

MORTGAGE & INDENTURE

Made the ___ day of July, 2010

between

OWNER

and

AGENT

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MORTGAGE & INDENTURE

THIS MORTGAGE AND INDENTURE bearing date the ____ day of _____, _____.

BETWEEN:

OWNER, a corporation incorporated under the laws of the Province of Alberta
(the "Owner")

AND

AGENT, a corporation incorporated under the laws of the Province of Alberta
(the "Agent")

WHEREAS the Owner is the registered owner of the Building and Lands (as defined herein);

AND WHEREAS the Owner is desirous of raising money for the purposes of _____, and with a view to so doing is desirous of creating and issuing the Note Certificates, the issuance of which is provided by this Indenture;

NOW THEREFORE IT IS HEREBY covenanted, agreed and declared as follows:

ARTICLE 1 – INTERPRETATION

1.1 Definitions

The terms defined in this Section 1.1 (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Indenture and of the Note Certificates shall have the respective meanings specified in this Section 1.1.

- (a) "Board of Directors" shall mean the Board of Directors of the Owner.
- (b) "Building" means the _____ constructed on the Lands as at the date hereof and as such facility is to be operated on behalf of the Owner, all for use as a _____.
- (c) "Business Day" shall mean any day other than a Saturday, Sunday, a legal holiday or a day on which banking institutions are closed in the City of _____.
- (d) "Certificate of Authentication" shall refer to the authentication of the Agent endorsed upon the Note Certificates pursuant to Article 2.
- (e) "Construction Liens" means mechanics', labourers', builders', materialmens' or, without limiting the generality of the foregoing, any lien of a similar nature created by statute, arising out of the construction by the Owner of the Project or the furnishing of services, materials or supplies therefor, existing at the particular time upon the Project, which rank in priority to this Indenture.
- (f) "Event of Default" means any event specified in Section 6.1, continued for the period of time, if any, therein designated.
- (g) "Extraordinary Resolution" means a resolution passed (i) at a meeting of holders by not less than 66 2/3% of the votes cast thereat; or (ii) by instruments in writing signed in one or more counterparts by the holders of not less than 66 2/3% of the aggregate principal amount of Note Certificates then outstanding.

- (h) "Holders" or "holders" means the persons for the time being entered in the appropriate register or registers hereinafter mentioned as holders of any of the Note Certificates and owners of an undivided interest in and to the mortgage and charge hereby created and "Holder" or "holder" means any one of them.
- (i) "Indenture" means this instrument as originally executed or, if amended or supplemented as herein provided, as so amended or supplemented.
- (j) "Lands" means an estate in fee simple in those lands legally described on Schedule "A" hereto and excepting thereout all mines and minerals, subject to the Permitted Encumbrances.
- (k) "_____ Mortgage" means the first mortgage in favour of _____ registered for an original principal amount of \$_____, in respect of which there was outstanding on _____ the approximate principal amount of \$_____ together with interest thereon, and which mortgage is registered as instrument number _____.
- (l) "Mortgaged Property" means the Property as defined in Section 3.1 and also the undertaking, property, assets, rights and interests which are now or hereafter may be subjected or intended to be subjected to the charge in favour of the Agent created hereunder.
- (m) "Note Certificate" means a promissory note and mortgage certificate of the Owner issued or to be issued hereunder and for the time being outstanding, each entitled to and representing an undivided interest in the indebtedness and the mortgage and charge hereby created and which shall be issued in the form set forth in Schedule "B" hereto.
- (n) "Permitted Encumbrances" means as of any particular time any of the following encumbrances on the Mortgaged Property:
 - (i) any subsisting reservations, exceptions, limitations and provisos and conditions including royalties contained in the original grant of the Lands from the Crown;
 - (ii) any permits, licenses, agreements, restrictions or rights-of-way or other public easements and public access which, in the opinion of legal counsel to the holders, will not in the aggregate materially and adversely impair the use of the Lands for the purpose for which the Lands are held by the Owner;
 - (iii) zoning and building by-laws and ordinances and municipal by-laws and regulations which, in the opinion of legal counsel to the holders, do not materially interfere with the use by the Owner of the Lands for the purposes for which the Lands are held and for the time being used by the Owner; and
 - (iv) _____ Mortgage.
- (o) "Project" means the Lands and the Building.

1.2 Meaning of "Outstanding"

The term "outstanding" when used with reference to Note Certificates, shall, subject to the residual rights of a holder to claim any amounts from the Owner or the Agent pursuant to the provisions of Section 11.2, mean, as of any particular time, all Note Certificates authenticated and delivered by the Agent under this Indenture, except:

- (a) Note Certificates theretofore cancelled by the Owner in accordance with the provisions hereof or delivered to the Owner for cancellation;

- (b) Note Certificates for the payment of which monies in the necessary amount shall have been deposited for that purpose with the Agent; and
- (c) Note Certificates in lieu of or in substitution for which other Note Certificates shall have been authenticated and delivered pursuant to the terms of Sections 2.10 or 4.2.

**ARTICLE 2 - ISSUE, DESCRIPTION, EXECUTION, REGISTRATION,
TRANSFER AND EXCHANGE OF NOTE CERTIFICATES**

2.1 Limits of Issue

The Note Certificates authorized to be issued hereunder shall consist of and be limited to an aggregate outstanding principal amount from time to time of \$_____.

2.2 Issuance

Note Certificates shall be initially issued only in minimum denominations of \$_____ or integral multiples thereof. The Note Certificates shall bear such date or dates and mature on such date or dates, shall bear interest at such rate or rates, may be issued in such denominations, may be redeemable before maturity in such manner, may be payable as to principal and interest at such place or places in _____, _____, may contain such provisions for the interchange or transfer of Note Certificates of different denominations and forms, may provide for early maturity at the option of the Owner, and may contain such other provisions, not inconsistent with the provisions of this Indenture, as may be determined by resolution of the Board of Directors passed at, or prior to, the time of issue thereof. Note Certificates issued hereunder shall only be issued and certified by the Agent upon the Agent receiving a direction in writing signed by a member of the Board of Directors advising as to the names and addresses of the persons to become holders and attaching a copy of the resolution of the Board of Directors, certified by the Secretary thereof, specifying all of the provisions to be applicable to the Note Certificates to be issued.

Subject to:

- (a) the Agent receiving the certified resolution of the Board of Directors specifying all of the provisions to be applicable and certifying that the Note Certificates applied for have been validly authorized, executed and delivered by the Owner; and
- (b) the Agent receiving the direction in writing as to the names and addresses of the persons to become holders; and
- (c) the Agent receiving cash (or certified cheques or official bank drafts) from the proposed holders in an amount equal to the aggregate principal amount of the Note Certificates applied for; and
- (d) the Agent receiving Note Certificates in accordance with the direction for purposes of authentication;

the Note Certificates in the form set forth in Schedule "A" shall be authenticated and dated by the Agent and delivered to the named holder and upon such certification and delivery thereof by the Agent the Note Certificates will be valid and binding direct obligations of the Owner entitled to the benefits and security created by this Indenture and any interest provided for in such Note Certificate shall be payable by the Owner on and from the Issue Date specified in the Note Certificate.

All amounts received by the Agent from the proposed holders pursuant to this Section 2.2 shall be held by the Agent and upon authentication and receipt by the Agent of a certified copy of a resolution of the Board of Directors requesting such amounts, the Agent shall pay to the Owner the requested amounts but only if the Agent obtains concurrently therewith a certified copy of the Note Certificate and Title for the Lands showing this Indenture to be a valid and subsisting

first charge as described herein and not subject to any Construction Liens. All amounts received by the Agent pursuant to this Section 2.2 shall be held by the Agent, until properly requested by the Board of Directors, in a Canadian chartered bank, all interest, if any, to accrue to the credit of the Owner.

2.3 Denominations and Forms of Note Certificates

The Note Certificates may be of different denominations and may contain such variations of tenor and effect not inconsistent with the provisions of this Indenture, as are incidental to such differences of denomination including variations in the provisions for the exchange of Note Certificates of different denominations and in the provisions for the registration or transfer of Note Certificates and Note Certificates may have different dates of issue, different dates of maturity, different rates of interest or provision for no interest and/or different redemption prices.

The Note Certificates may be engraved, lithographed, printed, mimeographed or typewritten, or part in one form and part in another, as the Owner may determine.

2.4 Signature of Note Certificates

All Note Certificates shall be under the seal of the Owner and shall be signed (either manually or by facsimile signature) by any one (1) of the Board of Directors. A facsimile signature upon any of the Note Certificates shall, for all purposes of this Indenture, be deemed to be the signature of the person whose signature it purports to be and to have been signed at the time such facsimile signature is reproduced and notwithstanding that any person whose signature, either manual or in facsimile, may appear on the Note Certificates is not at the date of this Indenture or at the date of the Note Certificates or at the date of certifying and delivery thereof, a member of the Board of Directors, such Note Certificates shall be valid and binding upon the Owner and entitled to the security of this Indenture.

2.5 Certification

No Note Certificate shall be issued or, if issued shall be obligatory upon the Owner, or shall entitle the holder to the benefit of the security hereby created, until it has been certified by or on behalf of the Agent substantially in the form provided for hereunder or in some other form approved by the Agent, whose approval shall be conclusive evidence that as at such date such Note Certificate is duly issued, is a valid obligation of the Owner and is secured hereby.

The certificate of the Agent signed on the Note Certificates shall not be construed as a representation or warranty by the Agent as to the validity of this Indenture or of Note Certificates and/or the certificates or their issuance.

2.6 Note Certificates Equally Secured

The Note Certificates may be issued at par in such amounts, to such persons and on such terms, not inconsistent with the provisions of this Indenture, as the Board of Directors may determine. Subject to the terms hereof and in particular Sections 3.2 and 6.3 hereof, each Note Certificate as soon as issued or negotiated and certified shall be equally and ratably secured hereby as if all of the Note Certificates had been issued and negotiated simultaneously.

2.7 Registration of Note Certificates

The Owner shall cause to be kept registers of the holder or holders of any of the Note Certificates, such registration to be noted on such Note Certificates. The name and address of each holder of Note Certificates so registered, the dates and amounts of all principal payments and particulars of the Note Certificates held by him shall be alphabetically entered in the register in which such Note Certificates are registered.

After registration of a Note Certificate no transfer thereof shall be valid unless the same has been approved prior thereto by the Board of Directors and such transfer is made on one of the registers by the registered holder or his executors or administrators or other legal representatives or his or

their attorney duly appointed by instrument in writing in form and execution satisfactory to the Owner, upon compliance with such requirements as the Owner may prescribe, and such transfer shall only be effective upon the cancellation of the Note Certificate and the issuance of a new Note Certificate in the name of the transferee.

The registers referred to in this Section 2.7 shall be kept by and at the principal office of the Owner in the City of _____, _____, with a duplicate thereof to be maintained at the office of the Agent in the City of _____, _____.

The registers referred to in this Section 2.7 and maintained at the Owner's office shall at all reasonable times be open for inspection by the Agent and by any other person entitled thereof by law.

The Owner shall not be required (a) to exchange Note Certificates for a period of twenty-one (21) days next preceding any principal or interest payment date; or (b) to exchange any Note Certificate on the day of any selection by the Owner of Note Certificates to be prepaid or during the twenty-one (21) preceding days; or (c) to exchange any Note Certificates selected or called for prepayment in whole or in part.

Note Certificates shall be transferable or assignable only with the consent of the Owner granted by the Board of Directors. The Owner shall not be charged with notice of, or be bound to see to the execution of, any trust, whether express, implied or constructive, in respect of any Note Certificates and may, where it is prepared to consent, transfer the same on the direction of the registered holder thereof, whether named as trustee or otherwise, as though that person were the beneficial owner thereof.

The Owner shall have power at any time to close any register upon which the entries of the registration of any Note Certificates appear and in that event shall transfer the records thereof to another existing register or to a new register and thereafter such Note Certificates shall be deemed to be registered on such existing or new register as the case may be.

In the event that the register in any place is transferred to a register kept in another place, notice of such change shall be given by the Owner, in the manner provided in Section 12 hereof, to the Agent.

2.8 Persons Entitled to Payment

The persons in whose name any Note Certificate shall be registered shall be deemed the owner thereof for all purposes of this Indenture. Payment of or on account of the interest, if any, on such Note Certificates shall be made only to or upon the order in writing of such registered holder thereof and such payment shall be good and sufficient discharge to the Owner and to the Agent for the amounts so paid. Payment of or on account of any installment on the principal of such Note Certificates (with the exception of the final payment or a prepayment) shall be made only to or upon the order of the Agent in accordance with Section 4.1 and such payment shall be good and sufficient discharge to the Owner of the amount so paid.

Where Note Certificates are registered in more than one name the interest, if any, from time to time payable in respect thereof may be paid by cheque payable to the order of all such holders, failing written instructions from them to the contrary, and the receipt of any one of such holders therefor shall be a valid discharge to the Owner.

In the case of death of one or more joint registered holders, the principal moneys and interest, if any, on Note Certificates may be paid to the survivor or survivors of such registered holders whose receipt therefor shall constitute a valid discharge to the Owner.

2.9 Cancellation Upon Repayment or Prepayment

All Note Certificates repaid in full shall be cancelled by the Owner, such cancellation to be effective upon the Owner providing to the Agent the funds as required by Section 4.1. Note

Certificates cancelled shall not be reissued. Upon surrender of any Note Certificate pursuant to a prepayment in part, then upon the Owner effecting such prepayment to the Agent and upon the Owner issuing, and the Agent certifying, a new Note Certificate evidencing the amount remaining outstanding after such payment, the original Note Certificate shall be cancelled by the Owner.

2.10 Mutilation, Loss or Destruction

In case any of the Note Certificates issued hereunder shall become mutilated or are lost, stolen or destroyed, the Owner, in its discretion, may issue, and thereupon the Agent shall certify and deliver, a new Note Certificate of like date and tenor upon surrender and cancellation of the mutilated Note Certificate or, in the case of a lost, stolen or destroyed Note Certificate, in lieu of and in substitution for the same. The substituted Note Certificate shall be in a form provided hereunder and shall be entitled to the benefits of this Indenture in the same manner and to the same extent as the Note Certificate in respect of which it is issued in lieu or in substitution of. In case of loss, theft or destruction, the applicant for a substituted Note Certificate shall furnish to the Owner evidence satisfactory to the Owner of such loss, theft or destruction and (in the discretion of the Owner) an indemnity satisfactory to the Owner and, in any case, shall pay all expenses incidental to the issue of such substituted Note Certificate.

2.11 Place of Payment

All payments on the Note Certificates as to principal and interest shall be made in lawful money of Canada at the place of payment specified in Section 4.1 provided that, notwithstanding anything to the contrary contained in this Indenture or in any Note Certificate, the Owner may enter into an agreement with the registered holder of any Note Certificate providing for payment of the principal or interest on such Note Certificate at a place or places other than the place of payment specified in Section 4.1.

Payments of principal and interest on any Note Certificate in accordance with this Section 2.11 and Section 4.1 shall absolutely satisfy and discharge the liability of the Owner with respect to such payment under such Note Certificate unless, in the case of payment by cheque, a cheque for payment thereof be not paid upon presentation or be lost or destroyed. From time to time, the Owner shall notify the Agent as to the persons with whom the Owner has entered into an agreement providing for a place of payment other than as provided for in Section 4.1.

2.12 Prepayment

The Owner shall have the right at its option and without penalty, at any time, both before and after maturity, to redeem and prepay all or part of the outstanding principal amount of any of the Note Certificates upon payment, to the date of such principal payment, of all interest (if any) accrued and unpaid on any such Note Certificate. The Note Certificates selected for repayment shall be within the sole discretion of the Owner. No holder shall have any right to necessarily participate in any prepayment which the Owner may elect to effect hereunder.

ARTICLE 3 - MORTGAGE AND CHARGE

3.1 Specific Charge

In consideration of the premises and for the better securing to the Agent of the due payment of all principal monies and interest (including interest on overdue principal and interest, if any) and other monies for the time being and from time to time owing on the security of this instrument and on the Note Certificates, the Owner does hereby mortgage and charge to the Agent as and by way of a fixed and specific mortgage and charge in the principal amount of \$_____ all of its right, title, estate and interest, both present and future:

- (a) in and to the Lands;

- (b) in and to the Building and all other buildings, erections and structures now or hereafter erected or located on, within or under the Lands and which constitute any part of the Project;
- (c) in and to all fixed machinery, plant, equipment and apparatus and fittings and other fixtures, partitions and other fixed property incorporated in the Building or now or hereafter erected or located on, within or under the Lands; and
- (d) in and to all rights-of-way, easements, franchises and privileges, appurtenant or appertaining to the Project;

(all of which property and assets are collectively referred to as the "Mortgaged Property" and the whole being subject to Permitted Encumbrances).

To have and to hold the Mortgaged Property and all rights hereby conferred unto the Agent, its successors and assigns, forever, but as agent, nevertheless, for the equal and ratable benefit and security of the holders of all the Note Certificates issued and to be issued hereunder, without any preference or priority of any such Note Certificates over any other by reason of priority in the time of issue or negotiation thereof or otherwise howsoever, save and except as specifically provided for hereunder, and for the uses and purposes and with the powers and authorities and subject to the terms and conditions herein set forth.

The mortgage created hereunder or granted hereby shall not extend or apply to and shall not include:

- (a) any property held in trust by the Owner and lawfully belonging to others;
- (b) the last day of the term of any lease or agreement therefor but upon enforcement of the mortgage granted hereunder, the Owner shall stand possessed of such last day in trust to assign the same to any person acquiring such term; and
- (c) shall not extend to nor include any "consumer goods" of the Owner as that term is defined in the *Personal Property Security Act* (_____).

3.2 Note Certificates Rank *Pari Passu*

All the Note Certificates shall rank *pari passu* as to principal and shall, as to principal, be secured hereby equally and ratably whatever may be the actual date or date of authentication thereof or terms of issue of the same respectively.

3.3 Charge Effective Irrespective of Advance

The mortgage hereby created or provided to be created shall be effective whether the monies thereby secured, or any part thereof, shall be advanced before or after or at the same time as the issue of any of the Note Certificates intended to be secured thereby or before or after or upon the date of the execution of this Indenture.

3.4 Further Assurances Covenant

The Owner hereby covenants with the Agent that after the security hereby created shall have become enforceable and the Agent shall have become bound to enforce the same, it will from time to time execute and give all such assurances and do all things as the Agent may reasonably require for facilitating the realization of the Mortgaged Property and, for exercising all the powers, authorities and discretions hereby conferred upon the Agent and for confirming to any purchaser of any of the Mortgaged Property, whether sold by the Agent hereunder or by judicial proceedings, the title to the property so sold, and that it will give all notices and directions as the Agent may consider expedient.