

Execution Version

DIAMOND ESTATES WINES & SPIRITS INC.

as Borrower

and

BANK OF MONTREAL

as Lender

**SECOND AMENDED AND RESTATED CREDIT
AGREEMENT**

Dated as of November 30, 2021

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SECOND AMENDED AND RESTATED CREDIT AGREEMENT dated as of November 30, 2021 between Diamond Estates Spirits & Wines Inc., a corporation incorporated under the laws of the Province of Ontario (the “**Borrower**”), and Bank of Montreal, a Canadian chartered bank (the “**Lender**”);

WHEREAS pursuant to an amended and restated credit agreement made as of October 26, 2020, as amended prior to the date hereof (collectively, the “**Existing Credit Agreement**”), the Lender made available to the Borrower certain credit facilities subject to the terms and conditions set forth therein;

WHEREAS the parties hereto have agreed to amend and restate the Existing Credit Agreement pursuant to the terms hereof in order to reflect the agreement of the parties hereto;

THIS AGREEMENT WITNESSES that, in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereto covenant and agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Defined Terms. The following defined terms shall for all purposes of this agreement, or any amendment, substitute, supplement, replacement or addition hereto, have the following respective meanings unless the context otherwise specifies or requires or unless otherwise defined herein:

“1067 Niagara Property” means the real property municipally known as 1067 Niagara Stone Road, Niagara on the Lake and in which Diamond Estates Wines & Spirits Ltd. owns a freehold interest.

“1314102” means 1314102 Ontario Ltd., a corporation incorporated under the laws of the Province of Ontario.

“2601636” means 2601636 Ontario Inc., a corporation incorporated under the laws of the Province of Ontario.

“2019 Lassonde Equity Contribution” means all subscriptions for common shares of the Borrower by Lassonde Industries Inc. for cash consideration pursuant to the subscription agreement dated as of July 29, 2019 between July 29, 2019 and October 31, 2019.

“2023 Specified Shareholder Contribution” means the Specified Shareholder Contribution made or to be made by one or more shareholders of the Borrower on terms satisfactory to the Lender on or prior to November 30, 2023 and in a minimum amount of \$8,250,000 (which such amount, for certainty, excludes the \$750,000 advance previously made by Lassonde Industries Inc. to the Borrower

pursuant to the advance agreement dated May 29, 2023 and entered into by the Borrower and Lassonde Industries Inc.).

“2024 Specified Shareholder Contribution” has the meaning given to such term in Section 11.1(dd).

“**Accordion Notice**” shall have the meaning ascribed thereto in Section 2.7(a).

“**affiliate**” means as to any Person, any other Person that, directly or indirectly, is in Control of, is Controlled by, or is under common Control with, such Person.

“**Alternate Base Rate Canada**” means, at any particular time, the greater of (a) the Base Rate Canada at such time and (b) the Federal Funds Effective Rate at such time plus ██████ % per annum. In the event that the Alternate Base Rate Canada is determined at any time to be less than zero, it shall be deemed to be zero at such time for the purposes of this agreement.

“**AML Legislation**” shall have the meaning ascribed thereto in Section 14.11.

“**Applicable Law**” means all public laws, statutes, ordinances, decrees, judgments, codes, standards, acts, orders, by-laws, rules, regulations, Official Body Consents, permits and requirements of all Official Bodies, in each case having the force of law and which now or hereafter may be lawfully applicable to and enforceable against any Obligor or its property or any part thereof.

“**Available RT Credit**” means, at any particular time, the amount, if any, by which the amount of the RT Credit Limit at such time exceeds the aggregate amount of credit outstanding under the RT Facility at such time.

“**BA Discounted Proceeds**” means, in respect of any Bankers’ Acceptances on any day, an amount (rounded to the nearest whole cent and with one-half of one cent being rounded up) calculated on such day by multiplying:

- (a) the aggregate face amount of such Bankers’ Acceptances; by
- (b) the amount equal to one divided by the sum of one plus the product of:
 - (i) the BA Rate which is applicable to such Bankers’ Acceptance (expressed as a decimal); and
 - (ii) a fraction, the numerator of which is the number of days in the term of such Bankers’ Acceptances and the denominator of which is 365;

with the amount as so determined being rounded up or down to the fifth decimal place and .000005 being rounded up.

“**BA Draft**” shall have the meaning ascribed thereto in Section 3.33.3(i).

“**BA Equivalent Loan**” shall have the meaning ascribed thereto in Section 3.4.

“**BA Proceeds**” means, with respect to a particular Bankers’ Acceptance, the BA Discounted Proceeds with respect thereto less the amount of the acceptance fees in respect of such Bankers’ Acceptance calculated in accordance with Section 7.6.

“**Backyard Vineyard Property**” means the real property municipally known as 3033 – 232 Langley, British Columbia, and in which Back Yard Vineyards owns a leasehold interest.

“**BackYard Vineyards**” means BackYard Vineyards Corp., a corporation existing under the laws of the Province British Columbia.

“**BA Rate**” means, with respect to an issue of Bankers’ Acceptances, the discount rate determined in accordance with the Lender’s normal practice at or about 10:00 a.m. (Toronto time) on the date of acceptance of such Bankers’ Acceptances, for bankers’ acceptances having a comparable face value and maturity date to the face value and maturity date of such issue of Bankers’ Acceptances. In the event that the BA Rate is determined at any time to be less than zero, it shall be deemed to be zero at such time for the purposes of this agreement.

“**Bankers’ Acceptance**” means a bill of exchange under the *Bills of Exchange Act* (Canada) or a depository bill under the *Depository Bills and Notes Act* (Canada) (a) drawn by the Borrower and accepted by the Lender, (b) denominated in Canadian dollars, (c) having a term of 28 to 182 days, as selected by the Borrower and subject to market availability and (d) issued and payable only in Canada.

“**Banking Day**” means any day, other than Saturday and Sunday, on which banks generally are open for business in Toronto, Ontario and, when used in respect of LIBOR Loans, means any day other than a Saturday or a Sunday on which banks generally are open for business in Toronto, Ontario and London, England and on which transactions can be carried on in the London interbank market.

“**Base Rate Canada**” means the variable rate of interest per annum equal to the rate of interest determined by the Lender from time to time as its base rate for United States dollar loans made by the Lender in Canada from time to time, being a variable per annum reference rate of interest adjusted automatically upon change by the Lender, calculated on the basis of a year of 365 days or 366 days in the case of a leap year. In the event that the Base Rate Canada is determined at any time to be less than zero, it shall be deemed to be zero at such time for the purposes of this agreement.

“**Base Rate Canada Loan**” means monies lent by the Lender to the Borrower in United States dollars and upon which interest accrues at a rate referable to the Alternate Base Rate Canada.

“**BCAP Credit Limit**” means ~~\$2,750,000~~1,317,708.25 as such amount may be reduced pursuant to Section 2.5.

“**BCAP Facility**” shall have the meaning ascribed thereto in Section 2.1(c).

“**BCAP Facility Maturity Date**” has the meaning given to it in Section 2.8.

“**Borrowing Base**” means, at any particular time, the amount that is equal to the sum of (x) the Unmargined Amount and (y) the aggregate of:

~~(a)~~ (a) the Eligible Receivables Amount at such time; and

~~(b)~~ (b) the Eligible Inventory Amount, less the Priority Payables Amount at such time; provided that for the purposes of determining the Borrowing Base pursuant to clause (y) of this definition, the Eligible Inventory Amount ~~may~~shall not at any time exceed █% of the aggregate Borrowing Base as determined pursuant to clause (y) of this definition.

“**Borrowing Base Credit Excess**” means, as at a particular date, the amount, if any, by which the aggregate amount of credit outstanding under the RT Facility as at the close of business on such date exceeds the amount of the Borrowing Base as at the last day of the most recently completed calendar month.

“**Borrowing Base Specified Shareholder Contribution**” has the meaning given to such term in Section 11.1(cc).

“**Branch of Account**” means the Lender’s branch located at 100 King Street West, Toronto, Ontario, or such other branch of the Lender located in Canada as the Borrower and the Lender may mutually agree upon.

“**Canadian Blocked Person**” means any Person that is a “designated person”, “politically exposed foreign person” or “terrorist group” as described in any Canadian Economic Sanction and Export Control Laws.

“**Canadian Dollar Equivalent**” means the Exchange Equivalent in Canadian dollars of any amount of United States dollars.

“**Canadian Economic Sanctions and Export Control Laws**” means any Canadian laws, regulations or order governing transactions in controlled goods or technologies or dealings with countries, entities, organizations, or individuals subject to economic situations and similar measures, including the *Special Economic Measures Act* (Canada), the *United Nations Act* (Canada), the *Freezing Assets of Corrupt Foreign Officials Act* (Canada), Part II.1 of the *Criminal Code* (Canada) and the *Export Permits Act* (Canada), and any related regulations.

“**Capital Expenditures**” means, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities and including in all events all

amounts expended or capitalized under Capital Leases, but excluding any amount representing capitalized interest) by the Borrower on a consolidated basis during such period that, in conformity with generally accepted accounting principles, are required to be included as additions during such period to tangible fixed assets, provided that the term “**Capital Expenditures**” shall not include (a) expenditures made in connection with the replacement, substitution or restoration of assets (i) to the extent financed from insurance proceeds paid on account of the loss of or damage to the assets being replaced or restored or (ii) to the extent funded with awards of compensation arising from the expropriation, taking by eminent domain or condemnation of the assets being replaced, (b) the purchase price of equipment that is purchased simultaneously with the trade-in of existing equipment to the extent of the credit granted by the seller of such equipment for the equipment being traded in at such time, (c) the purchase price of tangible fixed assets and other capital expenditures made within 90 days of the sale of any asset to the extent purchased with the proceeds of such sale, or (d) expenditures that constitute any part of rental expenses under operating leases for real or personal property.

“**Capital Expenditure Threshold**” has the meaning ascribed to such term in Section 11.3(g).

“**Capital Lease**” means any lease of property, real or personal, the obligations of the lessee in respect of which are required in accordance with generally accepted accounting principles to be capitalized on the balance sheet of the lessee (including, without limitation, any such lease forming part of a sale-leaseback transaction).

“**Capital Stock**” means common shares, preferred shares or other equivalent equity interests (however designated) of capital stock of a body corporate, equity preferred or common interests in a limited liability company, member or shareholder interests in an unlimited liability company, limited or general partnership interests in a partnership or any other equivalent of such ownership interests.

“**Cash Equivalents**” means, as to any Person, (i) securities issued or directly and fully guaranteed or insured by the government of the United States or any agency or instrumentality thereof (provided that the full faith and credit of the United States is pledged in support thereof) or by the government of Canada or any Province thereof, in each case, having maturities of not more than one year from the date of acquisition, (ii) term deposits, certificates of deposit, money market deposits of, and bankers’ acceptances and commercial paper issued by, any commercial bank incorporated in the United States of recognized standing having capital and surplus in excess of U.S. \$50,000,000 or of any Canadian Schedule I chartered bank, in each case, with maturities of not more than one year from the date of acquisition by such Person, (iii) commercial paper having the highest obtainable rating from Moody’s, S&P or Dominion Bond Rating Service Limited and maturing within one year of the date of acquisition by such Person and

(iv) investments in money market funds substantially all of whose assets are comprised of securities of the types described in clauses (i) to (iii) above.

“**Cash Proceeds of Realization**” means the aggregate of (i) all Proceeds of Realization in the form of cash and (ii) all cash proceeds of the sale or disposition of non-cash Proceeds of Realization.

“**CEW**” means Creekside Estate Winery Inc., a corporation incorporated under the laws of the Province of Ontario.

“**Change in Law**” means the occurrence, after the date of this agreement, of any of the following: (a) the phase-in, adoption or taking effect of any Applicable Law, (b) any change in any Applicable Law or in the administration, interpretation or application thereof by any Official Body or (c) the making or issuance of any Applicable Law by any Official Body or the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Official Body provided that notwithstanding anything herein to the contrary, (x) the *Dodd-Frank Wall Street Reform and Consumer Protection Act* and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “**Change in Law**”, regardless of the date enacted, adopted or issued.

“**Change of Control**” means the occurrence of any of the following events or circumstances:

- (a) Control of the Borrower is acquired or exercised by any Person or group of Persons, directly or indirectly; or
- (b) any Obligor ceases to be a direct or indirect wholly-owned Subsidiary of the Borrower.

“**Closing Certificate**” of a particular Obligor means a certificate of a senior officer of such Obligor addressed to the Lender, in form and substance satisfactory to the Lender, acting reasonably, and certifying (a) the truth and correctness of attached copies of the articles of incorporation and by-laws of such Obligor and the resolution of the board of directors of such Obligor authorizing it to execute, deliver and perform its obligations under the Loan Documents to which it is a party (and, in the case of any Obligor whose Shares are owned by another Obligor, authorizing the pledge of all of its issued and outstanding shares to the Lender and any subsequent disposition thereof by the Lender in realizing on the Security therein constituted by the relevant Security Document), (b) specimen signatures of the individuals authorized to sign Loan Documents on behalf of such Obligor and (c) in the case of the Closing Certificate of the Borrower, that no

Default has occurred and is continuing or would arise immediately after or as a result of the initial drawdown under this agreement.

“**Closing Date**” means September 29, 2017 or such other date as may be agreed to by the Borrower and the Lender.

“**Compliance Certificate**” means a certificate of a senior officer of the Borrower substantially in the form of Schedule B hereto.

“**Confirmation**” means the confirmation of Credit Documents entered into as of the Second Restatement Date by each Obligor in favour of the Lender.

“**Contaminant**” means any contaminant, as defined by the EPA.

“**Control**” and “**Controlled**”, when used with respect to any Person, shall mean the power to direct the management and policies of such Person, directly or indirectly, whether through ownership of Voting Stock, by contract or otherwise.

“**Conversion Notice**” shall have the meaning ascribed thereto in Section 6.4.

“**Credit Documents**” means the Loan Documents, the Hedging Agreements and the Financial Services Agreements.

“**Credit Excess**” means, as at a particular date, the amount, if any, by which the aggregate amount of credit outstanding under the RT Facility as at the close of business on such date exceeds the amount of the RT Credit Limit as at the close of business on such date.

“**Credit Facilities**” means, collectively, the BCAP Facility, the RT Facility and the NRT Facility and “**Credit Facility**” means any of the Credit Facilities.

“**Credit Limit**” means the BCAP Credit Limit, RT Credit Limit or the NRT Credit Limit, as the context requires.

“**Default**” means any event which is or which, with the passage of time, the giving of notice or both, would be an Event of Default.

“**Designated Account**” means, with respect to transactions in a particular currency under the Credit Facilities, an account of the Borrower maintained by the Lender at the Branch of Account for the purposes of transactions in such currency under the Credit Facilities.

“**De Sousa**” means De Sousa Wines Toronto Inc., a corporation incorporated under the laws of the Province of Ontario.

“DEWSL” means Diamond Estates Wines & Spirits Ltd., a corporation incorporated under the laws of the Province of Ontario.

“Distribution” means:

- (a) the declaration, payment or setting aside for payment of any dividend or other distribution on or in respect of any Capital Stock of any Obligor, or other than a dividend declared, paid or set aside for payment by the Borrower which is payable in Capital Stock of any Obligor; and
- (b) the redemption, retraction, purchase, retirement or other acquisition, in whole or in part, of any Capital Stock of any Obligor or any securities, instruments or contractual rights capable of being converted into, exchanged or exercised for Capital Stock of any Obligor, including options, warrants, conversion or exchange privileges and similar rights.

“Draft” means any draft, bill of exchange, receipt, acceptance, demand or other request for payment drawn or issued under or in respect of a Letter.

“Drawdown Notice” shall have the meaning ascribed thereto in Section 4.1.

“EBITDA” means, for any particular period and calculated, in each case, as applicable, on a consolidated basis, Net Income for such period (a) increased, to the extent reducing consolidated Net Income for such period, by the sum of (without duplication) (i) Interest Expense for such period; (ii) income and capital tax expenses of the Borrower; (iii) depletion, depreciation and amortization expenses of the Borrower; (iv) non-cash items or items that are extraordinary or non-recurring losses of the Borrower which, in each case, are acceptable to the Lender; (v) severance pay paid to employees of the Obligors in an aggregate amount not to exceed \$900,000; (vi) costs and expenses not to exceed \$100,000, in the aggregate, incurred by an Obligor in connection with cost savings strategies approved by the Lender, and (vii) non-cash and non-recurring expenses incurred in the Fiscal Quarters ending December 31, 2019, March 31, 2020, June 30, 2020 and/or September 30, 2020 not to exceed \$400,000, in the aggregate, relating to the depletion of inventory of the Obligors, as approved by the Lender and (b) decreased, to the extent increasing consolidated Net Income for such period, by the sum of (without duplication) and on a consolidated basis (i) non-cash items of the Borrower increasing consolidated Net Income (excluding any such non-cash item to the extent that it represents the reversal of any accrual or reserve for potential cash item in any prior period); (ii) extraordinary or non-recurring gains of the Borrower; and (iii) any unrealized foreign exchange gains of the Borrower. For purposes of calculating EBITDA for any period, EBITDA during such period attributable to any acquisition or disposition during such period which is permitted hereunder shall be included on a pro forma basis for such period

(assuming the consummation of such acquisition or disposition and the incurrence or assumption of any Indebtedness in connection therewith occurred on the first day of such period). For certainty, any such pro forma adjustment of EBITDA following a disposition as described above shall exclude the related historical EBITDA in respect thereof.

“**EDC Receivables Insurance Policy**” means the receivables insurance policy number GE 1 45756 issued by Export Development Canada in favour of DEWSL.

~~“**Eligible Bulk Wine Inventory Amount**” means, at any particular time, the aggregate value of the Eligible Inventory of all of the Obligors at such time which is bulk wine, valued at the lower of cost (on a first in first out basis) and the current market value, in each case expressed in Canadian dollars.~~

~~“**Eligible Finished Goods Inventory Amount**” means, at any particular time, the aggregate value of the Eligible Inventory of all of the Obligors at such time which are finished goods, valued at the lower of cost (on a first in first out basis) and the current market value, in each case expressed in Canadian dollars.~~

“**Eligible Government Receivables**” means those Eligible Receivables with respect to which the account debtor is located in Canada and is a provincial liquor or gaming board or commission but which are not Eligible Investment Grade Receivables or Eligible Insured Receivables.

“**Eligible Government Receivables Amount**” means those Eligible Receivables with respect to which the account debtor is located in Canada and is a (i) provincial liquor or gaming board or commission, or (ii) Crown corporation or governmental agency consented to in writing by the Lender, but which in all cases are not Eligible Investment Grade Receivables or Eligible Insured Receivables.

“**Eligible Insured Receivables**” means those Eligible Receivables that are fully insured under credit insurance provided by Export Development Corporation.

“**Eligible Insured Receivables Amount**” means those Eligible Receivables that are fully insured under credit insurance provided by Export Development Corporation, or any other reputable insurer consented to in writing by the Lender.

“**Eligible Inventory**” means that Inventory which satisfies, and only for so long as such Inventory satisfies, each of the standards of eligibility set forth in Schedule J.

“**Eligible Inventory Amount**” means, at any particular time, ~~the aggregate~~ \oplus ██████ % of the Eligible Inventory NOLV.

“**Eligible Inventory Appraisal Report**” means the appraisal report with respect to the valuation of the Obligors’ Eligible Inventory most recently prepared and delivered to the Lender by the Borrower (and in form and substance satisfactory to the Lender).

“Eligible Inventory NOLV” means the net orderly liquidation value of a percentage of the cost basis of the Eligible Inventory to be determined by the Lender, based on the Eligible Inventory Appraisal Report most recently delivered to the Lender by the Borrower.

- ~~(a) ■ % of the Eligible Finished Goods Inventory Amount at such time;~~
- ~~(b) ■ % of the Eligible Bulk Wine Inventory Amount at such time; and~~
- ~~(c) ■ % of the Eligible Packaging Inventory Amount at such time.~~

“Eligible Investment Grade Receivables” means those Eligible Receivables with respect to which the account debtor is located in Canada or the United States and is Investment Grade but which are not Eligible Insured Receivables.

“Eligible Investment Grade Receivables Amount” means, at any particular time, the aggregate invoice or ledger amount owing on Eligible Investment Grade Receivables at such time, net of any credit balances, trade discounts, holdbacks, concessions, claims of reduction, counterclaim, set-off or recoupment and claims for credits, allowances or adjustments because of returned, inferior or damaged Inventory, in each case expressed in Canadian dollars.

~~“Eligible Packaging Inventory Amount” means, at any particular time, the aggregate value of the Eligible Inventory of all of the Obligers at such time which are packaging materials, valued at the lower of cost (on a first in first out basis) and the current market value, in each case expressed in Canadian dollars.~~

“Eligible Receivables” means those Receivables which satisfy, and only for so long as such Receivables satisfy, each of the standards of eligibility set forth in Schedule I.

“Eligible Receivables Amount” means, at any particular time, the aggregate of:

- (a) ■ % of the Eligible Insured Receivables Amount at such time;
- (b) ■ % of the Eligible Government Receivables Amount at such time;
- (c) ■ % of the Eligible Investment Grade Receivables Amount at such time; and
- (d) ■ % of the Eligible Standard Receivables Amount at such time.

“Eligible Standard Receivables” means those Eligible Receivables with respect to which the account debtor is located in Canada or the United States but which are not Eligible Government Receivables, Eligible Investment Grade Receivables or Eligible Insured Receivables.

“Eligible Standard Receivables Amount” means, at any particular time, the aggregate invoice or ledger amount owing on Eligible Standards Receivables at such time, net of any credit balances, trade discounts, holdbacks, concessions, claims of reduction, counterclaim, set-off or recoupment and claims for credits, allowances or adjustments because of returned, inferior or damaged Inventory, in each case expressed in Canadian dollars.

“Employee Benefit Plan” means any employee benefit plan maintained or contributed to by any Obligor that are not Pension Plans, including any profit sharing, savings, supplemental retirement, retiring allowance, severance, pension, deferred compensation, welfare, bonus, incentive compensation, phantom stock, supplementary unemployment benefit plan or arrangement and any life, health, dental and disability plan or arrangements in which the employees or former employees of any Obligor participate or are eligible to participate, in each case whether written or oral, funded or unfunded, insured or self-insured, reported or unreported, but excluding all Statutory Plans, stock option or stock purchase plans.

“EDC Guarantee” means the guarantee entered into by Export Development Canada pursuant to which Export Development Bank guarantees, subject to Applicable Law, the Secured Obligations of the Borrower to a maximum amount not to exceed ■% the BCAP Facility Credit Limit as of the Restatement Date.

“Environmental Laws” means all federal, provincial or local statutes, laws, ordinances, codes, rules, regulations, guidelines, consent decrees and administrative orders (including EPA) applicable to any Real Property having the force of law and relating to: (i) occupational health and safety, (ii) the protection of the environment, or (iii) any hazardous or toxic waste, substance or material.

“EPA” means the *Environmental Protection Act* (Ontario), as amended from time to time, and any successor statute and including all regulations issued under all such statutes.

“Event of Default” means any one of the events set forth in Section 13.1.

“EWG” means Equity Wine Group Inc., a corporation incorporated under the laws of the Province of Ontario.

“Exchange Equivalent” means, as of any particular date, with reference to any amount (the **“original amount”**) expressed in Canadian dollars or United States dollars (the **“original currency”**), the amount expressed in the other currency which would be required to buy the original amount of the original currency using the spot rate quoted by the Lender at approximately 11:00 a.m. (Toronto time) on such date and for comparable amounts of such original currency.

“Excluded Taxes” means, with respect to the Lender or any other recipient (each, a **“Recipient”**) of any payment to be made by or on account of any obligation of

the Obligors under any Loan Document, (a) Taxes imposed on or measured by its net or overall gross income (however denominated), franchise Taxes imposed on it and capital Taxes imposed on it, in each case by (i) any jurisdiction (or any political subdivision thereof) as a result of a present or former connection between the Lender and the jurisdiction imposing such tax (other than any such connection arising solely from the Lender having executed, delivered, become party to, or performed its obligations, or perfected a security interest under, or received a payment under, or engaged in any transaction in respect of, or enforced, any Loan Document), or (ii) the jurisdiction under the laws of which such Recipient is organized or in which its principal lending office is located or, in the case of the Lender, the jurisdiction in which its applicable lending office is located, (b) any branch profits Taxes or any similar Tax imposed by any jurisdiction described in clause (a) above, (c) any withholding Taxes under Part XIII of the *Income Tax Act* (Canada) on any payment to any Recipient by reason of the Recipient not dealing at arm's length for purposes of the *Income Tax Act* (Canada) with the relevant Obligor at the time such payment is made, or (d) any withholding Taxes payable under Part XIII of the *Income Tax Act* (Canada) that are imposed on amounts payable to or for the account of a Recipient as a consequence of such Recipient being, at any time, a "specified non-resident shareholder" (within the meaning of subsection 18(5) of the *Income Tax Act* (Canada) of the relevant Obligor, or, at any time, not dealing at arm's length (within the meaning of the *Income Tax Act* (Canada)) with a "specified shareholder" (within the meaning of subsection 18(5) of the *Income Tax Act* (Canada)) of the relevant Obligor.

"**FCC EBITDA**" means, for any particular Fiscal Quarter, EBITDA of the Borrower (for certainty, on a consolidated basis) for such Fiscal Quarter less the sum of (without duplication):

- (a) income taxes paid in cash by the Borrower, on a consolidated basis, for such Fiscal Quarter;
- (b) Distributions paid by the Borrower in cash during such Fiscal Quarter which are permitted hereunder; and
- (c) Unfunded Capital Expenditures of the Borrower, on a consolidated basis, for such Fiscal Quarter;

determined in each case in accordance with Section 1.15 and expressed in Canadian dollars, provided, however, that (1) for the relevant period ~~July 29, 2019 to October 31, 2020~~, FCC EBITDA shall be adjusted to include ~~all~~ cash proceeds of the ~~2019 Lassonde Equity Contribution minus the transaction fees (up to a maximum amount of \$1,000,000), and, subject to terms and conditions satisfactory to the Lender acting reasonably, further equity contributions, net of any fees~~ 2023 Specified Shareholder Contribution in an amount not exceeding \$5,000,000; (2) for the second Fiscal Quarter of 2021, FCC EBITDA shall be

adjusted to include on a dollar-for-dollar basis up to \$500,000 of the 2019 Lassonde Equity Contribution to the extent any such 2019 Lassonde Equity Contribution was used in such Fiscal Quarter to finance Capital Expenditures; and (3) for the period from and including the first day of the third Fiscal Quarter of 2021 to and including the last day of the second Fiscal Quarter of 2022, FCC EBITDA shall be adjusted to include \$1,000,000 of 2019 Lassonde Equity Contribution.

“Federal Funds Effective Rate” means, for any particular day, the variable rate of interest per annum, calculated on the basis of a year of 360 days and for the actual number of days elapsed, equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by Federal Funds brokers as published for such day (or, if such day is not a Banking Day, for the next preceding Banking Day) by the Federal Reserve Bank of New York or, for any Banking Day on which such rate is not so published by the Federal Reserve Bank of New York, from three Federal Funds brokers of recognized standing selected by the Lender. In the event that the Federal Funds Effective Rate is determined at any time to be less than zero, it shall be deemed to be zero at such time for the purposes of this agreement.

“Financial Covenants” means the covenants contained in Sections 11.1(f), 11.1(g) and 11.1(h).

“Financial Services Agreement” means an agreement (other than a Loan Document or a Hedging Agreement) entered into by any Obligor and the Lender at the time such agreement is entered into and pursuant to which such party provides, without limitation, financial services such as cash management, corporate MasterCard or lease financing to such Obligor.

“Fiscal Quarter” means any of the fiscal quarters of the Borrower.

“Fiscal Year” means the twelve-month period ending on March 31 in each year.

“Fixed Charges” means, for a particular period, the sum of (without duplication):

- (a) all scheduled principal payments made or required to have been made by the Borrower, on a consolidated basis, on account of the Indebtedness of the Borrower, on a consolidated basis, during such period; and
- (b) all Interest Expenses of the Borrower, on a consolidated basis, paid in cash during such period;

determined in each case in accordance with Section 1.15 and expressed in Canadian dollars.

“Fixed Charges Coverage Ratio” means, for a particular Fiscal Quarter, the ratio of Rolling FCC EBITDA for such Fiscal Quarter to Rolling Fixed Charges for such Fiscal Quarter.

“Fixed Rate” means, with respect to a particular Fixed Rate Loan, the fixed rate of interest per annum quoted by the Lender for such Loan.

“Fixed Rate Loan” means monies lent by the Lender to the Borrower hereunder in Canadian dollars and upon which interest accrues at a rate referable to the Fixed Rate.

“Fully Drawn BCAP Amount” means the aggregate amount of credit outstanding under the BCAP Facility as at the close of business on the Restatement Date.

“Fully Drawn NRT Amount” means the aggregate amount of credit outstanding under the NRT Facility as at the close of business on the Second Restatement Date.

“generally accepted accounting principles” means generally accepted accounting principles in effect in Canada as recommended in the Handbook of the Canadian Institute of Chartered Accountants in effect from time to time, which shall include IFRS, from time to time approved by the Canadian Institute of Chartered Accountants, or any successor institute, including those recommended in the Handbook of the Canadian Institute of Chartered Accountants, on the date on which such generally accepted accounting principles are applied.

“Guarantee Obligation” of any Person (the **“guaranteeing person”**) means any obligation of (a) the guaranteeing person or (b) another Person (including, without limitation, any bank under any letter of credit) to induce the creation of which the guaranteeing person has issued a reimbursement, counterindemnity or similar obligation, in either case guaranteeing or in effect guaranteeing any Indebtedness, leases, dividends or other similar payment obligations (the **“primary obligations”**) of any other third Person (the **“primary obligor”**) in any manner, whether directly or indirectly, including, without limitation, any obligation of the guaranteeing person, whether or not contingent, (i) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds (1) for the purchase or payment of any such primary obligation or (2) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the owner of any such primary obligation against loss in respect thereof; provided, however, that the term Guarantee Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of

business. The amount of any Guarantee Obligation of any guaranteeing person shall be deemed to be the maximum liability of such guaranteeing person upon the occurrence of the contingency giving rise to the Guarantee Obligation.

“Guarantees” means the one or more unlimited, unconditional guarantees entered into from time to time by the Guarantors in favour of the Lender, each in form and substance satisfactory to the Lender, and pursuant to which each Guarantor guarantees, subject to Applicable Law, all of the Secured Obligations of each of the other Obligor and subordinates and postpones any claims it may have against any other Obligor to the Secured Obligations, as the same may be amended, modified, supplemented or replaced from time to time.

“Guarantors” means, collectively, DEWSL, De Sousa, BackYard Vineyards, EWG, 1314102, CEW, 2601636 and any other Subsidiaries of the Borrower which become guarantors pursuant to Section 11.1(q).

“Hazardous Materials” means any Pollutant or Contaminant or hazardous or toxic chemical, material or substance within the meaning of any applicable Environmental Laws.

“Hedging Agreement” means any present or future swap, hedging, foreign exchange or other derivative transaction that (i) is entered into by the Borrower and the Lender and (ii) has a maturity date that is on or prior to the RT and NRT Maturity Date.

“Hedging Obligations” means all obligations of any Person under any agreement, whether or not in writing, relating to any transaction that is a rate swap, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap or option, note or bill option, interest rate option, forward foreign exchange transaction, cap, collar or floor transaction, currency swap, cross-currency rate swap, swaption, currency option or any other, similar transaction (including any option to enter into any of the foregoing) or any combination of the foregoing, and, unless the context otherwise clearly requires, any master agreement relating to or governing any or all of the foregoing measured on a marked-to-market basis at the time of determination.

“Hostile Take-Over Bid” means a Take-Over Bid in respect of which the board of directors (or equivalent governing body) of the target entity has recommended against acceptance of such Take-Over Bid to the target entity’s shareholders or which is similarly opposed or contested.

“Ice Wine Marketing Agreement” is used with the defined meaning given to it in Schedule A.

“IFRS” means generally accepted accounting principles applied in accordance with International Financial Reporting Standards as adopted by the International Accounting Standards Board and approved by the Chartered Professional Accountants of Canada (or any successor institute) for application in Canada.

“Immaterial” means does not, and is not reasonably likely to, have a materially adverse impact on the business, assets and/or operations of any of the Obligors.

“Indebtedness” of any Person means, without duplication, (i) indebtedness for borrowed money of such Person, (ii) Purchase Money Obligations of such Person, (iii) the principal and capitalized interest, if any, in respect of any note, bond, debenture or similar instrument issued by such Person, (iv) obligations of such Person, as lessee, under any Capital Lease, (v) Hedging Obligations of such Person, (vi) every reimbursement obligation of such Person with respect to letters of credit, bankers’ acceptances or similar facilities issued for the account of such Person and (vii) Guarantee Obligations of such Person with respect to the Indebtedness of another Person; provided, however, that “Indebtedness” shall exclude trade payables.

“Indemnified Taxes” means Taxes other than Excluded Taxes imposed on or with respect to any payment made by or on account of any obligation of the Borrower under any Loan Document.

“Insolvency Proceeds” means

“Intellectual Property” means all issued patents and patent applications, industrial design registrations, trade-marks, registrations and applications therefor, trade-names and styles, logos, copyright registrations and applications therefor, all of the foregoing owned by or licensed to the Obligors and used in or necessary to the operation of their respective business.

“Interest Expenses” means, for any particular period, the aggregate amount (expressed in Canadian dollars) which would be classified on the consolidated statements of earnings of the Borrower for such period as interest expenses and interest equivalents (whether expensed or capitalized), all as determined in accordance with Section 1.15.

“Interest Period” means the 1 month, 3 month or 6 month period (subject to availability), as applicable, for which interest on a LIBOR Loan shall be calculated in accordance with Article 7 of this agreement.

“Inventory” shall mean all goods (i) which in the ordinary course of the Obligors’ business are held for sale or lease or are to be furnished under contracts of service or consumed in the ordinary course of the Obligors’ business, or (ii) which are raw materials, finished goods, packaging materials and all other similar materials and supplies of every nature in each case used or usable in connection with the acquisition, manufacture, processing, supply, servicing, storing, packing, shipping, advertising, selling, leasing or furnishing of such goods and any constituents or parts thereof, or (iii) which are returned or repossessed goods of the type described above and all documents of title at any time evidencing or representing any part of the foregoing.

“Investment” shall mean any advance, loan, financial assistance, extension of credit (other than trade credit) or capital contribution to, purchase of Shares, bonds, notes, debentures or other securities of, purchase of assets representing a business unit of, or any other similar investment made in, any Person. The amount of any Investment shall be the original principal or capital amount thereof less all returns of principal or equity thereon and shall, if made by the transfer or exchange of property other than cash, be deemed to have been made in an original principal or capital amount equal to the fair value of such property at the time of such Investment, as determined in good faith by the applicable Person.

“Investment Grade” means a debt rating of not less than “Baa3”, “BBB-” or “BBBL” by at least any two of Moody’s, S&P and DBRS Limited, respectively.

“Letters” means standby and documentary letters of credit issued by the Lender (i) at the request, and on the credit, of the Borrower and (ii) on behalf of the Borrower and, if applicable, a Subsidiary of the Borrower, each being denominated in Canadian or United States dollars, having a term of not more than one year, being issued to a named beneficiary and being otherwise in a form satisfactory to the Lender.

“Landlord Agreements” means the consent and acknowledgment agreements entered into among the landlords, applicable Obligors and BMO with respect to the leased premises from time to time occupied by the Obligors.

“Lassonde Debt” means the accounts payable Indebtedness incurred by the Borrower through ordinary course business transactions with and owing to Lassonde Industries Inc., in an amount not exceeding \$1,000,000.

“Leverage Ratio” means, at any particular time, the ratio of Total Liabilities at such time to Tangible Net Worth at such time.

“LIBOR” shall mean, with respect of each Interest Period for each LIBOR Loan, a rate per annum, (rounded upwards if necessary, to the nearest 1/16th of 1%) expressed on the basis of a 360 day year, equal to the annual interest rate for deposits of United States dollars for a maturity most nearly comparable to such Interest Period which appears on page 3750 of the Dow Jones Telerate Screen as of 11:00 a.m. (London time) on the second Banking Day prior the commencement of such Interest Period; provided that if such Dow Jones Telerate Screen rate is not available on such day, then the annual interest rate for deposits of United States dollars for a maturity most nearly comparable to such Interest Period which appears on the LIBOR page of the Reuters Screen as of 11:00 a.m. (London time) on the second Banking Day prior to the commencement of such Interest Period; and provided further that if such Reuters Screen rate is not available on such day, then the interest rate at which the Lender is offered deposits of United States dollars by leading banks in the London interbank market as of 11:00 a.m. (London time) on the second Banking Day prior to the commencement of such Interest

Period, for delivery on the first day of such Interest Period for the number of days comprised in such Interest Period and in an amount comparable to the amount of such LIBOR Loan. In the event that LIBOR is at any time determined to be less than zero, it shall be determined to be zero at such time for the purpose of this agreement.

“LIBOR Loan” means monies lent by the Lender to the Borrower in United States dollars and upon which interest accrues at a rate referable to LIBOR.

“Lien” means any mortgage, charge, hypothec, assignment, pledge, lien, vendor’s privilege, supplier’s right of reclamation, trust, deemed trust or other security interest or encumbrance of whatever kind or nature, regardless of form and whether consensual or arising by law (statutory or otherwise), that secures the payment of any indebtedness or liability or the observance or performance of any obligation.

“Liquidity” means, at any particular time, the sum of (i) Unrestricted Cash at such time and (ii) Available RT Credit.

“Loan Documents” means this agreement, the Guarantees, the EDC Guarantee, the Confirmation, the Post-Closing Undertaking, the Third Party Agreements and the Security Documents.

“Loans” means Prime Rate Loans, BA Equivalent Loans, Base Rate Canada Loans, LIBOR Loans and Fixed Rate Loans.

“Material Adverse Change” means any change of circumstances or any event which would have a Material Adverse Effect.

“Material Adverse Effect” means a material adverse effect (or a series of adverse effects, none of which is material in and of itself but which, cumulatively, result in a material adverse effect) on:

- (a) the operations, property, assets or financial condition of any of the Obligor;
- (b) the ability of any of the Obligor to perform their obligations under the Credit Documents;
- (c) the ability of the Lender to enforce its rights under the Credit Documents; or
- (d) the priority of the Security.

“Material Agreement” means (i) each agreement listed in Section 10.1(r) of Schedule A and (ii) any other agreement (A) to which any Obligor is a party or bound, (B) which is material to, or necessary in, the operation of the business of any Obligor, (C) which any Obligor cannot promptly replace by an alternative and

comparable contract with comparable commercial terms, and (D) the absence of which could reasonably be expected to have a Material Adverse Effect.

“**Maturity Date**” means either the (a) BCAP Facility Maturity Date or (b) the RT and NRT Maturity Date, as the context requires.

“**Minimum Liquidity Plan**” shall have the meaning ascribed thereto in Section 11.1(h).

“**Moody’s**” means Moody’s Investors Service, Inc. or any successor by merger or consolidation to its business.

“**Net Income**” means net income of the Borrower on a consolidated basis calculated in accordance with Canadian generally accepted accounting principles.

“**NRT Credit Limit**” means \$~~10,753,000~~8,673,000 or the U.S. Dollar Equivalent thereof, as such amount may be reduced pursuant to Section 2.4.

“**NRT Facility**” shall have the meaning ascribed thereto in Section 2.1(b).

“**Obligors**” means the Borrower and the Guarantors.

“**OFAC**” means the U.S. Department of the Treasury’s Office of Foreign Assets Control.

“**OFAC Lists**” shall mean, collectively, the List of Specially Designated Nationals and Blocked persons maintained by OFAC, as amended from time to time, or any similar lists issued by OFAC.

“**Official Body**” means any national government or government of any political subdivision thereof, or any parliament, legislature, council, agency, authority, board, central bank, monetary authority, commission, department or instrumentality thereof, or any court, tribunal, grand jury, mediator or arbitrator, whether foreign or domestic, in each case having jurisdiction in the relevant circumstances.

“**Official Body Consent**” means any licence, right, permit, franchise, privilege, registration, direction, decree, consent, order, permission, approval or authority issued or provided by an Official Body.

“**Order**” means an order, judgement, injunction or other determination restricting payment by the Lender under or in accordance with a Letter or extending the Lender’s liability beyond the expiration date stated therein.

“**Other Taxes**” has the meaning ascribed thereto in Section 8.5(b).

“**Pension Plan**” means any plan, program or arrangement which is considered to be a pension plan for the purposes of any applicable pension benefits standards, or

tax, statute and/or regulation in Canada or any Province or territory thereof established, maintained or contributed to by, or to which there is or may be an obligation to contribute by, any Obligor, its employees or former employees, in each case whether written or oral, funded or unfunded, insured or self-insured, reported or unreported, but excluding all Statutory Plans.

“Permitted Indebtedness” means (without duplication):

- (a) the Secured Obligations of any Obligor;
- (b) Indebtedness secured by a Permitted Lien;
- (c) Capital Leases and Purchase Money Obligations of the Obligors provided that the aggregate principal amount of Capital Leases and Purchase Money Obligations outstanding at any time shall not exceed \$3,000,000;
- (d) Indebtedness of any Obligor to another Obligor;
- (e) Indebtedness of any Obligor to an affiliate of such Obligor (other than another Obligor) provided that such affiliate has entered into an assignment, postponement and subordination of such Indebtedness in favour of the Lender in form and substance satisfactory to the Lender;
- (f) Guarantee Obligations of the Obligors with respect to any of the foregoing Permitted Indebtedness;
- (g) Indebtedness of the Obligors which is subordinated and postponed to the Secured Obligations pursuant to an agreement in form and substance satisfactory to the Lender; ~~and~~
- (h) any other Indebtedness of the Obligors which is consented to in writing by the Lender; ~~and~~
- (i) for and during the period commencing on and including the Second Amendment Date to and including November 30, 2023, the Lassonde Debt in an amount not exceeding \$1,000,000.

“Permitted Liens” means any one or more of the following with respect to the Secured Assets:

- (a) inchoate or statutory Liens for taxes, assessments and other governmental charges or levies which are not delinquent (taking into account any relevant grace periods) or the validity of which are currently being contested in good faith by appropriate proceedings and in respect of which there shall have been set aside a reserve (segregated to the extent required by generally accepted accounting

principles) in an amount which is adequate therefor or the Liens are not, in the aggregate, materially prejudicial to the Security;

- (b) inchoate or statutory Liens of contractors, subcontractors, mechanics, workers, suppliers, materialmen, carriers and others in respect of construction, maintenance, repair or operation of Secured Assets, provided that such Liens are related to obligations not due or delinquent (taking into account any applicable grace or cure periods), adequate holdbacks are being maintained as required by applicable legislation or such Liens are being contested in good faith by appropriate proceedings and in respect of which there shall have been set aside a reserve (segregated to the extent required by generally accepted accounting principles) in an amount which is adequate with respect thereto and provided further that such Liens do not in the aggregate materially detract from the value of the Secured Assets as a whole or materially interfere with the use of the Secured Assets encumbered thereby in the operation of the business of the relevant Obligor;
- (c) easements, rights-of-way, servitudes, restrictions and similar rights in real property comprised in the Secured Assets or interests therein granted or reserved to other Persons, provided that such rights do not in the aggregate materially detract from the value of the Secured Assets as a whole or materially interfere with the use of the Secured Assets subject thereto in the operation of the business of the relevant Obligor;
- (d) title defects or irregularities which are of a minor nature and which do not in the aggregate materially detract from the value of the Secured Assets encumbered thereby or materially interfere with the use thereof in the operation of the business of the relevant Obligor;
- (e) Liens incidental to the conduct of the business or the ownership of the Secured Assets (other than those described in clauses (f) and (g) of this definition) which were not incurred in connection with the borrowing of money or the obtaining of advances of credit (including, without limitation, unpaid purchase price), and which do not in the aggregate materially detract from the value of the Secured Assets encumbered thereby or materially interfere with the use thereof in the operation of the business of the relevant Obligor;
- (f) Liens securing appeal bonds and other similar Liens arising in connection with court proceedings (including, without limitation, surety bonds, security for costs of litigation where required by law and letters of credit) or any other instruments serving a similar purpose;

- (g) attachments, judgments and other similar Liens arising in connection with court proceedings; provided, however, that the same would not constitute an Event of Default;
- (h) the reservations, limitations, provisos and conditions, if any, expressed in any original grant from the Crown of any real property or any interest therein or any comparable reservation, limitation, proviso and condition in any jurisdiction other than Canada;
- (i) Liens, charges or other security interests given to a public utility or any municipality or governmental or other public authority when required by such utility or other authority in connection with the operation of the business of the relevant Obligor or the ownership of the Secured Assets, provided that such Liens do not in the aggregate reduce the fair market value of the Secured Assets or materially interfere with the use thereof in the operation of the business of the relevant Obligor;
- (j) servicing agreements, development agreements, site plan agreements, and other agreements with governmental or public authorities pertaining to the use or development of any of the Secured Assets, provided same are complied with including, without limitation, any obligations to deliver letters of credit and other security as required;
- (k) applicable municipal and other governmental restrictions, including municipal by-laws and regulations, affecting the use of land or the nature of any structures which may be erected thereon, provided such restrictions have been complied with;
- (l) Liens granted pursuant to the Security Documents;
- (m) Liens securing the Permitted Indebtedness referred to in paragraph (c) of the definition thereof;
- (n) any rights of expropriation, access or user or any other rights conferred or vested by or under statutes of Canada or applicable Provinces;
- (o) any other Lien consented to in writing by the Lender;
- (p) Liens securing any Priority Payables Amount to the extent that such Priority Payables Amount are secured by a Lien;
- (q) all Liens arising from time to time from or granted under any warehouse, storage, manufacturing or supply agreement provided that such Liens are granted in the ordinary course of business and in the case of supply or manufacturing agreements arise only if the applicable Obligor fails to perform its obligations thereunder; and

- (r) the extension, renewal or refinancing of any Permitted Lien, provided that such Liens do not extend to any additional assets, property or undertaking of the Obligors,

provided that nothing in this definition or this agreement shall (i) be construed as evidencing an intention or agreement on the part of the Creditors that the security created by the Security Documents or the obligations secured by the Security Documents be or have been subordinated to any such Permitted Lien, or (ii) cause any such subordination to occur.

“Person” means any natural person, corporation, firm, partnership, joint venture, joint stock company, incorporated or unincorporated association, government, governmental agency or any other entity, whether acting in an individual, fiduciary or other capacity.

“Pollutant” means any pollutant, as defined by EPA.

“Post-Closing Undertaking” means the post-closing undertaking dated as of the Second Restatement Date entered into by the Borrower in favour of the Lender.

“Prepayment Notice” shall have the meaning ascribed thereto in Section 9.5.

“Prime Rate” means the greater of (i) the variable rate of interest per annum equal to the rate of interest determined by the Lender from time to time as its prime rate for Canadian dollar loans made by the Lender in Canada from time to time, being a variable per annum reference rate of interest adjusted automatically upon change by the Lender calculated on the basis of a year of 365 days or 366 days in the case of a leap year and (ii) the sum of (a) the BA Rate for a 30 day term, and (b) ■% per annum. In the event that the Prime Rate is determined at any time to be less than zero, it shall be deemed to be zero at such time for the purposes of this agreement.

“Prime Rate Loan” means monies lent by the Lender to the Borrower hereunder in Canadian dollars and upon which interest accrues at a rate referable to the Prime Rate.

“Priority Payables Amount” means, at any particular time, the aggregate amount due and payable at such time by the Obligors which is secured by or may have the benefit of one or more Liens or statutory rights or claims in favour of a governmental authority, Employee Benefit Plan (including any administrator or beneficiary thereof), or Person which ranks or is capable of ranking prior to or *pari passu* with the Liens created by the Security in respect of any Secured Assets included in the Borrowing Base including, to the extent applicable based on the foregoing, amounts due and payable for vacation pay, severance pay, employee deductions (including income, withholding, social security and other employment taxes), sales tax, excise tax, tax payable pursuant to Part IX of the *Excise Tax Act*

(Canada) (net of GST or HST input credits), workers' compensation, government royalties, pension fund obligations and overdue rents.

"Proceeds of Realization" means all cash and non-cash proceeds derived from any sale, disposition or other realization of the Secured Assets, received as a dividend, distribution or other payment in or in connection with any Insolvency Proceedings involving any Obligor or received from any Obligor pursuant to a Guarantee or from Export Development Canada pursuant to the EDC Guarantee, as applicable, (i) after any notice by the Lender to the Borrower pursuant to Section 13.1 declaring all indebtedness of the Borrower hereunder to be immediately due and payable, (ii) upon any dissolution, liquidation, winding-up, reorganization, bankruptcy, insolvency or receivership of any of the Obligors (or any other arrangement or marshalling of the Secured Assets that is similar thereto) or (iii) upon the enforcement of, or any action taken with respect to, any of the Security Documents, the Guarantees or EDC Guarantee. For greater certainty, prior to the Security becoming enforceable (x) insurance proceeds derived as a result of the loss or destruction of any of the Secured Assets or (y) cash or non-cash proceeds derived from any expropriation or other condemnation of any of the Secured Assets shall not constitute Proceeds of Realization.

"Purchase Money Obligations" means indebtedness arising in the ordinary course of business which is assumed as part of, or issued or incurred to pay or provide funds to pay, all or a part of the purchase price of any real or personal property but specifically excluding Indebtedness under Capital Leases.

"Queenston Road Property" means the real property municipally known as 963 Queenston Road, Niagara on the Lake and in which 1314102 owns a freehold interest.

"Real Property" means all real property which is now or may hereafter be owned, leased, operated, occupied, controlled or used by any of the Obligors, including the owned real properties set forth in Schedule A (as updated from time to time).

"Receivables" means the trade accounts receivable and contract accounts receivable of each of the Obligors.

"Receiver" means a receiver, receiver and manager or other Person having similar powers or authority appointed by the Lender or by a court at the instance of the Lender in respect of the Secured Assets or any part thereof.

"Reporting Date" means the date which is 45 days after the end of each Fiscal Quarter and 120 days after the end of each Fiscal Year.

"Restatement Date" means October 26, 2020.

“Rolling FCC EBITDA” means, for any particular Fiscal Quarter, the aggregate FCC EBITDA for the twelve-month period ending on the last day of such Fiscal Quarter.

“Rolling Fixed Charges” means, for any particular Fiscal Quarter, the aggregate Fixed Charges for such Fiscal Quarter and the three immediately preceding Fiscal Quarters.

“Rollover Notice” shall have the meaning ascribed thereto in Section 5.3.

“RT and NRT Maturity Date” means January 2, ~~2024~~2025.

“RT Credit Limit” means \$~~14,400,000~~11,400,000 or the U.S. Dollar Equivalent thereof, as such amount may be changed pursuant to Section 2.5 or Section 2.7.

“RT Facility” shall have the meaning ascribed thereto in Section 2.1(a).

“S&P” means Standard & Poor’s Financial Services LLC, a subsidiary of McGraw-Hill Financial, Inc., or any successor by merger or consolidation to its business.

“Sanctions” has the meaning ascribed thereto in the definition of “Sanctioned Person”.

“Sanctioned Country” means any country or territory, to the extent that such country or territory itself is subject (or becomes the subject) of Sanctions.

“Sanctioned Person” means (i) any person that is a Canadian Blocked Person, or is subject to international economic sanctions adopted, administered or enforced by the United Nations Security Council, OFAC (including any persons subject to country-specific or activity-specific sanctions administered by OFAC and any persons named on any OFAC Lists), the U.S. Department of Commerce Bureau of Industry and Security, the U.S. Department of State or pursuant to any other law, rules, regulations or other official acts of the United States (each of the foregoing, collectively, “Sanctions”). As of the date hereof, certain information regarding Sanctioned Persons issued by the United States can be found on the website of the United States Department of Treasury at www.treas.gov/ofac/, or (ii)(A) an agency of the government of a Sanctioned Country, (B) an organization controlled by a Sanctioned Country, or (C) a person resident in a Sanctioned Country, to the extent subject to a sanctions program administered by OFAC.

“Second Amendment Date” means November 14, 2023.

“Second Restatement Date” means November 30, 2021.

“Secured Assets” means:

- (a) all of the present and future assets, property and undertaking of each Obligor; and
- (b) any and all proceeds of any of the foregoing.

“Secured Obligations” of a particular Obligor means all indebtedness, obligations and liabilities, present or future, absolute or contingent, matured or not, at any time owing by such Obligor to the Lender, or remaining unpaid to the Lender including, without limitation, all indebtedness, obligations and liabilities, present or future, absolute or contingent, matured or not, at any time owing by such Obligor to the Lender, or remaining unpaid to the Lender, under or in connection with the Credit Documents.

“Security” means the collateral security constituted by the Security Documents.

“Security Discharge Date” means the date on which all of the Secured Obligations of the Borrower have been fully satisfied and all commitments of the Lender under all of the Credit Documents have terminated.

“Security Documents” means the security documents described in Schedule G hereto and any other security documents (as the same may be amended, modified, supplemented, restated or replaced from time to time) entered into from time to time by the Obligors in favour of the Lender in order to grant to the Lender a first-priority Lien on the Secured Assets (subject to Permitted Liens which, by their nature, would have priority) as continuing collateral security for the payment and performance of the Secured Obligations.

“Shareholders’ Equity” means, at any particular time, the total amount of shareholders’ equity of the Borrower, as such amount would be expressed on the consolidated balance sheet of the Borrower prepared as at such time in accordance with generally accepted accounting principles.

“Shares”, as applied to the shares of any corporation or other entity, means the shares or other ownership interests of every class whether now or hereafter authorized, regardless of whether such shares or other ownership interests shall be limited to a fixed sum or percentage with respect to the rights of the holders thereof to participate in dividends and in the distribution of assets upon the voluntary or involuntary liquidation, dissolution or winding-up of such corporation or other entity.

“Solvent” at any time when used with respect to a person means that if that person is formed under the federal laws of Canada or the laws of the Province thereof, that at such time (i) such person is not for any reasons unable to meet its obligations as they generally become due, (ii) such person has not ceased paying its current obligation in the ordinary course of business as they generally become

due and (iii) the aggregate property of such person is, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would be sufficient, to enable payment of all of its obligations, due and accruing due.

“**Specified Equity Contribution**” shall have the meaning ascribed thereto in Section 11.1(i).

“**Specified Shareholder Contributions**” means, collectively, any cash contribution (funded with proceeds of common equity, issues of convertible debentures, or other equity having terms acceptable to the Lender, including deeply subordinated equityholder debt) made by one or more shareholders of the Borrower to the Borrower on terms and conditions satisfactory to the Lender.

“**Statutory Plans**” means any Canadian federal or provincial statutory plan which an Obligor is required to comply with including the Canada Pension Plan, Quebec Pension Plan and plans administered pursuant to applicable health tax, workplace safety and unemployment insurance legislation.

“**Subject Properties**” means, collectively, (a) the Queenston Road Property and (b) the Backyard Vineyard Property.

“**Subsidiary**” means, with respect to any Person, any corporation, company or other similar business entity of which more than fifty per cent (50%) of the outstanding Shares or other equity interests (in the case of Persons other than corporations) having ordinary voting power to elect a majority of the board of directors or the equivalent thereof of such corporation, company or similar business entity (irrespective of whether at the time Shares of any other class or classes of the Shares of such corporation, company or similar business entity shall or might have voting power upon the occurrence of any contingency) is at the time directly or indirectly owned by such Person, by such Person and one or more other Subsidiaries of such Person, or by one or more other Subsidiaries of such Person.

“**Take-Over Bid**” means a “take-over bid” as defined in the *Securities Act* (Ontario) except that all references to “Ontario” shall be amended to “any jurisdiction in the world.”

“**Tangible Net Worth**” means, at any particular time, the amount of Shareholders’ Equity plus the amount of Indebtedness of the Borrower which is subordinated and postponed (on terms acceptable to the Lender) to the Secured Obligations less the amount of goodwill of the Borrower, amounts due from affiliates of the Borrower which are not Obligors, long term investments of the Borrower, leasehold improvements of the Borrower, intellectual property of the Borrower and other intangible assets of the Borrower, as each such amount (to the extent applicable) would, in each case, be expressed on a consolidated balance sheet of the Borrower prepared at such time in accordance with generally accepted accounting principles.

“Target Indebtedness” means any Indebtedness of any of EWG, 1314102, CEW and/or 2601636 incurred prior to the Second Restatement Date and which remains outstanding immediately prior to the Second Restatement Date.

“Tax Act” means the *Income Tax Act* (Canada), as amended from time to time, and any successor statute and including all regulations issued under all such statutes.

“Tax” or **“Taxes”** means any and all taxes, assessments, fees, rates, levies, imposts, deductions, dues, duties and other charges of any nature, including any interest, fines, penalties or other liabilities with respect thereto, imposed, levied, collected, withheld or assessed by any Official Body (including a federal, provincial, territorial, municipal or foreign Official Body), and whether disputed or not.

“Third Party Agreements” means (i) the Landlord Agreements and (ii) any, subordination agreements, control agreements, estoppel certificates and letters, intercreditor agreements, consents, approvals, acknowledgements, undertakings, directions and all other documents, instruments and agreements which, in the opinion of the Lender and its counsel, are desirable to make effective the Security and to ensure the perfection and the intended priority of the Security.

“Title Insurance Policy” means the Lender’s Title Insurance Policy from First Canadian Title in respect of the first Charge in favour of the Lender granted by the Borrower against the property municipally known as 1067 Niagara Stone Road, Niagara-on-the-Lake, Ontario containing a policy in the amount of \$20,500,000, being the appraised value of the property.

“Total Liabilities” means, at any particular time, the amount of the liabilities of the Borrower at such time less the amount of deferred taxes of the Borrower and the amount of Indebtedness of the Borrower which is subordinated and postponed, (on terms acceptable to the Lender) to the Secured Obligations, as each such amount (to the extent applicable) would, in each case, be expressed on a consolidated balance sheet of the Borrower prepared at such time in accordance with generally accepted accounting principles.

“Unmargined Amount” means \$2,500,000, provided that the Lender has received, on or after the Second Amendment Date, an appraisal with respect to the 1067 Niagara Property evidencing a property valuation amount acceptable to the Lender, acting in its sole discretion, and provided further that if the Lender ceases at any time to have a valid, enforceable and perfected first-ranking mortgage and charge with respect to the 1067 Niagara Property, the Unmargined Amount shall be deemed to be \$0.

“Unfunded Capital Expenditures” means, for any period, the amount of all Capital Expenditures during such period less any of such Capital Expenditures funded by Permitted Indebtedness.

“Unrestricted Cash” means, at any particular time and without duplication, an aggregate amount equal to all cash and Cash Equivalents of the Obligors (i) which is not subject to any Lien (other than the Security) or restriction, (ii) which is credited to deposit with the Lender or any other financial institution and/or securities accounts, in each case, situated in Canada or the United States and in the case of (x) any securities accounts or (y) any bank accounts domiciled in the United States, subject to a Third Party Agreement and (iii) which cash and Cash Equivalents constitute Security at such time.

“U.S. Dollar Equivalent” means the Exchange Equivalent in United States dollars of any amount of Canadian dollars.

“Voting Stock” means Capital Stock of a Person which carries voting rights or the right to Control such Person under any circumstances, provided that Capital Stock which carries the right to vote or Control conditionally upon the happening of an event shall not be considered Voting Stock until the occurrence of such event and then only during the continuance of such event.

“Warehouse Agreements” means the warehouse agreements entered into among the warehouse providers, the applicable Obligors and the Lender with respect to the warehouse space from time to time occupied by the Obligors.

“Yearend Financial Statements” means the audited financial statements of the Borrower on a consolidated basis, including the notes thereto, in respect of the most recently completed Fiscal Year.

1.2 Other Usages. References to “this agreement”, “the agreement”, “hereof”, “herein”, “hereto” and like references refer to this Credit Agreement and not to any particular Article, Section or other subdivision of this agreement. Any references herein to any agreements or documents shall mean such agreements or documents as amended, supplemented or otherwise modified from time to time in accordance with the terms hereof and thereof.

1.3 Plural and Singular. Where the context so requires, words importing the singular number shall include the plural and vice versa.

1.4 Headings. The division of this agreement into Articles and Sections and the insertion of headings in this agreement are for convenience of reference only and shall not affect the construction or interpretation of this agreement.

1.5 Currency. Unless otherwise specified herein, all statements of or references to dollar amounts in this agreement shall mean lawful money of Canada.

1.6 Applicable Law. This agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

1.7 Time of the Essence. Time shall in all respects be of the essence of this agreement.

1.8 Non-Banking Days. Subject to Section 7.5(c), whenever any payment to be made hereunder shall be stated to be due or any action to be taken hereunder shall be stated to be required to be taken on a day other than a Banking Day, such payment shall be made or such action shall be taken on the next succeeding Banking Day and, in the case of the payment of any amount, the extension of time shall be included for the purposes of computation of interest, if any, thereon.

1.9 Consents and Approvals. Whenever the consent or approval of a party hereto is required in a particular circumstance, unless otherwise expressly provided for herein, such consent or approval shall not be unreasonably withheld or delayed by such party.

1.10 Amount of Credit. Any reference herein to the amount of credit outstanding under any Credit Facility shall mean, at any particular time:

- (a) in the case of a Prime Rate Loan or a BA Equivalent Loan, the principal amount thereof;
- (b) in the case of a Bankers' Acceptance, the face amount of the Bankers' Acceptance;
- (c) in the case of a LIBOR Loan or a Base Rate Canada Loan, the Canadian Dollar Equivalent of the principal amount thereof; and
- (d) in the case of a Letter denominated in Canadian dollars, the contingent liability of the Lender thereunder (or, if the Letter is denominated in U.S. dollars, the Canadian Dollar Equivalent of the contingent liability of the Lender thereunder).

1.11 Schedules. Each and every one of the schedules which is referred to in this agreement and attached to this agreement shall form a part of this agreement.

1.12 Paramountcy. In the event of any conflict or inconsistency between the provisions of this agreement and the provisions of any other Loan Document, the provisions of this agreement shall prevail and be paramount. If any covenant, representation, warranty or event of default contained in any other Loan Document is in conflict with or is inconsistent with a provision of this agreement relating to the same specific matter, such covenant, representation, warranty or event of default shall be deemed to be amended to the extent necessary to ensure that it is not in conflict with or inconsistent with the provision of this agreement relating to the same specific matter.

1.13 Extension of Credit. For the purposes hereof, each drawdown, rollover and conversion shall be deemed to be an extension of credit hereunder.

1.14 Statute References. Any reference in this agreement to any statute or any section thereof shall, unless otherwise expressly stated, be deemed to be a reference to such statute or section as amended, restated or re-enacted from time to time.

1.15 Accounting Principles. Unless otherwise provided herein, all financial terms used in the agreement shall be determined in accordance with Canadian generally accepted accounting principles in effect at the date of such determination. Where the character or amount of any asset or liability or item of revenue or expense is required to be determined, or any consolidation or other computation is required to be made for the purpose of this agreement, such determination or calculation shall be made in accordance with Canadian generally accepted accounting principles applied on a consistent basis, unless otherwise indicated. If there is a change in Canadian generally accepted accounting principles after the date of this agreement which materially adversely affects the Borrower's ability to comply with any Financial Covenant, then such Financial Covenant shall be determined in accordance with Canadian generally accepted accounting principles in effect as at the date of this agreement. In such event, the Yearend Financial Statements shall be prepared in accordance with Canadian generally accepted accounting principles in effect on the date of such Yearend Financial Statements, and the Borrower shall concurrently deliver to the Lender a reconciliation prepared by their auditor in form and substance satisfactory to the Lender, acting reasonably and in consultation with the Lender, showing all adjustments made to such Yearend Financial Statements in order to determine compliance with such Financial Covenants on the basis of Canadian generally accepted accounting principles in effect on the date of this agreement.

1.16 Successors and Permitted Assigns of Parties. Any reference in this agreement to a party to this agreement shall include the successors and permitted assigns of such party.

1.17 Meaning of Include. The words "include", "includes" and "including", when used in this agreement, shall be deemed to be followed by the phrase "without limitation".

ARTICLE 2 CREDIT FACILITIES

2.1 Establishment of Credit Facilities. Subject to the terms and conditions hereof, the Lender hereby establishes in favour of the Borrower:

- (a) a revolving term credit facility (the "**RT Facility**") in the amount of the RT Credit Limit;
- (b) a non-revolving term credit facility (the "**NRT Facility**") in the amount of the NRT Credit Limit; and
- (c) a non-revolving term credit facility (the "**BCAP Facility**") in the amount of the BCAP Credit Limit.

2.2 Borrowing Base Restriction. Notwithstanding any other provision hereof, the aggregate amount of credit outstanding under the RT Facility shall not at any particular time

exceed the lesser of the RT Credit Limit as at such time and the Borrowing Base as at the last day of the most recently completed calendar month.

2.3 Credit Restrictions. Any extension of credit hereunder by way of Prime Rate Loans shall be in a minimum amount of \$100,000 and BA Equivalent Loans or Bankers' Acceptances shall be in a minimum amount of \$1,000,000 and, in each case, in an amount equal to such minimum amount or an integral multiple of \$100,000 in excess thereof. Any extension of credit hereunder by way of Base Rate Canada Loans shall be in a minimum amount of U.S.\$100,000 and LIBOR Loans shall be in a minimum amount of U.S. \$1,000,000, in each case, and in an amount equal to such minimum amount or an integral multiple of U.S. \$100,000 in excess thereof.

2.4 Lender's Commitment. Subject to the terms and conditions hereof, the Lender agrees to extend credit to the Borrower under a particular Credit Facility from time to time provided that the aggregate amount of credit extended by the Lender under a particular Credit Facility shall not at any time exceed the relevant Credit Limit.

2.5 Changes in Credit Limits. Upon at least two Banking Days' prior written notice to the Lender, the Borrower may, without premium or penalty, on any day, permanently reduce the RT Credit Limit in whole or in part to the extent that the RT Facility is not being utilized, provided that (i) any such reduction shall be in amount of at least \$500,000 or an integral multiple of \$100,000 in excess thereof and (ii) after giving effect to such reduction and to any prepayments of Loans made on the date thereof in accordance with this agreement, the aggregate amount of credit outstanding under the RT Facility shall not exceed the aggregate amount of the RT Credit Limit then in effect. The amount of the RT Credit Limit will not be reduced by any prepayment or repayment under the RT Facility pursuant to Section 9.8 or 9.9 but will be reduced by any prepayment or repayment under the RT Facility pursuant to Section 9.1 ~~and~~, 9.4 and 9.6(h)(ii) and will be reduced to zero on the Maturity Date. As at the close of business on the Second Restatement Date, the amount of the NRT Facility shall be permanently reduced to the Fully Drawn NRT Amount. The amount of the NRT Credit Limit will be reduced at the time, and by the amount, of any prepayment or repayment of the NRT Facility pursuant to Section 9.2, 9.4 or 9.6 and will be reduced to zero on the Maturity Date. As at the close of business on the Restatement Date, the amount of the BCAP Facility was permanently reduced to the Fully Drawn BCAP Amount. The amount of the BCAP Credit Limit will be reduced at the time, and by the amount, of any prepayment or repayment of the BCAP Facility pursuant to Section 9.3, 9.4 or 9.6 and will be reduced to zero on the Maturity Date. Any repayment of outstanding credit which forms part of any rollover or conversion from one type of credit to another type of credit under Article 5 or Article 6 shall not cause any reduction in the amount of the relevant Credit Limit.

2.6 Termination of Credit Facilities. A Credit Facility shall terminate upon the earliest to occur of:

- (a) the Maturity Date;
- (b) the termination of such Credit Facility in accordance with Section 13.1; and

- (c) the date on which, pursuant to Section 2.5, the relevant Credit Limit has been permanently reduced to zero.

Upon the termination of a Credit Facility, the right of the Borrower to obtain any credit under such Credit Facility and all of the obligations of the Lender to extend credit under such Credit Facility shall automatically terminate.

2.7 Accordion Feature

- (a) Subject to Section 2.7(b), the Borrower may, by notice to the Lender (an “**Accordion Notice**”), from time to time request that the amount of the RT Credit Limit be increased by an aggregate amount of up to \$2,000,000 (in the aggregate for all Accordion Notices). For certainty, the RT Credit Limit shall not exceed at any particular time \$16,400,000. Within twenty (20) Banking Days of the receipt by the Lender of an Accordion Notice, the Lender shall notify the Borrower as to whether or not it agrees to such increase of the RT Credit Limit. If such notification is not given to the Borrower within such twenty (20) Banking Day period, then the Lender will be deemed not to have agreed to such increase.
- (b) Each Accordion Notice shall specify (i) the requested amount of the proposed RT Credit Limit increase (which amount shall be in compliance with Section 2.7(a)) and (ii) the effective date of the proposed increase (the “**Accordion Effective Date**”). If the Lender notifies the Borrower that it agrees to such increase in the RT Credit Limit, this agreement shall be deemed to thereupon be amended accordingly.
- (c) No increase in the RT Credit Limit pursuant to this Section 2.7 shall be permitted if, at such time, a Default or Event of Default has occurred and is continuing or would arise as a result of any such increase.

2.8 BCAP Facility Maturity Date. The BCAP Facility shall expire on ~~October 1, 2022~~ December 31, 2025 (the “BCAP Facility Maturity Date”) unless extended by the Lender in its sole and absolute discretion at the request of the Borrower for a further period in accordance with this Section 2.8 ~~provided that such extension shall not in any case extend beyond October 26, 2025. Such expiry date, as extended from time to time in accordance with this Section 2.8, is referred to herein as the “BCAP Facility Maturity Date”.~~ If the Borrower wishes to extend the BCAP Facility Maturity Date, the Borrower will deliver to the Lender, (a) at least 60 days prior to the BCAP Facility Maturity Date (the “**Current Maturity Date**”), a notice in which the Borrower requests the Lender to extend the BCAP Facility for an additional period after the Current Maturity Date (such extended date referred to herein as the “**Extended BCAP Facility Maturity Date**”) and (b) evidence satisfactory to the Lender that the EDC Guarantee will remain in full force and effect until the Extended BCAP Facility Maturity Date. The Lender shall provide notice to the Borrower, either (a) that it wishes to make an irrevocable offer to the Borrower (which may be accepted within the time and on the terms set out in such offer and with effect on the Current Maturity Date) to extend the BCAP Facility for an additional period, with effect from the Current Maturity Date, or (b) that it declines to approve the requested extension.

If the Lender makes an offer to the Borrower that is not accepted by the Borrower, the Borrower will repay all amounts outstanding under the BCAP Facility on the Current Maturity Date.

ARTICLE 3 GENERAL PROVISIONS RELATING TO CREDITS

3.1 Types of Credit Availments. Subject to the terms and conditions hereof, (a) the Borrower may obtain credit under the RT Facility by way of one or more Prime Rate Loans, Base Rate Canada Loans, ~~Bankers' Acceptances, and~~ Letters ~~and BA Equivalent Loans~~, provided that the aggregate amount of credit outstanding under the RT Facility by way of Letters may not at any time exceed \$1,000,000 or the U.S. Dollar Equivalent thereof. (b) the Borrower may obtain credit under the NRT Facility by way of one or more Prime Rate Loans, Base Rate Canada Loans, ~~and~~ Fixed Rate Loans, ~~Bankers' Acceptances and BA Equivalent Loans~~ and (c) the Borrower may obtain credit under the BCAP Facility by way of a Prime Rate Loan.

3.2 Funding of Loans. The Lender shall, upon fulfilment by the Borrower of the terms and conditions set forth in Article 12, make such funds available to the Borrower in the principal amount of each Loan by 3:00 p.m. (Toronto time) on the date of the extension of credit by crediting the relevant Designated Account.

3.3 Funding of Bankers' Acceptances.

- (a) If the Lender receives a Drawdown Notice, Rollover Notice or Conversion Notice requesting a drawdown of, a rollover of or a conversion into Bankers' Acceptances, the Lender shall, not later than 11:00 a.m. (Toronto time) on the date of each extension of credit by way of Bankers' Acceptance, accept drafts of the Borrower which are presented to it for acceptance and which have an aggregate face amount equal to the total extension of credit being made available by way of Bankers' Acceptances on such date. The Lender shall purchase the Bankers' Acceptances which it has accepted for a purchase price equal to the BA Discounted Proceeds therefor. The Lender may at any time and from time to time hold, sell, rediscount or otherwise dispose of any and all Bankers' Acceptances accepted and purchased by it.
- (b) The Borrower hereby waive presentment for payment of Bankers' Acceptances by the Lender and any defence to payment of amounts due to the Lender in respect of a Bankers' Acceptance which might exist by reason of such Bankers' Acceptance being held at maturity by the Lender and agree not to claim from the Lender any days of grace for the payment at maturity of Bankers' Acceptances.
- (c) In the case of a drawdown by way of Bankers' Acceptance, the Lender shall, upon fulfilment by the Borrower of the terms and conditions set forth in Article 12 and forthwith after the acceptance of drafts of the Borrower as aforesaid, make the BA Proceeds with respect to such Bankers' Acceptances available to the Borrower by 3:00 p.m. (Toronto time) on the date of such extension of credit by crediting the relevant Designated Account. In the case of a rollover of or conversion into Bankers' Acceptances, the Lender shall retain the Bankers' Acceptance and shall

not be required to make any funds available to the Borrower; however, forthwith after the acceptance of drafts of the Borrower as aforesaid, the Borrower shall pay to the Lender an amount equal to the amount of the acceptance fees in respect of such Bankers' Acceptances calculated in accordance with Section 7.6 plus the amount by which the aggregate face amount of such Bankers' Acceptances exceeds the aggregate BA Discounted Proceeds with respect thereto.

- (d) Any Bankers' Acceptance may, at the option of the Borrower, be executed in advance by or on behalf of the Borrower (as otherwise provided herein), by mechanically reproduced or facsimile signatures of any officer or director of the Borrower who is properly so designated and authorized by the Borrower from time to time. Any Bankers' Acceptance so executed and delivered by the Borrower to the Lender shall be valid and shall bind the Borrower and may be dealt with by the Lender to all intents and purposes as if the Bankers' Acceptance had been signed in the executing officers' own handwriting.
- (e) The Borrower shall notify the Lender as to those officers or directors of the Borrower whose signatures may be reproduced and used to execute Bankers' Acceptances in the manner provided in Section 3.3(d). Bankers' Acceptances with the mechanically reproduced or facsimile signatures of designated officers may be used by the Lender and shall continue to be valid, notwithstanding the death, termination of employment or termination of authorization of either or both of such officers or any other circumstance.
- (f) The Borrower hereby indemnifies and agrees to hold harmless the Lender against and from all losses, damages, expenses and other liabilities caused by or attributable to the use of the mechanically reproduced or facsimile signature instead of the original signature of an authorized officer of the Borrower on a Banker's Acceptance prepared, executed, issued and accepted pursuant to this agreement, except to the extent determined by a court of competent jurisdiction to be due to the gross negligence or wilful misconduct of the Lender.
- (g) The Lender agrees that, in respect of the safekeeping of executed drafts of the Borrower which are delivered to it for acceptance hereunder, it shall exercise the same degree of care which it gives to its own property, provided that it shall not be deemed to be an insurer thereof.
- (h) All Bankers' Acceptances shall, at the option of the Lender, be issued in the form of depository bills made payable originally to and deposited with The Canadian Depository for Securities Limited pursuant to the *Depository Bills and Notes Act* (Canada).
- (i) In order to facilitate the issuance of Bankers' Acceptances pursuant to this agreement, the Borrower hereby authorizes the Lender, and appoints the Lender as the Borrower's attorney, to complete, sign and endorse drafts or depository bills (each such executed draft or bill being herein referred to as a "BA Draft") on its behalf in handwritten form or by facsimile or mechanical signature or

otherwise in accordance with the applicable Drawdown Notice, Rollover Notice or Conversion Notice and, once so completed, signed and endorsed to accept them as Bankers' Acceptances under this agreement and then if applicable, purchase, discount or negotiate such Bankers' Acceptances in accordance with the provisions of this agreement. BA Drafts so completed, signed, endorsed and negotiated on behalf of the Borrower by the Lender shall bind the Borrower as fully and effectively as if so performed by an authorized officer of the Borrower. Each draft of a Bankers' Acceptance completed, signed or endorsed by the Lender shall mature on the last day of the term thereof.

3.4 BA Equivalent Loans. If, in the sole judgement of the Lender, acting reasonably and in good faith, the Lender is unable to extend credit by way of Bankers' Acceptances in accordance with this agreement, the Lender shall give an irrevocable notice to such effect to the Borrower prior to 10:00 a.m. (Toronto time) on the date of the requested credit extension and shall make available to the Borrower prior to 11:00 a.m. (Toronto time) on the date of such requested credit extension a Canadian dollar loan (a "**BA Equivalent Loan**") in the principal amount equal to the total credit to be extended by way of Bankers' Acceptances, such BA Equivalent Loan to be funded in the same manner as a Loan is funded pursuant to Section 3.2. Such BA Equivalent Loan shall have the same term as the Bankers' Acceptances for which it is a substitute and shall bear such rate of interest per annum throughout the term thereof, calculated on the basis of a year of 365 days or 366 days in the case of a leap year, as shall permit the Lender to obtain the same effective rate as if the Lender had accepted and purchased a Bankers' Acceptance at the same acceptance fee and pricing at which a bank listed in Schedule I to the *Bank Act* (Canada) and selected by the Lender would have accepted and purchased such Bankers' Acceptance at approximately 11:00 a.m. (Toronto time) on the date such BA Equivalent Loan is made, on the basis that, and the Borrower hereby agrees that, for such a BA Equivalent Loan, interest shall be payable in advance on the date of the extension of credit by the Lender deducting the interest payable in respect thereof from the principal amount of such BA Equivalent Loan.

3.5 Inability to Fund U.S. Dollar Advances in Canada. If the Lender determines, acting reasonably and in good faith, which determination shall be final, conclusive and binding on the Borrower, and the Lender notifies the Borrower that (i) by reason of circumstances affecting financial markets inside or outside Canada, deposits of United States dollars are unavailable to the Lender in Canada, (ii) adequate and fair means do not exist for ascertaining the applicable interest rate on the basis provided in the definition of LIBOR or Alternate Base Rate Canada, as the case may be, (iii) the making or continuation of United States dollar advances in Canada has been made impracticable by the occurrence of a contingency (other than a mere increase in rates payable by the Lender to fund the advance) which materially and adversely affects the funding of the advances at any interest rate computed on the basis of LIBOR or the Alternate Base Rate Canada, as the case may be, or by reason of a change since the date hereof in any Applicable Law or government regulation, guideline or order (whether or not having the force of law but, if not having the force of law, one with which a responsible Canadian chartered bank would comply) or in the interpretation thereof by any Official Body affecting the Lender or any relevant financial market, which results in LIBOR or the Alternate Base Rate Canada, as the case may be, no longer representing the effective cost to the Lender of deposits in such market for a relevant Interest Period, or (iv) any change to present law or any

future law, regulation, order, treaty or official directive (whether or not having the force of law but, if not having the force of law, one with which a responsible Canadian chartered bank would comply) or any change therein or any interpretation or application thereof by any Official Body has made it unlawful for the Lender to make or maintain or give effect to its obligations in respect of United States dollar advances in Canada as contemplated herein, then

- (a) the right of the Borrower to obtain any credit in United States dollars by way of Base Rate Canada Loans or LIBOR Loans, as applicable, shall be suspended until the Lender determines, acting reasonably and in good faith, that the circumstances causing such suspension no longer exist and the Lender so notifies the Borrower;
- (b) if any credit in United States dollars by way of Base Rate Canada Loans or LIBOR Loans, as applicable, is not yet outstanding, any applicable Drawdown Notice shall be cancelled and the advance requested therein shall not be made;
- (c) if any LIBOR Loan is already outstanding at any time when the right of the Borrower to obtain credit by way of a LIBOR Loan is suspended, it shall, subject to the Borrower having the right to obtain credit by way of a Base Rate Canada Loan at such time, be converted to a Base Rate Canada Loan on the last day of the Interest Period applicable thereto (or on such earlier date as may be required to comply with any applicable law) or, if the Borrower does not have the right to obtain credit by way of a Base Rate Canada Loan at such time, such LIBOR Loan shall be converted to a Prime Rate Loan on the last day of the Interest Period applicable thereto (or on such earlier date as may be required to comply with any applicable law) in the principal amount equal to the Canadian Dollar Equivalent of the principal amount of such LIBOR Loan; and
- (d) if any Base Rate Canada Loan is already outstanding at any time when the right of the Borrower to obtain credit by way of a Base Rate Canada Loan is suspended, it shall, subject to the Borrower having the right to obtain credit by way of a LIBOR Loan at such time, be immediately converted to a LIBOR Loan in the principal amount equal to the principal amount of the Base Rate Canada Loan and having an Interest Period of one month or, if the Borrower does not have the right to obtain credit by way of a LIBOR Loan at such time, it shall be immediately converted to a Prime Rate Loan in the principal amount equal to the Canadian Dollar Equivalent of the principal amount of the Base Rate Canada Loan.

In the event that any of the events listed above results in a limitation of the amount of loans made by the Lender which can bear interest at LIBOR or the Alternate Base Rate Canada, as the case may be, or the amount of United States dollar advances which the Lender can make in Canada, the Lender agrees to use good faith to allocate, in reasonable fashion, the available amounts amongst its borrowers as is reasonably practicable.

3.6 Timing of Credit Availments. No Bankers' Acceptance, BA Equivalent Loan, Letter, LIBOR Loan or Fixed Rate Loan may have an expiry date or a maturity date, as the case may be, later than the relevant date described in Section 2.6(a) or which would otherwise impede the scheduled repayments of outstanding credit hereunder.

3.7 Time, Place and Source of Payments. Unless otherwise expressly provided herein, the Borrower shall make all payments pursuant to this agreement or pursuant to any document, instrument or agreement delivered pursuant hereto by deposit by or on behalf of the Borrower to the relevant Designated Account before 12:00 noon (Toronto time) on the day specified for payment and the Lender shall be entitled to withdraw the amount of any payment due to the Lender hereunder from such account on the day specified for payment. Any such payment received on the day specified for such payment but after 12:00 noon (Toronto time) shall be deemed to have been received prior to 12:00 noon (Toronto time) on the Banking Day immediately following such day specified for payment.

3.8 Evidence of Indebtedness. The Lender shall open and maintain accounts wherein the Lender shall record the amount of credit outstanding, each payment of principal and interest on account of each Loan, each Bankers' Acceptance accepted and cancelled, each Letter issued and drawn upon and all other amounts becoming due to and being paid to the Lender hereunder. The Lender's accounts constitute, in the absence of manifest error, *prima facie* evidence of the indebtedness of the Borrower pursuant to this agreement.

3.9 Notice Periods. Each Drawdown Notice, Rollover Notice, Conversion Notice and Prepayment Notice shall be given to the Lender:

- (a) prior to 10:00 a.m. (Toronto time) on the second Banking Day prior to any drawdown by way of issuance of a Letter;
- (b) prior to 10:00 a.m. (Toronto time) on the first Banking Day prior to the date of any voluntary prepayment under the BCAP Facility or NRT Facility pursuant to Section 9.4 or the date of any drawdown, rollover or conversion into a Bankers' Acceptance;
- (c) prior to 10:00 a.m. (Toronto time) on the date of any voluntary prepayment under the RT Facility pursuant to Section 9.4 or the date of any other drawdown, rollover or conversion; and
- (d) prior to 10:00 a.m. (Toronto time) on the third Banking Day prior to drawdown any of a Fixed Rate Loan.

3.10 General Provisions Relating to All Letters.

- (a) The Borrower hereby acknowledges and confirms to the Lender that the Lender shall not be obliged to make any inquiry or investigation as to the right of any beneficiary to make any claim or Draft or request any payment under a Letter and payment by the Lender pursuant to a Letter shall not be withheld by the Lender by reason of any matters in dispute between the beneficiary thereof and the Borrower. The sole obligation of the Lender with respect to Letters is to cause to be paid a Draft drawn or purporting to be drawn in accordance with the terms of the applicable Letter and for such purpose the Lender is only obliged to determine that the Draft purports to comply with the terms and conditions of the relevant Letter.

- (b) The Lender shall not have any responsibility or liability for or any duty to inquire into the form, sufficiency (other than to the extent provided in the preceding paragraph), authorization, execution, signature, endorsement, correctness (other than to the extent provided in the preceding paragraph), genuineness or legal effect of any Draft, certificate or other document presented to it pursuant to a Letter and the Borrower unconditionally assume all risks with respect to the same. The Borrower agrees that it assumes all risks of the acts or omissions of the beneficiary of any Letter with respect to the use by such beneficiary of the relevant Letter.
- (c) The obligations of the Borrower hereunder with respect to Letters shall be absolute, unconditional and irrevocable and shall not be reduced by any event or occurrence including, without limitation:
 - (i) any lack of validity or enforceability of this agreement or any such Letter;
 - (ii) any amendment or waiver of or any consent to departure from this agreement;
 - (iii) the existence of any claim, set-off, defense or other rights which the Borrower may have at any time against any beneficiary or any transferee of any such Letter (or any Person for whom any such beneficiary or any such transferee may be acting), the Lender or any other Person;
 - (iv) any Draft, statement or other document presented under any such Letter proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect whatsoever;
 - (v) payment by the Lender under such Letter against presentation of a sight draft or certificate which does not comply with the terms of such Letter provided it purports to so comply;
 - (vi) any non-application or misapplication by the beneficiary of such Letter of the proceeds of any drawing under such Letter;
 - (vii) the surrender or impairment of any Security; or
 - (viii) any reduction or withdrawal of the Lender's credit rating by any rating agency.

The obligations of the Borrower hereunder with respect to Letters shall remain in full force and effect and shall apply to any amendment to or extension of the expiration date of any such Letter.

- (d) Any action, inaction or omission taken or suffered by the Lender or any of the Lender's correspondents under or in connection with a Letter or any Draft made

thereunder, if in good faith and in conformity with foreign or domestic laws, regulations or customs applicable thereto (including Applicable Laws), shall be binding upon the Borrower and shall not place the Lender or any of its correspondents under any resulting liability to the Borrower (except as otherwise may be provided in Section 3.10(a)). Without limiting the generality of the foregoing, the Lender and its correspondents may receive, accept or pay as complying with the terms of a Letter, any Draft thereunder, otherwise in order which may be signed by, or issued to, the administrator or any executor of, or the trustee in bankruptcy of, or the receiver for any property of, or other Person acting as the representative or in the place of, such beneficiary or its successors and assigns. The Borrower covenants that it will not take any steps, issue any instructions to the Lender or any of its correspondents or institute any proceedings intended to derogate from the right or ability of the Lender or its correspondents to honour and pay any Draft or Drafts.

- (e) The Borrower agrees that, except as otherwise may be provided in Section 3.10(a), the Lender shall have no liability to it for any reason in respect of or in connection with any Letter, the issuance thereof, any payment thereunder, or any other action taken by the Lender or any other Person in connection therewith, other than on account of the Lender's gross negligence or wilful misconduct.
- (f) Save to the extent expressly provided otherwise in this Section 3.10, the rights and obligations between the Lender and the Borrower with respect to each Letter shall be determined in accordance with the applicable provisions of the (i) Uniform Customs and Practice for Documentary Credits (1993 Revision), ICC Publications 500 or (ii) the International Standby Practices - ISP98, ICC Publication No. 590, as applicable.
- (g) In connection with the issuance of any Letter, the Borrower shall be required to complete (to the Lender's reasonable satisfaction) a letter of credit application in the form from time to time provided by the Lender.

3.11 Benchmark Replacement Setting.

- (a) *Benchmark Replacement.* Notwithstanding anything to the contrary herein or in any other Credit Document if a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (1) or (2) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this agreement and (y) if a Benchmark Replacement is determined in accordance with clause (3) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder in respect

of any Benchmark setting at or after 5:00 p.m. (Toronto time) on the fifth (5th) Banking Day after the date notice of such Benchmark Replacement is provided to the Lender without any amendment to, or further action or consent of any other party to, this agreement.

- (b) *Benchmark Replacement Conforming Changes.* In connection with the implementation of a Benchmark Replacement, the Lender will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Credit Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this agreement or any other Credit Document.
- (c) *Notices; Standards for Decisions and Determinations.* The Lender will promptly notify the Borrower of (i) any occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes, (iv) the removal or reinstatement of any tenor of a Benchmark pursuant to clause (d) below and (v) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Lender pursuant to this Section 3.11 including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this agreement or any other Credit Document, except, in each case, as expressly required pursuant to this Section 3.11.
- (d) *Unavailability of Tenor of Benchmark.* Notwithstanding anything to the contrary herein or in any other Credit Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including Term SOFR or LIBOR and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Lender in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is or will be no longer representative, then the Lender may modify the definition of "Interest Period" for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is or will no longer be representative for a Benchmark (including a Benchmark Replacement), then the Lender may modify the definition of "Interest Period" for all Benchmark settings at or after such time to reinstate such previously removed tenor.

- (e) *Benchmark Unavailability Period.* Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for an advance of, conversion to or continuation of a LIBOR Loan to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for an extension of credit of or conversion to a Base Rate Canada Loan.
- (f) *Lender Disclaimer.* The Lender does not warrant or accept responsibility for, and shall not have any liability with respect to (a) the administration of, submission of, calculation of or any other matter related to any Benchmark, any component definition thereof or rates referenced in the definition thereof or any alternative, comparable or successor rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, comparable or successor rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, such Benchmark or any other Benchmark, or (b) the effect, implementation or composition of any Benchmark Replacement Conforming Changes.
- (g) *Acknowledgement of LIBOR Replacement.* The interest rate on LIBOR Loans is determined by reference to LIBOR, which is derived from the London interbank offered rate. LIBOR is intended to represent the rate at which contributing banks may obtain short-term borrowings from each other in the London interbank market. On March 5, 2021 the Financial Conduct Authority ("FCA"), the regulatory supervisor of LIBOR's administrator ("IBA"), announced in a public statement the future cessation or loss of representativeness of overnight/Spot Next, 1-month, 3-month, 6-month and 12-month LIBO Rate tenor settings. In light of this eventuality, public and private sector industry initiatives are currently underway to identify new or alternative reference rates to be used in place of LIBR. In the event that LIBOR is no longer available as set forth in this Section 3.11 or in the event of certain other circumstances as set forth in Section 3.5, such provisions provide mechanisms for determining an alternative, successor or replacement reference rate. The parties hereto hereby acknowledge that there is no assurance that the composition or characteristics of any such alternative, successor or replacement reference rate, as it may or may not be adjusted pursuant to this Section 3.11, will be similar to or produce the same value or economic equivalence as LIBOR or that such alternative, successor or replacement reference rate will have the same volume or liquidity as did LIBOR prior to its discontinuance or unavailability.
- (h) *Certain Defined Terms.* As used in this Section 3.11:

"Available Tenor" means, as of any date of determination and with respect to the then-current Benchmark, as applicable, any tenor for such Benchmark or payment period for interest calculated with reference to such Benchmark, as applicable,

that is or may be used for determining the length of an Interest Period pursuant to this agreement as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of "Interest Period" pursuant to clause (d) of this Section 3.11.

"Benchmark" means, initially, LIBOR; provided that if a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred with respect to LIBOR or the then-current Benchmark, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to clause (a) of this Section 3.11.

"Benchmark Replacement" means, for any Available Tenor, the first alternative set forth in the order below that can be determined by the Lender for the applicable Benchmark Replacement Date:

- (i) the sum of: (a) Term SOFR and (b) the related Benchmark Replacement Adjustment;
- (ii) the sum of: (a) Daily Simple SOFR and (b) the related Benchmark Replacement Adjustment;
- (iii) the sum of: (a) the alternate benchmark rate that has been selected by the Lender and the Borrower as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for U.S. dollar-denominated syndicated credit facilities at such time and (b) the related Benchmark Replacement Adjustment;

provided that, in the case of clause (i), such Unadjusted Benchmark Replacement is displayed on a screen or other information service that publishes such rate from time to time as selected by the Lender in its reasonable discretion. If the Benchmark Replacement as determined pursuant to clause (i), (ii) or (iii) above would be less than zero, the Benchmark Replacement will be deemed to be zero for the purposes of this agreement.

"Benchmark Replacement Adjustment" means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Interest Period and Available Tenor for any setting of such Unadjusted Benchmark Replacement:

- (i) for purposes of clauses (i) and (ii) of the definition of "Benchmark Replacement," the first alternative set forth in the order below that can be determined by the Lender:

- (A) the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that has been selected or recommended by the Relevant Governmental Body for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for the applicable Corresponding Tenor;
 - (B) the spread adjustment (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that would apply to the fallback rate for a derivative transaction referencing the ISDA Definitions to be effective upon an index cessation event with respect to such Benchmark for the applicable Corresponding Tenor; and
- (ii) for purposes of clause (iii) of the definition of “Benchmark Replacement,” the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Lender and the Borrower for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body on the applicable Benchmark Replacement Date or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for U.S. dollar- denominated syndicated credit facilities;

provided that, in the case of clause (i) above, such adjustment is displayed on a screen or other information service that publishes such Benchmark Replacement Adjustment from time to time as selected by the Lender in its reasonable discretion.

“Benchmark Replacement Conforming Changes” means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Alternate Base Rate Canada”, the definition of “Banking Day,” the definition of “Interest Period,” timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Lender decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Lender in a manner substantially

consistent with market practice (or, if the Lender decides that adoption of any portion of such market practice is not administratively feasible or if the Lender determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Lender decides is reasonably necessary in connection with the administration of this agreement and the other Credit Documents).

“Benchmark Replacement Date” means the earliest to occur of the following events with respect to the then-current Benchmark:

- (i) in the case of clause (i) or (ii) of the definition of “Benchmark Transition Event,” the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof);
- (ii) in the case of clause (iii) of the definition of “Benchmark Transition Event,” the date of the public statement or publication of information referenced therein; or
- (iii) in the case of an Early Opt-in Election, the sixth (6th) Banking Day after the date notice of such Early Opt-in Election is provided to the Lender.

For the avoidance of doubt, (A) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (B) the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (i) or (ii) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Transition Event” means the occurrence of one or more of the following events with respect to the then-current Benchmark:

- (i) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

- (ii) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or
- (iii) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer representative.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“**Benchmark Unavailability Period**” means the period (if any) (x) beginning at the time that a Benchmark Replacement Date pursuant to clauses (i) or (ii) of that definition has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder in accordance with this Section 3.11 and (y) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and in accordance with this Section 3.11.

“**Corresponding Tenor**” with respect to any Available Tenor means, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.

“**Daily Simple SOFR**” means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Lender in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining “Daily Simple SOFR” for business loans; provided, that if the Lender decides that any such convention is not

administratively feasible for the Lender, then the Lender may establish another convention in its reasonable discretion.

“Early Opt-in Election” means, if the then-current Benchmark is LIBOR, the occurrence of:

- (i) a notification by the Lender to the Borrower (or the notification by the Borrower to the Lender) that at least five currently outstanding U.S. dollar-denominated syndicated credit facilities at such time contain (as a result of amendment or as originally executed) a SOFR-based rate (including SOFR, a term SOFR or any other rate based upon SOFR) as a benchmark rate (and such syndicated credit facilities are identified in such notice and are publicly available for review), and
- (ii) the joint election by the Lender and the Borrower to trigger a fallback from LIBOR.

“ISDA Definitions” means the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time by the International Swaps and Derivatives Association, Inc. or such successor thereto.

“Reference Time” with respect to any setting of the then-current Benchmark means (A) if such Benchmark is LIBOR, 11:00 a.m. (London, England time) on the second Banking Day preceding the date of such setting, and (B) if such Benchmark is not LIBOR, the time determined by the Lender in its reasonable discretion.

“Relevant Governmental Body” means the Federal Reserve Board or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board or the Federal Reserve Bank of New York, or any successor thereto.

“SOFR” means, with respect to any Banking Day, a rate per annum equal to the secured overnight financing rate for such Banking Day published by the SOFR Administrator on the SOFR Administrator’s Website at approximately 8:00 a.m. (Toronto time) on the immediately succeeding Banking Day.

“SOFR Administrator” means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“SOFR Administrator’s Website” means the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

“**Term SOFR**” means, for the applicable Corresponding Tenor as of the applicable Reference Time, the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

“**Unadjusted Benchmark Replacement**” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

ARTICLE 4 DRAWDOWNS

4.1 Drawdown Notice. Subject to the terms and conditions hereof and provided that all of the applicable conditions precedent set forth in Article 12 have been fulfilled by the Borrower or waived by the Lender, the Borrower may have credit extended to it under the relevant Credit Facility from time to time (i) as regards the RT Facility only, by way of overdraft for Prime Rate Loans and Base Rate Canada Loans and (ii) as regards each of the Credit Facilities, by way of drawdown by giving to the Lender an irrevocable notice (“**Drawdown Notice**”) in accordance with Section 3.9, in substantially the form of Schedule C hereto and specifying:

- (a) the Credit Facility under which the credit is to be extended;
- (b) the date the credit is to be extended;
- (c) whether the credit is to be extended by way of Loan, Letter or Bankers’ Acceptance;
- (d) in the case of any credit to be extended by way of Loan, the type of Loan and the principal amount of the Loan;
- (e) in the case of any credit to be extended by way of Fixed Rate Loan, the applicable term thereof;
- (f) in the case of any credit to be extended by way of Bankers’ Acceptances, the aggregate face amount of the Bankers’ Acceptances to be issued and the term of the Bankers’ Acceptances; and
- (g) if the credit is to be obtained by way of Letter, the named beneficiary of the Letter, the maturity date and amount of the Letter, the currency in which the Letter is to be denominated and all other terms of the Letter (including, without limitation, (i) the proposed form of the Letter (if not in the Lender’s standard form) and (ii) if the Letter is to be issued on behalf of a Subsidiary of the Borrower as well as on behalf of the Borrower, the name of such Subsidiary).

If credit is to be obtained by way of Letter and if such Letter is to be issued on behalf of a Subsidiary of the Borrower as well as on behalf of the Borrower, the Borrower shall ensure that accompanying such Drawdown Notice is an instrument, substantially in the form of Schedule C hereto, and pursuant to which such Subsidiary shall agree, without qualification, to reimburse the

Lender on demand for the full amount of each and any Draft presented to and paid by the Lender in accordance with such Letter.

4.2 Drawdown Restrictions. Only one further drawdown shall be permitted under the NRT Facility and such drawdown shall be made on the Second Restatement Date. No further drawdowns shall be permitted under the BCAP Facility.

ARTICLE 5 ROLLOVERS

5.1 Bankers' Acceptances. Subject to the terms and conditions hereof and provided that the Borrower has, by giving notice to the Lender in accordance with Section 5.3, requested the Lender to accept drafts of the Borrower to replace all or a portion of outstanding Bankers' Acceptances under a particular Credit Facility as they mature, the Lender shall, on the maturity of such Bankers' Acceptances, accept the Borrower's draft or drafts having an aggregate face amount equal to the aggregate face amount of the matured Bankers' Acceptances or the portion thereof to be replaced.

5.2 BA Equivalent Loans. Subject to the terms and conditions hereof and provided that the Borrower has, by giving notice to the Lender in accordance with Section 5.3, requested the Lender to continue to extend credit by way of BA Equivalent Loans, to replace all or a portion of an outstanding BA Equivalent Loan under the RT Facility or NRT Facility, as applicable, as it matures, the Lender shall, on the maturity of such BA Equivalent Loan continue to extend credit to the Borrower by way of a BA Equivalent Loan, as the case may be, (without a further advance of funds to the Borrower) in the principal amount equal to the principal amount of the matured BA Equivalent Loan. The provisions of Section 3.4 with respect to the payment of interest on a BA Equivalent Loan shall apply *mutatis mutandis* to any rollover of a BA Equivalent Loan pursuant to this Section 5.2.

5.3 Rollover Notice. The notice to be given to the Lender pursuant to Section 5.1 or 5.2 ("**Rollover Notice**") shall be irrevocable, shall be given in accordance with Section 3.9, shall be substantially in the form of Schedule D hereto and shall specify:

- (a) the Credit Facility under which the rollover is to occur;
- (b) the maturity date of the maturing Bankers' Acceptances or BA Equivalent Loan, as the case may be;
- (c) the face amount of the maturing Bankers' Acceptances or the principal amount of the maturing BA Equivalent Loan, as the case may be, and the portion thereof to be replaced;
- (d) in the case of maturing Banker's Acceptances, the aggregate face amount of the new Bankers' Acceptances to be issued and the term or terms of the new Bankers' Acceptances; and

- (e) in the case of maturing BA Equivalent Loans, the aggregate principal amount of the new BA Equivalent Loans and the term or terms of the new BA Equivalent Loans.

ARTICLE 6 CONVERSIONS

6.1 Converting Loan to Other Type of Loan. Subject to the terms and conditions hereof and provided that the Borrower has, by giving notice to the Lender in accordance with Section 6.4, requested the Lender to convert all or a portion of an outstanding Loan under the RT Facility or NRT Facility, as applicable, (other than a BA Equivalent Loan) into another type of Loan (other than a BA Equivalent Loan or a LIBOR Loan), the Lender shall, on the date of conversion (which, in the case of the conversion of all or a portion of an outstanding LIBOR Loan, shall be the date on which the Loan matures), continue to extend credit to the Borrower by way of the type of Loan into which the outstanding Loan or a portion thereof is converted in the aggregate principal amount equal to the principal amount of the Loan being converted or the Exchange Equivalent thereof.

6.2 Converting Loan to Bankers' Acceptances. Subject to the terms and conditions hereof and provided that the Borrower has, by giving notice to the Lender in accordance with Section 6.4, requested the Lender to accept its drafts to replace all or a portion of an outstanding Loan under the RT Facility or NRT Facility, as applicable, and, if a Fixed Rate Loan or a BA Equivalent Loan is to be replaced the date of conversion is the date on which such Loan matures, the Lender shall, on the date of conversion, accept the Borrower's draft or drafts having an aggregate face amount equal to the aggregate principal amount of such Loan or the portion thereof which is being converted.

6.3 Converting Bankers' Acceptances to Loan. The Lender shall, on the maturity date of a Bankers' Acceptance, pay to the holder thereof the face amount of such Bankers' Acceptance. Provided that the Borrower has, by giving notice to the Lender in accordance with Section 6.4, requested the Lender to convert all or a portion of outstanding maturing Bankers' Acceptances under the RT Facility or NRT Facility, as applicable, into a Loan, the Lender shall, upon the maturity date of such Bankers' Acceptances and the payment by the Lender to the holders of such Bankers' Acceptances of the aggregate face amount thereof and concurrent with the payment by or on behalf of the Borrower to the Lender of the aggregate face amount of such Bankers' Acceptances, extend credit to the Borrower by way of the Loan into which the matured Bankers' Acceptances or a portion thereof are converted in the aggregate principal amount equal to the aggregate face amount of the matured Bankers' Acceptances or the portion thereof which are being converted or the Exchange Equivalent thereof. Where the Lender has funded the Borrower by way of a BA Equivalent Loan rather than by way of Bankers' Acceptances, the provisions of this Section 6.3 as they relate to Bankers' Acceptances shall apply *mutatis mutandis* to such BA Equivalent Loan.

6.4 Conversion Notice. The notice to be given to the Lender pursuant to Section 6.1, 6.2 or 6.3 ("**Conversion Notice**") shall be irrevocable, shall be given in accordance with Section 3.9, shall be substantially in the form of Schedule E hereto and shall specify:

- (a) the Credit Facility under which the conversion is to take place;
- (b) whether an outstanding Loan or Bankers' Acceptances are to be converted and, if an outstanding Loan is to be converted, the type of Loan to be converted;
- (c) the date on which the conversion is to take place;
- (d) the face amount of the Bankers' Acceptances or the portion thereof which is to be converted or the principal amount of the Loan or the portion thereof which is to be converted;
- (e) the type and amount of the Loan or Bankers' Acceptances into which the outstanding Loan or Bankers' Acceptances are to be converted;
- (f) if an outstanding Loan or Bankers' Acceptances are to be converted into a Fixed Rate Loan, the applicable term of the new Fixed Rate Loan; and
- (g) if an outstanding Loan is to be converted into Bankers' Acceptances, the aggregate face amount of the new Bankers' Acceptances to be issued and the term or terms of the new Bankers' Acceptances.

6.5 Absence of Notice. Subject to the terms and conditions hereof, with respect to any maturing Fixed Rate Loan, LIBOR Loan or Bankers' Acceptance, in the absence of a Rollover Notice or Conversion Notice delivered to the Lender by 10 a.m. (Toronto time) on the date of such maturity, a maturing LIBOR Loan shall be automatically converted to a Base Rate Canada Loan and a maturing Fixed Rate Loan, Bankers' Acceptance or BA Equivalent Loan shall be automatically converted to a Prime Rate Loan as though a notice to such effect had been given in accordance with Section 6.4.

6.6 Conversion After Default. If a Default has occurred and is continuing at 10:00 a.m. (Toronto time) on the second Banking Day prior to the maturity date of a Fixed Rate Loan, LIBOR Loan, BA Equivalent Loan or Bankers' Acceptance, such LIBOR Loan shall automatically convert to a Base Rate Canada Loan and such Fixed Rate Loan, BA Equivalent Loan or Bankers' Acceptance shall automatically convert to a Prime Rate Loan as though a notice to such effect had been given in accordance with Section 6.4.

ARTICLE 7 INTEREST

7.1 Interest Rates. The Borrower shall pay to the Lender, in accordance with Section 3.7, interest on the outstanding principal amount from time to time of each Loan (other than BA Equivalent Loans) and on the amount of overdue interest thereon from time to time, at the rate per annum equal to:

- (a) the Prime Rate plus ██████% in the case of each Prime Rate Loan under the RT Facility;

- (b) the Prime Rate plus ■■■% in the case of each Prime Rate Loan under the NRT Facility;
- (c) the Prime Rate plus ■■■% in the case of each Prime Rate Loan under the BCAP Facility;
- (d) the Alternate Base Rate Canada plus ■■■% in the case of each Base Rate Canada Loan under the RT Facility;
- (e) the Alternate Base Rate Canada plus ■■■% in the case of each Base Rate Canada Loan under the NRT Facility; and
- (f) the applicable Fixed Rate in the case of each Fixed Rate Loan.

7.2 Interest In Advance. Interest on each BA Equivalent Loan shall be paid in advance as provided in Section 3.4.

7.3 Calculation and Payment of Interest.

- (a) Interest on the outstanding principal amount from time to time of each Loan (other than BA Equivalent Loans) and on the amount of overdue interest thereon from time to time shall accrue from day to day from and including the date on which credit is obtained by way of such Loan or the date on which such payment of overdue interest was due, as the case may be, to but excluding the date on which such Loan or such overdue interest, as the case may be, is repaid in full (both before and after maturity and as well after as before judgment) and shall be calculated on the basis of the actual number of days elapsed divided by 365 or 366 in the case of a leap year (in the case of a Prime Rate Loan or a Base Rate Canada Loan) or divided by 360 days (in the case of a LIBOR Loan).
- (b) Accrued interest shall be paid,
 - (i) in the case of interest on Prime Rate Loans and Base Rate Canada Loans, quarterly in arrears on the last Banking Day of each Fiscal Quarter;
 - (ii) in the case of interest on Fixed Rate Loans, on the last day of the applicable term; provided that, in the case of term of a duration longer than three months, accrued interest shall be paid no less frequently than every three months from the first day of such term and on the date on which such Loans are otherwise required to be repaid; and
 - (iii) in the case of interest on LIBOR Loans, on the last day of the applicable Interest Period; provided that, in the case of Interest Periods of a duration longer than three months, accrued interest shall be paid no less frequently than every three months from the first day of such Interest Period during the term of such Interest Period and on the date on which such Loans are otherwise required to be repaid.

7.4 General Interest Rules.

- (a) For the purposes hereof, whenever interest is calculated on the basis of a year of 360, 365 or 366 days, each rate of interest determined pursuant to such calculation expressed as an annual rate for the purposes of the *Interest Act* (Canada) is equivalent to such rate as so determined multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by 360, 365 or 366, respectively.
- (b) Interest on each Loan shall be payable in the currency in which such Loan is denominated during the relevant period.
- (c) If the Borrower fails to pay any fee or other amount of any nature payable by them to the Lender hereunder (other than principal or interest) on the due date therefor or under any document, instrument or agreement delivered pursuant hereto on the due date therefor, the Borrower shall pay to the Lender interest on such overdue amount in the same currency as such overdue amount is payable from and including such due date to but excluding the date of actual payment (as well after as before judgment) at the rate per annum, calculated and compounded monthly, which is equal to:
 - (i) the Alternate Base Rate Canada plus [REDACTED]% in the case of overdue amounts denominated in U.S. dollars; and
 - (ii) the Prime Rate plus [REDACTED]% in the case of all other overdue amounts.

Such interest on overdue amounts shall become due and be paid on demand by the Lender.

7.5 [Reserved].

7.7 Acceptance Fees. Upon the acceptance of any draft or drafts of the Borrower pursuant hereto, the Borrower shall pay to the Lender, in accordance with Section 3.7, in advance, an acceptance fee calculated at the rate per annum, on the basis of a year of 365 days or 366 days in the case of a leap year, equal to [REDACTED]% on the face amount of such Bankers' Acceptances under the RT Facility or equal to [REDACTED]% on the face amount of such Bankers' Acceptances under the NRT Facility, in each case for its term, being the actual number of days in the period commencing on the date of acceptance of the Borrower's draft or drafts and ending on but excluding the maturity date of the Bankers' Acceptance, provided that the minimum amount of such acceptance fee with respect to any extension of credit shall be \$500. With respect to each drawdown by way of Bankers' Acceptances, such acceptance fees shall be paid by the Lender deducting the amount thereof from the BA Discounted Proceeds before the Lender remits the BA Proceeds to the Borrower as provided in Section 3.33.3(c). With respect to each rollover of and conversion into Bankers' Acceptances, such acceptance fees shall be paid by the Borrower to the Lender as provided in Section 3.33.3(c). Each such payment is non-refundable and fully earned when due.

7.8 Standby Fees. Upon the last Banking Day of each Fiscal Quarter and upon the termination of the RT Facility pursuant to Section 2.5, the Borrower shall pay to the Lender in accordance with Section 3.7, in arrears, a standby fee on the Available RT Credit, calculated and accruing daily from the Closing Date at the rate per annum, calculated on the basis of a year of 365 days or 366 days in the case of a leap year, equal to [REDACTED] % during such period.

7.9 Letter Fees. The Borrower shall pay to the Lender, in accordance with Section 3.7, an issuance fee in arrears on the last Banking Day of each Fiscal Quarter and upon the termination of the RT Facility, calculated at a rate per annum equal to [REDACTED] % (in the case of Letters which are standby letters of credit) or the Lender's standard rate (in the case of Letters which are documentary letters of credit) on the basis of a year of 365 days or 366 days in the case of a leap year and on the amount of each such Letter for a period of time equal to the number of days elapsed since the issuance date or the last payment date. In addition, with respect to all Letters, the Borrower shall from time to time pay to the Lender its usual and customary fees (at the then prevailing rates) for the amendment, delivery, administration and transfer of letters of credit such as the Letters. Each such payment is non-refundable and fully earned when due.

7.10 Arrangement Fee. The Borrower shall pay to the Lender in accordance with Section 3.7, an annual arrangement fee equal to [REDACTED] % of the BCAP Credit Limit on the date such arrangement fee is due and payable. The first such payment shall be due and payable on the Restatement Date and thereafter on each anniversary thereof for so long as credit under the BCAP Facility remains outstanding. Such arrangement fee shall be non-refundable and fully earned when due.

7.11 Default Rate. During any period that an Event of Default has occurred and is continuing, each interest rate referred to in Section 7.1 and the acceptance fee referred to in Section 7.6 shall, to the extent permitted by Applicable Law, be increased by [REDACTED] % per annum.

7.12 BCAP Facility Fee. The Borrower shall pay to the Lender in accordance with Section 3.7, an annual BCAP Facility fee equal to [REDACTED] % of the of the BCAP Credit Limit as in effect on the applicable date of calculation (the "BCAP Facility Fee"). The BCAP Facility Fee shall be calculated and payable in accordance with the following schedule:

Calculation Date	Payment Due Date	Percentage (%) of BCAP Credit Limit Payable
Restatement Date	April 23, 2021	[REDACTED] % x 180/365
Restatement Date	July 23, 2021	[REDACTED] % x 185/365
First anniversary of Restatement Date	November 10, 2021	[REDACTED] % x 90/365
First anniversary of Restatement Date	January 24, 2022	[REDACTED] % x 90/365

First anniversary of Restatement Date	April 22, 2022	■% x 90/365
First anniversary of Restatement Date	July 22, 2022	■% x 95/365

The BCAP Facility Fee shall be calculated daily at the applicable rate per annum, calculated on the basis of a year of 365 days or 366 days in the case of a leap year. The BCAP Facility Fee shall be non-refundable and fully earned when due. Notwithstanding the foregoing, the Lender may amend the due date of each BCAP Facility Fee payment in its sole discretion.

7.13 Upfront Fee. The Borrower shall pay to the Lender in accordance with Section 3.7, an upfront fee of \$■ (such amount being equal to ■ basis points per annum on the Lender's commitments under the RT Facility and NRT Facility as of the Second Restatement Date and for the period commencing on the Second Restatement Date and ending January 2, 2024), which such upfront fee shall be due and payable on the Second Restatement Date. Such upfront fee shall be non-refundable, fully earned when due and payable in cash, warrant options (with respect to options to purchase Shares of the Borrower) or a combination of cash and such warrant options. Any such warrant options shall be delivered to the Lender within 30 days of the Second Restatement Date.

**ARTICLE 8
RESERVE, CAPITAL, INDEMNITY AND TAX PROVISIONS**

8.1 Conditions of Credit. The obtaining or maintaining of credit hereunder shall be subject to the terms and conditions contained in this Article 8.

8.2 Increased Costs.

- (a) **Increased Costs Generally.** If from time to time any Change in Law shall:
- (i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, the Lender;
 - (ii) subject the Lender to any Tax of any kind whatsoever with respect to this agreement, any Letter, any participation in a Letter, or any extension of credit made by it, (including, without limitation, any "transaction tax" not based on income), or change the basis of taxation of payments to the Lender in respect thereof, except for (A) Indemnified Taxes or Other Taxes covered by Section 8.5, and (B) any Excluded Tax payable by the Lender; or
 - (iii) impose on the Lender or any applicable interbank market any other condition, cost or expense affecting this agreement or extensions of credit made by the Lender;

and the result of any of the foregoing shall be to increase the cost to the Lender of making or maintaining any extension of credit (or of maintaining its obligation to make any such extensions of credit), or to reduce the amount of any sum received or receivable by the Lender hereunder (whether of principal, interest or any other amount), then upon request of the Lender from time to time the Borrower will pay to the Lender such additional amount or amounts as will compensate the Lender for such additional costs incurred or reduction suffered, such amount or amounts to be determined in the sole and absolute discretion of the Lender, acting reasonably.

- (b) **Capital and Liquidity Requirements.** If the Lender determines in its sole and absolute discretion, acting reasonably, that any Change in Law affecting the Lender or any lending office of the Lender regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on the Lender's capital as a consequence of this agreement, the commitments of the Lender hereunder or the credit extended by the Lender hereunder, to a level below that which the Lender could have achieved but for such Change in Law (taking into consideration the Lender's policies with respect to, as applicable, capital adequacy or liquidity requirements), then from time to time the Borrower will pay to the Lender such additional amount or amounts as will compensate the Lender for any such reduction suffered, such amount or amounts to be determined in the sole and absolute discretion of the Lender, acting reasonably.
- (c) **Certificates for Reimbursement.** A certificate of the Lender setting forth the amount or amounts necessary to compensate the Lender as specified in paragraph (a) or (b) of this Section, including reasonable detail of the basis of calculation of the amount or amounts, and delivered to the Borrower from time to time shall be conclusive absent manifest error. The Borrower shall pay the Lender the amount shown as due on any such certificate within 10 days after receipt thereof.
- (d) **Delay in Requests.** Failure or delay on the part of the Lender to demand compensation pursuant to this Section shall not constitute a waiver of the Lender's right to demand such compensation, except that the Borrower shall not be required to compensate the Lender pursuant to this Section for any increased costs incurred or reductions suffered more than six months prior to the date that the Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of the Lender's intention to claim compensation therefore, unless the Change in Law giving rise to such increased costs or reductions is retroactive, in which case the six-month period referred to above shall be extended to include the period of retroactive effect thereof.

8.3 Indemnity Relating to Credits. Upon notice from the Lender to the Borrower (which notice shall be accompanied by a detailed calculation of the amount to be paid by the Borrower), the Borrower shall pay to the Lender such amount or amounts as will compensate the Lender for any reasonable loss, cost or expense incurred by them:

- (a) in the liquidation or redeposit of any funds acquired by the Lender to fund or maintain any portion of a Fixed Rate Loan, LIBOR Loan or BA Equivalent Loan as a result of:
 - (i) the failure of the Borrower to borrow or make repayments on the dates specified under this agreement or in any notice from the Borrower to the Lender (provided that if any notice specifies the repayment of a Fixed Rate Loan, a LIBOR Loan or a BA Equivalent Loan at any time other than its maturity date, then the Borrower shall be responsible for any reasonable loss, costs or expenses referred to above); or
 - (ii) the repayment or prepayment of any amounts on a day other than the payment dates prescribed herein or in any notice from the Borrower to the Lender (provided that if any notice specifies the repayment of a Fixed Rate Loan, a LIBOR Loan or a BA Equivalent Loan at any time other than its maturity date, then the Borrower shall be responsible for any reasonable loss, costs or expenses referred to above);
- (b) in converting United States dollars into Canadian dollars or Canadian dollars into United States dollars as a result of the failure of the Borrower to make repayments of outstanding credit hereunder in the currency in which such outstanding credit was denominated; or
- (c) with respect to any Bankers' Acceptance or Letter, arising from claims or legal proceedings, and including reasonable legal fees and disbursements, respecting the obtaining of credit by the Borrower by way of such Bankers' Acceptance or Letter, the collection of amounts owed by the Borrower hereunder in respect of such Bankers' Acceptance or Letter or the enforcement of the Lender's rights hereunder in respect of such Bankers' Acceptance or Letter including, without limitation, legal proceedings attempting to restrain the Lender from paying any amount under such Bankers' Acceptance or Letter except for any such reasonable loss, cost or expense that a court of competent jurisdiction determined arose on account of the gross negligence or wilful misconduct of the Lender.

8.4 Indemnity for Transactional and Environmental Liability.

- (a) The Borrower hereby agrees to indemnify, exonerate and hold the Lender free and harmless from and against any and all claims, demands, actions, causes of action, suits, losses, costs (including, without limitation, all Other Taxes), charges, liabilities and damages, and expenses in connection therewith (irrespective of whether the Lender is a party to the action for which indemnification hereunder is sought), and including, without limitation, reasonable legal fees, documented out of pocket disbursements and reasonable amounts paid to or to indemnify the Lender's affiliates, employees, officers, directors and agents (collectively, in this Section 8.4(a), the "**Indemnified Liabilities**"), paid, incurred or suffered by the Lender as a result of, or arising out of, or relating to (i) any use made or to be

made in whole or in part, directly or indirectly, with the proceeds of any credit obtained hereunder, or (ii) the execution, delivery, performance or enforcement of this agreement and any instrument, document or agreement executed pursuant hereto, except for any such Indemnified Liabilities that a court of competent jurisdiction determined arose on account of the Lender's gross negligence or willful misconduct. For greater certainty, Indemnified Liabilities shall not include any Excluded Taxes.

- (b) Without limiting the generality of the indemnity set out in Section 8.4(a), the Borrower hereby further agrees to indemnify, exonerate and hold the Lender free and harmless from and against any and all claims, demand, actions, causes of action, suits, losses, costs, charges, liabilities and damages, and expenses in connection therewith, including, without limitation, reasonable legal fees, documented out of pocket disbursements and reasonable amounts paid to or to indemnify the Lender's affiliates, employees, officers, directors and agents, of any and every kind whatsoever (collectively, in this Section 8.4(b), the "**Indemnified Liabilities**"), paid, incurred or suffered by the Lender for, with respect to, or as a direct or indirect result of, (i) the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release from, any Real Property of any Hazardous Material or (ii) the breach or violation of any Environmental Law by the Obligors, except for any such Indemnified Liabilities that a court of competent jurisdiction determines arose on account of the Lender's gross negligence or willful misconduct.
- (c) All obligations provided for in this Section 8.4 shall survive any termination of the Credit Facilities or this agreement and shall not be reduced or impaired by any investigation made by or on behalf of the Lender.
- (d) If, for any reason, the obligations of the Borrower pursuant to this Section 8.4 shall be unenforceable, the Borrower agrees to make the maximum contribution to the payment and satisfaction of each obligation that is permissible under Applicable Law, except to the extent that a court of competent jurisdiction determines such obligations arose on account of the gross negligence or willful misconduct of the Lender.

8.5 Payments Free and Clear of Taxes.

- (a) Any and all payments made by the Borrower hereunder or under any other Loan Document (any such payment being hereinafter referred to as a "**Payment**") to or for the benefit of the Lender shall be made without set-off or counterclaim, and free and clear of, and without deduction or withholding for, or on account of, any and all present or future Taxes, except to the extent such deduction or withholding is required by Applicable Law or the administrative practice of any Official Body. If the Borrower shall be so required to deduct or withhold any Taxes from or in respect of any Payment made to or for the benefit of the Lender, the Borrower shall:

- (i) promptly notify the Lender of such requirement;
 - (ii) with respect to Indemnified Taxes, pay to the Lender in addition to the Payment to which the Lender is otherwise entitled. such additional amount as is necessary to ensure that the net amount received by the Lender (free and clear of, and net of, any Indemnified Taxes, including the full amount of any Indemnified Taxes required to be deducted or withheld from any additional amount paid by the Borrower under this Section 8.5(a), whether assessable against the Borrower or the Lender) equals the full amount the Lender would have received had no such deduction or withholding been required;
 - (iii) make such deduction or withholding;
 - (iv) pay to the relevant Official Body in accordance with Applicable Law the full amount of Taxes required to be deducted or withheld (including the full amount of Taxes required to be deducted or withheld from any additional amount paid by the Borrower to the Lender under this Section 8.5(a)), within the time period required by Applicable Law; and
 - (v) as promptly as possible thereafter, forward to the Lender an original official receipt (or a certified copy), or other documentation reasonably acceptable to the Lender, evidencing such payment to such Official Body.
- (b) In addition, the Borrower agrees to pay any and all present or future stamp or documentary taxes or excise or property taxes, charges or levies of a similar nature, which arise from any Payment or from the execution, delivery or registration of, or otherwise with respect to, the Loan Documents and the transactions contemplated thereby (any such amounts being hereinafter referred to as “**Other Taxes**”).
- (c) The Borrower hereby indemnifies and holds harmless the Lender for the full amount of Indemnified Taxes and Other Taxes (including Indemnified Taxes and Other Taxes imposed under this Section 8.5(c)) levied, imposed or assessed against (and whether or not paid directly by) the Lender. In addition, the Borrower hereby indemnifies and holds harmless the Lender for all interest, penalties and reasonable expenses, resulting from or relating to the Borrower’s failure to:
- (i) remit to the Lender the documentation referred to in Section 8.5(a)(v); or
 - (ii) pay any Taxes or Other Taxes when due to the relevant Official Body (including, without limitation, any Taxes imposed by any Official Body on amounts payable under this Section 8.5)).

The provisions of this Section 8.5(c) shall apply whether or not such Taxes or Other Taxes were correctly or legally assessed. The Lender who pays any

Indemnified Taxes or Other Taxes, interest, penalties and reasonable expenses, shall promptly notify the Borrower of such payment, provided, however, that failure to provide such notice shall not detract from, or compromise, the obligations of the Borrower under this Section 8.5. Payment pursuant to this indemnification shall be made within 30 days from the date the Lender makes written demand therefor accompanied by a certificate as to the amount of such Indemnified Taxes or Other Taxes, interest, penalties and the calculation thereof, which certificate shall be conclusive absent manifest error.

- (d) If the Borrower determines in good faith that a reasonable basis exists for contesting any Indemnified Taxes for which a payment has been made under this Section 8.5, the Lender shall, if so requested by the Borrower, cooperate with the Borrower in challenging such Indemnified Taxes at the Borrower's expense.
- (e) If the Lender receives a refund of Taxes for which a payment has been made by the Borrower under this Section 8.5, which refund in the good faith judgment of the Lender is attributable to the Indemnified Taxes giving rise to such payment made by the Borrower, then the Lender shall reimburse the Borrower for such amount (if any, but not exceeding the amount of any payment made under this Section 8.5 that gives rise to such refund), net of out-of-pocket expenses of the Lender which the Lender determines in its absolute discretion will leave it, after such reimbursement, in no better or worse position than it would have been in if such Indemnified Taxes had not been exigible. The Borrower, upon the request of the Lender, agrees to repay the Lender any portion of any such refund paid over to the Borrower that the Lender is required to pay to the relevant Official Body and agrees to pay any interest, penalties or other charges paid by the Lender as a result of or related to such payment to such Official Body. Notwithstanding the foregoing, the Lender shall not be under any obligation to arrange its tax affairs in any particular manner so as to claim any refund.
- (f) The Borrower's obligations under this Section 8.5 shall survive without limitation the termination of the Credit Facilities and this agreement and all other Loan Documents and the permanent repayment of the outstanding credit and all other amounts payable hereunder.

ARTICLE 9 REPAYMENTS AND PREPAYMENTS

9.1 Repayment of RT Facility. The Borrower shall repay to the Lender in full the outstanding credit under the RT Facility on the Maturity Date together with all accrued and unpaid interest thereon and all accrued and unpaid fees with respect thereto. As concerns any Letter which, on the Maturity Date, has an expiry date later than the Maturity Date, the Borrower shall pay to the Lender, on the Maturity Date, the then contingent liability of the Lender thereunder (to be held solely for the purpose of satisfying any draw under such Letter and to be held subject to Section 13.4). Following such payment by the Borrower to the Lender, the Borrower shall have no further liability to the Lender with respect to any such Letter.

9.2 Repayment of NRT Facility. The Borrower shall repay to the Lender the full amount of credit outstanding under the NRT Facility in consecutive instalments on the last day of each Fiscal Quarter from and including March 31, 2021 to and including the last complete Fiscal Quarter before the Maturity Date, each such instalment to be in an amount equal to [REDACTED] % of the Fully Drawn NRT Amount. A further instalment shall be in the amount equal to the balance of the credit outstanding under the NRT Facility and shall be paid on the Maturity Date, at which time the Borrower shall also pay to the Lender all accrued and unpaid interest thereon and all unpaid and unpaid fees with respect thereto.

9.3 Repayment of BCAP Facility. The Fully Drawn BCAP Amount shall be repaid by the Borrower to the Lender in instalments. The instalments shall be paid on the last Banking Day of each calendar month from and including the month of October 2021 (such initial payment being due and payable on October 29, 2021) to and including the last full month prior to the BCAP Facility Maturity Date. Such instalments shall be in an amount equal to [REDACTED] % of the Fully Drawn BCAP Amount. The balance of credit outstanding under the BCAP Facility owing after the last of the aforesaid instalments, together with all accrued and unpaid interest thereon and all accrued and unpaid fees with respect thereto, shall be repaid on the BCAP Facility Maturity Date. Amounts which are repaid as aforesaid may not be reborrowed.

9.4 Voluntary Prepayments. Subject to Section 9.5, the Borrower shall be entitled, at its option, to prepay all or any portion of the outstanding Prime Rate Loans and Base Rate Canada Loans of the Borrower under a particular Credit Facility. Prepayments under the RT Facility pursuant to this Section 9.4 may be reborrowed. Prepayments under the NRT Facility or BCAP Facility pursuant to this Section 9.4 may not be reborrowed and shall be applied to the instalments referred to in Sections 9.2 or 9.3, as applicable, in inverse order of maturity. Any prepayment of all or any portion of any outstanding Loan must be in a minimum amount of \$250,000 or multiples of \$100,000 in excess thereof (in the case of any Prime Rate Loan) or U.S.\$250,000 or multiples of U.S.\$100,000 in excess thereof (in the case of any Base Rate Canada Loan). Fixed Rate Loans, BA Equivalent Loans, LIBOR Loans and Bankers' Acceptance may not be prepaid; however, (i) the Borrower may pay to the Lender (with the Lender's consent) on a date other than the last day of the term of a Bankers' Acceptance the face amount of such Bankers' Acceptance (to be held solely for the purpose of reimbursing the Lender for the amount paid by the Lender on the presentment thereof) and, following such payment by the Borrower, the Borrower shall have no further liability to the Lender with respect to such Bankers' Acceptance and (ii) provided that Section 8.3(a) is complied with, the Borrower may pay to the Lender (with the Lender's consent) on a date other than the last day of the term or Interest Period of a Fixed Rate Loan, a BA Equivalent Loan or a LIBOR Loan the face amount or principal amount thereof (to be held solely for the purpose of repaying such Loan on the maturity thereof) and, following such payment by the Borrower, the Borrower shall have no further liability to the Lender with respect to such Loan.

9.5 Prepayment Notice. The Borrower shall give written notice to the Lender of each voluntary prepayment pursuant to Section 9.4. Such notice (a "**Prepayment Notice**") shall be irrevocable, shall be given in accordance with Section 3.9, shall be substantially in the form of Schedule F hereto, and shall specify:

- (a) the Credit Facility under which the prepayment is to be made;
- (b) the date on which the prepayment is to take place; and
- (c) the type and principal amount of the Loan or the portion thereof which is to be prepaid.

9.6 **Mandatory Prepayments.**

- (a) On the sale or other disposition by any Obligor of any of their respective assets out of the ordinary course of business (excluding, for certainty, the disposition of the Subject Properties) which is not prohibited pursuant to Section 11.3(k) and for which the aggregate net proceeds of such sale or other disposition exceed \$250,000 and are not applied within 180 days following such sale or disposition to replace the assets so sold or disposed of (evidence of such application to be by means of copies of purchase orders and/or invoices), the Borrower shall prepay outstanding credit in the amount of proceeds of such disposition (net of the transaction costs of such disposition and net of any taxes exigible or payable by such Obligor as a result of such disposition).
- (b) On the receipt by any Obligor of any proceeds of property or casualty insurance and the aggregate amount thereof exceeds \$250,000, to the extent such proceeds are not applied within 180 days following the relevant casualty to replace, repair or restore the insured assets which were damaged or destroyed (evidence of such use to be by means of copies of purchase orders and/or invoices), the Borrower shall prepay outstanding credit in the amount of such proceeds (net of any taxes exigible or payable by such Obligor as a result of such casualty event).
- (c) On the receipt by any Obligor of any proceeds of the EDC Receivables Insurance Policy, the Borrower shall prepay outstanding credit in the amount of such proceeds.
- (d) On the receipt of the proceeds of the issuance by any Obligor of equity or debt securities, other than proceeds from ~~the 2019 Lassonde Equity Contribution or, subject to terms and conditions satisfactory to the Lender acting reasonably, other equity contributions received between July 31, 2019 and October 31, 2019~~ Specified Shareholder Contribution, the Borrower shall prepay outstanding credit in an amount equal to 100% of such proceeds (net of reasonable transactions costs), unless otherwise expressly agreed to in writing by the Lender, acting reasonably.
- (e) ~~All~~ Unless otherwise expressly provided, all amounts prepaid pursuant to this Section 9.6 shall be applied, firstly, until outstanding credit under the NRT Facility has been fully repaid, to the NRT Facility in inverse order of maturity, secondly, to the RT Facility until outstanding credit under the RT Facility has been fully repaid and thirdly, to the BCAP Facility until outstanding credit under the BCAP Facility has been fully repaid, in inverse order of maturity.

- (f) Any Specified Equity Contribution received by the Borrower shall be applied towards repayment of any outstanding credit under the RT Facility. To the extent required to comply with the preceding sentence, the Borrower shall repay the outstanding credit under the RT Facility within five Banking Days of receipt of the aforementioned Specified Equity Contribution.
- (g) Any Specified Shareholder Contribution (other than the 2023 Specified Shareholder Contribution and the 2024 Specified Shareholder Contribution) received by the Borrower shall be applied towards the repayment of any outstanding credit under the RT Facility.
- (h) On the receipt by any Obligor of any proceeds from the 2023 Specified Shareholder Contribution, the Borrower shall apply the proceeds therefrom as follows:
 - (i) \$1,322,331.06 of such proceeds shall be applied towards the prepayment of any outstanding credit under the BCAP Facility;
 - (ii) \$1,677,668.94 of such proceeds shall be applied towards the prepayment of any outstanding credit under the NRT Facility;
 - (iii) \$3,000,000 of such proceeds shall be applied towards the prepayment of any outstanding credit under the RT Facility;
 - (iv) up to \$1,000,000 of such proceeds shall be permitted to be applied towards the repayment of any outstanding Lasonde Debt; and
 - (v) the remaining balance of such proceeds shall be applied towards the prepayment of any outstanding credit under the RT Facility.
- (i) On the receipt by any Obligor of any proceeds from the disposition of a Subject Property, the Borrower shall prepay outstanding credit in the amount of the proceeds of such disposition (net of the transaction costs of such disposition and net of any taxes exigible or payable by such Obligor as a result of such disposition) as follows: firstly, towards any outstanding credit under the NRT Facility until all outstanding credit under such Credit Facilities has been fully repaid, and secondly, towards any outstanding credit under the RT Facility.
- (j) On the receipt by any Obligor of any proceeds from the 2024 Specified Shareholder Contribution, the Borrower shall apply the proceeds therefrom as follows: firstly, towards any outstanding credit under the NRT Facility until all outstanding credit under such Credit Facility has been fully repaid, and secondly, towards any outstanding credit under the RT Facility.

9.7 Reimbursement Obligation for Maturing Bankers' Acceptances. The Borrower hereby unconditionally agrees to pay to the Lender on the maturity date (whether at stated maturity, by acceleration or otherwise) of each Bankers' Acceptance the undiscounted face

amount of such then-maturing Bankers' Acceptance. The obligation of the Borrower to reimburse the Lender for then-maturing Bankers' Acceptances may be satisfied by the Borrower by:

- (a) paying to the Lender, in accordance with Section 3.7, on the maturity date of the Bankers' Acceptances an amount equal to the aggregate undiscounted face amount thereof, provided that the Borrower shall notify the Lender of its intention to reimburse the Lender in such manner prior to 10:00 a.m. (Toronto time) on such maturity date;
- (b) replacing the maturing Bankers' Acceptances with new Bankers' Acceptances in accordance with Section 5.1; or
- (c) converting the maturing Bankers' Acceptances into a Loan in accordance with Section 6.3 or 6.5.

In no event shall the Borrower claim from the Lender any grace period with respect to the aforesaid obligation of the Borrower to reimburse the Lender.

9.8 Repayments of Credit Excess. In the event that (x) any Credit Excess that arises solely as a result of currency fluctuations exceeds 2% of the aggregate of the RT Credit Limit or (y) any other Credit Excess exists at any time, the Borrower shall repay to the Lender on demand the amount of such Credit Excess. Each such repayment shall first be applied to repay outstanding Prime Rate Loans and Base Rate Canada Loans as selected by the Borrower and, to the extent that the amount of such repayment exceeds the aggregate amount of credit outstanding by way of such Loans which have been repaid, shall then be held in trust by the Lender to be applied to repay outstanding BA Equivalent Loans or LIBOR Loans or to satisfy reimbursement obligations with respect to outstanding Bankers' Acceptances or Letters as such Loans or Bankers' Acceptances mature or as such Letters are drawn upon, as the case may be. Any such cash held in trust by the Lender shall be held only during, and to the extent of, any Credit Excess which arises as a result of currency fluctuations.

9.9 Repayments of Borrowing Base Credit Excess. In the event that Borrowing Base Credit Excess exists at any time, the Borrower shall, within 10 Business Days of such occurrence, repay to the Lender the amount of such Borrowing Base Credit Excess. Each such repayment shall be applied towards repayment of any outstanding credit under the RT Facility.

9.10 ~~9.9~~ Currency of Repayment. All payments and repayments of outstanding credit hereunder shall be made in the currency of such outstanding credit.

9.11 ~~9.10~~ Reimbursement or Conversion on Presentation of Letters.

- (a) On presentation of a Letter and payment thereunder by the Lender, the Borrower shall forthwith pay to the Lender, and thereby reimburse the Lender for, all amounts paid by the Lender pursuant to such Letter. Such reimbursement shall be effected by a deemed extension of credit by way of Loan to such Borrower (without any advance of funds to Borrower), such Loan to be a Base Rate Canada Loan (if such Letter was denominated in U.S. dollars) or a Prime Rate Loan (if

such Letter was denominated in Canadian dollars) in the principal amount of the payment of the Lender thereunder.

- (b) If the Lender makes payment under any Letter and the Borrower does not fully reimburse the Lender on or before the date of payment, then Section 9.10(a) shall apply to deem a Loan to be outstanding to the Borrower under this agreement in the manner therein set out.

9.12

~~9.11~~ Letters Subject to an Order.

Subject to Section 13.4, the Borrower shall pay to the Lender an amount equal to the maximum amount available to be drawn under any unexpired Letter which becomes the subject of any Order; payment in respect of each such Letter shall be due forthwith upon demand. Once any such payment is made, the funds shall be deposited in a segregated account under the sole dominion and control of the Lender and may be used only for the purpose of reimbursing the Lender for amounts paid by the Lender in honouring a draft presented in respect of such Letter, whereupon the amount of outstanding credit with respect to such Letter shall thereafter be deemed to be nil. For greater certainty, upon such payment, a corresponding amount shall be added back to the availability under the RT Facility.

ARTICLE 10 REPRESENTATIONS AND WARRANTIES

10.1 Representations and Warranties. To induce the Lender to enter into this agreement and to extend credit to the Borrower hereunder from time to time, the Borrower hereby represents and warrants to the Lender as at the Second Restatement Date, as at the date of each subsequent extension of credit and as at the last day of each Fiscal Quarter (except for representations and warranties made as of a certain date and subject to Section 11.1(n) and 11.1(o)), as follows and acknowledges and confirms that the Lender is relying upon such representations and warranties in entering into this agreement and in extending credit hereunder:

- (a) **Status and Power.** Each Obligor is a corporation duly incorporated and validly subsisting under the laws of the Provinces of Ontario or British Columbia, as applicable. Except as set out in Section 10.1(a) of Schedule A, each Obligor is duly qualified, registered or licensed in all jurisdictions where such qualification, registration or licensing is required and each Obligor has all requisite capacity, power and authority to own, hold under licence or lease its properties, to carry on its business as now conducted and to otherwise enter into, and carry out the transactions contemplated by, the Loan Documents to which it is a party.
- (b) **Authorization and Enforcement of Loan Documents.** All necessary action, corporate or otherwise, has been taken to authorize the execution, delivery and performance by each Obligor of the Loan Documents to which it is a party. Each of the Obligors has duly executed and delivered the Loan Documents to which it is a party. The Loan Documents to which each Obligor is a party are legal, valid and binding obligations of such Obligor, enforceable against such Obligor by the other parties thereto in accordance with their respective terms, subject to the laws

of general application affecting creditors' rights and the discretion of the court in awarding equitable remedies.

- (c) **Compliance with Other Instruments.** The execution, delivery and performance by each Obligor of the Loan Documents to which it is a party, and the consummation of the transactions contemplated herein and therein (i) do not conflict with, result in any breach or violation of, or constitute a default under the terms, conditions or provisions of (A) the articles of incorporation or by-laws of, or any unanimous shareholder agreement or declaration relating to such Obligor, or (B) any Applicable Law binding on or applicable to such Obligor or to which its property is subject or any agreement, lease, licence, permit or other instrument to which such Obligor is a party or is otherwise bound or by which such Obligor benefits or to which any of its property is subject and (ii) do not require the consent or approval of any Official Body or any other Person which has not been obtained and provided to the Lender except where the lack of such consent or approval is Immaterial.
- (d) **Litigation, etc.** Except as set out in Section 10.1(d) of Schedule A, there are no actions, suits or proceedings which have been commenced or have been threatened in writing against or affecting any Obligor before any Official Body which contest any of the transactions contemplated in any of the Loan Documents. There are no actions, suits or proceedings which have been commenced or have been threatened in writing against or affecting any Obligor before any Official Body as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, would require any Obligor to pay more than \$50,000.
- (e) **Title to Assets.** Each Obligor has a good and marketable title to, and is the sole legal and beneficial owner of all of its property, assets and undertaking, free from any Liens other than the Permitted Liens, and no Person has any agreement or right to acquire any of such property, assets and undertaking except as permitted hereunder or as set out in Section 10.1(e) of Schedule A.
- (f) **Conduct of Business.** No Obligor is in violation of any mortgage, franchise, licence, permit, judgment, decree, order, statute, rule or regulation relating in any way to itself or to the operation of its business or to its property or assets in a manner which would reasonably be expected to have a Material Adverse Effect. Except as set out in Section 10.1(f) of Schedule A, each Obligor has all licenses, permits, registrations, approvals and consents which are required to own its properties and assets and to operate its businesses where they are currently being operated, other those which would be Immaterial.
- (g) **Insurance.** Each policy of insurance required to be maintained by each Obligor pursuant to Section 11.1(h) is being maintained and is in full force and effect.
- (h) **No Default.** No Default or Event of Default exists or would result from the incurring of any Secured Obligations by any Obligor. No Obligor is in default

under or with respect to any contractual obligation in any respect of which, individually or together with all such defaults, would reasonably be expected to have a Material Adverse Effect, or that would, if such default had occurred after the initial drawdown hereunder, result in a Default or an Event of Default.

- (i) **French Form of Corporate Name.** Except as set out in Section 10.1(i) of Schedule A hereto, there is no French form of the corporate name of any Obligor.
- (j) **Places of Business.** The location of the place or places of business (and, if there are more than one, the principal place of business) of each Obligor are as set out in Section 10.1(j) of Schedule A.
- (k) **Locations of Tangible Assets.** The addresses of all locations of the inventory, equipment and other tangible assets of each Obligor (other than inventory in transit, laptop computers, fax machines, printers, cell phones, PDAs, office supplies and motor vehicles owned by an Obligor and used by any employee thereof) and whether each location is owned or leased by the relevant Obligor or is a public warehouse or the premises of a customer of the relevant Obligor are as set out in Section 10.1(k) of Schedule A hereto. With respect to inventory located at a public warehouse, no Obligor has issued a negotiable document of title with respect thereto.
- (l) **Consents, Approvals, etc.** Other than as set forth in Section 10.1(l) of Schedule A, no consents, approvals, acknowledgements, undertakings, non-disturbance agreements, directions or other documents or instruments which have not already been provided to the Lender are required to be entered into by any Person (i) to make effective the Security created or intended to be created by the Obligors in favour of the Lender pursuant to the Security Documents with respect to the material collateral referred to therein, (ii) to ensure the perfection and the intended priority of such Security other than financing statements filed in connection with such Security or (iii) to implement the transactions contemplated by the Loan Documents.
- (m) **Capital and Subsidiaries.** As at the date hereof, other than as set forth in Section 10.1(m) of Schedule A:
 - (i) There is no unanimous shareholder agreement or declaration with respect any Obligor.
 - (ii) Save in respect of (i) incentive stock options issued pursuant to the Borrower's stock option plan and (ii) units issued pursuant to the Borrower's deferred share unit plan, there are no outstanding warrants, options or other agreements which require or may require the issuance of any Shares of any Obligor, there are no outstanding debt or securities convertible into Shares of any Obligor and there are no Shares of any Obligor allotted for issuance, in each case to a Person other than an Obligor.

- (iii) No Obligor is a partner in any limited or general partnership, a member of any unlimited liability company or a party to any joint venture. There are no Subsidiaries of the Borrower that are not Guarantors.
- (iv) The authorized capital of DEWSL consists of common shares and the issued capital consists of 100 common shares. The Borrower is the registered and beneficial owner of all of the issued and outstanding Shares of DEWSL. All of the issued shares of DEWSL are issued as fully paid and non-assessable.
- (v) The authorized capital of De Sousa consists of common Shares and the issued capital consists of 100 common shares. DEWSL is the registered and beneficial owner of all of the issued and outstanding Shares of De Sousa. All of the issued shares of De Sousa are issued as fully paid and non-assessable.
- (vi) The authorized capital of BackYard Vineyards consists of common shares and the issued capital consists of 201 common shares. The Borrower is the registered and beneficial owner of all of the issued and outstanding Shares of BackYard Vineyards. All of the issued Shares of BackYard Vineyards are issued as fully paid and non-assessable.
- (vii) The authorized capital of EWG consists of Class B common shares and the issued capital consists of 3,113,52 Class B common shares. The Borrower is the registered and beneficial owner of all of the issued and outstanding Shares of EWG. All of the issued Shares of EWG are issued as fully paid and non-assessable.
- (viii) The authorized capital of 1314102 consists of common shares and the issued capital consists of 779.897 common shares. EWG is the registered and beneficial owner of all of the issued and outstanding Shares of 1314102. All of the issued Shares of 1314102 are issued as fully paid and non-assessable.
- (ix) The authorized capital of CEW consists of Class A common shares and the issued capital consists of 100 Class A common shares. EWG is the registered and beneficial owner of all of the issued and outstanding Shares of CEW. All of the issued Shares of CEW are issued as fully paid and non-assessable.
- (x) The authorized capital of 2601636 consists of Class A common shares and the issued capital consists of 100 Class A common shares. EWG is the registered and beneficial owner of all of the issued and outstanding Shares of 2601636. All of the issued Shares of 2601636 are issued as fully paid and non-assessable.

- (n) **Real Property and Leases/Warehouse Agreements.** Section 10.1(n) of Schedule A contains a complete and accurate list of all real property owned by an Obligor. Section 10.1(n) of Schedule A contains a complete and accurate list of all leases and arrangements in respect of warehouse facilities of real property to an Obligor (collectively, the “**Leases/Warehouse Agreements**”). Each of the relevant Obligors has delivered or made available to the Lender true and complete copies of each of such Leases/Warehouse Agreements and all documents to which any such Obligor is a party affecting the rights or obligations of such Obligor thereunder including, without limitation, any non-disturbance and recognition agreements, subordination agreements, attachment agreements and agreements regarding the term or rental of any of such Leases/Warehouse Agreements. No Obligor is in default of its obligations thereunder nor has any of them delivered or received any notice of default under any such Lease/Warehouse Agreement (except as may have been promptly disclosed to the Lender), except where any such default would be Immaterial. The Leases/Warehouse Agreements are in good standing, create a good and valid leasehold estate in the leased properties thereby demised (as applicable) and are in full force and effect without amendment. All rents under the Leases and the Warehouse Agreements and additional rents have been paid and no waiver, indulgence or postponement of the lessee’s obligations has been granted by the applicable lessor. Each of the Leases/Warehouse Agreements is adequate and suitable for the purposes for which it is presently used and the applicable Obligors have adequate right of ingress and egress into each of the leased properties for the operation of its business.
- (o) **Intellectual Property.** Each Obligor owns or is licensed or otherwise has the right to use all Intellectual Property that is used in the operation of their businesses without conflict with the rights of any other Person (other than any Intellectual Property the absence or non-proprietary ownership of which, or any such conflict with respect to which would be Immaterial). No Obligor has received any notice of any claim of infringement or similar claim or proceeding relating to any of the Intellectual Property other than that which would be Immaterial. Section 10.1(o) of Schedule A contains a complete and accurate list of all registered Intellectual Property owned by or licensed to any Obligor and all registration particulars with respect thereto (other than any Intellectual Property the non-proprietary ownership of which would be Immaterial).
- (p) **Labour Agreements.** No Obligor has any contracts with any labour union or employee association, and are not under any obligation to assume any such contracts to or conduct negotiations with any labour union or employee association with respect to any future agreements, and no Obligor is aware of any current attempts to organize or establish any such labour union or employee association.
- (q) **Liens.** The Liens granted to the Lender pursuant to the Security Documents are fully perfected first priority Liens in and to the Secured Assets, subject only to Permitted Liens.

- (r) **Material Agreements.** Section 10.1(r) of Schedule A contains a true and complete list of all Material Agreements. Each Material Agreement is in good standing and in full force and effect (other than those which by their terms have lapsed) and none of the parties thereto is in material breach of any of the terms and conditions contained therein except for breaches which are Immaterial. As of the date hereof, the copies of the Material Agreements provided to the Lender are true and correct copies thereof.
- (s) **Tax Returns and Taxes.** Each Obligor has filed all tax returns and tax reports required by Applicable Law to have been filed by it and has paid all taxes and governmental charges thereby shown to be owing, except any such taxes or charges which are being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with generally accepted accounting principles shall have been set aside on its books.
- (t) **Financial Statements.** Each financial report and financial statement for each Obligor delivered to the Lender pursuant to or in connection with this agreement have been prepared in accordance with International Financial Reporting Standards as issued by the International Accounting Standards Board, or generally accepted accounting principles, as the case may be, (subject, in each case, to yearend audit adjustments and the absence of notes, where applicable), does not contain (or, if audited, would not contain) any qualification (other than with respect to maturity) and fairly and accurately presents, in all material respects, the financial information and the financial condition and results of operations of such Person contained therein as at their respective preparation dates.
- (u) **Accuracy of Information.** No information (excluding Forecasts (hereinafter defined)) furnished to the Lender by or on behalf of any Obligor in connection with any of the Loan Documents contains, when taken as a whole, when furnished, any material misstatement of fact or omits to state a material fact necessary to make the statements contained therein not misleading, in any material respect, in light of the circumstances in which they were made and as of the date made (after giving effect to all supplements and updates thereto from time to time). Each financial forecast, estimate and projection (“Forecast”) prepared and furnished by or on behalf of any Obligor to the Lender pursuant to or in connection with any Loan Document was prepared in good faith based upon assumptions believed to be reasonable at the time of preparation thereof (it being understood and agreed that projections are not to be viewed as facts or a guarantee of financial performance, are subject to significant uncertainties and contingencies many of which are beyond the Obligors’ control, that actual results may differ from projected results and such differences may be material).
- (v) **Environmental Compliance.**
 - (i) Each Real Property is operated or used by the relevant Obligor in compliance with all Environmental Laws applicable to them except where

non-compliance could not result in an obligation of all Obligor in the aggregate in excess of \$100,000.

- (ii) There are no commenced or threatened (in writing):
 - (A) claims, complaints or notices received by any Obligor from an Official Body with respect to any alleged material violation of any Environmental Law by any Obligor; or
 - (B) complaints, notices to, or investigations of, any Obligor from an Official Body regarding potential material liability of any Obligor under any Environmental Law;

notice of which has not been provided by the Borrower to the Lender.

- (iii) To the knowledge of the Borrower, there are no releases of Hazardous Materials at, on or under any Real Property to the extent such release could reasonably be expected to result in an obligation of all Obligor in the aggregate in excess of \$100,000.
- (iv) Each Obligor has been issued and is in compliance with all permits, certificates, approvals, licenses and other authorizations required under any Environmental Laws to own its properties and assets and to carry on its businesses, except where the non-issuance or non-compliance could result in an obligation of all Obligor in the aggregate in excess of \$100,000.
- (w) **Securities Accounts.** No Obligor maintains any securities accounts.
- (x) **Employee Benefit Plans and Pension Plans.** Each Employee Benefit Plan and Pension Plan is in compliance in all material respects with all Applicable Laws and the respective requirements of the governing documents for such plan except for non-compliance that could not result in an obligation for all Obligor in the aggregate in excess of \$50,000. With respect to any Employee Benefit Plan maintained or contributed to by any Obligor, reasonable reserves have been established in accordance with prudent business practice or where required by best accounting practices in the jurisdiction in which such plan is maintained having regard to tax legislation. The aggregate unfunded liabilities, after giving effect to any reserves for such liabilities, with respect to all Employee Benefit Plans and Pension Plans could not be reasonably expected to result in a Material Adverse Effect. There is no proceeding or claim (other than routine claims for benefits) pending or threatened in writing against any Obligor with respect to any Employee Benefit Plan. No Obligor maintains or contributes to a defined benefit or similar Pension Plan.
- (y) **Foreign Assets Control Regulations.** Neither the execution and delivery of this agreement nor the Borrower's use of the proceeds of the Credit Facilities will violate the Trading with the Enemy Act, as amended, or any of the foreign assets

control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto. Without limiting the foregoing, no Obligor (a) is or will become a Person whose property or interests in property are blocked pursuant to Section 1 of Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001) or (b) engages or will engage in any dealings or transactions, or be otherwise associated, with any such Person. Each Obligor is in compliance, in all material respects, with the Title III of Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA Patriot Act of 2001). No part of the proceeds from the Credit Facilities will be used, directly or indirectly, for any payment to any governmental official or employee, political party, official of a political party, candidate for political office or anyone else acting in an official party capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended. No Obligor (i) is a Sanctioned Person, (ii) has more than 15% of its assets in Sanctioned Countries, or (iii) derives more than 15% of its operating income from investments in, or transactions with Sanctioned Persons or Sanctioned Countries. The Borrower has not and will not use the proceeds of the Credit Facilities to fund any operations in, finance any investments or activities in or make any payments to a Sanctioned Person or a Sanctioned Country that is in violation of the OFAC restrictions.

- (z) **Solvency.** Each Obligor is Solvent.
- (aa) **No Material Adverse Change.** Since the date of the Yearend Financial Statements, there has been no Material Adverse Change.

10.2 Survival of Representations and Warranties. All of the representations and warranties of the Borrower contained in Section 10.1 shall survive the execution and delivery of this agreement and shall continue until the Security Discharge Date, notwithstanding any investigation made at any time by or on behalf of the Lender.

ARTICLE 11 COVENANTS

11.1 Affirmative Covenants. The Borrower hereby covenants and agrees with the Lender that, until the Security Discharge Date, and unless waived by the Lender in writing:

- (a) **Prompt Payment.** The Borrower shall, and shall cause each other Obligor to, duly and punctually pay or cause to be duly and punctually paid to the Lender and all amounts payable by the Obligors under the Loan Documents at the times and places and in the currency and manner mentioned therein.
- (b) **Financial Reporting.** The Borrower shall furnish the Lender with the following statements and reports:

- (i) within 120 days after the end of each Fiscal Year, a copy of the audited consolidated financial statements of the Borrower, together with Management Discussion and Analysis and Auditor's Letter to Management;
- (ii) within 60 days after the end of each Fiscal Quarter of each Fiscal Year, a copy of the unaudited consolidated financial statements of the Borrower, together with Management Discussion and Analysis;
- (iii) no later than each Reporting Date, a duly executed and completed compliance certificate, in the form attached as Schedule B hereto, evidencing compliance with the terms of this agreement as well as any updated information with respect to Schedule A as required pursuant to Section 11.1(o) or (p);
- (iv) within 60 days after the beginning of each Fiscal Year, a financial forecast for the Borrower on a consolidated basis in respect of such Fiscal Year, which shall disclose all material assumptions utilized and shall include the following items set out on a quarterly basis: balance sheet, income statement, cash flow statement, Capital Expenditures budget and projected Financial Covenant compliance;
- (v) within 30 days after the end of each calendar month (i) a certificate of a senior financial officer of the Borrower certifying the amount of the Borrowing Base as at the last day of such calendar month, such certificate to be substantially in the form set forth in Schedule K and to have attached thereto a detailed calculation of the Borrowing Base, a detailed listing of all relevant working capital accounts for such period and to be in form satisfactory to the Lender and (ii) certified true and correct (A) monthly aged lists of accounts receivable on an invoice-dated basis. (B) aged lists of accounts payable and (C) monthly inventory listing;
- (vi) weekly, 13-week cash flow statements evidencing, among other things, compliance with the minimum Liquidity covenant set forth in Section 11.1(h), together with a detailed comparison of original forecasts versus actual results, and reasonably detailed written updates with respect to the Borrower's strategic review process, and, if applicable, a Minimum Liquidity Plan to be delivered in accordance with Section 11.1(h);
- (vii) concurrent with the filing by the Borrower with relevant securities regulatory authorities, copies of all such filings;
- (viii) within 60 days of the Second Restatement Date, a comprehensive business plan setting forth all such information and projections as the Lender shall require and to be in form and substance satisfactory to the Lender, in its sole and absolute discretion; and

- (ix) such additional financial or operating reports or statements as the Lender may, from time to time, reasonably require, including for certainty, all supporting documentation evidencing the additions to Net Income set forth in the definition of "EBITDA".
- (c) **Corporate Existence.** The Borrower shall, and shall cause each other Obligor to, preserve and maintain its legal existence in good standing (except as permitted by Section 11.3(c)) and shall, and shall cause each other Obligor to, qualify and remain duly qualified to conduct business and own property in each jurisdiction in which it conducts business and/or owns assets, save for any jurisdictions which are Immaterial.
- (d) **Conduct of Business.** The Borrower shall, and shall cause each other Obligor to, conduct its business in such a manner so as to comply with all Applicable Law (including, without limitation, Environmental Laws), so as to observe and perform in all respects all its obligations under leases, licences and agreements necessary for the proper conduct of its business and so as to preserve and protect its property and assets and the earnings, income and profits therefrom except where failure to do so would be Immaterial. The Borrower shall, and shall cause each other Obligor to, perform all obligations incidental to any trust imposed upon it by statute and shall, and the Borrower shall, and shall cause each other Obligor to, ensure that any breaches of the said obligations and the consequences of any such breach shall be promptly remedied except where failure to do so would be Immaterial. The Borrower shall, and shall cause each other Obligor to, obtain and maintain all Official Body Consents necessary for the operation of its business except where failure to do so would be Immaterial.
- (e) **Use of Proceeds.** The Borrower shall apply all of the proceeds of the credit obtained under the RT Facility to finance the Borrower's general operating, corporate and working capital requirements, including, for certainty, (i) subject to prior written consent of the Lender, the acquisition and development of the Naramata, British Columbia winery and (ii) subject to compliance with Section 11.3(g), Fiscal Year 2020 Capital Expenditures. The Borrower shall apply all of the proceeds of the credit obtained under the NRT Facility to (i) partially finance Capital Expenditures which are scheduled to be incurred in the Fiscal Year ending March 31, 2018 and (ii) repay all of the Target Indebtedness. The Borrower shall apply all of the proceeds of the credit obtained under the BCAP Facility towards operational cash flow needs (including regularly scheduled principal and interest payments due and payable with respect to any Credit Facility), as well as to satisfy ordinary course of business lease, equipment and supplier financing payments.
- (f) **Leverage Ratio.**
 - (i) from and including January 1, 2021, to and including March 31, 2021, the Borrower shall maintain the Leverage Ratio at less than or equal to 2.15 to 1; and

- (ii) from and including April 1, 2021, and at all times thereafter, the Borrower shall maintain the Leverage Ratio at less than or equal to 2.00 to 1.
- (g) **Fixed Charges Coverage Ratio.**
 - (i) from and including January 1, 2021, to and including March 31, 2021, the Borrower shall maintain the Fixed Charges Coverage Ratio at greater than or equal to 0.70 to 1;
 - (ii) from and including April 1, 2021, to and including June 30, 2021, the Borrower shall maintain the Fixed Charges Coverage Ratio at greater than or equal to 0.90 to 1; and
 - (iii) from and including July 1, 2021, and at all times thereafter, the Borrower shall maintain the Fixed Charges Coverage Ratio at greater than or equal to 1.25 to 1.
- (h) **Minimum Liquidity.** From and including the Second Restatement Date, and at all times thereafter, the Borrower shall maintain Liquidity at or greater than \$200,000 (the “**Target Liquidity**”), provided that if the Borrower is not able to maintain Target Liquidity at any time, the Borrower shall deliver to the Lender a minimum liquidity plan (the “**Minimum Liquidity Plan**”), which such Minimum Liquidity Plan shall (i) outline the Borrower’s plan for meeting and maintaining Target Liquidity and (ii) be in form and substance satisfactory to the Lender, in its sole and absolute discretion.
- (i) **Equity Cure.** For the purposes of determining compliance with the Financial Covenants set forth in Section 11.1(g) (the “**Subject Financial Covenants**”), any cash equity contribution to the Borrower from a shareholder of the Borrower (a “**Shareholder**”) (funded with proceeds of common equity or other equity having terms reasonably acceptable to the Lender, including deeply subordinated equityholder debt) after the last day of the applicable Fiscal Quarter with respect to which the Subject Financial Covenants are being tested and on or prior to the day that is 15 days after the day on which financial statements are required to be delivered for a Fiscal Quarter will, at the irrevocable election of the Borrower, be a positive addition to the calculation of EBITDA, on a dollar-for-dollar basis, solely for the purposes of determining compliance with the Subject Financial Covenants at the end of such Fiscal Quarter and any subsequent period that includes such Fiscal Quarter (any such equity contribution so included in the calculation of EBITDA, a “**Specified Equity Contribution**”); provided that the Borrower shall not be permitted to receive more than two Specified Equity Contributions, as follows:
 - (i) for the Fiscal Quarter ended September 30, 2021, a single Specified Equity Contribution in an amount equal to \$700,000 or such amount required to cause the Borrower to be in compliance with the Subject Financial

Covenants (the amount of such Specified Equity Contribution referred to herein as the “**Initial Specified Equity Contribution Amount**”); and

- (ii) for the Fiscal Quarter ended December 31, 2021, a single Specified Equity Contribution in an amount equal to \$2,680,000 *less* the Initial Specified Equity Contribution Amount.

All Specified Equity Contributions will be disregarded for purposes of the calculation of EBITDA for all other purposes, including calculating basket levels, pricing, determining compliance with incurrence based or *pro forma* calculations or conditions, and other items governed by reference to EBITDA. The proceeds received by the Borrower from all Specified Equity Contributions shall be promptly used by the Borrower to prepay outstanding Loans under the Credit Facilities in accordance with Section 9.6(f).

- (j) **Insurance.** The Borrower shall maintain, and shall cause each other Obligor to maintain, on an individual or aggregate basis, with financially sound and reputable insurers, insurance with respect to the properties and business of the Obligors against loss, damage, risk or liability of the kinds customarily insured against by Persons carrying on a similar business in a similar geographical area, including business interruption insurance. The Borrower shall cause the Lender to be named in each such policy as secured party or mortgagee and lender’s loss payee or additional insured, as appropriate, in a manner acceptable to the Lender, acting reasonably. Each policy of insurance shall contain a clause or endorsement requiring the insurer to endeavor to give not less than thirty (30) days’ (subject to any mandatory statutory reduction to fifteen (15) days) prior written notice to the Lender in the event of cancellation of the policy for any reason whatsoever. The Borrower shall, and shall cause each other Obligor to, comply with all of the material provisions contained in all such insurance policies. All premiums for such insurance shall be paid by the relevant Obligor when due, and certificates of insurance and, if requested, photocopies of the policies shall be delivered to the Lender. The Borrower shall promptly notify the Lender of any loss, damage, or destruction to the Secured Assets, whether or not covered by insurance, in excess of \$50,000. In the absence of any Event of Default, the Borrower shall have the right to determine, whether and to what extent such proceeds shall be used for repair or replacement. If, however, any Event of Default shall have occurred and be continuing, the Lender may determine, in its sole discretion, whether the proceeds shall be used for repair or replacement. If an Event of Default does not exist, the Borrower or the relevant Obligor may negotiate a settlement regarding such proceeds with the insurance company and the Lender shall forward such proceeds to the relevant Obligor. If, however, an Event of Default exists, the Lender shall collect the insurance proceeds directly and no Obligor shall enter into any settlement agreement with the applicable insurance company without the prior written consent of the Lender, which consent shall not be unreasonably withheld.

- (k) **Taxes.** The Borrower shall, and shall cause each other Obligor to, pay all material taxes, rates, government fees and dues levied, assessed or imposed upon it and upon its property or assets or any part thereof, as and when the same become due and payable (save and except when and so long as the validity of any such taxes, rates, fees, dues, levies, assessments or imposts is being contested in good faith by appropriate proceedings and adequate reserves shall have been set aside in the books of the relevant Obligor and the Borrower shall, and shall cause each other Obligor to, deliver to the Lender, when requested, written evidence of such payments.
- (l) **Reimbursement of Expenses.** The Borrower shall reimburse the Lender, on demand, for all reasonable costs, charges and expenses incurred by or on its behalf (including, without limitation, travel costs, reasonable out-of-pocket expenses and the reasonable fees and documented out-of-pocket disbursements of insurance and environmental consultants retained by the Lender and of the Lender's legal counsel) in connection with:
- (i) due diligence undertaken by or on behalf of the Lender;
 - (ii) any review of the insurance policies relating to damage to or destruction of the Secured Assets;
 - (iii) environmental audits and studies as reasonably required by the Lender but only to the extent permitted pursuant to Section 11.1(p)(ii) (provided, however, that the foregoing proviso shall not apply for so long as an Event of Default has occurred and is continuing);
 - (iv) any review, inspection or appraisal at reasonable intervals of any security to be granted pursuant to the Security Documents, provided that the Borrower shall be obligated to only pay for one inspection per Fiscal Year in an amount that is mutually acceptable to the Borrower and the Lender unless an Event of Default has occurred and is continuing, in which event there shall be no restrictions on the number of such inspections for which the Borrower must pay;
 - (v) the development, negotiation, preparation, execution, delivery, interpretation and enforcement of the Loan Documents and all other documentation ancillary to the completion of the transactions contemplated hereby and any amendments hereto or thereto and any waivers of any provisions hereof or thereof (whether or not consummated or entered into);
 - (vi) the operation of the Credit Facilities on a reasonable market-standard basis;
 - (vii) preserving the validity, perfection and priority of the Security; and

(viii) any lien search fees, recording and filing fees and Other Taxes relating to the transactions contemplated hereby.

(m) **Notices.** The Borrower shall promptly notify the Lender:

(i) of the occurrence of any Default or Event of Default or Material Adverse Change;

(ii) of any matter including (A) breach or non-performance of, or any default under, a contractual obligation of any of the Obligors by one of the Obligors, (B) any dispute, litigation, investigation, proceeding or suspension of or before any Official Body affecting any of the Obligors; or (C) the commencement of, or any material development in, or the rendering of a judgment in connection with, any litigation or proceeding affecting any of the Obligors, other than that which is Immaterial;

(iii) of the receipt of any management letters from the Borrower's auditors; and

(iv) of the issuance of any Shares of the Obligors.

Each notice under this Section shall be accompanied by a written statement by an officer of the Borrower setting forth details of the occurrence referred to therein, and, in the case of clauses (i) and (ii) above, stating what action the Borrower proposes to take with respect thereto and at what time. Each notice under clause (i) above shall describe with particularity any and all clauses or provisions of this agreement or other Loan Document that have been (or foreseeably will be) breached or violated.

(n) **Inspection of Assets and Operations.** The Borrower shall, and shall cause each other Obligor to, permit representatives of the Lender to inspect the Secured Assets and for that purpose to enter on any Real Property where any of the Secured Assets may be situated during reasonable business hours and upon reasonable prior written notice; provided, however, if a Default has occurred and is continuing, the foregoing limitation with respect to reasonable business hours and reasonable notice shall not apply.

(o) **Books and Records.** The Borrower shall, and shall cause each other Obligor to, keep proper books of account and records covering all its business and affairs on a current basis, make full, true and correct entries of its transactions in such books, set aside on its books from its earnings all such proper reserves as required by generally accepted accounting principles and permit representatives of the Lender to inspect such books of account, records and documents and to make copies therefrom during reasonable business hours and upon reasonable prior written notice and to discuss the affairs, finances and accounts of each Obligor with the officers of the Obligors and their auditors during reasonable business hours and upon reasonable prior written notice; provided, however, if a Default

has occurred and is continuing, the foregoing limitation with respect to reasonable business hours and reasonable prior written notice shall not apply.

- (p) **Change in Scheduled Information.** Subject to Section 11.1(o), if any of the information contained in Schedule A shall change, the Borrower shall notify the Lender in writing of the details of such change at the next Reporting Date and Schedule A shall thereupon be deemed to be amended accordingly. Provided that the Borrower has complied with this Section 11.1(n) with respect to a particular change of information contained in Schedule A, the Borrower shall be deemed not to be in breach of the relevant provision of Section 10.1 during the period from the date of such change to the next Reporting Date.
- (q) **Change of Name or Jurisdiction of Incorporation.** If any Obligor changes its corporate name or its jurisdiction of incorporation or the jurisdiction of location of any of its places of business or the jurisdiction in which any of its tangible assets with a total aggregate value in excess of \$50,000 are located (including, for certainty, any Obligor's customer's premises) or adopts a French form of its corporate name, the Parent shall promptly notify the Lender in writing of the details of such change or adoption and Schedule A shall thereupon be deemed to be amended accordingly.
- (r) **Environmental Compliance.** The Borrower shall, and shall cause each other Obligor to:
 - (i) use and operate all of its facilities and properties in compliance with all Environmental Laws applicable to such facilities and properties, keep all permits, approvals, certificates, licenses and other authorizations relating to environmental matters and necessary for the operation of its business in effect and remain in compliance therewith, and handle all Hazardous Materials in material compliance with all applicable Environmental Laws;
 - (ii) provided the Lender has a good faith concern that there is a material non-compliance by an Obligor with Environmental Laws applicable to it, permit the Lender to conduct inspections, audits and appraisals of all or any of the relevant records, business and assets of such Obligor to ensure compliance with applicable Environmental Laws;
 - (iii) promptly notify the Lender and provide copies upon receipt of all material adverse written claims, or written notice of a threatened claim or allegations, in each case relating to the condition of its facilities and properties or compliance with Environmental Laws, and shall take all commercially reasonable steps to promptly cure, have dismissed or otherwise resolved to the satisfaction of the Lender any actions and proceedings relating to any such compliance with Environmental Laws, except for those being diligently contested in good faith and by appropriate proceedings and for which adequate reserves in accordance

with generally accepted accounting principles shall have been set aside on its books; and

- (iv) provide such information and certifications which the Lender may reasonably request from time to time to evidence compliance with the foregoing.

(s) Additional Guarantees and Security.

- (i) Any direct or indirect Subsidiary of the Borrower formed or acquired after the Closing Date shall, subject to Section 11.1(q)(ii), be subject to, *inter alia*, the requirements of Sections 11.1(q)(iii) and (iv).
- (ii) At least 10 days prior to the direct or indirect formation or acquisition by the Borrower of a Subsidiary, the Borrower shall notify the Lender of such proposed formation or acquisition (a “**Subsidiary Notice**”).
- (iii) On or before the date of the formation or acquisition of any Subsidiary of the Borrower, the Borrower shall provide to the Lender such information regarding such Subsidiary and its business, finances and assets as the Lender may reasonably request including:
 - (A) its proper legal name, its legal form and its jurisdiction of incorporation or formation;
 - (B) a copy of its constating documents and by-laws;
 - (C) the location of its place or places of business and, if more than one, its principal place of business;
 - (D) the locations of all of its tangible personal property and a description of such property at each such location;
 - (E) the legal description of any real property owned or leased by it and, if leased, a copy of the lease;
 - (F) a description of all registered Intellectual Property (other than commercially available software) owned by it or licensed to it, together with all registration particulars and copies of any licensing agreements; and
 - (G) a description of its authorized and issued capital and the registered holders of all issued and outstanding Shares of its Capital Stock.
- (iv) The Borrower shall, or shall cause each direct or indirect Subsidiary of the Borrower, within fifteen Banking Days after the formation or acquisition of such Subsidiary, deliver to the Lender the following:

- (A) the Guarantee and Security Documents of such Subsidiary;
- (B) any necessary Third Party Agreements;
- (C) a Closing Certificate of such Subsidiary;
- (D) a certificate of status or good standing or a certificate to similar effect for such Subsidiary, issued by the appropriate governmental body or agency;
- (E) share certificates representing all of the issued and outstanding Shares of such Subsidiary, duly endorsed in blank for transfer or attached to duly executed stock transfers and powers of attorney;
- (F) requisite information to identify such Subsidiary under the applicable AML Legislation, delivered sufficiently in advance to complete such identification;
- (G) a customary opinion of legal counsel to such Subsidiary with respect to such Subsidiary, the enforceability of the Loan Documents to which such Subsidiary is a party and such other matters as the Lender may reasonably request;
- (H) a revised Schedule A containing all relevant information relating to such Subsidiary; and
- (I) a certificate of an officer of the Borrower certifying that no Default has occurred and is continuing or would occur or arise immediately after or as a result of such Subsidiary becoming a Guarantor hereunder.

Upon the completion of the foregoing deliveries and all documents and instruments having been properly registered, recorded and filed in all places which, searches having been conducted in all jurisdictions which, and deliveries of all consents, approvals, landlord agreements, acknowledgements, undertakings, directions, negotiable documents of title and other documents and instruments to the Lender having been made which, in the opinion of the Lender's counsel, acting reasonably, are desirable or required to make effective the Security created or intended to be created by such Subsidiary in favour of the Lender pursuant to the Security Documents of such Subsidiary and to ensure the perfection and the intended first-ranking priority of such security, such Subsidiary shall become a Guarantor for all purposes of this agreement and Schedule A to this agreement shall be amended by being replaced with the aforesaid revised Schedule A.

- (v) Within 20 Banking Days of the acquisition of any freehold or material leasehold interest in real property by any Obligor, the Borrower shall, or shall cause any such Obligor to, execute and deliver to the Lender a Security Document granting security in such real property together with all other documentation deemed necessary by the Lender, acting reasonably (including, for certainty, customary opinions of counsel to such Obligor, title insurance in favour of the Lender on the subject property and corporate authorizing documents).
- (t) **Wholly-Owned Subsidiaries.** The Borrower will maintain each Subsidiary as a wholly-owned Subsidiary and will only acquire wholly-owned Subsidiaries.
- (u) **Material Agreements.** The Borrower shall promptly provide the Lender a copy of (i) each amendment to each Material Agreement permitted hereunder forthwith after such amendment is effective and (ii) any material notice issued under any Material Contract.
- (v) **Observance of Agreements.** The Borrower shall, and shall cause, each other Obligor to, duly observe the terms and conditions of and perform in a timely fashion all of its obligations under each Material Agreement and each other agreement to which it is a party unless failure to so observe or perform such Material Agreement would be Immaterial and will provide to the Lender copies of any written communications delivered to it by any of the other parties thereto alleging any default or threatening the exercise of any remedy by reason of a default thereunder.
- (w) **Employee Benefit Plan and Pension Plan Compliance.** The Borrower shall, and shall cause each other Obligor to, establish, maintain and operate all Employee Benefit Plans and Pension Plans to comply with all laws, regulations and rules applicable thereto and the respective requirements of the governing documents for such Employee Benefit Plans and Pension Plans, save for non-compliance that is Immaterial.
- (x) **Title.** The Borrower shall, and shall cause each other Obligor to, will, warrant and defend its title to its Secured Assets and every part thereof against the claims of all persons whomsoever and do, observe and perform all of its obligations and all things necessary or expedient to be done, observed or performed by virtue of any Applicable Law for the purpose of creating, maintaining and keeping maintained the Security as valid and effective security with the priority required hereunder.
- (y) **Certificate of Substantial Completion.** The Borrower shall provide a true and complete copy of the Certificate of Substantial Completion with respect to 1067 Niagara Stone Road, Niagara on the Lake, Ontario within 30 days of receipt thereof.

- (z) **Amended/Replacement Ice Wine Marketing Agreement.** The Borrower shall ensure that any amendment or replacement of the Ice Wine Marketing Agreement includes terms providing granting of a security interest in and assignment of such agreement that are satisfactory to the Lender, acting reasonably.
- (aa) **Government/Regulatory Consents.** The Borrower shall, and shall cause each other Obligor to, provide all government and/or regulatory consents required by any government agency or other regulatory body in connection with the granting of security and/or assignments over and of any of the Secured Assets by any Obligor to the Lender.
- (bb) **Additional Leases/Warehouse Arrangements.** The Borrower shall, and shall cause each other Obligor to, provide a landlord agreement or warehouse agreements, as applicable, within 30 days of any Obligor entering into any new premises lease or warehouse arrangement where any Second Assets are or shall be located.
- (cc) **Borrowing Base Specified Shareholder Contribution.** For the purposes of ensuring compliance with the mandatory repayment requirements set forth in Section 9.9, the Borrower shall cause one or more of its shareholders to make a Specified Shareholder Contribution in an amount equal to the amount of the Borrowing Base Credit Excess outstanding from time to time (each such Specified Shareholder Contribution, a “Borrowing Base Specified Shareholder Contribution”). All Borrowing Base Specified Shareholder Contributions will be disregarded for purposes of the calculation of EBITDA, including calculating basket levels, pricing, determining compliance with incurrence based or *pro forma* calculations or conditions, and other items governed by reference to EBITDA. The proceeds received by the Borrower from all Borrowing Base Specified Shareholder Contributions shall be promptly used by the Borrower to repay outstanding Loans under the RT Facility in accordance with Section 9.6(g).
- (dd) **2024 Specified Shareholder Contribution.** To the extent there is any outstanding Secured Obligations under the BCAP Facility and/or the NRT Facility on and as of May 30, 2024 (any such amount referred to herein as the “Outstanding Term Debt”), the Borrower shall cause one or more of its shareholders to make a Specified Shareholder Contribution in an amount equal to the Outstanding Term Debt by no later than May 30, 2024 (the “2024 Specified Shareholder Contribution”).

11.2 Performance of Covenants by Lender. The Lender may, upon notice to the Borrower, perform any covenant of the Borrower under this agreement which the Borrower fails to perform or cause to be performed and which the Lender is capable of performing, including any covenants the performance of which requires the payment of money, provided that the Lender shall not be obligated to perform any such covenant and no such performance by the Lender shall require the Lender to further perform such covenants or shall operate as a derogation of the rights and remedies of the Lender under this agreement or as a waiver of such

covenant by the Lender. Any amounts paid by the Lender as aforesaid shall be repaid by the Borrower to the Lender on demand.

11.3 Restrictive Covenants. The Borrower hereby covenants and agrees with the Lender that, until the Security Discharge Date, and unless waived by the Lender in writing:

- (a) **Liens.** The Borrower shall not, and shall not suffer or permit any other Obligor or any other Obligor to, enter into or grant, create, assume or suffer to exist any Lien affecting any of the property, assets or undertaking of such Obligor other than Permitted Liens.
- (b) **Indebtedness.** The Borrower shall not, and shall not suffer or permit any other Obligor to, incur, assume or otherwise permit any Indebtedness other than Permitted Indebtedness.
- (c) **Corporate Existence.** The Borrower shall not, and shall not suffer or permit any other Obligor to, take part in any consolidation, amalgamation, merger, winding-up, dissolution, corporate reorganization or similar proceeding or arrangement provided, however, that the foregoing shall not prohibit such proceedings or arrangements solely between two or more Obligors.
- (d) **Change in Business.** The Borrower shall not, and shall not suffer or permit any other Obligor to, discontinue its business or any material part thereof or change in any material manner the nature, organization, structure or operation of its business.
- (e) **Capital.** The Borrower shall not suffer or permit any other Obligor to, issue Shares unless the Shares are issued to the Borrower or another Obligor and are deposited in pledge with the Lender pursuant to a Security Document.
- (f) **Investments.** The Borrower shall not, and shall not suffer or permit any other Obligor to, make any Investment except for:
 - (i) Investments held by an Obligor on the Closing Date in amounts approved by the Lender;
 - (ii) Investments held by an Obligor in the form of cash or Cash Equivalents that are subject to the Security;
 - (iii) extensions of credit in the nature of accounts receivable or notes receivable arising from the sale or lease of goods or services in the ordinary course of business;
 - (iv) Capital Expenditures permitted hereunder; and
 - (v) Investments by an Obligor in another Obligor;

Provided that any such Investment referred to in clauses (ii) to (v) above shall not be made at any time that an Event of Default has occurred and is continuing.

- (g) **Capital Expenditures.** The Borrower shall not incur Capital Expenditures in excess of ~~\$1,000,000 during the Fiscal Years ending March 31, 2021 and March 31, 2022 or in excess of \$1,500,000~~ during any subsequent Fiscal Year trailing twelve month period commencing on or after the Second Amendment Date.
- (h) **Transactions with Affiliates.** The Borrower shall not, and shall not suffer or permit any other Obligor to, enter into any transaction (including, without limitation, any management or consulting agreement) with any affiliate of such Obligor (other than another Obligor), except on arm's length terms and in the ordinary course of business or except as otherwise specifically permitted hereunder.
- (i) **Distributions.** None of the Obligors shall make any Distribution without the prior written consent of the Lender.
- (j) **Acquisitions.** The Borrower shall not, and shall not suffer or permit any other Obligor to, make acquisitions of Persons, properties, businesses or assets constituting a business as a going concern (including acquisitions of other Persons by amalgamation, merger, consolidation or purchase of shares) without the prior written consent of the Lender, such consent not to be unreasonably withheld. The Borrower shall not, and shall not suffer or permit any other Obligor to, make a Hostile Take-Over Bid.
- (k) **Disposition of Assets.** The Borrower shall not, and shall not suffer or permit any other Obligor to, directly or indirectly, sell, assign, lease, convey, transfer or otherwise dispose of (whether in one or a series of transactions and whether or not as part of a sale/leaseback transaction) any of the Secured Assets or enter into any agreement to do any of the foregoing without the Lender's express prior written consent, such consent not to be unreasonably withheld, except:
 - (i) dispositions of inventory by the Obligors in the ordinary course of business;
 - (ii) dispositions by the Obligors of used, worn-out or surplus property;
 - (iii) the sale of equipment by the Obligors to the extent that such equipment is exchanged for credit against the purchase price of other equipment or the proceeds of such sale are applied to the purchase price of other equipment within 180 days and provided that the consideration received reflects the fair market value of the property sold;
 - (iv) disposals of defaulted accounts by subrogation or assignment to any export credit guarantee department or other governmental authority, in order to collect on them from that export credit guarantee department or

other governmental authority, provided that the relevant Obligor has received, or reasonably expects that it shall receive, the related insurance proceeds;

- (v) the sale by the Obligors of obsolete equipment for nominal consideration; or
 - (vi) any other disposition provided that the aggregate proceeds of all such dispositions of all Obligors combined do not exceed \$250,000 per Fiscal Year of the Borrower.
- (l) **Fiscal Year.** No Obligor shall change its Fiscal Year without the Lender's express prior written consent, such consent not to be unreasonably withheld.
 - (m) **Amendments.** The Borrower shall not, and shall not suffer or permit any other Obligor to, amend, replace, terminate (other than by lapse of its term) or waive any provision of any Material Agreement in any manner which is materially adverse in interest to any Obligor or the Lender.
 - (n) **Bank Accounts and Cash Management Arrangements.** The Borrower shall not, and shall not suffer or permit any other Obligor to, maintain any bank account or cash management arrangement in Canada with any financial institution other than the Lender.
 - (o) **Securities Accounts.** The Borrower shall not, and shall not suffer or permit any other Obligor to, maintain any securities accounts.
 - (p) **Hedging Obligations.** The Borrower shall not, and shall not suffer or permit any other Obligor to, enter into any agreement in respect of, or acquire any, Hedging Obligations (i) of a speculative nature, or (ii) with or from any Person other than the Lender at any time.
 - (q) **Material Agreements.** The Borrower shall not, and shall not suffer or permit any other Obligor to, terminate, amend or otherwise change any Material Agreement if such termination, amendment or change is materially adverse to the Lender or any Obligor.
 - (r) **Management Compensation.** The Borrower shall not, and shall not suffer or permit any other Obligor to, increase the compensation of its senior management, whether such compensation is salary, bonus, dividends, stock options or employee loans, if a Default would arise as a result of such increase.
 - (s) **Bank Accounts.** The Borrower shall not, and shall not suffer or permit any other Obligor to, maintain bank accounts with any financial institution other than the Lender.
 - (t) **435 North Service Road West.** The Borrower shall not, and shall not suffer or permit any other Obligor to, maintain Secured Assets (excluding, for certainty,

any computer equipment utilized in the ordinary course of business) at the premises municipally known as 435 North Service Road West, Oakville, Ontario with a total aggregate value exceeding \$25,000 at any time.

ARTICLE 12 CONDITIONS PRECEDENT

12.1 Conditions Precedent to Amendment and Restatement. The amendments to and restatement of the Existing Credit Agreement contemplated by this agreement shall not take effect until the fulfillment of the following conditions precedent:

- (a) the Obligors shall have executed and delivered to the Lender (i) the Loan Documents, (ii) assignments, postponements and subordinations of Indebtedness owing by Obligors to affiliates of such Obligors (other than other Obligors) in form and substance satisfactory to the Lender; and (iii) intercreditor agreements with holders of Indebtedness of the Obligors which is required to be postponed and subordinated to the Secured Obligations, such agreements to be in form and substance satisfactory to the Lender;
- (b) the Lender shall have received, in form and substance satisfactory to the Lender:
 - (i) a Closing Certificate of each Obligor;
 - (ii) a certificate of status or good standing or a certificate to similar effect for each Obligor, issued by the appropriate governmental body or agency;
 - (iii) a duly executed and completed certificate of a senior officer of the Borrower evidencing *pro forma* compliance with the Financial Covenants as of the Second Restatement Date after giving effect to the drawdowns on the Second Restatement Date;
 - (iv) a certificate of a financial officer of the Borrower, in form and substance satisfactory to the Lender, certifying the Borrowing Base as of the last day of the most recently completed calendar month, attaching the calculation thereof and being supported by listings of inventory, aged accounts receivable and aged accounts payable;
 - (v) certificates of insurance evidencing the insurance coverage required to be maintained pursuant to Section 11.1(h), in each case noting the Lender as first loss payee and/or as an additional insured, as applicable;
 - (vi) to the extent not previously delivered, certified true copies of the Material Agreements;
 - (vii) to the extent not previously delivered, a complete and accurate copy of the EDC Receivables Insurance Policy and all consent documents executed by Export Development Canada required in connection with the granting of a security interest therein and assignment thereof;

- (viii) to the extent not previously delivered, share certificates representing all of the issued and outstanding shares of the Obligors, duly endorsed in blank for transfer or attached to duly executed stock transfers and powers of attorney;
 - (ix) to the extent not previously delivered, the Landlord Agreements;
 - (x) to the extent not previously delivered, the Warehouse Agreements; and
 - (xi) a customary opinion of legal counsel to the Obligors with respect to the Obligors, the enforceability of the Loan Documents, the validity and perfection of the Security and such other matters as the Lender may reasonably request; and
- (c) the Lender shall be satisfied that all required estoppel, limitation of interest letter or authorization to discharge from prior registered creditors have been obtained;
 - (d) the Lender shall be satisfied that all Liens other than Permitted Liens have been discharged;
 - (e) the Lender shall be satisfied that all Indebtedness of the Obligors (including, for certainty, the Target Indebtedness) other than Permitted Indebtedness has been terminated and been paid in full;
 - (f) all documents and instruments shall have been properly registered, recorded and filed in all places which, searches shall have been conducted in all jurisdictions which, and deliveries of all consents, approvals, landlord waivers or agreements, non-disturbance agreements, acknowledgements, undertakings, directions, negotiable documents of title and other documents and instruments to the Lender shall have been made which, in the opinion of the Lender's counsel, acting reasonably, are desirable or required to make effective the Security created or intended to be created by the Obligors in favour of the Lender pursuant to the Security Documents and to ensure the perfection and the intended first-ranking priority of the Security;
 - (g) the Lender and its legal counsel shall be satisfied, acting reasonably, that all necessary approvals, acknowledgements, directions and consents have been given and that all relevant laws have been complied with in respect of all agreements and transactions referred to herein;
 - (h) the Borrower shall have paid, or made satisfactory arrangements to pay, all reasonable invoiced fees of the Lender's professional advisors; and
 - (i) the Borrower shall have paid to the Lender all fees which are payable on the Second Restatement Date.

12.2 Conditions Precedent to All Credit. The obligation of the Lender to extend credit under the Credit Facilities is subject to fulfilment or waiver of the following conditions precedent at the time such credit is extended:

- (a) no Default has occurred and is continuing or would arise immediately after giving effect to or as a result of such extension of credit; and
- (b) the Borrower shall have complied with the notice requirements of Article 4, Article 5 or Article 6, as the case may be, in respect of the relevant credit.

12.3 Waiver. The terms and conditions of Sections 12.1 and 12.2 are inserted for the sole benefit of the Lender, and the Lender may waive such terms and conditions, in whole or in part, with or without terms or conditions, without prejudicing its right to assert the terms and conditions of Section 12.1 or 12.2 in whole or in part in respect of any further extension of credit.

12.4 Entry Into Effect of this Amendment and Restatement. On the Second Restatement Date, this agreement shall amend and restate the Existing Credit Agreement in its entirety and the Existing Credit Agreement as so amended and restated is hereby ratified and confirmed by the parties hereto. This agreement is not intended by the parties to, and shall not constitute, a payment, discharge, satisfaction or novation of the whole or any item or part of the Secured Obligations (as defined in the Existing Credit Agreement) remaining outstanding and owing to the Lender until paid in full in accordance with the provisions of this agreement. The parties hereto agree that, on the Second Restatement Date, the Loans, Letters and Bankers' Acceptances (each as is defined in the Existing Credit Agreement) outstanding under the Existing Credit Agreement shall become outstanding hereunder as advances of the same type. Each Obligor hereby confirms to and agrees with the Lender that its Secured Obligations (defined in the Existing Credit Agreement) shall continue in full force and effect in accordance with their respective terms (amended and restated, as applicable, by this agreement).

ARTICLE 13 DEFAULT AND REMEDIES

13.1 Events of Default. Upon the occurrence of any one or more of the following events, unless expressly waived in writing by the Lender:

- (a) the non-payment of any principal amount due hereunder;
- (b) the non-payment of any interest, fee or other amount (other than principal) due hereunder within three (3) Banking Days after the date such payment is due, provided that such three (3) Banking Day grace period shall not be available more than once in any 12 month period;
- (c) the commencement of proceedings for the dissolution, liquidation or winding-up of any of the Obligors or for the suspension of the operations of any of the Obligors (provided that, if such proceedings are commenced by a Person other than an Obligor, such proceedings shall only constitute an Event of Default if

- (i) such proceedings are not being diligently defended or (ii) such proceedings have not been discharged, vacated or stayed within 30 days after commencement);
- (d) any of the Obligors ceases to carry on its business or is adjudged or declared bankrupt or insolvent or admits in writing its inability to pay debts as they become due or makes an assignment for the general benefit of creditors, petitions or applies to any tribunal for the appointment of a receiver or trustee for it or for any part of its property having a fair market value in excess of \$50,000 (or such a receiver or trustee is appointed for it or any part of its property having a fair market value in excess of \$50,000), or files a notice of intention to file a proposal, or commences (or any other Person commences) any proceedings relating to it under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction whether now or hereafter in effect (provided that, if any such petition or application or any such proceedings are commenced by another Person, such proceedings shall only constitute an Event of Default if (i) such proceedings are not being diligently defended or (ii) any order is made or any other step is taken which would stay or otherwise prohibit the exercise or enforcement by the Lender of any of its rights, entitlements or remedies under any Credit Document or at law, or (iii) such proceedings have not been discharged, vacated or stayed within 10 days after commencement), or by any act indicates its consent to, approval of, or acquiescence in, any such proceeding for it or for any part of its property having a fair market value in excess of \$50,000, or suffers the appointment of any receiver or trustee, sequestrator or other custodian for it or any such part of its property;
- (e) any representation or warranty made or deemed made by any of the Obligors in any Loan Document or in any other document, agreement or instrument delivered to the Lender pursuant hereto proves to have been incorrect in any material respect when made or furnished; provided that if such representation or warranty is capable of being corrected within thirty days, the relevant Obligor diligently attempts to take all such action as may be necessary in order that such representation or warranty will become correct and diligently keeps the Lender informed of its efforts in this regard, and such representation or warranty is correct by not later than the expiry of such thirty day period, then the incorrectness of such representation, or warranty shall not constitute an Event of Default;
- (f) the breach or failure of due observance or performance of (x) any Financial Covenant and/or (y) any covenant or provision of any Credit Document, the breach of which has been expressly stated therein as resulting in an immediate Event of Default for which there is no grace period;
- (g) the breach or failure of due observance or performance by any of the Obligors of any covenant or provision of any of the Credit Documents, other than those heretofore or hereafter dealt with in this Section 13.1, or of any other document, agreement or instrument delivered to the Lender pursuant hereto or thereto which

is not remedied within thirty days after written notice to do so has been given by the Lender to the Borrower;

- (h) a writ, execution, attachment or similar process is issued or levied against all or any portion of the Secured Assets in connection with any judgment against any of the Obligors in excess of \$50,000 and such writ, execution, attachment or similar process is not released, bonded, satisfied, discharged, vacated or stayed within thirty days after its entry, commencement or levy;
- (i) one or more Lien holders enforce their security or other remedies against any part of the Secured Assets having a fair market value in excess of \$50,000;
- (j) any Obligor (i) fails to make any payment in respect of any Indebtedness having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than \$50,000 or the U.S. Dollar Equivalent thereof when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) and such failure continues after the applicable grace or notice period, if any, specified in the relevant document on the date of such failure; or (ii) fails to perform or observe any condition or covenant, or any other event shall occur or condition exist, under any agreement or instrument relating to any such Indebtedness and the holder or holders of such Indebtedness or beneficiary or beneficiaries of such Indebtedness (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) are able to cause such Indebtedness to be declared to be due and payable prior to its stated maturity or such Indebtedness which is a contingent obligation has become payable;
- (k) any of the Obligors disclaims its liability under any one or more of the Credit Documents or any one or more of the Credit Documents is determined by the Lender not to be valid and enforceable by the Lender against the relevant Obligor and any such document has not been replaced by a valid and enforceable document and equivalent in effect to such document, assuming such document had originally been valid and enforceable, in form and substance acceptable to the Lender, within thirty (30) days of such determination, provided, however, that such grace period shall only be provided if the relevant Obligor actively cooperates with the Lender to so replace such document and provided further however, such grace period shall not apply in the case of the EDC Guarantee;
- (l) the occurrence of a Change of Control;
- (m) the occurrence of a Material Adverse Change;
- (n) any information provided by any Obligor to the Lender and/or Export Development Canada (including, without limitation, any information, attestation, self-declaration or confirmation provided in the Borrower's online application for

the EDC Guarantee) is inaccurate or untrue at the time of the provision of such information or if such information ceases to be accurate or true.

the Lender may, by notice to the Borrower, terminate all of the Credit Facilities and, by the same or further notice to the Borrower, declare all indebtedness of the Borrower to the Lender pursuant to this agreement (including the face amount of all Bankers' Acceptances issued and outstanding hereunder and the contingent liability of the Lender under all Letters issued and outstanding hereunder) and all accrued and unpaid interest and fees hereunder to be immediately due and payable, whereupon all of the Credit Facilities shall terminate, all such indebtedness shall immediately become and be due and payable and the Lender may enforce the Security or cause the Security to be enforced (provided, however, that all of the Credit Facilities shall terminate, all such indebtedness of the Borrower to the Lender shall automatically become due and payable and the Lender shall immediately become entitled to enforce the Security or cause the Security to be enforced, without notice of any kind to the Borrower or any Obligor, upon the occurrence of an event described in clause (d) or (e) above). With respect to any Bankers' Acceptances outstanding at the time all such indebtedness becomes immediately due and payable, the Borrower shall forthwith deposit with the Lender cash collateral in an amount equal to the aggregate face amount of the Bankers' Acceptances, to be held on terms and conditions satisfactory to the Lender, and upon such deposit having been made the Borrower shall have no further liability to the Lender with respect to such Bankers' Acceptances. Upon the payment by the Borrower to the Lender of the then contingent liability under all outstanding Letters, the Borrower shall have no further liability to the Lender with respect to such Letters.

13.2 Remedies Cumulative. The Borrower expressly agrees that the rights and remedies of the Lender under this agreement are cumulative and in addition to and not in substitution for any rights or remedies provided by law. Any single or partial exercise by the Lender of any right or remedy for a default or breach of any term, covenant or condition in this agreement does not waive, alter, affect or prejudice any other right or remedy to which the Lender may be lawfully entitled for the same default or breach. Any waiver by the Lender of the strict observance, performance or compliance with any term, covenant or condition of this agreement is not a waiver of any other or subsequent default and any indulgence by the Lender with respect to any failure to strictly observe, perform or comply with any term, covenant or condition of this agreement is not a waiver of the entire term, covenant or condition or any other or subsequent default.

13.3 Set-Off. In addition to any rights now or hereafter granted under Applicable Law, and not by way of limitation of any such rights, the Lender is authorized, at any time that an Event of Default has occurred and is continuing and without notice to the Borrower or to any other Person, any such notice being expressly waived by the Borrower, to set-off, appropriate, combine and apply any and all accounts and deposits, matured or unmatured, general or special, and any other indebtedness at any time held by or owing by the Lender to or for the credit of or the account of the Borrower against and on account of the obligations and liabilities of the Borrower which are due and payable to the Lender under this agreement.

13.4 Refund of Overpayments. With respect to each Letter for which the Lender has been paid all of its contingent liability pursuant to Section 9.1, Section 9.9 or Section 13.1 and

provided that all amounts due by the Borrower to the Lender under Section 9.1, Section 9.9 or Section 13.1 have been paid, the Lender agrees to pay to the Borrower, upon the later of

- (a) if the Letter is subject to an Order, the date on which any final and non-appealable order, judgment or other determination has been rendered or issued either permanently enjoining the Lender from paying under such Letter or terminating any outstanding Order; and
- (b) the earlier of:
 - (i) the date on which either the original counterpart of such Letter is returned to the Lender for cancellation or the Lender is released by the beneficiary thereof from any further obligations in respect of such Letter;
 - (ii) the expiry of such Letter; and
 - (iii) (where the contingent liability under such Letter is less than the face amount thereof), all amounts possibly payable under such Letter have been paid;

an amount equal to any excess of the amount received by the Lender hereunder in respect of its contingent liability under such Letter over the total of amounts applied to reimburse the Lender for amounts paid by it under or in connection with such Letter (the Lender having the right to so appropriate such funds).

13.5 Application of Cash Proceeds of Realization.

- (a) All Proceeds of Realization not in the form of cash shall be forthwith delivered to the Lender and disposed of, or realized upon, by the Lender in such manner as the Lender may approve so as to produce Cash Proceeds of Realization.
- (b) Subject to the claims, if any, of secured creditors of the Obligor whose security ranks in priority to the Security, all Cash Proceeds of Realization shall be applied and distributed, and the claims of the Lender shall be deemed to have the relative priorities which would result in the Cash Proceeds of Realization being applied and distributed, as follows:
 - (i) firstly, to the payment of all reasonable costs and expenses incurred by or on behalf of the Lender (including, without limitation, all legal fees and disbursements) in the exercise of all or any of the powers granted to it hereunder or under the Security Documents, the Guarantees or EDC Guarantee and in payment of all of the remuneration of any Receiver and all costs and expenses properly incurred by such Receiver (including, without limitation, all legal fees and disbursements) in the exercise of all or any powers granted to it under the Security Documents;

- (ii) secondly, in payment of all amounts of money borrowed or advanced by the Lender or such Receiver pursuant to the Security Documents and any interest thereon;
- (iii) thirdly, to the payment or prepayment of the Secured Obligations (other than any Secured Obligations owing on account of Indebtedness incurred under the BCAP Facility), including holding as cash collateral to be applied against such Secured Obligations which have not then matured, to the Lender;
- (iv) fourthly, to the payment or prepayment of the Secured Obligations owing on account of Indebtedness incurred under the BCAP Facility to the Lender; and
- (v) the balance, if any, in accordance with Applicable Law.

ARTICLE 14 MISCELLANEOUS

14.1 Waivers. Any term, covenant or condition of any of the Loan Documents may only be amended with the prior written consent of the parties hereto or compliance therewith may be waived (either generally or in a particular instance and either retroactively or prospectively) by the Lender and in any such event the failure to observe, perform or discharge any such covenant, condition or obligation, so amended or waived (whether such amendment is executed or such consent or waiver is given before or after such failure), shall not be construed as a breach of such covenant, condition or obligation or as a Default or Event of Default. No failure or delay by the Lender in exercising any remedy, right or power hereunder or otherwise shall operate as a waiver thereof, except a waiver which is specifically given in writing by the Lender, and no single or partial exercise of any power, right or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other power, right or privilege.

14.2 Notices. All notices, demands and other communications provided for in this agreement shall be in writing and shall be personally delivered to an officer of the addressee or sent by telefacsimile, charges prepaid, at or to the applicable addresses or telefacsimile numbers, as the case may be, set opposite the party's name on the signature page hereof or at or to such other address or addresses or telefacsimile number or numbers as any party hereto may from time to time designate to the other parties in such manner. Any communication which is personally delivered as aforesaid shall be deemed to have been validly and effectively given on the date of such delivery if such date is a Banking Day and such delivery was made prior to 4:00 p.m. (Toronto time); otherwise, it shall be deemed to have been validly and effectively given on the Banking Day next following such date of delivery. Any communication which is transmitted by telefacsimile as aforesaid shall be deemed to have been validly and effectively given on the date of transmission if such date is a Banking Day and such transmission was made prior to 4:00 p.m. (Toronto time); otherwise, it shall be deemed to have been validly and effectively given on the Banking Day next following such date of transmission.

14.3 Severability. Any provision hereof which is prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.

14.4 Counterparts. This agreement may be executed in one or more counterparts (including counterparts executed and delivered by facsimile or electronic transmissions in portable document format or by other electronic means), each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument.

14.5 Successors and Assigns; No Third Party Rights or Liabilities. This agreement shall enure to the benefit of and shall be binding upon the parties hereto and their respective successors and permitted assigns. Nothing in this agreement will be construed to give any Person other than the parties hereto any legal or equitable right, remedy, or claim under or with respect to this agreement or any provision of this agreement. This agreement and all of its provisions and conditions are for the sole and exclusive benefit of the parties hereto and their successors and assigns.

14.6 Assignment.

- (a) Neither the Loan Documents nor the benefit thereof may be assigned by the Borrower.
- (b) The Lender shall be permitted to sell all or any part of its rights and obligations under the Loan Documents to one or more regulated financial institutions; provided that (i) unless an Event of Default has occurred and is continuing, the Borrower's consent to such assignment must be obtained, such consent not to be unreasonably withheld or delayed, (ii) the amount being assigned is at least \$5,000,000 and (iii) the Lender shall retain a commitment of at least \$5,000,000.

14.7 Increased Costs. If immediately following any assignment of the whole or any part of the Credit Facilities pursuant to Subsection 14.6(b) above, the transferee would incur costs, expenses or other amounts of the nature described in Section 8.2 in excess, at that time, of those which the Borrower would have been required to indemnify the Lender had such assignment or participation not taken place, the indemnity obligations of the Borrower under Section 8.2 shall not extend to such excess.

14.8 Entire Agreement. The Loan Documents and the agreements referred to therein and delivered pursuant thereto constitute the entire agreement between the parties hereto and supersede any prior agreements, commitment letters, undertakings, declarations, representations and understandings, both written and verbal, in respect of the subject matter hereof.

14.9 Further Assurances. The Borrower shall, and shall cause the other Obligor to, from time to time and at all times hereafter, upon every reasonable request of the Lender, make, do, execute, and deliver or cause to be made, done, executed and delivered all such further acts, deeds, assurances and things as may reasonably be necessary in the opinion of the Lender, acting reasonably, for more effectually implementing and carrying out the terms of the Loan Documents

or any agreement delivered pursuant thereto and such additional security, legal opinions, consents, approvals, acknowledgements, undertakings, non-disturbance agreements, directions and negotiable documents of title in connection with the property and assets of the Obligors, in form and substance satisfactory to the Lender, as the Lender may from time to time request (and to the extent required to be provided by third parties, to the extent obtainable using commercially reasonable efforts), to ensure (i) that all Secured Assets are subject to a Lien in favour of the Lender and (ii) the intended first ranking priority of such Liens (subject to Permitted Liens).

14.10 Judgment Currency.

- (a) If, for the purpose of obtaining or enforcing judgment against the Borrower in any court in any jurisdiction, it becomes necessary to convert into a particular currency (such currency being hereinafter in this Section 14.10 referred to as the “**Judgment Currency**”) an amount due in another currency (such other currency being hereinafter in this Section 14.10 referred to as the “**Indebtedness Currency**”) under this agreement, the conversion shall be made at the rate of exchange prevailing on the Banking Day immediately preceding:
 - (i) the date of actual payment of the amount due, in the case of any proceeding in the courts of the Province of Ontario or in the courts of any other jurisdiction that will give effect to such conversion being made on such date; or
 - (ii) the date on which the judgment is given, in the case of any proceeding in the courts of any other jurisdiction (the date as of which such conversion is made pursuant to this Section 14.10(a)(ii) being hereinafter in this Section 14.10 referred to as the “**Judgment Conversion Date**”).
- (b) If, in the case of any proceeding in the court of any jurisdiction referred to in Section 14.10(a)(i), there is a change in the rate of exchange prevailing between the Judgment Conversion Date and the date of actual payment of the amount due, the Borrower shall pay to the Lender, such additional or lesser amount (if any) as may be necessary to ensure that the amount paid in the Judgment Currency, when converted at the rate of exchange prevailing on the date of payment, will produce the amount of the Indebtedness Currency which could have been purchased with the amount of Judgment Currency stipulated in the judgment or judicial order at the rate of exchange prevailing on the Judgment Conversion Date.
- (c) Any amount due from the Borrower under the provisions of Section 14.10(b) shall be due to the judgment creditor as a separate debt and shall not be affected by judgment being obtained for any other amounts due under or in respect of this agreement.
- (d) The term “rate of exchange” in this Section 14.10 means the noon spot rate of exchange for Canadian interbank transactions applied in converting the Indebtedness Currency into the Judgment Currency published by the Bank of Canada for the day in question.

14.11 Anti-Money Laundering Legislation. The Borrower acknowledges that, pursuant to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada) and other applicable anti-money laundering, anti-terrorist financing, government sanction and “know your client” applicable laws, whether within Canada or elsewhere (collectively, including any guidelines or orders thereunder, “**AML Legislation**”), the Lender may be required to obtain, verify and record information regarding the Obligors and their directors, authorized signing officers, direct or indirect shareholders or other Persons in control of any such Obligor, and the transactions contemplated hereby. The Borrower shall promptly:

- (a) provide all such information, including supporting documentation and other evidence, as may be reasonably requested by the Lender or any prospective assignee of the Lender in order to comply with any applicable AML Legislation, whether now or hereafter in existence; and
- (b) if requested from time to time, notify the recipient of any such information of any changes thereto.

14.12 Forum Selection and Consent to Jurisdiction. Any legal action or proceeding with respect to this agreement may be brought in the courts of the Province of Ontario and, by execution and delivery of this agreement, the parties hereby accept for themselves and in respect of their property, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid courts. The Borrower hereby expressly and irrevocably submits to the jurisdiction of the courts of the Province of Ontario for the purpose of any such litigation as set forth above and irrevocably agrees to be bound by any judgment rendered thereby in connection with such litigation.

14.13 Waivers of Jury Trial. THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT TO WHICH IT IS A PARTY AND FOR ANY COUNTERCLAIM THEREIN.

14.14 Treatment of Certain Information: Confidentiality.

- (a) The Lender agrees to maintain the confidentiality of Information, except that Information may be disclosed (a) to it, its affiliates and its and its affiliates’ respective partners, directors, officers, employees, agents, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority or governmental authority purporting to have jurisdiction over it (including any self-regulatory authority), (c) to the extent required by Applicable Law or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those

of this Section, to (i) any assignee of or any prospective assignee of any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap, derivative, credit-linked note or similar transaction relating to the Borrower and the Secured Obligations, (g) with the consent of the Borrower or (h) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to the Lender on a non- confidential basis from a source other than an Obligor. Without limiting the generality of the foregoing, the Lender shall not publish promotional “tombstones” and other forms of notices of the facilities made available hereunder without the consent of the Borrower, such consent not to be unreasonably withheld; provided that in no circumstance shall such promotional “tombstones” or other forms of notices disclose the dollar amounts of the facilities made available hereunder.

- (b) For purposes of this Section, “**Information**” means all information received in connection with this agreement from any Obligor relating to any Obligor or any of its Subsidiaries or any of their respective businesses, other than any such information that is available to the Lender on a non-confidential basis. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

14.15 Survival. The provisions of Article 10, Article 11 and Article 13 (and all other provisions of this agreement which are necessary to give effect to each of the provisions of such Articles) shall survive repayment in full of all credit outstanding under the Credit Facilities for the benefit of the Lender until the Security Discharge Date. For avoidance of doubt, the Security shall secure all Secured Obligations outstanding under the Hedging Agreements and the Financial Services Agreements regardless of whether any Secured Obligations remain outstanding under any Loan Documents.

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IN WITNESS WHEREOF the parties hereto have executed this agreement

**DIAMOND ESTATES WINES & SPIRITS
INC.**
1067 Niagara Stone Road
Niagara-on-the-Lake
ON L0S 1J0
Attention: [REDACTED]
Email: [REDACTED]

**DIAMOND ESTATES WINES & SPIRITS
INC., as Borrower**

Name:
Title:

BANK OF MONTREAL
150 King Street West, 11th Floor,
Toronto, Ontario M5H 3T9

BANK OF MONTREAL

Attention: [REDACTED]
Telefax: [REDACTED]
Email: [REDACTED]

By: _____
Name:
Title:

By: _____
Name:
Title:

IN WITNESS WHEREOF the parties have executed this agreement.

BORROWER:

**DIAMOND ESTATES WINES & SPIRITS
INC.**

By: _____

Name:

Title:

By: _____

Name:

Title:

GUARANTORS:

DIAMOND ESTATES WINE & SPIRITS LTD.

By: _____
Name:
Title:

By: _____
Name:
Title: CFO

DE SOUSA WINES TORONTO INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

BACKYARD VINEYARDS CORP.

By: _____
Name:
Title:

By: _____
Name:
Title:

LENDER:

BANK OF MONTREAL

By: _____
Name:
Title:

By: _____
Name:
Title:

[SCHEDULES INTENTIONALLY OMITTED]

