

CREDIT AGREEMENT

BETWEEN

**MEDICAL FACILITIES CORPORATION
as Canadian Borrower**

AND

**MEDICAL FACILITIES AMERICA, INC. and
MEDICAL FACILITIES (USA) HOLDINGS, INC.
as US Borrowers**

AND

**NATIONAL BANK OF CANADA
as Administrative Agent**

AND

**NATIONAL BANK FINANCIAL MARKETS
as Lead Arranger and Bookrunner**

AND

**THE FINANCIAL INSTITUTIONS
from time to time parties hereto,
as Lenders**

MADE AS OF

August 31, 2018

DAVIES WARD PHILLIPS & VINEBERG LLP

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CREDIT AGREEMENT

THIS AGREEMENT is made as of August 31, 2018.

B E T W E E N:

MEDICAL FACILITIES CORPORATION, a corporation existing under the laws of the Province of British Columbia (hereinafter referred to as the "**Canadian Borrower**")

- and -

MEDICAL FACILITIES AMERICA, INC., a corporation existing under the laws of the State of Delaware (hereinafter referred to as the "**MFA US Borrower**")

- and -

MEDICAL FACILITIES (USA) HOLDINGS, INC., a corporation existing under the laws of the State of Delaware (hereinafter referred to as the "**MFH US Borrower**")

- and -

NATIONAL BANK OF CANADA, in its capacity as Agent (the "**Agent**")

- and -

Each financial institution from time to time party to this Agreement and shown as a Lender on the signature pages hereto (hereinafter in such capacities individually referred to as a "**Lender**" and collectively in such capacities referred to as the "**Lenders**")

WHEREAS the Borrowers have requested the Credit Facility and the Lenders have agreed to provide the Credit Facility to the Borrowers on the terms and conditions herein set forth;

AND WHEREAS National Bank of Canada will be the Agent as contemplated by Section 14.01;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the covenants and agreements herein contained the parties hereto agree as follows:

ARTICLE 1 - INTERPRETATION

1.01 Definitions

In this Agreement, unless something in the subject matter or context is inconsistent therewith:

"**Acquisition**" shall mean, with respect to any Person, any purchase or other acquisition, regardless of how accomplished or effected (including any such purchase or other acquisition effected by way of amalgamation, merger, arrangement, business combination or other form of corporate reorganization or by way of purchase, lease or other acquisition arrangements), of (a) any other Person (including any purchase or acquisition of such number of the issued and outstanding securities of, or such portion of an Equity Interest in, such other Person) such that such other Person becomes a Subsidiary of the purchaser or of any of its Affiliates, (b) all or substantially all of the Property of any other Person, or (c) all or any material portion of all of any division, business, or operation or undertaking of any other Person as a going concern.

"**Adjusted EBITDA**" means, with respect to any Person for any period on a consolidated basis, Consolidated Net Income for such period plus the sum of all amounts deducted in arriving at such Consolidated Net Income amount in respect of:

- (a) Interest Expense;
- (b) Income Tax Expense;
- (c) Depreciation Expense;
- (d) any charges to Consolidated Net Income during such period which are non-cash charges or non-recurring expenses arising from the rationalization of such Person's and its Subsidiaries' facilities, product lines or personnel;
- (e) non-cash charges in respect of foreign currency adjustments and goodwill impairment; and
- (f) non-controlling interests.

"**Administrative Questionnaire**" means an administrative questionnaire in a form supplied by the Agent.

"**Advance**" means a borrowing by a Borrower by way of a Prime Rate Advance, a US Base Rate Advance, a BA Equivalent Note, a LIBOR Advance, acceptance by a Lender of a draft or

depository bill presented for acceptance as a Bankers' Acceptance (including BA Equivalent Notes), or the issuance of a Letter of Credit by the Issuing Lender, and any reference relating to the amount of Advances shall mean the sum of the principal amount of all outstanding Prime Rate Advances, and US Base Rate Advances and LIBOR Advances, whether as a result of a Drawdown, Conversion, Rollover or deemed advance, plus the face amount of all outstanding Bankers' Acceptances and BA Equivalent Notes, plus the maximum amount payable under Letters of Credit.

"**Affiliate**" means, with respect to a specified Person, another Person that directly or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

"**Agent**" means National Bank in its capacity as administrative agent for the Lenders, including any successor agent pursuant to Section 14.07.

"**Agent's Payment Branch**" means the branch of the Agent located at 600 de la Gauchetière St. West, Level A, Montreal, Quebec H3B 4L2 or such other office that the Agent may from time to time designate by notice to the Borrowers and the Lenders.

"**Agreement**" means this agreement, the schedules and all amendments made hereto in accordance with the provisions hereof, as amended, revised, replaced, supplemented or restated from time to time.

"**Annual Business Plan**" means the annual business plan of the Canadian Borrower, prepared on a consolidated basis, with detailed financial projections and budgets on a month to month basis for the following Fiscal Year, in each case consisting of a statement of income and proposed Capital Expenditures.

"**Applicable Law**" means (a) any domestic or foreign statute, law (including common and civil law), treaty, code, ordinance, rule, regulation, restriction or by-law (zoning or otherwise); (b) any judgment, order, writ, injunction, decision, ruling, decree or award; (c) any regulatory policy, practice, request, guideline or directive; or (d) any franchise, licence, qualification, authorization, consent, exemption, waiver, right, permit or other approval of any Governmental Authority, binding on or affecting the Person referred to in the context in which the term is used or binding on or affecting the property of such Person, in each case having the force of law.

"**Applicable Margin**" means, with respect to any Advance and the standby fees, from one Pricing Date to the next, the rates per annum determined in accordance with the pricing grid set forth below. For purposes hereof, the term "**Pricing Date**" means, for any Fiscal Quarter of the Canadian Borrower ending on or after the Closing Date, the fifth (5th) Business Day after the latest date on which the Borrowers are required to deliver to the Agent the financial statements and Compliance Certificate for such Fiscal Quarter pursuant to Section 10.03 hereof. The Applicable Margin shall be established on a Pricing Date based on the Debt to EBITDA Ratio as of the end of the most recently completed Fiscal Quarter or Fiscal Year, as applicable, and the Applicable Margin established on a Pricing Date shall remain in effect until the next Pricing Date. If the Canadian Borrower has not delivered its financial statements and Compliance Certificate by the date such financial statements and Compliance Certificate are required to be

delivered under Section 10.03 hereof (the "**Required Delivery Date**"), until such financial statements and Compliance Certificate are delivered, the Applicable Margin shall, on the first day after the latest date by which the Canadian Borrower was so required to provide such financial statements and Compliance Certificate, be set at the highest Applicable Margin (i.e., Level I shall apply). Each determination of the Applicable Margin made by the Agent in accordance with the foregoing shall be conclusive and binding on the Borrowers and the Lenders if reasonably determined. Notwithstanding anything else in this definition, for the purpose of determining the Applicable Margin until the delivery of unaudited financial statements and a Compliance Certificate in respect of the Fiscal Quarter ending on or about September 30, 2018, the Debt to EBITDA Ratio shall be deemed to be at Level II. For greater certainty, there shall be no adjustments to the Applicable Margin in respect of Bankers' Acceptances and BA Equivalent Notes that are outstanding on a Pricing Date. In respect of each Letter of Credit which is outstanding on the Pricing Date there shall be a readjustment to the fee initially paid upon the issuance thereof, as follows: the fee relating to the period from the date of issuance to but excluding the Pricing Date shall be based upon the Applicable Margin in effect during such period; and the fee relating to the period from and including the Pricing Date to but excluding the date of expiry of such Letter of Credit shall be based upon the Applicable Margin in effect from and after the Pricing Date (subject to any subsequent additional adjustment pursuant to a subsequently delivered Compliance Certificate).

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Upon the occurrence of an Event of Default that is continuing, the Applicable Margin shall, following written notice from the Agent to the Borrowers, be at the then applicable Level, [REDACTED]

"**Applicable Order**" means any applicable domestic or foreign order, judgment, award or decree made by any court or Governmental Authority.

"**Arm's Length**" has the meaning specified in the definition of "**Non-Arm's Length**".

"**Assignment and Assumption**" means an assignment and assumption entered into by a Lender and an Eligible Assignee and accepted by the Agent, in substantially the form of Schedule E or any other form approved by the Agent.

"**Associate**" means an "associate" as defined in the *Business Corporations Act* (Ontario).

"**Auditor**" means the Canadian Borrower's auditor, being any independent chartered accountants of recognized national standing in Canada.

"**BA Discount Proceeds**" means, with respect to a particular Bankers' Acceptance or BA Equivalent Note, the following amount:

$$\frac{F}{1 + \frac{D \times T}{365}}$$

where

F means the face amount of such Bankers' Acceptance or BA Equivalent Note;

D means the applicable BA Discount Rate for such Bankers' Acceptance or BA Equivalent Note; and

T means the number of days to maturity of such Bankers' Acceptance or BA Equivalent Note,

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

"**BA Discount Rate**" means:

- (a) with respect to any Lender which is a Schedule I Lender, and in respect of a Bankers' Acceptance being purchased by such Lender on any day, CDOR for a term which is comparable to the term of such Bankers' Acceptance, at or about 10:00 a.m., Toronto time, on such date; and
- (b) with respect to any Lender which is not a Schedule I Lender, and in respect of a Bankers' Acceptance being purchased by such Lender or a BA Equivalent Note being issued by such Lender on any day (i) the BA Discount Rate for Schedule I Lenders determined in accordance with subsection (a) above; plus (ii) 10 basis points.

"**BA Equivalent Note**" has the meaning set forth in Section 6.01(1).

"**BA Lender**" means any Lender which has not notified the Agent in writing that it is unwilling or unable to accept Drafts as provided for in Article 6.

"BA Stamping Fee" means the amount calculated by multiplying the face amount of a Bankers' Acceptance or a BA Equivalent Note by the BA Stamping Fee Rate and then multiplying the result by a fraction, the numerator of which is the number of days to elapse from and including the date of acceptance of such Bankers' Acceptance or purchase of such BA Equivalent Note by a Lender up to but excluding the maturity date of such Bankers' Acceptance or BA Equivalent Note and the denominator of which is 365.

"BA Stamping Fee Rate" means, with respect to a Bankers' Acceptance or a BA Equivalent Note, the applicable percentage rate per annum indicated below the reference to "BA Stamping Fee Rate" in the definition of "Applicable Margin" relevant to the period in respect of which a determination is being made.

"Bail-In Action" means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

"Bail-In Legislation" means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

"Bankers' Acceptance" or **"BA"** means a depository bill, as defined in the *Depository Bills and Notes Act* (Canada), in Canadian Dollars that is in the form of a Draft signed by or on behalf of the Canadian Borrower and accepted by a BA Lender as contemplated under Section 6.01 or, for Lenders not participating in clearing services as contemplated in that Act, a draft or other bill of exchange in Canadian Dollars that is signed on behalf of the Canadian Borrower and accepted by a Lender.

"Basel III" means (i) the agreements on capital requirements, leverage ratio and liquidity standards contained in "Basel III: A global regulatory framework for more resilient banks and banking systems", "Basel III: International framework for liquidity risk measurement standards and monitoring" and "Guidance for national authorities operating the countercyclical capital buffer" published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated; and (ii) any further guidance or standards published by the Basel Committee on Banking Supervision relating to "Basel III".

"Borrowers" means, collectively, the Canadian Borrower and the US Borrowers.

"Borrowers' Counsel" means the firm of Goodmans LLP or such other firm or firms of legal counsel as the Canadian Borrower may from time to time designate.

"Breakage Costs" means all reasonable costs, losses and expenses incurred by any Lender by reason of the liquidation or deployment of deposits or other funds, the breakage of LIBOR contracts, all as set out in a certificate delivered to a Borrower by any Lender entitled to receive such reimbursement.

"Business" means the business of the operation or management of specialty surgical hospitals or ambulatory surgery centres or any business presently engaged in by the MFC Partnerships as of the Closing Date.

"Business Day" shall mean any day other than a Saturday or a Sunday on which banks generally are open for business in Toronto, Ontario and Montreal, Quebec, and when used in respect of LIBOR Advances, shall mean any day other than a Saturday or a Sunday on which banks are generally open for business in Toronto, Ontario, Montreal, Quebec, New York, New York and London, England and on which transactions can be carried on in the London interbank market and when used in respect of US Base Rate Advances, shall mean any day other than a Saturday or a Sunday on which banks generally are open for business in Toronto, Ontario, Montreal, Quebec, and New York, New York.

"Canadian Borrower" means Medical Facilities Corporation, a corporation existing under the laws of the Province of British Columbia, including its successors and assigns.

"Canadian Dollars", "Cdn. Dollars" and "Cdn.\$" means the lawful money of Canada.

"Capital Expenditures" means, for any period, the unfinanced maintenance capital expenditures of the Canadian Borrower and its Wholly Owned Subsidiaries for the period determined on a consolidated basis, but excluding unfinanced maintenance capital expenditures of any non-Wholly Owned Subsidiary, plus, without duplication, that portion of the unfinanced capital expenditures of any Subsidiary of the Canadian Borrower (other than a Wholly Owned Subsidiary) for the period equal to the Canadian Borrower's ownership interest (directly or indirectly held) in such Subsidiary.

"Capitalized Lease Obligations" means, at the time any determination thereof is to be made, the amount of the liability in respect of a capital lease that would at such time be required to be capitalized and reflected as a liability on a balance sheet (excluding the footnotes thereto) in accordance with GAAP.

"Cash Equivalents" means:

- (a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the Government of Canada or of any Canadian province (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the Government of Canada or of such Canadian province), in each case maturing within one year from the date of acquisition thereof;
- (b) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the Government of the United States of America or of any state (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the Government of the United States of America or of such state), in each case maturing within one year from the date of acquisition thereof;
- (c) investments in commercial paper maturing within 365 days from the date of acquisition thereof and rated, at such date of acquisition, at least "Prime 1" (or the then equivalent grade) by Moody's or "A" (or the then equivalent grade) by S&P or R-1 Low (or the then equivalent) by Dominion Bond Rating Service Limited;

- (d) investments in certificates of deposit, bankers' acceptances and time deposits maturing within 365 days from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of Canada or of any province thereof or the United States of America or any state thereof; and
- (e) money market funds that invest substantially all of their assets in any of the foregoing.

"Cash Taxes" means, for any period, any United States and Canadian federal, state, provincial or local income taxes paid or payable by the Canadian Borrower in cash during such period, without duplication, on a consolidated basis, but excluding Cash Taxes for any Non-Wholly Owned Subsidiary, plus, without duplication, that portion of the Cash Taxes for the period of any Subsidiary of the Canadian Borrower (other than a Wholly Owned Subsidiary) equal to the Canadian Borrower's ownership interest (directly or indirectly held) in the Subsidiary.

"CDOR" means, on any date, the annual rate of interest which is the rate based on an average rate applicable to Canadian Dollar bankers' acceptances for a specified term appearing on the "Reuters Screen CDOR Page" (as defined in the International Swaps and Derivatives Association, Inc., definitions, as modified and amended from time to time) at approximately 10:00 a.m. (Toronto time), on such date, or if such date is not a Business Day, then on the immediately preceding Business Day, provided that if such rate does not appear on the Reuters Screen CDOR Page on such date as contemplated, then CDOR on such date shall be the rate for the term referred to above applicable to Canadian Dollar bankers' acceptances quoted by the Agent as of 10:00 a.m. (Toronto time) on such date or, if such date is not a Business Day, then on the immediately preceding Business Day. CDOR shall be no less than 0%.

"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 Governmental Authority or (c) the making or issuance of any Applicable Law by any Governmental Authority.

"Change of Control" means:

- (a) (i) the acquisition by any Person, or group of such Persons acting jointly or in concert, beneficially or otherwise, of greater than fifty percent (50%) of the outstanding Equity Interests of the Canadian Borrower or (ii) change of Control of the Canadian Borrower; or
- (b) any Guarantor (including any general partners), other than the Canadian Borrower is (i) no longer a Wholly Owned Subsidiary, directly or indirectly, of the Canadian Borrower, or (ii) no longer Controlled by the Canadian Borrower.

"Closing Date" means August 31, 2018 or such later date as may be agreed to by the parties hereto.

"**Commitment**" means, in respect of each Lender from time to time, the maximum amount of Advances which the Lender has covenanted to make as set forth in Schedule A to this Agreement (which may be amended and distributed to all parties by the Agent from time to time), which for greater certainty shall in each case be reduced by such Lender's Proportionate Share of the amount of any permanent repayments, reductions or prepayments made hereunder.

"**Compliance Certificate**" means the certificate required pursuant to Section 10.03(4), substantially in the form annexed as Schedule D and signed by a senior officer of the Borrowers.

"**Consolidated Net Debt**" means, as of any date of determination, the sum, without duplication, of: (a) the Net Debt of the Canadian Borrower and each Wholly Owned Subsidiary of the Canadian Borrower; and (b) that portion of the Net Debt of any Subsidiary of the Canadian Borrower (other than a Wholly Owned Subsidiary) equal to the Canadian Borrower's proportionate ownership interest (directly or indirectly held) in the Subsidiary.

"**Consolidated Net Income**" means, with respect to any Person for any period, the aggregate of the Net Income of such Person and its Subsidiaries, including its Non-Wholly Owned Subsidiaries existing on the date hereof and any Non-Wholly Owned Subsidiaries formed or acquired after the date hereof, for such period, on a consolidated basis; provided, however, that: (a) any net after-tax extraordinary gains or losses (less all fees and expenses relating thereto) will be excluded; (b) any increase in amortization or depreciation resulting from purchase accounting in relation to any acquisition that is consummated after March 29, 2004, net of taxes, will be excluded; (c) the Net Income for such period will not include the cumulative effect of a change in accounting principles during such period; (d) any net after-tax gains or losses (less all fees and expenses relating thereto) attributable to asset dispositions other than in the ordinary course of business (as determined in good faith by the Canadian Borrower) will be excluded; (e) the Net Income for such period of any Person that is not a Subsidiary of such Person, or that is accounted for by the equity method of accounting, will be included only to the extent of the amount of dividends or distributions or other payments paid in cash (or to the extent converted into cash) to such Person or a Subsidiary thereof in respect of such period; and (f) the Net Income for such period of any Subsidiary will be excluded to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary of its Net Income is not at the date of determination permitted without any prior governmental approval (which has not been obtained) or, directly or indirectly, by the operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Subsidiary or its shareholders, unless such restrictions with respect to the payment of dividends or similar distributions have been legally waived; provided that the net loss of any such Subsidiary will be included.

"**Contingent Obligation**" means, as to any Person, any obligation, whether secured or unsecured, of such Person guaranteeing or indemnifying, or in effect guaranteeing or indemnifying, any indebtedness, leases, dividends, letters of credit or other monetary obligations (the "**primary obligations**") of any other Person (the "**primary obligor**") in any manner, whether directly or indirectly, including any obligation of such Person as an account party in respect of a letter of credit or letter of guarantee issued to assure payment by the primary obligor of any such primary obligation and any obligations of such Person, whether or not contingent, (a) to purchase any such primary obligation or any Property constituting direct or indirect

security therefor, (b) to advance or supply funds for the purchase or payment of any such primary obligation or to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (c) to purchase Property, securities or services primarily for the purpose of assuring the obligee under any such primary obligation of the ability of the primary obligor to make payment of such primary obligation, or (d) otherwise to assure or hold harmless the obligee under such primary obligation against loss in respect of such primary obligation; provided, however, that the term Contingent Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business and customary indemnities provided in agreements executed and delivered in respect of Acquisitions or Dispositions.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. **"Controlling"** and **"Controlled"** have corresponding meanings.

"Controlled Group" in respect of any Obligor or any Subsidiary of a Borrower operating in the United States, means all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control which, together with such Obligor or Subsidiary, or any of their respective Subsidiaries, are treated as a single employer under Section 414(b) or (c) of the IRC.

"Controlling Acquisition" means an Acquisition that is completed by either (a) a Borrower, or (b) a Subsidiary of a Borrower in which such Borrower owns at least 75% of all issued and outstanding Equity Interests of such Subsidiary, in each case, in respect of the Equity Interests of a target that represent either (i) not less than 51% of all of the issued and outstanding Equity Interests of such target, or (ii) (x) not less than 10% of all of the issued and outstanding Equity Interests of such target, and (y) result in the Canadian Borrower having directly or indirectly the power to significantly influence operating and financial decisions and to make or restrict Distributions with respect to such target.

"Conversion" means a conversion of an Advance pursuant to Section 2.06.

"Conversion Date" means the date specified by a Borrower as being the date on which such Borrower has elected to convert one type of Advance into another type of Advance and which shall be a Business Day.

"Conversion Notice" means the notice of request for Conversion substantially in the form annexed hereto as Schedule B to be given to the Agent by a Borrower pursuant to Section 2.06.

"Convertible Debentures" means the 5.90% convertible unsecured subordinated debentures due on December 31, 2019 issued pursuant to the Convertible Debentures Indenture.

"Convertible Debentures Indenture" means the trust indenture dated as of December 21, 2012 among the Canadian Borrower and Computershare Trust Company of Canada, as trustee.

"Credit Facility" has the meaning set forth in Section 2.01.

"**Debt**" means, with respect to any Person, without duplication, the aggregate of the following amounts, at the date of determination:

- (a) all indebtedness of such Person to any other Person for borrowed money;
- (b) all obligations of such Person for the deferred purchase price of Property or services which constitute indebtedness, except any such balance that constitutes a trade payable or similar obligation incurred in the ordinary course of business;
- (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments;
- (d) all obligations of such Person created or arising under any conditional sale or other title retention agreement with respect to Property acquired by such Person (whether or not the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such Property);
- (e) all obligations of such Person in respect of Capitalized Lease Obligations;
- (f) all reimbursement obligations, contingent or otherwise, of such Person under bankers' acceptance, letter of credit and similar facilities;
- (g) all obligations of such Person to purchase, redeem, retire, defease or otherwise acquire for value any partnership or shareholder or other Equity Interests of such Person prior to the Maturity Date (for greater certainty, not including obligations with respect to unexercised options and rights of first refusal and where conditions precedent to the obligations have not occurred);
- (h) all Contingent Obligations of such Person (other than, for certainty, the Obligor guarantees and other Security);
- (i) all Earn Out Obligations that are due and owing but have not been paid or are required by GAAP to be recorded as a liability on a Person's balance sheet;
- (j) all obligations of such Person under any Hedge Arrangements; and
- (k) any other obligation arising under arrangements or agreements including without limitation off-balance sheet financing that, in substance, provide debt financing to such Person.

"**Debt Service Amount**" means, for any period, the sum, without duplication, of (a) Interest Expense on Consolidated Net Debt plus scheduled mandatory repayments of any portion of the Consolidated Net Debt (including imputed payments on Capitalized Lease Obligations) during such period, (b) all cash dividend payments (excluding items eliminated in consolidation) on a series of Preferred Stock or Disqualified Stock of the Canadian Borrower, and (c) that portion of all cash dividend payments on a series of Preferred Stock or Disqualified Stock of a Subsidiary of the Canadian Borrower (other than a Wholly Owned Subsidiary) paid to a Person that is not a

Subsidiary of the Canadian Borrower equal to the Canadian Borrower's proportionate ownership interest (excluding items eliminated in consolidation), directly or indirectly held, in the Subsidiary.

"Debt Service Coverage Ratio" means, in respect of any period, the ratio of (a) EBITDA less Capital Expenditures and Cash Taxes to (b) the Debt Service Amount for such period.

"Debt to EBITDA Ratio" means, at any time, the ratio of (a) Consolidated Net Debt at such time to (b) EBITDA for the most recently completed Four Quarter period.

"Default" means any event or condition that constitutes an Event of Default or that would constitute an Event of Default except for satisfaction of any condition subsequent required to make the event or condition an Event of Default, including giving of any notice, passage of time, or both.

"Depreciation Expense" means, for any period with respect to any Person, depreciation, amortization, depletion and other like reductions to income of such Person for such period not involving any outlay of cash, determined without duplication and on a consolidated basis in accordance with GAAP.

"Disposition" means any sale, assignment, transfer, conveyance, lease or other disposition of any asset of any Obligor in a single transaction or a series of related transactions and the words **"Dispose"** and **"Disposed"** shall have a correlative meaning. For certainty, (i) the purchase and sale of Cash Equivalents and (ii) the conversion of cash from one currency to another currency do not constitute Dispositions.

"Disqualified Stock" means, with respect to any Person, any Equity Interests of such Person which, by its terms (or by the terms of any security into which it is convertible or for which it is redeemable or exchangeable), or upon the happening of any event: (a) matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise; (b) is convertible or exchangeable for Debt or Disqualified Stock; or (c) is redeemable at the option of the holder thereof, in whole or in part, in each case prior to the date that is 30 days after the earlier of (i) the Maturity Date, and (ii) the date on which the Credit Facility is repaid in full and the Commitments are terminated; provided, however, that only the portion of Equity Interests which so matures or is mandatorily redeemable, is so convertible or exchangeable or is so redeemable at the option of the holder thereof prior to such date will be deemed to be Disqualified Stock; provided further, however, that if such Equity Interests are issued to any director, manager, officer, employee or to any plan for the benefit of such parties of the Canadian Borrower or its Subsidiaries or by any such plan to such parties, such Equity Interests will not constitute Disqualified Stock solely because it may be required to be repurchased by the Canadian Borrower in order to satisfy applicable statutory or regulatory obligations or as a result of such parties' termination, death or disability.

"Distributable Cash" means, with respect to any Four Quarter Period, the EBITDA of the Canadian Borrower for such period, less the following items for the same period:

- (a) Cash Taxes;

- (b) Interest Expense (excluding payments pursuant to the Convertible Debentures);
- (c) Capital Expenditures; and
- (d) scheduled payments (or repayments) on Consolidated Net Debt.

"Distribution" shall mean, with respect to any Person, any payment, directly or indirectly, by such Person: (a) of any dividends on any Equity Interests, other than dividends or distributions payable in shares or other Equity Interests; (b) on account of, or for the purpose of setting apart any property for a sinking or other analogous fund for, the purchase, redemption, retirement or other acquisition of any Equity Interests of such Person; (c) of any other distribution (other than distributions in shares or other Equity Interests) in respect of any Equity Interests of such Person including a return of capital; (d) interest payments or other distributions on, and payments for the repurchase, redemption or other retirement of, the Convertible Debentures; or (e) of any management, consulting or similar fee or compensation or any bonus payment or comparable payment, or by way of gift or other gratuity, to the extent such distributions are made in cash, to any Affiliate of such Person (including to a direct or indirect parent) or to any director, officer or member of the management of an Affiliate of such Person provided that payments and reimbursements by an Obligor in the course of its business to employees, directors, officers and members of management of Obligors shall not constitute Distributions hereunder.

"Draft" has the meaning set forth in Section 6.01(1).

"Drawdown" means:

- (a) the advance of a Prime Rate Advance or a US Base Rate Advance or a LIBOR Advance;
- (b) the issue of Bankers' Acceptances or BA Equivalent Notes; or
- (c) the issue of Letters of Credit.

"Drawdown Date" means the date on which a Drawdown is made by a Borrower pursuant to the provisions hereof and which shall be a Business Day.

"Drawdown Notice" means the notice of request for advance substantially in the form annexed hereto as Schedule B to be given to the Agent by a Borrower pursuant to Section 2.06.

"Earn Out Obligations" means any amounts payable by an Obligor to any one or more sellers of applicable assets or Equity Interests after the Closing Date but following completion of an Acquisition and whether based on working capital purchase price adjustments, future performance, future profitability or otherwise (provided, for certainty, reimbursement for expenses, payments in connection with indemnity claims and other similar payments shall not constitute Earn Out Obligations).

"EBITDA" means, for any period, the Adjusted EBITDA of the Canadian Borrower and all of its Subsidiaries, for the period determined on a consolidated basis, but excluding Adjusted EBITDA for any Non-Wholly Owned Subsidiary, plus without duplication that portion of the

Adjusted EBITDA for the period of any Subsidiary of the Canadian Borrower (other than a Wholly Owned Subsidiary) equal to the Canadian Borrower's ownership interest (directly or indirectly held) in the Subsidiary.

Should an Obligor make an Acquisition or complete a Disposition during any fixed period:

- (a) in respect of each (x) new Obligor which has become a Subsidiary of the Canadian Borrower, and (y) Acquisition of Property constituting substantially all of the Property of a Person or a material portion of a division, business, operation or undertaking of a Person in such fiscal period, EBITDA shall be determined as if such Obligor had been a Subsidiary (or such Property had been owned) during the entire fiscal period; and
- (b) in respect of each (x) Obligor which has ceased to be a Subsidiary of the Canadian Borrower, and (y) Dispositions of Property constituting substantially all of the Property of a Person or a material portion of a division, business, operation or undertaking of a Person in such fiscal period, EBITDA shall be determined as if such Obligor had not been a Subsidiary (or such Property had been Disposed of) during the entire fiscal period.

"EEA Financial Institution" means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"EEA Member Country" means any of the member states of the European Union, Iceland, Liechtenstein and Norway.

"EEA Resolution Authority" means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"Eligible Assignee" means any Person (other than a natural person, any Obligor or any Affiliate of an Obligor or a Non-Funding Lender), in respect of which any consent that is required by Section 16.02 has been obtained.

"Encumbrance" means, in respect of any Person, any mortgage, debenture, pledge, hypothec, lien, charge, encumbrance, assignment by way of security, hypothecation or security interest granted or permitted by such Person or arising by operation of law, in respect of any of such Person's Property, or any consignment or capital lease of Property by such Person as consignee or lessee or any other security agreement, trust or arrangement having the effect of security for the payment of any debt, liability or obligation, and **"Encumbrances"**, **"Encumbrancer"**, **"Encumber"** and **"Encumbered"** shall have corresponding meanings.

"Environmental Liability" means any liability of an Obligor arising from the breach of any Requirements of Environmental Law.

"Equity Interest" means (i) in the case of any corporation, all capital stock and any securities exchangeable for or convertible into capital stock, (ii) in the case of an association or business entity, any and all shares, interests, participation rights or other equivalents of corporate stock (however designated) in or to such association or entity, (iii) in the case of a partnership, limited liability company or unlimited liability company, partnership or membership interests (whether general or limited), as applicable, and (iv) any other ownership interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distribution of assets of, the issuing Person, and including, in all of the foregoing cases described in clauses (i), (ii), (iii) or (iv), any warrants, rights or other options to purchase or otherwise acquire any of the interests described in any of the foregoing cases.

"Equivalent Amount" means with respect to any two currencies, the amount obtained in one such currency when an amount in the other currency is translated into the first currency using the Exchange Rate on the Business Day immediately preceding the Business Day with respect to which such computation is required for the purpose of this Agreement.

"ERISA" means the Employee Retirement Income Security Act of 1974 (United States) as amended from time to time.

"EU Bail-In Legislation Schedule" means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

"Event of Default" means any of the events or circumstances described in Section 12.01.

"Exchange Rate" means, in relation to the conversion of one currency into another currency, the spot rate of exchange for such conversion as quoted by the Bank of Canada at the close of business on the Business Day that such conversion is to be made (or, if such conversion is to be made before close of business on such Business Day, then at approximately close of business on the immediately preceding Business Day), and, in either case, if no such rate is quoted, the spot rate of exchange quoted for wholesale transactions by the Agent on the Business Day such conversion is to be made in accordance with its normal practice.

"Excluded Taxes" means, with respect to the Agent, any Lender, the Issuing Lender or any other recipient of any payment to be made by or on account of any obligation of an Obligor hereunder or under any other Loan Document (each, a "**Recipient**"), (a) Taxes imposed on or measured by its net income, capital taxes and franchise taxes imposed on it (in lieu of net income taxes), in each case, (i) by the jurisdiction (or any political subdivision thereof) under the laws of which such Recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located or (ii) that are Other Connection Taxes, (b) any branch profits taxes or any similar tax imposed by any jurisdiction described in clause (a) in which such Recipient is located, (c) Taxes imposed under FATCA, (d) any Taxes attributable to a Lender's failure to comply with Section 15.02(6), (e) any withholding Taxes imposed on a payment by or on account of any obligation of an Obligor hereunder or under any other Loan Document: (i) to a Person with which the Obligor does not deal at Arm's Length at

the time of making such payment or (ii) in respect of a debt or other obligation to pay an amount to a Person with whom the payer is not dealing at Arm's Length at the time of such payment and (f) any Taxes imposed on a Recipient by reason of such Recipient: (i) being a "specified shareholder" (as defined in subsection 18(5) of the *Income Tax Act* (Canada)) of any Obligor, or (ii) not dealing at Arm's Length with a "specified shareholder" (as defined in subsection 18(5) of the *Income Tax Act* (Canada)) of any Obligor (g) in the case of a Lender, United States federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in an Advance or Commitment pursuant to an Applicable Law in effect on the date on which (i) such Lender acquires such interest in the Advance or Commitment (other than pursuant to an assignment request by a Borrower under Section 15.03(2)) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 15.02, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office.

"Executive Order" has the meaning set forth in Section 9.01(34).

"Existing Debt" means indebtedness arising by the Borrowers to National Bank pursuant to the second amended and restated credit agreement dated as of July 7, 2015, other than indebtedness pursuant to the Existing Letters of Credit.

"Existing Letters of Credit" means the letters of credit issued by National Bank as set forth on Schedule G.

"FATCA" means Sections 1471 through 1474 of the IRC as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the IRC, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the IRC.

"Federal Funds Effective Rate" means, for any day, an annual rate of interest, expressed on the basis of a year of 360 days, equal, for each day during such period, to the weighted average of the rates on overnight United States federal funds transactions with members of the Federal Reserve System arranged by United States federal funds brokers, as published for such day (or, if such day is not a Business Day, for the preceding Business Day) by the Federal Reserve Bank of New York or, for any day on which that rate is not published for that day by the Federal Reserve Bank of New York, the simple average of the quotations for that day for such transactions received by the Agent from three United States federal funds brokers of recognized standing selected by it.

"Financial Assistance" means, without duplication and with respect to any Person, all loans made by that Person and guarantees or Contingent Obligations granted or incurred by that Person for the purpose of or having the effect of providing financial assistance to another Person or Persons, including, without limitation, letters of guarantee, letters of credit, legally binding comfort letters or indemnities issued in connection therewith, endorsements of bills of exchange (other than for collection or deposit in the ordinary course of business), obligations to purchase

assets regardless of the delivery or non-delivery thereof and obligations to make advances or otherwise provide financial assistance to any other entity and for greater certainty "**Financial Assistance**" shall include any guarantee of any third party lease obligations.

"**Fiscal Quarter**" means each successive three-month period of the Canadian Borrower's Fiscal Year ending on or about March 31, June 30, September 30 and December 31.

"**Fiscal Year**" means a twelve-month period ending on December 31 of any year, as such date may be changed with the consent of the Majority Lenders.

"**Four Quarter Period**" means as at the last day of any particular Fiscal Quarter of the Canadian Borrower, the period of four consecutive Fiscal Quarters which includes the Fiscal Quarter ending as of the date of such calculation (including the last day thereof) and the immediately preceding three Fiscal Quarters.

"**GAAP**" means generally accepted accounting principles which are in effect in Canada from time to time, including the International Financial Reporting Standards to the extent applicable.

"**Governmental Authority**" means the government of Canada or any other nation, or of any political subdivision thereof, whether provincial, state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, including any supra-national bodies such as the European Union or the European Central Bank and including a Minister of the Crown, Superintendent of Financial Institutions or other comparable authority or agency.

"**Guarantor**" means any Person that has entered into a guarantee guaranteeing the due payment and performance to the Agent and the Lenders of all present and future Obligations of the Borrowers to the Agent and the Lenders under the Loan Documents. As of the Closing Date, the only Guarantors are each of the Borrowers with respect to, in each case, the Obligations of the other two Borrowers.

"**Hazardous Material**" shall mean any substance, product, waste, pollutant, material, chemical, contaminant, dangerous goods, hazardous waste, constituent or other material listed or regulated under any Requirements of Environmental Law, including, without limitation, asbestos, petroleum product or by-product and polychlorinated biphenyls.

"**Hedge Arrangement**" means, for any period, for any Person, any arrangement or transaction between such Person and any other Person (whether entered into on, prior or after the Closing Date) which is (x) an interest rate swap transaction, forward interest rate transaction, forward foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency option or any other similar transaction (including any option with respect to any of such transactions or arrangements) designed to protect or mitigate against risks in interest or currency exchange or (y) a derivative product designed to hedge stock-based compensation or other similar items.

"**Hostile Take-Over Bid**" shall mean a Take-Over Bid by an Obligor or in which an Obligor is involved, in respect of which the board of directors (or persons performing similar functions) of

the Person whose securities are subject to such Take-Over Bid has recommended rejection of such Take-Over Bid or has not recommended acceptance of such Take-Over Bid.

"Income Tax Expense" means, with respect to the Canadian Borrower, for any period, the aggregate, without duplication and on a consolidated basis, of all Taxes on the income of the Canadian Borrower for such period, determined in accordance with GAAP.

"Indemnified Taxes" means Taxes other than Excluded Taxes.

"Insolvency Legislation" means legislation in any applicable jurisdiction relating to reorganization, arrangement, compromise or re-adjustment of debt, dissolution or winding-up, or any similar legislation, and specifically includes for greater certainty the *BIA*, the *Companies' Creditors Arrangement Act* (Canada), the *Winding-Up and Restructuring Act* (Canada) and the *Bankruptcy Code* (United States).

"Intellectual Property" means the intellectual property in patents, patent applications, trademarks, trade-mark applications, trade names, service marks, copyrights, copyright registrations and trade secrets including, without limitation, customer lists and information and business opportunities, industrial designs, proprietary software, technology, recipes and formulae and other similar intellectual property rights.

"Interbank Reference Rate" means the interest rate expressed as a percentage per annum which is customarily used by the Agent when calculating interest due by it or owing to it arising from correction of errors and other adjustments between it and other Canadian chartered banks.

"Intercompany Notes" means the June 1, 2011 \$194,500,000 subordinated 12.25% promissory note due June 1, 2021 and the November 29, 2012 \$27,455,108 subordinated 10.00% promissory note, both issued by MFA US Borrower to the Canadian Borrower.

"Interest Expense" of the Canadian Borrower means, for any period, without duplication and on a consolidated basis, the aggregate amount of interest and other financing charges paid or payable by the Canadian Borrower, on account of such period with respect to Debt including interest, amortization of discount and financing fees, commissions, discounts, the interest or time value of money component of costs related to factoring or securitizing receivables or monetizing inventory and other fees and charges payable with respect to letters of credit, letters of guarantee and bankers' acceptance financing, standby fees, the interest component of Capitalized Lease Obligations, all as determined in accordance with GAAP.

"Interest Payment Date" means:

- (a) with respect to each Prime Rate Advance and US Base Rate Advance, the first Business Day of each calendar month; and
- (b) with respect to each LIBOR Advance, the last Business Day of each applicable Interest Period and, if any Interest Period is longer than ninety (90) days, the last business Day of each such ninety (90) day period during such Interest Period.

"Interest Period" means,

- (a) with respect to each Prime Rate Advance and US Base Rate Advance, the period commencing on the applicable Drawdown Date or Conversion Date, as the case may be, and terminating on the date selected by a Borrower hereunder for the Conversion of such Advance into another type of Advance or for the repayment of such Advance;
- (b) with respect to each Bankers' Acceptance and BA Equivalent Note, the period selected by the Canadian Borrower hereunder and being 1, 2, 3 or 6 months' duration, subject to availability, commencing on the Drawdown Date, Rollover Date or Conversion Date of such Advance;
- (c) with respect to each LIBOR Advance, the period selected by a Borrower and being 1, 2, 3 or 6 months' duration, subject to availability, commencing on the applicable Drawdown Date, Rollover Date or Conversion Date of such Advance, as the case may be; and
- (d) with respect to a Letter of Credit, the period commencing on the date of issuance of the Letter of Credit and terminating on the last day that the Letter of Credit is outstanding;

provided that (i) in any case the last day of each Interest Period shall be also the first day of the next Interest Period, (ii) the last day of each Interest Period shall be a Business Day and if the last day of an Interest Period selected by a Borrower is not a Business Day such Borrower shall be deemed to have selected an Interest Period the last day of which is the Business Day next following the last day of the Interest Period otherwise selected, and (iii) no Interest Period shall expire subsequent to the Maturity Date.

"Investment" in any Person means any direct or indirect (a) acquisition of any Equity Interest in any other Person, or (b) loan or advance made to any other Person. In determining the amount of any Investment involving a transfer of any Property other than cash, such Property shall be valued at its fair market value at the time of such transfer. For greater certainty an Acquisition shall not be treated as an Investment.

"IRC" means Internal Revenue Code of 1986 of the United States of America (as amended).

"ISDA Master Agreement" means the 2002 ISDA Master Agreement (Multi-Currency - Cross Border) as published by the International Swaps and Derivatives Association, Inc., as amended, revised or replaced from time to time.

"Issuing Lender" means National Bank or such other Lender as may from time to time be designated as an Issuing Lender by the Agent and the Canadian Borrower.

"Judgment Conversion Date" has the meaning set forth in Section 17.05(1)(b).

"Judgment Currency" has the meaning set forth in Section 17.05(1).

"Lender-Related Distress Event" means, with respect to any Lender or any Person that directly or indirectly controls such Lender (each a **"Distressed Person"**), a voluntary or involuntary case with respect to such Distressed Person under any Insolvency Legislation or a custodian, conservator, receiver or similar official is appointed for such Distressed Person or any substantial part of such Distressed Person's assets, or such Distressed Person is subject to a forced liquidation, merger, sale or other change of control supported in whole or in part by guaranties or other support (including, without limitation, the nationalization or assumption of ownership or operating control by the government of Canada, the United States or other Governmental Authority), or such Distressed Person makes a general assignment for the benefit of its creditors or is otherwise adjudicated as, or determined by any Governmental Authority having regulatory authority over such Distressed Person or its assets to be, insolvent, bankrupt, or deficient in meeting any capital adequacy or liquidity standard of any such governmental authority.

"Lenders" means the Persons designated in Schedule A annexed hereto (and if elected by a Lender, can include its Affiliate or a lending office in the United States with respect to Advances to the US Borrowers) and **"Lender"** means any one of the Lenders and includes each of their successors and permitted assigns.

"Lenders' Counsel" means the firm of Davies Ward Phillips & Vineberg LLP or such other firm of legal counsel as the Agent may from time to time designate and any and all local agent counsel retained by Davies Ward Phillips & Vineberg LLP for and on behalf of the Agent.

"Lending Office" means, with respect to a particular Lender, the branch or office specified in Schedule A from which such Lender makes Advances and to which the Agent disburses payments received for the benefit of such Lender.

"Letter of Credit Fee Rate" means, with respect to a Letter of Credit, the annual percentage per annum indicated below the reference to "Letters of Credit Fee Rate" in the pricing grid in the definition of "Applicable Margin" relevant to the period in respect of which determination is being made.

"Letters of Credit" means letters of credit or letters of guarantee (including non-financial letters of credit) issued by the Issuing Lender pursuant to the Credit Facility at the request and for the account of a Borrower under this Agreement, and **"Letter of Credit"** means any one thereof.

"LIBO Rate" means, for any Interest Period with respect to a LIBOR Advance,

- (a) the rate per annum determined by the Agent at approximately 11:00 a.m. (London time), on the date that is two (2) Business Days prior to the commencement of such Interest Period by reference to the rate set by ICE Benchmark Administration (or any display substituted therefor or any successor thereto) for deposits in US Dollars, which is equal to the offered rate that appears on the page of the Reuters LIBOR01 screen (or any successor thereto as may be selected by the Agent) that displays the Intercontinental Exchange Benchmark Administration for deposits in Dollars, for a period equal to such Interest Period and in an amount comparable to the amount of the LIBOR Advance to be outstanding during such Interest Period; provided, however, that, to the extent that an interest rate is not

ascertainable pursuant to the foregoing provisions of this definition, the "LIBO Rate" shall be the interest rate per annum determined by the Agent to be the average of the rates per annum at which deposits in US Dollars are offered for such relevant Interest Period to major banks in the London interbank market in London, England by the Agent at approximately 11:00 a.m. (London time) on the date that is two (2) Business Days prior to the beginning of such Interest Period for a period comparable to the Interest Period and in an amount comparable to the amount of the LIBOR Advance to be outstanding during such Interest Period; or

- (b) if the rate is not determinable pursuant to clause (a) of this definition at the relevant time in respect of the relevant period, Section 2.15 shall apply.

The LIBO Rate shall be no less than 0%.

"LIBOR Advance" means an Advance in United States Dollars made by the Lenders to a Borrower with respect to which such Borrower has specified that interest is to be calculated by reference to the LIBO Rate.

"LIBOR Interest Period" means an Interest Period applicable to any LIBOR Advance.

"LIBOR Rate Margin" means, with respect to LIBOR Advances, the applicable percentage rate per annum indicated below the references to "LIBOR Rate Margin" in the pricing grid in the definition of "Applicable Margin".

"Loan Documents" means this Agreement, the Security, all guarantees delivered by any Obligor pursuant to this Agreement and each document, agreement, instrument and certificate delivered to the Agent or any Lenders by or on behalf of an Obligor or any other Person (in the case of any other Person, as required by the terms of this Agreement) on or after the Closing Date in each case as the same may from time to time be supplemented, amended or restated, and **"Loan Document"** shall mean any one of the Loan Documents.

"Majority Lenders" means Lenders holding greater than 66 $\frac{2}{3}$ % of the Commitments under the Credit Facility.

"Material Adverse Effect" shall mean a material adverse effect on (a) the business, operations, properties, assets or condition (financial or otherwise) of the Canadian Borrower on a consolidated basis, (b) the legality, validity or enforceability of any of the Loan Documents considered as a whole, including the validity, enforceability, perfection or priority of any encumbrance created under any of the Security considered as a whole, (c) the ability of the Obligors, as a whole, to pay or perform any of their debts, liabilities or obligations under any of the Loan Documents, or (d) the right, entitlement or ability of the Agent or the Lenders to enforce their rights or remedies under any of the Loan Documents.

"Material Contracts" means each of the agreements identified in Schedule 9.01(20) and any agreement, contract or legally binding arrangement entered into from time to time by an Obligor or to which any of their property or assets may be subject for which breach, non performance, cancellation, failure to renew, termination, revocation or lapse could reasonably be expected to have a Material Adverse Effect.

"Material ERISA Liability" has the meaning set forth in Section 12.01(n).

"Material Licences" means each licence, permit or approval issued by any Governmental Authority to any Obligor the breach or default in respect of which could reasonably be expected to result in a Material Adverse Effect.

"Maturity Date" means the earlier of August 31, 2023 and the date on which the Credit Facility is terminated pursuant to Section 12.02.

"MFA US Borrower" means Medical Facilities America, Inc., a corporation existing under the laws of the State of Delaware, including its successors and assigns.

"MFC Partnerships" means Black Hills Surgical Hospital, LLP, Sioux Falls Specialty Hospital, LLP, Oklahoma Spine Hospital, LLC, The Surgery Center of Newport Coast, LLC, Arkansas Surgical Hospital, LLC, United Surgeons, LLC, Central Arkansas Surgical Center, LLC, Ambulatory Surgery Associates, LLC, Meridian Missouri Surgery Center, LLC, Miracle Hills Surgery Center, LLC, Eastwind Surgical, LLC, Northwest Neurospine Institute, LLC, Riverview Ambulatory Surgical Center, LLC and any subsequently acquired entity pursuant to a Controlling Acquisition that carries on the Business and that is acquired by MFH US Borrower following the Closing Date.

"MFH US Borrower" means Medical Facilities (USA) Holdings, Inc., a corporation existing under the laws of the State of Delaware, including its successors and assigns.

"Mortgage" means a first lien mortgage, deed of trust, assignment of leases and rents, hypothec or other security document granting in favour of Agent a first priority ranking Encumbrance (subject to Permitted Encumbrances) on any Mortgaged Property to secure the Obligations.

"Mortgaged Property" means each parcel of real property and the improvements thereto owned or leased by any Obligor on the Closing Date or acquired thereafter with respect to which a Mortgage is to be granted under the Security Documents and includes each other parcel of real property and the improvements thereto owned by any Obligor with respect to which a Mortgage is granted pursuant to the Security Documents.

"Multiemployer Plan" means any US Pension Plan that is a "multiemployer plan" described in Section 4001(a)(3) of ERISA and subject to Title IV of ERISA.

"National Bank" means National Bank of Canada.

"Net Debt" means, with respect to a Person, the actual outstanding amount of funded Debt of the Person, plus, without duplication, (a) the principal component of all Capitalized Lease Obligations, (b) the aggregate liquidation value of all Disqualified Stock and Preferred Stock of such Person, and (c) other Debt of the Person at such time, each determined on an unconsolidated basis, provided that the Convertible Debentures will be excluded from the calculation of the Net Debt of the Borrowers;

"**Net Income**" means, for any period, with respect to any Person, the net income (loss) of such Person for such period, determined in accordance with GAAP and before any reduction in respect of Preferred Stock dividends.

"**Non-Arm's Length**" and similar phrases have the meaning attributed thereto for the purposes of the *Income Tax Act* (Canada); and "**Arm's Length**" shall have the opposite meaning.

"**Non-BA Lender**" means any Lender which is not a BA Lender.

"**Non-Controlling Acquisition**" means any Acquisition that is not a Controlling Acquisition.

"**Non-Funding Lender**" means any Lender (i) that has failed to fund any payment or Advances required to be made by it hereunder or to purchase all participations required to be purchased by it hereunder and under the Loan Documents, or (ii) that has given verbal or written notice to the Canadian Borrower, the Agent or any Lender or has otherwise publicly announced that it believes that it will be unable to fund advances under credit arrangements to which it is a party, or (iii) with respect to which one or more Lender-Related Distress Events has occurred, or (iv) that has become the subject of a Bail-In Action; (v) with respect to which the Agent or the Issuing Lender has knowledge that such Lender has defaulted in fulfilling its obligations (whether as an agent, lender or letter of credit issuer) under one or more other syndicated credit facilities, or (vi) with respect to which the Agent has concluded, acting reasonably, and has advised the Lenders in writing that it is of the view that, there is a reasonable chance that such Lender shall become a "Non-Funding Lender" pursuant to any of (i), (ii), (iii) or (iv) above and that such Lender has been deemed a "Non-Funding Lender".

"**Non-Wholly Owned Subsidiary**" of any Person means a Subsidiary of such Person which is not a Wholly Owned Subsidiary.

"**Obligations**" means, with respect to any Obligor, all of its present and future indebtedness, liabilities and obligations of any and every kind, nature or description whatsoever (whether direct or indirect, joint or several or joint and several, absolute or contingent, matured or unmatured, in any currency and whether as principal debtor, guarantor, surety or otherwise, including without limitation any interest that accrues thereon after or would accrue thereon but for the commencement of any case, proceeding or other action, whether voluntary or involuntary, relating to the bankruptcy, insolvency or reorganization whether or not allowed or allowable as a claim in any such case, proceeding or other action) to each of the Agent, the Lenders (and their Affiliates), and any of them under, in connection with, relating to or with respect to each of the Loan Documents and any and all Hedge Arrangements and Service Agreements and all agreements relating to VISA, MasterCard and other charge cards issued by any Lender, and any unpaid balance thereof.

"**Obligors**" means, collectively, the Borrowers and the Guarantors. As of the Closing Date, there are no Obligors other than the Borrowers.

"**OFAC**" means The Office of Foreign Assets Control of the US Department of the Treasury.

"**OFAC Event**" has the meaning set forth in Section 10.01(20).

"OFAC Sanctions Programs" means all laws, regulations, and Executive Orders administered by OFAC and all economic and trade sanction programs administered by OFAC or the US Department of State, any and all similar United States federal laws, regulations or Executive Orders, and any similar laws, regulations or orders adopted by any State within the United States.

"OFAC SDN List" means the list of Specially Designated Nationals and Blocked Persons administered by OFAC, in each case, as renewed, extended, amended or replaced.

"Organizational Documents" means, with respect to any Person, such Person's articles or other charter documents, by-laws, shareholder agreement, partnership agreement, joint venture agreement, limited liability company agreement or trust agreement, as applicable, and any and all other similar agreements, documents and instruments relative to such Person.

"Other Connection Taxes" shall mean, with respect to the Agent, any Lender, the Issuing Lender or any other recipient of any payment to be made by or on account of an Obligor hereunder or under any other Loan Document, Taxes imposed as a result of a present or former connection between such person and the jurisdiction imposing such Tax (other than connections arising from such person having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to this Agreement or enforced this Agreement or any other Loan Document).

"Other Taxes" means all present or future stamp, court or documentary, intangible, recording, filing or similar taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any other Loan Document or from the execution, delivery, performance, registration or enforcement of, from the receipt or perfection of a security interest under, or otherwise with respect to, this Agreement or any other Loan Document except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 15.03).

"Participant" shall have the meaning ascribed to such term in Section 16.04.

"PATRIOT Act" means the *USA Patriot Act* (Title III of the Pub. L. 107-56) signed into law October 26, 2001.

"PBGC" means the Pension Benefit Guaranty Corporation.

"Permitted Acquisition" means an Acquisition complying with the terms and provisions provided for in Section 10.04(9).

"Permitted Debt" means:

- (a) Debt under this Agreement and the other Loan Documents;
- (b) Debt in respect of Purchase Money Security Interests and Capitalized Lease Obligations in an outstanding amount not to exceed \$5,000,000 in the aggregate at any time;

- (c) credit facilities in favour of (x) the MFC Partnerships up to an aggregate amount not exceeding \$95,000,000 in respect of the MFC Partnerships which are Subsidiaries of the Canadian Borrower as at the Closing Date, and (y) each new MFC Partnership acquired after the Closing Date in an amount not to exceed \$15,000,000 for such MFC Partnership;
- (d) guarantees by a Borrower of Debt of the MFC Partnerships permitted in item (c);
- (e) Debt incurred in connection with the financing of any working capital requirements of any MFC Partnership, the purchase, construction, improvement or the lease of any Property of any MFC Partnership, or any renewal, extension or replacement of such obligations, up to an aggregate amount of \$10,000,000;
- (f) Permitted Intercompany Debt;
- (g) the Convertible Debentures;
- (h) Qualifying Hedge Arrangements and other Hedge Arrangements provided that that the aggregate amount of obligations incurred thereunder in favour of counterparties other than a Lender or an Affiliate of a Lender must not exceed \$5,000,000; and
- (i) Debt consented to in writing by the Lenders from time to time.

"Permitted Disposition" means, provided that no Default or Event of Default exists and the making of such Disposition would not result in a Default or Event of Default:

- (a) the Disposition of inventory in the ordinary course of business;
- (b) Dispositions of worn-out, obsolete or unusable equipment in the ordinary course of business;
- (c) Dispositions of Property in favour of a Borrower or among the Subsidiaries of a Borrower provided that, in the case of a Disposition among Subsidiaries of a Borrower of any material part of the Property of the transferor, the following conditions are satisfied:
 - (i) if a Borrower is the transferor, the transferee shall be a Wholly Owned Subsidiary of a Borrower and such Wholly Owned Subsidiary shall have executed and deliver to the Agent all such documents as may be necessary or advisable to provide for the same Security over the Property being transferred as provided in all Loan Documents to which the applicable Borrower is party;
 - (ii) the transferee shall remain solvent after the Disposition; and
 - (iii) the Agent has been provided prior to the Disposition with satisfactory evidence of compliance with the requirements of clauses (i), and (ii) and

including such financial information, certificates, documents and legal opinions as the Agent may reasonably request;

and provided further that if such Disposition relates to substantially all of the property or assets of the transferor, the transferor may wind-up or dissolve itself after completion of such Disposition; and

- (d) other Dispositions by Obligors to non-Obligors to the extent that no Default or Event of Default exists and the fair market value of the assets Disposed of by all Obligors pursuant to this clause (d) does not exceed \$10,000,000 in the aggregate during any Fiscal Year (calculated on the basis of the greater of book value and proceeds of disposition).

"Permitted Distributions" means, provided that no Default or Event of Default exists and the making of such Distribution could not result in a Material Adverse Effect or a Default or Event of Default:

- (a) Distributions paid by an Obligor to another Obligor;
- (b) payments made on Permitted Intercompany Debt; and
- (c) Distributions by the Borrowers provided that such Distributions do not, for any Four Quarter Period, exceed the Distributable Cash for such period.

"Permitted Encumbrances" means, with respect to any Person, the following:

- (a) Encumbrances for Taxes, assessments and other governmental charges or levies not yet due or for which installments have been paid based on reasonable estimates pending final assessments, or if due, the validity of which is being contested diligently and in good faith by appropriate proceedings by that Person and in respect of which reasonable reserves under GAAP are maintained;
- (b) undetermined or inchoate liens, rights of distress and charges incidental to current operations which have not at such time been filed or exercised and of which none of the Lenders has been given notice, or which relate to obligations not due or payable, or the validity of which is being contested diligently and in good faith by appropriate proceedings by that Person;
- (c) reservations, limitations, provisos and conditions expressed in any original grants from the Crown or other grants of real or immovable property, or interests therein, which do not materially affect the use of the affected land for the purpose for which it is used by that Person;
- (d) zoning, land use and building restrictions, survey exceptions, by-laws, regulations and ordinances of federal, provincial, state, municipal and other Governmental Authorities, licences, easements, rights-of-way and rights in the nature of easements (including, without limiting the generality of the foregoing, licences, restrictions, easements, servitudes, rights-of-way and rights in the nature of

easements for railways, sidewalks, public ways, sewers, drains, gas, steam and water mains or electric light and power, or telephone and telegraph conduits, poles, wires and cables) which do not materially impair the use of the affected land for the purpose for which it is used by that Person;

- (e) title defects, encroachments or irregularities or other matters relating to title which are of a minor nature and which in the aggregate do not materially impair the use of the affected property for the purpose for which it is used by that Person;
- (f) the right reserved to or vested in any municipality or governmental or other public authority by the terms of any lease, licence, franchise, grant or permit acquired by that Person or by any statutory provision to terminate any such lease, licence, franchise, grant or permit, or to require annual or other payments as a condition to the continuance thereof;
- (g) the Encumbrance resulting from the deposit of cash or securities in connection with contracts, tenders or expropriation proceedings, or to secure workers compensation, employment insurance, performance or surety bonds in the ordinary course of business;
- (h) security given to a public utility or any municipality or Governmental Authority when required by such utility or authority in connection with the operations of that Person in the ordinary course of its business provided that such security does not materially impair the use of the affected property for the purpose for which it is used by that Person;
- (i) liens securing appeal bonds or other similar liens arising in connection with court proceedings (including security for costs of litigation where required by law and letters of credit) or any other instrument serving a similar purpose not to exceed \$250,000 in aggregate outstanding at any time;
- (j) the Encumbrance created by a judgment of a court of competent jurisdiction, as long as the judgment is being contested diligently and in good faith by appropriate proceedings or is promptly satisfied by that Person and does not result in an Event of Default;
- (k) Encumbrances imposed by law, such as carriers', repairmen's, warehousemen's and mechanics' liens or other liens arising out of judgments or awards with respect to which an appeal or other proceeding for review is being prosecuted (and as to which any foreclosure or other enforcement proceeding shall have been effectively stayed) not to exceed \$250,000 in aggregate outstanding at any time;
- (l) Encumbrances arising solely by virtue of any statutory or common law provision relating to banker's liens, rights of combination of accounts or similar rights in the ordinary course of conducting day-to-day banking business in relation to deposit accounts or other funds maintained with a creditor depository institution;

- (m) Encumbrances arising from the right of distress enjoyed by landlords or Encumbrances otherwise granted to landlords (including, without limitation, Encumbrances over rent deposits), in either case, to secure the payment of arrears of rent in respect of leased properties;
- (n) servicing agreements, development agreements, site plan agreements and other agreements with Governmental Authorities pertaining to the use or development of any of the assets of the Person, provided same are complied with in all material respects and do not materially impair the use of such assets in the operation of the business of such Person;
- (o) Encumbrances granted to a provider of surety bonds which are not perfected (so that no required filing or registration has been made), or if such Encumbrances are perfected against an Obligor, such Encumbrances shall be subordinated and postponed in favour of the Agent pursuant to a subordination and postponement agreement satisfactory to the Agent, acting reasonably;
- (p) the Security;
- (q) Purchase Money Security Interests and Encumbrances securing Capitalized Lease Obligations, provided that such Encumbrances secure Permitted Debt;
- (r) Encumbrances securing Debt identified in paragraphs (c) and (e) of the definition of "Permitted Debt"; provided that any Encumbrance securing Debt identified in paragraph (e) of the definition of "Permitted Debt" shall charge only the property of the MFC Partnership incurring the related Debt and for an amount not in excess of such Debt; and
- (s) such other Encumbrances as agreed to in writing by the Majority Lenders in accordance with this Agreement.

"Permitted Intercompany Debt" means Debt owing by one Obligor to another Obligor, including Debt owing under the Intercompany Notes, and Debt owing by the MFC Partnerships to a Borrower in accordance with existing business practices.

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"Preferred Stock" means any Equity Interests with preferential right of payment of dividends or upon liquidation, dissolution, or winding up.

"Pricing Date" is defined in the definition of "Applicable Margin".

"Prime Rate" means a fluctuating rate of interest per annum, expressed on the basis of a year of 365 or 366 days, as applicable, which is equal at all times to the greater of (a) the base rate of interest (however designated) of the Agent for determining interest chargeable by it on Canadian Dollar commercial loans made in Canada; and (b) [REDACTED] for one

month Canadian Dollar bankers' acceptances having a face amount comparable to the face amount in respect of which the applicable Prime Rate calculation is being made.

"Prime Rate Advance" means an Advance in Canadian Dollars made by the Lenders to the Canadian Borrower with respect to which the Canadian Borrower has specified that interest is to be calculated by reference to the Prime Rate.

"Prime Rate Margin" means, for any period, the percentage rate per annum applicable to that period as indicated below the reference to "Prime Rate Margin" in the pricing grid in the definition of "Applicable Margin".

"Property" means, with respect to any Person, all or any portion of its undertaking, property and assets, both real and personal, including for greater certainty any share in the capital of a corporation or ownership interest in any other Person.

"Proportionate Share" means in respect of each Lender from time to time, (a) with respect to the Credit Facility, the percentage of the Credit Facility which a Lender has agreed to advance to a Borrower, determined by dividing the Lender's Commitment in respect of the Credit Facility by the aggregate of all of the Lenders' Commitments with respect to the Credit Facility and, with respect to an Advance, means the Proportionate Share of the Credit Facility under which such Advance is made and, (b) with respect to the Obligations, *pro rata* in accordance with the aggregate unpaid amount of the Obligations owed to such Lender, which, in the case of all Qualifying Hedge Arrangements, shall mean all amounts due thereunder including, with respect to all Qualifying Hedge Arrangements (whether or not governed by an ISDA Master Agreement), as a result of a Termination Event (as such term is defined in the ISDA Master Agreement).

"Purchase Money Security Interest" means an Encumbrance created or assumed by an Obligor securing Debt incurred to finance the unpaid acquisition price of personal Property (but, for certainty, excluding Equity Interests or in connection with an Acquisition) provided that in each case (i) such Encumbrance is created prior to, or concurrently with, the acquisition of such personal Property, (ii) such Encumbrance does not at any time encumber any Property other than the Property financed or refinanced (to the extent the principal amount is not increased) by such Debt and proceeds thereof, (iii) the amount of Debt secured thereby is not increased subsequent to such acquisition, and (iv) the principal amount of Debt secured by any such Encumbrance at no time exceeds 100% of the original acquisition price of such personal Property at the time it was acquired.

"Qualifying Hedge Arrangements" means a Hedge Arrangement provided by a Lender or an Affiliate of a Lender which is not speculative.

"Recipient" has the meaning set forth in the definition of "Excluded Taxes".

"Related Parties" means, with respect to any Person, such Person's Affiliates and the directors, officers, employees and agents of such Person and of such Person's Affiliates.

"Relevant Jurisdiction" means, from time to time, with respect to a Person that is granting Security hereunder, any province or territory of Canada, any state of the United States or any

other country, political subdivision thereof, in which such Person has its jurisdiction of formation, registered office, chief executive office or chief place of business or has tangible Property (other than Property in transit) and, for greater certainty, at the Closing Date includes the provinces and states set forth in Schedule 9.01(18) attached hereto.

"Repayment Notice" means the notice substantially in the form annexed hereto as Schedule C.

"Reportable Event" means any of the events set forth in Section 4043 of ERISA, other than an event for which the provision of notice has been waived.

"Requirements of Environmental Law" means all applicable requirements of the common law or of statutes, regulations, by-laws, ordinances, treaties, judgments and decrees, and (to the extent that they have the force of law) rules, guidelines, orders, approvals, permits and directives of any federal, territorial, provincial, state, regional, municipal or local judicial, regulatory or administrative agency, board or governmental authority in Canada the United States and any other jurisdiction in which any Obligor has operations or assets, where such requirements relate to environmental or occupational health and safety matters (as they relate to exposure to a Hazardous Material) and the assets and undertaking of any Obligor and the intended uses thereof, including but not limited to, all such requirements relating to: (a) the protection, preservation or remediation of the natural environment (the air, land, surface water or groundwater); (b) solid, gaseous or liquid waste generation, handling, treatment, storage, disposal or transportation; (c) occupational safety and health (as they relate to exposure to a Hazardous Material); and (d) the regulation of Hazardous Materials.

"Requirements of Law" means, as to any Person, the Organizational Documents of such Person and any Applicable Law, or determination of a Governmental Authority having the force of law (but nevertheless including determinations of a Governmental Authority not having the force of law if responsible and prudent Persons engaged in a business similar to the Business would observe such determinations), in each case applicable to or binding upon such Person or any of its business or Property or to which such Person or any of its business or Property is subject.

"Rollover" means a rollover of a maturing Bankers' Acceptance into a new Bankers' Acceptance or BA Equivalent Note, as applicable, or the rollover of a maturing LIBOR Advance into a new LIBOR Advance.

"Rollover Date" means the date of commencement of a new Interest Period applicable to a Bankers' Acceptance or a BA Equivalent Note or a LIBOR Advance that is being rolled over.

"Rollover Notice" means the Notice of Request for Advance substantially in the form annexed hereto as Schedule B to be given to the Agent by a Borrower in connection with the Rollover of a Bankers' Acceptance or a BA Equivalent Note or a LIBOR Advance pursuant to Section 2.06.

"Sanctioned Entity" means (a) a country or a government of a country, (b) an agency of the government of a country, (c) an organization directly or indirectly controlled by a country or its government, (d) a Person resident in or determined to be resident in a country, in each case, that is subject to a country sanctions program administered and enforced by OFAC, the US Department of State or any equivalent or similar agency or body in Canada.

"Sanctioned Person" means a person named on the list of Specially Designated Nationals maintained by OFAC.

"Sanction(s)" means any international economic sanction administered or enforced by the United States Government (including without limitation, OFAC and the U.S. Department of State), Canada, the United Nations Security Council, the European Union, Her Majesty's Treasury or other relevant sanctions authority.

"Schedule I Lender" means a bank which is chartered under the *Bank Act* (Canada) and named in Schedule I thereto.

"Security" means all security (including guarantees) held from time to time by or on behalf of the Lenders or the Agent on behalf of the Lenders, securing or intended to secure directly or indirectly repayment of the Obligations and includes, without limitation, all security described in Article 11.

"Security Documents" means the documents referred to in Article 11.

"Service Agreements" means agreements made between an Obligor and a Lender or an Affiliate of a Lender in respect of cash management (including bank accounts), payroll or other banking services (including for certainty, credit and other charge cards).

"Subsidiary" means, at any time, as to any Person, any other Person, if at such time the first mentioned Person owns, directly or indirectly, securities or other ownership interests in such other Person, having ordinary voting power to elect a majority of the board of directors or persons performing similar functions for such other Person, and shall include any other Person in like relationship to a Subsidiary of such first mentioned Person.

"Swingline Commitment" means \$25,000,000.

"Swingline Facility" has the meaning set forth in Section 2.02(1).

"Swingline Lender" means National Bank.

"Swingline Loan" has the meaning set forth in Section 2.02(2).

"Take-Over Bid" shall mean either (a) an offer to acquire outstanding voting or equity securities of a class of a Person whose shares are publicly traded where the securities that are the subject of such offer, together with the offeror's securities, constitute at least 20% of the outstanding securities of that class of securities on the date the offer is made, or (b) any other event which is a take-over bid within the meaning attributed to such term by any law, treaty, rule, regulation, or requirement of any stock exchange or securities commission, or determination of any arbitrator, court, stock exchange, securities commission or other Governmental Authority, in each case, applicable to or binding on any Obligor.

"Taxes" means all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"**United States Dollars**", "**US Dollars**", "**US \$**" and "**\$**" means the lawful money of the United States of America.

"**US Base Rate**" means a fluctuating rate of interest per annum, expressed on the basis of a year of 365 days or 366 days, as applicable, which is equal at all times to the greater of (a) the base rate of interest (however designated) of the Agent for determining interest chargeable by it on United States Dollar commercial loans in Canada and (b) the sum of [REDACTED]

"**US Base Rate Advance**" means an Advance in United States Dollars made by the Lenders to a Borrower with respect to which such Borrower has specified that interest is to be calculated by a reference to US Base Rate.

"**US Base Rate Margin**" means, for any period, the percentage rate per annum applicable to that period as indicated below the reference to "US Base Rate Margin" in the pricing grid in the definition of "Applicable Margin".

"**US Borrowers**" means, collectively, MFA US Borrower and MFH US Borrower.

"**US Obligor**" means any Obligor existing pursuant to the laws of any State of the United States of America.

"**US Pension Plan**" means any employee pension benefit plan covered by Title IV of ERISA (other than a Multiemployer Plan) that either (i) is maintained by the Obligors, the Subsidiaries of the Borrowers or any of them, or (ii) with respect to which an Obligor or a Subsidiary of a Borrower has or would reasonably be expected to have liability (including on account of its membership in a Controlled Group).

"**Welfare Plan**" means an employee welfare plan within the meaning of Section 3(1) of ERISA that is sponsored by an Obligor for the benefit of its employees resident in the United States of America.

"**Wholly Owned Subsidiary**" of any Person at any time means a Subsidiary of such Person 100% of the outstanding Equity Interests or other ownership interests of which will at such time be owned by such Person or by one or more Wholly Owned Subsidiaries of such Person.

"**Withholding Agent**" means any Obligor or the Agent, as applicable.

"**Write-Down and Conversion Powers**" means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

1.02 **Headings**

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

1.03 Accounting Practices

All accounting terms not specifically defined in this Agreement shall be interpreted in accordance with GAAP. If any accounting changes occur and such changes result in a material change in the calculation of the financial covenants, standards or terms used in this Agreement, then the Canadian Borrower, the Agent and the Lenders agree to enter into negotiations in order to amend such provisions of this Agreement, so as to equitably reflect such accounting changes with the desired result that the criteria for evaluating the applicable Obligor's financial condition shall be the same after such accounting changes as if such accounting changes had not been made; provided, however, that the agreement of the Majority Lenders to any required amendments of such provisions shall be sufficient to bind all Lenders. If the Canadian Borrower and the Majority Lenders agree upon the required amendments, then after appropriate amendments have been executed and the underlying accounting change with respect thereto has been implemented, any reference to GAAP contained in this Agreement or in any other Loan Document shall, only to the extent of such accounting change, refer to GAAP, consistently applied after giving effect to the implementation of such accounting change. If the Canadian Borrower and the Majority Lenders cannot agree upon the required amendments within thirty (30) days following the date of implementation of any accounting change, then all calculations of financial covenants and other standards and terms in this Agreement and the other Loan Documents shall continue to be prepared, delivered and made without regard to the underlying accounting change. In such case, the Canadian Borrower shall, in connection with the delivery of any financial statements under this Agreement, provide a management prepared reconciliation of the financial covenants to such financial statements in light of such accounting changes. For the avoidance of doubt, notwithstanding any changes in GAAP after the Closing Date that would require lease obligations that would be treated as operating leases as of the Closing Date to be classified and accounted for as Capitalized Lease Obligations or otherwise reflected on the Canadian Borrower's consolidated balance sheet, such lease obligations, whether incurred prior to or at any time after the Closing Date, shall continue to be excluded from the definition of Debt for borrowed money and shall not constitute Debt but shall continue to be treated as operating leases in a manner consistent with such treatment prior to such change.

1.04 Permitted Encumbrances

The inclusion of reference to Permitted Encumbrances in any Loan Document is not intended to subordinate and shall not subordinate, and shall not be interpreted as subordinating, any Encumbrance created by any of the Security to any Permitted Encumbrance.

1.05 Currency

Unless otherwise specified in this Agreement, all references to dollar amounts (without further description) will mean US Dollars.

1.06 Paramountcy

In the event of a conflict in or between the provisions of this Agreement and the provisions of any Schedule annexed hereto or any of the other Loan Documents then, notwithstanding anything contained in such Schedule or other Loan Document, the provisions of

this Agreement will prevail and the provisions of such Schedule or other Loan Document will be deemed to be amended to the extent necessary to eliminate such conflict. In particular, if any act or omission of an Obligor is expressly permitted under this Agreement but is expressly prohibited under any Schedule annexed hereto or another Loan Document, such act or omission shall be permitted. If any act or omission is expressly prohibited under any Schedule annexed hereto or a Loan Document (other than this Agreement), but this Agreement does not expressly permit such act or omission, or if any act is expressly required to be performed under such Schedule or such Loan Document but this Agreement does not expressly relieve the applicable Obligor from such performance, such circumstance shall not constitute a conflict in or between the provisions of this Agreement and the provisions of such Schedule or Loan Document.

1.07 Non-Business Days

Unless otherwise expressly provided in this Agreement, whenever any payment is stated to be due on a day other than a Business Day, the payment will be made on the immediately following Business Day. Notwithstanding the foregoing, if with respect to any payment of principal or interest on a LIBOR Advance the succeeding Business Day falls in the next calendar month, the due date for payment of such principal or interest shall be the next preceding Business Day. Unless otherwise expressly provided in this Agreement, whenever any action to be taken is stated or scheduled to be required to be taken on, or (except with respect to the calculation of interest or fees) any period of time is stated or scheduled to commence or terminate on, a day other than a Business Day, the action will be taken or the period of time will commence or terminate, as the case may be, on the immediately following Business Day.

1.08 Interest Payments and Calculations

(1) All interest payments to be made under this Agreement will be paid without allowance or deduction for deemed re-investment or otherwise, both before and after maturity and before and after default and/or judgment, if any, until payment of the amount on which such interest is accruing, and interest will accrue on overdue interest, if any.

(2) Unless otherwise stated, wherever in this Agreement reference is made to a rate of interest or rate of fees "per annum" or a similar expression is used, such interest or fees will be calculated on the basis of a calendar year of 365 days or 366 days, as the case may be, and using the nominal rate method of calculation, and will not be calculated using the effective rate method of calculation or on any other basis that gives effect to the principle of deemed re-investment of interest.

(3) For the purposes of the *Interest Act* (Canada) and disclosure under such act, whenever interest to be paid under this Agreement is to be calculated on the basis of a year of 365 days or any other period of time that is less than a calendar year, the yearly rate of interest to which the rate determined pursuant to such calculation is equivalent is the rate so determined multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by either 365 or such other period of time, as the case may be. The rates of interest under this Agreement are nominal rates, and not effective rates or yields. The principle of deemed reinvestment of interest does not apply to any interest calculation under this Agreement. Each of the Obligors confirms that it fully understands and is able to calculate the

rate of interest applicable to the Credit Facility based on the methodology for calculating per annum rates provided for in the Agreement. The Agent agrees that if requested in writing by the Canadian Borrower it shall calculate the nominal and effective per annum rate of interest on any Advance outstanding at any time and provide such information to the Canadian Borrower promptly following such request; provided that any error in any such calculation, or any failure to provide such information on request, shall not relieve the Canadian Borrower or any other Obligor of any of its obligations under this Agreement or any other Loan Document, nor result in any liability to the Agent or any Lender. Each Borrower hereby irrevocably agrees not to plead or assert, whether by way of defence or otherwise, in any proceeding relating to the Loan Documents, that the interest payable under the Loan Documents and the calculation thereof has not been adequately disclosed to the Borrowers, whether pursuant to Section 4 of the *Interest Act* (Canada) or any other applicable law or legal principle.

(4) Unless expressly agreed otherwise under this Agreement, the Agent shall calculate all fees and interest, including without limitation standby fees and agency fees. For greater certainty all such calculations shall be without duplication of any day such that neither interest nor fees shall be calculated in respect of the same day twice.

(5) Notwithstanding anything herein to the contrary, in no event shall any interest rate or rates referred to herein (together with other fees payable hereunder which are construed by a court of competent jurisdiction to be interest or in the nature of interest) exceed the maximum interest rate permitted by Applicable Law. If such maximum interest rate would be exceeded by the terms hereof, the rates of interest payable hereunder shall be reduced to the extent necessary so that such rates (together with other fees which are construed by a court of competent jurisdiction to be interest or in the nature of interest) equal the maximum interest rate permitted by Applicable Law, and any overpayment of interest received by the Agent or the Lenders theretofore shall be applied, forthwith after determination of such overpayment, to pay all then outstanding interest, and thereafter to pay outstanding principal, as if the same were a prepayment of principal and treated accordingly hereunder.

1.09 Determinations By the Borrowers

All provisions contained herein requiring a Borrower to make a determination or assessment of any event or circumstance or other matter to the best of its knowledge shall be deemed to require such Borrower to make all inquiries and investigations as may be reasonable in the circumstances before making any such determination or assessment.

1.10 Terms Generally

The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein (including this Agreement) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented, restated or otherwise

modified (subject to any restrictions on such amendments, supplements, restatements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person's successors and permitted assigns, (c) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) unless otherwise expressly stated, all references in this Agreement to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (e) any reference to any law or regulation herein shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time and (f) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

1.11 Schedules

The following are the Schedules annexed hereto and incorporated by reference and deemed to be part hereof:

- Schedule A – Lenders and Commitments
- Schedule B – Notice of Request for Advance
- Schedule C – Repayment Notice
- Schedule D – Compliance Certificate
- Schedule E – Assignment and Assumption
- Schedule F – Loan Pricing Corporation Information
- Schedule 9.01(12) – Description of Real Property
- Schedule 9.01(13) – Insurance Policies
- Schedule 9.01(17) – Corporate Structure
- Schedule 9.01(18) – Relevant Jurisdictions
- Schedule 9.01(19) – Intellectual Property
- Schedule 9.01(20) – Material Contracts and Material Licences
- Schedule 9.01(25) – Non-Arm's Length Transactions

ARTICLE 2 - THE CREDIT FACILITY

2.01 Credit Facility

Subject to the terms and conditions of this Agreement the Lenders establish (on a several and not joint or joint and several basis) in favour of the Borrowers a revolving credit facility (the "**Credit Facility**") in an amount (including Advances made in US Dollars and the Equivalent Amount in US Dollars of Advances made in Canadian Dollars) not to exceed \$150,000,000. The Credit Facility shall include a swingline facility in an amount (including Advances made in US Dollars and the Equivalent Amount in US Dollars of Advances made in Canadian Dollars) not to exceed the Swingline Commitment to be made available by the Swingline Lender to the Borrowers pursuant to the Swingline Facility. The aggregate of all outstanding Advances under the Credit Facility shall at no time exceed the maximum permitted amount provided for herein.

2.02 Swingline Facility

(1) Subject to the terms and conditions of this Agreement, the Swingline Lender establishes in favour of the Canadian Borrower a revolving credit facility which is part of the Credit Facility in an amount (including Advances made in US Dollars and the Equivalent Amount in US Dollars of Advances made in Canadian Dollars) up to the Swingline Commitment which, as of the date hereof, is \$25,000,000, on the terms set forth in this Section 2.02 (the "**Swingline Facility**").

(2) At any time that the Canadian Borrower would be entitled to obtain Prime Rate Advances and US Base Rate Advances, as the case may be, under the Credit Facility, it shall be entitled to draw cheques on its Cdn. Dollar chequing account and US Dollar chequing account, as the case may be, maintained from time to time with the Swingline Lender at the Agent's Payment Branch (or in such other accounts with the Swingline Lender at such other branch of the Swingline Lender as may be agreed upon by the Swingline Lender and the Borrowers from time to time). The debit balance from time to time in any such Canadian Dollar account shall be deemed to be a Prime Rate Advance outstanding to the Canadian Borrower from the Swingline Lender under the Credit Facility. The debit balance from time to time in any such US Dollar account shall be deemed to be a US Base Rate Advance outstanding to the Canadian Borrower from the Swingline Lender under the Credit Facility. If at any time the Canadian Borrower is a party to a cash concentration arrangement with the Swingline Lender, the amount of any overdraft from time to time in the Cdn. Dollar or US Dollar concentration account, as the case may be, of the Canadian Borrower established pursuant to such arrangement (which for greater certainty may include one of the Cdn. Dollar or US Dollar accounts identified above) shall, without duplication, be deemed to be a Prime Rate Advance or US Base Rate Advance, as the case may be, outstanding to the Canadian Borrower from the Swingline Lender under the Credit Facility. A Prime Rate Advance or a US Base Rate Advance from the Swingline Lender as contemplated by this subsection, prior to such time as such Advance is repaid as contemplated by Section 2.02(4) or purchased as contemplated by Section 2.02(5), is referred to as a "**Swingline Loan**". Any positive credit balance existing in a Borrower's accounts (not taking into account the Swingline Facility) at any time will automatically be used for the repayment of any amount outstanding in the same currency under the Swingline Facility, and in this connection, each Borrower hereby authorizes the Swingline Lender to effect all necessary debits in its accounts to effect such repayments. If a Swingline Loan in a currency has been reduced to zero and there is a positive credit balance in the same currency in such Borrower's accounts, then the Agent may apply such credit balance in repayment of the Prime Rate Advances or the US Base Rate Adv, as the case may be, then outstanding.

(3) The outstanding amount (including Advances made in US Dollars and the Equivalent Amount in US Dollars of Advances made in Canadian Dollars) of all Swingline Loans at any time shall not exceed the lesser of:

- (a) the Swingline Commitment; and
- (b) the amount, if any, by which:
 - (i) the Commitment at such time;

exceeds

- (ii) the amount (including Advances made in US Dollars and the Equivalent Amount in US Dollars of Advances made in Canadian Dollars) of all Advances (other than Swingline Loans) outstanding at such time under the Credit Facility.

(4) The Swingline Lender may (but shall not be obliged to) deliver a written notice to the Agent (which shall thereupon deliver a similar notice to each of the Lenders) and to the Canadian Borrower, or the Agent may itself (but shall not be obliged to) deliver a written notice to each of the Lenders and to the Canadian Borrower requiring repayment of the Swingline Loans from time to time. The Canadian Borrower shall be deemed to have given at such time a Drawdown Notice to the Agent requesting Prime Rate Advances or US Base Rate Advances, as applicable, under the Credit Facility in an aggregate amount equal to the amount of such Swingline Loans and subject to the provisions of Section 2.06(4). The Lenders shall thereupon (irrespective of whether any condition precedent to an Advance has been satisfied, whether the amount of such Advance to be made available under the Credit Facility is less than, equal to or more than the minimum amount, if any, of an Advance required to be included in an Advance constituting such type of Advance under this Agreement, whether any Default or Event of Default has occurred or is continuing or whether any acceleration or enforcement action (including any termination of the Credit Facility and the Commitments) has occurred or commenced under any of the Loan Documents or otherwise or whether the Maturity Date has occurred) make such Prime Rate Advance and US Base Rate Advance, as applicable, under the Credit Facility and the Agent shall apply the proceeds thereof in repayment of such Swingline Loans. The Agent shall promptly notify the Canadian Borrower of any such Prime Rate Advances and US Base Rate Advances, and the Canadian Borrower agrees to accept each such Prime Rate Advance and US Base Rate Advance under the Credit Facility and hereby irrevocably authorizes and directs the Agent to apply the proceeds thereof in payment of the applicable Swingline Loan.

(5) Without limiting Section 2.02(4), on the Maturity Date, or if an Event of Default has occurred and is continuing, each of the Lenders agrees that it will purchase from the Swingline Lender, and the Swingline Lender agrees that it shall sell to such Lenders, for cash, at par, without representation or warranty from or recourse against the Swingline Lender (and irrespective of whether any condition precedent to an Advance has been satisfied, any Default or Event of Default has occurred or is continuing or whether any acceleration or enforcement action (including any termination of the Credit Facility and the Commitments) has occurred or been commenced under any of the Loan Documents or otherwise or whether the Maturity Date has occurred), on a rateable basis, an undivided interest in all Swingline Loans then outstanding. The Agent, upon consultation with the applicable Lenders, shall have the power to settle any documentation required to evidence any such purchase and, if deemed advisable by the Agent, to execute any document as attorney for any Lender in order to complete any such purchase. The Canadian Borrower and the Lenders acknowledge that the foregoing arrangements are to be settled by the Lenders among themselves, and the Canadian Borrower expressly consents to the foregoing arrangements among such Lenders.

2.03 Purpose of Credit Facility

Advances under the Credit Facility shall only be used by the Borrowers for their general corporate purposes, including for working capital, capital expenditures, to repay Existing Debt and to finance, in whole or in part, (a) the payment of the purchase price and related expenses payable pursuant to any Permitted Acquisitions, and (b) redemptions of Equity Interests of the Canadian Borrower and repayments on the Convertible Debentures permitted under this Agreement.

2.04 Manner of Borrowing

(1) A Borrower may, subject to the terms hereof, make Drawdowns, Conversions and Rollovers as applicable under the Credit Facility in Canadian Dollars, by way of Prime Rate Advances and Bankers' Acceptances (and BA Equivalent Notes) and in United States Dollars, by way of US Base Rate Advances and LIBOR Advances and Letters of Credit in Canadian Dollars, US Dollars and such other currencies agreed to by the Issuing Lender. A Borrower shall have the option, subject to the terms and conditions hereof, to determine which types of Advances shall be drawn down and in which combinations or proportions.

(2) The Canadian Borrower may make Drawdowns under the Swingline Facility in (i) Canadian Dollars by way of Prime Rate Advances, and (ii) United States Dollars by way of US Base Rate Advances.

(3) Letters of Credit may not exceed an aggregate face value of \$50,000,000.

2.05 Nature of the Credit Facility

Subject to the terms and conditions hereof, the Credit Facility is a revolving credit and, accordingly, the Borrowers may increase or decrease Advances under the Credit Facility by making Drawdowns, repayments and further Drawdowns of the amount of Advances that have been repaid.

2.06 Drawdowns, Conversions and Rollovers

(1) Subject to the provisions of this Agreement, a Borrower may (i) make Drawdowns hereunder; (ii) convert the whole or any part of any type of Advance into any other type of Advance; or (iii) may roll over any Bankers' Acceptances or BA Equivalent Note or LIBOR Advance on the last day of the applicable Interest Period thereof or extend Letters of Credit in accordance with their terms, by giving the Agent a Drawdown Notice, Conversion Notice or Rollover Notice, as the case may be.

(2) The applicable Borrower shall provide written notice to the Agent in respect of Advances, Rollovers, Conversions and repayments to the extent set out below:

- (a) no notice is required for Advances and repayments in respect of Swingline Loans;
- (b) except as provided in clause (a) above, one (1) Business Day's notice is required before 10:00 a.m. Toronto time in respect of any Advance, Rollover, Conversion

or voluntary repayment in Canadian Dollars if the amount is equal to or less than Cdn.\$10,000,000, or in respect of any Advance, Rollover, Conversion or voluntary repayment in US Dollars if the amount is equal to or less than \$10,000,000;

- (c) except as provided in clauses (a) and (b) above, two (2) Business Days' notice is required before 10:00 a.m. Toronto time in respect of any Advance, Rollover, Conversion or voluntary repayment in Canadian Dollars if the amount is greater than Cdn.\$10,000,000, or in respect of any Advance, Rollover, Conversion or voluntary repayment in US Dollars if the amount is greater than \$10,000,000;
- (d) notwithstanding the foregoing, if an Advance, Rollover, Conversion or voluntary repayment relates to a Bankers' Acceptance, two (2) Business Days' notice is required before 10:00 a.m. Toronto time;
- (e) notwithstanding the foregoing, if an Advance, Rollover, Conversion or voluntary repayment relates to a LIBOR Loan, three (3) Business Days' notice is required before 10:00 a.m. Toronto time; and
- (f) notwithstanding the foregoing, if an Advance relates to the issuance of a Letter of Credit, three (3) Business Days' notice is required before 10:00 a.m., Toronto time.

(3) If notice is not provided as contemplated herein with respect to the maturity of any Bankers' Acceptance, BA Equivalent Loan or LIBOR Advance, the Agent may convert such Bankers' Acceptance, BA Equivalent Loan or LIBOR Advance upon its maturity into a Prime Rate Advance or a US Base Rate Advance, as applicable.

(4) Any conversion from one form of availment option to another shall be subject to satisfaction of all terms and conditions applicable to the form of the new availment option.

(5) Each Drawdown Notice, Conversion Notice or Rollover Notice, as the case may be, shall be delivered by a Borrower on a Business Day on or prior to 10:00 a.m. (Toronto time) to the Agent.

(6) Each Drawdown, Conversion or Rollover under the Credit Facilities shall (i) in the case of Prime Rate Advances, be in a minimum principal amount of Cdn.\$1,000,000 and in each case whole multiples of Cdn.\$100,000; (ii) in the case of Banker's Acceptances, be in a minimum face amount of Cdn.\$1,000,000 and in whole multiples of Cdn.\$100,000; and (iii) in the case of US Base Rate Advances, be in a minimum principal amount of \$1,000,000 and in whole multiples of \$100,000; and (iv) in the case of LIBOR Advances, be in a minimum principal amount of \$1,000,000 and in whole multiples of \$100,000.

(7) The provisions of Section 2.06 (other than Section 2.06(2)(a) and Section 2.06(4)) do not apply to Swingline Loans.

2.07 Place of Advances and Repayments

(1) All payments of principal, interest and other amounts to be made by the Borrowers pursuant to this Agreement shall be made to the Agent at its address noted in Exhibit A or to such other address in Canada as the Agent may direct in writing from time to time. All such payments received by the Agent on a Business Day before 2:00 p.m. (Toronto time) shall be treated as having been received by the Agent on that day and any payments made after such time on a Business Day shall be treated as having been received by the Agent on the next Business Day.

(2) Whenever any payment shall be due on a day which is not a Business Day, the date for payment thereof shall be extended to the next succeeding Business Day. Interest shall continue to accrue and be payable thereon as provided herein, until the date on which such payment is received by the Agent.

(3) Each Borrower hereby irrevocably authorizes the Agent to debit any account maintained by such Borrower with the Agent from time to time in order to pay any amount of principal, interest, fees, expenses or other amounts payable by such Borrower pursuant to this Agreement.

2.08 Evidence of Obligations (Noteless Advances)

The Agent shall open and maintain, in accordance with its usual practice, accounts evidencing the Obligations; and the information entered in such accounts shall constitute prima facie evidence of the Obligations absent manifest error. The Agent may, but shall not be obliged to, request the Borrowers to execute and deliver promissory notes from time to time as additional evidence of the Obligations.

2.09 Determination of Equivalent Amounts

Whenever it is necessary or desirable at any time to determine the Equivalent Amount in Canadian Dollars of an amount expressed in US Dollars, or vice-versa (specifically including the determination of the Equivalent Amount in Canadian Dollars of an Advance made in US Dollars, the determination of each Lender's Proportionate Share of any repayment on any date, and the determination of whether the outstanding Advances under any Credit Facility exceed the maximum amount of credit available thereunder), the Equivalent Amount shall be determined by reference to the Exchange Rate on the date of such determination.

2.10 Agent's Obligations with Respect to Advances

Upon receipt of a Drawdown Notice, Conversion Notice or Rollover Notice, as the case may be, the Agent shall forthwith notify the Lenders of the proposed Drawdown Date, Conversion Date or Rollover Date, as the case may be, of each Lender's Proportionate Share of such Advance and, if applicable, the account of the Agent to which each Lender's Proportionate Share is to be credited.

2.11 Lenders' and Agent's Obligations with Respect to Advances

Each Lender shall, prior to noon (Toronto time) on the Drawdown Date, Conversion Date or Rollover Date, as the case may be, specified by a Borrower in a Drawdown Notice, Conversion Notice or Rollover Notice, as the case may be, credit the Agent's account specified in the Agent's notice given under Section 2.10 with such Lender's Proportionate Share of such Advance and by noon (Toronto time) on the same date the Agent shall make available the full amount of the amounts so credited to such Borrower.

2.12 Irrevocability

A Drawdown Notice, Conversion Notice or Rollover Notice, as the case may be, given by a Borrower hereunder shall be irrevocable and shall oblige such Borrower to take the action contemplated on the date specified therein.

2.13 Cancellation or Permanent Reduction of the Credit Facility

The Canadian Borrower may, at any time, upon giving at least three (3) Business Days prior notice to the Agent, cancel in full or, from time to time, permanently reduce in whole or in part the Credit Facility; provided, however that any reduction shall be in a minimum amount of \$5,000,000 and increments of \$100,000 thereafter. If the Credit Facility is so reduced, the Commitments of each of the Lenders shall be reduced *pro rata* in the same proportion that the amount of the reduction in the Credit Facility bears to the then current Commitments of the Lenders in effect immediately prior to such reduction.

2.14 Major Disruption

If

- (a) the Agent makes a determination (acting reasonably and in good faith), which determination shall be conclusive and binding upon the Canadian Borrower, and notifies the Canadian Borrower, that there no longer exists an active market for Bankers' Acceptances accepted by the Lenders;
- (b) the Majority Lenders advise the Agent who in turn advises the Canadian Borrower that for any reason a market for Bankers' Acceptances does not exist at any time or that the Lenders cannot for other reasons, after reasonable efforts, readily sell Bankers' Acceptances or perform their obligations under this Agreement with respect to Bankers' Acceptances;
- (c) the Agent is advised by Lenders holding at least 25% of the Commitments of all Lenders hereunder by written notice (each, a "**Lender BA Suspension Notice**") that such Lenders have determined (acting reasonably and in good faith) that the BA Discount Rate will not or does not accurately reflect the cost of funds of such Lenders or the discount rate which would be applicable to a sale of Bankers' Acceptances accepted by such Lenders in the market;

then:

- (i) the right of the Canadian Borrower to request Bankers' Acceptances or BA Equivalent Notes from any Lender shall be suspended until the Agent determines that the circumstances causing such suspension no longer exist, and so notifies the Canadian Borrower and the Lenders;
- (ii) any outstanding Notice of Request for Advance requesting an Advance by way of Bankers' Acceptances or BA Equivalent Notes shall be deemed to be a Drawdown Notice requesting an Advance by way of Prime Rate Advances in the amount specified in the original Drawdown Notice;
- (iii) any outstanding Conversion Notice requesting a conversion of an Advance by way of Bankers' Acceptances or BA Equivalent Notes shall be deemed to be a Conversion Notice requesting a conversion of such Advances into an Advance by way of Prime Rate Advances; and
- (iv) any outstanding Rollover Notice requesting a rollover of an Advance by way of Bankers' Acceptances or BA Equivalent Notes, shall be deemed to be a Conversion Notice requesting a conversion of such Advances into an Advance by way of Prime Rate Advances.

The Agent shall promptly notify the Canadian Borrower and the Lenders of any suspension of the Canadian Borrower's right to request Advances by way of Bankers' Acceptances or BA Equivalent Notes and of any termination of any such suspension. A Lender BA Suspension Notice shall be effective upon receipt of the same by the Agent if received prior to 2:00 p.m. (Toronto time) on a Business Day and if not, then on the next following Business Day, except in connection with an outstanding Drawdown Notice, Conversion Notice or Rollover Notice, in which case the applicable Lender BA Suspension Notice shall only be effective with respect to such outstanding Drawdown Notice, Conversion Notice or Rollover Notice if received by the Agent prior to 2:00 p.m. (Toronto time) 2 Business Days prior to the proposed date of Advance, date of conversion or date of rollover (as applicable) applicable to such outstanding Drawdown Notice, Conversion Notice or Rollover Notice, as applicable.

2.15 Termination of LIBOR Advances

- (1) If at any time a Lender determines, acting reasonably, (which determination shall be conclusive and binding on the Borrowers) that:
 - (a) the LIBO Rate does not adequately reflect the effective cost to the Lender of making or maintaining a LIBOR Advance; or
 - (b) it cannot readily obtain or retain funds in the London interbank market in order to fund or maintain any LIBOR Advance for a LIBOR Interest Period selected by a Borrower or cannot otherwise perform its obligations hereunder with respect to any LIBOR Advance for any such period;

then the Lender shall inform the Agent and upon at least four (4) Business Days' written notice by the Agent to the Canadian Borrower; and

- (c) the right of the Borrowers to request LIBOR Advances for such period from that Lender shall be and remain suspended until the Agent notifies the Borrowers that any condition causing such determination no longer exists; and
- (d) if the Lender is prevented from maintaining a LIBOR Advance, the applicable Borrower shall, at its option, either repay the LIBOR Advance to that Lender or convert the LIBOR Advance into other forms of Advance which are permitted by this Agreement, and the applicable Borrower shall be responsible for any loss or expense that the Lender incurs as a result, including Breakage Costs, if the Lender is prevented from maintaining a LIBOR Advance.

(2) If at any time the Agent determines that the LIBO Rate is not determinable pursuant to clause (a) or (b) in the definition of "LIBO Rate", the Agent shall so notify the Canadian Borrower, and the right of the Borrowers to request LIBOR Advances for such period shall be and remain suspended until the Agent notifies the Borrowers that any condition causing such determination no longer exists.

(3) Without in any way limiting the provisions of Sections 2.15(1) and (2), in the event that either the BA Discount Rate or the LIBO Rate ceases to be made available, then the Borrowers and the Agent shall enter into discussions with a view to determining a comparable successor or alternative discount rate in Canadian Dollars or interbank rate for deposits in US Dollars that is, at such time, broadly accepted as the prevailing market practice for syndicated leveraged loans of this type; provided that, if such alternative rate of interest shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement. Upon the Borrowers and the Agent agreeing on such a rate, the Borrowers and the Lenders party hereto shall enter into documentation to amend the provisions hereof to refer to such rate and make all other adjustments incidental thereto. The parties hereto agree that such amendment shall require the consent of the Majority Lenders.

From such time that either the BA Discount Rate or the LIBO Rate ceases to be made available, until an alternative rate of interest shall be determined in accordance with this subsection 2.15(3), (x) any Drawdown Notice or Conversion Notice requesting to convert or continue any Advance as a Libor Loan shall be ineffective, and (y) the Borrowers shall repay or convert any BA, BA Equivalent Note or Libor Loan then outstanding on maturity as a Prime Rate Advance or a US Base Rate Advance, as applicable.

2.16 Accordion – Increase to Credit Facility

(1) So long as (i) no Default or Event of Default has occurred and is continuing or would occur as a result of the increase, (ii) the representations and warranties contained herein and the other Loan Documents remain true and correct after giving effect to the increase in the Credit Facility (an "**Increase**") (other than such representations and warranties that relate specifically to an earlier date) and (iii) the Canadian Borrower would be in compliance with the financial covenants set forth in Section 10.02 on a *pro forma* basis after giving effect to the

Increase, then at any time following the Closing Date, a Borrower may, by delivering a written request for an increase (an "**Increase Request**") to the Agent, request an Increase. Any Increase Request may not request an Increase of less than \$5,000,000 (and integral multiples of \$1,000,000 thereafter) and all Increases may not exceed, in the aggregate \$50,000,000. Subject to the minimum and maximum Increases set forth in this Section 2.16(1), a Borrower may issue more than one Increase Request.

(2) An Increase Request will be delivered at least thirty (30) days before the date of the requested Increase, and will specify the requested principal amount of such Increase and the requested date of such Increase (the "**Increase Date**").

(3) Each Lender may, at its option, provide its Proportionate Share of the requested Increase. Any Lender consenting to provide its Proportionate Share of the Increase will be deemed to have committed to increase its respective Commitment accordingly upon delivery of notice of its consent to the Agent. Any Lender which does not advise the Canadian Borrower and the Agent, within ten (10) Business Days of an Increase Request, that such Lender will provide its Proportionate Share of the requested Increase will be deemed to have declined to provide its Proportionate Share thereof. Not more than five (5) Business Days following (i) the last day for receipt by the Agent of such notices or (ii) if all such Lenders have provided such notice, the day on which the last of such notices has been received by the Agent, the Agent will advise the Canadian Borrower and each Lender, which Lenders have agreed to provide their Proportionate Share of the Increase and which Lenders have declined to provide their Proportionate Share of the Increase, and the amount of such Proportionate Share so agreed or declined by each such Lender. Should Lenders not have agreed to provide the increase of Commitments requested by the Borrowers, the Borrowers may solicit other Persons to accept such Commitments subject to the approval of the Agent and the Issuing Lender.

(4) Notwithstanding anything to the contrary in this Agreement, no Lender will have any obligation to participate in any requested Increase unless it agrees to do so in its sole discretion.

(5) Upon its confirmation of the satisfaction of the foregoing conditions and any other conditions required by the Agent (including an amendment or restatement, if required, to this Agreement), the Agent will prepare and deliver to the Canadian Borrower and each Lender a new Schedule A, setting forth the Commitments of the Lenders following the Increase. Such new Schedule A, and the revised Commitments of the Lenders set forth therein, will become effective on the execution and delivery of the documentation applicable to the Increase Request.

ARTICLE 3 - DISBURSEMENT CONDITIONS

3.01 Conditions Precedent to an Initial Advance

The obligations of the Lenders under this Agreement are subject to and conditional upon the following conditions precedent being satisfied as of the date of the first Drawdown:

- (a) this Agreement shall have been executed and delivered by all parties hereto;

- (b) duly executed copies of the Security shall have been delivered to the Agent (along with certificates, if any, representing all shares or other securities pledged, together with related stock powers duly executed in blank) and such financing statements or other registrations of such Security, or notice thereof, shall have been filed, registered, entered or recorded in all offices of public record necessary or desirable in the opinion of the Agent to preserve or protect the charges and security interests created thereby;
- (c) the Agent shall have received timely notice as required under Section 2.06;
- (d) the Agent shall have received certified copies of the Organizational Documents of each Obligor, the resolutions authorizing the execution, delivery and performance of each Obligor's respective obligations under the Loan Documents and the transactions contemplated herein, and the incumbency of the officers and directors of the Obligors;
- (e) copies of all other shareholder agreements and partnership agreements, if any, applicable to each Obligor, certified by such Obligor to be true, shall have been delivered to the Agent;
- (f) a currently dated letter of opinion addressed to the Agent, the Lenders, the Lenders' Counsel of the Borrowers' Counsel along with the opinions of local counsel satisfactory to Lenders' Counsel shall have been delivered to the Agent;
- (g) certificates of status or good standing, as applicable, for each Obligor's jurisdiction of existence shall have been delivered to the Lenders;
- (h) the ownership, capital, corporate and legal structure of the Obligors shall be satisfactory to the Lenders;
- (i) a Compliance Certificate in form and substance satisfactory to the Lenders calculated as of the end of the most recently completed Fiscal Quarter shall have been delivered to the Agent;
- (j) Lenders' satisfaction with the Borrowers' insurance coverage and receipt by Agent of certificates of insurance acceptable to the Agent showing, *inter alia*, the Agent as an additional insured or loss payee, as the case may be, under all applicable insurance policies of the Obligors;
- (k) the Agent shall have received a confirmation from the trustee under the Convertible Debentures Indenture that the Agent benefits from the subordination provision contemplated by section 9.7 of the Convertible Debenture Indenture (the "**Subordination Provision**");
- (l) no Material Adverse Effect shall have occurred since December 31, 2017, as determined by the Lenders acting reasonably;

- (m) arrangements satisfactory to the Lenders for repayment in full of all Existing Debt and other Debt that is not Permitted Debt owing by any Obligor to the existing lenders to such Obligor, concurrent with the initial Drawdown under the Credit Facility;
- (n) releases, discharges and postponements with respect to all Encumbrances which are not Permitted Encumbrances, if any, shall have been delivered to the Agent in form satisfactory to the Agent;
- (o) payment of all amounts and reasonable documented fees (including reasonable documented fees of Lenders' Counsel), payable to the Lenders or the Agent;
- (p) the Lenders shall have received all documentation and other information required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including without limitation the PATRIOT Act and the Proceeds of Crime (Money Laundering) and *Terrorist Financing Act* (Canada), that has been reasonably requested by the Lenders; and
- (q) the Agent shall have received such additional evidence, documents or undertakings as the Lenders shall reasonably request to establish the consummation of the transactions contemplated hereby and be satisfied, acting reasonably, as to the taking of all proceedings in connection herewith in compliance with the conditions set forth in this Agreement;

provided that all documents delivered pursuant to this Section 3.01 shall be in full force and effect, and in form and substance satisfactory to the Lenders acting reasonably.

3.02 Conditions Precedent to All Subsequent Advances

The obligation of the Lenders to make any Advance after the Closing Date is subject to and conditional upon the following conditions precedent being satisfied by the Borrowers:

- (a) the Agent shall have received timely notice as required under Section 2.06;
- (b) the representations and warranties pursuant to Section 9.01 are deemed to be repeated and continue to be true and correct as if made on and as of the Drawdown Date except to the extent that such representations and warranties relate specifically to an earlier date;
- (c) no Material Adverse Effect shall have occurred; and
- (d) no Default or Event of Default has occurred and is continuing on the Drawdown Date or would result from making the Advance.

3.03 Additional Conditions Precedent to Certain Subsequent Advances

(1) In addition to the conditions precedent set forth in Section 3.02. the obligation of the Lenders to make any Advance after the Closing Date that is intended to fund a redemption of Equity Interests of the Canadian Borrower or a repayment of Convertible Debentures is subject to and conditional upon the Canadian Borrower providing the Agent with at least three (3) Business Days' advance notice of the intended redemption or repayment together with a Compliance Certificate showing *pro forma* compliance after giving effect to the Advance and the redemption or repayment.

(2) In addition to the conditions precedent set forth in Section 3.02. the obligation of the Lenders to make any Advance after the Closing Date that is intended to fund a Controlling Acquisition is subject to and conditional upon the following conditions precedent being satisfied by the Borrowers:

- (a) the Agent shall have received at least three Business Days' advance notice of the Acquisition to be financed by such Advance, such notice to specify the estimated sources and uses of funds for such Controlling Acquisition;
- (b) the Agent, acting reasonably, shall have been satisfied with the result of its diligence with respect to the Controlling Acquisition, including on operational, management, financial, corporate, legal, regulatory and tax matters relating to the target to be acquired pursuant to such Controlling Acquisition (collectively, the "**Relevant Targetcos**");
- (c) the Agent, acting reasonably, shall be satisfied with the terms and conditions and the purchase price for the Controlling Acquisition as well as the contents of the share purchase agreement for the such Controlling Acquisition; and
- (d) the Agent shall have received each of the following documents, each in form and substance satisfactory to the Agent, acting reasonably:
 - (i) copies of the Organizational Documents of each Relevant Targetco;
 - (ii) certificates of status or good standing, as applicable, for each Relevant Targetco's jurisdiction of existence;
 - (iii) an executed copy of the share purchase agreement and other agreements material to the Controlling Acquisition;
 - (iv) for any Advance in respect of an Acquisition the cost of which is greater than \$50,000,000, an updated financial forecast referred to in Section 10.03(3) for the then current Fiscal Year;
 - (v) a Compliance Certificate showing *pro forma* compliance after giving effect to the Advance and the Controlling Acquisition;

- (vi) a certificate of the Chief Financial Officer of the Canadian Borrower (together with supporting documents) setting out the aggregate amount of the purchase price and related costs for the Controlling Acquisition and also specifying the various components of and the sources of funds for the payment of such purchase price and costs as well as the Debt of the Relevant Targetco that will remain outstanding after the Acquisition;
- (vii) a certificate of the Chief Financial Officer of the MFH US Borrower certifying that all governmental and regulatory approvals and material third party consents required for the completion of the Controlling Acquisition have been obtained and also certifying that all related filings have been made and that no material condition precedent to the closing of the Controlling Acquisition as provided in the share purchase agreement has been waived by the MFH US Borrower except where waiver of such condition would not adversely affect the rights of the Agent or the Lenders under this Agreement; and
- (viii) an updated Schedule 9.01(17) – Corporate Structure giving effect to the Acquisition and showing the percentage of each class of Equity Interests of the Relevant Targetco owned by MFH US Borrower.

3.04 Waiver

The conditions set forth in Sections 3.01, 3.02 and 3.03 are inserted for the sole benefit of the Lenders and may be waived by the Lenders in accordance with the terms of Section 14.14, in whole or in part (with or without terms or conditions), in respect of any Drawdown without prejudicing the right of the Lenders at any time to assert such conditions in respect of any subsequent Drawdown.

ARTICLE 4 - EVIDENCE OF DRAWDOWNS

4.01 Account of Record

The Agent shall open and maintain books of account evidencing all Advances and all other amounts owing by the Borrowers to the Lenders hereunder. The Agent shall enter in the foregoing accounts details of all amounts from time to time owing, paid or repaid by the Borrowers hereunder. The information entered in the foregoing accounts shall, absent manifest error, constitute *prima facie* evidence of the obligations of the Borrowers to the Lenders hereunder with respect to all Advances and all other amounts owing by the Borrowers to the Lenders hereunder. After a request by any of the Borrowers, the Agent shall promptly advise the Borrowers of such entries made in the Agent's books of account.

ARTICLE 5 - PAYMENTS OF INTEREST AND STANDBY FEES

5.01 Interest on Prime Rate Advances

The Canadian Borrower shall pay interest on each Prime Rate Advance during each Interest Period applicable thereto in Canadian Dollars at a rate per annum equal to the sum of (i) the Prime Rate in effect from time to time during such Interest Period plus (ii) the Prime Rate Margin. Each determination by the Agent of the Prime Rate and the Prime Rate Margin applicable from time to time shall, in the absence of manifest error, be binding upon the Canadian Borrower. Subject to Section 5.07 and Section 5.08, such interest shall be payable in arrears on each Interest Payment Date for such Advance for the period from and including the Drawdown Date or the preceding Conversion Date or Interest Payment Date, as the case may be, for such Advance to and including the day preceding such Interest Payment Date and shall be calculated on the principal amount of the Prime Rate Advance outstanding during such period and on the basis of the actual number of days elapsed in a year of 365 days or 366 days, as the case may be. Changes in the Prime Rate shall cause an immediate adjustment of the interest rate applicable to such Advance without the necessity of any notice to the Canadian Borrower.

5.02 Interest on US Base Rate Advances

The Borrowers shall pay interest on each US Base Rate Advance during each Interest Period applicable thereto in United States Dollars at a rate per annum equal to the sum of (i) the US Base Rate in effect from time to time during such Interest Period plus (ii) the US Base Rate Margin. Each determination by the Agent of the US Base Rate and the US Base Rate Margin applicable from time to time shall, in the absence of manifest error, be binding upon the Borrowers. Subject to Section 5.07 and Section 5.08, such interest shall be payable in arrears on each Interest Payment Date for such Advance for the period from and including the Drawdown Date or the preceding Conversion Date or Interest Payment Date, as the case may be, for such Advance to and including the day preceding such Interest Payment Date and shall be calculated on the principal amount of the US Base Rate Advance outstanding during such period and on the basis of the actual number of days elapsed divided by 365 or 366, as applicable. Changes in the US Base Rate shall cause an immediate adjustment of the interest rate applicable to such Advance without the necessity of any notice to the Borrowers.

5.03 Interest on LIBOR Advances

The Borrowers shall pay interest on each LIBOR Advance during each Interest Period applicable thereto in United States Dollars at a rate per annum equal to the sum of (i) the LIBO Rate in effect for such Interest Period plus (ii) the LIBO Rate Margin. Each determination by the Agent of the LIBO Rate and the LIBO Rate Margin applicable from time to time for an Interest Period shall, in the absence of manifest error, be binding upon the Borrowers. Subject to Section 5.07 and Section 5.08, such interest shall be payable in arrears on each Interest Payment Date for such Advance for the period from and including the Drawdown Date or the preceding Conversion Date, Rollover Date or Interest Payment Date, as the case may be, for such Advance to and including the day preceding such Interest Payment Date and shall be calculated on the principal amount of the LIBOR Advance outstanding during such period and on the basis of the actual number of days elapsed divided by 360.

5.04 **No Set-Off, Deduction etc.**

Except with respect to Taxes (which are governed by Section 15.02), all payments (whether interest or otherwise) to be made by a Borrower or any other party pursuant to this Agreement are to be made in freely transferable, immediately available funds and without set-off or deduction of any kind whatsoever (whether for deemed re-investment or otherwise) except to the extent required by Applicable Law, and if any such set-off or deduction is so required and is made, such Borrower or any other party will, as a separate and independent obligation to each Lender, be obligated to immediately pay to each Lender all such additional amounts as may be required to fully indemnify and save harmless such Lender from such set-off or deduction and will result in the effective receipt by such Lender of all the amounts otherwise payable to it in accordance with the terms of this Agreement.

5.05 **Standby Fees**

The Canadian Borrower shall pay to the Agent for the account of the Lenders in accordance with their Proportionate Share a standby fee in US Dollars calculated at the rate per annum specified as the applicable "Standby Fee Rate" in the table contained in the definition of "Applicable Margin" on the amount by which the average of the outstanding balance of all Advances under the Credit Facility as at the end of each day during such month is less than the Commitment (which, for greater certainty, is \$150,000,000 on the Closing Date). The standby fee shall be determined daily beginning on the date hereof and shall be calculated on the basis of a calendar year of 365 or 366 days, as the case may be, and shall be payable by the Canadian Borrower quarterly in arrears on the first Business Day of each subsequent Fiscal Quarter and on the Maturity Date. For purposes of determining the undrawn portion of the Credit Facility, the US Dollar Equivalent Amount of outstanding Advances under the Credit Facility in other currencies shall be calculated on the basis of the daily Exchange Rate in effect on the Business Day immediately preceding the first Business Day of the applicable month.

5.06 **Fees**

Each Borrower shall pay to the Agent such fees in such amounts, and on the terms and conditions, set out in any fee letter between a Borrower or the Borrowers and the Agent, as such letter may be amended, supplemented or replaced from time to time, or as otherwise agreed to in writing from time to time by the Agent (or any of its Affiliates) and a Borrower. For greater certainty, each such fee letter and all such written arrangements between the Agent and a Borrower or the Borrowers relating to the payment of fees in respect to this Agreement shall constitute Loan Documents, shall survive the execution of this Agreement and shall in all respects remain operative and binding on such Borrower or Borrowers.

5.07 **Overdue Principal and Interest**

(1) If all or part of any Prime Rate Advance or US Base Rate Advance shall not be paid when due (whether at its stated maturity, by acceleration or otherwise), such overdue amount shall bear interest (as well after as before judgment), payable on demand, at a rate per annum equal to the rate of interest applicable under this Agreement from time to time to such type of Advance from the date of such non-payment until paid in full.

(2) If all or part of any interest in respect of any Prime Rate Advance, LIBOR Advance or US Base Rate Advance shall not be paid when due (whether at its stated maturity, by acceleration or otherwise), such overdue interest shall, to the extent permitted by law, bear interest (as well after as before judgment), payable on demand, at a rate per annum equal to the rate of interest applicable under this Agreement from time to time to the type of Advance in respect of which such interest was not paid from the date of such non-payment until paid in full.

5.08 Interest on Other Amounts

If any amount owed by a Borrower to the Agent or any Lender under any of the Loan Documents is not paid when due and payable, and there is no other provision in any Loan Document specifying the interest payable on such overdue amount, such overdue amount shall bear interest (as well after as before judgment), payable (a) [REDACTED]

and (b) [REDACTED]

[REDACTED] in each such case from the date of non-payment until paid in full.

ARTICLE 6 - BANKERS' ACCEPTANCES AND LETTERS OF CREDIT

6.01 Bankers' Acceptances

(1) To facilitate the procedures contemplated in this Agreement, the Canadian Borrower irrevocably appoints each Lender from time to time as the attorney-in-fact of the Canadian Borrower to execute, endorse and deliver on behalf of the Canadian Borrower drafts (including book based forms and electronic paper) in the forms prescribed by such Lender (if such Lender is a BA Lender) for bankers' acceptances denominated in Cdn. Dollars (each such executed draft which has not yet been accepted by a Lender being referred to as a "**Draft**") or non-interest-bearing promissory notes of the Canadian Borrower in favour of such Lender (if such Lender is a Non-BA Lender) (each such promissory note being referred to as a "**BA Equivalent Note**"). Each Bankers' Acceptance and BA Equivalent Note executed and delivered by a Lender on behalf of the Canadian Borrower as provided for in this Section shall be as binding upon the Canadian Borrower as if it had been executed and delivered by a duly authorized officer of the Canadian Borrower.

(2) Notwithstanding Section 6.01(1), the Canadian Borrower will from time to time as required by the applicable Lender provide to the Lenders an appropriate number of Drafts drawn by the Canadian Borrower upon each BA Lender and either payable to a clearing service (if such BA Lender is a member thereof) or payable to the Canadian Borrower and endorsed in blank by the Canadian Borrower (if such BA Lender is not a member of such clearing service) and an appropriate number of BA Equivalent Notes in favour of each Non-BA Lender. The dates, the maturity dates and the principal amounts of all Drafts and BA Equivalent Notes delivered by the Canadian Borrower shall be left blank, to be completed by the Lenders as required by this Agreement. All such Drafts or BA Equivalent Notes shall be held by each Lender subject to the same degree of care as if they were such Lender's own property kept at the

place at which the Drafts or BA Equivalent Notes are ordinarily kept by such Lender. Each Lender, upon written request of the Canadian Borrower, will promptly advise the Canadian Borrower of the number and designation, if any, of the Drafts and BA Equivalent Notes then held by it. No Lender shall be liable for its failure to accept a Draft or purchase a BA Equivalent Note as required by this Agreement if the cause of such failure is, in whole or in part, due to the failure of the Canadian Borrower to provide on a timely basis appropriate Drafts or BA Equivalent Notes to the applicable Lender as may be requested by such Lender on a timely basis from time to time.

(3) The Agent, promptly following receipt of a Drawdown Notice requesting Bankers' Acceptances, shall (i) advise each BA Lender of the face amount and the term of the Draft to be accepted by it and (ii) advise each applicable Non-BA Lender of the face amount and term of the BA Equivalent Note to be purchased by it. All Drafts to be accepted from time to time by each BA Lender that is a member of a clearing service shall be payable to such clearing service. The term of all Bankers' Acceptances and BA Equivalent Notes issued pursuant to any Drawdown Notice shall be identical. Each Bankers' Acceptance and BA Equivalent Note shall be dated the Drawdown Date on which it is issued and shall be for a term of 1, 2, 3 or 6 months, subject to availability, provided that in no event shall the term of a Bankers' Acceptance or a BA Equivalent Note extend beyond the Maturity Date. The face amount of the Draft (or the aggregate face amount of the Drafts) to be accepted at any time by each Lender which is a BA Lender, and the face amount of the BA Equivalent Notes to be purchased at any time by each Lender which is a Non-BA Lender, shall be determined by the Agent based upon the amounts of their respective Commitments under the applicable Credit Facility. In determining a Lender's Proportionate Share of a request for Bankers' Acceptances, the Agent, in its sole discretion, shall be entitled to increase or decrease the face amount of any Draft, or BA Equivalent Note to the nearest \$1,000.

(4) Each BA Lender shall complete and accept on the applicable Drawdown Date a Draft having a face amount (or Drafts having the face amounts) and term advised by the Agent pursuant to subsection 6.01(3). Each applicable BA Lender shall purchase on the applicable Drawdown Date the Bankers' Acceptance accepted by it, for an aggregate price equal to the BA Discount Proceeds of such Bankers' Acceptance. The Canadian Borrower shall ensure that there is delivered to each applicable BA Lender that is a member of a clearing service the completed Bankers' Acceptances, and such BA Lender is hereby authorized to release the Bankers' Acceptance accepted by it to such clearing house upon receipt of confirmation that such clearing house holds such Bankers' Acceptance for the account of such BA Lender.

(5) Each Non-BA Lender, in lieu of accepting Drafts or purchasing Bankers' Acceptances on any Drawdown Date, will complete and purchase from the Canadian Borrower on such Drawdown Date a BA Equivalent Note in a face amount and for a term identical to the face amount and term of the Draft which such Non-BA Lender would have been required to accept on such Drawdown Date if it were a BA Lender, for a price equal to the BA Discount Proceeds of such BA Equivalent Note. Each Non-BA Lender shall be entitled without charge to exchange any BA Equivalent Note held by it for two or more BA Equivalent Notes of identical date and aggregate face amount, and the Canadian Borrower will execute and deliver to such Non-BA Lender such replacement BA Equivalent Notes and such Non-BA Lender shall return the original BA Equivalent Note to the Canadian Borrower for cancellation.

(6) The Canadian Borrower shall pay to each BA Lender in respect of each Draft tendered by the Canadian Borrower to and accepted by such BA Lender, and to each Non-BA Lender in respect of each BA Equivalent Note tendered to and purchased by such Non-BA Lender, as a condition of such acceptance or purchase, the BA Stamping Fee.

(7) Upon acceptance of each Draft or purchase of each BA Equivalent Note, the Canadian Borrower shall pay to the applicable Lender the related fee specified in Section 6.01(6), and to facilitate payment such Lender shall be entitled to deduct and retain for its own account the amount of such fee from the amount to be transferred by such Lender to the Agent for the account of the Canadian Borrower pursuant to this Agreement in respect of the sale of the related Bankers' Acceptance or of such BA Equivalent Note.

(8) If the Agent determines in good faith, which determination shall be final, conclusive and binding upon the Canadian Borrower, and so notifies the Canadian Borrower, that there does not exist at the applicable time a normal market in Canada for the purchase and sale of bankers' acceptances, any right of the Canadian Borrower to require the Lenders to purchase Bankers' Acceptances and BA Equivalent Notes under this Agreement shall be suspended until the Agent determines that such market does exist and gives notice thereof to the Canadian Borrower and any Drawdown Notice, Conversion Notice or Rollover Notice requesting Bankers' Acceptances shall, for the duration of such circumstances, be deemed to be a Drawdown Notice or Conversion Notice requesting a Prime Rate Advance in a similar aggregate principal amount. When a normal market in Canada for the purchase of Bankers' Acceptances and BA Equivalent Notes has returned, the Agent shall provide notice of such to the Canadian Borrower.

(9) On the date of maturity of each Bankers' Acceptance or BA Equivalent Note, the Canadian Borrower shall pay to the Agent, for the account of the holder of such Bankers' Acceptance or BA Equivalent Note, in Canadian Dollars an amount equal to the face amount of such Bankers' Acceptance or BA Equivalent Note, as the case may be (subject to standard and customary mechanics in connection with Rollovers or Conversions pursuant to Section 2.06). The obligation of the Canadian Borrower to make such payment shall not be prejudiced by the fact that the holder of such Bankers' Acceptance is the Lender that accepted such Bankers' Acceptances. No days of grace shall be claimed by the Canadian Borrower for the payment at maturity of any Bankers' Acceptance or BA Equivalent Note. If the Canadian Borrower does not make such payment, from the proceeds of an Advance obtained under this Agreement or otherwise, the amount of such required payment shall be deemed to be a Prime Rate Advance to the Canadian Borrower from the Lender that accepted such Banker's Acceptance or purchased such BA Equivalent Note.

(10) The signature of any duly authorized officer of the Canadian Borrower on a Draft or a BA Equivalent Note may be mechanically reproduced in facsimile, and all Drafts and BA Equivalent Notes bearing such facsimile signature shall be as binding upon the Canadian Borrower as if they had been manually signed by such officer, notwithstanding that such Person whose manual or facsimile signature appears on such Draft or BA Equivalent Note may no longer hold office at the date of such Draft or BA Equivalent Note or at the date of acceptance of such Draft by a BA Lender or at any time thereafter.

6.02 Letters of Credit

(1) If a Borrower wishes to request an Advance by way of issuance of Letters of Credit, such Borrower shall, at the time it delivers the notice required pursuant to Section 2.06, execute and deliver the Issuing Lender's usual documentation relating to the issuance and administration of Letters of Credit (including, without limitation, all reimbursement and indemnity agreements). In the event of any inconsistency between the terms of such documentation and this Agreement, the terms of this Agreement shall prevail.

(2) Each request for a Letter of Credit shall be made available by the Issuing Lender under the Credit Facility.

(3) No Letter of Credit may be issued for a period in excess of one year (provided that annually renewable Letters of Credit may be issued, subject to agreement of the Issuing Lender, with a final expiry date prior to the Maturity Date). Letters of Credit may be used by the Borrowers for general commercial purposes, and may not, for greater certainty, be used to guarantee obligations of Persons who are not Subsidiaries.

(4) If, at any time, a demand for payment (the amount so demanded being herein referred to as a "relevant amount") is made under a Letter of Credit, then:

- (a) the Issuing Lender shall notify the Agent who shall:
 - (i) promptly notify the applicable Borrower and each of the other Lenders of such demand; and
 - (ii) make demand on each Lender for an amount equal to its Proportionate Share of such relevant amount which demand shall constitute a deemed Prime Rate Advance or US Base Rate Advance, as applicable, to the applicable Borrower without the requirement of any further action on the part of the Borrowers; and
- (b) the Issuing Lender shall pay the amount demanded to the Person entitled thereto on the date upon which such amount becomes payable under the Letter of Credit.

(5) Where a demand for payment is made under a Letter of Credit issued in Canadian Dollars, the Canadian Borrower shall be deemed to have requested a Prime Rate Advance of the amount demanded pursuant to the Credit Facility. Where a demand for payment is made under a Letter of Credit issued in US Dollars, the applicable Borrower shall be deemed to have requested a US Base Rate Advance of the amount demanded pursuant to the Credit Facility. Where a demand for payment is made under a Letter of Credit issued in any other currency, the applicable Borrower shall be deemed to have requested a US Base Rate Advance in the Equivalent Amount of US Dollars to the amount demanded from the Issuing Lender. In each case payment will be made by the applicable Borrower of all charges and expenses payable to or incurred by the Issuing Lender and the Lenders in connection with payment being made under such Letter of Credit. All fees payable in connection with a Letter of Credit shall be made in the currency of such Letter of Credit unless such Letter of Credit is not in Cdn. Dollars or US Dollars in which case such fees shall be paid in Cdn. Dollars.

(6) The applicable Borrower hereby undertakes to indemnify and hold harmless the Issuing Lender and each of the Lenders from time to time on demand by the Agent from and against all liabilities and costs (including, without limitation, any costs incurred in funding any amount which falls due from the Agent and any Lender under a Letter of Credit hereunder to such Borrower) to the extent that such liabilities or costs are not satisfied or compensated by the payment of interest on sums due pursuant to this Agreement in connection with any Letter of Credit to such Borrower except where such liabilities or costs result from the negligence or wilful misconduct of the person claiming indemnification.

(7) The Issuing Lender shall at all times be entitled, and is irrevocably authorized by the Borrowers, to make any payment under the Letters of Credit for which a request or demand has been made in the required form without any further reference to the Borrowers and any investigation or enquiry, need not concern itself with the propriety or validity of any claim made or purported to be made under the terms of such Letter of Credit (except as to compliance with the payment conditions of such Letters of Credit) and shall be entitled to assume that any Person expressed in such Letter of Credit as being entitled to make demand or receive payments thereunder is so entitled. Accordingly, so long as a request or demand has been made as aforementioned it shall not be a defence to any demand made of a Borrower hereunder, nor shall the Borrowers or their obligations hereunder be impaired by the fact (if it be the case) that the Issuing Lender or the Lenders were or might have been justified in refusing payment, in whole or in part, of the amounts so claimed.

(8) A certificate of the Agent as to the amounts paid by any Lender pursuant to this Section 6.02 or the amount paid out under any Letter of Credit shall, in the absence of manifest error, be *prima facie* evidence of the existence and amount of such payment in any legal action or proceeding arising out of or in connection herewith.

(9) For so long as any Letter of Credit is outstanding, the Borrower shall pay to the Agent on behalf of the Lenders (which fee shall be paid by the Agent to the Lenders based on their Proportionate Share) a fee equal to the Letter of Credit Fee Rate on the amount of each Letter of Credit or, as applicable, on the Equivalent Amount of Canadian Dollars thereof, quarterly in advance on the first Business Day of such Fiscal Quarter, beginning on the date of issuance of such Letter of Credit.

The applicable Borrower shall pay in respect of each Letter of Credit, a fronting fee equal to [REDACTED] of the face amount of such Letter of Credit, payable in Cdn. Dollars or US Dollars, as applicable to the Issuing Lender (for its own account) on the day that the Letter of Credit is issued. Such fee shall be payable on each renewal of a Letter of Credit and will be payable on any increased amount of a Letter of Credit. Such fees shall each be calculated on the basis of a calendar year and the number of days the Letter of Credit will be outstanding during such period. Fronting fees are non-refundable.

The applicable Borrower shall also pay the standard fees and charges of the Issuing Lender in effect from time to time for issuing, renewing and amending Letters of Credit.

(10) The full face amount of each Letter of Credit issued by the Issuing Lender on behalf of the Borrowers shall be deemed to be an Advance under the Credit Facility which Advance shall be retired upon the earlier of:

- (i) the return of the Letter of Credit to the Issuing Lender for cancellation;
- (ii) the expiration date of the Letter of Credit; or
- (iii) the deeming of the amount drawn on the Letter of Credit to be a Prime Rate Advance or a US Base Rate Advance, as applicable, under the Credit Facility.

(11) If any Letter of Credit is outstanding upon the occurrence of an Event of Default or on the Maturity Date, the applicable Borrower shall if required by the Lenders forthwith pay to the Agent an amount (the "**deposit amount**") equal to the undrawn principal amount of the outstanding Letter of Credit, which deposit amount shall be held by the Agent for application against the indebtedness owing by the Borrowers in respect of any draw on the outstanding Letter of Credit. In the event that the Agent is not called upon to make full payment on the outstanding Letter of Credit prior to its expiry date, the deposit amount, or any part thereof as has not been paid out, shall, so long as no Event of Default then exists, be returned to the applicable Borrower.

(12) The obligations of the Borrowers with respect to Letters of Credit shall be unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including, without limitation, the following circumstances:

- (i) any lack of validity or enforceability of any Loan Document or the Letters of Credit;
- (ii) any amendment or waiver of or any consent to or actual departure from this Agreement;
- (iii) the existence of any claim, set-off, defence or other right which a Borrower may have at any time against any beneficiary or any transferee of a Letter of Credit (or any Persons for which any such beneficiary or any such transferee may be acting), the Issuing Lender or any other Person or entity, whether in connection with this Agreement, the transactions contemplated herein or in any other agreements or any unrelated transactions;
- (iv) any statement or any other document presented under a Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect except for non-compliance with the payment conditions of such Letter of Credit; or
- (v) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing.

(13) Each Borrower hereby indemnifies and agrees to hold the Issuing Lender harmless from all losses, damages, costs, demands, claims, expenses (including out-of-pocket expenses) and other consequences which the Issuing Lender may incur, sustain or suffer, other than as a result of its own negligence or wilful misconduct, as a result of issuing or amending a Letter of Credit, including legal and other expenses incurred by the Issuing Lender in any action to compel payment by the Issuing Lender under a Letter of Credit or to restrain the Issuing Lender from making payment under a Letter of Credit. Any amounts due under this indemnity shall form part of the Obligations.

It is understood and agreed that the Issuing Lender shall not have any liability for, and that the applicable Borrower assumes all responsibility for: (i) the genuineness of any signature; (ii) the form, validity, genuineness, falsification and legal effect of any draft, certification or other document required by a Letter of Credit or the authority of the Person signing the same; (iii) the failure of any instrument to bear any reference or adequate reference to a Letter of Credit or the failure of any Persons to note the amount of any instrument on the reverse of a Letter of Credit or to surrender a Letter of Credit; (iv) the good faith or acts of any Person other than the Issuing Lender and its agents and employees; (v) the existence, form or sufficiency or breach or default under any agreement or instruments of any nature whatsoever; (vi) any delay in giving or failure to give any notice, demand or protest; and (vii) any error, omission, delay in or non-delivery of any notice or other communication, however sent, provided that the foregoing provisions do not extend to the failure by the Issuing Lender to comply with the payment conditions contained in the Letter of Credit. The determination as to whether the required documents are presented prior to the expiration of a Letter of Credit and whether such other documents are in proper and sufficient form for compliance with a Letter of Credit shall be made by the Issuing Lender in its sole discretion, which determination shall be conclusive and binding upon the Borrowers absent manifest error. It is agreed that the Issuing Lender may honour, as complying with the terms of a Letter of Credit and this Agreement, any documents otherwise in order and signed or issued by the beneficiary thereof. Any action, inaction or omission on the part of the Issuing Lender under or in connection with the Letters of Credit or any related instruments or documents, if in good faith and in conformity with such laws, regulations or commercial or banking customs as the Issuing Lender may reasonably deem to be applicable, shall be binding upon the Borrowers, and shall not affect, impair or prevent the vesting of the Issuing Lender's rights or powers hereunder or the applicable Borrower's obligation to make full reimbursement of amounts drawn under the Letters of Credit. Notwithstanding the provision of this Section 6.02(12), the Borrowers shall not be responsible for and no Person shall be relieved of responsibility for any gross negligence or wilful misconduct of such Person.

(14) The Borrowers and the Lenders hereby acknowledge that the Existing Letters of Credit shall be deemed to be Letters of Credit under the Credit Facility and shall be subject to all of the terms of this Agreement relating to Letters of Credit including, without limitation, the payment of all fees.

ARTICLE 7 – REPAYMENT

7.01 Mandatory Repayment of Principal

Subject to the terms hereof, each Borrower shall repay all Obligations that it owes in connection with the Credit Facility, including the outstanding principal amount of all Advances thereunder together with all accrued interest, fees and other amounts then unpaid by it with respect to such Advances (which, for greater certainty, shall include all amounts payable by the Borrowers to the Agent under Section 6.01(9) with respect to any Bankers' Acceptances and BA Equivalent Notes outstanding thereunder on the Maturity Date and all amounts payable by the Borrowers to the Agent under Section 6.02(11) with respect to Letters of Credit outstanding on the Maturity Date) in full on the Maturity Date, and the Credit Facility and the Commitments thereunder shall be automatically terminated on the Maturity Date.

7.02 Voluntary Repayments and Reductions

Subject to the Agent receiving a Repayment Notice which shall be given not less than three (3) Business Days prior to the proposed repayment date and which shall be irrevocable, the Borrowers may from time to time repay Advances outstanding under the Credit Facility without premium, penalty or bonus provided that each such repayment shall be in a minimum aggregate amount of \$5,000,000 and in whole multiples of \$100,000 for Advances denominated in United States Dollars and in a minimum aggregate amount of Cdn.\$5,000,000 and in whole multiples of Cdn.\$100,000 for Advances denominated in Canadian Dollars. Notwithstanding the foregoing (i) LIBOR Advances may not be repaid prior to the end of the applicable LIBOR Interest Period unless the applicable Borrower pays to the Agent (for the account of each Lender) an amount equal to the Breakage Costs (and Breakage Costs will apply regardless as to whether the repayment is voluntary or mandatory); and (ii) Bankers' Acceptances, BA Equivalent Notes and Letters of Credit may not be repaid prior to their respective maturity or expiry dates but may be cash collateralized along with delivery of such documentation as may be required by the Agent as specified in Section 7.04. The determination of the amount of any Breakage Costs resulting from, arising out of, or imposed upon or incurred by any Lender as a result of the repayment of any LIBOR Advance prior to the end of the applicable LIBOR Interest Period, when evidenced by a certificate from that Lender giving a reasonably detailed calculation of the amount of such loss, cost or expense, shall be *prima facie* evidence of the same.

7.03 Currency Fluctuations

If the Agent determines that on any day as a result of currency fluctuations or otherwise the aggregate of (a) Advances in US Dollars then outstanding under the Credit Facility, and (b) the Equivalent Amount in US Dollars of Advances in Cdn. Dollars then outstanding under the Credit Facility on such day exceeds the Commitments then in effect in respect of the Credit Facility by 3% or more, the Agent shall notify the Borrowers that such an event has occurred, and the Canadian Borrower shall, within two (2) Business Days upon receipt of such notice, repay Advances under the Credit Facility in an amount equal to such excess.

7.04 **Cash Collateral**

In connection with each mandatory repayment hereunder in connection with Bankers' Acceptances, BA Equivalent Notes and Letters of Credit which are to be repaid prior to their respective maturity or expiry dates, the applicable Borrower shall deposit cash with the Agent (for the benefit of the applicable Lenders) equal to the full face amount at maturity of such Bankers' Acceptance or BA Equivalent Note or the face amount of such Letters of Credit, as applicable, and shall concurrently deliver to the Agent a cash collateral agreement, supporting resolutions, certificates and opinions in form and substance satisfactory to the Lenders.

ARTICLE 8 - PLACE AND APPLICATION OF PAYMENTS

8.01 **Place of Payment of Principal, Interest and Fees**

(1) The Canadian Borrower undertakes at all times when any Advance is outstanding or any other amount is owed by it under any Loan Document to maintain at the Agent's Payment Branch an account in Cdn. Dollars and an account in US Dollars, which the Agent shall be entitled to debit with such amounts as are from time to time required to be paid by the Canadian Borrower under the Loan Documents, as and when such amounts are due. Without in any way limiting the rights of the Agent pursuant to the foregoing, unless otherwise specifically agreed between the Canadian Borrower and the Agent, the Canadian Borrower hereby directs the Agent to debit the aforesaid accounts with such amounts as are from time to time required to be paid by the Canadian Borrower pursuant to this Agreement.

(2) Each US Borrower undertakes at all times when any Advance is outstanding or any other amount is owed by it under any Loan Document to maintain at the Agent's Payment Branch an account in Cdn. Dollars and an account in US Dollars, which the Agent shall be entitled to debit with such amounts as are from time to time required to be paid by such US Borrower under the Loan Documents, as and when such amounts are due. Without in any way limiting the rights of the Agent pursuant to the foregoing, unless otherwise specifically agreed between a US Borrower and the Agent, each US Borrower hereby directs the Agent to debit the aforesaid accounts with such amounts as are from time to time required to be paid by such US Borrower pursuant to this Agreement.

(3) All payments by a Borrower under any Loan Document, unless otherwise expressly provided in such Loan Document, shall be made to the Agent at the Agent's Payment Branch, or at such other location as may be agreed upon by the Agent and the applicable Borrower, for the account of the Lenders entitled to such payment, not later than 12:00 noon (Toronto time) for value on the date when due, and shall be made in immediately available funds without set-off or counterclaim.

(4) Unless the Agent shall have been notified by a Borrower not later than 12:00 noon (Toronto time) of the Business Day prior to the date on which any payment to be made by such Borrower under a Loan Document is due that such Borrower does not intend to remit such payment, the Agent shall be entitled to assume that such Borrower has remitted or will remit such payment when so due and the Agent may (but shall not be obliged to), in reliance upon such assumption, make available to each applicable Lender on such payment date such Lender's share

of such assumed payment. If a Borrower does not in fact remit such payment to the Agent as required by such Loan Document, each applicable Lender shall immediately repay to the Agent on demand the amount so made available to such Lender, together with interest on such amount at the Interbank Reference Rate, in respect of each day from and including the date such amount was made available by the Agent to such Lender to the date such amount is repaid in immediately available funds to the Agent, and such Borrower shall immediately pay to the Agent on demand such amounts as are sufficient to compensate the Agent and the Lenders for all costs and expenses (including, without limitation, any interest paid to lenders of funds without duplication of interest otherwise paid hereunder) which the Agent may sustain in making any such amounts available to the Lenders or which any Lender may sustain in receiving any such amount from, and in repaying any such amount to, the Agent or in compensating the Agent as aforesaid. A certificate of the Agent as to any amounts payable by a Borrower pursuant to the preceding sentence and containing reasonable details of the calculation of such amounts shall be *prima facie* evidence of the amounts so payable.

(5) If any amount which has been received by the Agent not later than 12:00 noon (Toronto time) on any Business Day as provided above is not paid by the Agent to a Lender on such Business Day as required under this Agreement, the Agent shall immediately pay to such Lender on demand interest on such amount at the Interbank Reference Rate in respect of each day from and including the day such amount was required to be paid by the Agent to such Lender to the day such amount is so paid.

8.02 Netting of Payments

If, on any date, amounts would be due and payable under this Agreement in the same currency by a Borrower to the Lenders, or any one of them, and by the Lenders, or such Lender, to such Borrower, then, on such date, upon notice from the Agent or such Lender stating that netting is to apply to such payments, the obligations of each such party to make payment of any such amount will be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by such Borrower to the Lenders, or such Lender, exceeds the aggregate amount that would otherwise have been payable by the Lenders, or such Lender, to such Borrower or *vice versa*, such obligations shall be replaced by an obligation upon whichever of such Borrower or the Lenders, or such Lender, would have had to pay the larger aggregate amount to pay to the other the excess of the larger aggregate amount over the smaller aggregate amount. For greater certainty, prior to acceleration of repayment pursuant to Section 12.02, this Section 8.02 shall not permit any Lender to exercise a right of set-off, combination or similar right against any amount which a Borrower may have on deposit with such Lender in respect of any amount to which netting is to apply pursuant to this Section 8.02, but shall apply only to determine the net amount to be payable by the Lenders or one of them to such Borrower, or by a Borrower to the Lenders or one of them pursuant to the Loan Documents.

ARTICLE 9 - REPRESENTATIONS AND WARRANTIES

9.01 Representations and Warranties

Each Borrower represents and warrants to the Agent and to each of the Lenders and acknowledges and confirms that the Agent and each of the Lenders is relying upon such representations and warranties:

(1) Existence and Qualification Each Obligor (a) has been duly incorporated, established, formed, amalgamated, merged or continued, as the case may be, and is validly subsisting and in good standing as a corporation, company, limited partnership or partnership, under the laws of its jurisdiction of formation, amalgamation, merger or continuance, as the case may be (or in the case of Obligors which are not corporations or companies, has been duly created or established as a partnership or other applicable entity and validly exists under and is in good standing under the laws of the jurisdiction in which it has been created or established), where the failure by any Obligor, individually or together with one or more Obligors, to be in good standing could reasonably be expected to have a Material Adverse Effect, (b) is duly qualified to carry on its business in each jurisdiction in which it carries on business except where the failure by it, individually or together with one or more other Obligors, to be so qualified would not adversely affect its business in any material respect, and (c) has all required Material Licences.

(2) Power and Authority Each Obligor has the corporate, company or partnership power and authority, as the case may be, (a) to enter into, and to exercise its rights and perform its obligations under, the Loan Documents to which it is a party and all other instruments and agreements delivered by it pursuant to any of the Loan Documents, and (b) to own its Property and carry on its business as currently conducted and as currently proposed to be conducted by it.

(3) Execution, Delivery, Performance and Enforceability of Documents The execution, delivery and performance of each of the Loan Documents to which any Obligor is a party, and every other instrument or agreement delivered by an Obligor pursuant to any Loan Document, has been duly authorized by all corporate, company or partnership actions required, and each of such documents has been duly executed and delivered by it. Each Loan Document to which any Obligor is a party constitutes the legal, valid and binding obligations of such Obligor, enforceable against such Obligor in accordance with their respective terms (except, in any case, as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally and by principles of equity).

(4) Loan Documents Comply with Applicable Laws, Organizational Documents and Contractual Obligations None of the execution or delivery of, the consummation of the transactions contemplated in, or the compliance with the terms, conditions and provisions of any of, the Loan Documents by any Obligor or the completion of any Controlling Acquisition conflicts with or will conflict with, or results or will result in any breach of, or constitutes a default under or contravention of, any Requirement of Law (including any Requirement of Environmental Law) in any material respect, any Obligor's Organizational Documents, the Convertible Debentures Indenture or any other Material Contract or Material Licence, or results

or will result in the creation or imposition of any Encumbrance upon any of its Property except for Permitted Encumbrances.

(5) Consent Respecting Loan Documents Each Obligor has obtained, made or taken all consents, approvals, authorizations, declarations, registrations, filings, notices and other actions whatsoever required (including from any Governmental Authority), (except for registrations or filings which may be required in respect of the Security Documents) to enable it to execute and deliver each of the Loan Documents to which it is a party and to consummate the transactions contemplated in the Loan Documents, except where the failure to do so would not have an adverse effect in any material respect on the Loan Documents.

(6) Approvals, Licenses and Authorizations The Obligors and all Subsidiaries of the Borrowers have all licenses, permits, concessions, certificates, registrations, franchises and other authorizations and approvals of all Governmental Authorities that are material and required or necessary for the Obligors and the Subsidiaries of the Borrowers to carry on the Business in all material respects. Each Material Licence is valid, subsisting and in good standing and the Obligors and the Subsidiaries of the Borrowers are not in default or breach (except for immaterial breaches that do not allow for a right of termination of such licence) of any Material Licence and, to the knowledge of the Canadian Borrower, no proceeding is pending or has been threatened in writing by the applicable Government Authority to revoke or limit any Material Licence.

(7) Taxes Each Obligor and each Subsidiary of a Borrower has duly and timely filed all tax returns required to be filed by it and has paid or made adequate provision for the payment of all Taxes levied on its Property or income which are showing therein as due and payable, including interest and penalties, or has accrued such amounts in its financial statements for the payment of such Taxes except for Taxes which are not material in amount or which are not delinquent or if delinquent are being contested, and, except, after the date of this Agreement, as is disclosed to the Agent in writing there is no material action, suit, proceeding, investigation, audit or claim now pending, or to its knowledge, threatened by any Governmental Authority regarding any Taxes.

(8) Judgments, Etc. As of the Closing Date, no Obligor is subject to any material judgment, order, writ, injunction, decree or award which has not been stayed or of which enforcement has not been suspended.

(9) Absence of Litigation All actions, suits or proceeds pending or judgments existing as of the Closing Date that could reasonably be expected to result in a potential liability to an Obligor or any Subsidiary of a Borrower in excess of \$2,500,000.

(10) Title to Assets Each Obligor and each Subsidiary of a Borrower has good and defensible title (or valid leasehold interest) to its assets (immaterial assets excluded), and all assets are free and clear of all Encumbrances except Permitted Encumbrances and as of the Closing Date no Person has any agreement or right to acquire an interest in such assets other than in the ordinary course of its business and pursuant to a Permitted Disposition.

(11) Use of Real Property All real property owned or leased by each Obligor may be used in all material respects by such Obligor pursuant to Applicable Law for the present use and operation of the business conducted on such real property by such Obligor. All leased real property (other than leases between Obligors) where the lessor is Non-Arm's Length are on market terms and conditions and, in such case, is on terms which are commercially reasonable.

(12) Description of Real Property Schedule 9.01(12) contains a description as of the Closing Date of (a) all real property owned by each Obligor (including municipal addresses (to the extent available), legal description (to the extent available) and the name of the Obligor that owns such property and a brief description of such property and its use), and (b) all real property leased by each Obligor (including municipal addresses (to the extent available), legal description (to the extent available), the name of the Obligor that leases such property and the name of the landlord).

(13) Insurance Each Obligor or each Borrower on behalf of itself and all other Obligors maintains insurance which is in full force and effect that complies with all of the requirements of this Agreement. Schedule 9.01(13) lists all existing insurance policies maintained by the Obligors as of the Closing Date.

(14) Labour Relations As of the Closing Date: (i) no Obligor is aware that it is engaged in any unfair labour practice; and there is no unfair labour practice complaint or complaint of employment discrimination pending against any Obligor or to the knowledge of any Obligor threatened against any Obligor, before any Governmental Authority; (ii) no material grievance or arbitration arising out of or under any collective bargaining agreement is pending against any Obligor or to the knowledge of any Obligor threatened against any Obligor; and (iii) no strike, labour dispute, slowdown or material work stoppage is pending against any Obligor or to the knowledge of any Obligor threatened against any Obligor.

(15) Compliance with Laws No Obligor and no Subsidiary of a Borrower is in default under any Applicable Law (including Requirements of Environmental Laws) or any Applicable Order in any material respect.

(16) No Default or Event of Default No Default or Event of Default has occurred which is continuing.

(17) Corporate Structure The corporate structure of the Canadian Borrower and its Subsidiaries is, as at the Closing Date, as set out in Schedule 9.01(17), which Schedule contains:

- (a) *Shareholdings of the Obligors.* On the Closing Date, all of the Subsidiaries of the Canadian Borrower are as provided for in Schedule 9.01(17) and as of the Closing Date the Canadian Borrower does not own or hold any shares in the capital of, or any other ownership interest in, any other Person.
- (b) *Share Capital of Obligors.* On the Closing Date, the authorized capital of each of the Subsidiaries of the Canadian Borrower as at such time is as provided for in Schedule 9.01(17), of which the number of issued and outstanding Equity Interests and the beneficial owners thereof at such time is provided for in Schedule 9.01(17).

- (c) *Rights to Acquire Shares of Obligors.* No Person has an agreement or option or any other right or privilege (whether by law, pre-emptive or contractual) capable of becoming an agreement or option, including convertible securities, warrants or convertible obligations of any nature, for the purchase, subscription, allotment or issuance of any unissued shares in the capital of any Obligor (other than the Canadian Borrower) except as provided for in Schedule 9.01(17).

(18) Relevant Jurisdictions Schedule 9.01(18) identifies in respect of each Obligor as of the Closing Date, the Relevant Jurisdictions including the full address (including postal code) of such Obligor's registered office, chief executive office and all places of business and, if different, the address at which the books and records of such Obligor are located, the address at which senior management of such Obligor are located and conduct their deliberations and make their decisions with respect to the business of such Obligor and the address from which the invoices and accounts of such Obligor are issued.

(19) Intellectual Property Each Obligor has rights sufficient for it to use all the Intellectual Property reasonably necessary for the conduct of its business. All material patents, trade-marks, copyrights or industrial designs which have been either registered or in respect of which a registration application has been filed by it, as at the Closing Date, are listed on Schedule 9.01(19). No Obligor has received any notice of any claim of infringement or similar claim or proceeding relating to any of its Intellectual Property which, if determined against such Obligor, could reasonably be expected to have a Material Adverse Effect.

(20) Material Contracts:

- (a) Schedule 9.01(20), accurately sets out, as of the Closing Date, all Material Contracts and Material Licences, each of which is in full force and effect and as of the Closing Date no notice of intent to terminate or, if applicable, not to renew has been received with respect to any Material Contract or Material Licence;
- (b) each Material Contract to which an Obligor is a party is binding upon such Obligor and, to its knowledge, is a binding agreement of each other Person who is a party to the Material Contract.

(21) Financial Year End Its financial year end is on December 31.

(22) Financial Information The most recent quarterly and annual financial statements of the Canadian Borrower are complete in all material respects and such financial statements fairly present in all material respects the results of its operations and financial position, as of the dates referred to therein and have been prepared in accordance with GAAP (except that such quarterly financial statements do not include notes and the year-end adjustments that are reflected in the corresponding audited annual financial statements). Except as reflected or disclosed in such financial statements, none of the Borrowers has any material contingent liabilities, liabilities for Taxes, unusual forward or long term commitments or unrealized or anticipated losses from any unfavourable commitments that have not been disclosed in writing to the Agent.

(23) No Material Adverse Effect Since the date of the Canadian Borrower's most recent annual audited financial statements, there has been no condition (financial or otherwise), event or change in its business, liabilities, operations, results of operations or assets which constitutes or has, or could reasonably be expected to constitute, or cause, a Material Adverse Effect.

(24) Insolvency As at the Closing Date, no Obligor (a) has committed any act of bankruptcy, (b) is insolvent, or has proposed, or given notice of its intention to propose, a compromise or arrangement to its creditors generally, (c) has any petition for a receiving order in bankruptcy filed against it, made a voluntary assignment in bankruptcy, taken any proceeding with respect to any compromise or arrangement, taken any proceeding to have itself declared bankrupt or wound-up, taken any proceeding to have a receiver appointed of any part of its assets or has had any Encumbrancer take possession of any of its Property.

(25) Non-Arm's Length Transactions All agreements, arrangements or transactions between any Obligor, on the one hand, and any Affiliate of or other Person not dealing at Arm's Length with such Obligor (other than another Obligor and other than ordinary course arrangements with any employee, management or director of an Obligor), on the other hand, in existence as of the Closing Date are set forth on Schedule 9.01(25).

(26) Debt There exists no Debt of an Obligor that is not Permitted Debt.

(27) Restrictions on Payments None of the Borrowers or their Subsidiaries is subject to any law, regulation, agreement or other legal impediment that prohibits, restricts or imposes any condition upon its ability to pay Distributions or to make or repay loans or advances, except for laws of general application providing that the declaration or payment of Distributions by a Person are subject to such Person being in compliance with solvency or other similar requirements.

(28) True and Complete Disclosure The information, reports, financial statements and documents furnished or to be furnished by or on behalf of the Borrowers to the Agent in connection with the negotiation, preparation, execution, delivery or performance of the Loan Documents, when taken as a whole, do not and will not contain any untrue statement of material fact or omit to state any material fact necessary to make the statements therein, not misleading in any material respect. All forecasts have been prepared based upon reasonable assumptions made in the ordinary course of business and on a basis consistent with past practices.

(29) Margin Stock Each Obligor is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U of the Board of Governors of the US Federal Reserve System) ("**Margin Stock**"), and no part of the proceeds of any Advance or any other extension of credit made hereunder will be used to purchase or carry any such margin stock or to extend credit to others for the purpose of purchasing or carrying any such margin stock. As of the Closing Date, no Obligor and no Subsidiary of any Obligor owns any Margin Stock.

(30) Investment Company No Borrower is an "investment company" or a company "controlled" by an "investment company" within the meaning of the *Investment Company Act of 1940*, as amended.

(31) ERISA With respect to each US Pension Plan and except as could not reasonably be expected to result in Material ERISA Liability to any Obligor or any Subsidiary of a Borrower, (i) it and each other member of its Controlled Group has fulfilled its obligations under the minimum funding standards of and is in compliance in all respects with ERISA and the IRC to the extent applicable to it and has not incurred any material liability to the PBGC or under Title IV of ERISA, other than a liability to the PBGC for premiums under Section 4007 of ERISA; (ii) it does not have any unfunded contingent liabilities with respect to any post-retirement benefits under a Welfare Plan, other than liability for continuation coverage described in Part 6 of Title I of ERISA or as required under US State law requirements for health continuation coverage; (iii) no Reportable Event has occurred and is continuing with respect to any US Pension Plan, and no Obligor, Subsidiary of a Borrower or other member of the Controlled Group has engaged in a nonexempt prohibited transaction described in Section 406 of ERISA or Section 4975 of the IRC with respect to any US Pension Plan; (iv) no notice of intent to terminate a US Pension Plan has been filed or issued nor has any US Pension Plan been terminated; (v) no circumstances exist which would reasonably be expected to result in the PBGC's institution of proceedings to terminate, or appoint a trustee to administer, a US Pension Plan, nor has the PBGC instituted any such proceedings; (vi) neither it nor any member of its Controlled Group has completely or partially withdrawn from a Multiemployer Plan; and (vii) it and all current members of its Controlled Group have met their minimum funding requirements under ERISA with respect to all of their US Pension Plans and the present value of all benefits under each US Pension Plan does not exceed the fair market value of such US Pension Plan assets allocable to such benefits, as determined on the most recent valuation date of such US Pension Plan on the basis of actuarial assumptions specified for funding purposes in such US Pension Plan's actuarial valuation report and in accordance with the provisions of ERISA by more than \$2,500,000.

(32) OFAC It is not in violation of any of the country or list based economic and trade sanctions applicable to it and administered and enforced by OFAC. No Obligor: (a) is a Sanctioned Person or a Sanctioned Entity; (b) has more than 10% of its assets located in Sanctioned Entities; or (c) derives more than 10% of its revenues from investments in, or transactions with Sanctioned Persons or Sanctioned Entities.

(33) Anti-Corruption Laws No part of the proceeds of the Advances shall be used, directly or indirectly: (a) to offer or give anything of value to any official or employee of any foreign government department or agency or instrumentality or government-owned entity, to any foreign political party or party official or political candidate or to any official or employee of a public international organization, or to anyone else acting in an official capacity (collectively, "**Foreign Official**"), in order to obtain, retain or direct business by (i) influencing any act or decision of such Foreign Official in his official capacity, (ii) inducing such Foreign Official to do or omit to do any act in violation of the lawful duty of such Foreign Official, (iii) securing any improper advantage or (iv) inducing such Foreign Official to use his influence with a foreign government or instrumentality to affect or influence any act or decision of such government or instrumentality; (b) to cause any Lender to violate the U.S. Foreign Corrupt Practices Act of

1977; or (c) to cause any Lender to violate any other anti-corruption law applicable to such Lender (all laws referred to in clauses (b) and (c) being "**Anti-Corruption Laws**").

(34) Sanctions Laws No Obligor and to the knowledge of the Borrowers, no Affiliate of an Obligor acting or benefiting in any direct capacity in connection with the Advances is any of the following (a "**Restricted Person**"): (a) a Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the "**Executive Order**"); (b) a Person that is named as a "specially designated national and blocked person" on the most current list published by OFAC at its official website or any replacement website or other replacement official publication of such list or similarly named by any similar foreign governmental authority; (c) a Person that is owned 50 percent or more by any Person described in this Section 9.01(34); (d) any other Person with which any Obligor is prohibited from dealing under any Sanctions laws applicable to such an Obligor; or (e) a Person that derives more than 10% of its annual revenue from investments in or transactions with any Person described in this Section 9.01(34)(a), (b), (c) or (d). Further, none of the proceeds from the Advances shall be used to finance or facilitate, directly or indirectly, any transaction with, investment in, or any dealing for the benefit of, any Restricted Person.

(35) USA Patriot Act Notice Each Obligor is in compliance, in all material respects, with the PATRIOT Act, the Bank Secrecy Act and anti-money laundering laws, to the extent an Obligor is legally required to comply with such laws.

9.02 Survival and Repetition of Representations and Warranties

The representations and warranties set out in Section 9.01 will survive each Advance hereunder and will be deemed to be repeated by the Borrowers as of the date of each request for new Advance by a Borrower (and for certainty such representations shall be made with respect to the date specified in such representation), it being understood that to the extent any such representation and warranty relates solely to a specifically identified date, it needs only to be true and correct as of such date.

ARTICLE 10 - COVENANTS

10.01 Positive Covenants

So long as this Agreement is in force and except as otherwise permitted by the prior written consent of the Majority Lenders, the Borrowers shall and shall cause each other Obligor and, in the case of subsections (2), (4), (5), (7) and (12) only, each Subsidiary of a Borrower to:

(1) Timely Payment Make due and timely payment of the Obligations required to be paid by it hereunder.

(2) Conduct of Business, Maintenance of Existence, Compliance with Laws Carry on and conduct its business and operations in a proper, efficient and businesslike manner, in accordance with good business practice; preserve, renew and keep in full force and effect its existence except as may otherwise be permitted pursuant to Section 10.04(2); and take all

reasonable action to maintain all material rights, privileges and franchises necessary or desirable in the normal conduct of its business, to maintain in force all Material Contracts and to comply in all material respects with all Material Contracts, Material Licences and Requirements of Law (including Requirements of Environmental Law) except where the failure to comply would not have a material impact on the Business.

(3) Further Assurances Provide the Agent and the Lenders with such other documents, opinions, consents, acknowledgements and agreements requested by the Agent, acting reasonably as are within its control and reasonably necessary to implement this Agreement or the other Loan Documents from time to time.

(4) Books and Records, Access to Information Keep adequate records and books of account, in which complete entries will be made in accordance with GAAP and permit representatives of the Agent, upon reasonable prior notice and during normal business hours, to examine, copy and make extracts from its books and records, to inspect any of its Property, and to discuss its business and affairs with its officers and auditors; provided that in the absence of an Event of Default which is continuing the Agent's right to enter the premises of the Borrowers and any of their Subsidiaries will be limited to one time in any Fiscal Year.

(5) Obligations and Taxes Pay or discharge or cause to be paid or discharged, before the same shall become delinquent all Taxes imposed upon it or upon its income or profits or in respect of its business or Property (other than Taxes the amounts of which are immaterial and do not constitute an Encumbrance on an Obligor's Property that ranks *pari passu* or prior to the Encumbrances granted in favour of the Lenders) and file all tax returns in respect thereof; provided, however that it shall not be required to pay or discharge or to cause to be paid or discharged any such amount so long as the validity or amount thereof shall be contested in good faith by appropriate proceedings and an adequate reserve in accordance with GAAP has been established in its books and records.

(6) Use of Credit Facility Use the proceeds of the Credit Facility as contemplated by Section 2.03.

(7) Insurance Maintain or cause to be maintained with reputable insurers, coverage of such types as is customary for and would be maintained by a corporation with an established reputation engaged in the same or similar business in similar locations and provide to the Agent, upon request and not more frequently than on an annual basis, evidence of such coverage. The Agent on behalf of the Lenders shall be indicated, as applicable, as first loss payee in respect of property insurance and additional insured in respect of liability insurance, and all property insurance policies shall contain such standard mortgage clauses as the Agent shall reasonably require for the Lenders' protection.

(8) Notice of Litigation Promptly notify the Agent on becoming aware of the occurrence of any litigation, dispute, arbitration, proceeding or other circumstance the result of which could reasonably be expected to result in (a) a judgment or award against it or any of its Subsidiaries in excess of \$2,500,000 or (b) a Material Adverse Effect, and from time to time provide the Agent with all reasonable information requested by the Agent concerning the status of any such proceeding.

(9) Other Notices Promptly, upon having knowledge, give notice to the Agent on behalf of the Lenders of:

- (a) any notice of expropriation affecting any Obligor or any of its Subsidiaries in which the value of the property being expropriated exceeds \$5,000,000;
- (b) any violation of any Applicable Law which does or could reasonably be expected to have a Material Adverse Effect;
- (c) any default under any Debt of an Obligor or any of its Subsidiaries in an amount in excess of \$5,000,000;
- (d) any termination prior to maturity of, or default (after giving effect to any grace period) under a Material Contract or any termination, lapse, rescission or default (after giving effect to any grace period) under a Material Licence;
- (e) any Material Adverse Effect;
- (f) any damage to or destruction of any property, real or personal, of any Obligor or any of its Subsidiaries having a replacement cost in excess of \$5,000,000;
- (g) any threatened or pending litigation or governmental, regulatory or arbitration proceeding or labour controversy or fine, penalty or other similar monetary obligation against or imposed upon the Borrowers or any Subsidiary or any of their Property which could reasonably be expected to be determined adversely to the applicable Obligor or any of its Subsidiaries and which, if so determined, could reasonably be expected to have a Material Adverse Effect or give rise to an Event of Default;
- (h) the receipt of insurance proceeds by any Obligor in excess of \$5,000,000;
- (i) any Default or Event of Default;
- (j) any Encumbrance registered against any property or assets of any Obligor other than a Permitted Encumbrance; or
- (k) any Change of Control.

(10) ERISA Except as could not reasonably be expected to result in material liability to any Obligor or any of its Subsidiaries, promptly pay and discharge all obligations and liabilities arising under ERISA of a character which if unpaid or unperformed could reasonably be expected to result in the imposition of an Encumbrance other than a Permitted Encumbrance against any of its properties. Promptly notify the Agent of (i) the occurrence of any Reportable Event with respect to a US Pension Plan, (ii) receipt of any notice from the PBGC of its intention to seek termination of any US Pension Plan or appointment of a trustee therefor, (iii) its intention to terminate or withdraw from any US Pension Plan or Multiemployer Plan which would result in the incurrence by it or any Subsidiary of any material liability, fine or penalty, and (iv) the occurrence of any event with respect to any US Pension Plan or Multiemployer Plan which

would result in the incurrence by it or any Subsidiary of any material liability, fine or penalty, and (v) any material increase in its contingent liability with respect to any post-retirement Welfare Plan benefits under a Welfare Plan other than liability for continuation coverage described in Part 6 of Subtitle B of Title I of ERISA or as required under US state law requirements for health continuation coverage.

(11) Security With respect to the Security:

- (a) provide to the Agent the Security required from time to time pursuant to Article 11 in accordance with the provisions of such Article, accompanied by customary supporting resolutions, certificates and opinions in form and substance satisfactory to the Agent; and
- (b) do, execute and deliver all such things, documents, security, agreements and assurances as may from time to time reasonably be requested by the Agent to ensure that the Agent holds at all times valid, enforceable, perfected first priority Encumbrances (subject only to Permitted Encumbrances) from the Obligors meeting the requirements of Article 11.

(12) Maintenance of Property Maintain all material Property used or useful in its business in good working order and condition, ordinary wear and tear excepted.

(13) Expenses Pay promptly (i) all reasonable and itemized fees and disbursements (including sales tax, goods and services tax and harmonised sales and goods and services tax) incurred or paid by the Agent, its Affiliates and the Lenders in connection with the preparation, negotiation, execution, delivery, maintenance, amendment and enforcement (including any workouts in connection with or in lieu of any enforcement) of the Loan Documents and in connection with the consummation of the transactions contemplated by the Loan Documents (but specifically excluding, (A) unless an Event of Default has occurred and is continuing, any assignment or participation costs incurred by the Agent or any Lender, or (B) any loan syndication costs incurred by the Agent or any Lender at any time), including without limitation, all court costs and all reasonable and documented fees and disbursements of lawyers, auditors, consultants and accountants, (ii) all reasonable and documented out-of-pocket expenses incurred by the Issuing Lender in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder, and (iii) all reasonable and documented out-of-pocket expenses incurred by the Agent, any Lender or the Issuing Lender, including the reasonable and documented fees, charges and disbursements of counsel, in connection with the enforcement or protection of its rights in connection with this Agreement and the other Loan Documents, including its rights under this Section, or in connection with the Advances made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout restructuring or negotiations in respect of such Advances or Letters of Credit.

(14) US Pension Plans Maintain all US Pension Plans relating to each Obligor or any of its Subsidiaries to be maintained in compliance with all Applicable Laws in all material respects.

(15) Material Contracts and Material Licences At the request of the Agent, from time to time, provide to the Lenders certified copies of any new Material Contracts and Material Licences.

(16) Cash Management Within 90 days of the Closing Date, maintain all cash management services (which, for certainty, includes all bank accounts) of the Obligor (other than US Obligor in the case of cash management requirements in the United States of America) with National Bank or a Lender.

(17) Reporting Issuer Status The Canadian Borrower shall at all times maintain its status as a reporting issuer under and will comply with applicable securities laws, including corporate governance rules thereunder.

(18) Subordination of Convertible Debentures The Canadian Borrower shall at all times ensure that the payment of the Convertible Debentures be subordinated to the rights and remedies of the Agent under the Credit Facility and the terms and conditions of the Subordination Provision must be as provided in the Convertible Debentures Indenture on December 21, 2012.

(19) Status of Subsidiaries Each of the US Borrowers shall remain at all times a Wholly Owned Subsidiary of the Canadian Borrower. With respect to any MFC Partnership which is not a Subsidiary of the Canadian Borrower, the Canadian Borrower shall possess at all times (i) not less than 10% of all of the issued and outstanding Equity Interests of such MFC Partnership, and (ii) the power to directly or indirectly significantly influence operating and financial decisions and to make or restrict Distributions with respect to such MFC Partnership.

(20) OFAC If any Obligor obtains actual knowledge or receives any written notice that any Obligor or any Subsidiary of any Obligor is named on the then current OFAC SDN List (such occurrence, an "**OFAC Event**"), such Obligor shall promptly (i) give written notice to the Agent and the Lenders of such OFAC Event, and (ii) comply in all material respects with all Applicable Laws with respect to such OFAC Event (regardless of whether the party included on the OFAC SDN List is located within the jurisdiction of the United States of America), including the OFAC Sanctions Programs, and each Obligor hereby authorizes and consents to the Agent and the Lenders taking any and all steps the Agent or the Lenders deem necessary, in their sole but reasonable discretion, to avoid violation of all Applicable Laws with respect to any such OFAC Event, including the requirements of the OFAC Sanctions Programs (including the freezing and/or blocking of assets and reporting such action to OFAC).

10.02 Financial Covenants

So long as this Agreement is in force and except as otherwise permitted by the prior written consent of the Majority Lenders:

(1) Debt to EBITDA Ratio The Canadian Borrower, on a consolidated basis and calculated in accordance with GAAP, will ensure that its Debt to EBITDA Ratio (a) at all times for the preceding Four Quarter Period is not greater than 3.00:1.00 or, (b) in any twelve (12) month period commencing with the month of the closing of a Controlling Acquisition that is

permitted pursuant to Section 10.04(9)(a), the cost of which exceeds \$50,000,000, is not greater than 3.50:1.00.

(2) Debt Service Coverage Ratio The Canadian Borrower, on a consolidated basis and calculated in accordance with GAAP, will ensure that its Debt Service Coverage Ratio is at all times not less than 3.00:1.00 for the preceding four Quarter Period.

10.03 Reporting Requirements

The Borrowers shall, and shall cause each Subsidiary to, maintain a standard system of accounting in accordance with GAAP and shall, subject to applicable privacy legislation and non-disclosure required in order to maintain solicitor-client privilege, furnish to the Agent (on behalf of the Lenders) and its duly authorized representatives such information respecting the business and financial condition of the Borrowers and each Subsidiary of the Borrowers as the Agent or any Lender (acting through the Agent) may reasonably request; and without any request, shall furnish to the Agent (on behalf of the Lenders):

(1) Annual Reports As soon as available and in any event within one hundred and twenty (120) days after the end of each of the Canadian Borrower's Fiscal Years, cause to be prepared and delivered to the Agent, (i) the annual audited consolidated financial statements of the Canadian Borrower including, in each case and without limitation, balance sheet, statement of income and statement of cash flows for such Fiscal Year, and (ii) the annual unaudited unconsolidated financial statements of each of the Canadian Borrower's Subsidiaries and of each MFC Partnership that is not a Subsidiary of the Canadian Borrower including, in each case and without limitation, balance sheet, statement of income and statement of cash flows for such Fiscal Year, in each case prepared in accordance with GAAP, and (iii) a management discussion and analysis with respect to such consolidated financial results, all as certified by an officer of the Canadian Borrower.

(2) Quarterly Reports As soon as available and in any event within sixty (60) days of the end of each Fiscal Quarter, cause to be prepared and delivered to the Agent as at the end of such Fiscal Quarter unaudited financial statements of the Canadian Borrower prepared on a consolidated basis, including, in each case and without limitation, balance sheet, statement of income, statement of cash flows, and a list of all outstanding Hedge Arrangements, which shall be prepared in accordance with GAAP (subject to usual year-end adjustments and the absence of full note and deferred tax disclosure) and a management discussion and analysis with respect to such consolidated financial results.

(3) Annual Business Plan As soon as available, and in any event no later than sixty (60) days after the end of each Fiscal Year of the Canadian Borrower, a copy of the Annual Business Plan for the following Fiscal Year, such Annual Business Plan to be in a form consistent with past practice.

(4) Compliance Certificate Together with the financial statements referred to in (1) and (2) above, provide the Agent with a Compliance Certificate, which shall set forth the calculations supporting such statements in respect of Section 10.02 hereof.

(5) Management Letters Upon receipt thereof, copies of all "management letters" submitted by the Auditor in connection with the Borrowers' audited financial statements highlighting issues or deficiencies that, if not addressed or corrected, could result in a Material Adverse Effect.

(6) Regulatory Filings Copies of any filing with any Governmental Authority provided that if the information or material so filed is also posted on SEDAR then the Canadian Borrower shall notify the Agent of such posting rather than delivering copies.

10.04 Negative Covenants

So long as this Agreement is in force and except as otherwise permitted by the prior written consent of the Majority Lenders, the Borrowers shall not and shall ensure that each Obligor and, in the case of subsections (1), (2), (4), (6), (8), (9), (11), (17) and (23) only, each Subsidiary of a Borrower shall not:

(1) Disposition of Property Except for Permitted Dispositions, Dispose of, in one transaction or a series of transactions, all or any part of its Property, whether now owned or hereafter acquired.

(2) No Consolidation, Amalgamations, etc. Consolidate, amalgamate or merge with any other Person, export a corporation into a jurisdiction outside of Canada or the United States, enter into any corporate reorganization or other transaction intended to effect or otherwise permit a change in its existing corporate or capital structure, liquidate, wind-up or dissolve itself, or permit any liquidation, winding-up or dissolution unless prior written approval has been received from the Majority Lenders and such customary documentation as is required by Lenders' Counsel, acting reasonably, is delivered concurrently with such transaction. Notwithstanding the foregoing, (A) an Obligor may consolidate, amalgamate or merge with another Obligor, liquidate, wind-up or dissolve itself into another Obligor, (B) a Subsidiary of the Canadian Borrower may consolidate, amalgamate or merge with another Subsidiary of the Canadian Borrower, liquidate, wind-up or dissolve itself into another Subsidiary of the Canadian Borrower and (C) an Obligor or Subsidiary of the Canadian Borrower may change its capital structure in each case subject to (i) there existing no Default or Event of Default, (ii) the Agent being provided with no less than thirty (30) days' prior written notice (or such shorter period as the Agent may agree) of the occurrence of such event, (iii) concurrent with such event, the Agent being provided with such additional Loan Documents that it requires, acting reasonably, in connection with such event including, if required, to obtain Security over any Equity Interests of the Canadian Borrower and any of its Subsidiaries arising therefrom to the extent such Equity Interests are owned by a Borrower or other Obligor, (iv) the surviving entity remaining solvent after the transaction, (v) the Agent being provided with such financial information, certificates, documents and legal opinions as it may reasonably request in connection therewith and (vi) such event not having any negative impairment on the Security granted in favour of the Lenders and the obligations of the surviving Obligors pursuant to the Loan Documents in effect at such time.

(3) No Change of Name Change its name, adopt a French form of name or change its jurisdiction of incorporation or formation, its chief executive office, principal place of business or location at which it keeps records in respect of accounts receivable, in each case without

providing the Agent with fifteen (15) days' prior written notice thereof (or such shorter period as the Agent may agree).

(4) No Debt Create, incur, assume or permit any Debt to remain outstanding, other than Permitted Debt.

(5) No Investments Make any Investments except (i) Investments permitted in accordance with the provisions of Sections 10.04(9), 10.04(13) and 10.04(15), (ii) Cash Equivalents, (iii) Permitted Intercompany Debt, (iv) Investments in Obligors and (v) provided that (a) there exists no Default or Event of Default, (b) the Investment is in a Person that is in the same business as the Business, and (c) the Investment is in a business located in Canada or the US, Investments (and along with Non-Controlling Acquisitions but not including Controlling Acquisitions) in an aggregate amount not to exceed \$30,000,000 in any Fiscal Year or such greater amount as agreed to by the Lenders, acting reasonably.

(6) No Financial Assistance Give any Financial Assistance to any Person other than (i) the delivery of the Security, (ii) Financial Assistance in the form of Investments permitted pursuant to the provisions of Section 10.04(5), (iv) Permitted Intercompany Debt, and (v) Financial Assistance in favour of other Persons in an aggregate amount not exceeding \$10,000,000 at any time.

(7) No Distributions Make any Distribution except Permitted Distributions; provided that the Canadian Borrower shall maintain at the end of each Fiscal Quarter cash of no less than \$10,000,000 available for Distributions on its Equity Interests for the twelve months ending at such quarter (the "**Distribution Reserve**"), and (y) no Default or Event of Default exists and the making of such Distribution shall not cause a Default or an Event of Default. The calculation of the Distribution Reserve will be made in the same manner as in the standard disclosure by the Canadian Borrower in its filed Management's Discussion and Analysis of Consolidated Financial Conditions and Results of Operations as set out in Table 2: *Reconciliation of cash available for distribution and standardized cash to the cash provided by operating activities*.

(8) No Encumbrances Create, incur, assume or permit to exist any Encumbrance upon any of its Property except Permitted Encumbrances.

(9) Acquisitions Make any Acquisitions other than:

(a) in the case of Controlling Acquisitions, Acquisitions that comply with the following terms and conditions:

(i) the aggregate cash consideration (including future payments due and Earn Out Obligations) of any particular Acquisition shall not exceed a total consideration of \$50,000,000 unless the excess consideration above \$50,000,000 is funded solely by the issuance of Equity Interests;

(ii) delivery to the Agent of a *pro forma* Compliance Certificate;

- (iii) the business subject to such Acquisition shall have its primary operations in Canada or the United States of America and shall be in the Business or a reasonably related business; and
 - (iv) the Acquisition shall not constitute a Hostile Take-Over Bid; and
- (b) in the case of Non-Controlling Acquisitions, Acquisitions that comply with the following terms and conditions:
 - (i) at the time of the Acquisition there exists no Default or Event of Default and there shall exist no Default or Event of Default after giving effect to the completion of the Acquisition;
 - (ii) the aggregate cash consideration (including future payments due and Earn Out Obligations) for all such Acquisitions and Investments made pursuant to Section 10.04(5)(v) during any Fiscal Year shall not exceed \$30,000,000 or such greater amount as agreed to by the Lenders, acting reasonably;
 - (iii) the Acquisition shall not constitute a Hostile Take-Over Bid;
 - (iv) the business subject to such Acquisition shall have its primary operations in Canada or the United States of America and shall be in the Business or a reasonably related business;
 - (v) delivery to the Agent of a *pro forma* Compliance Certificate; and
 - (vi) if such Acquisition is of Equity Interests of a Person or Persons other than a Relevant Targetco, the Borrowers shall comply with the provisions of Section 10.04(15)(c) and the Agent shall receive the documents and agreements contemplated by Section 10.04(15)(c) within the thirty (30) day time frame specified therein.
- (10) No Change to Year End Make any change to its Fiscal Year.
- (11) No Change to Business Carry on any business other than the Business or similar businesses and activities ancillary or related thereto, provided that MFA US Borrower's business must consist solely of holding and managing its investments in MFH US Borrower.
- (12) Location of Assets in Other Jurisdictions Acquire any Property outside of the Relevant Jurisdictions identified in Schedule 9.01(18) or, except for any Property in transit in the ordinary course of business, move any Property from one jurisdiction to another jurisdiction where the movement of such Property would cause the Encumbrance of the Security over such Property to cease to be perfected under Applicable Law, or suffer or permit in any other manner any of its Property to not be subject to the Encumbrance of the Security or to be or become located in a jurisdiction as a result of which the Encumbrance of Security over such Property is not perfected, unless (a) the Obligor has first given ten (10) days' prior written notice thereof to the Agent, and (b) the applicable Obligor has first executed and delivered to the Agent all

Security and all financing or registration statements in form and substance satisfactory to the Agent which the Agent or its counsel, acting reasonably, from time to time deem necessary or advisable to ensure that the Security at all times constitutes a perfected first priority Encumbrance (subject only to Permitted Encumbrances) over such Property notwithstanding the movement or location of such Property as aforesaid together with such customary supporting certificates, resolutions, opinions and other documents as the Agent may deem necessary, acting reasonably, or desirable in connection with such security and registrations.

(13) No Share Issuance Issue any Equity Interests (the Canadian Borrower excluded) unless the Person to whom such Equity Interests are issued is an Obligor and then only if the additional Equity Interests so issued are concurrently and validly pledged to the Agent under the Security and all resolutions (corporate, shareholder or otherwise) required by the Agent, acting reasonably, in connection therewith are delivered to the Agent.

(14) Amendments to Organizational Documents Subject to Section 10.04(2), amend any of its Organizational Documents in a manner that would be prejudicial to the interests of any of the Lenders under the Loan Documents.

(15) No New Subsidiaries Create or acquire any Subsidiary after the date of this Agreement other than MFC Partnerships unless: (a) such Subsidiary exists pursuant to the laws of Canada, any Province or Territory of Canada or any state of the United States of America; (b) all of the issued and outstanding capital of such Subsidiary is owned by an Obligor; (c) within thirty (30) days of such creation or acquisition (i) such new Subsidiary provides, *inter alia*, a legal, valid and enforceable guarantee in favour of the Agent for and on behalf of the Lenders in form and substance reasonably satisfactory to the Lenders (it being acknowledged the forms delivered on the Closing Date are satisfactory subject to any amendments that may be reasonably required by the Agent); (ii) all of the issued and outstanding shares of such new Subsidiary are pledged to the Agent; (iii) such Security is executed and delivered as the Agent views as necessary in order to create a first priority perfected Encumbrance (subject to Permitted Encumbrances) in all assets acquired and/or Equity Interests of the acquired Person or Persons (including all third party consents reasonably required by the Agent); and (iv) all resolutions (corporate, shareholder or otherwise) required by the Agent, acting reasonably, in connection therewith, are delivered to the Agent, and in each case customary legal opinions are delivered by Borrowers' Counsel to the Lenders, acting reasonably.

(16) Hostile Take-Over Bid Make or complete a Hostile Take-Over Bid.

(17) Non-Arm's Length Transactions Except as set out in Schedule 9.01(25), effect any transactions with any Person (other than an Obligor) not dealing at Arm's Length with the transacting Obligor or Subsidiary, except any transaction on terms no less favourable to such Obligor or Subsidiary as would be obtainable in a comparable transaction with a Person which is at Arm's Length with such Obligor or Subsidiary, as applicable; provided that the foregoing shall not apply to:

(a) transactions between Obligors; or

- (b) transactions between Subsidiaries (that are not themselves Obligor) of Obligor; or
- (c) other transactions or arrangements expressly permitted by this Agreement.

(18) Sale and Leaseback Except for Permitted Dispositions pursuant to clause (d) of such definition, enter into any arrangement with any Person providing for the leasing by any Obligor, as lessee, of Property which has been or is to be sold or transferred by such Obligor to such Person or to any other Person to whom funds have been or are to be advanced by such Person on the security of such Property or the lease obligation of any Obligor.

(19) US Bank Accounts Open or maintain any bank accounts in the United States unless the Lenders have received a deposit account control agreement in form and substance satisfactory to the Agent acting reasonably. The Borrowers shall not be required to deliver such agreements in connection with such accounts for a period of 90 days following the Closing Date.

(20) Auditor Change its Auditor unless any replacement is a nationally recognized accounting firm.

(21) Hedge Arrangements Enter into or permit to be outstanding at any time Hedge Arrangement unless such Hedge Arrangement is not speculative.

(22) Convertible Debentures Indenture and Operating Agreements Consent to any material amendment to (i) the provisions of the Convertible Debentures Indenture including to the financial covenants therein, and (ii) to the provisions of any operating agreement with any MFC Partnership, in each case where such amendment is prejudicial to the rights of the Agent and the Lenders under this Agreement and the other Loan Documents unless such amendment has been approved by the Agent.

(23) Anti-Money Laundering and Anti-Terrorism Finance Laws; Foreign Corrupt Practices Act; Sanctions Laws; Restricted Person The Borrowers shall not, and shall not permit any Subsidiary to, (a) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or otherwise violates any anti-terrorism law, anti-corruption law, anti-money laundering law or sanctions law or (b) cause or permit any of the funds that are used to repay the Obligations to be derived from any unlawful activity with the result that the Agent, any Lender or any Obligor would be in violation of any Applicable Law or (c) use any part of the proceeds of the Advances, directly or indirectly, for any conduct that would violate any OFAC Sanctions Programs.

ARTICLE 11 - SECURITY

11.01 Form of Security

On the Closing Date, as continuing collateral security for the payment and satisfaction of all Obligations of the Borrowers to the Agent and the Lenders, the Borrowers shall deliver or cause to be delivered to the Agent for itself and on behalf of the Lenders the following Security, all of which shall be in form and substance satisfactory to the Agent:

- (a) a security agreement from each of the Borrowers in favour of the Agent constituting a first-priority Encumbrance (subject to Permitted Encumbrances) on all of the present and future Property of such Borrower;
- (b) a securities pledge agreement from the Canadian Borrower in favour of the Agent constituting a first-priority Encumbrance (subject to Permitted Encumbrances) on all Equity Interests that it owns in its Subsidiaries from time to time;
- (c) a securities pledge agreement from the MFA US Borrower in favour of the Agent constituting a first-priority Encumbrance (subject to Permitted Encumbrances) on all Equity Interests that it owns in its Subsidiaries from time to time;
- (d) a guarantee from the Canadian Borrower guaranteeing the due payment and performance to the Agent and the Lenders of all present and future Obligations of the other Borrowers to the Agent and the Lenders or any one or more of them under the Loan Documents;
- (e) a guaranty from the MFH US Borrower guaranteeing the due payment and performance to the Agent and the Lenders of all present and future Obligations of the other Borrowers to the Agent and the Lenders or any one or more of them under the Loan Documents;
- (f) a guaranty from the MFA US Borrower guaranteeing the due payment and performance to the Agent and the Lenders of all present and future Obligations of the other Borrowers to the Agent and the Lenders or any one or more of them under the Loan Documents; and
- (g) all Equity Interests of each Obligor (other than the Canadian Borrower) together with duly executed stock powers of attorney; and
- (h) such other security as may be reasonably required by the Agent and the Lenders from time to time.

11.02 After Acquired Property and Further Assurances

Each Obligor shall from time to time, at the reasonable request of the Agent, execute and deliver all such further deeds or other instruments of conveyance, assignment, transfer, mortgage, pledge or charge in connection with any of its Property, whether now existing or acquired by any Obligor after the date hereof and intended to be subject to the security interests created hereby including any insurance thereon.

11.03 Application of Proceeds of Security

Each of the Lenders acknowledges that the Agent holds the Security to secure all of the Obligations and upon the occurrence of an acceleration of Obligations under Section 12.02, shall distribute the proceeds of realisation in accordance with Section 12.11.

11.04 Security Charging Real Property

Notwithstanding anything to the contrary contained in any Loan Document, to the extent that the charges and security interests created by the Security charge real property or any interest therein such charges and security interests on such real property shall secure interest after the occurrence of an Event of Default at the same rates as those in effect prior to such occurrence.

ARTICLE 12 - DEFAULT

12.01 Events of Default

The occurrence of any one or more of the following events (each such event being herein referred to as an "**Event of Default**") shall constitute a default under this Agreement:

- (a) if a Borrower fails to pay any amount of principal owing under the Credit Facility when due; or
- (b) if a Borrower fails to pay any interest, fees or other Obligations under the Loan Documents when due and payable and such non-payment continues for a period of three (3) Business Days; or
- (c) if a Borrower fails to observe or perform any of the covenants in Sections 10.02, or 10.04(7) or Article 11; or
- (d) if any Obligor neglects to observe or perform any covenant or obligation contained in this Agreement or any other Loan Document (other than a covenant or condition whose breach or default in performance is specifically dealt with elsewhere in this Section 12.01) and the Borrowers shall fail to remedy such default within the earlier of (x) thirty (30) days from the date of becoming aware of the non-compliance, and (y) one hundred and eighty (180) days from the date of non-compliance; or
- (e) if any representation or warranty made by any Obligor in this Agreement, any Loan Document or in any certificate or other document at any time delivered hereunder to the Agent or the Lenders shall prove to have been incorrect in any material respect on and as of the date thereof and, where such default is capable of being remedied, the Borrowers shall have failed to remedy such default within thirty (30) days from the date of the occurrence thereof;
- (f) if the Canadian Borrower any of its Subsidiaries cease to carry on business generally (except as a result of a transaction permitted pursuant to Sections 10.04(1) or 10.04(2)) or admits its inability or fails to pay its debts generally; or
- (g) if any Obligor defaults in the observance or performance of any agreement or condition (including payment) in relation to any Debt (other than the Credit

Facility) to any Person which in the aggregate principal amount then outstanding is in excess of \$7,500,000 or contained in any instrument or agreement evidencing, securing or relating thereto if the effect of such default is to cause, or to permit the holder of such Debt to cause, such Debt to become due prior to its stated maturity date and such default is not waived or cured within any applicable cure or grace period; or

- (h) if one or more MFC Partnerships defaults in the observance or performance of any other agreement or condition (including payment) in relation to any Debt to any Person which in the aggregate principal amount then outstanding is in excess of \$10,000,000 or contained in any instrument or agreement evidencing, securing or relating thereto if the effect of such default is to cause, or to permit the holder of such Debt to cause, such Debt to become due prior to its stated maturity date and such default is not waived or cured within any applicable cure or grace period; or
- (i) the Canadian Borrower or any of its Subsidiaries (i) applies for or consents to or is the subject of an order for the appointment of a receiver, interim receiver or trustee (or any Person performing similar functions) in respect of itself or of all or a substantial part of its assets, (ii) makes a general assignment for the benefit of its creditors, (iii) takes advantage of any law relating to bankruptcy, insolvency, reorganization, liquidation, dissolution, arrangement or winding-up, or (iv) takes any action for the purpose of effecting any of the foregoing; or
- (j) a proceeding (or any similar action) is commenced against the Canadian Borrower or any of its Subsidiaries seeking (i) its bankruptcy, reorganization, liquidation, dissolution, arrangement or winding-up, or similar relief, (ii) the appointment of a receiver, interim receiver or trustee (or any Person performing similar functions) in respect of itself or of all or any substantial part of its assets, or (iii) the seizure or the attachment of, or the enforcement of remedies on, any part of its assets having a value of more than \$7,500,000, and, in each case, such proceeding (or similar action) is not dismissed or withdrawn after a period of 60 days, provided that such grace period will apply only if such proceeding (or action) is diligently contested in good faith and does not disrupt the business or normal operations of the Canadian Borrower or the relevant Subsidiary, as applicable; or
- (k) the occurrence of a Material Adverse Effect; or
- (l) if a Change of Control shall occur; or
- (m) shares of the Canadian Borrower cease to be listed for trading on a recognized stock exchange in Canada or the United States; or
- (n) any of the following events shall occur or exist under ERISA with respect to any US Obligor or any member of a Controlled Group: (i) any Reportable Event shall occur with respect to a US Pension Plan; (ii) complete or partial withdrawal from any Multiemployer Plan shall occur; (iii) a notice of intent to terminate a US

Pension Plan shall be filed, or a US Pension Plan shall be terminated; or (iv) circumstances exist which would reasonably be expected to constitute grounds entitling the PBGC to institute proceedings to terminate a US Pension Plan, or the PBGC shall institute such proceedings; and in each case above, such event or condition (together with all other events or conditions identified above), could subject such US Obligor to any tax, penalty or other liability (including on account of its membership in a Controlled Group at the relevant time) which would reasonably be expected to result in an additional liability or obligation in excess of \$5,000,000 (each such case above being a "**Material ERISA Liability**").

12.02 Acceleration and Termination of Rights

If any Event of Default shall occur and be continuing, all Obligations owing by the Borrowers under the Loan Documents shall, at the option of the Agent, upon the request of the Majority Lenders, become immediately due and payable, provided that, at the request of the Agent, any obligations, contingent or otherwise, arising under Hedge Arrangements owing to the Lenders shall be cash collateralized and secured in a manner satisfactory to the Agent and the Lenders party thereto with interest thereon, at the rate or rates determined as herein provided, to the date of actual payment thereof, all without notice, presentment, protest, demand, notice of dishonour or any other demand or notice whatsoever, all of which are hereby expressly waived by each Obligor; provided, if any Event of Default described in Section 12.01(i) through 12.01(j) with respect to a Borrower shall occur, the Commitments (if not theretofore terminated) shall automatically terminate and the outstanding principal amount of all Advances and all other Obligations shall automatically be and become immediately due and payable. In such event the Agent may, on behalf of the Lenders, exercise any right or recourse and/or proceed by any action, suit, remedy or proceeding against any Obligor authorized or permitted by law for the recovery of all the Obligations of the Borrowers to the Lenders and proceed to exercise any and all rights hereunder and under the Security and no such remedy for the enforcement of the rights of the Lenders shall be exclusive of or dependent on any other remedy but any one or more of such remedies may from time to time be exercised independently or in combination.

12.03 Payment of Bankers' Acceptances and Letters of Credit

If the Canadian Borrower does not pay to the Agent for the account of the Lenders the principal amount of any unmatured Bankers' Acceptance or BA Equivalent Note or any Borrower in the case of the face amount of any unexpired Letter of Credit required to be paid pursuant to Section 12.02, the Agent on behalf of the Lenders shall have the option at any time without notice to the applicable Borrower to give notice to the Lenders to make an Advance to the applicable Borrower equal to the principal amount of all unmatured Bankers' Acceptances or BA Equivalent Notes and the face amount of all unexpired Letters of Credit. The proceeds of such Advance shall be held by the Agent in a cash collateral account for the benefit of the applicable Borrower and shall be applied in payment of such Bankers' Acceptances or BA Equivalent Notes as they mature and such Letters of Credit if payment is required thereunder or otherwise as the Agent may require. The applicable Borrower shall execute and deliver as security for such Advance all such security as the Lenders may deem necessary or advisable

including, without limitation, an assignment of credit balance in respect of such cash collateral account.

12.04 Remedies Cumulative and Waivers

For greater certainty, it is expressly understood and agreed that the respective rights and remedies of the Lenders and the Agent hereunder or under any other Loan Document or instrument executed pursuant to this Agreement are cumulative and are in addition to and not in substitution for any rights or remedies provided by law or by equity; and any single or partial exercise by the Lenders or by the Agent of any right or remedy for a default or breach of any term, covenant, condition or agreement contained in this Agreement or other document or instrument executed pursuant to this Agreement shall not be deemed to be a waiver of or to alter, affect or prejudice any other right or remedy or other rights or remedies to which any one or more of the Lenders and the Agent may be lawfully entitled for such default or breach. Any waiver by the Lenders or the Agent of the strict observance, performance or compliance with any term, covenant, condition or other matter contained herein and any indulgence granted, either expressly or by course of conduct, by the Lenders or the Agent shall be effective only in the specific instance and for the purpose for which it was given and shall be deemed not to be a waiver of any rights and remedies of the Lenders or the Agent under this Agreement or any other Loan Document or instrument executed pursuant to this Agreement as a result of any other default or breach hereunder or thereunder.

12.05 Termination of Lenders' Obligations

Following occurrence of an Event of Default that is continuing, the Lenders shall be relieved of all obligations to provide any further Advances hereunder whether by Rollover, Conversion or otherwise, by way of Bankers' Acceptances (and BA Equivalent Notes), LIBOR Advances or Letters of Credit; provided that the foregoing shall not prevent the Lenders from disbursing money hereunder in reduction of then outstanding Bankers' Acceptances and Letters of Credit. For greater certainty any such Advances shall be at the sole discretion of the Lenders. During the existence of an Event of Default, the Agent may reallocate all Advances *pro rata* among the Lenders in such manner as the Agent determines is equitable.

12.06 Saving

The Lenders shall not be under any obligation to the Borrowers or any other Person to realize any collateral or enforce the Security or any part thereof or to allow any of the collateral to be sold, dealt with or otherwise disposed of. The Lenders shall not be responsible or liable to the Obligors or any other Person for any loss or damage upon the realization or enforcement of, the failure to realize or enforce the collateral or any part thereof or the failure to allow any of the collateral to be sold, dealt with or otherwise disposed of or for any act or omission on their respective parts or on the part of any director, officer, agent, servant or adviser in connection with any of the foregoing, except that a Lender may be responsible or liable for any loss or damage arising from the wilful misconduct or negligence of that Lender.

12.07 **Perform Obligations**

If an Event of Default has occurred and is continuing and if a Borrower has failed to perform any of its covenants or agreements in the Loan Documents, the Majority Lenders, may, but shall be under no obligation to, instruct the Agent on behalf of the Lenders to perform any such covenants or agreements in any manner deemed fit by the Majority Lenders without thereby waiving any rights to enforce the Loan Documents. The reasonable expenses (including any legal costs) paid by the Agent and the Lenders in respect of the foregoing shall be an Obligation and shall be secured by the Security.

12.08 **Third Parties**

No Person dealing with the Lenders or any agent of the Lenders shall be required to inquire whether the Security has become enforceable, or whether the powers which the Lenders or the Agent are purporting to exercise have been exercisable, or whether any Obligations remain outstanding upon the security thereof, or as to the necessity or expediency of the stipulations and conditions subject to which any sale shall be made, or otherwise as to the propriety or regularity of any sale or other disposition or any other dealing with the collateral charged by such Security or any part thereof.

12.09 **Set-Off or Compensation**

If an Event of Default has occurred and is continuing, each of the Lenders and each of their respective Affiliates is hereby authorized at any time and from time to time to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender or any such Affiliate to or for the credit or the account of any Obligor against any and all of the obligations of the Borrowers now or hereafter existing under this Agreement or any other Loan Document to such Lender, irrespective of whether or not such Lender has made any demand under this Agreement or any other Loan Document and although such obligations of the Obligor may be contingent or unmatured or are owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such indebtedness. The rights of each the Lenders and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff, consolidation of accounts and bankers' lien) that the Lenders or their respective Affiliates may have. Each Lender agrees to promptly notify the applicable Borrower and the Agent after any such setoff and application, but the failure to give such notice shall not affect the validity of such setoff and application. If any Affiliate of a Lender exercises any rights under this Section 12.09, it shall share the benefit received in accordance with Section 14.20 as if the benefit had been received by the Lender of which it is an Affiliate.

12.10 **Realization of Security**

Each of the Lenders acknowledges that the Agent holds the Security to secure all of the Obligations and upon the event of the occurrence of an Event of Default, the Agent shall act on the written instructions of the Majority Lenders as provided in this Agreement and shall

distribute the net sale proceeds of realization of the Security to the Lenders in accordance with their Proportionate Share of the Obligations and in accordance with Section 12.11.

12.11 Application of Payments

Notwithstanding any other provision of this Agreement, the proceeds of realization of the Security or any portion thereof shall be distributed in the following order:

- (a) first, in payment of all costs and expenses incurred by the Agent in connection with such realization, including legal, accounting and receivers' fees and disbursements;
- (b) second, in payment of all costs and expenses incurred by the Lenders in connection with such realization, including legal, accounting and receivers' fees and disbursements;
- (c) third, against the Obligations to each Lender (but with respect to Hedge Arrangements, limited to Qualifying Hedge Arrangements) in accordance with its Proportionate Share;
- (d) fourth, against all other Obligations owing to the Lenders pursuant to Hedge Arrangements that were not paid in Section (c) above to each Lender based on the amount owing to such Lender divided by the aggregate amount owing to all Lenders; and
- (e) fifth, if all Obligations of the Borrowers listed above have been paid and satisfied in full, any surplus proceeds of realization shall be paid to the Borrowers unless otherwise required in accordance with Applicable Law.

12.12 Consultant

The Borrowers agree that, at any time after the occurrence of an Event of Default that is continuing and upon written request delivered by the Agent, it shall appoint a financial consultant (hereinafter referred to as the "**Consultant**") for the purposes of reviewing the operations of the Obligors from time to time thereafter. The terms of the Consultant's scope of duties, including appropriate covenants regarding confidentiality, shall be settled by the Agent with the consent of the Canadian Borrower, provided that such terms may be settled by the Agent and the Lenders if agreement with the Canadian Borrower is not reached within five (5) days of the date of the Agent's request. The Borrowers consent, and shall cause each Obligor to consent, at all times to a free exchange of information or the particulars of any such information exchanged at any time.

ARTICLE 13 – COSTS, EXPENSES AND INDEMNIFICATION

13.01 Indemnification by the Borrowers

- (a) The Borrowers, on a joint and several basis, shall pay (i) all reasonable and documented out-of-pocket expenses incurred by the Agent including the reasonable fees, charges and disbursements for counsel for the Agent in connection with the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable and documented out-of-pocket expenses incurred by the Agent in connection with the retention of Advisors as contemplated by Section 14.23(2) (other than legal counsel), (iii) all reasonable and documented out-of-pocket expenses incurred by the Issuing Lender in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iv) all reasonable and documented out-of-pocket expenses incurred by the Agent, any Lender or the Issuing Lender, including the reasonable and documented fees, charges and disbursements of counsel, in connection with the enforcement or protection of its rights in connection with this Agreement and the other Loan Documents, including its rights under this Section 13.01, or in connection with the Advances made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout restructuring or negotiations in respect of such Advances or Letters of Credit.
- (b) The Borrowers, on a joint and several basis, shall indemnify the Agent (and any sub-agent thereof), each Lender and the Issuing Lender, and each Related Party of any of the foregoing Persons (each such Person being called an "**Indemnatee**") against, and hold each Indemnatee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the fees, charges and disbursements of any counsel for any Indemnatee, incurred by any Indemnatee or asserted against any Indemnatee by any third party or by any Obligor arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance or non-performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation or non-consummation of the transactions contemplated hereby or thereby, (ii) any Advance or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the Issuing Lender to honour a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by any Obligor, or any Environmental Liability related in any way to any Obligor, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third

party or by an Obligor and regardless of whether any Indemnitee is a party thereto, provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (w) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence, fraud or wilful misconduct of an Indemnitee, (x) result from a claim brought by a Borrower or any other Obligor against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if the Obligor has obtained a final and nonappealable judgment in its favour on such claim as determined by a court of competent jurisdiction, or (y) have resulted solely from a dispute among Indemnitees that does not involve an act or omission by a Borrower or any other Obligor (other than any claims against an Indemnitee in its capacity or in fulfilling its role as an administrative agent or arranger or any similar role under this Agreement), or (z) in respect of matters specifically addressed in Sections 15.01, 15.02 and 13.01(a). Notwithstanding the foregoing, this Section 13.01 shall not apply with respect to Taxes other than Taxes that represent losses, liability, claims, and damages arising from any non-Tax claim. The indemnity contained herein shall survive the termination of the Commitments.

13.02 Reimbursement by Lenders

To the extent that a Borrower for any reason fails to indefeasibly pay any amount required under Section 13.01 to be paid by them to the Agent (or any sub-agent thereof), the Issuing Lender or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Agent (or any such sub-agent), the Issuing Lender or such Related Party, as the case may be, such Lender's Proportionate Share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Agent (or any such sub-agent) or the Issuing Lender, or against any Related Party of any of the foregoing acting for the Agent (or any such sub-agent) or the Issuing Lender in connection with such capacity. The obligations of the Lenders under this Section 13.02 are subject to the other provisions of this Agreement concerning several liability of the Lenders.

13.03 Waiver of Consequential Damages

To the fullest extent permitted by Applicable Law, the Obligors shall not assert, and hereby waive, any claim against any Indemnitee, on any theory of liability, for indirect, consequential, punitive, aggravated or exemplary damages (as opposed to direct damages) arising out of, in connection with, or as a result of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby (or any breach thereof), the transactions contemplated hereby or thereby, any Advance or Letter of Credit or the use of the proceeds thereof. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

13.04 **Payments**

All amounts due under this Section shall be payable promptly after demand therefor. A certificate of the Agent or a Lender setting forth the amount or amounts owing to the Agent, Lender or a sub-agent or Related Party, as the case may be, as specified in this Section, including reasonable detail of the basis of calculation of the amount or amounts, and delivered to the Borrowers shall be conclusive absent manifest error.

ARTICLE 14 - THE AGENT AND THE LENDERS

14.01 **Appointment and Authority**

Each of the Lenders and the Issuing Lender hereby irrevocably appoints National Bank as the Agent to act on its behalf as the Agent hereunder and under the other Loan Documents and authorizes the Agent to take such actions on its behalf and to exercise such powers as are delegated to the Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Agent, the Lenders and the Issuing Lender, and no Obligor shall have rights as a third party beneficiary of any of such provisions.

14.02 **Rights as a Lender**

The Person serving as the Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with any Obligor or any Affiliate thereof as if such Person were not the Agent and without any duty to account to the Lenders.

14.03 **Exculpatory Provisions**

(1) The Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Agent:

- (a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;
- (b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Agent is required to exercise as directed in writing by the Majority Lenders (or such other number or percentage of the Lenders as shall be expressly provided for in the Loan Documents), but the Agent shall not be required to take any action that, in its

opinion or the opinion of its counsel, may expose the Agent to liability or that is contrary to any Loan Document or Applicable Law; and

- (c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrowers or any of their Affiliates that is communicated to or obtained by the person serving as the Agent or any of its Affiliates in any capacity.

(2) The Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Majority Lenders (or such other number or percentage of the Lenders as is necessary, or as the Agent believes in good faith is necessary, under the provisions of the Loan Documents) or (ii) in the absence of its own gross negligence or wilful misconduct. The Agent shall be deemed not to have knowledge of any Default unless and until notice describing the Default is given to the Agent by a Borrower or a Lender.

(3) Except as otherwise expressly specified in this Agreement the Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition specified in this Agreement, other than to confirm receipt of items expressly required to be delivered to the Agent.

14.04 Reliance by Agent

The Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of an Advance, or the issuance of a Letter of Credit that by its terms must be fulfilled to the satisfaction of a Lender or the Issuing Lender, the Agent may presume that such condition is satisfactory to such Lender or the Issuing Lender unless the Agent shall have received notice to the contrary from such Lender or the Issuing Lender prior to the making of such Advance or the issuance of such Letter of Credit. The Agent may consult with legal counsel (who may be counsel for the Borrowers), independent accountants and other experts selected by it and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

14.05 Indemnification of Agent

Each Lender agrees to indemnify the Agent and hold it harmless (to the extent not reimbursed by the Borrowers), rateably according to its Proportionate Share (and not jointly or jointly and severally) from and against any and all losses, claims, damages, liabilities and related expenses, including the fees, charges and disbursements of any counsel, which may be incurred by or asserted against the Agent in any way relating to or arising out of the Loan Documents or the transactions therein contemplated. However, no Lender shall be liable for any portion of such losses, claims, damages, liabilities and related expenses resulting from the Agent's gross negligence or wilful misconduct.

14.06 Delegation of Duties

The Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Agent from among the Lenders (including the Person serving as Agent) and their respective Affiliates. The Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The provisions of this Article and other provisions of this Agreement for the benefit of the Agent shall apply to any such sub-agent and to the Related Parties of the Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Agent.

14.07 Replacement of Agent

(1) The Agent may at any time give notice of its resignation to the Lenders, the Issuing Lender and the Canadian Borrower. Upon receipt of any such notice of resignation, the Majority Lenders shall have the right in consultation with the Canadian Borrower, to appoint a successor, which shall be a Lender having a Commitment to a revolving credit if one or more is established in this Agreement and having an office in Toronto, Ontario or Montreal, Quebec, or an Affiliate of any such Lender with an office in Toronto, Ontario or Montreal, Quebec. The Agent may also be removed at any time by the Majority Lenders upon 30 days' notice to the Agent and the Canadian Borrower as long as the Majority Lenders, in consultation with the Borrowers, appoint and obtain the acceptance of a successor within such 30 days, which shall be a Lender having a Commitment to a revolving credit if one or more is established in this Agreement and having an office in Toronto, Ontario or Montreal, Quebec, or an Affiliate of any such Lender with an office in Toronto, Ontario or Montreal, Quebec.

(2) If no such successor shall have been so appointed by the Majority Lenders and shall have accepted such appointment within 30 days after the retiring Agent gives notice of its resignation, then the retiring Agent may on behalf of the Lenders, appoint a successor Agent meeting the qualifications specified in Section 14.01, provided that if the Agent shall notify the Canadian Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Agent on behalf of the Lenders under any of the Loan Documents, the retiring Agent shall continue to hold

such collateral security until such time as a successor Agent is appointed) and (2) all payments, communications and determinations provided to be made by, to or through the Agent shall instead be made by or to each Lender directly, until such time as the Majority Lenders appoint a successor Agent as provided for above in the preceding paragraph.

(3) Upon a successor's appointment as Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the former Agent, and the former Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided in the preceding paragraph). The fees payable by the Borrowers to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrowers and such successor. After the termination of the service of the former Agent, the provisions of this Article 14 and of Article 13 shall continue in effect for the benefit of such former Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the former Agent was acting as Agent.

14.08 Non-Reliance on Agent and Other Lenders

Each Lender and the Issuing Lender acknowledges that it has, independently and without reliance upon the Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and the Issuing Lender also acknowledges that it will, independently and without reliance upon the Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

14.09 Collective Action of the Lenders

Each of the Lenders hereby acknowledges that to the extent permitted by Applicable Law, any collateral security and the remedies provided under the Loan Documents to the Lenders are for the benefit of the Lenders collectively and acting together and not severally and further acknowledges that its rights hereunder and under any collateral security are to be exercised not severally, but by the Agent upon the decision of the Majority Lenders (or such other number or percentage of the Lenders as shall be expressly provided for in the Loan Documents). Accordingly, notwithstanding any of the provisions contained herein or in any collateral security, each of the Lenders hereby covenants and agrees that it shall not be entitled to take any action hereunder or thereunder including, without limitation, any declaration of default hereunder or thereunder but that any such action shall be taken only by the Agent with the prior written agreement of the Majority Lenders (or such other number or percentage of the Lenders as shall be expressly provided for in the Loan Documents). Each of the Lenders hereby further covenants and agrees that upon any such written agreement being given, it shall co-operate fully with the Agent to the extent requested by the Agent. Notwithstanding the foregoing, in the absence of instructions from the Lenders and where in the sole opinion of the Agent, acting reasonably and in good faith, the exigencies of the situation warrant such action, the Agent may

without notice to or consent of the Lenders take such action on behalf of the Lenders as it deems appropriate or desirable in the interest of the Lenders.

14.10 No Other Duties, etc.

Anything herein to the contrary notwithstanding, none of the "bookrunners", "arrangers" or holders of similar titles, if any, specified in this Agreement shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Agent or a Lender hereunder.

14.11 Payments by the Borrowers

(1) Prior to an Event of Default that is continuing, all payments made by or on behalf of the Borrowers pursuant to this Agreement will be made to and received by the Agent on behalf of the Lenders and will be distributed by the Agent to the Lenders as soon as possible upon receipt by the Agent. Subject to Sections 8.02 and 12.11, unless otherwise specified herein, the Agent will distribute to the Lenders in accordance with each Lender's Proportionate Share:

- (a) payments of interest and standby fees;
- (b) costs and expenses;
- (c) repayments of principal;
- (d) prepayments of principal;
- (e) amounts received by the exercise of any right of set-off, consolidation of accounts, or by counterclaim or cross-action; and
- (f) all other payments received by the Agent.

(2) Notwithstanding the foregoing, any such distribution that would otherwise be made pursuant to Section 14.11(1)(c) or (d) on account of any outstanding Bankers' Acceptances or BA Equivalent Notes will be set aside in a separate collateral account for the primary benefit of the Lenders who have issued such Bankers' Acceptances or BA Equivalent Notes (and for the secondary benefit of the Lenders in respect of other Obligations) until and to the extent that such Obligations become matured and not contingent, at which time such distributions will be made to the Lenders for whose primary benefit such amounts are held, at which time such application will be made in accordance with Section 14.11(1)(c) or (d).

14.12 Knowledge and Required Action

The Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default (other than the non-payment of any principal, interest or other amount to the extent the same is required to be paid to the Agent for the account of the Lenders) unless the Agent has received notice from a Lender or the Canadian Borrower specifying such Default or Event of Default and stating that such notice is given pursuant to this Section. In the event that the Agent receives such a notice, it shall give prompt notice thereof to the Lenders,

and shall also give prompt notice to the Lenders of each non-payment of any amount required to be paid to the Agent for the account of the Lenders. The Agent shall, subject to Section 14.13 take such action with respect to such Default or Event of Default as shall be directed by the Lenders in accordance with this Article 13 provided that, unless and until the Agent shall have received such direction the Agent may, but shall not be obliged to, take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interest of the Lenders; and provided further that the Agent in any case shall not be required to take any such action which it determines to be contrary to the Loan Documents or to any Applicable Law.

14.13 Request for Instructions

The Agent may at any time request instructions from the Lenders with respect to any actions or approvals which, by the terms of any of the Loan Documents, the Agent is permitted or required to take or to grant, and the Agent shall be absolutely entitled to refrain from taking any such action or to withhold any such approval and shall not be under any liability whatsoever as a result thereof until it shall have received such instructions from the Lenders. No Lender shall have any right of action whatsoever against the Agent as a result of the Agent acting or refraining from acting under the Loan Documents in accordance with instructions from the Lenders. The Agent shall in all cases be fully justified in failing or refusing to take or continue any action under the Loan Documents unless it shall have received further assurances to its satisfaction from the Lenders of their indemnification obligations under Section 14.05 against any and all liability and expense which may be incurred by it by reason of taking or continuing to take such action, and unless it shall be secured in respect thereof as it may deem appropriate.

14.14 Actions by Lender

(1) Any amendment to this Agreement and the granting of any waiver or consent by the Lenders relating to the following matters shall require the unanimous agreement of the Lenders:

- (a) decreases in interest rates and fees in respect of the Credit Facility;
- (b) increases in the amount of credit available under the Credit Facility and increases in the amount of any Lender's Commitment;
- (c) extensions of the maturity date of the Credit Facility;
- (d) extensions of the scheduled dates for any payments of principal, interest and other amounts hereunder or the scheduled amounts of repayments hereunder;
- (e) releases of all or any material portion of the Security except to the extent provided in paragraph (3) below;
- (f) the definitions of "Majority Lenders" and "Proportionate Share" in Section 1.01; and

- (g) this Section 14.14, and any other provision of this Agreement which expressly requires the unanimous consent of the Lenders in connection with any action to be taken or consent to be provided by the Lenders.

(2) Except for the matters described in paragraph (1) above, any amendment to this Agreement, or any consent or waiver hereunder, shall be effective if made among the Borrowers, the Agent and the Majority Lenders, and for greater certainty any such amendment which is agreed to by the Majority Lenders shall be final and binding upon all Lenders.

(3) The Agent may from time to time without notice to or the consent of the Lenders execute and deliver releases of the Security or any portion thereof in respect of any item of Property (whether or not the proceeds of sale thereof are received by the Agent) which the Obligors are permitted to dispose of and upon payment and/or collateralization in full of the Obligations in accordance with the terms hereof without obtaining the prior written consent of the Majority Lenders or all Lenders; and in providing any such releases the Agent may rely upon and assume the correctness of all information contained in any certificate or document provided by a Borrower, without further enquiry. Otherwise, any release or discharge in respect of the Security or any portion thereof shall require the written consent of the Lenders acting unanimously.

(4) Any action to be taken or decision to be made by the Lenders pursuant to this Agreement which is required to be unanimous shall be made at a meeting of the Lenders called by the Agent or by a written instrument executed by all of the Lenders. Any action to be taken or decision to be made by the Lenders pursuant to this Agreement which is required to be made by the Majority Lenders shall be made at a meeting of the Lenders called by the Agent or by a written instrument executed by the Majority Lenders. Any such instrument may be executed by fax or PDF and in counterparts.

(5) In the event that in connection with any proposed amendment, modification, termination, waiver or consent with respect to any of the provisions hereof as contemplated by Section 14.14(1), the consent of the Majority Lenders shall have been obtained but the consent of one or more of such other Lenders (each a "**Non Consenting Lender**") whose consent is required shall not have been obtained; then, with respect to each Non Consenting Lender (the "**Terminated Lender**") the Canadian Borrower may, by giving written notice to the Agent and any Terminated Lender of its election to do so, elect to cause such Terminated Lender (and such Terminated Lender hereby irrevocably agrees) to assign its outstanding Advances and its Commitment, if any, in full to one or more Eligible Assignees (each a "**Replacement Lender**") in accordance with the provisions of this Agreement and the Canadian Borrower shall pay the fees, if any, payable thereunder in connection with any assignment from the Non Consenting Lender; provided:

- (a) on the date of such assignment, the Replacement Lender shall pay to the Terminated Lender an amount equal to the sum of (a) an amount equal to the principal of, and all accrued interest on, all outstanding Advances of the Terminated Lender, (b) an amount equal to all unreimbursed drawings that have been funded by such Terminated Lender, together with all then unpaid interest with respect thereto at such time, and (c) an amount equal to all accrued, but

therefore unpaid fees owing to such Terminated Lender pursuant to this Agreement;

- (b) on the date of such assignment, the Borrowers shall pay any amounts payable to such Terminated Lender in respect to any Breakage Costs or otherwise owed as a consequence of such repayment or otherwise as if it were a prepayment; and
- (c) each Replacement Lender shall consent, at the time of such assignment, to each matter in respect of which such Terminated Lender was a Non Consenting Lender;

provided, the Canadian Borrower may not make such election with respect to any Terminated Lender that is also the Issuing Lender unless, prior to the effectiveness of such election, the Borrowers shall cause each outstanding Letter of Credit issued by the Issuing Lender to be cancelled or cash collateralized or otherwise supported in a manner satisfactory to the Issuing Lender. Upon the prepayment of all amounts owing to any Terminated Lender and the termination of such Terminated Lender's Commitment, if any, such Terminated Lender shall no longer constitute a "Lender" for purposes hereof; provided, any rights of such Terminated Lender to indemnification hereunder shall survive as to such Terminated Lender.

(6) The Agent is authorized, without further action by the Lenders, to release the Security and execute related documents in connection with a Permitted Disposition to the extent relating to the property subject to such Disposition.

14.15 Provisions for Benefit of Lenders Only

The provisions of this Article 14, other than this Section 14.15, Section 14.07, Section 14.14(5) and the rights of the Borrowers to receive notice as specified in this Article 14 relating to the rights and obligations of the Lenders and the Agent *inter se* shall be operative as between the Lenders and the Agent only, and the Obligors shall not have any rights under or be entitled to rely for any purposes upon such provisions.

14.16 Payments by Agent

(1) The following provisions shall apply to all payments made by the Agent to the Lenders hereunder:

- (a) the Agent shall be under no obligation to make any payment (whether in respect of principal, interest, fees or otherwise) to any Lender until an amount in respect of such payment has been received by the Agent from a Borrower;
- (b) if the Agent receives a payment of principal, interest, fees or other amount owing by a Borrower under the Credit Facility which is less than the full amount of any such payment due, the Agent shall distribute such amount received among the Lenders in each Lender's Proportionate Share of the Credit Facility;
- (c) if any Lender has advanced more or less than its Proportionate Share of the Credit Facility, such Lender's entitlement to a payment of principal, interest, fees or

other amount owing by the Borrowers under the Credit Facility shall be increased or reduced, as the case may be, to reflect the amount actually advanced by such Lender;

- (d) if a Lender's Proportionate Share of an Advance under the Credit Facility has been advanced for less than the full period to which any payment by a Borrower relates, such Lender's entitlement to receive a portion of any payment of interest or fees under the Credit Facility shall be reduced in proportion to the length of time such Lender's Proportionate Share has actually been outstanding (unless such Lender has paid all interest required to have been paid by it to the Agent);
- (e) the Agent acting reasonably and in good faith shall, after consultation with the Lenders in the case of any dispute, determine in all cases the amount of all payments to which each Lender is entitled and such determination shall be deemed to be prima facie correct absence manifest error;
- (f) upon request, the Agent shall deliver a statement detailing any of the payments to the Lenders referred to herein;
- (g) all payments by the Agent to a Lender hereunder shall be made to such Lender at its address set out herein unless notice to the contrary is received by the Agent from such Lender; and
- (h) if the Agent has received a payment from a Borrower on a Business Day (not later than the time required for the receipt of such payment as set out in this Agreement) and fails to remit such payment to any Lender entitled to receive its Proportionate Share of such payment on such Business Day, the Agent agrees to pay interest on such late payment at a rate determined by the Agent in accordance with prevailing banking industry practice on interbank compensation.

(2) Each Borrower hereby irrevocably authorizes the Agent to debit any account maintained by it with the Agent in order to make payments as contemplated herein.

(3) The Agent may in its sole discretion from time to time make adjustments in respect of any Lender's share of a Drawdown, Conversion, Rollover or repayment under the Credit Facility in order that the outstanding Advances due to such Lender under the Credit Facility shall be approximately in accordance with such Lender's Proportionate Share of the Credit Facility.

14.17 Acknowledgements, Representations and Covenants of Lenders

(1) Each Lender represents and warrants that it has the legal capacity to enter into this Agreement pursuant to its charter and any applicable legislation and has not violated its charter, constating documents or any applicable legislation by so doing.

(2) Each of the Lenders acknowledges and confirms that in the event that the Agent does not receive payment in accordance with this Agreement, it shall not be the obligation of the

Agent to maintain the Credit Facility in good standing nor shall any Lender have recourse to the Agent in respect of any amounts owing to such Lender under this Agreement.

(3) Each Lender acknowledges and agrees that its obligation to advance its Proportionate Share of Advances in accordance with the terms of this Agreement is independent and in no way related to the obligation of any other Lender hereunder.

(4) Each Lender hereby acknowledges receipt of a copy of this Agreement and acknowledges that it is satisfied with the form and content of such documents.

(5) Except to the extent recovered by the Agent from the Borrowers, promptly following demand therefor, each Lender shall pay to the Agent an amount equal to such Lender's Proportionate Share of any and all reasonable costs, expenses, claims, losses and liabilities incurred by the Agent in connection with this Agreement except for those incurred by reason of the Agent's negligence or wilful misconduct.

(6) Each Lender shall respond promptly to each request by the Agent for the consent of such Lender required hereunder.

(7) Each Lender that assigns all or a portion of its rights and obligations under this Agreement shall pay to the Agent a processing and recordation fee of Cdn.\$5,000 with respect to each such assignment in accordance with Section 16.02(1)(f).

14.18 Rights of Agent

(1) In administering the Credit Facility, the Agent may retain, at the expense of the Lenders if such expenses are not recoverable from the Borrowers, such solicitors, counsel, auditors and other experts and agents as the Agent may select, in its sole discretion, acting reasonably and in good faith after consultation with the Lenders.

(2) The Agent shall be entitled to rely on any communication, instrument or document believed by it to be genuine and correct and to have been signed by the proper individual or individuals, and shall be entitled to rely and shall be protected in relying as to legal matters upon opinions of independent legal advisors selected by it. The Agent may also assume that any representation made by a Borrower is true and that no Default or Event of Default has occurred unless the officers or employees of the Lender acting as Agent, active in their capacity as officers or employees responsible for the Borrowers' accounts, have actual knowledge to the contrary or have received notice to the contrary from any other party to this Agreement.

(3) Except in its own right as a Lender, the Agent shall not be required to advance its own funds for any purpose, and in particular, shall not be required to pay with its own funds insurance premiums, taxes or public utility charges or the cost of repairs or maintenance with respect to the assets which are the subject matter of the Security, nor shall it be required to pay with its own funds the fees of solicitors, counsel, auditors, experts or agents engaged by it as permitted hereby.

(4) The Agent may round an individual Lender's Proportionate Share of any Advance to the nearest \$100,000 in Canadian Dollars or United States Dollars, as the case may be.

(5) The Agent shall be entitled to scan and provide by email to the Lenders all financial information it receives from the Borrowers pursuant to Section 10.03.

14.19 Non-Funding Lenders

(1) Each Non-Funding Lender shall be required to provide to the Agent (A) [REDACTED] and (B) cash or Cash Equivalents in an amount, as shall be determined from time to time by the Agent in its discretion, equal to all other obligations of such Non-Funding Lender to the Agent that are owing or may become owing pursuant to this Agreement, including, without limitation, such Non-Funding Lender's obligation to pay its Proportionate Share of any indemnification or expense reimbursement amounts not paid by the Borrowers. Such cash or Cash Equivalents shall be held by Agent in one or more cash collateral accounts which accounts shall be in the name of the Agent and shall not be required to be interest bearing. The Agent shall be entitled to apply the foregoing cash and Cash Equivalents in accordance with Section 12.11. Notwithstanding anything in this Agreement to the contrary, so long as there is a Non-Funding Lender it shall be within the sole determination of the Issuing Lender as to whether it is agreeable to issue any new Letters of Credit or extend or renew any expiring Letters of Credit.

(2) Neither Agent nor any of its Affiliates nor any of their respective officers, directors, employees, agents or representatives shall be liable to any Lender (including, without limitation, a Non-Funding Lender) for any action taken or omitted to be taken by it in connection with amounts payable by a Borrower to a Non-Funding Lender and received and deposited by Agent in a cash collateral account and applied in accordance with the provisions of this Agreement save and except for the gross negligence or wilful misconduct of the Agent as determined by a final non-appealable judgment of a court of competent jurisdiction.

(3) The Agent shall be entitled to set off any Non-Funding Lender's Proportionate Share of all payments received from a Borrower against such Non-Funding Lender's obligations to fund payments and Advances required to be made by it and to purchase participations required to be purchased by it in each case under this Agreement and the other Loan Documents. The Agent shall be entitled to withhold and deposit in one or more non-interest bearing cash collateral accounts in the name of the Agent all amounts (whether principal, interest, fees or otherwise) received by Agent and due to a Non-Funding Lender pursuant to this Agreement which amounts shall be used by Agent (A) first, to reimburse (I) the Agent for any amounts owing to it by the Non-Funding Lender pursuant to any Loan Document, and then to reimburse (II) the Issuing Lender for any amounts paid by it that has not been fully reimbursed due to such Non-Funding Lender not funding its Proportionate Share of the applicable Advance, (B) second, to repay any Advances made by a Lender in order to fund a shortfall created by a Non-Funding Lender which repayment shall be in the form of an assignment by each such Lender of such Advance to the Non-Funding Lender, (C) third, (I) first, to cash collateralize all other obligations of such Non-Funding Lender to the Agent owing pursuant to this Agreement in such amount as shall be determined from time to time by the Agent in its discretion including, without limitation, such Non-Funding Lender's obligation to pay its Proportionate Share of any indemnification or expense reimbursement amounts not paid by the Borrowers and (II), second, to maintain cash collateral for a Non-Funding Lender's Proportionate Share of reimbursement obligations for

Letters of Credit, and (D) fourth, at the Agent's discretion, to fund from time to time the Non-Funding Lender's Proportionate Share of Advances under the Credit Facility.

(4) For certainty, a Non-Funding Lender will have no voting or consent rights with respect to matters under this Agreement or other Loan Documents. Accordingly, the Commitments and the aggregate unpaid principal amount of the Advances owing to any Non-Funding Lender shall be disregarded in determining Majority Lenders and all Lenders or all affected Lenders. Notwithstanding the foregoing, should a Non-Funding Lender (i) fund all outstanding Advances that it previously failed to fund and pay all other amounts owing to Agent, and (ii) confirm in writing to the Agent that there is no reasonable likelihood that it will subsequently again become a Non-Funding Lender, then such Lender shall thereafter be entitled to vote and shall have consent rights in the same manner and fashion as if it were not a Non-Funding Lender.

14.20 Sharing of Payments by Lenders

If any Lender, by exercising any right of setoff or counterclaim or otherwise, obtains any payment or other reduction that might result in such Lender receiving payment or other reduction of a proportion of the aggregate amount of its Advances and accrued interest thereon or other obligations hereunder greater than its *pro rata* share thereof as provided herein, then the Lender receiving such payment or other reduction shall (a) notify the Agent of such fact, and (b) purchase (for cash at face value) participations in the Advances and such other obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders rateably in accordance with the aggregate amount of principal of and accrued interest on their respective Advances and other amounts owing them, provided that:

- (a) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest;
- (b) the provisions of this Section shall not be construed to apply to (x) any payment made by any Obligor pursuant to and in accordance with the express terms of this Agreement or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Advances or participation in disbursements under Letters of Credit to any assignee or participant, other than to any Obligor or any Affiliate of an Obligor (as to which the provisions of this Section shall apply); and
- (c) the provisions of this Section shall not be construed to apply to (w) any payment made while no Event of Default has occurred and is continuing in respect of obligations of the Borrowers to such Lender that do not arise under or in connection with the Loan Documents, (x) any payment made in respect of an obligation that is secured by a Permitted Encumbrance or that is otherwise entitled to priority over a Borrower's obligations under or in connection with the Loan Documents, (y) any reduction arising from an amount owing to an Obligor upon the termination of derivatives entered into between the Obligor and such Lender,

or (z) any payment to which such Lender is entitled as a result of any form of credit protection obtained by such Lender.

14.21 Agent's Clawback

(1) Funding by Lenders: Presumption by Agent Unless the Agent shall have received notice from a Lender prior to the proposed date of any advance of funds that such Lender will not make available to the Agent such Lender's share of such advance, the Agent may assume that such Lender has made such share available on such date in accordance with the provisions of this Agreement concerning funding by Lenders and may, in reliance upon such assumption, make available to the applicable Borrower a corresponding amount. In such event if a Lender has not in fact made its share of the applicable advance available to the Agent, then the applicable Lender shall pay to the Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to a Borrower to but excluding the date of payment to the Agent, at a rate determined by the Agent in accordance with prevailing banking industry practice on Interbank compensation. If such Lender pays such amount to the Agent, then such amount shall constitute such Lender's Advance included in such advance. If the Lender does not do so forthwith, the applicable Borrower shall pay to the Agent forthwith on demand such corresponding amount with interest thereon at the interest rate applicable to the advance in question. Any payment by a Borrower shall be without prejudice to any claim such Borrower may have against a Lender that has failed to make such payment to the Agent.

(2) Payments by Borrowers: Presumptions by Agent Unless the Agent shall have received notice from a Borrower prior to the date on which any payment is due to the Agent for the account of any Lender hereunder that such Borrower will not make such payment the Agent may assume that such Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute the amount due to the Lenders. In such event, if a Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to the Agent forthwith on demand the amount so distributed to such Lender with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Agent, at a rate determined by the Agent in accordance with prevailing banking industry practice on Interbank compensation.

14.22 Security

The Security shall be granted in favour of and held by the Agent for and on behalf of the Lenders in accordance with the provisions of this Agreement. The Agent shall, in accordance with its usual practices in effect from time to time, take all steps required to perfect and maintain the Security, including: taking possession of the certificates representing the securities required to be pledged hereunder; filing renewals and change notices in respect of such Security; and ensuring that the name of the Agent is noted as loss payee or mortgagee on all property insurance policies covering the Property. If the Agent becomes aware of any matter concerning the Security which it considers to be material, it shall promptly inform the Lenders. The Agent shall comply with all instructions provided by the Lenders in connection with the enforcement or release of the Security which it holds. The Agent agrees to permit each Lender

to review and make photocopies of the original documents comprising the Security from time to time upon reasonable notice.

14.23 Protection of Agent

(1) Unless the Agent has actual knowledge or actual notice to the contrary, it may assume that each Lender's address set out in the signature pages attached hereto are correct, unless and until it has received from such Lender a notice designating a different address.

(2) The Agent may from time to time engage and pay for the advice or services of any lawyers, accountants and other experts (collectively "**Advisors**") whose advice or services may to it seem necessary, expedient or desirable and rely upon any advice so obtained. The reasonable and documented fees of such Advisors shall be payable by the Borrowers (and to the extent that such costs are not recovered from the Borrowers pursuant to this Agreement, each Lender agrees to reimburse the Agent in such Lender's Proportionate Share of such costs); provided that the Borrowers shall not pay fees of more than once counsel in any specific jurisdiction.

(3) Unless the Agent has actual knowledge or actual notice to the contrary, it may rely as to matters of fact which might reasonably be expected to be within the knowledge of any Obligor upon a statement contained in any Loan Document.

(4) Unless the Agent has actual knowledge or actual notice to the contrary, it may rely upon any communication or document believed by it to be genuine.

(5) The Agent may refrain from exercising any right, power or discretion vested in it under this Agreement unless and until instructed by the Majority Lenders as to whether or not such right, power or discretion is to be exercised and, if it is to be exercised, as to the manner in which it should be exercised (provided that such instructions shall be required to be provided by all of the Lenders in respect of any matter for which the unanimous consent of the Lenders is required as set out herein).

(6) The Agent may refrain from exercising any right, power or discretion vested in it which would or might in its sole and unfettered opinion be contrary to any law of any jurisdiction or any directive or otherwise render it liable to any Person, and may do anything which is in its opinion in its sole discretion necessary to comply with any such law or directive.

(7) The Agent may refrain from acting in accordance with any instructions of the Majority Lenders to begin any legal action or proceeding arising out of or in connection with this Agreement or take any steps to enforce or realize upon any Security, until it shall have received such security as it may reasonably require (whether by way of payment in advance or otherwise) against all costs, claims, expenses (including legal fees) and liabilities which it will or may expend or incur in complying with such instructions.

(8) The Agent shall not be bound to disclose to any Person any information relating to the Obligors or any related person if such disclosure would or might in its opinion in its sole discretion constitute a breach of any law or regulation or be otherwise actionable at the suit of any Person.

(9) The Agent shall not accept any responsibility for the accuracy and/or completeness of any information supplied in connection herewith or for the legality, validity, effectiveness, adequacy or enforceability of any Loan Document and shall not be under any liability to any Lender as a result of taking or omitting to take any action in relation to any Loan Document except in the case of the Agent's gross negligence or wilful misconduct.

14.24 Duties of Agent

The Agent shall:

- (a) as a non-fiduciary agent for the Borrowers, maintain a record of the outstanding Advances owing to each Lender (including the interest of each Lender in all outstanding Letters of Credit), which record shall be prima facie presumed to be correct and accurate, absent manifest error;
- (b) hold and maintain the Security to the extent provided in Section 14.22;
- (c) provide to each Lender copies of all financial information received from the Borrowers promptly after receipt thereof, and copies of any Drawdown Notices, Conversion Notices, Rollover Notices, Repayment Notices and other notices received by the Agent from the Borrowers upon request by any Lender;
- (d) promptly advise each Lender of Advances required to be made by it hereunder and disburse all repayments to the Lenders hereunder in accordance with the terms of this Agreement;
- (e) promptly notify each Lender of the occurrence of any Event of Default of which the Agent has actual knowledge or actual notice;
- (f) at the time of engaging any agent, receiver, receiver-manager, consultant, monitor or other party in connection with the Security or the enforcement thereof, obtain the agreement of such party to comply with the applicable terms of this Agreement in carrying out any such enforcement activities and dealing with any proceeds of realization;
- (g) account for any monies received by it in connection with this Agreement, the Security and any other agreement delivered in connection herewith or therewith;
- (h) each time the Borrowers request the written consent of the Lenders or Majority Lenders in connection with any matter, use its best efforts to obtain and communicate to the Borrowers the response of the Lenders in a reasonably prompt and timely manner having due regard to the nature and circumstances of the request;
- (i) give written notice to the Borrowers in respect of any other matter in respect of which notice is required in accordance with or pursuant to this Agreement, promptly or promptly after receiving the consent of the Lenders or Majority Lenders, if required under the terms of this Agreement;

- (j) except as otherwise provided in this Agreement, act in accordance with any instructions given to it by the Majority Lenders;
- (k) if so instructed by the Majority Lenders, refrain from exercising any right, power or discretion vested in it under this Agreement or any document incidental thereto;
- (l) call a meeting of the Lenders at any time not earlier than five (5) days and not later than thirty (30) days after receipt of a written request for a meeting provided by any Lender; and
- (m) if it so elects, arrange for the establishment of all Hedging Agreements to be entered into between the Borrowers and the Lenders hereunder; and the Agent shall (if it elects to arrange any Hedging Agreements), in its discretion, offer each Lender an opportunity to participate in a pro-rata portion of such Hedging Agreements pursuant to such arrangements as may be agreed between the Agent and the respective Lenders.

ARTICLE 15– TAXES AND CHANGE OF CIRCUMSTANCES

15.01 Increased Costs

- (1) Increased Costs Generally If, from time to time, any Change in Law shall:
 - (a) 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, any Lender;
 - (b) subject any Lender to any Tax of any kind whatsoever with respect to this Agreement, any Letter of Credit, any participation in a Letter of Credit or any Advance made by it, or change the basis of taxation of payments to such Lender in respect thereof, except in each case for Indemnified Taxes or Other Taxes covered by Section 15.02 and the imposition, or any change in the rate, of any Excluded Tax payable by such Lender, or
 - (c) impose on any Lender or any applicable interbank market any other condition, cost or expense affecting this Agreement or Advances made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Advance (or of maintaining its obligation to make any such Advance), or to increase the cost to such Lender or the Issuing Lender of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or the Issuing Lender hereunder (whether of principal, interest or any other amount), then upon request of such Lender from time to time, the Borrowers will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

Notwithstanding anything contained in this Agreement, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, regulations, guidelines, requirements and directives thereunder, issued in connection therewith or in implementation thereof and (ii) all requests, rules, regulations, guidelines or directives whether concerning capital adequacy or liquidity promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall, in each case, be deemed a "Change in Law" regardless of the date enacted, adopted, applied or issued.

(2) Capital and Liquidity Requirements If any Lender determines in its sole and absolute discretion, that any Change in Law affecting such Lender or any lending office of such Lender or such Lender's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Advances made by, or the Letters of Credit issued or participated in by such Lender, to a level below that which such Lender or its holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of its holding company with respect to, as applicable, capital adequacy or liquidity requirements), then from time to time the Borrowers will pay to such Lender such additional amount or amounts as will compensate such Lender or its holding company for any such reduction suffered.

(3) Certificates for Reimbursement A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in paragraph (1) or (2) of this Section, including reasonable detail of the basis of calculation of the amount or amounts, and delivered to the Borrowers from time to time shall be conclusive absent manifest error. The Borrowers shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

(4) Delay in Requests Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's right to demand such compensation, except that the Borrowers shall not be required to compensate a Lender pursuant to this Section for any increased costs incurred or reductions suffered (i) more than six months prior to the date that such Lender notifies the Borrowers of the Change in Law giving rise to such increased costs or reductions and of such 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, and (ii) for which the Lender is not seeking similar compensation from similar borrowers.

15.02 Taxes

(1) Payments Subject to Taxes Any and all payments by or on account of any obligations of any Obligor hereunder or under any Loan Document shall be made without deduction or withholding for any Taxes except as required by Applicable Law. If a Withholding Agent is required by Applicable Law to deduct or withhold any Taxes in respect of any payment by or on account of any obligation of an Obligor hereunder or under any other Loan Document,

then (i) if such Tax is an Indemnified Tax (including any Other Tax), the sum payable shall be increased by that Obligor when payable as necessary so that after making or allowing for all required deductions and withholdings (including deductions and withholdings applicable to additional sums payable under this Section) the Agent, Lender or Issuing Lender, as the case may be, receives an amount equal to the sum it would have received had no such deductions or withholdings been required, (ii) the applicable Withholding Agent shall be entitled to make any such deductions or withholdings required to be made by it under Applicable Law and (iii) the applicable Withholding Agent shall timely pay the full amount required to be deducted or withheld to the relevant Governmental Authority in accordance with Applicable Law.

(2) Payment of Other Taxes by the Borrowers Without limiting the provisions of paragraph (1) above, the Obligors shall timely pay to the relevant Governmental Authority in accordance with Applicable Law, or at the option of the Agent, timely reimburse it for the payment of, any Other Taxes.

(3) Indemnification by the Borrowers The applicable Borrower shall indemnify the Agent, each Lender and the Issuing Lender, within 10 days after written demand therefor (specifying in reasonable detail the nature and the amount of the Indemnified Taxes or Other Taxes), for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) withheld or deducted on payments to, or paid by, the Agent, such Lender or the Issuing Lender in respect of any payment by or on account of any obligation of an Obligor hereunder or any other Loan Document and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to a Borrower by a Lender (with a copy to the Agent), or by the Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(4) Evidence of Payments As soon as practicable after any payment of Indemnified Taxes or Other Taxes by an Obligor to a Governmental Authority, the Obligor shall deliver to the Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Agent.

(5) Treatment of Certain Refunds and Tax Reductions If the Agent or a Lender determines that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by the Borrowers or with respect to which an Obligor has paid additional amounts pursuant to this Section or that, because of the payment of such Taxes or Other Taxes, it has benefited from a reduction in Excluded Taxes otherwise payable by it, it shall pay to the Borrowers or Obligor, as applicable, an amount equal to such refund or reduction (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrowers or Obligor under this Section with respect to the Taxes or Other Taxes giving rise to such refund or reduction), net of all reasonable and documented out-of-pocket expenses of the Agent or such Lender, as the case may be, and without interest (other than any net after-Tax interest paid by the relevant Governmental Authority with respect to such refund). The Borrowers or Obligor as applicable, upon the request of the Agent or such Lender, agrees to repay the amount paid over

to the Borrowers or Obligor (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Agent or such Lender if the Agent or such Lender is required to repay such refund or reduction to such Governmental Authority. Notwithstanding anything to the contrary in this Section 15.02(5), in no event will the Agent or any Lender be required to pay any amount to the Borrowers or an Obligor pursuant to this Section 15.02(5) the payment of which would place such Agent or Lender in a less favourable after-Tax position than such Agent or Lender would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payment or additional amounts with respect to such Tax had been paid. This paragraph shall not be construed to require the Agent or any Lender to make available its tax returns (or any other information relating to its Taxes that it deems confidential) to the Borrowers or any other Person, to arrange its affairs in any particular manner or to claim any available refund or reduction.

(6) Status of Lenders To the extent that withholdings apply to any payment to be made to a Lender, any Lender that is entitled to an exemption from or reduction of any withholding Tax with respect to any payments from any Obligor hereunder or under any other Loan Document shall, to the extent it may lawfully do so, deliver to the Borrowers and to the Agent, at the time or times reasonably requested by the Borrowers or the Agent and at the time or times prescribed by Applicable Law, such properly completed and executed documentation reasonably requested by the Borrowers or the Agent or prescribed by Applicable Law (including IRS Form W-8s and W-9s, as applicable, together with any required attachments or certifications) as will permit such payments to be made without withholding (including FATCA withholding) or at a reduced rate of withholding. In addition, any Lender, if required by the Borrowers or the Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by the Borrowers or Agent as will enable the Borrowers or the Agent to determine whether or not such Lender is subject to withholding (including FATCA withholding), backup withholding or information reporting requirements. Each Lender shall, from time to time after the initial delivery by such Lender of the forms described above, at the request of the Agent or the Borrowers or if any form or certification it previously delivered expires or becomes obsolete or inaccurate, (a) deliver to the Borrowers and the Agent renewals, amendments or additional or successor forms, together with any other certificate or statement of exemption required in order to confirm or establish such Lender's status or that such Lender is entitled to an exemption from or reduction in withholding tax (including FATCA or backup withholding) or as may be necessary for the US Borrowers and the Agent to comply with their obligations under FATCA or (b) notify the Agent and the Borrowers in writing of its inability to deliver any such forms, certificates or other evidence. Solely for purposes of this Section 15.02(6), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(7) Indemnification by the Lenders Each Lender shall severally indemnify the Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Obligors have not already indemnified the Agent for such Indemnified Taxes and without limiting the obligation of Obligors to do so), and (ii) any Taxes (other than Indemnified Taxes) attributable to such Lender, in each case, that are payable or paid by the Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Agent shall be conclusive absent manifest error. Each

Lender hereby authorizes the Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Agent to the Lender from any other source against any amount due to the Agent under this paragraph (7).

(8) Survival Each party's obligations under this Section 15.02 shall survive the resignation or replacement of the Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge or all obligations under any Loan Document.

15.03 Mitigation Obligations: Replacement of Lenders

(1) Designation of a Different Lending Office If any Lender requests compensation under Section 15.01, or requires a Borrower to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 15.02, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Advances hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 15.01 or 15.02, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(2) Replacement of Lenders If any Lender requests compensation under Section 15.01, if a Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 15.02, if any Lender's obligations are suspended pursuant to Section 15.04 or if any Lender defaults in its obligation to fund Advances hereunder, then such Borrower may, at its sole expense and effort, upon 10 days' notice to such Lender and the Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Article 16), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

- (a) the applicable Borrower pays the Agent the assignment fee specified in Section 16.02(1)(f);
- (b) the assigning Lender receives payment of an amount equal to the outstanding principal of its Advances and participations in disbursements under Letters of Credit, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any breakage costs and amounts required to be paid under this Agreement as a result of prepayment to a Lender) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the applicable Borrowers (in the case of all other amounts);
- (c) in the case of any such assignment resulting from a claim for compensation under Section 15.01 or payments required to be made pursuant to Section 15.02, such

assignment will result in a reduction in such compensation or payments thereafter;
and

- (d) such assignment does not conflict with Applicable Law.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrowers to require such assignment and delegation cease to apply.

15.04 Illegality

If any Lender determines that any Applicable Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make or maintain any Advance (or to maintain its obligation to make any Advance), or to participate in, issue or maintain any Letter of Credit (or to maintain its obligation to participate in or to issue any Letter of Credit), or to determine or charge interest rates based upon any particular rate, then, on notice thereof by such Lender to the Borrowers through the Agent, any obligation of such Lender with respect to the activity that is unlawful shall be suspended until such Lender notifies the Agent and the Borrowers that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, a Borrower shall, upon demand from such Lender (with a copy to the Agent), prepay or, if conversion would avoid the activity that is unlawful, convert any Advances, or take any necessary steps with respect to any Letter of Credit in order to avoid the activity that is unlawful. Upon any such prepayment or conversion, a Borrower shall also pay accrued interest on the amount so prepaid or converted. Each Lender agrees to designate a different Lending Office if such designation will avoid the need for such notice and will not, in the good faith judgment of such Lender, otherwise be materially disadvantageous to such Lender.

ARTICLE 16 – SUCCESSORS AND ASSIGNS AND ADDITIONAL LENDERS

16.01 Successors and Assigns Generally

The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Obligor may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations, hereunder except (i) to an Eligible Assignee in accordance with the provisions of Section 16.02, (ii) by way of participation in accordance with the provisions of Section 16.04, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 16.05 (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in paragraph (2) of Section 16.04 and, to the extent expressly contemplated hereby, the Related Parties of each of the Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

16.02 **Assignment by Lenders**

(1) Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Advances at the time owing to it); provided that:

- (a) except if an Event of Default has occurred and is continuing or in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Advances at the time owing to it or in the case of an assignment to a Lender, the aggregate amount of the Commitment being assigned (which for this purpose includes Advances outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Advance of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than \$5,000,000 (unless the Commitment or amount owing to such Lender under the Credit Facility is less than \$5,000,000), unless each of the Agent and, so long as no Event of Default has occurred and is continuing, the Borrowers otherwise consent to a lower amount (each such consent not to be unreasonably withheld or delayed);
- (b) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Advance or the Commitment assigned; except that this clause (b) shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate credits on a non-*pro rata* basis;
- (c) any assignment of a Commitment relating to a credit under which Letters of Credit may be issued must be approved by any Issuing Lender (such approval not to be unreasonably withheld or delayed), unless the Person that is the proposed assignee is itself already a Lender with a Commitment under that credit;
- (d) any assignment must be approved by the Agent (such approval not to be unreasonably withheld or delayed);
- (e) any assignment must be approved by the Borrowers acting reasonably (such approval not to be unreasonably delayed; provided that such approval shall not be considered to have been unreasonable withheld, if as a result of such approval, the Borrowers would be required to pay an additional amount pursuant to Article 15) unless (A) the proposed assignee is already a Lender or an Affiliate of a Lender, or (B) an Event of Default has occurred and is continuing; and
- (f) the parties to each assignment shall execute and deliver to the Agent an Assignment and Assumption, together with a processing and recordation fee in an amount specified in Section 14.17(7) and the Eligible Assignee, if it shall not be a Lender, shall deliver to the Agent an Administrative Questionnaire.

Subject to acceptance and recording thereof by the Agent pursuant to Section 16.03, from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement and the other Loan Documents, including any collateral security, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Article 13 and Article 15, and shall continue to be liable for any breach of this Agreement by such Lender, with respect to facts and circumstances occurring prior to the effective date of such assignment. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph (other than a participation described in Section 16.04) shall be null and void as against the Borrowers. Any payment by an assignee to an assigning Lender in connection with an assignment or transfer shall not be or be deemed to be a repayment by the Borrowers or a new Advance to the Borrowers.

16.03 **Register**

The Agent shall maintain at one of its offices in Toronto, Ontario or Montreal, Quebec a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the Advances owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive, absent manifest error, and the Borrowers, the Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrowers and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

16.04 **Participations**

(1) Any Lender may at any time, without the consent of, or notice to, the Borrowers or the Agent, sell participations to any Person (other than a natural person, an Obligor or any Affiliate of an Obligor) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Advances owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrowers, the Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any payment by a Participant in connection with a sale of a participation shall not be or be deemed to be a repayment by the Borrowers or a new Advance to the Borrowers.

(2) The voting rights of any Participants shall (i) be limited to matters in respect of (a) increases in Commitments of such Participant, (b) reductions of principal, interest or fees payable to such Participant, (c) extensions of final maturity or scheduled amortization of the

Advances or Commitments in which such Participant participates and (d) releases of all or substantially all of the value of the guarantees, or all or substantially all of the collateral (other than in accordance with Section 17.18) and (ii) for clarification purposes, not include the right to vote on waivers of Defaults or Events of Default.

(3) A Participant: (i) shall comply with the requirements of Section 15.02(6) as if it were a Lender, and (ii) shall not be entitled to receive any greater payment under Section 15.01 or 15.02 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant.

(4) Each Lender that sells a participation shall, acting solely for this purpose as a nonfiduciary agent of the Borrowers, maintain a register on which it enters the name and address of each participant and the principal amounts of and stated interest on each Participant's interest in the Advances or other obligations under the Loan Documents (the "**Participant Register**"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Agent (in its capacity as Agent) shall have no responsibility for maintaining a Participant Register.

16.05 Certain Pledges

Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under the Agreement to secure obligations of such Lender, but no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

ARTICLE 17 - GENERAL

17.01 Exchange and Confidentiality of Information

The Borrowers authorize and consent to the reproduction, disclosure and use by the Agent and Lenders of information about the Borrowers (including, without limitation, the Borrowers' names and any identifying logos) and the transactions herein contemplated to enable the Agent and/or the Lenders to publish promotional "tombstones" and other forms of notices of the transactions contemplated herein in any manner and in any media (including, without limitation, brochures) and the reproduction, disclosure and use of such information shall be subject to the prior approval of the Borrowers acting reasonably; provided that the Agent and the Lenders shall not be permitted to disclose the financial terms related to the Credit Facility. The Borrowers acknowledge and agree that no compensation will be payable by the Agent or any Lender resulting therefrom, and that the Agent and the Lender shall have no liability whatsoever

to the Borrowers or any of their employees, officers, directors, affiliates or shareholders in obtaining and using such information in accordance with the terms hereof.

17.02 Nature of Obligations under this Agreement

(1) The obligations of each Lender and of the Agent under this Agreement are several and not joint and several. The failure of any Lender to carry out its obligations hereunder shall not relieve the other Lenders, the Agent or the Borrowers of any of their respective obligations hereunder. Neither the entering into of this Agreement nor the completion of any transactions contemplated herein shall constitute the Lenders a partnership.

(2) Neither the Agent nor any Lender shall be responsible for the obligations of any other Lender hereunder.

17.03 Addresses, Etc. for Notices

(1) The addresses and telecopier numbers for the purposes of notices and other communications to the Borrowers and the Agent are set out on the signatures pages and Schedules to this Agreement.

(2) Notices Generally Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in Section 17.03(3)), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier to the addresses or telecopier numbers specified elsewhere in this Agreement or, if to a Lender, to it at its address or telecopier number specified in the Register or, if to an Obligor other than the Borrowers, in care of the Borrowers.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier shall be deemed to have been given when sent (except that, if not given on a business day between 9:00 a.m. and 5:00 p.m. local time where the recipient is located, shall be deemed to have been given at 9:00 a.m. on the next business day for the recipient). Notices delivered through electronic communications to the extent provided in Section 17.03(3) below shall be effective as provided in Section 17.03(3).

(3) Electronic Communications Notices and other communications to the Lenders and the Issuing Lender hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Agent, provided that the foregoing shall not apply to notices to any Lender of Advances to be made or Letters of Credit to be issued if such Lender has notified the Agent that it is incapable of receiving notices under such Article by electronic communication. The Agent or the Borrowers may, in their discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Agent otherwise prescribes, (i) notices and other communications sent to an email address shall be deemed received upon the sender's receipt of an acknowledgement

from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(4) Change of Address, Etc. Any party hereto may change its address or telecopier number for notices and other communications hereunder by notice to the other parties hereto.

17.04 Governing Law and Submission to Jurisdiction

(1) Governing Law This Agreement shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the laws of Canada applicable therein.

(2) Submission to Jurisdiction Each Obligor irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the courts of the Province of Ontario, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or any other Loan Document, or for recognition or enforcement of any judgment, and each of the parties hereto irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or in any other Loan Document shall affect any right that the Agent or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against any Obligor or its properties in the courts of any jurisdiction.

(3) Waiver of Venue Each Obligor irrevocably and unconditionally waives, to the fullest extent permitted by Applicable Law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in 17.04(2). Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by Applicable Law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

17.05 Judgment Currency

(1) If for the purpose of obtaining or enforcing judgment against a Borrower or any Obligor in any court in any jurisdiction, it becomes necessary to convert into any other currency (such other currency being hereinafter in this Section 17.05 referred to as the "**Judgment Currency**") an amount due in Canadian Dollars or United States Dollars under this Agreement, the conversion shall be made at the rate of exchange prevailing on the Business Day immediately preceding:

- (a) 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
- (b) 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 17.05(1)(b) being hereinafter in this Section 17.05 referred to as the "**Judgment Conversion Date**").

(2) If, in the case of any proceeding in the court of any jurisdiction referred to in Section 17.05(1)(b), 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 Borrowers shall pay such additional or lesser amount 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 Canadian Dollars or United States Dollars, as the case may be, 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.

(3) Any amount due from a Borrower under the provisions of Section 17.05(2) shall be due 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.

(4) The term "rate of exchange" in this Section 17.05 means the spot rate of exchange based on Canadian interbank transactions in Canadian Dollars or United States Dollars, as the case may be, in the Judgment Currency published or quoted by the Bank of Canada at close of business on the Business Day that such conversion is to be made (or, if such conversion is to be made before close of business on such Business Day, then at approximately close of business on the immediately preceding Business Day) and, in either case, if such rate is not so published or quoted by the Bank of Canada, such term shall mean the Equivalent Amount of the Judgment Currency.

17.06 Benefit of the Agreement

This Agreement shall enure to the benefit of and be binding upon the Borrowers, the Lenders, the Agent and their respective permitted successors and permitted assigns.

17.07 Survival

The provisions of Article 13 shall survive the repayment of all Advances, whether on account of principal, interest or fees, and the termination of this Agreement, unless a specific release of such provisions by the Agent, on behalf of the Lenders, is delivered to the Borrowers.

17.08 Severability

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall not invalidate the remaining provisions hereof and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

17.09 Whole Agreement

This Agreement (along with the other Loan Documents) constitutes the whole and entire agreement between the parties hereto and cancels and supersedes any prior agreements, undertakings, declarations, commitments, representations, written or oral, in respect thereof.

17.10 Further Assurances

The Borrowers, each Lender and the Agent shall promptly cure any default by it in the execution and delivery of this Agreement, the Loan Documents or of any of the agreements provided for hereunder to which it is a party. The Borrowers, at their expense, shall promptly execute and deliver to the Agent, upon reasonable request by the Agent, all such other and further documents, agreements, opinions, certificates and instruments in compliance with and required to give effect to the covenants and agreements of the Borrowers hereunder or to make any recording, file any notice or obtain any consent contemplated herein.

17.11 Waiver of Jury

EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

17.12 Counterpart; Integration; Effectiveness; Electronic Execution

(1) Counterparts; Integration; Effectiveness This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents and any separate letter agreements with respect to fees payable to the Agent constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 3.01, this Agreement shall become effective when it has been executed by the Agent and when the Agent has received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or by sending a scanned copy by electronic mail shall be effective as delivery of a manually executed counterpart of this Agreement.

(2) Electronic Execution of Assignments The words "execution", "signed", "signature", and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any Applicable Law, including Parts 2 and 3 of the *Personal Information Protection and Electronic Documents Act* (Canada), the *Electronic Commerce Act, 2000* (Ontario) and other similar federal or provincial laws based on the *Uniform Electronic Commerce Act* of the Uniform Law Conference of Canada or its *Uniform Electronic Evidence Act*, as the case may be.

17.13 Treatment of Certain Information; Confidentiality

(1) Each of the Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to it, its Affiliates and its Affiliates' respective partners, directors, officers, employees, agents and advisors on a need to know basis only (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 purporting to have jurisdiction over it (including any self-regulatory authority), (c) to the extent required by Applicable Laws or regulations 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 Participant in, or any prospective assignee of or Participant in, 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 Borrowers and their obligations, (g) with the consent of the Borrowers 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 Agent or any Lender on a non-confidential basis from a source other than an Obligor.

(2) 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 Agent or any Lender on a non-confidential basis prior to such receipt. 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. In addition, the Agent may disclose to any agency or organization that assigns standard identification numbers to loan facilities such basic information describing the facilities provided hereunder as is necessary to assign unique identifiers (and, if requested, supply a copy of this Agreement), if being understood that the Person to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to make available to the public only such Information as such person normally makes available in the course of its business of assigning identification numbers.

(3) In addition, and notwithstanding anything herein to the contrary, the Agent may provide the information described in Schedule F concerning the Borrowers and the credit facilities established herein to Loan Pricing Corporation and/or other recognized trade publishers of information for general circulation in the loan market.

17.14 Tombstone Marketing

For the purpose of "tombstone marketing", the Borrowers hereby authorize and consent to the reproduction, disclosure and use by the Lenders and the Agent of their names, identifying logos and the Credit Facility to enable the Lenders to publish promotional "tombstones"; provided that the amount of the Credit Facility shall not be disclosed. The Borrowers acknowledge and agree that if such consent is given, the Lenders shall be entitled to determine, in their sole discretion, whether to use such information; that no compensation will be payable by the Lenders or the Agent in connection therewith; and that the Lenders and the Agent shall have no liability whatsoever to them or any of their respective employees, officers, directors, affiliates or shareholders in obtaining and using such information as contemplated herein.

17.15 Time of the Essence

Time shall be of the essence of this Agreement.

17.16 Delivery by Facsimile Transmission

This Agreement may be executed and delivered by facsimile transmission or other electronic communication and each of the parties hereto may rely on such facsimile signature as though such facsimile signature were an original signature.

17.17 Hypothecary Representative

For greater certainty and without limiting the power of the Agent hereunder or under any other Loan Document, the Agent and each Lender hereby appoints and authorizes National Bank of Canada to act as hypothecary representative within the meaning of Article 2692 of the Civil Code of Quebec (in such capacity, the "**Hypothecary Representative**") of the Agent and the Lenders (and their Affiliates) for the purposes of holding any security granted by any Obligor pursuant to the laws of the Province of Quebec and to exercise such rights and duties as are conferred upon the Hypothecary Representative thereunder and under applicable laws (with the power to delegate any such rights and duties as appropriate). National Bank of Canada, the Agent and each of the Lenders hereby confirms and agrees to such appointment and each Person who is or becomes the Agent or a Lender hereunder (including by its execution of an assignment and assumption agreement) shall be deemed to have consented to and ratified the foregoing appointment of the Hypothecary Representative and to have ratified all actions taken by the Hypothecary Representative prior to such date. For greater certainty, the Hypothecary Representative shall have the same rights, powers, immunities, indemnities and exclusions from liability as are prescribed in favour of the Agent in this Agreement, which shall apply *mutadis mutandis*. In the event of the resignation and appointment of a successor Agent (which shall include its resignation as Hypothecary Representative), such successor Agent shall also act as the

Hypothecary Representative unless and until a successor hypothecary representative is otherwise appointed.

17.18 Termination of Agreement and Loan Documents

This Agreement and the Loan Documents shall terminate and shall be of no further effect, other than with respect to indemnities expressly stated to survive termination of this Agreement, and the Agent shall execute and deliver all discharges and termination statements requested by the Borrowers (at the expense of the Borrowers) upon indefeasible repayment by the Obligors of all Obligations owing to the Agent and the Lenders (other than contingent indemnification obligations in respect of which no claim has then been made and ordinary course obligations in respect of Service Agreements and charge card agreements) and the termination of the Commitments and any Hedge Arrangements.

17.19 Anti-Money Laundering Legislation

(1) The Borrowers acknowledge 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" laws (collectively, including any guidelines or orders thereunder, "**AML Legislation**"), the Lenders and the Agent may be required to obtain, verify and record information regarding the Borrowers, the Guarantors, their directors, authorized signing officers, direct or indirect shareholders or other Persons in control of the Borrowers and the Guarantors, and the transactions contemplated hereby. The Borrowers shall promptly provide all such information, including supporting documentation and other evidence, as may be reasonably requested by any Lender or the Agent, or any prospective assignee or participant of a Lender or the Agent, in order to comply with any applicable AML Legislation, whether now or hereafter in existence.

(2) The Borrowers acknowledge and agree that pursuant to the provisions of the *USA Patriot Act* (Title III of the Pub. L. 107-56) signed into law October 26, 2001 (the "*Patriot Act*"), the Agent and any Lender may be required to obtain, verify and record information with respect to the US Obligors and the Borrowers hereby agree to cooperate with the Agent and each Lender and provide them with all information that may be required in order to fulfil their obligations under the Patriot Act. Without limiting the generality of the foregoing, the Borrowers agree to use commercially reasonable efforts to obtain the consent of any of their respective officers, directors and employees whose consent to the disclosure of any such information is required under applicable privacy legislation in Canada.

Each of the Lenders agrees that the Agent has no obligation to ascertain the identity of the Borrowers or the Guarantors or any authorized signatories of the Borrowers or a Guarantor on behalf of any Lender, or to confirm the completeness or accuracy of any information it obtains from the Borrowers or any Guarantor or any such authorized signatory in doing so.

17.20 Acknowledgement and Consent to Bail-In of EEA Financial Institutions

Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto

acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

- (a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and
- (b) the effects of any Bail-In Action on any such liability, including, if applicable:
 - (i) a reduction in full or in part or cancellation of any such liability;
 - (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or
 - (iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

BORROWERS:

Address:

Medical Facilities Corporation
45 St. Clair Avenue West
Suite 200
Toronto, ON M4V 1K6

Attention: Chief Executive Officer
Facsimile: (416) 925-6083

**MEDICAL FACILITIES
CORPORATION**

By: "Tyler Murphy"
Tyler Murphy

By: _____

Address:

Medical Facilities Corporation
45 St. Clair Avenue West
Suite 200
Toronto, ON M4V 1K6

Attention: Chief Executive Officer
Facsimile: (416) 925-6083

**MEDICAL FACILITIES AMERICA,
INC.**

By: “Tyler Murphy”
Tyler Murphy

By: _____

Address:

Medical Facilities Corporation
45 St. Clair Avenue West
Suite 200
Toronto, ON M4V 1K6

Attention: Chief Executive Officer
Facsimile: (416) 925-6083

**MEDICAL FACILITIES (USA)
HOLDINGS, INC.**

By: “Tyler Murphy”
Tyler Murphy

By: _____

AGENT:

Address:

For purposes of all notices of utilization, conversion, renewal or repayment and the delivery of the financial information of the Credit Agreement:

National Bank of Canada
Corporate Customer Service – Syndication and Agency Group
500 Place d'Armes, 26th Floor
Transit: 0897-1
Montreal, Quebec H2Y 2W3

Attention: Syndication
Facsimile: (514) 271-5294

NATIONAL BANK OF CANADA, as Agent

By: “David Sellitto”
Name: David Sellitto
Title: Director

By: “Philippe Tomic”
Name: Philippe Tomic
Title: Director

For purposes of Letters of Credit issuance (NBC as Issuing Lender):

E-mail: Import.Export@bnc.ca

For all other purposes (Credit) including Agent's signature page:

National Bank Financial
Loan Structuring & Syndication – Corporate & Investment Banking Group
1155 Metcalfe Street, 5th Floor
Montreal, Quebec H3B 4S9

Attention: Managing Director
Facsimile: (514) 390-7850

in the case of any Lender or the Agent, with a copy to:

Davies Ward Phillips & Vineberg LLP
155 Wellington Street West
Toronto, ON M5V 3J7

Attention: Joel Scoler
Facsimile: (416) 863-0871

LENDERS:

Address:

National Bank of Canada
130 King Street West, 32nd Floor
Toronto, ON M5X 1J9

Attention: Director
Facsimile: (416) 869-6545

**NATIONAL BANK OF CANADA, as a
Lender**

By: “David Sellitto”
David Sellitto, Director

By: “David Torrey”
David Torrey, Managing Director

Address:

The Toronto-Dominion Bank
66 Wellington Street West, 9th Floor
Toronto, ON M5X 1A2

Attention: Andrew Rytel
Email: andrew.rytel@tdsecurities.com

**THE TORONTO-DOMINION BANK, as
a Lender**

By: “Andrew C. Rytel”
Andrew C. Rytel, Vice President

By: “Tim Thomas”
Tim Thomas, Managing Director

Address:

HSBC Bank Canada
70 York Street
Toronto, ON M5J 1S9

Attention: Grant McFarlane
Email: grant.mcfarlane@hsbc.ca

Attention: Martin Weitbrecht
Email: martin.weitbrecht@hsbc.ca

**THE TORONTO-DOMINION BANK, as
a Lender**

By: “Jesse Macmasters”
Jesse Macmasters, Head of Large
Corporate - Ontario

By: “Simon Tobin”
Director, Large Corporate Banking

SCHEDULE A

LENDERS AND COMMITMENTS

<u>Lender</u>	<u>Credit Facility</u>
National Bank of Canada	\$75,000,000
The Toronto-Dominion Bank	\$37,500,000
HSBC Bank Canada	\$37,500,000
	<hr/>
	\$150,000,000

(c) The type and Amount of the proposed [Advance] [Conversion] [Rollover] are as follows (check appropriate boxes):

- Amount
- () **Prime Rate Advance:** Cdn.\$ _____
- () **US Base Rate Advance:** US\$ _____
- () **Bankers' Acceptances (BA Equivalent Notes):**

<u>Amount</u>	<u>Term in Months</u>	<u>Rollover Amount</u>
Cdn.\$ _____	_____	Cdn.\$ _____
_____	_____	_____
_____	_____	_____

() **LIBOR Loan:**

<u>Amount</u>	<u>Term in Months</u>	<u>Rollover Amount</u>
US\$ _____	_____	US\$ _____
_____	_____	_____
_____	_____	_____

() **Letter of Credit under Revolving Facility:**

	<u>Amount</u>	<u>Expiry Date</u>
Cdn.\$ _____	\$ _____	_____
US\$ _____	\$ _____	_____

Total Cdn.\$ _____

Total US\$ _____

If Rollover or Conversion of another Advance, provide details of other Advance:

(d) Type: _____

(e) Amount: _____

(f) Maturity Date: _____

3. In conjunction with the request for an Advance, the undersigned, as the Borrower, confirms that:

- (a) all of the representations and warranties set forth in Article 9 of the Credit Agreement are true and correct as at the date hereof, except to the extent that such representations and warranties are made as of a specified date (including the Closing Date) in which case such representations and warranties are true as of such specified date;
- (b) as of the date hereof, no Material Adverse Effect has occurred or exists;
- (c) no Default or Event of Default has occurred and is continuing nor will any such event occur as a result of the aforementioned Advances; and
- (d) all terms and conditions precedent to an Advance contained in Section 3.01, 3.02 [**and Section 3.03**] of the Credit Agreement have been satisfied.

MEDICAL FACILITIES CORPORATION

Per: _____
Name:
Title:

MEDICAL FACILITIES AMERICA, INC.

Per: _____
Name:
Title:

MEDICAL FACILITIES (USA) HOLDINGS, INC.

Per: _____
Name:
Title:

SCHEDULE C

REPAYMENT NOTICE

TO: **NATIONAL BANK OF CANADA**, as Agent
Corporate Customer Service – Syndication and Agency Group
500 Place d’Armes, 26th Floor
Transit: 0897-1
Montreal, Quebec H2Y 2W3

Attention: Syndication
Fax: (514) 271-5294

FROM: **MEDICAL FACILITIES CORPORATION, MEDICAL FACILITIES AMERICA, INC. and MEDICAL FACILITIES (USA) HOLDINGS, INC. as Borrowers** (the “**Borrowers**”)

DATE: [●]

1. This notice of request for repayment is delivered to you, as Agent, pursuant to the credit agreement made as of August 31, 2018 (as amended, supplemented, restated or replaced from time to time, the “**Credit Agreement**”), between the Borrowers, the Agent and the Lenders and other financial institutions specified therein. All defined terms set forth but not otherwise defined in this notice shall have the respective meanings set forth in the Credit Agreement, unless the context requires otherwise.

2. The undersigned hereby gives you notice of a repayment as follows:
 - (a) Date of Repayment: _____
 - (b) Advance Type: _____
 - (c) Principal Amount: _____
 - (d) Credit Facility: _____

MEDICAL FACILITIES CORPORATION

Per: _____
Name:
Title:

MEDICAL FACILITIES AMERICA, INC.

Per: _____
Name:
Title:

MEDICAL FACILITIES (USA) HOLDINGS, INC.

Per: _____
Name:
Title:

SCHEDULE D

COMPLIANCE CERTIFICATE

TO: NATIONAL BANK OF CANADA, as Agent
Loan Structuring & Syndication – Corporate & Investment Banking Group
1155 Metcalfe Street, 5th Floor
Montreal, Quebec H3B 4S9

Attention: Director
Fax (514) 390-7850

FROM: MEDICAL FACILITIES CORPORATION, MEDICAL FACILITIES AMERICA, INC. and MEDICAL FACILITIES (USA) HOLDINGS, INC. as Borrowers (the “Borrowers”)

RE: Credit Agreement dated as of August 31, 2018 (as amended, modified, revised, restated or replaced from time to time, the “Credit Agreement”), made between the Borrowers, the Agent and the Lenders (as defined therein)

DATE: [●]

The undersigned, the ● of the Borrowers hereby certifies, in that capacity and without personal liability, that:

1. I have read and am familiar with the provisions of the Credit Agreement and have made such examinations and investigations, including a review of the applicable books and records of the Borrowers as are necessary to enable me to express an informed opinion as to the matters set out herein. Unless otherwise defined herein terms used herein have the meanings ascribed thereto in the Credit Agreement.
2. I have made or caused to be made such examinations or investigations as are, in my opinion, necessary to furnish this Certificate, and I have furnished this Certificate with the intent that it may be relied upon by the Agent and the Lenders as a basis for determining compliance by the Borrower with its covenants and obligations under the Credit Agreement and the other Loan Documents as of the date of this Certificate.
3. This Certificate is delivered for the fiscal period ended ● [specify Fiscal Quarter or Fiscal Year] (the “Computation Period”).
4. The representations and warranties contained in each of the Loan Documents are true and correct on the date of this Certificate with reference to facts subsisting on such date, with the same effect as if made on such date, except to the extent that such representations and warranties are made as of a specified date (including the Closing Date) in which case such representations and warranties will be true as of such specified date, except

5. No Default or Event of Default has occurred and is continuing on the date of this Certificate except _____.

[Specify nature and period of existence of any Default or Event of Default and any action which the Borrowers have taken or proposes to take with respect thereto.]

6. The financial statements attached hereto as Annex I for the Computation Period fairly present in all material respects the information contained in such financial statements, and such financial statements, and all calculations of financial covenants and presentation of financial information in this Certificate and the Appendices to this Certificate, have been prepared in accordance with GAAP[, **subject to usual year-end adjustments and the absence of full note and deferred tax disclosure**] **[NTD: Carve-out is only applicable to quarterly financial statements]**.

7. As of • (the “**Computation Date**”):

- (a) The Debt to EBITDA Ratio was •:1, calculated as provided for in the spreadsheet attached hereto as Annex II.

The maximum Debt to EBITDA Ratio pursuant to Section 10.02(1) of the Credit Agreement on the Computation Date was 3.00:1.00 **[3.50:1.00]**.

- (b) The Debt Service Coverage Ratio was •:1, calculated as provided for in the spreadsheet attached hereto as Annex III.

The minimum Debt Service Coverage Ratio permitted pursuant to Section 10.02(2) of the Credit Agreement on the Computation Date was 3.00:1.00.

8. For the Fiscal Quarter/Year ended _____, the total value of all Non-Controlling Acquisitions permitted pursuant to Section 10.04(9) was _____. Detailed calculations of these amounts, including the aggregate value of all Non-Controlling Acquisitions permitted pursuant to Section 10.04(9) made since the Closing Date, are attached hereto on Annex IV.

9. For the Computation Date, the aggregate outstanding principal amount of Capitalized Lease Obligations and Purchase Money Security Interests was \$_____.

10. For the Fiscal Quarter/Year ended _____, the aggregate fair market value of the assets Disposed of pursuant to clause (d) of the definition of “Permitted Disposition” is \$_____.

11. For the Computation Date, the aggregate fair market value of the Debt incurred pursuant to clause (e) of the definition of “Permitted Debt” is \$_____.

12. For the Computation Date, the aggregate Encumbrances pursuant to clause (f) of the definition of “Permitted Encumbrances” is \$_____.

13. For the Fiscal Quarter/Year ended _____, Capital Expenditures were \$ _____. Detailed calculations of this amount are attached hereto on Annex V.
14. Attached hereto as Annex VI is a list of all outstanding Hedge Arrangements as of the Computation Date.
15. Attached hereto as Annex VII is notice of: (a) any new Material Contract entered into or receipt of a Material License or (b) any material change in, or material amendment to, any Material Contract or termination of a Material Licence, in each case during the previous Fiscal Quarter.

By: _____
Name:
Title:

ANNEX I TO COMPLIANCE CERTIFICATE
FINANCIAL STATEMENTS

[See Attached]

ANNEX II TO COMPLIANCE CERTIFICATE
DEBT TO EBITDA RATIO CALCULATIONS

ANNEX III TO COMPLIANCE CERTIFICATE
DEBT SERVICE COVERAGE RATIO CALCULATIONS

ANNEX IV TO COMPLIANCE CERTIFICATE

VALUE OF ACQUISITIONS

[See Attached]

ANNEX V TO COMPLIANCE CERTIFICATE

CAPITAL EXPENDITURES

[See Attached]

ANNEX VI TO COMPLIANCE CERTIFICATE
OUTSTANDING HEDGE ARRANGEMENTS

[See Attached]

ANNEX VII TO COMPLIANCE CERTIFICATE
MATERIAL CONTRACT AND MATERIAL LICENCE

[See Attached]

SCHEDULE E

ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (the “Assignment and Assumption”) is dated as of the Effective Date set forth below and is entered into by and between [*insert name of Assignor*] (the “Assignor”) and [*insert name of Assignee*] (the “Assignee”). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as amended, restated, supplemented or otherwise modified from time to time, the “Credit Agreement”), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of the Assignor’s rights and obligations in its capacity as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below (including without limitation any letters of credit, guarantees, and swingline loans included in such facilities) and (ii) to the extent permitted to be assigned under Applicable Law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered, pursuant thereto or the loan-transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned pursuant to clauses (i) and (ii) above being referred to herein collectively as, the “Assigned Interest”). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

- i) Assignor: _____
- ii) Assignee: _____
[and is an Affiliate/Approved Fund of [*identify Lender*]¹]
- iii) Borrowers: **MEDICAL FACILITIES CORPORATION, MEDICAL FACILITIES AMERICA, INC. and MEDICAL FACILITIES (USA) HOLDINGS, INC.** (the “Borrowers”)
- iv) Administrative Agent: National Bank of Canada, as Administrative Agent under the Credit Agreement

¹ Select as applicable.

v) Credit Agreement: Credit agreement dated as of August 31, 2018, between the Borrowers, the Lenders party thereto, National Bank of Canada, as Administrative Agent, and the other agents party thereto.

vi) Assigned Interest:

Facility Assigned ²	Aggregate Amount of Commitment / Loans for all Lenders ³	Amount of Commitment / Loans Assigned ³	Percentage Assigned of Commitment / Loans ⁴	CUSIP Number
	\$	\$	%	
	\$	\$	%	
	\$	\$	%	

vii) [Trade Date: _____] ⁵

² Fill in the appropriate terminology for the types of facilities under the Credit Agreement that are being assigned under this Assignment (e.g. "Revolving Facility," Term Facility," etc.)

³ Amount to be adjusted by the counterparties to take into account any payments or prepayments made between the Trade Date and the Effective Date.

⁴ Set forth, to at least 9 decimals, as a percentage of the Commitments of all Lenders thereunder.

⁵ To be completed if the Assignor and the Assignee intend that the minimum assignment amount is to be determined as of the Trade Date

Effective Date: _____, 20__ [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

The terms set forth in this Assignment and Assumption are hereby agreed to:

<p><u>ASSIGNOR</u> [NAME OF ASSIGNOR]</p> <p>By: _____ Title: _____</p>
<p><u>ASSIGNEE</u> [NAME OF ASSIGNEE]</p> <p>By: _____ Title: _____</p>

<p>[Consented to and]¹ Accepted: NATIONAL BANK OF CANADA, as Administrative Agent</p> <p>By: _____ Title: _____</p>
<p>[Consented to:]² [NAME OF RELEVANT PARTY]</p> <p>By: _____ Title: _____</p>

¹ To be added only if the consent of the Administrative Agent is required by the terms of the Credit Agreement.

² To be added only if the consent of the Borrowers and/or other parties (e.g. Swingline Lender, Issuing Lender) is required by the terms of the Credit Agreement.

[Credit Agreement dated as of August 31, 2018 between **MEDICAL FACILITIES CORPORATION, MEDICAL FACILITIES AMERICA, INC. and MEDICAL FACILITIES (USA) HOLDINGS, INC.**, as the Borrowers, National Bank of Canada, as Administrative Agent and the financial institutions from time to time parties thereto as Lenders]

STANDARD TERMS AND CONDITIONS FOR
ASSIGNMENT AND ASSUMPTION

Representations and Warranties

1. **Assignor.** The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrowers, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Borrowers, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.
2. **Assignee.** The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets all requirements of an Eligible Assignee under the Credit Agreement (subject to receipt of such consents as may be required under the Credit Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it has received a copy of the Credit Agreement, together with copies of the most recent financial statements delivered pursuant to Section 10.03 thereof, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on the Administrative Agent or any other Lender, and (v) if it is a foreign Lender, attached to the Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

3. **Payments**

From and after the Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignee whether such amounts have accrued prior to, on or after the Effective Date. The Assignor and the Assignee shall make all appropriate adjustments in payments by the Administrative Agent for periods prior to the Effective Date or with respect to the making of this assignment directly between themselves.

4. **General Provisions**

This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and permitted assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy or by sending a scanned copy by electronic mail shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law governing the Credit Agreement.

SCHEDULE F

LOAN PRICING CORPORATION INFORMATION

<u>Company Level</u>	<u>Deal Specific</u>	<u>Facility Specific</u>
Issuer Name	Currency/Amount	Currency/Amount
Location	Date	Type
SIC (Cdn)	Purpose	Purpose
Identification Number(s)	Sponsor	Tenor
Revenue	Financial Covenants	Term Out Option
		Expiration Date
	Target Company	Facility Signing Date
*Measurement of Risk	Assignment Language	Pricing
S&P Sr. Debt	Law Firms	Base Rate(s)/Spread(s) / BA/LIBOR
S&P Issuer	MAC Clause	Initial Pricing Level
Moody's Sr. Debt	Springing lien	Pricing Grid (tied to, levels)
Moody's Issuer	Cash Dominion	Grid Effective Date
Fitch Sr. Debt	Mandatory Prepays	Fees
Fitch Issuer	Restricted Payments (Negative Covenants)	Participation Fee (tiered also)
S&P Implied (internal assessment)	Other Restrictions	Commitment Fee
DBRS		
Other Ratings		Annual fee
*Industry Classification		Utilization Fee
Moody's Industry		LC Fee(s)
S&P Industry		BA Fee
Parent		Prepayment Fee
Financial Ratios		Other Fees to Market
		Security
		Secured/Unsecured
		Collateral and Seniority of Claim
		Collateral Value
		Guarantors
		Lenders Names/Titles
		Lender Commitment (\$)
		Committed/Uncommitted
		Distribution method
		Amortization Schedule
		Borrowing Base/Advance Rates
		New Money Amount
		Country of Syndication
		Facility Rating (Loss given default)
		S&P Bank Loan
		Moody's Bank Loan
		Fitch Bank Loan
		DBRS
		Other Ratings

SCHEDULE G
EXISTING LETTERS OF CREDIT

None.

SCHEDULE 9.01(9)

LITIGATION

None.

SCHEDULE 9.01 (12)

DESCRIPTION OF REAL PROPERTY

Owned Real Property:

None.

Leased Real Property:

1. Lease of second floor office space at 45 St. Clair Avenue West, Suite 200, Toronto, Ontario M4V 1K6 by Medical Facilities Corporation, as tenant, and 2382811 Ontario Inc., as landlord.
2. Lease of second floor office space at the Six Corporate Centre at 830 Crescent Centre Drive, Franklin, Tennessee 3706 by Medical Facilities America, Inc., as tenant, and Cool Springs Corporate Centre, LLC, as landlord.

Coverage Type	Policy Number	Carrier	Term	Coverage Limits
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Side A - Directors and Officers Personal Coverage -Where the company is not permitted by law or is unable due to insolvency to indemnify its directors and officers, then the coverage applies under this clause.

Side B -Corporate Indemnity Coverage -Where the law permits and/ or requires the company to indemnify it directors and officers the n the insurer will pay on the company's behalf subject to policy exclusions and the deductibles (so the company will not be out of pocket for these expenses).

Side C- Entity Coverage - The insurer will pay on behalf of the insured organization all losses on account of a claim.

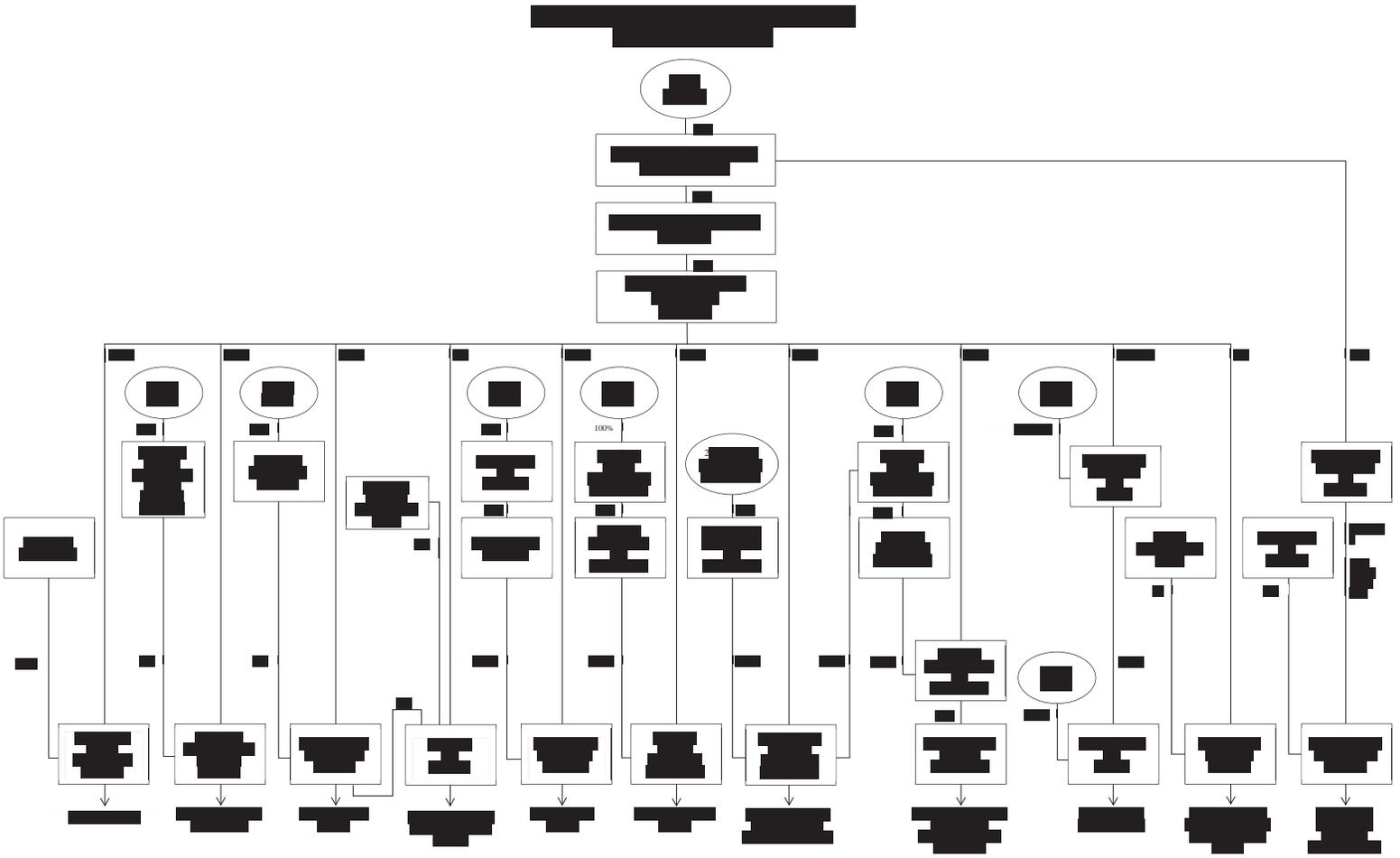
Liability Insurance- Medical Facilities Holdings (USA), Inc.

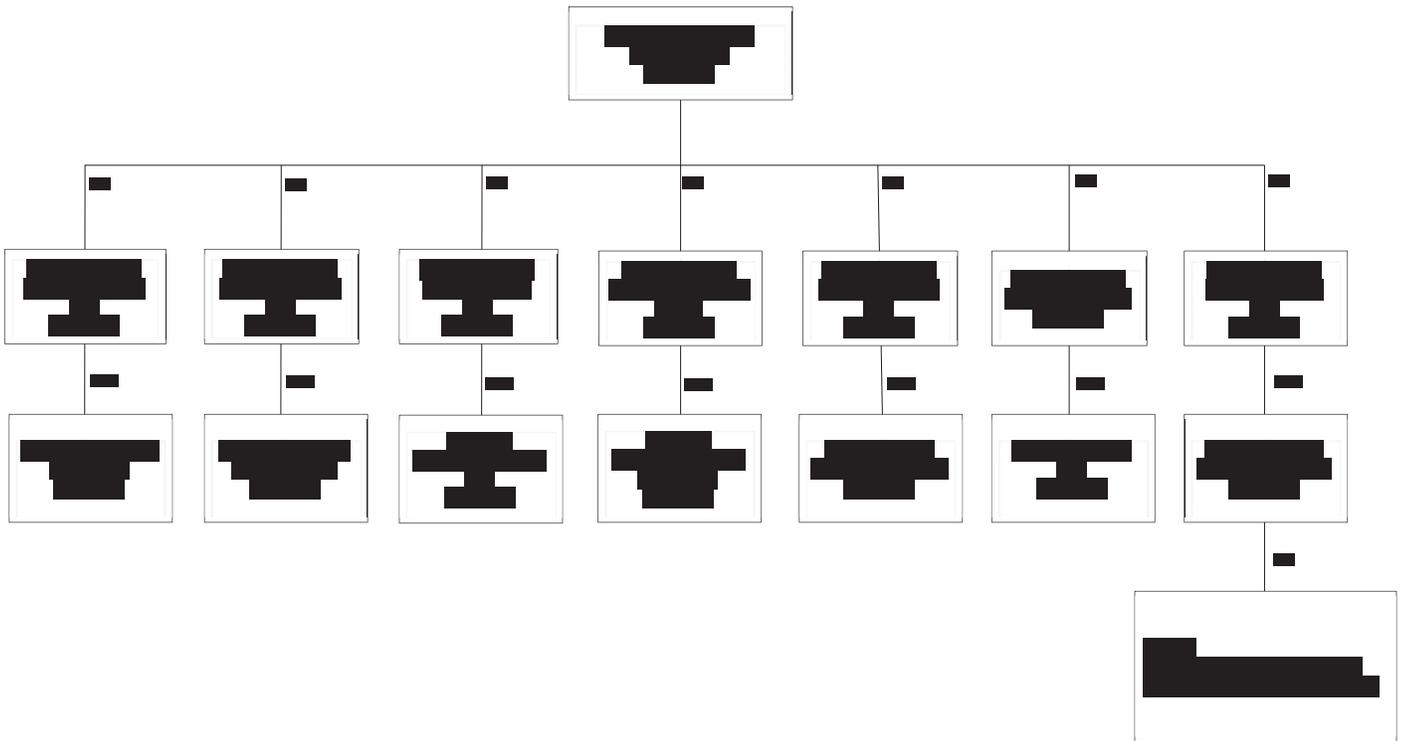
Coverage Type	Policy Number	Carrier	Term	Coverage Limits
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Commercial Property, Commercial Auto, Workers Compensation and Cyber Security Insurance- Medical Facilities (USA), Inc. and Medical Facilities America, Inc.

Coverage Type	Policy Number	Carrier	Term	Coverage Limits
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

SCHEDULE 9.01(17)
CORPORATE STRUCTURE
(See attached)









SCHEDULE 9.01(18)

RELEVANT JURISDICTION

Medical Facilities Corporation

Registered office address:	355 Burrard Street, Suite 1800 Vancouver, British Columbia V6C 2G8	[REDACTED]
Chief Executive and Head office address:	45 St. Clair Avenue West, Suite 200 Toronto, Ontario M4V 1K6	[REDACTED]
Senior management address:	830 Crescent Centre Drive, Suite 200 Franklin, Tennessee 37067	

Medical Facilities America, Inc. and Medical Facilities (USA) Holdings, Inc.

Registered office address:	Corporation Trust Center 1209 Orange Street Wilmington, Delaware 19801	
Chief Executive and Head office address:	830 Crescent Centre Drive, Suite 200 Franklin, Tennessee 37067	[REDACTED]
Principal place of business:	910 E 20th Street Sioux Falls, South Dakota 57105	
Location of minute books:	Hodgson Russ, The Guardian Building 140 Pearl Street, Suite 100 Buffalo, New York 14202	
Accounting records and invoices	45 St. Clair Avenue West, Suite 200 Toronto, Ontario M4V 1K6	

SCHEDULE 9.01(19)
INTELLECTUAL PROPERTY

None.

SCHEDULE 9.01(20)

MATERIAL CONTRACTS AND MATERIAL LICENSES

1. Management Agreement dated June 1, 2011 in respect of Medical Facilities America among Medical Facilities Corporation, Medical Facilities America, Black Hills Surgical, LLC, Dakota Plains Surgical Subco, LLC and Sioux Falls Surgical Subco, LLC.
2. Trust Indenture between Medical Facilities Corporation and Computershare Trust Company of Canada, as trustee, dated December 21, 2012, providing for the issuance of 5.9% convertible unsecured subordinated debentures of Medical Facilities Corporation.

Exchange Agreements

3. Exchange Agreement dated March 29, 2004 among Medical Facilities Corporation, Medical Facilities Holdings (USA), LLC (predecessor to Medical Facilities (USA) Holdings, Inc.), Black Hills Surgical, LLC, Dakota Plains Surgical Subco, LLC and Sioux Falls Surgical Subco, LLC.
4. Exchange Agreement dated June 21, 2005 among Medical Facilities Corporation, Medical Facilities Holdings (USA), LLC (predecessor to Medical Facilities (USA) Holdings, Inc.) and OSH Subco, LLC.
5. Exchange Agreement dated November 30, 2012 among Medical Facilities Corporation, Medical Facilities America, Inc., Medical Facilities (USA) Holdings, Inc. and AR Surgical Holdings, LLC.

Arkansas Surgical Hospital

6. Operating Agreement of AR Surgical Holdings, LLC dated November 30, 2012.
7. Second Amended and Restated Operating Agreement of Arkansas Surgical Hospital, LLC dated November 30, 2012.
8. Non-Solicitation, Non-Disclosure and Non-Compete Agreements.

Black Hills Surgical Hospital

9. Amended Operating Agreement of Black Hills Surgical Physicians, LLC dated May 9, 2016.
10. Black Hills Surgical, LLC Declaration (Operating Agreement) dated March 29, 2004.
11. Amended and Restated (Final) Partnership Agreement of Black Hills Surgical Hospital, LLP dated June 20, 2017.
12. Non-Solicitation, Non-Disclosure and Non-Compete Agreements.

Oklahoma Spine Hospital

13. Operating Agreement of OSH Holdings, LLC dated June 21, 2005.
14. Operating Agreement of OSH Subco, LLC dated June 21, 2005.
15. Second Amended and Restated Operating Agreement of Oklahoma Spine Hospital, L.L.C. dated June 21, 2005.
16. Non-Solicitation, Non-Disclosure and Non-Compete Agreement.

Sioux Falls Specialty Hospital

17. Third Amended and Restated Operating Agreement of Sioux Falls Surgical Physicians, LLC dated June 23, 2015.
18. Sioux Falls Surgical Subco, LLC Declaration (Operating Agreement) dated March 29, 2004.
19. Amended and Restated (Final) Partnership Agreement of Sioux Falls Surgical Center, LLP dated March 29, 2004 and First Amendment to Amended and Restated Partnership Agreement of Sioux Falls Surgical Hospital, LLP dated June 3, 2011.
20. Non-Solicitation, Non-Disclosure and Non-Compete Agreement.

The Surgery Center of Newport Coast

21. Amended and Restated Operating Agreement of The Surgery Center of Newport Coast, LLC dated January 7, 2008.
22. Non-Solicitation, Non-Disclosure and Non-Compete Agreement.

Unity Medical and Surgical Hospital and Physician's ASC Management

23. First Amendment to Purchase and Sale Agreement dated May 9, 2016 between Unity Realty, LLC and RRI Acquisitions, LLC.
24. Membership Interest Purchase Agreement dated September 23, 2016 between Physician's ASC Management, LLC and Medical Facilities (USA) Holdings, Inc.
25. First Amended and Restated Operating Agreement for Physician's ASC Management, LLC dated September 23, 2016.
26. Second Amended and Restated Operating Agreement for United Surgeons, LLC dated September 23, 2016.

MFC Nueterra Holding Company

27. Purchase Agreement dated January 12, 2018 by Meridian Surgical Partners, LLC, MS Holding Company, Inc., MFC Nueterra Holding Company, LLC and Medical Facilities Corporation and Amendment to Purchase Agreement dated January 31, 2018 among MFC Nueterra Holding Company, LLC, Meridian Surgical Partners, LLC, MS Holding Company, Inc. and Medical Facilities Corporation.
28. Amended and Restated Limited Liability Company Agreement of MFC Nueterra Holding Company, LLC dated January 12, 2018.
29. First Amendment to the Amended and Restated Limited Liability Company Operating Agreement of MFC Nueterra Holding Company, LLC dated February 1, 2018.
30. Management Services Agreement dated February 1, 2018 between MFC Nueterra Holding Company, LLC and NueHealth, LLC.

Dakota Plains Surgical Center

31. Asset Purchase Agreement dated June 4, 2015 among Avera St. Luke's and Dakota Plains Surgical Center, LLP and Amendment to Asset Purchase Agreement dated June 30, 2015 among Avera St. Luke's and Dakota Plains Surgical Center, LLP.

SCHEDULE 9.01(25)

NON-ARM'S LENGTH TRANSACTIONS

Intercompany Notes

1. Senior Subordinated 12.25% Promissory Note issued by Medical Facilities America, Inc. to Medical Facilities Corporation dated June 1, 2011 for US\$194,500,000 due June 1, 2021.
2. Senior Subordinated 10.0% Promissory Note issued by Medical Facilities America, Inc. to Medical Facilities Corporation dated November 29, 2012 for US\$27,455,108 due November 29, 2022.

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