

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549**

**FORM 8-A**  
**FOR REGISTRATION OF CERTAIN CLASSES OF SECURITIES  
PURSUANT TO SECTION 12(b) OR (g) OF THE  
SECURITIES EXCHANGE ACT OF 1934**

**ALGONQUIN POWER & UTILITIES CORP.**

(Exact name of registrant as specified in its charter)

**Ontario, Canada**  
(State or other jurisdiction  
of incorporation or organization)

**N/A**  
(I.R.S. Employer  
Identification No.)

**354 Davis Road**  
**Oakville, Ontario, Canada**  
(Address of Principal Executive Offices)

**L6J 2X1**  
(Zip Code)

**Securities to be registered pursuant to Section 12(b) of the Act:**

Title of each class  
to be so registered

Name of each exchange on which  
each class is to be registered

**6.875% Fixed-to-Floating Subordinated Notes – Series 2018-A due October  
17, 2078**

**New York Stock Exchange**

If this form relates to the registration of a class of securities pursuant to Section 12(b) of the Exchange Act and is effective pursuant to General Instruction A.(c) or (e), check the following box.

If this form relates to the registration of a class of securities pursuant to Section 12(g) of the Exchange Act and is effective pursuant to General Instruction A.(d) or (e), check the following box.

If this form relates to the registration of a class of securities concurrently with a Regulation A offering, check the following box.

Securities Act registration statement or Regulation A offering statement file number  
to which this form relates (if applicable):  
333-227245

Securities to be registered pursuant to Section 12(g) of the Act:

None  
(Title of Class)

## INFORMATION REQUIRED IN REGISTRATION STATEMENT

Algonquin Power & Utilities Corp. (the “Company”) has filed with the Securities and Exchange Commission (the “SEC”) a prospectus supplement dated October 10, 2018 (the “Prospectus Supplement”) to a short-form base shelf prospectus dated September 18, 2018 (the “Prospectus”), relating to securities to be registered hereunder included in the Company’s shelf Registration Statement on Form F-10 (File No. 333-227245), which became automatically effective on September 20, 2018.

### Item 1. Description of Registrant’s Securities to be Registered.

The Company on this registration statement registers hereunder \$287,500,000 in aggregate principal amount of the Company’s 6.875% Fixed-to-Floating Subordinated Notes – Series 2018-A due October 17, 2018 (the “Notes”). For a description of the securities to be registered hereunder, reference is made to the information under the headings “Description of Debt Securities” and “Description of Equity Securities” of the Prospectus dated September 18, 2018, as supplemented by the information under the headings “Description of the Notes” and “Description of the Conversion Preferred Shares” in the Company’s related Prospectus Supplement, dated October 10, 2018, filed by the Company with the SEC on October 15, 2018. Such information is incorporated herein by reference and made a part of this registration statement in its entirety.

### Item 2. Exhibits.

<b>Exhibit Number</b>	<b>Description</b>
<a href="#">3.1*</a>	Restated Articles of Algonquin Power & Utilities Corp., as amended.
<a href="#">3.2*</a>	By-laws of Algonquin Power & Utilities Corp.
<a href="#">4.1*</a>	Indenture dated October 17, 2018, by and among Algonquin Power & Utilities Corp., American Stock Transfer Trust Company, LLC, as the U.S. Trustee, and AST Trust Company (Canada), as the Canadian Co-Trustee.
<a href="#">4.2*</a>	First Supplemental Indenture dated October 17, 2018, by and among Algonquin Power & Utilities Corp., American Stock Transfer Trust Company, LLC, as the U.S. Trustee, and AST Trust Company (Canada), as the Canadian Co-Trustee.
<a href="#">4.3*</a>	Form of 6.875% Fixed-to-Floating Subordinated Note – Series 2018-A due October 17, 2078 (included in Exhibit <a href="#">4.2</a> hereto).
<a href="#">4.4*</a>	Provisions Attaching to Fixed-To-Floating Preferred Shares, Series F of Algonquin Power & Utilities Corp. (included in Exhibit <a href="#">3.1</a> hereto).

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\*Filed herewith.

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**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, hereunto duly authorized.

Date: October 18, 2018

**ALGONQUIN POWER & UTILITIES CORP.**

By: s/ David Bronicheski  
Name: David Bronicheski  
Title: Chief Financial Officer

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Innovation, Science and  
Economic Development Canada  
Corporations Canada

Innovation, Sciences et  
Développement économique Canada  
Corporations Canada

## Certificate of Amendment

*Canada Business Corporations Act*

## Certificat de modification

*Loi canadienne sur les sociétés par actions*

Algonquin Power & Utilities Corp.

Corporate name / Dénomination sociale

236237-6

Corporation number / Numéro de société

I HEREBY CERTIFY that the articles of the above-named corporation are amended under section 178 of the *Canada Business Corporations Act* as set out in the attached articles of amendment.

JE CERTIFIE que les statuts de la société susmentionnée sont modifiés aux termes de l'article 178 de la *Loi canadienne sur les sociétés par actions*, tel qu'il est indiqué dans les clauses modificatrices ci-jointes.

Cheryl Ringor

Deputy Director / Directeur adjoint

2018-10-16

Date of amendment (YYYY-MM-DD)

Date de modification (AAAA-MM-JJ)

Canada

**Form 4**  
**Articles of Amendment**  
*Canada Business Corporations Act*  
*(CBCA) (s. 27 or 177)*

**Formulaire 4**  
**Clauses modificatrices**  
*Loi canadienne sur les sociétés par*  
*actions (LCSA) (art. 27 ou 177)*

- 1 Corporate name  
Dénomination sociale  
**Algonquin Power & Utilities Corp.**
- 2 Corporation number  
Numéro de la société  
**236237-6**
- 3 The articles are amended as follows  
Les statuts sont modifiés de la façon suivante

See attached schedule / Voir l'annexe ci-jointe

- 4 Declaration: I certify that I am a director or an officer of the corporation.  
Déclaration : J'atteste que je suis un administrateur ou un dirigeant de la société.

Original signed by / Original signé par  
**David Bronicheski**  
\_\_\_\_\_  
**David Bronicheski**  
**905-465-4512**

Misrepresentation constitutes an offence and, on summary conviction, a person is liable to a fine not exceeding \$5000 or to imprisonment for a term not exceeding six months or both (subsection 250 (1) of the CBCA).

Faire une fausse déclaration constitue une infraction et son auteur, sur déclaration de culpabilité par procédure sommaire, est passible d'une amende maximale de 5 000 \$ et d'un emprisonnement maximal de six mois, ou l'une de ces peines (paragraphe 250(1) de la LCSA).

You are providing information required by the CBCA. Note that both the CBCA and the *Privacy Act* allow this information to be disclosed to the public. It will be stored in personal information bank number IC/PPU-049.

Vous fournissez des renseignements exigés par la LCSA. Il est à noter que la LCSA et la *Loi sur les renseignements personnels* permettent que de tels renseignements soient divulgués au public. Ils seront stockés dans la banque de renseignements personnels numéro IC/PPU-049.

**PROVISIONS ATTACHING TO  
FIXED-TO-FLOATING PREFERRED SHARES, SERIES F  
OF  
ALGONQUIN POWER & UTILITIES CORP.  
(the "Corporation")**

The sixth series of preferred shares, designated as Preferred Shares, Series F (the "**Preferred Shares, Series F**"), shall consist of such number of shares as are required to be issued by the Corporation upon the occurrence of an Automatic Conversion Event (as defined below) and which, in addition and subject to the rights, privileges, restrictions and conditions attaching to the preferred shares as a class, shall have attached thereto the following rights, privileges, restrictions and conditions.

**1. DEFINITION OF TERMS**

The following definitions are relevant to the Preferred Shares, Series F:

"**Act**" means the *Canada Business Corporations Act*;

"**Automatic Conversion Event**" means an event giving rise to an automatic conversion of Notes — Series 2018-A, without the consent of the holders of such notes and pursuant to the terms and conditions of the Indenture, into Preferred Shares, Series F, and specifically, meaning the occurrence of any one of the following: (i) the making by the Corporation of a general assignment for the benefit of its creditors or a proposal (or the filing of a notice of its intention to do so) under the *Bankruptcy and Insolvency Act* (Canada); (ii) any proceeding instituted by the Corporation seeking to adjudicate it as bankrupt (including any voluntary assignment in bankruptcy) or insolvent or, where the Corporation is insolvent, seeking liquidation, winding up, dissolution, reorganization, arrangement, adjustment, protection, relief or composition of its debts under any law relating to bankruptcy or insolvency in Canada, or seeking the entry of an order for the appointment of a receiver, interim receiver, trustee or other similar official for the Corporation or any substantial part of its property and assets in circumstances where the Corporation is adjudged as bankrupt (including any voluntary assignment in bankruptcy) or insolvent; (iii) a receiver, interim receiver, trustee or other similar official is appointed over the Corporation or for any substantial part of its property and assets by a court of competent jurisdiction in circumstances where the Corporation is adjudged as bankrupt (including any voluntary assignment in bankruptcy) or insolvent under any law relating to bankruptcy or insolvency in Canada; or (iv) any proceeding is instituted against the Corporation seeking to adjudicate it as bankrupt (including any voluntary assignment in bankruptcy) or insolvent, or where the Corporation is insolvent, seeking liquidation, winding up, dissolution, reorganization, arrangement, adjustment, protection, relief or composition of its debts under any law relating to bankruptcy or insolvency in Canada, or seeking the entry of an order for the appointment of a receiver, interim receiver, trustee or other similar official for the Corporation or any substantial part of its property and assets in circumstances where the Corporation is adjudged as bankrupt or insolvent under any law relating to bankruptcy or insolvency in Canada, and either such proceeding has not been stayed or dismissed within sixty (60) days of the institution of any such proceeding or the actions sought in such proceedings occur (including the entry of an order for relief against the Corporation or the appointment of a receiver, interim receiver, trustee, or other similar official for it or for any substantial part of its property and assets);

"**Board of Directors**" means the board of directors of the Corporation;

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“**Business Day**” means a day other than a Saturday or Sunday or civic holiday on which chartered banks are open for business in the City of Toronto, Ontario;

“**Common Shares**” means the common shares of the Corporation;

“**Dividend Payment**” means dividends payable on a Dividend Payment Date;

“**Dividend Payment Date**” means January 17, April 17, July 17 and October 17 of each year during which any Preferred Shares, Series F are issued and outstanding;

“**Indenture**” means the Indenture, to be dated on or about October 17, 2018, among the Corporation, American Stock Transfer and Trust Company, LLC, as U.S. trustee (the “U.S. Trustee”), and AST Trust Company (Canada), as Canadian co-trustee (the “Canadian Co-Trustee”) as supplemented by the First Supplemental Indenture, to be dated on or about October 17, 2018, among the Corporation, the U.S. Trustee and the Canadian Co-Trustee;

“**ITA**” means the *Income Tax Act* (Canada) and the regulations thereunder, as amended from time to time, and any successor or replacement provision of similar effect;

“**Notes — Series 2018-A**” means the 6.875% Fixed-to-Floating Subordinated Notes — Series 2018-A due October 17, 2078 of the Corporation;

“**Perpetual Preferred Share Rate**” means the dividend rate payable on the Preferred Shares, Series F from time to time, being the same rate as the interest rate which would have accrued on the Notes — Series 2018-A at any such time if such notes had not been automatically converted into Preferred Shares, Series F upon an Automatic Conversion Event, and had remained outstanding;

“**Preferred Shares**” means the preferred shares of the Corporation, issuable in series;

All dollar amounts are in United States dollars.

## **2. ISSUE PRICE**

The issue price of each of the Preferred Shares, Series F will be \$25.00.

## **3. DIVIDENDS**

Holders of Preferred Shares, Series F will be entitled to receive and the Corporation shall pay thereon, cumulative preferential cash dividends, if, as and when declared by the Board of Directors, subject to the Act, at the Perpetual Preferred Share Rate, payable on each Dividend Payment Date, subject to any applicable withholding tax.

The dividends on Preferred Shares, Series F will accrue (but not compound) on a daily basis. If, on any Dividend Payment Date, the dividends accrued to such date are not paid in full on all of the Preferred Shares, Series F then issued and outstanding, such dividends, or the unpaid portion thereof, shall be paid on a subsequent date or dates determined by the Board of Directors on which the Corporation will have sufficient funds properly available, under the provisions of applicable law and under the provisions of any trust indenture governing bonds, debentures or other securities of the Corporation, for the payment of such dividends.

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Any dividends declared on the Preferred Shares, Series F will (except in case of redemption in which case payment of dividends will be made upon surrender of the certificates representing the Preferred Shares, Series F to be redeemed or except as otherwise provided with the consent of a registered holder of Preferred Shares, Series F) be paid by electronic funds transfer or by cheque of or on behalf of the Corporation in lawful money of the United States (less any tax required to be deducted) and payment thereof shall satisfy such dividends. Each dividend on the Preferred Shares, Series F shall be paid to the registered holders appearing on the Corporation's registers at the close of business on the first day of the month, whether or not a Business Day, during which a Dividend Payment Date falls.

The Corporation shall elect, in the manner and within the time provided under section 191.2 of the ITA, or any successor or replacement provision of similar effect, and take all other necessary action under the ITA, to pay tax at a rate such that no holder of Preferred Shares, Series F will be required to pay tax under section 187.2 of Part IV.1 of the ITA or any successor or replacement provision of similar effect on dividends received on the Preferred Shares, Series F. Nothing in this paragraph shall prevent the Corporation from entering into an agreement with a taxable Canadian corporation with which it is related to transfer all or a portion of the Corporation's liability for tax under section 191.1 of the ITA to that taxable Canadian corporation in accordance with the provisions of section 191.3 of the ITA.

#### **4. VOTING RIGHTS**

Except as otherwise required by law or in the conditions attaching to the Preferred Shares as a class, the holders of Series F Shares shall not be entitled to receive notice of, attend at, or vote at any meeting of shareholders of the Corporation, unless and until the Corporation has failed to pay, in aggregate, eight Dividend Payments on the Preferred Shares, Series F, in accordance with the terms hereof, regardless of whether (i) the failures to make such Dividend Payments were consecutive, (ii) such dividends were declared or (iii) there were any monies of the Corporation properly applicable to the payment of such dividends. In the event of such non-payment, and only for so long as any such dividends remain in arrears, the holders of the Preferred Shares, Series F shall be entitled to receive notice of all meetings of shareholders of the Corporation and to attend thereat (other than a separate meeting of the holders of another series or class of shares), and shall at any such meeting be entitled to vote together with all of the voting shares of the Corporation (except when the vote of the holders of shares of any other class or series is to be taken separately and as a class or series) on the basis of one vote in respect of each Preferred Share, Series F held by such holder.

In connection with any action to be taken by the Corporation which requires the approval of the holders of the Preferred Shares, Series F voting as a series or as part of the class of Preferred Shares, each such Preferred Share, Series F will entitle the holder thereto to one vote.

#### **5. REDEMPTION**

The Preferred Shares, Series F will not be redeemable by the Corporation on or prior to October 17, 2023. After that date, but subject to the Act and the provisions described below under Article 8, the Corporation may redeem at any time all, or from time to time any part, of the then-outstanding Preferred Shares, Series F, at the Corporation's option without the consent of the holders, by the payment of an amount in cash for each such share so redeemed of \$25.00 together with all accrued and unpaid dividends up to but excluding the date fixed for redemption, subject to any applicable withholding tax.

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Where a part only of the then-outstanding Preferred Shares, Series F is at any time to be redeemed, the Preferred Shares, Series F to be redeemed will be redeemed *pro rata*, disregarding fractions or in such other manner as the Board of Directors determines.

Written notice of any redemption will be given by the Corporation to registered holders of Preferred Shares, Series F at least thirty (30) and not more than sixty (60) days prior to the redemption date. The notice of redemption must include the redemption price, the place at which the redemption price is to be paid, and the redemption date, and, if less than all of the Preferred Shares, Series F are to be redeemed, the number of shares to be redeemed. On or before the redemption date, the Corporation shall deposit the redemption price of the shares to be redeemed with the transfer agent and registrar for the Preferred Shares, Series F, less any applicable withholding tax, to be paid without interest to or to the order of the registered holders of such shares upon presentation and surrender to the transfer agent and registrar of the certificates representing the shares. Such deposit shall be deemed to be payment to holders of the Preferred Shares, Series F and shall satisfy and discharge all liability for the redemption price for the shares to be redeemed. Provided such deposit has been made, the shares called for redemption shall, on the redemption date, be and be deemed to be redeemed and no longer outstanding. If only a portion of the shares represented by any certificate are to be redeemed, the Corporation, at its sole expense, shall cause a new certificate for the remaining portion of shares to be issued and delivered to the holder of such shares. Provided the redemption price is deposited, the shares called for redemption shall from and after the redemption date cease to be entitled to dividends, and holders shall not be entitled to exercise any of the other rights of shareholders in respect thereof, and their rights shall be limited to receiving, without interest, their proportionate part of the total redemption price deposited against presentation and surrender of the certificates held by them respectively. If the redemption price is not deposited, the rights of holders of the shares called for redemption shall remain unaffected.

## **6. PURCHASE FOR CANCELLATION**

Subject to the provisions described below under Article 8, on or after October 17, 2023, the Corporation may at any time and from time to time purchase for cancellation any outstanding Preferred Shares, Series F in the open market, by tender or private contract, at any price, subject to any applicable withholding tax. Any such Preferred Shares, Series F purchased by the Corporation shall be cancelled and shall not be reissued.

In the case of any purchase of shares by tender, the Corporation shall give notice of its intention to invite tenders to all holders of the Preferred Shares, Series F by forwarding by prepaid post or delivering the same to each registered holder at their address as it appears on the books of the Corporation or, failing such address, then to the last known address of such shareholder and, if two or more tenders of shares at the same price be received, which shares when added to any shares already tendered at a lower price or prices aggregate more than the number of shares to be purchased at such time, the Corporation shall prorate as nearly as possible (disregarding fractions) among the holders of Preferred Shares, Series F submitting such tenders at the same price the number of shares necessary to complete the number of shares to be purchased at such time.

## **7. RIGHTS ON LIQUIDATION**

In the event of the liquidation, dissolution or winding-up of the Corporation, holders of the Preferred Shares, Series F shall be entitled to receive \$25.00 per share (less any amount that may have been returned to holders as a return of capital), together with all accrued and unpaid dividends up to but excluding the date of payment, subject to any applicable withholding tax, before any amount shall be paid or any assets of the Corporation distributed to the holders of Common Shares or any other shares ranking junior to the Preferred Shares, Series F. Upon payment to the registered holders of the Preferred Shares, Series F of the amount payable to them pursuant to this Article 7, holders thereof shall not be entitled to share in any further distribution of the property or assets of the Corporation.

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**8. RESTRICTIONS ON DIVIDENDS AND RETIREMENT OF SHARES**

So long as any of the Preferred Shares, Series F are outstanding, the Corporation shall not, without the approval of the holders of the Preferred Shares, Series F given in the manner specified under Article 11 below:

- (a) declare any dividend on the Common Shares or any other shares ranking junior to the Preferred Shares, Series F (other than stock dividends on shares ranking junior to the Preferred Shares, Series F);
- (b) redeem, purchase or otherwise retire any Common Shares or any other shares ranking junior to the Preferred Shares, Series F (except out of the net cash proceeds of a substantially concurrent issue of shares ranking junior to the Preferred Shares, Series F); or
- (c) redeem, purchase or otherwise retire: (i) less than all the Preferred Shares, Series F; or (ii) except pursuant to any purchase obligation, sinking fund, retraction privilege or mandatory redemption provisions attaching to any series of preferred shares of the Corporation, any other shares ranking on a parity with the Preferred Shares, Series F,

unless, in each case, all dividends on the Preferred Shares, Series F and on all other shares ranking prior to or on a parity with the Preferred Shares, Series F, have been declared and paid or set apart for payment.

**9. ISSUE OF ADDITIONAL SERIES OF PREFERRED SHARES**

The Corporation may issue other series of preferred shares ranking on a parity with the Preferred Shares, Series F without the authorization of the holders of the Preferred Shares, Series F as a series provided that at the date of such issuance all cumulative dividends up to and including the Dividend Payment Date for the last completed period for which dividends shall be payable shall have been declared and paid or set aside for payment in respect of the Preferred Shares, Series F.

**10. AMENDMENTS TO PREFERRED SHARES, SERIES F**

The Corporation will not, without the approval of holders of the Preferred Shares, Series F or, if applicable, of the Notes given as provided in Article 11 below, delete or vary any rights, privileges, restrictions and conditions attaching to the Preferred Shares, Series F.

**11. APPROVALS**

The approval of any amendments to the rights, privileges, restrictions and conditions attaching to the Preferred Shares, Series F may be given by a resolution carried by the affirmative vote of not less than 66%% of the votes cast at a meeting of holders of Preferred Shares, Series F at which at least a majority of the outstanding Preferred Shares, Series F is represented or, if no quorum is present at such meeting, at a meeting following such adjourned meeting at which no quorum would apply. At any meeting of holders of Preferred Shares, Series F as a series, each such holder shall be entitled to one vote for each Preferred Share, Series F held. For so long as the Notes are outstanding, no amendment will be made to the rights, privileges, restrictions and conditions of the Preferred Shares, Series F (other than any amendments relating to the preferred shares of the Corporation as a class) without the prior approval of the holders of not less than a majority of the aggregate principal amount of the Notes then outstanding.

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**12. BOOK-ENTRY ONLY ISSUE**

Unless the Corporation directs otherwise, the Preferred Shares, Series F shall be issued and held under the “book-entry only” system and shall be represented by a single fully-registered permanent global share certificate.

**13. BUSINESS DAYS**

If any action is required to be taken by the Corporation on a day that is not a Business Day, then such action will be taken on the next succeeding day that is a Business Day.

**14. FRACTIONAL SHARES**

The Preferred Shares, Series F may be issued in whole or in fractional shares. Each fractional Preferred Share, Series F shall carry and be subject to the rights, privileges, restrictions and conditions (including voting rights and dividend rights) of the Preferred Shares, Series F in proportion to the applicable fractions.

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**Certificate of Amendment**

*Canada Business Corporations Act*

**Certificat de modification**

*Loi canadienne sur les sociétés par actions*

Algonquin Power & Utilities Corp.

Corporate name / Dénomination sociale

236237-6

Corporation number / Numéro de société

I HEREBY CERTIFY that the articles of the above-named corporation are amended under section 178 of the *Canada Business Corporations Act* as set out in the attached articles of amendment.

JE CERTIFIE que les statuts de la société susmentionnée sont modifiés aux termes de l'article 178 de la *Loi canadienne sur les sociétés par actions*, tel qu'il est indiqué dans les clauses modificatrices ci-jointes.



Virginie Ethier

Director / Directeur

2016-06-10

Date of Amendment (YYYY-MM-DD)  
Date de modification (AAAA-MM-JJ)



1 Corporate name  
Dénomination sociale  
Algonquin Power & Utilities Corp.

2 Corporation number  
Numéro de la société  
236237-6

3 The articles are amended as follows  
Les statuts sont modifiés de la façon suivante

The corporation changes the minimum and/or maximum number of directors to:  
Les nombres minimal et/ou maximal d'administrateurs sont modifiés pour :  
Min. 3 Max. 20

4 Declaration: I certify that I am a director or an officer of the corporation.  
Déclaration : J'atteste que je suis un administrateur ou un dirigeant de la société.

Original signed by / Original signé par  
David Bronicheski  
David Bronicheski  
905-465-4512

Misrepresentation constitutes an offence and, on summary conviction, a person is liable to a fine not exceeding \$5000 or to imprisonment for a term not exceeding six months or both (subsection 250(1) of the CBCA).

Faire une fausse déclaration constitue une infraction et son auteur, sur déclaration de culpabilité par procédure sommaire, est passible d'une amende maximale de 5 000 \$ et d'un emprisonnement maximal de six mois, ou l'une de ces peines (paragraphe 250(1) de la LCSA).

You are providing information required by the CBCA. Note that both the CBCA and the Privacy Act allow this information to be disclosed to the public. It will be stored in personal information bank number IC/PPU-049.

Vous fournissez des renseignements exigés par la LCSA. Il est à noter que la LCSA et la Loi sur les renseignements personnels permettent que de tels renseignements soient divulgués au public. Ils seront stockés dans la banque de renseignements personnels numéro IC/PPU-049.

Canada Business Corporations Act (CBCA)
FORM 4
ARTICLES OF AMENDMENT
(Sections 27 or 177)

1 - Corporate name
Algonquin Power & Utilities Corp.

2 - Corporation number
2 3 6 2 3 7 6

3 - The articles are amended as follows: (Please note that more than one section can be filled out)

A: The corporation changes its name to:

B: The corporation changes the province or territory in Canada where the registered office is situated to:
To complete the change, a Form 3 - Change of Registered Office Address must accompany the Articles of Amendment.

Ontario

C: The corporation changes the minimum and/or maximum number of directors to: (For a fixed number of directors, please indicate the same number in both the minimum and maximum options).

Minimum number 3 Maximum number 20

D: Other changes: (e.g., to the classes of shares, to restrictions on share transfers, to restrictions on the businesses of the corporation or to any other provisions that are permitted by the CBCA to be set out in the Articles) Please specify.

[Empty box for specifying other changes]

4 - Declaration

I hereby certify that I am a director or an authorized officer of the corporation.

Signature: [Handwritten Signature]
Print name: David Bronicheski Telephone number: 905-465-4512

Note: Misrepresentation constitutes an offence and, on summary conviction, a person is liable to a fine not exceeding \$5000 or to imprisonment for a term not exceeding six months or to both (subsection 250(1) of the CBCA).



2014-02-28

Corporations Canada  
9th floor, Jean Edmonds Towers South  
365 Laurier Avenue West  
Ottawa, Ontario K1A 0C8

Corporations Canada  
9e étage, Tour Jean-Edmonds sud  
365, avenue Laurier ouest  
Ottawa (Ontario) K1A 0C8

Corporation Number: 236237-6  
Numéro de société :

Request Received: 2014-02-27  
Date de réception de la demande :

Request ID: 6614733  
Numéro de la demande :

Your Reference:  
Votre référence :

Please find enclosed the **Certificate of Amendment** issued under the *Canada Business Corporations Act* (CBCA) and related documents for **Algonquin Power & Utilities Corp.** Please ensure that these documents are kept with the corporate records.

The issuance of this certificate will be listed in Corporations Canada's online Monthly Transactions report. You can access the report on the Corporations Canada website.

Please ensure that the corporation is aware of all of its ongoing reporting obligations by referring to our pamphlet, *Keeping Your Corporation in Good Standing*, available on our website or by contacting Corporations Canada.

If you require additional information, please contact Corporations Canada.

Vous trouverez ci-joint le **certificat de modification** émis en vertu de la *Loi canadienne sur les sociétés par actions* (LCSA) ainsi que les documents connexes relativement à **Algonquin Power & Utilities Corp.** Veuillez vous assurer de le conserver avec les livres de la société.

L'émission de ce certificat sera rapportée dans notre prochain rapport mensuel de transactions. Vous pouvez consulter le rapport dans le site Web de Corporations Canada.

Veuillez vous assurer que la société est informée de toutes ses obligations de déclaration. Vous pouvez consulter la brochure *Maintenir votre société en conformité*, ci-jointe ou disponible en ligne, pour connaître les obligations de déclaration de la société.

Si vous avez besoin de plus d'information, veuillez communiquer avec Corporations Canada.



## Certificate of Amendment

*Canada Business Corporations Act*

## Certificat de modification

*Loi canadienne sur les sociétés par actions*

Algonquin Power & Utilities Corp.

Corporate name / Dénomination sociale

236237-6

Corporation number / Numéro de société

I HEREBY CERTIFY that the articles of the above-named corporation are amended under section 27 of the *Canada Business Corporations Act* as set out in the attached articles of amendment designating a series of shares.

JE CERTIFIE que les statuts de la société susmentionnée sont modifiés aux termes de l'article 27 de la *Loi canadienne sur les sociétés par actions*, tel qu'il est indiqué dans les clauses modificatrices désignant une série d'actions.

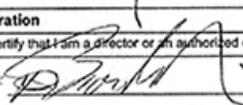
Marcie Girouard

Director / Directeur

2014-02-27

Date of Amendment (YYYY-MM-DD)  
Date de modification (AAAA-MM-JJ)

Canada Business Corporations Act (CBCA)  
FORM 4  
ARTICLES OF AMENDMENT  
(Sections 27 or 177)

<b>1 - Corporate name</b> ALGONQUIN POWER & UTILITIES CORP.
<b>2 - Corporation number</b> 2 3 6 2 3 7 - 6
<b>3 - The articles are amended as follows:</b> (Please note that more than one section can be filled out) A: The corporation changes its name to:  B: The corporation changes the province or territory in Canada where the registered office is situated to: To complete the change, a Form 3 - Change of Registered Office Address must accompany the Articles of Amendment.  C: The corporation changes the minimum and/or maximum number of directors to: (For a fixed number of directors, please indicate the same number in both the minimum and maximum options). Minimum number <input type="text"/> Maximum number <input type="text"/>  D: Other changes: (e.g., to the classes of shares, to restrictions on share transfers, to restrictions on the businesses of the corporation or to any other provisions that are permitted by the CBCA to be set out in the Articles) Please specify. The articles of the Corporation are amended to increase the classes and any minimum number of shares that the Corporation is authorized to issue by creating 4,000,000 Cumulative Rate Reset Preferred Shares, Series D and 4,000,000 Cumulative Floating Rate Preferred Shares, Series E. The rights, privileges, restrictions and conditions attaching to each series of shares are as set out on Schedule A annexed to these articles, which Schedule is incorporated into this form.
<b>4 - Declaration</b> I hereby certify that I am a director or an authorized officer of the corporation. Signature:  Print name: David Bronicheski Telephone number: 905-465-4512 Note: Misrepresentation constitutes an offence and, on summary conviction, a person is liable to a fine not exceeding \$5000 or to imprisonment for a term not exceeding six months or to both (subsection 250(1) of the CBCA).

## SCHEDULE A

### IV.1 CUMULATIVE RATE RESET PREFERRED SHARES, SERIES D

The fourth series of preferred shares shall consist of up to 4,000,000 shares, which shares shall be designated as Cumulative Rate Reset Preferred Shares, Series D (the "Series D Shares") and which, in addition to the rights, privileges, restrictions and conditions attached to the preferred shares as a class, shall have attached thereto the following rights, privileges, restrictions and conditions:

(a) Dividends

(i) **Dividend Periods and Dividend Payment Dates.** A "Dividend Period" means the period from and including the date of initial issue of the Series D Shares to, but excluding, June 30, 2014 and, thereafter, the next succeeding period that is from and including the 31st day (each, a "Quarter End Date") of each of the months of March, June, September and December in each year, as the case may be, to but excluding the next succeeding Quarter End Date. The dividend payment dates (the "Dividend Payment Dates") in respect of the dividends payable on the Series D Shares shall be the last day (or, if such day is not a Business Day, the immediately following Business Day) of each of the months of March, June, September and December in each year.

(ii) **Payment of Dividends.**

(A) During the Initial Fixed Rate Period and each Subsequent Fixed Rate Period, the holders of Series D Shares shall be entitled to receive, and the Corporation shall pay thereon, if, as and when declared by the board of directors of the Corporation (the "Board"), out of moneys of the Corporation properly applicable to the payment of dividends, fixed, cumulative, preferential cash dividends (the "Quarterly Dividends") in the amounts set forth in subsection IV.1(a)(ii)(B) payable, with respect to each Dividend Period, on the Dividend Payment Date in respect of such Dividend Period.

(B) Subject to subsection IV.1(a)(iii), for all Dividend Periods during:

- (1) the Initial Fixed Rate Period, each Quarterly Dividend shall be in an amount equal to \$0.31250 per Series D Share (being an annual rate equal to \$1.25 per Series D Share); and
- (2) each Subsequent Fixed Rate Period, each Quarterly Dividend shall be in an amount per Series D Share equal to the result of the following calculation:  $\frac{1}{4} \times [(\$25.00 \times \text{AFDR})]$ , where "AFDR" means the Annual Fixed Dividend Rate applicable to such Subsequent Fixed Rate Period.

(C) The Corporation shall determine the Annual Fixed Dividend Rate for each Subsequent Fixed Rate Period on the relevant Fixed Rate Calculation Date. Such determination shall, in the absence of manifest error, be final and binding on the Corporation and all holders of Series D Shares. The Corporation shall, on the relevant Fixed Rate Calculation Date, give written notice of the Annual Fixed Dividend Rate for the ensuing Subsequent Fixed Rate Period to the registered holders of the then outstanding Series D Shares in accordance with the provisions of subsection IV.1(f)(i).

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(D) Dividends on the Series D Shares shall accrue daily from and including the date of issue of such shares.

(iii) **Initial Dividend and Dividend for Other than a Full Dividend Period.** The holders of Series D Shares shall be entitled to receive, and the Corporation shall pay thereon, if, as and when declared by the Board out of moneys of the Corporation properly applicable to the payment of dividends, cumulative, preferential cash dividends for the initial period or any period which is less than a full Dividend Period, as follows:

(A) an initial dividend in respect of the period from and including the date of the initial issue of the Series D Shares to but excluding June 30, 2014 in an amount per Series D Share equal to \$1.25 multiplied by a fraction, the numerator of which is the number of calendar days from and including the date of the initial issue of the Series D Shares to but excluding June 30, 2014 and the denominator of which is 365, (which, if the Series D Shares are issued on March 5, 2014, shall be \$0.4007 per Series D Share); and

(B) a dividend in an amount per share with respect to any Series D Share:

(1) which is issued, redeemed or converted during any Dividend Period;

(2) where the assets of the Corporation are distributed to the holders of the Series D Shares pursuant to subsection IV.1(i) with an effective date during any Dividend Period; or

(3) in any other circumstance where the number of days in a Dividend Period that such share has been outstanding is less than a full Dividend Period (other than the period referred to in subsection IV.1(a)(iii)(A)),

equal to the amount obtained when the amount of the Quarterly Dividend payable in respect of the applicable full Dividend Period is multiplied by a fraction, the numerator of which is the number of calendar days in such Dividend Period that such share has been outstanding (excluding the date of redemption or conversion, the effective date for the distribution of assets or the last day of the applicable shorter period, as applicable) and the denominator of which is the number of calendar days in such Dividend Period.

(iv) **Payment Procedure.** The Corporation shall pay the dividends declared on the Series D Shares on the relevant Dividend Payment Date (less any tax required to be deducted or withheld by the Corporation) by electronic funds transfer or by cheque(s) drawn on a Canadian chartered bank or trust company and payable in lawful money of Canada at any branch of such bank or trust company in Canada or in such other manner, not contrary to applicable law, as the Corporation shall reasonably determine. The delivery or mailing of any cheque to a holder of Series D Shares (in the manner provided for in subsection IV.1(f)(i)) or the electronic transfer of funds to an account specified by such holder shall be a full and complete discharge of the Corporation's obligation to pay the dividends to such holder to the extent of the sum represented thereby (plus the amount of any tax required to be and in fact deducted or withheld by the Corporation from the related dividends as aforesaid and remitted to the proper taxing authority), unless such cheque is not honoured when presented for payment. Subject to applicable law, dividends which are represented by a cheque which has not been presented to the Corporation's banker for payment or that otherwise remain unclaimed for a period of six years from the date on which they were declared to be payable may be reclaimed and used by the Corporation for its own purposes.

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(v) **Cumulative Payment of Dividends.** If on any Dividend Payment Date, the Quarterly Dividends payable in respect of the Dividend Period ending in the calendar month in which such Dividend Payment Date occurs are not paid in full on all of the Series D Shares then outstanding, such Quarterly Dividends, or the unpaid part thereof, shall be paid (less any tax required to be deducted or withheld by the Corporation) on a subsequent date or dates determined by the Board on which the Corporation shall have sufficient monies properly applicable to the payment of such Quarterly Dividends. The holder of Series D Shares shall not be entitled to any dividends other than or in excess of the cumulative preferential cash dividends herein provided for.

(vi) **Priority.** The Series D Shares rank senior to the Common Shares and rank on a parity with every other series of Preferred Shares as to dividends.

(b) Redemption, Conversion and Purchase

(i) **General.** To the extent permitted by applicable law, the Series D Shares may be redeemed, converted or purchased by the Corporation as provided in this subsection IV.1(b) but not otherwise.

(ii) **Corporation's Redemption Rights.** The Series D Shares shall not be redeemable by the Corporation prior to March 31, 2019. On any Series D Conversion Date, the Corporation may redeem all or any number of the outstanding Series D Shares, at its option, by the payment in cash of \$25.00 per share so redeemed together with all accrued and unpaid dividends thereon up to, but excluding, the date fixed for redemption (less any tax required to be deducted or withheld by the Corporation) (the "Redemption Price"). Where applicable, if less than all of the outstanding Series D Shares are at any time to be redeemed, the particular shares to be redeemed shall be selected on a pro rata basis (disregarding fractions) or, with the consent of any applicable stock exchange, in such other manner as the Board may in its sole discretion determine by resolution.

(iii) **Notice of Redemption.** Notice of any redemption of Series D Shares pursuant to subsection IV.1(b)(ii) shall be given to each holder of Series D Shares to be redeemed by the Corporation at least 30 and not more than 60 days prior to the date fixed for redemption. Any notice of redemption of Series D Shares by the Corporation shall be validly and effectively given on the date on which it is sent to each holder of Series D Shares to be redeemed in the manner provided for in subsection IV.1(f)(i). Such notice shall set out:

(A) the date (the "Redemption Date") on which the redemption is to take place;

(B) unless all the Series D Shares held by the holder to whom it is addressed are to be redeemed, the number of Series D Shares so held which are to be redeemed; and

(C) the Redemption Price.

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- (iv) **Payment of Redemption Price.** The Corporation shall on the Redemption Date pay or cause to be paid to the holders of the Series D Shares so called for redemption the Redemption Price therefor on presentation and delivery at the principal transfer office of the Transfer Agent in the city of Toronto or such other place or places in Canada designated in the notice of redemption, of the certificate or certificates representing the Series D Shares so called for redemption. Such payment shall be made by electronic funds transfer to an account specified by such holder or by cheque drawn on a Canadian chartered bank or trust company in the amount of the Redemption Price and such electronic transfer of funds or the delivery or mailing of such cheque (in the manner provided for in subsection IV.1(f)(i)) shall be a full and complete discharge of the Corporation's obligation to pay the Redemption Price owed to the holders of Series D Shares so called for redemption to the extent of the sum represented thereby (plus the amount of any tax required to be and in fact deducted or withheld by the Corporation as aforesaid and remitted to the proper taxing authority) unless such cheque is not honoured when presented for payment. From and after the Redemption Date, the holders of Series D Shares called for redemption shall cease to be entitled to dividends or to exercise any of the rights of holders of Series D Shares in respect of such shares except the right to receive the Redemption Price, provided that if payment of such Redemption Price is not duly made in accordance with the provisions hereof, then the rights of such holders shall remain unimpaired. If less than all the Series D Shares represented by any certificate shall be redeemed, a new certificate for the balance shall be issued without cost to the holder. Subject to applicable law, redemption monies which remain unclaimed for a period of six years from the Redemption Date may be reclaimed and used by the Corporation for its own purposes.
- (v) **Deposit of Redemption Price.** The Corporation shall have the right, at any time after mailing a notice of redemption, to deposit the aggregate Redemption Price for the Series D Shares thereby called for redemption, or such part thereof as at the time of deposit has not been claimed by the holders entitled thereto, in a special account with a Canadian chartered bank or trust company named in the notice of redemption in trust for the holders of such shares, and upon such deposit being made or upon the Redemption Date, whichever is the later, the Series D Shares in respect of which such deposit shall have been made shall be deemed to be redeemed on the Redemption Date and the rights of each holder thereof shall be limited to receiving, without interest, the holder's proportionate part (after taking into account any amounts required to be deducted or withheld on account of tax in respect of such holder) of the Redemption Price so deposited upon presentation and surrender of the certificate or certificates representing the Series D Shares so redeemed. Any interest on any such deposit shall belong to the Corporation. Subject to applicable law, redemption monies which remain unclaimed for a period of six years from the Redemption Date may be reclaimed and used by the Corporation for its own purposes.
- (vi) **Declaration of Dividends in Respect of Shares to be Redeemed.** If a dividend is declared by the Board in respect of any Dividend Period during which the Series D Shares are redeemed, notwithstanding the provisions of subsection IV.1(a)(iv), no electronic funds transfer or cheque shall be made or issued in payment of such dividend; rather, the amount of such dividend declared shall be considered to be an accrued and unpaid dividend for purposes of subsection IV.1(b)(ii).
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- (vii) **Conversion at the Option of the Holder.** Subject to the second paragraph of subsection IV.1(b)(viii), subsection IV.1(b)(ix) and subsection IV.1(b)(x), each holder of Series D Shares shall have the right, at its option, on any Series D Conversion Date, to convert all or any part of its Series D Shares registered in its name into Cumulative Floating Rate Preferred Shares, Series E (the "Series E Shares") on the basis of one Series E Share for each Series D Share converted. Such right may be exercised by notice in writing (an "Election Notice") given not earlier than the 30th day prior to, and not later than 5:00 p.m. (Toronto time) on the 15th day preceding, the applicable Series D Conversion Date during usual business hours at any principal transfer office of the Transfer Agent, or such other place or places designated by the Corporation. On any conversion of Series D Shares into Series E Shares, the certificates representing the Series E Shares resulting from the conversion of Series D Shares to which such holder is entitled shall be issued in the name of the holder of the Series D Shares converted or in such name or names as such holder may direct in writing; provided that such holder shall pay any applicable security transfer taxes. Any Election Notice shall be accompanied by (1) payment or evidence of payment of the tax (if any) payable; and (2) the certificate or certificates representing the Series D Shares in respect of which the holder thereof desires to convert into Series E Shares with the transfer form on the back thereof or other appropriate stock transfer power of attorney duly endorsed by the holder, or his or her attorney duly authorized in writing, in which Election Notice such holder may elect to convert part only of the Series D Shares represented by such certificate or certificates not theretofore called for redemption in which event the Corporation will issue and deliver or cause to be delivered to such holder, at the expense of the Corporation, a new certificate representing the Series D Shares represented by such certificate or certificates that have not been converted. Such conversion shall be deemed to have been made at 5:00 p.m. (Toronto time) on the Series D Conversion Date, so that the rights of the holder of such Series D Shares as the holder thereof shall cease at such time and the person or persons entitled to receive the Series E Shares upon such conversion will be treated for all purposes as having become the holder or holders of record of such Series E Shares at such time. An Election Notice is irrevocable once received by the Corporation. If the Corporation does not receive an Election Notice within the specified time, the Series D Shares shall be deemed not to have been converted (subject to subsection IV.1(b)(ix)).
- (viii) **Notice of Conversion Rate and Dividend Rates and Election Notice.** The Corporation shall, at least 30 days and not more than 60 days prior to each Series D Conversion Date, provide notice in writing to the then registered holders of the Series D Shares of the Series D Conversion Date and a form of Election Notice as specified by the Corporation. On the 30th day prior to each Series D Conversion Date, the Corporation shall give notice in writing to the registered holders of the Series D Shares of the Annual Fixed Dividend Rate for the next Subsequent Fixed Rate Period and the Floating Quarterly Dividend Rate for the next Quarterly Floating Rate Period (as these terms are defined in the Series E Share Provisions).

If the Corporation gives notice pursuant to subsection IV.1(b)(iii) to the registered holders of the Series D Shares of the redemption of all Series D Shares pursuant to subsection IV.1(b)(ii), it shall not be required to give notice to the holders of the Series D Shares of any dividend rates or of the conversion right of holders of Series D Shares and the right of holders of Series D Shares to convert such shares pursuant to subsection IV.1(b)(vii) shall terminate.

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- (ix) **Automatic Conversion.** If the Corporation determines that there would remain outstanding on a Series D Conversion Date less than 1,000,000 Series D Shares, after having taken into account all Election Notices in respect of Series D Shares duly tendered for conversion into Series E Shares and all Election Notices in respect of Series E Shares duly tendered for conversion into Series D Shares in accordance with the Series E Share Provisions, in each case received by the Corporation during the time fixed therefor, then, all, but not part, of the remaining outstanding Series D Shares will automatically be converted into Series E Shares on the basis of one Series E Share for each Series D Share on the applicable Series D Conversion Date. The Corporation shall give notice in writing of the automatic conversion thereof to all holders of the Series D Shares at least seven days prior to the applicable Series D Conversion Date.
  - (x) **Restrictions on Conversion.** The holders of Series D Shares shall not be entitled to convert their shares into Series E Shares if the Corporation determines that there would remain outstanding on a Series D Conversion Date less than 1,000,000 Series E Shares after having taken into account all Election Notices in respect of Series D Shares duly tendered for conversion into Series E Shares and all Election Notices in respect of Series E Shares duly tendered for conversion into Series D Shares in accordance with the Series E Share Provisions, in each case received by the Corporation during the time fixed therefor. The Corporation shall give notice in writing of the inability to convert Series D Shares to all holders of the Series D Shares at least seven days prior to the applicable Series D Conversion Date.
  - (xi) **Non-Residents.** The Corporation is not required to (but may at its option) issue Series E Shares upon the conversion of Series D Shares into Series E Shares to any person whose address is in, or whom the Corporation or the Transfer Agent has reason to believe is a resident of, any jurisdiction outside Canada, to the extent that such issue would require the Corporation to take any action to comply with the securities laws or analogous laws of such jurisdiction.
  - (xii) **Purchase for Cancellation.** Subject to applicable laws, the Corporation may, at any time, purchase for cancellation (if obtainable), out of capital or otherwise, the whole or any part of the Series D Shares outstanding from time to time at any price by tender to all holders of record of Series D Shares or through the facilities of any stock exchange on which the Series D Shares are listed, or in any other manner, provided that in the case of a purchase in any other manner the price for such Series D Shares so purchased for cancellation shall not exceed the highest price offered for a board lot of the Series D Shares on any stock exchange on which such shares are listed on the date of purchase for cancellation, plus the costs of purchase. If upon any tender to holders of Series D Shares under the provisions of this subsection IV.1(b)(xii), more shares are offered than the Corporation is prepared to purchase, the shares so offered will be purchased as nearly as may be pro rata (disregarding fractions) according to the number of Series D Shares so offered by each of the holders of Series D Shares who offered shares to such tender. From and after the date of purchase of any Series D Shares under the provisions of this subsection IV.1(b)(xii), the shares so purchased shall be cancelled.
  - (xiii) **Conversion — General** On the conversion of a Series D Share to a Series E Share pursuant to the terms of these Series D Share Provisions, each such Series D Share shall become an issued Series E Share and the number of unissued Series D Shares shall be increased by the number of Series D Shares that became Series E Shares.
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(c) Voting Rights

- (i) **Voting Rights – General.** Except as otherwise required by law or in the conditions attaching to the Preferred Shares as a class, the holders of Series D Shares shall not be entitled to receive notice of, attend at, or vote at any meeting of shareholders of the Corporation, unless and until the Corporation shall have failed to pay eight Quarterly Dividends on the Series D Shares in accordance with the terms hereof, whether or not consecutive and whether or not such dividends were declared and whether or not there are any monies of the Corporation properly applicable to the payment of such dividends. In the event of such non-payment, and for only so long as any such dividends remain in arrears, the holders of the Series D Shares shall be entitled to receive notice of all meetings of shareholders of the Corporation and to attend thereat (other than a separate meeting of the holders of another series or class of shares), and shall at any such meetings which they shall be entitled to attend, except when the vote of the holders of shares of any other class or series is to be taken separately and as a class or series, be entitled to vote together with all of the voting shares of the Corporation on the basis of one vote in respect of each Series D Share held by each such holder, until all such arrears of such dividends shall have been paid, whereupon such rights shall cease unless and until the Corporation shall again fail to pay eight Quarterly Dividends on the Series D Shares in accordance with the terms hereof, whether or not consecutive and whether or not such dividends were declared and whether or not there are any monies of the Corporation properly applicable to the payment of such dividends, in which event such voting rights shall become effective again and so on from time to time.

(d) Issue Price

The consideration for which each Series D Share shall be issued is \$25.00 and, upon payment of such consideration, each such share shall be issued as fully paid and non-assessable.

In the event of a conversion of a Series E Share into a Series D Share, the amount to be deducted from the stated capital account maintained for the Series E Shares and added to the stated capital account maintained for the Series D Shares will be \$25.00 per share so converted.

(e) Election under the *Income Tax Act* (Canada)

The Corporation shall elect in the manner and within the time provided under the Income Tax Act (Canada) (the "Tax Act"), under Subsection 191.2(1) of Part VI.1 of the Tax Act, or any successor or replacement provision of similar effect, and take all other necessary action under the Tax Act, to pay or cause payment of tax under Part VI.1 of the Tax Act at a rate such that the corporate holders will not be required to pay tax on dividends received on the Series D Shares under Section 187.2 of Part IV.1 of the Tax Act or any successor or replacement provision of similar effect.

(f) Notice and Interpretation

- (i) **Notices.** Any notice, cheque, invitation for tenders or other communication from the Corporation herein provided for shall be sufficiently given, sent or made if delivered or if sent by first class unregistered mail, postage prepaid, to the holders of the Series D Shares at their respective addresses appearing on the records of the Corporation maintained by the Corporation or the Transfer Agent, or, in the case of joint holders, to the address of the holder whose name appears first on the records of the Corporation maintained by the Corporation or the Transfer Agent as one of such joint holders, or, in the event of the address of any of such holders not so appearing, then at the last address of such holder known to the Corporation. Accidental failure to give such notice, invitation for tenders or other communication to one or more holders of the Series D Shares shall not affect the validity of the notices, invitations for tenders or other communications properly given or any action taken pursuant to such notice, invitation for tender or other communication but, upon such failure being discovered, the notice, invitation for tenders or other communication, as the case may be, shall be sent forthwith to such holder or holders. If any notice, cheque, invitation for tenders or other communication from the Corporation given to a holder of Series D Shares pursuant to this subsection is returned on three consecutive occasions because the holder cannot be found, the Corporation shall not be required to give or mail any further notices, cheques, invitations for tenders or other communications to such shareholder until the holder informs the Corporation in writing of such holder's new address.
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If the Board determines that mail service is or is threatened to be interrupted at the time when the Corporation is required or elects to give any notice hereunder by mail, or is required to send any cheque or any share certificate to a holder, whether in connection with the redemption of such share or otherwise, the Corporation may, notwithstanding the provisions hereof:

- (A) give such notice by publication thereof once in a newspaper having national circulation in Canada or, if there is no newspaper having national circulation in Canada, in an English language newspaper of general circulation published in each of Vancouver, Calgary, Toronto and Montreal and such notice shall be deemed to have been validly given on the day next succeeding its publication; and
  - (B) fulfill the requirement to send such cheque or such share certificate by arranging for the delivery thereof to such holder by the Transfer Agent at its principal offices in the city of Toronto, and such cheque and/or share certificate shall be deemed to have been sent on the date on which notice of such arrangement shall have been given as provided in (A) above, provided that as soon as the Board determines that mail service is no longer interrupted or threatened to be interrupted, such cheque or share certificate, if not theretofore delivered to such holder, shall be sent by mail as herein provided.
- (ii) **Interpretation.** If any day on which any dividend on the Series D Shares is payable, on which any Redemption Date or any Series D Conversion Date shall occur, or on or by which any other action is required or permitted to be taken hereunder is not a Business Day, then such dividend shall be payable, such Redemption Date or Series D Conversion Date shall occur or such other action shall be required or permitted to be taken on the immediately following day that is a Business Day.

If a holder of Series D Shares is entitled to a cheque and such cheque is not received by the holder, or if the cheque is lost or destroyed, the Corporation, on being furnished with reasonable evidence of non-receipt, loss or destruction, and an indemnity satisfactory to the Corporation, acting reasonably, will issue to the holder of the Series D Shares a replacement cheque for the amount of the original cheque.

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The Corporation will be entitled to deduct or withhold from any amount payable to a holder of Series D Shares under these Series D Share provisions any amount required by law to be deducted or withheld from that payment.

Reference to any statute is to that statute as in force from time to time, including any regulations, rules, policy statements or guidelines made under that statute, and includes any statute that may be enacted in substitution of that statute.

All references herein to a holder of Series D Shares shall be interpreted as referring to a registered holder of the Series D Shares.

For the purposes hereof:

- (A) "Annual Fixed Dividend Rate" means, for any Subsequent Fixed Rate Period, the annual rate (expressed as a percentage rounded to the nearest one hundred-thousandth of one percent (with 0.000005% being rounded up)) equal to the sum of the Government of Canada Yield on the applicable Fixed Rate Calculation Date plus 3.28%;
  - (B) "Bloomberg Screen GCAN5YR Page" means the display designated as page "GCAN5YR<INDEX>" on the Bloomberg Financial L.P. service (or such other page as may replace the GCAN5YR page on that service or if such service is no longer available, a successor service as determined by the Corporation) for purposes of displaying Government of Canada Yields;
  - (C) "Business Day" means a day other than a Saturday, a Sunday or any other day that is a statutory or civic holiday in the place where the Corporation has its head office;
  - (D) "Fixed Rate Calculation Date" means, for any Subsequent Fixed Rate Period, the 30th day prior to the first day of such Subsequent Fixed Rate Period;
  - (E) "Government of Canada Yield" on any date means the yield to maturity on such date (assuming semi-annual compounding) of a Canadian dollar denominated non-callable Government of Canada bond with a term to maturity of five years as quoted as of 10:00 a.m. (Toronto time) on such date and which appears on the Bloomberg Screen GCAN5YR Page on such date; provided that, if such rate does not appear on the Bloomberg Screen GCAN5YR Page on such date, the Government of Canada Yield will mean the average of the yields determined by two registered Canadian investment dealers selected by the Corporation, as being the yield to maturity on such date (assuming semi-annual compounding) which a Canadian dollar denominated non-callable Government of Canada bond would carry if issued in Canadian dollars at 100% of its principal amount on such date with a term to maturity of five years;
  - (F) "in priority to", "on a parity with" and "junior to" have reference to the order of priority in payment of dividends and in the distribution of assets in the event of any liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, or other distribution of the assets of the Corporation among its shareholders for the purpose of winding-up its affairs;
  - (G) "Initial Fixed Rate Period" means the period from and including the date of the initial issue of the Series D Shares to, but excluding, March 31, 2019;
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- (H) "Quarter End Date" has the meaning given to it in subsection IV.1(a)(i);
- (I) "ranking as to capital" and similar expressions mean ranking with respect to priority in the distribution of assets of the Corporation in the event of any liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, upon a return of capital or upon any other distribution of the assets of the Corporation among its shareholders for the purpose of winding-up its affairs;
- (J) "ranking as to dividends" and similar expressions mean ranking with respect to priority in the payment of dividends by the Corporation;
- (K) "Series D Conversion Date" means March 31, 2019 and March 31 (or, if such date is not a Business Day, the immediately following Business Day) of every fifth year thereafter;
- (L) "Series D Share Provisions" means the designation, rights, privileges, restrictions and conditions of the Series D Shares;
- (M) "Series E Share Provisions" means the designation, rights, privileges, restrictions and conditions of the Series E Shares;
- (N) "Subsequent Fixed Rate Period" means for the initial Subsequent Fixed Rate Period, the period from and including March 31, 2019 to, but excluding, March 31, 2024 and for each succeeding Subsequent Fixed Rate Period, the period commencing on the day immediately following the end of the immediately preceding Subsequent Fixed Rate Period to, but excluding, March 31 in the fifth year thereafter; and
- (O) "Transfer Agent" means CIBC Mellon Trust Company at its principal transfer office in Toronto, Ontario, its successors and assigns, or such other person as from time to time may be appointed as the registrar and transfer agent for the Series D Shares.

(g) Modification

Subject to subsection IV.1(b)(ii), the designation, rights, privileges, restrictions and conditions attaching to the Series D Shares as a series may be repealed, deleted, varied, modified, amended or amplified from time to time only with the approval of the holders of the Series D Shares given in accordance with the Canada Business Corporations Act (the "CBCA") and subsection IV.1(h) and with any required approvals of any stock exchanges on which the Series D Shares may be listed.

(h) Approval of Holders of Series D Shares

- (i) **Approval of Holders of Series D Shares.** Except as otherwise provided herein, any approval of the holders of the Series D Shares with respect to any matters requiring the consent of such holders may be given in such manner as may then be required by law, subject to a minimum requirement that such approval be given by a resolution signed by all such holders or passed by the affirmative vote of at least two-thirds of the votes cast by the holders who voted in respect of that resolution at a meeting of the holders duly called for that purpose and at which the holders of 10% of the outstanding Series D Shares are present in person or represented by proxy. If at any such meeting the holder(s) of 10% of the outstanding Series D Shares are not present in person or represented by proxy within one-half hour after the time appointed for such meeting, then the meeting shall be adjourned to such date not less than 15 days thereafter and to such time and place as may be designated by the chairman of such meeting, and not less than 10 days' written notice shall be given of such adjourned meeting. At such adjourned meeting the holders(s) of Series D Shares present in person or represented by proxy shall form the necessary quorum and may transact the business for which the meeting was originally called and a resolution passed thereat by the affirmative vote of at least two-thirds of the votes cast at such meeting shall constitute the approval of the holders of the Series D Shares. At any meeting of holders of Series D Shares as a series, each such holder shall be entitled to one vote in respect of each share held.
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(ii) **Formalities, etc.** The proxy rules applicable to, the formalities to be observed in respect of the giving notice of, and the formalities to be observed in respect of the conduct of, any meeting or any adjourned meeting of holders of the Series D Shares shall be those required by law, as may from time to time be supplemented by the by-laws of the Corporation. On every poll taken at every meeting of holders of Series D Shares as a series, each holder entitled to vote thereat shall have one vote in respect of each Series D Share held.

(i) Rights on Liquidation

In the event of the liquidation, dissolution or winding-up of the Corporation or other distribution of assets of the Corporation among its shareholders for the purpose of winding-up its affairs, whether voluntary or involuntary, subject to the prior satisfaction of the claims of all creditors of the Corporation and of holders of shares of the Corporation ranking prior to the Series D Shares, the holders of the Series D Shares shall rank (a) on a parity with the Preferred Shares of every other series and (b) senior to the Common Shares and the shares of any other class ranking junior to the Preferred Shares. The Series D Shares shall be entitled to receive an amount equal to \$25.00 per Series D Share, together with an amount equal to all accrued and unpaid dividends up to but excluding the date fixed for payment or distribution (less any tax required to be deducted or withheld by the Corporation), before any amount is paid or any assets of the Corporation are distributed to the holders of any shares of the Corporation ranking junior as to capital to the Series D Shares. Upon payment to the holders of the Series D Shares of the amounts so payable to them, such holders shall not be entitled to share in any further distribution of the assets of the Corporation.

(j) Withholding Taxes

(i) **Withholding Taxes.** For greater certainty, and notwithstanding any other provision of this Section IV.1, the Corporation shall be entitled to deduct and withhold any amounts required to be deducted or withheld on account of any taxes from any amounts (including shares) payable or otherwise deliverable in respect of the Series D Shares, including on the redemption, cancellation or conversion of the Series D Shares. To the extent that any amounts are deducted or withheld, such deducted or withheld amounts shall be treated for all purposes hereof as having been paid or delivered to the person in respect of which such deduction or withholding was made. The Corporation is hereby authorized to sell or otherwise dispose of all or any number of Series EShares otherwise deliverable to a holder of Series D Shares on the conversion of such Series D Shares in order to meet any applicable tax deduction or withholding tax requirements.

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- (ii) **Transfer Taxes.** For greater certainty, and notwithstanding any other provision of this Section IV.1, the Corporation shall not be required to pay any tax which may be:
- (A) imposed upon the person or persons to whom Series E Shares are issued,
  - (B) payable in respect of the issuance of such Series E Shares or a certificate therefor, or
  - (C) payable in respect of any transfer involved in the issuance and delivery of any certificate in the name or names other than that of the holder of the Series D Shares,

in connection with the conversion of Series D Shares into Series E Shares. The Corporation may refuse to issue any Series E Share or deliver any such Series E Share certificate unless and until the person or persons requesting the issuance thereof shall have paid to the Corporation the amount of such tax or shall have established to the satisfaction of the Corporation that such tax has been paid or is otherwise not required to be paid in the circumstances

V.1 **CUMULATIVE FLOATING RATE PREFERRED SHARES, SERIES E**

The fifth series of preferred shares shall consist of up to 4,000,000 shares, which shares shall be designated as Cumulative Floating Rate Preferred Shares, Series E (the "Series E Shares") and which, in addition to the rights, privileges, restrictions and conditions attached to the preferred shares as a class, shall have attached thereto the following rights, privileges, restrictions and conditions:

(a) **Dividends**

- (i) **Dividend Payment Dates.** The dividend payment dates (the "Dividend Payment Dates") in respect of the dividends payable on the Series E Shares shall be the last day (or if such day is not a Business Day, the immediately following Business Day) of each of the months of March, June, September and December in each year.
- (ii) **Payment of Dividends.** The holders of Series E Shares shall be entitled to receive, and the Corporation shall pay thereon, if, as and when declared by the board of directors of the Corporation (the "Board"), out of moneys of the Corporation properly applicable to the payment of dividends, quarterly floating rate, cumulative, preferential cash dividends in respect of each Quarterly Floating Rate Period in an amount per Series E Share determined by multiplying the applicable Floating Quarterly Dividend Rate by \$25.00 ("Quarterly Dividends").

The Corporation shall determine the Floating Quarterly Dividend Rate for each Quarterly Floating Rate Period on the relevant Floating Rate Calculation Date. Such determination shall be, in the absence of manifest error, final and binding on the Corporation and all holders of Series E Shares. The Corporation shall, on the relevant Floating Rate Calculation Date, give written notice of the Floating Quarterly Dividend Rate for the ensuing Quarterly Floating Rate Period to the registered holders of outstanding Series E Shares in accordance with the provisions of subsection V.1(f)(i).

Dividends on the Series E Shares shall accrue daily from and including the date of issue of such shares.

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(iii) **Dividend for Other than a Full Quarterly Floating Rate Period.** The holders of Series E Shares shall be entitled to receive, and the Corporation shall pay thereon, if, as and when declared by the Board out of moneys of the Corporation properly applicable to the payment of dividends, cumulative, preferential cash dividends for any period which is less than a full Quarterly Floating Rate Period, in an amount per share with respect to any Series E Share:

- (A) which is issued, redeemed or converted during any Quarterly Floating Rate Period;
- (B) where the assets of the Corporation are distributed to the holders of the Series E Shares pursuant to subsection V.1 (i) with an effective date during any Quarterly Floating Rate Period; or
- (C) in any other circumstance where the number of days in a Quarterly Floating Rate Period that such share has been outstanding is less than a full Quarterly Floating Rate Period;

equal to the amount (rounded to five decimal places) obtained when the amount of the Quarterly Dividend payable in respect of the applicable full Quarterly Floating Rate Period is multiplied by a fraction, the numerator of which is the number of calendar days in such Quarterly Floating Rate Period that such share has been outstanding (excluding the date of redemption or conversion, the effective date for the distribution of assets or the last day of the applicable shorter period, as applicable) and the denominator of which is the number of calendar days in such Quarterly Floating Rate Period.

(iv) **Payment Procedure.** The Corporation shall pay the dividends declared on the Series E Shares on the relevant Dividend Payment Date (less any tax required to be deducted or withheld by the Corporation) by electronic funds transfer or by cheque(s) drawn on a Canadian chartered bank or trust company and payable in lawful money of Canada at any branch of such bank or trust company in Canada or in such other manner, not contrary to applicable law, as the Corporation shall reasonably determine. The delivery or mailing of any cheque to a holder of Series E Shares (in the manner provided for in subsection V.1(f)(i)) or the electronic transfer of funds to an account specified by such holder shall be a full and complete discharge of the Corporation's obligation to pay the dividends to such holder to the extent of the sum represented thereby (plus the amount of any tax required to be and in fact deducted or withheld by the Corporation from the related dividends as aforesaid and remitted to the proper taxing authority), unless such cheque is not honoured when presented for payment. Subject to applicable law, dividends which are represented by a cheque which has not been presented to the Corporation's banker for payment or that otherwise remain unclaimed for a period of six years from the date on which they were declared to be payable may be reclaimed and used by the Corporation for its own purposes.

(v) **Cumulative Payment of Dividends.** If on any Dividend Payment Date, the Quarterly Dividends payable in respect of the Dividend Period ending in the calendar month in which such Dividend Payment Date occurs are not paid in full on all of the Series E Shares then outstanding, such Quarterly Dividends, or the unpaid part thereof, shall be paid (less any tax required to be deducted or withheld by the Corporation) on a subsequent date or dates determined by the Board on which the Corporation shall have sufficient monies properly applicable to the payment of such Quarterly Dividends. The holder of Series E Shares shall not be entitled to any dividends other than or in excess of the cumulative preferential cash dividends herein provided for.

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- (vi) **Priority.** The Series E Shares rank senior to the Common Shares and rank on a parity with every other series of Preferred Shares as to dividends.

(b) Redemption, Conversion and Purchase

- (i) **General.** To the extent permitted by applicable law, the Series E Shares may be redeemed, converted or purchased by the Corporation as provided in this subsection V.1(b) but not otherwise.

- (ii) **Corporation's Redemption Rights.** The Series E Shares shall not be redeemable by the Corporation on or prior to March 31, 2019. On any Series E Conversion Date, the Corporation may redeem all or any number of the outstanding Series E Shares, at its option, by the payment in cash of \$25.00 per share so redeemed together with all accrued and unpaid dividends thereon to, but excluding, the date fixed for redemption (less any tax required to be deducted or withheld by the Corporation) (the "Conversion Date Redemption Price").

On any date after March 31, 2019 that is not a Series E Conversion Date, the Corporation may redeem all or any number of the outstanding Series E Shares, at its option, by payment in cash of \$25.50 per share so redeemed together with all accrued and unpaid dividends thereon up to, but excluding, the date fixed for redemption (less any tax required to be deducted or withheld by the Corporation) (the "Non-Conversion Date Redemption Price").

Where applicable, if less than all of the then outstanding Series E Shares are at any time to be redeemed, the particular shares to be redeemed shall be selected on a pro rata basis (disregarding fractions) or, with the consent of any applicable stock exchange, in such other manner as the Board may in its sole discretion determine by resolution.

- (iii) **Notice of Redemption.** Notice of any redemption of Series E Shares pursuant to subsection V.1(b)(ii) shall be given to each holder of Series E Shares to be redeemed by the Corporation at least 30 and not more than 60 days prior to the date fixed for redemption. Any notice of redemption of Series E Shares by the Corporation shall be validly and effectively given on the date on which it is sent to each holder of Series E Shares to be redeemed in the manner provided for in subsection V.1(f)(i). Such notice shall set out:

- (A) the date (the "Redemption Date") on which the redemption is to take place;
  - (B) unless all the Series E Shares held by the holder to whom it is addressed are to be redeemed, the number of Series E Shares so held which are to be redeemed; and
  - (C) the Conversion Date Redemption Price or the Non-Conversion Date Redemption Price, as applicable (such applicable redemption price referred to hereinafter as the "Redemption Price").
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- (iv) **Payment of Redemption Price.** The Corporation shall on the Redemption Date pay or cause to be paid to the holders of the Series E Shares so called for redemption the Redemption Price therefor on presentation and delivery at the principal transfer office of the Transfer Agent in the city of Toronto or such other place or places in Canada designated in the notice of redemption, of the certificate or certificates representing the Series E Shares so called for redemption. Such payment shall be made by electronic funds transfer to an account specified by such holder or by cheque drawn on a Canadian chartered bank or trust company in the amount of the Redemption Price and such electronic transfer of funds or the delivery or mailing of such cheque (in the manner provided for in subsection V.1(f)(i)) shall be a full and complete discharge of the Corporation's obligation to pay the Redemption Price owed to the holders of Series E Shares so called for redemption to the extent of the sum represented thereby (plus the amount of any tax required to be and in fact deducted or withheld by the Corporation as aforesaid and remitted to the proper taxing authority) unless such cheque is not honoured when presented for payment. From and after the Redemption Date, the holders of Series E Shares called for redemption shall cease to be entitled to dividends or to exercise any of the rights of holders of Series E Shares in respect of such shares except the right to receive the Redemption Price, provided that if payment of such Redemption Price is not duly made in accordance with the provisions hereof, then the rights of such holders shall remain unimpaired. If less than all the Series E Shares represented by any certificate shall be redeemed, a new certificate for the balance shall be issued without cost to the holder. Subject to applicable law, redemption monies which remain unclaimed for a period of six years from the Redemption Date may be reclaimed and used by the Corporation for its own purposes.
- (v) **Deposit of Redemption Price.** The Corporation shall have the right, at any time after mailing a notice of redemption, to deposit the aggregate Redemption Price for the Series E Shares thereby called for redemption, or such part thereof as at the time of deposit has not been claimed by the holders entitled thereto, in a special account with a Canadian chartered bank or trust company named in the notice of redemption in trust for the holders of such shares, and upon such deposit being made or upon the Redemption Date, whichever is the later, the Series E Shares in respect of which such deposit shall have been made shall be deemed to be redeemed on the Redemption Date and the rights of each holder thereof shall be limited to receiving, without interest, the holder's proportionate part (after taking into account any amounts required to be deducted or withheld on account of tax in respect of such holder) of the Redemption Price so deposited upon presentation and surrender of the certificate or certificates representing the Series E Shares so redeemed. Any interest on any such deposit shall belong to the Corporation. Subject to applicable law, redemption monies which remain unclaimed for a period of six years from the Redemption Date may be reclaimed and used by the Corporation for its own purposes.
- (vi) **Declaration of Dividends in Respect of Shares to be Redeemed.** If a dividend is declared by the Board in respect of any Quarterly Floating Rate Period during which the Series E Shares are redeemed, notwithstanding the provisions of subsection V.1(a)(iv), no electronic funds transfer or cheque shall be made or issued in payment of such dividend; rather, the amount of such dividend declared shall be considered to be an accrued and unpaid dividend for purposes of subsection V.1(b)(ii).
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- (vii) **Conversion at the Option of the Holder.** Subject to second paragraph of subsection V.1(b)(viii), subsection V.1(b)(ix) and subsection V.1(b)(x), each holder of Series E Shares shall have the right, at its option, on any Series E Conversion Date, to convert all or any part of its Series E Shares registered in its name into Cumulative Rate Reset Preferred Shares, Series D (the "Series D Shares") on the basis of one Series D Share for each Series E Share converted. Such right may be exercised by notice in writing (an "Election Notice") given not earlier than the 30th day prior to and not later than 5:00 p.m. (Toronto time) on the 15th day preceding the applicable Series E Conversion Date during usual business hours at any principal transfer office of the Transfer Agent, or such other place or places designated by the Corporation. On any conversion of Series E Shares into Series D Shares, the certificates representing the Series D Shares resulting from the conversion of Series E Shares to which such holder is entitled shall be issued in the name of the holder of the Series E Shares converted or in such name or names as such holder may direct in writing; provided that such holder shall pay any applicable security transfer taxes. Any Election Notice shall be accompanied by (1) payment or evidence of payment of the tax (if any) payable; and (2) the certificate or certificates representing the Series E Shares in respect of which the holder thereof desires to convert into Series D Shares with the transfer form on the back thereof or other appropriate stock transfer power of attorney duly endorsed by the holder, or his or her attorney duly authorized in writing, in which Election Notice such holder may elect to convert part only of the Series E Shares represented by such certificate or certificates not theretofore called for redemption in which event the Corporation will issue and deliver or cause to be delivered to such holder, at the expense of the Corporation, a new certificate representing the Series E Shares represented by such certificate or certificates that have not been converted. Such conversion shall be deemed to have been made at 5:00 p.m. (Toronto time) on the Series E Conversion Date, so that the rights of the holder of such Series E Shares as the holder thereof shall cease at such time and the person or persons entitled to receive the Series D Shares upon such conversion will be treated for all purposes as having become the holder or holders of record of such Series D Shares at such time. An Election Notice is irrevocable once received by the Corporation. If the Corporation does not receive an Election Notice within the specified time, the Series E Shares shall be deemed not to have been converted (subject to subsection V.1(b)(ix)).
- (viii) **Notice of Conversion Date and Dividend Rates and Election Notice.** The Corporation shall, at least 30 days and not more than 60 days prior to each Series E Conversion Date, provide notice in writing to the then registered holders of the Series E Shares of the Series E Conversion Date and a form of Election Notice as specified by the Corporation. On the 30th day prior to each Series E Conversion Date, the Corporation shall give notice in writing to the registered holders of the Series E Shares of the Floating Quarterly Dividend Rate for the next Quarterly Floating Rate Period and the Annual Fixed Dividend Rate applicable to the Series D Shares for the next Subsequent Fixed Rate Period (as such terms are defined in the Series D Share Provisions).

If the Corporation gives notice pursuant to subsection V.1(b)(iii) to the registered holders of the Series E Shares of the redemption of all Series E Shares pursuant to subsection V.1(b)(ii), it shall not be required to give notice to the holders of the Series E Shares of any dividend rates or of the conversion right of holders of Series E Shares and the right of holders of Series E Shares to convert such shares pursuant to subsection V.1(b)(vii) shall terminate.

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- (ix) **Automatic Conversion.** If the Corporation determines that there would remain outstanding on a Series E Conversion Date less than 1,000,000 Series E Shares, after having taken into account all Election Notices in respect of Series E Shares duly tendered for conversion into Series D Shares and all Election Notices in respect of Series D Shares duly tendered for conversion into Series E Shares in accordance with the Series D Share Provisions, in each case received by the Corporation during the time fixed therefor then, all, but not part, of the remaining outstanding Series E Shares will automatically be converted into Series D Shares on the basis of one Series D Share for each Series E Share on the applicable Series E Conversion Date. The Corporation shall give notice in writing of the automatic conversion thereof to all holders of the Series E Shares at least seven days prior to the applicable Series E Conversion Date.
  - (x) **Restrictions on Conversion.** The holders of Series E Shares shall not be entitled to convert their shares into Series D Shares if the Corporation determines that there would remain outstanding on a Series E Conversion Date less than 1,000,000 Series D Shares after having taken into account all Election Notices in respect of Series E Shares duly tendered for conversion into Series D Shares and all Election Notices in respect of Series D Shares duly tendered for conversion into Series E Shares in accordance with the Series D Share Provisions, in each case received by the Corporation during the time fixed therefor. The Corporation shall give notice in writing of the inability to convert Series E Shares to all holders of the Series E Shares at least seven days prior to the applicable Series E Conversion Date.
  - (xi) **Non-Residents.** The Corporation is not required to (but may at its option) issue Series D Shares upon the conversion of Series E Shares into Series D Shares to any person whose address is in, or whom the Corporation or the Transfer Agent has reason to believe is a resident of, any jurisdiction outside Canada, to the extent that such issue would require the Corporation to take any action to comply with the securities laws or analogous laws of such jurisdiction.
  - (xii) **Purchase for Cancellation.** Subject to applicable laws, the Corporation may, at any time, purchase for cancellation (if obtainable), out of capital or otherwise, the whole or any part of the Series E Shares outstanding from time to time at any price by tender to all holders of record of Series E Shares or through the facilities of any stock exchange on which the Series E Shares are listed, or in any other manner, provided that in the case of a purchase in any other manner the price for such Series E Shares so purchased for cancellation shall not exceed the highest price offered for a board lot of the Series E Shares on any stock exchange on which such shares are listed on the date of purchase for cancellation, plus the costs of purchase. If upon any tender to holders of Series E Shares under the provisions of this subsection V.1(b)(xii), more shares are offered than the Corporation is prepared to purchase, the shares so offered will be purchased as nearly as may be pro rata (disregarding fractions) according to the number of Series E Shares so offered by each of the holders of Series E Shares who offered shares to such tender. From and after the date of purchase of any Series E Shares under the provisions of this subsection V.1(b)(xii), the shares so purchased shall be cancelled.
  - (xiii) **Conversion — General** On the conversion of a Series E Share to a Series D Share pursuant to the terms of these Series E Share Provisions, each such Series E Share shall become an issued Series D Share and the number of unissued Series E Shares shall be increased by the number of Series E Shares that became Series D Shares.
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(c) Voting Rights

- (i) **Voting Rights — General** Except as otherwise required by law or in the conditions attaching to the Preferred Shares as a class, the holders of Series E Shares shall not be entitled to receive notice of, attend at, or vote at any meeting of shareholders of the Corporation, unless and until the Corporation shall have failed to pay eight Quarterly Dividends on the Series E Shares in accordance with the terms hereof, whether or not consecutive and whether or not such dividends were declared and whether or not there are any monies of the Corporation properly applicable to the payment of such dividends.

In the event of such non-payment, and for only so long as any such dividends remain in arrears, the holders of the Series E Shares shall be entitled to receive notice of all meetings of shareholders of the Corporation and to attend thereat (other than a separate meeting of the holders of another series or class of shares), and shall at any such meetings which they shall be entitled to attend, except when the vote of the holders of shares of any other class or series is to be taken separately and as a class or series, be entitled to vote together with all of the voting shares of the Corporation on the basis of one vote in respect of each Series E Share held by each such holder, until all such arrears of such dividends shall have been paid, whereupon such rights shall cease unless and until the Corporation shall again fail to pay eight Quarterly Dividends on the Series E Shares in accordance with the terms hereof, whether or not consecutive and whether or not such dividends were declared and whether or not there are any monies of the Corporation properly applicable to the payment of such dividends, in which event such voting rights shall become effective again and so on from time to time.

(d) Issue Price

The Series E Shares will only be issuable upon conversion of Series D Shares and will have an ascribed issue price of \$25.00 per share.

In the event of a conversion of a Series D Share to a Series E Share the amount to be deducted from the stated capital account maintained for the Series D Shares and added to the stated capital account maintained for the Series E Shares will be \$25.00 per share so converted.

(e) Election Under the Income Tax Act

The Corporation shall elect in the manner and within the time provided under the Tax Act, under Subsection 191.2(1) of Part VI.1 of the Tax Act, or any successor or replacement provision of similar effect, and take all other necessary action under the Tax Act, to pay or cause payment of tax under Part VI.1 of the Tax Act at a rate such that the corporate holders will not be required to pay tax on dividends received on the Series E Shares under Section 187.2 of Part IV.1 of the Tax Act or any successor or replacement provision of similar effect.

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(f) Notice and Interpretation

- (i) **Notices.** Any notice, cheque, invitation for tenders or other communication from the Corporation herein provided for shall be sufficiently given, sent or made if delivered or if sent by first class unregistered mail, postage prepaid, to the holders of the Series E Shares at their respective addresses appearing on the records of the Corporation maintained by the Corporation or the Transfer Agent, or, in the case of joint holders, to the address of the holder whose name appears first on the records of the Corporation maintained by the Corporation or the Transfer Agent as one of such joint holders, or, in the event of the address of any of such holders not so appearing, then at the last address of such holder known to the Corporation. Accidental failure to give such notice, invitation for tenders or other communication to one or more holders of the Series E Shares shall not affect the validity of the notices, invitations for tenders or other communications properly given or any action taken pursuant to such notice, invitation for tender or other communication but, upon such failure being discovered, the notice, invitation for tenders or other communication, as the case may be, shall be sent forthwith to such holder or holders.

If any notice, cheque, invitation for tenders or other communication from the Corporation given to a holder of Series E Shares pursuant to this subsection is returned on three consecutive occasions because the holder cannot be found, the Corporation shall not be required to give or mail any further notices, cheques, invitations for tenders or other communications to such shareholder until the holder informs the Corporation in writing of such holder's new address.

If the Board determines that mail service is or is threatened to be interrupted at the time when the Corporation is required or elects to give any notice hereunder by mail, or is required to send any cheque or any share certificate to a holder, whether in connection with the redemption of such share or otherwise, the Corporation may, notwithstanding the provisions hereof:

- (A) give such notice by publication thereof once in a newspaper having national circulation in Canada or, if there is no newspaper having national circulation in Canada, in an English language newspaper of general circulation published in each of Vancouver, Calgary, Toronto and Montréal and such notice shall be deemed to have been validly given on the day next succeeding its publication; and
- (B) fulfill the requirement to send such cheque or such share certificate by arranging for the delivery thereof to such holder by the Transfer Agent at its principal offices in the city of Toronto, and such cheque and/or share certificate shall be deemed to have been sent on the date on which notice of such arrangement shall have been given as provided in (A) above, provided that as soon as the Board determines that mail service is no longer interrupted or threatened to be interrupted, such cheque or share certificate, if not theretofore delivered to such holder, shall be sent by mail as herein provided.
- (ii) **Interpretation.** If any day on which any dividend on the Series E Shares is payable, on which any Redemption Date or any Series E Conversion Date shall occur, or on or by which any other action is required or permitted to be taken hereunder is not a Business Day, then such dividend shall be payable, such Redemption Date or Series E Conversion Date shall occur or such other action shall be required or permitted to be taken on the immediately following day that is a Business Day.
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If a holder of Series E Shares is entitled to a cheque and such cheque is not received by the holder, or if the cheque is lost or destroyed, the Corporation, on being furnished with reasonable evidence of non-receipt, loss or destruction, and an indemnity satisfactory to the Corporation, acting reasonably, will issue to the holder of the Series E Shares a replacement cheque for the amount of the original cheque.

The Corporation will be entitled to deduct or withhold from any amount payable to a holder of Series E Shares under these Series E Share provisions any amount required by law to be deducted or withheld from that payment.

Reference to any statute is to that statute as in force from time to time, including any regulations, rules, policy statements or guidelines made under that statute, and includes any statute that may be enacted in substitution of that statute.

All references herein to a holder of Series E Shares shall be interpreted as referring to a registered holder of the Series E Shares.

For the purposes hereof:

- (A) "Business Day" means a day other than a Saturday, a Sunday or any other day that is a statutory or civic holiday in the place where the Corporation has its head office;
  - (B) "Floating Quarterly Dividend Rate" means, for any Quarterly Floating Rate Period, the rate (expressed as a percentage rounded to the nearest one hundred-thousandth of one percent (with 0.000005% being rounded up)) equal to the sum of the T-Bill Rate on the applicable Floating Rate Calculation Date plus 3.28% per annum (calculated on the basis of the actual number of days elapsed in such Quarterly Floating Rate Period divided by 365);
  - (C) "Floating Rate Calculation Date" means for any Quarterly Floating Rate Period, the 30th day prior to the first day of such Quarterly Floating Rate Period;
  - (D) "in priority to", "on a parity with" and "junior to" have reference to the order of priority in payment of dividends and in the distribution of assets in the event of any liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, or other distribution of the assets of the Corporation among its shareholders for the purpose of winding-up its affairs;
  - (E) "Quarterly Commencement Date" means the last day of each of March, June, September and December in each year, commencing on March 31, 2019;
  - (F) "Quarterly Floating Rate Period" means the period from and including the day immediately following the end of the immediately preceding Quarterly Floating Rate Period to, but excluding, the next succeeding Quarterly Commencement Date;
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- (G) “ranking as to capital” and similar expressions mean ranking with respect to priority in the distribution of assets of the Corporation in the event of any liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, upon a return of capital or upon any other distribution of the assets of the Corporation among its shareholders for the purpose of winding-up its affairs;
- (H) “ranking as to dividends” and similar expressions mean ranking with respect to priority in the payment of dividends by the Corporation;
- (I) “Series D Share Provisions” means the designation, rights, privileges, restrictions and conditions of the Series D Shares;
- (J) “Series E Conversion Date” means March 31, 2024 and March 31 (or, if such date is not a Business Day, the immediately following Business Day) of every fifth year thereafter;
- (K) “Series E Share Provisions” means the designation, rights, privileges, restrictions and conditions of the Series E Shares;
- (L) “T-Bill Rate” means, for any Quarterly Floating Rate Period, the average yield expressed as a percentage per annum on 90-day Government of Canada Treasury Bills, using the 3-month average results, as reported by the Bank of Canada, for the most recent treasury bills auction preceding the applicable Floating Rate Calculation Date (with auction results being posted on Reuters page BOCBILL or such other page as may replace such page on that service or if such service is no longer available, a successor service as determined by the Corporation); and
- (M) “Transfer Agent” means CIBC Mellon Trust Company at its principal transfer office in Toronto, Ontario, its successors and assigns, or such other person as from time to time may be appointed as the registrar and transfer agent for the Series E Shares.

(g) Modification

Subject to subsection V.1(b)(ii), the designation, rights, privileges, restrictions and conditions attaching to the Series E Shares as a series may be repealed, deleted, varied, modified, amended or amplified from time to time only with the approval of the holders of the Series E Shares given in accordance with the CBCA and subsection V.1(h) and with any required approvals of any stock exchanges on which the Series E Shares may be listed.

(h) Approval of Holders of Series E Shares

- (i) **Approval of Holders of Series E Shares.** Except as otherwise provided herein, any approval of the holders of the Series E Shares with respect to any matters requiring the consent of such holders may be given in such manner as may then be required by law, subject to a minimum requirement that such approval be given by a resolution signed by all such holders or passed by the affirmative vote of at least two-thirds of the votes cast by the holders who voted in respect of that resolution at a meeting of the holders duly called for that purpose and at which the holders of 10% of the outstanding Series E Shares are present in person or represented by proxy. If at any such meeting the holder(s) of 10% of the outstanding Series E Shares are not present in person or represented by proxy within one-half hour after the time appointed for such meeting, then the meeting shall be adjourned to such date not less than 15 days thereafter and to such time and place as may be designated by the chairman of such meeting, and not less than 10 days' written notice shall be given of such adjourned meeting. At such adjourned meeting the holders(s) of Series E Shares present in person or represented by proxy shall form the necessary quorum and may transact the business for which the meeting was originally called and a resolution passed thereat by the affirmative vote of at least two-thirds of the votes cast at such meeting shall constitute the approval of the holders of the Series E Shares. At any meeting of holders of Series E Shares as a series, each such holder shall be entitled to one vote in respect of each share held.
-

- (ii) **Formalities, etc.** The proxy rules applicable to, the formalities to be observed in respect of the giving notice of, and the formalities to be observed in respect of the conduct of, any meeting or any adjourned meeting of holders of the Series E Shares shall be those required by law, as may from time to time be supplemented by the by-laws of the Corporation. On every poll taken at every meeting of holders of Series E Shares as a series, each holder entitled to vote thereat shall have one vote in respect of each Series E Share held.

- (i) **Rights on Liquidation**

In the event of the liquidation, dissolution or winding-up of the Corporation or other distribution of assets of the Corporation among its shareholders for the purpose of winding-up its affairs, whether voluntary or involuntary, subject to the prior satisfaction of the claims of all creditors of the Corporation and of holders of shares of the Corporation ranking prior to the Series E Shares, the holders of the Series E Shares shall rank (a) on a parity with the Preferred Shares of every other series and (b) senior to the Common Shares and the shares of any other class ranking junior to the Preferred Shares. The Series E Shares shall be entitled to receive an amount equal to \$25.00 per Series E Share, together with an amount equal to all accrued and unpaid dividends up to but excluding the date fixed for payment or distribution (less any tax required to be deducted or withheld by the Corporation), before any amount is paid or any assets of the Corporation are distributed to the holders of any shares of the Corporation ranking junior as to capital to the Series E Shares. Upon payment to the holders of the Series E Shares of the amounts so payable to them, such holders shall not be entitled to share in any further distribution of the assets of the Corporation.

- (i) **Withholding Taxes**

- (i) **Withholding Taxes.** For greater certainty, and notwithstanding any other provision of this Section V.1, the Corporation shall be entitled to deduct and withhold any amounts required to be deducted or withheld on account of any taxes from any amounts (including shares) payable or otherwise deliverable in respect of the Series E Shares, including on the redemption, cancellation or conversion of the Series E Shares. To the extent that any amounts are deducted or withheld, such deducted or withheld amounts shall be treated for all purposes hereof as having been paid or delivered to the person in respect of which such deduction or withholding was made. The Corporation is hereby authorized to sell or otherwise dispose of all or any number of Series D Shares otherwise deliverable to a holder of Series E Shares on the conversion of such Series E Shares in order to meet any tax deduction or withholding tax requirements.
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(ii) **Transfer Taxes.** For greater certainty, and notwithstanding any other provision of this Section V.1, the Corporation shall not be required to pay any tax which may be:

- (A) imposed upon the person or persons to whom Series D Shares are issued,
- (B) payable in respect of the issuance of such Series D Shares or a certificate therefor, or
- (C) payable in respect of any transfer involved in the issuance and delivery of any certificate in the name or names other than that of the holder of the Series E Shares,

in connection with the conversion of Series E Shares into Series D Shares. The Corporation may refuse to issue any Series D Shares or deliver any such Series D Share certificate unless and until the person or persons requesting the issuance thereof shall have paid to the Corporation the amount of such tax or shall have established to the satisfaction of the Corporation that such tax has been paid or is otherwise not required to be paid in the circumstances.

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2013-01-03

Corporations Canada  
9th floor, Jean Edmonds Towers South  
365 Laurier Avenue West  
Ottawa, Ontario K1A 0C8

Corporations Canada  
9e étage, Tour Jean-Edmonds sud  
365, avenue Laurier ouest  
Ottawa (Ontario) K1A 0C8

Corporation Number: 236237-6  
Numéro de société :

Request Received: 2012-12-27  
Date de réception de la demande :

Request ID: 5638447  
Numéro de la demande :

Your Reference:  
Votre référence :

Please find enclosed the **Certificate of Amendment** issued under the *Canada Business Corporations Act* (CBCA) and related documents for **Algonquin Power & Utilities Corp.** Please ensure that these documents are kept with the corporate records.

The issuance of this certificate will be listed in Corporations Canada's online Monthly Transactions report. You can access the report on the Corporations Canada website.

Please ensure that the corporation is aware of **all** of its ongoing reporting obligations by referring to our pamphlet, *Keeping Your Corporation in Good Standing*, available on our website or by contacting Corporations Canada.

If you require additional information, please contact Corporations Canada.

Vous trouverez ci-joint le **certificat de modification** émis en vertu de la *Loi canadienne sur les sociétés par actions* (LCSA) ainsi que les documents connexes relativement à **Algonquin Power & Utilities Corp.** Veuillez vous assurer de le conserver avec les livres de la société.

L'émission de ce certificat sera rapportée dans notre prochain rapport mensuel de transactions. Vous pouvez consulter le rapport dans le site Web de Corporations Canada.

Veuillez vous assurer que la société est informée de **toutes** ses obligations de déclaration. Vous pouvez consulter la brochure *Maintenir votre société en conformité*, ci-jointe ou disponible en ligne, pour connaître les obligations de déclaration de la société.

Si vous avez besoin de plus d'information, veuillez communiquer avec Corporations Canada.

**Certificate of Amendment**

*Canada Business Corporations Act*

**Certificat de modification**

*Loi canadienne sur les sociétés par actions*

Algonquin Power & Utilities Corp.

Corporate name / Dénomination sociale

236237-6

Corporation number / Numéro de société

I HEREBY CERTIFY that the articles of the above-named corporation are amended under section 178 of the *Canada Business Corporations Act* as set out in the attached articles of amendment.

JE CERTIFIE que les statuts de la société susmentionnée sont modifiés aux termes de l'article 178 de la *Loi canadienne sur les sociétés par actions*, tel qu'il est indiqué dans les clauses modificatrices ci-jointes.



Marcie Girouard

Director / Directeur

2013-01-01

Date of Amendment (YYYY-MM-DD)  
Date de modification (AAAA-MM-JJ)



## Articles of Amendment

(Section 27 or 177 of the *Canada Business Corporations Act (CBCA)*)

### Form 4

#### Instructions

**1** Any changes in the articles of the corporation must be made in accordance with section 27 or 177 of the CBCA.

**A:** If an amendment involves a change of corporate name (including the addition of the English or French version of the corporate name), the new name must comply with sections 10 and 12 of the CBCA as well as part 2 of the regulations, and the Articles of Amendment must be accompanied by a Canada-based NUANS® search report dated not more than ninety (90) days prior to the receipt of the articles by Corporations Canada. A numbered name may be assigned under subsection 11(2) of the CBCA without a NUANS® search.

**D:** Any other amendments must correspond to the paragraphs and subparagraphs referenced in the articles being amended. If the space available is insufficient, please attach a schedule to the form.

#### 2 Declaration

This form must be signed by a director or an officer of the corporation (subsection 262(2) of the CBCA).

#### General

The information you provide in this document is collected under the authority of the CBCA and will be stored in personal information bank number IC/PPU-049. Personal information that you provide is protected under the provisions of the *Privacy Act*. However, public disclosure pursuant to section 266 of the CBCA is permitted under the *Privacy Act*.

If you require more information, please consult our website at [www.corporationscanada.ic.gc.ca](http://www.corporationscanada.ic.gc.ca) or contact us at 613-941-9042 (Ottawa region), toll-free at 1-866-333-5556 or by email at [corporationscanada@ic.gc.ca](mailto:corporationscanada@ic.gc.ca).

#### Prescribed Fees

- Corporations Canada Online Filing Centre: \$200
- By mail or fax: \$200 paid by cheque payable to the Receiver General for Canada or by credit card (American Express®, MasterCard® or Visa®).

#### Important Reminders

**Changes of registered office address and/or mailing address:**  
Complete and file Change of Registered Office Address (Form 3).

**Changes of directors or changes of a director's address:**  
Complete and file Changes Regarding Directors (Form 6).

These forms can be filed electronically, by mail or by fax free of charge.

File documents online:

**Corporations Canada Online Filing Centre:**  
[www.corporationscanada.ic.gc.ca](http://www.corporationscanada.ic.gc.ca)

Or send documents by mail:

**Director General,  
Corporations Canada  
Jean Edmonds Tower South  
9th Floor  
365 Laurier Ave. West  
Ottawa ON K1A 0C8**

By Facsimile:  
**613-941-0999**

Canada

<b>1</b>	<b>Corporation name</b> ALGONQUIN POWER & UTILITIES CORP.
----------	--

<b>2</b>	<b>Corporation number</b> 236237 - 6
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<b>3</b>	<b>The articles are amended as follows:</b> (Please note that more than one section can be filled out)
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<b>A:</b>	The corporation changes its name to:
-----------	--------------------------------------

<b>B:</b>	The corporation changes the province or territory in Canada where the registered office is situated to: (Do not indicate the full address)
-----------	---

<b>C:</b>	The corporation changes the minimum and/or maximum number of directors to: (For a fixed number of directors, please indicate the same number in both the minimum and maximum options)
minimum:	maximum:

<b>D:</b>	Other changes: (e.g., to the classes of shares, to restrictions on share transfers, to restrictions on the businesses of the corporation or to any other provisions that are permitted by the CBCA to be set out in the Articles) <b>Please specify.</b>
-----------	--

The articles of the Corporation are amended by creating a fixed number of a new series of Preferred Shares designated as Series C Preferred Shares, so that the Corporation is authorized to issue:

- (i) an unlimited number of Common Shares;
- (ii) an unlimited number of Preferred Shares, issuable in series;
- (iii) 4,800,000 Series A Shares;
- (iv) 4,800,000 Series B Shares; and
- (v) 100 Series C Shares.

The Schedule A annexed to these articles, is incorporated into this form.

<b>4</b>	<b>Declaration</b>
----------	--------------------

I hereby certify that I am a director or an officer of the corporation.

*David Bronicheski*

SIGNATURE

David Bronicheski

( 905 ) 465-4512

PRINT NAME

TELEPHONE NUMBER

Note: Misrepresentation constitutes an offence and, on summary conviction, a person is liable to a fine not exceeding \$5000 or to imprisonment for a term not exceeding six months or both (subsection 250(1) of the CBCA).

**E-MAIL**

2012 -12- 27

10:09

## Schedule "A"

III.1 The rights, privileges, restrictions and conditions attaching to the Series C Shares are as follows:

- (a) Voting Rights - Subject to the Canada Business Corporations Act (the "**Act**"), the holders of the Series C Shares shall not, as such, be entitled to receive notice of or to attend any meeting of the shareholders of the Corporation or to vote at any such meeting.
  - (b) Dividends - Subject to the Act, the holders of the Series C Shares shall in each financial year of the Corporation in the discretion of the directors, but always in preference and priority to any payment of dividends on the Common Shares, be entitled to cumulative dividends at the rate of 1% per share of the amounts set out in the table below, payable in four (4) equal quarterly installments on April 1, July 1, October 1 and January 1 (of the following year) in each year, except in 2031, in which case the dividend will be payable in two (2) equal quarterly installments on April 1 and June 19, 2031, and no dividends shall be paid or set apart for payment upon the Common Shares and the shares of any other class ranking junior to the Preferred Shares unless all cumulative dividends on the Series C Shares shall have been declared and paid or set aside for payment. Dividend payments will be made to the holder of record of the Series C Shares of record on the last day of each calendar quarter, except for the last dividend payment which shall be made to the holder of record on June 19, 2031. The holders of the Series C Shares shall not be entitled to any dividends other than as provided for herein. Dividends shall accrue on the Series C Shares from the date of issue unless the directors shall otherwise determine. The Series C Shares rank senior to the Common Shares and rank on a parity with every other series of Preferred Shares as to dividends.
-

2012	\$539,211	\$134,803	\$134,803	\$134,803	\$134,803
2013	\$787,133	\$196,783	\$196,783	\$195,783	\$196,783
2014	\$1,038,559	\$259,640	\$259,640	\$259,640	\$259,640
2015	\$989,327	\$247,332	\$247,332	\$247,332	\$247,332
2016	\$852,805	\$213,201	\$213,201	\$213,201	\$213,201
2017	\$792,240	\$198,060	\$198,060	\$198,060	\$198,060
2018	\$977,500	\$244,375	\$244,375	\$244,375	\$244,375
2019	\$1,136,965	\$284,241	\$284,241	\$284,241	\$284,241
2020	\$1,127,510	\$281,878	\$281,878	\$281,878	\$281,878
2021	\$1,124,554	\$281,139	\$281,139	\$281,139	\$281,139
2022	\$1,126,178	\$281,545	\$281,545	\$281,545	\$281,545
2023	\$1,333,509	\$333,377	\$333,377	\$333,377	\$333,377
2024	\$1,517,605	\$379,401	\$379,401	\$379,401	\$379,401
2025	\$1,505,774	\$376,444	\$376,444	\$376,444	\$376,444
2026	\$1,332,566	\$333,142	\$333,142	\$333,142	\$333,142
2027	\$1,254,096	\$313,524	\$313,524	\$313,524	\$313,524
2028	\$1,269,734	\$317,434	\$317,434	\$317,434	\$317,434
2029	\$1,285,793	\$321,448	\$321,448	\$321,448	\$321,448
2030	\$1,302,098	\$325,524	\$325,524	\$325,524	\$325,524
2031	\$575,900	\$287,950	\$287,950	na	na

The actual annual aggregate dividends for all Series C Shares for any year will be the applicable base dividend as set out in the table above multiplied by the CPI Factor for such year, with such dividends being paid in equal quarterly installments. For purposes hereof, "CPI Factor" equals the annual average CPI for the year immediately preceding the year in respect of which an actual annual dividend is calculated, as published by Statistics Canada, divided by CPI for the 2010 year (which is 116.5). As further reference, the applicable annual average CPI published for 2011 was 119.9. To illustrate, the CPI Factor for purposes of the 2012 actual annual dividend would therefore be 119.9 divided by 116.5 equalling 1.0292.

The source for CPI data is as follows: <http://www.statcan.gc.ca/pub/62-001-x/2012008/t040-eng.htm> or such other equivalent source from Statistics Canada (or any successor thereto) to the extent the foregoing source is no longer applicable.

By way of illustration, the following table sets out the sample calculation for actual annual aggregate dividends for all Series C Shares assuming a 2% annual CPI.

2012	na	\$539,211	116.50	119.90	1.03	\$138,737	\$138,737	\$138,737	\$138,737
2013	2.0%	\$787,133	116.50	122.30	1.05	\$206,577	\$206,577	\$206,577	\$206,577
2014	2.0%	\$1,038,559	116.50	124.74	1.07	\$278,013	\$278,013	\$278,013	\$278,013
2015	2.0%	\$989,327	116.50	127.24	1.09	\$270,130	\$270,130	\$270,130	\$270,130
2016	2.0%	\$852,805	116.50	129.78	1.11	\$237,511	\$237,511	\$237,511	\$237,511
2017	2.0%	\$792,240	116.50	132.38	1.14	\$225,056	\$225,056	\$225,056	\$225,056
2018	2.0%	\$977,500	116.50	135.03	1.16	\$283,238	\$283,238	\$283,238	\$283,238
2019	2.0%	\$1,136,965	116.50	137.73	1.18	\$336,033	\$336,033	\$336,033	\$336,033
2020	2.0%	\$1,127,510	116.50	140.48	1.21	\$339,903	\$339,903	\$339,903	\$339,903
2021	2.0%	\$1,124,554	116.50	143.29	1.23	\$345,792	\$345,792	\$345,792	\$345,792
2022	2.0%	\$1,126,178	116.50	146.16	1.25	\$353,217	\$353,217	\$353,217	\$353,217
2023	2.0%	\$1,333,509	116.50	149.08	1.28	\$426,610	\$426,610	\$426,610	\$426,610
2024	2.0%	\$1,517,605	116.50	152.06	1.31	\$495,215	\$495,215	\$495,215	\$495,215
2025	2.0%	\$1,505,774	116.50	155.10	1.33	\$501,182	\$501,182	\$501,182	\$501,182
2026	2.0%	\$1,332,566	116.50	158.21	1.36	\$452,402	\$452,402	\$452,402	\$452,402
2027	2.0%	\$1,254,096	116.50	161.37	1.39	\$434,277	\$434,277	\$434,277	\$434,277
2028	2.0%	\$1,269,734	116.50	164.60	1.41	\$448,486	\$448,486	\$448,486	\$448,486
2029	2.0%	\$1,285,793	116.50	167.89	1.44	\$463,241	\$463,241	\$463,241	\$463,241
2030	2.0%	\$1,302,098	116.50	171.25	1.47	\$478,498	\$478,498	\$478,498	\$478,498
2031	2.0%	\$575,900	116.50	174.67	1.50	\$431,731	\$431,731	na	na

- (c) **Distribution Rights** - In the event of the liquidation, dissolution or winding-up of the Corporation or other distribution of assets of the Corporation among its shareholders for the purpose of winding-up its affairs, whether voluntary or involuntary, subject to the prior satisfaction of the claims of all creditors of the Corporation and of holders of shares of the Corporation ranking prior to the Series C Shares, the holders of the Series C Shares shall rank (a) on a parity with the Preferred Shares of every other series and (b) senior to the Common Shares and the shares of any other class ranking junior to the Preferred Shares. The Series C Shares shall be entitled to receive an amount equal to the redemption price plus any accrued and unpaid dividends thereon up to, but excluding, the redemption date. The redemption price for the purposes of this Section III.1(c) shall be equal to the sum of: (a) the face value of each Series C Share, being \$53,400 and (b) the net present value of future dividends on the Series C Shares calculated using a discount rate equal to the yield on: (i) 10 year Government of Canada Bonds; or (ii) if the remaining term of the Series C Shares is less than 10 years, the yield on the Government of Canada Bonds closest in maturity to the remaining term of the Series C Shares, in each case, plus 50 bps. The net present value of the future dividends will be calculated by an independent national or international firm of chartered accountants, acceptable to a majority in number of the holders of Series C Shares, acting reasonably, using the table set out in Section III.1(b) above for the amount of the base dividends per annum adjusted for inflation using assumptions considered reasonable by such firm of chartered accountants and applying the appropriate discount rate as set out above, The Corporation shall send a written notice to the holders of Class C Shares of its proposal of a firm of chartered accountants to make the determination and the holders will have ten calendar days thereafter to notify the Corporation of their acceptance or rejection of such firm and the failure by a holder to provide such notice shall be deemed to be acceptance of such firm and if a majority of the holders accept such firm, it shall be deemed to be accepted by all such holders. The cost of preparing such calculation shall be borne by the Corporation. The foregoing amount shall be paid before any amount is paid or any assets of the Corporation are distributed to the holders of any shares of the Corporation ranking junior as to capital to the Series C Shares. Upon payment to the holders of the Series C Shares of the amounts so payable to them, such holders shall not be entitled to share in any further distribution of the assets of the Corporation.

(d) **Redemption on Certain Corporate Transactions**

- (i) *General.* In the event that the Corporation is a party to a transaction which results in the Common Shares or securities issued in exchange for such Common Shares not being listed on the Toronto Stock Exchange, TSX Venture Exchange, New York Stock Exchange, American Stock Exchange, NASDAQ or London Stock Exchange, subject to the Act, the holder shall have the option to require the Corporation to redeem all but not less than all of the issued Series C Shares registered in the name of such holder on the books of the Corporation, at the redemption price plus any accrued and unpaid dividends thereon up to, but excluding, the redemption date. The redemption price for the purposes of this Section III.1(d) shall be equal to the sum of (a) the face value of each Series C Share, being \$53,400 and (b) the net present value of future dividends on the Series C Shares calculated using a discount rate equal to the yield on: (i) the 10 year Government of Canada Bonds; or (ii) if the remaining term of the Series C Shares is less than 10 years, the yield on the Government of Canada Bonds closest in maturity to the remaining term of the Series C Shares, in each case, plus 200 basis points ("bps"). The net present value of the future dividends will be calculated by an independent national or international firm of chartered accountants acceptable to a majority in number of the holders of Series C Shares, acting reasonably, using the table set out in Section III.1(b) above for the amount of the base dividends per annum adjusted for inflation using assumptions considered reasonable by such firm of chartered accountants and applying the appropriate discount rate as set out above. The Corporation shall send a written notice to the holders of Class C Shares of its proposal of a firm of chartered accountants to make the determination and the holders will have ten calendar days thereafter to notify the Corporation of their acceptance or rejection of such firm and the failure by a holder to provide such notice shall be deemed to be acceptance of such firm and if a majority of the holders accept such firm, it shall be deemed to be accepted by all such holders. The cost of preparing such calculation shall be borne equally by the Corporation and the holders of Series C Shares whose shares are being redeemed.
- (ii) *Transaction Notice.* The Corporation shall give not less than thirty (30) days' prior notice in writing of a transaction which will give rise to the redemption option set forth in Section III.1(d)(i) by mailing to each person who at the date of mailing is a registered holder of Series C Shares. Such notice shall be mailed in a prepaid envelope addressed to each such shareholder at such shareholder's address as it appears on the books of the Corporation or, in the event of the address of any such shareholder not so appearing, then to the last known address of such shareholder, provided however, that accidental failure or omission to give any such notice to one or more of such holders shall not affect the validity of such transaction. Such notice shall set out the anticipated closing date of the transaction which date shall also be deemed to be the date of redemption (the "redemption date"), details of the proposed transaction giving rise to the notice, the anticipated redemption price of the shares and the date on which redemption will take place if so elected by the holder. Furthermore the Corporation shall respond to such requests for additional information from the holder regarding the transaction as the holder reasonably requests in order to make its decision regarding whether it will exercise its redemption right.
- (iii) *Redemption Notice.* A holder of such Series C Shares that would like to exercise its right to redemption shall tender to the Corporation at its registered office a request in writing ("redemption notice") specifying (A) that such holder desires to have all of the Series C Shares registered in the name of such holder redeemed by the Corporation (B) the share certificates, if any, representing the Series C Shares which the registered holder desires to have the Corporation redeem (C) the address to which such payment is to be delivered, provided that if the holder does not indicate an address, the Corporation shall make the payment to such shareholder at such shareholder's address as it appears on the books of the Corporation or, in the event of the address of any such shareholder not so appearing, then to the last known address of such shareholder and (D) the business day, which shall be not less than 30 days after the day on which the request in writing is given to the Corporation, on which the holder desires to have the Corporation redeem such shares (the "**redemption date**").
-

- (iv) *Redemption Procedure.* On the redemption date, the Corporation shall pay or cause to be paid to or to the order of the registered holders of the shares to be redeemed the applicable redemption price plus any accrued and unpaid dividends thereon up to, but excluding, the redemption date on presentation and surrender, at the registered office of the Corporation or any other place designated in such notice, of the certificates representing the shares so called for redemption. Such payment shall be made by cheque payable at any branch in Canada of a chartered bank or trust company selected by the Corporation.
- (v) *Cessation of Rights.* From and after the redemption date, the Series C Shares so redeemed shall cease to be entitled to dividends and the holders thereof shall not be entitled to exercise any of the rights of shareholders in respect thereof, unless payment of the redemption price of the Series C Shares plus any accrued and unpaid dividends thereon up to, but excluding, the redemption date shall not be made upon presentation of the certificates in accordance with the foregoing provisions, in which case the rights of the holders shall remain unaffected.
- (vi) *Deposit of Redemption Price.* The Corporation shall have the right, at any time after receipt of the redemption notice, to deposit the redemption price of the Series C Shares to be redeemed or of such of the said shares represented by certificates which have not at the date of such deposit been surrendered by the holders thereof in connection with any such redemption plus any accrued and unpaid dividends thereon up to, but excluding, the redemption date, in a special account in any chartered bank or any trust company in Canada named in such notice to be paid without interest to or to the order of the respective holders of such shares called for redemption upon presentation and surrender to such bank or trust company of the certificates representing the same and, upon such deposit being made or upon the redemption date, whichever is the later, the Series C Shares in respect of which such deposit shall have been made shall be redeemed and the holders thereof after such deposit or such redemption date, as the case may be, shall be limited to receiving without interest their proportionate part of the total amount so deposited against presentation and surrender of the said certificates held by them respectively, and interest allowed on any such deposit shall belong to the Corporation.

(e) Redemption at Option of Holder in Event of Failure to Pay Dividends

- (i) *General.* Subject to the Act, a holder of any Series C Shares shall be entitled, at any time following the failure by the Corporation to declare and pay a dividend on any of the dates set forth herein and provided such dividend has not been declared and paid within seven calendar days of notice of a request for redemption being given, to require the Corporation to redeem all, but not less than all, of the Series C Shares registered in the name of such holder on the books of the Corporation. The redemption price for the purposes of this Section III.1(e) shall be equal to the sum of (a) the face value of each Series C Share, being \$53,400 and (b) the net present value of future dividends on the Series C Shares calculated using a discount rate equal to the yield on: (i) 10 year Government of Canada Bonds; or (ii) if the remaining term of the Series C Shares is less than 10 years, the yield on the Government of Canada Bonds closest in maturity to the remaining term of the Series C Shares, in each case, plus 50 bps. The net present value of the future dividends will be calculated by an independent national or international firm of chartered accountants, acceptable to a majority in number of the holders of Series C Shares, acting reasonably, using the table set out in Section III.1(b) above for the amount of the base dividends per annum adjusted for inflation using assumptions considered reasonable by such firm of chartered accountants and applying the appropriate discount rate as set out above. The Corporation shall send a written notice to the holders of Class C Shares of its proposal of a firm of chartered accountants to make the determination and the holders will have ten calendar days thereafter to notify the Corporation of their acceptance or rejection of such firm and the failure by a holder to provide such notice shall be deemed to be acceptance of such firm and if a majority of the holders accept such firm, it shall be deemed to be accepted by all such holders. The cost of preparing such calculation shall be borne equally by the Corporation and the holders of Series C Shares whose shares are being redeemed.
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- (ii) *Notice.* A holder of such shares to be redeemed shall tender to the Corporation at its registered office a request in writing specifying (A) that such holder desires to have all of the Series C Shares registered in the name of such holder redeemed by the Corporation (B) the business day, which shall be not less than 30 days after the day on which the request in writing is given to the Corporation, on which the holder desires to have the Corporation redeem such shares (the “**redemption date**”), together with the share certificates, if any, representing the Series C Shares which the registered holder desires to have the Corporation redeem and (C) the address to which such payment is to be delivered, provided that if the holder does not indicate an address, the Corporation shall make the payment to such shareholder at such shareholder’s address as it appears on the books of the Corporation or, in the event of the address of any such shareholder not so appearing, then to the last known address of such shareholder.
- (iii) *Redemption Procedure.* Upon receipt of such request and share certificates representing the Series C Shares, the Corporation shall, on the redemption date, redeem such shares by paying to such registered holder an amount equal to the redemption price plus any accrued and unpaid dividends thereon up to, but excluding, the redemption date. Such payment shall be made by cheque payable at any branch in Canada of one of the Corporation’s bankers for the time being.
- (iv) *Cessation of Rights.* The Series C Shares shall be redeemed on the redemption date and thereafter such shares shall cease to be entitled to dividends and the holders thereof shall not be entitled to exercise any of the rights of shareholders in respect thereof, unless payment of the redemption price plus any accrued and unpaid dividends on the Class C Shares up to, but excluding, the redemption date is not made on the redemption date, in which case the rights of the holders of such shares shall remain unaffected.

(f) Automatic Redemption

- (i) *General.* Unless the Corporation has delivered a conversion notice pursuant to Section III.1(g)(ii), subject to the Act, the Corporation shall redeem on June 19, 2031 all but not less than all of the issued Series C Shares, other than those Series C Shares for which a conversion notice has been delivered by the holder pursuant to Section III.1(g)(vi) hereof, on payment for each share to be redeemed of the redemption price of \$53,400 plus any accrued and unpaid dividends thereon up to, and including, the redemption date.
  - (ii) *Notice.* The Corporation shall give notice in writing of such redemption on or before May 20, 2031 by mailing to each person who at the date of mailing is a registered holder of the Series C Shares to be redeemed a redemption notice. Such notice shall be mailed in a prepaid envelope addressed to each such shareholder at such shareholder’s address as it appears on the books of the Corporation or, in the event of the address of any such shareholder not so appearing, then to the last known address of such shareholder, provided however, that accidental failure or omission to give any such notice to one or more of such holders shall not affect the validity of such redemption. Such notice shall set out the redemption price of the shares to be redeemed and the date on which redemption is to take place, being June 19, 2031.
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- (iii) *Redemption Procedure.* On the date so specified for redemption in such notice, the Corporation shall pay or cause to be paid to or to the order of the registered holders of the shares to be redeemed in cash the redemption price of \$53,400 per share plus any accrued and unpaid dividends thereon up to, and including, the redemption date on presentation and surrender, at the registered office of the Corporation or any other place designated in such notice, of the certificates representing the shares so called for redemption. Such payment shall be made by cheque payable at any branch in Canada of one of the Corporation's bankers for the time being.
- (iv) *Cessation of Rights.* After June 19, 2031, the Series C Shares called for redemption shall cease to be entitled to dividends and the holders thereof shall not be entitled to exercise any of the rights of shareholders in respect thereof, unless payment of the redemption price of the Series C Shares plus any accrued and unpaid dividends thereon up to, and including, the redemption date shall not be made upon presentation of the certificates in accordance with the foregoing provisions, in which case the rights of the holders shall remain unaffected.
- (v) *Deposit of Redemption Price.* The Corporation shall have the right, at any time after the mailing of the redemption notice but in any event not before May 1, 2031, to deposit the redemption price of the Series C Shares so called for redemption or of such of the said shares represented by certificates which have not at the date of such deposit been surrendered by the holders thereof in connection with any such redemption plus any accrued and unpaid dividends thereon up to, and including, the redemption date in a special account in any chartered bank or any trust company in Canada named in such notice to be paid without interest to or to the order of the respective holders of such shares called for redemption upon presentation and surrender to such bank or trust company of the certificates representing the same and, upon such deposit being made or upon the date specified for redemption in such notice, whichever is the later, the Series C Shares in respect of which such deposit shall have been made shall be redeemed and the holders thereof after such deposit or such redemption date, as the case may be, shall be limited to receiving without interest their proportionate part of the total amount so deposited against presentation and surrender of the said certificates held by them respectively, and interest allowed on any such deposit shall belong to the Corporation.

(g) Conversion

- (i) *General.* Provided that the Common Shares are listed on the Toronto Stock Exchange, TSX Venture Exchange, New York Stock Exchange, American Stock Exchange, NASDAQ or London Stock Exchange, subject to Regulatory Approval, a holder of any Series C Shares shall be entitled, at any time after May 20, 2031 and before June 19, 2031, to convert all, but not less than all of the Series C Shares registered in the name of such holder on the books of the Corporation into Common Shares. The conversion price for the purposes of this Section III.1(g) shall be equal to the face value of each Series C Share, being \$53,400 (the "**Conversion Price**"). Provided that the Common Shares are listed on the Toronto Stock Exchange, TSX Venture Exchange, New York Stock Exchange, American Stock Exchange, NASDAQ or London Stock Exchange, the Corporation shall be entitled to convert all but not less than all of the Series C Shares for which no redemption notice has been delivered before May 20, 2031 by delivering a conversion notice under Section III.1(g)(ii), in which case the Conversion Price shall equal the face value of each Series C Share, being \$53,400.
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- (ii) *Notice.* In the case of a conversion by a holder of Series C Shares, a holder of such shares to be converted shall tender to the Corporation at its registered office a request in writing specifying (A) that such holder desires to have all of the Series C Shares registered in the name of such holder converted by the Corporation into Common Shares (B) the business day, which shall be not less than 30 days after the day on which the request in writing is given to the Corporation, on which the holder desires to have the Corporation convert such shares (the “**conversion date**”), together with the share certificates, if any, representing the Series C Shares which the registered holder desires to have the Corporation convert and (C) the address to which such shares are to be delivered, provided that if the holder does not indicate an address, the Corporation shall deliver the shares to such shareholder at such shareholder’s address as it appears on the books of the Corporation or, in the event of the address of any such shareholder not so appearing, then to the last known address of such shareholder. In the case of a conversion by the Corporation, the Corporation shall give notice in writing of such conversion on May 20, 2031 by mailing to each person who at the date of mailing is a registered holder of Series C Shares to be converted a conversion notice. Such notice shall be mailed in a prepaid envelope addressed to each such shareholder at such shareholder’s address as it appears on the books of the Corporation or, in the event of the address of any such shareholder not so appearing, then to the last known address of such shareholder, provided however, that accidental failure or omission to give any such notice to one or more of such holders shall not affect the validity of such conversion. Such notice shall set out the Conversion Price of the shares to be converted and the date on which such conversion is to take place, being June 19, 2031.
- (iii) *Conversion Procedure.* In the case of a conversion by a holder of Series C Shares, upon receipt of such request and share certificates representing the Series C Shares, the Corporation shall, on the conversion date, convert such shares into Common Shares and pay the holder the amount of any accrued and unpaid dividends thereon up to, and including, the conversion date in cash. In the case of a conversion by the Corporation, the Corporation shall have the right, at any time after mailing of the conversion notice, to deposit the share certificates for Common Shares representing the Conversion Price of the Series C Shares to be converted plus a cheque in the amount of any accrued and unpaid dividends on such Series C Shares up to, and including, the conversion date in trust with a trust company in Canada named in such notice to be delivered and paid without interest to or to the order of the respective holders of such shares to be converted upon presentation and surrender to such trust company of the certificates representing the same and, upon such deposit being made or upon the date specified for conversion in such notice, whichever is later, the Series C Shares in respect of which such deposit shall have been made shall be converted into Common Shares and the holders thereof after such deposit or such conversion date, as the case may be, shall be limited to receiving without interest their proportion of the Common Shares and the total amount so deposited against presentation and surrender of the said certificates held by them respectively, and interest allowed on any such deposit shall belong to the Corporation. Subject to Regulatory Approval, such conversion shall be effected by delivery of share certificates for Common Shares in the amount determined as set out in Section III.1(g)(iv) below, provided that in the case of a fractional Common Share, such fractional Common Share shall be rounded to the nearest full share, together with a cheque payable at any branch in Canada of one of the Corporation’s bankers from time to time in respect of any accrued and unpaid dividends.
- (iv) *Number of Common Shares.* The number of Common Shares to be issued will be equal to the Conversion Price determined as at the conversion date multiplied by the number of Series C Shares held by such holder divided by the sixty (60) day volume weighted average price of the Common Shares on the TSX, provided that if the Common Shares are not then listed on the TSX, then on such stock exchange as may be selected by the board of directors of the Corporation.
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- (v) *Cessation of Rights.* The Series C Shares shall be converted on the conversion date and thereafter such shares shall cease to be entitled to dividends and the holders thereof shall not be entitled to exercise any of the rights of shareholders in respect thereof, unless payment of the Conversion Price plus any accrued and unpaid dividends on the Class C Shares up to, and including, the conversion date is not made on the conversion date, in which case the rights of the holders of such shares shall remain unaffected.
  - (vi) If the Corporation provides a redemption notice to a holder of Series C Shares pursuant to Section III.1(f)(ii), the holder may provide a conversion notice to the Corporation pursuant to Section III.1(g)(ii) not less than 10 days prior to the applicable redemption date, in which case the conversion notice will take precedence over such redemption notice and such Series C Shares shall be converted into Common Shares in accordance with this Section III.1(g) on the date specified in the redemption notice.
  - (h) Regulatory Approval – For purposes hereof, “Regulatory Approval” means the approval of any regulatory authority having jurisdiction in connection with the conversion of the Series C Shares referred to in Section III.1(g) pursuant to which holders of Series C Shares are to receive Common Shares, including the approval of the TSX if the Common Shares are, at the relevant time, listed on the TSX. The Corporation will use commercially reasonable efforts to obtain such Regulatory Approval in a timely manner.
  - (i) Anti Dilution – The Conversion Price in effect at any date shall be subject to adjustment from time to time as follows:
    - (i) If and whenever at any time after April 15, 2031 and prior to June 19, 2031 the Corporation shall fix a record date for the issuance of options, rights or warrants to all or substantially all the holders of its outstanding Common Shares entitling them, for a period expiring not more than 45 days after such record date, to subscribe for or purchase Common Shares (or securities convertible or exchangeable into Common Shares) at a price per share (or having a conversion or exchange price per share) less than 95% of the Current Market Price of a Common Share on such record date, the Conversion Price shall be adjusted immediately after such record date so that it shall equal the price determined by multiplying the Conversion Price in effect on such record date by a fraction, of which the numerator shall be the total number of Common Shares outstanding on such record date plus the total number of additional Common Shares offered for subscription or purchase (or into which the convertible or exchangeable securities so offered are convertible or exchangeable) and of which the denominator shall be the total number of Common Shares outstanding on such record date plus a number of Common Shares equal to the number arrived at by dividing the aggregate price of the total number of additional Common Shares offered for subscription or purchase (or the aggregate conversion or exchange price of the convertible or exchangeable securities so offered) by such Current Market Price per Common Share. Such adjustment shall be made successively whenever such a record date is fixed. To the extent that any such options, rights or warrants are not so issued or any such options, rights or warrants are not exercised prior to the expiration thereof, the Conversion Price shall be re adjusted to the Conversion Price which would then be in effect if such record date had not been fixed or to the Conversion Price which would then be in effect based upon the number of Common Shares (or securities convertible or exchangeable into Common Shares) actually issued upon the exercise of such options, rights or warrants, as the case may be.
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- (ii) If and whenever at any time prior to June 19, 2031, there is a reclassification of the Common Shares or a capital reorganization of the Corporation (other than (i) a subdivision of the outstanding Common Shares into a greater number of shares, (ii) a reduction, combination or consolidation of the outstanding Common Shares into a smaller number of shares, or (iii) the issuance of Common Shares or securities convertible into or exchangeable for Common Shares to holders of substantially all of the outstanding Common Shares by way of dividend or distribution) or a consolidation, amalgamation, arrangement or merger of the Corporation with or into any other person or other entity; or a sale or conveyance of the property and assets of the Corporation as an entirety or substantially as an entirety to any other person or other entity or a liquidation, dissolution or winding up of the Corporation, any holder of Series C Shares who has not exercised its right of conversion prior to the effective date of such reclassification, capital reorganization, consolidation, amalgamation, arrangement or merger, sale or conveyance or liquidation, dissolution or winding-up, upon the exercise of such right thereafter, shall be entitled to receive and shall accept, in lieu of the number of Common Shares then sought to be acquired by it, the number of shares or other securities or property of the Corporation or of the person or other entity resulting from such merger, amalgamation, arrangement or consolidation, or to which such sale or conveyance may be made or which holders of Common Shares receive pursuant to such liquidation, dissolution or winding up, as the case may be, that such holder of Series C Shares would have been entitled to receive on such reclassification, capital reorganization, consolidation, amalgamation, arrangement or merger, sale or conveyance or liquidation, dissolution or winding-up, if, on the record date or the effective date thereof, as the case may be, the holder had been the registered holder of the number of Common Shares sought to be acquired by it and to which it was entitled to acquire upon the exercise of the conversion right. If determined appropriate by the board of directors of the Corporation to give effect to or to evidence the provisions of this Section III.1 (i)(ii), the Corporation, its successor, or such purchasing person or other entity as the case may be, shall, prior to or contemporaneously with any such reclassification, capital reorganization, consolidation, amalgamation, arrangement, merger, sale or conveyance or liquidation, dissolution or winding-up enter into an agreement which shall provide, to the extent possible, for the application of the provisions set forth herein with respect to the rights and interests thereafter of the holder of Class C Shares to the end that the provisions set forth herein shall thereafter correspondingly be made applicable, as nearly as may reasonably be practicable, with respect to any shares or other securities or property to which a holder of Class C Shares is entitled on the exercise of its conversion rights thereafter.
  - (iii) In any case in which this Section III.1(i) shall require that an adjustment shall become effective immediately after a record date for an event referred to herein, the Corporation may defer, until the occurrence of such event, issuing to the holder of Class C Shares converted after such record date and before the occurrence of such event the additional Common Shares issuable upon such conversion by reason of the adjustment required by such event before giving effect to such adjustment; provided, however, that the Corporation shall deliver to such holder of Class C Shares an appropriate instrument evidencing such holder's right to receive such additional Common Shares upon the occurrence of the event requiring such adjustment and the right to receive any distributions made on such additional Common Shares declared in favour of holders of record of Common Shares on and after the conversion date or such later date as such holder would, but for the provisions of this Section III.1 (i)(iii) have become the holder of record of such additional Common Shares pursuant to this Section III.1(i).
  - (iv) The adjustments provided for in this Section III.1(i) are cumulative and shall apply to successive events resulting in any adjustment under the provisions of this Section, provided that, notwithstanding any other provision of this Section, no adjustment of the Conversion Price shall be required unless such adjustment would require an increase or decrease of at least 1% in the Conversion Price then in effect; provided however, that any adjustments which by reason of this Section III.1 (i)(iv) are not required to be made shall be carried forward and taken into account in any subsequent adjustment.
  - (v) For the purpose of calculating the number of Common Shares outstanding, Common Shares owned by or for the benefit of the Corporation shall not be counted.
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- (vi) In the event of any question arising with respect to the adjustments provided in this Section III.1(i), such question shall be conclusively determined by a firm of chartered accountants appointed by the Corporation and acceptable to a majority of the holders of Class C Shares (who may be the auditors of the Corporation); such accountants shall have access to all necessary records of the Corporation and such determination shall be binding upon the Corporation and the holders of Class C Shares. The Corporation shall send a written notice to the holders of Class C Shares of its proposal of a firm of chartered accountants to make the determination and the holders will have ten calendar days thereafter to notify the Corporation of their acceptance or rejection of such firm and the failure to provide such notice shall be deemed to be acceptance of such firm.
  - (vii) In case the Corporation shall take any action affecting the Common Shares other than an action described in this Section III.1(i), which in the opinion of the board of directors of the Corporation would materially adversely affect the rights of the holders of Class C Shares, the Conversion Price shall be adjusted in such manner and at such time, by action of the directors, subject to Regulatory Approval, as the board of directors of the Corporation in their sole discretion may determine to be equitable in the circumstances. Failure of the board of directors of the Corporation to make such an adjustment shall be conclusive evidence that the directors have determined that it is equitable to make no adjustment in the circumstances.
  - (viii) Subject to Regulatory Approval, no adjustment in the Conversion Price shall be made in respect of any event described in Section III.1(i)(ii) if the holders of Series C Shares are entitled to participate in such event on the same terms mutatis mutandis as if they had converted their Series C Shares prior to the effective date or record date, as the case may be, of such event.
  - (ix) Except as stated above in this Section III.1(i), no adjustment will be made in the Conversion Price for any Class C Shares as a result of the issuance of Common Shares at less than the Current Market Price during the period from April 15, 2031 to the conversion date.
  - (x) For purposes of this Section III.1(i), "Current Market Price" means the weighted average trading price of the Common Shares on the Toronto Stock Exchange for the 20 consecutive trading days ending on the fifth trading day preceding the date of the applicable event (or, if the Common Shares are not listed thereon, on such stock exchange on which the Common Shares are listed as may be selected for such purpose by the board of directors of the Corporation, or if the Common Shares are not listed on any stock exchange, then on the over-the-counter market). The weighted average price shall be determined by dividing the aggregate sale price of all Common Shares sold on the said exchange or market, as the case may be, during the said 20 consecutive trading days by the total number of Common Shares so sold during such period.
- (j) Specified Amount – For the purposes of subsection 191(4) of the Tax Act, the specified amount for each Series C Share is \$238,830.
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**Certificate of Amendment**

*Canada Business Corporations Act*

**Certificat de modification**

*Loi canadienne sur les sociétés par actions*

Algonquin Power & Utilities Corp.

Corporate name / Dénomination sociale

236237-6

Corporation number / Numéro de société

I HEREBY CERTIFY that the articles of the above-named corporation are amended under section 27 of the *Canada Business Corporations Act* as set out in the attached articles of amendment designating a series of shares.

JE CERTIFIE que les statuts de la société susmentionnée sont modifiés aux termes de l'article 27 de la *Loi canadienne sur les sociétés par actions*, tel qu'il est indiqué dans les clauses modificatrices désignant une série d'actions.

Marcie Girouard

Director / Directeur

2012-11-02

Date of Amendment (YYYY-MM-DD)  
Date de modification (AAAA-MM-JJ)



- 
- 1 Corporate name  
Dénomination sociale  
**Algonquin Power & Utilities Corp.**
- 
- 2 Corporation number  
Numéro de la société  
**236237-6**
- 
- 3 The articles are amended as follows  
Les statuts sont modifiés de la façon suivante

The corporation amends the description of classes of shares as follows:  
La description des catégories d'actions est modifiée comme suit :  
**See attached schedule / Voir l'annexe ci-jointe**

- 
- 4 Declaration: I certify that I am a director or an officer of the corporation.  
Déclaration : J'atteste que je suis un administrateur ou un dirigeant de la société.

Original signed by / Original signé par  
**David Bronicheski**  
\_\_\_\_\_  
**David Bronicheski**  
**905-465-4512**

Note: Misrepresentation constitutes an offence and, on summary conviction, a person is liable to a fine not exceeding \$5000 or to imprisonment for a term not exceeding six months or both (subsection 250(1) of the CBCA).

Nota : Faire une fausse déclaration constitue une infraction et son auteur, sur déclaration de culpabilité par procédure sommaire, est passible d'une amende maximale de 5 000 \$ et d'un emprisonnement maximal de six mois, ou de l'une de ces deux peines (paragraphe 250(1) de la LCSA).

The articles of the Corporation are amended to increase the classes and any maximum number of shares that the Corporation is authorized to issue by creating 4,800,000 Cumulative Rate Reset Preferred Shares, Series A and 4,800,000 Cumulative Floating Rate Preferred Shares, Series B. The rights, privileges, restrictions and conditions attaching to each series of shares are as set out on Schedule A annexed to these articles, which Schedule is incorporated into this form.

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## SCHEDULE A

### I.1 CUMULATIVE RATE RESET PREFERRED SHARES, SERIES A

The first series of preferred shares shall consist of up to 4,800,000 shares, which shares shall be designated as Cumulative Rate Reset Preferred Shares, Series A (the "Series A Shares") and which, in addition to the rights, privileges, restrictions and conditions attached to the preferred shares as a class, shall have attached thereto the following rights, privileges, restrictions and conditions:

#### (a) Dividends

(i) **Dividend Periods and Dividend Payment Dates.** A "Dividend Period" means the period from and including the date of initial issue of the Series A Shares to, but excluding, December 31, 2012 and, thereafter, the next succeeding period that is from and including the 31st day (each, a "Quarter End Date") of each of the months of March, June, September and December in each year, as the case may be, to but excluding the next succeeding Quarter End Date. The dividend payment dates (the "Dividend Payment Dates") in respect of the dividends payable on the Series A Shares shall be the last day (or, if such day is not a Business Day, the immediately following Business Day) of each of the months of March, June, September and December in each year.

#### (ii) **Payment of Dividends.**

(A) During the Initial Fixed Rate Period and each Subsequent Fixed Rate Period, the holders of Series A Shares shall be entitled to receive, and the Corporation shall pay thereon, if, as and when declared by the board of directors of the Corporation (the "Board"), out of moneys of the Corporation properly applicable to the payment of dividends, fixed, cumulative, preferential cash dividends (the "Quarterly Dividends") in the amounts set forth in subsection I.1(a)(ii)(B) payable, with respect to each Dividend Period, on the Dividend Payment Date in respect of such Dividend Period.

(B) Subject to subsection I.1(a)(iii), for all Dividend Periods during:

- (1) the Initial Fixed Rate Period, each Quarterly Dividend shall be in an amount equal to \$0.28125 per Series A Share (being an annual rate equal to \$1.1250 per Series A Share); and
- (2) each Subsequent Fixed Rate Period, each Quarterly Dividend shall be in an amount per Series A Share equal to the result of the following calculation:  $1/4 \times [(\$25.00 \times \text{AFDR})]$ , where "AFDR" means the Annual Fixed Dividend Rate applicable to such Subsequent Fixed Rate Period.

(C) The Corporation shall determine the Annual Fixed Dividend Rate for each Subsequent Fixed Rate Period on the relevant Fixed Rate Calculation Date. Such determination shall, in the absence of manifest error, be final and binding on the Corporation and all holders of Series A Shares. The Corporation shall, on the relevant Fixed Rate Calculation Date, give written notice of the Annual Fixed Dividend Rate for the ensuing Subsequent Fixed Rate Period to the registered holders of the then outstanding Series A Shares in accordance with the provisions of subsection I.1(f)(i).

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(D) Dividends on the Series A Shares shall accrue daily from and including the date of issue of such shares.

(iii) **Initial Dividend and Dividend for Other than a Full Dividend Period.** The holders of Series A Shares shall be entitled to receive, and the Corporation shall pay thereon, if, as and when declared by the Board out of moneys of the Corporation properly applicable to the payment of dividends, cumulative, preferential cash dividends for the initial period or any period which is less than a full Dividend Period, as follows:

(A) an initial dividend in respect of the period from and including the date of the initial issue of the Series A Shares to but excluding December 31, 2012 in an amount per Series A Share equal to \$1.1250 multiplied by a fraction, the numerator of which is the number of calendar days from and including the date of the initial issue of the Series A Shares to but excluding December 31, 2012 and the denominator of which is 365, (which, if the Series A Shares are issued on November 9, 2012, shall be \$0.1603 per Series A Share); and

(B) a dividend in an amount per share with respect to any Series A Share:

- (1) which is issued, redeemed or converted during any Dividend Period;
- (2) where the assets of the Corporation are distributed to the holders of the Series A Shares pursuant to subsection 1.1(i) with an effective date during any Dividend Period; or
- (3) in any other circumstance where the number of days in a Dividend Period that such share has been outstanding is less than a full Dividend Period (other than the period referred to in subsection 1.1(a)(iii)(A)),

equal to the amount obtained when the amount of the Quarterly Dividend payable in respect of the applicable full Dividend Period is multiplied by a fraction, the numerator of which is the number of calendar days in such Dividend Period that such share has been outstanding (excluding the date of redemption or conversion, the effective date for the distribution of assets or the last day of the applicable shorter period, as applicable) and the denominator of which is the number of calendar days in such Dividend Period.

(iv) **Payment Procedure.** The Corporation shall pay the dividends declared on the Series A Shares on the relevant Dividend Payment Date (less any tax required to be deducted or withheld by the Corporation) by electronic funds transfer or by cheque(s) drawn on a Canadian chartered bank or trust company and payable in lawful money of Canada at any branch of such bank or trust company in Canada or in such other manner, not contrary to applicable law, as the Corporation shall reasonably determine. The delivery or mailing of any cheque to a holder of Series A Shares (in the manner provided for in subsection 1.1(f)(i)) or the electronic transfer of funds to an account specified by such holder shall be a full and complete discharge of the Corporation's obligation to pay the dividends to such holder to the extent of the sum represented thereby (plus the amount of any tax required to be and in fact deducted or withheld by the Corporation from the related dividends as aforesaid and remitted to the proper taxing authority), unless such cheque is not honoured when presented for payment. Subject to applicable law, dividends which are represented by a cheque which has not been presented to the Corporation's banker for payment or that otherwise remain unclaimed for a period of six years from the date on which they were declared to be payable may be reclaimed and used by the Corporation for its own purposes.

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(v) **Cumulative Payment of Dividends.** If on any Dividend Payment Date, the Quarterly Dividends payable in respect of the Dividend Period ending in the calendar month in which such Dividend Payment Date occurs are not paid in full on all of the Series A Shares then outstanding, such Quarterly Dividends, or the unpaid part thereof, shall be paid (less any tax required to be deducted or withheld by the Corporation) on a subsequent date or dates determined by the Board on which the Corporation shall have sufficient monies properly applicable to the payment of such Quarterly Dividends. The holder of Series A Shares shall not be entitled to any dividends other than or in excess of the cumulative preferential cash dividends herein provided for.

(vi) **Priority.** The Series A Shares rank senior to the Common Shares and rank on a parity with every other series of Preferred Shares as to dividends.

(b) Redemption, Conversion and Purchase

(i) **General.** To the extent permitted by applicable law, the Series A Shares may be redeemed, converted or purchased by the Corporation as provided in this subsection I.1 (b) but not otherwise.

(ii) **Corporation's Redemption Rights.** The Series A Shares shall not be redeemable by the Corporation prior to December 31, 2018. On any Series A Conversion Date, the Corporation may redeem all or any number of the outstanding Series A Shares, at its option, by the payment in cash of \$25.00 per share so redeemed together with all accrued and unpaid dividends thereon up to, but excluding, the date fixed for redemption (less any tax required to be deducted or withheld by the Corporation) (the "Redemption Price"). Where applicable, if less than all of the outstanding Series A Shares are at any time to be redeemed, the particular shares to be redeemed shall be selected on a pro rata basis (disregarding fractions) or, with the consent of any applicable stock exchange, in such other manner as the Board may in its sole discretion determine by resolution.

(iii) **Notice of Redemption.** Notice of any redemption of Series A Shares pursuant to subsection I.1(b)(ii) shall be given to each holder of Series A Shares to be redeemed by the Corporation at least 30 and not more than 60 days prior to the date fixed for redemption. Any notice of redemption of Series A Shares by the Corporation shall be validly and effectively given on the date on which it is sent to each holder of Series A Shares to be redeemed in the manner provided for in subsection I.1(f)(i). Such notice shall set out:

(A) the date (the "Redemption Date") on which the redemption is to take place;

(B) unless all the Series A Shares held by the holder to whom it is addressed are to be redeemed, the number of Series A Shares so held which are to be redeemed; and

(C) the Redemption Price.

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- (iv) **Payment of Redemption Price.** The Corporation shall on the Redemption Date pay or cause to be paid to the holders of the Series A Shares so called for redemption the Redemption Price therefor on presentation and delivery at the principal transfer office of the Transfer Agent in the city of Toronto or such other place or places in Canada designated in the notice of redemption, of the certificate or certificates representing the Series A Shares so called for redemption. Such payment shall be made by electronic funds transfer to an account specified by such holder or by cheque drawn on a Canadian chartered bank or trust company in the amount of the Redemption Price and such electronic transfer of funds or the delivery or mailing of such cheque (in the manner provided for in subsection 1.1(f)(i)) shall be a full and complete discharge of the Corporation's obligation to pay the Redemption Price owed to the holders of Series A Shares so called for redemption to the extent of the sum represented thereby (plus the amount of any tax required to be and in fact deducted or withheld by the Corporation as aforesaid and remitted to the proper taxing authority) unless such cheque is not honoured when presented for payment. From and after the Redemption Date, the holders of Series A Shares called for redemption shall cease to be entitled to dividends or to exercise any of the rights of holders of Series A Shares in respect of such shares except the right to receive the Redemption Price, provided that if payment of such Redemption Price is not duly made in accordance with the provisions hereof, then the rights of such holders shall remain unimpaired. If less than all the Series A Shares represented by any certificate shall be redeemed, a new certificate for the balance shall be issued without cost to the holder. Subject to applicable law, redemption monies which remain unclaimed for a period of six years from the Redemption Date may be reclaimed and used by the Corporation for its own purposes.
- (v) **Deposit of Redemption Price.** The Corporation shall have the right, at any time after mailing a notice of redemption, to deposit the aggregate Redemption Price for the Series A Shares thereby called for redemption, or such part thereof as at the time of deposit has not been claimed by the holders entitled thereto, in a special account with a Canadian chartered bank or trust company named in the notice of redemption in trust for the holders of such shares, and upon such deposit being made or upon the Redemption Date, whichever is the later, the Series A Shares in respect of which such deposit shall have been made shall be deemed to be redeemed on the Redemption Date and the rights of each holder thereof shall be limited to receiving, without interest, the holder's proportionate part (after taking into account any amounts required to be deducted or withheld on account of tax in respect of such holder) of the Redemption Price so deposited upon presentation and surrender of the certificate or certificates representing the Series A Shares so redeemed. Any interest on any such deposit shall belong to the Corporation. Subject to applicable law, redemption monies which remain unclaimed for a period of six years from the Redemption Date may be reclaimed and used by the Corporation for its own purposes.
- (vi) **Declaration of Dividends in Respect of Shares to be Redeemed.** If a dividend is declared by the Board in respect of any Dividend Period during which the Series A Shares are redeemed, notwithstanding the provisions of subsection 1.1(a)(iv), no electronic funds transfer or cheque shall be made or issued in payment of such dividend; rather, the amount of such dividend declared shall be considered to be an accrued and unpaid dividend for purposes of subsection 1.1(b)(ii).
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- (vii) **Conversion at the Option of the Holder.** Subject to the second paragraph of subsection I.1(b)(viii), subsection I.1 (b)(ix) and subsection I.1(b)(x), each holder of Series A Shares shall have the right, at its option, on any Series A Conversion Date, to convert all or any part of its Series A Shares registered in its name into Cumulative Floating Rate Preferred Shares, Series B (the "Series B Shares") on the basis of one Series B Share for each Series A Share converted. Such right may be exercised by notice in writing (an "Election Notice") given not earlier than the 30th day prior to, and not later than 5:00 p.m. (Toronto time) on the 15th day preceding, the applicable Series A Conversion Date during usual business hours at any principal transfer office of the Transfer Agent, or such other place or places designated by the Corporation. On any conversion of Series A Shares into Series B Shares, the certificates representing the Series B Shares resulting from the conversion of Series A Shares to which such holder is entitled shall be issued in the name of the holder of the Series A Shares converted or in such name or names as such holder may direct in writing; provided that such holder shall pay any applicable security transfer taxes. Any Election Notice shall be accompanied by (1) payment or evidence of payment of the tax (if any) payable; and (2) the certificate or certificates representing the Series A Shares in respect of which the holder thereof desires to convert into Series B Shares with the transfer form on the back thereof or other appropriate stock transfer power of attorney duly endorsed by the holder, or his or her attorney duly authorized in writing, in which Election Notice such holder may elect to convert part only of the Series A Shares represented by such certificate or certificates not theretofore called for redemption in which event the Corporation will issue and deliver or cause to be delivered to such holder, at the expense of the Corporation, a new certificate representing the Series A Shares represented by such certificate or certificates that have not been converted. Such conversion shall be deemed to have been made at 5:00 p.m. (Toronto time) on the Series A Conversion Date, so that the rights of the holder of such Series A Shares as the holder thereof shall cease at such time and the person or persons entitled to receive the Series B Shares upon such conversion will be treated for all purposes as having become the holder or holders of record of such Series B Shares at such time. An Election Notice is irrevocable once received by the Corporation. If the Corporation does not receive an Election Notice within the specified time, the Series A Shares shall be deemed not to have been converted (subject to subsection I.1(b)(ix)).
- (viii) **Notice of Conversion Rate and Dividend Rates and Election Notice.** The Corporation shall, at least 30 days and not more than 60 days prior to each Series A Conversion Date, provide notice in writing to the then registered holders of the Series A Shares of the Series A Conversion Date and a form of Election Notice as specified by the Corporation. On the 30th day prior to each Series A Conversion Date, the Corporation shall give notice in writing to the registered holders of the Series A Shares of the Annual Fixed Dividend Rate for the next Subsequent Fixed Rate Period and the Floating Quarterly Dividend Rate for the next Quarterly Floating Rate Period (as these terms are defined in the Series B Share Provisions).

If the Corporation gives notice pursuant to subsection I.1 (b)(iii) to the registered holders of the Series A Shares of the redemption of all Series A Shares pursuant to subsection I.1(b)(ii), it shall not be required to give notice to the holders of the Series A Shares of any dividend rates or of the conversion right of holders of Series A Shares and the right of holders of Series A Shares to convert such shares pursuant to subsection I.1(b)(vii) shall terminate.

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- (ix) **Automatic Conversion.** If the Corporation determines that there would remain outstanding on a Series A Conversion Date less than 1,000,000 Series A Shares, after having taken into account all Election Notices in respect of Series A Shares duly tendered for conversion into Series B Shares and all Election Notices in respect of Series B Shares duly tendered for conversion into Series A Shares in accordance with the Series B Share Provisions, in each case received by the Corporation during the time fixed therefor, then, all, but not part, of the remaining outstanding Series A Shares will automatically be converted into Series B Shares on the basis of one Series B Share for each Series A Share on the applicable Series A Conversion Date. The Corporation shall give notice in writing of the automatic conversion thereof to all holders of the Series A Shares at least seven days prior to the applicable Series A Conversion Date.
- (x) **Restrictions on Conversion.** The holders of Series A Shares shall not be entitled to convert their shares into Series B Shares if the Corporation determines that there would remain outstanding on a Series A Conversion Date less than 1,000,000 Series B Shares after having taken into account all Election Notices in respect of Series A Shares duly tendered for conversion into Series B Shares and all Election Notices in respect of Series B Shares duly tendered for conversion into Series A Shares in accordance with the Series B Share Provisions, in each case received by the Corporation during the time fixed therefor. The Corporation shall give notice in writing of the inability to convert Series A Shares to all holders of the Series A Shares at least seven days prior to the applicable Series A Conversion Date.
- (xi) **Non-Residents.** The Corporation is not required to (but may at its option) issue Series B Shares upon the conversion of Series A Shares into Series B Shares to any person whose address is in, or whom the Corporation or the Transfer Agent has reason to believe is a resident of, any jurisdiction outside Canada, to the extent that such issue would require the Corporation to take any action to comply with the securities laws or analogous laws of such jurisdiction.
- (xii) **Purchase for Cancellation.** Subject to applicable laws, the Corporation may, at any time, purchase for cancellation (if obtainable), out of capital or otherwise, the whole or any part of the Series A Shares outstanding from time to time at any price by tender to all holders of record of Series A Shares or through the facilities of any stock exchange on which the Series A Shares are listed, or in any other manner, provided that in the case of a purchase in any other manner the price for such Series A Shares so purchased for cancellation shall not exceed the highest price offered for a board lot of the Series A Shares on any stock exchange on which such shares are listed on the date of purchase for cancellation, plus the costs of purchase. If upon any tender to holders of Series A Shares under the provisions of this subsection 1.1(b)(xii), more shares are offered than the Corporation is prepared to purchase, the shares so offered will be purchased as nearly as may be pro rata (disregarding fractions) according to the number of Series A Shares so offered by each of the holders of Series A Shares who offered shares to such tender. From and after the date of purchase of any Series A Shares under the provisions of this subsection 1.1(b)(xii), the shares so purchased shall be cancelled.
- (xiii) **Conversion – General.** On the conversion of a Series A Share to a Series B Share pursuant to the terms of these Series A Share Provisions, each such Series A Share shall become an issued Series B Share and the number of unissued Series A Shares shall be increased by the number of Series A Shares that became Series B Shares.
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(c) Voting Rights

- (i) **Voting Rights – General.** Except as otherwise required by law or in the conditions attaching to the Preferred Shares as a class, the holders of Series A Shares shall not be entitled to receive notice of, attend at, or vote at any meeting of shareholders of the Corporation, unless and until the Corporation shall have failed to pay eight Quarterly Dividends on the Series A Shares in accordance with the terms hereof, whether or not consecutive and whether or not such dividends were declared and whether or not there are any monies of the Corporation properly applicable to the payment of such dividends. In the event of such non-payment, and for only so long as any such dividends remain in arrears, the holders of the Series A Shares shall be entitled to receive notice of all meetings of shareholders of the Corporation and to attend thereat (other than a separate meeting of the holders of another series or class of shares), and shall at any such meetings which they shall be entitled to attend, except when the vote of the holders of shares of any other class or series is to be taken separately and as a class or series, be entitled to vote together with all of the voting shares of the Corporation on the basis of one vote in respect of each Series A Share held by each such holder, until all such arrears of such dividends shall have been paid, whereupon such rights shall cease unless and until the Corporation shall again fail to pay eight Quarterly Dividends on the Series A Shares in accordance with the terms hereof, whether or not consecutive and whether or not such dividends were declared and whether or not there are any monies of the Corporation properly applicable to the payment of such dividends, in which event such voting rights shall become effective again and so on from time to time.

(d) Issue Price

The consideration for which each Series A Share shall be issued is \$25.00 and, upon payment of such consideration, each such share shall be issued as fully paid and nonassessable.

In the event of a conversion of a Series B Share into a Series A Share, the amount to be deducted from the stated capital account maintained for the Series B Shares and added to the stated capital account maintained for the Series A Shares will be \$25.00 per share so converted.

(e) Election under the *Income Tax Act (Canada)*

The Corporation shall elect in the manner and within the time provided under the Income Tax Act (Canada) (the "Tax Act"), under Subsection 191.2(1) of Part VI.1 of the Tax Act, or any successor or replacement provision of similar effect, and take all other necessary action under the Tax Act, to pay or cause payment of tax under Part VI.1 of the Tax Act at a rate such that the corporate holders will not be required to pay tax on dividends received on the Series A Shares under Section 187.2 of Part IV. 1 of the Tax Act or any successor or replacement provision of similar effect.

(f) Notice and Interpretation

- (i) **Notices.** Any notice, cheque, invitation for tenders or other communication from the Corporation herein provided for shall be sufficiently given, sent or made if delivered or if sent by first class unregistered mail, postage prepaid, to the holders of the Series A Shares at their respective addresses appearing on the records of the Corporation maintained by the Corporation or the Transfer Agent, or, in the case of joint holders, to the address of the holder whose name appears first on the records of the Corporation maintained by the Corporation or the Transfer Agent as one of such joint holders, or, in the event of the address of any of such holders not so appearing, then at the last address of such holder known to the Corporation. Accidental failure to give such notice, invitation for tenders or other communication to one or more holders of the Series A Shares shall not affect the validity of the notices, invitations for tenders or other communications properly given or any action taken pursuant to such notice, invitation for tender or other communication but, upon such failure being discovered, the notice, invitation for tenders or other communication, as the case may be, shall be sent forthwith to such holder or holders. If any notice, cheque, invitation for tenders or other communication from the Corporation given to a holder of Series A Shares pursuant to this subsection is returned on three consecutive occasions because the holder cannot be found, the Corporation shall not be required to give or mail any further notices, cheques, invitations for tenders or other communications to such shareholder until the holder informs the Corporation in writing of such holder's new address.
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If the Board determines that mail service is or is threatened to be interrupted at the time when the Corporation is required or elects to give any notice hereunder by mail, or is required to send any cheque or any share certificate to a holder, whether in connection with the redemption of such share or otherwise, the Corporation may, notwithstanding the provisions hereof:

- (A) give such notice by publication thereof once in a newspaper having national circulation in Canada or, if there is no newspaper having national circulation in Canada, in an English language newspaper of general circulation published in each of Vancouver, Calgary, Toronto and Montreal and such notice shall be deemed to have been validly given on the day next succeeding its publication; and
  - (B) fulfill the requirement to send such cheque or such share certificate by arranging for the delivery thereof to such holder by the Transfer Agent at its principal offices in the city of Toronto, and such cheque and/or share certificate shall be deemed to have been sent on the date on which notice of such arrangement shall have been given as provided in (A) above, provided that as soon as the Board determines that mail service is no longer interrupted or threatened to be interrupted, such cheque or share certificate, if not theretofore delivered to such holder, shall be sent by mail as herein provided.
- (ii) **Interpretation.** If any day on which any dividend on the Series A Shares is payable, on which any Redemption Date or any Series A Conversion Date shall occur, or on or by which any other action is required or permitted to be taken hereunder is not a Business Day, then such dividend shall be payable, such Redemption Date or Series A Conversion Date shall occur or such other action shall be required or permitted to be taken on the immediately following day that is a Business Day.

If a holder of Series A Shares is entitled to a cheque and such cheque is not received by the holder, or if the cheque is lost or destroyed, the Corporation, on being furnished with reasonable evidence of non-receipt, loss or destruction, and an indemnity satisfactory to the Corporation, acting reasonably, will issue to the holder of the Series A Shares a replacement cheque for the amount of the original cheque.

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The Corporation will be entitled to deduct or withhold from any amount payable to a holder of Series A Shares under these Series A Share provisions any amount required by law to be deducted or withheld from that payment.

Reference to any statute is to that statute as in force from time to time, including any regulations, rules, policy statements or guidelines made under that statute, and includes any statute that may be enacted in substitution of that statute.

All references herein to a holder of Series A Shares shall be interpreted as referring to a registered holder of the Series A Shares.

For the purposes hereof:

- (A) "Annual Fixed Dividend Rate" means, for any Subsequent Fixed Rate Period, the annual rate (expressed as a percentage rounded to the nearest one hundred-thousandth of one percent (with 0.000005% being rounded up)) equal to the sum of the Government of Canada Yield on the applicable Fixed Rate Calculation Date plus 2.94%;
  - (B) "Bloomberg Screen GCAN5YR Page" means the display designated as page "GCAN5YR<INDEX> " on the Bloomberg Financial L.P. service (or such other page as may replace the GCAN5YR page on that service or if such service is no longer available, a successor service as determined by the Corporation) for purposes of displaying Government of Canada Yields;
  - (C) "Business Day" means a day other than a Saturday, a Sunday or any other day that is a statutory or civic holiday in the place where the Corporation has its head office;
  - (D) "Fixed Rate Calculation Date" means, for any Subsequent Fixed Rate Period, the 30th day prior to the first day of such Subsequent Fixed Rate Period;
  - (E) "Government of Canada Yield" on any date means the yield to maturity on such date (assuming semi-annual compounding) of a Canadian dollar denominated non-callable Government of Canada bond with a term to maturity of five years as quoted as of 10:00 a.m. (Toronto time) on such date and which appears on the Bloomberg Screen GCAN5YR Page on such date; provided that, if such rate does not appear on the Bloomberg Screen GCAN5YR Page on such date, the Government of Canada Yield will mean the average of the yields determined by two registered Canadian investment dealers selected by the Corporation, as being the yield to maturity on such date (assuming semi-annual compounding) which a Canadian dollar denominated non-callable Government of Canada bond would carry if issued in Canadian dollars at 100% of its principal amount on such date with a term to maturity of five years;
  - (F) "in priority to", "on a parity with" and "junior to" have reference to the order of priority in payment of dividends and in the distribution of assets in the event of any liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, or other distribution of the assets of the Corporation among its shareholders for the purpose of winding-up its affairs;
  - (G) "Initial Fixed Rate Period" means the period from and including the date of the initial issue of the Series A Shares to, but excluding, December 31, 2018;
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- (H) "Quarter End Date" has the meaning given to it in subsection 1.1(a)(i);
- (I) "ranking as to capital" and similar expressions mean ranking with respect to priority in the distribution of assets of the Corporation in the event of any liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, upon a return of capital or upon any other distribution of the assets of the Corporation among its shareholders for the purpose of winding-up its affairs;
- (J) "ranking as to dividends" and similar expressions mean ranking with respect to priority in the payment of dividends by the Corporation;
- (K) "Series A Conversion Date" means December 31, 2018 and December 31 (or, if such date is not a Business Day, the immediately following Business Day) of every fifth year thereafter;
- (L) "Series A Share Provisions" means the designation, rights, privileges, restrictions and conditions of the Series A Shares;
- (M) "Series B Share Provisions" means the designation, rights, privileges, restrictions and conditions of the Series B Shares;
- (N) "Subsequent Fixed Rate Period" means for the initial Subsequent Fixed Rate Period, the period from and including December 31, 2018 to, but excluding, December 31, 2023 and for each succeeding Subsequent Fixed Rate Period, the period commencing on the day immediately following the end of the immediately preceding Subsequent Fixed Rate Period to, but excluding, December 31 in the fifth year thereafter; and
- (O) "Transfer Agent" means CIBC Mellon Trust Company at its principal transfer office in Toronto, Ontario, its successors and assigns, or such other person as from time to time may be appointed as the registrar and transfer agent for the Series A Shares.

(g) Modification

Subject to subsection 1.1(b)(ii), the designation, rights, privileges, restrictions and conditions attaching to the Series A Shares as a series may be repealed, deleted, varied, modified, amended or amplified from time to time only with the approval of the holders of the Series A Shares given in accordance with the Canada Business Corporations Act (the "CBCA") and subsection 1.1(h) and with any required approvals of any stock exchanges on which the Series A Shares may be listed.

(h) Approval of Holders of Series A Shares

- (i) **Approval of Holders of Series A Shares.** Except as otherwise provided herein, any approval of the holders of the Series A Shares with respect to any matters requiring the consent of such holders may be given in such manner as may then be required by law, subject to a minimum requirement that such approval be given by a resolution signed by all such holders or passed by the affirmative vote of at least two-thirds of the votes cast by the holders who voted in respect of that resolution at a meeting of the holders duly called for that purpose and at which the holders of 10% of the outstanding Series A Shares are present in person or represented by proxy. If at any such meeting the holder(s) of 10% of the outstanding Series A Shares are not present in person or represented by proxy within one-half hour after the time appointed for such meeting, then the meeting shall be adjourned to such date not less than 15 days thereafter and to such time and place as may be designated by the chairman of such meeting, and not less than 10 days' written notice shall be given of such adjourned meeting. At such adjourned meeting the holder(s) of Series A Shares present in person or represented by proxy shall form the necessary quorum and may transact the business for which the meeting was originally called and a resolution passed thereat by the affirmative vote of at least two-thirds of the votes cast at such meeting shall constitute the approval of the holders of the Series A Shares. At any meeting of holders of Series A Shares as a series, each such holder shall be entitled to one vote in respect of each share held.
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(ii) **Formalities, etc.** The proxy rules applicable to, the formalities to be observed in respect of the giving notice of, and the formalities to be observed in respect of the conduct of, any meeting or any adjourned meeting of holders of the Series A Shares shall be those required by law, as may from time to time be supplemented by the by-laws of the Corporation. On every poll taken at every meeting of holders of Series A Shares as a series, each holder entitled to vote thereat shall have one vote in respect of each Series A Share held.

(i) Rights on Liquidation

In the event of the liquidation, dissolution or winding-up of the Corporation or other distribution of assets of the Corporation among its shareholders for the purpose of winding-up its affairs, whether voluntary or involuntary, subject to the prior satisfaction of the claims of all creditors of the Corporation and of holders of shares of the Corporation ranking prior to the Series A Shares, the holders of the Series A Shares shall rank (a) on a parity with the Preferred Shares of every other series and (b) senior to the Common Shares and the shares of any other class ranking junior to the Preferred Shares. The Series A Shares shall be entitled to receive an amount equal to \$25.00 per Series A Share, together with an amount equal to all accrued and unpaid dividends up to but excluding the date fixed for payment or distribution (less any tax required to be deducted or withheld by the Corporation), before any amount is paid or any assets of the Corporation are distributed to the holders of any shares of the Corporation ranking junior as to capital to the Series A Shares. Upon payment to the holders of the Series A Shares of the amounts so payable to them, such holders shall not be entitled to share in any further distribution of the assets of the Corporation.

(i) Withholding Taxes

(i) **Withholding Taxes.** For greater certainty, and notwithstanding any other provision of this Section I.1, the Corporation shall be entitled to deduct and withhold any amounts required to be deducted or withheld on account of any taxes from any amounts (including shares) payable or otherwise deliverable in respect of the Series A Shares, including on the redemption, cancellation or conversion of the Series A Shares. To the extent that any amounts are deducted or withheld, such deducted or withheld amounts shall be treated for all purposes hereof as having been paid or delivered to the person in respect of which such deduction or withholding was made. The Corporation is hereby authorized to sell or otherwise dispose of all or any number of Series B Shares otherwise deliverable to a holder of Series A Shares on the conversion of such Series A Shares in order to meet any applicable tax deduction or withholding tax requirements.

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- (ii) **Transfer Taxes.** For greater certainty, and notwithstanding any other provision of this Section I.1, the Corporation shall not be required to pay any tax which may be:
- (A) imposed upon the person or persons to whom Series B Shares are issued,
  - (B) payable in respect of the issuance of such Series B Shares or a certificate therefor, or
  - (C) payable in respect of any transfer involved in the issuance and delivery of any certificate in the name or names other than that of the holder of the Series A Shares,

in connection with the conversion of Series A Shares into Series B Shares. The Corporation may refuse to issue any Series B Share or deliver any such Series B Share certificate unless and until the person or persons requesting the issuance thereof shall have paid to the Corporation the amount of such tax or shall have established to the satisfaction of the Corporation that such tax has been paid or is otherwise not required to be paid in the circumstances

## II.1 CUMULATIVE FLOATING RATE PREFERRED SHARES, SERIES B

The second series of preferred shares shall consist of up to 4,800,000 shares, which shares shall be designated as Cumulative Floating Rate Preferred Shares, Series B (the "Series B Shares") and which, in addition to the rights, privileges, restrictions and conditions attached to the preferred shares as a class, shall have attached thereto the following rights, privileges, restrictions and conditions:

### (a) Dividends

- (i) **Dividend Payment Dates.** The dividend payment dates (the "Dividend Payment Dates") in respect of the dividends payable on the Series B Shares shall be the last day (or if such day is not a Business Day, the immediately following Business Day) of each of the months of March, June, September and December in each year.
- (ii) **Payment of Dividends.** The holders of Series B Shares shall be entitled to receive, and the Corporation shall pay thereon, if, as and when declared by the board of directors of the Corporation (the "Board"), out of moneys of the Corporation properly applicable to the payment of dividends, quarterly floating rate, cumulative, preferential cash dividends in respect of each Quarterly Floating Rate Period in an amount per Series B Share determined by multiplying the applicable Floating Quarterly Dividend Rate by \$25.00 ("Quarterly Dividends").

The Corporation shall determine the Floating Quarterly Dividend Rate for each Quarterly Floating Rate Period on the relevant Floating Rate Calculation Date. Such determination shall be, in the absence of manifest error, final and binding on the Corporation and all holders of Series B Shares. The Corporation shall, on the relevant Floating Rate Calculation Date, give written notice of the Floating Quarterly Dividend Rate for the ensuing Quarterly Floating Rate Period to the registered holders of outstanding Series B Shares in accordance with the provisions of subsection II.1(f)(i).

Dividends on the Series B Shares shall accrue daily from and including the date of issue of such shares.

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(iii) **Dividend for Other than a Full Quarterly Floating Rate Period.** The holders of Series B Shares shall be entitled to receive, and the Corporation shall pay thereon, if, as and when declared by the Board out of moneys of the Corporation properly applicable to the payment of dividends, cumulative, preferential cash dividends for any period which is less than a full Quarterly Floating Rate Period, in an amount per share with respect to any Series B Share:

- (A) which is issued, redeemed or converted during any Quarterly Floating Rate Period;
- (B) where the assets of the Corporation are distributed to the holders of the Series B Shares pursuant to subsection II.1(i) with an effective date during any Quarterly Floating Rate Period; or
- (C) in any other circumstance where the number of days in a Quarterly Floating Rate Period that such share has been outstanding is less than a full Quarterly Floating Rate Period;

equal to the amount (rounded to five decimal places) obtained when the amount of the Quarterly Dividend payable in respect of the applicable full Quarterly Floating Rate Period is multiplied by a fraction, the numerator of which is the number of calendar days in such Quarterly Floating Rate Period that such share has been outstanding (excluding the date of redemption or conversion, the effective date for the distribution of assets or the last day of the applicable shorter period, as applicable) and the denominator of which is the number of calendar days in such Quarterly Floating Rate Period.

(iv) **Payment Procedure.** The Corporation shall pay the dividends declared on the Series B Shares on the relevant Dividend Payment Date (less any tax required to be deducted or withheld by the Corporation) by electronic funds transfer or by cheque(s) drawn on a Canadian chartered bank or trust company and payable in lawful money of Canada at any branch of such bank or trust company in Canada or in such other manner, not contrary to applicable law, as the Corporation shall reasonably determine. The delivery or mailing of any cheque to a holder of Series B Shares (in the manner provided for in subsection II.1(f)(i)) or the electronic transfer of funds to an account specified by such holder shall be a full and complete discharge of the Corporation's obligation to pay the dividends to such holder to the extent of the sum represented thereby (plus the amount of any tax required to be and in fact deducted or withheld by the Corporation from the related dividends as aforesaid and remitted to the proper taxing authority), unless such cheque is not honoured when presented for payment. Subject to applicable law, dividends which are represented by a cheque which has not been presented to the Corporation's banker for payment or that otherwise remain unclaimed for a period of six years from the date on which they were declared to be payable may be reclaimed and used by the Corporation for its own purposes.

(v) **Cumulative Payment of Dividends.** If on any Dividend Payment Date, the Quarterly Dividends payable in respect of the Dividend Period ending in the calendar month in which such Dividend Payment Date occurs are not paid in full on all of the Series B Shares then outstanding, such Quarterly Dividends, or the unpaid part thereof, shall be paid (less any tax required to be deducted or withheld by the Corporation) on a subsequent date or dates determined by the Board on which the Corporation shall have sufficient monies properly applicable to the payment of such Quarterly Dividends. The holder of Series B Shares shall not be entitled to any dividends other than or in excess of the cumulative preferential cash dividends herein provided for.

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- (vi) **Priority.** The Series B Shares rank senior to the Common Shares and rank on a parity with every other series of Preferred Shares as to dividends.

(b) Redemption, Conversion and Purchase

- (i) **General.** To the extent permitted by applicable law, the Series B Shares may be redeemed, converted or purchased by the Corporation as provided in this subsection II.1(b) but not otherwise.

- (ii) **Corporation's Redemption Rights.** The Series B Shares shall not be redeemable by the Corporation on or prior to December 31, 2018. On any Series B Conversion Date, the Corporation may redeem all or any number of the outstanding Series B Shares, at its option, by the payment in cash of \$25.00 per share so redeemed together with all accrued and unpaid dividends thereon to, but excluding, the date fixed for redemption (less any tax required to be deducted or withheld by the Corporation) (the "Conversion Date Redemption Price").

On any date after December 31, 2018 that is not a Series B Conversion Date, the Corporation may redeem all or any number of the outstanding Series B Shares, at its option, by payment in cash of \$25.50 per share so redeemed together with all accrued and unpaid dividends thereon up to, but excluding, the date fixed for redemption (less any tax required to be deducted or withheld by the Corporation) (the "Non-Conversion Date Redemption Price").

Where applicable, if less than all of the then outstanding Series B Shares are at any time to be redeemed, the particular shares to be redeemed shall be selected on a pro rata basis (disregarding fractions) or, with the consent of any applicable stock exchange, in such other manner as the Board may in its sole discretion determine by resolution.

- (iii) **Notice of Redemption.** Notice of any redemption of Series B Shares pursuant to subsection II.1(b)(ii) shall be given to each holder of Series B Shares to be redeemed by the Corporation at least 30 and not more than 60 days prior to the date fixed for redemption. Any notice of redemption of Series B Shares by the Corporation shall be validly and effectively given on the date on which it is sent to each holder of Series B Shares to be redeemed in the manner provided for in subsection II.1(f)(i). Such notice shall set out:

- (A) the date (the "Redemption Date") on which the redemption is to take place;
- (B) unless all the Series B Shares held by the holder to whom it is addressed are to be redeemed, the number of Series B Shares so held which are to be redeemed; and
- (C) the Conversion Date Redemption Price or the Non-Conversion Date Redemption Price, as applicable (such applicable redemption price referred to hereinafter as the "Redemption Price").
-

- (iv) **Payment of Redemption Price.** The Corporation shall on the Redemption Date pay or cause to be paid to the holders of the Series B Shares so called for redemption the Redemption Price therefor on presentation and delivery at the principal transfer office of the Transfer Agent in the city of Toronto or such other place or places in Canada designated in the notice of redemption, of the certificate or certificates representing the Series B Shares so called for redemption. Such payment shall be made by electronic funds transfer to an account specified by such holder or by cheque drawn on a Canadian chartered bank or trust company in the amount of the Redemption Price and such electronic transfer of funds or the delivery or mailing of such cheque (in the manner provided for in subsection II.1 (f)(i)) shall be a full and complete discharge of the Corporation's obligation to pay the Redemption Price owed to the holders of Series B Shares so called for redemption to the extent of the sum represented thereby (plus the amount of any tax required to be and in fact deducted or withheld by the Corporation as aforesaid and remitted to the proper taxing authority) unless such cheque is not honoured when presented for payment. From and after the Redemption Date, the holders of Series B Shares called for redemption shall cease to be entitled to dividends or to exercise any of the rights of holders of Series B Shares in respect of such shares except the right to receive the Redemption Price, provided that if payment of such Redemption Price is not duly made in accordance with the provisions hereof, then the rights of such holders shall remain unimpaired. If less than all the Series B Shares represented by any certificate shall be redeemed, a new certificate for the balance shall be issued without cost to the holder. Subject to applicable law, redemption monies which remain unclaimed for a period of six years from the Redemption Date may be reclaimed and used by the Corporation for its own purposes.
- (v) **Deposit of Redemption Price.** The Corporation shall have the right, at any time after mailing a notice of redemption, to deposit the aggregate Redemption Price for the Series B Shares thereby called for redemption, or such part thereof as at the time of deposit has not been claimed by the holders entitled thereto, in a special account with a Canadian chartered bank or trust company named in the notice of redemption in trust for the holders of such shares, and upon such deposit being made or upon the Redemption Date, whichever is the later, the Series B Shares in respect of which such deposit shall have been made shall be deemed to be redeemed on the Redemption Date and the rights of each holder thereof shall be limited to receiving, without interest, the holder's proportionate part (after taking into account any amounts required to be deducted or withheld on account of tax in respect of such holder) of the Redemption Price so deposited upon presentation and surrender of the certificate or certificates representing the Series B Shares so redeemed. Any interest on any such deposit shall belong to the Corporation. Subject to applicable law, redemption monies which remain unclaimed for a period of six years from the Redemption Date may be reclaimed and used by the Corporation for its own purposes.
- (vi) **Declaration of Dividends in Respect of Shares to be Redeemed.** If a dividend is declared by the Board in respect of any Quarterly Floating Rate Period during which the Series B Shares are redeemed, notwithstanding the provisions of subsection II.1(a)(iv), no electronic funds transfer or cheque shall be made or issued in payment of such dividend; rather, the amount of such dividend declared shall be considered to be an accrued and unpaid dividend for purposes of subsection II.1(b)(ii).
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- (vii) **Conversion at the Option of the Holder.** Subject to second paragraph of subsection II.1(b)(viii), subsection II.1(b)(ix) and subsection II.1(b)(x), each holder of Series B Shares shall have the right, at its option, on any Series B Conversion Date, to convert all or any part of its Series B Shares registered in its name into Cumulative Rate Reset Preferred Shares, Series A (the "Series A Shares") on the basis of one Series A Share for each Series B Share converted. Such right may be exercised by notice in writing (an "Election Notice") given not earlier than the 30th day prior to and not later than 5:00 p.m. (Toronto time) on the 15th day preceding the applicable Series B Conversion Date during usual business hours at any principal transfer office of the Transfer Agent, or such other place or places designated by the Corporation. On any conversion of Series B Shares into Series A Shares, the certificates representing the Series A Shares resulting from the conversion of Series B Shares to which such holder is entitled shall be issued in the name of the holder of the Series B Shares converted or in such name or names as such holder may direct in writing; provided that such holder shall pay any applicable security transfer taxes. Any Election Notice shall be accompanied by (1) payment or evidence of payment of the tax (if any) payable; and (2) the certificate or certificates representing the Series B Shares in respect of which the holder thereof desires to convert into Series A Shares with the transfer form on the back thereof or other appropriate stock transfer power of attorney duly endorsed by the holder, or his or her attorney duly authorized in writing, in which Election Notice such holder may elect to convert part only of the Series B Shares represented by such certificate or certificates not theretofore called for redemption in which event the Corporation will issue and deliver or cause to be delivered to such holder, at the expense of the Corporation, a new certificate representing the Series B Shares represented by such certificate or certificates that have not been converted. Such conversion shall be deemed to have been made at 5:00 p.m. (Toronto time) on the Series B Conversion Date, so that the rights of the holder of such Series B Shares as the holder thereof shall cease at such time and the person or persons entitled to receive the Series A Shares upon such conversion will be treated for all purposes as having become the holder or holders of record of such Series A Shares at such time. An Election Notice is irrevocable once received by the Corporation. If the Corporation does not receive an Election Notice within the specified time, the Series B Shares shall be deemed not to have been converted (subject to subsection II.1(b)(ix)).
- (viii) **Notice of Conversion Date and Dividend Rates and Election Notice.** The Corporation shall, at least 30 days and not more than 60 days prior to each Series B Conversion Date, provide notice in writing to the then registered holders of the Series B Shares of the Series B Conversion Date and a form of Election Notice as specified by the Corporation. On the 30th day prior to each Series B Conversion Date, the Corporation shall give notice in writing to the registered holders of the Series B Shares of the Floating Quarterly Dividend Rate for the next Quarterly Floating Rate Period and the Annual Fixed Dividend Rate applicable to the Series A Shares for the next Subsequent Fixed Rate Period (as such terms are defined in the Series A Share Provisions).

If the Corporation gives notice pursuant to subsection II.1(b)(iii) to the registered holders of the Series B Shares of the redemption of all Series B Shares pursuant to subsection II.1(b)(ii), it shall not be required to give notice to the holders of the Series B Shares of any dividend rates or of the conversion right of holders of Series B Shares and the right of holders of Series B Shares to convert such shares pursuant to subsection II.1(b)(vii) shall terminate.

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- (ix) **Automatic Conversion.** If the Corporation determines that there would remain outstanding on a Series B Conversion Date less than 1,000,000 Series B Shares, after having taken into account all Election Notices in respect of Series B Shares duly tendered for conversion into Series A Shares and all Election Notices in respect of Series A Shares duly tendered for conversion into Series B Shares in accordance with the Series A Share Provisions, in each case received by the Corporation during the time fixed therefor then, all, but not part, of the remaining outstanding Series B Shares will automatically be converted into Series A Shares on the basis of one Series A Share for each Series B Share on the applicable Series B Conversion Date. The Corporation shall give notice in writing of the automatic conversion thereof to all holders of the Series B Shares at least seven days prior to the applicable Series B Conversion Date.
  - (x) **Restrictions on Conversion.** The holders of Series B Shares shall not be entitled to convert their shares into Series A Shares if the Corporation determines that there would remain outstanding on a Series B Conversion Date less than 1,000,000 Series A Shares after having taken into account all Election Notices in respect of Series B Shares duly tendered for conversion into Series A Shares and all Election Notices in respect of Series A Shares duly tendered for conversion into Series B Shares in accordance with the Series A Share Provisions, in each case received by the Corporation during the time fixed therefor. The Corporation shall give notice in writing of the inability to convert Series B Shares to all holders of the Series B Shares at least seven days prior to the applicable Series B Conversion Date.
  - (xi) **Non-Residents.** The Corporation is not required to (but may at its option) issue Series A Shares upon the conversion of Series B Shares into Series A Shares to any person whose address is in, or whom the Corporation or the Transfer Agent has reason to believe is a resident of, any jurisdiction outside Canada, to the extent that such issue would require the Corporation to take any action to comply with the securities laws or analogous laws of such jurisdiction.
  - (xii) **Purchase for Cancellation.** Subject to applicable laws, the Corporation may, at any time, purchase for cancellation (if obtainable), out of capital or otherwise, the whole or any part of the Series B Shares outstanding from time to time at any price by tender to all holders of record of Series B Shares or through the facilities of any stock exchange on which the Series B Shares are listed, or in any other manner, provided that in the case of a purchase in any other manner the price for such Series B Shares so purchased for cancellation shall not exceed the highest price offered for a board lot of the Series B Shares on any stock exchange on which such shares are listed on the date of purchase for cancellation, plus the costs of purchase. If upon any tender to holders of Series B Shares under the provisions of this subsection II.1(b)(xii), more shares are offered than the Corporation is prepared to purchase, the shares so offered will be purchased as nearly as may be pro rata (disregarding fractions) according to the number of Series B Shares so offered by each of the holders of Series B Shares who offered shares to such tender. From and after the date of purchase of any Series B Shares under the provisions of this subsection II.1(b)(xii), the shares so purchased shall be cancelled.
  - (xiii) **Conversion — General** On the conversion of a Series B Share to a Series A Share pursuant to the terms of these Series B Share Provisions, each such Series B Share shall become an issued Series A Share and the number of unissued Series B Shares shall be increased by the number of Series B Shares that became Series A Shares.
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(c) Voting Rights

- (i) **Voting Rights – General.** Except as otherwise required by law or in the conditions attaching to the Preferred Shares as a class, the holders of Series B Shares shall not be entitled to receive notice of, attend at, or vote at any meeting of shareholders of the Corporation, unless and until the Corporation shall have failed to pay eight Quarterly Dividends on the Series B Shares in accordance with the terms hereof, whether or not consecutive and whether or not such dividends were declared and whether or not there are any monies of the Corporation properly applicable to the payment of such dividends.

In the event of such non-payment, and for only so long as any such dividends remain in arrears, the holders of the Series B Shares shall be entitled to receive notice of all meetings of shareholders of the Corporation and to attend thereat (other than a separate meeting of the holders of another series or class of shares), and shall at any such meetings which they shall be entitled to attend, except when the vote of the holders of shares of any other class or series is to be taken separately and as a class or series, be entitled to vote together with all of the voting shares of the Corporation on the basis of one vote in respect of each Series B Share held by each such holder, until all such arrears of such dividends shall have been paid, whereupon such rights shall cease unless and until the Corporation shall again fail to pay eight Quarterly Dividends on the Series B Shares in accordance with the terms hereof, whether or not consecutive and whether or not such dividends were declared and whether or not there are any monies of the Corporation properly applicable to the payment of such dividends, in which event such voting rights shall become effective again and so on from time to time.

(d) Issue Price

The Series B Shares will only be issuable upon conversion of Series A Shares and will have an ascribed issue price of \$25.00 per share.

In the event of a conversion of a Series A Share to a Series B Share the amount to be deducted from the stated capital account maintained for the Series A Shares and added to the stated capital account maintained for the Series B Shares will be \$25.00 per share so converted.

(e) Election Under the Income Tax Act

The Corporation shall elect in the manner and within the time provided under the Tax Act, under Subsection 191.2(1) of Part VI.1 of the Tax Act, or any successor or replacement provision of similar effect, and take all other necessary action under the Tax Act, to pay or cause payment of tax under Part VI.1 of the Tax Act at a rate such that the corporate holders will not be required to pay tax on dividends received on the Series B Shares under Section 187.2 of Part IV. 1 of the Tax Act or any successor or replacement provision of similar effect.

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(f) Notice and Interpretation

- (i) **Notices.** Any notice, cheque, invitation for tenders or other communication from the Corporation herein provided for shall be sufficiently given, sent or made if delivered or if sent by first class unregistered mail, postage prepaid, to the holders of the Series B Shares at their respective addresses appearing on the records of the Corporation maintained by the Corporation or the Transfer Agent, or, in the case of joint holders, to the address of the holder whose name appears first on the records of the Corporation maintained by the Corporation or the Transfer Agent as one of such joint holders, or, in the event of the address of any of such holders not so appearing, then at the last address of such holder known to the Corporation. Accidental failure to give such notice, invitation for tenders or other communication to one or more holders of the Series B Shares shall not affect the validity of the notices, invitations for tenders or other communications properly given or any action taken pursuant to such notice, invitation for tender or other communication but, upon such failure being discovered, the notice, invitation for tenders or other communication, as the case may be, shall be sent forthwith to such holder or holders.

If any notice, cheque, invitation for tenders or other communication from the Corporation given to a holder of Series B Shares pursuant to this subsection is returned on three consecutive occasions because the holder cannot be found, the Corporation shall not be required to give or mail any further notices, cheques, invitations for tenders or other communications to such shareholder until the holder informs the Corporation in writing of such holder's new address.

If the Board determines that mail service is or is threatened to be interrupted at the time when the Corporation is required or elects to give any notice hereunder by mail, or is required to send any cheque or any share certificate to a holder, whether in connection with the redemption of such share or otherwise, the Corporation may, notwithstanding the provisions hereof:

- (A) give such notice by publication thereof once in a newspaper having national circulation in Canada or, if there is no newspaper having national circulation in Canada, in an English language newspaper of general circulation published in each of Vancouver, Calgary, Toronto and Montreal and such notice shall be deemed to have been validly given on the day next succeeding its publication; and
- (B) fulfill the requirement to send such cheque or such share certificate by arranging for the delivery thereof to such holder by the Transfer Agent at its principal offices in the city of Toronto, and such cheque and/or share certificate shall be deemed to have been sent on the date on which notice of such arrangement shall have been given as provided in (A) above, provided that as soon as the Board determines that mail service is no longer interrupted or threatened to be interrupted, such cheque or share certificate, if not theretofore delivered to such holder, shall be sent by mail as herein provided.
- (ii) **Interpretation.** If any day on which any dividend on the Series B Shares is payable, on which any Redemption Date or any Series B Conversion Date shall occur, or on or by which any other action is required or permitted to be taken hereunder is not a Business Day, then such dividend shall be payable, such Redemption Date or Series B Conversion Date shall occur or such other action shall be required or permitted to be taken on the immediately following day that is a Business Day.
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If a holder of Series B Shares is entitled to a cheque and such cheque is not received by the holder, or if the cheque is lost or destroyed, the Corporation, on being furnished with reasonable evidence of non-receipt, loss or destruction, and an indemnity satisfactory to the Corporation, acting reasonably, will issue to the holder of the Series B Shares a replacement cheque for the amount of the original cheque.

The Corporation will be entitled to deduct or withhold from any amount payable to a holder of Series B Shares under these Series B Share provisions any amount required by law to be deducted or withheld from that payment.

Reference to any statute is to that statute as in force from time to time, including any regulations, rules, policy statements or guidelines made under that statute, and includes any statute that may be enacted in substitution of that statute.

All references herein to a holder of Series B Shares shall be interpreted as referring to a registered holder of the Series B Shares.

For the purposes hereof:

- (A) "Business Day" means a day other than a Saturday, a Sunday or any other day that is a statutory or civic holiday in the place where the Corporation has its head office;
  - (B) "Floating Quarterly Dividend Rate" means, for any Quarterly Floating Rate Period, the rate (expressed as a percentage rounded to the nearest one hundred-thousandth of one percent (with 0.000005% being rounded up)) equal to the sum of the T-Bill Rate on the applicable Floating Rate Calculation Date plus 2.94% per annum (calculated on the basis of the actual number of days elapsed in such Quarterly Floating Rate Period divided by 365);
  - (C) "Floating Rate Calculation Date" means for any Quarterly Floating Rate Period, the 30th day prior to the first day of such Quarterly Floating Rate Period;
  - (D) "in priority to", "on a parity with" and "junior to" have reference to the order of priority in payment of dividends and in the distribution of assets in the event of any liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, or other distribution of the assets of the Corporation among its shareholders for the purpose of winding-up its affairs;
  - (E) "Quarterly Commencement Date" means the last day of each of March, June, September and December in each year, commencing on December 31, 2018;
  - (F) "Quarterly Floating Rate Period" means the period from and including the day immediately following the end of the immediately preceding Quarterly Floating Rate Period to, but excluding, the next succeeding Quarterly Commencement Date;
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- (G) "ranking as to capital" and similar expressions mean ranking with respect to priority in the distribution of assets of the Corporation in the event of any liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, upon a return of capital or upon any other distribution of the assets of the Corporation among its shareholders for the purpose of winding-up its affairs;
- (H) "ranking as to dividends" and similar expressions mean ranking with respect to priority in the payment of dividends by the Corporation;
- (I) "Series A Share Provisions" means the designation, rights, privileges, restrictions and conditions of the Series A Shares;
- (J) "Series B Conversion Date" means December 31, 2023 and December 31 (or, if such date is not a Business Day, the immediately following Business Day) of every fifth year thereafter;
- (K) "Series B Share Provisions" means the designation, rights, privileges, restrictions and conditions of the Series B Shares;
- (L) "T-Bill Rate" means, for any Quarterly Floating Rate Period, the average yield expressed as a percentage per annum on 90-day Government of Canada Treasury Bills, using the 3-month average results, as reported by the Bank of Canada, for the most recent treasury bills auction preceding the applicable Floating Rate Calculation Date (with auction results being posted on Reuters page BOCBILL or such other page as may replace such page on that service or if such service is no longer available, a successor service as determined by the Corporation); and
- (M) "Transfer Agent" means CIBC Mellon Trust Company at its principal transfer office in Toronto, Ontario, its successors and assigns, or such other person as from time to time may be appointed as the registrar and transfer agent for the Series B Shares.

(g) Modification

Subject to subsection 11.1(b)(ii), the designation, rights, privileges, restrictions and conditions attaching to the Series B Shares as a series may be repealed, deleted, varied, modified, amended or amplified from time to time only with the approval of the holders of the Series B Shares given in accordance with the CBCA and subsection 11.1(h) and with any required approvals of any stock exchanges on which the Series B Shares may be listed.

(h) Approval of Holders of Series B Shares

- (i) **Approval of Holders of Series B Shares.** Except as otherwise provided herein, any approval of the holders of the Series B Shares with respect to any matters requiring the consent of such holders may be given in such manner as may then be required by law, subject to a minimum requirement that such approval be given by a resolution signed by all such holders or passed by the affirmative vote of at least two-thirds of the votes cast by the holders who voted in respect of that resolution at a meeting of the holders duly called for that purpose and at which the holders of 10% of the outstanding Series B Shares are present in person or represented by proxy. If at any such meeting the holder(s) of 10% of the outstanding Series B Shares are not present in person or represented by proxy within one-half hour after the time appointed for such meeting, then the meeting shall be adjourned to such date not less than 15 days thereafter and to such time and place as may be designated by the chairman of such meeting, and not less than 10 days' written notice shall be given of such adjourned meeting. At such adjourned meeting the holder(s) of Series B Shares present in person or represented by proxy shall form the necessary quorum and may transact the business for which the meeting was originally called and a resolution passed thereat by the affirmative vote of at least two-thirds of the votes cast at such meeting shall constitute the approval of the holders of the Series B Shares. At any meeting of holders of Series B Shares as a series, each such holder shall be entitled to one vote in respect of each share held.
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(ii) **Formalities, etc.** The proxy rules applicable to, the formalities to be observed in respect of the giving notice of, and the formalities to be observed in respect of the conduct of, any meeting or any adjourned meeting of holders of the Series B Shares shall be those required by law, as may from time to time be supplemented by the by-laws of the Corporation. On every poll taken at every meeting of holders of Series B Shares as a series, each holder entitled to vote thereat shall have one vote in respect of each Series B Share held.

(i) **Rights on Liquidation**

In the event of the liquidation, dissolution or winding-up of the Corporation or other distribution of assets of the Corporation among its shareholders for the purpose of winding-up its affairs, whether voluntary or involuntary, subject to the prior satisfaction of the claims of all creditors of the Corporation and of holders of shares of the Corporation ranking prior to the Series B Shares, the holders of the Series B Shares shall rank (a) on a parity with the Preferred Shares of every other series and (b) senior to the Common Shares and the shares of any other class ranking junior to the Preferred Shares. The Series B Shares shall be entitled to receive an amount equal to \$25.00 per Series B Share, together with an amount equal to all accrued and unpaid dividends up to but excluding the date fixed for payment or distribution (less any tax required to be deducted or withheld by the Corporation), before any amount is paid or any assets of the Corporation are distributed to the holders of any shares of the Corporation ranking junior as to capital to the Series B Shares. Upon payment to the holders of the Series B Shares of the amounts so payable to them, such holders shall not be entitled to share in any further distribution of the assets of the Corporation.

(i) **Withholding Taxes**

(i) **Withholding Taxes.** For greater certainty, and notwithstanding any other provision of this Section II.1, the Corporation shall be entitled to deduct and withhold any amounts required to be deducted or withheld on account of any taxes from any amounts (including shares) payable or otherwise deliverable in respect of the Series B Shares, including on the redemption, cancellation or conversion of the Series B Shares. To the extent that any amounts are deducted or withheld, such deducted or withheld amounts shall be treated for all purposes hereof as having been paid or delivered to the person in respect of which such deduction or withholding was made. The Corporation is hereby authorized to sell or otherwise dispose of all or any number of Series A Shares otherwise deliverable to a holder of Series B Shares on the conversion of such Series B Shares in order to meet any tax deduction or withholding tax requirements.

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(ii) **Transfer Taxes.** For greater certainty, and notwithstanding any other provision of this Section II.1, the Corporation shall not be required to pay any tax which may be:

- (A) imposed upon the person or persons to whom Series A Shares are issued,
- (B) payable in respect of the issuance of such Series A Shares or a certificate therefor, or
- (C) payable in respect of any transfer involved in the issuance and delivery of any certificate in the name or names other than that of the holder of the Series B Shares,

in connection with the conversion of Series B Shares into Series A Shares. The Corporation may refuse to issue any Series A Shares or deliver any such Series A Share certificate unless and until the person or persons requesting the issuance thereof shall have paid to the Corporation the amount of such tax or shall have established to the satisfaction of the Corporation that such tax has been paid or is otherwise not required to be paid in the circumstances.

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Industry Canada

Industrie Canada

**Corporations Canada**

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**Corporations Canada**

9e étage  
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October 27, 2009 / le 27 octobre 2009

Your file - Votre référence

JAMES MILLER  
TORYS LLP  
79 WELLINGTON ST. W.  
SUITE 3000 BOX 270, TD CENTRE  
TORONTO ONTARIO  
M5K 1N2

Our file - Notre référence  
**236237-6**

Re - Objet

Hydrogenics Corporation -  
Corporation Hydrogène

Enclosed herewith is the document issued in the above matter.

Vous trouverez ci-inclus le document émis dans l'affaire précitée.

A notice of issuance of CBCA documents will be published in the *Canada Corporations Bulletin*. A notice of issuance of CCA documents will be published in the *Canada Corporations Bulletin* and the *Canada Gazette*.

Un avis de l'émission de documents en vertu de la LCSA sera publié dans le *Bulletin des sociétés canadiennes*. Un avis de l'émission de documents en vertu de la LCC sera publié dans le *Bulletin des sociétés canadiennes* et dans la *Gazette du Canada*.

IF A NAME OR CHANGE OF NAME IS INVOLVED, THE FOLLOWING CAUTION SHOULD BE OBSERVED:

S'IL EST QUESTION D'UNE DÉNOMINATION SOCIALE OU D'UN CHANGEMENT DE DÉNOMINATION SOCIALE, L'AVERTISSEMENT SUIVANT DOIT ÊTRE RESPECTÉ :

This name is available for use as a corporate name subject to and conditional upon the applicants assuming full responsibility for any risk of confusion with existing business names and trade marks (including those set out in the relevant NUANS search report(s)). Acceptance of such responsibility will comprise an obligation to change the name to a dissimilar one in the event that representations are made and established that confusion is likely to occur. The use of any name granted is subject to the laws of the jurisdiction where the company carries on business.

Cette dénomination sociale est disponible en autant que les requérants assument toute responsabilité de risque de confusion avec toutes dénominations commerciales et toutes marques de commerce existantes (y compris celles qui sont citées dans le(s) rapport(s) de recherches de NUANS pertinent(s)). Cette acceptation de responsabilité comprend l'obligation de changer la dénomination de la société en une dénomination différente advenant le cas où des représentations sont faites établissant qu'il y a une probabilité de confusion. L'utilisation de tout nom octroyé est sujette à toute loi de la juridiction où la société exploite son entreprise.

Christopher Burrell

For the Director General, Corporations Canada

pour le Directeur général, Corporations Canada

Canada

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**Certificate of Arrangement**

**Certificat d'arrangement**

**Canada Business Corporations Act**

**Loi canadienne sur les sociétés par actions**

Hydrogenics Corporation -	236237-6
Corporation Hydrogénique	
Name of CBCA corporation(s) involved - Dénomination(s) de la (des) société(s) L.C.S.A. concernée(s)	Corporation number - Numéro de la société
I hereby certify that the arrangement set out in the attached articles of arrangement, involving the above-referenced corporation(s), has been effected under section 192 of the <i>Canada Business Corporations Act</i> .	Je certifie que l'arrangement mentionné dans les clauses d'arrangement annexées, concernant la (les) société(s) susmentionnée(s), a pris effet en vertu de l'article 192 de la <i>Loi canadienne sur les sociétés par actions</i> .
	October 27, 2009 / le 27 octobre 2009
Richard G. Shaw Director - Directeur	Date of Arrangement - Date de l'arrangement



1 -- Name of the applicant corporation(s) - Dénomination sociale de la(des) requérante(s) <b>HYDROGENICS CORPORATION-CORPORATION HYDROGÉNIQUE</b>	2 -- Corporation No.(s) - N <sup>o</sup> (s) de la(des) société(s) <b>2362376</b>
3 -- Name of the corporation(s) the articles of which are amended, if applicable Dénomination sociale de la(des) société(s) dont les statuts sont modifiés, le cas échéant <b>The annexed Schedule A is incorporated in this form</b>	4 -- Corporation No.(s) - N <sup>o</sup> (s) de la(des) société(s)
5 -- Name of the corporation(s) created by amalgamation, if applicable Dénomination sociale de la(des) société(s) issue(s) de la(des) fusion(s), le cas échéant <b>n/a</b>	6 -- Corporation No.(s) - N <sup>o</sup> (s) de la(des) société(s)
7 -- Name of the dissolved corporation(s), if applicable Dénomination sociale de la(des) société(s) dissoute(s), le cas échéant <b>n/a</b>	8 -- Corporation No.(s) - N <sup>o</sup> (s) de la(des) société(s)
9 -- Name of other corporations involved, if applicable Dénomination sociale des autres sociétés en cause, le cas échéant <b>The annexed Schedule B is incorporated in this form</b>	10 -- Corporation No.(s) or Jurisdiction of Incorporation N <sup>o</sup> (s) de la(des) société(s)/ou loi sous le régime de laquelle elle est constituée

11 -- In accordance with the order approving the arrangement - Conformément aux termes de l'ordonnance approuvant l'arrangement

- a.  The articles of the above named corporation(s) are amended in accordance with the attached plan of arrangement  
 Les statuts de la(des) société(s) susmentionnée(s) sont modifiés en conformité avec le plan d'arrangement ci-joint

The name of \_\_\_\_\_ is changed to \_\_\_\_\_

La dénomination sociale de \_\_\_\_\_ est modifiée pour \_\_\_\_\_

- b.  The following bodies corporate are amalgamated in accordance with the attached plan of arrangement  
 Les personnes morales suivantes sont fusionnées conformément au plan d'arrangement ci-joint
- c.  The above named corporation(s) is(are) liquidated and dissolved in accordance with the attached plan of arrangement  
 La(les) société(s) susmentionnée(s) est(sont) liquidée(s) et dissoute(s) conformément au plan d'arrangement ci-joint
- d.  The plan of arrangement attached hereto, involving the above named body(ies), corporate is hereby effected  
 Le plan d'arrangement ci-joint portant sur la(les) personne(s) morale(s) susmentionnée(s) prend effet

The annexed Schedule C which sets out information on amendments to the articles is incorporated in this form

Signature 	Printed Name - Nom en lettres moulées <b>Lawrence Davis</b>	12 -- Capacity of - En qualité de <b>Authorized Signing Officer</b>	13 -- Tel. No. - N <sup>o</sup> de tél. <b>905-361-3633</b>
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OCT 27 2009

**Schedule A**

3. Name of the corporation(s) the articles of which are amended, if applicable

<b>Name of Corporation</b>	<b>Corporation No.</b>
Hydrogenics Corporation-Corporation Hydrogénique	2362376
Stuart Energy Systems Corporation	3793257
Hydrogenics Test Systems Inc.	3881105
7188501 Canada Inc.	7188501

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**Schedule B**

9. Name of other corporations involved, if applicable

<b>Name of Corporation</b>	<b>Corporation No. or Jurisdiction of Incorporation</b>
7188501 Canada Inc.	7188501
Stuart Energy Systems Corporation	3793257
Hydrogenics Test Systems Inc.	3881105

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### Schedule C

11.a The articles of the above named corporation(s) are amended in accordance with the attached plan of arrangement. In particular:

1. The articles of Hydrogenics Corporation - Corporation Hydrogénique are amended by deleting the Series A and Series B Preferred Shares and all rights, privileges, restrictions and conditions thereto.
  2. The name of Hydrogenics Corporation - Corporation Hydrogénique is changed to Algonquin Power & Utilities Corp.
  3. The name of Stuart Energy Systems Corporation is changed to 3793257 Canada Inc.
  4. The name of Hydrogenics Test Systems Inc. is changed to 3881105 Canada Inc.
  5. The name of 7188501 Canada Inc. is changed to Hydrogenics Corporation - Corporation Hydrogénique.
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PLAN OF ARRANGEMENT

PLAN OF ARRANGEMENT UNDER SECTION 192  
OF THE CANADA BUSINESS CORPORATIONS ACT

ARTICLE 1  
INTERPRETATION

1.1 Definitions

In this Plan of Arrangement, unless there is something in the subject matter or context inconsistent therewith, capitalized terms used but not defined shall have the meanings ascribed thereto in the Definitive Agreement and the following terms shall have the following meanings (and grammatical variations of such terms shall have corresponding meanings):

“**Algonquin**” means Algonquin Power Income Fund, an open-ended unincorporated investment trust established under the laws of the Province of Ontario pursuant to the Algonquin Declaration of Trust;

“**Algonquin Declaration of Trust**” means the amended and restated declaration of trust dated May 26, 2004, as amended;

“**Arrangement**” means the arrangement involving Hydrogenics, the Hydrogenics Securityholders, Stuart Energy, Test Systems and Newco under the provisions of section 192 of the CBCA, on the terms and conditions set forth in this Plan of Arrangement, subject to any amendment or modification thereto made in accordance with the terms of the Definitive Agreement and this Plan of Arrangement, or made at the direction of the Court in the Final Order (with the consent of Hydrogenics, the Board of Trustees and Newco, each acting reasonably);

“**Articles of Arrangement**” means the articles of arrangement in respect of the Arrangement required under subsection 192(6) of the CBCA to be filed with the Director after the Final Order has been made;

“**Assumed Liabilities**” has the meaning attributed to such term in the Divestiture Agreement, which, for greater certainty, excludes the Excluded Liabilities;

“**Board of Trustees**” means the board of trustees of Algonquin;

“**Business Day**” means any day on which banks in the City of Toronto, Ontario are open for business;

“**CBCA**” means the *Canada Business Corporations Act*;

“**Certificate**” means the certificate giving effect to the Arrangement to be issued by the Director pursuant to subsection 192(7) of the CBCA after the Articles of Arrangement have been filed;

“**Court**” means the Ontario Superior Court of Justice (Commercial List);

“**Definitive Agreement**” means the support agreement made as of June 11, 2009 between Hydrogenics, the Board of Trustees and Newco;

“**Director**” means the Director appointed under section 260 of the CBCA;

“**Divested Assets**” has the meaning attributed to such term in the Divestiture Agreement, which, for greater certainty, excludes the Excluded Assets;

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**“Divestiture Agreement”** means the Divestiture Agreement to be entered into as of the Effective Date providing for the transfer, assignment and conveyance by Hydrogenics, Stuart Energy and Test Systems of the Divested Assets to Newco and the assumption by Newco of the Assumed Liabilities;

**“Effective Date”** means the date upon which the Arrangement becomes effective as established by the date of issue shown on the Certificate;

**“Effective Time”** means 12:01 a.m. (Toronto time) on the Effective Date, or such other time as may be specified in writing by Hydrogenics to Newco;

**“Excluded Assets”** has the meaning attributed to such term in the Divestiture Agreement;

**“Excluded Liabilities”** has the meaning attributed to such term in the Divestiture Agreement;

**“Final Order”** means the order of the Court approving the Arrangement as such order may be amended by the Court (with the consent of Hydrogenics, the Board of Trustees and Newco) at any time prior to the Effective Date or, if appealed, then unless such appeal is withdrawn or dismissed, as affirmed or varied (provided that any such variation shall be acceptable to Hydrogenics, the Board of Trustees and Newco, each acting reasonably);

**“Hydrogenics”** means Hydrogenics Corporation, a corporation existing under the laws of Canada;

**“Hydrogenics Divested Assets”** has the meaning attributed to such term in section 2.3(a);

**“Hydrogenics DSU Holders”** means the holders of Hydrogenics DSUs;

**“Hydrogenics DSUP”** means the deferred share unit plan of Hydrogenics;

**“Hydrogenics DSUs”** means the deferred share units, whether or not vested, granted pursuant to the Hydrogenics DSUP that are outstanding immediately prior to the Effective Time;

**“Hydrogenics Note 1”** means the promissory note of Hydrogenics, in the principal amount of \$10,813,084;

**“Hydrogenics Note 2”** means the promissory note of Hydrogenics, representing the Additional Amount;

**“Hydrogenics Note 3”** means the promissory note of Hydrogenics, representing the Post-Closing Amount;

**“Hydrogenics Optionholders”** means the holders of Hydrogenics Options;

**“Hydrogenics Option Plan”** means the Amended Stock Option Plan 2007 of Hydrogenics;

**“Hydrogenics Options”** means the stock options, whether or not vested, to acquire Hydrogenics Shares, granted pursuant to the Hydrogenics Option Plan that are outstanding immediately prior to the Effective Time;

**“Hydrogenics Redeemable Shares”** means the Hydrogenics Shares once redesignated as “Redeemable Common Shares” pursuant to section 2.3(m)(i) of this Plan of Arrangement;

**“Hydrogenics RSU Holders”** means the holders of Hydrogenics RSUs;

**“Hydrogenics RSUP”** means the restricted share unit plan of Hydrogenics;

**“Hydrogenics RSUs”** means the unvested restricted share units granted pursuant to the Hydrogenics RSUP that are outstanding immediately prior to the Effective Time and in respect of which the holder is not entitled to an immediate payment;

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“**Hydrogenics Securityholders**” means, collectively, the Hydrogenics Shareholders, the Hydrogenics Optionholders, the Hydrogenics DSU Holders and the Hydrogenics RSU Holders;

“**Hydrogenics Shareholders**” means at any time and unless the context otherwise requires, the registered holders of Hydrogenics Shares at such time;

“**Hydrogenics Shares**” means the issued and outstanding common shares in the capital of Hydrogenics immediately prior to the Effective Time;

“**Interim Order**” means the interim order of the Court, as the same may be amended or varied by the Court (with the consent of Hydrogenics, the Board of Trustees and Newco, each acting reasonably) pursuant to subsection 192(4) of the CBCA, containing declarations and directions with respect to the Arrangement and the holding of the Meeting;

“**Meeting**” means the special meeting of Hydrogenics Shareholders, to be held to consider the Arrangement, and any adjournment or postponement thereof;

“**New Algonquin Shares**” means the new class of common shares in the capital of Hydrogenics that are authorized pursuant to section 2.3(m)(ii) of this Plan of Arrangement;

“**Newco**” means 7188501 Canada Inc., a corporation incorporated under the CBCA, and which is, at the Effective Time, a wholly-owned subsidiary of Hydrogenics;

“**Newco DSU Holders**” means holders of Newco DSUs;

“**Newco DSUP**” means the deferred share unit plan to be adopted by Newco having the terms and conditions described in the proxy circular sent to Hydrogenics Securityholders;

“**Newco DSUs**” means the deferred share units to be granted pursuant to the Newco DSUP or this Plan of Arrangement;

“**Newco Option Plan**” means the stock option plan to be adopted by Newco having the terms and conditions described in the proxy circular sent to Hydrogenics Securityholders;

“**Newco Optionholders**” means holders of Newco Options;

“**Newco Options**” means the stock options to be granted pursuant to the Newco Option Plan or this Plan of Arrangement;

“**Newco RSU Holders**” means holders of Newco RSUs;

“**Newco RSUP**” means the restricted share unit plan to be adopted by Newco having the terms and conditions described in the proxy circular sent to Hydrogenics Securityholders;

“**Newco RSUs**” means the restricted share units to be granted pursuant to the Newco RSUP or this Plan of Arrangement;

“**Newco Securityholders**” means, collectively, the Newco Shareholders, the Newco Optionholders, the Newco DSU Holders and the Newco RSU Holders;

“**Newco Shareholders**” means the holders of issued and outstanding Newco Shares;

“**Newco Shares**” means the common shares in the capital of Newco;

“**Stuart Energy**” means Stuart Energy Systems Corporation, a corporation existing under the laws of Canada;

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“**Stuart Energy Divested Assets**” has the meaning attributed to such term in section 2.3(b);

“**Test Systems**” means Hydrogenics Test Systems Inc., a corporation existing under the laws of Canada; and

“**Test Systems Divested Assets**” has the meaning attributed to such term in section 2.3(c).

## **1.2 Number of Hydrogenics Shares**

For purposes of determining the number of Hydrogenics Shares outstanding on the Effective Date, that number shall conclusively be considered to be the number set forth in a certificate or letter of the registrar and transfer agent of Hydrogenics on that date.

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

The division of this Plan of Arrangement into “Articles”, “sections”, “subsections” and “subparagraphs” and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Plan of Arrangement. Unless otherwise indicated, all references to an “Article”, “section” or “subsection” followed by a number and/or a letter refer to the specified Article, section or subsection of this Plan of Arrangement. The terms “hereof”, “herein” and “hereunder” and similar expressions refer to this Plan of Arrangement and not to any particular Article, section, subsection or subparagraph hereof.

## **1.4 Rules of Construction**

In this Plan of Arrangement, unless the context otherwise requires, (a) words importing the singular number shall include the plural and vice versa; (b) words importing any gender shall include all genders; (c) words importing persons shall include individuals, partnerships, associations, corporations, funds, unincorporated organizations, governments, regulatory authorities, and other entities; and (d) “include”, “includes” and “including” shall be deemed to be followed by the words “without limitation”.

## **1.5 Currency**

Unless otherwise stated, all references in this Plan of Arrangements to sums of money are expressed in lawful money of Canada and “\$” refers to Canadian dollars.

## **1.6 Date for any Action**

If the date on which any action is required or permitted to be taken hereunder by a Person is not a Business Day, such action shall be required or permitted to be taken on the next succeeding day which is a Business Day.

## **1.7 References to Dates, Statutes, etc.**

In this Plan of Arrangement, references from or through any date mean, unless otherwise specified, from and including that date and/or through and including that date, respectively.

In this Plan of Arrangement, unless something in the subject matter or context is inconsistent therewith or unless otherwise herein provided, a reference to any statute, regulation, direction or instrument is to that statute, regulation, direction or instrument as now enacted or as the same may from time to time be amended, re-enacted or replaced, and in the case of a reference to a statute, includes any regulations, rules, policies or directions made thereunder. Any reference in this Plan of Arrangement to a Person includes its heirs, administrators, executors, legal personal representatives, predecessors, successors and permitted assigns. References to any agreement, contract or indenture are to that agreement, contract or indenture as amended, modified or supplemented from time to time in accordance with its terms.

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**1.8 Time**

Time shall be of the essence in every matter or action contemplated hereunder. All times expressed herein are local time (Toronto, Ontario) unless otherwise stipulated herein.

**ARTICLE 2  
THE ARRANGEMENT**

**2.1 Definitive Agreement**

This Plan of Arrangement is made pursuant to the Definitive Agreement.

**2.2 Effect of Filing Articles of Arrangement**

This Plan of Arrangement and the Arrangement, upon the filing of the Articles of Arrangement and the issuance of the Certificate, will become effective on, and be binding on and after, the Effective Time on: (a) the Hydrogenics Securityholders; (b) Hydrogenics; (c) Stuart Energy; (d) Test Systems; (e) Newco; and (f) Newco Securityholders.

The Articles of Arrangement and Certificate shall be filed and issued, respectively, with respect to this Arrangement in its entirety. The Certificate shall be conclusive evidence that the Arrangement has become effective and that each of the provisions of Article 2 has become effective in the sequence and at the times set out therein.

**2.3 Arrangement and Related Transactions**

Commencing at the Effective Time, the following events or transactions shall occur and shall be deemed to occur in the following sequence without any further act or formality, except as otherwise expressly provided:

- (a) Hydrogenics shall transfer, assign and convey its entire legal and beneficial right, title and interest in and to the Divested Assets in respect of Hydrogenics (the “**Hydrogenics Divested Assets**”) to Newco and, as consideration for the Hydrogenics Divested Assets, Newco shall assume the Assumed Liabilities in respect of Hydrogenics and issue to Hydrogenics fully paid Newco Shares with a fair market value equal to the fair market value of the Hydrogenics Divested Assets less the amount of the Assumed Liabilities in respect of Hydrogenics, all on the terms and conditions set forth in the Divestiture Agreement;
  - (b) Stuart Energy shall transfer, assign and convey its entire legal and beneficial right, title and interest in and to the Divested Assets in respect of Stuart Energy (the “**Stuart Energy Divested Assets**”) to Newco and, as consideration for the Stuart Energy Divested Assets, Newco shall assume the Assumed Liabilities in respect of Stuart Energy and issue to Stuart Energy fully paid Newco Shares with a fair market value equal to the fair market value of the Stuart Energy Divested Assets less the amount of the Assumed Liabilities in respect of Stuart Energy, all on the terms and conditions set forth in the Divestiture Agreement;
  - (c) Test Systems shall transfer, assign and convey its entire legal and beneficial right, title and interest in and to the Divested Assets in respect of Test Systems (the “**Test Systems Divested Assets**”) to Newco and, as consideration for the Test Systems Divested Assets, Newco shall assume the Assumed Liabilities in respect of Test Systems and issue to Test Systems fully paid Newco Shares with a fair market value equal to the fair market value of the Test Systems Divested Assets less the amount of the Assumed Liabilities in respect of Test Systems, all on the terms and conditions set forth in the Divestiture Agreement;
  - (d) Stuart Energy shall distribute all of its Newco Shares to Hydrogenics as a return of capital;
-

- (e) Test Systems shall distribute all of its Newco Shares to Hydrogenics as a partial repayment of the indebtedness owing to Hydrogenics in an amount equal to the fair market value of such Newco Shares;
  - (f) Hydrogenics shall issue Hydrogenics Note 1, Hydrogenics Note 2 and Hydrogenics Note 3 to Newco as contributions to the capital of Newco;
  - (g) Newco shall adopt and be deemed to have adopted and implemented the Newco RSUP;
  - (h) the Hydrogenics RSUP shall be terminated and cancelled and each Hydrogenics RSU shall be terminated and cancelled in exchange for one Newco RSU, the value of which is based on one Newco Share on the same terms and conditions, mutatis mutandis, as the terminated and cancelled Hydrogenics RSU;
  - (i) Newco shall adopt and be deemed to have adopted and implemented the Newco DSUP;
  - (j) the Hydrogenics DSUP shall be terminated and cancelled and each Hydrogenics DSU shall be terminated and cancelled in exchange for one Newco DSU, the value of which is based on one Newco Share on the same terms and conditions, mutatis mutandis, as the terminated and cancelled Hydrogenics DSU;
  - (k) Newco shall adopt and be deemed to have adopted and implemented the Newco Option Plan;
  - (l) the Hydrogenics Option Plan shall be terminated and cancelled and each Hydrogenics Option to acquire one Hydrogenics Share shall be terminated and cancelled in exchange for one Newco Option, as the sole consideration, at an exercise price per Newco Share equal to the exercise price per Hydrogenics Share under the Hydrogenics Option so terminated and cancelled and having the same vesting date and expiry date as the Hydrogenics Option so terminated and cancelled, and the Newco Options so granted shall be otherwise deemed to have been granted under, and be subject to, the terms and conditions of the Newco Option Plan;
  - (m) the articles of Hydrogenics shall be amended to change its authorized capital as follows:
    - (i) by changing the designation of the Hydrogenics Shares to “Redeemable Common Shares”, having the same rights, privileges, restrictions and conditions as the Hydrogenics Shares, but with each Hydrogenics Redeemable Share being redeemable at the option of Hydrogenics in consideration for one Newco Share;
    - (ii) by the creation of a new class of common shares (the “**New Algonquin Shares**”), being an unlimited number of shares designated as “Common Shares”, having the following rights, privileges, restrictions and conditions attaching thereto:
      - (A) Dividends: The holders of Common Shares and Redeemable Common Shares shall be entitled to receive dividends if, as and when declared by the Board of Directors of Hydrogenics on the Common Shares and Redeemable Common Shares, such dividends to be declared contemporaneously and paid at the same time in the same property and in equal amounts per share on all Common Shares and Redeemable Common Shares at the time outstanding without preference or priority of one share over another, subject to prior satisfaction of all preferential rights to dividends attached to all shares of other classes of shares of Hydrogenics ranking in priority to the Common Shares and Redeemable Common Shares in respect of dividends, if any;
      - (B) Notice and Voting: Except for meetings of holders of a particular class or series of shares other than the Common Shares required by applicable laws to be held as a separate class or series meeting, the holders of Common Shares shall be entitled to receive notice of and to attend all meetings of shareholders of Hydrogenics, and at such meetings to vote, together with (except at meetings of holders of Common Shares required by applicable laws to be held as a separate class meeting) holders of Redeemable Common Shares on all matters submitted to a vote on the basis of one vote for each Common Share held; and
-

- (C) Liquidation: In the event of any liquidation, dissolution or winding up of Hydrogenics, whether voluntary or involuntary, or any other distribution of the assets of Hydrogenics among its shareholders for the purpose of winding up its affairs, and subject to prior satisfaction of all preferential rights to return of capital on dissolution attached to all shares of other classes of shares of Hydrogenics ranking in priority to the Common Shares and Redeemable Common Shares, if any, the holders of Common Shares and Redeemable Common Shares shall be entitled, to share rateably, together with the shares of any other class of shares of Hydrogenics ranking equally with the Common Shares and Redeemable Common Shares in respect of return of capital on dissolution, in such assets of Hydrogenics as are available for distribution in equal amounts per share, without preference or priority of one share over another; and
- (iii) (A) the Preferred Shares and all rights, privileges, restrictions and conditions thereto, and (B) the Series A and Series B Preferred Shares and all rights, privileges, restrictions and conditions thereto, shall be deleted if requested in writing by the Board of Trustees, prior to the filing of the Articles of Arrangement;
- (n) Immediately following the Compulsory Acquisition by Hydrogenics pursuant to section 13.12A of the Algonquin Declaration of Trust, each outstanding Hydrogenics Redeemable Share shall be, and shall be deemed to be, redeemed by Hydrogenics, with payment of the redemption price therefor to be effected by the issuance of one Newco Share for each Hydrogenics Redeemable Share;
- (o) the names of Hydrogenics, Stuart Energy and Test Systems shall be changed to “Algonquin Power Inc.”, “Algonquin Energy Systems Corporation” and “Algonquin Test Systems Inc.”, respectively, or such other names as may be requested in writing by the Board of Trustees, prior to the filing of the Articles of Arrangement, to Hydrogenics, Stuart Energy and Test Systems, and permitted by Hydrogenics, acting reasonably, and the Director;
- (p) the name of Newco shall be changed to “Hydrogenics Corporation - Corporation Hydrogénique”;
- (q) the number of directors of Hydrogenics shall be reduced from seven to four, and the incumbent directors of Hydrogenics shall, and shall be deemed to, have resigned and be replaced, as directors, by the trustees of Algonquin;
- (r) the number of directors of Newco shall be increased from three to seven, and the resigning directors of Hydrogenics in subsection 2.3(q), shall, and shall be deemed to, be the directors of Newco;
- (s) the initial auditors of Newco will be PricewaterhouseCoopers LLP, Who shall continue in office until the close of business of the first annual meeting of the holders of Newco Shares, and the directors of Newco are authorized to fix the remuneration of such auditors;
- (t) the auditors of Hydrogenics will be KPMG LLP, who shall continue in office until the close of business of the next annual meeting of the holders of New Algonquin Shares, and the directors of Hydrogenics are authorized to fix the remuneration of such auditors; and
-

- (u) Hydrogenics will pay to Newco \$10,813,084 in full satisfaction of Hydrogenics Note 1.

## **2.4 Effect of Redemptions and Exchanges**

As a result of the exchange of Hydrogenics Shares provided in subsection 23(n):

- (a) each Hydrogenics Shareholder shall cease to be a holder of the Hydrogenics Shares and such holder's name shall be removed from the register of holders of Hydrogenics Shares as of the Effective Date; and
- (b) each Hydrogenics Shareholder whose Hydrogenics Shares are exchanged shall become a holder of the number of Newco Shares to which such holder is entitled as a result of such exchange and such holder's name shall be added to the register of holders of Newco Shares as of the Effective Date.

## **2.5 Effect of Transfer of Divested Assets and assumption of Assumed Liabilities**

As a result of the transfer, assignment and conveyance of Divested Assets and assumption of Assumed Liabilities provided in subsections 2.3(a), 2.3(b) and 2.3(c) each of Hydrogenics, Stuart Energy and Test Systems will be released from all debts, liabilities, commitments and obligations of any nature (whether matured or unmatured, accrued, fixed, contingent or otherwise) of any kind whatsoever with respect to the Divested Assets and Assumed Liabilities.

### **ARTICLE 3 OUTSTANDING HYDROGENICS CERTIFICATES, ETC.**

#### **3.1 Rights of Hydrogenics Shareholders**

From and after the Effective Time, certificates formerly representing Hydrogenics Shares exchanged under the Arrangement shall represent only the right to receive the consideration to which the former holder of such Hydrogenics Shares is entitled to receive pursuant to Article 2. Hydrogenics Shareholders shall not be entitled to any interest, dividend, premium or other payment on or with respect to the Hydrogenics Shares other than the transfer of Newco Shares to which they are entitled pursuant to Article 2 of the Plan of Arrangement.

#### **3.2 Rights of Other Hydrogenics Securityholders**

From and after the Effective Time, grant letters, agreements, certificates and other instruments or documents, if any, formerly representing Hydrogenics RSUs, Hydrogenics DSUs and Hydrogenics Options, or rights thereto, shall represent only the Newco RSUs, Newco DSUs and Newco Options granted to the Hydrogenics RSU Holders, Hydrogenics DSU Holders and Hydrogenics Optionholders pursuant to Article 2.

### **ARTICLE 4 AMENDMENTS**

#### **4.1 Amendments to Plan of Arrangement**

- (a) Hydrogenics may amend, modify and/or supplement this Plan of Arrangement at any time and from time to time prior to the Effective Time, provided that each such amendment, modification and/or supplement must be: (i) set out in writing; (ii) filed with the Court and, if made following the Meeting, approved by the Court; and (iii) communicated to Hydrogenics Shareholders if and as required by the Court.
  - (b) Any amendment, modification or supplement to this Plan of Arrangement may be proposed by Hydrogenics at any time prior to or at the Meeting with or without any other prior notice or communication, and, if so proposed and accepted by the persons voting at the Meeting (other than as may be required under the Interim Order), shall become part of this Plan of Arrangement for all purposes.
-

- (c) Any amendment, modification or supplement to this Plan of Arrangement that is approved by the Court following the Meeting shall be effective only, if required by the Court or applicable law, it is consented to by the Hydrogenics Shareholders voting in the manner directed by the Court.
- (d) Any amendment, modification or supplement to this Plan of Arrangement may be made following the Effective Time but shall only be effective if it is consented to by each of Hydrogenics and Newco, provided that it concerns a matter which, in the reasonable opinion of Hydrogenics and Newco, is of an administrative nature required to better give effect to the implementation of this Plan of Arrangement and is not adverse to the financial or economic interests of Hydrogenics, Newco or any former Hydrogenics Securityholder.

**ARTICLE 5**  
**GENERAL**

**5.1 Paramountcy and Releases**

From and after the Effective Date (i) this Plan of Arrangement shall take precedence and priority over any and all Hydrogenics Shares, Hydrogenics RSUs, Hydrogenics DSUs and Hydrogenics Options granted prior to the Effective Time, (ii) the rights and obligations of the Hydrogenics Securityholders, Hydrogenics, Stuart Energy, Test Systems, Newco and any trustee or transfer agent therefor in relation thereto, shall be solely as provided for in this Plan of Arrangement, and (iii) all actions, causes of action, claims or proceedings (actual or contingent and whether or not previously asserted), only with respect to or in connection with this Plan of Arrangement, based on or in any way relating to the Hydrogenics Shares, Hydrogenics RSUs, Hydrogenics DSUs, Hydrogenics Options, the Divested Assets and the Assumed Liabilities shall be deemed to have been settled, compromised, released and determined without liability except as set forth herein.

**5.2 Further Assurances**

Notwithstanding that the transactions and events set out herein shall occur and shall be deemed to occur in the order set out in this Plan of Arrangement without any further act or formality, each of the parties to the Definitive Agreement shall make so and execute, or cause to be made, done or executed, all such further acts, deeds, agreements, transfers, assurances, instruments or documents as may reasonably be required by any of the parties thereto in order to further document or evidence any of the transactions or events set out herein.

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Industry Canada

Industrie Canada

**Certificate  
of Amendment**

**Canada Business  
Corporations Act**

**Certificat  
de modification**

**Loi canadienne sur  
les sociétés par actions**

Hydrogenics Corporation -

Corporation Hydrogénique

236237-6

Name of corporation-Dénomination de la société

Corporation number-Numéro de la société

I hereby certify that the articles of the  
above-named corporation were amended:

Je certifie que les statuts de la société  
susmentionnée ont été modifiés:

- a) under section 13 of the *Canada Business Corporations Act* in accordance with the attached notice;
- b) under section 27 of the *Canada Business Corporations Act* as set out in the attached articles of amendment designating a series of shares;
- c) under section 179 of the *Canada Business Corporations Act* as set out in the attached articles of amendment;
- d) under section 191 of the *Canada Business Corporations Act* as set out in the attached articles of reorganization;

- a) en vertu de l'article 13 de la *Loi canadienne sur les sociétés par actions*, conformément à l'avis ci-joint;
- b) en vertu de l'article 27 de la *Loi canadienne sur les sociétés par actions*, tel qu'il est indiqué dans les clauses modificatrices ci-jointes désignant une série d'actions;
- c) en vertu de l'article 179 de la *Loi canadienne sur les sociétés par actions*, tel qu'il est indiqué dans les clauses modificatrices ci-jointes;
- d) en vertu de l'article 191 de la *Loi canadienne sur les sociétés par actions*, tel qu'il est indiqué dans les clauses de réorganisation ci-jointes;

Richard G. Shaw  
Director - Directeur

May 18, 2005 / le 18 mai 2005

Date of Amendment - Date de modification

Canada

Processing Type - Médi de traitement: E-Commerce/Commerce-É

1. Name of Corporation - Désignation de la société Hydrogenics Corporation - Corporation Hydrogénique	2. Corporation No. - N° de la société 235237-6
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3. The articles of the above-named corporation are amended as follows:  
Les statuts de la société mentionnée ci-dessus sont modifiés de la façon suivante:

The articles of the Company be and the same are hereby amended to increase the maximum number of directors of the Company to 12.

Date	Name - Nom	Signature	Capacity of - en qualité
2005-05-18	A. RANDALL HADGREN		AUTHORIZED OFFICER

Page 1 of 1

Canada

**Certificate  
of Amendment**

**Certificat  
de modification**

**Canada Business  
Corporations Act**

**Loi canadienne sur  
les sociétés par actions**

Hydrogenics Corporation -	
Corporation Hydrogénique	236237-6
_____ Name of corporation-Dénomination de la société	_____ Corporation number-Numéro de la société
I hereby certify that the articles of the above-named corporation were amended:	Je certifie que les statuts de la société susmentionnée ont été modifiés:
a) under section 13 of the <i>Canada Business Corporations Act</i> in accordance with the attached notice;	<input type="checkbox"/> a) en vertu de l'article 13 de la <i>Loi canadienne sur les sociétés par actions</i> , conformément à l'avis ci-joint;
b) under section 27 of the <i>Canada Business Corporations Act</i> as set out in the attached articles of amendment designating a series of shares;	<input type="checkbox"/> b) en vertu de l'article 27 de la <i>Loi canadienne sur les sociétés par actions</i> , tel qu'il est indiqué dans les clauses modificatrices ci-jointes désignant une série d'actions;
c) under section 179 of the <i>Canada Business Corporations Act</i> as set out in the attached articles of amendment;	<input checked="" type="checkbox"/> c) en vertu de l'article 179 de la <i>Loi canadienne sur les sociétés par actions</i> , tel qu'il est indiqué dans les clauses modificatrices ci-jointes;
d) under section 191 of the <i>Canada Business Corporations Act</i> as set out in the attached articles of reorganization;	<input type="checkbox"/> d) en vertu de l'article 191 de la <i>Loi canadienne sur les sociétés par actions</i> , tel qu'il est indiqué dans les clauses de réorganisation ci-jointes;
 _____ Director - Directeur	October 18, 2000 / le 18 octobre 2000 Date of Amendment - Date de modification



Industry Canada Industrie Canada

ELECTRONIC TRANSACTION RAPPORT DE LA TRANSACTION  
REPORT ÉLECTRONIQUE

Canada Business Loi canadienne sur les  
Corporations Act sociétés par actions

ARTICLES OF AMENDMENT CLAUSES MODIFICATRICES  
(SECTIONS 27 OR 177) (ARTICLES 27 OU 177)

Processing Type - Mode de traitement: E-Commerce/Commerce électronique

1. Name of Corporation - Dénomination de la société Hydrogenics Corporation - Corporation Hydrogénique	2. Corporation No. - N° de la société  236237-6
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3. The articles of the above-named corporation are amended as follows:  
Les statuts de la société mentionnée ci-dessus sont modifiés de la façon suivante:

Paragraph 2 of the Articles shall be amended to change the location of the registered office of the Corporation from the Regional Municipality of York, in the Province of Ontario to the Regional Municipality of Peel, in the Province of Ontario.

Date  
2000-10-16

Signature  
PIERRE RIVARD

Title - Titre  
PRESIDENT

tzambrano@osler.com

Canada

INFOMAX SERVICE

Canada Business  
Corporations Act

Loi canadienne sur  
les sociétés par actions

FORM 4  
ARTICLES OF AMENDMENT  
(SECTION 27 OR 177)

FORMULE 4  
CLAUSES MODIFICATRICES  
(ARTICLES 27 OU 177)

1 - Name of corporation - Dénomination de la société  
HYDROGENICS CORPORATION -  
CORPORATION HYDROGÉNIQUE

2 - Corporation No. - N° de la société  
236237-6

3 - The articles of the above-named corporation are amended as follows:

Les statuts de la société mentionnée ci-dessus sont modifiés de la façon suivante.

Paragraph 2 of the Articles shall be amended to change the location of the registered office of the Corporation from the Regional Municipality of York, in the Province of Ontario to the Regional Municipality of Peel, in the Province of Ontario.

Date  
\_\_\_\_\_, 2000

Signature  
*[Handwritten Signature]*

Title - Titre  
President

FOR DEPARTMENTAL USE ONLY - À L'USAGE DU MINISTÈRE SEULEMENT  
F003 - Dépense



Restated Certificate  
of Incorporation

Certificat  
de constitution à jour

Canada Business  
Corporations Act

Loi canadienne sur  
les sociétés par actions

Hydrogenics Corporation -

Corporation Hydrogénique

236237-6

Name of corporation-Dénomination de la société

Corporation number-Numéro de la société

I hereby certify that the articles of  
incorporation of the above-named corporation  
were restated under section 180 of the *Canada  
Business Corporations Act* as set out in the  
attached restated articles of incorporation.

Je certifie que les statuts constitutifs de la  
société susmentionnée ont été mis à jour en  
vertu de l'article 180 de la *Loi canadienne sur  
les sociétés par actions*, tel qu'il est indiqué  
dans les statuts mis à jour ci-joints.



Director - Directeur

September 29, 2000 / le 29 septembre 2000

Effective Date of Restatement -  
Date d'entrée en vigueur de la mise à jour



Industry Canada  
Canada Business  
Corporations Act

Industrie Canada  
Loi canadienne sur les  
sociétés par actions

FORM 7  
RESTATED ARTICLES OF  
INCORPORATION  
(SECTION 180)

FORMULE 7  
STATUTS CONSTITUTIFS  
MIS À JOUR  
(ARTICLE 180)

1 - Name of corporation - Dénomination de la société  
**HYDROGENICS CORPORATION -  
CORPORATION HYDROGÉNIQUE**

Corporation No. - N° de la société  
**236237-6**

2 - The place in Canada where the registered office is situated  
Lieu au Canada où est situé le siège social  
**Regional Municipality of York, Province of Ontario**

3 - The classes and any maximum number of shares that the corporation is authorized to issue  
Catégories et tout nombre maximal d'actions que la société est autorisée à émettre  
**The annexed Schedule I is incorporated in this form.**

4 - Restrictions, if any, on share transfers  
Restrictions sur le transfert des actions, s'il y a lieu  
**None**

5 - Number (or minimum and maximum number) of directors  
Nombre (ou nombre minimal et maximal) d'administrateurs  
**Minimum 3, Maximum 9**

6 - Restrictions, if any, on business the corporation may carry on  
Limites imposées à l'activité commerciale de la société, s'il y a lieu  
**None**

7 - Other provisions, if any  
Autres dispositions, s'il y a lieu  
**The annexed Schedule II is incorporated in this form.**

The foregoing restated articles of incorporation correctly set out, without substantive change, the corresponding provisions of the articles of incorporation as amended and supersede the original articles of incorporation.

Cette mise à jour des statuts constitués démontre exactement, sans changement substantiel, les dispositions correspondantes des statuts constitués modifiés qui remplacent les statuts constitués originaux.

Signature *[Signature]*  
Title - Titre  
**President**

Date  
**29/09/2000**

FOR DEPARTMENTAL USE ONLY -  
À L'USAGE DU MINISTÈRE SEULEMENT  
Filed - Déposée **SEP 29 2000**

## SCHEDULE I

The classes and any maximum number of shares that the Corporation is authorized to issue shall consist of an unlimited number of Preferred Shares, issuable in series, an unlimited number of Series A Preferred Shares, an unlimited number of Series B Preferred Shares and an unlimited number of Common Shares with the following rights, privileges, restrictions and conditions:

### COMMON SHARES

#### Section 1. Voting Rights

Each holder of Common Shares shall be entitled to receive notice of and to attend all meetings of shareholders of the Corporation and to vote thereat, except meetings at which only holders of a specified class of shares (other than Common Shares) or specified series of shares are entitled to vote. At all meetings of which notice must be given to the holders of the Common Shares, each holder of Common Shares shall be entitled to one vote in respect of each Common Share held by such holder.

#### Section 2. Dividends

The holders of the Common Shares shall be entitled, subject to the rights, privileges, restrictions and conditions attaching to any other class of shares of the Corporation, to receive any dividend declared by the Corporation.

#### Section 3. Liquidation, Dissolution or Winding-up

The holders of the Common Shares shall be entitled, subject to the rights, privileges, restrictions and conditions attaching to any other class of shares of the Corporation, to receive the remaining property of the Corporation on a liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary.

### PREFERRED SHARES

(a) **One or More Series.** – The Preferred Shares may at any time and from time to time be issued in one or more series.

(b) **Terms of Each Series.** – Subject to the *Canada Business Corporations Act* (the “Act”) or any statute which may be substituted therefor, as amended from time to time, the directors may fix, before the issue thereof, the number of Preferred Shares of each series, the designation, rights, privileges, restrictions and conditions attaching to the Preferred Shares of each series, including, without limitation, any voting rights, any right to receive dividends (which may be cumulative or non-cumulative and variable or fixed) or the means of determining such dividends, the dates of payment thereof, any terms and conditions of redemption or purchase, any conversion rights, and any rights on the liquidation, dissolution or winding-up of the Corporation, any sinking fund or other provisions, the whole to be subject to the issue of a certificate of amendment setting forth the designation, rights, privileges, restrictions and conditions attaching to the Preferred Shares of the series.

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(c) **Ranking of Preferred Shares.** – The Preferred Shares of each series shall, with respect to the payment of dividends and the distribution of assets in the event of the liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, rank on a parity with the Preferred Shares of every other series and be entitled to preference over the common shares. If any amount of cumulative dividends (whether or not declared) or declared non-cumulative dividends or any amount payable on any such distribution of assets constituting a return of capital in respect of the Preferred Shares of any series is not paid in full, the Preferred Shares of such series shall participate rateably with the Preferred Shares of every other series in respect of all such dividends and amounts.

### **SERIES A AND SERIES B PREFERRED SHARES**

#### **Section 1. Liquidation Rights.**

(a) **Liquidation Payments.** In the event of any liquidation, dissolution or winding up of the affairs of the Corporation, whether voluntary or involuntary, the holders of each Series A Preferred Share and Series B Preferred Share (together the “Preferred Shares”) shall be entitled to be paid out of the assets of the Corporation available for distribution to holders of the Corporation’s capital stock of all classes in preference to holders of Common Shares, an amount equal to:

- (i) with respect to Series A Preferred Shares, the greater of (i) an amount equal to \$2.00 per Series A Preferred Share, together with all dividends accrued thereon and unpaid and accrued (the “Series A Minimum Purchase Price”); or (ii) such amount per Series A Preferred Share as would have been payable had all Preferred Shares been converted to Common Shares pursuant to the provisions of Section 2 immediately prior to such event of liquidation, dissolution or winding up; and
- (ii) with respect to Series B Preferred Shares, the greater of (i) an amount equal to \$10.50 per Series B Preferred Share, together with all dividends accrued thereon and unpaid and accrued (the “Series B Minimum Purchase Price”); or (ii) such amount per Series B Preferred Share as would have been payable had all Preferred Shares been converted to Common Shares pursuant to the provisions of Section 2 immediately prior to such event of liquidation, dissolution or winding up.

If all assets of the Corporation shall be insufficient to permit the payment in full to the holders of Preferred Shares of all amounts so distributable to them, then the entire assets of the Corporation available for such distribution shall be distributed rateably among the holders of Preferred Shares and in proportion to the full preferential amount each such holder is otherwise entitled to receive.

After such payments shall have been made in full to the holders of the Preferred Shares, or funds necessary for such payments shall have been set aside by the Corporation in trust for the account of holders of Preferred Shares so as to be available for such payments, the remaining assets available for distribution shall be distributed among the holders of the Common Shares rateably in proportion to the number of Common Shares held by each of them.

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After conversion of Preferred Shares into Common Shares, the holder of such Common Shares shall not be entitled to any preferential payment or distribution in case of any liquidation, dissolution or winding up, but shall share ratably in any distribution of the assets of the Corporation among the holders of Common Shares.

The amounts payable with respect to Preferred Shares under this Section 1(a) are hereinafter referred to as "Preferred Share Liquidation Payments".

(b) **Distribution Other than Cash.** Whenever the distributions provided for in this Section 1 shall be payable in property other than cash, the value of such distribution shall be the fair market value of such property as determined in good faith by the Board of Directors of the Corporation, provided however, that if any holder of Preferred Shares disputes the fair market value computed by the Board of Directors, the fair market value shall be determined by a national chartered accountant firm selected by the Board of Directors with whom the Corporation has no dealings.

(c) **Sale of Assets as Liquidation etc.** The sale of all or substantially all of the assets of the Corporation shall be deemed to be a liquidation, dissolution or winding up of the affairs of the Corporation for purposes of this Section 1 unless the holders of at least a majority of the then outstanding Preferred Shares elect to the contrary, such election to be made by giving written notice thereof to the Corporation no later than 15 days after the Corporation provides written notice of such event to the holders of Preferred Shares. If the holders of Preferred Shares so elect and give such notice, the provisions of Subsection 2(h) shall apply to the Preferred Shares. Unless such election is made, all consideration received by the Corporation in such asset sale less all costs and expenses related to such sale and any debt required to be paid as a result of such sale together with all other available assets of the Corporation shall be distributed toward the amounts payable with respect to such Preferred Shares pursuant to Subsection 1(a).

(d) **Notice.** Written notice of any proposed liquidation, dissolution or winding up of the affairs of the Corporation (including any merger, consolidation or sale of assets which may be deemed to be a liquidation, dissolution or winding up of the affairs of the Corporation under Subsection 1(c)), stating a payment date, the amount of the Preferred Share Liquidation Payments and the place where such Preferred Share Liquidation Payments shall be payable, shall be delivered to the holders of Preferred Shares not less than 45 days prior to the proposed date of such proposed liquidation, dissolution or winding up.

## **Section 2. Conversion.**

The holders of Preferred Shares shall have conversion rights as follows (the "Conversion Rights"):

(a) **Optional Conversion.** Each Preferred Share shall be convertible, without the payment of any additional consideration by the holder thereof and at the option of the holder thereof, at any time after the Original Issue Date (as defined in section 2(e)) at the office of the Corporation or any transfer agent for the Preferred Shares by making the following calculation:

- (i) Each Series A Preferred Share shall be converted into that number of fully paid and non-assessable Common Shares determined by multiplying each such share by the ratio determined by dividing \$2.00 by the Series A Conversion Price, determined as hereinafter provided, in effect at the time of conversion. The Series A Conversion Price at which Common Shares will be deliverable upon conversion of Series A Preferred Shares without the payment of any additional consideration by the holder thereof (the "Series A Conversion Price") shall initially be \$2.00 per Common Share.
-

(ii) Each Series B Preferred Share shall be converted into that number of fully paid and non-assessable Common Shares determined by multiplying each such share by the ratio determined by dividing \$10.50 by the Series B Conversion Price, determined as hereinafter provided, in effect at the time of conversion. The Series B Conversion Price at which Common Shares will be deliverable upon conversion of Series B Preferred Shares without the payment of any additional consideration by the holder thereof (the "Series B Conversion Price") shall initially be \$10.50 per Common Share.

(b) **Mechanics of Optional Conversions.** Before any holder of Preferred Shares shall be entitled to convert the same into Common Shares, the holder shall surrender the certificate or certificates therefor at the office of the Corporation or of any transfer agent for Preferred Shares, and shall give written notice to the Corporation at such office that the holder elects to convert the same and shall state therein the holder's name or the name or, subject to any legal or contractual restrictions on transfer thereof, names of the holder's nominees' in which the holder wishes the certificate or certificates for Common Shares to be issued and such notice shall be accompanied by an agreement in form satisfactory to the Corporation acting reasonably by which the person(s) in whose name the Common Shares are to be issued agrees to be bound by the provisions of any applicable shareholders' agreement of the Corporation if such person is not already a party to such agreements. On the date of conversion, all rights with respect to the Preferred Shares so converted shall terminate, except for any of the rights of the holder thereof, upon surrender of the holder's certificate or certificates therefor, to receive certificates for the number of Common Shares into which such Preferred Shares have been converted and to receive dividends as contemplated in Section 5. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by the holder's attorney duly authorized in writing. No fractional Common Share shall be issued upon the optional conversion of Preferred Shares. In lieu of any fractional share to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the Series A Minimum Purchase Price in respect of Series A Preferred Shares and Series B Minimum Purchase Price in respect of Series B Preferred Shares. The Corporation shall, as soon as practicable after surrender of the certificate or certificates for conversion, issue and deliver at such office to such holder of Preferred Shares, or, subject to any legal or contractual restrictions on transfer thereof, to the holder's nominee or nominees, a certificate or certificates for the number of Common Shares to which the holder shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the Preferred Shares to be converted, and the person or persons entitled to receive the Common Shares issuable upon conversion shall be treated for all purposes as the record holder or holders of such Common Shares on such date.

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(c) **Automatic Conversion.** Each Preferred Share shall be converted automatically into that number of fully paid and non-assessable Common Shares determined as follows: (i) in the case of Series A Preferred Shares, by multiplying each Series A Preferred Share by the ratio determined by dividing \$2.00 by the Series A Conversion Price in effect at the time of conversion (subject to adjustment as provided for in Subsections 2(e)); and (ii) in the case of Series B Preferred Shares, by multiplying each Series B Preferred Share by the ratio determined by dividing \$10.50 by the Series B Conversion Price in effect at the time of conversion (subject to adjustment as provided for in Subsections 2(e)). Such automatic conversion shall occur upon the earliest to occur of:

- (i) the closing of an offering or offerings pursuant to a receipted prospectus under the *Securities Act* (Ontario), as amended, or similar document filed under other applicable securities laws in Canada or the United States, covering the offer and sale of Common Shares for the account of the Corporation to the public in which:
  - (A) the Common Shares are listed on a North American stock exchange or The NASDAQ Stock Market;
  - (B) the net proceeds to the Corporation from such offering or offerings aggregate not less than \$15 million; and
  - (C) the public offering price of which is not less than \$15.00 per share adjusted to take into account of any dividend, combination of shares, or the like, or
- (ii) the written election of the holders of greater than 50% of the then outstanding Preferred Shares to require such conversion.

(d) **Mechanics of Automatic Conversions.** Upon the occurrence of an event specified in Subsection 2(c), the Preferred Shares shall be converted automatically without any further action by the holders of the Preferred Shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; provided, however, that all holders of Preferred Shares being converted shall be given written notice of the occurrence of an event specified in Subsection 2(c) including the date such event occurred (the "Automatic Conversion Date"), and the Corporation shall not be obligated to issue certificates evidencing the Common Shares issuable upon such conversion unless certificates evidencing such Preferred Shares being converted are either delivered to the Corporation or its transfer agent, or the holder notifies the Corporation or any transfer agent that such certificates have been lost, stolen, or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection therewith and, if the Corporation so elects, provides an appropriate indemnity and the holder of the Common Shares enters into an agreement in form satisfactory to the Corporation acting reasonably by which the person in whose name the Common Shares are to be issued agrees to be bound by the provisions of any applicable shareholders' agreement of the Corporation if such person is not already a party. On the Automatic Conversion Date, all rights with respect to the Preferred Shares so converted shall terminate, except for any of the rights of the holder thereof, upon surrender of the holder's certificate or certificates therefor, to receive certificates for the number of Common Shares into which such Preferred Share have been converted and the right to receive the dividends as contemplated in Section 5. Upon the automatic conversion of the Preferred Shares, the holders of such Preferred Shares shall surrender the certificates representing such shares at the office of the Corporation or of its transfer agent. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by the holder's attorney duly authorized in writing. Upon surrender of such certificates, the Corporation shall promptly issue and deliver to such holder, in such holder's name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of Common Shares into which the Preferred Shares surrendered were convertible on the Automatic Conversion Date. No fractional Common Share shall be issued upon the automatic conversion of Preferred Shares. In lieu of any fractional share to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the Series A Minimum Purchase Price in respect of Series A Preferred Shares and Series B Minimum Purchase Price in respect of Series B Preferred Shares. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of the occurrence of any event described in Subsection 2(c), and the person or persons entitled to receive the Common Shares issuable upon conversion shall be treated for all purposes as the record holder or holders of such Common Shares on such date.

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(e) **Adjustments to Conversion Price.**

(i) **Special Definitions.** For purposes of this Subsection 2(e), the following definitions shall apply:

“**Option**” shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire either Common Shares or Convertible Securities.

“**Original Issue Date**” shall mean the first date on which a Series B Preferred Share was issued.

“**Conversion Price**” shall mean the Series A Conversion Price or Series B Conversion Price, as applicable.

“**Convertible Securities**” shall mean any evidences of indebtedness, shares of capital stock (other than Common Shares) or other securities directly or indirectly convertible into or exchangeable for Common Shares other than the Preferred Shares.

“**Additional Common Shares**” shall mean all Common Shares issued (or, pursuant to Subsection 2(e)(ii), deemed to be issued) by the Corporation after the Original Issue Date, other than:

- (A) Common Shares issued or issuable upon conversion of Preferred Shares;
  - (B) securities issued in connection with any stock split, stock dividend, combination of shares of the like;
  - (C) Common Shares issued or issuable to officers, directors or employees of, or consultants to, the Corporation pursuant to a stock purchase or option plan, or other similar arrangement approved by the Board of Directors, and consented to in accordance with the provisions of the Unanimous Shareholders' Agreement; and
-

- (D) that number of Common Shares, as is recommended by the Compensation Committee of the Corporation's Board of Directors and approved by the Corporation's Board of Directors, issued or issuable to officers, directors, or employees of, or consultants to, the Corporation at the discretion of the Board of Directors, and consented to in accordance with the provisions of the Unanimous Shareholders' Agreement.

(ii) **Issue of Securities Deemed to be Issue of Additional Common Shares.**

- (A) **Options and Convertible Securities.** In the event the Corporation at any time or from time to time after the Original Issue Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Shares issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Common Shares issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that in any such case in which Additional Common Shares are deemed to be issued:
- (1) no further adjustment of the Conversion Price shall be made upon the subsequent issue of Convertible Securities or Common Shares upon the exercise of such Options or conversion or exchange of such Convertible Securities;
  - (2) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase in the Consideration (as defined in Subsection 2(e)(iv)) payable to the Corporation, or decrease in the number of Common Shares issuable, upon the exercise, conversion or exchange thereof, the Conversion Price computed upon the original issue thereof (or upon the occurrence of a record, date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities;
-

- (3) upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon such expiration, be recomputed as if:
    - (I) in the case of the Convertible Securities or Options for Common Shares, the only Additional Common Shares issued were the Common Shares, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the Consideration received therefor was the Consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the Consideration actually received by the Corporation upon such exercise, or for the issue of all such Convertible Securities which were actually converted or exchanged, plus the additional Consideration, if any, actually received by the Corporation upon such conversion or exchange; and
    - (II) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the Consideration received by the Corporation for the Additional Common Shares deemed to have been then issued was the Consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the Consideration deemed to have been received by the Corporation upon the issue of the Convertible Securities with respect to which such Options were actually exercised;
  - (4) no readjustment pursuant to Clauses (2) or (3) above shall have the effect of increasing the Conversion Price to an amount which exceeds the lower of (i) the Conversion Price on the original adjustment date; or (ii) the Conversion Price that would have resulted from any issue of Additional Common Shares between the original adjustment date and such readjustment date;
  - (5) in the case of any Options which expire by their terms not more than 30 days after the date of issue thereof, no adjustment of the Conversion Price shall be made until the expiration or exercise of all such Options, where upon such adjustment shall be made in the same manner provided in Clause (3) above; and
  - (6) if such record date shall have been fixed and such Options or Convertible Securities are not issued on the date fixed therefor, the adjustment previously made in the Conversion Price which became effective on such record date shall be cancelled as of the close of business on such record date, and thereafter the Conversion Price shall be adjusted pursuant to this Subsection 2(e)(ii) as of the actual date of their issue.
-

(B) **Stock Dividends, Stock Distribution and Subdivisions.** In the event the Corporation at any time or from time to time after the Original Issue Date shall declare or pay any dividend or make any other distribution on the Common Shares payable in Common Shares or effect a subdivision of the outstanding Common Shares (by reclassification or otherwise other than by payment of a dividend in Common Shares), then and in any such event, Additional Common Shares shall be deemed to have been issued:

- (1) in the case of any such dividend or distribution, immediately after the close of business on the record date for the determination of holders of any class of securities entitled to receive such dividend or distribution; or
- (2) in the case of any such subdivision, at the close of business on the date immediately prior to the date upon which such corporate action becomes effective.

If such record date shall have been fixed and no part of such dividend shall have been paid on the date fixed therefor, the adjustment previously made in the Conversion Price which became effective on such record date shall be cancelled as of the close of business on such record date, and thereafter the Conversion Price shall be adjusted pursuant to this Section 2(e)(ii) as of the time of actual payment of such dividend.

(iii) **Adjustment of the Conversion Price Upon Issue of Additional Common Shares.** In the event that at any time or from time to time after the Original Issue Date, the Corporation shall issue Additional Common Shares (including, without limitation, Additional Common Shares deemed to be issued pursuant to Subsection 2(e)(ii)(A) but excluding Additional Common Shares deemed to be issued pursuant to Subsection 2(e)(ii)(B), which event is dealt with in Subsection 2(e)(v)(A)), without consideration or for a Consideration Per Share (as defined below) less than the Series A Conversion Price, with respect to Series A Preferred Shares, or Series B Conversion Price, with respect to Series B Preferred Shares, in effect on the date of and immediately prior to such issue, then and in such event, such Conversion Price shall be reduced, concurrently with such issue, to a price equal to the Consideration Per Share for which such Additional Common Shares are issued or deemed to be issued.

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- (iv) **Determination of Consideration.** For purposes of this Subsection 2(e), the consideration (the “Consideration”) received or receivable by the Corporation for the issue of any Additional Common Shares shall be computed as follows:
- (A) **Cash and Property.** Such Consideration shall:
- (1) insofar as it consists of cash, be computed at the aggregate amounts of cash received or receivable by the Corporation excluding amounts paid or payable for accrued interest or accrued dividends;
  - (2) insofar as it consists of property other than cash, be computed at the fair value thereof at the time of such issue, as determined in good faith by the Board of Directors, provided however, that if any holder of Preferred Shares disputes the fair market value computed by the Board of Directors, the fair market value shall be determined by a national chartered accountant firm selected by the Board of Directors with whom the Corporation has no dealings; and
  - (3) in the event Additional Common Shares are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received or receivable, computed as provided in Subsections 2(e)(iv)(A)(1) and (2) above, allocable to such Additional Common Shares as determined in good faith by the Board of Directors, provided however, that if any holder of Preferred Shares disputes the allocation determined by the Board of Directors, the allocation shall be determined by a national chartered accountant firm selected by the Board of Directors with whom the Corporation has no dealings.
- (B) **Additional Common Shares other than Options and Convertible Securities.** The Consideration per share (the “Consideration Per Share”) for the issue of any Additional Common Shares other than Options and Convertible Securities shall be the Consideration for the issue of any Additional Common Shares other than Options or Convertible Securities, divided by the total number of such Additional Common Shares issued by the Corporation in exchange therefor.
- (C) **Options and Convertible Securities.** The Consideration per share (also the “Consideration Per Share”, as the context requires) for Additional Common Shares deemed to have been issued pursuant to Subsection 2(e)(ii)(A), relating to Options and Convertible Securities, shall be computed by dividing (x) the Consideration for the issue of such Options or Convertible Securities, plus the aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such Consideration), payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by (y) the number of Common Shares (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.
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(v) **Adjustment of the Conversion Price for Dividends, Distributions, Subdivisions, Combinations or Consolidations of Common Shares.**

- (A) **Stock Dividends, Distributions or Subdivisions.** In the event the Corporation shall be deemed to have issued Additional Common Shares pursuant to Subsection 2(e)(ii)(B) in a stock dividend, stock distribution or subdivision, the Conversion Price in effect immediately before such deemed issue shall, concurrently with the effectiveness of such deemed issue, be proportionately decreased.
- (B) **Combinations or Consolidations.** In the event the outstanding shares of Common Shares shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common Shares, the Conversion Price in effect immediately prior to such combination or consolidation shall, concurrently with the effectiveness of such combination or consolidation, be proportionately increased.

(f) **Adjustments for Certain Dividends and Distributions.** In the event that at any time or from time to time after the Original Issue Date the Corporation shall make or issue, or fix a record date for the determination of holders of Common Shares entitled to receive, a dividend or other distribution other than a Dividend in the Ordinary Course or a stock dividend payable in Common Shares which event is dealt with in Subsection 2(e)(v)(A), then and in each such event provision shall be made so that the holders of Preferred Shares shall receive upon conversion thereof, in addition to the number of Common Shares receivable thereupon, the amount of the dividend of the Corporation that they would have received had their Preferred Shares been converted into Common Shares on the date of such event and had they thereafter, during the period from the date of such event to and including the Conversion Date, retained such securities receivable by them as aforesaid during such period, giving application during such period to all adjustments called for herein. For purposes hereof, "Dividend in the Ordinary Course" means a dividend payable in cash not exceeding 5% of the net profit of the Corporation in any fiscal year.

(g) **Adjustment for Reclassification, Exchange or Substitution.** In the event that at any time or from time to time after the Original Issue Date, the Common Shares issuable upon the conversion of Preferred Shares shall be changed into the same or a different number of shares of any class or classes of stock, whether by capital reorganization, reclassification, or otherwise other than a merger, consolidation, or sale of assets provided for in Subsection 2(h) below, then and in each such event the holder of any Preferred Shares shall have the right thereafter to convert such shares into the kind and amount of shares of stock and other securities and property receivable upon such reorganization, reclassification, or other change, by the holder of a number of Common Shares equal to the number of Common Shares into which such Preferred Shares might have been converted immediately prior to such reorganization, reclassification, or change, all subject to further adjustment as provided herein.

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(h) **Adjustment for Merger, Consolidation or Sale of Assets.** In the event that at any time or from time to time after the Original Issue Date, the Corporation shall sell all or substantially all of its assets or merge, amalgamate or consolidate with or into another entity, each Preferred Share as to which such is not treated as a liquidation under Subsection 1(c) shall thereafter be convertible into the kind and amount of shares of stock or other securities or property to which a holder of the number of Common Shares of the Corporation deliverable upon conversion of such Preferred Shares would have been entitled to receive upon such consolidation, amalgamation, merger or sale; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors, provided however, that if any holder of Preferred Shares disputes the adjustment determined by the Board of Directors, the adjustment shall be determined by a national chartered accountant firm selected by the Board of Directors with whom the Corporation has no dealings) shall be made in the application of the provisions set forth in this Section 2 with respect to the rights and interest thereafter of the holders of Preferred Shares, to the end that the provisions set forth in this Section 2 shall thereafter be applicable, as nearly as reasonably may be, in relation to any shares of stock or other property thereafter deliverable upon the conversion of Preferred Shares.

(i) **No Impairment.** The Corporation shall not, by amendment of its Articles of Incorporation or through any reorganization, transfer of assets, consolidation, amalgamation, merger, dissolution, issue or sale of securities or any other voluntary action, including, without limitation, voluntary bankruptcy proceedings, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation but shall at all times in good faith assist in the carrying out of all the provisions of this Section 2 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the Holders of Preferred Shares under this Section 2 against impairment.

(j) **Certificate as to Adjustments.** Upon the occurrence of each adjustment or readjustment pursuant to this Section 2, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each affected holder of Preferred Shares a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any affected holder of Preferred Shares, furnish or cause to be furnished to such holder a like certificate setting forth:

- (i) such adjustments and readjustments; and
- (ii) the number of Common Shares and the amount, if any, of other property which at the time would be received upon the conversion of each Preferred Share.

(k) **Notices of Record Date.** In the event of any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend which is the same as cash dividends paid in previous quarters) or other distribution, the Corporation shall deliver to each holder of Preferred Shares at least twenty days prior to such record date a notice specifying the date on which any such record is to be taken for the purpose of such dividend or distribution.

(l) **Common Shares Reserved.** The Corporation shall reserve and keep available out of its authorized but unissued Common Shares such number of Common Shares as shall from time to time be sufficient to effect conversion of the Preferred Shares.

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(m) **Certain Taxes.** The Corporation shall pay any *issue* or transfer taxes payable in connection with the conversion of Preferred Shares, provided, however, that the Corporation shall not be required to pay any tax which may be payable in respect of any transfer to a name other than that of the holder of the Preferred Shares.

(n) **Closing of Books.** The Corporation shall at no time close its transfer books against the transfer of any Preferred Shares of any Common Shares issued or issuable upon the conversion of any Preferred Shares in any manner which interferes with the timely conversion or transfer of such Preferred Shares or Common Shares.

**Section 3. Restrictions.**

At any time when Preferred Shares are outstanding, except where the vote of the holders of a greater number of shares of the Corporation is required by law or hereunder, and in addition to any other vote required by law or hereunder, without the affirmative vote of the holders of at least two-thirds of the then outstanding Preferred Shares voting collectively as a single class, the Corporation will not:

- (a) create or authorize the creation of, or increase or authorize any increase in the number of authorized shares of any class or series of capital stock of the Corporation having liquidation or dividend rights equal or superior to the Preferred Shares;
- (b) issue any shares, or any rights, options or warrants to acquire shares or any security convertible into shares, of any class or series of capital stock of the Corporation having liquidation or dividend rights equal or superior to the Preferred Shares; and
- (c) redeem any shares of its capital stock other than pursuant to Section 6.

**Section 4. Voting Rights.**

The holders of Preferred Shares shall be entitled to notice of any meeting of shareholders and, except with respect to the matters set forth in Section 3 or as otherwise required by law, shall vote together with the holders of Common Shares as a single class upon any matter submitted to the shareholders for a vote, on the following basis:

- (a) holders of Common Shares shall have one vote per share; and
- (b) holders of Preferred Shares shall have that number of votes per share as is equal to the number of Common Shares (including fractions of a share) into which each such Preferred Share held by such holder could be converted on the date for determination of shareholders entitled to vote at the meeting or on the date of any written consent.

**Section 5. Dividends.**

Preferred Shares shall be entitled to a fixed, preferential, cumulative dividend in the amount of 5% per annum of the Series A Minimum Purchase Price or of the Series B Minimum Purchase Price, as applicable, compounded annually. Dividends on such Preferred Shares shall be payable in preference and prior to any payment of any dividend on the Common Shares. After the payment of such dividends on Preferred Shares, the holders of Common Shares and Preferred Shares shall be entitled, when and if declared by the Board of Directors, to dividends out of assets of the Corporation legally available therefor, which dividends shall be payable to the holders of the Preferred Shares (as if fully converted into Common Shares) and the holders of the Common Shares on a per share basis.

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**Section 6. Redemption.**

**(a) Optional Redemption.**

- (i) From and after the date that is the earlier of (a) five years after the Original Issue Date (as defined in section 2(e)) or (b) an event of non-compliance by the Corporation under the Unanimous Shareholders' Agreement, each holder of Preferred Shares may elect to have the Corporation redeem from it, to the extent the Corporation has funds legally available for such purpose, and subject to Subsection 6(a)(iv), any or all Preferred Shares held by such holder. Such election may be made only by delivering to the Corporation within 60 days after the Corporation's delivery to the holders of Preferred Shares of its year-end audited financial statements, or within 30 days after its delivery to such holders of its quarterly unaudited financial statements (a) a written notice signed by such holder specifying the number of Preferred Shares so to be redeemed, and (b) certificates for the Preferred Shares so to be redeemed, together with stock powers therefor duly executed by such holder in blank (such written election, certificates and stock powers being referred to collectively as a "Redemption Notice").
  - (ii) Subject to Subsection 6(a)(iii), within 10 days of receipt of a Redemption Notice, the Corporation shall deliver to each holder of Preferred Shares a notice containing a copy of each Redemption Notice it has received, and specifying the total funds legally available to the Corporation for redemption of all Preferred Shares outstanding at such time. Upon receipt of such notice from the Corporation, each holder of Preferred Shares who has not delivered a Redemption Notice shall have 20 days to deliver to the Corporation a written notice of its election to have the Corporation redeem from it, to the extent the Corporation has funds legally available for such purpose, and subject to Subsection 6(a)(iv), any or all Preferred Shares held by such holder (a "Participation Notice"). Such Participation Notice shall be in the form and shall contain the information and documents required to be contained in a Redemption Notice.
  - (iii) Within 6 months of the expiration of the 20 day period referred to in Subsection 6(a)(ii), the Corporation shall redeem from each holder of Preferred Shares from whom the Corporation received a Redemption Notice or a Participation Notice, all the Preferred Shares as to which Redemption Notices or Participation Notices have been given, to the extent the Corporation has funds legally available for such purpose, and subject to Subsection 6(a)(iv), by paying to the respective holders an amount per Preferred Share equal to:
    - (A) in the case of Series A Preferred Shares, the greater of (i) the number of Series A Preferred Shares to be redeemed held by the respective holders multiplied by the Series A Minimum Purchase Price; (ii) if there is a published market for the Common Shares, the "market price" as defined in the *Securities Act* (Ontario) of the Common Shares as at the end of the 20 day period referred to in Section 6(iii) multiplied by the number of Common Shares held by the respective holders had the Series A Preferred Shares to be redeemed held by the respective holders been converted into Common Shares pursuant to the provisions of Section 2 on such date; and (iii) if there is not a published market for the Common Shares, the Fair Market Value of the Common Shares held by the respective holders had the Preferred Shares to be redeemed held by the respective holders been converted into Common Shares pursuant to the provisions of Section 2 on such date; and
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- (B) in the case of Series B Preferred Shares, the greater of (i) the number of Series B Preferred Shares to be redeemed held by the respective holders multiplied by the Series B Minimum Purchase Price; (ii) if there is a published market for the Common Shares, the "market price" as defined in the *Securities Act* (Ontario) of the Common Shares as at the end of the 20 day period referred to in Section 6(iii) multiplied by the number of Common Shares held by the respective holders had the Series B Preferred Shares to be redeemed held by the respective holders been converted into Common Shares pursuant to the provisions of Section 2 on such date; and (iii) if there is not a published market for the Common Shares, the Fair Market Value of the Common Shares held by the respective holders had the Preferred Shares to be redeemed held by the respective holders been converted into Common Shares pursuant to the provisions of Section 2 on such date.

The Fair Market Value shall be the simple average of the Fair Market Value arrived at by two national accounting firms, one as selected jointly by the written election of the holders of not less than two-thirds of the then outstanding Preferred Shares, and one as selected by the Board of Directors of the Corporation. For purposes hereof, Fair Market Value means the highest cash price in terms of money which would be obtained if all the Shareholders of the Corporation sold all of their respective Common Shares in an open and unrestricted market (recognizing that the Common Shares are securities of a corporation which cannot offer its securities to the public) without compulsion to a willing and knowledgeable purchaser acting at arms' length and where in determining such Fair Market Value: (i) the value of each Common Share is based on the value of all Common Shares; and (ii) no diminution or accretion in value is attributed to any majority or minority interest.

- (iv) If the funds of the Corporation legally available for redemption of Preferred Shares are insufficient to redeem the total number of Preferred Shares submitted for redemption pursuant to Redemption Notices and any Participation Notices, those funds which are legally available will be split pro rata based on the aggregate value of Series A Preferred Shares and Series B Preferred Shares to be redeemed (based on the applicable minimum purchase price) into two pools of funds, one pool for Series A Preferred Share redemptions and one pool for Series B Preferred Share redemptions. Each pool will be used to redeem the maximum possible number of whole shares rateably among the holders of the applicable series of Preferred Shares who have submitted Redemption Notices or Participation Notices during the 20 day period referred to in Subsection 6(a)(ii), or which are subject to mandatory redemption. The Preferred Shares not redeemed shall remain outstanding and, notwithstanding anything herein to the contrary, shall remain entitled to all rights and preferences otherwise provided herein.
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**Section 7. Notices.**

All notices, requests, consents, demands and other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given, made and received (a) when delivered against receipt; (b) upon transmitter's confirmation of the receipt of a facsimile transmission, which shall be followed by an original sent otherwise in accordance with this Section 7; (c) upon confirmed delivery by a standard overnight carrier; or (d) upon expiration of 5 business days after the date when deposited in the mail, first class postage prepaid, addressed to the Corporation at its registered office or at such other address of which the Corporation may notify the holders of Preferred Shares from time to time, or if to a holder of Preferred Shares or Common shares, to such holder's address as shown by the records of the Corporation.

**Section 8. Residual Rights.**

All rights accruing to the outstanding shares of the Corporation not expressly provided for to the contrary herein shall be vested in the Common Shares.

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## SCHEDULE II

1. The directors may appoint from time to time one or more directors within the limits provided in the *Canada Business Corporations Act*.
  2. The directors are authorized to determine the number of directors of the Corporation from time to time by resolution.
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**BY-LAW NO. 4**  
**(as amended on March 7, 2008)**  
**A by-law relating generally to the**  
**transaction of the business and affairs of**  
**HYDROGENICS CORPORATION —**  
**CORPORATION HYDROGÉNIQUE**

(the “Corporation”)

**ARTICLE 1**  
**INTERPRETATION**

**1.01 Definitions.** In this by-law and all other by-laws and resolutions of the Corporation, unless the context otherwise requires:

- (a) The following terms shall have the meanings specified:
    - (i) “Act” means the *Canada Business Corporations Act* or any statute which may be substituted therefor, as amended from time to time;
    - (ii) “articles” means the original or restated articles of incorporation, articles of amendment, articles of amalgamation, articles of continuance, articles of arrangement, articles of dissolution, articles of reorganization or articles of revival of the Corporation and any amendments thereto;
    - (iii) “board” means the board of directors of the Corporation;
    - (iv) “director” means a member of the board;
    - (v) “electronic” means by facsimile, electronic mail, transmission of data or information through computer networks, any similar means or any other prescribed means; and
    - (vi) “meeting of shareholders” means an annual meeting of shareholders of the Corporation, or a special meeting of shareholders of the Corporation, or both, and includes a meeting of any class or series of any class of shareholders of the Corporation;
  - (b) Terms used herein that are defined in the Act shall have the meanings given to those terms in the Act; and
  - (c) Words importing the masculine gender shall include the feminine and neuter genders, and words importing the singular number shall include the plural number, and vice versa.
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**ARTICLE 2  
DIRECTORS**

2.01 **Number of Directors and Quorum.** Until changed in accordance with the Act, the board shall consist of such number of directors as set out in the articles of the Corporation or as the board may from time to time determine. A majority of the directors shall constitute a quorum for the transaction of business. Notwithstanding vacancies, a quorum of directors may exercise all the powers of the board.

2.02 **Election and Term.** Directors shall be elected by the shareholders at each annual meeting of shareholders to hold office until the next annual meeting of shareholders or until their respective successors are elected or appointed. The number of directors to be elected at any such meeting shall be that number most recently determined by the board. At any annual meeting of shareholders every retiring director shall, if qualified, be eligible for re-election.

2.03 **Qualification.** At least that number of directors as required by the Act shall be resident Canadian and at least that number of directors as required by the Act shall not be officers or employees of the Corporation or its affiliates.

2.04 **Places of Meetings.** Meetings of the board may be held at any place within or outside Canada.

2.05 **Calling of Meetings.** Meetings of the board shall be held from time to time at such place, on such day and at such time as the board, the chairman of the board, the president or any two directors may determine.

2.06 **Notice.** Notice of the time and place of each meeting of the board shall be given to each director at least forty-eight (48) hours before the meeting by any means including telephone, facsimile or electronic means. A notice of meeting of the board need not specify the business to be transacted at the meeting except as may be required by the Act. The accidental failure to give notice of a meeting of the board to a director or any error in such notice not affecting the substance thereof shall not invalidate any action taken at the meeting. A meeting of the board may be held without notice immediately following any annual meeting of shareholders. An individual need not be given notice of the meeting at which that individual is appointed by the other directors to fill a vacancy on the board if that individual is present at that meeting.

2.07 **Votes to Govern.** At all meetings of the board any question shall be decided by a majority of the votes cast on the question and, in the case of an equality of votes, the chairman of the meeting shall not be entitled to a second or casting vote.

2.08 **Chairman and Secretary.** The chairman of the board shall be chairman of any meeting of the board. If the chairman of the board is not present, the directors present shall choose one of their number to be chairman. The secretary of the Corporation shall act as secretary at any meeting of the board and, if the secretary of the Corporation be absent, the chairman of the meeting shall appoint a person who need not be a director to act as secretary of the meeting.

2.09 **Meetings by Telephone or Electronic Means.** Wherever permitted by the Act, meetings of directors may be held by telephone or electronic means or by means of such other communications facilities as shall permit all persons participating in the meeting to communicate adequately, and a director participating in a meeting of directors by such means shall be deemed to be present at the meeting.

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**ARTICLE 3  
COMMITTEES**

3.01 **Audit Committee.** The directors shall appoint from among their number an audit committee to be composed of not fewer than three directors, of whom a majority shall not be officers or employees of the Corporation or any affiliate of the Corporation. The audit committee shall have the functions prescribed by the board of directors.

3.02 **Other Committees.** The board may elect or appoint additional committees composed of directors or such other persons which may exercise such powers as, subject to any limitations prescribed by the Act, the board may delegate to them and shall have such other functions as the board may determine.

3.03 **Committee Procedure.** Subject to the Act and any restrictions imposed by the board, each committee shall have the power to fix its quorum to elect its chairman and to regulate its procedure.

**ARTICLE 4  
OFFICERS**

4.01 **Appointment of Officers.** The board may from time to time appoint a chairman of the board, a president, one or more vice-presidents, a secretary, a treasurer and such other officers as the board may determine, including one or more assistants to any of the officers so appointed.

4.02 **Term of Office.** Every officer shall hold office during the pleasure of the board.

**ARTICLE 5  
MEETINGS OF SHAREHOLDERS**

5.01 **Annual and Special Meetings.** The board shall call an annual meeting of shareholders not later than 15 months after the holding of the last preceding annual meeting. The board may at any time call a special meeting of shareholders. Meetings of shareholders shall be held at such place within or outside Canada as the board may determine.

5.02 **Notice of Meetings.** Notice in writing of the time and place of each meeting of shareholders shall be given not less than twenty-one (21) days nor more than fifty (50) days before the meeting to each shareholder entitled to vote at the meeting, to each director and to the auditor of the Corporation. The accidental failure to give notice of a meeting of shareholders to any person entitled thereto or any error in such notice not affecting the substance thereof shall not invalidate any action taken at the meeting.

5.03 **Persons Entitled to be Present.** The only persons entitled to attend a meeting of shareholders shall be those persons entitled to vote thereat, the directors, the auditor of the Corporation and any other persons who, although not entitled to vote at the meeting, are entitled or required under any provision of the Act, the articles or any by-law of the Corporation to attend the meeting. Any other persons may be admitted in the meeting only on the invitation of the chairman of the meeting or with the consent of the meeting.

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5.04 **Quorum.** A quorum for the transaction of business at any meeting of shareholders shall be two persons present in person or represented by proxy holding in the aggregate not less than 25% of the outstanding shares of the Corporation entitled to vote at the meeting.

5.05 **Chairman, Secretary and Scrutineers.** The chairman of the board or, in the absence of the chairman, a director designated by the board shall act as chairman at each meeting of shareholders. The secretary of the Corporation, or in the absence of the secretary, such other person as the chairman of the meeting may appoint, shall act as secretary of the meeting. At any meeting of shareholders, the chairman of the meeting may appoint one or more persons, who may but need not be shareholders, to serve as scrutineers with such duties as the chairman may prescribe.

5.06 **Voting.** Any question at a meeting of shareholders shall be decided by a show of hands unless a ballot thereon is required or demanded as hereinafter provided. Upon a show of hands every person who is present and entitled to vote thereon shall have one vote. Whenever a vote by show of hands shall have been taken upon a question, unless a ballot thereon is so required or demanded, a declaration by the chairman of the meeting that the vote upon the question has been carried or carried by a particular majority or not carried and an entry to that effect in the minutes of the meeting shall be *prima facie* evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against any resolution or other proceeding in respect of the said question, and the result of the vote so taken shall be the decision of the shareholders upon the said question.

5.07 **Ballots.** On any question proposed for consideration at a meeting of shareholders, regardless of the manner of voting, the chairman may require, or any shareholder or proxyholder entitled to vote at the meeting may demand, a ballot. A ballot so required or demanded shall be taken in such manner as the chairman shall direct. A requirement or demand for a ballot may be withdrawn at any time prior to the taking of the ballot. If a ballot is taken, each person present shall be entitled, in respect of the shares which each person is entitled to vote at the meeting upon the question, to that number of votes provided by the Act or the articles, and the result of the ballot so taken shall be the decision of the shareholders upon the said question.

## **ARTICLE 6 PAYMENTS**

6.01 **Cheques.** Any amount payable in cash to shareholders (including dividends payable in cash) shall be paid by cheque drawn on the Corporation's bankers or one of them to the order of each registered holder of shares of the class or series in respect of which such amount is to be paid and mailed by prepaid ordinary mail to such registered holder at such holder's address recorded in the Corporation's securities register, unless in each case such holder otherwise directs. In the case of joint holders the cheque shall, unless such joint holders otherwise direct, be made payable to the order of all of such joint holders and mailed to them at their address recorded in the securities register of the Corporation. In the case of the payment of a dividend, the mailing of such cheque as aforesaid, unless the same is not paid on due presentation, shall satisfy and discharge the liability for the dividend to the extent of the sum represented thereby plus the amount of any tax which the Corporation is required to and does withhold.

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6.02 **Non-receipt of Cheques.** In the event of non-receipt of any cheque by the person to whom it is sent, the Corporation shall issue to such person a replacement cheque for a like amount on such terms as to indemnity, reimbursement of expenses and evidence of non-receipt and of title as the board may from time to time prescribe, whether generally or in any particular case.

6.03 **Unclaimed Dividends.** Any dividend unclaimed after a period of six (6) years from the date on which the same has been declared to be payable shall be forfeited and shall revert to the Corporation.

6.04 **Currency of Dividends.** Dividends or other distributions payable in cash may be paid to shareholders in any denomination. The board may declare dividends or other distributions in any currency and make such provisions as it deems advisable for the payment of such dividends or other distributions.

#### **ARTICLE 7 EXECUTION OF INSTRUMENTS**

7.01 **General.** Contracts, documents or other instruments requiring execution by the Corporation may be signed by any one director or officer. The board may appoint any other person or persons to sign instruments generally or specific instruments. Where appropriate, such instruments may be executed under the corporate seal.

7.02 **Execution in Counterpart or by Electronic Means.** Any notice, resolution, by-law, requisition, statement or other documents may be executed by facsimile or other electronic means and in several documents of like form, each of which is executed by one or more persons, and such documents when duly executed by all persons required or permitted, as the case may be, to do so, shall be deemed to constitute one documents for the purposes of the Act.

7.03 **Authority to Act for the Corporation.** By way of supplement to Article 7.01, any director or officer is authorized, for and on behalf of the Corporation, to make, enter into, execute and deliver powers of attorney appointing agents to act on behalf of the Corporation, on such terms and conditions as they see fit, in connection with the incorporation and other matters relating to subsidiaries of the Corporation located outside of Canada.

#### **ARTICLE 8 BORROWING**

8.01 **Borrowing.** Without limit to the powers of the board as provided in the Act, the board may from time to time on behalf of the Corporation:

- (a) borrow money upon credit of the Corporation;
  - (b) issue, reissue, sell or pledge debt obligations of the Corporation;
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- (c) to the extent permitted by the Act, give, directly or indirectly, financial assistance to any person by means of a loan, a guarantee to secure the performance of an obligation or otherwise;
- (d) mortgage, hypothecate, pledge or otherwise create a security interest in all or any property of the Corporation, owned or subsequently acquired, to secure any obligation of the Corporation; and
- (e) delegate to one or more directors or officers all or any of the powers conferred by the foregoing provisions to such extent and in such manner as the board shall determine at the time of such delegation.

**ARTICLE 9  
PROTECTION OF DIRECTORS AND OFFICERS**

9.01 **Transactions with the Corporation.** Except as provided by the Act and subject to Article 9.02, no director or officer shall be disqualified, by virtue of being a director or officer of the Corporation, from entering into, or from being concerned or interested in any manner in, any contract, transaction or arrangement made or proposed to be made with the Corporation or any body corporate in which the Corporation is interested and no such contract, transaction or arrangement shall be void or voidable for any such reason. No director or officer shall be liable to account to the Corporation for any profit arising from any such office or realized in respect of any such contract, transaction or arrangement.

9.02 **Conflict of Interest.** Subject to and in accordance with the provisions of this Act, a director or officer of the Corporation is a party to a material contract or transaction or proposed material contract or transaction with the Corporation, or is a director or an officer of or has a material interest in any person who is a party to a material contract or transaction or proposed material contract or transaction with the Corporation, shall disclose in writing to the Corporation or request to have entered in the minutes of meetings of directors the nature and extent of such director or officer's interest, and any such director shall refrain from voting in respect thereof unless otherwise permitted by the Act.

9.03 **Limitation of Liability.** All directors and officers of the Corporation in exercising their powers and discharging their duties shall act honestly and in good faith with a view to the best interests of the Corporation and exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. Subject to the foregoing, no director or officer shall be liable for the acts, omissions, failures, neglects or defaults of any other director, officer or employee, or for any loss, damage or expense happening to the Corporation through the insufficiency or deficiency of title to any property acquired for or on behalf of the Corporation, or for the insufficiency or deficiency of any security in or upon which any of the moneys of the Corporation shall be invested, or for any loss or damage arising from the bankruptcy, insolvency or tortious acts of any person with whom any of the moneys, securities or effects of the Corporation shall be deposited, or for any loss occasioned by any error of judgment or oversight on the part of such director or officer, or for any other loss, damage or misfortune which shall happen in the execution of the duties of office or in relation thereto; provided that nothing herein shall relieve any director or officer from the duty to act in accordance with the Act and the regulations thereunder or from liability for any breach thereof.

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9.04 **Indemnity of Directors and Officers.** Subject to the limitations contained in the Act but without limit to the right of the Corporation to indemnify any person under the Act or otherwise, to the full extent permitted by the Act, the Corporation shall indemnify a director or officer of the Corporation, a former director or officer of the Corporation or a person who acts or acted at the Corporation's request as a director or officer of a body corporate of which the Corporation is or was a shareholder or creditor (or a person who undertakes or has undertaken any liability on behalf of the Corporation or at the Corporation's request on behalf of any such body corporate), and such director or officer's heirs and legal representatives, against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by such director or officer in respect of any civil, criminal or administrative action or proceeding to which such director or officer is made a party by reason of being or having been a director or officer of such Corporation or body corporate (or by reason of having undertaken such liability); and the Corporation shall with the approval of a court indemnify a person in respect of an action by or on behalf of the Corporation or body corporate to produce a judgment in its favour, to which such person is made a party by reason of being or having been a director or an officer of the Corporation or body corporate, against all costs, charges and expenses reasonably incurred by such director or officer in connection with such action if in each case such director or officer:

- (a) acted honestly and in good faith with a view to the best interests of the Corporation; and
- (b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, had reasonable grounds for believing that his or her conduct was lawful.

Notwithstanding the foregoing, the Corporation shall, without requiring the approval of a court, indemnify any person referred to above, in respect of an action by or on behalf of the Corporation or body corporate to procure a judgment in its favour who has been substantially successful on the merits in the defence of any civil, criminal or administrative action or proceeding to which such person is made a party by reason of being or having been a director or officer of the Corporation or body corporate, against all costs, charges and expenses reasonably incurred by such person in respect of such action or proceeding, provided that such person has satisfied the appropriate conditions referred to in (a) and (b) above.

9.05 **Insurance.** Subject to the limitations contained in the Act, the Corporation may purchase and maintain insurance for the benefit of any person referred to in Article 9.03 as the board may from time to time determine.

9.06 **Indemnities Not Limiting.** The provisions of this Article 9 shall be in addition to and not in substitution for any rights, immunities and protections to which any person referred to in Article 9.03 is otherwise entitled.

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**ARTICLE 10  
GENERAL**

10.01 **Corporate Seal.** The Corporation may have one or more different corporate seals, which seals may be adopted or changed from time to time by the board, on which the name of the Corporation may appear in one or more language forms as set out in its articles.

10.02 **Financial Year.** Until changed by the board, the financial year of the Corporation shall end on December 31 of each year.

**ARTICLE 11  
REPEAL**

11.01 **Repeal.** Upon this by-law coming into force, each of By-Law No. 1, 2 and 3 of the Corporation are repealed. However, such repeal shall not affect the previous operation of such by-laws or affect the validity of any act done or right, privilege, obligation or liability acquired or incurred under the validity of any contract or agreement made pursuant to such by-laws prior to their repeal. All officers and persons acting under such repealed by-laws shall continue to act as if appointed under the provisions of this by-law and all resolutions of the shareholders or board with continuing effect passed under such repealed by-laws shall continue good and valid, until amended or repealed, except to the extent inconsistent with this by-law.

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**INDENTURE**

**by and among**

**ALGONQUIN POWER & UTILITIES CORP.**

**as the Issuer**

**AND**

**AMERICAN STOCK TRANSFER & TRUST COMPANY, LLC**

**as the U.S. Trustee**

**AND**

**AST TRUST COMPANY (CANADA)**

**as the Canadian Co-Trustee**

**Dated as of October 17, 2018**

**SUBORDINATED DEBT SECURITIES**

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CERTAIN SECTIONS OF THIS INDENTURE RELATING TO SECTIONS 310 THROUGH 318, INCLUSIVE, OF THE TRUST INDENTURE ACT OF 1939, AS AMENDED:

<b>Trust Indenture Act Section</b>		<b>Indenture Section</b>
Section 310	(a)(1)	6.9
	(a)(2)	6.9
	(a)(3)	6.9
	(a)(4)	Not Applicable
	(a)(5)	6.9
	(b)	6.8
Section 311		6.10
	(a)	6.13
	(b)	6.13
Section 312	(a)	7.1
		7.2
	(b)	7.2
Section 313	(c)	7.2
	(a)	7.3
	(b)	7.3
	(c)	7.3
	(d)	7.3
Section 314	(a)	7.4
	(a)(4)	1.2
		10.5
	(b)	Not Applicable
	(c)(1)	1.2
	(c)(2)	1.2
	(c)(3)	Not Applicable
	(d)	Not Applicable
	(e)	1.2
	Section 315	(a)
(b)		6.2
(c)		6.1
(d)		6.1
(e)		5.14
Section 316	(a)	1.1
	(a)(1)(A)	5.12
	(a)(1)(B)	5.13
	(a)(2)	Not Applicable
	(b)	5.8
Section 317	(c)	1.4
	(a)(1)	5.3
	(a)(2)	5.4
Section 318	(b)	10.4
	(a)	1.7

Note: This reconciliation and tie shall not, for any purpose, be deemed to be a part of this Indenture.

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**INDENTURE**, dated as of October 17, 2018, by and among (i) ALGONQUIN POWER & UTILITIES CORP., a corporation duly organized and existing under the laws of Canada (herein called the “**Corporation**”), having its principal office at 354 Davis Road, Oakville, Ontario L6J 2X1, (ii) AMERICAN STOCK TRANSFER & TRUST COMPANY, LLC, as the United States trustee, paying agent, registrar and transfer agent (herein called the “**U.S. Trustee**”) and (iii) AST TRUST COMPANY (CANADA), as the Canadian trustee (herein called the “**Canadian Co-Trustee**”). The U.S. Trustee and the Canadian Co-Trustee are each also individually referred to in this Indenture as a “**Trustee**” and collectively, as the “**Trustees**”.

## **RECITALS OF THE CORPORATION**

The Corporation has duly authorized the execution and delivery of this Indenture to provide for the issuance from time to time of its unsecured subordinated debentures, notes or other evidences of indebtedness (herein called the “**Securities**”), to be issued in one or more series as in this Indenture provided.

All things necessary to make this Indenture a valid agreement of the Corporation, in accordance with its terms, have been done.

### **NOW THEREFORE, THIS INDENTURE WITNESSETH:**

For and in consideration of the premises and the purchase of the Securities by the Holders thereof, it is mutually agreed, for the equal and proportionate benefit of all Holders of the Securities or of series thereof, as follows:

## **ARTICLE 1**

### **DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION**

#### **1.1 Definitions**

For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

- (1) the terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular;
- (2) all other terms used herein which are defined in the Trust Indenture Act, either directly or by reference therein, have the meanings assigned to them therein;

(3) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles, and, except as otherwise herein expressly provided, the term “generally accepted accounting principles” with respect to any computation required or permitted hereunder shall mean (i) such accounting principles which are recognized as being generally accepted in the United States, if the Corporation is then preparing its financial statements in accordance with such principles, (ii) international financial reporting standards as issued by the International Accounting Standards Board, if the Corporation is then preparing its financial statements in accordance with such principles or (iii) accounting principles which are recognized as being generally accepted in Canada, if the Corporation is then preparing its financial statements in accordance with such principles;

- (4) “including” means including, without limitation;
- (5) unless the context otherwise requires, any reference to an “Article” or a “Section” refers to an Article or a Section, as the case may be, of this Indenture; and
- (6) the words “herein” “hereof” and “hereunder” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision.

“**Act**” when used with respect to any Holder, has the meaning specified in Section 1.4.

“**Additional Amounts**” has the meaning specified in Section 10.2.

“**Additional Securities**” has the meaning specified in Section 3.3.

“**Affiliate**” means, with respect to any specified Person, any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, “**control**” means, when used with respect to any specified Person, the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “**controlling**” and “**controlled**” have meanings correlative to the foregoing.

“**Applicable Procedures**” means, with respect to any transaction involving a Global Security or beneficial interest therein, the rules and procedures of the Depository, Euroclear and Clearstream, in each case, to the extent applicable to such transaction and as in effect from time to time.

“**Authenticating Agent**” means any Person authorized by the U.S. Trustee pursuant to Section 6.14 to act on behalf of the U.S. Trustee to authenticate Securities of one or more series.

“**Authorized Denomination**” has the meaning specified in Section 3.2.

“**Authorized Officers**” has the meaning specified in Section 1.5.

“**Board of Directors**” means the Corporation’s board of directors or any committee thereof duly authorized to act on behalf of such board of directors.

“**Board Resolution**” means a copy of a resolution certified by an officer of the Corporation to have been duly adopted by the applicable Board of Directors and to be in full force and effect on the date of such certification, and delivered to the U.S. Trustee.

“**Business Day**” means a day other than (i) a Saturday or a Sunday, (ii) a day on which banking institutions in New York City, New York or Toronto, Ontario are authorized or obligated by law or executive order to remain closed or (iii) a day on which the Corporate Trust Office of a Trustee is closed for business.

“**Canadian Co-Trustee**” means the Person named as the “Canadian Co-Trustee” in the first paragraph of this Indenture until a successor Canadian Co-Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter shall mean or include each Person who is then a Canadian Co-Trustee hereunder, unless there has ceased to be a Canadian Co-Trustee under this Indenture.

“**Canadian Trust Indenture Legislation**” means, at any time, statutory provisions relating to trust indentures and the rights, duties and obligations of trustees under trust indentures and of bodies corporate issuing or guaranteeing debt obligations under trust indentures to the extent that such provisions are at such time in force and applicable to this Indenture, and at the date of this Indenture includes the applicable provisions of the *Loan and Trust Corporations Act* (Ontario), the *Trust and Loan Companies Act* (Canada) and the *Canada Business Corporations Act* and any statute that may be substituted therefor, as from time to time amended, and any other statute of Canada or a province thereof, including the regulations under any such statute.

“**Change in Tax Law**” has the meaning specified in Section 11.7.

“**Clearstream**” means Clearstream Banking, S.A, or its successor.

“**Commission**” means the United States Securities and Exchange Commission, as from time to time constituted, created under the Exchange Act, or, if at any time after the execution of this Indenture such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body performing such duties at such time.

“**Company Request**” or “**Company Order**” means a written request or order signed in the name of the Corporation by any one officer or director of the Corporation, and delivered to the U.S. Trustee.

“**Corporate Trust Office**” means the office of a Trustee designated by such Trustee at which at any particular time its corporate trust business shall be administered, which office on the date hereof is located at 6201 15th Avenue, Brooklyn, NY 11219 in the case of the U.S. Trustee, and at 2001, boul. Robert-Bourassa, Bureau 1600, Montreal, QC H3A 2A, in the case of the Canadian Co-Trustee.

“**Corporation**” means the Person named as the “**Corporation**” in the first paragraph of this Indenture until a successor Person shall have become such pursuant to the applicable provisions of this Indenture, and thereafter shall mean such successor Person.

“**corporation**” includes corporations, associations, companies, limited liability companies, unlimited liability companies, joint-stock companies and business trusts.

“**Covenant Defeasance**” has the meaning specified in Section 12.3.

“**Currency**” means any currency or currencies, composite currency or currency unit or currency units issued by the government of one or more countries or by any recognized confederation or association of such governments.

“**Custodian**” means the custodian appointed by DTC, or any successor Person thereto, with respect to any Global Security, and shall initially be the U.S. Trustee.

“**Defaulted Interest**” has the meaning specified in Section 3.8.

“**Defeasance**” has the meaning specified in Section 12.2.

“**Definitive Security**” means a certificated Security registered in the name of the Holder thereof and issued in accordance with Section 3.6 and substantially in a form as shall be established by or pursuant to a Board Resolution of the Corporation or in one or more indentures supplemental hereto.

“**Depository**” means, with respect to Securities of any series issuable in whole or in part in the form of one or more Global Securities, a clearing agency registered under the Exchange Act that is designated to act as Depository for such Securities as contemplated by Section 3.1.

“**DTC**” means The Depository Trust Company, or its successor.

“**Euroclear**” means Euroclear Bank, S.A./N.V., as operator of the Euroclear system, or its successor.

“**Event of Default**” has the meaning specified in Section 5.1.

“**Exchange Act**” means the United States Securities Exchange Act of 1934 and any statute successor thereto, in each case, as amended from time to time.

“**Expiration Date**” has the meaning specified in Section 1.4.

“**First Currency**” has the meaning specified in Section 1.16.

“**Global Security**” means a Security that evidences all or part of the Securities of any series which is issued to a Depository or a nominee thereof for such series in accordance with Section 3.1(20).

“**Government Obligation**” means (1) any security which is (i) a direct obligation of the United States of America or the government which issued the foreign Currency in which the applicable Securities referred to in Section 4.1 or Article 12, as applicable, are payable, for the payment of which its full faith and credit is pledged or (ii) an obligation of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America or such government which issued the foreign Currency in which the applicable Securities are payable, the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America or such other government, which, in either of subclause (1)(i) or (1)(ii), is not callable or redeemable at the option of the issuer thereof, and (2) any depositary receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act) as custodian with respect to any Government Obligation which is specified in clause (1) above and held by such bank for the account of the holder of such depositary receipt, or with respect to any specific payment of principal of or interest on any Government Obligation which is so specified and held, provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depositary receipt from any amount received by the custodian in respect of the Government Obligation or the specific payment of principal or interest evidenced by such depositary receipt.

“**Holder**” means a Person in whose name a Security is registered in the Register.

“**Indenture**” means this instrument as originally executed and as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof, including, for all purposes of this instrument and any such supplemental indenture, the provisions of the Trust Indenture Act that are deemed to be a part of and govern this instrument and any such supplemental indenture, respectively. The term “**Indenture**” shall also include the terms of particular series of Securities established as contemplated by Section 3.1.

“**Instructions**” has the meaning specified in Section 1.5.

“**interest**” means, when used with respect to an Original Issue Discount Security which by its terms bears interest only after Maturity, interest payable after Maturity at the rate prescribed in such Original Issue Discount Security.

“**Interest Payment Date**” means, when used with respect to any Security, the Stated Maturity of an installment of interest on such Security.

“**Judgment Currency**” has the meaning specified in Section 1.15.

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

“**Minimum Authorized Denomination**” has the meaning specified in Section 3.2.

“**MJDS**” means the U.S./Canada Multijurisdictional Disclosure System adopted by the Commission and Canadian securities regulators.

“**Notice of Default**” means a written notice of the kind specified in Section 5.1(3).

“**Officer’s Certificate**” means a certificate signed by any officer of the Corporation and delivered to the U.S. Trustee on behalf of the Corporation without personal liability.

“**Opinion of Counsel**” means a written opinion of counsel, who may be counsel for the Corporation or other counsel, including an employee of the Corporation, who shall be reasonably acceptable to the U.S. Trustee.

“**Original Issue Discount Security**” means any Security which provides for an amount less than the principal amount thereof to be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 5.2.

“**Original Securities**” has the meaning specified in Section 3.3.

“**Other Currency**” has the meaning specified in Section 1.16.

“**Outstanding**” means, when used with respect to Securities, as of the date of determination, all Securities theretofore authenticated and delivered under this Indenture, except:

(1) Securities theretofore cancelled by the U.S. Trustee or delivered to the U.S. Trustee for cancellation;

(2) Securities, or portions thereof, for whose payment or redemption the necessary amount of money or money’s worth has been theretofore deposited with the U.S. Trustee or any Paying Agent, other than the Corporation, in trust or set aside and segregated in trust by the Corporation (if the Corporation shall act as its own Paying Agent) for the Holders of such Securities; provided that, if such Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the U.S. Trustee has been made; and

(3) Securities as to which Defeasance has been effected pursuant to Section 12.2, provided, however, that in determining whether the Holders of the requisite principal amount of the Outstanding Securities have given, made or taken any request, demand, authorization, direction, notice, consent, waiver or other action hereunder as of any date, (i) the principal amount of an Original Issue Discount Security which shall be deemed to be Outstanding for such purpose shall be equal to the amount of the principal thereof which would be, or shall have been declared to be, due and payable as of such date upon acceleration of the Maturity thereof to such date pursuant to Section 5.2, (ii) if, as of such date, the principal amount payable at the Stated Maturity of a Security is not determinable, the principal amount of such Security which shall be deemed to be Outstanding shall be the amount as specified or determined as contemplated by Section 3.1, (iii) the principal amount of a Security denominated in one or more foreign Currencies which shall be deemed to be Outstanding shall be the U.S. dollar equivalent, determined as of such date in the manner provided as contemplated by Section 3.1, of the principal amount of such Security (or, in the case of a Security described in Clause (i) or (ii) above, of the amount determined as provided in such Clause), and (iv) Securities owned by the Corporation or any other obligor upon the Securities or any Affiliate of the Corporation or of such other obligor, whether of record or beneficially, shall be disregarded and deemed not to be Outstanding, except that, in determining whether a Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent, waiver or other action, only Securities which such Trustee actually knows to be so owned shall be so disregarded. Securities so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the U.S. Trustee the pledgee’s right so to act with respect to such Securities and that the pledgee is not the Corporation or any other obligor upon the Securities or any Affiliate of the Corporation or of such other obligor.

“**Paying Agent**” means the U.S. Trustee and any other Person authorized by the Corporation to pay the principal of, or any premium, Additional Amounts or interest on, any Securities on behalf of the Corporation.

“**Periodic Offering**” means an offering of Securities of a series from time to time the specific terms of which Securities, including the rate or rates of interest or formula for determining the rate or rates of interest thereon, if any, the Stated Maturity or Maturities thereof and the redemption provisions, if any, with respect thereto, are to be determined by the Corporation upon the issuance of such Securities.

“**Person**” means any individual, corporation, partnership, limited liability company, unlimited liability company or corporation, joint venture, trust, unincorporated organization or government or any agency or political subdivision thereof.

“**Place of Payment**” means, when used with respect to the Securities of any series, the place or places where the principal of, and any premium, Additional Amounts and interest on, the Securities of that series are payable as specified as contemplated by Section 3.1.

“**Predecessor Security**” means, with respect to a particular Security, every previous Security evidencing all or a portion of the same debt as that evidenced by such particular Security; and, for the purposes of this definition, any Security authenticated and delivered under Section 3.7 in exchange for or in lieu of a mutilated, destroyed, lost or stolen Security shall be deemed to evidence the same debt as such mutilated, destroyed, lost or stolen Security.

“**Privacy Laws**” has the meaning specified in Section 6.17.

“**rate(s) of exchange**” has the meaning specified in Section 1.15.

“**Redemption Date**” means, when used with respect to any Security to be redeemed, the date fixed for such redemption by or pursuant to this Indenture.

“**Redemption Price**” means, when used with respect to any Security to be redeemed, the price at which it is to be redeemed pursuant to this Indenture.

“**Register**” and “**Registrar**” have the respective meanings specified in Section 3.5.

“**Regular Record Date**” means, with respect to the interest payable on any Interest Payment Date on the Securities of any series, the date specified for that purpose as contemplated by Section 3.1.

“**Relevant Taxing Jurisdiction**” has the meaning specified in Section 10.2.

“**Required Currency**” has the meaning specified in Section 1.15.

“**Responsible Officer**” means, when used with respect to either Trustee, an officer of such Trustee in its Corporate Trust Office having direct responsibility for the administration of this Indenture, and also, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of such officer’s knowledge of, and familiarity with, the particular subject.

“**Securities**” has the meaning stated in the first recital of this Indenture and more particularly means any Securities authenticated and delivered under this Indenture.

“**Securities Act**” means the United States Securities Act of 1933 and any statute successor thereto, in each case, as amended from time to time.

“**Special Record Date**” means, with respect to the payment of any Defaulted Interest on the Securities of any series, a date fixed by the U.S. Trustee pursuant to Section 3.8.

“**Stated Maturity**” means, when used with respect to any Security or any installment of principal thereof or interest thereon, the date specified in such Security as the date on which the principal of such Security or such installment of principal or interest is due and payable, in the case of such principal, as such date may be advanced or extended as provided pursuant to the terms of such Security and this Indenture.

“**Taxes**” has the meaning specified in Section 10.2.

“**Tax Redemption Date**” has the meaning specified in Section 11.7.

“**Trust Indenture Act**” means the United States Trust Indenture Act of 1939 as in force at the date of this Indenture; provided, however, that in the event the United States Trust Indenture Act of 1939 is amended after such date, it shall mean, to the extent required by any such amendment, the United States Trust Indenture Act of 1939 as so amended.

“**Trust Indenture Legislation**” means the Trust Indenture Act and, if there is at the relevant time a Canadian Co-Trustee hereunder, the Canadian Trust Indenture Legislation.

“**Trustee**” or “**Trustees**” means the Person named as the “**U.S. Trustee**” and the “**Canadian Co-Trustee**” in the first paragraph of this instrument until a successor of either Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter shall mean or include each Person who is then a Trustee hereunder. If the Canadian Co-Trustee resigns or is removed and, pursuant to Section 6.10, the Corporation is not required to appoint a successor Trustee to the Canadian Co-Trustee, then “**Trustee**”, “**Trustees**” and any reference to “**the Trustees**” shall mean the U.S. Trustee.

“**U.S. Trustee**” means the Person named as the “**U.S. Trustee**” in the first paragraph of this instrument until a successor U.S. Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter shall mean or include each Person who is then a U.S. Trustee hereunder.

“**Writing**” has the meaning specified in Section 6.18.

## 1.2 Compliance Certificates and Opinions

Upon any application or request by the Corporation to either Trustee to take any action under any provision of this Indenture, the Corporation shall furnish to the applicable Trustee such certificates and opinions as may be required under the Trust Indenture Legislation. Each such certificate or opinion shall be given in the form of an Officer’s Certificate, if to be given by an officer of the Corporation or an Opinion of Counsel, if to be given by counsel, and shall comply with the requirements of the Trust Indenture Legislation and any other requirements set forth in this Indenture.

Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture shall include:

- (1) a statement that the individual signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;
- (2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;
- (3) a statement that, in the opinion of such individual, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been complied with; and
- (4) a statement as to whether, in the opinion of such individual, such condition or covenant has been complied with.

1.3 Form of Documents Delivered to Trustees

In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of an officer of the Corporation may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to the matters upon which his or her certificate or opinion is based are erroneous. Any such certificate or Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Corporation stating that the information with respect to such factual matters is in the possession of the Corporation unless such counsel knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to such matters are erroneous.

Any certificate or opinion of an officer of the Corporation may be based, insofar as it relates to accounting matters, upon a certificate or opinion of, or representations by, an accountant or firm of accountants, unless such officer knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to the accounting matters upon which such certificate or opinion may be based are erroneous.

Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

Whenever, subsequent to the receipt by either Trustee of any Board Resolution, Officer's Certificate, Opinion of Counsel or other document or instrument, a clerical, typographical or other inadvertent or unintentional error or omission shall be discovered therein, a new document or instrument may be substituted therefor in corrected form with the same force and effect as if originally filed in the corrected form and, irrespective of the date or dates of the actual execution and delivery thereof, such substitute document or instrument shall be deemed to have been executed and delivered as of the date or dates required with respect to the document or instrument for which it is substituted. Anything in this Indenture to the contrary notwithstanding, if any such corrective document or instrument indicates that action has been taken by or at the request of the Corporation which could not have been taken had the original document or instrument not contained such error or omission, the action so taken shall not be invalidated or otherwise rendered ineffective but shall be and remain in full force and effect, except to the extent that such action was a result of wilful misconduct or bad faith. Without limiting the generality of the foregoing, any Securities issued under the authority of such defective document or instrument shall nevertheless be the valid obligations of the Corporation entitled to the benefits of this Indenture equally and ratably with all other Outstanding Securities, except as aforesaid.

#### 1.4 Acts of Holders: Record Dates

Any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by this Indenture to be given, made or taken by Holders of the Outstanding Securities of all series or one or more series, as the case may be, may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument is, or instruments are, delivered to a Trustee and, where it is hereby expressly required, to the Corporation. Such instrument or instruments, and the action embodied therein and evidenced thereby, are herein sometimes referred to as the "Act" of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and, subject to Section 6.1, conclusive in favor of the Trustees, the Corporation, if made in the manner provided in this Section 1.4.

The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by a certificate of a notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him or her the execution thereof. Where such execution is by a signer acting in a capacity other than his or her individual capacity, such certificate or affidavit shall also constitute sufficient proof of his or her authority. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner which a Trustee deems sufficient.

The ownership of Securities held by any Person, and the date of holding the same, shall be proved by the Register.

Any request, demand, authorization, direction, notice, consent, waiver or other Act of the Holder of any Security shall bind every future Holder of the same Security and the Holder of every Security issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done, omitted or suffered to be done by the Trustees or the Corporation in reliance thereon, whether or not notation of such action is made upon such Security.

The Corporation may set any day as a record date for the purpose of determining the Holders of Outstanding Securities of all series or one or more series, as the case may be, entitled to give, make or take any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by this Indenture to be given, made or taken by Holders of Securities of such series; provided that the Corporation may not set a record date for, and the provisions of this paragraph shall not apply with respect to, the giving or making of any notice, declaration, request or direction referred to in the next paragraph. If any record date is set pursuant to this paragraph, the Holders of Outstanding Securities of the relevant series' on such record date, and no other Holders, shall be entitled to take or revoke the relevant action, whether or not such Holders remain Holders after such record date; provided that no such action shall be effective hereunder unless taken on or prior to the applicable Expiration Date by Holders of the requisite principal amount of Outstanding Securities of such series' on such record date. Nothing in this paragraph shall be construed to prevent the Corporation from setting a new record date for any action for which a record date has previously been set pursuant to this paragraph, whereupon the record date previously set shall automatically and with no action by any Person be cancelled and of no effect, and nothing in this paragraph shall be construed to render ineffective any action taken by Holders of the requisite principal amount of Outstanding Securities of the relevant series' on the date such action is taken. Promptly after any record date is set pursuant to this paragraph, the Corporation, at its own expense, shall cause notice of such record date, the proposed action by Holders and the applicable Expiration Date to be given to the U.S. Trustee in writing in the manner set forth in Section 1.5 and to each Holder of Securities of the relevant series' in the manner set forth in Section 1.6.

The U.S. Trustee may set any day as a record date for the purpose of determining the Holders of Outstanding Securities of all series or one or more series, as the case may be, entitled to join in the giving or making of (i) any Notice of Default, (ii) any declaration of acceleration referred to in Section 5.2, (iii) any request to institute proceedings referred to in Section 5.7(2) or (iv) any direction referred to in Section 5.12, in each case, with respect to Securities of all series or one or more series, as the case may be. If any record date is set pursuant to this paragraph, the Holders of Outstanding Securities of the relevant series' on such record date, and no other Holders, shall be entitled to join in such notice, declaration, request or direction or to revoke the same, whether or not such Holders remain Holders after such record date; provided that no such action shall be effective hereunder unless taken on or prior to the applicable Expiration Date by Holders of the requisite principal amount of Outstanding Securities of such series' on such record date. Nothing in this paragraph shall be construed to prevent the U.S. Trustee from setting a new record date for any action for which a record date has previously been set pursuant to this paragraph, whereupon the record date previously set shall automatically and with no action by any Person be cancelled and of no effect, and nothing in this paragraph shall be construed to render ineffective any action taken by Holders of the requisite principal amount of Outstanding Securities of the relevant series' on the date such action is taken. Promptly after any record date is set pursuant to this paragraph, the U.S. Trustee, at the Corporation's expense, shall cause notice of such record date, the proposed action by Holders and the applicable Expiration Date to be sent to the Corporation in writing in the manner set forth in Section 1.5 and to each Holder of Securities of the relevant series' in the manner set forth in Section 1.6.

With respect to any record date set pursuant to this Section 1.4, the party hereto which sets such record date may designate any day as the applicable "**Expiration Date**" and from time to time may change such Expiration Date to any earlier or later day; provided that no such change shall be effective unless notice of such proposed new Expiration Date is given in writing to (i) in the case of a record date set by the Corporation, the U.S. Trustee and (ii) in the case of a record date set by the U.S. Trustee, the Corporation to each Holder of Securities of the relevant series' in the manner set forth in Section 1.6, on or prior to the applicable existing Expiration Date. If an Expiration Date is not designated with respect to any record date set pursuant to this Section 1.4, the party hereto which set such record date shall be deemed to have initially designated the 180th day after such record date as the Expiration Date with respect thereto, subject to its right to change the Expiration Date as provided in this paragraph. Notwithstanding the foregoing, no Expiration Date shall be later than the 180th day after the applicable record date.

Without limiting the foregoing, a Holder entitled hereunder to take any action hereunder with regard to any particular Security may do so with regard to all or any part of the principal amount of such Security or by one or more duly appointed agents, each of which may do so pursuant to such appointment with regard to all or any part of such principal amount.

1.5 Notices, Etc., to the U.S. Trustee and the Corporation

Any request, demand, authorization, direction, notice, consent, waiver or Act of Holders or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with:

(1) the U.S. Trustee by any Holder or the Corporation shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing to or with the U.S. Trustee at its Corporate Trust Office, Attention: Legal Department, with a copy to the Canadian Co-Trustee (which delivery shall not constitute notice herein), or

(2) the Corporation by the U.S. Trustee or by any Holder shall be sufficient for every purpose hereunder, unless otherwise herein expressly provided, if in writing and mailed, first-class postage prepaid, or sent by overnight courier, to the Corporation addressed to it at its principal office at 354 Davis Road, Oakville, Ontario L6J 2X1, Attention: Chief Financial Officer, or at any other address previously furnished in writing to the U.S. Trustee by the Corporation.

The U.S. Trustee shall have the right to accept and act upon instructions, including funds transfer instructions given pursuant to this Indenture and delivered using electronic means ("**Instructions**"); provided, however, that the Corporation shall provide to the U.S. Trustee an incumbency certificate listing officers with the authority to provide such Instructions on behalf of the Corporation (the "**Authorized Officers**") and containing specimen signatures of such Authorized Officers, which incumbency certificate shall be amended by the Corporation whenever a person is to be added or deleted from the listing. If the Corporation elects to give Instructions to the U.S. Trustee using electronic means and the U.S. Trustee in its discretion elects to act upon such Instructions, the U.S. Trustee's understanding of such Instructions shall be deemed controlling. The Corporation understands and agrees that the U.S. Trustee cannot determine the identity of the actual sender of such Instructions and that the U.S. Trustee may conclusively presume that directions that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided to the U.S. Trustee have been sent by such Authorized Officer. The Corporation shall be responsible for ensuring that only Authorized Officers transmit such Instructions to the U.S. Trustee and that the Corporation and all Authorized Officers are solely responsible to safeguard the use and confidentiality of applicable user and authorization codes, passwords and authentication keys upon receipt by the Corporation. The U.S. Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the U.S. Trustee's reliance upon, and compliance with, such Instructions notwithstanding that such directions may conflict or be inconsistent with a subsequent written instruction. The Corporation agrees: (i) to assume all risks arising out of the use of electronic means to submit Instructions to the U.S. Trustee, including the risk of the U.S. Trustee acting on unauthorized Instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to the U.S. Trustee and that there may be more secure methods of transmitting Instructions than the method(s) selected by the Corporation; (iii) that the security procedures, if any, to be followed in connection with its transmission of Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the U.S. Trustee immediately upon learning of any compromise or unauthorized use of the security procedures.

1.6 Notice to Holders; Waiver

Where this Indenture provides for notice to Holders of any event by the Corporation or the U.S. Trustee, such notice shall be sufficiently given, unless otherwise herein expressly provided, if in writing and mailed, first-class postage prepaid, or sent by overnight courier, to each Holder affected by such event, at his or her address as it appears in the Register, or sent electronically through the Applicable Procedures of the Depositary, not later than the latest date, if any, and not earlier than the earliest date, if any, prescribed for the giving of such notice. In any case where notice to Holders is given by mail, courier or sent electronically, neither the failure to mail, courier or send such notice, nor any defect in any notice so mailed, couriered or sent, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders. Upon the occurrence of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give such notice by mail, by courier or by electronic transmission, then such notification as shall be made with the approval of the U.S. Trustee (not to be unreasonably withheld, conditioned or delayed) shall constitute a sufficient notification for every purpose hereunder.

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

1.7 Conflict with Trust Indenture Legislation

If any provision hereof limits, qualifies or conflicts with a provision of the Trust Indenture Legislation which is applicable to this Indenture and/or which is required thereunder to be a part of and govern this Indenture, the Trust Indenture Legislation provision shall control. If any provision of this Indenture modifies or excludes any provision of the Trust Indenture Legislation which may be so modified or excluded, the latter provision shall be deemed to apply to this Indenture as so modified or to be excluded, as the case may be.

1.8 Effect of Headings and Table of Contents

The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

1.9 Successors and Assigns

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

1.10 Separability Clause

In case any provision in this Indenture or in any of the Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

1.11 Benefits of Indenture

Nothing in this Indenture or in the Securities, express or implied, shall give to any Person, other than the parties hereto, any Authenticating Agent, any Paying Agent, any Registrar and their successors hereunder and the Holders, any benefit or any legal or equitable right, remedy or claim under this Indenture.

1.12 Governing Law; Waiver of Trial by Jury

This Indenture and the Securities shall be governed by and construed in accordance with the laws of the State of New York, without regard to conflicts of laws principles thereof. This Indenture is subject to the provisions of the Trust Indenture Legislation that are required to be part of this Indenture and shall, to the extent applicable, be governed by such provisions. Notwithstanding the preceding sentence of this Section 1.12, the exercise, performance or discharge by the Canadian Co-Trustee of any of its rights, powers, duties or responsibilities hereunder shall be construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

Each of the Corporation, the Trustees and any Holder by its acceptance of any Securities irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of, or relating to, this Indenture, the Securities or the transactions contemplated hereby.

1.13 Consent to Jurisdiction and Service of Process

The Corporation submits to the non-exclusive jurisdiction of any New York State or federal court sitting in New York City over any suit, action or proceeding arising out of or relating to this Indenture or any Security. The Corporation irrevocably waives, to the fullest extent permitted by law, any objection that it may have to the laying of the venue of any such suit, action or proceeding brought in such a court and any claim that any such suit, action or proceeding brought in such a court has been brought in an inconvenient forum. The Corporation agrees that final judgment in any such suit, action or proceeding brought in such a court shall be conclusive and binding upon it and may be enforced in the courts of Canada, or any other courts to the jurisdiction of which the Corporation is subject, by a suit upon such judgment, provided that service of process is effected upon the Corporation in the manner specified in the following paragraph or as otherwise permitted by law; provided, however, that the Corporation does not waive, and the foregoing provisions of this sentence shall not constitute or be deemed to constitute a waiver of, (i) any right to appeal any such judgment, to seek any stay or otherwise to seek reconsideration or review of any such judgment or (ii) any stay of execution or levy pending an appeal from, or a suit, action or proceeding for reconsideration or review of, any such judgment.

As long as any Securities remain outstanding, the Corporation will at all times have an authorized agent in the Borough of Manhattan, New York City upon whom process may be served in any legal action or proceeding arising out of or relating to the Indenture or any Security. Service of process upon such agent and written notice of such service mailed or delivered to the Corporation shall, to the extent permitted by law, be deemed in every respect effective service of process upon the Corporation in any such legal action or proceeding. The Corporation shall appoint in one or more indentures supplemental hereto, on or prior to the issuance of Securities of any series, an agent for such purpose with respect to such series, and covenants and agrees that service of process in any such legal action or proceeding may be made upon it at the office of such agent at the address provided, or at such other address or to such other agent in the Borough of Manhattan, New York City as the Corporation may designate in a written notice to the U.S. Trustee.

The Corporation hereby consents to process being served in any suit, action or proceeding of the nature referred to in the preceding paragraphs by service upon such agent together with the mailing of a copy thereof by registered or certified mail, postage prepaid, return receipt requested, to the Corporation's principal office at 354 Davis Road, Oakville, Ontario L6J 2X1, Attention: Chief Financial Officer, or to any other address of which the Corporation shall have given written notice to the U.S. Trustee. The Corporation irrevocably waives, to the fullest extent permitted by law, all claim or error by reason of any such service, but does not waive any right to assert lack of subject matter jurisdiction, and agrees that such service (i) shall be deemed in every respect effective service of process upon the Corporation in any such suit, action or proceeding and (ii) shall, to the fullest extent permitted by law, be taken and held to be valid personal service upon and personal delivery to the Corporation.

Nothing in this Section 1.13 shall affect the right of the Trustees or any Holder to serve process in any manner permitted by law or limit the right of the Trustees to bring proceedings against the Corporation in the courts of any jurisdiction or jurisdictions.

1.14 Legal Holidays

In any case where any Interest Payment Date, Redemption Date, Stated Maturity or Maturity of any Security shall not be a Business Day at any Place of Payment, then, notwithstanding any other provision of this Indenture or of any of the Securities other than a provision in the Securities of any series which specifically states that such provision shall apply in lieu of this Section 1.14, payment of principal, premium, Additional Amounts or interest need not be made at such Place of Payment on such date, but may be made on the next succeeding Business Day at such Place of Payment with the same force and effect as if made on the Interest Payment Date, Redemption Date, or at the Stated Maturity or Maturity, as applicable; provided that, unless specified in respect of the Securities of any series pursuant to Section 3.1, no interest shall accrue for the period from and after such Interest Payment Date, Redemption Date, Stated Maturity or Maturity, as the case may be.

1.15 Conversion of Currency.

The Corporation covenants and agrees that the following provisions shall apply to conversion of Currency in the case of the Securities and this Indenture to the fullest extent permitted by applicable law:

(1)

(A) If for the purposes of obtaining judgment in, or enforcing the judgment of, any court in any country, it becomes necessary to convert into any Currency (the “**Judgment Currency**”) an amount due or contingently due in the Currency of the Securities of any series and this Indenture (the “**Required Currency**”), then the conversion shall be made at the rate of exchange prevailing on the Business Day before the day on which a final judgment which is not appealable or is not appealed is given or the order of enforcement is made, as the case may be, unless a court shall otherwise determine; and

(B) If there is a change in the rate of exchange prevailing between the Business Day before the day on which the judgment referred to in (A) above is given or an order of enforcement is made, as the case may be, or such other date as a court shall determine, and the date of receipt of the amount due, the Corporation shall pay such additional, or, as the case may be, such lesser, amount, if any, as may be necessary so that the amount paid in the Judgment Currency when converted at the rate of exchange prevailing on the date of receipt will produce the amount in the Required Currency originally due.

(2) In the event of the winding-up of the Corporation at any time while any amount or damages owing under the Securities and this Indenture, or any judgment or order rendered in respect thereof, shall remain outstanding, the Corporation shall indemnify and hold the Holders of Securities and the Trustees harmless against any deficiency arising or resulting from any variation in rates of exchange between (A) the date as of which the equivalent of the amount in the Required Currency due or contingently due under the Securities and this Indenture, other than under this Section 1.15(2), is calculated for the purposes of such winding-up and (B) the final date for the filing of proofs of claim in such winding-up. For the purpose of this Section 1.15(2), the final date for the filing of proofs of claim in the winding-up of the Corporation shall be the date fixed by the liquidator or otherwise in accordance with the relevant provisions of applicable law as being the latest practicable date as at which liabilities of the Corporation may be ascertained for such winding-up prior to payment by the liquidator or otherwise in respect thereto.

(3) The obligations contained in Sections 1.15(1)(B) and 1.15(2) shall constitute separate and independent obligations of the Corporation from its other obligations under the Securities and this Indenture, shall give rise to separate and independent causes of action against the Corporation, shall apply irrespective of any waiver or extension granted by any Holder or the applicable Trustee from time to time and shall continue in full force and effect notwithstanding any judgment or order or the filing of any proof of claim in the winding-up of the Corporation for a liquidated sum in respect of amounts due hereunder, other than under Section 1.15(2) above, or under any such judgment or order. Any such deficiency as aforesaid shall be deemed to constitute a loss suffered by the Holders or the applicable Trustee, as the case may be, and no proof or evidence of any actual loss shall be required by the Corporation or the applicable liquidator. In the case of Section 1.15(2) above, the amount of such deficiency shall not be deemed to be reduced by any variation in rates of exchange occurring between the said final date and the date of any liquidating distribution.

(4) The term “**rate(s) of exchange**” shall mean: (i) in the case that either the Required Currency or the Judgment Currency is in Canadian dollars, the Bank of Canada daily average exchange rate for purchases on the relevant date of the Required Currency with the Judgment Currency, as reported on the “**Daily Exchange Rates**” page of the website of the Bank of Canada, or by such other means of reporting the Bank of Canada daily average exchange rate as may be agreed upon by each of the parties to this Indenture; or (ii) in all other cases, the rate at which in accordance with normal banking procedures the U.S. Trustee could purchase, in the City of New York, the Required Currency with the Judgment Currency on the relevant date, and, in each case, includes any premiums and costs of exchange payable.

1.16 Currency Equivalent

Except as otherwise provided in this Indenture, for purposes of the construction of the terms of this Indenture or of the Securities, in the event that any amount is stated herein in the Currency of one nation or bloc (the “**First Currency**”), as of any date such amount shall also be deemed to represent the amount in the Currency of any other relevant nation or bloc (the “**Other Currency**”) which is required to purchase such amount in the First Currency (i) at the Bank of Canada daily average exchange rate as reported on the “**Daily Exchange Rates**” page of the website of the Bank of Canada, or by such other means of reporting the Bank of Canada daily average exchange rate as may be agreed upon by each of the parties to this Indenture or (ii) if the Bank of Canada daily average exchange rate is not available, in accordance with normal banking procedures in the City of New York, in each case, on the date of determination.

1.17 No Security Interest Created

Unless expressly provided for in one or more supplements to this Indenture entered into pursuant to the terms of this Indenture, nothing in this Indenture or the Securities shall be construed to constitute a security interest under the *Uniform Commercial Code*, *Personal Property Security Act* or similar legislation, as now or hereafter enacted and in effect in any jurisdiction where property of the Corporation is or may be located.

1.18 Currency

Unless otherwise indicated in this Indenture, any Security or any indenture supplemental hereto, all amounts referenced herein are in U.S. dollars.

**ARTICLE 2**  
**SECURITY FORMS**

2.1 Forms Generally

The Securities of each series shall be in substantially the form as shall be established by or pursuant to a Board Resolution of the Corporation or in one or more indentures supplemental hereto, in each case with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture, and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may be required to comply with law or with the rules of any securities exchange or Depository therefor or as may, consistently herewith, be determined by the officer executing such Securities, as evidenced by their execution thereof. If the form of Securities of any series is established by action taken pursuant to a Board Resolution, a copy of an appropriate record of such action shall be certified by an officer of the Corporation and delivered to the U.S. Trustee at or prior to the delivery of the Company Order contemplated by Section 3.3 for the authentication and delivery of such Securities.

Any Definitive Securities shall be printed, lithographed or engraved on steel engraved borders or may be produced in any other manner, all as determined by the officers executing such Securities, as evidenced by their execution of such Securities.

Any Global Security will represent such of the Outstanding Securities as will be specified therein and each Global Security shall provide that it represents the aggregate principal amount of outstanding Securities from time to time endorsed thereon and that the aggregate principal amount of outstanding Securities represented thereby may from time to time be reduced or increased, as appropriate, to reflect exchanges, payments and redemptions. Any endorsement of a Global Security to reflect the amount of any increase or decrease in the aggregate principal amount represented thereby will be made by the U.S. Trustee or the Custodian, at the direction of the U.S. Trustee, in accordance with instructions given by the Holder thereof. Any Global Security may also be produced in any other manner, all as determined by the officers executing such Securities, as evidenced by their execution of such Securities.

2.2 Form of Legends

Each Global Security will bear a legend in substantially the following form and/or such other legends as the Depository may require from time to time:

“THIS GLOBAL SECURITY IS HELD BY THE DEPOSITARY (AS DEFINED IN THE INDENTURE GOVERNING THIS SECURITY) OR ITS NOMINEE IN CUSTODY FOR THE BENEFIT OF THE BENEFICIAL OWNERS HEREOF, AND IS NOT TRANSFERABLE TO ANY PERSON UNDER ANY CIRCUMSTANCES EXCEPT THAT (1) THIS GLOBAL SECURITY MAY BE EXCHANGED IN WHOLE BUT NOT IN PART PURSUANT TO SECTION 3.6(1) OF THE INDENTURE, (2) THIS GLOBAL SECURITY MAY BE DELIVERED TO THE U.S. TRUSTEE FOR CANCELLATION PURSUANT TO SECTION 3.10 OF THE INDENTURE AND (3) THIS GLOBAL SECURITY MAY BE TRANSFERRED TO A SUCCESSOR DEPOSITARY WITH THE PRIOR WRITTEN CONSENT OF THE CORPORATION. UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR SECURITIES IN DEFINITIVE FORM, THIS SECURITY MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY. UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY TRUST COMPANY (“DTC”), TO THE CORPORATION OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR SUCH OTHER ENTITY AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.”

If Securities are sold to purchasers in Canada on a “private placement” basis exempt from the prospectus requirements of applicable securities laws, the applicable Global Security or Definitive Security shall bear the legend in substantially the following form:

“IN CANADA, UNLESS PERMITTED UNDER SECURITIES LEGISLATION, THE HOLDER OF THIS SECURITY MUST NOT TRADE THE SECURITY BEFORE [DATE WHICH IS FOUR MONTHS AND ONE DAY FROM THE DATE OF ISSUANCE OF APPLICABLE SECURITY TO BE INSERTED HERE].”

2.3 Form of U.S. Trustee’s Certificate of Authentication.

Subject to Section 6.14, the U.S. Trustee’s certificates of authentication shall be in substantially the following form:

This is one of the Securities of the series designated therein referred to in the within-mentioned Indenture.

**AMERICAN STOCK TRANSFER & TRUST COMPANY, LLC**, as U.S.  
Trustee

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

**ARTICLE 3**  
**THE SECURITIES**

3.1 Amount Unlimited: Issuable in Series

The aggregate principal amount of Securities which may be authenticated and delivered under this Indenture is unlimited.

The Securities may be issued in one or more series and each such series shall rank *pari passu* with each other series without discrimination, preference or priority, regardless of the actual date of issue, and with all other unsecured and subordinated indebtedness of the Corporation. There shall be established in one or more Board Resolutions of the Corporation or pursuant to authority granted by one or more Board Resolutions of the Corporation and, subject to Section 3.3, set forth below, or determined in the manner provided in, an Officer's Certificate of the Corporation, or established in one or more indentures supplemental hereto, prior to the issuance of Securities of any series, any or all of the following, as applicable:

- (1) the title of the Securities of the series, which shall distinguish the Securities of the series from Securities of any other series;
- (2) any limit upon the aggregate principal amount of the Securities of the series which may be authenticated and delivered under this Indenture, except for Securities authenticated and delivered upon registration of, transfer of, or in exchange for, or in lieu of, other Securities of the series pursuant to Section 3.4, 3.6, 3.7, 9.6 or 11.6 and except for any Securities which, pursuant to Section 3.3, are deemed never to have been authenticated and delivered hereunder;
- (3) the Person to whom any interest on a Security of the series shall be payable, if other than the Person in whose name that Security, or any Predecessor Security, is registered at the close of business on the Regular Record Date for such interest;
- (4) the date or dates on which the principal of any Securities of the series is payable or the method by which such date shall be determined and the right, if any, to shorten or extend the date on which the principal of any Securities of the series is payable and the conditions to any such change;
- (5) the rate or rates at which any Securities of the series shall bear interest, if any, or the method by which such rate or rates shall be determined, the date or dates from which any such interest shall accrue, or the method by which such date or dates shall be determined, the Interest Payment Dates on which any such interest shall be payable, the manner, if any, of determination of such Interest Payment Dates and the Regular Record Date, if any, for any such interest payable on any Interest Payment Date;
- (6) the right, if any, to extend the interest payment periods and the terms of such extension or extensions;
- (7) the place or places, if any, other than the Corporate Trust Office, where the principal of, and any premium, Additional Amounts and interest on, any Securities of the series shall be payable and whether, if acceptable to the U.S. Trustee, any principal of such Securities shall be payable without presentation or surrender thereof;
- (8) the period or periods within which, or the date or dates on which, the price or prices at which and the other terms and conditions upon which any Securities of the series may be redeemed, in whole or in part, at the option of the Corporation;
- (9) the obligation, if any, of the Corporation to redeem or purchase any Securities of the series pursuant to any sinking fund, purchase fund or analogous provisions or at the option of the Holder thereof, the period or periods within which, the price or prices at which and the other terms and conditions upon which any Securities of the series shall be redeemed or purchased, in whole or in part, pursuant to such obligation and any other provisions related to such redemption or purchase pursuant to such sinking fund or otherwise;

- (10) if other than denominations of \$2,000 and any integral multiple of \$1,000 in excess thereof, the denominations in which any Securities of the series shall be issuable;
- (11) if other than the U.S. Trustee, the identity of each Registrar, Authenticating Agent and/or Paying Agent;
- (12) if the amount of principal of, or any premium, Additional Amounts or interest on, any Securities of the series may be determined with reference to an index or pursuant to a formula, the manner in which such amounts shall be determined;
- (13) if other than the Currency of the United States of America, the Currency in which the principal of, or any premium, Additional Amounts or interest on, any Securities of the series shall be payable and the manner of determining the equivalent thereof in the Currency of the United States of America for any purpose, including for purposes of the definition of Outstanding in Section 1.1;
- (14) if the principal of, or any premium, Additional Amounts or interest on, any Securities of the series is to be payable, at the election of the Corporation or the Holder thereof, in one or more Currencies other than the Currency of the United States of America, the Currency in which the principal of, or any premium, Additional Amounts or interest on, such Securities as to which such election is made shall be payable, the periods within which and the terms and conditions upon which such election is to be made and the amount so payable (or the manner in which such amount shall be determined);
- (15) if other than the entire principal amount thereof, the portion of the principal amount of any Securities of the series which shall be payable upon declaration of acceleration of the Maturity thereof pursuant to Section 5.2;
- (16) whether, under what circumstances and the Currency in which the Corporation will pay Additional Amounts as contemplated by Section 10.2 on the Securities of the series to any Holder, including any modification to the definition of such term, in respect of any tax, assessment or governmental charge and, if so, whether the Corporation will have the option to redeem such Securities rather than pay such Additional Amounts, and the terms of any such option;
- (17) the application, if any, of Section 10.2 and all or any portion of Article 11 to the Securities of that series;
- (18) if the principal amount payable at the Stated Maturity of any Securities of the series will not be determinable as of any one or more dates prior to the Stated Maturity, the amount which shall be deemed to be the principal amount of such Securities as of any such date for any purpose thereunder or hereunder, including the principal amount thereof which shall be due and payable upon any Maturity other than the Stated Maturity or which shall be deemed to be Outstanding as of any date prior to the Stated Maturity, or, in any such case, the manner in which such amount deemed to be the principal amount shall be determined;

(19) if either or both of Sections 12.2 and 12.3 will not apply to any Securities of the series;

(20) if applicable, that any Securities of the series shall be issuable in whole or in part in the form of one or more Global Securities and, in such case, the respective Depositary or Depositaries for such Global Securities, the form of any legend or legends which shall be borne by any such Global Security in addition to or in lieu of that set forth in Section 2.2 and any circumstances in addition to or in lieu of those set forth in Section 3.6 in which Global Securities may be exchanged for Definitive Securities;

(21) any transfer and exchange provisions of the Securities of the series;

(22) any addition, modification or deletion of any Events of Default or covenants provided with respect to any Securities of the series and any change in the right of the U.S. Trustee or the requisite Holders of such Securities to declare the principal amount thereof due and payable pursuant to Section 5.2;

(23) any addition, modification or deletion in the covenants set forth in Article 10 which applies to Securities of the series;

(24) the terms, if any, upon which the Securities of the series may be convertible into or exchanged for any of the Corporation's common shares, preferred shares, other debt securities or warrants for common shares, preferred shares or other securities of any kind and the terms and conditions upon which such conversion or exchange shall be effected, including the initial conversion or exchange price or rate, the conversion or exchange period and any other additional provisions;

(25) the subordination terms of the Securities of the series; and

(26) any other terms of the series, which may amend, supplement, modify or delete any provision of this Indenture insofar as it applies to such series, which are not inconsistent with the requirements of the Trust Indenture Legislation.

All Securities of any one series shall be substantially identical except, subject to Section 3.3, as may otherwise be provided in or pursuant to the Board Resolution referred to above and set forth or determined in the manner provided in the Officer's Certificate referred to above or in any applicable indenture supplemental hereto. Not all Securities of any one series need to be issued on the same date, and, unless otherwise provided, a series may be reopened for issuances of additional Securities of such series without the consent of any Holders thereof.

If any of the terms of the series are established by action taken pursuant to one or more Board Resolutions, such Board Resolutions, or a certified copy thereof, shall be delivered to the U.S. Trustee at or prior to the delivery of the Officer's Certificate setting forth the terms or the manner of determining the terms of the series.

With respect to Securities of a series offered in a Periodic Offering, the Board Resolution or action taken pursuant thereto, Officer's Certificate or supplemental indenture referred to above may provide general terms or parameters for Securities of such series and provide either that the specific terms of particular Securities of such series shall be specified in a Company Order or that such terms shall be determined by the Corporation in accordance with other procedures specified in a Company Order as contemplated by the third paragraph of Section 3.3.

Notwithstanding Section 3.1(2) and unless otherwise expressly provided with respect to a series of Securities, the aggregate principal amount of a series of Securities may be increased and additional Securities of such series may be issued up to the maximum aggregate principal amount authorized, if any, with respect to such series as increased without the consent of any Holder thereof.

### 3.2 Denominations

The Securities of each series shall be issuable only in such denominations as shall be specified as contemplated by Section 3.1. In the absence of any such specified denomination with respect to the Securities of any series, the Securities of such series, shall be issuable in denominations of \$2,000 (the "**Minimum Authorized Denomination**") and any integral multiple of \$1,000 in excess thereof (the "**Authorized Denomination**").

### 3.3 Execution, Authentication, Delivery and Dating

The Securities shall be executed on behalf of the Corporation by any two officers of the Corporation. The signatures of any two officers of the Corporation on the Securities may be manual or by facsimile or electronic signature and may be imprinted or otherwise reproduced on the Securities.

Securities bearing the manual or facsimile or electronic signature of any two individuals each of whom was at any time a proper officer of the Corporation shall bind the Corporation, notwithstanding that such individual has ceased to hold such office(s) prior to the authentication and delivery of such Securities or did not hold such offices at the date of such Securities.

At any time and from time to time after the execution and delivery of this Indenture, the Corporation may deliver Securities of any series executed by the Corporation to the U.S. Trustee for authentication, together with a Company Order for the authentication and delivery of such Securities, and the U.S. Trustee, in accordance with the Company Order, shall authenticate and deliver such Securities, provided, however, that in the case of Securities offered in a Periodic Offering, the U.S. Trustee shall authenticate and deliver such Securities from time to time in accordance with such other procedures, including the receipt by the U.S. Trustee of oral or electronic instructions from the Corporation or its duly authorized agents, promptly confirmed in writing, acceptable to the U.S. Trustee as may be specified by or pursuant to a Company Order delivered to the U.S. Trustee prior to the time of the first authentication of Securities of such series.

If the form or terms of the Securities of the series have been established by or pursuant to one or more Board Resolutions of the Corporation as permitted by Sections 2.1 and 3.1, in authenticating such Securities, and accepting the additional responsibilities under this Indenture in relation to such Securities, the U.S. Trustee shall be entitled to receive, and, subject to Section 6.1, shall be fully protected in relying upon, an Opinion of Counsel of the Corporation stating:

(1) if the form of such Securities has been established by or pursuant to one or more Board Resolutions of the Corporation as permitted by Section 2.1, that such form has been established in conformity with the provisions of this Indenture;

(2) if the terms of such Securities have been, or in the case of Securities of a series offered in a Periodic Offering, will be, established by or pursuant to Board Resolutions of the Corporation as permitted by Section 3.1, that such terms have been, or in the case of Securities of a series offered in a Periodic Offering, will be, established in conformity with the provisions of this Indenture, subject, in the case of Securities of a series offered in a Periodic Offering, to any conditions specified in such Opinion of Counsel of the Corporation; and

(3) that such Securities, when authenticated and delivered by the U.S. Trustee and issued by the Corporation in the manner and subject to any conditions specified in such Opinion of Counsel of the Corporation, will constitute valid and legally binding obligations of the Corporation enforceable in accordance with their terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights, to general equity principles and to such other qualifications as such counsel shall conclude do not materially affect the rights of Holders of such Securities.

If such form or terms have been so established, the U.S. Trustee shall not be required to authenticate such Securities if the issue of such Securities pursuant to this Indenture will affect the U.S. Trustee's own rights, duties or immunities under the Securities and this Indenture or otherwise in a manner which is not reasonably acceptable to the U.S. Trustee.

Notwithstanding the provisions of Section 3.1 and of the preceding paragraph, if all Securities of a series are not to be originally issued at one time, it shall not be necessary to deliver the Officer's Certificate otherwise required pursuant to Section 3.1 or the Company Order and Opinion of Counsel otherwise required pursuant to such preceding paragraph at or prior to the authentication of each Security of such series if such documents are delivered at or prior to the authentication upon original issuance of the first Security of such series to be issued.

With respect to Securities of a series offered in a Periodic Offering, the U.S. Trustee may rely, as to the authorization by the Corporation of any of such Securities, the form and terms thereof and the legality, validity, binding effect and enforceability thereof, upon the Opinion of Counsel of the Corporation and the other documents delivered pursuant to Sections 2.1 and 3.1 and this Section 3.3, as applicable, in connection with the first authentication of Securities of such series.

Each Security shall be dated the date of its authentication or, in the case of the original issuance of the Securities of a series, the date of original issuance of such Securities. If any additional Securities of a series ("**Additional Securities**") issued after the date of original issuance of Securities of such series ("**Original Securities**") are not fungible with such Original Securities for U.S. or Canadian federal income tax purposes, then such Additional Securities shall be issued with a separate CUSIP or ISIN number so that they are distinguishable from the Original Securities.

No Security shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Security a certificate of authentication substantially in the form provided for herein executed by the U.S. Trustee by manual signature of an authorized signatory, and such certificate upon any Security shall be conclusive evidence, and the only evidence, that such Security has been duly authenticated and delivered hereunder and is entitled to the benefits of this Indenture. Notwithstanding the foregoing, if any Security shall have been authenticated and delivered hereunder but never issued and sold by the Corporation, and the Corporation shall deliver such Security to the U.S. Trustee for cancellation as provided in Section 3.10, stating that such Security has never been issued and sold by the Corporation, for all purposes of this Indenture such Security shall be deemed never to have been authenticated and delivered hereunder and shall never be entitled to the benefits of this Indenture.

#### 3.4 Temporary Securities

Pending the preparation of definitive Securities of any series, the Corporation may execute, and upon Company Order the U.S. Trustee shall authenticate and deliver, temporary Securities which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Securities in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the officer executing such Securities may determine, as evidenced by such officer's execution of such Securities.

If temporary Securities of any series are issued, the Corporation will cause the definitive Securities of that series to be prepared without unreasonable delay. After the preparation of definitive Securities of such series, the temporary Securities of such series shall be exchangeable for definitive Securities of such series upon surrender of the temporary Securities of such series at the office or agency of the Corporation in a Place of Payment for that series, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Securities of any series, the Corporation shall execute and the U.S. Trustee shall authenticate and deliver in exchange therefore one or more definitive Securities of the same series, of any authorized denominations and of like tenor and aggregate principal amount. Until so exchanged, the temporary Securities of any series shall in all respects be entitled to the same benefits under this Indenture as definitive Securities of such series and tenor.

#### 3.5 Registrar and Paying Agent

The U.S. Trustee is hereby appointed a security registrar for the purpose of registering Securities and transfers of Securities as herein provided (each such registrar, a "**Registrar**") and the Corporation hereby designates the Corporate Trust Office of the U.S. Trustee as the office where Securities may be presented for payment. The Registrar will keep a register (the "**Register**") of the Securities and of their transfer and exchange. The Corporation may appoint one or more co-registrars and one or more additional paying agents. The Corporation may change any Registrar or Paying Agent without notice to any Holder. The Corporation will notify the U.S. Trustee in writing of the name and address of any Paying Agent or Registrar not a party to this Indenture. If the Corporation fails to appoint or maintain another entity as Registrar or Paying Agent, the U.S. Trustee shall act as such. The Corporation or any of its subsidiaries may act as Registrar or Paying Agent.

The Corporation hereby appoints DTC to act as the initial Depository with respect to the Global Securities.

The Corporation hereby appoints the U.S. Trustee to act as the initial Registrar, Paying Agent and Custodian with respect to the Global Securities.

3.6 Transfer and Exchange of Global Securities

(1) A Global Security may not be transferred except as a whole by the Depository to a nominee of the Depository, by a nominee of the Depository to the Depository or to another nominee of the Depository or by the Depository or any such nominee to a successor Depository or a nominee of such successor Depository. All Global Securities will be exchanged by the Corporation for Definitive Securities if:

(A) the Corporation delivers to the U.S. Trustee notice from the Depository that it is unwilling or unable to continue to act as Depository or that it is no longer a clearing agency registered under the Exchange Act and, in either case, a successor Depository is not appointed by the Corporation within 120 days after the date of such notice from the Depository;

(B) the Corporation in its sole discretion determines that the Global Securities, in whole but not in part, should be exchanged for Definitive Securities and delivers a written notice to such effect to the U.S. Trustee; or

(C) there has occurred and is continuing a default or Event of Default with respect to the Securities.

Upon the occurrence of either of the preceding events in subclause 3.6(1)(A) or 3.6(1)(B) above, Definitive Securities shall be issued in such names as the Depository shall instruct the U.S. Trustee. Global Securities also may be exchanged or replaced, in whole or in part, as provided in Section 3.7. Every Security authenticated and delivered, in exchange for, or in lieu of, a Global Security or any portion thereof, whether pursuant to this Section 3.6, Section 3.7, Section 9.6, Section 11.6 or otherwise, shall be authenticated and delivered in the form of, and shall be, a Global Security. A Global Security may not be exchanged for another Security other than as provided in this Section 3.6(1).

(2) To permit registrations of transfers and exchanges, the Corporation will execute and the U.S. Trustee will authenticate Global Securities and Definitive Securities upon receipt of an Authentication Order in accordance with Section 3.3 or at the Registrar's request.

(3) No service charge will be made to a Holder of a beneficial interest in a Global Security or to a Holder of a Definitive Security for any registration of transfer or exchange, but the Corporation and the U.S. Trustee may require payment of a sum sufficient to cover any transfer tax or similar governmental charge payable in connection therewith, other than any such transfer taxes or similar governmental charge payable upon exchange or transfer pursuant to Section 11.6.

(4) All Global Securities and Definitive Securities issued upon any registration of transfer or exchange of Global Securities or Definitive Securities will be the valid obligations of the Corporation, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Global Securities or Definitive Securities surrendered upon such registration of transfer or exchange.

(5) Neither the Registrar nor the Corporation will be required:

(A) to issue, to register the transfer of or to exchange any Securities during a period beginning at the opening of business five days before the day of any selection of Securities for redemption under Article 11 and ending at the close of business on the day of selection;

(B) to register the transfer of or to exchange any Security selected for redemption in whole or in part, except the unredeemed portion of any Security being redeemed in part; or

(C) to register the transfer of or to exchange a Security between a record date and the next succeeding interest payment date.

(6) Prior to due presentment for the registration of a transfer of any Security, the U.S. Trustee, any Authenticating Agent and the Corporation may deem and treat the Person in whose name any Security is registered as the absolute owner of such Security for the purpose of receiving payment of principal of and interest on such Securities and for all other purposes, and none of the U.S. Trustee, any Authenticating Agent or the Corporation shall be affected by notice to the contrary.

### 3.7 Mutilated, Destroyed, Lost and Stolen Securities

If any mutilated but otherwise identifiable Security is surrendered to the U.S. Trustee, the Corporation shall execute and the U.S. Trustee shall authenticate and deliver in exchange therefor a replacement Security of the same series and of like tenor and principal amount and evidencing the same indebtedness and bearing a number not contemporaneously outstanding.

If there shall be delivered to the Corporation and to the U.S. Trustee (i) evidence to their satisfaction of the destruction, loss or theft of any Security and (ii) such security or indemnity as may be required by them to save each of them and any agent of each of them harmless, then, in the absence of notice to the Corporation or the U.S. Trustee that such Security has been acquired by a "protected purchaser" (as defined in the *Uniform Commercial Code*), the Corporation shall execute and the U.S. Trustee shall authenticate and deliver, in lieu of any such destroyed, lost or stolen Security, a replacement Security of the same series and of like tenor and principal amount and evidencing the same indebtedness and bearing a number not contemporaneously outstanding.

Notwithstanding the provisions of the previous two paragraphs, in case any such mutilated, destroyed, lost or stolen Security has become or is about to become due and payable, the Corporation in its discretion may, instead of issuing a replacement Security, pay such Security.

Upon the issuance of any replacement Security under this Section 3.7, the Corporation may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses, including the fees and expenses of the U.S. Trustee, connected therewith.

Every replacement Security of any series issued pursuant to this Section 3.7 in lieu of any mutilated, destroyed, lost or stolen Security shall constitute an original additional contractual obligation of the Corporation, whether or not the mutilated, destroyed, lost or stolen Security shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities of that series duly issued hereunder.

The provisions of this Section 3.7, as amended or supplemented pursuant to Section 3.1 of this Indenture with respect to a particular series or generally, are exclusive and shall preclude, to the extent lawful, all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities.

3.8 Payment of Interest; Interest Rights Preserved

Except as otherwise provided as contemplated by Section 3.1 with respect to any series of Securities, interest on any Security which is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name that Security, or any Predecessor Security, is registered at the close of business on the Regular Record Date for such interest at the office or agency of the Corporation maintained for such purpose pursuant to Section 10.3.

Except as otherwise provided as contemplated by Section 3.1 with respect to any series of Securities, any interest on any Security of any series which is payable, but is not punctually paid or duly provided for, on any Interest Payment Date (herein called “**Defaulted Interest**”) shall forthwith cease to be payable to the Holder on the relevant Regular Record Date by virtue of having been such Holder, and such Defaulted Interest shall be paid by the Corporation, at its election in each case, as provided in subclause 3.8(1) or 3.8(2) below:

(1) The Corporation may elect to make payment of any Defaulted Interest to the Persons in whose names the Securities of such series, or their respective Predecessor Securities, are registered at the close of business on a Special Record Date for the payment of such Defaulted Interest, which shall be fixed in the following manner:

(A) the Corporation shall notify the U.S. Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Security of such series and the date of the proposed payment, and at the same time the Corporation shall deposit with the U.S. Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the U.S. Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest;

(B) thereupon the U.S. Trustee shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the U.S. Trustee of the notice of the proposed payment;

(C) the U.S. Trustee shall promptly notify the Corporation of such Special Record Date and, in the name and at the expense of the Corporation, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be given to each Holder of Securities of such series in the manner set forth in Section 1.6, not less than 10 days prior to such Special Record Date; and

(D) notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been so sent, such Defaulted Interest shall be paid to the Persons in whose names the Securities of such series, or their respective Predecessor Securities, are registered at the close of business on such Special Record Date and shall no longer be payable pursuant to the following subclause 3.8(2).

(2) The Corporation may make payment of any Defaulted Interest on the Securities of any series in any other lawful manner consistent with the requirements of any securities exchange, if any, on which such Securities may be listed, and upon such notice as may be required by such exchange, if, after notice given by the Corporation to the U.S. Trustee of the proposed payment pursuant to this subclause 3.8(2), such manner of payment shall be deemed practicable by the U.S. Trustee.

Subject to Section 3.6 and the foregoing provisions of this Section 3.8, each Security delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Security shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Security.

### 3.9 Persons Deemed Owners

Prior to due presentment of a Security for registration of transfer, the Corporation, the U.S. Trustee and any agent of the Corporation or the U.S. Trustee may treat the Person in whose name such Security is registered as the owner of such Security for the purpose of receiving payment of principal of, and any premium, Additional Amounts and, subject to Section 3.8, any interest on, such Security and for all other purposes whatsoever, whether or not such Security be overdue, and none of the Corporation, the U.S. Trustee or any agent of the Corporation or the U.S. Trustee shall be affected by notice to the contrary.

None of the Corporation, the Trustees or any agent of the Corporation or the Trustees shall have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interest of a Security in global form or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

Notwithstanding the foregoing, with respect to any Global Security, nothing herein shall prevent the Corporation, the U.S. Trustee or any agent of the Corporation or the U.S. Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depositary or its nominee, as a Holder, with respect to such Global Security or impair, as between such Depositary and owners of beneficial interests in such Global Security, the operation of customary practices governing the exercise of the rights of such Depositary or its nominee as Holder of such Global Security.

3.10 Cancellation

Except as otherwise contemplated by Section 3.1 with respect to any series of Securities, all Securities surrendered for payment, redemption, registration of transfer or exchange or for credit against any sinking fund payment shall, if surrendered to any Person other than the U.S. Trustee, be delivered to the U.S. Trustee and shall be promptly cancelled by it. The Corporation may at any time deliver to the U.S. Trustee for cancellation any Securities previously authenticated and delivered hereunder which the Corporation may have acquired in any manner whatsoever, and may deliver to the U.S. Trustee for cancellation any Securities previously authenticated hereunder which the Corporation has not issued and sold, and all Securities so delivered shall be promptly cancelled by the U.S. Trustee.

No Securities shall be authenticated in lieu of or in exchange for any Securities cancelled as provided in this Section 3.10, except as expressly permitted by this Indenture. All cancelled Securities held by the U.S. Trustee shall be disposed of by the U.S. Trustee in accordance with its customary practices.

3.11 Computation of Interest

Except as otherwise specified as contemplated by Section 3.1 for Securities of any series, interest on the Securities of each series shall be computed on the basis of a 360-day year of twelve 30-day months. For disclosure purposes under the *Interest Act* (Canada), whenever in this Indenture or any Securities issued hereunder interest at a specified rate is to be calculated on the basis of a period less than a calendar year, the yearly rate of interest to which such rate is equivalent is such rate multiplied by the actual number of days in the relevant calendar year and divided by the number of days in such period.

3.12 CUSIP Numbers, ISIN, etc.

The Corporation in issuing the Securities may use “CUSIP” numbers, “ISINs” and “Common Code” numbers, in each case, if then generally in use, and, if so, the U.S. Trustee shall use “CUSIP” numbers, “ISINs” and “Common Code” numbers in notices of redemption as a convenience to Holders; provided that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Securities, and any such redemption shall not be affected by any defect in or omission of such numbers. The Corporation shall notify the U.S. Trustee in writing of any change in any “CUSIP” numbers, “ISINs” or “Common Code” numbers applicable to the Securities.

**ARTICLE 4**  
**SATISFACTION AND DISCHARGE**

4.1 Satisfaction and Discharge

This Indenture shall upon Company Request cease to be of further effect with respect to any series of Securities specified in such Company Request, except as to any surviving rights of transfer or exchange of Securities herein expressly provided for, any right of Holders of Outstanding Securities to receive payments in respect of the principal of, or any premium, Additional Amounts or interest on, such Securities when such payments are due, and the rights of the Trustees with respect to regular payment and indemnity which also shall survive, and the Trustees, at the expense of the Corporation, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture as to such series, when:

(1) either:

(A) all Securities of such series theretofore authenticated and delivered, other than (i) Securities which have been mutilated, destroyed, lost or stolen and which have been replaced or paid as provided in Section 3.7 and (ii) Securities for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Corporation and thereafter repaid to the Corporation or discharged from such trust, as provided in Section 10.4, have been delivered to the U.S. Trustee for cancellation; or

(B) all Securities of such series not theretofore delivered to the U.S. Trustee for cancellation

(i) have become due and payable, or

(ii) will become due and payable at their Stated Maturity within one year, or

(iii) if redeemable at the option of the Corporation, are to be called for redemption within one year under arrangements satisfactory to the U.S. Trustee for the giving of notice of redemption by the U.S. Trustee in the name, and at the expense, of the Corporation, and the Corporation, in the case of subclause 4.1(1)(B)(i), 4.1(1)(B)(ii) or 4.1(1)(B)(iii) above, has deposited or caused to be deposited with the U.S. Trustee as trust funds in trust for the purpose: (I) money in an amount; (II) Government Obligations which through the scheduled payment of principal and interest in respect thereof in accordance with their terms will provide, not later than the due date of any payment, money in an amount; or (III) a combination thereof, sufficient, in the case of subclause (II) or (III), in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the U.S. Trustee, to pay and discharge, and which shall be applied by the U.S. Trustee to pay and discharge, the entire indebtedness on such Securities not theretofore delivered to the U.S. Trustee for cancellation, for principal and any premium, Additional Amounts and interest to the date of such deposit in the case of Securities which have become due and payable or to the Stated Maturity or Redemption Date, as the case may be;

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

(3) the Corporation has delivered to the U.S. Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent to the satisfaction and discharge of this Indenture have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture, each of the obligations of the Corporation to the Trustees under Section 6.7, the obligations of the U.S. Trustee to any Authenticating Agent under Section 6.14 and, if money shall have been deposited with the U.S. Trustee pursuant to subclause 4.1(1)(B), the obligations of the U.S. Trustee under Section 4.2 and the last paragraph of Section 10.4, shall survive.

#### 4.2 Application of Trust Money

Subject to the provisions of the last paragraph of Section 10.4, all money deposited with the U.S. Trustee pursuant to Section 4.1 shall be held in trust and applied by it, in accordance with the provisions of the Securities and this Indenture, to the payment, either directly or through any Paying Agent, including the Corporation acting as its own Paying Agent, as the U.S. Trustee may determine, to the Persons entitled thereto, of the principal and any premium, Additional Amounts and interest for whose payment such money has been deposited with the U.S. Trustee.

The Corporation shall pay and indemnify the U.S. Trustee against any tax, fee or other charge imposed on or assessed against the Government Obligations deposited pursuant to Section 4.1 or the principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of Outstanding Securities.

Notwithstanding anything in this Article 4 to the contrary, the U.S. Trustee shall deliver or pay to the Corporation from time to time upon Company Request any money or Government Obligations held by either of them as provided in Section 4.1 which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the U.S. Trustee (in case Government Obligations are held by the U.S. Trustee as provided in Section 4.1), are in excess of the amount thereof which would then be required to be deposited to effect the satisfaction and discharge of this Indenture.

### **ARTICLE 5 REMEDIES**

#### 5.1 Event of Default

“**Event of Default**” means, wherever used herein with respect to Securities of any series, any one of the following events, whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body, unless such event is inapplicable to a particular series or is specifically deleted or modified in or pursuant to a supplemental indenture, Board Resolution or Officer’s Certificate establishing the terms of such series pursuant to Section 3.1:

(1) default in the payment of any interest (including Additional Amounts) upon any Security of that series when it becomes due and payable, and continuance of such default for a period of 30 days; provided, however, that if the Corporation is permitted by the terms of the Securities of such series to defer the payment in question, the date on which such payment is due and payable shall be the date on which the Corporation is required to make payment following such deferral, if such deferral has been elected pursuant to the terms of the Securities; or

(2) default in the payment of the principal of, or any premium or Additional Amounts, if any, on any Security of that series at its Maturity; or

(3) default in the performance, or breach, of any covenant of the Corporation in this Indenture, other than a covenant or a default in whose performance or whose breach is elsewhere in this Section 5.1 specifically dealt with or which has expressly been included in this Indenture solely for the benefit of a series of Securities other than that series, and continuance of such default or breach for a period of 90 days after there has been given, by registered or certified mail, to the Corporation by either Trustee (with a copy to the other Trustee), or to the Corporation and the Trustees by the Holders of at least 25% in principal amount of the Outstanding Securities of that series a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a Notice of Default hereunder; or

(4) the entry by a court having jurisdiction in the premises of (A) a decree or order for relief in respect of the Corporation in an involuntary case or proceeding under the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada) or other applicable United States federal or state bankruptcy, insolvency, reorganization or other similar law or (B) a decree or order adjudging the Corporation a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Corporation under the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada) or other applicable United States federal or state law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Corporation or of any substantial part of the Corporation's property, or ordering the winding-up or liquidation of the Corporation's affairs, and the continuance of any such decree or order for relief or any such other decree or order unstayed and in effect for a period of 90 consecutive days; or

(5) the commencement by the Corporation of a voluntary case or proceeding under the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada) or other United States federal or state bankruptcy, insolvency, reorganization or other similar law or of any other case or proceeding to be adjudicated a bankrupt or insolvent, or the consent by it to the entry of a decree or order for relief in respect of the Corporation in an involuntary case or proceeding under the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada) or other applicable United States federal or state bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it, or the filing by it of a petition or answer or consent seeking reorganization or relief thereunder, or the consent by it to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Corporation or of any substantial part of the Corporation's property, or the making by the Corporation of an assignment for the benefit of creditors, or the admission by the Corporation in writing of the Corporation's inability to pay the Corporation's debts generally as they become due, or the authorization of any such action by the Board of Directors of the Corporation; or

(6) any other Event of Default provided with respect to Securities of that series.

5.2 Acceleration of Maturity; Rescission and Annulment

If an Event of Default (other than an Event of Default specified in Section 5.1(4) or 5.1(5)) with respect to Securities of any series at the time Outstanding occurs and is continuing, then, in every such case, the U.S. Trustee or the Holders of not less than 25% in principal amount of the Outstanding Securities of that series may declare the principal amount of all the Securities of that series, or, if any Securities of that series are Original Issue Discount Securities, such portion of the principal amount of such Securities as may be specified by the terms thereof, premium, Additional Amounts and any interest thereon to be due and payable immediately, by a notice in writing to the Corporation, and to the U.S. Trustee if given by Holders, and upon any such declaration, such principal amount or specified amount, premium, Additional Amounts and any interest thereon shall become immediately due and payable. If an Event of Default specified in Section 5.1(4) or 5.1(5) occurs and is continuing, the aggregate principal amount of all Securities of a series, premium, Additional Amounts and any interest thereon shall automatically, and without any declaration or other action on the part of the U.S. Trustee or any Holder, become immediately due and payable.

At any time after such a declaration of acceleration with respect to Securities of any series has been made and before a judgment or decree for payment of the money due has been obtained by the U.S. Trustee as hereinafter provided in this Article 5, the Event of Default giving rise to such declaration of acceleration shall, without further act, be deemed to have been waived, and such declaration and its consequences shall, without further act, be deemed to have been rescinded and annulled, if:

- (1) the Corporation has paid or deposited with the U.S. Trustee a sum sufficient to pay:
  - (A) all overdue interest on all Securities of that series;
  - (B) the principal of, and any premium and Additional Amounts on, any Securities of that series which have become due otherwise than by such declaration of acceleration and any interest thereon at the rate or rates prescribed therefor in such Securities;
  - (C) to the extent that payment of such interest is lawful, interest on overdue interest at the rate or rates prescribed therefor in such Securities; and
  - (D) all sums paid or advanced by the Trustees hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustees and their agents and counsels; and
- (2) all Events of Default with respect to Securities of that series or of all series, as the case may be, other than the non-payment of principal amount, premium, Additional Amounts or interest on Securities of that series or of all series, as the case may be, which have become due solely by such declaration of acceleration, have been cured or waived as provided in Section 5.13.

No such rescission shall affect any subsequent default or impair any right consequent thereon.

5.3 Collection of Indebtedness and Suits for Enforcement by Trustee

The Corporation covenants that if:

(1) default is made in the payment of any interest on any Security when such interest becomes due and payable and such default continues for a period of 30 days, or

(2) default is made in the payment of the principal of, or premium or Additional Amounts, if any, on any Security at the Maturity, then it will, upon demand of the U.S. Trustee, pay to it, for the benefit of the Holders of such Securities, the whole amount then due and payable on such Securities for principal and any premium, Additional Amounts and interest and, to the fullest extent that payment of such interest is legally enforceable, interest on any overdue principal, premium and Additional Amounts and on any overdue interest, at the rate or rates prescribed therefor in such Securities, and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of each of the Trustees and their agents and counsels.

If an Event of Default with respect to Securities of any series or of all series, as the case may be, occurs and is continuing, either Trustee may in its discretion proceed to protect and enforce the rights of the Trustees and the rights of the Holders of Securities of such series or of all series, as the case may be, by such appropriate judicial proceedings as such Trustee shall deem most effectual to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy.

5.4 Trustees May File Proofs of Claim

In case of any judicial proceeding relative to the Corporation or any other obligor upon the Securities, or the property or creditors of the Corporation or any other obligor under the Securities, the Trustees, irrespective of whether the principal of the Securities shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the U.S. Trustee shall have made any demand on the Corporation for the payment of overdue premium, Additional Amounts or interest, shall be entitled and empowered, by intervention in such proceeding or otherwise, to take any and all actions authorized under the Trust Indenture Legislation in order to have claims of the Holders and the Trustees allowed in any such proceeding. In particular, the U.S. Trustee shall be authorized to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same, and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Holder to make such payments to the U.S. Trustee and, in the event that the U.S. Trustee shall consent to the making of such payments directly to the Holders, to pay to the U.S. Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of each of the U.S. Trustee and its agents and counsels, and any other amounts due to either Trustee under Section 6.7.

No provision of this Indenture shall be deemed to authorize the Trustees to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Securities or the rights of any Holder thereof or to authorize the Trustees to vote in respect of the claim of any Holder in any such proceeding; provided, however, that the Trustees may, on behalf of the Holders, vote for the election of a trustee in bankruptcy or similar official and be a member of a creditors' or other similar committee.

5.5 Trustee May Enforce Claims Without Possession of Securities

All rights of action and claims under this Indenture or the Securities may be prosecuted and enforced by the Trustees, or either of them, without the possession of any of the Securities or the production thereof in any proceeding relating thereto, and any such proceeding instituted by either or both Trustees shall be brought in its or their own name as trustee(s) of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of each of the Trustees and their respective agents and counsel, be for the ratable benefit of the Holders of the Securities in respect of which such judgment has been recovered.

5.6 Application of Money Collected

Subject to Article XIV of this Indenture, any money collected by the U.S. Trustee pursuant to this Article 5 shall be applied in the following order, at the date or dates fixed by the U.S. Trustee and, in case of the distribution of such money on account of principal or any premium, Additional Amounts or interest, upon presentation of the Securities and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid: (1) first, to the payment of all amounts due to the Trustees under Section 6.7; (2) second, to the payment of the amounts then due and unpaid for principal of, and any premium, Additional Amounts and interest, including interest on interest, if any, on, the Securities in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on such Securities for principal and any premium, Additional Amounts and interest, respectively; and (3) third, to the payment of the balance, if any, to the Corporation or any other Person or Persons legally entitled thereto.

5.7 Limitation on Suits

No Holder of any Security of any series shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture or the Securities or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless:

- (1) such Holder has previously given written notice to a Trustee of a continuing Event of Default with respect to the Securities of that series;
- (2) the Holders of not less than a majority in principal amount of the Outstanding Securities of that series shall have made written request to such Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;
- (3) such Holder or Holders have offered to such Trustee indemnity reasonably satisfactory to it, against the costs, expenses and liabilities to be incurred in compliance with such request;
- (4) for 60 days after its receipt of such notice, request and offer of indemnity, such Trustee has failed to institute any such proceeding; and

(5) no direction inconsistent with such written request has been given to such Trustee during such 60-day period by the Holders of a majority in principal amount of the Outstanding Securities of that series;

it being understood and intended that no one or more of such Holders shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the rights of any other Holders of Outstanding Securities of such affected series, or to obtain or to seek to obtain priority or preference over any other of such Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all of such Holders of the Outstanding Securities of such affected series. For purposes of clarity, it is hereby understood and agreed that an Event of Default described in clause (1) or (2) of Section 5.1 with respect to the Securities of any series shall, for purposes of this Section 5.7 be deemed to affect only such series of Securities.

5.8 Unconditional Right of Holders to Receive Principal, Premium, Additional Amounts and Interest

Notwithstanding any other provision in this Indenture, the Holder of any Security shall have the right, which is absolute and unconditional, to receive payment of the principal of, and any premium and Additional Amounts and, subject to Section 3.8, interest on, such Security on the respective Stated Maturities expressed in such Security or, in the case of redemption, on the Redemption Date, and to institute suit for the enforcement of any such payment, and such rights shall not be impaired without the consent of such Holder.

5.9 Restoration of Rights and Remedies

If either Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to such Trustee or to such Holder, then and in every such case, subject to any determination in such proceeding, the Corporation, the Trustees and the Holders shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustees and the Holders shall continue as though no such proceeding had been instituted.

5.10 Rights and Remedies Cumulative

Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities in the last paragraph of Section 3.7, no right or remedy herein conferred upon or reserved to the Trustees or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

5.11 Delay or Omission Not Waiver

No delay or omission of the Trustees or of any Holder of any Securities to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article 5 or by law to the Trustees or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustees or by the Holders, as the case may be.

5.12 Control by Holders

The Holders of a majority in principal amount of the Outstanding Securities of any series shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to any Trustee, or exercising any trust or power conferred on any Trustee, with respect to the Securities of such series; provided that:

- (1) such direction shall not be in conflict with any rule of law or with this Indenture,
- (2) the Trustees may take any other action deemed proper by the Trustees which is consistent with such direction, and
- (3) subject to the provisions of Section 6.1, each of the Trustees shall have the right to decline to follow any such direction if such Trustee in good faith shall, by a Responsible Officer of such Trustee, determine that the proceeding so directed would involve the Trustee in personal liability.

5.13 Waiver of Past Defaults

Subject to Section 5.2, the Holders of not less than a majority in principal amount of the Outstanding Securities of any series with respect to which any default under the Indenture shall have occurred and be continuing may, on behalf of the Holders of all Securities of such series, waive such past default under the Indenture and its consequences, except a default:

- (1) in the payment of the principal of, or any premium, Additional Amounts or interest on, any Security of such series, or
- (2) in respect of a covenant or provision hereof which under Article 9 cannot be modified or amended without the consent of the Holder of each Outstanding Security of the series affected.

Upon any such waiver, such default shall cease to exist and be deemed not to have occurred, and any Event of Default arising therefrom shall be deemed to have been cured and not to have occurred, for every purpose of this Indenture with respect to the applicable Series; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon. For purposes of clarity, it is hereby understood and agreed that an Event of Default described in clause (1) or (2) of Section 5.1 with respect to the Securities of any series shall, for purposes of this Section 5.13, be deemed to affect only such series of Securities.

5.14 Undertaking for Costs

In any suit for the enforcement of any right or remedy under this Indenture, or in any suit against either or both of the Trustees for any action taken, suffered or omitted by it or them as a Trustee, a court may require any party litigant in such suit to file an undertaking to pay the costs of such suit, and may assess costs against any such party litigant, in the manner and to the extent provided in the Trust Indenture Legislation; provided that neither this Section 5.14 nor the Trust Indenture Legislation shall be deemed to authorize any court to require such an undertaking or to make such an assessment in any suit instituted by the Corporation or either or both Trustees.

5.15 Waiver of Stay or Extension Laws

The Corporation covenants, to the extent that it may lawfully do so, that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture, and the Corporation, to the extent that it may lawfully do so, hereby expressly waives all benefit or advantage of any such law and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustees, but will suffer and permit the execution of every such power as though no such law had been enacted.

**ARTICLE 6  
THE TRUSTEES**

6.1 Certain Duties and Responsibilities

(1) The duties and responsibilities of the Trustees shall be as provided by the Trust Indenture Legislation.

(2) Subject to clause (1) of this Section 6.1, in the event an Event of Default has occurred and is continuing with respect to a series of Securities of which a Responsible Officer of the U.S. Trustee (with a copy to a Responsible Officer of the Canadian Co-Trustee) has received written notification in accordance with the provisions of this Indenture, the U.S. Trustee will, with respect to the Securities of such series, exercise such of the rights and powers vested in it under this Indenture and use the same degree of care and skill in its exercise, that a prudent Person would exercise or use in the circumstances in the conduct of its own affairs.

(3) Except during the continuance of an Event of Default with respect to the Securities of any series:

(A) the Trustees undertake to perform such duties and only such duties as are specifically set forth in this Indenture and applicable to the respective Trustee and no implied covenants or obligations shall be read into this Indenture against the Trustees; and

(B) in the absence of bad faith on their part, the Trustees may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustees and conforming to the requirements of this Indenture. However, the Trustees shall examine such certificates and opinions to determine whether or not they conform to the requirements of this Indenture, but, for greater certainty, need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein, and shall be entitled to seek advice from legal counsel in relation thereto.

- (4) Each of the Trustees will not be relieved from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:
- (A) this Section 6.1(4) shall not be construed to limit the effect of Section 6.1(2);
  - (B) a Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it is proved that such Trustee was negligent in ascertaining the pertinent facts; and
  - (C) a Trustee shall not be liable with respect to any action it takes or omits to take with respect to Securities of any series in good faith in accordance with a direction received by it pursuant to Section 5.12.
- (5) The Trustees shall not be deemed to have notice or any actual knowledge of any matter, including defaults or Events of Default, unless written notice thereof is received by a Responsible Officer of the U.S. Trustee (with a copy to a Responsible Officer of the Canadian Co-Trustee) in accordance with this Indenture and such notice clearly references the Securities, the Corporation or this Indenture.
- (6) Every provision of this Indenture, as applicable, that in any way relates to the Trustees is subject to Section 6.1(2), Section 6.1(3), Section 6.1(4) and Section 6.1(7).
- (7) No provision of this Indenture shall require either of the Trustees to expend or risk its own funds or otherwise incur liability in the performance of any of its duties hereunder.
- (8) No provision of this Indenture shall require the Trustees to take or omit to take any action under this Indenture or take any action at the request or direction of Holders if it has grounds for believing that repayment of such funds is not assured to it or it does not receive an agreement in writing from such Holders for full indemnity and security satisfactory to it in its discretion against any loss, liability or expense which might be incurred by it in compliance with such request or direction nor shall the Trustees be required to do anything which is illegal or contrary to applicable laws or this Indenture. Neither Trustee shall be liable to the Holders if prevented or delayed in performing any of its obligations or discretionary functions under this Indenture by (i) any present or future law applicable to it, (ii) any governmental or regulatory authority or (iii) any circumstances beyond its control.
- (9) A Trustee shall not be liable for interest on any money received by it except as such Trustee may agree in writing with the Corporation.
- (10) Money held in trust by the U.S. Trustee need not be segregated from other funds except to the extent required by law.

(11) The Trustees will, save as expressly otherwise provided herein, have absolute and uncontrolled discretion as to the exercise or non-exercise of their functions and will not be responsible, save as expressly provided herein, for any loss, liability, cost, claim, action, demand, expense or inconvenience which may result from their exercise or non-exercise but, whenever the Trustees are under the provisions of this Indenture or the Securities bound to act at the request or direction of the Holders, the Trustees shall nevertheless not be so bound unless first indemnified or secured to their satisfaction against all actions, proceedings, claims and demands to which they may render themselves liable and all costs, charges, damages, expenses and liabilities which they may incur by so doing.

## 6.2 Notice of Defaults

If a default occurs hereunder with respect to Securities of any series, and a Responsible Officer of the U.S. Trustee has been provided with written notification of such default (with a copy to the Canadian Co-Trustee), the Trustees shall give the Holders of Securities of such series notice of such default as and to the extent provided by the Trust Indenture Legislation. For the purpose of Section 6.1 and this Section 6.2, the term “**default**” means any event which is, or after notice or lapse of time or both would become, an Event of Default with respect to Securities of such series.

## 6.3 Certain Rights of Trustees

Subject to the provisions of Section 6.1:

(1) the Trustees may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document believed by them to be genuine and to have been signed or presented by the proper party or parties;

(2) any request or direction of the Corporation mentioned herein shall be sufficiently evidenced by a Company Request or Company Order or as otherwise expressly provided herein, and any resolution of the Board of Directors of the Corporation shall be sufficiently evidenced by a Board Resolution of the Corporation;

(3) whenever in the administration of this Indenture the Trustees shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, each Trustee, unless other evidence be herein specifically prescribed, may, in the absence of bad faith on its part, rely upon an Officer’s Certificate;

(4) the Trustees may consult with counsel, an investment banker or an accountant of their selection and the advice of such counsel, investment banker or accountant or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by them hereunder in good faith and in reliance thereon;

(5) subject to the provisions of the Indenture relating to the duties of the Trustees in case an Event of Default occurs and is continuing, the Trustees shall be under no obligation to exercise any of the rights or powers vested in them by this Indenture at the request or direction of any of the Holders of Securities of any series pursuant to this Indenture, unless such Holders shall have offered to the Trustees security or indemnity, reasonably satisfactory to each, against the costs, expenses and liabilities which might be incurred by them in compliance with such request or direction;

(6) the Trustees shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Trustees, in their discretion, may make such further inquiry or investigation into such facts or matters as they may see fit, and, if the Trustees shall determine to make such further inquiry or investigation, they shall be entitled, at reasonable times previously notified to the Corporation, to examine the relevant books, records and premises of the Corporation, personally or by agent or attorney;

(7) the Trustees may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustees shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by either of them hereunder;

(8) in no event shall the Trustees be responsible or liable for special, indirect, incidental, punitive or consequential loss or damage of any kind whatsoever, including lost profits, even if the Trustees or either of them have been advised of the likelihood of such loss or damage and regardless of the form of action;

(9) in no event shall the Trustees be responsible or liable for any failure or delay in the performance of their obligations under this Indenture arising out of or caused by, directly or indirectly, forces beyond its reasonable control, including strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software or hardware) services;

(10) the permissive rights of the Trustees to take the actions permitted by this Indenture will not be construed as an obligation or duty to do so;

(11) prior to the occurrence of an Event of Default of which a Responsible Officer of a Trustee shall have actual knowledge, and after the curing of all such Events of Default which may have occurred, the duties and obligations of the Trustees shall be determined solely by the express provisions of this Indenture and the Trustees shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustees;

(12) the Trustees shall have no duty to inquire as to the performance of the Corporation with respect to the covenants contained herein. The Trustees may assume without inquiry in the absence of written notice to the contrary that the Corporation is duly complying with its obligations contained in this Indenture required to be performed and observed by it, and that no Default or Event of Default or other event which would require repayment of the Securities has occurred;

(13) either Trustee may request that the Corporation deliver an Officer's Certificate setting forth the names of the individuals and titles of officers authorized at such time to take specified actions pursuant to this Indenture, which Officer's Certificate may be signed by any Person authorized to sign an Officer's Certificate, including any Person specified as so authorized in any such certificate previously delivered and not superseded; and

(14) the Trustees shall not have any obligation or duty to monitor, determine or inquire as to compliance, and shall not be responsible or liable for compliance with restrictions on transfer, exchange, redemption, purchase or repurchase, as applicable, of minimum denominations imposed under this Indenture or under applicable law or regulation with respect to any transfer, exchange, redemption, purchase or repurchase, as applicable, of any interest in any Securities, but may in their sole discretion, choose to do so.

6.4 Not Responsible for Recitals or Issuance of Securities

The recitals contained herein and in the Securities, except a Trustee's certificate of authentication, shall be taken as the statements of the Corporation, and neither the Trustees nor any Authenticating Agent assumes any responsibility for their correctness. The Trustees make no representations as to the validity or sufficiency of this Indenture or of the Securities, except that each of the Trustees represents that it is duly authorized to execute and deliver this Indenture and perform its obligations hereunder. In addition, the U.S. Trustee represents and warrants that the statements made by it in a Statement of Eligibility on Form T-1 supplied to the Corporation are true and accurate, subject to the qualifications set forth therein. Neither the U.S. Trustee nor any Authenticating Agent shall be accountable for the use or application by the Corporation of Securities or the proceeds thereof.

6.5 May Hold Securities

Either Trustee, any Authenticating Agent, any Paying Agent, any Registrar or any other agent of the Corporation or of a Trustee, in its individual or any other capacity, may become the owner or pledgee of Securities and, subject to Sections 6.8 and 6.13, may otherwise deal with the Corporation with the same rights it would have if it were not a Trustee, Authenticating Agent, Paying Agent, Registrar or such other agent.

6.6 Money Held in Trust

Money held by either the U.S. Trustee or any Paying Agent in trust hereunder need not be segregated from other funds except to the extent required by law. Neither the U.S. Trustee nor any Paying Agent shall be under any liability for interest on any money received by it hereunder except as otherwise agreed in writing with the Corporation.

6.7 Compensation and Reimbursement

The Corporation agrees:

(1) to pay to the Trustees from time to time such compensation as shall be agreed to in writing between the Corporation and the Trustees for all services rendered by them hereunder, which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust;

(2) except as otherwise expressly provided herein, to reimburse each Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by such Trustee in accordance with any provision of this Indenture, including the reasonable compensation and the expenses and disbursements of its agents and counsel subject to prior agreement by the Corporation, except any such expense, disbursement or advance as may be attributable to such Trustee's negligence, willful misconduct or bad faith; and

(3) to indemnify the Trustees for, and to hold them harmless against, any loss, liability or expense incurred without negligence, willful misconduct or bad faith on their part arising out of or in connection with the acceptance or administration of the trust or trusts hereunder, including the costs and expenses of defending themselves against any claim or liability (whether asserted by any Holder, the Corporation or otherwise) and of enforcing the terms of this Indenture (including, but not limited to, any indemnification provided hereunder) in connection with the exercise or performance of any of their powers or duties hereunder.

As security for the performance of the obligations of the Corporation under this Section 6.7, the Trustees shall have a lien prior to the Securities upon all property and funds held by them hereunder for any amount owing to them or any predecessor of either such Trustee pursuant to this Section 6.7, except with respect to funds held in trust for the benefit of the Holders of particular Securities.

Without limiting any rights available to the Trustees under applicable law, when either Trustee incurs expenses or renders services in connection with an Event of Default specified in Section 5.1(4) or Section 5.1(5), the expenses, including the reasonable charges and expenses of their counsel, and the compensation for the services are intended to constitute expenses of administration under any applicable U.S. or Canadian federal, state or provincial bankruptcy, insolvency or other similar law.

The provisions of this Section 6.7 shall survive the satisfaction, discharge or termination of this Indenture and the resignation or removal of the Trustees.

The rights, protections, powers, immunities and indemnities afforded to the Trustees under this Indenture shall be afforded to any other trustee, any Paying Agent, any Registrar, any Authenticating Agent or any Custodian appointed hereunder.

6.8 Conflicting Interests

If a Trustee has or shall acquire a conflicting interest or material conflict of interest within the meaning of any Trust Indenture Legislation, such Trustee shall either eliminate such interest or resign, to the extent and in the manner provided by, and subject to the provisions of, the Trust Indenture Legislation and this Indenture. To the extent permitted by the Trust Indenture Legislation, a Trustee shall not be deemed to have a conflicting interest or material conflict of interest by virtue of being a trustee under this Indenture with respect to Securities of more than one series. The Trustees represent and warrant to the Corporation that they have no conflicting interest or material conflict of interest within the meaning of any Trust Indenture Legislation.

6.9 Corporate Trustee Required; Eligibility

There shall at all times be a U.S. Trustee hereunder with respect to the Securities of each series, which may be the U.S. Trustee hereunder for Securities of one or more other series. Each U.S. Trustee shall be a Person that is eligible pursuant to the Trust Indenture Act to act as such and has a combined capital and surplus (together with its affiliates) of at least \$50,000,000. If any such Person publishes reports of condition at least annually, pursuant to law or to the requirements of its supervising or examining authority, then for the purposes of this Section 6.9 and to the extent permitted by the Trust Indenture Act, the combined capital and surplus of such Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. No obligor of any Securities under this Indenture or Person directly or indirectly controlling, controlled by, or under common control with such obligor shall serve as Trustee. In case at any time the U.S. Trustee shall cease to be eligible in accordance with the provisions of this Section 6.9, such U.S. Trustee shall resign immediately in the manner and with the effect specified in Section 6.10.

For so long as required by the Canadian Trust Indenture Legislation, there shall be a Canadian Co-Trustee under this Indenture. The Canadian Co-Trustee shall at all times be a corporation organized under the laws of Canada or any province thereof and shall be authorized under the laws of Ontario and, if so required, duly registered to carry on trust business therein. If at any time the Canadian Co-Trustee shall cease to be eligible in accordance with this Section 6.9, it shall resign immediately in the manner and with the effect hereinafter specified in Section 6.10.

6.10 Resignation and Removal; Appointment of Successor.

No resignation or removal of either Trustee and no appointment of a successor Trustee pursuant to this Article 6 shall become effective until the acceptance of appointment by the successor Trustee in accordance with the applicable requirements of Section 6.11.

Either Trustee may resign at any time with respect to the Indenture and the Securities of one or more series, as applicable, by giving written notice thereof to the Corporation. If the instrument of acceptance by a successor Trustee required by Section 6.11 shall not have been delivered to such Trustee within 30 days after the giving of such notice of resignation, a court of competent jurisdiction may appoint a successor Trustee with respect to the Securities of such series in accordance with the terms of this Section 6.10.

Either Trustee may be removed at any time with respect to the Securities of any series (i) by Act of the Holders of a majority in principal amount of the Outstanding Securities of such series, delivered to such Trustee and to the Corporation or (ii) by the Corporation by Officer's Certificate delivered to such Trustee.

If at any time:

(1) either Trustee shall fail to comply with Section 6.8 after written request therefor by the Corporation or by any Holder who has been a *bona fide* Holder of a Security for at least six months; or

(2) either Trustee shall cease to be eligible under Section 6.9 and shall fail to resign after written request therefor by the Corporation or by any Holder who has been a *bona fide* Holder of a Security for at least six months; or

(3) either Trustee shall become incapable of acting or shall be adjudged a bankrupt or insolvent or a receiver of such Trustee or of its property shall be appointed or any public officer shall take charge or control of such Trustee or its property or affairs for the purpose of rehabilitation, conservation or liquidation, then, in any such case, (A) the Corporation by a Board Resolution may remove such Trustee with respect to all Securities or the Securities of such series, or (B) subject to Section 5.14, any Holder who has been a *bona fide* Holder of a Security for at least six months may, on behalf of himself or herself and all others similarly situated, petition any court of competent jurisdiction for the removal of such Trustee with respect to all Securities of such series and the appointment of a successor Trustee or Trustees.

If either Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of U.S. Trustee or the Canadian Co-Trustee for any cause, with respect to the Securities of one or more series, then the Corporation, by a Board Resolution, shall promptly appoint a successor Trustee or Trustees with respect to the Securities of that or those series, it being understood that any such successor Trustee may be appointed with respect to the Securities of one or more or all of such series and that at any time there shall be at most one U.S. Trustee and one Canadian Co-Trustee with respect to the Securities of any particular series, and shall comply with the applicable requirements of Section 6.11. If, within 60 days after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee with respect to the Securities of any series shall not have been appointed by the Corporation, then a successor Trustee may be appointed by Act of the Holders of a majority in principal amount of the Outstanding Securities of such series delivered to the Corporation and the retiring Trustee and the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment in accordance with the applicable requirements of Section 6.11, become the successor Trustee with respect to the Securities of such series and to that extent supersede the successor Trustee appointed by the Corporation. If no successor Trustee with respect to the Securities of any series shall have been so appointed by the Corporation within 60 days after such resignation, removal or incapability or the Holders and accepted appointment in the manner required by Section 6.11 within 120 days after such resignation, removal or incapability, or the occurrence of such vacancy, any Holder who has been a *bona fide* Holder of a Security of such series for at least six months may, or either Trustee may, at the expense of the Corporation, petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities of such series.

The Corporation shall give notice of each resignation and each removal of a Trustee with respect to the Securities of any series and each appointment of a successor Trustee with respect to the Securities of any series to all Holders of Securities of such series in the manner provided in Section 1.6. Each notice shall include the name of the successor Trustee with respect to the Securities of such series and the address of its Corporate Trust Office.

If a Canadian Co-Trustee under this Indenture is no longer required by the Canadian Trust Indenture Legislation, then the Corporation, by a Board Resolution, may remove the Canadian Co-Trustee after giving 30 days' prior written notice to the Trustees. For the avoidance of doubt, the Canadian Co-Trustee is acting hereunder solely to satisfy the requirements of the Canadian Trust Indenture Legislation and is not acting as Paying Agent, Registrar or Transfer Agent for the Securities issued.

In case of the appointment hereunder of a successor Trustee with respect to all Securities, every such successor Trustee so appointed shall execute, acknowledge and deliver to the Corporation and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; but, on the request of the Corporation or the successor Trustee, such retiring Trustee shall, upon payment of its charges, execute and deliver an instrument transferring to such successor Trustee all the rights, powers, protections, immunities, indemnities and trusts of the retiring Trustee and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder.

In case of the appointment hereunder of a successor Trustee with respect to the Securities of one or more, but not all, series, the Corporation, the retiring Trustee and each successor Trustee with respect to the Securities of one or more series shall execute and deliver an indenture supplemental hereto wherein each successor Trustee shall accept such appointment and which: (i) shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, each successor Trustee all the rights, powers, protections, immunities, indemnities, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates; (ii) if the retiring Trustee is not retiring with respect to all Securities, shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, protections, immunities, indemnities, trusts and duties of the retiring Trustee with respect to the Securities of that or those series as to which the retiring Trustee is not retiring shall continue to be vested in the retiring Trustee; and (iii) shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by multiple Trustees, it being understood that nothing herein or in such supplemental indenture shall constitute such Trustees co-trustees of the same trust, except as otherwise provided in this Indenture, and that each such Trustee shall be trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered, except as otherwise provided in this Indenture, by any other such Trustee; and upon the execution and delivery of such supplemental indenture the resignation or removal of the retiring Trustee shall become effective to the extent provided therein and each such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, protections, immunities, indemnities, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates; but, on request of the Corporation or any successor Trustee, such retiring Trustee shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder with respect to the Securities of that or those series to which the appointment of such successor Trustee relates.

Upon request of any such successor Trustee, the Corporation shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers, protections, immunities, indemnities and trusts referred to in the first or second preceding paragraph of this Section 6.11, as the case may be.

No successor Trustee shall accept its appointment unless at the time of such acceptance such successor Trustee shall be qualified and eligible under this Article 6.

6.12 Merger, Amalgamation, Conversion, Consolidation or Succession to Business

Any Person into which either Trustee may be merged, arranged, amalgamated or converted or with which it may be consolidated, or any Person resulting from any merger, arrangement, amalgamation, conversion or consolidation to which such Trustee shall be a party, or any Person succeeding to all or substantially all the corporate trust business of either Trustee, shall be the successor of such Trustee hereunder, provided that such Person shall be otherwise qualified and eligible under this Article 6, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Securities shall have been authenticated but not delivered by the U.S. Trustee then in office, any successor by merger, arrangement, amalgamation, conversion or consolidation to such authenticating U.S. Trustee shall be deemed to have adopted such authentication and shall deliver the Securities so authenticated with the same effect as if such successor Trustee had itself authenticated such Securities without the execution or filing of any paper or any further act on the part of any of the parties hereto.

6.13 Preferential Collection of Claims Against Corporation

If and when a Trustee shall be or become a creditor of the Corporation or any other obligor upon the Securities, such Trustee shall be subject to the provisions of the applicable Trust Indenture Legislation regarding the collection of claims against the Corporation or any such other obligor.

6.14 Appointment of Authenticating Agent

The U.S. Trustee may appoint one or more Authenticating Agents acceptable to the Corporation with respect to one or more series of Securities which shall be authorized to act on behalf of the U.S. Trustee to authenticate Securities of such series and the U.S. Trustee shall give written notice of such appointment to all Holders of Securities of the series with respect to which such Authenticating Agent will serve. Securities so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the U.S. Trustee hereunder. Any such appointment shall be evidenced by an instrument in writing signed by a Responsible Officer of the U.S. Trustee, and a copy of such instrument shall be promptly furnished to the Corporation. Wherever reference is made in this Indenture to the authentication and delivery of Securities by the U.S. Trustee or the U.S. Trustee's certificates of authentication, such reference shall be deemed to include authentication and delivery on behalf of the U.S. Trustee by an Authenticating Agent and a certificate of authentication executed on behalf of the U.S. Trustee by an Authenticating Agent. Each Authenticating Agent shall be acceptable to the Corporation and shall at all times be a corporation organized and doing business under the laws of the United States of America, any State thereof, the District of Columbia or the laws of Canada or any province thereof, authorized under such laws to act as Authenticating Agent, having a combined capital and surplus (together with its Affiliates) of not less than \$50,000,000 and subject to supervision or examination by federal or state authority or Canadian federal or provincial authority. If such Authenticating Agent publishes reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section 6.14, the combined capital and surplus of such Authenticating Agent shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section 6.14, such Authenticating Agent shall resign immediately in the manner and with the effect specified in this Section 6.14.

Any Person into which an Authenticating Agent may be merged, arranged, amalgamated or converted or with which it may be consolidated, or any corporation resulting from any merger, arrangement, amalgamation, conversion or consolidation to which such Authenticating Agent shall be a party, or any Person succeeding to the corporate agency or corporate trust business of an Authenticating Agent, shall continue to be an Authenticating Agent, provided that such corporation shall be otherwise eligible under this Section 6.14, without the execution or filing of any paper or any further act on the part of the U.S. Trustee or the Authenticating Agent.

An Authenticating Agent may resign at any time by giving written notice thereof to the U.S. Trustee and to the Corporation. The U.S. Trustee may at any time terminate the agency of an Authenticating Agent by giving written notice thereof to such Authenticating Agent and to the Corporation. Upon receiving such a notice of resignation or upon such a termination, or in case at any time such Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section 6.14, the U.S. Trustee may appoint a successor Authenticating Agent which shall be acceptable to the Corporation and shall give notice of such appointment in the manner provided in Section 1.6 to all Holders of Securities of the series with respect to which such Authenticating Agent will serve. Any successor Authenticating Agent upon acceptance of its appointment hereunder shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an Authenticating Agent. No successor Authenticating Agent shall be appointed unless eligible under the provisions of this Section 6.14.

The Corporation agrees to pay to each Authenticating Agent from time to time reasonable compensation for its services under this Section 6.14.

If an appointment with respect to one or more series is made pursuant to this Section 6.14, the Securities of such series may have endorsed thereon, in addition to the U.S. Trustee's certificate of authentication, an alternative certificate of authentication in the following form:

This is one of the Securities of the series designated therein referred to in the within-mentioned Indenture.

**[NAME OF AUTHENTICATING AGENT],**

as Authenticating Agent

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

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

6.15 Third Party

The Corporation hereby represents to the Canadian Co-Trustee that any account to be opened by, or interest to be held by, the Canadian Co-Trustee in connection with this Indenture, for or to the credit of the Corporation, either:

- (1) is not intended to be used by or on behalf of any third party; or
- (2) is intended to be used by or on behalf of a third party, in which case, the Corporation hereto agrees to complete and execute forthwith a declaration in the Canadian Co-Trustee's prescribed form as to the particulars of such third party.

6.16 Not Bound to Act

The Canadian Co-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 Canadian Co-Trustee, in its sole judgment, determines that such act might cause it to be in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline. Further, should the Canadian Co-Trustee, in its sole judgment, determine at any time that its acting under this Indenture has resulted in its being in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline, then it shall have the right to resign on 30 days' written notice to the Corporation, notwithstanding the provisions of Section 6.10 of this Indenture, provided that:

- (1) the Canadian Co-Trustee's written notice shall describe the circumstances of such non-compliance; and
- (2) if such circumstances are rectified to the Canadian Co-Trustee's satisfaction within such 30 day period, then such resignation shall not be effective.

6.17 Privacy (Canadian Co-Trustee)

The parties acknowledge that federal and/or provincial legislation that addresses the protection of individuals' personal information (collectively, "**Privacy Laws**") applies to obligations and activities under this Indenture. Despite any other provision of this Indenture, neither the Corporation nor the Canadian Co-Trustee shall take or direct any action that would contravene or cause the other to contravene applicable Privacy Laws. The Corporation shall, prior to transferring or causing to be transferred personal information to the Canadian Co-Trustee, obtain and retain required consents of the relevant individuals to the collection, use and disclosure of their personal information, or shall have determined that such consents either have previously been given upon which the parties can rely or are not required under Privacy Laws. The Canadian Co-Trustee shall use commercially reasonable efforts to ensure that its services hereunder comply with Privacy Laws. Specifically, the Canadian Co-Trustee agrees: (1) to have a designated chief privacy officer; (2) to maintain policies and procedures to protect personal information and to receive and respond to any privacy complaint or inquiry; (3) to use personal information solely for the purposes of providing its services under or ancillary to this Indenture and not to use it for any other purpose except with the consent of or direction from the Corporation or the individual involved; (4) not to sell or otherwise improperly disclose personal information to any third party; and (5) to employ administrative, physical and technological safeguards to reasonably secure and protect personal information against loss, theft, or unauthorized access, use or modification.

6.18 Joint Trustees

The rights, powers, duties and obligations conferred and imposed upon the Trustees are conferred and imposed upon and shall be exercised and performed by the U.S. Trustee and the Canadian Co-Trustee individually, as set forth explicitly herein, and neither Trustee shall be liable or responsible for the acts or omissions of the other Trustee. Any written notice, request, direction, certificate, instruction, opinion or other document (each such document for purposes of this Section 6.18, a “**Writing**”) delivered pursuant to any provisions of this Indenture shall be delivered to the U.S. Trustee (with a copy to the Canadian Co-Trustee).

**ARTICLE 7**

**HOLDERS’ LISTS AND REPORTS BY TRUSTEES AND CORPORATION**

7.1 Corporation to Furnish Names and Addresses of Holders

The Corporation will furnish or cause to be furnished to the Trustees:

(1) semi-annually within 15 days after each Regular Record Date, a list, in such form as the Trustees may reasonably require, of the names and addresses of the Holders of Securities of each series as of such Regular Record Date; and

(2) at such other times as either Trustee may reasonably request in writing, within 30 days after the receipt by the Corporation of any such request, a list of similar form and content as of a date not more than 15 days prior to the time such list is furnished; provided, however, that so long as a Trustee is the Registrar, no such list shall be required to be furnished to such Trustee. If a Trustee shall no longer be the Registrar, such Trustee shall be entitled to rely on the most recent such list provided or available to it without liability therefor.

7.2 Preservation of Information; Communications to Holders

The Trustees shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders contained in the most recent list furnished to the Trustees as provided in Section 7.1 and the names and addresses of Holders received by the U.S. Trustee in its capacity as Registrar. The Trustees may destroy any list furnished to them as provided in Section 7.1 upon receipt of a new list so furnished.

The rights of Holders to communicate with other Holders with respect to their rights under this Indenture or under the Securities, and the corresponding rights and obligations of the Trustees, shall be as provided by the Trust Indenture Legislation.

Every Holder of Securities, by receiving and holding the same, agrees with the Corporation and the Trustees that none of the Corporation or the Trustees or any agent of any of them shall be held accountable by reason of any disclosure of information as to names and addresses of Holders made pursuant to the Trust Indenture Legislation.

7.3 Reports by U.S. Trustee

The U.S. Trustee shall transmit to Holders such reports concerning the U.S. Trustee and its actions under this Indenture as may be required pursuant to the Trust Indenture Legislation at the times and in the manner provided pursuant thereto. If required by Section 313(a) of the Trust Indenture Act, the U.S. Trustee shall, within 60 days after each May 15 following the date of this Indenture, deliver to Holders a brief report, dated as of May 15, which complies with the provisions of Section 313(a) of the Trust Indenture Act.

A copy of each such report shall, at the time of such transmission to Holders, be filed by the U.S. Trustee with each stock exchange upon which any Securities of any series are listed, if applicable. The Corporation will promptly notify the U.S. Trustee when any Securities are listed on any stock exchange.

7.4 Reports by Corporation

(1) The Corporation shall supply to Holders and the U.S. Trustee, in each case at the Corporation's own expense, copies of the annual reports and quarterly reports of the Corporation and of any information, documents or reports that the Corporation is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act within 15 days after the same is filed with the Commission or pursuant to applicable Trust Indenture Legislation at the times and in the manner provided pursuant to such Trust Indenture Legislation. Notwithstanding the foregoing, such reports, information or documents shall be deemed supplied to Holders and the U.S. Trustee pursuant to this Section 7.4(1) if such reports, information or documents have been filed by the Corporation with the Commission. The U.S. Trustee shall have no responsibility to determine if and when any such reports, information or documents have been filed by the Corporation with the Commission. Delivery of these reports, information and documents to the U.S. Trustee is for informational purposes only and the U.S. Trustee's receipt of any such report will not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Corporation's compliance with any of its covenants hereunder, as to which the U.S. Trustee is entitled to rely exclusively on Officer's Certificates.

(2) Notwithstanding that the Corporation may not be subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, or otherwise report on an annual and quarterly basis on forms provided for such annual and quarterly reporting pursuant to rules and regulations promulgated by the Commission, the Corporation shall supply to Holders and the U.S. Trustee:

(A) all annual and quarterly financial statements that the Corporation would have filed with the Commission on Form 40-F and Form 6-K pursuant to Section 13 or Section 15(d) of the Exchange Act as if the Corporation was required, as an MJDS-eligible issuer, to file with the Commission such financial statements; provided, however, that such financial statements shall be substantially in the form prescribed or permitted (including pursuant to any exemption granted by applicable regulatory authorities) by applicable Canadian regulatory authorities for Canadian public reporting companies and, with respect to the annual financial statements only, including a report thereon by the Corporation's certified independent accountants, plus, in each case, a Management's Discussion and Analysis of the Corporation that describes its financial condition and results of operations on a consolidated basis; and

(B) all current reports that would be required to be filed with the Commission on Form 6-K if the Corporation were required to file such reports.

For the avoidance of doubt, none of the above reporting requirements shall be construed to require such financial statements or reports that would not otherwise be required to be filed by foreign private issuers subject to MJDS.

Notwithstanding the foregoing, such statements, reports and information shall be deemed supplied to Holders and the U.S. Trustee pursuant to this Section 7.4 if such statements, reports and information have been posted on the Corporation's public website.

**ARTICLE 8**  
**CONSOLIDATION, AMALGAMATION, ARRANGEMENT, MERGER,**  
**CONVEYANCE OR TRANSFER**

8.1 Corporation May Consolidate, Etc., on Certain Terms

Nothing contained in this Indenture or in any of the Securities shall prevent any consolidation, merger, arrangement or amalgamation of the Corporation with or into any other Person or Persons, whether or not affiliated with the Corporation or successive consolidations, mergers, arrangements or amalgamations in which the Corporation or any of its successors shall be a party, or shall prevent any conveyance or transfer of the properties and assets of the Corporation as an entirety or substantially as an entirety to any other Person, whether or not affiliated with the Corporation lawfully entitled to acquire the same; provided, however, that the Corporation hereby covenants and agrees, that:

(1) if an Event of Default has occurred and is continuing, it will not enter into any agreement for any such consolidation, merger, arrangement, amalgamation, conveyance or transfer; and

(2) upon any such consolidation, merger, arrangement, amalgamation, conveyance or transfer, (i) the due and punctual payment of the principal of, and premium, Additional Amounts and interest on, all of the Securities, according to their tenor, and the due and punctual performance and observance of all of the covenants and conditions of this Indenture to be performed by the Corporation shall be expressly assumed, by indenture supplemental hereto, in form reasonably satisfactory to the Trustees, executed and delivered to the Trustees by the Person (if other than the Corporation) formed by such consolidation, or into which the Corporation shall have been merged, arranged or amalgamated, or by the Person which shall have acquired such properties and assets, and (ii) the Corporation shall deliver to the Trustees an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, merger, arrangement, amalgamation, conveyance or transfer and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture, comply with this 8.1 and that all conditions precedent herein provided for relating to such transaction have been complied with.

8.2 Successor Substituted.

Upon any consolidation, merger, arrangement or amalgamation of the Corporation with or into any other Person or Persons or any conveyance or transfer of the properties and assets of the Corporation as an entirety or substantially as an entirety in accordance with Section 8.1, the successor Person formed by such consolidation, arrangement or amalgamation or into which the Corporation is merged or to whom such conveyance or transfer is made shall succeed to, and be substituted for, and may exercise every right and power of, the Corporation under this Indenture with the same effect as if such successor Person had been named as the Corporation herein, and thereafter (except with respect to any Person that is a predecessor to an amalgamation) the predecessor Person shall be relieved of all obligations and covenants under this Indenture and the Securities, as the case may be, so long as the covenants of this Article 8 have been complied with.

**ARTICLE 9  
SUPPLEMENTAL INDENTURES**

9.1 Supplemental Indentures Without Consent of Holders

The Corporation and the Trustees, at any time and from time to time, without the consent of any Holders, may enter into one or more indentures supplemental hereto, in form reasonably satisfactory to the Trustees, for any of the following purposes:

- (1) to evidence the succession of another Person to the Corporation and the assumption by any such successor of the covenants of the Corporation herein and in the Securities; or
- (2) to add to the covenants of the Corporation or any other obligor for the benefit of the Holders of all or any series of Securities, and if such covenants are to be for the benefit of less than all series of Securities, stating that such covenants are expressly being included solely for the benefit of such series, or to surrender any right or power herein conferred upon the Corporation; or
- (3) to add any additional Events of Default for the benefit of the Holders of all or any series of Securities, and if such additional Events of Default are to be for the benefit of less than all series of Securities, stating that such additional Events of Default are expressly being included solely for the benefit of such series; or
- (4) to add to or change any of the provisions of this Indenture to such extent as shall be necessary to permit or facilitate the issuance of Securities in bearer form, registrable or not registrable as to principal, and with or without interest coupons, or to facilitate the issuance of Securities in uncertificated form; or
- (5) to add to, change or eliminate any of the provisions of this Indenture in respect of one or more series of Securities; provided that any such addition, change or elimination: (A) shall neither (i) apply to any Security of any series created prior to the execution of such supplemental indenture and entitled to the benefit of such provision nor (ii) modify the rights of the Holder of any such Security with respect to such provision; and (B) shall become effective only when there is no such Security Outstanding; or

- (6) to secure the Securities of any series or add guarantees with respect to the Securities of any series; or
- (7) to establish the form or terms of Securities of any series as permitted by Sections 2.1 and 3.1; or
- (8) to effect or maintain, or otherwise comply with the requirements of the Commission in connection with the qualification of this Indenture under the Trust Indenture Act; or
- (9) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Securities of one or more series and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by multiple Trustees pursuant to the requirements of Section 6.11 or the removal of one or more of the Trustees pursuant to Section 6.10;
- (10) to cure any ambiguity, to correct or supplement any provision herein which may be defective or inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Indenture; provided that such action pursuant to this clause (10) shall not adversely affect the interests of Holders of Securities of any series in any material respect;
- (11) to conform the text of this Indenture or the terms of the Securities of any series to any corresponding provision of the prospectus, prospectus supplement, offering memorandum, offering circular, term sheet or other document pursuant to which such Securities were offered and setting forth the final terms of such Securities; or
- (12) to make any other change that does not adversely affect the interests of Holders of Securities of any series in any material respect.

9.2 Supplemental Indentures With Consent of Holders

With the consent of the Holders of not less than a majority in principal amount of the Outstanding Securities of any series affected by such supplemental indenture by Act of said Holders delivered to the Corporation and the Trustees, the Corporation and the Trustees may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of any supplemental indenture, or modifying in any manner the rights of the Holders of Securities of such series under this Indenture; provided, however, that no such supplemental indenture shall, without the consent of the Holder of each Outstanding Security affected thereby:

- (1) change the Stated Maturity of the principal of, or any installment of principal of or interest on, any Security; or
- (2) reduce the principal amount on any of the Securities of such series; or
- (3) reduce the rate of interest on any of the Securities of such series; or

- (4) reduce any premium payable upon the redemption of any of the Securities of such series; or
- (5) change any obligation of the Corporation to pay Additional Amounts contemplated by Section 10.2; or
- (6) reduce the amount of the principal of an Original Issue Discount Security or any other Security which would be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 5.2; or
- (7) change the Currency in which the principal, and any premium, Additional Amounts or interest thereon is payable; or
- (8) impair the right to institute suit for the enforcement of any such payment on or after the Stated Maturity thereof, or, in the case of redemption, on or after the Redemption Date; or
- (9) reduce the percentage in principal amount of the Outstanding Securities of any series, the consent of whose Holders is required for any such supplemental indenture, or the consent of whose Holders is required for any waiver of compliance with certain provisions of this Indenture or certain defaults hereunder and their consequences provided for in this Indenture; or
- (10) modify any of the provisions of this Section 9.2, Section 5.13 or Section 10.5, except to increase any such percentage or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Security affected thereby; provided, however, that this clause shall not be deemed to require the consent of any Holder with respect to changes in the references to “the Trustees” and concomitant changes in this Section 9.2 and Section 10.5, or the deletion of this proviso, in accordance with the requirements of Sections 6.10 and 9.1(9)); or
- (11) modify the subordination provisions applicable to any Security in a manner adverse to the Holder thereof.

A supplemental indenture which changes or eliminates any covenant or other provision of this Indenture which has expressly been included solely for the benefit of one or more particular series of Securities, or which modifies the rights of the Holders of Securities of such series with respect to such covenant or other provision, shall be deemed not to affect the rights under this Indenture of the Holders of Securities of any other series.

It shall not be necessary for any Act of Holders under this Section 9.2 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof.

### 9.3 Execution of Supplemental Indentures

In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article 9 or the modifications thereby of the trusts created by this Indenture, the Trustees shall be entitled to receive, and, subject to Section 6.1, shall be fully protected in relying upon, in addition to the documents required by Section 1.2, an Opinion of Counsel and an Officer’s Certificate each stating that the execution of such supplemental indenture is authorized or permitted by this Indenture. Each Trustee may, but shall not be obligated to, enter into any such supplemental indenture which affects the Trustee’s own rights, powers, protections, indemnities, duties or immunities under this Indenture or otherwise.

9.4 Effect of Supplemental Indentures

Upon the execution of any supplemental indenture under this Article 9, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes, and every Holder of Securities theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

9.5 Conformity with Trust Indenture Legislation

Every supplemental indenture executed pursuant to this Article 9 shall conform to the requirements of the Trust Indenture Legislation.

9.6 Reference in Securities to Supplemental Indentures

Securities of any series authenticated and delivered after the execution of any supplemental indenture pursuant to this Article 9 may, and shall if required by the U.S. Trustee, bear a notation in form approved by the U.S. Trustee as to any matter provided for in such supplemental indenture. Alternatively, the Corporation may, at its option, prepare and execute new Securities of any series authenticated and delivered after the execution of any supplemental indenture with such modifications as are necessary to conform, in the opinion of the U.S. Trustee, to any matter provided for in such supplemental indenture, and such new Securities shall be authenticated and delivered by the U.S. Trustee in exchange for the Outstanding Securities of such series.

**ARTICLE 10  
COVENANTS**

10.1 Payment of Principal, Premium, Additional Amounts and Interest.

The Corporation covenants and agrees for the benefit of each series of Securities that it will duly and punctually pay the principal of, and any premium, Additional Amounts and interest on, the Securities of that series in accordance with the terms of the Securities and this Indenture.

10.2 Payment of Taxes

Except as otherwise specified as contemplated by Section 3.1 for Securities of any series, all payments that the Corporation makes under or with respect to the Securities of any series will be made free and clear of and without withholding or deduction for or on account of any present or future tax, duty, levy, impost, assessment or other governmental charges, including penalties, interest and other similar liabilities related thereto, of whatever nature (collectively, “**Taxes**”) imposed or levied by or on behalf of Canada or any other jurisdiction in which the Corporation is incorporated, organized or otherwise resident or engaged in or carrying on business for tax purposes or from or through which the Corporation makes any payment on the Securities of such series, or by any political subdivision or taxing authority or agency thereof or therein (each, a “**Relevant Taxing Jurisdiction**”), unless withholding or deduction is then required by law. If the Corporation or any other applicable withholding agent is required to withhold or deduct any amount for or on account of Taxes of a Relevant Taxing Jurisdiction from any payment made under or with respect to the Securities of any series, the Corporation will pay to each Holder of such Securities as additional interest such additional amounts (“**Additional Amounts**”) as may be necessary to ensure that the net amount received by each Holder or beneficial owner of the Securities of such series after such withholding or deduction, including any withholding or deduction attributable to the Additional Amounts, will be not less than the amount the Holder or beneficial owner would have received if such Taxes had not been required to be withheld or deducted.

However, no Additional Amounts will be payable in respect or on account of:

(1) any Taxes that would not have been imposed or levied but for a present or former connection, including citizenship, nationality, residence, domicile, incorporation, or existence of a business, a permanent establishment, a dependent agent, a place of business or a place of management present or deemed present within such Relevant Taxing Jurisdiction, between such Holder or beneficial owner, or between a fiduciary, settlor, beneficiary, member or shareholder of, or possessor of power over, such Holder or beneficial owner, if such Holder or beneficial owner is an estate, trust, partnership, limited liability company or corporation, and the Relevant Taxing Jurisdiction, other than any connection arising solely from the acquisition, ownership or disposition of the Securities of any series, the receipt of payments under or with respect to the Securities of any series, or the exercise or enforcement of rights under or with respect to the Securities of any series or this Indenture;

(2) any Taxes that are imposed or withheld by reason of the failure of the Holder or beneficial owner of Securities of any series, following the Corporation's reasonable written request addressed to the Holder, and made at a time that would enable the Holder or beneficial owner acting reasonably to comply with that request, and in all events at least 30 calendar days before the relevant date on which payment under or with respect to the Securities of such series is due and payable, to comply with any certification or identification requirements, whether required or imposed by statute, regulation or administrative practice of a Relevant Taxing Jurisdiction, as a precondition to exemption from, or reduction in the rate of deduction or withholding of, Taxes imposed by the Relevant Taxing Jurisdiction, including a certification that the Holder or beneficial owner is not resident in the Relevant Taxing Jurisdiction, but, in each case, only to the extent that the Holder or beneficial owner, as the case may be, is legally eligible to provide such certification;

(3) any estate, inheritance, gift, sales, transfer, personal property or similar Taxes;

(4) any Tax which is payable otherwise than by deduction or withholding by the Corporation from payments made under or with respect to the Securities of any series;

(5) any Canadian withholding Taxes paid or payable by reason of (A) the Holder, beneficial owner or other recipient of the amount not dealing at arm's length with the Corporation for the purposes of the *Income Tax Act* (Canada), or (B) the Holder or beneficial owner being, or not dealing at arm's length with, a "specified shareholder" of the Corporation for the purposes of subsection 18(5) of the *Income Tax Act* (Canada);

(6) any Tax imposed on or with respect to any payment by the Corporation to the Holder if such Holder is a fiduciary or partnership or person other than the sole beneficial owner of such payment to the extent that Taxes would not have been imposed on such payment had the beneficiary, partner or other beneficial owner directly held the Securities of any series;

(7) any Tax that is imposed or levied by reason of the presentation, where presentation is required in order to receive payment, of the Securities of a series for payment on a date more than 30 days after the date on which such payment became due and payable or the date on which payment thereof is duly provided for, whichever is later, except to the extent that the beneficial owner or Holder thereof would have been entitled to Additional Amounts had the Securities been presented for payment on any date during such 30 day period;

(8) any Tax that is imposed or levied on or with respect to a Security of a series presented for payment on behalf of a Holder or beneficial owner who would have been able to avoid such withholding or deduction by presenting the relevant Security of such series to another paying agent;

(9) any Taxes to the extent such Taxes are directly attributable to the failure of the Holder or beneficial owner to qualify for an exemption from U.S. federal withholding tax with respect to payments of interest pursuant to an applicable income tax treaty to which the United States is a party or pursuant to the "portfolio interest" exemption as defined in Section 871(h) or 881(c), as applicable, of the Internal Revenue Code, in each case, as such treaty or section was in effect on the issuance date (determined without regard to the requirement that such holder or beneficial owner provide the applicable Internal Revenue Service Form W-8);

(10) any Taxes imposed pursuant to Sections 1471 through 1474 of the Internal Revenue Code as of the issuance date (and any amended or successor version that is substantially comparable), any regulations or other official guidance thereunder or agreements (including any intergovernmental agreements or any laws, rules or practices implementing such intergovernmental agreements) entered into in connection therewith;

(11) any Tax required to be deducted or withheld from any fee, commission or other amount paid to a non-resident of Canada (within the Meaning of the *Income Tax Act* (Canada) in respect of services rendered in Canada of any nature whatever; or

(12) any Taxes that are imposed in respect of any combination of clauses (1) through (11) above.

(1) Notwithstanding clause (4) above, where Tax is payable pursuant to Section 803 of the Regulations under the *Income Tax Act* (Canada) by a Holder or beneficial owner of the Securities in respect of any amount payable under the Securities to the Holder, other than by reason of a transfer of the Securities to a person resident in Canada for the purposes of such Act, but no Additional Amount is paid in respect of such Tax (excluding any penalties or interest relating thereto), the Corporation will pay to such Holder an amount equal to such Tax within 45 days after receiving from the Holder a notice containing reasonable particulars of the Tax so payable; provided, that such Holder or beneficial owner would have been entitled to receive Additional Amounts on account of such Tax but for the fact that it is payable otherwise than by deduction or withholding from payments made under or with respect to the Securities.

(2) Notwithstanding any other provision hereof, the Corporation, if the Corporation is an applicable withholding agent, or is otherwise required to withhold amounts under applicable law, will (A) make such withholding or deduction required by applicable law and (B) remit the full amount deducted or withheld to the relevant taxing authority in accordance with applicable law.

(3) At least 30 calendar days prior to each date on which any payment under or with respect to the Securities of any series is due and payable, if the Corporation will be obligated to pay Additional Amounts with respect to such payment, unless such obligation to pay Additional Amounts arises after the 30th day prior to the date on which payment under or with respect to the Securities of such series is due and payable, in which case it will be promptly thereafter, the Corporation will deliver to the U.S. Trustee an Officer's Certificate stating that such Additional Amounts will be payable and the amounts so payable and will set forth such other information, other than the identities of Holders and beneficial owners, necessary to enable the U.S. Trustee or Paying Agent to pay such Additional Amounts to Holders and beneficial owners (net of applicable withholding tax) on the relevant payment date. The U.S. Trustee will make such payments in the same manner as any other payments on the Securities of such series. The Corporation will provide the U.S. Trustee with documentation reasonably satisfactory to the U.S. Trustee evidencing payment of such Additional Amounts.

(4) The Corporation will take reasonable efforts to furnish to the U.S. Trustee or a Holder within a reasonable time certified copies of tax receipts or other evidence of the payment by the Corporation of any Taxes imposed or levied by a Relevant Taxing Jurisdiction.

(5) The Corporation will pay any present or future stamp, issue, registration, court documentation, excise or property taxes or other similar taxes, charges and duties, including interest, additions to tax and penalties with respect thereto, imposed by any Relevant Taxing Jurisdiction in respect of the receipt of any payment under or with respect to the Securities of any series, the execution, issue, delivery or registration of the Securities of such series or this Indenture or any other document or instrument referred to thereunder and any such taxes, charges, duties or similar levies imposed by any jurisdiction as a result of, or in connection with, the enforcement of the Securities of such series or this Indenture or any such other document or instrument following the occurrence of any Event of Default with respect to the Securities of such series. The Corporation will not, however, pay such amounts that are imposed on or result from a sale or other transfer or disposition by a Holder or beneficial owner of a Security.

(6) The preceding provisions will survive any termination, defeasance or discharge of this Indenture and shall apply *mutatis mutandis* to any jurisdiction in which any successor person to the Corporation is organized, incorporated or otherwise resident or engaged in or carrying on business for tax purposes and any political subdivision or taxing authority or agency thereof or therein.

10.3 Maintenance of Office or Agency

The Corporation will maintain in each Place of Payment for any series of Securities an office or agency where Securities of that series may be presented or surrendered for payment, where Securities of that series may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Corporation in respect of the Securities of that series and this Indenture may be served.

The Corporation will give prompt written notice to the Trustees of the location, and any change in the location, of such office or agency. If at any time the Corporation shall fail to maintain any such required office or agency or shall fail to furnish the Trustees with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the U.S. Trustee (with a copy to the Canadian Co-Trustee), and the Corporation hereby appoints each of the Trustees as its agent to receive all such presentations, surrenders, notices and demands.

The Corporation may also from time to time designate one or more other offices or agencies where the Securities of one or more series may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; provided, however, that no such designation or rescission shall in any manner relieve the Corporation of its obligation to maintain an office or agency in each Place of Payment for Securities of any series for such purposes. The Corporation will give prompt written notice to the Trustees of any such designation or rescission and of any change in the location of any such other office or agency.

10.4 Money for Securities Payments to Be Held in Trust

If the Corporation shall at any time act as its own Paying Agent with respect to any series of Securities, it will, on or before each due date of the principal of, or any premium, Additional Amounts or interest on, any of the Securities of that series, segregate and hold in trust for the benefit of the Persons entitled thereto a sum sufficient to pay the principal and any premium, Additional Amounts and interest so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided and will promptly notify the U.S. Trustee of its action or failure so to act.

Whenever the Corporation shall have appointed one or more Paying Agents for any series of Securities, it will, on or prior to each due date of the principal of, or any premium, Additional Amounts or interest on, any Securities of that series, deposit with a Paying Agent a sum sufficient to pay such amount (less any applicable withholding tax), such sum to be held as provided by the Trust Indenture Legislation, and unless such Paying Agent is the U.S. Trustee, the Corporation will promptly notify the U.S. Trustee of its action or failure so to act.

The Corporation will cause each Paying Agent for any series of Securities other than the U.S. Trustee to execute and deliver to the U.S. Trustee an instrument in which such Paying Agent shall agree with the U.S. Trustee, subject to the provisions of this Section 10.4, that such Paying Agent will:

- (1) comply with the provisions of the Trust Indenture Legislation applicable to it as a Paying Agent; and

(2) during the continuance of any default by the Corporation or any other obligor upon the Securities of that series in the making of any payment in respect of the Securities of that series, upon the written request of the U.S. Trustee, forthwith pay to the U.S. Trustee all sums held in trust by such Paying Agent for payment in respect of the Securities of that series.

The Corporation may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay, or by Company Order direct any Paying Agent to pay, to the U.S. Trustee all sums held in trust hereunder by the Corporation or such Paying Agent, such sums to be held by the U.S. Trustee upon the same trusts as those upon which such sums were held by the Corporation or such Paying Agent, and, upon such payment by any Paying Agent to the U.S. Trustee, such Paying Agent shall be released from all further liability with respect to such money.

Unless otherwise specified pursuant to Section 3.1 in respect of the Securities of any series, any money deposited with the U.S. Trustee or any Paying Agent, or then held by the Corporation, in trust for the payment of the principal of, or any premium, Additional Amounts or interest on, any Security of any series and remaining unclaimed for two years after such principal, premium, Additional Amounts or interest has become due and payable shall be paid to the Corporation, on Company Request, or, if then held by the Corporation, shall be discharged from such trust, and the Holder of such Security shall thereafter, as an unsecured general creditor, look only to the Corporation for payment thereof, and all liability of the U.S. Trustee or such Paying Agent with respect to such trust money, and all liability of the Corporation, as trustee thereof, shall thereupon cease; provided, however, that the U.S. Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Corporation cause to be published once, in a newspaper published in the English language, customarily published on each Business Day and of general circulation in the Borough of Manhattan, The City of New York, New York and the City of Toronto, Ontario, notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such publication, any unclaimed balance of such money then remaining will be repaid to the Corporation.

10.5 Statement by Officers as to Default

The Corporation will deliver to the Trustees, within 120 days after the end of each calendar year or on or before such other day in each calendar year as the Corporation and the Trustees may from time to time agree upon, an Officer's Certificate, stating whether or not to the best knowledge of the signers thereof the Corporation is in default in the performance and observance of any of the terms, provisions and conditions of this Indenture, without regard to any period of grace or requirement of notice provided hereunder, and, if the Corporation shall be in default, specifying all such defaults and the nature and status thereof of which it may have knowledge.

10.6 Company Existence

Subject to Article 8, the Corporation will do or cause to be done all things necessary to preserve and keep in full force and effect its existence (corporate or other) and the rights (charter and statutory) and franchises of the Corporation; provided, however, that the Corporation shall not be required to preserve any such right or franchise if the Corporation shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Corporation and its subsidiaries, taken as a whole.

10.7 Waiver of Certain Covenants

Except as otherwise specified as contemplated by Section 3.1 for Securities of any series, the Corporation may, with respect to the Securities of any series, omit in any particular instance to comply with any term, provision or condition set forth in any covenant provided pursuant to Sections 3.1(22), 9.1(2) or 9.1(7) for the benefit of the Holders of such series if before the time for such compliance the Holders of not less than a majority in principal amount of the Outstanding Securities of such series shall, by Act of such Holders, either waive such compliance in such instance or generally waive compliance with such term, provision or condition, but no such waiver shall extend to or affect such term, provision or condition except to the extent so expressly waived, and, until such waiver shall become effective, the obligations of the Corporation and the duties of the U.S. Trustee in respect of any such term, provision or condition shall remain in full force and effect. The Corporation will promptly notify the U.S. Trustee in writing of any such waiver or the revocation of any such waiver.

**ARTICLE 11**  
**REDEMPTION OF SECURITIES**

11.1 Applicability of Article

Unless, pursuant to Section 3.1, provision is made that Sections 11.2 through 11.6 shall apply to the Securities of the applicable series, then Sections 11.2 through 11.6 shall not apply to the Securities of such series.

11.2 Election to Redeem; Notice to U.S. Trustee

The election of the Corporation to redeem any Securities shall be evidenced by an Officer's Certificate or in another manner specified as contemplated by Section 3.1 for such Securities. In case of any redemption at the election of the Corporation, the Corporation shall, at least 45 days prior to the Redemption Date fixed by the Corporation, unless a shorter notice shall be reasonably satisfactory to the U.S. Trustee, notify the U.S. Trustee of such Redemption Date, of the principal amount of Securities of such series to be redeemed and, if applicable, of the tenor of the Securities to be redeemed. In the case of any redemption of Securities (i) prior to the expiration of any restriction on such redemption provided in the terms of such Securities or elsewhere in this Indenture, or (ii) pursuant to an election of the Corporation which is subject to a condition specified in the terms of such Securities or elsewhere in this Indenture, the Corporation shall furnish the U.S. Trustee with an Officer's Certificate evidencing compliance with each such restriction or condition.

11.3 Selection by U.S. Trustee of Securities to Be Redeemed

If less than all the Securities of any series are to be redeemed, the particular Securities to be redeemed shall be selected not more than 60 days prior to the Redemption Date by the U.S. Trustee, from the Outstanding Securities of such series not previously called for redemption, in accordance with the Applicable Procedures of the Depositary in the case of Global Securities, or, if the Securities are not represented by Global Securities, by such method as the U.S. Trustee shall deem fair and appropriate; provided that the unredeemed portion of the principal amount of any Security shall be in an Authorized Denomination, which shall not be less than the Minimum Authorized Denomination, for such Security.

The U.S. Trustee shall promptly notify the Corporation in writing of the Securities selected for redemption as aforesaid and, in the case of any Securities selected for partial redemption as aforesaid, the principal amount thereof to be redeemed.

The provisions of the two preceding paragraphs shall not apply with respect to any redemption affecting only a single Security, whether such Security is to be redeemed in whole or in part. In the case of any such redemption in part, the unredeemed portion of the principal amount of the Security shall be in an Authorized Denomination, which shall not be less than the Minimum Authorized Denomination, for such Security.

For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Securities shall relate, in the case of any Securities redeemed or to be redeemed only in part, to the portion of the principal amount of such Securities which has been or is to be redeemed.

11.4 Notice of Redemption

Except as otherwise specified as contemplated by Section 3.1 for Securities of any series, notice of redemption shall be delivered not less than 30 nor more than 60 days prior to the Redemption Date, to each Holder of Securities to be redeemed, at the address appearing in the Register.

All notices of redemption shall state:

- (1) the Redemption Date;
- (2) the Redemption Price or, if not then ascertainable, the manner of calculation thereof;
- (3) if less than all the Outstanding Securities of any series and of a specified tenor consisting of more than a single Security are to be redeemed, the identification, and, in the case of partial redemption of any such Securities, the principal amounts, of the particular Securities to be redeemed and, if less than all the Outstanding Securities of any series and of a specified tenor consisting of a single Security are to be redeemed, the principal amount of the particular Security to be redeemed;
- (4) that on the Redemption Date the Redemption Price, together with accrued interest, if any, to the Redemption Date, will become due and payable upon each such Security to be redeemed and, if applicable, that interest thereon will cease to accrue on and after said date;
- (5) the place or places where each such Security is to be surrendered for payment of the Redemption Price and accrued interest, if any, unless it shall have been specified as contemplated by Section 3.1 with respect to such Securities that such surrender shall not be required;

- (6) the “CUSIP” number, “ISIN” or “Common Code” number, if any, printed on the Securities being redeemed; and
- (7) such other matters as the Corporation shall deem desirable or appropriate.

Unless otherwise specified with respect to any Securities in accordance with Section 3.1, with respect to any redemption of Securities at the election of the Corporation, unless, upon the giving of notice of such redemption, Defeasance shall have been effected with respect to such Securities pursuant to Section 12.2, such notice may state that such redemption shall be conditional upon the receipt by the U.S. Trustee or the Paying Agent(s) for such Securities, on or prior to the date fixed for such redemption, of money sufficient to pay the principal of, and any premium, Additional Amounts and interest on, such Securities and that if such money shall not have been so received such notice shall be of no force or effect and the Corporation shall not be required to redeem such Securities. In the event that such notice of redemption contains such a condition and such money is not so received, the redemption shall not be made and within a reasonable time thereafter notice shall be given, in the manner in which the notice of redemption was given, that such money was not so received and such redemption was not required to be made, and the U.S. Trustee or Paying Agent(s) for the Securities otherwise to have been redeemed shall promptly return to the Holders thereof any of such Securities which had been surrendered for payment upon such redemption.

Notice of redemption of Securities to be redeemed at the election of the Corporation, and any notice of non-satisfaction of redemption as aforesaid, shall be given by the Corporation or, at the Corporation’s request, by the U.S. Trustee in the name and at the expense of the Corporation. Subject to the preceding paragraph, any such notice of redemption shall be irrevocable.

#### 11.5 Securities Payable on Redemption Date

Notice of redemption having been given as aforesaid, and the conditions, if any, set forth in such notice having been satisfied, the Securities or portions thereof so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified, and from and after such date, unless, in the case of an unconditional notice of redemption, the Corporation shall default in the payment of the Redemption Price and accrued interest, if any, such Securities or portions thereof, if interest-bearing, shall cease to bear interest. Upon surrender of any such Security for redemption in accordance with said notice, such Security or portion thereof shall be paid by the Corporation at the Redemption Price, together with accrued interest, if any, to the Redemption Date; provided, however, that no such surrender shall be a condition to such payment if so specified as contemplated by Section 3.1 with respect to such Security, and provided further that, unless otherwise specified as contemplated by Section 3.1, installments of interest whose Stated Maturity is on or prior to the Redemption Date will be payable to the Holders of such Securities, or one or more Predecessor Securities, registered as such at the close of business on the relevant Record Dates according to their terms and the provisions of Section 3.8.

If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal and any premium and Additional Amounts shall, until paid, bear interest from the Redemption Date at the rate prescribed therefor in the Security.

11.6 Securities Redeemed in Part

Any Security which is to be redeemed only in part shall be surrendered at a Place of Payment therefor, with, if the Corporation or the U.S. Trustee so require, due endorsement by, or a written instrument of transfer in form satisfactory to the Corporation and the U.S. Trustee duly executed by, the Holder thereof or his attorney duly authorized in writing, and the Corporation shall execute, and the U.S. Trustee or the Authenticating Agent shall authenticate and deliver to the Holder of such Security without service charge, a new Security or Securities of the same series and of like tenor, of any authorized denomination as requested by such Holder, in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Security so surrendered.

11.7 Tax Redemption

Except as otherwise specified as contemplated by Section 3.1 for Securities of any series, the Corporation may, at its option, redeem the Securities of any series, in whole but not in part, at any time upon not less than 30 days' nor more than 60 days' written notice to the Holders, which notice shall be given in accordance with Section 11.4, at a redemption price equal to 100% of the principal amount thereof, plus accrued and unpaid interest thereon to the date fixed for redemption (a "**Tax Redemption Date**"), premium, if any, and all Additional Amounts, if any, then due and which will become due on the Tax Redemption Date as a result of the redemption, if the Corporation determines that the Corporation is, or on the next date on which any amount would be payable in respect of the Securities of such series, would be obligated to pay Additional Amounts in respect of the Securities of such series pursuant to the terms and conditions thereof, which the Corporation cannot avoid by the use of commercially reasonable measures available to it as a result of:

(1) any change in, or amendment to, the laws or any regulations, treaties or rulings promulgated thereunder of any Relevant Taxing Jurisdiction which becomes effective on or after the issuance date or, in the case of a Relevant Taxing Jurisdiction that did not become a Relevant Taxing Jurisdiction until after the issuance date, the date on which such Relevant Taxing Jurisdiction became a Relevant Taxing Jurisdiction under this Indenture; or

(2) any change in, or amendment to, the official application, administration, or interpretation of the laws, regulations, treaties or rulings of any Relevant Taxing Jurisdiction, including, without limitation, by virtue of a holding, judgment, or order by a court of competent jurisdiction or published practice or revenue or administrative guidance or determination, on or after the issuance date or, in the case of a Relevant Taxing Jurisdiction that did not become a Relevant Taxing Jurisdiction until after the issuance date, the date on which such Relevant Taxing Jurisdiction became a Relevant Taxing Jurisdiction under this Indenture (each of the foregoing clauses (1) and (2), a "**Change in Tax Law**"), provided that the Corporation will also deliver to the U.S. Trustee an Opinion of Counsel stating that the Corporation would be obligated to pay Additional Amounts as a result of a Change in Tax Law.

This Section 11.7 shall apply *mutatis mutandis* to any successor Person, after such successor Person becomes a party to this Indenture, with respect to a Change in Tax Law occurring after the time such successor Person becomes a party to this Indenture.

## ARTICLE 12 DEFEASANCE AND COVENANT DEFEASANCE

### 12.1 Applicability of Article

Unless, pursuant to Section 3.1, provision is made that either or both of (i) defeasance of any Securities or any series of Securities under Section 12.2 and (ii) covenant defeasance of any Securities or any series of Securities under Section 12.3 shall not apply to such Securities of a series, then the provisions of either or both of Sections 12.2 and Section 12.3, as the case may be, together with Sections 12.4 and 12.5, shall be applicable to the Outstanding Securities of such series upon compliance with the conditions set forth below in this Article 12.

### 12.2 Defeasance and Discharge

The Corporation may cause itself to be discharged from its obligations with respect to any Securities or any series of Securities on and after the date the conditions set forth in Section 12.4 are satisfied (hereinafter called “**Defeasance**”). For this purpose, such Defeasance means that the Corporation shall be deemed to have paid and discharged the entire indebtedness represented by such Securities and to have satisfied all its other obligations under such Securities and this Indenture insofar as such Securities are concerned, and the Trustees, at the expense of the Corporation, shall execute proper instruments acknowledging the same, subject to the following which shall survive until otherwise terminated or discharged hereunder:

- (1) the rights of Holders of such Securities to receive, solely from the trust fund described in Section 12.4 and as more fully set forth in Section 12.4, payments in respect of the principal of, and any premium, Additional Amounts and interest on, such Securities when payments are due;
- (2) the Corporation’s obligations with respect to such Securities under Sections 3.5, 3.6, 10.2, 10.3 and 10.4 and with respect to the Trustees under Section 6.7;
- (3) the rights, powers, protections, indemnities, trusts, duties and immunities of the Trustees hereunder; and
- (4) this Article 12.

Subject to compliance with this Article 12, Defeasance with respect to any Securities or any series of Securities is permitted under this Section 12.2 notwithstanding the prior exercise by the Corporation of its rights under Section 12.3 with respect to such Securities. Following a Defeasance, payment of such Securities may not be accelerated because of an Event of Default.

12.3 Covenant Defeasance

The Corporation may cause itself to be released from its obligations under any covenants provided pursuant to Sections 3.1(22), 9.1(2), 9.1(6) or 9.1(7) with respect to any Securities or any series of Securities for the benefit of the Holders of such Securities and the occurrence of any event specified in Section 5.1(3) (with respect to any such covenants provided pursuant to Section 3.1(22), 9.1(2), 9.1(6) or 9.1(7) shall be deemed not to be or result in an Event of Default with respect to such Securities as provided in this Section 12.3, in each case, on and after the date the conditions set forth in Section 12.4 are satisfied (hereinafter called “**Covenant Defeasance**”). For this purpose, such Covenant Defeasance means that, with respect to such Securities, the Corporation may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such specified Section, to the extent so specified in the case of Section 5.1(3), whether directly or indirectly by reason of any reference elsewhere herein to any such Section or by reason of any reference in any such Section to any other provision herein or in any other document, but the remainder of this Indenture and such Securities shall be unaffected thereby.

12.4 Conditions to Defeasance or Covenant Defeasance

The following shall each be a condition precedent to the application of Section 12.2 or Section 12.3 to any Securities or any series of Securities, as the case may be:

(1) the Corporation shall have irrevocably deposited or caused to be deposited with the U.S. Trustee as trust funds in trust for the purpose of making the following payments, specifically pledged as security for, and dedicated solely to, the benefit of the Holders of such Securities: (A) money in an amount, or (B) Government Obligations which through the scheduled payment of principal and interest in respect thereof in accordance with their terms will provide, not later than the due date of any payment, money in an amount, or (C) a combination thereof, sufficient, in the case of (B) or (C), in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the U.S. Trustee, to pay and discharge, and which shall be applied by the U.S. Trustee to pay and discharge, the principal of, and any premium, Additional Amounts and interest on, such Securities on the applicable Stated Maturities or on any Redemption Date established pursuant to Section 12.4(3) below, in accordance with the terms of this Indenture and such Securities;

(2) no event which is, or after notice or lapse of time or both would become, an Event of Default with respect to such Securities or any other Securities shall have occurred and be continuing at the time of such deposit or, with regard to any such event specified in Sections 5.1(4) and 5.1(5), at any time on or prior to the 90th day after the date of such deposit, it being understood that this condition shall not be deemed satisfied until after such 90th day;

(3) if the Securities are to be redeemed prior to the applicable Stated Maturity, other than from mandatory sinking fund payments or analogous payments, notice of such redemption shall have been duly given pursuant to this Indenture or provision therefor satisfactory to the U.S. Trustee shall have been made;

(4) in the case of Defeasance, the Corporation shall have delivered to the U.S. Trustee an Opinion of Counsel confirming that, subject to customary assumptions and exclusions, (i) the Corporation has received from, or there has been published by, the Internal Revenue Service a ruling or (ii) since the date of this Indenture, there has been a change in the applicable U.S. federal income tax law, in either case to the effect that and based thereon such Opinion of Counsel shall confirm that, the Holders and beneficial owners of such Securities will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such Defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Defeasance had not occurred;

(5) in the case of Covenant Defeasance, the Company shall have delivered to the Trustee an Opinion of Counsel confirming that, subject to customary assumptions and exclusions, the Holders and beneficial owners of such Securities will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such Covenant Defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred; and

(6) the Corporation shall have delivered to the U.S. Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent with respect to such Defeasance or Covenant Defeasance have been complied with.

#### 12.5 Deposited Money and Government Obligations to Be Held in Trust; Miscellaneous Provisions

Subject to the provisions of the last paragraph of Section 10.4, all money and Government Obligations, including the proceeds thereof, deposited with the U.S. Trustee pursuant to Section 12.4 in respect of any Securities shall be held in trust and applied by the U.S. Trustee, in accordance with the provisions of such Securities and this Indenture, to the payment, either directly or through any such Paying Agent, including the Corporation acting as its own Paying Agent, as the U.S. Trustee may determine, to the Holders of such Securities, of all sums due and to become due thereon in respect of principal and any premium, Additional Amounts and interest, but money so held in trust need not be segregated from other funds except to the extent required by law.

The Corporation shall pay and indemnify the U.S. Trustee against any tax, fee or other charge imposed on or assessed against the Government Obligations deposited pursuant to Section 12.4 or the principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of Outstanding Securities.

Notwithstanding anything in this Article 12 to the contrary, the U.S. Trustee shall deliver or pay to the Corporation from time to time upon Company Request, any money or Government Obligations held by it as provided in Section 12.4 with respect to any Securities which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the U.S. Trustee, are in excess of the amount thereof which would then be required to be deposited to effect the Defeasance or Covenant Defeasance, as the case may be, with respect to such Securities.

12.6 Reinstatement.

If and for so long as the U.S. Trustee is unable to apply any money or Government Obligations held in trust pursuant to Section 10.4, Section 12.4 or Section 12.5 by reason of any legal proceeding or by reason of any order or judgment of any court or government agency enjoining, restraining or otherwise prohibiting such application, the Corporation's obligations with respect to this Indenture and the Securities will be reinstated as though no such deposit in trust had been made. If the Corporation makes any payment of principal of or interest on any Securities because of the reinstatement of its obligations, it will be subrogated to the rights of the Holders of such Securities to receive such payment from the money or Government Obligations held in trust.

**ARTICLE 13**  
**IMMUNITY OF INCORPORATORS, SHAREHOLDERS, OFFICERS AND**  
**DIRECTORS**

13.1 Indenture and Securities Solely Corporate Obligations

No recourse for the payment of the principal of, or any premium, Additional Amounts or interest on, any Security, or for any claim based thereon or otherwise in respect thereof, and no recourse under or upon any obligation, covenant or agreement of the Corporation in this Indenture or in any supplemental indenture, or in any Security, or because of the creation of any indebtedness represented thereby, shall be had against any incorporator, shareholder, officer, director or employee, as such, past, present or future, of the Corporation or of any successor corporation, either directly or through the Corporation or any successor corporation, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that all such liability is hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Indenture and the issue of the Securities.

**ARTICLE 14**  
**SUBORDINATION OF SECURITIES**

The Securities of a series issued hereunder shall be subordinated in right of payment to the extent provided in the subordination terms with respect to such Securities that are established pursuant to Section 3.1.

*[Signature page follows]*

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed as of the day and year first above written.

**ALGONQUIN POWER & UTILITIES CORP.**

By: /s/ Ian Robertson  
Name: Ian Robertson  
Title: Chief Executive Officer

By: /s/ David Bronicheski  
Name: David Bronicheski  
Title: Chief Financial Officer

**AMERICAN STOCK TRANSFER & TRUST COMPANY, LLC**, as U.S. Trustee

By: /s/ Paul Kim  
Name: Paul Kim  
Title: Assistant General Counsel

**AST TRUST COMPANY (CANADA)**, as Canadian Co-Trustee

By: /s/ Nelia Andrade  
Name: Nelia Andrade  
Title: Authorized signatory/signataire autorisé

By: /s/ Marta Recinos  
Name: Marta Recinos  
Title: Authorized signatory/signataire autorisé

*[Signature page to Indenture]*

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**ALGONQUIN POWER & UTILITIES CORP.**

as Issuer

and

**AMERICAN STOCK TRANSFER & TRUST COMPANY, LLC**

as the U.S. trustee, the U.S. registrar, the U.S. paying agent and the U.S. transfer agent

and

**AST TRUST COMPANY (CANADA)**

as the Canadian trustee, the Canadian registrar and the Canadian transfer agent

**FIRST SUPPLEMENTAL INDENTURE**

PROVIDING FOR THE ISSUE OF

6.875% FIXED-TO-FLOATING SUBORDINATED

NOTES —SERIES 2018-A DUE OCTOBER 17, 2078

Dated as of October 17, 2018

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THIS FIRST SUPPLEMENTAL INDENTURE (the "First Supplemental Indenture") dated as of October 17, 2018, between ALGONQUIN POWER & UTILITIES CORP., a company duly organized and existing under the laws of Canada, (hereinafter called the "Issuer" and, when referred to in the Original Indenture, the "Corporation") and AMERICAN STOCK TRANSFER & TRUST COMPANY, LLC, a New York limited liability trust company, as the U.S. trustee, the U.S. registrar, the U.S. paying agent and the U.S. transfer agent, (hereinafter called the "U.S. Trustee"), AST TRUST COMPANY (CANADA), a trust company existing under the federal laws of Canada, as the Canadian trustee, the Canadian registrar and the Canadian transfer agent, (hereinafter called the "Canadian Trustee").

WHEREAS by an indenture (the "Original Indenture") dated as of October 17, 2018 between the Issuer, the U.S. Trustee and the Canadian Trustee, provision was made for the issue of subordinated notes of the Issuer without limitation as to the aggregate principal amount subject to the provisions of the Original Indenture;

WHEREAS the Issuer is desirous of issuing subordinated notes under the provisions of the Original Indenture, and this First Supplemental Indenture, as a series of Securities to be designated as 6.875% Fixed-to-Floating Subordinated Notes —Series 2018-A Due October 17, 2078 (the "Notes");

WHEREAS the Issuer and the Trustees have agreed to supplement the Original Indenture as herein provided;

WHEREAS all necessary action has been taken by the Issuer to make the Notes when certified by the U.S. Trustee and issued as provided in this First Supplemental Indenture, valid, binding and legal obligations of the Issuer with the benefits and subject to the terms of the Original Indenture and to make this First Supplemental Indenture a valid and binding agreement of the Issuer, in accordance with its terms; and

WHEREAS the foregoing recitals are made as representations and statements of fact by the Issuer and not by the Trustees.

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

## ARTICLE 1

### Interpretation

SECTION 1.1. Definitions. In this First Supplemental Indenture, unless there is something in the subject matter or context inconsistent therewith:

"Additional Amounts" has the meaning ascribed to such term in Section 2.5(a).

"Automatic Conversion" has the meaning ascribed to such term in Section 4.1.

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“Automatic Conversion Event” means an event giving rise to an Automatic Conversion, being the occurrence of any one of the following: (i) the making by the Issuer of a general assignment for the benefit of its creditors or a proposal (or the filing of a notice of its intention to do so) under the Bankruptcy and Insolvency Act (Canada), (ii) any proceeding instituted by the Issuer seeking to adjudicate it as bankrupt (including any voluntary assignment in bankruptcy) or insolvent or, where the Issuer is insolvent, seeking liquidation, winding up, dissolution, reorganization, arrangement, adjustment, protection, relief or composition of its debts under any law relating to bankruptcy or insolvency in Canada, or seeking the entry of an order for the appointment of a receiver, interim receiver, trustee or other similar official for the Issuer or any substantial part of its property and assets in circumstances where the Issuer is adjudged as bankrupt (including any voluntary assignment in bankruptcy) or insolvent, (iii) a receiver, interim receiver, trustee or other similar official is appointed over the Issuer or for any substantial part of its property and assets by a court of competent jurisdiction in circumstances where the Issuer is adjudged as bankrupt (including any voluntary assignment in bankruptcy) or insolvent under any law relating to bankruptcy or insolvency in Canada, or (iv) any proceeding is instituted against the Issuer seeking to adjudicate it as bankrupt (including any voluntary assignment in bankruptcy) or insolvent, or where the Issuer is insolvent, seeking liquidation, winding up, dissolution, reorganization, arrangement, adjustment, protection, relief or composition of its debts under any law relating to bankruptcy or insolvency in Canada, or seeking the entry of an order for the appointment of a receiver, interim receiver, trustee or other similar official for the Issuer or any substantial part of its property and assets in circumstances where the Issuer is adjudged as bankrupt or insolvent under any law relating to bankruptcy or insolvency in Canada, and either such proceeding has not been stayed or dismissed within sixty (60) days of the institution of any such proceeding or the actions sought in such proceedings occur (including the entry of an order for relief against the Issuer or the appointment of a receiver, interim receiver, trustee, or other similar official for it or for any substantial part of its property and assets).

“Calculation Agent” means a third party independent financial institution of national standing in the United States or Canada with experience providing such services, which has been selected by the Issuer.

“Canadian Taxes” has the meaning ascribed to such term in Section 2.5(a).

“Conversion Preferred Shares” means the newly issued series of preferred shares of the Issuer to be issued to Holders of Notes upon an Automatic Conversion.

“Conversion Time” has the meaning ascribed to such term in Section 4.1.

“Dividend Restricted Shares” means, collectively, the Issuer Preferred Shares and the Issuer Common Shares.

“Deferral Period” has the meaning ascribed to such term in Section 5.1.

“Equity Credit Methodology” means the methodology or criteria employed by Fitch, S&P or Moody’s for purposes of assigning equity credit to securities such as the Notes that was effective on the Issue Date.

“Fitch” means Fitch Ratings Ltd.

“hereto”, “hereby”, “hereunder”, “hereof”, “herein” and similar expressions refer to this First Supplemental Indenture and not to any particular article, section, subdivision or other portion hereof.

“Holders” means the registered holders, from time to time, of the Notes or, where the context requires, all of such holders.

“Ineligible Person” means any Person whose address is in, or whom the Issuer or its transfer agent has reason to believe is a resident of, any jurisdiction outside of Canada and the United States of America to the extent that: (i) the issuance or delivery by the Issuer to such Person, upon an Automatic Conversion, of Conversion Preferred Shares, would require the Issuer to take any action to comply with securities or analogous laws of such jurisdiction; or (ii) withholding tax would be applicable in connection with the delivery to such Person of Conversion Preferred Shares upon an Automatic Conversion.

“Interest Payment Date” means January 17, April 17, July 17 and October 17 of each year during which any Notes are outstanding until the Maturity Date.

“Interest Period” means, initially, the period from and including the Issue Date to but excluding January 17, 2019 and thereafter from and including each Interest Payment Date to but excluding the next following Interest Payment Date.

“Interest Reset Date” means October 17, 2023 and every January 17, April 17, July 17 and October 17 of each year during which any Notes are outstanding thereafter until the Maturity Date, on which dates the interest rate on the Notes will be reset as described on the Form of Global Notes attached as Exhibit A hereto.

“Issue Date” means October 17, 2018.

“Issuer Common Shares” means the common shares of the Issuer.

“Issuer Preferred Shares” means the preferred shares of the Issuer (including the Series A Preferred Shares, the Series B Preferred Shares, the Series C Preferred Shares, the Series D Preferred Shares, the Series E Preferred Shares and the Conversion Preferred Shares).

“LIBOR” means, for any Interest Period, the rate for U.S. dollar deposits for a three-month period beginning on the second London Banking Day after the applicable LIBOR Determination Date that appears on page LIBOR01 of the Reuters service (or on any successor or substitute page of such service, or any successor to or substitute for such service providing rate quotations comparable to those currently provided on such page of such service, as determined by the Issuer from time to time for purposes of providing quotations of interest rates applicable to U.S. dollar deposits in the London interbank market) at approximately 11:00 a.m., London time, on such LIBOR Determination Date. If page LIBOR01 of the Reuters service does not include such a rate or is unavailable on a LIBOR Determination Date, the Issuer will request the principal London office of each of four major banks in the London interbank market, as selected by the Issuer, to provide such bank’s offered quotation, as of approximately 11:00 a.m., London time, on such LIBOR Determination Date, to prime banks in the London interbank market for deposits in a Representative Amount of U.S. dollars for a three-month period beginning on the second London Banking Day after such LIBOR Determination Date. If at least two such offered quotations are so provided, the LIBOR rate for the relevant interest period will be the arithmetic mean of such quotations. If fewer than two such quotations are so provided, the Issuer will request each of three major banks in New York City, as selected by the Issuer, to provide such bank’s rate, as of approximately 11:00 a.m., New York City time, on such LIBOR Determination Date, for loans in a Representative Amount in U.S. dollars to leading European banks for a three-month period beginning on the second London Banking Day after such LIBOR Determination Date. If at least two such rates are so provided, the LIBOR rate for the relevant interest period will be the arithmetic mean of such rates. If fewer than two such rates are so provided, then if a Calculation Agent has not been appointed at such time, the Issuer will appoint a Calculation Agent who shall, after consulting such sources as it deems comparable to any of the foregoing quotations or display page, or any such source as it deems reasonable from which to estimate LIBOR or any of the foregoing lending rates, shall determine the LIBOR rate for the LIBOR Determination Date in its sole discretion. If the Calculation Agent is unable or unwilling to determine the LIBOR rate as provided in the immediately preceding sentence, the Calculation Agent will use a substitute or successor base rate that it has determined in its sole discretion is most comparable to the LIBOR rate, provided that if the Calculation Agent determines there is an industry-accepted substitute or successor base rate, then the Calculation Agent shall use such substitute or successor base rate. If the Calculation Agent has determined a substitute or successor base rate in accordance with the immediately preceding sentence, the Calculation Agent in its sole discretion may determine what business day convention to use, the definition of business day, the determination date to be used and any other relevant methodology for calculating such substitute or successor base rate, including any adjustment factor needed to make such substitute or successor base rate comparable to the LIBOR rate, in a manner that is consistent with industry-accepted practices for such substitute or successor base rate.

If the Issuer determines on the relevant LIBOR Determination Date that the LIBOR rate has been discontinued, then it will appoint a Calculation Agent and the Calculation Agent will use a substitute or successor base rate that it has determined in its sole discretion is most comparable to the LIBOR rate, provided that if the Calculation Agent determines there is an industry-accepted substitute or successor base rate, then the Calculation Agent shall use such substitute or successor base rate. If the Calculation Agent has determined a substitute or successor base rate in accordance with the foregoing, the Calculation Agent in its sole discretion may determine what business day convention to use, the definition of business day, the dividend determination date to be used and any other relevant methodology for calculating such substitute or successor base rate, including any adjustment factor needed to make such substitute or successor base rate comparable to the LIBOR rate, in a manner that is consistent with industry-accepted practices for such substitute or successor base rate.

“LIBOR Determination Date” means, with respect to an Interest Period, the London Banking Day that is two London Banking Days prior to the first day of such Interest Period.

“London Banking Day” is any day on which dealings in U.S. dollars are transacted or, with respect to any future date, are expected to be transacted in the London interbank market.

“Maturity Date” means October 17, 2078.

“Moody’s” means Moody’s Investors Service, Inc.

“Notes” means the 6.875% Fixed-to-Floating Subordinated Notes —Series 2018-A due October 17, 2078 issued by the Issuer hereunder.

“Original Indenture” has the meaning ascribed to such term in the first recital to this First Supplemental Indenture.

“Parity Notes” means any class or series of Issuer indebtedness currently outstanding or hereafter created which ranks on a parity with the Notes (prior to any Automatic Conversion) as to distributions upon liquidation, dissolution or winding-up.

“Prospectus” means the short form base shelf prospectus dated September 18, 2018, as supplemented by the prospectus supplement dated October 10, 2018, relating to the offering by the Issuer of the Notes, including all documents incorporated by reference therein.

“Rating Event” means the amount of equity credit assigned to the Notes by Fitch, S&P or Moody’s has been reduced due to an amendment to, clarification or change in, the Equity Credit Methodology; provided, that a “Rating Event” with respect to Moody’s will not be deemed to have occurred unless (i) Moody’s has actually assigned a rating to the Notes at the time of determination and (ii) the amount of equity credit assigned to the Notes by Moody’s immediately following any such reduction shall be lower than the amount of equity credit that would have been assigned by Moody’s had the Notes been rated by Moody’s on the Issue Date.

“Representative Amount” means a principal amount of not less than \$1,000,000 for a single transaction in the relevant market at the relevant time.

“S&P” means Standard & Poor’s Ratings Services.

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

“Series A Preferred Shares” means the Issuer’s cumulative rate reset preferred shares, Series A.

“Series B Preferred Shares” means the Issuer’s nil cumulative floating rate preferred shares, Series B.

“Series C Preferred Shares” means the Issuer’s cumulative rate reset preferred shares, Series C.

“Series D Preferred Shares” means the Issuer’s cumulative rate reset preferred shares, Series D.

“Series E Preferred Shares” means the Issuer’s nil cumulative floating rate preferred shares, Series E.

“Tax” means any present or future tax, duty, levy, impost, assessment or other governmental charge (including penalties, interest and other liabilities related thereto), in each case in the nature of a tax, imposed or levied by a governmental authority.

“Tax Act” means the *Income Tax Act* (Canada) and the regulations thereunder.

“Tax Event” means the Issuer has received an opinion of counsel of nationally recognized standing in the United States or Canada or, if applicable, the Relevant Taxing Jurisdiction experienced in such matters to the effect that, as a result of (i) any amendment or change to the laws (or any regulations or rulings thereunder) of any Relevant Taxing Jurisdiction or any applicable tax treaty or (ii) any change in the application, administration or interpretation of such laws, regulations, rulings or treaties (including any judicial decision rendered by a court of competent jurisdiction with respect to such laws, regulations, rulings or treaties), in each of (i) and (ii), by any legislative body, court, governmental authority or agency, regulatory body or taxing authority, which amendment or change is effective on or after the Issue Date (or if the Relevant Taxing Jurisdiction has changed since the Issue Date, the date on which the applicable jurisdiction became a Relevant Taxing Jurisdiction) (including, for the avoidance of doubt, any such amendment or change made on or after the Issue Date (or the date on which the applicable jurisdiction became a Relevant Taxing Jurisdiction, as applicable) that has retroactive effect to a date prior to the Issue Date (or the date on which the applicable jurisdiction became a Relevant Taxing Jurisdiction, as applicable)), the Issuer has been or will be obligated to pay Additional Amounts as described under Section 2.5 and the Issuer cannot avoid such obligation by taking commercially reasonable measures to avoid it.

Words importing the singular include the plural and vice versa and words importing the masculine gender include the feminine gender and vice versa.

SECTION 1.2. Interpretation Not Affected By Headings, etc. The division of this First Supplemental Indenture into Articles and Sections, the provision of a table of contents and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this First Supplemental Indenture.

SECTION 1.3. Incorporation of Certain Definitions. All terms contained in this First Supplemental Indenture which are defined in the Original Indenture, as supplemented and amended to the date hereof, shall, for all purposes hereof, have the meanings given to such terms in the Original Indenture, as so supplemented and amended, unless otherwise defined herein or unless the context otherwise specifies or requires.

SECTION 1.4. Definition of “this Indenture”. The term “this Indenture”, whenever used herein, means the Original Indenture as supplemented and amended by this First Supplemental Indenture.

ARTICLE 2

The Notes

SECTION 2.1. Designation and Principal Amount. There is hereby authorized and established a series of Securities under the Indenture, designated as “6.875% Fixed-to-Floating Subordinated Notes — Series 2018-A due October 17, 2078”, which is not limited in aggregate principal amount. The aggregate principal amount of the Notes to be initially issued shall be limited to \$287,500,000. The Issuer may from time to time issue additional Notes hereunder in accordance with Section 3.3 of the Original Indenture.

SECTION 2.2. Terms of Notes. (a) The Notes shall be dated as of the Issue Date, regardless of their actual date of issue, and shall mature on the Maturity Date.

(b) From the Issue Date to, but excluding, October 17, 2023, the Notes will bear interest at the rate of 6.875% per annum, payable in arrears in equal quarterly payments on each Interest Payment Date with the first payment on January 17, 2019. Notwithstanding the foregoing, the initial interest payment payable on January 17, 2019, will be \$0.4297 per \$25.00 principal amount of the Notes. From October 17, 2023 and on every Interest Reset Date of each year during which the Notes are outstanding thereafter until October 17, 2078, the interest rate on the Notes will be reset as follows: (i) starting on October 17, 2023, on every Interest Reset Date, until October 17, 2028, the interest rate on the Notes will be reset at an interest rate per annum equal to the three-month LIBOR plus 3.677%, payable in arrears, with the first payment at such rate being on January 17, 2024; (ii) starting on October 17, 2028, on every Interest Reset Date, until October 17, 2043, the interest rate on the Notes will be reset at an interest rate per annum equal to the three-month LIBOR plus 3.927%, payable in arrears, with the first payment at such rate being on January 17, 2029; and (iii) starting on October 17, 2043, on every Interest Reset Date, until October 17, 2078, the interest rate on the Notes will be reset at an interest rate per annum equal to the three-month LIBOR plus 4.677%, payable in arrears, with the first payment at such rate being on January 17, 2044. Subject to Article 5, interest as aforesaid shall be payable after as well as before default, with interest on overdue interest, in like money, at the same rates and on the same dates.

(c) Interest for each Interest Period from the Issue Date to, but excluding, October 17, 2023, will be calculated on the basis of a 360-day year consisting of twelve 30-day months. Interest for each Interest Period from October 17, 2023 to the Maturity Date will be calculated on the basis of the actual number of days elapsed during the applicable Interest Period and a 360-day year. For the purposes of disclosure under the *Interest Act* (Canada), and without affecting the interest payable on the Notes, whenever the interest rate on the Notes is to be calculated on the basis of a period of less than a calendar year, the yearly interest rate equivalent for such interest rate will be the interest rate multiplied by the actual number of days in the relevant calendar year and divided by 360.

(d) For the period from the Issue Date to October 17, 2023, if any Interest Payment Date falls on a day that is not a Business Day, the Interest Payment Date will be postponed until the next Business Day, and no further interest or other sums will accrue in respect of such postponement. For the period from October 17, 2023 to the Maturity Date, if an Interest Payment Date, other than a redemption date or the Maturity Date, falls on a day that is not a Business Day, the Interest Payment Date will be postponed to the next day that is a Business Day, except that if that Business Day is in the next succeeding calendar month, the Interest Payment Date will be the immediately preceding Business Day (in each case, resulting in a corresponding adjustment to the number of days in the applicable interest period). Also, if a redemption date or the Maturity Date of the Notes falls on a day that is not a Business Day, the payment and principal will be made on the next succeeding Business Day and no interest on such payment will accrue for the period from and after the redemption date or the Maturity Date, if applicable.

(e) Interest payments will be made to Holders in whose names the Notes are registered at the close of business on January 3, April 3, July 3 and October 3 (in each case, whether or not a Business Day), as the case may be, immediately preceding the relevant floating-rate Interest Payment Date.

SECTION 2.3. Form of Notes. (a) Subject to Section 3.6 of the Original Indenture, the Notes shall be issued only as fully registered global Notes in minimum denominations of \$25.00 and integral multiples of \$25.00 in excess thereof.

(b) The Notes and the certificate of the U.S. Trustee endorsed thereon shall be in the English language and shall be substantially in the form set out in Exhibit A hereto, with such appropriate additions, deletions, substitutions and variations as the Trustees may approve and shall bear such distinguishing letters and numbers as the Trustees may approve, such approval of the Trustees to be conclusively evidenced by its certification of the Notes.

(c) The Notes may be engraved, printed or lithographed, or partly in one form and partly in another, as the Issuer may determine.

SECTION 2.4. Registrar and Transfer Agent, Paying Agent and Calculation Agent. The Issuer hereby appoints the U.S. Trustee as the U.S. registrar and U.S. transfer agent and U.S. paying agent of the Notes and the U.S. Trustee hereby accepts such appointment. The Issuer hereby appoints the Canadian Trustee as the Canadian transfer agent and Canadian paying agent of the Notes and the Canadian Trustee hereby accepts such appointment.

SECTION 2.5. Additional Amounts. (a) This Section 2.5 supersedes and replaces Section 10.2 of the Original Indenture with respect to the Notes.

References to "Section 10.2" of the Original Indenture and the terms defined therein shall instead refer to this "Section 2.5" of this First Supplemental Indenture, and the terms "Taxes", "Relevant Taxing Jurisdiction" and "Additional Amounts" as defined in Section 10.2 of the Original Indenture shall instead have the meanings provided to them in this First Supplemental Indenture. All payments made by or on account of any obligation of the Issuer under or with respect to the Notes shall be made free and clear of and without withholding or deduction for, or on account of, any present or future Taxes, unless the Issuer is required to withhold or deduct Taxes by law or by the interpretation or administration thereof by the relevant government authority or agency. If the Issuer is so required to withhold or deduct any Taxes imposed by the Government of Canada or any province or territory thereof or by any authority or agency therein or thereof having power to tax (a "Relevant Taxing Jurisdiction," and such Taxes, "Canadian Taxes") from any payment made under or with respect to the Notes, the Issuer shall pay as additional interest such additional amounts (hereinafter "Additional Amounts") as may be necessary so that the net amount received by each holder of the Notes (including Additional Amounts) after such withholding or deduction for Canadian Taxes shall not be less than the amount the Holder would have received if such Canadian Taxes had not been withheld or deducted; provided, however, that no Additional Amounts shall be payable with respect to a payment made to a Holder in respect of a Holder or beneficial owner (i) with which the Issuer does not deal at arm's length (for purposes of the Tax Act) at the time of the making of such payment, (ii) which is subject to such Canadian Taxes by reason of the failure to comply with any certification, identification, information, documentation or other reporting requirement by a Holder or beneficial owner of the Notes if compliance is required by law, regulation, administrative practice or an applicable treaty as a precondition to exemption from, or a reduction in, the rate of deduction or withholding of, such Canadian Taxes, (iii) where all or any portion of the amount paid to such Holder relates to an amount that is or was deemed to be a dividend paid to such Holder pursuant to subsection 214(16) of the Tax Act, (iv) which is subject to such Canadian Taxes by reason of its carrying on business in or being connected with Canada or any province or territory thereof (including, without limitation, by being or having been a national, domiciliary or resident, or treated as a resident, of, or physically present in or having or having had a permanent establishment in, Canada or any province or territory thereof) otherwise than by the mere holding of Notes or the receipt of payments thereunder, (v) in respect of any applicable Taxes that are payable other than by withholding from payments under or with respect to the Notes, (vi) in respect of any estate, inheritance, gift, sale, transfer, personal property, excise or similar applicable Taxes, (vii) if the applicable Taxes would not have been imposed but for the presentation of such Note (in cases in which presentation is required) more than 30 days after the later of the date on which the relevant payment became due and payable pursuant to the terms thereof or was made or duly provided for, (viii) in respect of any applicable Taxes to the extent such applicable Taxes result from the presentation of any Note for payment (where presentation is required for payment) and the payment can be made without such withholding or deduction by the presentation of the Note for payment by at least one other paying agent, (ix) for any Taxes imposed pursuant to Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended (the "Code") (or any amended or successor version of such sections) ("FATCA"), any regulations or other official guidance thereunder, any agreement entered into pursuant to section 1471(b)(1) of the Code, any intergovernmental agreement entered into between a non-U.S. jurisdiction and the United States in connection with FATCA or any law, regulation or other official guidance enacted in any jurisdiction implementing FATCA and (x) in respect of any combination of applicable Taxes referred to in the preceding clauses (i) through (ix). The Issuer shall make such withholding or deduction and remit the full amount deducted or withheld to the relevant authority as and when required under applicable law.

(b) Additional Amounts shall not be paid for any applicable Taxes if the holder is a fiduciary, partnership, limited liability company or person other than the sole beneficial owner of that payment to the extent that such payment would be required to be included in the income under the laws of the Relevant Taxing Jurisdiction, for tax purposes, of a beneficiary or settlor with respect to the fiduciary, a partner or member of that partnership or limited liability company or a beneficial owner who would not have been entitled to such Additional Amounts had that beneficiary, settlor, partner, member or beneficial owner been the holder thereof.

(c) Whenever in the Indenture there is mentioned, in any context, (i) the payment of principal or premium, (ii) purchase prices in connection with a purchase of Notes, (iii) interest, or (iv) any other amount payable on or with respect to the Notes, such reference shall be deemed to include payment of any Additional Amounts to the extent that, in such context, such Additional Amounts are, were or would be payable in respect thereof.

(d) The Issuer will pay any present or future stamp, court, documentary or similar Taxes that arise in any taxing jurisdiction from the execution, delivery, enforcement or registration of the Notes, the Indenture, or any other document or instrument required in relation thereof, and the Issuer agrees to indemnify the holders for any such Taxes paid by such holders. The obligations described under this heading will survive any termination, defeasance or discharge of the Indenture.

### ARTICLE 3

#### Redemption and Purchase for Cancellation of The Notes

SECTION 3.1. Redemption of Notes at the Option of the Issuer. On or after October 17, 2023, the Issuer may, at its option, on giving not more than 60 days nor less than 30 days' prior notice to the Holders thereof, redeem the Notes in whole at any time or in part from time to time on any Interest Payment Date without the consent of the Holders, at a Redemption Price per \$25.00 principal amount of the Notes equal to 100% of the principal amount thereof, together with accrued and unpaid interest to, but excluding, the Redemption Date.

SECTION 3.2. Notice to U.S. Trustee. This Section 3.2 supersedes and replaces Section 11.2 of the Original Indenture with respect to the Notes, and references to "Section 11.2" of the Original Indenture shall instead refer to this "Section 3.2" of this First Supplemental Indenture. If the Issuer elects to redeem any Notes pursuant to the Indenture, the Issuer shall, at least 45 days prior to the Redemption Date fixed by the Issuer, unless a shorter notice period shall be reasonably satisfactory to the U.S. Trustee, notify the U.S. Trustee of such Redemption Date and the principal amount of Notes to be redeemed. Such notice shall be accompanied by an Officer's Certificate and an Opinion of Counsel from the Issuer to the effect that such redemption shall comply with the terms of the Indenture.

SECTION 3.3. Early Redemption upon a Tax Event. This Section 3.3 supersedes and replaces Section 11.7 of the Original Indenture with respect to the Notes, and references to "Section 11.7" of the Original Indenture shall instead refer to this "Section 3.3" of this First Supplemental Indenture. After the occurrence of a Tax Event, the Issuer may, at its option, on giving not more than 60 days' nor less than 30 days' prior notice to the Holders thereof, redeem all (but not less than all) of the Notes without the consent of the Holders. The Redemption Price per \$25.00 principal amount of the Notes shall be equal to 100% of the principal amount thereof, together with accrued and unpaid interest to, but excluding, the Redemption Date.

SECTION 3.4. Early Redemption upon a Rating Event. Prior to the initial Interest Reset Date and within 90 days of a Rating Event, the Issuer may, at its option, on giving not more than 60 days nor less than 30 days' prior notice to the Holders, redeem all (but not less than all) of the Notes without the consent of the Holders. The Redemption Price per \$25.00 principal amount of the Notes shall be equal to 102% of the principal amount thereof, together with accrued and unpaid interest to, but excluding, the Redemption Date.

SECTION 3.5. Notice of Redemption. This Section 3.5 supersedes and replaces Section 11.4 of the Original Indenture with respect to the Notes, and references to "Section 11.4" of the Original Indenture shall instead refer to this "Section 3.5" of this First Supplemental Indenture

(a) Notice of redemption shall be delivered not less than 30 nor more than 60 days prior to the Redemption Date, to each Holder of Notes to be redeemed, at the address appearing in the Register.

(b) All notices of redemption shall state:

(i) the Redemption Date;

(ii) the Redemption Price;

(iii) if less than all of the outstanding Notes are to be redeemed, the principal amount of Notes to be redeemed;

(iv) that on the Redemption Date, the Redemption Price, together with accrued and unpaid interest, if any, to the Redemption Date, will become due and payable upon each such Note to be redeemed, and that interest thereon will cease to accrue on and after such date;

(v) the place or places where each such Note is to be surrendered for payment of the Redemption Price and accrued interest, if any;

(vi) the "CUSIP" number or "ISIN" number printed on the Notes being redeemed; and

(vii) such other matters as the Issuer shall deem desirable or appropriate.

(c) Notice of redemption of the Notes to be redeemed at the election of the Issuer, and any notice of non-satisfaction of redemption as aforesaid, shall be given by the Issuer or, at the Issuer's request, by the U.S. Trustee in the name and at the expense of the Issuer.

(d) Notice of redemption shall be irrevocable and on the Redemption Date, the Notes subject to redemption shall become due and payable at the Redemption Price, and from and after such date (unless the Issuer shall default in the payment of the Redemption Price and accrued interest) such Notes shall cease to bear interest.

SECTION 3.6. Purchase of the Notes for Cancellation.

(a) Subject to Section 5.3, the Issuer may purchase all or any of the Notes in the open market (which may include purchases from or through an investment dealer or a firm holding membership on or that is a participant of a recognized stock exchange) or by invitation for tenders or by private contract and, in each case, at any price, payable in cash. Notes purchased by the Issuer shall be delivered to the U.S. Trustee for cancellation and shall not be reissued.

(b) If, upon an invitation for tenders, more Notes than the Issuer is willing to purchase are tendered at the same lowest price, the Notes to be purchased by the Issuer shall be selected by the U.S. Trustee pro rata, or in such other manner as the U.S. Trustee may consider equitable in compliance with applicable law, from the Notes tendered by each Holder who tendered at such lowest price. For this purpose, the U.S. Trustee may make, and from time to time amend, regulations with respect to the manner in which the Notes may be so selected and regulations so made shall be valid and binding upon all Holders, notwithstanding the fact that, as a result thereof, one or more of such Notes become subject to purchase in part only. The Holder of any Notes of which a part only is purchased, upon surrender of such Notes for payment, shall be entitled to receive, without expense to such Holder, one or more new Notes for the unpurchased part so surrendered and the U.S. Trustee shall certify and deliver such new Notes upon receipt of the Notes so surrendered.

SECTION 3.7. Applicability of Certain Redemption Provisions in Original Indenture. Sections 11.3, 11.5 and 11.6 of the Original Indenture shall be applicable to the Notes.

ARTICLE 4

Automatic Conversion

SECTION 4.1. Automatic Conversion. Upon an Automatic Conversion Event, as of the Conversion Time all Notes, including accrued and unpaid interest thereon, shall be automatically converted (the "Automatic Conversion"), without the consent of the Holders, into a newly issued series of fully paid Conversion Preferred Shares with a stated issue price of \$25.00 per share, for each \$25.00 principal amount of Notes, together with such number of Conversion Preferred Shares (including fractional shares, where applicable) calculated by dividing the amount of accrued and unpaid interest on each \$25.00 principal amount of Notes from the immediately preceding Interest Payment Date to, but excluding, the date of the Automatic Conversion Event by \$25.00. The Automatic Conversion shall occur upon an Automatic Conversion Event (the "Conversion Time"). At the Conversion Time all Notes shall be deemed to be immediately and automatically surrendered and cancelled without need for further action by the Holders who shall thereupon automatically cease to be Holders thereof and all rights of any such Holder as a debtholder of the Issuer shall automatically cease. For greater certainty, any Notes purchased or redeemed by the Issuer prior to the Conversion Time shall be deemed not to be outstanding, and shall not be subject to the Automatic Conversion.

SECTION 4.2. Right Not to Deliver the Conversion Preferred Shares. Upon an Automatic Conversion of the Notes, the Issuer reserves the right not to issue some or all, as applicable, of the Conversion Preferred Shares to Ineligible Persons. In such circumstances, the Issuer will hold all Conversion Preferred Shares that would otherwise be delivered to Ineligible Persons, as agent for such Ineligible Persons, and will attempt to facilitate the sale of such shares through a registered broker or dealer retained by the Issuer for the purpose of effecting the sale (to parties other than the Issuer, its affiliates or other Ineligible Persons) on behalf of such Ineligible Persons of such Conversion Preferred Shares. Such sales, if any, may be made at any time and any price. The Issuer will not be subject to any liability for failing to sell Conversion Preferred Shares on behalf of any such Ineligible Persons or at any particular price on any particular day. The net proceeds received by the Issuer from the sale of any such Conversion Preferred Shares will be divided among the Ineligible Persons in proportion to the number of Conversion Preferred Shares that would otherwise have been delivered to them, after deducting the costs of sale and any applicable Taxes or withholding on account of Taxes, if any. The Issuer will make payment of the aggregate net proceeds to DTC (if the Notes are then held in the book-entry only system) or to the registrar and transfer agent (in all other cases) for distribution to such Ineligible Persons in accordance with the Applicable Procedures or otherwise.

SECTION 4.3. As a precondition to the delivery of any certificate or other evidence of issuance representing any Conversion Preferred Shares or related rights following an Automatic Conversion, the Issuer may require a Holder (and persons holding Notes represented by such Holder) to deliver a declaration, in form and substance satisfactory to the Issuer, confirming compliance with any applicable regulatory requirements to establish that such Holder is not, and does not represent, an Ineligible Person.

## ARTICLE 5

### Deferral Right

SECTION 5.1. Deferral Right. So long as no Event of Default has occurred and is continuing, the Issuer may elect, at its sole option, at any date other than an Interest Payment Date, to defer the interest payable on the Notes on one or more occasions for up to five consecutive years (a "Deferral Period"). Such deferral will not constitute an Event of Default or any other breach under the Indenture and the Notes. Deferred interest will accrue, compounding on each subsequent Interest Payment Date, until paid. A Deferral Period terminates on any Interest Payment Date on which the Issuer pays all accrued and unpaid interest on such date. No Deferral Period may extend beyond the Maturity Date.

The Issuer will give the Holders of the Notes written notice of its election to commence a Deferral Period at least 10 and not more than 60 days before the first applicable Interest Payment Date. After the commencement of a Deferral Period, the Issuer will give the Holders of the Notes written notice of its election to continue or terminate, as applicable, such Deferral Period, at least 10 and not more than 60 days before each subsequent Interest Payment Date until the termination of such Deferral Period.

SECTION 5.2. No Limit. There shall be no limit on the number of Deferral Periods that may occur pursuant to Section 5.1.

SECTION 5.3. Dividend Stopper Undertaking. Unless the Issuer has paid all accrued and unpaid interest on the Notes, the Issuer will not:

- (i) declare any dividend on the Dividend Restricted Shares or pay any interest on any Parity Notes (other than stock dividends on Dividend Restricted Shares);
- (ii) redeem, purchase or otherwise retire any Dividend Restricted Shares or Parity Notes (except (i) with respect to Dividend Restricted Shares, out of the net cash proceeds of a substantially concurrent issue of Dividend Restricted Shares or (ii) pursuant to any purchase obligation, sinking fund, retraction privilege or mandatory redemption provisions attaching to any series of Dividend Restricted Shares); or
- (iii) make any payment to holders of any of the Dividend Restricted Shares or any Parity Notes in respect of dividends not declared or paid on such Dividend Restricted Shares or interest not paid on such Parity Notes, respectively.

## ARTICLE 6

### Subordination

SECTION 6.1. Notes Subordinated to Senior Indebtedness. (a) Pursuant to and in accordance with Article 14 of the Original Indenture, the Notes shall be subordinated to the extent provided in this Article 6 of the First Supplemental Indenture. The Issuer covenants and agrees, and each Holder of Notes, by the acceptance thereof, likewise covenants and agrees, that the indebtedness represented by the Notes and the payment of the principal of and interest on each and all of the Notes is hereby expressly subordinated, to the extent and in the manner hereinafter set forth, in right of payment to the prior payment in full of all present and future Senior Indebtedness.

(a) In the event (i) of any insolvency or bankruptcy proceedings or any receivership, liquidation, reorganization or other similar proceedings in respect of the Issuer or a substantial part of its property, or of any proceedings for liquidation, dissolution or other winding up of the Issuer, whether or not involving insolvency or bankruptcy, or (ii) subject to the provisions of Section 6.2 that (A) a default shall have occurred with respect to the payment of principal of or interest on or other monetary amounts due and payable on any Senior Indebtedness, or (B) there shall have occurred an event of default (other than a default in the payment of principal or interest or other monetary amounts due and payable) in respect of any Senior Indebtedness, as defined therein or in the instrument under which the same is outstanding, permitting the holder or holders thereof to accelerate the maturity thereof (with notice or lapse of time, or both), and such event of default shall have continued beyond the period of grace, if any, in respect thereof, and, in the cases of subclauses (A) and (B) of this clause (ii), such default or Event of Default shall not have been cured or waived or shall not have ceased to exist, or (iii) that the principal of and accrued interest on the Notes shall have been declared due and payable pursuant to Section 5.2 of the Original Indenture and such declaration shall not have been rescinded and annulled as provided therein, then:

(1) The holders of all Senior Indebtedness shall first be entitled to receive payment of the full amount due thereon, or provision shall be made for such payment in money or money's worth, before the Holders of any of the Notes are entitled to receive a payment on account of the principal of or interest on the indebtedness evidenced by the Notes, including, without limitation, any payments made pursuant to Article 3;

(2) Any payment by, or distribution of assets of, the Issuer of any kind or character, whether in cash, property or securities, to which the Holders of any of the Notes or the Trustees would be entitled except for the provisions of this Article shall be paid or delivered by the person making such payment or distribution, whether a trustee in bankruptcy, a receiver, receiver and manager or liquidating trustee or otherwise, directly to the holders of such Senior Indebtedness or their representative or representatives or to the trustee or trustees under any indenture under which any instruments evidencing any of such Senior Indebtedness may have been issued, ratably according to the aggregate amounts remaining unpaid on account of such Senior Indebtedness held or represented by each, to the extent necessary to make payment in full of all Senior Indebtedness remaining unpaid after giving effect to any concurrent payment or distribution (or provision therefor) to the holders of such Senior Indebtedness, before any payment or distribution is made to the holders of the indebtedness evidenced by the Notes or to the Trustees under this instrument; and

(3) In the event that, notwithstanding the foregoing, any payment by, or distribution of assets of, the Issuer of any kind or character, whether in cash, property or securities, in respect of principal of or interest on the Notes or in connection with any repurchase by the Issuer of the Notes, shall be received by the Trustees or the Holders of any of the Notes before all Senior Indebtedness is paid in full, or provision made for such payment in money or money's worth, such payment or distribution in respect of principal of or interest on the Notes or in connection with any repurchase by the Issuer of the Notes shall be paid over to the holders of such Senior Indebtedness or their representative or representatives or to the trustee or trustees under any indenture under which any instruments evidencing any such Senior Indebtedness may have been issued, ratably as aforesaid, for application to the payment of all Senior Indebtedness remaining unpaid until all such Senior Indebtedness shall have been paid in full, after giving effect to any concurrent payment or distribution (or provision therefor) to the holders of such Senior Indebtedness.

**SECTION 6.2. Disputes with Holders of Certain Senior Indebtedness.** Any failure by the Issuer to make any payment on or perform any other obligation under Senior Indebtedness, other than any indebtedness incurred by the Issuer or assumed or guaranteed, directly or indirectly, by the Issuer for money borrowed (or any deferral, renewal, extension or refunding thereof) or any indebtedness or obligation as to which the provisions of this Section shall have been waived by the Issuer in the instrument or instruments by which the Issuer incurred, assumed, guaranteed or otherwise created such indebtedness or obligation, shall not be deemed a default or event of default under Section 6.1(b)(ii) if (1) the Issuer shall be disputing its obligation to make such payment or perform such obligation and (2) either (i) no final judgment relating to such dispute shall have been issued against the Issuer which is in full force and effect and is not subject to further review, including a judgment that has become final by reason of the expiration of the time within which a party may seek further appeal or review, and (ii) in the event of a judgment that is subject to further review or appeal has been issued, the Issuer shall in good faith be prosecuting an appeal or other proceeding for review and a stay of execution shall have been obtained pending such appeal or review.

SECTION 6.3. Subrogation. Subject to the payment in full of all Senior Indebtedness, the Holders of the Notes shall be subrogated (equally and ratably with the holders of all obligations of the Issuer which by their express terms are subordinated to Senior Indebtedness of the Issuer to the same extent as the Notes are subordinated and which are entitled to like rights of subrogation) to the rights of the holders of Senior Indebtedness to receive payments or distributions of cash, property or securities of the Issuer applicable to the Senior Indebtedness until all amounts owing on the Notes shall be paid in full, and as between the Issuer, its creditors other than holders of such Senior Indebtedness and the Holders, no such payment or distribution made to the holders of Senior Indebtedness by virtue of this Article that otherwise would have been made to the Holders shall be deemed to be a payment by the Issuer on account of such Senior Indebtedness, it being understood that the provisions of this Article are and are intended solely for the purpose of defining the relative rights of the Holders, on the one hand, and the holders of Senior Indebtedness, on the other hand.

SECTION 6.4. Obligation of Issuer Unconditional. (a) Nothing contained in this Article or elsewhere in this Indenture or in the Notes is intended to or shall impair, as among the Issuer, its creditors other than the holders of Senior Indebtedness and the Holders, the obligation of the Issuer, which is absolute and unconditional, to pay to the Holders the principal of and interest on the Notes as and when the same shall become due and payable in accordance with their terms, or is intended to or shall affect the relative rights of the Holders and creditors of the Issuer other than the holders of Senior Indebtedness, nor shall anything herein or therein prevent the Trustees or any Holder from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, subject to the rights, if any, under this Article of the holders of Senior Indebtedness in respect of cash, property or securities of the Issuer received upon the exercise of any such remedy.

(b) Upon payment or distribution of assets of the Issuer referred to in this Article, the Trustees and the Holders shall be entitled to rely upon any order or decree made by any court of competent jurisdiction in which any such dissolution, winding up, liquidation or reorganization proceeding affecting the affairs of the Issuer is pending or upon a certificate of the trustee in bankruptcy, receiver, receiver and manager, assignee for the benefit of creditors, liquidating trustee or agent or other person making any payment or distribution, delivered to the Trustees or to the Holders, for the purpose of ascertaining the persons entitled to participate in such payment or distribution, the holders of the Senior Indebtedness and other indebtedness of the Issuer, the amount thereof or payable thereon, the amount paid or distributed thereon and all other facts pertinent thereto or to this Article.

SECTION 6.5. Payments on Notes Permitted. Nothing contained in this Article or elsewhere in this Indenture or in the Notes shall affect the obligations of the Issuer to make, or prevent the Issuer from making, payment of the principal of or interest on the Notes in accordance with the provisions hereof and thereof, except as otherwise provided in this Article.

SECTION 6.6. Effectuation of Subordination by Trustees. Each Holder of Notes, by its acceptance thereof, authorizes and directs the Trustees on its behalf to take such action as may be necessary or appropriate to effectuate the subordination provided in this Article and appoints each Trustee its attorney-in-fact for any and all such purposes.

SECTION 6.7. Knowledge of Trustees. Notwithstanding the provisions of this Article or any other provisions of this Indenture, the Trustees shall not be charged with knowledge of the existence of any facts that would prohibit the making of any payment of moneys to or by a Trustee, or the taking of any other action by a Trustee, unless and until such Trustee shall have received written notice thereof mailed or delivered to such Trustee from the Issuer, any Holder, any paying agent or the holder or representative of any class of Senior Indebtedness; provided that if at least three Business Days prior to the date upon which by the terms hereof any such moneys may become payable for any purpose (including, without limitation, the payment of the principal or interest on any Note) a Trustee shall not have received with respect to such moneys the notice provided for in this Section, then, anything herein contained to the contrary notwithstanding, such Trustee shall have full power and authority to receive such moneys and to apply the same to the purpose for which they were received and shall not be affected by any notice to the contrary that may be received by it within three Business Days prior to or on or after such date.

SECTION 6.8. Trustees May Hold Senior Indebtedness. Each Trustee shall be entitled to all the rights set forth in this Article with respect to any Senior Indebtedness at the time held by it, to the same extent as any other holder of Senior Indebtedness, and nothing in the Original Indenture or elsewhere in this Indenture shall deprive the Trustee of any of its rights as such holder.

SECTION 6.9. Rights of Holders of Senior Indebtedness Not Impaired.

(a) No right of any present or future holder of any Senior Indebtedness to enforce the subordination herein shall at any time or in any way be prejudiced or impaired by any act or failure to act on the part of the Issuer or by any noncompliance by the Issuer with the terms, provisions and covenants of this Indenture, regardless of any knowledge thereof any such holder may have or be otherwise charged with.

(b) With respect to the holders of Senior Indebtedness, (i) the duties and obligations of the Trustees shall be determined solely by the express provisions of this Indenture, (ii) the Trustees shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture, (iii) no implied covenants or obligations shall be read into this Indenture against the Trustees and (iv) the Trustees shall not be deemed to be a fiduciary as to such holders.

SECTION 6.10. Article Applicable to Paying Agents. In case at any time any paying agent other than a Trustee shall have been appointed by the Issuer and be then acting hereunder, the term "Trustee" as used in this Article shall in such case (unless the context shall require not otherwise) be construed as extending to and including such paying agent within its meaning as fully for all intents and purposes as if such paying agent were named in this Article in addition to or in place of the applicable Trustee; provided, however, that Sections 6.7 and 6.8 shall not apply to the Issuer if it acts as its own paying agent.

SECTION 6.11. Trustee; Compensation Not Prejudiced. Nothing in this Article shall apply to claims of, or payments to, the Trustee pursuant to Section 6.7 of the Original Indenture.

## ARTICLE 7

### Merger, Amalgamation, Consolidation, Sale, Lease or Conveyance

SECTION 7.1. Merger, Amalgamation, Consolidation, Sale, Lease or Conveyance. This Section 7.1 supersedes and replaces Section 8.1 of the Original Indenture with respect to the Notes, and references to “Section 8.1” of the Original Indenture shall instead refer to this “Section 7.1” of this First Supplemental Indenture.

(a) The Issuer shall not merge, amalgamate or consolidate with any other Person or sell, lease or convey all or substantially all of its assets to any Person, unless:

(i) the Issuer shall be the continuing Person, or the successor corporation or Person that acquires all or substantially all the assets of the Issuer shall expressly assume all of the covenants to be performed and conditions to be observed by the Issuer under the Indenture by supplemental indenture reasonably satisfactory to the Trustees executed and delivered to the Trustees by such Person;

(ii) if any such successor Person referred to in clause (i) above, is organized under the laws of a jurisdiction other than the laws of Canada or any province or territory thereof or the United States, any state thereof or the District of Columbia, such successor person shall assume the Issuer’s obligations under this First Supplemental Indenture to pay Additional Amounts, with the name of such successor jurisdiction being included in addition to Canada in each place that Canada appears in Section 2.5(a), including the definition of “Relevant Taxing Jurisdiction”.

(iii) immediately after such merger, amalgamation, consolidation, sale, lease or conveyance the Issuer or such successor Person must not be in default in the performance of the covenants and conditions of the Indenture to be performed or observed by the Issuer; and

(iv) the Issuer shall deliver to the Trustees an Officer’s Certificate and an Opinion of Counsel, each stating that such consolidation, amalgamation, merger, conveyance, transfer or lease and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture, comply with this Section 7.1 and that all conditions precedent herein provided for relating to such transaction have been complied with.

ARTICLE 8

Additional Covenant

SECTION 8.1. Additional Covenant. The Issuer covenants for the benefit of Holders of Notes, that for so long as the Conversion Preferred Shares issuable upon the Automatic Conversion are issuable or outstanding, the Issuer will not create or issue any preferred shares which, in the event of insolvency, liquidation, dissolution or winding up of the Issuer, would rank in right of payment in priority to such Conversion Preferred Shares.

ARTICLE 9

Events of Default

SECTION 9.1. Events of Default. (a) With respect to the Notes, "Event of Default" means any one of the following events (whatever the reason for such Event of Default and whether it shall be occasioned by provisions of Article 6 of this First Supplemental Indenture or be voluntary or involuntary or effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulations of any administrative or governmental body):

- (i) default on the payment of principal or premium or Additional Amounts, if any, when due and payable;
- (ii) default on the payment of interest (including Additional Amounts) when due and payable and such default continues for 30 days (subject to the Issuer's right, at its sole option, to defer interest payments, as described under Article 5 of this First Supplemental Indenture);
- (iii) default in the performance of Section 7.1 of this First Supplemental Indenture;
- (iv) default in the performance of, or breaches of, any covenant of the Issuer under the Indenture (other than a covenant or a default in whose performance or breach is specifically dealt with in clauses (i), (ii) or (iii) above), and continuance of such default or breach for a period of 90 days after there has been given notice by registered or certified mail, to the Issuer by either Trustee (with a copy to the other Trustee), or to the Issuer and the Trustees by the Holders of at least 25.00% in principal amount of the Notes, a written notice specifying such default or breach and requiring it to be remedied.

(b) This Section 9.1 supersedes and replaces Section 5.1 of the Original Indenture with respect to the Notes. References to "Section 5.1" of the Original Indenture shall instead refer to this "Section 9.1" of this First Supplemental Indenture; references to "Section 5.1(3)" of the Original Indenture shall refer to "Section 9.1(a)(iv)" of this First Supplemental Indenture; and references to "clause (1) or (2) of Section 5.1" in the Original Indenture shall be deemed to refer to "clause (i) or (ii) of Section 9.1(a)" of this First Supplemental Indenture.

Amendment, Supplement and Waiver

SECTION 10.1. Without the Consent of Holders. This Section 10.1 supersedes and replaces Section 9.1 of the Original Indenture with respect to the Notes, and references to “Section 9.1” of the Original Indenture shall instead refer to this “Section 10.1” of this First Supplemental Indenture. The Issuer and the Trustees, at any time and from time to time, without the consent of any Holders, may amend or supplement the Indenture or the Notes, for any of the following purposes:

- (a) to evidence the succession of another Person to the Issuer and the assumption by such successor of the covenants of the Issuer in the Indenture and the Notes in accordance with Section 7.1 of this First Supplemental Indenture;
- (b) to add to the covenants of the Issuer or any other obligor for the benefit of holders of the Notes or surrender any right or power under the Indenture conferred upon the Issuer;
- (c) to add any additional Events of Default for the benefit of the Holders of the Notes;
- (d) to secure the Notes or add guarantees with respect to the Notes;
- (e) to effect or maintain, or otherwise comply with the requirements of the Commission in connection with the qualification of the Indenture under the Trust Indenture Act;
- (f) to evidence and provide for the acceptance of appointment by a successor Trustee or to add or change any of the provisions of the Indenture as shall be necessary to provide for or facilitate the administration of the trusts by multiple Trustees or the removal of one or more of the Trustees;
- (g) to cure any ambiguity, to correct or supplement any provision of the Indenture which may be defective or inconsistent with any other provisions of the Indenture, or to make any other provisions with respect to matters or questions arising under the Indenture; *provided* that such action pursuant to this clause (g) shall not adversely affect the interests of Holders of the Notes in any material respect;
- (h) to conform the text of the Indenture or the terms of the Notes to the “Description of the Notes” in the Prospectus; or
- (i) to make any other change that does not adversely affect the interests of Holders of Notes in any material respect.

SECTION 10.2. With the Consent of Holders. This Section 10.2 supersedes and replaces Section 9.2 of the Original Indenture with respect to the Notes, and references to “Section 9.2” of the Original Indenture shall instead refer to this “Section 10.2” of this First Supplemental Indenture. With the consent of the Holders of not less than a majority in principal amount of outstanding Notes, the Issuer and the Trustees may amend or supplement the Indenture or the Notes for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of the Indenture, or modifying the rights of the Holders of Notes under the Indenture; provided, however, that without the consent of each Holder of the outstanding Notes affected thereby, the Issuer and the Trustees may not:

- (a) change the Stated Maturity of the principal of, or any installment of principal or interest on, the Notes;
- (b) reduce the principal amount thereof or reduce the rate of interest thereon;
- (c) reduce any premium payable on redemption thereof;
- (d) change any obligation of the Issuer to pay Additional Amounts;
- (e) change the currency in which principal, and any premium, Additional Amounts or interest thereon is payable;
- (f) impair the right to institute suit for the enforcement of any payment on any of the Notes when due;
- (g) reduce the percentage in principal amount of the Notes, the consent of whose Holders is required under the provisions of Section 10.1 of this First Supplemental Indenture, this Section 10.2, Section 5.13 of the Original Indenture or Section 10.7 of the Original Indenture for any amendment or waiver of compliance with certain provisions of the Indenture or certain defaults thereunder and their consequences provided for in the Indenture;
- (h) modify the provisions of Section 10.1 of this First Supplemental Indenture, this Section 10.2, or Sections 5.13, 10.5 or 10.7 of the Original Indenture, except to increase any percentage of Holders whose consent is required for such amendment or waiver or to provide that certain provisions of the Indenture cannot be modified or waived without the consent of each Holder of the outstanding Notes affected thereby; or
- (i) modify Article 6 of this First Supplemental Indenture in a manner adverse to the Holders of the Notes.

No amendment may be made to the subordination provisions in Article 6 of this First Supplemental Indenture that adversely affects the rights of any holder of Senior Indebtedness then outstanding unless the holders of such Senior Indebtedness (or their representative) consent to such change.

ARTICLE 11

Indenture Supplemental to Original Indenture

SECTION 11.1. Indenture Supplemental to Original Indenture. This First Supplemental Indenture is supplemental to the Original Indenture within the meaning of the Original Indenture. The Original Indenture, all indentures supplemental thereto and this First Supplemental Indenture shall, subject to Section 9.4 of the Original Indenture, be read together and have the effect so far as practicable as though all the provisions thereof and hereof were contained in one instrument. The terms and provisions contained in this First Supplemental Indenture will constitute, and are hereby expressly made a part of, the Original Indenture. The Issuer and the Trustees, by their execution and delivery of this First Supplemental Indenture, expressly agree to such terms and provisions and to be bound thereby; provided, however, that the provisions of this First Supplemental Indenture shall apply solely with respect to the Notes and that, except as expressly supplemented hereby with respect to the Notes, the Original Indenture shall continue in full force and effect and is in all respects confirmed, ratified and preserved. The Original Indenture and this First Supplemental Indenture shall be read, taken and construed as one and the same instrument. In the event that any provision of this First Supplemental Indenture expressly limits, qualifies or conflicts with a provision of the Original Indenture, such provision of this First Supplemental Indenture shall control.

ARTICLE 12

Acceptance of Trusts by Trustees

SECTION 12.1. Acceptance of Trusts by Trustees. Each Trustee hereby accepts the trusts and duties declared and provided for in, and as otherwise contemplated by, this First Supplemental Indenture and hereby agrees to perform the same upon the terms and conditions set forth herein and as contemplated hereby and in the Original Indenture, in each case as supplemented or amended from time to time.

ARTICLE 13

Miscellaneous

SECTION 13.1. Counterparts. This First Supplemental Indenture may be executed in several counterparts, including by facsimile or in electronic form, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument and notwithstanding their date of execution shall be deemed to bear the same date as of the date hereof.

SECTION 13.2. Governing Law; Waiver of Trial by Jury.

(a) This First Supplemental Indenture and the Notes shall be governed by and construed in accordance with the laws of the State of New York, without regard to conflicts of laws principles thereof. This First Supplemental Indenture is subject to the provisions of the Trust Indenture Legislation that are required to be part of this First Supplemental Indenture and shall, to the extent applicable, be governed by such provisions. Notwithstanding the first sentence of this Section 13.2, the exercise, performance or discharge by the Canadian Co-Trustee of any of its rights, powers, duties or responsibilities hereunder shall be construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

(b) Each of the Issuer, the Trustees and any Holder by its acceptance of the Notes irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of, or relating to, this First Supplemental Indenture, the Notes or the transactions contemplated hereby.

SECTION 13.3. Consent to Jurisdiction and Service of Process.

(a) The Issuer submits to the non-exclusive jurisdiction of any New York State or federal court sitting in New York City over any suit, action or proceeding arising out of or relating to this First Supplemental Indenture or any Note. The Issuer irrevocably waives, to the fullest extent permitted by law, any objection that it may have to the laying of the venue of any such suit, action or proceeding brought in such a court and any claim that any such suit, action or proceeding brought in such a court has been brought in an inconvenient forum. The Issuer agrees that final judgment in any such suit, action or proceeding brought in such a court shall be conclusive and binding upon it and may be enforced in the courts of Canada, or any other courts to the jurisdiction of which the Issuer is subject, by a suit upon such judgment, provided that service of process is effected upon the Issuer in the manner specified in the clause (b) of this Section 13.3 or as otherwise permitted by law; *provided*, however, that the Issuer does not waive, and the foregoing provisions of this sentence shall not constitute or be deemed to constitute a waiver of, (i) any right to appeal any such judgment, to seek any stay or otherwise to seek reconsideration or review of any such judgment or (ii) any stay of execution or levy pending an appeal from, or a suit, action or proceeding for reconsideration or review of, any such judgment.

(b) As long as the Notes remain outstanding, the Issuer will at all times have an authorized agent in the Borough of Manhattan, New York City upon whom process may be served in any legal action or proceeding arising out of or relating to this First Supplemental Indenture or any Note. Service of process upon such agent and written notice of such service mailed or delivered to the Issuer shall, to the extent permitted by law, be deemed in every respect effective service of process upon the Issuer in any such legal action or proceeding. The Issuer irrevocably appoints CT Corporation System as its agent to receive service of process or other legal summons for purposes of any such suit, action or proceeding that may be instituted in any state or federal court in the City and County of New York.

(c) The Issuer hereby consents to process being served in any suit, action or proceeding of the nature referred to in clauses (a) or (b) of this Section 13.3 by service upon such agent together with the mailing of a copy thereof by registered or certified mail, postage prepaid, return receipt requested, to the Issuer's principal office at 354 Davis Road, Oakville, Ontario L6J 2X1, Attention: Chief Financial Officer, or to any other address of which the Issuer shall have given written notice to the U.S. Trustee. The Issuer irrevocably waives, to the fullest extent permitted by law, all claim or error by reason of any such service, but does not waive any right to assert lack of subject matter jurisdiction, and agrees that such service (i) shall be deemed in every respect effective service of process upon the Issuer in any such suit, action or proceeding and (ii) shall, to the fullest extent permitted by law, be taken and held to be valid personal service upon and personal delivery to the Issuer.

(d) Nothing in this Section 13.3 shall affect the right of the Trustees or any Holder to serve process in any manner permitted by law or limit the right of the Trustees to bring proceedings against the Issuer in the courts of any jurisdiction or jurisdictions.

SECTION 13.4. Benefits of Indenture. Nothing in this First Supplemental Indenture or in the Notes, express or implied, shall give to any Person, other than the parties hereto, any Authenticating Agent, any Paying Agent, any Registrar and their successors hereunder and the Holders, any benefit or any legal or equitable right, remedy or claim under this First Supplemental Indenture.

SECTION 13.5. Severability. In case any provision in this First Supplemental Indenture or in any of the Notes shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

SECTION 13.6. Successors and Assigns. All covenants and agreements in this First Supplemental Indenture by the Issuer shall bind its successors and assigns, whether so expressed or not.

**ALGONQUIN POWER & UTILITIES CORP.**

By: /s/ Ian Robertson  
Name: Ian Robertson  
Title: Chief Executive Officer

By: /s/ David Bronicheski  
Name: David Bronicheski  
Title: Chief Financial Officer

**AMERICAN STOCK TRANSFER & TRUST COMPANY, LLC**

By: /s/ Paul H. Kim  
Name: Paul H. Kim  
Title: Assistant General Counsel

**AST TRUST COMPANY (CANADA)**

By: /s/ Nelia Andrade  
Name: Nelia Andrade  
Title: Authorized Signatory

By: /s/ Marta Recinos  
Name: Marta Recinos  
Title: Authorized Signatory

## FORM OF GLOBAL NOTE

THIS GLOBAL SECURITY IS HELD BY THE DEPOSITARY (AS DEFINED IN THE INDENTURE GOVERNING THIS SECURITY) OR ITS NOMINEE IN CUSTODY FOR THE BENEFIT OF THE BENEFICIAL OWNERS HEREOF, AND IS NOT TRANSFERABLE TO ANY PERSON UNDER ANY CIRCUMSTANCES EXCEPT THAT (1) THIS GLOBAL SECURITY MAY BE EXCHANGED IN WHOLE BUT NOT IN PART PURSUANT TO SECTION 3.6(1) OF THE INDENTURE, (2) THIS GLOBAL SECURITY MAY BE DELIVERED TO THE U.S. TRUSTEE FOR CANCELLATION PURSUANT TO SECTION 3.10 OF THE INDENTURE AND (3) THIS GLOBAL SECURITY MAY BE TRANSFERRED TO A SUCCESSOR DEPOSITARY WITH THE PRIOR WRITTEN CONSENT OF THE ISSUER. UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR SECURITIES IN DEFINITIVE FORM, THIS SECURITY MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY. UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY TRUST COMPANY (“DTC”), TO THE ISSUER OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR SUCH OTHER ENTITY AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

[IN CANADA, UNLESS PERMITTED UNDER SECURITIES LEGISLATION, THE HOLDER OF THIS SECURITY MUST NOT TRADE THE SECURITY BEFORE [DATE WHICH IS FOUR MONTHS AND ONE DAY FROM THE DATE OF ISSUANCE OF APPLICABLE SECURITY TO BE INSERTED HERE].]

No.

## ALGONQUIN POWER &amp; UTILITIES CORP.

(a company established under the laws of Canada)

6.875% Fixed-to-Floating Subordinated Notes —Series 2018-A Due October 17, 2078

CUSIP: 015857 709      ISIN: US0158577090

**ALGONQUIN POWER & UTILITIES CORP.** (the “**Issuer**”) for value received hereby acknowledges itself indebted and promises to pay to the registered holder hereof (the “**Holder**”) on October 17, 2078, or on such earlier date as the principal amount hereof may become due in accordance with the provisions of the Indenture hereinafter mentioned, the principal sum of \$[●] in lawful money of the United States on presentation and surrender of this Note (as defined below) at the principal office of the U.S. Trustee in the City of New York, New York or such other location as it may designate from time to time, and to pay interest on the principal amount hereof from and including the date hereof, or from and including the last Interest Payment Date (as defined in the Indenture) to which interest shall have been paid or made available for payment on the outstanding Notes, whichever is later, at the rate of 6.875% per annum, payable in arrears, in equal quarterly payments on January 17, April 17, July 17 and October 17 in each year (or the next following Business Day if such date is not a Business Day) from October 17, 2018 to, but excluding, October 17, 2023. Notwithstanding the foregoing, the initial interest payment payable on January 17, 2019, will be \$0.4297 per \$25.00 principal amount of the Notes. From October 17, 2023, and on every Interest Reset Date (as defined in the Indenture) during which the Notes are outstanding thereafter until the Maturity Date, the interest payable on the Notes will be reset as follows: (i) starting on October 17, 2023, on every Interest Reset Date, until October 17, 2028, the interest rate on the Notes will be reset at an interest rate per annum equal to the three-month LIBOR plus 3.677%, payable in arrears, with the first payment at such rate being on January 17, 2024; and (ii) starting on October 17, 2028, on every Interest Reset Date, until October 17, 2043, the interest rate on the Notes will be reset at an interest rate per annum equal to the three-month LIBOR plus 3.927%, payable in arrears, with the first payment at such rate being on January 17, 2029; and (iii) starting on October 17, 2043, on every Interest Reset Date, until the Maturity Date, the interest rate on the Notes will be reset at an interest rate per annum equal to the three-month LIBOR plus 4.677%, payable in arrears, with the first payment at such rate being on January 17, 2044. Subject to Article 5 of the first supplemental indenture referred to below, interest as aforesaid shall be payable after as well as before default, with interest on overdue interest at the same rates and on the same dates.

This Note is one of the 6.875% Fixed-to-Floating Subordinated Notes due October 17, 2078 (the “**Notes**”) of the Issuer issued or issuable under the provisions of an indenture made as of October 17, 2018, between the Issuer, American Stock Transfer & Trust Company, LLC, as the U.S. Trustee, the U.S. Registrar, the U.S. Paying Agent and the U.S. Transfer Agent (the “**U.S. Trustee**”), and AST Trust Company (Canada), as the Canadian Trustee, the Canadian Registrar and the Canadian Transfer Agent (the “**Canadian Trustee**”), as supplemented by the first supplemental indenture dated as of October 17, 2018, between the Issuer, the U.S. Trustee and the Canadian Trustee (which indenture as so supplemented is herein referred to as the “**Indenture**”). The Notes issuable under the Indenture are unlimited in principal amount. Reference is hereby expressly made to the Indenture for a description of the terms and conditions upon which the Notes are or are to be issued and held and the rights, remedies and obligations of the holders of the Notes, of the Issuer and of the Trustees in respect thereof, all to the same effect as if the provisions of the Indenture were herein set forth, to all of which provisions the Holder by acceptance hereof acknowledges and assents.

So long as no Event of Default has occurred and is continuing, the Issuer may elect, at its sole option, at any date other than an Interest Payment Date, to defer the interest payable on the Notes on one or more occasions for up to five consecutive years (a “**Deferral Period**”). There shall be no limit on the number of Deferral Periods that may occur. Such deferral will not constitute an Event of Default or any other breach under the Indenture and the Notes. Deferred interest will accrue, compounding on each subsequent Interest Payment Date, until paid. A Deferral Period terminates on any Interest Payment Date on which the Issuer pays all accrued and unpaid interest on such date. No Deferral Period may extend beyond the Maturity Date.

The Notes are issuable only as fully registered global Notes in minimum denominations of \$25.00 and integral multiples of \$25.00 in excess thereof. Upon compliance with the provisions of the Indenture, the Notes of any denomination may be exchanged for an equal aggregate principal amount of the Notes in any other authorized denomination or denominations.

The Notes are direct obligations of the Issuer but are not secured by any mortgage, pledge, hypothec or other charge.

The indebtedness evidenced by this Note and by all other Notes now or hereafter certified and delivered under the Indenture is subordinated and subject in right of payment, to the extent and in the manner provided in the Indenture, to the prior payment in full of all present and future Senior Indebtedness (as defined in the Indenture), whether outstanding at the date of the Indenture or thereafter created, incurred, assumed or guaranteed.

The right is reserved to the Issuer to purchase or redeem the Notes for cancellation, and in certain circumstances the Issuer will be required to redeem the Notes, in all cases in accordance with the provisions of the Indenture.

The Notes will be automatically converted into Conversion Preferred Shares (as defined in the Indenture) upon an Automatic Conversion Event (as defined in the Indenture), in the manner, with the effect and as of the effective time contemplated in the Indenture.

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

This Note may only be transferred, upon compliance with the conditions prescribed in the Indenture, in one of the registers to be kept at the principal office of the U.S. Trustee or other registrar in the City of New York, New York by the Holder or such Holder's executors or administrators or other legal representatives or such Holder's attorney duly appointed by an instrument in form and substance satisfactory to the U.S. Trustee or other registrar, and upon compliance with such reasonable requirements as the U.S. Trustee and/or other registrar may prescribe.

This Note shall be governed by and construed in accordance with the laws of New York.

This Note shall not become obligatory for any purpose until it shall have been authenticated by the U.S. Trustee in accordance with the Indenture.

**ALGONQUIN POWER & UTILITIES CORP.**

By: \_\_\_\_\_  
Name: Ian Robertson  
Title: Chief Executive Officer

By: \_\_\_\_\_  
Name: David Bronicheski  
Title: Chief Financial Officer

(FORM OF TRUSTEE'S CERTIFICATE)

This Note is one of the 6.875% Fixed-to-Floating Subordinated Notes —Series 2018-A due October 17, 2078 referred to in the Indenture within mentioned.

AMERICAN STOCK TRANSFER & TRUST COMPANY, LLC

as the U.S. Trustee and as the Authenticating Agent of the Canadian Trustee

By:

\_\_\_\_\_  
(Authorized Signing Officer)

**CERTIFICATE OF TRANSFER**

I or we assign and transfer this Note to:

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

and irrevocably appoint agent to transfer this Note on the books of Algonquin Power & Utilities Corp. The agent may substitute another to act for him.

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

Signature: \_\_\_\_\_  
(Sign exactly as your name appears on the Notes)

Signature  
Guarantee: \_\_\_\_\_

(This signature must be guaranteed by a member of the Securities Transfer Association Medallion Program (STAMP), a member of the Stock Exchange Medallion Program (SEMP) or a member of the New York Stock Exchange Inc. Medallion Signature Program (MSP)).