act* (Canada), as amended;

“this Indenture”, **“this Indenture”**, **“this Agreement”**, **“hereto”** **“herein”**, **“hereby”**, **“hereof”** and similar expressions mean and refer to this Indenture and any indenture, deed or instrument supplemental hereto; and the expressions **“Article”**, **“Section”**, **“subsection”** and **“paragraph”** followed by a number, letter or both mean and refer to the specified article, section, subsection or paragraph of this Indenture;

“Trustee” means Computershare Trust Company of Canada in its capacity as trustee of the Contingent Value Rights, and its successors for the time being in the trusts hereby created; and

“Trustee Agency” means the principal office of the Trustee in the City of Vancouver, British Columbia or such other place as may be designated in accordance with Section 3.5;

“written order of the Issuer”, **“written request of the Issuer”**, **“written consent of the Issuer”**, **“Officer’s Certificate”** and **“certificate of the Issuer”** mean, respectively, a written order, request, consent and certificate signed in the name of the Issuer by any one director or officer of the general partners of the Issuer and may consist of one or more instruments so executed.

1.2 Gender

Throughout this Indenture words importing the singular number include the plural and vice versa and words importing gender include the masculine, feminine and neuter genders.

1.3 Meaning of “Outstanding”

Every Contingent Value Right Authenticated by the Trustee will be deemed to be outstanding until the Expiry Date.

1.4 Interpretations Not Affected by Headings

The division of this Indenture into sections, subsections and paragraphs and the provision of a table of contents and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Indenture.

1.5 Currency

Except as otherwise expressly provided herein, all references to dollar amounts herein are to Canadian dollars.

1.6 Business Day

Whenever any payment is due or required to be taken under this Indenture on or as of a day that is not a Business Day, that payment must be made and the other action must be taken on or as of the next day that is a Business Day.

1.7 Applicable Law

This Indenture (including all documents relating thereto, which by common accord have been and will be drafted in English) shall be construed in accordance with the laws of the Province of British Columbia, and the federal laws of Canada applicable therein and shall be treated in all respects as Province of British Columbia contracts. Each of the parties hereto, which shall include the Holders, irrevocably attorns to the exclusive jurisdiction of the courts of the Province of British Columbia with respect to all matters arising out of this Indenture and the transactions contemplated herein.

1.8 Severability

The invalidity or unenforceability of any particular provision of this Indenture shall not affect or limit the validity or enforceability of the remaining provisions of this Indenture.

**ARTICLE 2
ISSUE OF CONTINGENT VALUE RIGHTS**

2.1 Creation/Issue/Designation

- (a) An aggregate of 160,277,702 Contingent Value Rights are hereby created and authorized to be issued on the Issue Date in accordance with the terms and conditions hereof. By written order of the Issuer, the Trustee shall issue Contingent Value Rights to the Holders and record the name and address of each of the Holders on the Register.
- (b) The Contingent Value Rights will be issued on the Issue Date to those Persons who are Registered Shareholders of the Issuer as of the Record Date on the basis of one (1)

Contingent Value Right for every one (1) Common Share held on the Record Date and such Contingent Value Rights shall expire as at the Expiry Time.

2.2 Form and Terms of Contingent Value Rights

- (a) The Contingent Value Rights are direct unconditional obligations of the Issuer.
- (b) The Contingent Value Consideration will be paid to the Holders in United States dollars, or such other currency as the Issuer may direct, pursuant to Section 2.3 hereof.
- (c) The place at which the Register of the Contingent Value Rights will be kept will be at the office of the Trustee in Vancouver, British Columbia.
- (d) The Contingent Value Rights will be issued in uncertificated form and will be evidenced by a position on the Register to be maintained by the Trustee in accordance with Section 3.1.
- (e) Contingent Value Rights shall be issued in whole numbers and not a fraction of a whole number, and where the number of Contingent Value Rights to which any Holder is entitled contains a fraction or an amount that is less than a whole number, the number of Contingent Value Rights to be issued to such Holder will be rounded down to the nearest whole number.

2.3 Payment of Contingent Value Consideration to Holders

- (a) The Contingent Value Consideration, if any, will be paid to the Holders in accordance with their respective Pro-Rata Share on the applicable Payment Date.
- (b) Within 20 Business Days after each date on which the Issuer receives Proceeds, the Issuer will: (i) file with the Trustee a certificate of the Issuer (A) specifying the amount of the Proceeds received; (B) specifying whether or not Contingent Value Consideration is payable and the amount of Contingent Value Consideration, if any, together with the supporting calculation; (C) stating whether a payment of Contingent Value Consideration is or is not required pursuant to the application of Section 4.3 hereof, together with the supporting calculation; and (D) stating whether or not the applicable Payment Date for the Payment required to be made (if any) is the Final Payment Date and the reason therefore; (ii) pay to the Trustee the amount of money representing the aggregate of the Contingent Value Consideration, if any, by delivering a certified cheque payable to the Trustee drawn on a Canadian chartered bank or by wiring such funds to an account designated by the Trustee for such purpose; and (iii) issue a news release (A) disclosing the Issuer's receipt of Proceeds; (B) specifying the amount of the Proceeds received; (C) specifying whether or not Contingent Value Consideration is payable and the amount of Contingent Value Consideration; and (D) stating whether or not the applicable Payment Date for the Payment required to be made (if any) is the Final Payment Date and the reason therefore.
- (c) Upon receipt by the Trustee of the Contingent Value Consideration pursuant to Section 2.3(b), the Trustee will pay to the Holders the amount of money representing each respective Holder's Pro-Rata Share of the Contingent Value Consideration on the

applicable Payment Date in accordance with the Issuer's instructions provided to the Trustee under Section 2.3(b) by mailing cheques payable to the Holders drawn on a Canadian chartered bank.

- (d) The Trustee will act and rely upon certificates and other documents filed by the Issuer pursuant to this section for all purposes of the payment of the Holders' entitlements to the Contingent Value Consideration without any further investigation.
- (e) Without limiting any other right of the Holders, any Holder shall be entitled to request and receive from the Trustee a copy of the certificates and other documents filed by the Issuer pursuant to this section.
- (f) All Contingent Value Rights will be deemed cancelled at the Expiry Time without any further action on behalf of the Holders.
- (g) The Trustee will disburse monies according to this Indenture only to the extent that monies have been deposited with it.

2.4 Receipt by the Issuer of Multiple Proceeds Payments

If the Issuer receives multiple payments of Proceeds, the Issuer will upon each such receipt of a payment of Proceeds determine the Contingent Value Consideration (if any) reasonably and in good faith and (i) based on the aggregate Proceeds that have been received by the Issuer, less any amounts previously transferred to the Trustee on account of Contingent Value Consideration; and (ii) by calculating and deducting Excluded Amounts without duplication of Excluded Amounts calculated and deducted in connection with any previous determination of Contingent Value Consideration. In the event that the Issuer retains funds that would, but for the application of Section 4.3, have been required to be transferred to the Trustee on account of Contingent Value Consideration, the Issuer will preserve those funds until: (i) they are transferred to the Trustee in connection with a subsequent receipt by the Issuer of Proceeds; or (ii) the Expiry Date.

2.5 Contingent Value Rights to Rank *Pari Passu*

All Contingent Value Rights rank equally *pari passu* with each and every other Contingent Value Right without discrimination, preference or priority.

2.6 Authentication by Trustee

- (a) No Contingent Value Right may be issued or, if issued, will have any legal effect until it is Authenticated by or on behalf of the Trustee.
- (b) Authentication by the Trustee shall be conclusive evidence as against the Issuer that the Contingent Value Rights so Authenticated have been duly issued hereunder and that the Holder thereof is entitled to the benefits of this Indenture. Such Authentication shall be conclusive evidence that such Contingent Value Rights are duly Authenticated and represent a valid and binding obligation of the Issuer and that the Holder is entitled to the benefits of this Indenture.

- (c) Authentication by the Trustee, including by way of entry on the Register, shall not be construed as a representation or warranty by the Trustee as to the validity of this Indenture or as to the performance by the Issuer of its obligations under this Indenture and the Trustee shall in no respect be liable or answerable for the use made of the Contingent Value Consideration thereof.
- (d) Any Contingent Value Rights validly issued in accordance with the terms of this Indenture shall, subject to the terms of this Indenture and Applicable Legislation, validly entitle the Holder to acquire Contingent Value Consideration.

**ARTICLE 3
REGISTRATION, TRANSFER, EXCHANGE AND OWNERSHIP
OF CONTINGENT VALUE RIGHTS**

3.1 Fully Registered Contingent Value Rights

The Issuer hereby appoints the Trustee as registrar and transfer agent of the Contingent Value Rights. The Issuer will cause to be kept by and at the principal office of the Trustee in Vancouver, British Columbia, the Register in which will be entered the names and addresses of the holders of the Contingent Value Rights, the particulars of the Contingent Value Rights held by them respectively and of all permitted transfers of Contingent Value Rights.

The Trustee shall maintain records and accounts concerning the Contingent Value Rights, which shall contain the information called for below with respect to each Contingent Value Right, together with such other information as may be required by law or as the Trustee may elect to record. All 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 party) as the register of the holders of Contingent Value Rights. The information to be entered for each account in the Register at any time shall include (without limitation):

- (a) the name and address of each Holder, the date of Authentication thereof and the number of Contingent Value Rights held by each such Holder;
- (b) whether such Contingent Value Rights have been cancelled; and
- (c) a Register of transfers in which any transfers of Contingent Value Rights occurring be operation of law in accordance with Section 3.2 **Error! Reference source not found.** and the date and other particulars of each such transfer shall be entered.

Once a Contingent Value Right has been Authenticated, the information set forth in the Register with respect thereto at the time of Authentication may be altered, modified, amended, supplemented or otherwise changed only to reflect 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. Each person who becomes a Holder of a Contingent Value Right, by his, her or its acquisition thereof shall be deemed to have irrevocably (i) consented to the foregoing authority of the Trustee to make such minor error corrections and (ii) 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 the Issuer and the Trustee plus interest, at an appropriate then prevailing rate of interest to the Trustee), sustained by the Issuer 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 the Issuer or to the Trustee.

3.2 Transfers and Ownership of Contingent Value Rights

(a) The Contingent Value Rights may only be transferred on the Register by the Holder or its legal representatives or its attorney duly appointed by an instrument in writing in form and execution satisfactory to the Trustee and: (1) in the case of Book Entry Contingent Value Rights, only in accordance with Applicable Procedures prescribed by the Depository under the book entry registration system; (2) in the case of uncertificated Contingent Value Rights, only upon delivering to the Trustee instruction from the Holder in a form reasonably satisfactory to the Trustee together with a duly executed form of transfer (as set out in Schedule "A"); and (3) in each case, upon compliance with:

- i. the conditions herein;
- ii. such reasonable requirements as the Trustee may prescribe; and
- iii. all applicable securities legislation and requirements of regulatory authorities;

and such transfer shall be duly noted in such Register by the Trustee. Upon compliance with such requirements, the Trustee shall record the transfer of the Contingent Value Rights on the Register. Transfers within the systems of the Depository are not the responsibility of the Trustee and will not be noted on the register maintained by the Trustee.

(b) Subject to the provisions of this Indenture, Applicable Legislation and applicable law, the Holder shall be entitled to the rights and privileges attaching to the Contingent Value Rights and the Issuer and the Trustee shall discharge their respective responsibilities with respect to such Contingent Value Rights and neither the Issuer nor the Trustee shall be bound to inquire into the title of any such Holder.

3.3 No Verification

The Trustee will have no obligation to ensure or verify compliance with any applicable laws or regulatory requirements on the issue, transfer or redemption of any Contingent Value Rights.

3.4 Charges for Registration, Transfer and Exchange

For each Contingent Value Right registered or transferred on the Register, the Issuer will, if required by the Trustee, reimburse the Trustee for its actual out of pocket expenses in connection therewith, including, without limitation, legal fees and disbursements on a special costs basis.

3.5 Applicant to Pay Charges

Payment of any such charges and reimbursement of the Trustee or the Issuer for reasonable fees and any transfer taxes or governmental or other charges required to be paid will be made by the party requesting such exchange, or transfer on the Register as a condition precedent thereto.

3.6 Register Open for Inspection

The Register will be open for inspection by the Issuer or the Trustee during normal business hours on Business Days and upon payment to the Trustee of its reasonable fees applicable to such inspection. The Trustee will from time to time, when requested to do so by the Issuer, furnish the Issuer with a list of the names and addresses of Holders of Contingent Value Rights entered on the said Register showing the number of Contingent Value Rights held by each such Holder. Any Holder shall be entitled to request confirmation of the number of Contingent Value Rights noted on the Register on account of such Holder.

3.7 Closing of Register

Neither the Issuer nor the Trustee will be required to make transfers or exchanges of any Holder's fully registered Contingent Value Rights during the period beginning on a Payment Record Date and ending immediately following the corresponding Payment Date.

3.8 Ownership of Contingent Value Rights

The person in whose name any Contingent Value Right is registered will, for the purposes of this Indenture, be deemed to be the absolute owner of the Contingent Value Right for all purposes and payment of or on account of the Contingent Value Right. The Issuer and the Trustee will not be affected by any notice or knowledge to the contrary except where the Issuer or the Trustee is required to take notice by statute or by order of a court of competent jurisdiction.

3.9 No Notice of Trusts

Neither the Issuer nor the Trustee will be bound to take notice of or see to the execution of any trust, whether express, implied or constructive, in respect of any Contingent Value Rights.

3.10 No Set-Offs

The Holder for the time being of any Contingent Value Rights will be entitled to such Holder's Pro-Rata Share of the Contingent Value Consideration as calculated and payable pursuant to this Indenture free from all equities or rights of set-off or counterclaim between the Issuer and the original or any intermediate holder thereof and all persons may act accordingly and the receipt by any such Holder of such Holder's Pro-Rata Share of the Contingent Value Consideration will be a good discharge of the Issuer and the Trustee for the same, and neither the Issuer nor the Trustee is bound to inquire into the title of any such Holder.

ARTICLE 4
CALCULATION OF CONTINGENT VALUE CONSIDERATION

4.1 Holder's Entitlement to Contingent Value Consideration

Each Contingent Value Right will entitle the Holder thereof to receive the Contingent Value Consideration in accordance with such Holder's Pro-Rata Share, as determined pursuant to this Indenture.

4.2 Calculation of Contingent Value Consideration

For the purposes of this Indenture, the term "**Contingent Value Consideration**" shall mean, in each case (calculated in accordance with Section 2.4 if applicable), the amount, if any, by which the Proceeds exceed the aggregate of the following:

- (a) amounts sufficient to pay or reserve for taxes payable by the Issuer in connection with the receipt of such Proceeds calculated by applying all applicable statutory tax rates to such Proceeds;
- (b) amounts sufficient to pay or reserve for professional fees and expenses (including, but not limited to, any contingent fees) incurred by the Issuer in connection with any Arbitration Award, to the extent that such fees are unpaid as of the date of the receipt by the (x) Issuer or (y) its affiliates, of such Proceeds;
- (c) amounts sufficient to pay or reserve for any accrued and unpaid operating expenses of the Issuer as of the date of the receipt by the Issuer of such Proceeds, provided that (x) such expenses were reasonable and incurred in the ordinary course of the Issuer's business, consistent with past practices, (y) immediately prior to the receipt by the Issuer of such Proceeds, such expenses did not remain unpaid as a result of a failure by the Issuer to pay its expenses in the ordinary course of the Issuer's business, consistent with past practice;
- (d) all amounts payable to BWA pursuant to the Arbitration Funding Agreement including amounts advanced to the Issuer in support of the Arbitration Proceedings as well as amounts payable to BWA in connection with the Arbitration Award;
- (e) CAD\$8,000,000 to be retained by the Issuer for working capital and other corporate purposes; and
- (f) such additional amounts as may be necessary to ensure that the Company is not insolvent as at any Payment Date and will not be rendered insolvent by the payment of the Contingent Value Rights Consideration in accordance herewith (the amounts described in the foregoing clauses (a) through (f) collectively referred to herein as the "**Excluded Amounts**").

4.3 De Minimis Amount Exception.

Notwithstanding anything to the contrary herein, in the event that following the calculation of all Excluded Amounts in respect of a receipt of Proceeds by the Issuer, the Contingent Value Consideration payable to holders of Contingent Value Rights is less than CAD\$0.01 per Contingent Value Right, the Issuer shall have

no obligation to transfer the Contingent Value Consideration to the Trustee in respect of that receipt of Proceeds and the Trustee shall have no obligation to make a payment to the Holders. Until the Expiry Date, the Issuer will preserve for potential distribution any amounts that would, but for this section, have been distributed to the Holders hereunder.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF THE ISSUER

5.1 Representations and Warranties

The Issuer represents and warrants to the Trustee that:

- (a) it is a corporation validly existing under the laws of British Columbia;
- (b) it has the corporate power and capacity and the full power and authority to execute and deliver this Indenture;
- (c) it will not, by entering into this Indenture, contravene any law or the constating documents of the Issuer or any agreement by which it is bound; and
- (d) there are no actions or proceedings pending or, to the knowledge of the Issuer, threatened, which challenge the validity of this Indenture or which would materially adversely affect the ability of the Issuer to perform its obligations under this Indenture or any document evidencing any indebtedness of the Issuer to the Trustee or the Holders.

5.2 Reliance and Survival

All representations and warranties of the Issuer made herein or in any certificate or other document delivered by or on behalf of the Issuer for the benefit of the Trustee are material, will survive the execution and delivery of this Indenture and will continue in full force and effect without time limit. The Trustee will be deemed to have relied upon each such representations and warranties notwithstanding any investigation made by or on behalf of the Trustee at any time.

ARTICLE 6 COVENANTS

6.1 Positive Covenants

The Issuer covenants that, during the term of this Indenture, it will:

- (a) duly and punctually pay, or cause to be paid, all amounts which may, at any time and from time to time, be payable in respect of the Contingent Value Rights or which otherwise may be payable pursuant to the terms of this Indenture, all payments to be made by the Issuer in accordance with the applicable provisions of this Indenture and in connection therewith the Issuer will furnish the Trustee with evidence of each such payment as soon as practicable after the payment is made;
- (b) except as provided for in Article 13, at all times maintain its existence and carry on its business in accordance with applicable laws;

- (c) provide the Trustee with written notice of any change in the name of the Issuer and of any change in the principal office address of the Issuer as soon as reasonably practicable upon the occurrence of such a change;
- (d) promptly notify the Trustee and the Holders in writing of any Event of Default which, if rectifiable, remains unrectified for more than five days following its occurrence;
- (e) in any judicial proceedings taken to cancel or enforce this Indenture or the covenants of the Issuer hereunder, agree that the Trustee will be entitled to costs on a “special costs” basis. Any costs so recovered will be credited against any solicitors’ fees and charges paid or incurred by the Trustee relating to the matters in respect of which the costs were awarded and which have been added to the monies secured hereunder pursuant to the foregoing clause;
- (f) pay to the Trustee from time to time, reasonable remuneration for its services hereunder and will pay or reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in the administration or execution of its duties hereby created (including the reasonable compensation and the disbursements of its Counsel and all other advisers and assistants not regularly in its employ) both before any default hereunder and thereafter until all duties of the Trustee hereunder shall be finally and fully performed. Any amount owing hereunder and remaining unpaid after 30 days from the invoice date will bear interest at the then current rate charged by the Trustee against unpaid invoices and shall be payable upon demand. This Section shall survive the resignation or removal of the Trustee and/or the termination of this Indenture;
- (g) perform and carry out all of the acts or things to be done by it as provided in this Indenture in good faith, acting reasonably;
- (h) pay all costs, charges and expenses of and incidental to the taking, recovering or enforcing the remedies in this Indenture or otherwise in relation to this Indenture or by reason of non-payment or procuring payment of the monies hereby payable;
- (i) if the Issuer defaults in the performance of any covenant hereunder, agree that the Trustee may, but will not be obligated to, perform any covenant of the Issuer capable of being performed by the Trustee and if the Trustee is put to any costs, charges, expenses or outlays to perform any such covenant, the Issuer will indemnify the Trustee for such reasonable costs, charges, expenses or outlays and such costs, charges, expenses or outlays (including solicitors’ fees and charges incurred by the Trustee on a “special costs” basis) will be payable forthwith by the Issuer to the Trustee, and will bear interest at the highest rate borne by any of the other obligations;
- (j) do, execute, acknowledge and deliver or cause to be done, executed, acknowledged or delivered, such further acts, deeds, and assurances as the Trustee may reasonably require for the accomplishing and effecting the intention of this Indenture;
- (k) keep or cause to be kept proper and adequate records and books of account in which true and complete entries will be made in a manner sufficient to enable the preparation of financial statements in accordance with GAAP; and

- (l) if requested by the Trustee in connection with any Payment Date and, if so requested, as a condition to the Trustee's obligation to distribute any Contingent Value Consideration on such Payment Date hereunder, deliver to the Trustee an Officer's Certificate: (A) confirming the proper calculation of the amount of any withholding taxes under the Tax Act in respect of Holders who are Non-Resident Holders or confirmation that no such withholding taxes apply; and (B) setting forth all tax reporting if any, required to be facilitated by the Trustee in respect of the payment of the Contingent Value Consideration or confirming either that there is no such tax reporting required or that all such tax reporting will be completed by the Issuer. Such Officer's Certificate shall be provided to the Trustee at least 5 Business Days preceding the Payment Date.

By acceptance of the Contingent Value Rights in accordance with the terms of this Indenture, the Holder agrees: (A) to transfer its Contingent Value Rights only by operation of law in connection with the death or incapacitation of the Holder or with the prior written consent of the Issuer; and (B) that the Issuer does not have a duty to design the transactions contemplated herein in a manner that minimizes the Holder's tax liabilities, and the Holder will not make any claim against the Issuer, its officers or its board of directors related to tax liabilities arising from this Indenture, the issuance of Contingent Value Rights hereunder or the payment of Contingent Value Consideration.

6.2 Enforceability of Contingent Value Rights

The Issuer covenants and agrees that it is duly authorized to create and issue the Contingent Value Rights to be issued hereunder and that the Contingent Value Rights, when issued and Authenticated as herein provided, will be valid and enforceable against the Issuer in accordance with the provisions hereof and the terms hereof.

ARTICLE 7 DEFAULT AND ENFORCEMENT

7.1 Events of Default

The following events will constitute events of default under this Indenture (an "**Event of Default**"):

- (a) the Issuer fails to make any payment required under this Indenture as and when any such payment becomes due pursuant to the provisions of this Indenture;
- (b) the Issuer fails to observe or perform any material covenant of the Issuer as provided in this Indenture;
- (c) an order is made or a resolution is passed for the winding up or liquidation of the Issuer;
- (d) the Issuer commits any act of bankruptcy, including if the Issuer (i) institutes proceedings to be adjudicated a bankrupt or insolvent, (ii) consents to the institution of bankruptcy or insolvency proceedings against it, (iii) becomes insolvent, (iv) makes an assignment or proposal, or serves notice of its intention to make a proposal under the applicable bankruptcy or insolvency legislation, (v) a general assignment in favour of its creditors or a bankruptcy petition is filed or presented against the Issuer, (vi) admits in writing its

inability to pay its debts generally as they become due, or (vii) takes any corporate action in furtherance of any of the aforesaid purposes;

- (e) if a decree or order of a court having jurisdiction is entered adjudging the Issuer as bankrupt or insolvent under applicable bankruptcy or insolvency laws, or issuing sequestration or process of execution against any substantial part of the property of the Issuer;
- (f) if any receiver, receiver-manager, trustee, custodian, liquidator or similar agent is appointed for the Issuer or for any of the Issuer's property, or if the Issuer consents to any such appointment or a decree or order of a court having jurisdiction is made for such appointment;
- (g) if the Issuer ceases or threatens to cease to carry on its business; and
- (h) if any execution, sequestration, extent or any other process of any court becomes enforceable against the Issuer or if a distress or analogous process will be levied upon any collateral of the Issuer, or any part thereof.

7.2 Notice of Events of Default

(a) If an Event of Default occurs and is continuing the Trustee will, within 30 days after it has been notified in writing of such Event of Default by the Issuer, or a Holder, give notice of such Event of Default to the Issuer, and the Holders in the manner provided in Article 12, unless the default has been waived pursuant to Section 7.4.

(b) Where notice of the occurrence of an Event of Default has been given and the Event of Default is thereafter cured, notice that the Event of Default is no longer continuing will be given by the Trustee to the Holders in the manner provided in Article 12 within a reasonable time not exceeding 30 days after the Trustee becomes aware that the Event of Default has been cured.

(c) The Trustee shall not be bound to give any notice or do or take any act, action or proceeding by virtue of the powers conferred on it hereby unless and until it shall have been required to do so under the terms hereof; nor shall the Trustee be required to take notice of any Event of Default hereunder, unless and until notified in writing of such Event of Default, which notice shall distinctly specify the Event of Default desired to be brought to the attention of the Trustee and in the absence of any such notice the Trustee may for all purposes of this Indenture conclusively assume that no Event of Default has occurred. Any such notice shall in no way limit any discretion herein given to the Trustee to determine whether or not the Trustee shall take action with respect to any Event of Default.

7.3 Late Payments and Deliveries

The failure by the Issuer to make the payments within the times required in Section 2.3 will not constitute an Event of Default if the Issuer makes reasonable efforts to make the payments within the times required, or as soon as possible thereafter, and the payment is made no later than 10 Business Days after the time for payment as required in Section 2.3(b).

7.4 Waiver of Default

If an Event of Default occurs, Holders of not less than two-thirds of all Contingent Value Rights then outstanding have the power (without prejudice to the powers exercisable by Special Resolution) by requisition in writing to instruct the Trustee to waive the default and the Trustee will then waive any default hereunder upon such terms and conditions as such Holders prescribe in such requisition; and the Trustee will, so long as it has not become bound to institute any proceedings hereunder, have the power, subject to applicable law, to waive any default arising hereunder upon such terms and conditions as the Trustee deems advisable, on the advice of Counsel, if, in the Trustee's opinion, based on the advice of Counsel, such default is not adverse to the interests of the Holders or has been cured or adequate satisfaction has been made; provided that no act or omission either of the Trustee or of the Holders in the Contingent Value Rights will extend to or be taken in any manner whatsoever to affect any subsequent default or the rights resulting therefrom.

7.5 Remedies of Trustee

Subject to Section 11.2(b), following the occurrence, and during the continuance of an Event of Default, the Trustee may, and shall upon receipt of a Special Resolution directing it to do so, enforce its rights by any remedy or proceeding authorized or permitted by this Indenture or by law or equity.

All action taken under this Section 7.5 will be taken on behalf of and for the equal benefit of all Holders.

7.6 No Suits by Holders

No Holder of any Contingent Value Rights will have any right to institute any action, suit or proceeding at law or in equity, or to exercise any other remedy authorized by this Indenture for the purposes of enforcing payment on any Contingent Value Rights, or enforcing any right on behalf of the Holders for the execution of any trust or power hereunder, for the appointment of a liquidator or receiver, for a receiving order under the *Bankruptcy and Insolvency Act* (Canada), to have the Issuer wound up, to file or prove a claim in any liquidation or bankruptcy proceeding, or for any other remedy hereunder, unless (i) such Holder has previously given to the Trustee written notice of the happening of an Event of Default hereunder; (ii) the Holders by Special Resolution have made a request to the Trustee and the Trustee has been afforded a reasonable opportunity either itself to proceed to exercise the powers hereinbefore granted, or to institute an action, suit or proceeding in its name for such purpose; (iii) the Holders or any of them has 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 (iv) the Trustee has failed to act within a reasonable time after such notification, request and offer of indemnity; in such case, but not otherwise, any Holder acting on behalf of himself and all other Holders will be entitled to take proceedings in any court of competent jurisdiction such as the Trustee might have taken under Section 7.5; it being understood and intended that not one or more holders of Contingent Value Rights will have any right in any manner whatsoever to effect, disturb or prejudice the rights hereby created by his, her or their action or to enforce any right hereunder, except subject to the conditions and in the manner herein provided, and that all powers and trusts hereunder will be exercised and all proceedings at law will be instituted, had and maintained by the Trustee, except only as herein provided, and in any event for the equal benefit of all holders of Contingent Value Rights.

7.7 Application of Proceeds by Trustee

Subject to the claims of secured creditors ranking in priority to this Indenture, all monies arising from any enforcement hereof, together with any other monies then or thereafter in the hands of the Trustee available for that purpose, will be applied by the Trustee as follows:

- (a) first, in payment or reimbursement to the Trustee of the remuneration, expenses, disbursements and advances of the Trustee earned, incurred or made in the administration or execution of the trusts hereunder or otherwise in relation to this Indenture with interest thereon as herein provided;
- (b) secondly, in or towards payment of the outstanding Contingent Value Rights, which are then outstanding, and all other monies owing hereunder in that order of priority; and
- (c) the balance, if any, to the Issuer.

7.8 Remedies Cumulative

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

7.9 Trustee Appointed Attorney

The Issuer irrevocably appoints the Trustee as the attorney of the Issuer in the name and on behalf of the Issuer to execute any instruments and do any acts and things which the Issuer ought to execute and do, and has not executed or done, under the covenants and provisions contained in this Indenture and generally to use the name of the Issuer in the exercise of all or any of the powers hereby conferred on the Trustee, with full powers of substitution and revocation.

7.10 Judgment Against the Issuer

The Issuer covenants and agrees with the Trustee that, in case of any judicial or other proceedings to enforce the rights of the Holders of Contingent Value Rights, judgment may be rendered against it in favour of the Holders of Contingent Value Rights or in favour of the Trustee, as trustee for the Holders of Contingent Value Rights, for any amount which may remain due in respect of the Contingent Value Rights.

7.11 Immunity of Issuer and Others

No recourse under or upon any other obligation, covenant or agreement contained in this Indenture or any other right issued hereunder or because of the creation of any indebtedness or security hereunder will be had against any officer or director, past, present or future, of the Issuer or of subsidiaries of the Issuer or of any successor of the Issuer, either directly or through the Issuer, or its subsidiaries, or otherwise by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any statute or otherwise. It being expressly understood that this Indenture and the Contingent Value Rights issued hereunder are solely corporate obligations and that no personal liability whatever will attach to or be incurred by affiliates, officers or directors of the Issuer, or of subsidiaries of the Issuer, or of any successor of the Issuer, or any of them, because of the creation of the indebtedness hereby authorized or

the creation of any security interest, or under or by reason of the obligations, covenants or agreements contained in this Indenture or in any of the Contingent Value Rights issued hereunder or implied therefrom. Any and all personal liability of every name and nature either at common law or in equity or by statute and any and all Contingent Value Rights and claims against every such officer or director, are hereby expressly waived as a condition of, and as consideration for, the execution of this Indenture and the issue of the Contingent Value Rights.

ARTICLE 8 ASSIGNMENT

8.1 Assignment by Issuer

Subject to compliance with Article 13, this Indenture may not be assigned by the Issuer without the prior written consent of the Trustee.

8.2 Assignment by Trustee

This Indenture may not be assigned by the Trustee except with the prior written consent of the Issuer, such consent not to be unreasonably withheld, and in compliance with Section 11.8.

8.3 Obligations of Assignee

Upon the assignment of this Indenture as provided in this Article 8, the assignee will assume all obligations and covenants of the assignor under this Indenture as if the assignee were in the position of the assignor.

ARTICLE 9 SATISFACTION AND DISCHARGE

9.1 Repayment of Unclaimed Monies to Issuer

Subject to Applicable Legislation in effect from time to time, any monies paid to the Trustee in respect of any Contingent Value Rights and not paid to the Holders within three years after the date of such payment, or represented by any cheque of the Trustee mailed to a Holder under Section 2.3(c) which has not been negotiated for payment within six years after the date of mailing, will be repaid to the Issuer by the Trustee on demand, and thereupon the Trustee will be released from all further liability with respect to such monies, and thereafter the Holders will have no rights in respect of such Contingent Value Rights, except to obtain payment of such monies (without interest thereon) from the Issuer.

9.2 Release from Covenants

Upon the Expiry Time this Indenture shall cease to be of further effect and the Trustee, on demand of and at the cost and expense of the Issuer and upon delivery to the Trustee of a certificate of the Issuer stating that all conditions precedent to the satisfaction and discharge of this Indenture have been complied with, shall execute proper instruments acknowledging satisfaction of and discharging this Indenture. Notwithstanding the foregoing, the indemnities provided to the Trustee by the Issuer hereunder shall remain in full force and effect and survive the termination of this Indenture or resignation or removal of the Trustee.

ARTICLE 10
MEETING OF CONTINGENT VALUE RIGHTS HOLDERS

10.1 Contingent Value Rights Holders to Convene Meeting

The Trustee may at any time and from time to time and will, on receipt of a written request of the Issuer or Holders holding not less than 10% of the Contingent Value Rights, and upon being funded and indemnified to its reasonable satisfaction by the Issuer or by the Holders against the costs which may be incurred in connection with the calling and holding of such meeting, convene a meeting of the Holders. In the event of the Trustee failing within 30 days after receipt of such request and indemnity and funding given as aforesaid to give notice convening such meeting, the Issuer or such Holders, as the case may be, may convene such meeting. Every such meeting will be held in the City of Vancouver or at such other place as may be approved or determined by the Trustee.

10.2 Notice

At least 21 days' notice of any meeting must be given to the Holders in the manner provided in Article 12 and a copy of the notice will be sent by mail to the Trustee (unless the meeting has been called by it) and to the Issuer (unless the meeting has been called by it). Such notice must state the time and the place of the meeting and will state briefly the general nature of the business to be transacted. It will 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.

10.3 Chair

Some person, who need not be a Holder, nominated in writing by the Trustee will chair the meeting and if no person is so nominated, or if the person so nominated is not present within fifteen minutes from the time fixed for the holding of the meeting, the Holders present in person or by proxy will choose some person present to be the chair.

10.4 Quorum

- (a) At any meeting of the Holders, a quorum will consist of Holders present in person or by proxy representing at least 10% of the outstanding Contingent Value Rights.
- (b) If a quorum of the Holders is not present within half an hour from the time fixed for holding any meeting, the meeting, if convened by the Holders, will be dissolved, but if otherwise convened the meeting will stand adjourned without notice to the same day in the next week (unless such day is a non-Business Day in which case it will stand adjourned to the next following Business Day thereafter) at the same time and place, unless the chair appoints some other place, day or time of which not less than seven days' notice will be given in the manner provided in Article 12.
- (c) At the adjourned meeting, the Holders present in person or by proxy will form a quorum and may transact the business for which the meeting was originally convened notwithstanding that they may not represent 10% of the outstanding Contingent Value Rights.

10.5 Power to Adjourn

The chair of any meeting at which a quorum of the Holders is present may with the consent of the holders of a majority in principal amount of the Contingent Value Rights represented thereto, adjourn any such meeting and no notice of such adjournment need be given except such notice, if any, as the meeting may prescribe.

10.6 Show of Hands

Every question submitted to a meeting will be decided in the first place by a majority of the votes given on a show of hands. At any such meeting, a declaration by the chair that a resolution has been carried, or carried unanimously, or by a particular majority, or lost, or not carried by a particular majority, will be conclusive evidence of the fact.

10.7 Poll

On every Special Resolution, and on any other question submitted to a meeting, when demanded by the chair or one or more Holders or proxies for Holders holding at least 10% of the Contingent Value Rights, a poll will be taken in such manner and either at once or after an adjournment, as the chair will direct. Questions other than Special Resolutions will, if a poll is taken, be decided by votes of the holders of a majority in the principal amount of the Contingent Value Rights represented at the meeting and voted on the poll.

10.8 Voting

On a show of hands every person who is present and entitled to vote, whether as Holder or as proxy for one or more absent Holders or both, will have one vote. On a poll, each holder of Contingent Value Rights present in person or represented by proxy will be entitled to one vote for each Contingent Value Right of which the person is a holder. A proxy need not be a Holder. In the case of joint registered holders of a Contingent Value Right, any one of them present in person or by proxy at the meeting may vote in the absence of the other or others; but in case more than one of them be present in person or by proxy, they will vote together in respect of the Contingent Value Rights of which they are joint registered holders.

10.9 Persons Entitled to Attend Meetings

The Issuer, the Trustee, and the Holders, by their respective officers and directors, the auditors of the Issuer and the legal advisors of the Issuer, the Trustee and any Holder may attend any meeting of Holders, but persons, other than Holders and proxies representing one or more absent Holders, will have no vote as such.

10.10 Regulations

The Trustee, or the Issuer with the approval of the Trustee, may (for the purpose of enabling Holders to be present and vote at any meeting and of enabling them to be represented and vote at any such meeting by proxy and of enabling the lodging of such proxies at some place other than the place where the meeting is to be held) make and vary such regulations as it may from time to time think fit providing for the setting of the record date for a meeting for the purpose of determining Holders entitled to receive notice of and to vote at the meeting.

Any regulations so made will be valid and proxies received and votes given in accordance with such regulations will be valid and will be counted. Except as such regulations may provide, the only person who will be recognized at any meeting as the Holder, or as entitled to vote or be present at the meeting with respect thereto, will be registered Holders and persons whom registered Holders have by instrument in writing duly appointed as their proxies.

10.11 Issuer and Trustee May be Represented

The Issuer and the Trustee, by their respective directors, officers, agents, and employees and legal counsel for the Issuer and for the Trustee may attend any meeting of the Holders.

10.12 Powers Exercisable by Special Resolution

In addition to all other powers conferred upon them by any other provisions of this Indenture or by law, a meeting of the Holders will have the following powers exercisable from time to time by Special Resolution, subject to the receipt of necessary regulatory and stock exchange approvals, if any:

- (a) power to agree to any modification, abrogation, alteration, compromise or arrangement of the Contingent Value Rights of Holders or the Trustee against the Issuer or against its undertaking, property and assets or any part thereof whether such Contingent Value Rights arise under this Indenture or otherwise;
- (b) power to direct or authorize the Trustee to exercise any power, right, remedy or authority given to it by this Indenture or to refrain from exercising any such power, right, remedy or authority;
- (c) power to waive and direct the Trustee to waive any default on the part of the Issuer in complying with any provision of this Indenture, and/or to annul and to direct the Trustee to annul any declaration in respect of such default made by the Trustee;
- (d) power to assent to any modification of or change in or omission from the provisions contained herein which will be agreed to by the Issuer and to authorize the Trustee to concur in and execute any deed or instrument supplemental hereto embodying such modification, change or omission;
- (e) power to appoint a committee with power and authority (subject to such limitations, if any, as may be prescribed in the resolution) to exercise, and to direct the Trustee to exercise, on behalf of the Holders, such of the powers of the Holders as are exercisable by special or other resolution as are included in the resolution appointing the committee. The resolution making such appointment may provide for payment of the expenses and disbursements of and compensation of such committee. Such committee will consist of such number of persons as is prescribed in the resolution appointing it and the members need not themselves be Holders;
- (f) power to amend, alter or repeal any Special Resolution previously passed by the Holders or by any committee appointed pursuant to clause (e); and
- (g) power to remove the Trustee from office and to appoint a new trustee or trustees.

10.13 Powers Cumulative

Any one or more of the powers and any combination of powers stated in this Indenture to be exercisable by the Holders by Special Resolution or otherwise may be exercised from time to time and the exercise of any one or more of such powers or any combination of them from time to time will not be deemed to exhaust the rights of the Holders to exercise such power or powers or combination of powers thereafter from time to time.

10.14 Minutes

Minutes of all resolutions passed and proceedings at every such meeting as aforesaid will be made and duly entered in books to be from time to time provided for that purpose by the Trustee at the expense of the Issuer, and any such minutes as aforesaid, if signed by the chair of the meeting at which such resolutions were passed or proceedings had, or by the chair of the next succeeding meeting of the Holders, will 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 will have been made, will be deemed to have been duly held and convened, and all resolutions passed thereat or proceedings taken, to have been duly passed and taken.

10.15 Instruments in Writing

All actions that may be taken and all powers that may be exercised by the Holders at a meeting held as provided in this section may also be taken and exercised by the holders of not less than two thirds in principal amount of all the outstanding Contingent Value Rights by an instrument in writing signed in one or more counterparts and the expression "Special Resolution", when used in this Indenture, will include an instrument so signed.

10.16 Binding Effect of Resolutions

Every Special Resolution passed in accordance with the provisions of this Article at a meeting of Holders will be binding upon all the Holders, whether present at or absent from such meeting, and every instrument in writing signed by the Holders in accordance with Section 10.15 will be binding upon all the Holders, whether signatories thereto or not, and each and every Holder and the Trustee (subject to the provisions for its indemnity herein contained) will be bound to give effect accordingly to every such resolution and instrument in writing.

10.17 Holdings by Issuer Disregarded

In determining whether Holders holding Contingent Value Rights evidencing the entitlement to receive Contingent Value Consideration are present at a meeting of Holders for the purpose of determining a quorum or have concurred in any consent, waiver, resolution or other action under this Indenture, Contingent Value Rights owned legally or beneficially by the Issuer shall be disregarded in accordance with the provisions of Section 16.6.

**ARTICLE 11
CONCERNING THE TRUSTEE**

11.1 Trust Indenture Legislation

- (a) In this section the term “Applicable Legislation” means the provisions, if any, of any statute of Canada or the Province of British Columbia and of regulations made under any such statute and any statute that may be substituted therefor as from time to time amended, relating to trust indentures and to the rights, duties and obligations of trustees under trust indentures and of corporations issuing debt obligations under trust indentures, to the extent that such provisions are at the time in force and applicable to this Indenture.
- (b) If and to the extent that any provision of this Indenture limits, qualifies or conflicts with a mandatory requirement of Applicable Legislation, such mandatory requirement will prevail.
- (c) The Issuer and the Trustee agree that each will at all times in relation to this Indenture and in any action to be taken hereunder, observe and comply with and be entitled to the benefits of Applicable Legislation.

11.2 Rights and Duties of Trustee

- (a) In the exercise of the rights, duties and obligations prescribed or conferred by the terms of this Indenture, the Trustee will act honestly and in good faith with a view to the best interests of the holders of the Contingent Value Rights and will exercise the degree of care, diligence and skill that a reasonable prudent person would exercise in comparable circumstances.
- (b) The obligation of the Trustee to commence or continue any act, action or proceeding for the purpose of enforcing any rights of the Trustee or the Holders hereunder will be conditional upon the Holders 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. None of the provisions contained in this Indenture will 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 and funded as aforesaid.
- (c) The Trustee may, before commencing or at any time during the continuance of any such act, action or proceeding, require the Holders at whose instance it is acting to deposit with the Trustee the Contingent Value Rights held by them, for which Contingent Value Rights the Trustee will issue receipts.

- (d) Every provision of this Indenture that by its terms relieves the Trustee of liability or entitles it to rely upon any evidence submitted to it is subject to the provisions of Applicable Legislation.

11.3 Evidence, Experts and Advisors

- (a) In addition to the reports, certificates, opinions and other evidence required by this Indenture, the Issuer will furnish to the Trustee such additional evidence of compliance with any provision hereof, and in such form, as may be prescribed by Applicable Legislation or as the Trustee may reasonably require by written notice to the Issuer.
- (b) In the exercise of its rights, duties and obligations, the Trustee, if it is acting in good faith, may rely as to the truth of the statements and the accuracy of the opinions expressed therein, upon statutory declarations, opinions, reports, certificates or other evidence referred to in subsection (a) hereof, provided that such evidence complies with Applicable Legislation and that the Trustee examines the same in order to determine whether such evidence indicates compliance with the applicable requirements of this Indenture.
- (c) Whenever Applicable Legislation requires that evidence referred to in subsection (a) be in the form of a statutory declaration, the Trustee may accept such statutory declaration in lieu of a certificate of the Issuer required by any provision hereof. Any such statutory declaration may be made by one or more of the president, the secretary, the treasurer, or any vice-president, or a director of the Issuer.
- (d) The Trustee may employ or retain such counsel, accountants, engineers, appraisers or other experts or advisors as it may reasonably require for the purpose of discharging its duties hereunder, the costs and expenses for all services so performed by any of them, without taxation of costs of any counsel, of which shall be paid for by the Issuer and the Trustee will not be responsible for any misconduct or negligence on the part of any of them who have been appointed with due care by the Trustee.
- (e) The Trustee may act and rely and shall be protected in acting and relying in good faith on the opinion or advice of or information obtained from any counsel, accountant, appraiser, engineer or other expert or advisor, whether retained or employed by the Issuer or by the Trustee in relation to any matter arising in the administration of the agency hereof.

11.4 Action by Trustee to Protect Interests

Subject to the discretion of the Holders expressed by Special Resolution or Section 7.6, the Trustee will have the power to institute and to maintain such actions and proceedings as it may consider necessary or expedient to preserve, protect or enforce its interests and the interests of the Holders.

11.5 Trustee Not Required to Give Security

The Trustee will 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 Contingent Value Rights.

11.6 Protection of Trustee

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

- (a) The Trustee will not be: (i) liable for or by reason of any statements of fact or recitals in this Indenture; or (ii) required to verify the same, but all such statements or recitals are and will be deemed to be made by the Issuer.
- (b) The Trustee is not obliged to see to or to require evidence of the registration or filing (or renewal thereof) of this Indenture or any instrument ancillary or supplemental hereto.
- (c) The Trustee will not be bound to give notice to any person or persons by reason of the execution hereof.
- (d) The Trustee will not incur any liability or responsibility whatsoever or be in any way responsible for the consequence of any breach on the part of the Issuer of any of the covenants herein contained, or of any acts of the agents or servants of the Issuer.
- (e) The Issuer and the Holders acknowledge and agree that the sole obligation of the Trustee is to exercise the powers granted hereunder only and on the specific written instructions of the Holders, and that the Issuer will save and hold harmless the Trustee from all liability for any and all acts or omissions in respect of its trusteeship or its actions, as applicable, hereunder.
- (f) The Trustee, its affiliates and their respective directors, officers and employees, in a personal or any other capacity, may buy, lend upon and deal in shares in the capital of the Issuer and in the Contingent Value Rights and generally may contract and enter into financial transactions with the Issuer or any affiliate without being liable to account for any profit made thereby.
- (g) In the event of any dispute arising regarding any term of this Indenture, the Trustee may, at its option, refuse to comply with any or all demands made under this Indenture until such dispute is resolved either by agreement among the parties or by a court of competent jurisdiction.
- (h) The Trustee is entitled not to act and will not be liable for refusing to act unless it has received clear and reasonable instructions from the Issuer or the Holders, as the case may be, which comply with the terms of this Indenture and which do not require the exercise of any discretion or independent judgment on the part of the Trustee.
- (i) The Trustee is entitled to refuse all instructions and will not be liable for refusing instructions, which in any way alter the purpose of this Indenture unless such instructions, if affecting the Issuer, are consented to by the Issuer and, if affecting the Holders, are approved by Special Resolution.
- (j) The Trustee will not be bound to act upon documents that are not authorized pursuant to the terms of this Indenture.

- (k) The Trustee may accept communications by facsimile transmission or other electronic means that enable the Trustee to confirm the identity of the sender and may rely as to the truth of the information contained in such communications.
- (l) Notwithstanding the foregoing or any other provision of this Indenture, any liability of the Trustee shall be limited, in the aggregate, to the amount of annual retainer fees paid by the Issuer to the Trustee under this Indenture in the twelve (12) months immediately prior to the Trustee receiving the first notice of the claim.
- (m) Notwithstanding any other provision of this Indenture, and whether such losses or damages are foreseeable or unforeseeable, the Trustee shall not be liable under any circumstances whatsoever for any: (i) breach by any other party of securities law or other rule of any securities regulatory authority, (ii) lost profits or (ii) special, indirect, incidental, consequential, exemplary, aggravated or punitive losses or damages.

11.7 Compliance with Privacy Code

The Issuer acknowledges 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.

The Issuer 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 hereunder 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 or upon request, including revisions thereto. Some of this personal information may be transferred to servicers outside of Canada for data processing and/or storage.

Further, the Issuer agrees that it shall not provide or cause to be provided to the Trustee any personal information relating to an individual who is not a party to this Indenture unless the Issuer has assured itself that such individual understands and has consented to the aforementioned uses and disclosures.

11.8 Resignation, Removal or Replacement of Trustee

The Trustee may resign its trust and be discharged from all further duties and liabilities hereunder by giving to the Issuer 30 days' notice in writing or such shorter notice as the Issuer may accept as sufficient. The Holders by Special Resolution will have the power at any time to remove the Trustee and to appoint a new trustee by giving the Trustee 30 days' notice in writing, or such shorter notice as the Trustee may

accept as sufficient. In the event of the Trustee resigning or being removed as aforesaid or being dissolved, becoming bankrupt, going into liquidation or otherwise becoming incapable of acting hereunder, the Issuer will forthwith appoint a new trustee, unless a new trustee has already been appointed by the Holders; failing such appointment by the Issuer the retiring Trustee or any Holder may apply to a Judge of the Supreme Court of British Columbia (the “**Court**”) for the appointment of a new trustee; but any new trustee so appointed by the Issuer or by the Court will be subject to removal as aforesaid by the Holders. On any new appointment, the new trustee will be vested with the same powers, rights, duties and responsibilities as if it had been originally named herein as Trustee without any further assurance, conveyance, act or deed; but there will be immediately executed, at the expense of the Issuer, all such conveyances or other instruments as may, in the opinion of counsel, be necessary or advisable for the purpose of assuring the same to the new trustee.

Upon the appointment of a successor trustee, the Issuer shall promptly notify the registered Holders thereof in the manner provided for in Section 12.1.

Any corporation into which the Trustee may be merged or consolidated or amalgamated, or any corporation resulting therefrom to which the Trustee shall be a party, or any corporation succeeding to substantially the corporate trust business of the Trustee shall be the successor to the Trustee hereunder without any further act on its part or any of the parties hereto, provided that such corporation would be eligible for appointment as successor trustee under this Section 11.8.

11.9 Acceptance of Trust

The Trustee hereby accepts the appointment as agent for the Holders pursuant to this Indenture and agrees to perform and administer this Indenture for and on behalf of the Holders upon the terms and conditions herein set forth.

11.10 Authority of Trustee

Subject to subsection 11.2(a), the Trustee will have the authority to take any action on behalf of the Holders which is, in its opinion, acting reasonably:

- (a) contemplated by this Indenture;
- (b) not inconsistent with its rights, powers, duties or obligations under this Indenture; or
- (c) necessary or desirable to exercise its rights and powers and to perform its duties and obligations under this Indenture.

11.11 Indemnification

Without limiting any protection or indemnity of the Trustee under any other provision of this Indenture, or otherwise at law, the Issuer hereby agrees to indemnify and hold harmless the Trustee and its affiliates, officers, directors, employees, agents, successors and assigns (the “**Indemnified Parties**”), from and against any and all liabilities, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements, including reasonable legal or advisor fees and disbursements, or of whatever kind or nature, which may at any time be imposed on, incurred by or asserted against the Indemnified Parties in connection with the performance of its duties and obligations hereunder, other than such liabilities, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements arising by reason of

the gross negligence or fraud of the Trustee. This provision shall survive the resignation or removal of the Trustee, or the termination of this Indenture. The Trustee shall not be under any obligation to prosecute or defend any action or suit in respect of the relationship which, in the opinion of its counsel, may involve it in expense or liability, unless the Issuer shall, so often as required, furnish the Trustee with satisfactory indemnity and funding against such expense or liability.

11.12 Payment of the Contingent Value Consideration

Payments of amounts representing the Contingent Value Consideration due to the Holders will be made in the following manner. The Issuer will establish and maintain with the Trustee a Contingent Value Consideration Account maintained by and be subject to the control of the Trustee for the purposes of this Indenture. On or before 9:00 a.m. (Vancouver time) on the Business Day immediately prior to the applicable Payment Date under this Indenture, the Issuer will deliver to the Trustee a certified cheque or wire transfer for deposit in the applicable Contingent Value Consideration Account in an amount sufficient to pay the cash amount payable in respect of such Contingent Value Rights (less any tax required by law to be deducted), provided the Issuer may elect to satisfy this requirement by providing the Trustee with a cheque for such amounts required under this post-dated to the applicable Payment Date. The Trustee, on behalf of the Issuer, will pay to each Holder entitled to receive the Contingent Value Consideration on the Contingent Value Rights. The delivery of such funds to the Trustee for deposit to the Contingent Value Consideration Account will satisfy and discharge the liability of the Issuer of the Contingent Value Rights to which the delivery of funds relates to the extent of the amount delivered (plus the amount of any tax deducted as aforesaid) and such Contingent Value Rights will thereafter to that extent not be considered as outstanding under this Indenture and such Holder will have no other right in regard thereto other than to receive out of the money so delivered or made available the amount to which it is entitled.

ARTICLE 12 NOTICES

12.1 Notice to Holders

Unless herein expressly provided, any notice to be given hereunder to Holders will be deemed to be validly given to the holders of registered Contingent Value Rights if such notice is sent by first class mail, postage prepaid, addressed to such holders at their respective addresses appearing on the register maintained under Article 3, or sent by fax. If in the case of joint holders of any Contingent Value Right more than one address appears in the Register in respect of such joint holding, such notice will be addressed only to the first address so appearing.

Any notice sent by mail will be deemed to have been given three Business Days following the day of mailing and any notice sent by fax will be deemed to have been given at the time of transmission. In determining under any provision hereof the date when notice of any meeting or other event must be given, the date of giving the notice will be excluded and the date of the meeting, or other event will be excluded. Accidental error or omission in giving notice or accidental failure to mail notice to any Holder will not invalidate any action or proceeding founded thereon.

If, by reason of a strike, lockout or other work stoppage, actual or threatened, involving postal employees, any notice to be given to the Holders hereunder could reasonably be considered unlikely to reach its destination, such notice shall be valid and effective only if it is delivered to such Holders to the address for such Holders contained in the register maintained by the Trustee or such notice may be given, at the Issuer's expense, by means of publication in the Globe and Mail, National Edition, or any other English

language daily newspaper or newspapers of general circulation in Canada, in each two successive weeks, the first such notice to be published within 5 business days of such event, and any so notice published shall be deemed to have been received and given on the latest date the publication takes place.

12.2 Notice to the Trustee

Any notice to the Trustee under the provisions of this Indenture will be valid and effective if delivered to an officer of the Trustee or if sent by first class mail, postage prepaid, addressed to the Trustee at its principal office in Vancouver, British Columbia, or sent by email to Corporatetrust.vancouver@computershare.com. Any notice sent by mail will be deemed to have been given three Business Days following the day of mailing and any notice sent by email will be deemed to have been given at the time of transmission. The Trustee's address is 510 Burrard Street, 3rd Floor, Vancouver, BC, V6C 3B9, Attention: General Manager, Corporate Trust. The Trustee may from time to time notify the Issuer and the Holders of a change in address which thereafter, until changed by like notice, will be the address of the Trustee for all purposes of this Indenture.

12.3 Notice to the Issuer

Any notice to the Issuer under the provision of this Indenture will be valid and effective if delivered to the Issuer or if sent by first class mail postage prepaid, addressed to the Issuer at: 1569 Dempsey Road, North Vancouver, British Columbia, V2X 0V8, Attention: President, or sent by email to info@lupakagold.com. Any notice sent by mail will be deemed to have been given three Business Days following the day of mailing and any notice sent by email will be deemed to have been given at the time of transmission. The Issuer may from time to time notify the Trustee and the Holders of a change in address which thereafter, until changed by like notice, will be the address of the Issuer for all purposes of this Indenture.

A copy of any notice to the Issuer, which copy shall not constitute notice hereunder, should be sent to the Company's solicitors at: DuMoulin Black LLP, 10th Floor, 595 Howe Street, Vancouver, British Columbia, V6C 2T5, Attention: Jason Sutherland, or sent by email to jsutherland@dumoulinblack.com

ARTICLE 13 SUCCESSOR COMPANIES

13.1 Certain Requirements in Respect of Merger, etc.

Except in the ordinary course of business, the Issuer shall not, in a single transaction or a series of related transactions, amalgamate or consolidate with or merge into any other Person, or permit any other Person to amalgamate or consolidate with or merge into the Issuer, or directly or indirectly transfer, sell, lease or otherwise dispose of all or substantially all of its property and assets (a "**Disposition**") to any Person unless:

- (a) the Issuer shall be the surviving Person, or the Person (if other than the Issuer) formed by such amalgamation, consolidation or into which the Issuer is merged or that acquires by disposition all or substantially all of the property and assets, or shares of the Issuer, and shall expressly assume, by a supplemental indenture executed and delivered to the Trustee in form satisfactory to the Trustee based on the advice of counsel, all of the Issuer's obligations under this Indenture and, in the case of an entity organized other than under the laws of the Province of British Columbia, shall attorn to the jurisdiction of the courts of the Province of British Columbia (the Issuer or such other Person who becomes

such a successor obligor under this Indenture being herein referred to as the “**Successor Person**”);

- (b) immediately before and after giving effect to such transaction, no Event of Default shall have occurred and be continuing; and
- (c) the Successor Person shall have delivered to the Trustee (i) a certificate of the Successor Person stating that such amalgamation, consolidation, merger or disposition by the Issuer, and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture, comply with this Article 13 and Article 14, if applicable, and that all conditions precedent herein provided for relating to such transaction have been satisfied, and (ii) an opinion of counsel stating that such amalgamation, consolidation, merger or other disposition complies with subsection 13.1(a), and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture has been duly authorized, executed and delivered by the Successor Person and constitutes a legal, valid and binding obligation of, and is enforceable against, such Successor Person, subject to such assumptions, qualifications and limitations as the Trustee, acting reasonably, may accept.

13.2 Successor Substituted

Upon any consolidation, amalgamation, merger or disposition described herein, and complying with the provisions of Section 13.1 in which the Issuer is not the continuing corporation, the Successor Person shall succeed to, and be substituted for, and may exercise every right and power of, the Issuer, and the Issuer shall be discharged from all its obligations and covenants under this Indenture.

ARTICLE 14 SUPPLEMENTAL INDENTURES

14.1 Supplemental Indentures

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

- (a) adding to the covenants of the Issuer herein contained for the protection of the holders of the Contingent Value Rights and/or providing for events of default in addition to those herein specified;
- (b) making such provision not inconsistent with this Indenture as may be necessary or desirable with respect to matters or questions arising hereunder which, in the opinion of the Trustee, upon advice of counsel, it may be expedient to make, provided that the Trustee will be of the opinion that such provisions and modifications will not be prejudicial to the interests of the Holders of Contingent Value Rights;
- (c) evidencing the succession, or successive successions, of other corporations to the Issuer and the covenants of and obligations assumed by any such successor in accordance with the provisions of this Indenture;

- (d) giving effect to any Special Resolution passed as provided in Article 10;
- (e) modifying any of the provisions of this Indenture, including relieving the Issuer from any of the obligations, conditions or restrictions herein contained, provided that such modification or relief shall be or become operative or effective only if, in the opinion of the Trustee, relying on the advice of counsel, such modification or relief in no way prejudices any of the rights of the registered Holders or of the Trustee, and provided further that the Trustee may in its sole discretion decline to enter into any such supplemental indenture which in its opinion may not afford adequate protection to the Trustee when the same shall become operative;
- (f) providing for the issuance of additional Contingent Value Rights hereunder, including Contingent Value Rights in excess of the number set out in Section 2.1 and any consequential amendments hereto as may be required by the Trustee relying on the advice of counsel; and
- (g) for any other purpose not inconsistent with the terms of this Indenture.

The Trustee may also, without the consent or concurrence of the Holders of Contingent Value Rights, by supplemental indenture or otherwise, concur with the Issuer in making any changes or corrections in this Indenture which it has been advised by counsel are required for the purpose of curing or correcting any ambiguity or defective or inconsistent provision or clerical omission or mistake or manifest error contained herein or in any deed or indenture supplemental or ancillary hereto, provided that in the opinion of the Trustee, relying on the advice of counsel, the Contingent Value Rights of the Trustee and of the Holders of Contingent Value Rights are in no way prejudiced thereby.

ARTICLE 15 ANTI-MONEY LAUNDERING

15.1 Third Party Interests

Each party to this Indenture hereby represents to the Trustee that any account to be opened by, or interest to held by the Trustee in connection with this Indenture, for or to the credit of such party, either (i) is not intended to be used by or on behalf of any third party; or (ii) is intended to be used by or on behalf of a third party, in which case such party hereto agrees to complete and execute forthwith a declaration in the Trustee's prescribed form as to the particulars of such third party.

15.2 Not Bound to Act

The Trustee shall retain the right not to act and shall not be liable for refusing to act if, due to a lack of information or for any other reason whatsoever, the Trustee, in its sole judgment, determines that such act might cause it to be in non-compliance with any applicable anti-money laundering, anti-terrorist legislation or economic sanctions 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, anti-terrorist legislation or economic sanctions legislation, regulation or guideline, then it shall have the right to resign on 10 days written notice to the Issuer, provided (i) that the Trustee's written notice shall describe the circumstances of such non-compliance; and (ii) that if such circumstances are rectified to the Trustee's satisfaction within such 10 day period, then such resignation shall not be effective.

ARTICLE 16
MISCELLANEOUS

16.1 Provisions of Indenture for the Sole Benefit of Parties and registered Holders

Nothing in this Indenture, expressed or implied, shall give or be construed to give to any person other than the parties hereto and the registered Holders, as the case may be, any legal or equitable right, remedy or claim under this Indenture, or under any covenant or provision herein or therein contained, all such covenants and provisions being for the sole benefit of the parties hereto and the registered Holders.

16.2 Severability

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

16.3 Force Majeure

No 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.

16.4 Successors and Assigns

The provisions of this Indenture enure to the benefit of, and is binding upon, the parties and their respective successors and assigns, provided always that the Issuer shall not assign or transfer any of its rights and obligations hereunder without the prior written consent of the Trustee.

16.5 Ownership of Contingent Value Rights

The Issuer and the Trustee may deem and treat the Holders as the absolute owner thereof for all purposes, and the Issuer and Trustee shall not be affected by any notice or knowledge to the contrary except where the Issuer and Trustee is required to take notice by statute or by order of a court of competent jurisdiction. The receipt of any such Holder of the Contingent Value Consideration which may be acquired pursuant thereto shall be a good discharge to the Issuer and the Trustee for the same and neither the Issuer nor the Trustee shall be bound to inquire into the title of any such holder except where the Issuer or the Trustee is required to take notice by statute or by order of a court of competent jurisdiction.

16.6 Contingent Value Rights owned by the Issuer or its Subsidiaries - Certificate to be Provided.

For the purpose of disregarding any Contingent Value Rights owned legally or beneficially by the Issuer in Section 10.17, the Issuer shall provide to the Trustee, from time to time, a certificate of the Issuer setting forth as at the date of such certificate:

- i. the names (other than the name of the Issuer) of the Holders which, to the knowledge of the Issuer, are owned by or held for the account of the Issuer; and
- ii. the number of Contingent Value Rights owned legally or beneficially by the Issuer;

and the Trustee, in making the computations shall be entitled to rely on such certificate without any additional evidence.

ARTICLE 17 EXECUTION

17.1 Counterparts and Formal Date

This Indenture may be executed in several counterparts each of which so executed will be deemed to be an original, and such counterparts together will constitute one and the same instrument and notwithstanding their date of execution, will be deemed to bear the date set out above.

[Remainder of page left intentionally blank. Signatures appear on next page.]

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

By the Issuer

LUPAKA GOLD CORP.

By: "Gordon Ellis"
Gordon Ellis
Chief Executive Officer and Director

By the Trustee

COMPUTERSHARE TRUST COMPANY OF CANADA

By: "Authorized Signatory"
its:

By: "Authorized Signatory"
its

SCHEDULE "A"

FORM OF TRANSFER

To: Computershare Trust Company of Canada

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers to

_____ (print name and address) the Contingent Value Rights and hereby irrevocably constitutes and appoints _____ as its attorney with full power of substitution to transfer the said securities on the appropriate register of the Trustee.

DATED this ____ day of _____, 20 ____.

Signature of Transferor

Name of Transferor

REASON FOR TRANSFER – FOR US RESIDENTS ONLY (WHERE THE INDIVIDUAL(S) OR CORPORATION RECEIVING THE SECURITIES IS A US RESIDENT). PLEASE SELECT ONLY ONE (SEE INSTRUCTIONS BELOW).

GIFT ESTATE PRIVATE SALE OTHER (OR NO CHANGE IN OWNERSHIP)

DATE OF EVENT (DATE OF GIFT, DEATH OR SALE):

□ □ / □ □ / □ □ □ □

VALUE PER CONTINGENT VALUE ON THE DATE OF EVENT:

\$ □ □ □ . □ □ □ CAD OR USD