



CANADIAN WESTERN BANK,
2000 Argentia Rd., Plaza #1, Suite
300 Mississauga, Ontario, L5N 2R7

REVOLVING LOAN AND SECURITY AGREEMENT

CLIENT: AEGIS BRANDS INC.
ADDRESS: 5915 Airport Rd., Ste. 630
Mississauga, Ontario L4V 1T1

CONTACT: Ba Linh Le
PHONE NUMBER:
EMAIL:

Table with 3 columns: LOAN, ADVANCES AND PREPAYMENTS, FEES AND INTEREST. Includes details like Maximum Credit Line (CAD \$4,000,000.00), Maturity Date (December 7, 2022), and Financing Rate (Prime + 3.20%).

Collateral
All present and after-acquired personal property (as such term is defined in accordance with the applicable personal property laws in the jurisdiction where the personal property is located) of the Client, and the proceeds therefrom, all as more specifically described in this Agreement and the security agreement given by the Client to the Lender as contemplated by this Agreement, provided no such collateral shall include the capital stock or any assets of 2734524 Ontario Inc.

ADDITIONAL PROVISIONS
Each of the following schedules are incorporated into and form an integral part of this Agreement:
Schedule "A" - Additional Provisions
Schedule "B" - Terms and Conditions
Schedule "C" - Request for Advance
Schedule "D" - Repayment Notice

WHEREAS Client (as defined below) has requested Lender (as defined below) to make available to it a revolving loan in the maximum aggregate amount specified under the heading "Maximum Credit Line" above and Lender has agreed to make such revolving loan available to Client on the terms and subject to the conditions set out in this Agreement.

THE PARTIES AGREE THAT: In consideration of the Loan made or to be made by Canadian Western Bank (the "Lender") to Client, the receipt of which Client hereby acknowledges, Client acknowledges itself indebted and promises to repay to Lender the Obligations. Client also acknowledges that it has agreed to grant to Lender a security interest in the Collateral to secure repayment of the Obligations on the terms and conditions set forth above, on all applicable schedules and other attachments hereto, all of which form part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Revolving Loan and Security Agreement at Mississauga, Ontario this 7th day of December, 2020.

AEGIS BRANDS INC. ("CLIENT")
By: Ba Linh Le
Name: Ba Linh Le
Title: Chief Financial Officer

CANADIAN WESTERN BANK
[Redacted signature area]

By:
Name:
Title:
SIGNATURE OF AUTHORIZED OFFICERS

[Redacted signature area]
SIGNATURE OF AUTHORIZED OFFICERS

**SCHEDULE A – ADDITIONAL PROVISIONS**

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The following provisions are in addition to, and shall be deemed to form part of, the Terms and Conditions set out in Schedule “B” to the Agreement (the “Terms and Conditions”), all of which are incorporated and form part of the Agreement.

**1. DEFINITIONS**

Capitalised terms not defined herein shall have the meaning set forth in the Terms and Conditions or on the front page of this Agreement. In this Agreement, the following terms have the meanings ascribed thereto:

“Corporate Guarantor” means the Bridgehead (2000) Inc.

“Covenant Parties” means, the Client | “Sites” means any present or future corporate location subject to a financing by the Lender and any corporate location where Client or Corporate Guarantor operates its business including, but not limiting the following Sites (each location a “Site” and collectively referred to as “Sites”):

**Bridgehead Coffeehouse located at:**

- 1. Preston: 130 Anderson St., Ottawa, ON K1R 6T7  
This site includes ROASTER LOCATION
- 2. Fairmont: 1024 Wellington St., Ottawa, ON K1Y 2X9
- 3. Wellington: 1277 Wellington St., Ottawa, ON K1Y 3A8
- 4. Elgin: 282 Elgin St., Ottawa, ON K2P 1M3
- 5. Iris: 2745 Iris St., Ottawa, ON K2C 3V5
- 6. Fairlawn: 2140 Carling Ave., Ottawa, ON K2A 1H1
- 7. Golden: 440 Richmond Rd., Ottawa, ON K2A 1H4
- 8. Second: 750 Bank St., Ottawa, ON K1S 3V6
- 9. Beechwood: 131 Beechwood, Ottawa, ON K1M 1L5
- 10. Grove: 1172 Bank St., Ottawa, ON K1S 3X9
- 11. Gilmour: 366 Bank St., Ottawa, ON K2P 1Y4
- 12. McRae: 317 McRae Ave., Ottawa, ON K1Z 8P4
- 13. Dalhousie: 224 Dalhousie Street, Ottawa, ON K1N 7E2
- 14. Sparks: 96 Sparks St., Ottawa, ON K1P 5B6
- 15. Rideau: 50 Rideau St., Unit E107C, Ottawa, ON K1N 9J7
- 16. Slater: 344 Slater St., Ottawa, ON K1R 7Y3
- 17. Albert: 109 Bank Street, Ottawa, ON K1P 5N5
- 18. O'Connor: 150 Slater St., Ottawa, ON K1P 5H6
- 19. Place Bell: 160 Elgin St., Ottawa, ON K2P 2C4

**2. PURPOSE**

The revolving loan shall be used for short term investments, franchisee re-purchases and general corporate purposes relating to the food and drink business currently operated by the Client.

### **3. REVOLVING LOAN AVAILABILITY**

Client hereby acknowledges and agrees that the continuing availability of, and the Lender's obligation to make, any Advance is subject to annual reviews conducted by the Lender, the results of which must be satisfactory to the Lender in its sole discretion.

At the time of the annual review, Lender may, in its sole discretion, elect to term out a portion, or the entirety, of the revolving loan and take any new Sites as Collateral.

Without limitation, in the event that the present Agreement fails to revolve in a manner satisfactory to the Lender, the Lender shall have no obligation to make any further Advances pursuant to the revolving loan, which shall be placed on a reducing term basis, at the prevailing rate, over an amortization period acceptable to the Lender in its sole discretion.

### **4. CONVERSION TO TERM LOAN**

Upon any periodic or annual review, the Lender may, in its sole discretion, elect to convert all or a portion of the Obligations to an amortizing term loan (a "**Converted Term Loan**"). The Lender will determine the interest rate, payment schedule, amortization period, and maturity date applicable to any Converted Term Loan. A Converted Term Loan will be subject to the Lender's standard terms and conditions for term loans as may be in effect at the time of conversion. Client agrees to execute any documents and take any steps that the Lender may reasonably direct in furtherance of conversion to a Converted Term Loan. Upon such a conversion, the Lender will have no obligations to make any further advances under the Loan. Upon such conversation the Borrower will not be required to pay the Standby Fee.

### **5. CLIENT'S GENERAL REPRESENTATIONS, WARRANTIES AND COVENANTS**

Section 28 of the Terms and Conditions is amended by replacing the last two sentences with the following:

During the Term of the loan and within **120** days of the Client's fiscal year-end, the Covenant Parties are required to submit to CWB complete Audited year-end financial statements. In addition, within **45** days of Client's quarter-end, the Covenant Parties are required to submit trailing-twelve month ("TTM") Notice to Reader financial statements. Reporting requirements are expanded to include internally prepared financial statements demonstrating the isolated results of (1) the operations of Second Cup Coffee and (2) Bridgehead Coffee, executed by the CFO. With the segmented results of each of the respective coffee operations together with the audited report demonstrating the consolidated results of all operations, an externally prepared financial statement for Bridgehead (2000) Inc. in a Review Engagement format will not be required.

For greater certainty, the remainder of Section 28 remains unchanged.

### **6. UNDERTAKING: RIGHT TO TERMINATE MANAGEMENT AGREEMENT**

The Client hereby (i) confirms that no management agreement is in place with respect of any of the restaurants at the Sites or otherwise funded in whole or in part by the Loan; and (ii) undertakes to obtain the Lender's consent prior to entering into any management agreement in respect of any such restaurant, which consent may be conditional upon the approval by the Lender of such manager and obtaining a subordination agreement from the manager or other arrangement satisfactory to the Lender.

### **7. NEGATIVE PLEDGE ON THE FRANCHISE AGREEMENT**

The Client shall not, without the prior written consent of the Lender, grant or permit an assignment by the Client of any Franchise Agreement, nor grant, permit create or cause to be created, any lien, including hypothecs, in or on any Franchise Agreement.

## **8. NEGATIVE PLEDGE ON LOCATION CONVERSION**

The Client shall not and shall not permit, without the prior written consent of the Lender, the conversion or transfer of any present or future Second Cup or Bridgehead (or future acquired brands/chains) location (including the Sites) to a Hemisphere Cannabis Co. location (a "**Location Conversion**") and the Client shall provide the Lender with prior written notice no later than 15 days prior to the closure of any Site.

## **9. LOAN FEE**

Client shall pay to Lender at the Closing Date a non-refundable loan fee equivalent to [REDACTED] of the Maximum Credit Line ("Loan Fee"), whether or not any Advances have been made to the Client. The Lender may, at its discretion (i) request that the Client sign a sporadic preauthorization to debit form for the amount of the Loan Fee or any other fees owing to the Lender; and (ii) if the Client has provided a good faith deposit, Lender may retain and set-off the Loan Fee or any other amounts owing to the Lender against said good faith deposit.

## **10. CROSS DEFAULT**

Section 2) of the Terms and Conditions is amended by adding the following at the end:

- h. a Default under this Agreement shall be deemed a default under all other present and future agreements entered into between the Client or any Affiliate of the Client (or the Covenant Parties) and Lender or any Affiliate, nominee or agent of Lender (an "**Affiliate Agreement**"), and
- i. a Default under the Affiliate Agreement shall be deemed a default under this Agreement.

For greater certainty, the remainder of Section 21 remains unchanged.

## **11. DEFAULT**

Section 21 of the Terms and Conditions is amended by deleting subsections (q) and (r) and replacing them with the following:

- q. a Location Conversion occurs without the prior written consent of the Lender;
- r. the Covenant Parties create, grant or permit to exist any hypothec on the Sites or their present and future movable, corporeal and incorporeal property, other than hypothecs granted in favor of Lender. For greater certainty, no subordinate hypothecs shall be permitted without the prior written consent of Lender; or
- s. any event or circumstance described in any paragraph (b) through (r) inclusive occurs with respect to any Covenant Parties, guarantor or surety of Client respecting this Agreement or any person who controls Client or any Affiliate of Client.

For greater certainty, the remainder of Section 21 remains unchanged.

## **12. CROSS-COLLATERIZATION**

The security granted under the Agreement is given also to secure the payment and performance of any and all debts, obligations and liabilities of any kind or description whatsoever (whether due or to become due) of Client or any Affiliates of Client (or the Covenant Parties) to Lender under the Agreement and any Affiliate Agreement. This security shall be deemed to be a continuing security which will not be released or discharged in whole or in part until satisfaction in full of all such debts, obligations and liabilities under the Agreement.

### 13. LOAN FINANCIAL COVENANTS

On a quarterly basis, Lender shall monitor the following financial covenants on the combined results of the Covenant Parties:

- Reporting: Audited Annual Reporting (FYE Dec31)
- Reporting: Quarterly Notice to Reader Reporting first due for Q4 Dec 31, 2020
- Tested: FYE 2021: FCCR 1.0:1.0; No Senior Leverage
- Tested: Q2 2022: Senior Leverage <4.50x, FCCR 1.10x pre/1.10x post
- Tested: Q4 2022: Senior Leverage <4.0x, FCCR 1.30x pre/1.10x post
- Tested: Q2 2023: Senior Leverage <3.50x, FCCR 1.30x pre/1.10x post

**(1) Fixed Charge Coverage Ratio, Pre-Compensation (FCCR-Pre):** As measured for the Covenant Parties on the last day of the Client's reporting period, the Covenant Parties must have a Pre-Compensation Consolidated FCCR equal to or greater than **as outlined above**.

**"Pre-Compensation Consolidated FCCR"** means, with respect to the 12-month period of time immediately preceding the date of determination, the ratio, calculated for the Covenant Parties for such time period, each as determined in accordance with GAAP, of: (i) the sum of net income, interest expense, income taxes, depreciation, amortization, and operating lease expenses (rent expense), and officers' salaries expensed on the income statement, plus or minus other non-cash adjustments or non-recurring items (as allowed by Lender); to (ii) the sum of operating lease expenses (rent expense, not including common area maintenance or property taxes), principal payments on long term debt, the current portion of all capital leases, and interest expense (excluding non-cash interest expense and amortization of non-cash financing expenses).

**(2) Fixed Charge Coverage Ratio, Post-Compensation (FCCR-Post):** As measured for the Covenant Parties on the last day of the Client's reporting period, the Covenant Parties must have a Post-Compensation Consolidated FCCR equal to or greater than **as outlined above**.

**"Post-Compensation Consolidated FCCR"** means, with respect to the 12-month period of time immediately preceding the date of determination, the ratio, calculated for the Covenant Parties for such time period, each as determined in accordance with GAAP, of: (i) the sum of net income, interest expense, income taxes, depreciation, amortization, and operating lease expenses (rent expense, not including common area maintenance or property taxes), plus or minus other non-cash adjustments or non-recurring items (as allowed by Lender), minus increases in officer or shareholder loan receivables and minus dividends or distributions not otherwise expensed on the applicable income statement(s); to (ii) the sum of operating lease expenses (rent expense, not including common area maintenance or property taxes), principal payments on long term debt, the current portion of all capital leases, and interest expense (excluding non-cash interest expense and amortization of non-cash financing expenses).

**(3) Funded Debt to EBITDA (Senior Leverage):** As measured for the Covenant Parties on the last day of the Client's reporting period, Consolidated Funded Debt to Consolidated EBITDA, which shall not be measured until Q2 2022, shall be equal to or less than **as outlined above**.

**"Consolidated Funded Debt"** is defined as the outstanding principal balance of all indebtedness of the Covenant Parties, including capital leases and the outstanding balances of any revolving lines of credit,

as at the last day of the fiscal period being measured. "**Consolidated EBITDA**" is defined as the aggregate sum, for the 12-month period of time immediately preceding the last day of the fiscal period being measured, for the Covenant Parties, of all net income, interest expense, income taxes, depreciation, and amortization, but less non-recurring miscellaneous income and plus non-recurring miscellaneous expenses (as allowed by Lender), each as determined in accordance with GAAP.

#### **14. CONDITIONS PRECEDENT**

Section 6.1 of the Terms and Conditions is amended by adding the following at the end:

- (a) Executed Assignment and Postponement of Creditor's Claims agreements from Client and Corporate Guarantor;
- (b) Executed confirmation of security interest in intellectual property;
- (c) Confirmation by Lender that ID Verification for signor for Client complete;
- (d) Assignment of Intellectual Property, Trademarks and Franchise Agreements;
- (e) Confirmation of discharge of all registrations by Bank of Nova Scotia against Client;
- (f) Confirmation of discharge of registration by Artis Stampede Ltd. against Client;
- (g) Confirmation of discharge of registration by Luke Enterprises Ltd. against Client;
- (h) Confirmation of discharge of all registrations by Xerox Canada Ltd. against Client unless approved by Lender to remain;
- (i) Confirmation of discharge of registration by La Caisse Populaire Vision Inc. as secured party against Bridgehead (2000) Inc.;
- (j) Confirmation by Clients and Lenders counsel of true applicable PPSA registrations against Client to ensure first priority registration by Lender;
- (k) Receipt of Legal Opinions as required by the Lender or its solicitors;
- (l) Receipt of 2019 Notice of Assessment for The Second Cup Ltd. confirming current with Canada Revenue Agency ("CRA") and if any balance owing, proof to be provided showing paid;
- (m) Receipt of litigation searches by Lenders solicitors against the Client and all guarantors confirming no active lawsuits; if active lawsuit, matter to be reviewed and confirmed acceptable by Lender.
- (n) All debt between Client and Corporate Guarantors to be jointly and severally (solidarily for the Province of Quebec) cross-collateralized, cross-defaulted and cross-guaranteed;
- (o) All fees required to be paid by Client;
- (p) No Default has occurred that is continuing;
- (q) No Material Adverse Effect shall have occurred and be continuing on and as of the Advance Date, nor shall a requested Advance result in the occurrence of a Material Adverse Effect;
- (r) Any other document reasonably required by the Lender (or its solicitors).

For greater certainty, the balance of Section 6 remains unchanged.

**15. ENTIRE AGREEMENT**

This Agreement, including the related security documents, constitutes the entire agreement between Lender and Client with respect to the subject matter contained herein and supersedes all prior negotiations, undertakings, representations and understandings, whether written or oral, including any proposal letter.

## SCHEDULE B – CUSTOM TERMS AND CONDITIONS

### 1. Interpretation

1.1 For the purpose of this Agreement, except to the extent modified by Schedule A- Additional Provisions:

- (a) "Advance" means an advance denominated in Canadian Dollars made pursuant to this Agreement;
- (b) "Advance Date" means the Business Day on which the Advance is made by Lender to Client hereunder
- (c) "Affiliate" means in respect of a person, a person or persons that, directly or indirectly through one or more intermediaries, control, are controlled by, or are under common control with, such person.
- (d) "Agreement" means the Revolving Loan and Security Agreement between Lender and Client to which this Schedule B – Terms and Conditions is attached and forms part of.
- (e) "Business Day" means a day when the office of Lender at the address stated on the face hereof is open for business dealings, but excludes Saturday, Sunday and any other day which is a statutory holiday in the provinces of Alberta, Ontario or Quebec.
- (f) "Canadian Dollar" or the symbol "\$" means lawful money of Canada.
- (g) "Claims" has the meaning assigned thereto in Section 24.
- (h) "Client" means the client stated on the face of the Agreement, and, in respect of any obligations regarding the Equipment, the Sites or other similar obligations, including all of the related obligations, covenants, undertaking, representations and warranties set out in Sections 7, 8, 9, 17, 18, 19, 20, 21, 27, 28 and 29, includes the Covenant Parties.
- (i) "Closing Date" means the date of execution and delivery of this Agreement and any other documents, instruments or agreements as required under Section 6.1.
- (j) "Collateral" means (a) all present and after acquired personal property (as such term is defined in the applicable personal property security laws in the province in which applicable property is located), including without limitation the property listed on face of the Agreement; (b) all present and after-acquired intellectual property and other intangibles relating to the Client, including without limitation all accounts, accounts receivable and securities accounts; (c) all present and after-acquired contracts of the, written or oral, for the sale, exchange, lease, license, rental or other disposition of any kind whatsoever of the foregoing; (d) all insurance claims and proceeds resulting therefrom with respect to any loss or damage to any of the foregoing; and (e) all proceeds of the foregoing in the form of chattel paper, documents of title, goods, instruments, intangibles, money, fixtures or investment property.
- (k) "control" means the power to direct or cause the direction of the management and policies of a person whether through the ownership of voting securities or otherwise.
- (l) "Conversion Rate" means the rate, expressed in Canadian Dollar for the purchase of one US Dollar, determined by adding 0.0100 CAD\$/US\$ to the highest rate which appears on the Bloomberg CAD GIT Page between 7 AM and 5 PM (EST).
- (m) "Covenant Parties" has the meaning given to it in Schedule A – Additional Provisions.
- (n) "Commitment Termination Date" means the date specified as Commitment Termination Date on the face of this Agreement
- (o) "Default" means any of those events or circumstances specified in Section 20.
- (p) "Equipment" means all tangible Collateral.
- (q) "Equities" means existing or future rights of counterclaim, defence, set-off, compensation, abatement or offset, legal or equitable.
- (r) "Financing Rate" means the interest rate per annum indicated on the face of this Agreement.
- (s) "Franchise Agreement" means any franchise, license or area development agreement granted with regard to the Sites.
- (t) "Franchise Parties" means any party that entered into or will enter into a Franchise Agreement.
- (u) "GAAP" means generally accepted accounting principles in effect from time to time in Canada or IFRS applicable to the relevant person, applied in a consistent manner from period to period.
- (v) "Guarantor" means, collectively, any Corporate Guarantors and/or Personal Guarantors, as applicable.
- (w) "Lender" means Canadian Western Bank.
- (x) "Lease Agreement" means any lease, sub-lease or storage agreement with regard to the Sites.
- (y) "Lease Parties" means any party that entered into or will enter into a Lease Agreement
- (z) "Lien" means any lien, privilege, mortgage, pledge, hypothec, charge, security interest, attachment, assignment, seizure, sequestration, distress, levy or other encumbrance of any nature or kind whatsoever.
- (aa) "Loan" means the aggregate unpaid principal amount of all Advances.

- (bb) "Loss of Equipment" means:
- (i) a total or constructive total loss of Equipment, or damage thereto, or theft thereof which, in the reasonable opinion of Lender, renders it impossible or impractical to use such Equipment for its intended purpose; or
  - (ii) expropriation or confiscation of any Equipment by any authority absolutely or for more than 180 days.
- (cc) "Maximum Credit Line" means the amount specified as the Maximum Credit Line on the face of this Agreement.
- (dd) "Material Adverse Effect" means, when used with reference to any event or circumstance or any person, an event, fact or circumstance that, either alone or when taken together with any other event, fact, circumstance, has or could reasonably be expected to have a material adverse effect on: (i) the business, assets, operations, property, or condition (financial or otherwise), of the Client, any Covenant Party and Guarantor taken as a whole, any of the Sites taken as a whole, the Equipment subject to the Lender's security or any portion thereof; (ii) the ability of the Client or any Guarantor in each case taken as a whole to perform and discharge its respective obligations under this Agreement or any of the related documents; (iii) the validity or enforceability of any of such documents, including this Agreement or any of the Lender's security, or the Lender's ability to enforce any of its rights or remedies under any of such documents; or (iv) the existence or priority of any of the liens in favour of the Lender including any liens affecting any of the Sites or such Equipment.
- (ee) "Maturity Date" means the date stated on the face of this Agreement;
- (ff) "Obligation" means any obligation by Client to pay any amount owing hereunder or under any documents, instruments or security delivered in connection herewith, including the Loan, Overdue Payments, accrued but unpaid interest, and all other amounts owing hereunder, or to perform any other obligation of Client hereunder or under any documents, instruments or security delivered in connection herewith.
- (gg) "Overdue Payment" means any amount owing by Client hereunder and any sum disbursed by Lender pursuant to Section 23 which is not paid when due hereunder, or any portion thereof.
- (hh) "person" means any natural person, corporation, firm, partnership, trust, sole proprietorship or governmental agency, authority or other entity, however constituted or designated.
- (ii) "Prime Rate" means the variable reference rate of interest per year declared by the Lender from time to time to be its "Prime Rate" for Canadian dollar loans made by the Lender in Canada, such rate to be adjusted automatically, without notice, as of the opening of business on the effective date of any change in such rate by the Lender by public notice or otherwise.
- (jj) "Supplier" means any manufacturer, supplier, vendor or dealer in Equipment or any other person from whom Client has acquired any of the Equipment.
- (kk) "Taxes" means any and all taxes, imposts, levies, fees, duties and charges imposed by any taxing authority on Lender, Client, the Equipment, its purchase, sale, ownership, security interest thereon, delivery, possession, operation or use including, without limitation, sales, excise, use, health services, property, goods and services, business transfer and value added taxes (including any penalties or interest based on late or non-payment), but excluding taxes imposed on or measured by Lender's overall net income.
- (ll) "TTM" means on a trailing twelve month basis.
- (mm) "Warranties" means any and all warranties, guarantees, representations, service contracts, contracts to stock spare parts and similar agreements, oral or written, express, implied or statutory, relating to Equipment.
- 1.2 Other than payments, which shall be made on the date each payment is due, and as otherwise provided in this Agreement, acts to be performed hereunder on non-Business Days shall be performed on the following Business Day.
- 2. Revolving Loan**
- 2.1 Lender agrees to make available to Client revolving loan in the aggregate principal amount equal to the Maximum Credit Line.
- 2.2 The Loan will revolve and, accordingly, Advances may be obtained, repaid and re-obtained by Client until the Maturity Date.
- 2.3 Client must ensure that the aggregate amount of all outstanding Advances under the Loan will not at any time exceed the Maximum Credit Line. Accordingly, Client may not request an Advance if the making of such Advance would result in such limit being exceeded.
- 2.4 To obtain an Advance, Client shall give a written notice to Lender, in the form of Schedule C, specifying:
- (a) the amount of the Advance, which shall be a multiple of \$50,000 but which shall be in the minimum amount stated as such on the face hereof; and
  - (b) the date of the Advance, which shall be a Business Day.
- The notice must be received by Lender no later than 12:00 pm (noon) Toronto time on the Business Day preceding the date of the Advance.
- 3. Term, Extension and Termination**
- 3.1 If Lender, in its sole discretion, agrees to extend the Maturity Date, the Lender shall notify Client of same and the Maturity Date shall be extended accordingly.
- 3.2 It shall be a condition to the approval of each extension hereunder that the following shall be true on or prior to such extension:

- (a) Client shall have provided to Lender a copy of its most recent quarterly and annual financial statements and, if required by Lender, those of any guarantor or surety of Client respecting this Agreement or any Affiliate of Client, in each case audited if applicable;
  - (b) Client shall have paid to Lender the Extension Fee provided on the face of this Agreement.
- 3.3 If, for any reason whatsoever, the Maturity Date is not extended as set forth above, the financing arrangement shall be terminated and Client shall pay all, and not less than all, the outstanding amount of the Loan together with (i) all accrued and unpaid interest thereon plus (ii) all other outstanding Obligations. Payment of all such amounts shall be due on the then applicable Maturity Date.
- 4. Fees and Interest**
- 4.1 Client shall pay to Lender, concurrently with the execution of this Agreement, the Loan Fee specified on the face hereof.
- 4.2 Client shall pay to Lender a standby fee on the unused portion of the Maximum Credit Line. The standby fee shall be calculated daily at the annual rate stated as such on the face hereof and shall be payable monthly in arrears on the first Business Day of the following month.
- 4.3 Advances shall bear interest at the applicable Financing Rate from the date hereof until unconditionally paid in full to Lender and such interest shall be payable monthly in arrears on the first Business Day of the following month.
- 4.4 Interest payable hereunder shall accrue and be calculated daily upon the daily outstanding balance of the aggregate Advances, the Loan or an Overdue Payment, as applicable, on the basis of the actual number of days elapsed in a year of 365 days or 366 days (or by 360, in the case of a rate calculated on the basis of a 360-day year), as applicable. All interest payments to be made under this Agreement shall be paid both before and after maturity and before and after Default and/or judgment, if any, until full and unconditional payment of the outstanding balance of the aggregate Advances, the Loan or any Overdue Amount, as applicable.
- 4.5 The yearly rate of interest to which each rate of interest expressed herein is equivalent is the product of (a) such rate multiplied by (b) the actual number of days in the calendar year in which it is to be ascertained divided by 365 (or by 360, in the case of a rate calculated on the basis of a 360-day year). The principle of deemed reinvestment of interest shall not apply to this Agreement or any payments made by Client hereunder.
- 4.6 In addition to interest payable under Section 4, as applicable, each Overdue Payment shall bear interest from the date such Overdue Payment was due until unconditionally paid in full to Lender at the rate of 18% per annum, calculated as specified in Section 4.5 and shall be payable on demand by Lender.
- 4.7 If the Financing Rate is a variable rate based on Prime Rate, a change in Prime Rate automatically changes the rate of interest payable hereunder to the same extent and in the same manner effective daily. Lender shall not be obliged to notify Client of

any such change, any right to notice being hereby irrevocably waived by Client.

- 4.8 In order to preserve Lender's net economic return, Lender in its sole discretion may adjust the pricing at any time prior to any disbursement during the revolving period or prior to determining the Financing Rate for the Term Period to reflect: (1) changes in the pricing assumptions of this Agreement; (2) a change in Lender's funding index rate; (3) Tax law changes; and (4) general market conditions. If Client does not accept such revised Financing Rate, the outstanding amount of the Loan together with (i) accrued and unpaid interest thereon plus (ii) all other outstanding Obligations shall be due on the then applicable Maturity Date.

**5. Repayment and Prepayment**

- 5.1 Client shall make such repayments as may be necessary to ensure that the aggregate amount of the Obligations do not at any time exceed the Maximum Credit Line.
- 5.2 Client may at any time make prepayments on Advances outstanding under the Loan without affecting its right to re-borrow up to the Maximum Credit Line. Client shall give a written notice to Lender, in the form of Schedule D, specifying:
- (a) the amount of the prepayment, which shall be a multiple of \$50,000 but which shall be in the minimum amount stated as such on the face hereof; and
  - (b) the date of the prepayment, which shall be a Business Day.

The notice must be received by Lender no later than 12:00 pm (noon) Toronto time on the Business Day that is at least 48 hours preceding the date of the prepayment.

**6. Conditions Precedent**

- 6.1 Notwithstanding any other provisions of this Agreement and without affecting in any manner the rights of Lender hereunder, Client shall have no rights under this Agreement (but shall have all applicable obligations hereunder), and Lender shall not be obligated to make the Advances, or to take, fulfill, or perform any other action hereunder, until the following conditions have been satisfied, in Lender's sole discretion, or waived in writing by Lender:
- (a) This Agreement or counterparts thereof shall have been duly executed by, and delivered to, Client and Lender.
  - (b) Lender shall have received such documents, instruments and agreements as Lender shall request in connection with the transactions contemplated by this Agreement, including all documents, instruments, and agreements, financing statements, certificates of title, and paid in full invoices and/or copies of canceled checks for the Equipment, each in form and substance satisfactory to Lender.
  - (c) Evidence satisfactory to Lender that the security interest created hereunder in favour of Lender is valid, perfected and first-ranking with respect to all Collateral subject to Permitted Encumbrances (as such term is defined in the general security agreement executed by the Borrower and the

Corporate Guarantor on or about the date hereof (collectively the "GSAs");

- (d) Evidence satisfactory to Lender that Client has obtained consents and acknowledgments of all persons whose consents and acknowledgments may be required to the terms and to the execution and delivery, of this Agreement and the consummation of the transactions contemplated hereby.
  - (e) Evidence satisfactory to Lender that the insurance policies provided for in Section 17 are in full force and effect, together with appropriate evidence showing Lender as a loss payee and in form and substance satisfactory to Lender.
  - (f) The representations and warranties contained herein shall be true and correct as of the Closing Date.
  - (g) Payment by Client of any fees required to be paid on or prior to the Closing Date.
  - (h) Lender shall have conducted, at Client's expense, an inspection of all Equipment or any Site the results of which shall be satisfactory to Lender in its sole discretion.
  - (i) Leases: Client shall have delivered to Lender and Lender shall have approved a fully executed, complete copy of the Lease or Lease renewals, as applicable, for all Sites;
  - (j) Franchise Agreements: Client shall have delivered to Lender and Lender shall have approved a fully executed, complete copy of the Franchise Agreement or Franchise Renewal Agreement, if applicable, for all Sites;
  - (k) All existing security interest granted to the Lender by any Covenant Party and all Collateral remains in place;
  - (l) All debt owing to Lender by any of the Covenant Parties to be jointly and severally cross-collateralized, cross-defaulted and cross-guaranteed;
  - (m) No Material Adverse Effect shall have occurred and be continuing on and as of the Advance Date, nor shall a requested Advance result in the occurrence of a Material Adverse Effect; and
  - (n) Any other document reasonably required by the Lender (or its solicitors) or any condition or requirement listed in Schedule A and Schedule B.
- 6.2 If all of the conditions precedent provided for in Section 6.1 have not been previously fulfilled or waived by the Lender prior to the Commitment Termination Date, the Lender may at any time on or after the Commitment Termination Date (but prior to making any Advance) terminate this Agreement upon notice to the Client, and the Lender will have no obligation to advance the Loan.
- 6.3 It shall be a condition to the funding of each Advance that the following statements shall be true

and accurate on the advance date applicable thereto:

- (a) No event shall have occurred and be continuing, or would result from the making of any Advance, which constitutes or would constitute a Default.
- (b) The Lender shall have received a notice of Advance in the form and substance required by Section 2.4.
- (c) The representations and warranties contained herein shall be true and correct as of the Advance date.

## **7. Title, Ownership**

Title to, ownership of, and all property in the Collateral shall remain with Client, but subject always to the security interest of Lender and other provisions hereof, and at Client's sole risk, until full payment in cash of all amounts repayable hereunder; prior to such payment, Client's rights therein are to quiet enjoyment and use on the terms and conditions of this Agreement so long as a Default has not occurred.

## **8. Security Interest, Hypothec and Warranties as to Collateral**

- 8.1 Client hereby grants to Lender a continuing first ranking security interest in any and all Collateral, all to secure any and all obligations owing from time to time by Client to Lender (including the Obligations).
- 8.2 For the purpose of the laws of the Province of Quebec, Client hereby grants to Lender a first ranking hypothec on all of its movable property, present and future, that constitutes Collateral, for an amount equal to 120% of the Maximum Credit Line with interest thereon at the rate of 24% per annum, all to secure any and all obligations owing from time to time by Client to Lender (including the Obligations). Lender agrees that the hypothec created under this Section 8.2 on any movable property of Client other than Collateral shall be subordinated to the rights of any other person who provides financing to Client and has security on such assets. Lender further agrees that, following a request by Client, it shall promptly provide to such other creditor of Client a confirmation of such subordination.
- 8.3 The security interest of Lender hereunder shall be valid, perfected and first-ranking at all times with respect to all Collateral intended to be covered thereby. The security interest granted to the Lender hereunder will attach to the Collateral at the earliest possible time.
- 8.4 Client represents and warrants to Lender that the Client has good and marketable title to Collateral, free and clear of all Liens, except for the Liens of Lender hereunder. Client agrees to comply with all Warranties accruing to the Client pertaining to Equipment; however, any failure by any vendor to comply with any Warranty shall not affect Client's obligations to Lender hereunder.
- 8.5 The termination of this Agreement shall not affect the security interest(s) granted herein prior to such termination and the obligations of Client to Lender arising in connection therewith. Without limiting the generality of the foregoing, Sections 8.1 through to and including section 8.5 shall continue in full force

and effect despite any termination of this Agreement.

- 8.6 If any term or condition in this section 8 shall be in consistent with the provisions of the GSAs. The terms and conditions of the GSAs shall be paramount.

#### **9. Personal Property and Waivers**

- 9.1 The Equipment shall at all times be and remain movable personal property. Notwithstanding any purpose for which Equipment may be used or that it may become affixed, attached or joined to land or any structure thereon, Equipment shall remain subject to all rights of Lender hereunder as if it were not so affixed, attached or joined.
- 9.2 Client agrees to use commercially reasonable efforts to obtain a waiver, if required by and in a form satisfactory to Lender, acting reasonably, from any landlord, mortgagee, hypothecary creditor or other encumbrancer of the premises where Collateral is situated (and prior to any Equipment becoming affixed if it is to be affixed).
- 9.3 The Client shall provide the Lender with written notice prior to or within 15 days of acquiring or otherwise obtaining possession of a Site.

#### **10. Postponement**

All shareholder, Affiliate and related entity debt shall be subordinated and postponed to Lender's debt.

#### **11. Maintenance, Use, Operation, Alterations, Upgrades, etc.**

- 11.1 Client shall at its own expense:

- (a) maintain Equipment in good operating condition, repair and appearance, ordinary wear and tear only excepted;
- (b) comply with all recommendations or requirements of Supplier as to preserve all Warranties; and
- (c) at Lender's request, enter into a maintenance agreement for Equipment for the full term of this Agreement with Supplier or a competent service and maintenance agent approved by Lender.

- 11.2 Client shall not, without Lender's consent, make any alterations, additions, accessions or attachments to any Collateral. Such consent will only be granted if such changes:

- (a) do not materially decrease the value of Collateral or limit, interfere with or frustrate its intended use;
- (b) do not prejudice or adversely affect any Warranties; and
- (c) are free from, and do not subject Collateral to, any Lien.

- 11.3 All replacement parts and components, alterations, additions, accessions and attachments to Collateral shall automatically become subject to the security interest created hereby, which will attach as soon as they are acquired by or on behalf of Client.

- 11.4 Client shall affix and keep affixed to Collateral any labels supplied by Lender identifying its security interest in Collateral.

#### **12. Inspection**

Any representative of Lender shall have the right to inspect Collateral at all reasonable times upon notice to Client.

#### **13. Franchise Agreement**

- 13.1 Client represents and warrants to Lender that the copy of any Franchise Agreement together with all amendments, modifications and supplements thereto, provided to Lender or executed by the Franchise Parties is a true and complete copy, subject to no amendment and that Franchise Parties are in good standing thereunder.

- 13.2 The expiration, revocation or other termination of any one or more of the Franchise Agreements or the assignment or other transfer of the Client's rights under any one or more of the Franchise Agreements, without Lender's prior written consent, shall, constitute a Default, if such expiration, revocation, termination, assignment or other transfer would cause the occurrence of a Material Adverse Effect, and Lender may invoke any remedies permitted under the Agreement. The consent to any such sale or transfer shall be in Lender's sole discretion, and shall be subject to the execution by the purchaser or transferee, prior to such sale or transfer, of a written assumption agreement containing such terms as Lender may require. In addition, any such consent shall be conditioned upon payment by Client to Lender of (i) a fee equal to one percent (1%) of the then unpaid outstanding balance of the Loan and (ii) all out-of-pocket costs and expenses incurred by Lender in connection with such consent, including, without limitation, legal fees.

#### **14. Rented Facilities**

Client represents and warrants to Lender that the lease agreements for all sites together with all amendments, modifications and supplements thereto, provided to Lender are true and complete, subject to no amendments and that Client is in good standing thereunder.

#### **15. Early Lease Expiry**

- 15.1 The Client covenants and agrees that, in the event the term of any Lease Agreement expires before the maturity date of the Agreement, it shall or shall use commercially reasonable efforts to have the Lease Parties cause the term of such Lease Agreement to be renewed or otherwise extended to a date that occurs on or after the maturity date of the Agreement. Failure to do so shall constitute a Default, if such failure would result in a Material Adverse Effect, and the Lender shall be entitled to exercise any and all rights and remedies it may have under the Agreement or at law.

- 15.2 Notwithstanding the foregoing, the Lender may, at its sole option, require the Client pay to the Lender an amount to be determined by the Lender at the time of the expiry of the Lease Agreement (the "Paydown Amount"). Failure to pay the Paydown Amount as required by the Lender shall constitute a Default and the Lender shall be entitled to exercise any and all rights and remedies it may have under the Agreement or at law. The Paydown Amount shall be deemed a payment of principal, shall be applied in the inverse order of maturity, and shall otherwise be applied in accordance with the terms of the Agreement.

## **16. Insurance**

16.1 Client shall at its own expense place and maintain with insurers acceptable to Lender:

- (a) comprehensive all risks insurance on Equipment for the full replacement value of the Equipment. Such insurance shall include: (i) a first loss payable clause in favour of Lender and (ii) a waiver of subrogation clause in favour of Lender; and
- (b) general public liability and property damage insurance with limits of liability at least equal to \$1,000,000 or such greater amount as Lender may require. Such insurance shall extend to all liabilities of Client under this Agreement arising out of its use or possession of Collateral and to any potential vicarious liability of Lender as holder of the security interest in Collateral created hereby.
- (c) business interruption coverage at least equal to the gross revenues for the last 12 months or such greater amount as Lender may require.

16.2 All such policies of insurance shall contain endorsements providing that:

- (a) 30 days' written notice shall be given to Lender before the policy lapses or is materially altered or cancelled;
- (b) the insurance shall be primary and not contributory;
- (c) Lender's interests therein shall not be invalidated or otherwise adversely affected by any act or omission, deliberate, negligent or otherwise, of Client or its agents, servants or employees (the so-called "standard mortgage clause");
- (d) Lender shall not be responsible for payment of any premiums; and
- (e) Lender may elect to have all proceeds of loss payable only to itself.

16.3 Client shall supply Lender with certified copies of all insurance policies, endorsements or other evidence of the required coverage satisfactory to Lender.

16.4 In the event of damage to any item of Equipment amounting to Loss of Equipment, Lender shall be entitled to receive immediate payment of the amount equal to the outstanding Obligation with respect to such item of Equipment. Lender may retain any monies received from the insurance proceeds in an amount equal thereto, Client remaining liable for any deficiency.

## **17. Taxes, etc.**

Client shall have the sole responsibility for and shall duly and punctually pay all Taxes and all licence and similar fees payable at any time upon, or in respect of, Collateral, this Agreement and any payments or transactions contemplated hereunder.

## **18. Liens**

Client shall keep Collateral free of all Liens, other than any Liens granted to, or taken by, Lender and the Permitted Encumbrances.

## **19. Laws and Regulations**

Client is and shall continue to be in compliance with all laws, regulations, permits, licenses and consents relating to use, operation or possession of Collateral, and those relating to the prevention of money laundering and terrorism. In addition to the other representations and warranties contained in this Agreement, Client represents and warrants that it and any guarantor(s) have not been convicted of any criminal or penal offence or infraction and are not the object of any investigation or audit by any governmental agency, department, authority or commission, whether federal, provincial, territorial or municipal.

## **20. Default**

It shall be a Default under this Agreement if:

- (a) Client fails to pay any interest payment within 10 days after its due date;
- (b) any representation or warranty of Client made herein or in any instrument or document delivered to Lender in connection herewith is false or materially incorrect or misleading;
- (c) any insurance coverage required to be obtained and maintained by Client under this Agreement shall lapse, expire or be cancelled;
- (d) Client defaults in any other Obligation, or defaults in any obligation under any other agreement with Lender or any Affiliate, nominee or agent of Lender, and such default continues for 10 days after notice thereof by Lender or such Affiliate, nominee or agent, as applicable, to Client;
- (e) any act of bankruptcy takes place respecting Client, or any proceeding, petition or notice, voluntary or involuntary, is commenced, made, given or filed, as the case may be, by Client or any other person, under any present or future statute or law relating to bankruptcy, insolvency or relief from or compromise or arrangement with creditors of Client and in such act, petition, filing or proceeding (excluding in the case of a voluntary act, petition or notice by the Client) has not been stayed, dismissed, vacated or withdrawn within thirty (30) days of the commencement thereof;
- (f) Client ceases or threatens to cease to carry on business or makes or proposes to make any sale of the whole or any substantial portion of its assets in bulk, or otherwise out of the normal course of business;
- (g) any execution, sequestration, expropriation or similar process is brought or threatened, by way of notice or otherwise, against, or a distress or analogous process is levied upon the whole or any part of the property of Client or Collateral and either (i) such enforcement proceedings shall have been commenced by any creditor upon such judgment or order and which proceedings have not been stayed, by reason of such judgment being satisfied, bonded or discharged, or (ii) there shall be a period of thirty (30) consecutive days during which a stay of enforcement of such judgment or

order, by reason of a pending appeal or otherwise, shall not be in effect;

- (h) any trustee, receiver, interim receiver, administrator, manager or similar official is appointed with respect to all or any part of the property, assets or undertaking of Client, whether pursuant to any private instrument or agreement or by order of any court;
- (i) if ownership of or control and direction over the assets or undertaking of Client or the majority of its voting shares changes, by amalgamation, merger, sale, transfer of shares or otherwise, except pursuant to death of the shareholder, or Client passes any resolution concerning any matter referred to in paragraph (e) or with respect to, or any proceedings, voluntary or involuntary, are commenced under, any present or future law relating to amalgamation, liquidation, winding-up or dissolution, provided that the Borrower and the Corporate Guarantor shall have the benefit of the cure periods set out in the GSAs, as applicable;
- (j) an event occurs which could reasonably be expected to have a Material Adverse Effect and such event continues for 10 days after notice thereof by Lender or such Affiliate, nominee or agent, as applicable, to Client;
- (k) Client fails to maintain any financial covenant under this Agreement;
- (l) the expiration, revocation or other termination of one or more Franchise Agreements or the assignment or other transfer of the Client's rights under any Franchise Agreements, in each case without Lender's prior written consent, provided that such expiration, revocation, other termination, assignment or other transfer results in or causes a Material Adverse Effect;
- (m) the Client materially defaults under any Franchise Agreement and such default is not cured within any curative period provided for under such Franchise Agreement;
- (n) the expiration, revocation or other termination of any Lease Agreement or the assignment or other transfer of the Lease Parties rights under such lease agreement, without Lender's prior written consent, provided that such expiration, revocation, other termination, assignment or other transfer results in or causes a Material Adverse Effect;
- (o) Client materially defaults under any Lease Agreement for the rented facilities where any Equipment of any Covenant Party is located and such default is not cured within the curative period, if any, granted to the Lease Parties under such lease agreement;
- (p) any Affiliate of Client defaults in any obligation under any other agreement with Lender or any Affiliate of Lender and such default continues for 10 days after notice thereof by Lender or such Affiliate, as applicable, to Affiliate of Client;

(q) the Covenant Parties create, grant or permit to exist any hypothec on the Sites or their present and future movable, corporeal and incorporeal property, other than hypothecs granted in favor of Lender. For greater certainty, no subordinate hypothecs shall be permitted without the prior written consent of Lender; or

(r) any event or circumstance described in any paragraph (b) through (q) inclusive occurs with respect to any Covenant Parties, guarantor or surety of Client respecting this Agreement or any person who controls Client or any Affiliate of Client.

A Default under this Agreement shall be deemed a default under all other agreements existing at the time of Default between Client and Lender or any Affiliate of Lender, whether entered into on, before or after the date of this Agreement.

## **21. Lender's Remedies on Default**

Upon Default, Lender shall be entitled to do one or more of the following:

- (a) declare this Agreement to be in default (with or without terminating this Agreement) whereupon all Obligations shall be immediately due, payable and enforceable without any notice or demand whatsoever;
- (b) terminate this Agreement;
- (c) declare any or all of the Obligations to be immediately due and payable, or be subject to immediate performance, as the case may be, without presentment, protest or notice of dishonor, all of which are expressly waived;
- (d) take possession of Collateral, without demand, notice or legal proceeding and enter on any premises of Client or any other person for such purpose;
- (e) sell, lease or otherwise dispose of Collateral by public or private transaction for such consideration payable immediately and/or deferred and on such terms and conditions as Lender in its discretion determines;
- (f) whether or not this Agreement may have been or be deemed to have been terminated, demand, sue for and recover the amount equal to the Accrued Liability, less, if applicable, the net proceeds to Lender derived from the sale, lease or other disposition of the Collateral, after deducting amount payable by Client pursuant to Section 24 hereof; and
- (g) exercise any other rights or remedies and/or take any proceedings available to Lender hereunder, at law or in equity, including, where applicable, all rights and remedies of a hypothecary creditor under the Civil Code of Québec.

In lieu of selling, leasing or otherwise disposing of Collateral, Lender may retain Collateral and cause Collateral to be valued by a qualified appraiser selected by it and such value shall be substituted for and deducted as net proceeds to Lender under subparagraph (f) of this Section. Proceeds of sale, lease or disposal need be deducted only when received, unless Lender elects to take the present

value of payments to be received, discounted at the Financing Rate then in effect, compounded monthly.

## **22. Lender's Rights to Remedy Defaults**

If Client fails to perform or comply with any Obligation, Lender may, but has no obligation to, perform same in the name of Client or Lender and make all necessary disbursements in connection therewith, which will form part of the Obligations and shall be reimbursed by Client immediately on demand. Lender is hereby appointed Client's lawful attorney to take any such action in Client's name.

## **23. Client's General Indemnities**

Client shall indemnify and save harmless Lender from and against all existing or future losses, costs, charges, expenses, liabilities, claims, demands, penalties, damages, suits, actions and causes of action of every nature and kind whatsoever, including strict liability in tort or in delict (collectively, "Claims") sustained or suffered by Lender, or for which Lender may become liable, unless caused by the gross negligence or willful misconduct of Lender, its employees, servants or agents, resulting from or arising out of:

- (a) Lender's lawful exercise or performance of its rights or obligations under this Agreement;
- (b) the holding by Lender of a security interest in the Collateral;
- (c) any Default;
- (d) any personal injury or property damage or other commercial loss arising out of the sale or delivery to, installation, ownership, use, operation, maintenance, condition, return, removal and re-delivery of Collateral; or
- (e) any use or operation of Collateral which infringes any patent or other industrial or intellectual property right.

## **24. Administrative Fees and Expenses**

Client shall pay to Lender on demand Lender's prevailing fees and all reasonable and documented costs, expenses and disbursements (including, without limitation, all legal fees on a full indemnity or solicitor and his own client basis) that Lender incurs, pays or becomes liable for in connection with the preparation, negotiation and registration of this Agreement and any other agreement evidencing or relating to the Obligations, the perfection or preservation of any Liens granted to or taken by Lender, processing of payments, rendering statements to Client, the failure of Client to pay or perform any of the Obligations, the enforcement by any means of any of the Obligations or any provision of this Agreement, the exercise of any rights, powers or remedies under this Agreement or any other agreement evidencing or relating to the Obligations (including all such costs, expenses and disbursements in connection with recovering or taking possession of the Collateral, removing or taking custody of, the storing, preserving, processing, repair, reconditioning or dismantling of Collateral, preparing Collateral for lease, sale or other disposition and leasing, selling or otherwise disposing of Collateral) and any professional advice sought in connection with any of the foregoing.

## **25. Pre-Authorized Payments**

Client shall execute and deliver to Lender from time to time upon request pre-authorized payment orders in such form as Lender may reasonably request. Lender is hereby authorized to deliver such orders to the financial institution named therein. Client hereby appoints Lender its lawful attorney to take all action contemplated by such payment orders to receive payment of any amount due under this Agreement. Lender may decline any other form of payment. All monthly payments under the Agreement by the Client are to be made via such pre-authorized payment.

## **26. Location of Collateral; Client's Name**

- 26.1 Except as otherwise expressly permitted hereunder, Client shall not part with possession of Collateral nor remove any of same from Canada.
- 26.2 Client covenants that it shall not change its name or chief executive office or move the Collateral from the Locations stated herein without first providing at least 30 days prior written notice to Lender.

## **27. Assignment and Leasing**

Client shall not assign any rights hereunder and Client shall not sell or attempt to sell Collateral nor lease or rent or attempt to lease or rent Collateral, in any case without the prior written consent of Lender, and such consent may be withheld by Lender in its sole and unfettered discretion. No action aforesaid by Client shall relieve Client of any of its Obligations.

## **28. Client's General Representations, Warranties and Covenants**

Client represents and warrants to and covenants with Lender that: (a) Client has been duly incorporated, amalgamated, merged or continued, as the case may be (or if Client is not a corporation, has been duly formed, created or established as a partnership, limited partnership, trust or other applicable entity) and validly exists under and is governed by the laws of its jurisdiction of formation, amalgamation, merger, continuance, establishment or creation, as the case may be, with the power and authority to own its assets and property, carry on its business as currently conducted, and to enter into this Agreement; (b) this Agreement and all other agreements, documents and instruments delivered in connection with this Agreement or the transactions contemplated hereby have been duly authorized, executed and delivered by all necessary action on the part of Client and constitute legal and valid agreements binding upon Client enforceable in accordance with their respective terms; (c) all Information as defined in Section 49 provided by Client to Lender is accurate; and (d) all payments to Lender are and will be derived from legal sources. Client agrees to furnish to Lender a copy of its most recent annual financial statements, audited if applicable, promptly upon availability and in any event, within 90 days of each financial year-end. Upon request by Lender, Client agrees also to furnish its quarterly financial statements promptly upon availability and, in any event, within 60 days of each financial quarter-end. The representations and warranties contained in this Agreement are deemed to be made and must be true and accurate at and as of the date of execution of this Agreement and at and as of the date of any drawdown, Advance, extension, continuation, term out or conversion hereunder. All representations and warranties

contained in this Agreement shall survive until the full and unconditional repayment of all sums owed hereunder. To the extent any representation or warranty above conflicts with the terms of the GSA, the terms of the GSAs shall be paramount.

### **29. Statutory Waivers and Acknowledgement**

29.1 Client waives its right to receive a copy of any financing statement or financing change statement registered by Lender and of any related verification statement.

29.2 Client waives, to the fullest extent permitted by law, the application of the provisions of (a) *The Limitation of Civil Rights Act* (Saskatchewan); and (b) *The Distress Act* (Manitoba). Client agrees that the provisions of this Agreement are commercially reasonable.

### **30. No Set-Off – Exclusion and Assignment Of Warranties**

30.1 Client irrevocably and unconditionally waives all equities against any interest payment and other amounts due to Lender hereunder and agrees to pay each such interest payment and other amount without regard to any equities. Neither defects in, damage to, nor loss or destruction of collateral shall terminate this Agreement or reduce any Obligations, except as otherwise expressly provided herein.

30.2 Client represents and warrants to and covenants with Lender that Collateral is and will be used for commercial, industrial or business purposes only and not for personal, family, household or farming purposes;

30.3 (a) Lender shall not be bound by or be deemed to have made or be liable for any representation, warranty or promise made by a Supplier or otherwise; (b) Lender shall not be liable for any failure of Equipment including any latent defect or alleged fundamental breach of this Agreement; (c) neither Lender nor any of its employees, servants or agents has made and does not now make any representation or warranty whatsoever, express or implied, with respect to Equipment or any intellectual or industrial property rights therein including, without limitation, the design, specifications, condition, quality, merchantability or fitness for Client's purposes and (d) Lender shall have no liability for any direct, indirect, punitive, exemplary, special or consequential damages or loss of profits, actual or anticipated, or for any damages based on strict or absolute tort or delictual liability or Lender's or Supplier's negligence. Nothing herein shall deprive Client of its rights against Supplier or any person other than Lender. Client shall make any claims with respect to Equipment directly against Supplier.

30.4 If Equipment is seized or sold by Lender, all warranties of Supplier and rights to all software, other intellectual and industrial property licenses accompanying goods shall be deemed assigned by Client to Lender.

### **31. Notices**

Any notice, demand, consent or other communication required or permitted hereunder ("Notice") shall be in writing and may be delivered, or sent by prepaid registered mail, or by telecopier or other means which produces a permanent written record (a "transmission"). Mailed Notice shall be

deemed to have been given two Business Days after mailing provided there is no general disruption or stoppage of postal services then in effect, in which case delivery shall be made by one of the other methods permitted herein; delivered Notice shall be effective upon delivery during business hours to an apparently responsible adult, and transmissions shall be deemed to have been received at the opening of the Business Day immediately following transmission. Addresses for Notice shall be those addresses stated on the face hereof and may be changed in accordance with the foregoing.

### **32. Remedies Cumulative**

All rights and remedies of Lender hereunder are cumulative and not exclusive or alternative and may be exercised by Lender successively, separately or together, in any order, sequence or combination.

### **33. Forbearance, Indulgence and Waivers**

Forbearance or indulgence by Lender in any instance shall not constitute a general waiver of the obligation under this Agreement to which the same applies. Any waiver by Lender of its rights must be in writing and shall not extend to any other obligation or right.

### **34. Allocations**

Client hereby irrevocably and unconditionally waives any present or future right to allocate any payment made to Lender to any specific Obligation due under this Agreement or under any other agreement with Lender or any Affiliate of Lender. Lender may allocate and apply any payment received to any Obligation due hereunder or under any other agreement with Lender or any Affiliate of Lender and may reverse, reallocate and re-apply any such payment as many times and in such manners as Lender from time to time sees fit. Payments received shall be allocated upon receipt of legal tender or cleared funds. Lender is hereby irrevocably authorized to combine and set off amounts payable by it to Client with amounts owing to it from Client (in each case whether matured or not and whether absolute or contingent) under the same or different agreements.

### **35. Time**

Time is and shall remain of the essence of this Agreement. The mere lapse of time for performance by Client of any Obligation under this Agreement will put Client in default hereunder.

### **36. Entire Agreement**

36.1 There are no representations, warranties, covenants, agreements or acknowledgements by Lender affecting the Loan, the Obligations, the Accrued Liability, this Agreement or Collateral, other than expressed in this Agreement.

36.2 No agreement purporting to amend or modify this Agreement or any other document, paper or writing relating hereto or to Collateral or connected herewith shall be binding unless in writing signed by the parties hereto.

### **37. Severability**

Any term, condition or provision of this Agreement which is deemed to be void, prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be severed herefrom and be ineffective

to the extent of such invalidity, prohibition or unenforceability, without in any way invalidating the balance hereof.

### **38. No Merger in Judgment**

The taking of any judgment by Lender under this Agreement shall not operate as a merger or novation of any term or condition hereof or of any obligation of Client or Lender hereunder.

### **39. Further Assurances and Power of Attorney**

39.1 Client and Lender each shall do, execute and perform all such acts, deeds, documents and things as may be reasonably required to enable Lender to have the full benefit of all rights and remedies intended to be reserved or created hereby. Lender is hereby appointed Client's lawful attorney to complete and/or correct any information on the face hereof or in any schedule hereto.

39.2 Each power of attorney granted in this Agreement is granted with full power of substitution, is irrevocable, is coupled with an interest, shall survive termination of this Agreement and may be exercised during any subsequent legal incapacity of Client or Lender.

### **40. Currency**

40.1 All sums of money owing under any Advance shall be paid in the currency of such Advance and all other sums of money payable hereunder shall be paid in Canadian Dollars.

40.2 If any amount payable pursuant to this Agreement needs to be converted from US Dollars to Canadian Dollars, such conversion shall be made by Lender on the relevant date at the Conversion Rate and Lender will notify Client of the amount so converted.

### **41. Survival**

Notwithstanding any other Section, any accrued Obligations, the Obligations of Client under Sections 16.4, 17, 22, 23, 24, and 34 and all rights of Lender hereunder, whether accrued or not, shall survive the termination or expiration of this Agreement and the payment of the Accrued Liability and all other amounts payable hereunder.

### **42. Section Headings**

Section headings in this Agreement are for convenience of reference only and do not affect the interpretation or construction hereof.

### **43. Assignment**

43.1 Client shall not assign this Agreement or any Obligations or rights hereunder without the prior written consent of Lender, and such consent may be withheld by Lender in its sole and unfettered discretion. No action aforesaid by Client shall relieve Client of any of its Obligations.

43.2 Lender may assign or transfer in whole or in part its rights under this Agreement or the Collateral, and/or grant a security interest, mortgage, transfer, charge or assignment in its rights hereunder or in the Collateral and any assignee, transferee or beneficiary of such security interest, mortgage, transfer, charge or assignment ("Assignee") shall be unrestricted in the exercise of such rights. Client shall recognize any such assignment, transfer or grant and shall not assert against any Assignee any Claims or Equities which it may have against Lender respecting this

Agreement or the Collateral and waives all Claims and Equities against Assignee's rights to enforce this Agreement based on Lender's alleged failure to perform same or any Supplier's breach of Warranties.<sup>1</sup>

### **44. Benefit of the Agreement**

This Agreement shall enure to the benefit of and be binding upon Lender and Client, and each of their respective heirs, executors, administrators, personal representatives, successors and permitted assigns and lessees, including without limitation any successor or assign arising as a result of an amalgamation or other corporate or business reorganization.

### **45. Choice of Law**

This Agreement shall be governed, construed, performed and enforced in accordance with the laws of the Province where the address of Client is located as stated on the face of this Agreement.

### **46. Language**

The parties hereto have expressly required that this Agreement and all documents, agreements and notices related thereto be drafted in the English language. *Les parties aux présentes ont expressément exigé que le présent contrat et tous les autres documents, conventions ou avis qui y sont afférents soient rédigés en langue anglaise.*

### **47. Joint and Several Liability**

If more than one person executes this Agreement as Client their obligations hereunder shall be joint and several (in all jurisdictions except Quebec) and solidary (in Quebec) and, where the context so admits, each reference in this Agreement to "Client" shall include reference to any one or more or all such persons and the acts or omissions of any such persons shall bind all of them.

### **48. Receipt of Agreement**

Client acknowledges receipt of an executed copy of this Agreement.

### **49. Information**

Client hereby consents and authorizes Lender and its Affiliates, agents, contractors and representatives, at any time, (a) to collect, verify, use, communicate with and disclose to third parties (including credit reporting agencies, financial institutions, creditors, vendors and other persons) any credit, financial and other information, including personal information (as applicable) and information related to the credit rating, financial capacity and payment history, with respect to Client ("Information"), as Lender deems necessary to process, complete, service and enforce the transactions hereby contemplated and any other existing or potential transactions, or as required or otherwise permitted by law; (b) to respond to inquiries from, and exchange any Information with, third parties concerning Client's credit rating, financial capacity and payment history; (c) to provide Information to persons to whom Lender considers assigning, granting a participation or otherwise disposing of rights or obligations under the

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<sup>1</sup> CWB requires the assignment right to remain, as drafted

transactions hereby contemplated; and (d) to provide to any person copies of this Agreement. This consent is in addition to and does not replace any consent previously given. Client agrees to the terms and conditions and the use of Information as set out in the CWB Financial Group Privacy Statement available on the CWB Financial Group website at <http://www.cwb.com/about-us/privacy>, as may be amended from time to time.

**50. Counterparts and Execution**

This Agreement may be executed in several counterparts and such counterparts together shall constitute one and the same instrument and shall be effective as of the formal date hereof. Each of the Client and the Lender agrees that if the original of this Agreement and/or related certificates, authorizations or other documents (collectively, the "Closing Documents") is not received by the Lender, then the Lender, in its sole discretion, may decide to treat and rely on the executed version of any such Closing Document that has been transmitted to the Lender by facsimile transmission ("fax") or by the use of other electronic means such as email (any such other electronic transmission being herein referred to as "pdf") as the signed original of such Closing Document. Without limiting the generality of the foregoing, each of the Client and the Lender further agrees that any Closing Document signed and transmitted by fax or pdf shall be treated for all purposes as an original document, the signature of any party on such Closing Document shall be considered as an original signature and the Closing Document transmitted by fax or pdf shall have the same effect as a counterpart thereof containing original signatures. No party shall raise as a defense to the enforcement of any Closing Document that a facsimile, email or other electronic transmission was used to transmit any signature of a party to such Closing Document.



