

**THE WESTAIM CORPORATION**

- and -

**GMP SECURITIES L.P.**

- and -

**TD SECURITIES INC.**

- and -

**EQUITY FINANCIAL TRUST COMPANY**

**SUBSCRIPTION RECEIPT INDENTURE**

Providing for the Issue of  
Subscription Receipts

Dated as of May 28, 2015

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**SUBSCRIPTION RECEIPT INDENTURE**

THIS INDENTURE dated as of the 28<sup>th</sup> day of May, 2015.

**A M O N G :**

**THE WESTAIM CORPORATION**, a company existing under the *Business Corporations Act* (Alberta)

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

- and -

**GMP SECURITIES L.P.**, a partnership formed under the laws of Ontario

(hereinafter called “**GMP**”)

- and -

**TD SECURITIES INC.**, a company existing under the laws of Ontario

(and together with GMP hereinafter called the “**Joint Bookrunners**”)

- and -

**EQUITY FINANCIAL TRUST COMPANY**, a trust company incorporated under the laws of Canada

(hereinafter called the “**Subscription Receipt Agent**”)

WHEREAS pursuant to the terms of an underwriting agreement dated the date hereof between the Company and the Underwriters (the “**Underwriting Agreement**”), the Company proposes to create, issue and sell 65,296,993 Special Warrants on a private placement basis (the “**Brokered Offering**”) and the Underwriters have agreed to purchase, or arrange substituted purchasers to purchase, such Special Warrants from the Company;

AND WHEREAS concurrent with the Brokered Offering, the Company proposes to create, issue and sell 6,823,152 Special Warrants on a non-brokered private placement basis (the “**Non-Brokered Offering**”);

AND WHEREAS each Special Warrant will entitle the holder thereof to acquire, subject to the conditions set out in the Special Warrant Indenture, without payment of any additional consideration and without further action on the part of the holder thereof, one Subscription Receipt;

AND WHEREAS each Subscription Receipt will entitle the holder to receive, subject to the conditions set out herein, without payment of any additional consideration and without further action on the part of the holder, one Common Share (each, an “**Underlying Share**”) upon the satisfaction at or prior to the Termination Time of the Escrow Release Conditions, and until such time, no Subscription Receipts may be exercised by the holder or, if the conditions to convert the Subscription Receipts are not met, an amount equal to the holder’s aggregate subscription price per Special Warrant plus the holder’s *pro rata* entitlement to any interest earned or income generated on the Proceeds (less any applicable withholding tax);

AND WHEREAS the Company is authorized to create and issue the Subscription Receipts as herein provided and to complete the transactions contemplated herein;

AND WHEREAS all things necessary have been done and performed to make the Subscription Receipts and the Subscription Receipt Certificates, when certified by the Subscription Receipt Agent and issued and delivered as herein provided, legal, valid and binding obligations of the Company with the benefits of and subject to the terms of this Indenture;

AND WHEREAS the foregoing recitals are made as representations by the Company and not by the Subscription Receipt Agent;

AND WHEREAS the Subscription Receipt Agent has agreed to enter into this Indenture and to hold all rights, interests and benefits contained herein for and on behalf of those persons who from time to time become Subscription Receiptholders issued pursuant to this Indenture;

NOW THEREFORE THIS INDENTURE WITNESSES that for good and valuable consideration mutually given, the receipt and sufficiency of which are hereby acknowledged, by each of the Company, the Joint Bookrunners and the Subscription Receipt Agent, the Company hereby appoints the Subscription Receipt Agent as agent for the Subscription Receiptholders, to hold all rights, interests and benefits contained herein for and on behalf of those persons who from time to time become Subscription Receiptholders issued pursuant to this Indenture, and the Company, the Joint Bookrunners and the Subscription Receipt Agent hereby covenant, agree and declare as follows:

## ARTICLE 1 INTERPRETATION

### Section 1.01 Definitions

In this Indenture and in the Subscription Receipt Certificates, unless there is something in the subject matter or context inconsistent therewith:

- (a) “**Adjustment Period**” means the period commencing on the date hereof and ending at 4:30 p.m., Toronto time, on the Conversion Date;
- (b) “**Applicable Legislation**” means such provisions of any statute of Canada or of a province thereof, and of regulations under any such statute, relating to subscription receipt indentures or to the rights, duties and obligations of corporations and of agents under subscription receipt indentures, as are from time to time in force and applicable to this Indenture;
- (c) “**Book-Entry Only System**” means the book-based securities transfer system administered by CDS in accordance with its operating rules and procedures in force from time to time;
- (d) “**Brokered Offering**” has the meaning attributed thereto in the Recitals;
- (e) “**Brokered Proceeds**” means the gross proceeds received from the Company in connection with the sale of Special Warrants pursuant to the Brokered Offering;
- (f) “**Business Day**” means any day that is not a Saturday, Sunday or statutory holiday in Toronto, Ontario, or a day when the principal corporate trust office of the Subscription Receipt Agent in such city is not generally open to the public for the transaction of business;

- (g) “**By-Law**” means the general by-law of the Company, which was amended and restated as of November 14, 2014;
- (h) “**Canadian Offering Jurisdictions**” means each of the provinces and territories of Canada where Special Warrants are sold;
- (i) “**CDS**” means CDS Clearing and Depository Services Inc.;
- (j) “**Certificate of Transferee**” means the certificate of transferee forming part of the Subscription Receipt Certificate;
- (k) “**Closing Date**” means the date of closing of the Offering;
- (l) “**Common Shares**” means the common shares of the Company as constituted on the date hereof, provided that in the event of any adjustment pursuant to Section 4.06 hereof, Common Shares shall thereafter mean the shares or other securities or property resulting from such adjustment;
- (m) “**Company**” means The Westaim Corporation, and includes any successor company to or of the Company which shall have complied with the provisions of Section 9.02 hereof;
- (n) “**Company’s auditors**” means Deloitte LLP or such other firm of chartered accountants appointed as the auditor of the Company;
- (o) “**Control Approval Requirements**” means the “Control Approval Requirements” as set forth and defined in the By-Law;
- (p) “**Conversion Date**” means the day on which the Subscription Receipt Agent is required to convert the Subscription Receipts pursuant to Section 4.01 hereof;
- (q) “**counsel**” means a barrister or solicitor or a firm of barristers and solicitors acceptable to the Subscription Receipt Agent, who may be legal counsel for the Company;
- (r) “**Current Market Price**” of a Common Share at any date means the price per share equal to the volume weighted average price at which the Common Shares have traded on the TSXV for any 20 consecutive Trading Days selected by the Company commencing not more than 30 Trading Days before such date, or, if the Common Shares are not listed on the TSXV, on any other stock exchange on which the Common Shares are then listed as may be selected by the directors, or, if the Common Shares are not listed on any stock exchange, then on the over-the-counter market with the weighted average price per Common Share being 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 aggregate number of Common Shares so sold or, if not traded on any recognized market or exchange, as determined by the directors, acting reasonably;
- (s) “**director**” means a director of the Company for the time being, and reference without more to action by the directors means action by the directors of the Company as a board or, to the extent empowered, by a committee of the board, in each case by resolution duly passed;
- (t) “**Escrow Deemed Transfer**” has the meaning attributed thereto in Section 6.02(b) hereof;

- (u) “**Escrow Release Conditions**” means the “Escrow Release Conditions” as set forth and defined in the Underwriting Agreement;
- (v) “**Escrow Transfer**” has the meaning attributed thereto in Section 6.02(a) hereof;
- (w) “**Escrow Transfer Date**” has the meaning attributed thereto in Section 6.02(c) hereof;
- (x) “**Exchange Basis**” means the number of Subscription Receipts which a Special Warrantholder is entitled to receive upon the deemed exercise of the rights attached to each whole Special Warrant pursuant to the terms of the Special Warrant Indenture, such number being equal to one Subscription Receipt per Special Warrant;
- (y) “**Extraordinary Resolution**” has the meaning attributed thereto in Section 8.12 and Section 8.15 hereof;
- (z) “**Indemnified Person**” has the meaning attributed thereto in Section 12.07(b);
- (aa) “**NI 44-101**” means National Instrument 44-101 – *Short Form Prospectus Distributions*;
- (bb) “**Non-Brokered Offering**” has the meaning attributed thereto in the Recitals;
- (cc) “**Non-Brokered Proceeds**” means the gross proceeds received from the Company in connection with the sale of Special Warrants pursuant to the Non-Brokered Offering;
- (dd) “**Offering**” means the Brokered Offering and the Non-Brokered Offering;
- (ee) “**Permitted Investments**” means short-term interest bearing or discount debt obligations issued or guaranteed by the Government of Canada or a province of Canada, or one or more of the five largest Canadian chartered banks, provided that in all cases such obligation is rated at least R1 (middle) by DBRS Limited or an equivalent rating from an equivalent rating service;
- (ff) “**person**” means a person and includes an individual, corporation, partnership, trustee, unincorporated organization or any other entity whatsoever, and words importing persons have a similar extended meaning;
- (gg) “**Proceeds**” means the Non-Brokered Proceeds as well as the Brokered Proceeds less 50% of the Underwriting Fee and the costs and expenses of the Underwriters approved by the Company, being \$228,480,680.93;
- (hh) “**Qualification Date**” means the second Business Day following the date on which a final receipt is issued by the Ontario Securities Commission, on behalf of the securities regulatory authorities in each of the Canadian Offering Jurisdictions, for the filing of a (final) short form prospectus pursuant to NI 44-101 qualifying for distribution the Subscription Receipts;
- (ii) “**Qualified Institutional Buyer**” means a “qualified institutional buyer” as defined in Rule 144A;
- (jj) “**Refund Time**” has the meaning attributed thereto in Section 6.05 hereof;
- (kk) “**Regulation D**” means Regulation D under the U.S. Securities Act;
- (ll) “**Regulation S**” means Regulation S under the U.S. Securities Act;



- (mm) “**Release Date**” means the date on or prior to the date upon which the Termination Time occurs, on which the Subscription Receipt Agent receives the Release Notice;
- (nn) “**Release Notice**” means a written notice in the form set out in Schedule B attached hereto executed by the Company;
- (oo) “**Release Time**” means 5:00 p.m., Toronto time, on the Release Date;
- (pp) “**Rule 144A**” means Rule 144A under the U.S. Securities Act;
- (qq) “**Share Rate**” means the number of Underlying Shares which are issuable upon the conversion of each Subscription Receipt in accordance with Section 2.02 hereof, subject to adjustment in accordance with Section 4.06 hereof;
- (rr) “**Shortfall Amount**” means an amount equal to the difference between the Proceeds, including any interest accrued or income generated thereon, and such amount as may be required in order to fully reimburse the holders whose Subscription Receipts have been cancelled pursuant to Section 2.02(d) hereof the amount of \$3.25 for each Subscription Receipt held plus the holder’s *pro rata* portion of any interest earned or income generated on the Proceeds (less any applicable withholding tax);
- (ss) “**Significant Voting Interest**” means the holding, directly or indirectly, of voting securities of the Company carrying 10% or more of the votes carried by all voting securities of the Company;
- (tt) “**Special Warrant Deemed Exercise Date**” means the date on the earlier of the: (i) Qualification Date, and (ii) date upon which the Escrow Release Conditions are satisfied, provided that such conditions have been satisfied at or prior to the Termination Time, and until such time, no Special Warrants may be exercised by the holder thereof;
- (uu) “**Special Warrant Indenture**” means the special warrant indenture dated as of the date hereof between the Company, the Joint Bookrunners and Equity Financial Trust Company;
- (vv) “**Special Warrants**” means the special warrants of the Company issued under the Special Warrant Indenture entitling the holder thereof to acquire, on the Special Warrant Deemed Exercise Date, without payment of any additional consideration and without further action on the part of the holder, Subscription Receipts on the Exchange Basis;
- (ww) “**Subscription Receipt Agent**” means Equity Financial Trust Company, including its successors and assigns;
- (xx) “**Subscription Receipt Agent Escrow Release**” means the circumstance where the Qualification Date has occurred and the Escrow Release Conditions have been satisfied prior to the Termination Time, without the Transaction having been terminated prior thereto;
- (yy) “**Subscription Receipt Certificate**” means a certificate representing one or more Subscription Receipts substantially in the form of the certificate attached hereto as Schedule A;
- (zz) “**Subscription Receiptholders**” or “**holders**” means the persons for the time being and from time to time entered in a register of holders described in Section 3.01 hereof as holders of Subscription Receipts;

- (aaa) “**Subscription Receiptholders’ Request**” means an instrument signed in one or more counterparts by Subscription Receiptholders who hold in the aggregate not less than 10% of the total number of Subscription Receipts then outstanding, requesting the Subscription Receipt Agent to take some action or proceeding specified therein;
- (bbb) “**Subscription Receipts**” means the Subscription Receipts created and issued pursuant to Section 2.01 hereof and authorized for issue hereunder and represented by Uncertificated Subscription Receipts or Subscription Receipt Certificates issued and certified in accordance with the provisions hereof and that have not, at the relevant time, expired, been purchased by the Company or been converted;
- (ccc) “**Subsidiary of the Company**” has the meaning ascribed thereto in the *Business Corporations Act* (Alberta);
- (ddd) “**Termination Notice**” means a written notice from the Company addressed to the Subscription Receipt Agent and the Joint Bookrunners notifying that the Escrow Release Conditions will not be satisfied;
- (eee) “**Termination Time**” means the earlier of (i) 4:30 p.m., Toronto time, on September 15, 2015; and (ii) the time and date, if any, on which the Company provides the Termination Notice to the Subscription Receipt Agent and the Joint Bookrunners;
- (fff) “**this Subscription Receipt Indenture**”, “**this Indenture**”, “**hereto**”, “**hereunder**”, “**hereof**”, “**herein**”, “**hereby**” and similar expressions mean or refer to this Subscription Receipt Indenture and any indenture, deed or instrument supplemental or ancillary hereto, and the expressions “**article**”, “**section**”, “**subsection**”, “**paragraph**”, “**subparagraph**”, “**clause**” and “**subclause**” followed by a number mean the specified article, section, subsection, paragraph, subparagraph, clause or subclause of this Indenture;
- (ggg) “**Time of Expiry**” means 4:59 p.m., Toronto time, on the Special Warrant Deemed Exercise Date;
- (hhh) “**Trading Day**”, with respect to any stock exchange or over-the-counter market, means a day on which shares may be traded through the facilities of such stock exchange or in such over-the-counter market and otherwise means a day on which shares may be traded through the facilities of the principal stock exchange on which the Common Shares are then listed (or if the Common Shares are not then listed on any stock exchange, then in the over-the-counter market);
- (iii) “**Transaction**” means, collectively, the (i) acquisition by the Company of Arena Investors, LLC, or, if determined appropriate, the business currently carried out by Arena Investors, LLC, in either case for \$1.00; and (ii) creation of Arena Finance Company, a specialty finance company that will be capitalized with approximately US\$200 million primarily from the Proceeds to participate in credit-oriented opportunities;
- (jjj) “**Transfer Agent**” means Computershare Investor Services Inc.;
- (kkk) “**TSXV**” means the TSX Venture Exchange;
- (lll) “**Uncertificated Subscription Receipt**” means any Subscription Receipt that is not evidenced by a Subscription Receipt Certificate;

- (mmm) “**Underlying Shares**” has the meaning attributed thereto in the Recitals;
- (nnn) “**Underwriters**” means the Joint Bookrunners, Cormark Securities Inc. and Scotia Capital Inc.;
- (ooo) “**Underwriting Agreement**” has the meaning attributed thereto in the Recitals;
- (ppp) “**Underwriting Fee**” means the commission payable to the Underwriters pursuant to the Underwriting Agreement;
- (qqq) “**United States**” means the United States of America, its territories and possessions, the District of Columbia and any state of the United States;
- (rrr) “**U.S. Accredited Investor**” means an institutional “accredited investor” who satisfies one or more of the criteria of Rule 501(a)(1), (2), (3) or (7) of Regulation D;
- (sss) “**U.S. Person**” means a “U.S. person” as defined in Rule 902(k) of Regulation S;
- (ttt) “**U.S. Securities Act**” means the United States Securities Act of 1933, as amended; and
- (uuu) “**Written Order of the Company**”, “**Written Request of the Company**”, “**Written Consent of the Company**”, “**Written Direction of the Company**” and “**Certificate of the Company**” mean a written order, request, consent, direction and certificate, respectively, signed in the name of the Company by any director or officer of the Company or by any other individual to whom such signing authority is delegated by the directors from time to time, and may consist of one or more instruments so executed, respectively.

#### **Section 1.02 Words Importing the Singular**

Words importing the singular include the plural and vice versa and words importing a particular gender or neuter include both genders and neuter.

#### **Section 1.03 Interpretation Not Affected by Headings, Etc.**

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

#### **Section 1.04 Day Not a Business Day**

If the day on which any action which would otherwise be required to be taken hereunder is not a Business Day in the place where the action is required to be taken, that action will be required to be taken on or before the requisite time on the next succeeding day that is a Business Day.

#### **Section 1.05 Time of the Essence**

Time will be of the essence in all respects in this Indenture and the Subscription Receipt Certificates.

**Section 1.06 Currency**

Except as otherwise stated, all dollar amounts herein and in the Subscription Receipt Certificates are expressed in Canadian dollars.

**Section 1.07 Applicable Law**

This Indenture and the Subscription Receipt Certificates will be construed and enforced in accordance with the laws prevailing in the Province of Ontario and the federal laws of Canada applicable therein and will be treated in all respects as Ontario contracts.

**ARTICLE 2  
THE SUBSCRIPTION RECEIPTS****Section 2.01 Creation and Issue of Subscription Receipts**

- (a) Creation of Subscription Receipts: Up to 72,120,145 Subscription Receipts entitling the holders thereof to be issued, subject to adjustment in accordance with the provisions of this Indenture, an aggregate of no more than 72,120,145 Underlying Shares on the terms and subject to the conditions herein provided, are hereby created and authorized for issue.
- (b) Certification: Upon the issue of the Subscription Receipts in certificated form, Subscription Receipt Certificates shall be executed by the Company and delivered to the Subscription Receipt Agent, certified by the Subscription Receipt Agent upon the Written Order of the Company and delivered by the Subscription Receipt Agent to the Company or to the order of the Company pursuant to a Written Direction of the Company, without any further act of or formality on the part of the Company and without the Subscription Receipt Agent receiving any consideration therefor.
- (c) Issue of Uncertificated Subscription Receipts: Notwithstanding any other provision herein, the Subscription Receipts (with the exception of any Subscription Receipts issued to, or for the account or benefit of, a person in the United States or U.S. Person pursuant to Regulation D) may also be issued as Uncertificated Subscription Receipts. All Uncertificated Subscription Receipts issued to CDS or its nominee shall be evidenced by a book entry position on the register of Subscription Receipts to be maintained by the Subscription Receipt Agent in accordance with Section 3.01(a).
- (d) No Fractional Subscription Receipts: Fractional Subscription Receipts shall not be issued or otherwise provided for. If any fraction of a Subscription Receipt would otherwise be issuable, the number of Subscription Receipts so issued shall be rounded down to the nearest whole Subscription Receipt without compensation therefor.

**Section 2.02 Terms of Subscription Receipts**

- (a) Conversion Terms: At any time after the Release Time each Subscription Receipt issued hereunder will entitle the holder thereof, upon the conversion thereof in accordance with the provisions of Article 4 hereof, and without payment of any additional consideration, to be issued one Underlying Share (subject to adjustment in certain events).

- (b) Adjustment: The number of Underlying Shares which may be issued upon the conversion of Subscription Receipts in accordance with the provisions hereof will be adjusted in the events and in the manner specified in Section 4.06 hereof.
- (c) Purchase by Company: The Company may from time to time purchase Subscription Receipts in the open market, by private agreement or otherwise, and any such purchase may be made in such manner, from such persons, at such prices and on such terms as the Company in its sole discretion may determine. Subscription Receipts purchased by the Company pursuant to this Section 2.02(c) shall be surrendered to the Subscription Receipt Agent for cancellation and shall be accompanied by a Written Direction of the Company to cancel the Subscription Receipts.
- (d) Cancellation: In the event that, following the Special Warrant Deemed Exercise Date: (i) the Escrow Release Conditions are not satisfied at or prior to the Termination Time; or (ii) the Termination Notice is delivered by the Company, all of the applicable Subscription Receipts shall, at the Termination Time and without any action on the part of the holders thereof (including the surrender of Subscription Receipt Certificates), be cancelled by the Subscription Receipt Agent and holders of Subscription Receipts shall thereafter have no rights thereunder except as set out in this Section 2.02(d). In such event, the Subscription Receipt Agent shall pay to the holders from the Proceeds, an amount equal to \$3.25 per Subscription Receipt plus the *pro rata* portion of any interest earned or income generated on the Proceeds (less any withholding tax required to be withheld in respect thereof). The amount of \$3.25 per Subscription Receipt plus the *pro rata* portion of any interest earned or income generated on the Proceeds (less any withholding tax required to be withheld in respect thereof) shall be paid to each holder by the Subscription Receipt Agent in accordance with Section 6.04(b)(i) hereof. In the event that the amount of the Proceeds, including any interest accrued or income generated thereon, is not sufficient to fully reimburse the holders the amount of \$3.25 per Subscription Receipt plus the holder's *pro rata* portion of any interest earned or income generated on the Proceeds (less any applicable withholding tax), the Subscription Receipt Agent shall promptly notify the Company of same and of the Shortfall Amount and, forthwith upon receiving such notification from the Subscription Receipt Agent, the Company shall pay to the Subscription Receipt Agent the Shortfall Amount, which the Subscription Receipt Agent shall pay to the holders *pro rata*.

### **Section 2.03 Form of Subscription Receipt Certificates**

- (a) Form of Certificate: The Subscription Receipt Certificates (including the certificate of the Subscription Receipt Agent endorsed thereon) will be substantially in the form of the certificate attached hereto as Schedule A and each Subscription Receipt Certificate will be dated as of the Special Warrant Deemed Exercise Date (regardless of the actual date of its issue), will bear such distinguishing letters and numbers as the Company, with the approval of the Subscription Receipt Agent, may prescribe and such legends as the Company may prescribe and will be issuable in any whole number denomination.
- (b) Production: The Subscription Receipt Certificates may be engraved, lithographed or printed (the expression "printed" including for purposes hereof both original typewritten material as well as mimeographed, mechanically, photographically, photostatically or electronically reproduced, typewritten or other written material), or partly in one form and partly in another, as the Company may determine.

- (c) Persons in the United States: Subscription Receipt Certificates originally issued to, or for the account or benefit of, a person in the United States under Rule 144A or a U.S. Person under Regulation D, and all Subscription Receipts and Underlying Shares, and all certificates issued in exchange or in substitution thereof or upon transfer thereof, shall bear, in addition to those set forth in Section 2.03(e) hereof, the following legend:

“THE OFFER AND SALE OF SECURITIES REPRESENTED HEREBY [FOR SUBSCRIPTION RECEIPTS INCLUDE: AND THE SECURITIES ISSUABLE UPON EXERCISE HEREOF] HAVE NOT BEEN AND WILL NOT BE REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE “U.S. SECURITIES ACT”) OR ANY STATE SECURITIES LAWS, AND THE SECURITIES REPRESENTED HEREBY AND THE SECURITIES ISSUABLE UPON EXERCISE HEREOF MAY BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED ONLY (A) TO THE CORPORATION, (B) OUTSIDE THE UNITED STATES IN COMPLIANCE WITH RULE 904 OF REGULATION S UNDER THE U.S. SECURITIES ACT AND IN COMPLIANCE WITH LOCAL LAWS AND REGULATIONS, (C) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE U.S. SECURITIES ACT AND IS AVAILABLE FOR RESALE OF THE SECURITIES, OR (D) IN COMPLIANCE WITH AN EXEMPTION FROM REGISTRATION UNDER THE U.S. SECURITIES ACT, INCLUDING RULE 144 OR RULE 144A THEREUNDER, IF AVAILABLE, AND, IN EACH CASE, IN COMPLIANCE WITH ANY APPLICABLE STATE SECURITIES LAWS. THE HOLDER FURTHER UNDERSTANDS AND AGREES THAT IN THE EVENT OF A TRANSFER PURSUANT TO THE FOREGOING CLAUSE (B) OR (D), THE CORPORATION WILL REQUIRE A LEGAL OPINION OF COUNSEL OF RECOGNIZED STANDING OR OTHER EVIDENCE SATISFACTORY TO THE CORPORATION THAT SUCH TRANSFER IS EXEMPT FROM REGISTRATION UNDER THE U.S. SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. DELIVERY OF THIS CERTIFICATE MAY NOT CONSTITUTE “GOOD DELIVERY” IN SETTLEMENT OF TRANSACTIONS ON STOCK EXCHANGES IN CANADA.”

provided that, if any Subscription Receipts are being sold outside the United States in compliance with the requirements of Rule 904 of Regulation S at the time when the Company is a “foreign issuer”, as defined in Regulation S at the time of sale, the legend set forth above may be removed by providing to the Subscription Receipt Agent or Transfer Agent, as the case may be, and the Company: (i) a declaration in the form described in Section 3.01(h) hereof (or as the Company may prescribe from time to time); and (ii) if requested by the Company, an opinion of counsel of recognized standing in form and substance satisfactory to the Company to the effect that such sale is being made in compliance with Rule 904 of Regulation S; and

provided further, that, if any Subscription Receipts are being sold pursuant to Rule 144 under the U.S. Securities Act and in compliance with any applicable state securities laws, the legend may be removed by delivering to the Subscription Receipt Agent or Transfer Agent, as the case may be, of an opinion of counsel of recognized standing satisfactory to the Company to the effect that the legend is no longer required under applicable requirements of the U.S. Securities Act and state securities laws.

- (d) Restrictive Exercise Legend for Persons in the United States: Each Subscription Receipt Certificate originally issued to, or for the account or benefit of, a person in the United States under Rule 144A or a U.S. Person under Regulation D, and all certificates issued in exchange or in substitution thereof or upon transfer thereof, shall bear or be deemed to bear the following legend:

“THESE SUBSCRIPTION RECEIPTS AND THE SECURITIES ISSUABLE UPON EXERCISE HEREOF HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE “U.S. SECURITIES ACT”) OR UNDER ANY STATE SECURITIES LAWS. THE HOLDER HEREOF, BY PURCHASING SUCH SECURITIES, AGREES FOR THE BENEFIT OF THE CORPORATION THAT SUCH SECURITIES MAY NOT BE EXERCISED IN THE UNITED STATES OR BY OR ON BEHALF OF A U.S. PERSON UNLESS AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE U.S. SECURITIES ACT AND ALL APPLICABLE STATE SECURITIES LAWS IS AVAILABLE. THE TERMS “UNITED STATES” AND “U.S. PERSON” ARE AS DEFINED BY REGULATION S UNDER THE U.S. SECURITIES ACT.”

- (e) Persons Outside the United States: Subscription Receipt Certificates as well as certificates issued in exchange for or in substitution of thereof, shall, if issued prior to the Qualification Date, bear the following legends, as applicable:

“UNLESS PERMITTED UNDER SECURITIES LEGISLATION, THE HOLDER OF THIS SECURITY MUST NOT TRADE THE SECURITY BEFORE SEPTEMBER 29, 2015.

WITHOUT PRIOR WRITTEN APPROVAL OF THE TSX VENTURE EXCHANGE AND COMPLIANCE WITH ALL APPLICABLE SECURITIES LEGISLATION, THE SECURITIES REPRESENTED BY OR UNDERLYING THIS CERTIFICATE MAY NOT BE SOLD, TRANSFERRED, HYPOTHECATED OR OTHERWISE TRADED ON OR THROUGH THE FACILITIES OF THE TSX VENTURE EXCHANGE OR OTHERWISE IN CANADA OR TO OR FOR THE BENEFIT OF A CANADIAN RESIDENT UNTIL SEPTEMBER 29, 2015.” [*only to the extent directed by the Company*]

#### **Section 2.04 Signing of Subscription Receipt Certificates**

- (a) Signing Officers: The Subscription Receipt Certificates shall be signed by any one officer or any one director of the Company or by any other individual to whom such signing authority is delegated by the directors of the Company from time to time.
- (b) Signatures: The signature of any officer or director of the Company or any individual referred to in Section 2.04(a) hereof may be a manual signature, engraved, lithographed or printed in facsimile and Subscription Receipt Certificates bearing such facsimile signature will, subject to Section 2.05 hereof, be binding on the Company as if they had been manually signed by such officer or director of the Company or individual.
- (c) No Longer Officer: Notwithstanding that any individual whose manual or facsimile signature appears on a Subscription Receipt Certificate as one of the officers or directors of the Company referred to in Section 2.04(a) hereof no longer holds the same or any other office with, or is no longer a director of, the Company at the date of issue of any Subscription Receipt Certificate or at

the date of certification or delivery thereof, such Subscription Receipt Certificate will, subject to Section 2.05 hereof, be valid and binding on the Company.

**Section 2.05 Certification by Subscription Receipt Agent**

- (a) Certification: No Subscription Receipt Certificate will be issued or, if issued, will be valid or entitle the holder to the benefits hereof until it has been certified by manual signature by or on behalf of the Subscription Receipt Agent substantially in the form of the certificate attached hereto as Schedule A or in such other form as may be approved by the Subscription Receipt Agent. The certification by the Subscription Receipt Agent on a Subscription Receipt Certificate will be conclusive evidence as against the Company that such Subscription Receipt Certificate has been issued hereunder and that the holder thereof is entitled to the benefits hereof.
- (b) Certification No Representation: The certification by the Subscription Receipt Agent on any Subscription Receipt Certificate issued hereunder will not be construed as a representation or warranty by the Subscription Receipt Agent as to the validity of this Indenture or such Subscription Receipt Certificate (except as to the genuineness of the certificate and the due certification thereof) or as to the performance by the Company of the obligations thereof under this Indenture and the Subscription Receipt Agent shall in no respect be liable or answerable for the use made of any Subscription Receipt Certificate or of the consideration therefor, except as otherwise specified herein.
- (c) Authentication of Uncertificated Subscription Receipts: No Uncertificated Subscription Receipt shall be issued or, if issued, shall be valid for any purpose or entitle the holder to the benefit hereof or thereof, until it has been, upon receipt of a Written Direction of the Company, authenticated by entry on the register maintained by the Subscription Receipt Agent pursuant to Section 3.01(a) of the particulars of such Subscription Receipt. Such entry on the register maintained by the Subscription Receipt Agent pursuant to Section 3.01 of the particulars of an Uncertificated Subscription Receipt shall be conclusive evidence that such Subscription Receipt is a valid and binding obligation of the Company and that the holder is entitled to the benefits of this Indenture.
- (d) No Representation: The authentication of the Subscription Receipt Agent with respect to Uncertificated Subscription Receipts issued hereunder shall not be construed as a representation or warranty by the Subscription Receipt Agent as to the validity of this Indenture or the Subscription Receipts (except the due authentication thereof) and the Subscription Receipt Agent shall in no respect be liable or answerable for the use made of the Subscription Receipts or any of them or of the consideration therefor except as otherwise specified herein.

**Section 2.06 Subscription Receipts to Rank *Pari Passu***

All Subscription Receipts will rank *pari passu*, whatever may be the actual dates of issue of the Subscription Receipt Certificates by which they are represented.

**Section 2.07 Issue in Substitution for Lost Certificates, Etc.**

- (a) Substitution: If any Subscription Receipt Certificate becomes mutilated or is lost, destroyed or stolen, the Company, subject to applicable law and to Section 2.07(b) hereof, will issue, and thereupon the Subscription Receipt Agent will certify and deliver, a new Subscription Receipt Certificate of like tenor and bearing the same legends as the one mutilated, lost, destroyed or



stolen in exchange for and in place of and on surrender and cancellation of such mutilated certificate or in lieu of and in substitution for such lost, destroyed or stolen certificate.

- (b) Cost of Substitution: The applicant for the issue of a new Subscription Receipt Certificate pursuant to this Section 2.07 shall bear the reasonable cost of the issue thereof and in the case of loss, destruction or theft shall, as a condition precedent to the issue thereof:
- (i) furnish to the Company and to the Subscription Receipt Agent such evidence of ownership and of the loss, destruction or theft of the Subscription Receipt Certificate to be replaced as is satisfactory to the Company and to the Subscription Receipt Agent in their discretion, acting reasonably;
  - (ii) if so requested, furnish an indemnity and/or surety bond in amount and form satisfactory to the Company and to the Subscription Receipt Agent in their respective discretion, acting reasonably; and
  - (iii) pay the reasonable charges of the Company and the Subscription Receipt Agent in connection therewith.

#### **Section 2.08 Cancellation of Surrendered Subscription Receipts**

All Subscription Receipt Certificates surrendered to the Subscription Receipt Agent in accordance with the provisions of this Indenture will be cancelled by the Subscription Receipt Agent and, if requested in writing by the Company, the Subscription Receipt Agent will furnish the Company with a cancellation certificate identifying each Subscription Receipt Certificate so cancelled and the number of Subscription Receipts represented thereby.

#### **Section 2.09 Subscription Receiptholder not a Shareholder**

Nothing in this Indenture or in the holding of a Subscription Receipt represented by a Subscription Receipt Certificate, or otherwise, shall be construed as conferring on any Subscription Receiptholder any right or interest whatsoever as a shareholder of the Company, including but not limited to any right to vote at, to receive notice of, or to attend, any meeting of shareholders or any other proceeding of the Company or any right to receive any dividend or other distribution.

#### **Section 2.10 Use of Book-Entry Only System**

- (a) Notwithstanding any other provision of this Indenture and except for the Subscription Receipts issued that contain the United States restrictive legend in Section 2.03(c) hereof, the Company, at its sole option, may specify in a Written Order of the Company the use of the Book-Entry Only System in order to evidence the Subscription Receipts issued hereunder, in which case the appropriate modifications shall be deemed to have been made to the terms of this Indenture in order to permit compliance with the operating procedures of the Book-Entry Only System. In addition, except for the Underlying Shares that contain the United States restrictive legend in Section 4.05(c) hereof, the Book-Entry Only System may be used in order to evidence the Underlying Shares.
- (b) Beneficial interests in Subscription Receipts participating in the Book-Entry Only System will be represented only through the Book-Entry Only System. Transfer of Subscription Receipts between CDS participants shall occur in accordance with CDS' rules and procedures. Neither the Company nor the Subscription Receipt Agent shall have any responsibility or liability for any

aspects of the records relating to or payments made by CDS, or its nominee, on account of the beneficial interest in the Subscription Receipts. Nothing herein shall prevent the owners of beneficial interests in the Subscription Receipts from voting such Subscription Receipts using duly executed proxies.

- (c) All references herein to actions by, notices given or payments made to Subscription Receiptholders shall, where Subscription Receipts are held through CDS, refer to actions taken by, or notices given or payments made to, CDS upon instruction from the CDS participants in accordance with its rules and procedures. For the purposes of any provision hereof requiring or permitting actions with the consent of or at the direction of Subscription Receiptholders evidencing a specified percentage of the aggregate Subscription Receipts outstanding, such direction or consent may be given by holders acting through CDS and the CDS participants owning Subscription Receipts evidencing the requisite percentage of the Subscription Receipts. The rights of a beneficial owner whose Subscription Receipts are held through CDS shall be exercised only through CDS and the CDS participants and shall be limited to those established by law and agreements between such beneficial owners and CDS and/or the CDS participants or upon instructions from the CDS participants. Each of the Subscription Receipt Agent and the Company may deal with CDS for all purposes (including the making of payments) as the authorized representative of the respective Subscription Receiptholders and such dealing with CDS shall constitute satisfaction or performance, as applicable, of their respective obligations hereunder.
- (d) For so long as Subscription Receipts are held through CDS, if any notice or other communication is required to be given to Subscription Receiptholders, the Subscription Receipt Agent will give such notices and communications to CDS.
- (e) If CDS resigns or is removed from its responsibility as depository and the Subscription Receipt Agent is unable or does not wish to locate a qualified successor, the Company shall direct CDS to surrender the Subscription Receipts to the Subscription Receipt Agent with instructions for registration of Subscription Receipts in the name and in the amount specified by CDS and the Company shall issue and the Subscription Receipt Agent shall certify and deliver the aggregate number of Subscription Receipts then outstanding in the form of definitive Subscription Receipt Certificates.
- (f) Notwithstanding anything herein to the contrary, neither the Company nor the Subscription Receipt Agent nor any agent thereof shall have any responsibility or liability for:
  - (i) the electronic records maintained by CDS relating to any ownership interests or any other interests in the Subscription Receipts or the Book-Entry Only System, or payment made on account of any ownership interest or any other interest of any person in any Subscription Receipt represented by an electronic position in the Book-Entry Only System (other than CDS or its nominee);
  - (ii) for maintaining, supervising or reviewing any records of CDS relating to such interest; or
  - (iii) any advice or representation made or given by CDS or those contained herein that relate to the rules and regulations of CDS or any action to be taken by CDS on its own direction at the direction of any participant in the Book-Entry Only System.

**ARTICLE 3**  
**REGISTRATION, TRANSFER AND OWNERSHIP OF SUBSCRIPTION RECEIPTS**  
**AND EXCHANGE OF SUBSCRIPTION RECEIPT CERTIFICATES**

**Section 3.01    Registration and Transfer of Subscription Receipts**

- (a)    Register: The Company will cause to be kept by the Subscription Receipt Agent at the principal office in Toronto, Ontario of the Subscription Receipt Agent:
- (i)    a register of holders in which shall be entered in alphabetical order the names and addresses of the holders and particulars of the Subscription Receipts held by them; and
  - (ii)   a register of transfers in which all transfers of Subscription Receipts and the date and other particulars of each transfer shall be entered.
- (b)    Transfer: Other than in the case of Subscription Receipts held in the Book-Entry Only System, no transfer of any Subscription Receipt will be valid unless entered on the register of transfers referred to in Section 3.01(a) hereof, or on any branch register maintained pursuant to Section 3.01(g) hereof, upon surrender to the Subscription Receipt Agent of the Subscription Receipt Certificate representing such Subscription Receipt, with a properly completed transfer form in substantially the form attached to the Subscription Receipt Certificate executed by the registered holder or the executors, administrators or other legal representatives thereof or the attorney thereof duly appointed by an instrument in writing in form and executed in a manner satisfactory to the Subscription Receipt Agent and, upon compliance with such requirements and such other reasonable requirements as the Subscription Receipt Agent may prescribe, such transfer will be duly noted on one of such registers of transfers by the Subscription Receipt Agent. Further, no transfer of Subscription Receipts shall be effective, or shall be entered on the register kept by the Subscription Receipt Agent, unless the transferee thereof (a) certifies in writing that: (i) it was not offered the Subscription Receipts in the United States, (ii) at the time it originated the buy order for the Subscription Receipts, it was not in the United States, (iii) it did not execute any agreement to purchase the Subscription Receipts or the transfer form in the United States and (iv) it is not acquiring the Subscription Receipts for the account or benefit of a person in the United States; or (b) has delivered an opinion of counsel of recognized standing or other evidence in form and substance satisfactory to the Company to the effect that an exemption from the registration requirements of the U.S. Securities Act and applicable state securities laws is available for the transfer of the Subscription Receipts to the transferee. The transferee will also be required to acknowledge that it shall notify the Company prior to any conversion of the Subscription Receipts if the representations, warranties and certifications contained in the Certificate of Transferee are no longer true and correct. In addition, if a Subscription Receipt Certificate tendered for transfer bears the legend set forth in Section 2.03(c) hereof, and the holder has not obtained the prior Written Consent of the Company, the Subscription Receipt Agent shall not register such transfer unless the holder has provided the Subscription Receipt Agent with the Subscription Receipt Certificate and the transfer is being made in accordance with Section 3.01(h) hereof (i) to the Company, (ii) outside the United States in accordance with the requirements of Rule 904 of Regulation S and in compliance with applicable local laws and regulations, (iii) pursuant to a registration statement that has been declared effective under the U.S. Securities Act and is available for resale of the Subscription Receipts or (iv) in compliance with an exemption from registration under the U.S. Securities Act, including Rule 144 or Rule 144A thereunder, if available, and, in each case, in compliance with any applicable state securities laws, after the holder has furnished to the Company an opinion of counsel of recognized standing in form and substance satisfactory to the Company to such effect. Any

Subscription Receipts acquired by Qualified Institutional Buyers will be considered “restricted securities” within the meaning of Rule 144(a)(3) under the U.S. Securities Act and may not be offered, sold, pledged, or otherwise transferred, directly or indirectly, unless: (A) the transfer is to the Corporation (through the Corporation is under no obligation to purchase any Subscription Receipts); (B) the transfer is made in accordance with Rule 144A under the U.S. Securities Act to a person that the transferor, and any person acting on its behalf, reasonably believes is a Qualified Institutional Buyer purchasing for its own account or for the account of one or more Qualified Institutional Buyers; or (C) the transfer is made outside the United States in accordance with Regulation S and in compliance with applicable local laws or regulations.

- (c) Register of Transfers: The transferee of any Subscription Receipt will, after surrender to the Subscription Receipt Agent of the Subscription Receipt Certificate representing such Subscription Receipt as required by Section 3.01(b) hereof and upon compliance with all other conditions in respect thereof required by this Indenture or by law, be entitled to be entered on the register of holders referred to in Section 3.01(a) hereof, or on any branch register of holders maintained pursuant to Section 3.01(g) hereof, as the owner of such Subscription Receipt free from all equities or rights of set-off or counterclaim between the Company and the transferor or any previous holder of such Subscription Receipt, except in respect of equities of which the Company is required to take notice by statute or by order of a court of competent jurisdiction.
- (d) Refusal of Registration: The Company shall be entitled, and may direct the Subscription Receipt Agent, to refuse to recognize any transfer, or enter the name of any transferee, of any Subscription Receipt on the registers referred to in Section 3.01(a) hereof or on any branch register maintained pursuant to Section 3.01(g) hereof if such transfer would constitute a violation of the laws of any jurisdiction or the instruments, rules, regulations or policies of any regulatory authority (including the TSXV) having jurisdiction.
- (e) No Notice of Trusts: Subject to applicable law, neither the Company nor the Subscription Receipt Agent will be bound to take notice of or see to the execution of any trust, whether express, implied or constructive, in respect of any Subscription Receipt, and the Company or the Subscription Receipt Agent may transfer any Subscription Receipt on the direction of the person registered as the holder thereof, whether named as trustee or otherwise, as though that person were the beneficial owner thereof.
- (f) Inspection: The Subscription Receipt Agent will from time to time when requested to do so in writing by the Company or any Subscription Receiptholder (upon payment of the reasonable charges of the Subscription Receipt Agent) furnish the Company or such Subscription Receiptholder with a list of the names and addresses of holders of Subscription Receipts entered on such registers and showing the number of Subscription Receipts held by each such holder.
- (g) Location of Registers: The Company may at any time and from time to time change the place at which the registers referred to in Section 3.01(a) hereof are kept, cause branch registers of holders or transfers to be kept, in each case subject to the approval of the Subscription Receipt Agent, at other places and close such branch registers or change the place at which such branch registers are kept. Notice of all such changes or closures shall be given by the Company to the Subscription Receipt Agent and to the holders of Subscription Receipts in accordance with Section 13.01 and Section 13.02 hereof.
- (h) Certain Transfers by Persons in the United States: In accordance with Section 3.01(b), if the Subscription Receipt Certificate surrendered pursuant to Section 3.01(b) hereof bears the legend set forth in Section 2.03(c) hereof and:

- (i) the holder thereof is selling Subscription Receipts represented thereby outside the United States in compliance with the requirements of Rule 904 of Regulation S and in compliance with Canadian local laws and regulations, and provided that the Company is a “foreign issuer” within the meaning of Regulation S at the time of sale, the Subscription Receipt Agent shall not register such transfer unless the holder thereof delivers to the Subscription Receipt Agent a declaration to substantially the following effect (and the Company hereby covenants and agrees to use its commercially reasonable efforts thereof to cause the Subscription Receipt Agent to deliver Subscription Receipt Certificates bearing no such legend within five Business Days of the date of approval by the Company to do so) and if requested by the Company, an opinion of counsel of recognized standing in form and substance satisfactory to the Company to the effect that such transfer is being made in compliance with Rule 904 of Regulation S:

“The undersigned (A) acknowledges that the sale of the securities of The Westaim Corporation (the “**Corporation**”) to which this declaration relates is being made in reliance on Rule 904 of Regulation S under the *United States Securities Act of 1933*, as amended (the “**U.S. Securities Act**”) and (B) certifies that (1) the undersigned is not an “affiliate” of the Corporation as that term is defined in Rule 405 under the U.S. Securities Act, a “distributor” or an affiliate of “distributor”, (2) the offer of such securities was not made to a person in the United States and either (a) at the time the buy order was originated, the buyer was outside the United States, or the seller and any person acting on its behalf reasonably believed that the buyer was outside the United States or (b) the transaction was executed on or through the facilities of a “designated offshore securities market” (as defined in Rule 902 of Regulation S under the U.S. Securities Act) and neither the seller nor any person acting on its behalf knows that the transaction has been prearranged with a buyer in the United States, (3) neither the seller nor any affiliate of the seller nor any person acting on their behalf has engaged or will engage in any “directed selling efforts” in the United States in connection with the offer and sale of such securities, (4) the sale is bona fide and not for the purpose of “washing-off” the resale restrictions imposed because the securities are “restricted securities” as that term is described in Rule 144(a)(3) under the U.S. Securities Act, (5) the seller does not intend to replace such securities sold in reliance on Rule 904 of the U.S. Securities Act with fungible unrestricted securities, and (6) the contemplated sale is not a transaction, or part of a series of transactions, which, although in technical compliance with Regulation S under the U.S. Securities Act, is part of a plan or scheme to evade the registration provisions of the U.S. Securities Act. Unless otherwise specified, terms set forth above in quotation marks have the meanings given to them by Regulation S under the U.S. Securities Act.”

Notwithstanding the foregoing, the Company may impose additional requirements for the removal of legends from securities sold in accordance with Rule 904 of Regulation S in the future, to the extent such requirements result from legal compliance requirements; or

- (ii) the holder thereof is selling Subscription Receipts represented thereby in compliance with the requirements of Rule 144 under the U.S. Securities Act, the legend set forth in Section 2.03(c) hereof may be removed by delivery to the Subscription Receipt Agent and the Company of an opinion of counsel of recognized standing satisfactory in form and substance to the Company to the effect that such legend is no longer required under applicable requirements of the U.S. Securities Act or applicable state securities laws.

**Section 3.02 Exchange of Subscription Receipt Certificates**

- (a) Exchange: One or more Subscription Receipt Certificates may at any time prior to the earlier of the Release Time and the Termination Time, on compliance with the reasonable requirements of the Subscription Receipt Agent, be exchanged for one or more Subscription Receipt Certificates of different denominations representing in the aggregate the same number of Subscription Receipts as the Subscription Receipt Certificate or Subscription Receipt Certificates being exchanged.
- (b) Place of Exchange: Subscription Receipt Certificates may be exchanged only at the principal office in Toronto, Ontario of the Subscription Receipt Agent or at any other place designated by the Company with the approval of the Subscription Receipt Agent.
- (c) Cancellation: Any Subscription Receipt Certificate tendered for exchange pursuant to this Section 3.02 shall be surrendered to the Subscription Receipt Agent and cancelled.
- (d) Execution: The Company will sign all Subscription Receipt Certificates in accordance with Section 2.04 hereof necessary to carry out exchanges pursuant to this Section 3.02 and such Subscription Receipt Certificates will be certified by the Subscription Receipt Agent in accordance with Section 2.05 hereof.
- (e) Subscription Receipt Certificates: Subscription Receipt Certificates exchanged for Subscription Receipt Certificates that bear the legends set forth in Section 2.03 hereof shall bear the same legends.

**Section 3.03 No Charges for Transfer or Exchange**

No charge will be levied on a presenter of a Subscription Receipt Certificate pursuant to this Indenture for the transfer of any Subscription Receipt or the exchange of any Subscription Receipt Certificate.

**Section 3.04 Ownership of Subscription Receipts**

- (a) Owner: Subject to applicable law, the Company and the Subscription Receipt Agent may deem and treat the person in whose name any Subscription Receipt is registered as the absolute owner of such Subscription Receipt for all purposes, and such person will for all purposes of this Indenture be and be deemed to be the absolute owner thereof, and the Company and the Subscription Receipt Agent will not be affected by any notice or knowledge to the contrary except as required by statute or by order of a court of competent jurisdiction.
- (b) Rights of Registered Holder: Subject to applicable law, the registered holder of any Subscription Receipt will be entitled to the rights represented thereby free from all equities and rights of set-off or counterclaim between the Company and the original or any intermediate holder thereof and all persons may act accordingly, and the issue and delivery to any such registered holder of the Underlying Shares issuable pursuant thereto (or the payment of amounts payable in respect thereof pursuant to Section 2.02(d)) will be a good discharge to the Company and the Subscription Receipt Agent therefor and neither the Company nor the Subscription Receipt Agent will be bound to inquire into the title of any such registered holder.

**ARTICLE 4**  
**CONVERSION OF SUBSCRIPTION RECEIPTS**

**Section 4.01    Conversion by Subscription Receipt Agent**

- (a)    Conversion by Subscription Receipt Agent: If, following the Escrow Transfer, the Escrow Release Conditions are satisfied at or before the Termination Time, the Company shall, at or prior to the Termination Time and in any event, no later than two Business Days after the satisfaction of the Escrow Release Conditions, cause the Release Notice to be delivered to the Subscription Receipt Agent. Provided that the Escrow Release Conditions are satisfied at or prior to the Termination Time, all Subscription Receipts outstanding at the Release Time will, at the Release Time, be converted and the holder thereof shall, without any action on the part of the holder thereof (including the surrender of any Subscription Receipt Certificate), be deemed to have subscribed for the Underlying Shares at the Release Time. In the event of the Escrow Deemed Transfer, the Release Notice shall be provided to both the Special Warrant Agent and the Subscription Receipt Agent. In such event, the Special Warrants shall be deemed to be exercised into Subscription Receipts, the Proceeds and any interest earned or income generated thereon shall be deemed to have been transferred by the Special Warrant Agent to the Subscription Receipt Agent and all Subscription Receipts outstanding will, as of the Release Time, be converted and the holder thereof shall, without any action on the part of the holder thereof (including the surrender of any Subscription Receipt Certificate), be deemed to have subscribed for the Underlying Shares as of the Release Time.
- (b)    Rights on Conversion by Subscription Receipt Agent: The holder of any Subscription Receipt converted pursuant to Section 4.01(a) hereof shall have no rights thereunder except to receive the Underlying Shares issued upon the conversion thereof to such holder, and the Subscription Receipts shall be cancelled by the Subscription Receipt Agent following conversion of the Subscription Receipts in accordance with this Article 4.
- (c)    Direction of Subscription Receipt Agent: The Subscription Receipt Agent is hereby irrevocably authorized and directed to convert the Subscription Receipts pursuant to Section 4.01(a).
- (d)    Treasury Direction: The Company covenants that, within two Business Days following receipt of the particulars to be provided by the Subscription Receipt Agent to the Company pursuant to Section 4.04 hereof, it will deliver a duly completed and executed treasury direction to the Transfer Agent in order to effect the issue of the Underlying Shares from treasury.

**Section 4.02    Effect of Conversion**

- (a)    Effect of Conversion: Upon the conversion of any Subscription Receipts in accordance with Section 4.01 hereof, the Underlying Shares thereby issuable will be deemed to have been issued, and the person or persons to whom such Underlying Shares are to be issued will be deemed to have become the holder or holders of record thereof, on the Conversion Date, unless the transfer registers for the Underlying Shares are closed on that date, in which case such Underlying Shares will be deemed to have been issued and such person or persons will be deemed to have become the holder or holders of record thereof on the date on which such transfer registers are reopened, but such Underlying Shares will be issued on the basis of the number of Underlying Shares to which such person or persons were entitled on the Conversion Date. The certificates representing the Underlying Shares which are issued to a holder of Subscription Receipts upon the conversion of Subscription Receipts by the Subscription Receipt Agent pursuant to Section 4.01 hereof shall be issued in the name of such holder.

- (b) Mailing of Certificates: Within five Business Days after the Conversion Date, the Company shall cause the Transfer Agent to mail or deliver to the person or persons in whose name or names the Underlying Shares thereby issued have been issued, at the respective addresses thereof, certificates representing the Underlying Shares so issued, provided that such persons held Subscription Receipt Certificates. All other holders shall have their Underlying Shares issued electronically through the Book-Entry Only System.

#### **Section 4.03 No Fractional Underlying Shares**

The Company will not, whether pursuant to an adjustment in accordance with Section 4.06 hereof or under any other circumstance, be obligated after the aggregation of the number of Underlying Shares to be issued to each holder of Subscription Receipts to issue any fraction of an Underlying Share on the conversion of Subscription Receipts, and any such fraction shall be rounded down to the next whole number of Underlying Shares. A holder of Subscription Receipts shall not be entitled to receive a cash payment or any other compensation in respect of any such fraction of an Underlying Share.

#### **Section 4.04 Recording**

The Subscription Receipt Agent will record the particulars of each Subscription Receipt as at the Conversion Date, including the name and address of each registered holder of Subscription Receipts and the number of Subscription Receipts so held. Within three Business Days after the Conversion Date the Subscription Receipt Agent will provide such particulars in writing to the Company.

#### **Section 4.05 Securities Restrictions**

- (a) General: No Underlying Shares will be issued pursuant to the conversion of any Subscription Receipt if the issue of such Underlying Shares would constitute a violation of the laws of any jurisdiction and, without limiting the generality of the foregoing, the certificates representing the Underlying Shares thereby issued will bear such legend or legends as may, in the opinion of counsel to the Company, be necessary or advisable in order to avoid a violation of any laws of any jurisdiction or to comply with the requirements of any stock exchange on which the Underlying Shares are then listed, provided that if, at any time, in the opinion of counsel to the Company, such legend or legends are no longer necessary or advisable in order to avoid a violation of any such laws or requirements, or the holder of any such legended certificate, at the expense thereof, provides the Company and the Transfer Agent, with evidence satisfactory in form and substance to the Company and to the Transfer Agent to the effect that such holder is entitled to sell or otherwise transfer such Underlying Shares in a transaction in which such legend or legends are not required, such legended certificate may thereafter be surrendered to the Company or the Transfer Agent, as applicable, in exchange for a certificate which does not bear such legend or legends.
- (b) Canadian Legends: Certificates representing Underlying Shares issued prior to the Qualification Date upon the conversion of Subscription Receipts shall bear the following legends, as applicable:

“UNLESS PERMITTED UNDER SECURITIES LEGISLATION, THE HOLDER OF THIS SECURITY MUST NOT TRADE THE SECURITY BEFORE SEPTEMBER 29, 2015.



WITHOUT PRIOR WRITTEN APPROVAL OF THE TSX VENTURE EXCHANGE AND COMPLIANCE WITH ALL APPLICABLE SECURITIES LEGISLATION, THE SECURITIES REPRESENTED BY THIS CERTIFICATE MAY NOT BE SOLD, TRANSFERRED, HYPOTHECATED OR OTHERWISE TRADED ON OR THROUGH THE FACILITIES OF THE TSX VENTURE EXCHANGE OR OTHERWISE IN CANADA OR TO OR FOR THE BENEFIT OF A CANADIAN RESIDENT UNTIL SEPTEMBER 29, 2015.” [only to the extent directed by the Company]

- (c) U.S. Legends: If the Subscription Receipt Certificate converted in accordance with this Article 4 bears the legend set forth in Section 2.03(c) hereof, then any certificate representing Underlying Shares issued upon the conversion thereof shall bear, in addition to those set forth in Section 4.05(b) hereof, the following legend:

“THE OFFER AND SALE OF SECURITIES REPRESENTED HEREBY HAVE NOT BEEN AND WILL NOT BE REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE “U.S. SECURITIES ACT”) OR ANY STATE SECURITIES LAWS, AND THE SECURITIES REPRESENTED HEREBY MAY BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED ONLY (A) TO THE CORPORATION, (B) OUTSIDE THE UNITED STATES IN COMPLIANCE WITH RULE 904 OF REGULATION S UNDER THE U.S. SECURITIES ACT AND IN COMPLIANCE WITH LOCAL LAWS AND REGULATIONS, (C) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE U.S. SECURITIES ACT AND IS AVAILABLE FOR RESALE OF THE SECURITIES, OR (D) IN COMPLIANCE WITH AN EXEMPTION FROM REGISTRATION UNDER THE U.S. SECURITIES ACT, INCLUDING RULE 144 OR RULE 144A THEREUNDER, IF AVAILABLE, AND, IN EACH CASE, IN COMPLIANCE WITH ANY APPLICABLE STATE SECURITIES LAWS. THE HOLDER FURTHER UNDERSTANDS AND AGREES THAT IN THE EVENT OF A TRANSFER PURSUANT TO THE FOREGOING CLAUSE (B) OR (D), THE CORPORATION WILL REQUIRE A LEGAL OPINION OF COUNSEL OF RECOGNIZED STANDING OR OTHER EVIDENCE SATISFACTORY TO THE CORPORATION THAT SUCH TRANSFER IS EXEMPT FROM REGISTRATION UNDER THE U.S. SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. DELIVERY OF THIS CERTIFICATE MAY NOT CONSTITUTE “GOOD DELIVERY” IN SETTLEMENT OF TRANSACTIONS ON STOCK EXCHANGES IN CANADA.”

provided that, if any Underlying Shares are being sold outside the United States in compliance with the requirements of Rule 904 of Regulation S at the time when the Company is a “foreign issuer”, as defined in Regulation S at the time of sale, the legend set forth above may be removed by providing to the Transfer Agent and the Company: (i) a declaration in the form described in Section 3.01(h) hereof (or as the Company may prescribe from time to time); and (ii) if requested by the Company, an opinion of counsel of recognized standing in form and substance satisfactory to the Company to the effect that such sale is being made in compliance with Rule 904 of Regulation S; and

provided further, that, if any Underlying Shares are being sold pursuant to Rule 144 under the U.S. Securities Act and in compliance with any applicable state securities laws, the legend may be removed by delivering to the Transfer Agent of an opinion of counsel of recognized standing

satisfactory to the Company to the effect that the legend is no longer required under applicable requirements of the U.S. Securities Act and state securities laws.

#### **Section 4.06 Adjustments**

- (a) Adjustment: The rights of the holder of any Subscription Receipt, including the number of Underlying Shares to which the holder will be entitled upon conversion of the Subscription Receipts, will be adjusted from time to time in the events and in the manner provided in, and in accordance with the provisions of, this Section 4.06.
- (b) The Share Rate in effect at any date will be subject to adjustment from time to time as follows:
- (i) Share Reorganization: If and whenever at any time during the Adjustment Period, the Company shall (A) subdivide or redivide the outstanding Common Shares into a greater number of Common Shares, (B) consolidate or combine the outstanding Common Shares into a lesser number of Common Shares, or (C) issue Common Shares (or securities convertible into or exchangeable for Common Shares) to all or substantially all of the holders of Common Shares by way of a stock dividend or other distribution, then, in each such event, the Share Rate will, on the record date for such event or, if no record date is fixed, the effective date of such event, be adjusted so that it will equal the rate determined by multiplying the Share Rate in effect immediately prior to such date by a fraction, of which the denominator shall be the total number of Common Shares outstanding on such date before giving effect to such event, and of which the numerator shall be the total number of Common Shares outstanding on such date after giving effect to such event (including, in the case where securities exchangeable for or convertible into Common Shares are distributed, the number of Common Shares that would have been outstanding had such securities been exchanged for or converted into Common Shares on such record date, assuming in any case where such securities are not then convertible or exchangeable but subsequently become so, that they were convertible or exchangeable on the record date on the basis upon which they first become convertible or exchangeable). Such adjustment will be made successively whenever any such event shall occur. Any such issue of Common Shares by way of a stock dividend shall be deemed to have been made on the record date for such stock dividend for the purpose of calculating the number of outstanding Common Shares under Section 4.06(b)(i) and (ii) hereof.
- (ii) Rights Offering: If and whenever at any time during the Adjustment Period, the Company shall fix a record date for the issue of rights, options or warrants to all or substantially all of the holders of Common Shares entitling the holders thereof, within a period expiring not more than 45 days after the record date for such issue, to subscribe for or purchase Common Shares (or securities convertible into or exchangeable for Common Shares) at a price per share (or having a conversion or exchange price per share) less than 95% of the Current Market Price on the earlier of such record date and the date on which the Company announces its intention to make such issue, then, in each such case, the Share Rate will be adjusted immediately after such record date so that it will equal the rate determined by multiplying the Share Rate in effect on such record date by a fraction, of which the denominator shall be the total number of Common Shares outstanding on such record date plus the number of Common Shares equal to the number arrived at by dividing the aggregate price of the total number of additional Common Shares so 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, and 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 so offered for subscription or purchase (or into or for which the convertible or exchangeable securities so offered are convertible or exchangeable). Any Common Shares owned by or held for the account of the Company or any Subsidiary of the Company shall be deemed not to be outstanding for the purpose of any such computation. Such adjustment will be made successively whenever such a record date is fixed, provided that if two or more such record dates referred to in this Section 4.06(b)(ii) are fixed within a period of 25 Trading Days, such adjustment will be made successively as if each of such record dates occurred on the earliest of such record dates. To the extent that any such rights, options or warrants are not exercised prior to the expiration thereof, the Share Rate will then be readjusted to the Share Rate which would then be in effect based upon the number of Common Shares (or securities convertible into or exchangeable for Common Shares) actually issued upon the exercise of such rights, options or warrants, as the case may be.

- (iii) Distribution: If and whenever at any time during the Adjustment Period, the Company shall fix a record date for the making of a distribution to all or substantially all of the holders of Common Shares of (A) shares of any class other than Common Shares whether of the Company or any other corporation, (B) rights, options or warrants to acquire Common Shares or securities exchangeable for or convertible into Common Shares, shares of the Company of any class other than Common Shares or property or other assets of the Company (other than rights, options or warrants exercisable by the holders thereof within a period expiring not more than 45 days after the record date for such issue or distribution to acquire Common Shares or securities exchangeable for or convertible into Common Shares at a price per share, or at an exchange or conversion price per share in the case of securities exchangeable for or convertible into Common Shares, of at least 95% of the Current Market Price on such record date), (C) evidences of indebtedness, or (D) cash, securities or other property or assets then, in each such case, the Share Rate will be adjusted immediately after such record date so that it will equal the rate determined by multiplying the Share Rate in effect on such record date by a fraction, of which the denominator shall be the total number of Common Shares outstanding on such record date multiplied by the Current Market Price on the earlier of such record date and the date on which the Company announces its intention to make such distribution, less the aggregate fair market value (as determined by the directors, acting reasonably, at the time such distribution is authorized) of such shares or rights, options or warrants or evidences of indebtedness or cash, securities or other property or assets so distributed, and of which the numerator shall be the total number of Common Shares outstanding on such record date multiplied by such Current Market Price. Any Common Shares owned by or held for the account of the Company or any Subsidiary of the Company shall be deemed not to be outstanding for the purpose of any such computation. Such adjustment will be made successively whenever such a record date is fixed, provided that if two or more such record dates referred to this Section 4.06(b)(iii) are fixed within a period of 25 Trading Days, such adjustment will be made successively as if each of such record dates occurred on the earliest of such record dates. To the extent that any such rights, options or warrants so distributed are not exercised prior to the expiration thereof, the Share Rate will then be readjusted to the Share Rate which would then be in effect based upon such rights, options or warrants or evidences of indebtedness or cash, securities or other property or assets actually distributed or based upon the number or amount of securities or the property or assets actually issued or distributed upon the exercise of such rights, options or warrants, as the case may be.

- (c) Reclassifications: If and whenever at any time during the Adjustment Period, there is (A) any reclassification of the outstanding Common Shares, any change of the Common Shares into other shares or any other reorganization of the Company (other than as described in Section 4.06(b) hereof), (B) any consolidation, amalgamation, arrangement, merger or other form of business combination of the Company with or into any other corporation or other entity resulting in any reclassification of the outstanding Common Shares, any change of the Common Shares into other shares or any other reorganization of the Company, or (C) any sale, lease, exchange or transfer of the undertaking or assets of the Company as an entirety or substantially as an entirety to another corporation or entity, then, in each such event, in respect of any Subscription Receipt converted, each holder will be entitled to receive, and shall accept, in lieu of the number of Common Shares to which such holder was theretofore entitled upon such conversion, the kind and number or amount of shares or other securities or property which such holder would have been entitled to receive as a result of such event if, on the effective date thereof, such holder had been the registered holder of the number of Common Shares to which such holder was theretofore entitled upon such conversion. If necessary as a result of any such event, appropriate adjustments will be made in the application of the provisions set forth in this subsection with respect to the rights and interests thereafter of the holders to the end that the provisions set forth in this subsection will thereafter correspondingly be made applicable, as nearly as may reasonably be, in the relation to any shares or other securities or property thereafter deliverable upon the conversion of any Subscription Receipt. Any such adjustments will be set forth in an indenture supplemental hereto with its successor or such corporation or other entity, as applicable, contemporaneously with such reclassification, consolidation, amalgamation, arrangement, merger or other event and which supplemental indenture shall be approved by the directors, acting reasonably, and shall for all purposes be conclusively deemed to be an appropriate adjustment and such supplemental indenture shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided in this Section 4.06 and which shall apply to successive reclassifications, reorganizations, amalgamations, mergers, business combinations or other events.
- (d) Deferral of Adjustment: In any case in which this section shall require that an adjustment shall become effective immediately after a record date for or an effective date of an event referred to herein, the Company may defer, until the occurrence and consummation of such event, issuing to the holder in respect of any Subscription Receipt converted after such record date or effective date and before the occurrence and consummation of such event the additional Common Shares or other securities or property issuable upon such conversion by reason of the adjustment required by such event, provided, however, that the Company will deliver to such holder an appropriate instrument evidencing such holder's right to receive such additional Common Shares or other securities or property upon the occurrence and consummation of such event and the right to receive any dividend or other distribution in respect of such additional Common Shares or other securities or property declared in favour of the holders of record of Common Shares or of such other securities or property on or after the Conversion Date or such later date as such holder would, but for the provisions of this subsection, have become the holder of record of such additional Common Shares or of such other securities or property pursuant to Section 4.02(a) hereof.
- (e) Adjustments Cumulative: The adjustments provided for in this section are cumulative, shall, in the case of any adjustment to the Share Rate, be computed to the nearest one one-hundredth of an Common Share and will apply (without duplication) to successive subdivisions, consolidations, distributions, issues or other events resulting in any adjustment under the provisions of this section, provided that, notwithstanding any other provision of this section, no adjustment of the Share Rate will be required (i) unless such adjustment would require an increase or decrease of at

least 1% in the Share Rate then in effect (provided, however, that any adjustment which by reason of this subsection is not required to be made will be carried forward and taken into account in any subsequent adjustment), (ii) if, in respect of any event described in this section (other than the events referred to in clauses (A) and (B) of Section 4.06(b)(i) hereof and in Section 4.06(c) hereof), the holders are entitled to participate in such event, or are entitled to participate within 45 days in a comparable event, on the same terms, with the necessary changes, as if the Subscription Receipts had been converted prior to or on the effective date of or record date for such event, (iii) in respect of any Common Shares issuable or issued pursuant to any stock option or any stock option or stock purchase plan in force from time to time for directors, officers, consultants or employees of the Company or of Subsidiaries of the Company, or (iv) in respect of any Common Shares issuable or issued pursuant to the conversion of Subscription Receipts.

- (f) Resolution of Questions: If any question arises with respect to the adjustments provided in this section, such question shall be conclusively determined by the Company's auditors or, if they are unable or unwilling to act, by such firm of chartered accountants as is appointed by the Company and is acceptable to the Subscription Receipt Agent. Such accountants shall have access to all necessary records of the Company and such determination shall be binding upon the Company, the Subscription Receipt Agent and the Subscription Receiptholders.
- (g) Other Actions: If and whenever at any time during the Adjustment Period, the Company shall take any action affecting or relating to the Common Shares, other than any action described in this section, which in the reasonable opinion of the directors would prejudicially affect the rights of holders of Subscription Receipts, the Share Rate will be adjusted by the directors in such manner, if any, and at such time, as the directors may reasonably determine to be equitable in the circumstances to such holders.
- (h) Additional Actions: As a condition precedent to the taking of any action which would require an adjustment in any of the rights under the Subscription Receipts, the Company will take any action which may, in the reasonable opinion of counsel to the Company, be necessary in order that the Company, or any successor to the Company or successor to the undertaking or assets of the Company, will be obligated to and may validly and legally issue all the Underlying Shares or other securities or property which the holders would be entitled to receive thereafter on the exercise thereof in accordance with the provisions hereof.
- (i) Notice to Subscription Receipt Agent: At least ten days before the earlier of the effective date of or record date for any event referred to in this section that requires or might require an adjustment in any of the rights under the Subscription Receipts, the Company will:
- (i) file with the Subscription Receipt Agent a Certificate of the Company specifying the particulars of such event and, to the extent determinable, any adjustment required and the computation of such adjustment; and
  - (ii) give notice to the Subscription Receiptholders of the particulars of such event and, to the extent determinable, any adjustment required, in accordance with Section 13.02(a) hereof.

Such notice need only set forth such particulars as have been determined at the date such notice is given. If any adjustment for which such notice is given is not then determinable, promptly after such adjustment is determinable the Company will:

- (A) file with the Subscription Receipt Agent a Certificate of the Company showing the computation of such adjustment; and
- (B) give notice to the Subscription Receiptholders of such adjustment in accordance with Section 13.02(a) hereof.

Where a notice pursuant to this subsection has been given, absent manifest error, the Subscription Receipt Agent shall be entitled to act and rely on any adjustment calculation of the Company or of the Company's auditors.

- (j) Duty of Subscription Receipt Agent: Subject to Section 12.02(a) hereof, the Subscription Receipt Agent shall not:
  - (i) at any time be under any duty or responsibility to any Subscription Receiptholder to determine whether any facts exist which may require any adjustment in the Share Rate, or with respect to the nature or extent of any such adjustment when made, or with respect to the method employed in making such adjustment;
  - (ii) be accountable with respect to the validity or value (or the kind or amount) of any Underlying Shares or of any shares or other securities or property which may at any time be issued or delivered upon the conversion of any Subscription Receipt; or
  - (iii) be responsible for any failure of the Company to make any cash payment or to issue, transfer or deliver Underlying Shares or share certificates upon the conversion of Subscription Receipts, or to comply with any of the covenants contained in this section.

#### **Section 4.07 Compliance with By-Law**

Notwithstanding any other provision of this Indenture, no person may hold or acquire any securities issued by the Company, including the Subscription Receipts or Underlying Shares, and the Company has the right to refuse to issue or register a transfer of any such securities to a person: if such person: (i) owns, holds or controls, directly or indirectly, or (ii) would (as a result of the issue or transfer of securities of the Company) own, hold or control, directly or indirectly, a Significant Voting Interest contrary to any of the Control Approval Requirements.

### **ARTICLE 5 COVENANTS**

#### **Section 5.01 General Covenants**

The Company covenants with the Subscription Receipt Agent that so long as any Subscription Receipts remain outstanding:

- (a) Maintenance: The Company will use its commercially reasonable efforts to at all times maintain its corporate existence, carry on and conduct its business, and that of its material subsidiaries, in a proper, efficient and business-like manner and keep or cause to be kept proper books of account in accordance with generally accepted accounting principles.

- (b) Reservation of Underlying Shares: The Company will reserve and conditionally allot for the purpose and keep available sufficient unissued Underlying Shares to enable it to satisfy its obligations on the conversion of the Subscription Receipts.
- (c) Issue of Underlying Shares: The Company will cause the Underlying Shares from time to time issued pursuant to the conversion of the Subscription Receipts and the certificates representing such Underlying Shares, to be issued and delivered in accordance with the provisions of this Indenture and the terms hereof and all Underlying Shares that are issued on the conversion of the Subscription Receipts will be fully paid and non-assessable shares.
- (d) Open Registers: The Company will cause the Subscription Receipt Agent to keep open the registers of holders and registers of transfers referred to in Section 3.01 hereof as required by such section and will not take any action or omit to take any action which would have the effect of preventing the Subscription Receiptholders from converting any of the Subscription Receipts or receiving any of the Underlying Shares issued upon such conversion.
- (e) Transactions: If the Company is a party to any transaction in which the Company is not the continuing corporation, it shall use commercially reasonable efforts to obtain all consents which may be necessary or appropriate under Canadian law to enable the continuing corporation to give effect to the Subscription Receipts.
- (f) Filings: The Company will make all requisite filings, including filings with appropriate securities commissions and stock exchanges, including those necessary to maintain the Company's status as a reporting issuer not in default of the securities legislation in the provinces and territories of Canada in which it is a reporting issuer on the date hereof, and those required in connection with the conversion of the Subscription Receipts and the issue of the Underlying Shares in connection therewith.
- (g) Further Information: With respect to any notices to be given or other acts to be performed or which may be given or performed by the Joint Bookrunners or the Subscription Receipt Agent under or pursuant to this Indenture (including the notice contemplated by Section 4.01(a) hereof), the Company shall provide to the Joint Bookrunners or the Subscription Receipt Agent, in a timely manner all such information and documents as any of the Joint Bookrunners or the Subscription Receipt Agent may reasonably request and that which are within the knowledge or control of the Company in order to verify the factual circumstances relating to such notices or acts and, if reasonably requested, such information and documents shall be certified as correct by an officer of the Company.
- (h) Termination Notice: If, following the Special Warrant Deemed Exercise Date, the Company determines that the Transaction will not be proceeding, it shall forthwith provide the Termination Notice to the Subscription Receipt Agent and the Joint Bookrunners.
- (i) Notice of Termination Time: If the Release Notice shall not have been provided in accordance with the provisions hereof and on or prior to the Termination Time, then, within two Business Days following the Termination Time, the Company shall send or cause to be sent to each holder written notice advising of the occurrence of the Termination Time and that each holder will be deemed to have sold to the Company all Subscription Receipts held by such holder and the Company will be deemed to have purchased all such Subscription Receipts at a price equal to the original subscription price for the Special Warrants, as contemplated by Article 6 hereof.

- (j) Release Notice: As soon as practicable following the sending of the Release Notice to the Subscription Receipt Agent, the Company shall issue a press release confirming the satisfaction of the Escrow Release Conditions, the deemed conversion of the Subscription Receipts and the issuance of the Underlying Shares. The Company shall not deliver the Release Notice to the Subscription Receipt Agent prior to the satisfaction of the Escrow Release Conditions.
- (k) Material Default: The Company will promptly notify the Subscription Receipt Agent, the Joint Bookrunners and the Subscription Receiptholders in writing of any material default under the terms of this Indenture which remains unrectified for more than 10 Business Days following its occurrence.
- (l) General Performance: Generally, the Company will well and truly perform and carry out all acts and things to be done by it as provided in this Indenture or in order to consummate the transactions contemplated hereby.

### **Section 5.02 Remuneration and Expenses of Subscription Receipt Agent**

The Company will pay to the Subscription Receipt Agent from time to time reasonable remuneration for the services thereof hereunder and will, on the request of the Subscription Receipt Agent, pay to or reimburse the Subscription Receipt Agent for all reasonable expenses, disbursements and advances made or incurred by the Subscription Receipt Agent in the administration or execution of the duties and obligations hereof (including reasonable compensation and disbursements of its counsel and other advisers and assistants not regularly in the employment thereof), both before any default hereunder and thereafter until all duties of the Subscription Receipt Agent hereunder have been finally and fully performed, except any such expense, disbursement or advance that arises out of or results from gross negligence or bad faith of the Subscription Receipt Agent. In no event shall any amount payable to the Subscription Receipt Agent hereunder be paid out of the Proceeds or accrued interest or income generated, if any, thereon unless the Proceeds and accrued interest or income generated, if any, are, at the time of payment, payable to the Company. The Subscription Receipt Agent shall have no obligation to take any action under this Indenture so long as any payment remains due to the Subscription Receipt Agent for any reasonable fees, expenses and disbursements. Any amount owing under this Section 5.02 and unpaid 30 days after request for such payment will bear interest from the expiration of such 30 days at a rate per annum equal to the then current rate charged by the Subscription Receipt Agent, payable on demand.

### **Section 5.03 Securities Qualification Requirements**

If, in the opinion of counsel, any instrument is required to be filed with, or any permission is required to be obtained from any governmental authority in Canada or any other step is required under any federal or provincial law of Canada before any Underlying Shares to which a Subscription Receiptholder is entitled pursuant to the conversion of any Subscription Receipt may properly and legally be issued upon due conversion thereof, the Company covenants that it will promptly take such required action.

### **Section 5.04 Performance of Covenants by Subscription Receipt Agent**

If the Company fails to perform any of its covenants contained in this Indenture and the Company has not rectified such failure within 10 Business Days after receiving written notice in accordance with Section 13.01 from the Subscription Receipt Agent of such failure, the Subscription Receipt Agent may notify the Subscription Receiptholders in accordance with Section 13.02 of such failure on the part of the Company or may itself perform any of such covenants capable of being



performed by it, but shall be under no obligation to perform such covenants or to notify the Subscription Receiptholders of such performance by it. All reasonable sums expended or disbursed by the Subscription Receipt Agent in so doing will be repayable as provided in Section 5.02 hereof. No such performance, expenditure or disbursement by the Subscription Receipt Agent shall be deemed to relieve the Company of any default hereunder or of its continuing obligations under the covenants of this Indenture.

## **ARTICLE 6**

### **ESCROW**

#### **Section 6.01    Application**

The provisions of this Article 6 shall only apply in the event the Escrow Transfer or the Escrow Deemed Transfer has occurred. Prior to such time, the Proceeds shall be dealt with in the manner provided in the Special Warrant Indenture.

#### **Section 6.02    Deposit of Proceeds in Escrow**

- (a) If, prior to the Termination Time, the Qualification Date occurs without the: (A) Escrow Release Conditions having been satisfied; and (B) Transaction having been terminated prior thereto, the Special Warrant Agent shall transfer to the Subscription Receipt Agent the Proceeds and any interest earned or income generated thereon, within three Business Days following the Time of Expiry (the “**Escrow Transfer**”).
- (b) If, prior to the Qualification Date and the Termination Time, the Escrow Release Conditions have been satisfied (the “**Escrow Deemed Transfer**”), the Proceeds and any interest earned or income generated thereon, shall be deemed to have been transferred by the Special Warrant Agent to the Subscription Receipt Agent effective as of the Time of Expiry.
- (c) On the date of the Escrow Transfer or the Escrow Deemed Transfer, as the case may be, (the “**Escrow Transfer Date**”), the Proceeds shall be deposited or deemed to be deposited with the Subscription Receipt Agent and retained by the Subscription Receipt Agent in escrow in accordance with the provisions of this Article 6. The Company acknowledges and agrees that it was a condition of the payment by the holders of Special Warrants of the issue price therefor that the Proceeds be held in escrow in accordance with the provisions of the Special Warrant Indenture and this Indenture. The Company further acknowledges and confirms that it has no interest in the Proceeds unless and until the Release Notice is delivered in accordance with the terms of the Special Warrant Indenture and/or this Indenture, as applicable, in which case the Company shall have an interest in the Proceeds, together with the interest earned or income generated, if any, thereon, less the amounts payable pursuant to Section 6.04(a)(i) and Section 6.04(a)(ii) hereof. As of the Escrow Transfer Date, the Subscription Receipt Agent shall retain the Proceeds for the benefit of the holders of the Subscription Receipts and, upon the delivery to the Subscription Receipt Agent of the Release Notice, retroactively for the benefit of the Company and the Joint Bookrunners prior to the Termination Time, in accordance with the provisions of this Article 6.

#### **Section 6.03    Investment of Proceeds**

The Proceeds deposited with the Subscription Receipt Agent hereunder, pending any release or application thereof as required in accordance with the provisions of this Article 6, shall be invested by the Subscription Receipt Agent in the name thereof in Permitted Investments in accordance

with any written direction given by the Company and the Joint Bookrunners from time to time to the Subscription Receipt Agent or, in the absence of any such direction, shall be held by the Subscription Receipt Agent in accordance with Section 12.04(b) hereof. The Subscription Receipt Agent shall have no responsibility or liability for any diminution of the Proceeds resulting from any Permitted Investment made in accordance with this Section 6.03, including any losses on any investment liquidated prior to maturity in order to make a payment required hereunder. Pending disbursement of the Proceeds, the Subscription Receipt Agent shall hold, invest and reinvest such amount as directed in writing by the Company and the Joint Bookrunners. Such direction to the Subscription Receipt Agent shall be provided no later than 10:00 a.m., Toronto time, on the day on which the investment is to be made. Any direction received by the Subscription Receipt Agent after 10:00 a.m., Toronto time, or on a day which is not a Business Day, shall be deemed to have been given prior to 10:00 a.m., Toronto time, on the next succeeding Business Day.

#### **Section 6.04 Release of Proceeds**

- (a) In the event the Subscription Receipt Agent Escrow Release has occurred, or in the event the Escrow Deemed Transfer has occurred, the Subscription Receipt Agent shall release the Proceeds and any interest accrued or income generated thereon by certified cheque, bank draft or wire transfer, upon delivery prior to the Termination Time of the Release Notice, within three Business Days following the Release Time, as follows:
- (i) an amount equal to (A) the balance of the Underwriting Fee payable to the Underwriters pursuant to the Underwriting Agreement not previously paid to the Underwriters on the Closing Date, including any interest accrued or income generated thereon, and (B) the balance of the expenses of the Underwriters (including legal expenses) payable to the Underwriters pursuant to the Underwriting Agreement not previously paid on the Closing Date, shall be released by the Subscription Receipt Agent to the Joint Bookrunners,
  - (ii) an amount equal to its reasonable fees for its services rendered hereunder and associated disbursements incurred shall be retained by the Subscription Receipt Agent, and
  - (iii) all of the remaining Proceeds, together with the remaining interest accrued or income generated, if any, on the Proceeds, shall be released by the Subscription Receipt Agent to or at the direction of the Company,
- all as provided for in the Release Notice.
- (b) In the event that the Release Notice has not been received by the Subscription Receipt Agent at or prior to the Termination Time, or if the Termination Notice is received by the Subscription Receipt Agent, commencing on the second Business Day following the Termination Time:
- (i) the Subscription Receipt Agent shall wire or forward by first class mail a cheque representing the amount of \$3.25 per Subscription Receipt plus the *pro rata* portion of any interest earned or income generated on the Proceeds, less any withholding tax required to be withheld in respect thereof, to Subscription Receiptholders; provided that should there exist a Shortfall Amount, the Subscription Receipt Agent shall promptly notify the Company of same and, forthwith upon receiving such notification from the Subscription Receipt Agent, the Company shall pay to the Subscription Receipt Agent the Shortfall Amount in immediately available funds for further distribution to Subscription Receiptholders, and

- (ii) any remaining Proceeds shall be released by the Subscription Receipt Agent to or at the direction of the Company.

#### **Section 6.05 Proceeds Held in Escrow**

In addition to the other rights granted to holders in this Indenture, until the earlier of the time (the “**Refund Time**”) the Proceeds are actually refunded in accordance with Section 6.04(b)(i) and the first Business Day following the Release Date, each holder has a claim against the Proceeds held in escrow in the amount equal to \$3.25 for each Subscription Receipt held by such holder plus the *pro rata* portion of any interest earned or income generated on the Proceeds, which claim shall subsist until such time as the Underlying Shares are issued or such amount is paid to the holder in full. In the event that, prior to the earlier of the Refund Time and the first Business Day following the Release Date, the Company (i) makes a general assignment for the benefit of creditors or any proceeding is instituted by the Company seeking relief on behalf thereof as a debtor, or to adjudicate the Company a bankrupt or insolvent, or seeking liquidation, winding-up, reorganization, arrangement, adjustment or composition of the Company or the debts of the Company under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, receiver and manager, trustee, custodian or similar official for the Company or any substantial part of the property and assets of the Company or the Company takes any corporate action to authorize any of the actions set forth above, or (ii) the Company shall be declared bankrupt, or a receiver, receiver and manager, trustee, custodian or similar official is appointed for the Company or any substantial part of its property and assets, the Company or an encumbrancer shall legally take possession of any substantial part of the property or assets of the Company or a distress or execution or any similar process is levied or enforced against such property and assets and remains unsatisfied for such period as would permit such property or such part thereof to be sold thereunder, the right of each holder to be issued Underlying Shares will terminate and such holder will be entitled to assert a claim against the Proceeds held in escrow in an amount equal to \$3.25 for each Subscription Receipt held by such holder plus the *pro rata* portion of any interest earned or income generated on the Proceeds, less any withholding tax required to be withheld in respect thereof.

#### **Section 6.06 Role as Subscription Receipt Agent**

The Subscription Receipt Agent accepts its duties and responsibilities under this Indenture solely as a custodian, bailee and agent, and no trust is intended to be, or is or will be, created hereby and the Subscription Receipt Agent shall owe no duty hereunder as a trustee.

### **ARTICLE 7 ENFORCEMENT**

#### **Section 7.01 Suits by Subscription Receiptholders**

All or any of the rights conferred on the holder by the terms of the Subscription Receipt Certificate or of this Indenture may be enforced by such holder by appropriate legal proceedings but without prejudice to the right which is hereby conferred on the Subscription Receipt Agent to proceed in the name thereof or on behalf of the holders to enforce each and every provision herein contained for the benefit of the Subscription Receiptholders.

**Section 7.02 Limitation of Liability**

The obligations hereunder are not personally binding on, nor will resort hereunder be had to the private property of, any past, present or future director, shareholder, officer, employee or agent of the Company, but only the property of the Company shall be bound in respect hereof.

**ARTICLE 8  
MEETINGS OF SUBSCRIPTION RECEIPHOLDERS****Section 8.01 Right to Convene Meetings**

- (a) Convening of Meeting: The Subscription Receipt Agent may at any time and from time to time convene a meeting of the Subscription Receiptholders, and will do so on receipt of a Written Request of the Company or a Subscription Receiptholders' Request and on being funded and indemnified to its reasonable satisfaction by the Company or by one or more of the Subscription Receiptholders signing such Subscription Receiptholders' Request against the costs which it may incur in connection with calling and holding such meeting.
- (b) Failure to Convene: If the Subscription Receipt Agent fails, within five Business Days after receipt of such Written Request of the Company or Subscription Receiptholders' Request, funding and indemnification, to give notice convening a meeting, the Company or any of such Subscription Receiptholders, as the case may be, may convene such meeting.
- (c) Place of Meeting: Every such meeting will be held in Toronto, Ontario, or such other place as is approved or determined by the Subscription Receipt Agent and the Company.

**Section 8.02 Notice**

- (a) Notice: At least 21 Business Days' notice of any meeting must be given to the Subscription Receiptholders, to the Subscription Receipt Agent (unless the meeting has been called by it) and to the Company (unless the meeting has been called by it).
- (b) Contents: The notice of the meeting must state the time when and the place where the meeting is to be held and must state briefly the general nature of the business to be transacted thereat, but it will not be necessary for the notice to set out the terms of any resolution to be proposed or any of the provisions of this article.

**Section 8.03 Chairman**

Some person (who need not be a Subscription Receiptholder) designated in writing by the Subscription Receipt Agent will be chairman of the meeting or, if no person is so designated or the person so designated is not present within 15 minutes after the time fixed for the holding of the meeting, the Subscription Receiptholders present in person or by proxy may choose some person present to be chairman.

**Section 8.04 Quorum**

- (a) Quorum: Subject to Section 8.04(c) and the provisions of Section 8.12 hereof, at any meeting of Subscription Receiptholders a quorum will consist of at least 25% of the Subscription

Receiptholders present in person or by proxy at the commencement of the meeting holding in the aggregate not less than 25% of the total number of Subscription Receipts then outstanding.

- (b) No Quorum: If a quorum of Subscription Receiptholders is not present within 30 minutes after the time fixed for holding a meeting, the meeting, if summoned by Subscription Receiptholders or on a Subscription Receiptholders' Request, will be dissolved, but, subject to Section 8.12 hereof, in any other case will be adjourned to the third following Business Day at the same time and place and no notice of the adjournment need be given.
- (c) Adjourned Meeting: At the adjourned meeting the Subscription Receiptholders present in person or by proxy will form a quorum and may transact any business for which the meeting was originally convened notwithstanding the number of Subscription Receipts that they hold.

#### **Section 8.05    Power to Adjourn**

The chairman of a meeting at which a quorum of the Subscription Receiptholders is present may, with the consent of the meeting, adjourn the meeting, and no notice of such adjournment need be given except as the meeting prescribes.

#### **Section 8.06    Show of Hands**

Every question submitted to a meeting, other than an Extraordinary Resolution, will be decided in the first place by a majority of the votes given on a show of hands and, unless a poll is duly demanded as herein provided, a declaration by the chairman that a resolution has been carried or carried unanimously or by a particular majority or lost or not carried by a particular majority will be conclusive evidence of the fact.

#### **Section 8.07    Poll**

- (a) Extraordinary Resolution: On every Extraordinary Resolution, and on every other question submitted to a meeting on which a poll is directed by the chairman of the meeting or requested by one or more Subscription Receiptholders acting in person or by proxy and holding in the aggregate not less than 10% of the total number of Subscription Receipts then outstanding, a poll will be taken in such manner as the chairman of the meeting directs.
- (b) Other: Matters, other than those required to be determined by Extraordinary Resolution, will be decided by a majority of the votes cast on the poll.

#### **Section 8.08    Voting**

On a show of hands each person present and entitled to vote, whether as a Subscription Receiptholder or as proxy for one or more absent Subscription Receiptholders, or both, will have one vote, and on a poll each Subscription Receiptholder present in person or represented by a proxy duly appointed by instrument in writing will be entitled to one vote in respect of each Subscription Receipt held by such holder. A proxy need not be a Subscription Receiptholder.

#### **Section 8.09    Regulations**

- (a) Ability to Make: The Subscription Receipt Agent, or the Company with the approval of the Subscription Receipt Agent, may from time to time make or vary such regulations as it thinks fit:

- (i) for the form of instrument appointing a proxy, the manner in which it must be executed, and verification of the authority of a person who executes it on behalf of a Subscription Receiptholder;
- (ii) governing the places at which and the times by which voting certificates or instruments appointing proxies must be deposited;
- (iii) generally for the calling of meetings of Subscription Receiptholders and the conduct of business thereof; and
- (iv) for the deposit of instruments appointing proxies at some approved place or places other than the place at which the meeting is to be held and enabling particulars of such instruments appointing proxies to be sent by mail, email, facsimile or other means of prepaid, transmitted, recorded communication before the meeting to the Company or to the Subscription Receipt Agent at the place where the meeting is to be held and for voting pursuant to instruments appointing proxies so deposited as though the instruments themselves were produced at the meeting.

Any regulations so made will be binding and effective and the votes given in accordance therewith will be valid and will be counted.

- (b) Recognition: Except as such regulations provide, the only persons who will be recognized at a meeting as Subscription Receiptholders, or as entitled to vote or, subject to Section 8.10 hereof, to be present at the meeting in respect thereof, will be the registered holders or persons holding proxies on their behalf.

#### **Section 8.10 The Company and Subscription Receipt Agent may be Represented**

The Company and the Subscription Receipt Agent by their respective employees, officers or directors, and the counsel of the Company and the Subscription Receipt Agent, may attend any meeting of Subscription Receiptholders, but will have no vote as such.

#### **Section 8.11 Powers Exercisable by Extraordinary Resolution**

In addition to all other powers conferred on them by the other provisions of this Indenture or by law, the Subscription Receiptholders at a meeting will have the power, exercisable from time to time by Extraordinary Resolution:

- (a) to assent to or sanction any amendment, modification, abrogation, alteration, compromise or arrangement of any right of the Subscription Receiptholders or, with the reasonable consent of the Subscription Receipt Agent, of the Subscription Receipt Agent in its capacity as subscription receipt agent hereunder or on behalf of the Subscription Receiptholders against the Company, whether such right arises under this Indenture or otherwise, which shall be agreed to by the Company, and to authorize the Subscription Receipt Agent to concur in and execute any indenture supplemental hereto in connection therewith;
- (b) to amend, alter or repeal any Extraordinary Resolution previously passed;
- (c) subject to arrangements as to financing and indemnity satisfactory to the Subscription Receipt Agent, to direct or authorize the Subscription Receipt Agent to enforce any obligation of the

- Company under this Indenture or to enforce any right of the Subscription Receiptholders in any manner specified in the Extraordinary Resolution;
- (d) to direct or authorize the Subscription Receipt Agent to refrain from enforcing any obligation or right referred to in clause (c) of this Section 8.11;
  - (e) to waive and direct the Subscription Receipt Agent to waive any default by the Company in complying with any provision of this Indenture, either unconditionally or on any condition specified in the Extraordinary Resolution;
  - (f) to appoint a committee with power and authority to exercise, and to direct the Subscription Receipt Agent to exercise, on behalf of the Subscription Receiptholders, such of the powers of the Subscription Receiptholders as are exercisable by Extraordinary Resolution;
  - (g) to restrain any Subscription Receiptholder from taking or instituting any suit, action or proceeding against the Company for the enforcement of any obligation of the Company under this Indenture or to enforce any right of the Subscription Receiptholders;
  - (h) to direct any Subscription Receiptholder who, as such, has brought any suit, action or proceeding, to stay or discontinue or otherwise deal therewith on payment of the costs, charges and expenses reasonably and properly incurred by him in connection therewith;
  - (i) to assent to any change in or omission from the provisions contained in the Subscription Receipt Certificates and this Indenture or any ancillary or supplemental instrument which may be agreed to by the Company, and to authorize the Subscription Receiptholders to concur in and execute any ancillary or supplemental indenture embodying the change or omission;
  - (j) to assent to any compromise or arrangement with any creditor or creditors or any class or classes of creditors, whether secured or otherwise, and with holders of any shares or other securities of the Company; and
  - (k) from time to time and at any time to remove the Subscription Receipt Agent and appoint a successor subscription receipt agent.

#### **Section 8.12 Meaning of “Extraordinary Resolution”**

- (a) Meaning: The expression “Extraordinary Resolution” when used in this Indenture means, subject to the provisions of this Section 8.12 and of Section 8.15 and Section 8.16 hereof, a motion proposed at a meeting of Subscription Receiptholders duly convened for that purpose and held in accordance with the provisions of this Article 8 at which there are present in person or by proxy at least 25% of the Subscription Receiptholders holding in the aggregate more than 25% of the total number of Subscription Receipts then outstanding and passed by the affirmative votes of Subscription Receiptholders who hold in the aggregate not less than 66 2/3% of the total number of Subscription Receipts represented at the meeting and voted on the motion.
- (b) Quorum: If, at a meeting called for the purpose of passing an Extraordinary Resolution, the quorum required by Section 8.12(a) hereof is not present within 30 minutes after the time appointed for the meeting, the meeting, if convened by Subscription Receiptholders or on a Subscription Receiptholders’ Request, will be dissolved, but in any other case will stand adjourned to such day, being not less than five Business Days or more than ten Business Days later, and to such place and time, as is appointed by the chairman of the meeting.

- (c) Notice: Not less than three Business Days' notice must be given to the Subscription Receiptholders of the time and place of such adjourned meeting.
- (d) Form of Notice: The notice must state that at the adjourned meeting the Subscription Receiptholders present in person or by proxy will form a quorum but it will not be necessary to set forth the purposes for which the meeting was originally called or any other particulars.
- (e) Quorum at Adjourned Meeting: At the adjourned meeting the Subscription Receiptholders present in person or by proxy will form a quorum and may transact any business for which the meeting was originally convened, and a motion proposed at such adjourned meeting and passed by the requisite vote as provided in Section 8.12(a) hereof will be an Extraordinary Resolution within the meaning of this Indenture notwithstanding that Subscription Receiptholders holding in the aggregate 25% of the total number of Subscription Receipts outstanding may not be present.
- (f) Poll: Votes on an Extraordinary Resolution must always be given on a poll and no demand for a poll on an Extraordinary Resolution will be necessary.

### **Section 8.13 Powers Cumulative**

Any one or more of the powers, and any combination of the powers, in this Indenture stated to be exercisable by the Subscription Receiptholders by Extraordinary Resolution or otherwise, may be exercised from time to time, and the exercise of any one or more of such powers or any combination of such powers from time to time will not prevent the Subscription Receiptholders from exercising such power or powers or combination of powers thereafter from time to time.

### **Section 8.14 Minutes**

Minutes of all resolutions passed and proceedings taken at every meeting of the Subscription Receiptholders will be made and duly entered in books from time to time provided for such purpose by the Company, and any such minutes, if signed by the chairman of the meeting at which such resolutions were passed or such proceedings were taken, will be *prima facie* evidence of the matters therein stated, and, until the contrary is proved, every such meeting in respect of the proceedings of which minutes have been so made, entered and signed will be deemed to have been duly convened and held, and all resolutions passed and proceedings taken thereat to have been duly passed and taken.

### **Section 8.15 Instruments in Writing**

Any action that may be taken and any power that may be exercised by Subscription Receiptholders at a meeting held as provided in this Article 8 may also be taken and exercised by Subscription Receiptholders who hold in the aggregate not less than 50% of the total number of Subscription Receipts at the time outstanding or in the case of an Extraordinary Resolution, Subscription Receiptholders who hold in the aggregate not less than 66 2/3% of the total number of Subscription Receipts at the time outstanding, by their signing, each in person or by attorney duly appointed in writing, an instrument in writing in one or more counterparts, and the expression "Extraordinary Resolution" when used in this Indenture includes a resolution embodied in an instrument so signed.

### **Section 8.16 Binding Effect of Resolutions**

Every resolution and every Extraordinary Resolution passed in accordance with the provisions of this Article 8 at a meeting of Subscription Receiptholders will be binding on all Subscription Receiptholders, whether present at or absent from the meeting and whether voting for or



against the resolution or abstaining, and every instrument in writing signed by Subscription Receiptholders in accordance with Section 8.15 hereof will be binding on all Subscription Receiptholders, whether signatories thereto or not, and every Subscription Receiptholder and the Subscription Receipt Agent (subject to the provisions for its indemnity herein contained) will be bound to give effect accordingly to every such resolution and instrument in writing.

**Section 8.17 Holdings by the Company and Subsidiaries Disregarded**

In determining whether Subscription Receiptholders holding the required total number of Subscription Receipts are present in person or by proxy for the purpose of constituting a quorum, or have voted or consented to a resolution, Extraordinary Resolution, consent, waiver, Subscription Receiptholders' Request or other action under this Indenture, a Subscription Receipt held by the Company or by a Subsidiary of the Company will be deemed to be not outstanding. The Company shall provide the Subscription Receipt Agent with a Certificate of the Company providing details of any Subscription Receipts held by the Company or by a Subsidiary of the Company upon the written request of the Subscription Receipt Agent.

**ARTICLE 9  
SUPPLEMENTAL INDENTURES AND SUCCESSOR CORPORATIONS**

**Section 9.01 Provision for Supplemental Indentures for Certain Purposes**

From time to time the Company (when authorized by the directors), the Joint Bookrunners and the Subscription Receipt Agent may jointly, subject to the provisions hereof, and will when so directed hereby, execute and deliver by their proper officers indentures or instruments supplemental hereto, which thereafter will form part hereof, for any or all of the following purposes:

- (a) increasing the number of Subscription Receipts authorized for issue hereunder and the corresponding number of Underlying Shares to which Subscription Receiptholders are entitled;
- (b) setting forth any adjustments resulting from the application of the provisions of Section 4.06 hereof;
- (c) adding hereto such additional covenants and enforcement provisions as in the opinion of counsel are necessary or advisable, and are not in the opinion of counsel and of the Joint Bookrunners prejudicial to the interest of the Subscription Receiptholders;
- (d) giving effect to any Extraordinary Resolution passed as provided in Article 8 hereof;
- (e) making such provisions not inconsistent with this Indenture as are necessary or desirable with respect to matters or questions arising hereunder or for the purpose of obtaining a listing or quotation of the Subscription Receipts or the Underlying Shares on a stock exchange or over-the-counter market, and are not in the opinion of counsel prejudicial to the interests of the Subscription Receiptholders;
- (f) adding to, deleting or altering the provisions hereof in respect of the transfer of Subscription Receipts or the conversion of Subscription Receipt Certificates, and making any modification in the form of the Subscription Receipt Certificates that does not affect the substance thereof;

- (g) modifying any provision of this Indenture (including, without limitation, making any modification which increases the number or amount of Underlying Shares issuable pursuant to the Subscription Receipts) or relieving the Company from any obligation, condition or restriction herein contained, except that no such modification or relief will be or become operative or effective if in the opinion of counsel it would impair any right of the Subscription Receiptholders or of the Subscription Receipt Agent, and the Subscription Receipt Agent may in its uncontrolled discretion decline to enter into any such supplemental indenture which in its opinion will not afford adequate protection to the Subscription Receipt Agent when it becomes operative; and
- (h) for any other purpose not inconsistent with the terms of this Indenture, including the correction or rectification of any ambiguity, defective or inconsistent provision, error or omission herein, if in the opinion of counsel, the rights of the Subscription Receipt Agent and of the Subscription Receiptholders are not prejudiced thereby.

### **Section 9.02 Successor Corporations**

In the case of the consolidation, amalgamation, arrangement, merger or transfer of the undertaking or assets of the Company as an entirety, or substantially as an entirety, to another corporation or other entity, the successor corporation or other entity resulting from such consolidation, amalgamation, arrangement, merger or transfer (if not the Company) will be bound by the provisions hereof and for the due and punctual performance and observance of each and every covenant and obligation contained in this Indenture to be performed by the Company and will execute and deliver to the Subscription Receipt Agent and the Joint Bookrunners a supplemental indenture and such other instruments as are satisfactory in form to the Subscription Receipt Agent and the Joint Bookrunners and in the opinion of counsel are necessary or advisable to evidence the express assumption by the successor corporation of such obligations.

## **ARTICLE 10 ANTI-MONEY LAUNDERING**

### **Section 10.01 Use of Accounts**

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

### **Section 10.02 Right of Subscription Receipt Agent to Resign**

The Subscription Receipt Agent 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 Subscription Receipt Agent, 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 Subscription Receipt Agent, 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 10 days written notice to the other parties to this Indenture, provided that (i) the Subscription Receipt Agent's written notice shall describe the circumstances of such non-compliance; and (ii) if such circumstances are rectified to

the Subscription Receipt Agent's satisfaction within such 10-day period, then such resignation shall not be effective.

## **ARTICLE 11 PRIVACY**

### **Section 11.01 Privacy**

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

- (i) to provide the services required under this Indenture and other services that may be requested from time to time;
- (ii) to help the Subscription Receipt Agent manage its servicing relationships with such individuals;
- (iii) to meet the Subscription Receipt Agent's legal and regulatory requirements; and
- (iv) if social insurance numbers are collected by the Subscription Receipt Agent, to perform tax reporting and to assist in verification of an individual's identity for security purposes.

Each party to this Indenture acknowledges and agrees that the Subscription Receipt Agent may receive, collect, use and disclose personal information provided to it or acquired by it in the course of this Indenture for the purposes described above and, generally, in the manner and on the terms described in its Privacy Code, which the Subscription Receipt Agent shall make available on its website or upon request, including revisions thereto. Further, each party to this Indenture agrees that it shall not provide or cause to be provided to the Subscription Receipt Agent any personal information relating to an individual who is not a party to this Indenture unless that party has assured itself that such individual understands and has consented to the aforementioned uses and disclosures.

## **ARTICLE 12 CONCERNING SUBSCRIPTION RECEIPT AGENT**

### **Section 12.01 Indenture Legislation**

If and to the extent that any provision of this Indenture limits, qualifies or conflicts with a mandatory requirement of Applicable Legislation, the mandatory requirement will prevail. The Company and the Subscription Receipt Agent each will at all times in relation to this Indenture and any action to be taken hereunder observe and comply with and be entitled to the benefits of Applicable Legislation.

### **Section 12.02 Rights and Duties of Subscription Receipt Agent**

- (a) Duty of Subscription Receipt Agent: In the exercise of the rights and duties prescribed or conferred by the terms of this Indenture, the Subscription Receipt Agent will act honestly and in good faith and will exercise that degree of care, diligence and skill that a reasonably prudent subscription receipt agent would exercise in comparable circumstances. The Subscription Receipt Agent shall not be bound to give any notice or do or take any act, action or proceeding by virtue

of the powers conferred on it hereby unless notice in writing is formally given and unless it is indemnified and funded in a manner satisfactory to it against such expenses or liability; nor shall the Subscription Receipt Agent be required to take notice of any default hereunder, unless and until notified in writing of such default, which notice shall distinctly specify the default desired to be brought to the attention of the Subscription Receipt Agent and in the absence of any such notice the Subscription Receipt Agent may for all purposes of this Indenture conclusively assume that no default has been made in the observance or performance of any of the representations, warranties, covenants, agreements or conditions contained herein. Any such notice shall in no way limit any discretion herein given to the Subscription Receipt Agent to determine whether or not the Subscription Receipt Agent shall take action with respect to any default. The Subscription Receipt Agent shall retain the right not to act and shall not be held liable for refusing to act unless it has received clear and reasonable documentation which complies with the terms of this Indenture. Such documentation must not require the exercise of any discretion or independent judgment. The Subscription Receipt Agent shall have no duties except those which are expressly set forth herein and it shall not be bound by any notice of a claim or demand with respect to, or any waiver, modification, amendment, termination or rescission of this Indenture, unless received by it in writing, and signed by the parties hereto and if its duties herein are affected, unless it shall have given its prior written consent thereto. No duty shall rest with the Subscription Receipt Agent to determine compliance of the transferor or transferee with applicable securities laws. Subject to the terms of this Indenture, the Subscription Receipt Agent shall be entitled to assume that all transfers are legal and proper.

- (b) No Relief From Liability: No provision of this Indenture will be construed to relieve the Subscription Receipt Agent from liability for its own gross negligence or bad faith.
- (c) Actions: The obligation of the Subscription Receipt Agent to commence or continue any act, action or proceeding in connection herewith, including without limitation, for the purpose of enforcing any right of the Subscription Receipt Agent or the Subscription Receiptholders hereunder is on the condition that the Subscription Receipt Agent shall have received a Subscription Receiptholders' Request specifying the act, action or proceeding which the Subscription Receipt Agent is requested to take and, when required by notice to the Subscription Receiptholders by the Subscription Receipt Agent, the Subscription Receipt Agent is furnished by one or more Subscription Receiptholders with sufficient funds to commence or continue such act, action or proceeding and an indemnity reasonably satisfactory to the Subscription Receipt Agent to protect and hold it harmless against the costs, charges, expenses and liabilities to be incurred thereby and any loss and damage it may suffer by reason thereof.
- (d) Funding: No provision of this Indenture will require the Subscription Receipt Agent to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers unless it is so indemnified.
- (e) Deposit of Subscription Receipts: The Subscription Receipt Agent may, before commencing or at any time during the continuance of any such act, action or proceeding, require the Subscription Receiptholders at whose instance it is acting to deposit with the Subscription Receipt Agent the Subscription Receipt Certificates held by them, for which certificates the Subscription Receipt Agent will issue receipts.
- (f) Restriction: Every provision of this Indenture that relieves the Subscription Receipt Agent of liability or entitles it to rely on any evidence submitted to it is subject to the provisions of Applicable Legislation, of this section and of Section 12.03 hereof.

**Section 12.03 Evidence, Experts and Advisers**

- (a) Evidence: In addition to the reports, certificates, opinions and other evidence required by this Indenture, the Company will furnish to the Subscription Receipt Agent such additional evidence of compliance with any provision hereof, and in such form, as is prescribed by Applicable Legislation or as the Subscription Receipt Agent reasonably requires by written notice to the Company.
- (b) Reliance by Subscription Receipt Agent: In the exercise of any right or duty hereunder the Subscription Receipt Agent, if it is acting in good faith, may act and rely, as to the truth of any statement or the accuracy of any opinion expressed therein, on any statutory declaration, opinion, report, certificate or other evidence furnished to the Subscription Receipt Agent pursuant to the provisions hereof or of Applicable Legislation or pursuant to a request of the Subscription Receipt Agent, if such evidence complies with Applicable Legislation and the Subscription Receipt Agent examines such evidence and determines that it complies with the applicable requirements of this Indenture.
- (c) Statutory Declaration: Whenever Applicable Legislation requires that evidence referred to in Section 12.03(a) hereof be in the form of a statutory declaration, the Subscription Receipt Agent may accept such statutory declaration in lieu of a Certificate of the Company required by any provision hereof. Any such statutory declaration may be made by any one or more of the Chairman, President, Chief Executive Officer, Chief Financial Officer or Secretary of the Company or by any other officer(s) or director(s) of the Company to whom such authority is delegated by the directors from time to time. In addition, the Subscription Receipt Agent may act and rely and shall be protected in acting and relying upon any resolution, certificate, direction, instruction, statement, instrument, opinion, report, notice, request, consent, order, letter, or other paper or document believed by it to be genuine and to have been signed, sent or presented by or on behalf of the proper party or parties.
- (d) Proof of Execution: Proof of the execution of any document or instrument in writing, including a Subscription Receiptholders' Request, by a Subscription Receiptholder may be made by the certificate of a notary public, or other officer with similar powers, that the person signing such instrument acknowledged to him the execution thereof, or by an affidavit of a witness to such execution, or in any other manner that the Subscription Receipt Agent considers adequate and, in respect of a Subscription Receiptholder that is a corporation, shall include a certificate of incumbency of such holder together with a certified resolution authorizing the person who signs such instruments to sign such instrument. The Subscription Receipt Agent shall not be responsible or liable in any manner whatsoever for the sufficiency, correctness, genuineness or validity of any instrument deposited with it, for the form or execution of such instruments, for the identity, authority or right of any person executing or depositing such instruments or for determining or compelling compliance therewith, and shall not otherwise be bound thereby.
- (e) Experts: The Subscription Receipt Agent may employ or retain such counsel, accountants, appraisers, or other experts or advisers as it reasonably requires for the purpose of determining and discharging its rights and duties hereunder and may pay the reasonable remuneration and disbursements for all services so performed by any of them, without taxation of costs of any counsel, and the reasonable costs of such services shall be added to and be part of the Subscription Receipt Agent's fee, and the Subscription Receipt Agent will not be responsible for any misconduct or negligence on the part of any of them who has been selected with due care by the Subscription Receipt Agent. The Subscription Receipt Agent may act and rely and shall be protected in acting or not acting and relying in good faith on the opinion or advice of or

information obtained from any counsel, accountant or other expert or advisor, whether retained or employed by the Company or by the Subscription Receipt Agent, in relation to any matter arising in the administration of the duties and obligations hereof.

#### **Section 12.04 Documents, Money, Etc. held by Subscription Receipt Agent**

- (a) Safekeeping: Any security, document of title or other instrument that may at any time be held by the Subscription Receipt Agent subject to the provisions of this Indenture may be placed in the deposit vaults of the Subscription Receipt Agent or of any Canadian chartered bank or deposited for safekeeping with any such bank.
- (b) Holding of Funds: Unless herein otherwise expressly provided, any money held by the Subscription Receipt Agent pending the application or withdrawal thereof under any provision of this Indenture shall be held in a segregated bank account earning the prescribed rate of interest then in effect.
- (c) Interest: Except in the circumstances described in Article 6 hereof, all interest or other income received by the Subscription Receipt Agent in respect of such deposits and investments referred to in Section 12.04(b) will belong to the Company.

#### **Section 12.05 Action by Subscription Receipt Agent to Protect Interests**

The Subscription Receipt Agent will have power to institute and to maintain such actions and proceedings as it considers necessary or expedient to protect or enforce its interests and the interests of the Subscription Receiptholders.

#### **Section 12.06 Subscription Receipt Agent not Required to Give Security**

The Subscription Receipt Agent will not be required to give any bond or security in respect of the execution of the duties and obligations and powers of this Indenture.

#### **Section 12.07 Protection of Subscription Receipt Agent**

- (a) Protection: By way of supplement to the provisions of any law for the time being relating to subscription receipt agents, it is expressly declared and agreed that:
  - (i) the Subscription Receipt Agent will not be liable for or by reason of, or required to substantiate, any statement of fact, representation or recital in this Indenture or in the Subscription Receipt Certificates (except the representation contained in Section 12.09 hereof or in the certificate of the Subscription Receipt Agent on the Subscription Receipt Certificates or other representation of the Subscription Receipt Agent made herein or therein), but all such statements or recitals are and will be deemed to be made by the Company;
  - (ii) nothing herein contained will impose on the Subscription Receipt Agent any obligation to see to, or to require evidence of, the registration or filing (or renewal thereof) of this Indenture or any instrument ancillary or supplemental hereto;
  - (iii) the Subscription Receipt Agent will not be bound to give notice to any person of the execution hereof;

- (iv) the Subscription Receipt Agent will not incur any liability or responsibility whatever or be in any way responsible for the consequence of any breach by the Company of any obligation or warranty herein contained or of any act of any director, officer, employee or agent of the Company;
  - (v) the Subscription Receipt Agent shall not be liable for any error of judgment, or for any act done or step taken or omitted by it in good faith, or for any mistake of fact or law, or for anything which it may do or refrain from doing in connection herewith, except for its own gross negligence or bad faith;
  - (vi) the Subscription Receipt Agent, in its personal or any other capacity, may buy, lend upon and deal in securities of the Company and in the Subscription Receipts and generally may contract and enter into financial transactions with the Company or any related corporation without being liable to account for any profit made thereby;
  - (vii) the Subscription Receipt Agent shall incur no liability with respect to the delivery or non-delivery of any certificate or certificates whether delivered by hand, mail or any other means provided that they are sent in accordance with the provisions hereof;
  - (viii) if the Subscription Receipt Agent delivers any cheque as required hereunder, the Subscription Receipt Agent shall have no further obligation or liability for the amount represented thereby, unless any such cheque is not honoured on presentation, provided that in the event of the non-receipt of such cheque by the payee, or the loss or destruction thereof, the Subscription Receipt Agent, upon being furnished with reasonable evidence of such non-receipt, loss or destruction and, if required by the Subscription Receipt Agent, an indemnity reasonably satisfactory to it, shall issue to such payee a replacement cheque for the amount of such cheque; and
  - (ix) the Subscription Receipt Agent will disburse funds in accordance with the provisions hereof only to the extent that funds have been deposited with it and shall not, under any circumstances, be required to disburse funds in excess of the amounts on deposit with the Subscription Receipt Agent at the time of such disbursement.
- (b) Indemnity: In addition to and without limiting any protection of the Subscription Receipt Agent hereunder or otherwise by law, the Company agrees to indemnify the Subscription Receipt Agent, its agents, employees, directors and officers (each an “**Indemnified Person**”), and save each Indemnified Person harmless from all liabilities, suits, damages, costs, expenses and actions which may be brought against or suffered by it arising out of or connected with the performance by the Subscription Receipt Agent of its duties hereunder, except to the extent that such liabilities, suits, damages, costs and actions are attributable to the gross negligence or bad faith of the Subscription Receipt Agent or an Indemnified Person. Notwithstanding any other provision hereof, this indemnity shall survive any removal or resignation of the Subscription Receipt Agent, discharge of this Indenture and termination of any duties and obligations hereunder.

#### **Section 12.08 Replacement of Subscription Receipt Agent**

- (a) Resignation: Subject to Section 10.02 and Section 12.09 hereof, the Subscription Receipt Agent may resign and be discharged from all further duties and liabilities hereunder, except as provided in this Section 12.08, by giving to the Company, the Joint Bookrunners and the Subscription Receiptholders not less than 60 days notice in writing or, if a new Subscription Receipt Agent has been appointed, such shorter notice as the Company accepts as sufficient provided that such

resignation and discharge shall be subject to the appointment of a successor thereto in accordance with the provisions hereof.

- (b) Removal: The Subscription Receiptholders by Extraordinary Resolution may at any time remove the Subscription Receipt Agent and appoint a new Subscription Receipt Agent.
- (c) Appointment of New Subscription Receipt Agent: If the Subscription Receipt Agent so resigns or is so removed or is dissolved, becomes bankrupt, goes into liquidation or otherwise becomes incapable of acting hereunder, the Company will forthwith appoint a new Subscription Receipt Agent unless a new Subscription Receipt Agent has already been appointed by the Subscription Receiptholders. The appointment of a new Subscription Receipt Agent shall be conditional on the previous Subscription Receipt Agent having received payment in full of all fees and expenses owing to it.
- (d) Failure to Appoint: Failing such appointment by the Company, the retiring Subscription Receipt Agent or any Subscription Receiptholder may apply at the expense of the Company to the Ontario Superior Court of Justice, on such notice as the Court directs, for the appointment of a new Subscription Receipt Agent.
- (e) New Subscription Receipt Agent: Any new Subscription Receipt Agent appointed under this section must be a corporation authorized to carry on the business of a transfer agent or trust company in Ontario and, if required by the Applicable Legislation of any other province, in such other province. On any such appointment the new Subscription Receipt Agent will be vested with the same powers, rights, duties and responsibilities as if it had been originally named herein as Subscription Receipt Agent without any further assurance, conveyance, act or deed, but there will be immediately executed, at the expense of the Company, all such conveyances or other instruments as, in the opinion of counsel, are necessary or advisable for the purpose of assuring the transfer of such powers, rights, duties and responsibilities to the new Subscription Receipt Agent. Any new Subscription Receipt Agent so appointed by the Company or by the Court will be subject to removal as aforesaid by the Subscription Receiptholders and by the Company.
- (f) Notice of New Subscription Receipt Agent: On the appointment of a new Subscription Receipt Agent, the Company will promptly give notice thereof to the Joint Bookrunners and the Subscription Receiptholders in accordance with Section 13.01(a) and Section 13.02(a) hereof.
- (g) Successor Subscription Receipt Agent: A corporation into or with which the Subscription Receipt Agent is merged or consolidated or amalgamated or to which all or substantially all of its corporate trust business is sold or is otherwise transferred, or a corporation succeeding to the corporate trust business of the Subscription Receipt Agent, will be the successor to the Subscription Receipt Agent hereunder without any further act on its part or on the part of any party hereto if such corporation would be eligible for appointment as a new Subscription Receipt Agent under Section 12.08(e) hereof.
- (h) Certificates: A Subscription Receipt Certificate certified but not delivered by a predecessor Subscription Receipt Agent may be delivered by the new or successor Subscription Receipt Agent in the name of the successor Subscription Receipt Agent.

#### **Section 12.09 Conflict of Interest**

The Subscription Receipt Agent represents to the Company and the Joint Bookrunners that, to the best of its knowledge, at the time of the execution and delivery hereof no material conflict of



interest exists between its role as a custodian, bailee and agent hereunder and its role in any other capacity and if a material conflict of interest arises hereafter it will, within 30 days after ascertaining that it has such material conflict of interest, either eliminate the conflict of interest or resign its duties and obligations hereunder.

**Section 12.10 Acceptance of Duties and Obligations**

The Subscription Receipt Agent hereby accepts the duties and obligations in this Indenture declared and provided for and agrees to perform them on the terms and conditions herein set forth. The Subscription Receipt Agent accepts the duties and responsibilities under this Indenture solely as custodian, bailee and agent. No trust is intended to be or will be created hereby and the Subscription Receipt Agent shall owe no duties hereunder as a trustee.

**ARTICLE 13  
GENERAL**

**Section 13.01 Notice to the Company, the Joint Bookrunners and Subscription Receipt Agent**

(a) Notice: Unless herein otherwise expressly provided, a notice to be given hereunder to the Company, the Joint Bookrunners or the Subscription Receipt Agent will be validly given if delivered or if sent by registered letter, postage prepaid, or if sent by facsimile transmission (if receipt of such transmission is confirmed):

(i) if to the Company:

The Westaim Corporation  
70 York Street, Suite 1700  
Toronto, Ontario M5J 1S9

Attention: Robert T. Kittel, Chief Operating Officer  
Facsimile: 416-969-3334

with a copy to (which shall not constitute notice):

Baker & McKenzie LLP  
Brookfield Place, Bay/Wellington Tower  
181 Bay Street, Suite 2100  
Toronto, Ontario M5J 2T3

Attention: Kevin Rooney  
Facsimile: 416-863-6275

(ii) if to the Joint Bookrunners:

GMP Securities L.P.  
145 King Street West, Suite 300  
Toronto, Ontario M5H 1J8

Attention: Kevin Sullivan  
Facsimile: 416-943-6160

with a copy to (which shall not constitute notice):

Fasken Martineau DuMoulin LLP  
 Bay Adelaide Centre, Box 20  
 333 Bay Street, Suite 2400  
 Toronto Ontario M5H 2T6

Attention: Robert McDowell/Richard Steinberg  
 Facsimile: 416-364-7813

(iii) if to the Subscription Receipt Agent:

Equity Financial Trust Company  
 200 University Avenue, Suite 300  
 Toronto, Ontario M5H 4H1

Attention: Corporate Trust Services  
 Facsimile: (416) 361-0470

and any such notice delivered or sent in accordance with the foregoing will be deemed to have been received on the date of delivery or facsimile transmission or, if mailed, on the second Business Day following the day of the mailing of the notice. The original of any document sent by facsimile transmission to the Subscription Receipt Agent shall be subsequently mailed to the Subscription Receipt Agent.

- (b) Change of Address: The Company, the Joint Bookrunners or the Subscription Receipt Agent, as the case may be, may from time to time notify the other in the manner provided in Section 13.01(a) hereof of a change of address which, from the effective date of such notice and until changed by like notice, will be the address of the Company, the Joint Bookrunners or the Subscription Receipt Agent, as the case may be, for all purposes of this Indenture.
- (c) Postal Interruption: If, by reason of a strike, lockout or other work stoppage, actual or threatened, involving Canadian postal employees, a notice to be given to the Subscription Receipt Agent, the Joint Bookrunners or to the Company hereunder could reasonably be considered unlikely to reach or likely to be delayed in reaching its destination, the notice will be valid and effective only if it is delivered to an officer of the party to which it is addressed. Any notice delivered in accordance with the foregoing will be deemed to have been received on the date of delivery to such officer.

### **Section 13.02 Notice to Subscription Receiptholders**

- (a) Notice: Unless herein otherwise expressly provided, a notice to be given hereunder to Subscription Receiptholders will be deemed to be validly given if the notice is sent by ordinary surface or air mail, postage prepaid, addressed to the Subscription Receiptholders or delivered (or so mailed to certain Subscription Receiptholders and so delivered to the other Subscription Receiptholders) at their respective addresses appearing on any of the registers of holders described in Section 3.01(a) hereof, provided, however, that if, by reason of a strike, lockout or other work stoppage, actual or threatened, involving Canadian postal employees, the notice could reasonably be considered unlikely to reach or likely to be delayed in reaching its destination, the notice will be valid and effective only if it is so delivered or is given by publication twice in the Report on Business section in the national edition of The Globe and Mail.

- (b) Date of Notice: A notice so given by mail or so delivered will be deemed to have been given on the third Business Day after it has been mailed or on the day on which it has been delivered, as the case may be, and a notice so given by publication will be deemed to have been given on the day on which it has been published as required. In determining under any provision hereof the date when notice of a meeting or other event must be given, the date of giving notice will be included and the date of the meeting or other event will be excluded. Accidental error or omission in giving notice or accidental failure to mail notice to any Subscription Receiptholder will not invalidate any action or proceeding founded thereon.

### **Section 13.03 Satisfaction and Discharge of Indenture**

If all certificates representing Underlying Shares required to be issued in compliance with the provisions hereof have been issued hereunder in accordance with such provisions, if all payments required to be made in compliance with the provisions of this Indenture have been made in accordance with such provisions and payment to the Subscription Receipt Agent of the fees and other remuneration payable to the Subscription Receipt Agent have been made, this Indenture will cease to be of further effect and, on demand of and at the cost and expense of the Company and on delivery to the Subscription Receipt Agent of a Certificate of the Company stating that all conditions precedent to the satisfaction and discharge of this Indenture have been complied with and on payment to the Subscription Receipt Agent of the fees and other remuneration payable to the Subscription Receipt Agent, the Subscription Receipt Agent will, at the demand and cost of the Company, execute proper instruments acknowledging the satisfaction of and discharging this Indenture.

### **Section 13.04 Sole Benefit of Parties and Subscription Receiptholders**

Subject to the provisions of Section 12.07(b) hereof, nothing in this Indenture or the Subscription Receipt Certificates, expressed or implied, will give or be construed to give to any person other than the parties hereto and the Subscription Receiptholders, as the case may be, any legal or equitable right, remedy or claim under this Indenture or the Subscription Receipt Certificates, or under any covenant or provision herein or therein contained, all such covenants and provisions being for the sole benefit of the parties hereto and the Subscription Receiptholders.

### **Section 13.05 Discretion of Directors**

Any matter provided herein to be determined by the directors will be determined by the directors in their sole discretion, acting reasonably, and a determination so made will be conclusive.

### **Section 13.06 Counterparts, Electronic Transmission and Formal Date**

This Indenture may be executed in several counterparts, each of which when so executed will be deemed to be an original and such counterparts together will constitute one and the same instrument and notwithstanding the date of their execution will be deemed to be dated as of the date of this Indenture. Such executions may be transmitted to the parties hereby by facsimile, email or other electronic delivery methods (including in electronic portable document (.pdf)), and any such execution shall have the full force and effect of an original signature.

*[remainder of page intentionally blank]*

IN WITNESS WHEREOF the parties hereto have executed this Subscription Receipt Indenture as of the day and year first above written.

**THE WESTAIM CORPORATION**

By: (signed) "J. Cameron MacDonald"  
Name: J. Cameron MacDonald  
Title: President and Chief Executive Officer

**GMP SECURITIES L.P.**

By: (signed) "Kevin Sullivan"  
Name: Kevin Sullivan  
Title: Deputy Chairman

**TD SECURITIES INC.**

By: (signed) "Jonathan Broer"  
Name: Jonathan Broer  
Title: Managing Director, Investment Banking

**EQUITY FINANCIAL TRUST COMPANY**

By: (signed) "Shelley Martin"  
Name: Shelley Martin  
Title: Senior Trust Officer

By: (signed) "Donald Crawford"  
Name: Donald Crawford  
Title: Corporate Trust Officer

## SCHEDULE A

### SUBSCRIPTION RECEIPT CERTIFICATE

**[Certificates issued prior to the Qualification Date must bear the following legends.]**

“UNLESS PERMITTED UNDER SECURITIES LEGISLATION, THE HOLDER OF THIS SECURITY MUST NOT TRADE THE SECURITY BEFORE SEPTEMBER 29, 2015.

WITHOUT PRIOR WRITTEN APPROVAL OF THE TSX VENTURE EXCHANGE AND COMPLIANCE WITH ALL APPLICABLE SECURITIES LEGISLATION, THE SECURITIES REPRESENTED BY OR UNDERLYING THIS CERTIFICATE MAY NOT BE SOLD, TRANSFERRED, HYPOTHECATED OR OTHERWISE TRADED ON OR THROUGH THE FACILITIES OF THE TSX VENTURE EXCHANGE OR OTHERWISE IN CANADA OR TO OR FOR THE BENEFIT OF A CANADIAN RESIDENT UNTIL SEPTEMBER 29, 2015.” *[only to the extent directed by the Company]*

**[Certificates issued to CDS must bear the following legend.]**

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

**[Certificates representing Subscription Receipts issued to U.S. Accredited Investors and/or Qualified Institutional Buyers must bear the following legends.]**

THESE SUBSCRIPTION RECEIPTS AND THE SECURITIES ISSUABLE UPON EXERCISE HEREOF HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE “U.S. SECURITIES ACT”) OR UNDER ANY STATE SECURITIES LAWS. THE HOLDER HEREOF, BY PURCHASING SUCH SECURITIES, AGREES FOR THE BENEFIT OF THE CORPORATION THAT SUCH SECURITIES MAY NOT BE EXERCISED IN THE UNITED STATES OR BY OR ON BEHALF OF A U.S. PERSON UNLESS AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE U.S. SECURITIES ACT AND ALL APPLICABLE STATE SECURITIES LAWS IS AVAILABLE. THE TERMS “UNITED STATES” AND “U.S. PERSON” ARE AS DEFINED IN REGULATION S UNDER THE U.S. SECURITIES ACT.

THE SECURITIES REPRESENTED HEREBY AND THE SECURITIES ISSUABLE UPON EXERCISE HEREOF HAVE NOT BEEN AND WILL NOT BE REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE “U.S. SECURITIES ACT”) OR ANY STATE SECURITIES LAWS, AND MAY BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED ONLY (A) TO THE CORPORATION, (B) OUTSIDE THE UNITED STATES IN

COMPLIANCE WITH RULE 904 OF REGULATION S UNDER THE U.S. SECURITIES ACT AND IN COMPLIANCE WITH LOCAL LAWS AND REGULATIONS, (C) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE U.S. SECURITIES ACT AND IS AVAILABLE FOR RESALE OF THE SECURITIES, OR (D) IN COMPLIANCE WITH AN EXEMPTION FROM REGISTRATION UNDER THE U.S. SECURITIES ACT, INCLUDING RULE 144 OR RULE 144A THEREUNDER, IF AVAILABLE, AND, IN EACH CASE, IN COMPLIANCE WITH ANY APPLICABLE STATE SECURITIES LAWS. THE HOLDER FURTHER UNDERSTANDS AND AGREES THAT IN THE EVENT OF A TRANSFER PURSUANT TO THE FOREGOING CLAUSE (B) OR (D), THE CORPORATION WILL REQUIRE A LEGAL OPINION OF COUNSEL OF RECOGNIZED STANDING OR OTHER EVIDENCE SATISFACTORY TO THE CORPORATION THAT SUCH TRANSFER IS EXEMPT FROM REGISTRATION UNDER THE U.S. SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. DELIVERY OF THIS CERTIFICATE MAY NOT CONSTITUTE “GOOD DELIVERY” IN SETTLEMENT OF TRANSACTIONS ON STOCK EXCHANGES IN CANADA.”

Certificate Number: \_\_\_\_\_

Number of Subscription Receipts: \_\_\_\_\_

CUSIP: ●

ISIN: ●

## **SUBSCRIPTION RECEIPTS**

**convertible for Common Shares of**

**THE WESTAIM CORPORATION**

*Capitalized terms used herein and not otherwise defined shall have the meaning ascribed thereto in the Subscription Receipt Indenture dated as of May 28, 2015 among the Company, the Subscription Receipt Agent and the Joint Bookrunners (the “**Subscription Receipt Indenture**”).*

THIS IS TO CERTIFY THAT, for value received, \_\_\_\_\_ (the “**holder**”) is the registered holder of the number of the subscription receipts (“**Subscription Receipts**”) specified above of The Westaim Corporation (the “**Company**”) and is thereby entitled, without payment of any additional consideration, to be issued fully paid and non-assessable common shares of the Company (“**Common Shares**”) on the basis of one Common Share for each one Subscription Receipt, subject to adjustment in accordance with the provisions of the Subscription Receipt Indenture, automatically after the Release Date (as defined herein) without the taking of any action by the holder, including the surrender of this Subscription Receipt Certificate, which will thereupon be cancelled by the Subscription Receipt Agent. Certificates representing the Common Shares so issued will be mailed to the holders thereof within five Business Days after their issuance.

Pursuant to the Subscription Receipt Indenture, the “Release Date” is the date prior to the Termination Time on which the Company delivers a notice (the “**Release Notice**”) to the Subscription Receipt Agent in the form required under the Subscription Receipt Indenture, which notice will, among other things, inform the Subscription Receipt Agent of the satisfaction of the Escrow Release Conditions. Such Release Notice shall be delivered to the Subscription Receipt Agent not later than two Business Days following satisfaction of the Escrow Release Conditions.

If not earlier converted pursuant to the terms of the Subscription Receipt Indenture, the Subscription Receipts represented by this Subscription Receipt Certificate will be cancelled by the Subscription Receipt Agent at the Termination Time. In such event, the holder will be entitled to receive,

and the Subscription Receipt Agent shall pay to the holder, the amount of \$3.25 per Subscription Receipt plus the *pro rata* portion of any interest earned or income generated on the Proceeds, less any applicable withholding taxes, all as more particularly set out in the Subscription Receipt Indenture. The Company will pay to the Subscription Receipt Agent the Shortfall Amount for further distribution to the holder.

This Subscription Receipt Certificate represents Subscription Receipts of the Company issued under the provisions of the Subscription Receipt Indenture. Reference is hereby made to the Subscription Receipt Indenture for particulars of the rights of the holders of the Subscription Receipts, the Company and the Subscription Receipt Agent in respect thereof and of the terms and conditions upon which the Subscription Receipts are issued and held, all to the same effect as if the provisions of the Subscription Receipt Indenture were herein set forth in full, to all of which the holder, by acceptance hereof, assents. In the event of a conflict between the provisions of this Subscription Receipt Certificate and the Subscription Receipt Indenture, the terms of the Subscription Receipt Indenture shall govern. The Company will furnish to the holder, on request, a copy of the Subscription Receipt Indenture.

**The holder and any transferee hereof are cautioned that in the event that the Subscription Receipts are deemed to be converted or are cancelled, certificates representing the Common Shares or cheques, as the case may be, will be mailed or delivered to the latest address of record of the registered holder, and the Company and the Subscription Receipt Agent are not bound to take notice of any transfers or assignments unless the transferee is a duly registered holder of the Subscription Receipt prior to such mailing or delivery.**

On and after the date of any conversion of the Subscription Receipts represented by this Subscription Receipt Certificate, the holder will have no rights hereunder except to receive certificates representing the Common Shares issued upon the conversion thereof to such holder.

The Company will not be obligated after the aggregation of the number of Common Shares to be issued to a holder of Subscription Receipts to issue any fraction of a Common Share on the conversion of Subscription Receipts. A holder of Subscription Receipts shall not be entitled to receive a cash payment or any other compensation in respect of any such fraction of a Common Share.

No Common Shares will be issued pursuant to any exercise of any Subscription Receipt if the issue of such security would constitute a violation of the securities laws of any applicable jurisdiction. All certificates for Common Shares acquired by, or for the account or benefit of, a person in the United States under Rule 144A or a U.S. Person under Regulation D, as well as all certificates issued in exchange therefor or in substitution thereof, shall bear the U.S. restrictive legend required by the Subscription Receipt Indenture.

The Subscription Receipt Indenture provides for adjustments to the rights of the holders of Subscription Receipts on the happening of certain stated events, including the subdivision or consolidation of the outstanding Common Shares, certain distributions of Common Shares or of securities convertible into or exchangeable for Common Shares or of other securities or assets of the Company, certain offerings of rights, warrants or options and certain capital reorganizations.

The Subscription Receipt Indenture contains provisions making binding on all holders of Subscription Receipts outstanding thereunder resolutions passed at meetings of such holders held in accordance with such provisions and instruments in writing signed by holders of a specified percentage of all outstanding Subscription Receipts.

On presentation at the principal office of the Subscription Receipt Agent in Toronto, Ontario, subject to the provisions of the Subscription Receipt Indenture and on compliance with the

reasonable requirements of the Subscription Receipt Agent, one or more Subscription Receipt Certificates may be exchanged at no cost to the holder for one or more Subscription Receipt Certificates of different denominations representing in the aggregate the same number of Subscription Receipts as the Subscription Receipt Certificate or Subscription Receipt Certificates being exchanged.

The Subscription Receipts represented by this Subscription Receipt Certificate may only be transferred on the register of transfers to be kept at the principal office of the Subscription Receipt Agent in Toronto, Ontario upon compliance with the conditions prescribed in the Subscription Receipt Indenture by the holder of such Subscription Receipts or the executors, administrators or other legal representatives thereof or the attorney thereof appointed by an instrument in writing in form and executed in a manner satisfactory to the Subscription Receipt Agent, including the requirement to complete the Form of Transfer forming part of this Subscription Receipt Certificate, and, upon compliance with such requirements and such other reasonable requirements as the Subscription Receipt Agent may prescribe, such transfer will be duly recorded on such register of transfers by the Subscription Receipt Agent. Notwithstanding the foregoing, the Company will be entitled, and may direct the Subscription Receipt Agent, to refuse to record any transfer of any Subscription Receipt on such register if such transfer would constitute a violation of the securities laws of any jurisdiction.

No transfer of Subscription Receipts shall be effective, or shall be entered on the register kept by the Subscription Receipt Agent, unless the transferee thereof (a) certifies in writing that: (i) it was not offered the Subscription Receipts in the United States, (ii) at the time it originated the buy order for the Subscription Receipts, it was not in the United States, (iii) it did not execute any agreement to purchase the Subscription Receipts or the transfer form in the United States and (iv) it is not acquiring the Subscription Receipts for the account or benefit of a person in the United States under Rule 144A or a U.S. Person under Regulation D; or (b) has delivered an opinion of counsel of recognized standing or other evidence in form and substance satisfactory to the Company to the effect that an exemption from the registration requirements of the United States Securities Act of 1933, as amended, and applicable state securities laws is available for the transfer of the Subscription Receipts to the transferee.

The holding of this Subscription Receipt Certificate will not constitute the holder a shareholder of the Company or entitle such holder to any right or interest in respect thereof except as otherwise provided in the Subscription Receipt Indenture.

This Subscription Receipt Certificate will not be valid for any purpose until it has been certified by or on behalf of the Subscription Receipt Agent for the time being under the Subscription Receipt Indenture.

Time is of the essence hereof.



IN WITNESS WHEREOF THE COMPANY has caused this Subscription Receipt Certificate to be signed by its officers or other individuals duly authorized in that behalf as of May 28, 2015.

**THE WESTAIM CORPORATION**

By: \_\_\_\_\_

This Subscription Receipt Certificate is one of the Subscription Receipt Certificates referred to in the Subscription Receipt Indenture.

**EQUITY FINANCIAL TRUST COMPANY**

\_\_\_\_\_  
*Authorized Signing Officer*

Date: \_\_\_\_\_

**FORM OF TRANSFER**

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers to \_\_\_\_\_ (print name and address) the Subscription Receipts represented by this Subscription Receipt Certificate and hereby appoints \_\_\_\_\_ as its attorney with full power of substitution to transfer the Subscription Receipts on the appropriate register of the Subscription Receipt Agent.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2015.

|                      |   |                         |
|----------------------|---|-------------------------|
|                      | ) |                         |
|                      | ) |                         |
|                      | ) | _____                   |
|                      | ) | Signature of Transferor |
|                      | ) |                         |
| _____                | ) | _____                   |
| Signature Guaranteed | ) | Name of Transferor      |

Capitalized terms used herein and not otherwise defined shall have the meaning ascribed thereto in the Subscription Receipt Indenture dated as of May 28, 2015 among the Company, the Subscription Receipt Agent and the Joint Bookrunners.

**CERTAIN REQUIREMENTS RELATING TO TRANSFERS**

1. The Subscription Receipts represented by this certificate may not be transferred to, or for the account or benefit of, any person in the United States except in limited circumstances specified in the Subscription Receipt Indenture.
2. The signature of the transferor must correspond in every particular with the surname and the first name(s) or initials shown on the face of this certificate and the endorsement must be signature guaranteed, in either case, by a Canadian Schedule 1 chartered bank or a member of a recognized securities transfer agents medallion program (STAMP). The stamp affixed thereon by the guarantor must bear the actual words "signature guarantee", or "signature medallion guaranteed" and otherwise be in accordance with industry standards.

### CERTIFICATE OF TRANSFEREE

The undersigned represents, warrants and certifies as follows (**only ONE of the following must be checked**):

- A.  that (i) it was not offered the Subscription Receipts of The Westaim Corporation (the “**Company**”) in the United States, (ii) at the time it originated the buy order for the Subscription Receipts, it was not in the United States, (iii) it did not execute any agreement to purchase the Subscription Receipts or this transfer form in the United States, and (iv) it is not acquiring the Subscription Receipts for the account or benefit of a person in the United States or a U.S. Person;
- B.  that it was offered the Subscription Receipts of the Company within the United States in accordance with Rule 144A; or
- C.  that it has delivered an opinion of counsel of recognized standing or other evidence in form and substance satisfactory to the Company to the effect that an exemption from the registration requirements of the United States Securities Act of 1933, as amended (the “**U.S. Securities Act**”), and applicable state securities laws is available for the transfer of the Subscription Receipts to the undersigned.

The undersigned holder understands that unless Box A above is checked, the certificates representing the Subscription Receipts and the Common Shares issuable upon conversion thereof will bear a legend restricting transfer without registration under the U.S. Securities Act and applicable state securities laws unless an exemption from registration is available.

The undersigned acknowledges it: (i) does not own, hold or control, directly or indirectly, or (ii) would not (as a result of the transfer) own, hold or control, directly or indirectly, a Significant Voting Interest contrary to any of the Control Approval Requirements.

The undersigned further acknowledges that it shall notify the Company prior to any conversion of the Subscription Receipts if the representations, warranties and certifications contained in this Certificate of Transferee are no longer true and correct.

DATED the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

|  |                       |
|--|-----------------------|
|  | Name of Transferee    |
|  | By: _____             |
|  | Office or Title       |
|  | Address of Transferee |

**SCHEDULE B**

**RELEASE NOTICE**

TO: **EQUITY FINANCIAL TRUST COMPANY (“EQUITY”)**

Reference is made to the subscription receipt indenture dated as of May 28, 2015 (the “**Subscription Receipt Indenture**”) between The Westaim Corporation (the “**Company**”), GMP Securities L.P. (“**GMP**”), TD Securities Inc. (“**TD**”) and Equity and the special warrant indenture dated as of May 28, 2015 (the “**Special Warrant Indenture**”) between the Company, GMP, TD and Equity. Unless otherwise defined herein, words and terms with the initial letter or letters thereof capitalized shall have the meanings given to such words and terms in the Subscription Receipt Indenture.

In accordance with the Subscription Receipt Indenture and the Special Warrant Indenture, the undersigned hereby represents, warrants and confirms that the Escrow Release Conditions have been satisfied.

Accordingly:

- (a) in accordance with Section 2.02 of the Subscription Receipt Indenture, Subscription Receipts shall entitle the holders thereof, upon conversion thereof in accordance with the provisions of the Subscription Receipt Indenture, to be issued Common Shares, and the Company hereby agrees to authorize and direct the Transfer Agent to issue Common Shares in accordance with the terms of the Subscription Receipt Indenture; and
- (b) in accordance with Article 6 of the Subscription Receipt Indenture, the Company hereby authorizes and directs the Subscription Receipt Agent to:
  - (i) release \$<> of the Proceeds (and interest earned thereon) to GMP by means of a wire transfer to \_\_\_\_\_;
  - (ii) retain \$<> of the Proceeds; and
  - (iii) release the balance of the Proceeds (and any remaining interest earned or income generated in respect of the Proceeds) to the Company by means of a wire transfer to \_\_\_\_\_.

This Release Notice, which may be delivered by electronic means, is irrevocable and shall constitute your good and sufficient authority for taking the actions described herein.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

**THE WESTAIM CORPORATION**

By: \_\_\_\_\_