

# **THIRD AMENDED AND RESTATED CREDIT AGREEMENT**

by and between

**TREE ISLAND INDUSTRIES LTD.**

as Canadian Borrower

- and -

**TREE ISLAND WIRE (USA), INC.**

as U.S. Borrower

- and –

**TREE ISLAND STEEL LTD.  
TREE ISLAND WIRE HOLDINGS (USA), INC.**

as Guarantors

- and-

**THE CANADIAN LENDERS SIGNATORY  
HERE TO FROM TIME TO TIME**

as Canadian Lenders

- and -

**THE U.S. LENDERS SIGNATORY  
HERE TO FROM TIME TO TIME**

as U.S. Lenders

**WELLS FARGO CAPITAL FINANCE CORPORATION CANADA**

as Agent

Dated: May 8, 2023

**TABLE OF CONTENTS**

**ARTICLE 1. DEFINITIONS ..... 2**

1.1 “Accounts” ..... 2

1.2 “Acceptable Appraisal” ..... 2

1.3 “Adjusted Daily Simple SOFR” ..... 3

1.4 “Affiliate” ..... 3

1.5 “Anti-Corruption Laws” ..... 3

1.6 “Anti-Money Laundering Laws” ..... 4

1.7 “Availability Reserves” ..... 4

1.8 “Available Tenor” ..... 4

1.9 “Average Excess Availability” ..... 5

1.10 “Benchmark” ..... 5

1.11 “Benchmark Replacement” ..... 5

1.12 “Benchmark Replacement Adjustment” ..... 5

1.13 “Benchmark Replacement Date” ..... 6

1.14 “Benchmark Transition Event” ..... 6

1.15 “Benchmark Transition Start Date” ..... 7

1.16 “Benchmark Unavailability Period” ..... 7

1.17 “BHC Act Affiliate” ..... 7

1.18 “BIA” ..... 7

1.19 “Blocked Account Agreement” ..... 8

1.20 “Blocked Accounts” ..... 8

1.21 “Board of Directors” ..... 8

1.22 “Borrowing Base” ..... 8

1.23 “Borrowing Base Certificate” ..... 8

1.24 “Borrowing Base Weekly Period” ..... 8

1.25 “Business Day” ..... 8

1.26 “CAML” ..... 8

1.27 “Canadian Borrower Intercompany Note” ..... 9

1.28 “Canadian Borrowing Base” ..... 9

1.29 “Canadian Capex Term Loan” ..... 9

1.30 “Canadian Dollar Amount” ..... 9

1.31 “Canadian Excess Availability” ..... 9

1.32 “Canadian Pension Plans” ..... 9

1.33 “Canadian Prime Rate” ..... 9

1.34 “Canadian Prime Rate Loans” ..... 10

1.35 “Canadian Reference Bank” ..... 10

1.36 “Canadian Revolving Loan Commitment” ..... 10

1.37 “Canadian Revolving Loans” ..... 10

1.38 “Capex Term Loan Commitment” ..... 10

1.39 “Capex Term Loan Maximum Limit” ..... 10

1.40 “Capex Term Loans” ..... 10

1.41 “Capex Term Loan Request” ..... 10

1.42 “Capital Expenditures” ..... 11

1.43 “Capital Lease” ..... 11

1.44	“CCAA”	11
1.45	“CCAA Plan”	11
1.46	“CDOR Rate”	11
1.47	“CDOR Rate Loans”	11
1.48	“Change in Law”	11
1.49	“Change of Control”	12
1.50	“Closing Date”	13
1.51	“Code”	13
1.52	“Collateral”	13
1.53	“Commitments”	13
1.54	“Compliance Certificate”	13
1.55	“Conforming Changes”	13
1.56	“Continuing Directors”	14
1.57	“Covered Entity”	14
1.58	“Daily Simple SOFR Loan”	14
1.59	“Dilution”	14
1.60	“Default”	14
1.61	“Default Right”	15
1.62	“EBITDA”	15
1.63	“Eligible Accounts”	15
1.64	“Eligible Inventory”	17
1.65	“Eligible Equipment”	18
1.66	“Eligible Transferee”	18
1.67	“Encumbrances”	19
1.68	“Environmental Laws”	19
1.69	“Equipment”	19
1.70	“Equivalent Amount”	19
1.71	“ERISA”	19
1.72	“ERISA Affiliate”	20
1.73	“ERISA Event”	20
1.74	“Event of Default”	20
1.75	“Federal Funds Rate”	20
1.76	“Financing Agreements”	21
1.77	“Fiscal Quarter”	21
1.78	“Fixed Charge Coverage Ratio”	21
1.79	“Fixed Charges”	21
1.80	“Floor”	21
1.81	“Funding Bank”	21
1.82	“Funding Losses”	21
1.83	“Governmental Authority”	22
1.84	“Guarantors”	22
1.85	“Hard Costs”	22
1.86	“Hazardous Materials”	22
1.87	“Holdco USA”	22
1.88	“IFRS”	22
1.89	“Information Certificates”	23

1.90	“Intellectual Property”	23
1.91	“Intercompany Indebtedness”	23
1.92	“Interest Expense”	23
1.93	“Interest Rate”	23
1.94	“Inventory”	24
1.95	“ITA”	24
1.96	“Landlord Agreement”	24
1.97	“Letter of Credit Accommodations”	24
1.98	“License Agreements”	25
1.99	“Loans”	25
1.100	“Margin Stock”	25
1.101	“Mark to Market Exposure”	25
1.102	“Material Adverse Effect”	25
1.103	“Maturity Date”	25
1.104	“Maximum Credit”	25
1.105	“Maximum Revolving Credit”	26
1.106	“Measurement Date”	26
1.107	“Multiemployer Plan”	26
1.108	“Net Amount of Eligible Accounts”	26
1.109	“Net Orderly Liquidation Value”	26
1.110	“Obligations”	26
1.111	“OFAC”	27
1.112	“Parent”	27
1.113	“Patriot Act”	27
1.114	“Payment Accounts”	27
1.115	“Person” or “person”	27
1.116	“Plan”	27
1.117	“PPSA”	27
1.118	“Priority Payables Reserve”	27
1.119	“Pro Rata Share”	28
1.120	“QFC”	29
1.121	“Receiver”	29
1.122	“Records”	29
1.123	“Relevant Governmental Body”	29
1.124	“Required Lenders”	29
1.125	“Revolving Loans”	29
1.126	“Sanctions”	30
1.127	“Sanctioned Target”	30
1.128	“Secured Parties”	30
1.129	“Significant Shareholders”	30
1.130	“Simple SOFR Adjustment”	30
1.131	“Slow Moving Inventory”	30
1.132	“SOFR”	31
1.133	“SOFR Administrator”	31
1.134	“SOFR Administrator’s Website”	31
1.135	“Spot Rate”	31

1.136	“Subsidiary” .....	31
1.137	“Suppressed Availability” .....	31
1.138	“Swap Agreement” .....	31
1.139	“Taxes” .....	32
1.140	“Total Excess Availability” .....	32
1.141	“UCC” .....	32
1.142	“Unadjusted Benchmark Replacement” .....	32
1.143	“U.S. Borrowing Base” .....	32
1.144	“U.S. Capex Term Loan” .....	32
1.145	“U.S. Dollar Amount” .....	32
1.146	“U.S. Excess Availability” .....	32
1.147	“U.S. Government Securities Business Day” .....	33
1.148	“U.S. Pension Plan” .....	33
1.149	“U.S. Prime Rate” .....	33
1.150	“U.S. Prime Rate Loans” .....	33
1.151	“U.S. Reference Bank” .....	33
1.152	“U.S. Revolving Loan Commitment” .....	33
1.153	“U.S. Revolving Loans” .....	33
1.154	“Value” .....	34
<b>ARTICLE 2. CREDIT FACILITIES .....</b>		<b>34</b>
2.1	Revolving Loans .....	34
2.2	Letter of Credit Accommodations .....	36
2.3	Swap Agreements .....	39
2.4	Availability Reserves .....	40
2.5	Capex Term Loans .....	40
<b>ARTICLE 3. INTEREST AND FEES .....</b>		<b>42</b>
3.1	Interest .....	42
3.2	Closing Fee .....	43
3.3	Servicing Fee .....	43
3.4	Unused Line Fee .....	43
3.5	Increased Costs .....	43
3.6	Illegality; Market Conditions .....	44
3.7	Intentionally Deleted .....	45
3.8	Intentionally Deleted .....	45
3.9	Delay in Requests .....	45
3.10	Special Provisions Applicable to Daily Simple SOFR Loans .....	45
3.11	Benchmark Replacement Setting .....	46
3.12	CDOR Replacement .....	47
<b>ARTICLE 4. CONDITIONS PRECEDENT .....</b>		<b>48</b>
4.1	Conditions Precedent to Initial Loans and Letter of Credit Accommodations .....	48
4.2	Conditions Precedent to all Loans and Letter of Credit Accommodations .....	49

<b>ARTICLE 5. COLLECTION AND ADMINISTRATION .....</b>	<b>50</b>
5.1 The Borrower's Loan Account.....	50
5.2 Statements.....	50
5.3 Collection of Accounts .....	50
5.4 Payments.....	51
5.5 Authorization to Make Loans and Letter of Credit Accommodations .....	53
5.6 Use of Proceeds.....	53
<b>ARTICLE 6. COLLATERAL REPORTING AND COVENANTS .....</b>	<b>54</b>
6.1 Collateral Reporting.....	54
6.2 Accounts Covenants.....	54
6.3 Inventory Covenants .....	56
6.4 Equipment Covenants .....	56
6.5 Power of Attorney.....	57
6.6 Right to Cure.....	58
6.7 Access to Premises.....	58
<b>ARTICLE 7. REPRESENTATIONS AND WARRANTIES .....</b>	<b>58</b>
7.1 Corporate Existence, Power and Authority; Subsidiaries.....	58
7.2 Financial Statements; No Material Adverse Change .....	59
7.3 Chief Executive Office; Collateral Locations.....	59
7.4 Priority of Liens; Title to Properties .....	59
7.5 Tax Returns .....	60
7.6 Litigation.....	60
7.7 Compliance with Other Agreements and Applicable Laws.....	60
7.8 Bank Accounts .....	60
7.9 Accuracy and Completeness of Information.....	61
7.10 Status of Canadian Pension Plans, U.S. Plans and Multiemployer Plans.....	61
7.11 Environmental Compliance .....	63
7.12 Intellectual Property.....	63
7.13 Subsidiaries; Affiliates; Capitalization; Solvency .....	64
7.14 OFAC; Sanctions; Anti-Corruption Laws; Anti-Money Laundering Laws; Patriot Act.....	65
7.15 Margin Stock; Investment Company Act; Etc. ....	65
7.16 Survival of Warranties; Cumulative .....	65
<b>ARTICLE 8. AFFIRMATIVE AND NEGATIVE COVENANTS.....</b>	<b>65</b>
8.1 Maintenance of Existence .....	65
8.2 New Collateral Locations .....	66
8.3 Compliance with Laws, Regulations, Etc. ....	66
8.4 Payment of Taxes and Claims.....	67
8.5 Insurance.....	68
8.6 Financial Statements and Other Information .....	68
8.7 Sale of Assets, Consolidation, Amalgamation, Dissolution, Etc.....	70
8.8 Encumbrances .....	70
8.9 Indebtedness.....	71

8.10	Loans, Investments, Guarantees, Etc. ....	72
8.11	Dividends and Redemptions .....	73
8.12	Transactions with Affiliates.....	73
8.13	Fixed Charge Coverage Ratio.....	73
8.14	Intellectual Property.....	74
8.15	Additional Bank Accounts.....	74
8.16	Applications under the CCAA.....	74
8.17	Operation of Canadian Pension Plans, U.S. Pension Plans and Multiemployer Plans..	75
8.18	Costs and Expenses.....	76
8.19	Further Assurances.....	77
8.20	Swap Agreements .....	77
8.21	Intentionally Deleted.....	77
8.22	Separate and Independent Covenants .....	77
<b>ARTICLE 9. EVENTS OF DEFAULT AND REMEDIES.....</b>		<b>78</b>
9.1	Events of Default .....	78
9.2	Remedies.....	80
<b>ARTICLE 10. ASSIGNMENT AND PARTICIPATIONS; APPOINTMENT OF AGENT</b>		<b>82</b>
10.1	Assignment and Participations.....	82
10.2	Appointment of Agent .....	84
10.3	Agent's Reliance, Etc. ....	85
10.4	Agent and Affiliates.....	85
10.5	Lender Credit Decision.....	86
10.6	Indemnification.....	86
10.7	Failure to Act .....	86
10.8	Concerning the Collateral and the Related Financing Agreements .....	87
10.9	Field Audit, Examination Reports and other Information; Disclaimer by Lenders.....	87
10.10	Collateral Matters.....	87
10.11	Successor Agent.....	88
10.12	Setoff and Sharing of Payments.....	89
10.13	Advances; Payments; Non-Funding Lenders; Information; Actions in Concert.....	89
10.14	Meetings of Lenders .....	92
10.15	Approval of Lenders and Agent.....	92
<b>ARTICLE 11. JURY TRIAL WAIVER; OTHER WAIVERS AND CONSENTS; GOVERNING LAW.....</b>		<b>93</b>
11.1	Governing Law; Choice of Forum; Service of Process; Jury Trial Waiver.....	93
11.2	Waiver of Notices .....	94
11.3	Amendments and Waivers .....	95
11.4	Waiver of Counterclaim.....	95
11.5	Indemnification.....	95
<b>ARTICLE 12. ACKNOWLEDGMENT AND RESTATEMENT .....</b>		<b>95</b>
12.1	Second Amended and Restated Credit Agreement and Financing Agreements.....	95

12.2	Existing Security Interests .....	96
<b>ARTICLE 13. TERM OF AGREEMENT; MISCELLANEOUS .....</b>		<b>96</b>
13.1	Term .....	96
13.2	Notices .....	98
13.3	Partial Invalidity.....	98
13.4	Successors .....	98
13.5	Entire Agreement .....	98
13.6	Headings .....	99
13.7	Facsimile; Counterparts .....	99
13.8	Judgment Currency .....	99
13.9	No Set-Off, Etc. ....	99
13.10	Acknowledgement Regarding Any Supported QFCs .....	100
13.11	<i>Patriot Act</i> ; CAML .....	100

INDEX TO  
EXHIBITS AND SCHEDULES

Exhibit A

Information Certificates:

TREE ISLAND STEEL LTD.

TREE ISLAND INDUSTRIES LTD.

TREE ISLAND WIRE HOLDINGS (USA), INC.

TREE ISLAND WIRE (USA), INC.

Exhibit B

Closing Agenda

Schedule 1.53

Commitments

Schedule 6.1

Form of Borrowing Base Certificate

Schedule 7.1

Corporate Structure Chart

Schedule 7.4

Existing Encumbrances

Schedule 7.8

Bank Accounts

Schedule 8.6(f)

Form of Compliance Certificate

Schedule 8.9

Existing Indebtedness

Schedule 8.10

Existing Loans, Advances and Guarantees

Schedule 10.1(a)(iv)

Form of Assignment Agreement

### **THIRD AMENDED AND RESTATED CREDIT AGREEMENT**

This Third Amended and Restated Credit Agreement dated May 8, 2023 is entered into by and between Tree Island Industries Ltd., a British Columbia corporation (the “**Canadian Borrower**”), Tree Island Wire (USA), Inc., a Delaware corporation (the “**U.S. Borrower**”), collectively with the Canadian Borrower, the “**Borrowers**”), Tree Island Steel Ltd., a Canadian federal corporation (the “**Parent**”), Tree Island Wire Holdings (USA), Inc., a Delaware corporation (“**Holdco USA**”), the Canadian Lenders signatory hereto from time to time (the “**Canadian Lenders**”), the U.S. Lenders signatory hereto from time to time (the “**U.S. Lenders**”; collectively with the Canadian Lenders, the “**Lenders**”) and Wells Fargo Capital Finance Corporation Canada, an Ontario corporation, as agent for and on behalf of the Secured Parties (in such capacity, the “**Agent**”).

#### **WITNESSETH:**

**WHEREAS** the Lenders have made loans and provided certain financial accommodations to the Borrowers pursuant to a credit agreement (as amended, modified, supplemented, extended, renewed, restated or replaced, the “**Original Credit Agreement**”) dated March 25, 2010 by and between the Agent, the Lenders, the Borrowers, Tree Island Wire Income Fund, a trust created under the laws of British Columbia (the “**Fund**”), and Holdco USA (and together with the Fund, the “**Guarantors**”)

**WHEREAS** the Borrowers, the Guarantors, the Agent and the Lenders amended and restated the Original Credit Agreement pursuant to an amended and restated credit agreement dated June 11, 2012 (as amended, modified, supplemented, extended, renewed, restated or replaced, the “**Amended and Restated Credit Agreement**”);

**WHEREAS** pursuant to a Plan of Arrangement under Section 192 of the *Canada Business Corporation Act* dated August 15, 2012 and approved by the Ontario Superior Court of Justice on September 17, 2012, the Fund, as Guarantor under the Original Credit Agreement, the Amended and Restated Credit Agreement and the other Financing Agreements and owner of all of the issued and outstanding shares of the Canadian Borrower, was dissolved and all of its assets and properties were distributed to the Parent in consideration for the Parent's assumption of all the Fund's obligations, liabilities and indebtedness including as Guarantor under the Original Credit Agreement, the Amended and Restated Credit Agreement and the other Financing Agreements

**WHEREAS** the Borrowers, the Guarantors (being Holdco USA and the Parent), the Agent and the Lenders amended and restated the Amended and Restated Credit Agreement pursuant to an second amended and restated credit agreement dated April 21, 2014 (as amended, modified, supplemented, extended, renewed, restated or replaced, the “**Second Amended and Restated Credit Agreement**”);

**WHEREAS** the Borrowers and the Guarantors have requested that the Agent and the Lenders amend and restate the Second Amended and Restated Credit Agreement, extend the existing loans and financing accommodations, and provide certain additional financing accommodations to the Borrowers, all on the terms and conditions set forth herein; and

**WHEREAS** the Agent and each Lender are willing to agree to such requests.

**NOW, THEREFORE**, in consideration of the mutual conditions and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

## **ARTICLE 1. DEFINITIONS**

All terms used herein which are defined in the PPSA (as hereinafter defined) shall have the meanings given therein unless otherwise defined in this Agreement. All references to the plural herein shall also mean the singular and to the singular shall also mean the plural unless the context otherwise requires. All references to the Agent, the Borrowers, the Guarantors and the Lenders pursuant to the definitions set forth in the recitals hereto, or to any other person herein, shall include their respective successors and assigns. The words “**hereof**”, “**herein**”, “**hereunder**”, “**this Agreement**” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not any particular provision of this Agreement and as this Agreement now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced. The word “**including**” when used in this Agreement shall mean “**including, without limitation**”. References herein to any statute or any provision thereof include such statute or provision as amended, revised, re-enacted, and/or consolidated from time to time and any successor statute thereto. A Default or Event of Default (as each such term is hereinafter defined) shall exist or continue or be continuing until such Default or Event of Default is waived in accordance with Section 11.3 or is cured in a manner satisfactory to the Required Lenders, if such Default or Event of Default is capable of being cured as determined by the Required Lenders. Any accounting term used herein unless otherwise defined in this Agreement shall have the meanings customarily given to such term in accordance with IFRS (as hereinafter defined). “**Canadian Dollars**” and the sign “**\$**” mean lawful money of Canada. “**U.S. Dollars**” and the sign “**U.S.\$**” mean lawful money of the United States of America. All monetary amounts referred to in this Agreement are in Canadian Dollars unless otherwise stated. Except as otherwise expressly provided herein, the applicable amount of any U.S. Dollars for purposes of the Financing Agreements (including for purposes of financial statements and all calculations in connection with covenants, including the financial covenants) shall be the Canadian Dollar Amount thereof as so determined by the Agent. For purposes of this Agreement, the following terms shall have the respective meanings given to them below:

### **1.1 “Accounts”**

“**Accounts**” shall mean all present and future rights of the Borrowers to payment for goods sold or leased or for services rendered, which are not evidenced by instruments or chattel paper, and whether or not earned by performance.

### **1.2 “Acceptable Appraisal”**

“**Acceptable Appraisal**” shall mean the most recent appraisal as to the Equipment in form, scope and methodology acceptable to the Agent and by an appraiser acceptable to the Agent addressed to the Agent or upon which the Agent is expressly permitted to rely.

### 1.3 “Adjusted Daily Simple SOFR”

“Adjusted Daily Simple SOFR” means, for any day (a “Simple SOFR Rate Day”), a rate per annum equal to the greater of (a) the sum of (i) SOFR for the day (such day, a “Simple SOFR Determination Day”) that is two (2) U.S. Government Securities Business Days prior to (A) if such Simple SOFR Rate Day is a U.S. Government Securities Business Day, such Simple SOFR Rate Day or (B) if such Simple SOFR Rate Day is not a U.S. Government Securities Business Day, the U.S. Government Securities Business Day immediately preceding such Simple SOFR Rate Day, in each case, as such SOFR is published by the SOFR Administrator on the SOFR Administrator’s Website; provided that if by 5:00 p.m. on the second (2nd) U.S. Government Securities Business Day immediately following any Simple SOFR Determination Day, SOFR in respect of such Simple SOFR Determination Day has not been published on the SOFR Administrator’s Website and a Benchmark Replacement Date with respect to Adjusted Daily Simple SOFR has not occurred, then SOFR for such Simple SOFR Determination Day will be SOFR as published in respect of the first preceding U.S. Government Securities Business Day for which such SOFR was published on the SOFR Administrator’s Website; provided further that SOFR as determined pursuant to this proviso shall be utilized for purposes of calculation of Adjusted Daily Simple SOFR for no more than three (3) consecutive Simple SOFR Rate Days and (ii) the Simple SOFR Adjustment and (b) the Floor. Any change in Adjusted Daily Simple SOFR due to a change in SOFR shall be effective from and including the effective date of such change in SOFR without notice to any Borrower. Each determination of Adjusted Daily Simple SOFR shall be made by the Agent and shall be conclusive in the absence of manifest error.

### 1.4 “Affiliate”

“Affiliate” shall mean, with respect to any Person:

- (a) each Person that, directly or indirectly, owns or controls, whether beneficially, or as a trustee, guardian or other fiduciary, 10% or more of the capital stock having ordinary voting power in the election of directors of such Person;
- (b) each Person that controls, is controlled by or is under common control with such Person; and
- (c) each of such Person's officers, directors, employees, shareholders, joint venturers and partners. For the purposes of this definition, “control” of a Person shall mean the possession, directly or indirectly, of the power to direct or cause the direction of its management or policies, whether through the ownership of voting securities, by contract or otherwise.

### 1.5 “Anti-Corruption Laws”

“Anti-Corruption Laws” means: (a) the *Corruption of Foreign Public Officials Act* (Canada), (b) the *U.S. Foreign Corrupt Practices Act of 1977*, (c) the *U.K. Bribery Act 2010*, and (d) any other anti-bribery or anti-corruption laws, regulations or ordinances in any jurisdiction in which any Borrower is located or doing business.

## 1.6 “Anti-Money Laundering Laws”

“Anti-Money Laundering Laws” means applicable laws or regulations in any jurisdiction in which any Borrower is located or doing business that relates to money laundering, any predicate crime to money laundering, or any financial record keeping and reporting requirements related thereto, including CAML.

## 1.7 “Availability Reserves”

“Availability Reserves” shall mean, as of any date of determination, such amounts, without duplication, as the Agent may from time to time establish and revise in good faith reducing the amount of Revolving Loans and Letter of Credit Accommodations which would otherwise be available to the Borrowers under the lending formula(s) provided for herein:

(a) to reflect events, conditions, contingencies or risks which, as determined by the Agent, do or may affect either:

- (i) the Collateral or any other property which is security for the Obligations or its value;
- (ii) the assets, business or prospects of any Borrower or any Guarantor; or
- (iii) the security interests and other rights of the Agent in the Collateral (including the enforceability, validity, perfection and priority thereof); or

(b) to reflect the Agent's belief that any Collateral report or financial information furnished by or on behalf of any Borrower or any Guarantor to the Agent is or may have been incomplete, inaccurate or misleading in any material respect; or

(c) to reflect outstanding Letter of Credit Accommodations as provided in Section 2.2 hereof; or

(d) to reflect the Agent's estimate of the amount of any Priority Payables Reserve; or

(e) to reflect any state of facts which the Agent determines constitutes a Default or an Event of Default; or

(f) to reflect Dilution for each incremental percentage in Dilution over 2.5%; or

(g) to reflect up to 3 months rent payable by a Borrower with respect to each premise at which Eligible Inventory included in the Canadian Borrowing Base or U.S. Borrowing Base, as the case may be, is located which is not owned or controlled by the applicable Borrower and in respect of which premise the Agent has not received a Landlord Agreement.

## 1.8 “Available Tenor”

“Available Tenor” means, as of any date of determination and with respect to any then-current Benchmark, as applicable, if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period

pursuant to this Agreement as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “interest period” pursuant to Section 3.11.

### **1.9 “Average Excess Availability”**

“Average Excess Availability” means, with respect to any period, the sum of the aggregate amount of Total Excess Availability for each day in such period (as calculated by the Agent as of the end of each respective day) divided by the number of days in such period.

### **1.10 “Benchmark”**

“Benchmark” means, initially, Adjusted Daily Simple SOFR; provided that if a Benchmark Transition Event has occurred with respect to Adjusted Daily Simple SOFR, or the applicable then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 3.11.

### **1.11 “Benchmark Replacement”**

“Benchmark Replacement” means, with respect to any Benchmark Transition Event for any then-current Benchmark, the sum of: (a) the alternate benchmark rate that has been selected by the Agent and the Borrowers as the replacement for such Benchmark giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for such then-current Benchmark for Dollar-denominated syndicated credit facilities and (b) the related Benchmark Replacement Adjustment; provided that if such Benchmark Replacement as so determined would be less than the Floor, such Benchmark Replacement shall be deemed to be the Floor for the purposes of this Agreement and the other Financing Agreements.

### **1.12 “Benchmark Replacement Adjustment”**

“Benchmark Replacement Adjustment” means, with respect to any replacement of any then-current Benchmark with an Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Agent and the Borrowers giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for U.S. Dollar-denominated syndicated credit facilities at such time.

### 1.13 “Benchmark Replacement Date”

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

(a) in the case of clause (a) or (b) of the definition of “Benchmark Transition Event,” the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide such Benchmark (or such component thereof) or, if such Benchmark is a term rate, all Available Tenors (if applicable) of such Benchmark (or such component thereof); or

(b) in the case of clause (c) of the definition of “Benchmark Transition Event,” the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided, that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if such Benchmark (or such component thereof) or, if such Benchmark is a term rate, any Available Tenor (if applicable) of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, if such Benchmark is a term rate, the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

### 1.14 “Benchmark Transition Event”

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

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

(b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Board of Governors, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such

component) has ceased or will cease to provide such Benchmark (or such component thereof) or, if such Benchmark is a term rate, all Available Tenors (if applicable) of such Benchmark (or such component thereof) permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide such Benchmark (or such component thereof) or, if such Benchmark is a term rate, any Available Tenor (if applicable) of such Benchmark (or such component thereof); or

(c) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such Benchmark (or such component thereof) or, if such Benchmark is a term rate, all Available Tenors (if applicable) of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative.

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

#### **1.15 “Benchmark Transition Start Date”**

“**Benchmark Transition Start Date**” means, in the case of a Benchmark Transition Event, the earlier of (a) the applicable Benchmark Replacement Date and (b) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication).

#### **1.16 “Benchmark Unavailability Period”**

“**Benchmark Unavailability Period**” means, with respect to any then-current Benchmark, the period (if any) (x) beginning at the time that a Benchmark Replacement Date with respect to such Benchmark has occurred if, at such time, no Benchmark Replacement has replaced such Benchmark for all purposes hereunder and under any Financing Agreement in accordance with Section 3.11 and (y) ending at the time that a Benchmark Replacement has replaced such Benchmark for all purposes hereunder and under any Financing Agreement in accordance with Section 3.11.

#### **1.17 “BHC Act Affiliate”**

“**BHC Act Affiliate**” of a Person means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841 (k)) of such Person.

#### **1.18 “BIA”**

“**BIA**” shall mean the *Bankruptcy and Insolvency Act* (Canada).

**1.19 “Blocked Account Agreement”**

“Blocked Account Agreement” shall have the meaning set forth in Section 5.3(a) hereof.

**1.20 “Blocked Accounts”**

“Blocked Accounts” shall have the meaning set forth in Section 5.3(a) hereof.

**1.21 “Board of Directors”**

“Board of Directors” shall mean, as to any Person, the board of directors (or comparable managers) of such Person, or any committee thereof duly authorized to act on behalf of the board of directors (or comparable managers).

**1.22 “Borrowing Base”**

“Borrowing Base” shall have the meaning set forth in Section 2.1(a) hereof.

**1.23 “Borrowing Base Certificate”**

“Borrowing Base Certificate” shall mean the borrowing base certificate, together with the completed exhibits thereto, to be delivered by the Borrowers pursuant to, *inter alia*, Section 6.1, the form of which is attached hereto as Schedule 6.1.

**1.24 “Borrowing Base Weekly Period”**

“Borrowing Base Weekly Period” shall mean the period of time (a) commencing on the date when Total Excess Availability is less than \$1,000,000 as determined by the Agent and (b) lasting until the date when Total Excess Availability is greater than or equal to \$1,000,000 for thirty (30) consecutive calendar days as determined by the Agent and no Default or Event of Default has occurred and is continuing during such thirty (30) consecutive calendar day period.

**1.25 “Business Day”**

“Business Day” shall mean a day (other than a Saturday, Sunday or statutory holiday in Ontario, Illinois, New York or British Columbia) on which the Agent's Toronto office, the Canadian Reference Bank's main Toronto office and banks in Chicago, New York City and Vancouver are open for business in the normal course.

**1.26 “CAML”**

“CAML” means, collectively, the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada), the *Criminal Code* (Canada) and the *United Nations Act* (Canada), including the Regulations Implementing the *United Nations Resolutions on the Suppression of Terrorism* (Canada) and the United Nations Al-Qaida and Taliban Regulations (Canada) promulgated under the *United Nations Act* (Canada), and other applicable anti-money laundering, anti-terrorist financing, government sanction and “know your client” laws applicable in Canada, including any rules, regulations, directives, guidelines or orders thereunder.

**1.27 “Canadian Borrower Intercompany Note”**

“**Canadian Borrower Intercompany Note**” shall mean the unsecured subordinated note, series A due November 12, 2032 dated October 13, 2004 issued by the Canadian Borrower in favour of the Parent (the registered holder of the note) as amended from time to time by the Parent and the Canadian Borrower.

**1.28 “Canadian Borrowing Base”**

“**Canadian Borrowing Base**” shall have the meaning set forth in Section 2.1(a) hereof.

**1.29 “Canadian Capex Term Loan”**

“**Canadian Capex Term Loan**” shall mean any Capex Term Loans denominated in Canadian Dollars or U.S. Dollars made available by the Canadian Lenders to the Canadian Borrower as set forth in Section 2.7(a).

**1.30 “Canadian Dollar Amount”**

“**Canadian Dollar Amount**” shall mean, at any time: (a) as to any amount denominated in Canadian Dollars, the amount thereof at such time; and (b) as to any amount denominated in any other currency, the equivalent amount in Canadian Dollars as determined by the Agent at such time on the basis of the Spot Rate for the purchase of Canadian Dollars with such currency.

**1.31 “Canadian Excess Availability”**

“**Canadian Excess Availability**” shall mean the Canadian Dollar Amount, as determined by the Agent, calculated at any time, equal to: (a) the lesser of: (i) the amount of the Canadian Borrowing Base as of such time as determined by the Agent and (ii) the Maximum Revolving Credit, minus (b) the sum of: (i) the amount of all then outstanding and unpaid Revolving Loans and Letter of Credit Accommodations to or in favour of the Canadian Borrower, plus (ii) the aggregate amount of all due but unpaid tax obligations and trade payables of the Canadian Borrower more than 60 days past due as of such time.

**1.32 “Canadian Pension Plans”**

“**Canadian Pension Plans**” shall mean each of the Canadian pension plans, if any, whether or not registered in accordance with the ITA, which the Borrowers or any Guarantor sponsors, maintains or administers or into which the Borrowers or any Guarantor makes or is obligated to make contributions at any time.

**1.33 “Canadian Prime Rate”**

“**Canadian Prime Rate**” shall mean, at any time, the greater of: (a) the annual interest rate from time to time publicly announced by the Canadian Reference Bank as its prime rate in effect for determining interest rates on Canadian Dollar denominated commercial loans in Canada, whether or not such announced rate is the best rate available at such bank; and (b) the annual rate of interest equal to the sum of: (i) the CDOR Rate at such time; and (ii) ██████ % *per annum*.

**1.34 “Canadian Prime Rate Loans”**

“**Canadian Prime Rate Loans**” shall mean any Loans or portions thereof denominated in Canadian Dollars and on which interest is payable based on the Canadian Prime Rate in accordance with the terms hereof.

**1.35 “Canadian Reference Bank”**

“**Canadian Reference Bank**” shall mean Toronto-Dominion Bank, or its successors and assigns, or such other bank as the Agent may from time to time designate, in its discretion.

**1.36 “Canadian Revolving Loan Commitment”**

“**Canadian Revolving Loan Commitment**” shall mean, as to any Canadian Lender, the aggregate of such Canadian Lender's Canadian Revolving Loan Commitment as set forth next to such Canadian Lender's name on Schedule 1.53 hereto or in the most recent Assignment Agreement executed by such Canadian Lender.

**1.37 “Canadian Revolving Loans”**

“**Canadian Revolving Loans**” shall mean the Canadian Revolving Loans denominated in Canadian Dollars and U.S. Dollars made available by the Canadian Lenders to the Canadian Borrower on a revolving basis (involving advances, repayments and readvances) as set forth in Section 2.1(a).

**1.38 “Capex Term Loan Commitment”**

“**Capex Term Loan Commitment**” shall mean, as to any Lender, the Capex Term Loan Commitment as set forth next to such Lender's name on Schedule 1.53 hereto or in the most recent Assignment Agreement executed by such Lender, which (i) aggregate commitment is \$10,000,000 (or the Equivalent Amount in U.S. Dollars) and (ii) is available by way of Canadian Dollars or U.S. Dollars made available by the Lenders to the Borrowers as set forth in Section 2.5(a).

**1.39 “Capex Term Loan Maximum Limit”**

“**Capex Term Loan Maximum Limit**” shall have the meaning set forth in Section 2.5(a) hereof.

**1.40 “Capex Term Loans”**

“**Capex Term Loans**” shall mean, collectively, the term loans made to the Borrowers pursuant to Section 2.5 hereof.

**1.41 “Capex Term Loan Request”**

“**Capex Term Loan Request**” shall have the meaning set forth in Section 2.5(g)(i) hereof.

**1.42 “Capital Expenditures”**

“**Capital Expenditures**” shall mean all expenditures for, or contracts for expenditures for, any fixed or capital assets or improvements, or for replacements, substitutions or additions thereto, which have a useful life of more than 1 year, including the direct or indirect acquisition of such assets by way of offset items or otherwise and shall include the principal amount of payments under Capital Leases during the applicable period.

**1.43 “Capital Lease”**

“**Capital Lease**” shall mean, as applied to any Person, any lease of (or any agreement conveying the right to use) any assets or property (whether real, personal or mixed) by such Person as lessee which in accordance with IFRS, is required to be reflected as a liability on the balance sheet of such Person.

**1.44 “CCAA”**

“**CCAA**” shall mean the *Companies' Creditors Arrangement Act* (Canada).

**1.45 “CCAA Plan”**

“**CCAA Plan**” shall have the meaning set forth in Section 8.16 hereof.

**1.46 “CDOR Rate”**

“**CDOR Rate**” shall mean, on any day, the average rate *per annum* as reported on the Refinitiv Benchmarks Services (UK) Limited’s CDOR Page (or any successor page or such other page or commercially available service displaying Canadian interbank bid rates for Canadian Dollar bankers’ acceptances as the Agent may designate from time to time, or if no such substitute service is available, the rate quoted by a Schedule I bank under the *Bank Act* (Canada) selected by the Agent at which such bank is offering to purchase Canadian Dollar bankers’ acceptances) as of 10:00 a.m. Eastern (Toronto) time such day for a term of 90 days (and, if any such reported rate is below zero, then the rate determined shall be deemed to be zero). Any change in the CDOR Rate shall be effective from and including the effective date of such change in the CDOR Rate without notice to any Borrower. Each determination of the CDOR Rate shall be made by the Agent and shall be conclusive in the absence of manifest error.

**1.47 “CDOR Rate Loans”**

“**CDOR Rate Loans**” shall mean any Loans or portions thereof denominated in Canadian Dollars and on which interest is payable based on the CDOR Rate in accordance with the terms hereof.

**1.48 “Change in Law”**

“**Change in Law**” means the occurrence after the Closing Date of: (a) the adoption or effectiveness of any law, rule, regulation, judicial ruling, judgment or treaty, (b) any change in any law, rule, regulation, judicial ruling, judgment or treaty or in the administration,

interpretation, implementation or application by any Governmental Authority of any law, rule, regulation, guideline or treaty, (c) any new, or adjustment to, requirements prescribed by the Board of Governors for “Eurocurrency Liabilities” (as defined in Regulation D of the Board of Governors), requirements imposed by the Federal Deposit Insurance Corporation, or similar requirements imposed by any domestic or foreign Governmental Authority or resulting from compliance by Lender with any request or directive (whether or not having the force of law) from any central bank or other Governmental Authority and related in any manner to Adjusted Daily Simple SOFR or SOFR, or (d) the making or issuance by any Governmental Authority of any request, rule, guideline or directive, whether or not having the force of law; provided, that notwithstanding anything in this Agreement to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith, and (ii) all requests, rules, guidelines or directives concerning capital adequacy 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 shall, in each case, be deemed to be a “Change in Law,” regardless of the date enacted, adopted or issued.

#### **1.49 “Change of Control”**

“**Change of Control**” means that:

(a) any Person or two or more Persons acting in concert, other than any Significant Shareholder, shall have acquired beneficial ownership, directly or indirectly, of equity interests of Parent (or other securities convertible into such equity interests) representing 50% or more of the combined voting power of all equity interests of Parent entitled (without regard to the occurrence of any contingency) to vote for the election of members of the Board of Directors of Parent;

(b) any Person or two or more Persons acting in concert, other than any Significant Shareholder, shall have acquired by contract or otherwise, or shall have entered into a contract or arrangement that, upon consummation thereof, will result in its or their acquisition of the power to exercise, directly or indirectly, a controlling influence over the management or policies of Parent or control over the equity interests of Parent entitled to vote for members of the Board of Directors of Parent on a fully-diluted basis (and taking into account all such equity interests that such Person or group has the right to acquire pursuant to any option right) representing 50% or more of the combined voting power of such equity interests;

(c) during any period of 24 consecutive months commencing on or after the Closing Date, the occurrence of a change in the composition of the Board of Directors of Parent such that a majority of the members of such Board of Directors are not Continuing Directors; or

(d) Parent fails to own and control, directly or indirectly, 100% of the equity interests of Canadian Borrower, Holdco USA and U.S. Borrower.

**1.50 “Closing Date”**

“Closing Date” shall mean the date on which the Agent sends the Borrowers a written notice that each of the conditions precedent in Section 4.1 to this Agreement either have been satisfied or have been waived.

**1.51 “Code”**

“Code” shall mean the United States Internal Revenue Code of 1986, as amended from time to time, and the rules and regulations promulgated thereunder from time to time.

**1.52 “Collateral”**

“Collateral” shall mean, collectively, all of the undertaking, property and assets, real or personal, tangible or intangible, now existing or hereafter acquired by any Borrower and/or any Guarantor, that may at any time be or become subject to an Encumbrance in favour of the Agent to secure any or all of the Obligations.

**1.53 “Commitments”**

“Commitment” shall mean

- (a) as to any Lender, the aggregate of such Lender's Canadian Revolving Loan Commitment, U.S. Revolving Loan Commitment and Capex Term Loan Commitment as set forth next to such Lender's name on Schedule 1.53 hereto or in the most recent Assignment Agreement executed by such Lender; and
- (b) as to all Lenders, the aggregate of all Lenders' Canadian Revolving Loan Commitment, U.S. Revolving Loan Commitment and Capex Term Loan Commitment, which aggregate commitment is \$35,000,000 (or the Equivalent Amount in U.S. Dollars) and the aggregate of the Canadian Revolving Loan Commitment and the U.S. Revolving Loan Commitment is \$25,000,000 (or the Equivalent Amount in U.S. Dollars).

**1.54 “Compliance Certificate”**

“Compliance Certificate” shall mean the compliance certificate to be delivered by the Borrowers pursuant to Section 8.6(f), the form of which is attached hereto as Schedule 8.6(f).

**1.55 “Conforming Changes”**

“Conforming Changes” means, with respect to either the use or administration of an initial Benchmark or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Business Day,” the definition of “U.S. Government Securities Business Day,” the definition of “interest period” or any similar or analogous definition (or the addition of a concept of “interest period”), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of Section 3.6(a) and other technical,

administrative or operational matters) that the Agent decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Agent in a manner substantially consistent with market practice (or, if the Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Financing Agreements).

**1.56 “Continuing Directors”**

“**Continuing Director**” means (a) any member of the Board of Directors who was a director (or comparable manager) of Parent on the Closing Date, and (b) any individual who becomes a member of the Board of Directors after the Closing Date if such individual was approved, appointed or nominated for election to the Board of Directors by a majority of the Continuing Directors.

**1.57 “Covered Entity”**

“**Covered Entity**” means any of the following: (a) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (b) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (c) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

**1.58 “Daily Simple SOFR Loan”**

“**Daily Simple SOFR Loan**” shall mean any Loans or portions thereof denominated in U.S. Dollars and on which interest is payable based on Adjusted Daily Simple SOFR in accordance with the terms hereof.

**1.59 “Dilution”**

“**Dilution**” shall mean, as of any date of determination, for any period, a percentage, based upon the most recent month end analysis performed by the Agent or field examination/audit of the Collateral conducted by the Agent's examiners, that is the result of dividing the amount of the Borrowers' (a) bad debt write-downs, discounts, advertising allowances, credits, or other dilutive items (including any accrued volume rebates, without duplication of the amount of such rebates addressed in the definition of “Eligible Accounts”), determined, without duplication, with respect to their Accounts during such period, by (b) their billings with respect to Accounts during such period.

**1.60 “Default”**

“**Default**” shall mean an event, circumstance or omission which, with any of the giving of notice, a lapse of time or a failure to remedy the event, circumstance or omission within a lapse of time, would constitute an Event of Default.

### **1.61 “Default Right”**

“Default Right” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

### **1.62 “EBITDA”**

“EBITDA” shall mean, as to the Parent, with respect to any period, an amount equal to the net income of the Parent on a consolidated basis for such period determined in accordance with IFRS, plus or minus, to the extent deducted or added in determining such net income for such period, without duplication:

- (a) depreciation, amortization, goodwill impairment loss, gain or loss on sale of fixed assets and non-cash unit or stock based compensation and all other non-cash charges that affect non-working capital items;
- (b) interest expenses;
- (c) restructuring and other one-time charges as disclosed on the unaudited quarterly financial statements and the annual audited financial statements each delivered hereunder to the extent agreed in advance in writing by the Agent;
- (d) the provision for income taxes for such period;
- (e) extraordinary gains or losses; and
- (f) unrealized foreign exchange gains or losses.

### **1.63 “Eligible Accounts”**

“Eligible Accounts” shall mean Accounts created by the Borrowers which are and continue to be acceptable to the Agent based on the criteria set forth below. In general, Accounts shall be Eligible Accounts if:

- (a) such Accounts arise from the actual and *bona fide* sale and delivery of goods by the Borrowers or rendition of services by the Borrowers in the ordinary course of their respective business which transactions are completed in accordance with the terms and provisions contained in any documents related thereto;
- (b) such Accounts are not unpaid more than 90 days after the date of the original invoice for them;
- (c) such Accounts comply with the terms and conditions contained in Section 6.2(c) hereof;
- (d) such Accounts do not arise from sales on consignment, guaranteed sale, sale and return, sale on approval, or other terms under which payment by the account debtor may be conditional or contingent;

(e) the chief executive office of the account debtor with respect to such Accounts is located in Canada or in the United States of America or, if the chief executive office or the account debtor is not located in Canada or in the United States of America, the Account is payable in Canadian Dollars or U.S. Dollars and, at the Agent's option, if either: (i) the account debtor has delivered to the Borrowers an irrevocable letter of credit issued or confirmed by a bank satisfactory to the Agent and payable only in Canada or in the United States of America in the currency in which the Account is denominated, sufficient to cover such Account, in form and substance satisfactory to the Agent and, if required by the Agent, the original of such letter of credit has been delivered to the Agent or the Agent's agent and the issuer thereof has been notified of the assignment of the proceeds of such letter of credit to the Agent; or (ii) such Account is fully insured under credit insurance payable to the Agent issued by an insurer and on terms and in an amount acceptable to the Agent; or (iii) such Account and the location of the chief executive office of the account debtor and the account debtor (if not located in Canada or the United States of America) is located in a country, in each case, acceptable in all respects to the Agent (subject to such lending formula with respect thereto as the Agent may determine);

(f) such Accounts do not consist of progress billings, bill and hold invoices or retainage invoices, except as to bill and hold invoices, if the Agent shall have received an agreement in writing from the account debtor, in form and substance satisfactory to the Agent, confirming the unconditional obligation of the account debtor to take the goods related thereto and pay such invoice;

(g) the account debtor with respect to such Accounts has not asserted a counterclaim, defense or dispute and does not have, and does not engage in transactions which may give rise to, any right of set-off against such Accounts (but the portion of the Accounts of such account debtor in excess of the amount at any time and from time to time owed by the Borrowers to such account debtor or claimed owed by such account debtor may be deemed Eligible Accounts);

(h) there are no facts, events or occurrences which would impair the validity, enforceability or collectability of such Accounts or reduce the amount payable or delay payment thereunder;

(i) such Accounts are subject to the first priority, valid and perfected security interest of the Agent and any goods giving rise thereto are not, and were not at the time of the sale thereof, subject to any Encumbrances except those permitted in this Agreement;

(j) neither the account debtor nor any officer or employee of the account debtor with respect to such Accounts is an Affiliate;

(k) the account debtors with respect to such Accounts are not any foreign government, the federal government of Canada, any Province, political subdivision, department, agency or instrumentality thereof unless, upon the Agent's request, the *Financial Administration Act* (Canada) or any similar provincial or local law, if applicable, has been complied with in a manner satisfactory to the Agent;

(l) there are no proceedings or actions which are threatened or pending against the account debtors with respect to such Accounts which might result in any material adverse change in any such account debtor's financial condition;

(m) such Accounts of a single account debtor or its Affiliates do not constitute more than 20% of all otherwise Eligible Accounts (but the portion of the Accounts not in excess of such percentage may be deemed Eligible Accounts);

(n) such Accounts are not owed by an account debtor who has Accounts unpaid more than 90 days after the date of the original invoice for them which constitute more than 50% of the total Accounts of such account debtor;

(o) such Accounts are not subject to any rebates to the account debtors (but the portion of the Accounts remaining unimpaired after reserving for all potentially applicable rebates may be deemed Eligible Accounts);

(p) such Accounts are not subject to any price protection or other terms, statutory or otherwise, under which payment by the account debtor may be reduced;

(q) such Accounts are owed by account debtors whose total indebtedness to the Borrowers does not exceed the credit limit with respect to such account debtors as determined by the Agent from time to time (but the portion of the Accounts not in excess of such credit limit may be deemed Eligible Accounts); and

(r) such Accounts are owed by account debtors deemed credit-worthy at all times by the Agent, as determined by the Agent.

General criteria for Eligible Accounts may be established and revised from time to time by the Agent. Any Accounts which are not Eligible Accounts shall nevertheless be part of the Collateral.

#### **1.64 “Eligible Inventory”**

“**Eligible Inventory**” shall mean Inventory consisting of inventory available for resale in the ordinary course of the business of the Borrowers. In general, Eligible Inventory shall not include: (a) components which are not part of finished goods; (b) spare parts for equipment; (c) packaging and shipping materials; (d) supplies used or consumed in the Borrowers' business; (e) Inventory at premises which are not owned and controlled by the Borrowers, except if the Agent shall have received an agreement (each, a “**Landlord Agreement**”) in writing from the person in possession of such Inventory and/or the owner or operator of such premises in form and substance satisfactory to the Agent acknowledging the Agent's first priority security interest and lien in the Inventory, waiving Encumbrances by such person against the Inventory and permitting the Agent access to, and the right to remain on, the premises so as to exercise the Agent's rights and remedies and otherwise deal with the Collateral; (f) Inventory subject to an Encumbrance in favour of any person other than the Agent except those permitted in this Agreement; (g) bill and hold goods; (h) unserviceable, obsolete, expired or Slow Moving Inventory; (i) Inventory which is not subject to the first priority, valid and perfected security interest and lien in favour of the Agent; (j) returned, damaged and/or defective Inventory; (k) Inventory purchased, accepted or sold on consignment or approval; and (l) Inventory located outside of Canada or the U.S. General criteria for Eligible Inventory may be established and revised from time to time by the Agent. Any Inventory which is not Eligible Inventory shall nevertheless be part of the Collateral.

### **1.65 “Eligible Equipment”**

“**Eligible Equipment**” shall mean any Equipment of a Borrower purchased after the Closing Date and that meets the criteria set forth below. In general, Eligible Equipment shall not include (a) fixtures; (b) any Equipment not in good operating condition; (c) Equipment that is surplus to the business of the Borrowers; (d) Equipment that is obsolete, worn-out or unserviceable; (e) Equipment that is leased or subject to any Encumbrance in favour of any Person other than the Agent except those permitted in this Agreement; (f) Equipment which is not subject to the first priority, valid and perfected security interest of the Agent; (g) Equipment at premises which are not owned and controlled by the Borrowers, except if the Agent shall have received a Landlord Agreement; (h) Equipment located outside of Canada or the U.S.; (i) Equipment whereby its use or operation requires proprietary software that is not freely assignable to the Agent; (j) Equipment that does not meet, in all material respects, all applicable safety or regulatory requirements applicable to it by applicable law for the use for which it is intended or for which it is being used; (k) Equipment that does not meet, in all material respects, all applicable requirements of all motor vehicle laws or other applicable statutes and regulations established by any Governmental Authority then applicable to such Equipment, or is subject to any licensing or similar requirement; and (l) Equipment that it is computer hardware. General criteria for Eligible Equipment may be established and revised from time to time by the Agent. Any Equipment which is not Eligible Equipment shall nevertheless be part of the Collateral.

### **1.66 “Eligible Transferee”**

“**Eligible Transferee**” shall mean:

- (a) any Lender;
- (b) the parent company of any Lender and/or any Affiliate of such Lender;
- (c) any Person that is engaged in the business of making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business and is administered or managed by a Lender or with respect to any Lender that is a fund which invests in commercial loans and similar extensions of credit, any other fund that invests in commercial loans and similar extensions of credit and is managed by the same investment advisor as such Lender or by an Affiliate of such investment advisor; and
- (d) any other commercial bank, financial institution or “accredited investor” (as defined under Ontario Securities Commission Rule 45-106) approved by the Agent and, unless an Event of Default has occurred and is continuing, the Borrowers (each such approval not to be unreasonably withheld or delayed),

provided, however, that,

- (i) no Borrower or Guarantor nor any Affiliate of a Borrower or Guarantor;
- (ii) nor any Person to whom any indebtedness (other than the Obligations) is owed by any Borrower or any Guarantor;

(iii) nor any natural person;

(iv) nor any Person that is a competitor of the Borrowers or Guarantors,

in each case of the foregoing clauses (i), (ii) and (iii), and (iv), shall qualify as an Eligible Transferee (each, a “**Prohibited Transferee**”).

#### **1.67 “Encumbrances”**

“**Encumbrances**” means any security interest, mortgage, pledge, hypothec, hypothecation, assignment, similar deposit arrangement, encumbrance, lien (statutory or otherwise), charge against or right of preference or priority in respect of, or similar interest in, property of any kind which secures payment of a debt or performance of an obligation (including the interest of a vendor or lessor under any conditional sale agreement, or of a lessor under any capital lease or other title retention agreement but excluding, for greater certainty, operating leases).

#### **1.68 “Environmental Laws”**

“**Environmental Laws**” shall mean, with respect to any Person, all federal (United States of America and Canada), state, provincial, district, local, municipal and foreign laws, statutes, rules, regulations, ordinances, orders, directives, permits, licenses and consent decrees relating to health, safety, hazardous, dangerous or toxic substances, waste or material, pollution and environmental matters, as now or at any time hereafter in effect, applicable to such Person and/or its business and facilities (whether or not owned by it), including laws relating to emissions, discharges, releases or threatened releases of pollutants, contamination, chemicals, or hazardous, toxic or dangerous substances, materials or wastes into the environment (including ambient air, surface water, ground water, land surface or subsurface strata) or otherwise relating to the generation, manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, chemicals, or hazardous, toxic or dangerous substances, materials or wastes.

#### **1.69 “Equipment”**

“**Equipment**” shall mean all of the Borrowers' now owned and hereafter acquired equipment, machinery, vehicles, tools, furniture, fixtures, all attachments, accessions and property now or hereafter affixed thereto or used in connection therewith, and substitutions and replacements thereof, wherever located.

#### **1.70 “Equivalent Amount”**

“**Equivalent Amount**” in one currency on any day shall mean the amount of that currency into which a specified amount of another currency can be converted at the Spot Rate (or if such rate is not available, such other rate as the Agent may determine).

#### **1.71 “ERISA”**

“**ERISA**” shall mean the *Employee Retirement Income Security Act of 1974*, together with all rules, regulations and interpretations promulgated thereunder or related thereto.

**1.72 “ERISA Affiliate”**

“ERISA Affiliate” shall mean any person required to be aggregated with any Borrower, Guarantor or any of its Subsidiaries under Sections 414(b), 414(c), 414(m) or 414(o) of the Code.

**1.73 “ERISA Event”**

“ERISA Event” shall mean:

(a) any “reportable event” as defined in Section 4043(c) of ERISA or the regulations issued thereunder, with respect to a U.S. Pension Plan, other than events as to which the requirement of notice has been waived in regulations by the Pension Benefit Guaranty Corporation;

(b) the adoption of any amendment to a U.S. Pension Plan that would require the provision of security pursuant to Section 401(a)(29) of the Code or Section 307 of ERISA;

(c) within the last six (6) years, a complete or partial withdrawal by any Borrower or any ERISA Affiliate from a Multiemployer Plan or a cessation of operations which is treated as such a withdrawal or notification that a Multiemployer Plan is in reorganization;

(d) the filing of a notice of intent to terminate a U.S. Pension Plan under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the Pension Benefit Guaranty Corporation to terminate a U.S. Pension Plan;

(e) an event or condition which would reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan;

(f) the imposition of any liability under Title IV of ERISA with respect to a U.S. Pension Plan, other than the Pension Benefit Guaranty Corporation premiums due but not delinquent under Section 4007 of ERISA, upon any Borrower, Guarantor or any ERISA Affiliate in excess of \$1,000,000; and

(g) any other event or condition with respect to any U.S. Pension Plan subject to Title IV of ERISA maintained, or contributed to, by any ERISA Affiliate that could reasonably be expected to result in liability of any Borrower or Guarantor in excess of \$1,000,000.

**1.74 “Event of Default”**

“Event of Default” shall mean the occurrence or existence of any event or condition described in Section 9.1 hereof.

**1.75 “Federal Funds Rate”**

“Federal Funds Rate” means, the rate *per annum* (rounded upwards, if necessary, to the next higher 1/1000<sup>th</sup> of 1%) representing the daily effective federal funds rate as quoted by the Agent and confirmed in Federal Reserve Board Statistical Release H.15 (519) or any successor or

substitute publication selected by the Agent. If, for any reason, such rate is not available, then “**Federal Funds Rate**” shall mean a daily rate which is determined, in the reasonable opinion of the Agent, to be the rate at which federal funds are being offered for sale in the national federal funds market at 9:00 a.m. New York time. Rates for weekends or holidays shall be the same as the rate for the most immediately preceding Business Day.

**1.76 “Financing Agreements”**

“**Financing Agreements**” shall mean, collectively, this Agreement, and all notes, guarantees, security agreements and other agreements, documents, certificates, instruments, registrations and securities previously, now or at any time hereafter executed and/or delivered by any Borrower or any Guarantor in connection with the Original Credit Agreement, the Amended and Restated Credit Agreement, the Second Amended and Restated Credit Agreement and this Agreement excluding any Swap Agreement, as the same now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

**1.77 “Fiscal Quarter”**

“**Fiscal Quarter**” shall mean any of the following 3 month periods in any fiscal year of the Parent: January 1 to March 31 (1<sup>st</sup> Fiscal Quarter), April 1 to June 30 (2<sup>nd</sup> Fiscal Quarter), July 1 to September 30 (3<sup>rd</sup> Fiscal Quarter) and October 1 to December 31 (4<sup>th</sup> Fiscal Quarter).

**1.78 “Fixed Charge Coverage Ratio”**

“**Fixed Charge Coverage Ratio**” shall mean, with respect to the Parent and its Subsidiaries on a consolidated basis for any period, the ratio of (a) EBITDA to (b) Fixed Charges.

**1.79 “Fixed Charges”**

“**Fixed Charges**” shall mean, with respect to the Parent and its Subsidiaries on a consolidated basis for any period, (a) the aggregate of all Interest Expense payable in cash for such period, plus (b) scheduled principal payments, plus (c) Capital Lease payments, plus (d) the amount of Capital Expenditures, determined in accordance with IFRS, to the extent applicable, made during such period and not funded with new term debt or Capital Leases, plus (e) cash dividends and distributions, plus (f) current taxes paid or payable.

**1.80 “Floor”**

“**Floor**” means a rate of interest equal to ████%.

**1.81 “Funding Bank”**

“**Funding Bank**” shall have the meaning set forth in Section 3.5(a) hereof.

**1.82 “Funding Losses”**

“**Funding Losses**” shall have the meaning set forth in Section 3.10(a) hereof.

**1.83 “Governmental Authority”**

“**Governmental Authority**” shall mean any government, parliament, legislature, municipal or local government, or any regulatory authority, agency, commission or board of any government, parliament, legislature, municipal or local government or any court or (without limitation to the foregoing) any other law, regulation or rule-making entity (including any central bank, fiscal or monetary authority regulating banks), having or purporting to have jurisdiction in the relevant circumstances, or any Person acting or purporting to act under the authority of any of the foregoing (including any arbitrator).

**1.84 “Guarantors”**

“**Guarantors**” shall mean collectively the Parent and Holdco USA and any guarantor, endorser, acceptor, surety or other person liable on or with respect to the Obligations or who is the owner of any property which is security for the Obligations, other than the Borrowers.

**1.85 “Hard Costs”**

“**Hard Costs**” shall mean, with respect to the acquisition by any Borrower of an item of Eligible Equipment, the net cash amount actually paid to acquire title to such item, net of all incentives, trade in allowances, discounts and rebates, and exclusive of freight, delivery charges, installation costs and charges, software costs, charges and fees, warranty costs, taxes, insurance and other incidental costs or expenses and all indirect costs or expenses of any kind.

**1.86 “Hazardous Materials”**

“**Hazardous Materials**” shall mean any hazardous, toxic or dangerous substances, materials and wastes, including hydrocarbons (including naturally occurring or man-made petroleum and hydrocarbons), flammable explosives, asbestos, urea formaldehyde insulation, radioactive materials, biological substances, polychlorinated biphenyls, pesticides, herbicides and any other kind and/or type of pollutants or contaminants (including materials which include hazardous constituents), sewage, sludge, industrial slag, solvents and/or any other similar substances, materials, or wastes and including any other substances, materials or wastes that are or become regulated under any Environmental Law (including any that are or become classified as hazardous or toxic under any Environmental Law).

**1.87 “Holdco USA”**

“**Holdco USA**” shall have the meaning set forth in the recitals hereto.

**1.88 “IFRS”**

“**IFRS**” shall mean International Financial Reporting Standards in effect from time to time, as adopted by the Canadian Accounting Standards Board of the Canadian Institute of Chartered Accountants (or any successor institute).

**1.89 “Information Certificates”**

“**Information Certificates**” shall mean, collectively, the Information Certificates of the Borrowers and the Guarantors constituting Exhibit A hereto containing material information with respect to the Borrowers and the Guarantors and their respective businesses and assets provided by or on behalf of the Borrowers and the Guarantors to the Agent and the Lenders in connection with the preparation of this Agreement and the other Financing Agreements and the financing arrangements provided for herein.

**1.90 “Intellectual Property”**

“**Intellectual Property**” shall mean the Borrowers' and the Guarantors' now owned and hereafter arising or acquired: patents, patent rights, patent applications, copyrights, works which are the subject matter of copyrights, copyright applications, copyright registrations, trademarks, trade names, trade styles, trademark and service mark applications, and licenses and rights to use any of the foregoing; all extensions, renewals, reissues, divisions, continuations, and continuations-in-part of any of the foregoing; all rights to sue for past, present and future infringement, if any, of the foregoing; all rights to inventories, trade secrets, formulae, processes, compounds, drawings, designs, blueprints, surveys, reports, manuals, and operating standards; goodwill (including goodwill associated with any trademark or the license of any trademark); customer and other lists in whatever form maintained; trade secret rights, copyright rights, rights in works of authorship, domain names and domain name registration and software and contract rights relating to computer software programs, in whatever form created or maintained.

**1.91 “Intercompany Indebtedness”**

“**Intercompany Indebtedness**” shall mean the intercompany indebtedness evidenced by the promissory notes and agreements described on Schedule 8.9 hereto and such other intercompany indebtedness between the Borrowers and the Guarantors entered into after the date hereof and evidenced by promissory notes which have been assigned to the Agent as first ranking security for the Obligations.

**1.92 “Interest Expense”**

“**Interest Expense**” shall mean, with respect to the Parent and its Subsidiaries on a consolidated basis for any period, interest expense (whether cash or non-cash) determined in accordance with IFRS, to the extent applicable, for such period.

**1.93 “Interest Rate”**

“**Interest Rate**” shall mean:

- (a) as to Canadian Revolving Loans: a rate equal to the CDOR Rate *plus* [REDACTED] % *per annum* for Canadian Revolving Loans denominated in Canadian Dollars, and a rate equal to Adjusted Daily Simple SOFR *plus* [REDACTED] % *per annum* for Canadian Revolving Loans denominated in U.S. Dollars;

(b) as to U.S. Revolving Loans: a rate equal to Adjusted Daily Simple SOFR *plus* █ % *per annum*;

(c) as to Capex Term Loans advanced in Canadian Dollars: a rate of equal to the CDOR Rate *plus* █ % *per annum*; and

(d) as to Capex Term Loans advanced in U.S. Dollars: a rate equal to Adjusted Daily Simple SOFR *plus* █ % *per annum*;

provided, that, the Interest Rate shall mean, upon written election by the Required Lenders, the rate of █ % *per annum* in excess of the applicable Interest Rate described above:

(x) on non-contingent Obligations: (i) for the period on and after the date of termination hereof until such time as the Agent has received full, final and indefeasible payment of all the Obligations; and (ii) for the period from and after the date of the occurrence of a Default or an Event of Default so long as such Default or Event of Default is continuing as determined by the Agent (notwithstanding entry of any judgment against the Borrowers); and

(y) on the Loans at any time outstanding in excess of the amounts available to the Borrowers under Article 2 (whether or not such excess(es) arise or are made with or without the Agent's knowledge or consent and whether made before or after a Default or an Event of Default).

#### **1.94 “Inventory”**

“**Inventory**” shall mean all of the Borrowers' now owned and hereafter existing or acquired raw materials, work in process, finished goods and all other inventory of whatsoever kind or nature, wherever located.

#### **1.95 “ITA”**

“**ITA**” shall mean the *Income Tax Act* (Canada).

#### **1.96 “Landlord Agreement”**

“**Landlord Agreement**” shall have the meaning set forth in the definition of Eligible Inventory.

#### **1.97 “Letter of Credit Accommodations”**

“**Letter of Credit Accommodations**” shall mean the letters of credit, merchandise purchase or other guarantees denominated in Canadian Dollars or U.S. Dollars which are from time to time either: (a) issued or opened by the Agent or a Lender for the account of the Borrowers; or (b) with respect to which the Agent or a Lender has agreed to indemnify the issuer or guaranteed to the issuer the performance by the Borrowers of its obligations to such issuer or repayment of any amounts drawn under or associated with such letter of credit, merchandise purchase or guarantee.

**1.98 “License Agreements”**

“License Agreements” shall have the meaning set forth in Section 7.12 hereof.

**1.99 “Loans”**

“Loans” shall mean the Revolving Loans and Capex Term Loans.

**1.100 “Margin Stock”**

“Margin Stock” as defined in Regulation U of the Board of Governors of the Federal Reserve System as in effect from time to time.

**1.101 “Mark to Market Exposure”**

“Mark to Market Exposure” in connection with a Borrower's liability under any of its Swap Agreements or other swap, hedge or similar agreement means, as at the Measurement Date, the “Early Termination Amount” that would be payable by such Borrower under such Swap Agreement or other swap, hedge or similar agreement as though such day was an “Early Termination Date” and the “Transaction” was a “Terminated Transaction” in accordance with the payment measures provided for in Section 6(e)(i) of the 2002 ISDA Master Agreement as published by International Swap Dealers Association, Inc. as amended or replaced from time to time. For the purposes of this Agreement, such liability shall be expressed in the U.S. Dollar Amount as at the end of any such month. Furthermore, the amount of such liability shall be established by the Lender or the Agent party to the Swap Agreements (or the Agent with respect to other swap, hedge or similar agreements) in good faith after consultation with the relevant counterparties who themselves shall determine same in accordance with the aforementioned payment measures.

**1.102 “Material Adverse Effect”**

“Material Adverse Effect” shall mean (a) a material adverse effect on (i) the business, condition (financial or otherwise), operations, performance, properties or prospects of the Borrowers and Guarantors, (ii) the rights and remedies of the Agent or any Lender under any Financing Agreement or (iii) the ability of any Borrower or Guarantor to perform its obligation under any Financing Agreements to which it is party or (b) an event that could reasonably be expected to result in liability of the Borrowers or the Guarantors in an aggregate amount in excess of \$1,000,000.

**1.103 “Maturity Date”**

“Maturity Date” shall mean the earlier of (a) demand for payment under Section 9.2 hereof and (b) July 1, 2026.

**1.104 “Maximum Credit”**

“Maximum Credit” shall mean the amount of \$35,000,000 or the Equivalent Amount in U.S. Dollars.

**1.105 “Maximum Revolving Credit”**

“Maximum Revolving Credit” shall mean \$25,000,000 or the Equivalent Amount in U.S. Dollars.

**1.106 “Measurement Date”**

“Measurement Date” shall mean, as of any date, the last Business Day of the prior calendar month or such other date as the Agent may determine upon providing written notice to Borrower.

**1.107 “Multiemployer Plan”**

“Multiemployer Plan” shall mean a “multi-employer plan” as defined in Section 4001(a)(3) of ERISA which is or was at any time during the current year or the immediately preceding six (6) years contributed to by a Borrower, a Guarantor, or any ERISA Affiliate or with respect to which a Borrower, a Guarantor or any ERISA Affiliate may incur any liability.

**1.108 “Net Amount of Eligible Accounts”**

“Net Amount of Eligible Accounts” shall mean the gross Canadian Dollar Amount of Eligible Accounts less: (a) sales, excise or similar taxes included in the amount thereof; and (b) returns, charge backs, discounts, claims, credits and allowances of any nature at any time issued, owing, granted, outstanding, available or claimed with respect to such Eligible Accounts; provided, that, the amounts deducted under clause (a) shall not duplicate items for which Availability Reserves have been established by the Agent.

**1.109 “Net Orderly Liquidation Value”**

“Net Orderly Liquidation Value” shall mean the Canadian Dollar Amount or the U.S. Dollar Amount, as applicable, to be realized from any orderly liquidation of Inventory net of the amount of deductions for all commissions, taxes, and other liquidation costs, as evidenced by an appraisal of such Inventory conducted, at the cost of the Borrowers, by such appraiser acceptable to the Agent, such appraisal to be in form, scope and methodology acceptable to the Agent and addressed to the Agent or upon which the Agent is permitted to rely.

**1.110 “Obligations”**

“Obligations” shall mean any and all Loans, Letter of Credit Accommodations and all other obligations, liabilities and indebtedness of every kind, nature and description owing by the Borrowers to the Agent, the Lenders and/or their respective Affiliates, including principal, interest, charges, fees, costs and expenses, however evidenced, whether as principal, surety, endorser, guarantor or otherwise, whether arising under this Agreement, the other Financing Agreements, any Swap Agreements, applicable laws and/or otherwise, whether now existing or hereafter arising, whether arising before, during or after the initial or any renewal term of this Agreement or after the commencement of any proceeding with respect to the Borrowers or any Guarantor under the BIA, the CCAA, or any similar statute in any jurisdiction (including the payment of interest and other amounts which would accrue and become due but for the commencement of such proceeding, whether or not such amounts are allowed or allowable in

whole or in part in such proceeding), whether direct or indirect, absolute or contingent, joint or several, due or not due, primary or secondary, liquidated or unliquidated, secured or unsecured, and however acquired by the Agent, the Lenders and/or their respective Affiliates.

**1.111 “OFAC”**

“OFAC” means The Office of Foreign Assets Control of the U.S. Department of the Treasury.

**1.112 “Parent”**

“Parent” shall have the meaning set forth in the recitals hereto.

**1.113 “Patriot Act”**

“Patriot Act” means the *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act of 2001*, as amended).

**1.114 “Payment Accounts”**

“Payment Account” shall have the meaning set forth in Section 5.3(a) hereof.

**1.115 “Person” or “person”**

“Person” or “person” shall mean any individual, sole proprietorship, partnership, limited partnership, corporation, limited liability company, business trust, unincorporated association, joint stock corporation, trust, joint venture or other entity or any government or any agency or instrumentality or political subdivision thereof.

**1.116 “Plan”**

“Plan” shall mean an employee benefit plan (as defined in Section 3(3) of ERISA) which a Borrower or a Guarantor sponsors, maintains, or to which it makes, is making, or is obligated to make contributions or, in the case of a Multiemployer Plan, has made contributions at any time during the immediately preceding six (6) plan years or with respect to which a Borrower or a Guarantor may incur liability. For greater certainty, “Plan” does not include a Canadian Pension Plan.

**1.117 “PPSA”**

“PPSA” shall mean the *Personal Property Security Act* (Ontario); provided, that, if the attachment, perfection or priority of Lender's security in respect of any Collateral is governed by the laws of any jurisdiction other than Ontario, PPSA shall mean those other laws for the purposes hereof relating to attachment, perfection or priority.

**1.118 “Priority Payables Reserve”**

“Priority Payables Reserve” shall mean, at any time, the full amount, without duplication, of the obligations, liabilities and indebtedness at such time which have a trust or statutory lien imposed to provide for payment or Encumbrances ranking or capable of ranking senior to or *pari*

*passu* with Encumbrances securing the Obligations on any of the Collateral under federal, provincial, state, county, municipal, or local law including claims for unremitted and accelerated rents, taxes, the claims of a clerk, servant, travelling salesperson, labourer or worker who is owed wages, salaries, commissions, disbursements, or compensation by the Borrowers (but only to the extent that the claims of such parties may rank or be capable of ranking senior to or *pari passu* with Encumbrances securing the Obligations on any of the Collateral pursuant to Section 81.3 or 81.4 of the BIA), vacation pay, workers' compensation obligations, government royalties, pension fund obligations or claims under the Wage Earner Protection Program Act (including amounts ranking or capable of ranking senior to or *pari passu* with Encumbrances securing the Obligations on any of the Collateral pursuant to Section 81.5 or Section 81.6 of the BIA), together with the aggregate value, determined in accordance with IFRS, of all Eligible Inventory which the Agent considers may be or may become subject to a right of a supplier to recover possession thereof under any federal, provincial, state, county, municipal, or local law, where such supplier's right may have priority over Encumbrances securing the Obligations including Eligible Inventory subject to a right of a supplier to repossess goods pursuant to Section 81.1 of the BIA.

#### **1.119 “Pro Rata Share”**

“**Pro Rata Share**” shall mean with respect to all matters relating to any Lender:

- (a) with respect to the Canadian Revolving Loans, the percentage obtained by dividing (i) the Canadian Revolving Loan Commitment of that Canadian Lender by (ii) the aggregate Canadian Revolving Loan Commitments of all Canadian Lenders;
- (b) with respect to the U.S. Revolving Loans, the percentage obtained by dividing (i) the U.S. Revolving Loan Commitment of that U.S. Lender by (ii) the aggregate U.S. Revolving Loan Commitments of all U.S. Lenders;
- (c) with respect to all Canadian Revolving Loans on and after the Maturity Date, the percentage obtained by dividing (i) the outstanding principal balance of the Canadian Revolving Loans held by that Canadian Lender by (ii) the outstanding principal balance of the Canadian Revolving Loans held by all Canadian Lenders;
- (d) with respect to all U.S. Revolving Loans on and after the Maturity Date, the percentage obtained by dividing (i) the outstanding principal balance of the U.S. Revolving Loans held by that U.S. Lender by (ii) the outstanding principal balance of the U.S. Revolving Loans held by all U.S. Lenders;
- (e) with respect to the Canadian Capex Term Loans, the percentage obtained by dividing (i) the Capex Term Loan Commitment of that Canadian Lender by (ii) the aggregate Capex Term Loan Commitments of all Canadian Lenders;
- (f) with respect to the Canadian Capex Term Loans on and after the Maturity Date, the percentage obtained by dividing (i) the outstanding principal balance of the Canadian Capex Term Loans held by that Canadian Lender by (ii) the outstanding principal balance of the Canadian Capex Term Loans held by all Canadian Lenders;

(g) with respect to the U.S. Capex Term Loans, the percentage obtained by dividing (i) the Capex Term Loan Commitment of that U.S. Lender by (ii) the aggregate Capex Term Loan Commitments of all U.S. Lenders;

(h) with respect to the U.S. Capex Term Loans on and after the Maturity Date, the percentage obtained by dividing (i) the outstanding principal balance of the U.S. Capex Term Loans held by that U.S. Lender by (ii) the outstanding principal balance of the U.S. Capex Term Loans held by all U.S. Lenders; and

(i) with respect to all Loans on and after the Maturity Date, the percentage obtained by dividing (i) the principal balance of the Loans held by that Lender by (ii) the outstanding principal balance of the Loans held by all Lenders.

**1.120 “QFC”**

“QFC” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. § 5390(c)(8)(D).

**1.121 “Receiver”**

“Receiver” shall have the meaning set forth in Section 9.2(e) hereof.

**1.122 “Records”**

“Records” shall mean all of the Borrower's present and future books of account of every kind or nature, purchase and sale agreements, invoices, ledger cards, bills of lading and other shipping evidence, statements, correspondence, memoranda, credit files and other data relating to the Collateral or any account debtor, together with the tapes, disks, diskettes and other data and software storage media and devices, file cabinets or containers in or on which the foregoing are stored (including any rights of the Borrowers with respect to the foregoing maintained with or by any other person).

**1.123 “Relevant Governmental Body”**

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

**1.124 “Required Lenders”**

“Required Lenders” shall mean the Lenders holding 66.67% or more of the Canadian Dollar Amount of all Commitments.

**1.125 “Revolving Loans”**

“Revolving Loans” shall mean collectively the Canadian Revolving Loans and the U.S. Revolving Loans.

**1.126 “Sanctions”**

“**Sanction**” or “**Sanctions**” means any and all economic or financial sanctions, sectoral sanctions, secondary sanctions, trade embargoes and anti-terrorism laws imposed, administered or enforced from time to time by: (a) the United States of America, including those administered by OFAC, the U.S. State Department, the U.S. Department of Commerce, or through any existing or future Executive Order, (b) the government of Canada, (c) the United Nations Security Council, (d) the European Union, (e) the United Kingdom, or (f) any other Governmental Authority in any jurisdiction in which (i) any Borrower is located or conducts business, (ii) in which any of the proceeds of the Loans will be used, or (iii) from which repayment of the Loans will be derived.

**1.127 “Sanctioned Target”**

“**Sanctioned Target**” means any target of Sanctions, including: (a) Persons on any list of targets identified or designated pursuant to any Sanctions, (b) Persons, countries, or territories that are the target of any territorial or country-based Sanctions program, (c) Persons that are a target of Sanctions due to their ownership or control by any Sanctioned Target(s), or (d) otherwise a target of Sanctions, including vessels, planes and ships, that are designated under any Sanctions program.

**1.128 “Secured Parties”**

“**Secured Parties**” shall collectively mean the Agent, the Lenders, their respective Affiliates, any financial institution under or in connection with a Swap Agreement and any other person to which Obligations are owed or who is the beneficiary of or under a guarantee of the Obligations (and, for greater certainty, if such person ceases to be an Agent or a Lender then for any swap transaction entered into under a Swap Agreement with that Agent or Lender or any of its Affiliates prior to the date that person ceases to be an Agent or Lender, that person or any of its Affiliates shall continue to be Secured Party hereunder with respect to a Borrower's obligations relating to any such swap transaction).

**1.129 “Significant Shareholders”**

“**Significant Shareholders**” shall mean The Futura Corporation and Arbutus Distributors Ltd.

**1.130 “Simple SOFR Adjustment”**

“**Simple SOFR Adjustment**” means a percentage equal to [REDACTED] % per annum.

**1.131 “Slow Moving Inventory”**

“**Slow Moving Inventory**” shall mean Inventory that is “slow-moving” as such term may be established and revised from time to time by the Agent.

**1.132 “SOFR”**

“SOFR” means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

**1.133 “SOFR Administrator”**

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

**1.134 “SOFR Administrator’s Website”**

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

**1.135 “Spot Rate”**

“Spot Rate” shall mean, with respect to a currency, the rate quoted by the Canadian Reference Bank as the spot rate for the purchase by the Canadian Reference Bank of such currency with another currency at approximately 10:00 a.m. (Toronto time) on the date 2 Business Days prior to the date as of which the foreign exchange computation is made.

**1.136 “Subsidiary”**

“Subsidiary” shall mean, with respect to any Person (the “First Person”), any other Person of which at least a majority of the outstanding securities or other ownership interests having by the terms thereof ordinary voting power to elect a majority of the board of directors or other persons performing similar functions of such Person (irrespective of whether or not, at the time, securities or other ownership interests of any other class or classes of such Person shall have or might have voting power by reason of the happening of any contingency), is, at the time, directly or indirectly owned or controlled by such First Person and/or one or more Subsidiaries of such First Person.

**1.137 “Suppressed Availability”**

“Suppressed Availability” shall mean availability of Revolving Loans (as calculated in accordance with this Agreement) that would otherwise exist but for the existence of facility limits and sub-limits.

**1.138 “Swap Agreement”**

“Swap Agreement” shall mean any swap agreement (as defined in 11 U.S.C. §101), foreign exchange agreement, interest rate swap, cap or collar agreement, interest rate future or option contract, currency swap agreement, currency future or option contract and other similar hedge or swap agreement between (a) a Borrower (or, with the prior consent of the Agent, in its sole discretion, the Agent on behalf of a Borrower) as one counterparty and (b) the Agent, the Lenders or any of their respective Affiliates (even if that counterparty should subsequently cease

to be the Agent, a Lender or an Affiliate thereof) and/or another financial institution as to the other counterparty (provided that, the prior written consent of the Agent is obtained (such consent to be provided in the Agent's sole discretion) as to such other financial institution and the agreement entered into with such other financial institution).

**1.139 “Taxes”**

“Taxes” shall have the meaning set forth in Section 5.4(a) hereof.

**1.140 “Total Excess Availability”**

“Total Excess Availability” shall mean the Canadian Dollar Amount, as determined by the Agent calculated at any time, of the sum of Canadian Excess Availability and U.S. Excess Availability.

**1.141 “UCC”**

“UCC” shall mean the *Uniform Commercial Code*.

**1.142 “Unadjusted Benchmark Replacement”**

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

**1.143 “U.S. Borrowing Base”**

“U.S. Borrowing Base” shall have the meaning set forth in Section 2.1(b) hereof

**1.144 “U.S. Capex Term Loan”**

“U.S. Capex Term Loan” shall mean any Capex Term Loans denominated in U.S. Dollars made available by the U.S. Lenders to the U.S. Borrower as set forth in Section 2.5(a).

**1.145 “U.S. Dollar Amount”**

“U.S. Dollar Amount” shall mean, at any time: (a) as to any amount denominated in U.S. Dollars, the amount thereof at such time; and (b) as to any amount denominated in any other currency, the equivalent amount in U.S. Dollars as determined by the Agent at such time on the basis of the Spot Rate for the purchase of U.S. Dollars with such currency.

**1.146 “U.S. Excess Availability”**

“U.S. Excess Availability” shall mean the U.S. Dollar Amount, as determined by the Agent, calculated at any time, equal to: (a) the lesser of: (i) the amount of the U.S. Borrowing Base as of such time as determined by the Agent and (ii) the Maximum Revolving Credit, minus (b) the sum of: (i) the amount of all then outstanding and unpaid Revolving Loans and Letter of Credit Accommodations to or in favour of the U.S. Borrower, plus (ii) the aggregate amount of all due but unpaid tax obligations and trade payables of the U.S. Borrower more than 60 days past due as of such time.

**1.147 “U.S. Government Securities Business Day”**

“U.S. Government Securities Business Day” means any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association, or any successor thereto, recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities; provided, that for purposes of notice requirements for any request for a Loan, such day is also a Business Day.

**1.148 “U.S. Pension Plan”**

“U.S. Pension Plan” shall mean a pension plan (as defined in Section 3(2) of ERISA) subject to Title IV of ERISA which a Borrower or Guarantor sponsors, maintains, or to which a Borrower or Guarantor or any ERISA Affiliate makes, is making, or is obligated to make contributions, other than a Multiemployer Plan.

**1.149 “U.S. Prime Rate”**

“U.S. Prime Rate” shall mean, at any time, the greater of: (a) the annual interest rate from time to time publicly announced by the U.S. Reference Bank as its prime rate in effect for U.S. Dollar denominated commercial loans, whether or not such announced rate is the best rate available at such bank; and (b) the annual rate of interest equal to the sum of: (i) the Federal Funds Rate at such time; and (ii)      % *per annum*.

**1.150 “U.S. Prime Rate Loans”**

“U.S. Prime Rate Loans” shall mean any Loans or portions thereof denominated in U.S. Dollars and on which interest is payable based on the U.S. Prime Rate in accordance with the terms hereof.

**1.151 “U.S. Reference Bank”**

“U.S. Reference Bank” shall mean Wells Fargo Bank, National Association or any successor thereto, or such other major bank in the United States as Lender may from time to time designate, in its discretion.

**1.152 “U.S. Revolving Loan Commitment”**

“U.S. Revolving Loan Commitment” shall mean, as to any U.S. Lender, the aggregate of such U.S. Lender's U.S. Revolving Loan Commitment as set forth next to such U.S. Lender's name on Schedule 1.53 hereto or in the most recent Assignment Agreement executed by such U.S. Lender.

**1.153 “U.S. Revolving Loans”**

“U.S. Revolving Loans” shall mean the U.S. Revolving Loans denominated in U.S. Dollars made available by the U.S. Lenders to the U.S. Borrower on a revolving basis (involving advances, repayments and readvances) as set forth in Section 2.1(b).

**1.154 “Value”**

“Value” shall mean the Canadian Dollar Amount, as determined by the Agent, with respect to Inventory, of the lower of: (a) cost computed on a first-in-first-out basis in accordance with IFRS; or (b) market value.

**ARTICLE 2. CREDIT FACILITIES**

**2.1 Revolving Loans**

(a) Subject to, and upon the terms and conditions contained herein, each of the Canadian Lenders severally (and not jointly) agrees to make its Pro Rata Share of Canadian Revolving Loans by way of CDOR Rate Loans and Daily Simple SOFR Loans to the Canadian Borrower from time to time in amounts requested by the Canadian Borrower up to the amount (the “**Canadian Borrowing Base**”) equal to the sum of:

- (i) 90% of the Net Amount of Eligible Accounts of the Canadian Borrower;  
plus
- (ii) the least of:
  - (A) 90% of the Value of Eligible Inventory of the Canadian Borrower;  
and
  - (B) 90% of the Net Orderly Liquidation Value of Eligible Inventory of the Canadian Borrower;less
- (iii) any Availability Reserves.

(b) Subject to, and upon the terms and conditions contained herein, each of the U.S. Lenders severally (and not jointly) agrees to make its Pro Rata Share of U.S. Revolving Loans by way of Daily Simple SOFR Loans to the U.S. Borrower from time to time in amounts requested by the U.S. Borrower up to the amount (the “**U.S. Borrowing Base**”) equal to the sum of:

- (i) 90% of the Net Amount of Eligible Accounts of the U.S. Borrower;  
plus
- (ii) the least of:
  - (A) 90% of the Value of Eligible Inventory of the U.S. Borrower; and
  - (B) 90% of the Net Orderly Liquidation Value of Eligible Inventory of the U.S. Borrower;less

(iii) any Availability Reserves.

(c) The Agent may, in its discretion, from time to time: (i) reduce the lending formula with respect to Eligible Accounts to the extent that the Agent determines that: (A) the Dilution with respect to the Accounts for any period has increased in any material respect or may be anticipated to increase in any material respect above historical levels; or (B) the general credit-worthiness of account debtors has declined; or (ii) reduce the lending formula(s) with respect to any category of Eligible Inventory to the extent that the Agent determines that: (A) the number of days of the turnover of any category of the Inventory for any period has changed in any material respect; or (B) the Net Orderly Liquidation Value of the Eligible Inventory, or any category thereof, has decreased; or (C) the nature and quality of the Inventory has deteriorated. In determining whether to reduce the lending formula(s), the Agent may consider events, conditions, contingencies or risks which are also considered in determining Eligible Accounts, Eligible Inventory or in establishing Availability Reserves.

(d) Except in the Agent's discretion, (i) the aggregate amount of the Revolving Loans and the Letter of Credit Accommodations outstanding at any time shall not exceed the Maximum Revolving Credit; (ii) the aggregate amount of the Revolving Loans, the Letter of Credit Accommodations and the Capex Term Loans outstanding at any time shall not exceed the Maximum Credit; (iii) the sub-limit for Eligible Inventory in the Canadian Borrowing Base and U.S. Borrowing Base on a combined basis shall be ██████████; (iv) the sub-limit for Eligible Inventory consisting of work-in-process in the Canadian Borrowing Base and the U.S. Borrowing Base on a combined basis shall be ██████████; and (v) the aggregate amount of the Capex Term Loans outstanding at any time shall not exceed the Capex Term Loan Maximum Limit. In the event that the outstanding amount of any component of the Loans, the aggregate amount of the outstanding Revolving Loans and Letter of Credit Accommodations or the aggregate amount of Capex Term Loans exceed the amounts available under the lending formulas, the sub-limits for Letter of Credit Accommodations set forth in Section 2.2(e) hereof, the Maximum Revolving Credit, the Maximum Credit or the Capex Term Loan Maximum Limit, as applicable, such event shall not limit, waive or otherwise affect any rights of the Agent in that circumstance or on any future occasions and the Borrowers shall, upon demand by the Agent, which may be made at any time or from time to time, immediately repay to the Agent the entire amount of any such excess(es) for which payment is demanded.

(e) For purposes only of applying the sub-limit on Revolving Loans based on Eligible Inventory pursuant to Section 2.1(a)(ii) and (b)(ii) hereof, the Agent may treat the then un-drawn amounts of outstanding Letter of Credit Accommodations for the purpose of purchasing Eligible Inventory as Revolving Loans to the extent the Agent is in effect basing the issuance of the Letter of Credit Accommodations on the Value of the Eligible Inventory being purchased with such Letter of Credit Accommodations. In determining the actual amounts of such Letter of Credit Accommodations to be so treated for purposes of the sub-limit, the outstanding Revolving Loans and Availability Reserves shall be attributed first to any components of the lending formulas in Section 2.1(a) and (b) hereof that are not subject to such sub-limit, before being attributed to the components of the lending formulas subject to such sub-limit.

## 2.2 Letter of Credit Accommodations

(a) Subject to, and upon the terms and conditions contained herein, at the request of the Borrowers, the Agent agrees to provide or arrange for Letter of Credit Accommodations for the account of the Canadian Borrower in Canadian Dollars and U.S. Dollars and the U.S. Borrower in U.S. Dollars containing terms and conditions acceptable to the Agent and the issuer thereof. Any payments made by the Agent or the Lenders to any issuer thereof and/or related parties in connection with the Letter of Credit Accommodations shall constitute additional Revolving Loans to the Borrowers pursuant to this Article 2.

(b) In addition to any charges, fees or expenses charged by any bank or issuer in connection with the Letter of Credit Accommodations, the Borrowers shall pay to the Agent, for the account of the Lenders based on their respective Pro Rata Shares, a letter of credit fee at a rate equal to ■■■% *per annum* on the daily outstanding balance of the Letter of Credit Accommodations for the immediately preceding month (or part thereof), payable in arrears as of the first day of each succeeding month, except that the Borrowers shall pay to the Agent, for the account of the Lenders based on their respective Pro Rata Shares, such letter of credit fee, upon the written election of the Required Lenders, at a rate equal to ■■■% *per annum* on such daily outstanding balance for: (i) the period from and after the date of termination hereof until the Agent has received full and final payment of all Obligations (notwithstanding entry of a judgment against the Borrowers); and (ii) the period from and after the date of the occurrence of a Default or an Event of Default for so long as such Default or Event of Default is continuing as determined by the Agent. Such letter of credit fee shall be calculated on the basis of a 365 day year for Canadian Dollar denominated Letter of Credit Accommodations and a 360 day year for U.S. Dollar denominated Letter of Credit Accommodations and actual days elapsed and the obligation of the Borrowers to pay such fee shall survive the termination or non-renewal of this Agreement.

(c) No Letter of Credit Accommodations shall be available to the Canadian Borrower, unless on the date of the proposed issuance of any Letter of Credit Accommodations, the Revolving Loans available to the Canadian Borrower (subject to the Maximum Revolving Credit and any Availability Reserves) are equal to or greater than:

- (i) if the proposed Letter of Credit Accommodation is for the purpose of purchasing Eligible Inventory and all negotiable documents of title with respect to such Eligible Inventory have been consigned to the issuer of the Letter of Credit Accommodation, the sum of:
  - (A) the percentage equal to 100% minus the then applicable percentage set forth in Section 2.1(a)(ii) hereof of the Value of such Eligible Inventory; plus
  - (B) freight, taxes, duty and other amounts which the Agent estimates must be paid in connection with such Eligible Inventory upon arrival and for delivery to one of the Canadian Borrower's locations for Eligible Inventory within Canada; and

- (ii) if the proposed Letter of Credit Accommodation is for any other purpose, an amount equal to 100% of the face amount thereof and all other commitments and obligations made or incurred by the Agent with respect thereto.

Effective on the issuance of each such Letter of Credit Accommodation, an Availability Reserve with respect to the Canadian Borrowing Base shall be established in the applicable amount set forth in Section 2.2(c)(i) or Section 2.2(c)(ii) hereof.

(d) No Letter of Credit Accommodations shall be available to the U.S. Borrower, unless on the date of the proposed issuance of any Letter of Credit Accommodations, the Revolving Loans available to the U.S. Borrower (subject to the Maximum Revolving Credit and any Availability Reserves) are equal to or greater than:

- (i) if the proposed Letter of Credit Accommodation is for the purpose of purchasing Eligible Inventory and all negotiable documents of title with respect to such Eligible Inventory have been consigned to the issuer of the Letter of Credit Accommodation, the sum of:
  - (A) the percentage equal to 100% minus the then applicable percentage set forth in Section 2.1(b)(ii) hereof of the Value of such Eligible Inventory; plus
  - (B) freight, taxes, duty and other amounts which the Agent estimates must be paid in connection with such Eligible Inventory upon arrival and for delivery to one of the U.S. Borrower's locations for Eligible Inventory within the U.S.; and
- (ii) if the proposed Letter of Credit Accommodation is for any other purpose, an amount equal to 100% of the face amount thereof and all other commitments and obligations made or incurred by the Agent with respect thereto.

Effective on the issuance of each such Letter of Credit Accommodation, an Availability Reserve with respect to the U.S. Borrowing Base shall be established in the applicable amount set forth in Section 2.2(d)(i) or Section 2.2(d)(ii) hereof.

(e) Except in the Agent's discretion, the amount of all outstanding Letter of Credit Accommodations and all other commitments and obligations made or incurred by the Agent and the Lenders in connection therewith, shall not at any time exceed \$5,000,000 or the Equivalent Amount in U.S. Dollars. At any time a Default or an Event of Default exists or has occurred and is continuing, upon the Agent's request, the Borrowers will either furnish cash collateral to secure the reimbursement obligations to the issuer in connection with any Letter of Credit Accommodations or furnish cash collateral to the Agent for the Letter of Credit Accommodations, and in either case, the Revolving Loans otherwise available to the Borrowers shall not be reduced as provided in Section 2.2(c) or (d) hereof to the extent of such cash collateral.

(f) The Borrowers shall indemnify and hold the Agent and the Lenders harmless from and against any and all losses, claims, damages, liabilities, costs and expenses which the Agent and the Lenders may suffer or incur in connection with any Letter of Credit Accommodations and any documents, drafts or acceptances relating thereto, including any losses, claims, damages, liabilities, costs and expenses due to any action taken by any issuer or correspondent with respect to any Letter of Credit Accommodation. The Borrowers assume all risks with respect to the acts or omissions of the drawer under or beneficiary of any Letter of Credit Accommodation and for such purposes the drawer or beneficiary shall be deemed the Borrowers' agent. The Borrowers assume all risks for, and agree to pay, all foreign, federal, provincial and local taxes, duties and levies relating to any goods subject to any Letter of Credit Accommodations or any documents, drafts or acceptances thereunder. The Borrowers hereby release and hold the Agent and the Lenders harmless from and against any acts, waivers, errors, delays or omissions, whether caused by the Borrowers, by any issuer or correspondent or otherwise with respect to or relating to any Letter of Credit Accommodation. The provisions of this Section 2.2(f) shall survive the payment of the Obligations and the termination or non-renewal of this Agreement.

(g) Nothing contained herein shall be deemed or construed to grant the Borrowers any right or authority to pledge the credit of the Agent or the Lenders in any manner. The Agent and the Lenders shall have no liability of any kind with respect to any Letter of Credit Accommodation provided by an issuer unless the Agent or a Lender has duly executed and delivered to such issuer the application or a guarantee or indemnification in writing with respect to such Letter of Credit Accommodation. The Borrowers shall be bound by any interpretation made by the Agent, a Lender, or any other issuer or correspondent under or in connection with any Letter of Credit Accommodation or any documents, drafts or acceptances thereunder, notwithstanding that such interpretation may be inconsistent with any instructions of the Borrowers. The Agent shall have the sole and exclusive right and authority to, and the Borrowers shall not: (i) at any time a Default or an Event of Default exists or has occurred and is continuing: (A) approve or resolve any questions of non-compliance of documents; (B) give any instructions as to acceptance or rejection of any documents or goods; or (C) execute any and all applications for steamship or airway guaranties, indemnities or delivery orders; and (ii) at all times: (A) grant any extensions of the maturity of, time of payment for, or time of presentation of, any drafts, acceptances, or documents; and (B) agree to any amendments, renewals, extensions, modifications, changes or cancellations of any of the terms or conditions of any of the applications, Letter of Credit Accommodations, or documents, drafts or acceptances thereunder or any letters of credit included in the Collateral. The Agent may take such actions either in its own name or in applicable Borrower's name.

(h) Any rights, remedies, duties or obligations granted or undertaken by the Borrowers to any issuer or correspondent in any application for any Letter of Credit Accommodation, or any other agreement in favour of any issuer or correspondent relating to any Letter of Credit Accommodation, shall be deemed to have been granted or undertaken by the Borrowers to the Agent and the Lenders. Any duties or obligations undertaken by the Agent or a Lender to any issuer or correspondent in any application for any Letter of Credit Accommodation, or any other agreement by the Agent or a Lender in favour of any issuer or correspondent relating to any Letter of Credit Accommodation, shall be deemed to have been

undertaken by the Borrowers to the Agent or such Lender and to apply in all respects to the Borrowers.

### **2.3 Swap Agreements**

(a) The Borrowers agree not to enter into any Swap Agreement or other hedge or swap arrangements or agreements without the prior written consent of the Agent unless such Swap Agreement is with the Agent or an Affiliate of Agent.

(b) If permitted under Section 2.3(a), a Borrower may enter into Swap Agreements from time to time over the telephone with representatives of the Agent's or a Lender's trading unit (or that of its Affiliates), the terms of which shall be confirmed in writing in accordance with the procedures established by the trading unit of the Agent, such Lender or its Affiliate, as applicable.

(c) Each Swap Agreement is governed by the terms and conditions set out in the confirmation forwarded by the applicable Person to the applicable Borrower on entering into the Swap Agreement and any applicable ISDA agreement. If there is a conflict between the terms and conditions set out in the confirmation or ISDA agreement and this Agreement, the confirmation or ISDA agreement shall govern unless otherwise expressly provided herein.

(d) Swap Agreements may, at the discretion of the Agent, the applicable Lender or its Affiliate, have contract periods extending beyond the Maturity Date.

(e) The Agent, the Lenders and their respective Affiliates may, at their respective discretion, decline to enter into any Swap Agreement with any Borrower at any time.

(f) Swap Agreements may be entered into for hedging purposes only and not for speculative purposes. Swap Agreements may not be entered into at any time when the aggregate Mark to Market Exposure of all existing Swap Agreements of the Borrowers, in the aggregate, exceeds \$5,000,000 or such greater amount as the Agent may agree in writing. If, at any time, the Mark to Market Exposure of all Swap Agreements of the Borrowers, in the aggregate, exceeds \$5,000,000 or such greater amount agreed to in writing by the Agent, the Borrowers shall take such measures as may be necessary to reduce the Mark to Market Exposure by the amount of such excess within 5 Business Days. The notional amount of any and all Swap Agreements of the Borrowers shall not exceed \$20,000,000 in the aggregate.

(g) The Borrowers shall provide the Agent with written notice forthwith upon entering into a Swap Agreement. Such notice shall specify the applicable Agent or Lender (or its Affiliate or financial institution) and the aggregate Mark to Market Exposure of outstanding Swap Agreements immediately prior to entering into such Swap Agreement. The Borrowers shall advise the Agent in writing of the aggregate Mark to Market Exposure of its outstanding Swap Agreements as at the end of each month by the next following Business Day, and such other times as the Agent shall request. For greater certainty, the Agent and any Lender that makes a Swap Agreement available to any Borrower covenants and agrees (and shall cause any of its applicable Affiliates) to provide within 5 Business Days of a written request therefore by the applicable Borrower, a determination of the Mark to Market Exposure of each Swap Agreement that such Agent or Lender (or such Affiliate) has with such Borrower

## 2.4 Availability Reserves

All Revolving Loans and Letter of Credit Accommodations otherwise available to the Borrowers pursuant to the lending formulas and subject to the Maximum Revolving Credit and other applicable limits hereunder shall be subject to the Agent's continuing right to establish and revise Availability Reserves.

## 2.5 Capex Term Loans

(a) Subject to and upon the terms and conditions contained herein, each of the Lenders severally (and not jointly) agrees to make its Pro Rata Share of the Capex Term Loans by way of CDOR Rate Loans to the Canadian Borrower and Daily Simple SOFR Loans to the Borrowers from time to time at the request of the Borrowers and in amounts requested by the Borrowers not to exceed the Canadian Dollar Amount of the lesser of (i) 85% of the Hard Costs of the Eligible Equipment and (ii) \$10,000,000 (or the Equivalent Amount in U.S. Dollars) as reduced by the amount of all principal payments in respect of Capex Term Loans (the “**Capex Term Loan Maximum Limit**”).

(b) The Capex Term Loans shall be:

- (i) repaid, together with interest and other amounts, in accordance with this Agreement and the other Financing Agreements; and
- (ii) secured by all of the Collateral.

(c) The Borrower shall make monthly payments of principal on each Capex Term Loan on the 1<sup>st</sup> Business Day of each month after the date of advance thereof and ending on the Maturity Date in an amount sufficient to amortize the full amount of the applicable Capex Term Loan over a period of 84 months. On the Maturity Date, the remaining unamortized balance of the Capex Term Loans together with all accrued and unpaid interest thereon shall be due and be payable to the Agent, for the account of the Lenders based on their respective Pro Rata Share.

(d) The Capex Term Loan may be prepaid in whole or in part, in the minimum amount of \$50,000 or U.S. \$50,000, as the case may be, and increments of \$50,000 or U.S.\$50,000, as the case may be, at any time and from time to time without penalty provided no Default or Event of Default has occurred and is continuing or could be expected to occur as a result of making such prepayment on two (2) Business Days prior written notice to the Agent. Each prepayment made shall be accompanied by the payment of accrued interest to the date of such payment on the amount prepaid. Any prepayment received will be applied against scheduled payments in reverse order of maturity. Any principal amount of a Capex Term Loan that is repaid or prepaid may not be reborrowed.

(e) If, as determined by the Acceptable Appraisal, the principal amount of the Capex Term Loans exceeds the Capex Term Loan Maximum Limit, the Borrowers shall pay the amount of such excess to the Agent as a reduction of principal of the Capex Term Loans on demand by the Agent.

(f) The proceeds of each Capex Term Loan shall be used solely for the payment of the purchase price, or to reimburse such Borrower for the cash previously paid by such Borrower for the purchase price, for the Eligible Equipment specified in the Capex Term Loan Request applicable to such Capex Term Loan; provided, that, in the case of a purchase price paid prior to the making of a Capex Term Loan, such purchase price was paid no more than 30 days prior to the date of such Capex Term Loan. No Capex Term Loan Request shall include any Eligible Equipment that has been included in any other Capex Term Loan Request. Each Equipment Purchase Loan shall be in an amount of not less than \$1,000,000 or U.S.\$1,000,000. A single Capex Term Loan may be used for the purchase price of one or more items constituting Eligible Equipment specified in the Capex Term Loan Request required to be delivered to Lender pursuant to Section 2.5(g) below and the minimum amount of such Capex Term Loan applies to such Capex Term Loan, not to the purchase price of any individual item of Eligible Equipment.

(g) In addition to the other conditions set forth herein, the obligation of a Lender to make any Capex Term Loan at any time shall be subject to the following conditions precedent:

- (i) the Agent shall have received from a Borrower not less than five (5) Business Days and not more than ten Business Days prior written notice of the proposed Capex Term Loan (each such notice being an “**Capex Term Loan Request**”), which notice shall specify the following: (A) the proposed Borrower, date and amount of such Capex Term Loan and if it will be a Daily Simple SOFR Loan or a CDOR Rate Loan, (B) a list and description of the Eligible Equipment (by model, make, manufacturer, serial number and such other identifying information as may be requested by the Agent) that is to be purchased with the proceeds of the Capex Term Loan subject to such Capex Term Loan Request or for which such Borrower is being reimbursed, as the case may be, (C) whether any of such Eligible Equipment has been purchased prior to the date of the proposed Capex Term Loan and if so, the date of such purchase and identifying the specific Eligible Equipment that has been so purchased, (D) the Hard Costs and total purchase price for such Eligible Equipment to be purchased with the proceeds of such Equipment Purchase Loan (and the terms of payment of such purchase price), or for which such Borrower is being reimbursed, as the case may be and (E) such other information and documents as the Agent may from time to time reasonably request with respect thereto; and
- (ii) the Agent shall have received (A) copies, or upon the Agent’s request, originals, of all agreements, documents and instruments relating to the sale of the Eligible Equipment to such Borrower, including any purchase orders, invoices, bills of sale or similar documents (provided, that, to the extent that the Agent may receive any originals, it will return such originals to a Borrower after the Agent has finished its use of them) and (B) evidence reasonably satisfactory to the Agent that the Eligible Equipment has been received and installed by such Borrower and is in good working order and operating for its intended purpose.

## ARTICLE 3. INTEREST AND FEES

### 3.1 Interest

(a) The Borrowers shall pay to the Agent, for the account of the Lenders based on their respective Pro Rata Shares, interest on the outstanding principal amount of the non-contingent Obligations at the applicable Interest Rate.

(b) Interest shall be payable by the Borrowers to the Agent (a) monthly in arrears with respect to Canadian Prime Rate Loans and U.S. Prime Rate Loans not later than the first Business Day of each calendar month and (b) monthly in arrears with respect CDOR Rate Loans and Daily Simple SOFR Loans not later than the first Business Day of each calendar month, and shall be calculated on the basis of a 365 day year and actual days elapsed, in the case of Canadian Prime Rate Loans and CDOR Rate Loans, and a 360 day year and actual days elapsed, in the case of U.S. Prime Rate Loans and Daily Simple SOFR Loans, as applicable. Changes in the Canadian Prime Rate, U.S. Prime Rate, the CDOR Rate and Adjusted Daily Simple SOFR shall cause an immediate adjustment of the applicable interest rate in respect of Canadian Prime Rate Loans, U.S. Prime Rate Loans, CDOR Rate Loans and Daily Simple SOFR Loans. All interest accruing hereunder on and after a Default or an Event of Default or termination hereof shall be payable on demand. In no event shall charges constituting interest payable by the Borrowers to the Agent exceed the maximum amount or the rate permitted under any applicable law or regulation, and if any part or provision of this Agreement is in contravention of any such law or regulation, such part or provision shall be deemed amended to conform thereto.

(c) For purposes of disclosure under the *Interest Act* (Canada), where interest is calculated pursuant hereto at a rate based upon a 365 or 360 day year (the “**First Rate**”), it is hereby agreed that the rate or percentage of interest on a yearly basis is equivalent to such First Rate multiplied by the actual number of days in the year divided by 365 or 360, as applicable. Each of the Borrowers and Guarantors confirm that it fully understands and is able to calculate the rate of interest applicable to each of the Loans based on the methodology for calculating *per annum* rates provided for in this Agreement. The Agent agrees that if requested in writing by the Borrowers or Guarantors it shall calculate the nominal and effective *per annum* rate of interest on any Loan outstanding at any time and provide such information to the Borrowers or Guarantors 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 Borrowers or Guarantors of any of their obligations under this Agreement or any other Financing Agreements, nor result in any liability of the Agent or any Lender. Each Borrower and Guarantor hereby irrevocably agrees not to plead or assert, whether by way of defence or otherwise, in any proceeding relating to the Financing Agreements, that the interest payable under the Financing Agreements and the calculation thereof has not been adequately disclosed to the Borrowers and Guarantors, whether pursuant to Section 4 of the *Interest Act* (Canada) or any other applicable law or legal principle.

(d) Notwithstanding the provisions of this Article 3 or any other provision of this Agreement, in no event shall the aggregate “**interest**” (as that term is defined in Section 347 of the *Criminal Code* (Canada)) exceed the effective annual rate of interest on the “**credit advanced**” (as defined therein) lawfully permitted under Section 347 of the *Criminal Code* (Canada). The effective annual rate of interest shall be determined in accordance with generally

accepted actuarial practices and principles over the term of the applicable Loans, and in the event of a dispute, a certificate of a Fellow of the Canadian Institute of Actuaries appointed by the Agent will be conclusive for the purposes of such determination.

(e) A certificate of an authorized signing officer of the Agent as to each amount and/or each rate of interest payable hereunder from time to time shall be conclusive evidence of such amount and of such rate, absent manifest error.

(f) For greater certainty, whenever any amount is payable under this Agreement or any Financing Agreement by the Borrowers as interest or as a fee which requires the calculation of an amount using a percentage *per annum*, each party to this Agreement acknowledges and agrees that such amount shall be calculated as of the date payment is due without application of the “**deemed reinvestment principle**” or the “**effective yield method**”. As an example, when interest is calculated and payable monthly, the rate of interest payable per month is one-twelfth (1/12th) of the stated rate of interest *per annum*.

### 3.2 Closing Fee

The Borrowers shall pay to the Agent, for the account of the Lenders based on their respective Pro Rata Shares, as a closing fee the amount of [REDACTED], which shall be fully earned as of and payable on the date hereof.

### 3.3 Servicing Fee

The Borrowers shall pay to the Agent monthly, a servicing fee in an amount equal to [REDACTED] in respect of the Agent's services for each month (or part thereof) while this Agreement remains in effect and for so long thereafter as any of the Obligations are outstanding, which fee shall be fully earned as of and payable in arrears on the first day of each month hereafter.

### 3.4 Unused Line Fee

The Borrowers shall pay to the Agent, for the account of the Lenders based on their respective Pro Rata Shares, monthly, an unused line fee in respect of all Revolving Loans and Letter of Credit Accommodations at a rate equal to [REDACTED] % *per annum* calculated upon the amount by which the Maximum Revolving Credit exceeds the average daily principal balance of the outstanding Revolving Loans and Letter of Credit Accommodations during the immediately preceding month (or part thereof) while this Agreement is in effect and for so long thereafter as any of the Obligations are outstanding, which fee shall be payable on the first day of each month in arrears.

### 3.5 Increased Costs

(a) If, after the Closing Date, either: (i) any Change in Law is introduced, including with respect to reserve requirements, applicable to the Agent or any Lender or any banking or financial institution from whom the Agent or any Lender borrows funds or obtains credit (a “**Funding Bank**”); or (ii) a Funding Bank, the Agent or any Lender complies with any future guideline or request from any central bank or other Governmental Authority; or (iii) a Funding Bank, the Agent or any Lender determines that the adoption of any applicable law, rule or

regulation regarding capital adequacy, or any change therein, or any change in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof has or would have the effect described below, or a Funding Bank, the Agent or any Lender complies with any request or directive regarding capital adequacy (whether or not having the force of law where customarily complied with by responsible financial institutions) of any such authority, central bank or comparable agency, and in the case of any event set forth in this clause; or (iv) such adoption, change or compliance has, or would have, the direct or indirect effect of reducing the rate of return on the Agent's or any Lender's capital as a consequence of its obligations hereunder to a level below that which the Agent or any Lender could have achieved but for such adoption, change or compliance (taking into consideration the Funding Bank's, the Agent's or any Lender's policies with respect to capital adequacy) by an amount deemed by the Agent or any Lender to be material, and the result of any of the foregoing events described in clauses (i), (ii), (iii) or (iv) is, or results in, an increase in the cost to the Agent or any Lender of funding or maintaining the Loans and/or Letter of Credit Accommodations, then the Borrowers shall from time to time upon demand by the Agent or any Lender pay to the Agent or such Lender additional amounts sufficient to indemnify the Agent or such Lender against such increased cost on an after-tax basis (after taking into account applicable deductions and credits in respect of the amount indemnified). A certificate as to the amount of such increased cost shall be submitted to the Borrowers by the Agent or such Lender and shall be conclusive, absent manifest error.

### **3.6 Illegality; Market Conditions**

Notwithstanding anything to the contrary contained herein, other than as a result of the occurrence of a Benchmark Transition Event, if (a) any change in market conditions or any Change in Law makes it unlawful or impractical for a Lender to make or maintain a Daily Simple SOFR Loan or a CDOR Rate Loan or to maintain its Commitment with respect to a Daily Simple SOFR Loan or a CDOR Rate Loan or (b) a Lender determines in good faith (which determination shall, absent manifest error, be final and conclusive and binding upon all parties hereto) that (i) it has become impractical as a result of a circumstance that adversely affects the U.S. market or Canadian market or the position of such Lender in such markets to ascertain, determine or charge interest rates at Adjusted Daily Simple SOFR, SOFR or CDOR, (ii) Daily Simple SOFR, SOFR or CDOR cannot be determined pursuant to the definition thereof, or (iii) adequate and fair means do not exist for ascertaining the interest rate applicable to Daily Simple SOFR Loans or CDOR Rate Loans on the basis provided for in the definition of Adjusted Daily Simple SOFR Loans, SOFR or CDOR, as applicable, then such Lender shall give notice thereof to the affected Borrower and the Agent and may (A) declare that Daily Simple SOFR Loans and CDOR Rate Loans will not thereafter be made by such Lender, such that any request for a Daily Simple SOFR Loan or CDOR Rate Loan from such Lender shall be deemed to be a request for a U.S. Prime Rate Loan or Canadian Prime Rate Loan, as applicable, unless such Lender's declaration has been withdrawn (and it shall be withdrawn promptly upon the cessation of the circumstances described in clause (a) or (b) above) and (B) require that all outstanding Daily Simple SOFR Loans or CDOR Rate Loans, as applicable, made by such Lender be converted to U.S. Rate Loans or Canadian Prime Rate Loans, as applicable, immediately, in which event all outstanding Daily Simple SOFR Loans and CDOR Rate Loans, as applicable, shall be so converted and shall bear interest at the U.S. Prime Rate or Canadian Prime Rate, as applicable, in effect from time to time, plus the applicable margins set forth in the definition of Interest Rate.

**3.7 Intentionally Deleted.**

**3.8 Intentionally Deleted.**

**3.9 Delay in Requests**

Failure or delay on the part of any Lender to demand compensation pursuant to Section 3.5(a) shall not constitute a waiver of such Lender's right to demand such compensation, provided that a Borrower shall not be required to compensate such Lender pursuant to those Sections for any increased costs incurred or reductions occurring more than 180 days prior to the date that such Lender becomes aware of the event giving rise to such Lender's claim for compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180 day period referred to above shall be extended to include the period of retroactive effect thereof).

**3.10 Special Provisions Applicable to Daily Simple SOFR Loans**

(a) Notwithstanding any other provision of this Agreement, in connection with each Daily Simple SOFR Loan, each Borrower shall indemnify, defend, and hold the Agent and the Lenders harmless against any loss, cost, or expense actually incurred by any Lender as a result of the payment or required assignment of any principal of any Daily Simple SOFR Loan other than on the first day of each calendar month or the Maturity Date (such losses, costs, or expenses, "**Funding Losses**").

(b) A certificate of the Agent or a Lender delivered to Borrowers setting forth in reasonable detail any amount or amounts that a Lender is entitled to receive pursuant to this Section 3.10 shall be conclusive absent manifest error. Borrowers shall pay such amount to the Agent or such Lender, as applicable, within 30 days of the date of its receipt of such certificate.

(c) Adjusted Daily Simple SOFR may be adjusted by the Agent with respect to any Lender on a prospective basis to take into account any additional or increased costs, in each case, due to changes in applicable law occurring subsequent to the making of the applicable Daily Simple SOFR Loans or pursuant to any Change in Law or change in the reserve requirements imposed by the Board of Governors, which additional or increased costs would increase the cost of funding or maintaining loans bearing interest at Adjusted Daily Simple SOFR. In any such event, the affected Lender shall give Borrowers and the Agent notice of such a determination and adjustment and, upon its receipt of the notice from the affected Lender, Borrowers may, by notice to the affected Lender and the Agent (A) require the Lender to furnish to Borrowers a statement setting forth in reasonable detail the basis for adjusting Adjusted Daily Simple SOFR and the method for determining the amount of such adjustment, or (B) repay the applicable Daily Simple SOFR Loans with respect to which such adjustment is made (together with any Funding Losses).

(d) The Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, (i) the continuation of, administration of, submission of, calculation of or any other matter related to Adjusted Daily Simple SOFR, SOFR or any other Benchmark, any component definition thereof or rates referred to in the definition thereof, or with respect to any alternative, successor or replacement rate thereto (including any then-current Benchmark or

any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement), as it may or may not be adjusted pursuant to Section 3.11, will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, Adjusted Daily Simple SOFR, SOFR, or any other Benchmark, prior to its discontinuance or unavailability, or (ii) the effect, implementation or composition of any Benchmark Replacement Conforming Changes. The Agent and its affiliates or other related entities may engage in transactions that affect the calculation of Adjusted Daily Simple SOFR, SOFR, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto and such transactions may be adverse to a Borrower. The Agent may select information sources or services in its reasonable discretion to ascertain Adjusted Daily Simple SOFR, SOFR or any other Benchmark, any component definition thereof or rates referred to in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to any Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

(e) Anything to the contrary contained herein notwithstanding, neither the Agent nor any Lender is not required actually to match fund any Obligation as to which interest accrues at Adjusted Daily Simple SOFR or SOFR.

### **3.11 Benchmark Replacement Setting**

(a) Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Financing Agreement, upon the occurrence of a Benchmark Transition Event with respect to any Benchmark, the Agent and the Borrowers may amend this Agreement to replace such Benchmark with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. on the fifth (5<sup>th</sup>) Business Day after the Agent has posted such proposed amendment to all affected Lenders and the Borrowers so long as Agent has not received, by such time, written notice of objection to such amendment from the Lenders comprising the Required Lenders. No replacement of a Benchmark with a Benchmark Replacement pursuant to this Section 3.11 will occur prior to the applicable Benchmark Transition Start Date.

(b) Benchmark Replacement Conforming Changes. In connection with the use, administration, adoption or implementation of a Benchmark Replacement, the Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Financing Agreement, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Financing Agreement.

(c) Notices; Standards for Decisions and Determinations. The Agent will promptly notify the Borrowers and the Lenders of (1) the implementation of any Benchmark Replacement and (2) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Agent will notify the Borrowers of (x) the removal or reinstatement of any tenor of a Benchmark pursuant to Section 3.11(d) and

(y) the commencement of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 3.11, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Financing Agreement, except, in each case, as expressly required pursuant to this Section 3.11.

(d) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Financing Agreement, at any time (including in connection with the implementation of a Benchmark Replacement), (1) if any then-current Benchmark is a term rate and either (I) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by Agent in its reasonable discretion or (II) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative, then the Agent may modify the definition of “interest period” (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (2) if a tenor that was removed pursuant to clause (1) above either (I) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (II) is not, or is no longer, subject to an announcement that it is not or will not be representative for a Benchmark (including a Benchmark Replacement), then the Agent may modify the definition of “interest period” (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(e) Benchmark Unavailability Period. Upon each Borrower’s receipt of notice of the commencement of a Benchmark Unavailability Period with respect to a given Benchmark, (1) a Borrower may revoke any pending request for a borrowing of, conversion to or continuation of any affected Daily Simple SOFR Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, such Borrower will be deemed to have converted any such request into a request for a borrowing of or conversion to a U.S. Prime Rate Loan and (2) any outstanding affected Daily Simple SOFR Loans will be deemed to have been converted to U.S. Prime Rate Loans with respect to any Daily Simple SOFR Loans, immediately.

### **3.12 CDOR Replacement**

Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, if at any time during the term of this Agreement, the Agent determines (which determination shall be conclusive absent manifest error), that: (a) adequate and reasonable means do not exist for ascertaining the CDOR Rate, including because the CDOR page is not available or published on a current basis for the applicable period and such circumstances are unlikely to be temporary; or (b) the administrator of the CDOR Rate or a Governmental Authority having jurisdiction has made a public statement identifying a specific date after which the CDOR Rate will permanently or indefinitely cease to be made available or permitted to be used for determining the interest rate of loans; or (c) a Governmental Authority having jurisdiction over the Agent or any Lender has made a public statement identifying a specific date after which the CDOR Rate shall no longer

be permitted to be used for determining the interest rate of loans (each such specific date in clause (b) above and in this clause (c) a “**CDOR Scheduled Unavailability Date**”); or (d) syndicated loans currently being executed, or that include language similar to that contained in this Section 3.12, are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace the CDOR Rate, then reasonably promptly after such determination by the Agent or receipt by the Agent of such notice, as applicable, the Agent may select a successor rate to the CDOR Rate, and the Agent may amend this Agreement to replace the CDOR Rate with an alternate benchmark rate (including any mathematical or other adjustments to the benchmark (if any) incorporated therein), giving due consideration to any evolving or then existing convention for similar Canadian Dollar denominated syndicated credit facilities for such alternative benchmarks (any such proposed rate, a “**CDOR Successor Rate**”), together with any proposed CDOR Successor Rate conforming changes. If no CDOR Successor Rate has been determined and the circumstances under clause (a) above in this Section 3.12 exist or a CDOR Scheduled Unavailability Date has occurred (as applicable), the Agent will promptly so notify the Canadian Borrower. Thereafter, the obligation of the Agent and each Canadian Lender to make or maintain CDOR Rate Loans shall be suspended (to the extent of the affected CDOR Rate Loans). Upon receipt of such notice, (i) the Canadian Borrower may revoke any pending request for a borrowing of CDOR Rate Loans (to the extent of the affected CDOR Rate Loans) or, failing that, will be deemed to have converted such request into a request for a borrowing of Canadian Prime Rate Loans bearing interest at the Canadian Prime Rate in effect from time to time plus the applicable margins set forth in the definition of Interest Rate and in the amount specified in such request and (ii) all outstanding CDOR Rate Loans made by any Canadian Lender shall be converted to Canadian Prime Rate Loans immediately, in which event all outstanding CDOR Rate Loans shall be so converted and shall bear interest at the Canadian Prime Rate in effect from time to time plus the applicable margins set forth in the definition of Interest Rate. Notwithstanding anything else herein, any definition of the CDOR Successor Rate (exclusive of any margin) shall provide that in no event shall such CDOR Successor Rate be less than zero for the purposes of this Agreement. In addition, the CDOR Successor Rate shall not be included or referenced in the definition of Canadian Prime Rate.

## **ARTICLE 4. CONDITIONS PRECEDENT**

### **4.1 Conditions Precedent to Initial Loans and Letter of Credit Accommodations**

Notwithstanding any other provision of this Agreement, the obligations of the Agent and the Lenders hereunder shall not become effective until such time as each of the following conditions precedent has been satisfied:

(a) no material adverse change shall have occurred in the assets, business or prospects of any Borrower or any Guarantor since the date of the Agent's latest field examination and no change or event shall have occurred which would impair the ability of any Borrower or any Guarantor to perform its obligations hereunder or under any of the other Financing Agreements to which it is a party or of the Agent to enforce the Obligations or realize upon the Collateral;

(b) the Agent shall have received all of the agreements, documents, certificates, resolutions and opinions set forth in the closing agenda attached hereto as Exhibit B with respect

to the transactions contemplated by this Agreement and the other Financing Agreements, each in form and substance satisfactory to the Agent;

(c) the Agent and each Lender shall have completed its business and legal due diligence of the transactions contemplated by this Agreement and the other Financing Agreements, the results of which shall be satisfactory to the Agent; and

(d) the Agent and each Lender shall have received at least 10 Business Days prior to the Closing Date (i) all documentation and information as is requested by the Agent and each Lender in connection with applicable “know your customer” and anti-money-laundering rules and regulations, (ii) customary individual background searches for each Borrower’s and Guarantor’s senior management and key principals, and (iii) for each Borrower and Guarantor that qualifies as a “legal entity customer” under 31 C.F.R. §1010.230, a certification in form and substance reasonably satisfactory to the Agent and each Lender regarding beneficial ownership as required by such regulation and, in the case of clauses (i), (ii) and (iii), shall be complete and accurate in all respects, and the results of which are reasonably satisfactory to the Agent and each Lender.

#### **4.2 Conditions Precedent to all Loans and Letter of Credit Accommodations**

Each of the following is an additional condition precedent to the Agent and the Lenders making Loans and/or providing Letter of Credit Accommodations to the Borrowers, including the initial Loans and Letter of Credit Accommodations and any future Loans and Letter of Credit Accommodations:

(a) all representations and warranties contained herein and in the other Financing Agreements shall be true and correct in all material respects with the same effect as though such representations and warranties had been made on and as of the date of the making of each such Loan or providing each such Letter of Credit Accommodation and after giving effect thereto;

(b) no law, regulation, order, judgement or decree of any Governmental Authority shall exist which purports to prohibit, restrain or otherwise affect (i) the making of Loans or the providing of the Letter of Credit Accommodations or (ii) the consummation of the transactions contemplated pursuant to the terms hereof or the other Financing Agreements and no change in law, regulation, order, judgement or decree of any Governmental Authority shall have occurred that has or has a reasonable likelihood of having an adverse impact on any Borrower or any Guarantor;

(c) no action, suit, investigation, litigation or proceeding shall be pending or threatened in any court or before any arbitrator or Governmental Authority, which (i) purports to enjoin, prohibit, restrain or otherwise affect (A) the making of Loans or the providing of the Letter of Credit Accommodations or (B) the consummation of the transactions contemplated pursuant to the terms hereof or the other Financing Agreements or (ii) has or has a reasonable likelihood of having an adverse determination to any Borrower or any Guarantor;

(d) no requirement of the Minister of National Revenue for payment pursuant to Section 224 or any successor Section of the ITA or Section 317 or any successor Section of the *Excise Act* (Canada) or any comparable provision of similar legislation shall have been received

by the Agent or any other Person in respect of any Borrower or any Guarantor or otherwise issued in respect of any Borrower or any Guarantor; and

(e) no Default or Event of Default shall exist or have occurred and be continuing on and as of the date of the making of any Loan or providing each such Letter of Credit Accommodation and after giving effect thereto.

## **ARTICLE 5. COLLECTION AND ADMINISTRATION**

### **5.1 The Borrower's Loan Account**

The Agent shall maintain one or more loan account(s) on its books in which shall be recorded (a) all Loans, Letter of Credit Accommodations and other Obligations and the Collateral, (b) all payments made by or on behalf of the Borrowers and (c) all other appropriate debits and credits as provided in this Agreement, including fees, charges, costs, expenses and interest. All entries in the loan account(s) shall be made in accordance with the Agent's customary practices as in effect from time to time.

### **5.2 Statements**

The Agent shall render to the Borrowers each month a statement setting forth the balance in each Borrower's loan account(s) maintained by the Agent for such Borrower pursuant to the provisions of this Agreement, including principal, interest, fees, costs and expenses. Each such statement shall be subject to subsequent adjustment by the Agent but shall, absent manifest errors or omissions, be considered correct and deemed accepted by the Borrowers and conclusively binding upon the Borrowers as an account stated except to the extent that the Agent receives a written notice from the Borrowers of any specific exceptions of the Borrowers thereto within 30 days after the date such statement has been mailed by the Agent. Until such time as the Agent shall have rendered to the Borrowers a written statement as provided above, the balance in each Borrower's loan account(s) shall be presumptive evidence of the amounts due and owing to the Agent and the Lenders by the Borrowers.

### **5.3 Collection of Accounts**

(a) Each of the Borrowers shall establish and maintain, at its expense, blocked accounts or lockboxes and related blocked accounts (in either case, "**Blocked Accounts**"), as the Agent may, from time to time, specify, and the Agent may establish and maintain bank accounts of the Agent ("**Payment Accounts**"), in each case with such banks as are acceptable to the Agent into which the Borrowers shall, in accordance with the Agent's instructions, promptly deposit, and direct its account debtors that remit payments by electronic funds transfers to directly remit, all payments on Accounts and all payments constituting proceeds of Inventory or other Collateral in the identical form in which such payments are made, whether by cash, cheque or other manner. The banks at which the Blocked Accounts are established shall enter into an agreement (each, a "**Blocked Account Agreement**"), in form and substance satisfactory to the Agent, providing that all items received or deposited in the Blocked Accounts are the property of the Agent, that the depository bank has no Encumbrance upon, or right to set-off against the Blocked Accounts, the items received for deposit therein, or the funds from time to time on deposit therein and that, upon receiving a springing blocked account notice trigger in writing

from the Agent after a Default or Event or Event of Default has occurred and is continuing, the depository bank will wire, or otherwise transfer, in immediately available funds, on a daily basis, all funds received or deposited into the Blocked Accounts to the Payment Accounts or such other bank account of the Agent as the Agent may from time to time designate for such purpose. The Borrowers agrees that all payments made to such Blocked Accounts or Payment Accounts or other funds received and collected by the Agent, whether on the Accounts or as proceeds of Inventory or other Collateral or otherwise, shall be the property of the Agent.

(b) For purposes of calculating the amount of the Loans available to the Borrowers, such payments will be applied (conditional upon final collection) to the Obligations on the Business Day of receipt by the Agent of immediately available funds in the Payment Accounts provided such payments and notice thereof are received in accordance with the Agent's usual and customary practices as in effect from time to time and within sufficient time to credit the applicable Borrower's loan account on such day, and if not, then on the next Business Day. For the purposes of calculating interest on the Obligations, such payments or other funds received will be applied (conditional upon final collection) to the Obligations on the Business Day of receipt of immediately available funds by the Agent in the Payment Account provided such payments or other funds and notice thereof are received in accordance with the Agent's usual and customary practices as in effect from time to time and within sufficient time to credit the applicable Borrower's loan account on such day, and if not, then on the next Business Day. If the Agent receives funds in a Payment Account at any time at which no Obligations are outstanding or in excess of the outstanding Obligations, the Agent shall transfer such funds to the applicable Borrower at such account as such Borrower may direct; provided, that, such Borrower shall, at the Agent's request, deposit such funds to an account maintained at the bank at which the Payment Accounts are maintained and, prior to such transfer, shall execute and deliver to the Agent a cash collateral agreement in form and substance satisfactory to the Agent providing to the Agent a first priority security interest over such account.

(c) The Borrowers and all of its Affiliates or agents shall, acting as trustee for the Agent, receive, as the property of the Agent, any monies, cheques, notes, drafts or any other payment relating to and/or proceeds of Accounts or other Collateral which come into their possession or under their control and immediately upon receipt thereof, shall deposit or cause the same to be deposited in the Blocked Accounts or the Payment Accounts, or remit the same or cause the same to be remitted, in kind, to the Agent. In no event shall the same be commingled with any Borrower's own funds. The Borrowers agree to reimburse the Agent on demand for any amounts owed or paid to any bank at which a Blocked Account or Payment Account is established or any other bank or person involved in the transfer of funds to or from the Blocked Accounts or the Payment Accounts arising out of the Agent's payments to or indemnification of such bank or person. The obligation of the Borrowers to reimburse the Agent for such amounts pursuant to this Section 5.3 shall survive the termination or non-renewal of this Agreement.

## **5.4 Payments**

(a) All Obligations shall be payable to the Payment Account as provided in Section 5.3 hereof or such other place as the Agent may designate from time to time. The Agent shall apply payments received or collected from the Borrowers or for the account of the

Borrowers (including the monetary proceeds of collections or of realization upon any Collateral) as follows:

- (i) first, to pay any fees, indemnities or expenses reimbursements then due to the Agent or the Lenders from the Borrowers;
- (ii) second, to pay interest then due in respect of any Loans; and
- (iii) third, to pay outstanding obligations in respect of the Loans, Letter of Credit Accommodations and Swap Agreements.

(b) Payments and collections received in any currency other than Canadian Dollars or U.S. Dollars will be accepted and/or applied at the sole discretion of the Agent. At the Agent's option, all principal, interest, fees, costs, expenses and other charges provided for in this Agreement or the other Financing Agreements may be charged directly to the loan account(s) of the Borrowers. The Borrowers shall make all payments to the Agent on the Obligations free and clear of, and without deduction or withholding for or on account of, any set-off, counterclaim, defence, duties, levies, imposts, fees, deductions, withholding, restrictions or conditions of any kind. Without limiting the generality of the foregoing, all payments made by the Borrowers to the Agent under the Financing Agreements shall be made free and clear of, and without deduction or withholding for or on account of, any present or future income, stamp or other taxes, levies, imposts, duties, charges, fees, deductions or withholdings (including interest, fines, penalties and additions to tax) (the "**Taxes**"), now or hereafter imposed, levied, collected, withheld or assessed by any Governmental Authority, excluding net income Taxes imposed on a Lender. If any Taxes are required to be withheld from any amounts payable to the Agent under the Financing Agreements: (A) the Borrowers shall withhold and deduct any such Taxes from such amounts, (B) the Borrowers shall pay or deposit with the appropriate taxing authority in a timely manner the full amount of Taxes so withheld or deducted, (C) the Borrowers shall promptly send the Agent a certified copy of an original official receipt received by the Borrowers (or other documentation reasonably acceptable to the Agent) showing payment thereof, and (D) the amounts so payable to the Agent shall be increased to the extent necessary to yield to each Lender (after payment of any such Taxes as aforesaid) interest or any such other amounts payable hereunder at the rates or in the amounts specified in this Agreement. If the Borrowers fail to pay any Taxes when due as aforesaid to the appropriate taxing authority or fail to remit to the Agent the required receipts or other required documentary evidence, the Borrowers shall indemnify each Lender for any incremental Taxes that may become payable by such Lender as a result of any such failure. If after receipt of any payment of, or proceeds of Collateral applied to the payment of, any of the Obligations, the Agent or any Lender is required to surrender or return such payment or proceeds to any Person for any reason, then the Obligations intended to be satisfied by such payment or proceeds shall be reinstated and continue and this Agreement shall continue in full force and effect as if such payment or proceeds had not been received by the Agent or such Lender. The Borrowers shall be liable to pay to the Agent and each Lender, and does hereby indemnify and hold the Agent and each Lender harmless for the amount of any payments or proceeds surrendered or returned. This Section 5.4 shall remain effective notwithstanding any contrary action which may be taken by the Agent or any Lender in reliance upon such payment or proceeds. This Section 5.4 shall survive the payment of the Obligations and the termination or non-renewal of this Agreement.

(c) Notwithstanding anything to the contrary contained in this Agreement: (i) all payments in respect of the Obligations shall be applied first to Obligations denominated in the same currency as the payments received; provided, that: (A) payments and collections received in any currency other than the currency in which any outstanding Obligations are denominated will be accepted and/or applied at the discretion of the Agent; (B) in the event that the Agent elects to accept and apply such amounts when there are no Obligations then outstanding in the same currency, the Agent may, at its option (but is not obligated to), convert such currency received to the currency in which the Obligations are denominated at the Spot Rate on such date (regardless of whether such rate is the best available rate); and (C) in such event, the Borrowers shall pay the costs of such conversion (or the Agent may, at its option, charge such costs to the loan account of the Borrowers maintained by the Agent); and (ii) to the extent the Borrowers, directly or indirectly, use any proceeds of Loans to acquire rights in or the use of any Collateral, payments in respect of the Obligations shall be deemed applied first to the Obligations arising from Loans that were not used for such purposes and second to the Obligations arising from Loans the proceeds of which were used to acquire rights in or the use of any Collateral in the chronological order in which the Borrowers acquired such rights in or the use of such Collateral.

## **5.5 Authorization to Make Loans and Letter of Credit Accommodations**

The Agent is authorized to make the Loans and provide the Letter of Credit Accommodations based upon written instructions received from anyone purporting to be an officer of the Borrowers or other authorized person or, at the discretion of the Agent, if such Loans are necessary to satisfy any Obligations. All requests for Loans or Letter of Credit Accommodations hereunder shall specify the date on which such Loan is to be made or Letter of Credit Accommodation established (which day shall be a Business Day) and the amount of the requested Loan. Requests received after 11:00 a.m. (Eastern Time) time on any day shall be deemed to have been made as of the opening of business on the immediately following Business Day. All Loans and Letter of Credit Accommodations under this Agreement shall be conclusively presumed to have been made to, and at the request of and for the benefit of, the Borrowers when deposited to the credit of the Borrowers or otherwise disbursed or established in accordance with the instructions of the Borrowers or in accordance with the terms and conditions of this Agreement.

## **5.6 Use of Proceeds**

(a) All Loans and Letter of Credit Accommodations shall be used by the Borrowers only for general operating, working capital and other proper corporate purposes of the Borrowers not otherwise prohibited by the terms hereof; provided, that, no part of the proceeds of the Loans 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 or for any purpose that violates the provisions of Regulation T, U or X of the Board of Governors. Each Borrower will not directly or indirectly, use any of the Loans to fund, finance or facilitate any activities, business or transactions that would be prohibited by (i) Sanctions, Anti-Money Laundering Laws or Anti-Corruption Laws or (ii) Sanctions if conducted by the Agent or any Lender.

## **ARTICLE 6. COLLATERAL REPORTING AND COVENANTS**

### **6.1 Collateral Reporting**

The Borrowers shall provide the Agent with the following documents in a form satisfactory to the Agent: (a) on a periodic basis as required by the Agent, a schedule of Accounts, sales made, credits issued and cash received; (b) on a monthly basis within 20 days after each month end or more frequently as the Agent may request, (i) perpetual inventory reports, (ii) inventory reports by category, location and age, (iii) agings of accounts payable, and (iv) Slow Moving Inventory reports; (c) (1) on a monthly basis within 20 days after each month end if no Borrowing Base Weekly Period is in effect, (2) on a weekly basis within 3 days after each week end if a Borrowing Base Weekly Period is in effect or (3) more frequently as the Agent may request, a duly completed and executed Borrowing Base Certificate for each Borrower, in substantially the form attached hereto as Schedule 6.1, together with any information which the Agent requests in connection therewith, which Borrowing Base Certificates shall, in no event, be deemed to limit, impair or otherwise affect the rights of the Agent or the Lenders contained in this Agreement and in the event of any conflict or inconsistency between the calculations made in the Borrowing Base Certificates and those made by the Agent, although the Agent shall be under no obligation to make its own calculations, those made by the Agent shall be binding and conclusive on the Borrowers absent manifest error; (d) upon the Agent's request, (i) copies of customer statements and credit memos, remittance advices and reports, and copies of deposit slips and bank statements, (ii) copies of shipping and delivery documents, and (iii) copies of purchase orders, invoices and delivery documents for Inventory and Equipment acquired by the Borrowers; (e) agings of accounts receivable on a monthly basis within 20 days after each month end or more frequently as the Agent may request; and (f) such other reports as to the Collateral as the Agent shall request from time to time. If any Borrower's records or reports of the Collateral are prepared or maintained by an accounting service, contractor, shipper or other agent, such Borrower hereby irrevocably authorizes such service, contractor, shipper or agent to deliver such records, reports, and related documents to the Agent and to follow the Agent's instructions with respect to further services at any time that a Default or an Event of Default exists or has occurred and is continuing.

### **6.2 Accounts Covenants**

(a) The Borrowers shall notify the Agent promptly of: (i) any material delay in a Borrower's performance of any of its obligations to any account debtor or the assertion of any claims, offsets, defences or counterclaims by any account debtor, or any disputes with account debtors, or any settlement, adjustment or compromise thereof; (ii) all material adverse information relating to the financial condition of any account debtor; and (iii) any event or circumstance which, to any Borrower's or any Guarantor's knowledge, would cause the Agent to consider any then existing Accounts as no longer constituting Eligible Accounts. No credit, discount, allowance or extension or agreement for any of the foregoing shall be granted to any account debtor without the Agent's consent, except in the ordinary course of the Borrowers' business in accordance with practices and policies previously disclosed in writing to the Agent. So long as no Default or Event of Default exists or has occurred and is continuing, the Borrowers shall settle, adjust or compromise any claim, offset, counterclaim or dispute with any account debtor. At any time that a Default or Event of Default exists or has occurred and is continuing,

the Agent shall, at its option, have the exclusive right to settle, adjust or compromise any claim, offset, counterclaim or dispute with account debtors or grant any credits, discounts or allowances.

(b) Without limiting the obligation of the Borrowers to deliver any other information to the Agent, the Borrowers shall promptly report to the Agent any return of Inventory by any one account debtor if the Inventory so returned in such case has a value in excess of \$500,000. At any time that Inventory is returned, reclaimed or repossessed, the Account (or portion thereof) which arose from the sale of such returned, reclaimed or repossessed Inventory shall not be deemed an Eligible Account. In the event any account debtor returns Inventory when a Default or Event of Default exists or has occurred and is continuing, the Borrowers shall, upon the Agent's request: (i) hold the returned Inventory in trust for the Agent; (ii) segregate all returned Inventory from all of its other property; (iii) dispose of the returned Inventory solely according to the Agent's instructions; and (iv) not issue any credits, discounts or allowances with respect thereto without the Agent's prior written consent.

(c) With respect to each Account: (i) the amounts shown on any invoice delivered to the Agent or schedule thereof delivered to the Agent shall be true and complete; (ii) no payments shall be made thereon except payments immediately delivered to the Agent pursuant to the terms of this Agreement; (iii) no credit, discount, allowance or extension or agreement for any of the foregoing shall be granted to any account debtor except as reported to the Agent in accordance with this Agreement and except for credits, discounts, allowances or extensions made or given in the ordinary course of the Borrowers' business in accordance with practices and policies previously disclosed in writing to the Agent; (iv) there shall be no set-offs, deductions, contras, defences, counterclaims or disputes existing or asserted with respect thereto except as reported to the Agent in accordance with the terms of this Agreement; and (v) none of the transactions giving rise thereto will violate any applicable federal or provincial laws or regulations, all documentation relating thereto will be legally sufficient under such laws and regulations and all such documentation will be legally enforceable in accordance with its terms.

(d) The Agent shall have the right at any time or times, in the Agent's name or in the name of a nominee of the Agent, to verify the validity, amount or any other matter relating to any Account or other Collateral, by mail, telephone, facsimile transmission, electronic communication or otherwise.

(e) Upon request of the Agent or upon the occurrence of a Default or an Event of Default which is continuing, the Borrowers shall deliver or cause to be delivered to the Agent, with appropriate endorsement and assignment, with full recourse to the Borrowers, all chattel paper and instruments which the Borrowers now own or may at any time acquire immediately upon a Borrower's receipt thereof.

(f) The Agent may, at any time or times that a Default or Event of Default exists or has occurred and is continuing: (i) notify any or all account debtors that the Accounts have been assigned to the Agent and that the Agent has a security interest therein and the Agent may direct any or all accounts debtors to make payment of Accounts directly to the Agent; (ii) extend the time of payment of, compromise, settle or adjust for cash, credit, return of merchandise or otherwise, and upon any terms or conditions, any and all Accounts or other obligations included

in the Collateral and thereby discharge or release the account debtor or any other party or parties in any way liable for payment thereof without affecting any of the Obligations; (iii) demand, collect or enforce payment of any Accounts or such other obligations, but without any duty to do so, and the Agent shall not be liable for its failure to collect or enforce the payment thereof nor for the negligence of its agents or attorneys with respect thereto; and (iv) take whatever other action the Agent may deem necessary or desirable for the protection of its interests. At any time that a Default or an Event of Default exists or has occurred and is continuing, at the Agent's request, all invoices and statements sent to any account debtor shall state that the Accounts and such other obligations have been assigned to the Agent and are payable directly and only to the Agent and the Borrowers shall deliver to the Agent such originals of documents evidencing the sale and delivery of goods or the performance of services giving rise to any Accounts as the Agent may require.

### **6.3 Inventory Covenants**

With respect to the Inventory: (a) the Borrowers shall at all times maintain inventory records satisfactory to the Agent, keeping correct and accurate records itemizing and describing the kind, type, quality and quantity of Inventory, the Borrower's cost therefore and daily withdrawals therefrom and additions thereto; (b) the Borrowers shall conduct a physical count of the Inventory at least once each year, but at any time or times as the Agent may request on or after a Default or an Event of Default, and promptly following such physical inventory shall supply the Agent with a report in the form and with such specificity as may be satisfactory to the Agent concerning such physical count; (c) the Borrowers shall not remove any Inventory from the locations set forth or permitted herein, without the prior written consent of the Agent, except for sales of Inventory in the ordinary course of the Borrowers' business and except to move Inventory directly from one location set forth or permitted herein to another such location; (d) upon the Agent's request, the Borrowers shall, at their expense, no more than 1 time in any calendar year, but at any time or times as the Agent may request on or after a Default or an Event of Default has occurred and is continuing, deliver or cause to be delivered to the Agent a written full scope report or appraisal as to the Inventory in form, scope and methodology acceptable to the Agent and by an appraiser acceptable to the Agent, addressed to the Agent or upon which the Agent is expressly permitted to rely; (e) the Borrowers shall produce, use, store and maintain the Inventory, with all reasonable care and caution and in accordance with applicable standards of any insurance and in conformity with applicable laws; (f) the Borrowers assume all responsibility and liability arising from or relating to the production, use, sale or other disposition of the Inventory; (g) the Borrowers shall not sell Inventory to any customer on approval, or any other basis which entitles the customer to return or may obligate the Borrowers to repurchase such Inventory; and (h) the Borrowers shall keep the Inventory in good and marketable condition.

### **6.4 Equipment Covenants**

With respect to the Equipment: (a) upon the Agent's request if there is an outstanding Capex Term Loan, the Borrowers shall, at their expense, no more than one (1) time in any two (2) consecutive calendar years (provided that this appraisal frequency limit shall trigger to no more than one (1) time in any one (1) calendar year if at any time Total Excess Availability is less than \$1,000,000), but at any time or times as the Agent may request on or after a Default or Event of

Default has occurred and is continuing, deliver or cause to be delivered to the Agent written reports or appraisals as to the Equipment in form, scope and methodology acceptable to the Agent and by an appraiser acceptable to the Agent addressed to the Agent or upon which the Agent is expressly permitted to rely; (b) the Borrowers shall keep the Equipment in good order, repair, running and marketable condition (ordinary wear and tear excepted); (c) the Borrowers shall use the Equipment with all reasonable care and caution and in accordance with applicable standards of any insurance and in conformity with all applicable laws; (d) the Equipment are and shall be used in the Borrowers' business and not for personal, family, household or farming use; (e) the Borrowers shall not remove any Equipment from the locations set forth or permitted herein, except to the extent necessary to have any Equipment repaired or maintained in the ordinary course of the business of the Borrowers or to move Equipment directly from one location set forth or permitted herein to another such location and except for the movement of motor vehicles used by or for the benefit of the Borrowers in the ordinary course of business; (f) the Equipment is now and shall remain personal property and the Borrowers shall not permit any of the Equipment to be or become a part of or affixed to real property; and (g) the Borrowers assume all responsibility and liability arising from the use of the Equipment.

## **6.5 Power of Attorney**

The Borrowers hereby irrevocably designate and appoint the Agent (and all persons designated by the Agent) as the Borrowers' true and lawful attorney-in-fact, and authorizes the Agent, in the Borrowers' or the Agent's name, to: (a) at any time a Default or an Event of Default exists or has occurred and is continuing: (i) demand payment on Accounts or other proceeds of Inventory or other Collateral, (ii) enforce payment of Accounts by legal proceedings or otherwise, (iii) exercise all of the Borrowers' rights and remedies to collect any Account or other Collateral, (iv) sell or assign any Account upon such terms, for such amount and at such time or times as the Agent deems advisable, (v) settle, adjust, compromise, extend or renew an Account, (vi) discharge and release any Account, (vii) prepare, file and sign applicable Borrower's name on any proof of claim in bankruptcy or other similar document against an account debtor, (viii) notify the post office authorities to change the address for delivery of the Borrowers' mail to an address designated by the Agent, and open and dispose of all mail addressed to the Borrowers, and (ix) do all acts and things which are necessary, in the Agent's determination, to fulfil the Borrowers' obligations under this Agreement and the other Financing Agreements; and (b) at any time to: (i) take control in any manner of any item of payment or proceeds thereof, (ii) have access to any lockbox or postal box into which the Borrowers' mail is deposited, (iii) endorse the applicable Borrower's name upon any items of payment or proceeds thereof and deposit the same in the Agent's account for application to the Obligations, (iv) endorse applicable Borrower's name upon any chattel paper, document, instrument, invoice, or similar document or agreement relating to any Account or any goods pertaining thereto or any other Collateral, (v) sign applicable Borrower's name on any verification of Accounts and notices thereof to account debtors, and (vi) execute in applicable Borrower's name and file any PPSA, UCC or other financing statements or amendments thereto. The Borrowers hereby release the Agent and its Affiliates and designees from any liabilities arising from any act or acts under this power of attorney and in furtherance thereof, whether of omission or commission, except as a result of the Agent's own gross negligence or wilful misconduct as determined pursuant to a final non-appealable order of a court of competent jurisdiction.

## **6.6 Right to Cure**

The Agent may, at its option: (a) cure any default by the Borrowers under any agreement with a third party or pay or bond on appeal any judgment entered against the Borrowers; (b) discharge taxes or other Encumbrances at any time levied on or existing with respect to the Collateral; and (c) pay any amount, incur any expense or perform any act which, in the Agent's judgment, is necessary or appropriate to preserve, protect, insure or maintain the Collateral and the rights of the Agent with respect thereto. The Agent may add any amounts so expended to the Obligations and charge each Borrower's account therefor, such amounts to be repayable by the Borrowers on demand. The Agent shall be under no obligation to effect such cure, payment or bonding and shall not, by doing so, be deemed to have assumed any obligation or liability of the Borrowers. Any payment made or other action taken by the Agent under this Section 6.6 shall be without prejudice to any right to assert a Default or an Event of Default hereunder and to proceed accordingly.

## **6.7 Access to Premises**

From time to time as requested by the Agent, at the cost and expense of the Borrowers: (a) the Agent or its designee shall have complete access to all of the Borrowers' premises (and offsite secure storage and cloud storage with respect to Records) during normal business hours and after two (2) Business Days' prior notice to the Borrowers, or at any time and without notice to the Borrowers if a Default or an Event of Default exists or has occurred and is continuing, for the purposes of inspecting, verifying and auditing the Collateral and all of the Borrowers' books and records, including the Records; (b) the Borrowers shall promptly furnish to the Agent such copies of such books and records or extracts therefrom as the Agent may request; and (c) the Agent or its designee may use during normal business hours such of the Borrowers' personnel, equipment, supplies and premises as may be reasonably necessary for the foregoing and, if a Default or an Event of Default exists or has occurred and is continuing, for the collection of Accounts and realization of other Collateral.

## **ARTICLE 7. REPRESENTATIONS AND WARRANTIES**

Each of the Borrowers and the Guarantors hereby represents and warrants to the Agent and the Lenders the following with respect to itself and its assets, properties and business (which shall survive the execution and delivery of this Agreement), the truth and accuracy of which are a continuing condition of the making of Loans and providing Letter of Credit Accommodations by the Lenders to the Borrowers:

### **7.1 Corporate Existence, Power and Authority; Subsidiaries**

Each of the Borrowers and the Guarantors has been duly incorporated, created or formed and is validly existing under the laws of its jurisdiction of incorporation, creation or formation and is duly qualified or registered in all provinces, states or other jurisdictions where the nature and extent of the business transacted by it or the ownership of assets makes such qualification or registration necessary, except for those jurisdictions in which the failure to so qualify or register would not have a material adverse effect on such Borrower's or Guarantor's financial condition, results of operation or business or the rights of the Agent in or to any of the Collateral. The execution, delivery and performance of this Agreement, the other Financing Agreements and the

transactions contemplated hereunder and thereunder are all within each Borrower's and Guarantor's powers, have been duly authorized and are not in contravention of law or the terms of such Borrower's or Guarantor's certificate of incorporation, by-laws, or other organizational documentation, or any indenture, agreement or undertaking to which such Borrower or Guarantor is a party or by which such Borrower or Guarantor or its property is bound. This Agreement and the other Financing Agreements constitute legal, valid and binding obligations of the Borrowers and the Guarantors enforceable in accordance with their respective terms. All of the Subsidiaries of the Borrowers and the Guarantors are set forth on the Information Certificates, as applicable. The corporate structure chart attached hereto as Schedule 7.1 shows all of the Subsidiaries of the Borrowers and the Guarantors and is true, accurate and complete.

## **7.2 Financial Statements; No Material Adverse Change**

All financial statements relating to the Borrowers and the Guarantors which have been or may hereafter be delivered by the Borrowers to the Agent have been prepared in accordance with IFRS and fairly present the financial condition and the results of operations of the Borrowers and the Guarantors as at the dates and for the periods set forth therein. There has been no material adverse change in the assets, liabilities, properties and condition, financial or otherwise, of the Borrowers and the Guarantors, since the date of the most recent audited consolidated financial statements of the Borrowers, the Guarantors and their respective Subsidiaries furnished by the Borrowers to the Agent prior to the date of this Agreement.

## **7.3 Chief Executive Office; Collateral Locations**

The chief executive office of the Borrowers and the Guarantors and each Borrower's Records concerning its Accounts are located only at the addresses set forth below and in the Information Certificates (which include details of locations and providers of each Borrower's offsite secure storage and cloud storage with respect to Records) and the only other places of business of the Borrowers and the Guarantors and the only other locations of Collateral, if any, are the addresses set forth in the Information Certificates, subject to the right of the Borrowers and the Guarantors to establish new locations in accordance with Section 8.2 hereof. The Information Certificates of the Borrowers and the Guarantors correctly identify any of such locations which are not owned by the Borrowers or the Guarantors, respectively, and set forth the owners and/or operators thereof and to the best of each Borrower's and Guarantor's knowledge, the holders of any mortgages on such locations.

## **7.4 Priority of Liens; Title to Properties**

The security interests and liens granted to the Agent under this Agreement and the other Financing Agreements constitute valid and perfected first priority security interests and liens in and upon the Collateral subject only to the Encumbrances indicated on Schedule 7.4 hereto (except to the extent that the Agent requires the discharge thereof prior to the advance of the initial Loans and Letter of Credit Accommodations hereunder) and the other Encumbrances permitted under Section 8.8 hereof. Each of the Borrowers and the Guarantors has good and marketable title to all of its assets and properties subject to no Encumbrances of any kind, except those granted to the Agent and such others as are specifically listed on Schedule 7.4 hereto (except to the extent that the Agent requires the discharge thereof prior to the advance of the

initial Loans and Letter of Credit Accommodations hereunder) or permitted under Section 8.8 hereof.

## **7.5 Tax Returns**

Each of the Borrowers and the Guarantors has filed, or caused to be filed, in a timely manner all tax returns, reports and declarations which are required to be filed by it (without requests for extensions except as previously disclosed in writing to the Agent). All information in such tax returns, reports and declarations is complete and accurate in all material respects. Each of the Borrowers and the Guarantors has paid or caused to be paid all Taxes due and payable or claimed due and payable in any assessment received by it, except Taxes the validity of which are being contested in good faith by appropriate proceedings diligently pursued and available to the Borrowers and the Guarantors and with respect to which adequate reserves have been set aside on their books. Adequate provision has been made for the payment of all accrued and unpaid federal, provincial, municipal, local, foreign and other Taxes whether or not yet due and payable and whether or not disputed.

## **7.6 Litigation**

Except as set forth on the Information Certificates, there is no present investigation by any Governmental Authority pending or, to the best of the Borrowers' and the Guarantors' knowledge, threatened against or affecting the Borrowers, the Guarantors or their respective assets, properties or business and there is no action, suit, proceeding or claim by any Person pending or, to the best of the Borrowers' and the Guarantors' knowledge, threatened against the Borrowers, the Guarantors or their respective assets, properties or business or against or affecting any transactions contemplated by this Agreement, which if adversely determined against the Borrowers or the Guarantors would result in any material adverse change in the assets, business or prospects of the Borrowers or the Guarantors or would impair the ability of the Borrowers or the Guarantors to perform their respective obligations hereunder or under any of the other Financing Agreements or of the Agent to enforce any Obligations or realize upon any Collateral.

## **7.7 Compliance with Other Agreements and Applicable Laws**

Neither of the Borrowers nor the Guarantors is in default in any material respect under, or in violation in any material respect of any of the terms of, any agreement, contract, instrument, lease or other commitment to which it is a party or by which it or any of its assets are bound and each Borrower and Guarantor is in compliance in all material respects with all applicable provisions of laws, rules, regulations, licenses, permits, approvals and orders of any Governmental Authority (including Sanctions, Anti-Money Laundering Laws and Anti-Corruption Laws).

## **7.8 Bank Accounts**

All of the deposit accounts, investment accounts or other accounts in the name of or used by the Borrowers maintained at any bank or other financial institution are set forth on Schedule 7.8 hereto, subject to the right of the Borrowers to establish new accounts in accordance with Section 8.15 hereof.

## **7.9 Accuracy and Completeness of Information**

All information furnished by or on behalf of the Borrowers and the Guarantors in writing to the Agent in connection with this Agreement or any of the other Financing Agreements or any transaction contemplated hereby or thereby, including all information on the Information Certificates, is true and correct in all material respects on the date as of which such information is dated or certified and does not omit any material fact necessary in order to make such information not misleading. No event or circumstance has occurred which has had or could reasonably be expected to have a material adverse affect on the assets, properties, business or prospects of the Borrowers or the Guarantors, which has not been fully and accurately disclosed to the Agent in writing. The Borrowers do not have any return policies in respect of sales of their respective Inventory except as disclosed to the Agent in writing prior to the date hereof.

## **7.10 Status of Canadian Pension Plans, U.S. Plans and Multiemployer Plans**

(a) The Canadian Pension Plans are duly registered under all applicable provincial pension benefits legislation and the only Canadian Pension Plan currently maintained by the Borrowers and the Guarantors is a group registered retirement savings plan (RRSP).

(b) All obligations of the Borrowers and the Guarantors (including fiduciary, funding, investment and administration obligations) required to be performed in connection with the Canadian Pension Plans or the funding agreements therefor have been performed in a timely fashion in accordance with the terms of the Canadian Pension Plans and applicable laws and regulations. There are no outstanding disputes concerning the assets held pursuant to any Canadian Pension Plan or such funding agreement.

(c) All contributions or premiums required to be made by the Borrowers and the Guarantors to the Canadian Pension Plans have been made in a timely fashion in accordance with the terms of the Canadian Pension Plans and applicable laws and regulations.

(d) All employee contributions to the Canadian Pension Plans required to be made by way of authorized payroll deduction have been properly withheld by the Borrowers and the Guarantors and fully paid into the Canadian Pension Plans in a timely fashion.

(e) All reports and disclosures relating to the Canadian Pension Plans required by any applicable laws or regulations have been filed or distributed in a timely fashion.

(f) There have been no improper withdrawals, or applications of, the assets of any of the Canadian Pension Plans.

(g) No amount is owing by any of the Canadian Pension Plans under the ITA or any provincial taxation statute or the Code.

(h) To the extent there exist Canadian Pension Plans, the Canadian Pension Plans are fully funded both on an ongoing basis and on a solvency basis (using actuarial assumptions and methods which are consistent with the valuations last filed with the applicable Governmental Authorities and which are consistent with generally accepted actuarial principles).

(i) None of the Canadian Pension Plans is the subject of an investigation, any other proceeding or any action or claim by any Governmental Authority or any other Person. There exists no state of facts which after notice or lapse of time or both could reasonably be expected to give rise to any such proceeding, action or claim. There has been no prohibited transactions or violations of the fiduciary responsibility rules with respect to any Canadian Pension Plans nor any related party transactions (except as permitted by applicable law) or prohibited investments under any Canadian Pension Plan.

(j) None of the Canadian Pension Plans is a defined benefit registered pension plan or contains a defined benefit provision.

(k) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal or State law. Each Plan which is intended to qualify under Section 401(a) of the Code has received a favourable determination letter from the Internal Revenue Service and to the best of Borrowers' knowledge, nothing has occurred which is likely to cause the loss of such qualification where such loss, when combined with other such occurrences or failures to comply, has or could reasonably be expected to have a material adverse effect on (i) the business, condition (financial or otherwise), operations, performance, properties or prospects of the Borrowers, (ii) the rights and remedies of any Agent or any Lender under any Financing Agreement or (iii) the ability of the Borrowers or any Guarantor perform its obligation under any Financing Agreements to which it is party. Each Borrower and its ERISA Affiliates have made all required contributions to any U.S. Pension Plan, and no application for a funding waiver has been made with respect to any U.S. Pension Plan.

(l) Except as set forth in the Information Certificate, there are no pending, or to the best of Borrowers' knowledge, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan which could reasonably be expected to result in liability of the Borrowers in an aggregate amount in excess of \$1,000,000. Except as set forth in the Information Certificate, there has been no prohibited transaction or violation of the fiduciary responsibility rules that would reasonably be expected to result in a material liability to the Borrowers.

(m) Except as set forth in the Information Certificate, no ERISA Event has occurred or is reasonably expected to occur that would reasonably be expected to result in a material liability to the Borrowers; the Borrowers and their respective ERISA Affiliates have not incurred and do not reasonably expect to incur any liability which could reasonably be expected to result in liability of the Borrowers and their respective Affiliates in an aggregate amount in excess of \$1,000,000 under Title IV of ERISA with respect to any U.S. Pension Plan (other than premiums due and not delinquent under Section 4007 of ERISA); the Borrowers and their respective ERISA Affiliates have not incurred and do not reasonably expect to incur any liability which could reasonably be expected to result in liability of the Borrowers and their respective Affiliates in an aggregate amount in excess of \$1,000,000 (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Section 4201 or 4243 of ERISA with respect to a Multiemployer Plan; and the Borrowers and their respective ERISA Affiliates have not engaged in a transaction that would be subject to Section 4069 or 4212(c) of ERISA.

## **7.11 Environmental Compliance**

(a) To the best of the Borrowers' and the Guarantors' knowledge, (i) neither the Borrowers nor the Guarantors has generated, used, stored, treated, transported, manufactured, handled, produced or disposed of any Hazardous Materials, on or off its premises (whether or not owned by it) in any manner which at any time violates any applicable Environmental Law or any license, permit, certificate, approval or similar authorization thereunder that would have a Material Adverse Effect and (ii) the operations of the Borrowers and the Guarantors comply in all respects with all Environmental Laws and all licenses, permits, certificates, approvals and similar authorizations thereunder except for any such non-compliance that would not have a Material Adverse Effect.

(b) To the best of the Borrowers' and the Guarantors' knowledge, there has been no investigation, proceeding, complaint, order, directive, claim, citation or notice by any Governmental Authority or any other Person nor is any pending or threatened with respect to any non-compliance with or violation of the requirements of any Environmental Law by the Borrowers or the Guarantors or the release, spill or discharge, threatened or actual, of any Hazardous Material or the generation, use, storage, treatment, transportation, manufacture, handling, production or disposal of any Hazardous Materials or any other environmental, health or safety matter, which affects the Borrowers, the Guarantors or their respective assets, properties, business or operations or any properties at which any of the Borrowers or the Guarantors has transported, stored or disposed of any Hazardous Materials and that would have a Material Adverse Effect.

(c) To the best of the Borrowers' and the Guarantors' knowledge, neither the Borrowers nor the Guarantors has any liability (contingent or otherwise) in connection with a release, spill or discharge, threatened or actual, of any Hazardous Materials or the generation, use, storage, treatment, transportation, manufacture, handling, production or disposal of any Hazardous Materials that would have a Material Adverse Effect.

(d) To the best of the Borrowers' and the Guarantors' knowledge, each of the Borrowers and the Guarantors has all licenses, permits, certificates, approvals or similar authorizations required to be obtained or filed in connection with the operations of the Borrowers and the Guarantors under any Environmental Law and all of such licenses, permits, certificates, approvals or similar authorizations are valid and in full force and effect except to the extent such failure to obtain or file or to be valid and in full force and effect would not have a Material Adverse Effect.

## **7.12 Intellectual Property**

Each of the Borrowers and the Guarantors owns or licences or otherwise has the right to use all Intellectual Property necessary for the operation of its business as presently conducted or proposed to be conducted. As of the date hereof, none of the Borrowers and the Guarantors has any Intellectual Property registered, or subject to pending applications, in the United States Patent and Trademark Office, the Canadian Intellectual Property Office or any similar office or agency in the United States of America or Canada, any State or Province thereof, any political subdivision thereof or in any other country, other than those described in the Information Certificates and has granted any licenses with respect thereto other than as set forth in the

Information Certificates. To the best of the Borrowers' and the Guarantors' knowledge, no event has occurred which permits or would permit after notice or passage of time or both, the revocation, suspension or termination of such rights. No slogan or other advertising device, product, process, method, substance or other Intellectual Property or goods bearing or using any Intellectual Property presently contemplated to be sold by or employed by the Borrowers or the Guarantors infringes any patent, trademark, service mark, trade name, copyright, license or other Intellectual Property owned by any other Person presently and no claim or litigation is pending or threatened against or affecting the Borrowers or the Guarantors contesting their right to sell or use any such Intellectual Property. The Information Certificates set forth all of the agreements or other arrangements of the Borrowers and the Guarantors pursuant to which the Borrowers and the Guarantors have a license or other right to use any trademarks, logos, designs, representations or other Intellectual Property owned by another Person as in effect on the date hereof and the dates of the expiration of such agreement or other arrangements of the Borrowers and the Guarantors as in effect on the date hereof (collectively, together with such agreement or other arrangement as may be entered into by the Borrowers and the Guarantors after the date hereof, collectively, the "**License Agreements**" and individually, a "**License Agreement**") other than over-the-counter shrink-wrapped or "click-wrapped" software. No trademark, service mark, copyright or other Intellectual Property at any time used by the Borrowers or the Guarantors which is owned by another Person, or owned by the Borrowers or the Guarantors but subject to any Encumbrance in favour of any Person other than the Agent, is affixed to any Eligible Inventory, except (a) to the extent permitted under the term of the License Agreements; and (b) to the extent the sale of Inventory to which such Intellectual Property is affixed is permitted to be sold by the Borrowers and the Guarantors under applicable law.

### **7.13 Subsidiaries; Affiliates; Capitalization; Solvency**

(a) Neither the Borrowers nor the Guarantors has any direct or indirect Subsidiaries or downstream Affiliates and is engaged in any joint venture or partnership except as set forth in the Information Certificates.

(b) Except as set forth in the Information Certificates, each of the Borrowers and the Guarantors is the record and beneficial owner of all of the issued and outstanding shares in the capital of each of the Subsidiaries listed in the Information Certificates as being owned by the Borrowers and the Guarantors and there are no proxies, irrevocable or otherwise, with respect to such shares and no equity securities of any of such Subsidiaries are or may become required to be issued by reason of any options, warrants, rights to subscribe to, calls or commitments of any kind or nature and there are no contracts, commitments, understandings or arrangements by which any such Subsidiaries are or may become bound to issue additional shares or securities convertible into or exchangeable for such shares.

(c) The issued and outstanding shares in the capital of each of the Borrowers and Holdco USA are directly and beneficially owned and held by the persons indicated in the Information Certificates, and in each case all of such shares have been duly authorized and are fully paid and non-assessable, free and clear of all Encumbrances of any kind, except as disclosed in writing to the Agent prior to the date hereof.

(d) Each of the Borrowers and the Guarantors is solvent and will continue to be solvent after the creation of the Obligations and the security interests of the Agent hereunder and the consummation of the other transactions contemplated hereunder and under the other Financing Agreements.

**7.14 OFAC; Sanctions; Anti-Corruption Laws; Anti-Money Laundering Laws; Patriot Act**

No Borrower or Guarantor is a Sanctioned Target or is owned or controlled by, or is acting on behalf of, a Sanctioned Target, (b) each Borrower and Guarantor has instituted, maintains and complies with policies, procedures and controls reasonably designed to assure compliance with Sanctions, Anti-Money Laundering Laws and Anti-Corruption Laws, and (c) to the knowledge of each Borrower and Guarantor, no Borrower or Guarantor is under investigation by a Governmental Authority for non-compliance with Sanction(s), Anti-Money Laundering Laws or Anti-Corruption Laws. As of the Closing Date, the information included in the certification regarding beneficial ownership as required by 31 C.F.R. §1010.230 received by the Agent from each Borrower and Guarantor that is a “legal entity customer” as defined in such regulation, is true and correct in all respects.

**7.15 Margin Stock; Investment Company Act; Etc.**

Neither the Borrowers nor the Guarantors own any Margin Stock or engages principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. Neither the Borrowers nor the Guarantors is subject to regulation under the *Federal Power Act* or the *Investment Company Act of 1940* or under any other federal, state, provincial, territorial or foreign statute or regulation which may limit its ability to incur Indebtedness or which may otherwise render all or any portion of the Obligations unenforceable. Neither the Borrowers nor the Guarantors is a “registered investment company” or a company “controlled” by a “registered investment company” or a “principal underwriter” of a “registered investment company” as such terms are defined in the *Investment Company Act of 1940*.

**7.16 Survival of Warranties; Cumulative**

All representations and warranties contained in this Agreement or any of the other Financing Agreements shall survive the execution and delivery of this Agreement and shall be deemed to have been made again to the Agent and each Lender on the date of each additional borrowing or other credit accommodation hereunder and shall be conclusively presumed to have been relied on by the Agent and each Lender regardless of any investigation made or information possessed by the Agent and each Lender. The representations and warranties set forth herein shall be cumulative and in addition to any other representations or warranties which the Borrowers and the Guarantors shall now or hereafter give, or cause to be given, to the Agent and each Lender.

**ARTICLE 8. AFFIRMATIVE AND NEGATIVE COVENANTS**

**8.1 Maintenance of Existence**

Each of the Borrowers and the Guarantors shall at all times preserve, renew and keep in full, force and effect its existence and rights and franchises with respect thereto and maintain in full

force and effect all permits, licenses, trademarks, trade names, approvals, authorizations, leases and contracts necessary to carry on the business as presently or proposed to be conducted. Each of the Borrowers and the Guarantors shall give the Agent 30 days prior written notice of any proposed change in its name, which notice shall set forth the new name and the Borrowers and the Guarantors shall deliver to the Agent a certified copy of the Certificate of Amendment of the applicable Borrower or Guarantor providing for the name change immediately following its filing.

## **8.2 New Collateral Locations**

The Borrowers and the Guarantors may open any new collateral location within Canada, provided the Borrowers and the Guarantors, (a) give the Agent 30 days prior written notice of the intended opening of any such new collateral location and (b) execute and deliver, or causes to be executed and delivered, to the Agent such agreements, documents, and instruments as the Agent may deem necessary or desirable to protect its interests in the Collateral at such location, including PPSA, UCC and other financing statements and such other evidence as the Agent may require for the perfection of the Agent's first priority security interests and liens where required by the Agent.

## **8.3 Compliance with Laws, Regulations, Etc.**

(a) Each of the Borrowers and the Guarantors shall, at all times, comply in all material respects with all laws, rules, regulations, licenses, permits, approvals and orders applicable to it and duly observe all requirements of any Governmental Authority, including all statutes, rules, regulations, orders, permits and stipulations relating to environmental pollution and employee health and safety, including all of the Environmental Laws except for any matter that the Borrowers or the Guarantors are contesting in good faith by appropriate proceedings diligently pursued and which is not reasonably expected to have a material adverse effect on the Borrowers, the Guarantors or their respective assets, business, operations, properties, goodwill, prospects or conditions (financial or otherwise).

(b) Each Borrower and Guarantor will (i) comply with Sanctions and (ii) comply with Anti-Money Laundering Laws and Anti-Corruption Laws in all material respects.

(c) Each of the Borrowers and the Guarantors shall establish and maintain, at its expense, a system to assure and monitor its continued compliance with all Environmental Laws in all of its operations, which system shall include annual reviews of such compliance by employees or agents of the Borrowers and the Guarantors who are familiar with the requirements of the Environmental Laws. Copies of all environmental surveys, audits, assessments, feasibility studies and results of remedial investigations shall be promptly furnished, or caused to be furnished, by the Borrowers and the Guarantors to the Agent. Each of the Borrowers and the Guarantors shall take prompt and appropriate action to respond to any non-compliance with any of the Environmental Laws and the Borrowers shall regularly report to the Agent on such response.

(d) Each of the Borrowers and the Guarantors shall give both oral and written notice to the Agent immediately upon its receipt of any notice of, or its otherwise obtaining knowledge of, (i) the occurrence of any event involving the release, spill or discharge, threatened or actual,

of any Hazardous Material; or (ii) any investigation, proceeding, complaint, order, directive, claims, citation or notice with respect to: (A) any non-compliance with or violation of any Environmental Law by the Borrowers or the Guarantors; or (B) the release, spill or discharge, threatened or actual, of any Hazardous Material; or (C) the generation, use, storage, treatment, transportation, manufacture, handling, production or disposal of any Hazardous Materials; or (D) any other environmental, health or safety matter, which affects any of the Borrowers, the Guarantors or their respective assets, business or operations or any properties at which the Borrowers or the Guarantors transported, stored or disposed of any Hazardous Materials.

(e) Without limiting the generality of the foregoing, whenever the Agent determines that there is non-compliance, or any condition which requires any action by or on behalf of the Borrowers or the Guarantors in order to avoid any material non-compliance, with any Environmental Law, the Borrowers or the Guarantors shall, at the Agent's request and the Borrowers' expense: (i) cause an independent environmental engineer acceptable to the Agent to conduct such tests of the site where the Borrowers' or the Guarantors' non-compliance or alleged non-compliance with such Environmental Laws has occurred as to such non-compliance and prepare and deliver to the Agent a report as to such non-compliance setting forth the results of such tests, a proposed plan for responding to any environmental problems described therein, and an estimate of the costs thereof and (ii) provide to the Agent a supplemental report of such engineer whenever the scope of such non-compliance, or the Borrowers' or the Guarantors' response thereto or the estimated costs thereof, shall change in any material respect.

(f) Each of the Borrowers and the Guarantors shall, on a joint and several basis, indemnify and hold harmless the Agent, the Lenders, their respective Affiliates, agents, invitees, representatives, successors and assigns, from and against any and all losses, claims, damages, liabilities, costs, and expenses (including legal fees and expenses) directly or indirectly arising out of or attributable to the use, generation, manufacture, reproduction, storage, release, threatened release, spill, discharge, disposal or presence of a Hazardous Material, including the costs of any required or necessary repair, cleanup or other remedial work with respect to any property of the Borrowers or the Guarantors and the preparation and implementation of any closure, remedial or other required plans. All representations, warranties, covenants and indemnifications in this Section 8.3 shall survive the payment of the Obligations and the termination or non-renewal of this Agreement.

#### **8.4 Payment of Taxes and Claims**

Each of the Borrowers and the Guarantors shall duly pay and discharge all Taxes, assessments, contributions and governmental charges upon or against it or its assets, business, operations or properties except for Taxes the validity of which are being contested in good faith by appropriate proceedings diligently pursued and available to the Borrowers and the Guarantors and with respect to which adequate reserves have been set aside on its books. The Borrowers and the Guarantors shall be liable for any Tax or penalties imposed on each Lender as a result of the financing arrangements provided for herein, excluding any Tax imposed on the income of a Lender, and the Borrowers and the Guarantors agree to indemnify, on a joint and several basis, and hold each Lender harmless with respect to the foregoing, and to repay to each Lender on demand the amount thereof, and until paid by the Borrowers and/or the Guarantors such amount shall be added and deemed part of the Loans; provided, that, nothing contained herein shall be

construed to require the Borrowers and the Guarantors to pay any income or franchise taxes attributable to the income of a Lender from any amounts charged or paid hereunder to such Lender. The foregoing indemnity shall survive the payment of the Obligations and the termination or non-renewal of this Agreement.

## **8.5 Insurance**

Each of the Borrowers and the Guarantors shall, at all times, maintain with financially sound and reputable insurers insurance with respect to the Collateral against loss or damage and all other insurance of the kinds and in the amounts customarily insured against or carried by corporations of established reputation engaged in the same or similar businesses and similarly situated. Said policies of insurance shall be satisfactory to the Agent as to form, amount and insurer. Each of the Borrowers and the Guarantors shall furnish certificates, policies or endorsements to the Agent as the Agent shall require as proof of such insurance, and, if the Borrowers or the Guarantors fail to do so, the Agent is authorized, but not required, to obtain such insurance at the expense of the Borrowers and the Guarantors. All policies shall provide for at least 30 days prior written notice to the Agent of any cancellation or reduction of coverage and that the Agent may act as attorney for the Borrowers and the Guarantors in obtaining, and at any time a Default or an Event of Default exists or has occurred and is continuing, adjusting, settling, amending and cancelling, such insurance. The Borrowers and the Guarantors shall cause the Agent to be named as a loss payee and an additional insured (but without any liability for any premiums) under such insurance policies and the Borrowers and the Guarantors shall obtain non-contributory lender's loss payable endorsements to all insurance policies in form and substance satisfactory to the Agent. Such lender's loss payable endorsements shall specify that the proceeds of such insurance shall be payable to the Agent as its interests may appear and further specify that the Agent shall be paid regardless of any act or omission by the Borrowers, the Guarantors or any of their respective Affiliates. At its option, the Agent may apply any insurance proceeds received by the Agent at any time to the cost of repairs or replacement of Collateral and/or to payment of the Obligations, whether or not then due, in any order and in such manner as the Agent may determine or hold such proceeds as cash collateral for the Obligations.

## **8.6 Financial Statements and Other Information**

(a) Each of the Borrowers and the Guarantors shall keep proper books and records in which true and complete entries shall be made of all dealings or transactions of or in relation to the Collateral and the business of the Borrowers, the Guarantors and their respective Subsidiaries (if any) in accordance with IFRS and the Borrowers shall furnish or cause to be furnished to the Agent: (i) within 30 days after the end of each fiscal month, monthly unaudited consolidated financial statements of the Borrowers, the Guarantors and their respective Subsidiaries (if any) and monthly unaudited consolidating financial statements of the Borrowers, the Guarantors and their respective Subsidiaries (if any), (including in each case balance sheets, statements of income and loss, statements of cash flow and statements of shareholders' equity), all in reasonable detail, fairly presenting the financial position and the results of the operations of the Borrowers, the Guarantors and their respective Subsidiaries (if any), as of the end of and through such fiscal month, (ii) within 45 days after the end of each fiscal quarter, quarterly unaudited consolidated financial statements of the Borrowers, the Guarantors and their respective

Subsidiaries (if any) and quarterly unaudited consolidating financial statements of the Borrowers, the Guarantors and their respective Subsidiaries (if any), (including in each case balance sheets, statements of income and loss, statements of cash flow and statements of shareholders' equity), all in reasonable detail, fairly presenting the financial position and the results of the operations of the Borrowers, the Guarantors and their respective Subsidiaries (if any), as of the end of and through such fiscal quarter together with a management discussion of such financial position and results in form acceptable to the Agent and (iii) within 90 days after the end of each fiscal year, audited consolidated financial statements of the Borrowers, the Guarantors and their respective Subsidiaries (if any), audited consolidating financial statements of the Borrowers, the Guarantors and their respective Subsidiaries (if any), (including in each case balance sheets, statements of income and loss, statements of changes in financial position and statements of shareholders' equity), and the accompanying notes thereto, all in reasonable detail, fairly presenting the financial position and the results of the operations of the Borrowers, the Guarantors and their respective Subsidiaries (if any), as of the end of and for such fiscal year, together with the unqualified opinion of independent chartered accountants, which accountants shall be an independent accounting firm selected by the Borrowers and acceptable to the Agent, that such financial statements have been prepared in accordance with IFRS, and present fairly the results of operations and financial condition of the Borrowers, the Guarantors and their respective Subsidiaries (if any), as of the end of and for the fiscal year then ended.

(b) The Borrowers and the Guarantors shall promptly notify the Agent in writing of the details of (i) any loss, damage, investigation, action, suit, proceeding or claim relating to the Collateral or any other property which is security for the Obligations or which would result in any material adverse change in any Borrower's or Guarantor's assets, business, operations, properties, goodwill, prospects or conditions (financial or otherwise) and (ii) the occurrence of any Default or Event of Default.

(c) The Borrowers and the Guarantors shall promptly after the sending or filing thereof furnish or cause to be furnished to the Agent copies of all reports which the Borrowers and the Guarantors send to their respective shareholders generally and copies of all reports and registration statements which the Borrowers and the Guarantors file with any provincial securities commission or securities exchange.

(d) The Borrowers and the Guarantors shall furnish or cause to be furnished to the Agent such budgets, forecasts, projections and other information respecting the Collateral and the business of the Borrowers and the Guarantors, as the Agent may, from time to time, request. The Agent is hereby authorized to deliver a copy of any financial statement or any other information relating to the business of the Borrowers and the Guarantors to any court or other Governmental Authority or to any participant or assignee or prospective participant or assignee. Each of the Borrowers and the Guarantors hereby irrevocably authorizes and directs all accountants or auditors to deliver to the Agent, at the Borrowers' and the Guarantors' expense, copies of the financial statements of the Borrowers and the Guarantors and any reports or management letters prepared by such accountants or auditors on behalf of the Borrowers and the Guarantors and to disclose to the Agent such information as they may have regarding the business of the Borrowers and the Guarantors. Any documents, schedules, invoices or other papers delivered to the Agent may be destroyed or otherwise disposed of by the Agent 1 year

after the same are delivered to the Agent, except as otherwise designated by the Borrowers and the Guarantors to the Agent in writing.

(e) The Borrowers and the Guarantors shall, within 20 days after the end of each month, provide a certificate of the chief financial officer of each of the Borrowers and the Guarantors, in form and content satisfactory to the Agent, certifying that each of the Borrowers and the Guarantors has paid in full: (i) all rent and other amounts due and payable with respect to any premises leased by the Borrowers or the Guarantors during such month; and (ii) all payments and other amounts due and payable with respect to any Canadian Pension Plan, Plan or U.S. Pension Plan or any material contract during such month.

(f) The Borrowers shall, within 30 days after the end of each month, provide a compliance certificate, in substantially the form attached hereto as Schedule 8.6(f) (each, a “**Compliance Certificate**”), to the Agent with respect to compliance with the financial covenant set forth in Sections 8.13, the calculation of Total Excess Availability and such other matters relating to the Borrowers and the Guarantors as the Agent may from time to time request; provided, that, the parties hereto acknowledge and agree that the Compliance Certificate furnished within 30 days after the end of each fiscal quarter and the twelfth fiscal month of any year may be need to be revised based on the findings of an internal or external audit, in which case the Borrowers shall furnish or cause to be furnished to the Agent, concurrently with the unaudited and audited consolidated financial statements to be furnished pursuant to Sections 8.6(a)(ii) and (iii) hereof, such revised Compliance Certificate within 45 days or 90 days, as the case may be, after the end of such period.

## **8.7 Sale of Assets, Consolidation, Amalgamation, Dissolution, Etc.**

Neither the Borrowers nor the Guarantors shall, directly or indirectly: (a) amalgamate with any other Person or permit any other Person to amalgamate with it; or (b) sell, assign, lease, transfer, abandon or otherwise dispose of any shares, units or other equity interests, or indebtedness to any other Person or any of its assets or properties, including the Collateral, to any other Person (except for: (i) sales of Inventory in the ordinary course of business; (ii) the disposition of Equipment of the Borrowers or the Guarantors so long as: (A) if a Default or an Event of Default exists or has occurred and is continuing, any proceeds are paid to the Agent; (B) such sales do not involve Equipment having an aggregate fair market value in excess of \$5,000,000 for all such Equipment disposed of in any fiscal year of the Borrowers; (C) Borrowers provide the Agent with reasonable prior written notice of each such disposition; and (D) if such disposed Equipment supports and covers an outstanding Capex Term Loan, any proceeds of such sold Equipment are promptly paid to the Agent to be applied against the outstanding Capex Term Loans in accordance with Section 2.5; and (iii) sales of shares or other equity interests in the Parent by the Parent in the ordinary course of business); or (c) form or acquire any Person; or (d) wind up, liquidate or dissolve; or (e) agree to do any of the foregoing.

## **8.8 Encumbrances**

Neither the Borrowers nor the Guarantors shall create, incur, assume or suffer to exist any Encumbrances of any nature whatsoever on any of its assets or properties, including the Collateral, except: (a) Encumbrances in favour of the Agent; (b) Encumbrances securing the payment of taxes, either not yet overdue or the validity of which are being contested in good

faith by appropriate proceedings diligently pursued and available to the Borrowers or the Guarantors and with respect to which adequate reserves have been set aside on its books; (c) non-consensual statutory Encumbrances (other than Encumbrances securing the payment of taxes) arising in the ordinary course of the Borrowers' or the Guarantors' business to the extent: (i) such Encumbrances secure indebtedness which is not overdue or (ii) such Encumbrances secure indebtedness relating to claims or liabilities which are fully insured and being defended at the sole cost and expense and at the sole risk of the insurer or being contested in good faith by appropriate proceedings diligently pursued and available to the Borrowers and the Guarantors, in each case prior to the commencement of foreclosure or other similar proceedings and with respect to which adequate reserves have been set aside on its books; (d) zoning restrictions, easements, licenses, covenants and other restrictions affecting the use of real property which do not interfere in any material respect with the use of such real property or ordinary conduct of the business of the Borrowers or the Guarantors as presently conducted thereon or materially impair the value of the real property which may be subject thereto; (e) purchase money security interests in Equipment (including capital leases) and purchase money mortgages on real estate not to exceed (i) \$2,500,000 in the aggregate at any time outstanding and (ii) \$500,000 on an individual basis so long as, in each case, such security interests and mortgages do not apply to any property of the Borrowers or the Guarantors other than the Equipment or real estate so acquired, and the indebtedness secured thereby does not exceed the cost of the Equipment or real estate so acquired, as the case may be; and (f) Encumbrances set forth on Schedule 7.4 hereto (except to the extent that the Agent requires the discharge thereof prior to the advance of the initial Loans and Letter of Credit Accommodations hereunder). The Borrowers and the Guarantors shall maintain any Encumbrances on their respective assets or properties that are permitted hereunder, if any, in good standing.

## **8.9 Indebtedness**

Neither the Borrowers nor the Guarantors shall incur, create, assume, become or be liable in any manner with respect to, or permit to exist, any obligations, liabilities or indebtedness, except (a) the Obligations including obligations, liabilities and indebtedness under or in connection with Swap Agreements; (b) trade obligations and normal accruals in the ordinary course of business not yet due and payable, or with respect to which the Borrowers or the Guarantors are contesting in good faith the amount or validity thereof by appropriate proceedings diligently pursued and available to the Borrowers or the Guarantors, and with respect to which adequate reserves have been set aside on its books; (c) purchase money indebtedness (including capital leases) to the extent not incurred or secured by Encumbrances (including capital leases) in violation of any other provision of this Agreement; and (d) the indebtedness set forth on Schedule 8.9 hereto (which includes the Intercompany Indebtedness); provided, that:

- (i) the Borrowers and the Guarantors may, subject to any agreement between the Agent and the holder of such indebtedness, only make regularly scheduled payments of principal and interest in respect of such indebtedness in accordance with the terms of the agreement, document or instrument evidencing or giving rise to such indebtedness as in effect on the date hereof, provided however that:

- (A) the Borrowers and the Guarantors may not make, and shall not accept, as the case may be, any payments in respect of any Intercompany Indebtedness (now existing or hereafter incurred) without the prior written consent of the Agent; provided however that the Canadian Borrower shall be permitted to make, and the Parent may accept, payments of principal and interest in respect of the Canadian Borrower Intercompany Note provided that no Default or Event of Default exists and is continuing or would occur as a result from making any such payment;
- (ii) neither the Borrowers nor the Guarantors shall directly or indirectly, (A) amend, modify, alter or change the terms of such indebtedness or any such agreement, document or instrument related thereto as in effect on the date hereof, or (B) redeem, retire, defease, purchase or otherwise acquire such indebtedness, or set aside or otherwise deposit or invest any sums for such purpose; and
- (iii) the Borrowers and the Guarantors shall furnish to the Agent all notices or demands in connection with such indebtedness either received by the Borrowers, the Guarantors or on their respective behalf, promptly after the receipt thereof, or sent by the Borrowers or the Guarantors or on their respective behalf, concurrently with the sending thereof, as the case may be.

#### **8.10 Loans, Investments, Guarantees, Etc.**

Neither the Borrowers nor the Guarantors shall, directly or indirectly, make any loans or advance money or property to any Person, or invest in (by capital contribution, dividend or otherwise) or purchase or repurchase the shares or indebtedness or all or a substantial part of the assets, property or undertaking of any Person, or guarantee, assume, endorse, or otherwise become responsible for (directly or indirectly) the obligations, liabilities, indebtedness, performance or dividends of any Person or agree to do any of the foregoing, except: (a) the endorsement of instruments for collection or deposit in the ordinary course of business; and (b) investments in: (i) short-term direct obligations of the government of Canada or the government of the United States of America; (ii) negotiable certificates of deposit issued by any bank satisfactory to the Agent, payable to the order of the Borrowers or the Guarantors, or to bearer and delivered to the Agent; and (iii) commercial paper rated A1 or P1; provided, that, as to any of the foregoing, unless waived in writing by the Agent, each of the Borrowers and the Guarantors shall take such actions as are deemed necessary by the Agent to perfect the security interest of the Agent in such investments; (c) payments to counterparties under or in connection with Swap Agreements; (d) the loans, advances and guarantees set forth on Schedule 8.10 hereto; provided, that, as to such loans, advances and guarantees: (i) neither the Borrowers nor the Guarantors shall, directly or indirectly: (A) amend, modify, alter or change the terms of such loans, advances or guarantees or any agreement, document or instrument related thereto; or (B) as to such guarantees, redeem, retire, defease, purchase or otherwise acquire the obligations, liabilities or indebtedness arising pursuant to such guarantees, or set aside or otherwise deposit or invest any sums for such purpose; and (ii) each of the Borrowers and the Guarantors shall furnish to the Agent all notices

or demands in connection with such loans, advances or guarantees or other obligations, liabilities or indebtedness subject to such guarantees either received by the Borrowers, the Guarantors or on their respective behalf, promptly after the receipt thereof, or sent by the Borrowers, the Guarantors or on their respective behalf, concurrently with the sending thereof, as the case may be; and (e) intercompany loans between the Borrowers constituting Intercompany Indebtedness provided that no Default or Event of Default has occurred and is continuing or would result from making any such intercompany loan.

**8.11 Dividends and Redemptions**

Neither the Borrowers nor the Guarantors shall, directly or indirectly, without the prior written consent of the Agent, such consent to be in its sole and absolute discretion, declare or pay any dividends or distributions on account of any shares, units or other equity interests of the Borrowers or the Guarantors, now or hereafter outstanding, or set aside or otherwise deposit or invest any sums for such purpose, or redeem, retire, defease, purchase or otherwise acquire any shares, units or other equity interests of any class (or set aside or otherwise deposit or invest any sums for such purpose) for any consideration other than common shares, units or other equity interests or apply or set apart any sum, or make any other distribution (by reduction of capital or otherwise) in respect of any such shares, units or other equity interests or agree to do any of the foregoing; provided however that the Borrowers and the Guarantors may do the following without the prior written consent of the Agent or the Lenders:

(a) any Borrower or Guarantor may declare or pay any dividend or distribution on account of its shares, units or other equity interests provided that no Default or Event of Default exists and is continuing or would occur as a result of any such declaration or payment.

**8.12 Transactions with Affiliates**

Neither the Borrowers nor the Guarantors shall, directly or indirectly: (a) purchase, acquire or lease any assets, property or undertaking from, or sell, transfer or lease any assets, property or undertaking to, any Affiliate except in the ordinary course of and pursuant to the reasonable requirements of the Borrowers' or the Guarantors' business and upon fair and reasonable terms no less favourable to the Borrowers or the Guarantors than the Borrowers or the Guarantors would obtain in a comparable arm's length transaction with a Person who/which is not an Affiliate; or (b) make any payments of management, consulting or other fees for management or similar services or any obligations, liabilities or indebtedness owing to any Affiliate, except reasonable compensation to officers, employees and directors for services rendered to the Borrowers or the Guarantors in the ordinary course of business.

**8.13 Fixed Charge Coverage Ratio**

Subject to each testing condition set forth below, the Parent shall maintain a Fixed Charge Coverage Ratio of not less than the following for each testing period set forth below calculated at the end of each testing period set forth below if the testing condition set forth below is triggered:

<u>Testing Date:</u>	<u>Testing Period:</u>	<u>Fixed Charge Coverage</u>	<u>Testing Condition:</u>
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		<u>Ratio:</u>	
Receipt by the Agent of a Compliance Certificate for the applicable Testing Period	Rolling 4 Fiscal Quarter basis	1.0:1.0	Only tested by the Agent if at any time Average Excess Availability (which may include up to \$1,000,000 of Suppressed Availability) is less than \$2,500,000 for any 30 consecutive day period (as determined by the Agent) at any time between receipt by the Agent of the last Testing Date Compliance Certificate and receipt by the Agent of the new Testing Date Compliance Certificate

#### **8.14 Intellectual Property**

In the event the Borrowers or the Guarantors obtain or apply for any material Intellectual Property rights or obtain any material licenses with respect thereto, the Borrowers and the Guarantors shall immediately notify the Agent thereof and shall provide to the Agent copies of all written materials including applications and licenses with respect to such Intellectual Property rights. At the Agent's request, each of the Borrowers and the Guarantors shall promptly execute and deliver to the Agent an Intellectual Property security agreement granting to the Agent a perfected security interest in such Intellectual Property rights in form and substance satisfactory to the Agent.

#### **8.15 Additional Bank Accounts**

Neither the Borrowers nor the Guarantors shall, directly or indirectly, open, establish or maintain any deposit account, investment account or any other account with any bank or other financial institution, other than the Blocked Accounts and the accounts set forth in Schedule 7.8 hereto, except: (a) as to any new or additional Blocked Accounts and other such new or additional accounts which contain any Collateral or proceeds thereof, with the prior written consent of the Agent and subject to such conditions thereto as the Agent may establish; and (b) as to any accounts used by the Borrowers and the Guarantors to make payments of payroll, taxes or other obligations to third parties, after prior written notice to the Agent.

#### **8.16 Applications under the CCAA**

Each of the Borrowers and the Guarantors acknowledges that its business and financial relationships with the Agent and the Lenders are unique from its relationship with any other of its creditors. Each of the Borrowers and the Guarantors agrees that it shall not file any plan of arrangement under the CCAA (the "**CCAA Plan**") which provides for, or would permit, directly or indirectly, the Agent or the Lenders to be classified with any other creditor of the Borrowers or the Guarantors for purposes of such CCAA Plan or otherwise.

## **8.17 Operation of Canadian Pension Plans, U.S. Pension Plans and Multiemployer Plans**

(a) The Borrowers and the Guarantors shall administer the Canadian Pension Plans in accordance with the requirements of the applicable pension plan texts, funding agreements, any other documents governing the Canadian Pension Plans, the ITA and applicable federal or provincial pension benefits legislation.

(b) The Borrowers and the Guarantors shall deliver to the Agent an undertaking of the funding agent for each of the Canadian Pension Plans stating that the funding agent will notify the Agent within 7 days of the Borrowers' or the Guarantors' failure to make any required contribution to the applicable Canadian Pension Plan within the time periods prescribed by applicable laws.

(c) The Borrowers and the Guarantors shall not receive or accept payment of any amount from any of the Canadian Pension Plans without the prior written consent of the Agent.

(d) Without the prior written consent of the Agent, neither the Borrowers nor the Guarantors shall terminate, or cause to be terminated, any of the Canadian Pension Plans, if such Canadian Pension Plan would have a wind up deficiency on termination.

(e) The Borrowers and the Guarantors shall promptly provide the Agent with any documentation relating to any of the Canadian Pension Plans as the Agent may request. The Borrowers and the Guarantors shall notify the Agent within 30 days of: (i) a material increase in the obligations, liabilities and indebtedness of any of the Canadian Pension Plans; (ii) the establishment of a new registered pension plan; (iii) commencing payment of contributions to a Canadian Pension Plan to which the Borrowers or the Guarantors had not previously been contributing.

(f) The Borrowers and the Guarantors shall, and shall cause each of its ERISA Affiliates to maintain each Plan in compliance in all material respects with the applicable provisions of ERISA, the Code and other applicable Federal and State law, cause each Plan which is qualified under Section 401(a) of the Code to maintain such qualification, not terminate any U.S. Pension Plan so as to incur any liability to the Pension Benefit Guaranty Corporation, not allow or suffer to exist any prohibited transaction involving any Plan or any trust created thereunder which would subject a Borrower or a Guarantor or such ERISA Affiliate to a tax or other liability on prohibited transactions imposed under Section 4975 of the Code or ERISA in an aggregate amount in excess of \$1,000,000, make all required contributions to any Plan which it is obligated to pay under Section 302 of ERISA, Section 412 of the Code or the terms of such Plan, not allow or suffer to exist any accumulated funding deficiency, whether or not waived, with respect to any U.S. Pension Plan, not engage in a transaction that could be subject to Section 4069 or 4212(c) of ERISA, or not allow or suffer to exist any occurrence of a reportable event or any other event or condition which presents a risk of termination by the Pension Benefit Guaranty Corporation of any U.S. Pension Plan that is a single employer plan, which termination could result in any liability to the Pension Benefit Guaranty Corporation in an aggregate amount in excess of \$1,000,000.

(g) No Borrower or Guarantor shall administer, sponsor or contribute to or be in any way liable with respect to any pension or benefit plan that is a defined benefit pension or benefit plan or contains a defined benefit provision.

## **8.18 Costs and Expenses**

The Borrowers shall pay to the Agent and the Lenders on demand all costs, expenses, filing fees and taxes paid or payable in connection with the preparation, negotiation, execution, delivery, recording, administration, collection, liquidation, enforcement and defense of the Obligations, the Agent's rights in the Collateral, this Agreement, the other Financing Agreements and all other documents related hereto or thereto, including any amendments, restatements, supplements or consents which may hereafter be contemplated (whether or not executed) or entered into in respect hereof and thereof, including: (a) all costs and expenses of filing or recording (including PPSA and UCC financing statement and other similar filing and recording fees and taxes, documentary taxes, intangibles taxes and mortgage recording taxes and fees, if applicable); (b) all insurance premiums, appraisal fees and search fees; (c) costs and expenses of remitting loan proceeds, collecting cheques and other items of payment, and establishing and maintaining the Blocked Accounts, if any, and the Payment Accounts, together with the Agent's customary charges and fees with respect thereto; (d) charges, fees or expenses charged by any bank or issuer in connection with the Letter of Credit Accommodations; (e) costs and expenses of preserving and protecting the Collateral; (f) costs and expenses paid or incurred in connection with obtaining payment of the Obligations, enforcing the security interests and liens of the Agent, selling or otherwise realizing upon the Collateral, and otherwise enforcing the provisions of this Agreement and the other Financing Agreements or defending any claims made or threatened against the Agent or the Lenders arising out of the transactions contemplated hereby and thereby (including preparations for and consultations concerning any such matters); (g) all out-of-pocket expenses and costs heretofore and from time to time hereafter incurred by the Agent during the course of periodic field examinations of the Collateral (excluding Equipment so long as no Default or Event of Default has occurred and is continuing) and the Borrowers' and the Guarantors' operations performed by or on behalf of Agent, plus a per diem charge at Agent's then standard rate for examiners in the field and office (provided however that so long as no Event of Default shall have occurred and be continuing, the Borrowers shall not be obligated to reimburse the Agent for more than 1 such field examinations during any calendar year); (h) the fees and disbursements of counsel (including legal assistants) to the Agent and Lenders in connection with any of the foregoing; (i) a fee at Agent's then standard rate per person plus reasonable out-of-pocket expenses of the Agent if the Agent implements and establishes an electronic collateral reporting system for the Borrowers; and (j) the actual charges paid or incurred by the Agent if it elects to employ the services of one or more third parties to perform financial audits or quality of earnings analyses of the Borrowers, Guarantors or their respective Subsidiaries, to examine or appraise the Collateral or any portion thereof or to assess the Borrowers', Guarantors' or their respective Subsidiaries' business valuation (provided however that so long as no Event of Default shall have occurred and be continuing, the Borrowers shall not be obligated to reimburse the Agent for such charges).

### **8.19 Further Assurances**

At the request of the Agent at any time and from time to time, each of the Borrowers and the Guarantors shall, at its expense, duly execute and deliver, or cause to be duly executed and delivered, such further agreements, documents and instruments, and do or cause to be done such further acts as may be necessary or proper to evidence, perfect, maintain and enforce the security interests and liens of the Agent and the priority thereof in the Collateral and to otherwise effectuate the provisions or purposes of this Agreement or any of the other Financing Agreements. The Agent may at any time and from time to time request a certificate from an officer of the Borrowers representing that all conditions precedent to the making of Loans and providing Letter of Credit Accommodations contained herein are satisfied. In the event of such request by the Agent, the Agent may (and shall if directed by the Required Lenders), at its option, cease to make any further Loans or provide any further Letter of Credit Accommodations until the Agent has received such certificate and, in addition, the Agent has determined that such conditions are satisfied. Where permitted by law, the Borrowers and the Guarantors hereby authorizes the Agent to execute and file one or more PPSA, UCC or other financing statements or notices signed only by the Agent or the Agent's representative. Notwithstanding anything to the contrary contained herein, the Agent shall not accept a lien on any real property from any Borrower or Guarantor unless each Lender has completed its flood insurance diligence, has received copies of all flood insurance documentation and has confirmed that flood insurance compliance has been completed as required by applicable laws or as otherwise satisfactory to each Lender and the Agent shall not accept delivery of any joinder to any Financing Agreement with respect to any Subsidiary of any Borrower or Guarantor, if such Subsidiary qualifies as a "legal entity customer" under 31 C.F.R. Section 1010.230, unless such Subsidiary has delivered a certification regarding beneficial ownership as required by such regulation in relation to such Subsidiary and the Agent and each Lender has completed its *Patriot Act* searches, OFAC/PEP searches and customary individual background checks for such Subsidiary, the results of which shall be satisfactory to the Agent and each Lender.

### **8.20 Swap Agreements**

The Borrowers and the Guarantors shall not enter into any Swap Agreement without the prior written consent of the Agent (such consent to be provided in the Agent's sole discretion).

### **8.21 Intentionally Deleted.**

### **8.22 Separate and Independent Covenants**

For greater certainty, each of the affirmative and negative covenants set forth in this Article 8 is a separate and independent covenant of each Borrower and Guarantor with respect to itself and its assets, properties and business and each Borrower and Guarantor shall not be responsible for the separate and independent covenants in this Article 8 given by any other Borrower or Guarantor.

## **ARTICLE 9. EVENTS OF DEFAULT AND REMEDIES**

### **9.1 Events of Default**

The occurrence or existence of any one or more of the following events are referred to herein individually as an “**Event of Default**”, and collectively as “**Events of Default**”:

(a) any Borrower fails to pay when due any of the Obligations or any Borrower or Guarantor fails to perform any of the terms, covenants, conditions or provisions contained in this Agreement or any of the other Financing Agreements;

(b) any representation, warranty or statement of fact made by any Borrower or any Guarantor to the Agent and/or any Lender in this Agreement, the other Financing Agreements or any other agreement, schedule, confirmatory assignment or otherwise shall when made or deemed made be false or misleading in any material respect;

(c) any Guarantor revokes, terminates or fails to perform any of the terms, covenants, conditions or provisions of any guarantee, endorsement or other agreement of such party in favour of the Agent and/or any Lender;

(d) any judgment for the payment of money is rendered against any Borrower or any Guarantor in excess of \$1,000,000 in any one case or in excess of \$1,000,000 in the aggregate and shall remain undischarged or unvacated for a period in excess of 30 days or execution shall at any time not be effectively stayed, or any judgment other than for the payment of money, or injunction, attachment, garnishment or execution is rendered against any Borrower or any Guarantor or any of their respective assets or properties;

(e) any Borrower or any Guarantor, which is a partnership, limited liability company, limited partnership, limited liability partnership or a corporation, dissolves or suspends or discontinues doing business;

(f) any Borrower or any Guarantor becomes insolvent (however defined or evidenced), makes an assignment for the benefit of creditors, proposes to make, makes or sends notice of a bulk sale or calls a meeting of its creditors or principal creditors;

(g) a petition, case or proceeding under the bankruptcy laws of Canada or similar laws of any foreign jurisdiction now or hereafter in effect or under any insolvency, arrangement, reorganization, moratorium, receivership, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction now or hereafter in effect (whether at law or in equity) is filed or commenced against any Borrower or any Guarantor or all or any part of their respective assets or properties and such petition, case or proceeding is not dismissed within 30 days after the date of its filing or any Borrower or any Guarantor shall file any answer admitting or not contesting such petition, case or proceeding or indicates its consent to, acquiescence in or approval of, any such action, petition, case or proceeding or the relief requested is granted sooner;

(h) a petition, case or proceeding under the bankruptcy laws of Canada or similar laws of any foreign jurisdiction now or hereafter in effect or under any insolvency, arrangement, reorganization, moratorium, receivership, readjustment of debt, dissolution or liquidation law or

statute of any jurisdiction now or hereafter in effect (whether at a law or equity) is filed or commenced by any Borrower or any Guarantor for all or any part of their respective assets or property including if any Borrower or any Guarantor shall:

- (i) apply for or consent to the appointment of a receiver, trustee or liquidator of it or of all or a substantial part of its property and assets;
- (ii) be unable, or admit in writing its inability, to pay its debts as they mature, or commit any other act of bankruptcy;
- (iii) make a general assignment for the benefit of creditors;
- (iv) file a voluntary petition or assignment in bankruptcy or a proposal seeking a reorganization, compromise, moratorium or arrangement with its creditors;
- (v) take advantage of any insolvency or other similar law pertaining to arrangements, moratoriums, compromises or reorganizations, or admit the material allegations of a petition or application filed in respect of it in any bankruptcy, reorganization or insolvency proceeding; or
- (vi) take any corporate action for the purpose of effecting any of the foregoing;

(i) (i) any default by any Borrower or any Guarantor under any agreement, document or instrument relating to any indebtedness for borrowed money owing to any person other than the Lenders, or any capitalized lease obligations, contingent indebtedness in connection with any guarantee, letter of credit, indemnity or similar type of instrument in favour of any person other than the Lenders, in any case in an amount in excess of \$250,000, which default continues for more than the applicable cure period, if any, with respect thereto, or (ii) any default by any Borrower or any Guarantor under any material contract, lease, license or other obligation to any person other than the Lenders, which default continues for more than the applicable cure period, if any, with respect thereto;

(j) any Change of Control shall occur after the Closing Date, whether directly or indirectly, without the prior written consent of the Required Lenders, such consent not to be unreasonably withheld;

(k) the indictment or threatened indictment of any Borrower or any Guarantor under any criminal statute, or commencement or threatened commencement of criminal or civil proceedings against any Borrower or any Guarantor, pursuant to which statute or proceedings the penalties or remedies sought or available include forfeiture of any of the assets or property of any Borrower or any Guarantor;

(l) there shall be a material adverse change in the assets, business, properties, goodwill, prospects or conditions (financial or otherwise) of any Borrower or any Guarantor after the date hereof;

(m) there shall be an event of default under any of the other Financing Agreements;

(n) there shall be a breach or failure to comply with the provisions of any intercreditor agreement or subordination agreement with respect to any Borrower or any Guarantor by any party thereto other than the Agent and the Lenders;

(o) a requirement from the Minister of National Revenue for payment pursuant to Section 224 or any successor Section of the ITA or Section 317 or any successor Section of the *Excise Tax Act* (Canada) or any comparable provision of similar legislation shall have been received by the Agent or any Lender or any other Person in respect of any Borrower or any Guarantor or otherwise issued in respect of any Borrower or any Guarantor;

(p) any security interest, lien or mortgage created by a Financing Agreement shall cease to be a valid and perfected first priority security interest, lien or mortgage (except as otherwise permitted herein or therein or for a trust, statutory lien or other Encumbrance ranking senior to or *pari passu* with Encumbrances securing the Obligations on any of the Collateral to which adequate Availability Reserves have been reserved by the Agent in its sole discretion) in any collateral purported to be covered thereby (including the Collateral);

(q) an ERISA Event shall occur which results in or could reasonably be expected to result in liability of a Borrower or a Guarantor in an aggregate amount in excess of \$1,000,000;

(r) there shall be a default under any Swap Agreement and such default continues for more than the applicable cure period, if any, with respect thereto; or

(s) any material loss, damage or destruction of the collateral purported to be covered by the Financing Agreements (including the Collateral) that is not covered in full by insurance proceeds payable to the Agent.

## **9.2 Remedies**

(a) At any time an Event of Default exists or has occurred and is continuing, the Agent shall have all rights and remedies provided in this Agreement, the other Financing Agreements, the PPSA, the UCC and other applicable law, all of which rights and remedies may be exercised without notice to or consent by any Borrower or any Guarantor (and shall be exercised if directed by the Required Lenders), except as such notice or consent is expressly provided for hereunder or required by applicable law. All rights, remedies and powers granted to the Agent hereunder, under any of the other Financing Agreements, the PPSA, the UCC or other applicable law, are cumulative, not exclusive and enforceable, in the Agent's or the Required Lenders' discretion, alternatively, successively, or concurrently on any one or more occasions, and shall include the right to apply to a court of equity for an injunction to restrain a breach or threatened breach by any Borrower or any Guarantor of this Agreement or any of the other Financing Agreements. The Agent may (and shall if so directed by the Required Lenders), at any time or times, proceed directly against any Borrower or any Guarantor to collect the Obligations (except under or in connection with Swap Agreements) without prior recourse to the Collateral.

(b) Without limiting the foregoing, at any time an Event of Default exists or has occurred and is continuing, the Agent may (and shall if directed by the Required Lenders), in its discretion and without limitation: (i) demand and accelerate the payment of all Obligations

(except under or in connection with Swap Agreements) and demand immediate payment thereof to the Agent (provided, that, upon the occurrence of any Event of Default described in Sections 9.1(g) and 9.1(h) hereof, all Obligations (except under or in connection with Swap Agreements) shall automatically become immediately due and payable); (ii) with or without judicial process or the aid or assistance of others, enter upon any premises on or in which any of the Collateral may be located and take possession of the Collateral or complete processing, manufacturing and repair of all or any portion of the Collateral and carry on the business of any Borrower or any Guarantor; (iii) require the Borrowers, at the Borrowers' expense, to assemble and make available to the Agent any part or all of the Collateral at any place and time designated by the Agent; (iv) collect, foreclose, receive, appropriate, set-off and realize upon any and all Collateral; (v) remove any or all of the Collateral from any premises on or in which the same may be located for the purpose of effecting the sale, foreclosure or other disposition thereof or for any other purpose; (vi) sell, lease, transfer, assign, deliver or otherwise dispose of any and all Collateral (including entering into contracts with respect thereto, public or private sales at any exchange, broker's board, at any office of the Agent or elsewhere) at such prices or terms as the Agent may deem reasonable, for cash, upon credit or for future delivery, with the Agent or any Lender having the right to purchase the whole or any part of the Collateral at any such public sale, all of the foregoing being free from any right or equity of redemption of any Borrower or any Guarantor, which right or equity of redemption is hereby expressly waived and released by each Borrower and Guarantor; (vii) borrow money and use the Collateral directly or indirectly in carrying on any Borrower's and any Guarantor's business or as security for loans or advances for any such purposes; (viii) grant extensions of time and other indulgences, take and give up security, accept compositions, grant releases and discharges, and otherwise deal with any Borrower, any Guarantor, debtors of any Borrower or any Guarantor, sureties and others as the Agent may see fit without prejudice to the liability of any Borrower or any Guarantor or the Agent's right to hold and realize the security interest created under any Financing Agreement; and/or (ix) terminate this Agreement. If any of the Collateral is sold or leased by the Agent upon credit terms or for future delivery, the Obligations shall not be reduced as a result thereof until payment therefor is finally collected by the Agent. If notice of disposition of Collateral is required by law, 5 days prior notice by the Agent to the Borrowers or any Guarantor designating the time and place of any public sale or the time after which any private sale or other intended disposition of Collateral is to be made, shall be deemed to be reasonable notice thereof and each Borrower and Guarantor waives any other notice. In the event the Agent institutes an action to recover any Collateral or seeks recovery of any Collateral by way of prejudgment remedy, each Borrower and Guarantor waives the posting of any bond which might otherwise be required.

(c) The Agent may apply the cash proceeds of Collateral actually received by the Agent from any sale, lease, foreclosure or other disposition of the Collateral to payment of the Obligations, in whole or in part and in accordance with Section 5.4(a), whether or not then due. The Borrowers and each Guarantor shall remain liable to the Agent and the Lenders for the payment of any deficiency with interest at the highest rate provided for herein and all costs and expenses of collection or enforcement including legal costs and expenses.

(d) Without limiting the foregoing, upon the occurrence of a Default or an Event of Default, the Agent may (and shall if directed by the Required Lenders), at its option, without notice: (i) cease making Loans or arranging Letter of Credit Accommodations or reduce the lending formulas or amounts of Loans and Letter of Credit Accommodations available to the

Borrowers; and/or (ii) terminate any provision of this Agreement providing for any future Loans or Letter of Credit Accommodations to be made by the Lenders to the Borrowers.

(e) The Agent may (and shall if directed by the Required Lenders) appoint, remove and reappoint any person or persons, including an employee or agent of the Agent or any Lender, to be a receiver (the “**Receiver**”) which term shall include a receiver and manager of, or agent for, all or any part of the Collateral. Any such Receiver shall, as far as concerns responsibility for his acts, be deemed to be the agent of the Borrowers and/or any Guarantor, as the case may be, and not of the Agent or any Lender, and the Agent and the Lenders shall not in any way be responsible for any misconduct, negligence or non-feasance of such Receiver, his employees or agents. Except as otherwise directed by the Agent, all money received by such Receiver shall be received in trust for and paid to the Agent. Such Receiver shall have all of the powers and rights of the Agent described in this Section 9.2. The Agent may, either directly or through its agents or nominees, exercise any or all powers and rights of a Receiver.

(f) The Borrowers and each Guarantor shall pay all costs, charges and expenses incurred by the Agent, the Lenders or any Receiver or any nominee or agent of the Agent and the Lenders, whether directly or for services rendered (including solicitor's costs on a solicitor and his own client basis, auditor's costs, other legal expenses and Receiver remuneration), in enforcing this Agreement or any other Financing Agreement and in enforcing or collecting the Obligations and all such costs, charges and expenses together with any money owing as a result of any borrowing permitted hereby shall be a charge on the proceeds of realization and shall be secured hereby and pursuant to the Financing Agreements.

## **ARTICLE 10. ASSIGNMENT AND PARTICIPATIONS; APPOINTMENT OF AGENT**

### **10.1 Assignment and Participations**

(a) Subject to the terms of this Section 10.1, any Lender may make an assignment or sale of participations in, at any time or times, the Financing Agreements, Loans and any Commitment or any portion thereof or interest therein, including any Lender's rights, title, interests, remedies, powers or duties thereunder. Any assignment by a Lender shall:

- (i) be in a minimum amount of \$1,000,000;
- (ii) require the consent of the Agent and the Borrowers; provided that:
  - (A) such consent is not to be unreasonably withheld, conditioned or delayed; and
  - (B) the consent of the Borrowers shall not be required if:
    - (I) an Event of Default or Default shall have occurred and be continuing; or
    - (II) such assignment is to an Eligible Transferee;
- (iii) not be to a Prohibited Transferee unless an Event of Default or Default shall have occurred and be continuing;

- (iv) be effected by the execution of an assignment Agreement (an “**Assignment Agreement**”) substantially in the form attached hereto as Schedule 10.1(a)(iv) and otherwise in form and substance reasonably satisfactory to, and acknowledged by, the Agent;
- (v) be conditioned on such assignee Lender representing to the assigning Lender and the Agent that it is purchasing the applicable Loans to be assigned to it for its own account, for investment purposes and not with a view to the distribution thereof; and
- (vi) include a payment to the Agent of an assignment fee of U.S.\$3,500.

In the case of an assignment by a Lender under this Section 10.1, the assignee shall have, to the extent of such assignment, the same rights, benefits and obligations as all other Lenders hereunder. The assigning Lender shall be relieved of its obligations hereunder with respect to its Commitments or assigned portion thereof from and after the date of such assignment. Each Borrower hereby acknowledges and agrees that any assignment shall give rise to a direct obligation of such Borrower to the assignee and that the assignee shall be considered to be a “**Lender**”. In all instances, each Lender's liability to make Loans hereunder shall be several and not joint and shall be limited to such Lender's Pro Rata Share of the applicable Commitment. Notwithstanding the foregoing provisions of this Section 10.1(a), any Lender may at any time pledge the Obligations held by it and such Lender's rights under this Agreement and the other Financing Agreements to the Bank of Canada or the Canada Deposit Insurance Corporation; provided, that no such pledge to the Bank of Canada or the Canada Deposit Insurance Corporation shall release such Lender from such Lender's obligations hereunder or under any other Financing Agreement.

(b) Any sale of a participation by a Lender of all or any part of its Commitment shall be made with the understanding that all amounts payable by the Borrowers hereunder shall be determined as if that Lender had not sold such participation, and that the holder of any such participation shall not be entitled to require such Lender to take or omit to take any action hereunder except actions directly affecting (i) any reduction in the principal amount of, or interest rate or fees payable with respect to any Loan in which such holder participates, (ii) any extension of the scheduled amortization of the principal amount of any Loan in which such holder participates or the final maturity date thereof, and (iii) any release of all or substantially all of the Collateral (other than in accordance with the terms of this Agreement or the other Financing Agreements). Neither the Agent nor any Lender (other than a Lender selling a participation) shall have any duty to any participant and may continue to deal solely with the Lender selling a participation as if no such sale had occurred. No consent of any Borrower is required with respect to the sale of a participation by a Lender of all or any part of its Commitment. No sale of a participation by a Lender of all or any part of its Commitment shall be made to a Prohibited Transferee.

(c) Except as expressly provided in this Section 10.1, no Lender shall, as between the Borrowers and that Lender, or the Agent and that Lender, be relieved of any of its obligations hereunder as a result of any sale, assignment, transfer or negotiation of, or granting of a

participation in, all or any part of the Loans, its Commitment or other Obligations owed to such Lender.

(d) The Borrowers shall assist any Lender permitted to sell assignments or participations under this Section 10.1 as reasonably required to enable the assigning or selling Lender to effect any such assignment or participation, including the execution and delivery of any and all agreements, notes and other documents and instruments as shall be requested, the preparation of informational materials for, and the participation of management in meetings with, potential assignees or participants. The Borrowers shall certify the correctness, completeness and accuracy of all descriptions of the Borrowers and each Guarantor and their respective affairs contained in any selling materials provided by them and all other information provided by them and included in such materials.

(e) A Lender may furnish any information concerning the Borrowers and any Guarantor in the possession of such Lender from time to time to Eligible Transferees and after an Event of Default to any assignees and participants (including prospective assignees and participants) provided such Persons agree to maintain the confidentiality of such information.

(f) The Borrowers and the Guarantors may not assign their rights under the Financing Agreements and any other document referred to herein or therein without the prior written consent of the Agent and all Lenders.

## **10.2 Appointment of Agent**

(a) The Agent is hereby appointed to act on behalf of the Secured Parties as agent under this Agreement and the other Financing Agreements. The provisions of this Section 10.2 are solely for the benefit of the Agent and the Secured Parties and neither the Borrowers nor any other Person shall have any rights as a third party beneficiary of any of the provisions hereof. In performing its functions and duties under this Agreement and the other Financing Agreements, the Agent shall act solely as an agent and mandatory of the Secured Parties and does not assume and shall not be deemed to have assumed any obligation toward or relationship of agency, mandatory or trust with or for the Borrowers or any Person other than the Secured Parties. The Agent shall have no duties or responsibilities except for those expressly set forth in this Agreement and the other Financing Agreements. The duties of the Agent shall be mechanical and administrative in nature and the Agent shall not have, or be deemed to have, by reason of this Agreement, any other Financing Agreement or otherwise a fiduciary relationship in respect of any Secured Party. Except as expressly set forth in this Agreement and the other Financing Agreements, the Agent shall not have any duty to disclose, and shall not be liable for failure to disclose, any information relating to the Borrowers, Guarantors or any of their respective Subsidiaries or any account debtor that is communicated to or obtained by the Agent or any of its affiliates in any capacity. Neither the Agent nor any of its Affiliates nor any of their respective officers, directors, employees, agents or representatives shall be liable to any Secured Party for any action taken or omitted to be taken by it hereunder or under any other Financing Agreement, or in connection herewith or therewith, except for damages caused by its or their own gross negligence or wilful misconduct as determined by a final and non-appealable judgment or court order binding on them.

(b) If the Agent shall request instructions from all Lenders, all affected Lenders or Required Lenders, as the case may be, with respect to any act or action (including failure to act) in connection with this Agreement or any other Financing Agreement, then the Agent shall be entitled to refrain from such act or taking such action unless and until the Agent shall have received instructions from all Lenders, all affected Lenders or the Required Lenders, as the case may be, and the Agent shall not incur liability to any Person by reason of so refraining. The Agent shall be fully justified in failing or refusing to take any action hereunder or under any other Financing Agreement (i) if such action would, in the opinion of Agent, be contrary to law or the terms of this Agreement or any other Financing Agreement; (ii) if such action would, in the opinion of the Agent, expose the Agent to liabilities under Environmental Laws; or (iii) if the Agent shall not first be indemnified to its satisfaction against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. Without limiting the foregoing, no Secured Party shall have any right of action whatsoever against the Agent as a result of the Agent acting or refraining from acting hereunder or under any other Financing Agreement in accordance with the instructions of all Lenders, all affected Lenders or the Required Lenders, as the case may be.

### **10.3 Agent's Reliance, Etc.**

Neither the Agent nor any of its Affiliates nor any of their respective directors, officers, agents or employees shall be liable for any action taken or omitted to be taken by it or them under or in connection with this Agreement or the other Financing Agreements, except for damages caused by its or their own negligence or wilful misconduct as determined by a final and non-appealable judgment or court order binding on them. Without limiting the generality of the foregoing, the Agent: (i) may consult with legal counsel, independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken by it in good faith in accordance with the advice of such counsel, accountants or experts; (ii) makes no warranty or representation to any Secured Party and shall not be responsible to any Secured Party for any statements, warranties or representations made in or in connection with this Agreement or the other Financing Agreements; (iii) shall not have any duty to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of this Agreement or the other Financing Agreements on the part of any Borrower or any Guarantor or to inspect the Collateral (including the books and records) of any Borrower or any Guarantor; (iv) shall not be responsible to any Secured Party for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or the other Financing Agreements or any other instrument or document furnished pursuant hereto or thereto; and (v) shall incur no liability under or in respect of this Agreement or the other Financing Agreements by acting upon any notice, consent, certificate or other instrument or writing (which may be by telecopy, telegram, cable or telex) believed by it to be genuine and signed or sent by the proper party or parties.

### **10.4 Agent and Affiliates**

With respect to any of its Commitments hereunder, the Agent shall have the same rights and powers under this Agreement and the other Financing Agreements 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, include the Agent in its individual capacity. The Agent and its Affiliates may lend money to, invest in, and generally engage in any kind of business with the

Borrowers, any of its Affiliates and any Person who may do business with or own securities of the Borrowers or any such Affiliate, all as if the Agent were not the Agent and without any duty to account therefor to the Lenders. The Agent and its Affiliates may accept fees and other consideration from the Borrowers for services in connection with this Agreement or otherwise without having to account for the same to the Lenders. Each Lender acknowledges the potential conflict of interest between the Agent as a Lender and the Agent as agent hereunder.

#### **10.5 Lender Credit Decision**

Each Lender acknowledges that it has, independently and without reliance upon the Agent or any other Lender and based on the Information Certificates and such other documents and information as it has deemed appropriate, made its own credit and financial analysis of the Borrowers and its own decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Agent 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 this Agreement. Each Lender acknowledges the potential conflict of interest of each other Lender as a result of the Lenders holding disproportionate interests in the Loans, and expressly consents to, and waives any claim based upon, such conflict of interest.

#### **10.6 Indemnification**

The Lenders agree to indemnify the Agent (to the extent not reimbursed by the Borrowers and without limiting the obligations of the Borrowers hereunder), ratably according to their respective Pro Rata Shares, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever that may be imposed on, incurred by, or asserted against the Agent in any way relating to or arising out of this Agreement or any other Financing Agreement or any action taken or omitted to be taken by the Agent in connection therewith; provided, that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the Agent's gross negligence or wilful misconduct as determined by a final and non-appealable judgment or court order binding on the Agent. Without limiting the foregoing, each Lender agrees to reimburse the Agent promptly upon demand for its rateable share according to its Pro Rata Share of any out-of-pocket expenses (including reasonable fees of counsel) incurred by the Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement and each other Financing Agreement, to the extent that the Agent is not reimbursed for such expenses by the Borrowers.

#### **10.7 Failure to Act**

Except for action expressly required of the Agent hereunder and under the other Financing Agreements, the Agent shall in all cases be fully justified in failing or refusing to act hereunder and thereunder unless it shall receive further assurances to its satisfaction from the Lenders of their indemnification obligations under Section 10.6 hereof against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action.

## **10.8 Concerning the Collateral and the Related Financing Agreements**

Each Lender authorizes and directs the Agent to enter into this Agreement and the other Financing Agreements. Each Lender agrees that any action taken by the Agent in accordance with the terms of this Agreement or the other Financing Agreements and the exercise by the Agent of its powers set forth therein or herein, together with such other powers that are reasonably incidental thereto, shall be binding upon the Lenders.

## **10.9 Field Audit, Examination Reports and other Information; Disclaimer by Lenders.**

By signing this Agreement, each Lender:

(a) is deemed to have requested that the Agent furnish such Lender, within a reasonable time after it becomes available to the Agent, a copy of each field audit, examination report, Compliance Certificate, Borrowing Base Certificate and/or other documentation (each such audit, report, certificate or documentation being referred to herein as a “**Report**” and collectively, “**Reports**”);

(b) expressly agrees and acknowledges that the Agent (i) does not make any representation or warranty as to the accuracy of any Report, or (ii) shall not be liable for any information contained in any Report;

(c) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that the Agent or any other party performing any audit or examination will inspect only specific information regarding the Borrowers and the Guarantors and will rely significantly upon the Borrowers' and Guarantors' books and records, as well as on representations of the Borrowers' and Guarantors' personnel; and

(d) agrees to keep all Reports confidential and strictly for its internal use and not to distribute or use any Report in any other manner.

## **10.10 Collateral Matters**

(a) The Lenders hereby irrevocably authorize the Agent at its option and in its discretion to release any Encumbrance upon any of the Collateral (i) upon termination of the Commitments and payment and satisfaction of all of the Obligations and delivery of cash collateral to the extent required under Section 13.1 below; or (ii) constituting property being sold or disposed of if the Borrowers certify to the Agent that the sale or disposition is made in compliance with Section 8.7 hereof (and the Agent may rely conclusively on any such certificate, without further enquiry); or (iii) constituting property in which the Borrowers and the Guarantors did not own an interest at the time the Encumbrance was granted or at any time thereafter; or (iv) if required under the terms of any of the other Financing Agreements, including any intercreditor agreement; or (v) approved, authorized or ratified in writing in accordance with Section 10.15 hereof. Except as provided above, the Agent will not release any Encumbrance upon any of the Collateral without the prior written authorization required in accordance with Section 10.15 hereof.

(b) Without any manner limiting the Agent's authority to act without any specific or further authorization or consent by applicable Lenders, each Lender, as applicable, agrees to confirm in writing, upon request by the Agent, the authority to release Collateral conferred upon the Agent under this Section. The Agent shall (and is hereby irrevocably authorized by the Lenders to) execute such documents as may be necessary to evidence the release of the Encumbrances granted to the Agent upon any Collateral to the extent set forth above; provided, that, (i) the Agent shall not be required to execute any such document on terms which, in the Agent's opinion, would expose the Agent to liability or create any obligations or entail any consequence other than the release of such Encumbrance without recourse or warranty and (ii) such release shall not in any manner discharge, affect or impair the Obligations or any Encumbrance upon (or obligations of any Borrower or any Guarantor in respect of) the Collateral retained by any Borrower or any Guarantor.

(c) The Agent shall have no obligation whatsoever to any Lender or any other Person to investigate, confirm or assure that the Collateral exists or is owned by the Borrowers and the Guarantors or is cared for, protected or insured or has been encumbered, or that any particular items of Collateral meet the eligibility criteria applicable in respect of the Loans hereunder, or whether any particular reserves are appropriate, or that the Encumbrances granted to the Agent pursuant hereto or any of the Financing Agreements or otherwise have been properly or sufficiently or lawfully created, perfected, protected or enforced or are entitled to any particular priority, or to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of the rights, authorities and powers granted or available to the Agent in this Agreement or in any of the other Financing Agreements, it being understood and agreed that in respect of Collateral, or any act, omission or event related thereto, the Agent may act in any manner it may deem appropriate, in its discretion, given the Agent's own interest in the Collateral as a Lender and that the Agent shall have no duty or liability whatsoever to any other Lender.

#### **10.11 Successor Agent**

The Agent may resign at any time by giving not less than 30 days' prior written notice thereof to the Lenders and the Borrowers. Upon any such resignation, the Required Lenders shall have the right to appoint a successor Agent. If no successor Agent shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the resigning Agent's giving notice of resignation, then the resigning Agent may, on behalf of the Lenders, appoint a successor Agent, which shall be a Lender, if a Lender is willing to accept such appointment, or otherwise shall be a commercial bank or financial institution or a subsidiary of a commercial bank or financial institution if such commercial bank or financial institution or other entity whose business includes making commercial loans, in each case, is organized under the laws of Canada or of any province thereof. If no successor Agent has been appointed pursuant to the foregoing, within 30 days after the date such notice of resignation was given by the resigning Agent, such resignation shall become effective and the Required Lenders shall thereafter perform all the duties of the Agent hereunder until such time, if any, as the Required Lenders appoint a successor Agent as provided above. Any successor Agent appointed by the Required Lenders hereunder shall be subject to the approval of the Borrowers, such approval not to be unreasonably withheld or delayed; provided, that such approval shall not be required if a Default or an Event of Default has occurred and is continuing. Upon the acceptance of any appointment

as the Agent hereunder by a successor Agent, such successor Agent shall succeed to and become vested with all the rights, powers, privileges and duties of the resigning Agent. Upon the earlier of the acceptance of any appointment as the Agent hereunder by a successor Agent or the effective date of the resigning Agent's resignation, the resigning Agent shall be discharged from its duties and obligations under this Agreement and the other Financing Agreements, except that any indemnity rights or other rights in favour of such resigning Agent shall continue. After any resigning Agent's resignation hereunder, the provisions of this Article 10 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was acting as the Agent under this Agreement and the other Financing Agreements.

#### **10.12           Setoff and Sharing of Payments**

In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, upon the occurrence and during the continuance of any Event of Default and subject to Section 10.13(f), each Lender is hereby authorized at any time or from time to time, without notice to the Borrowers or to any other Person (any such notice being hereby expressly waived) other than the Agent to setoff and to appropriate and to apply any and all balances held by it at any of its offices for the account of the Borrowers or the Guarantors (regardless of whether such balances are then due to the Borrowers or the Guarantors) and any other assets or properties at any time held or owing by that Lender to or for the credit or for the account of the Borrowers or the Guarantors against and on account of any of the Obligations that are not paid when due; provided, that Lenders exercising such setoff rights shall give notice thereof to the Borrowers and the Guarantors promptly after exercising such rights. Any Lender exercising a right of setoff or otherwise receiving any payment on account of the Obligations in excess of its Pro Rata Share thereof shall purchase for cash (and the other Lenders shall sell) such participations in each such other Lenders' Pro Rata Share of the Obligations as would be necessary to cause such Lender to share the amount so setoff or otherwise received with the other Lenders in accordance with their respective Pro Rata Shares. Each Borrower and Guarantor agrees, to the fullest extent permitted by law that (a) any Lender may exercise its right to setoff with respect to amounts in excess of its Pro Rata Share of the Obligations and may sell participations in such amounts so setoff to the other Lenders; and (b) any Lender so purchasing a participation in a Loan made or other Obligations held by the other Lenders may exercise all rights of setoff, bankers' lien, counterclaim or similar rights with respect to such participation as fully as if such Lender were a direct holder of the Loan and the other Obligations in the amount of such participation. Notwithstanding the foregoing, if all or any portion of the setoff amount or payment otherwise received is thereafter recovered from a Lender that has exercised the right of setoff, the purchase of participations by that Lender shall be rescinded and the purchase price restored without interest.

#### **10.13           Advances; Payments; Non-Funding Lenders; Information; Actions in Concert**

(a) Advances; Payments

- (i) In each funding notice provided by the Agent to a Lender hereunder, the Agent shall provide such Lender with written confirmation (by telephone, telecopy or email (if such Lender has provided email notice coordinates to

the Agent)) that all conditions precedent hereunder to such funding have been satisfied or waived in accordance with the terms hereof.

- (ii) Each Lender shall make the amount of such Lender's Pro Rata Share of such Loan available to the Agent in same day funds by wire transfer to the Agent's account not later than 11:00 a.m. (Toronto time) on the requested funding date (which must be a Business Day). After receipt of such wire transfers (or, in the Agent's sole discretion, before receipt of such wire transfers), subject to the terms hereof, the Agent shall make the requested Loan to the applicable Borrower. All payments by each Lender shall be made without setoff, counterclaim or deduction of any kind.
- (iii) On the 2nd Business Day of each calendar month or more frequently at the Agent's election (each, a "**Settlement Date**"), the Agent shall advise each Lender by telephone, telecopy or email (if such Lender has provided email notice coordinates to the Agent) of the amount of such Lender's Pro Rata Share of principal, interest and fees paid for the benefit of the Lenders with respect to each applicable Loan. Provided that each Lender has funded all payments and Loans required to be made by it and purchased all participations required to be purchased by it under this Agreement and the other Financing Agreements as of such Settlement Date, the Agent shall pay to each Lender such Lender's Pro Rata Share of principal, interest and fees paid by the Borrowers since the previous Settlement Date for the benefit of such Lender on the portion of the Loans held by it. To the extent that any Lender (a "**Non-Funding Lender**") has failed to fund all such payments and Loans or failed to fund the purchase of all such participations, the Agent shall be entitled to set off the funding short-fall against that Non-Funding Lender's Pro Rata Share of all payments received from the Borrowers. Such payments shall be made by wire transfer to such Lender's account not later than 2:00 p.m. (Toronto time) on the next Business Day following each Settlement Date.

(b) Availability of Lender's Pro Rata Share. The Agent may assume that each Lender will make its Pro Rata Share of each Loan available to the Agent on each funding date (which must be a Business Day). If such Pro Rata Share is not, in fact, paid to the Agent by such Lender when due, the Agent will be entitled to recover such amount on demand from such Lender without setoff, counterclaim or deduction of any kind. If any Lender fails to pay the amount of its Pro Rata Share forthwith upon the Agent's demand, the Agent shall promptly notify the Borrowers and the Borrowers shall immediately repay such amount to the Agent. Nothing in this Section 10.13(b) or elsewhere in this Agreement or the other Financing Agreements shall be deemed to require the Agent to advance funds on behalf of any Lender or to relieve any Lender from its obligation to fulfil its Commitment hereunder or to prejudice any rights that the Borrowers may have against any Lender as a result of any default by such Lender hereunder. To the extent that the Agent advances funds to a Borrower on behalf of any Lender and is not reimbursed therefor on the same Business Day as such Loan is made, the Agent shall be entitled to retain for its account all interest accrued on such advance until reimbursed by the applicable Lender.

(c) Return of Payments.

- (i) If the Agent pays an amount to a Lender under this Agreement in the belief or expectation that a related payment has been or will be received by the Agent from the Borrowers and such related payment is not received by the Agent, then the Agent will be entitled to recover such amount from such Lender on demand without setoff, counterclaim or deduction of any kind.
- (ii) If the Agent determines at any time that any amount received by the Agent under this Agreement must be returned to the Borrowers or paid to any other Person pursuant to any bankruptcy or insolvency law or otherwise, then, notwithstanding any other term or condition of this Agreement or any other Financing Agreement, the Agent will not be required to distribute any portion thereof to any Lender. In addition, each Lender will repay to the Agent on demand any portion of such amount that the Agent has distributed to such Lender, together with interest at such rate, if any, as the Agent is required to pay to the Borrowers or such other Person, without setoff, counterclaim or deduction of any kind.

(d) Non-Funding Lenders. The failure of any Non-Funding Lender to make any Loan or any payment required by it hereunder on the date specified thereof, shall not relieve any other Lender (each such other Lender, an “**Other Lender**”) of its obligations to make such Loan or purchase such participation on such date, but neither any Other Lender nor the Agent shall be responsible for the failure of any Non-Funding Lender to make a Loan, purchase a participation or make any other payment required hereunder. Notwithstanding anything set forth herein to the contrary, a Non-Funding Lender shall not have any voting or consent rights under or with respect to any Financing Agreement or constitute a “**Lender**” for any voting or consent rights under or with respect to any Financing Agreement. At the Borrowers' request, the Agent or a Person acceptable to the Agent shall have the right with the Agent's consent and in the Agent's sole discretion (but shall have no obligation) to purchase from any Non-Funding Lender, and each Non-Funding Lender agrees that it shall, at the Agent's request, sell and assign to the Agent or such Person, all of the Commitments of that Non-Funding Lender for an amount equal to the principal balance of all Loans held by such Non-Funding Lender and all accrued interest and fees with respect thereto through the date of sale, such purchase and sale to be consummated pursuant to an executed Assignment Agreement.

(e) Dissemination of Information. The Agent shall use reasonable efforts to provide the Lenders with any notice of any Event of Default received by the Agent from, or delivered by the Agent to, the Borrowers, notice of any Event of Default of which the Agent has actually become aware, and notice of any action taken by the Agent following any Event of Default; provided, that the Agent shall not be liable to any Lender for any failure to do so, except to the extent that such failure is attributable to the Agent's gross negligence or wilful misconduct as determined by a final and non-appealable judgment or court order binding on the Agent.

(f) Actions in Concert. Anything in this Agreement to the contrary notwithstanding, each Lender hereby agrees with the Agent and each other Lender that no Lender shall take any action to protect or enforce its rights arising out of this Agreement or the other Financing

Agreements (including exercising any rights of setoff) without first obtaining the prior written consent of the Agent and all other Lenders, it being the intent of the Lenders that any such action to protect or enforce rights under this Agreement and the other Financing Agreements shall be taken in concert and at the direction or with the consent of the Agent, all Lenders, affected Lenders or Required Lenders, as the case may be.

#### **10.14 Meetings of Lenders**

Any Lender is entitled to call a meeting of all Lenders on not less than 10 Business Days prior written notice to all other Lenders for the purposes of considering any matters relevant to this Agreement, the other Financing Agreements and/or in respect of the Obligations

#### **10.15 Approval of Lenders and Agent**

(a) Notwithstanding any other provision of this Agreement but subject to Section 10.15(b), no amendment or waiver of any provision of this Agreement, nor consent to any departure by any Borrower or any Guarantor therefrom, shall in any event be effective unless the same shall be in writing and signed by the Required Lenders, and then such amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given;

- (i) provided that no amendment, waiver or consent shall, unless in writing and signed by all affected Lenders (other than a Non-Funding Lender) do any of the following at any time:
  - (A) reduce the rate or amount of any principal, interest or fees payable by the Borrowers or alter the currency or mode of calculation or computation thereof;
  - (B) extend the time for payments required to be made by the Borrowers or the Maturity Date;
  - (C) increase any Lender's Commitment;
  - (D) change the definition of Required Lenders or Pro Rata Share or any provision of this Section 10.15(a); or
  - (E) change the payment waterfall in Section 5.4(a) hereof;
- (ii) provided further that no amendment, waiver or consent shall, unless in writing and signed by all Lenders (other than a Non-Funding Lender) do any of the following at any time:
  - (A) release all or substantially all of the value of the Collateral under any Financing Agreement or any guarantee of the Obligations; or
  - (B) permit any Borrower or any Guarantor to assign its rights under the Financing Agreements.

(b) Notwithstanding Section 10.15(a), the Agent may, without the consent of the Lenders, make amendments to the Financing Agreements that are for the sole purpose of curing any immaterial or administrative ambiguity, defect or inconsistency. The Agent shall, within a reasonable time, notify the Lenders or any such action. Notwithstanding Section 10.15(a), no amendment, waiver or consent shall, unless in writing and signed by the Agent in addition to the Lenders required above to take such action, affect the rights or duties of the Agent under this Agreement or any of the other Financing Agreements. Notwithstanding Section 10.15(a), no amendment, waiver or consent shall, unless in writing and signed by the applicable counterparty to a Swap Agreement (other than a Borrower), in addition to the Lenders required above to take such action, release all or substantially all of the value of the Collateral under any Financing Agreement or any guarantee of the Obligations or amend the payment waterfall in Section 5.4(a) or this sentence in Section 10.15(b). Notwithstanding Section 10.15(a), any amendment contemplated by Section 3.11 or 3.12 of this Agreement shall be effective as contemplated by such Sections.

## **ARTICLE 11. JURY TRIAL WAIVER; OTHER WAIVERS AND CONSENTS; GOVERNING LAW**

### **11.1 Governing Law; Choice of Forum; Service of Process; Jury Trial Waiver**

(a) The validity, interpretation and enforcement of this Agreement and the other Financing Agreements (unless expressly stated otherwise) and any dispute arising out of the relationship between the parties hereto, whether in contract, tort, equity or otherwise, shall be governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein (without giving effect to principles of conflicts of laws).

(b) The Borrowers, the Guarantors, the Lenders and the Agent irrevocably consent and submit to the non-exclusive jurisdiction of the Superior Court of Justice (Ontario) and waive any objection based on venue or *forum non conveniens* with respect to any action instituted therein arising under this Agreement or any of the other Financing Agreements or in any way connected with or related or incidental to the dealings of the parties hereto in respect of this Agreement or any of the other Financing Agreements or the transactions related hereto or thereto, in each case whether now existing or hereafter arising, and whether in contract, tort, equity or otherwise, and agree that any dispute with respect to any such matters shall be heard only in the courts described above (except that the Lenders and the Agent shall have the right to bring any action or proceeding against the Borrowers, the Guarantors or their respective assets or property in the courts of any other jurisdiction which the Lenders and the Agent deems necessary or appropriate in order to realize on the Collateral or to otherwise enforce their respective rights against the Borrowers, the Guarantors or their respective assets or property).

(c) To the extent permitted by applicable law, each of the Borrowers and the Guarantors hereby waives personal service of any and all process upon it and consents that all such service of process may be made by registered mail (return receipt requested) directed to its address set forth on the signature pages hereof and service so made shall be deemed to be completed 5 days after the same shall have been so deposited in the Canadian mails, or, at the Agent's or the Lender's option, by service upon the Borrowers and the Guarantors in any other manner provided under the rules of any such courts. Within 30 days after such service, the

Borrowers and the Guarantors shall appear in answer to such process, failing which the Borrowers and the Guarantors shall be deemed in default and judgment may be entered by the Agent or a Lender against the Borrowers and the Guarantors for the amount of the claim and other relief requested.

(d) The Borrowers, the Guarantors, the Lenders and the Agent each hereby waives any right to trial by jury of any claim, demand, action or cause of action (i) arising under this Agreement or any of the other Financing Agreements or (ii) in any way connected with or related or incidental to the dealings of the parties hereto in respect of this Agreement or any of the other Financing Agreements or the transactions related hereto or thereto in each case whether now existing or hereafter arising, and whether in contract, tort, equity or otherwise. The Borrowers, the Guarantors, the Lenders and the Agent each hereby agrees and consents that any such claim, demand, action or cause of action shall be decided by court trial without a jury and that the Borrowers, the Guarantors, the Lenders or the Agent may file an original counterpart of a copy of this Agreement with any court as written evidence of the consent of the parties hereto to the waiver of their right to trial by jury.

(e) The Agent and each Lender shall not have any liability to any Borrower or any Guarantor (whether in tort, contract, equity or otherwise) for losses suffered by any Borrower or any Guarantor in connection with, arising out of, or in any way related to the transactions or relationships contemplated by this Agreement or any other Financing Agreement, or any act, omission or event occurring in connection herewith, unless it is determined by a final and non-appealable judgment or court order binding on the Agent or a Lender, as the case may be, that the losses were the result of acts or omissions constituting gross negligence or willful misconduct. In any such litigation, the Agent and each Lender shall be entitled to the benefit of the rebuttable presumption that it acted in good faith and with the exercise of ordinary care in the performance by it of the terms of this Agreement or any other Financing Agreement.

(f) Each of the Borrowers and the Guarantors hereby expressly waives all rights of notice and hearing of any kind prior to the exercise of rights by the Agent from and after the occurrence of an Event of Default to repossess the Collateral with judicial process or to replevy, attach or levy upon the Collateral or other security for the Obligations. Each of the Borrowers and the Guarantors waives the posting of any bond otherwise required of the Agent in connection with any judicial process or proceeding to obtain possession of, replevy, attach or levy upon the Collateral or other security for the Obligations, to enforce any judgment or other court order entered in favour of the Agent, or to enforce by specific performance, temporary restraining order, preliminary or permanent injunction, this Agreement or any other Financing Agreement.

## **11.2 Waiver of Notices**

Each of the Borrowers and the Guarantors hereby expressly waives demand, presentment, protest and notice of protest and notice of dishonour with respect to any and all instruments and commercial paper, included in or evidencing any of the Obligations or the Collateral, and any and all other demands and notices of any kind or nature whatsoever with respect to the Obligations, the Collateral and this Agreement, except such as are expressly provided for herein. No notice to or demand on the Borrowers or the Guarantors which the Agent may elect to give

shall entitle the Borrowers or the Guarantors to any other or further notice or demand in the same, similar or other circumstances.

### **11.3 Amendments and Waivers**

Subject to Section 10.15, neither this Agreement nor any provision hereof shall be amended, modified, waived or discharged orally or by course of conduct, but only by a written agreement signed by an authorized officer of the Agent, each affected Lender, all Lenders or Required Lenders, as the case may be, and as to amendments, as also signed by an authorized officer of each of the Borrowers and the Guarantors. The Agent shall not, by any act, delay, omission or otherwise be deemed to have expressly or impliedly waived any of its rights, powers and/or remedies unless such waiver shall be in writing and signed by an authorized officer of the Agent. Any such waiver shall be enforceable only to the extent specifically set forth therein. A waiver by the Agent of any right, power and/or remedy on any one occasion shall not be construed as a bar to or waiver of any such right, power and/or remedy which the Agent would otherwise have on any future occasion, whether similar in kind or otherwise.

### **11.4 Waiver of Counterclaim**

Each of the Borrowers and the Guarantors waives all rights to interpose any claims, deductions, setoffs or counterclaims of any nature (other than compulsory counterclaims) in any action or proceeding with respect to this Agreement, the Obligations, the Collateral or any matter arising therefrom or relating hereto or thereto.

### **11.5 Indemnification**

Each of the Borrowers and the Guarantors shall, joint and severally, indemnify and hold the Agent, each Lender, and their respective Affiliates, agents, and counsel, harmless from and against any and all losses, claims, damages, liabilities, costs or expenses imposed on, incurred by or asserted against any of them in connection with any litigation, investigation, claim or proceeding commenced or threatened related to the negotiation, preparation, execution, delivery, enforcement, performance or administration of this Agreement, any other Financing Agreements, or any undertaking or proceeding related to any of the transactions contemplated hereby or any act, omission, event or transaction related or attendant thereto, including amounts paid in settlement, court costs, and the fees and expenses of counsel. To the extent that the undertaking to indemnify, pay and hold harmless set forth in this Section 11.5 may be unenforceable because it violates any law or public policy, each of the Borrowers and the Guarantors shall, on a joint and several basis, pay the maximum portion which it is permitted to pay under applicable law to the Agent and the Lenders in satisfaction of indemnified matters under this Section 11.5. The foregoing indemnity shall survive the payment of the Obligations and the termination or non-renewal of this Agreement.

## **ARTICLE 12. ACKNOWLEDGMENT AND RESTATEMENT**

### **12.1 Second Amended and Restated Credit Agreement and Financing Agreements**

(a) Each Borrower and Guarantor agrees that: (i) the Second Amended and Restated Credit Agreement and the other Financing Agreements have been duly executed and delivered

by the Borrowers and the Guarantors and are in full force and effect as of the date hereof; (ii) the agreements and obligations of the Borrowers and the Guarantors contained therein constitute the legal, valid and binding agreements and obligations of the Borrowers or the Guarantors, as the case may be, enforceable against such Borrower or Guarantor in accordance with its terms and no Borrower or Guarantor has a valid defense to the enforcement of such agreements or obligations; and (iii) the Agent and the Secured Parties are entitled to all of the rights, remedies and benefits provided for in, or arising pursuant to, the Second Amended and Restated Credit Agreement and the other Financing Agreements.

(b) Each Borrower and Guarantor agrees that the Borrowers are indebted to the Secured Parties for outstanding Obligations and Letter of Credit Accommodations (as defined in the Second Amended and Restated Credit Agreement) and other financial accommodations in connection with the Second Amended and Restated Credit Agreement together with all interest accrued and accruing thereon (to the extent applicable), and all fees, costs, expenses and other charges relating thereto, all of which are unconditionally owing by the Borrowers to the Secured Parties, without offset, defense or counterclaim of any kind, nature or description whatsoever. The financial accommodations provided in connection herewith are an extension of those provided in connection with the Second Amended and Restated Credit Agreement and shall continue without novation and shall be deemed Obligations of the Borrowers and the Guarantors hereunder.

(c) The provisions set forth in the Second Amended and Restated Credit Agreement are simultaneously amended and restated in their entirety, and as so amended and restated, are replaced and superseded by the provisions set forth in this Agreement.

## **12.2 Existing Security Interests**

(a) Notwithstanding any term of any Financing Agreement, each Borrower and Guarantor agrees that all security granted by them under, or in connection with, the Original Credit Agreement, the Amended and Restated Credit Agreement, the Second Amended and Restated Credit Agreement, this Agreement and the other Financing Agreements shall be held by the Agent, on behalf of the Secured Parties, to secure the Obligations.

(b) The security interests and mortgages of the Agent, on behalf of the Secured Parties, in the Collateral shall be deemed to be continuously granted, perfected and registered from the earliest date of such granting, perfection and registration.

## **ARTICLE 13. TERM OF AGREEMENT; MISCELLANEOUS**

### **13.1 Term**

(a) This Agreement and the other Financing Agreements shall become effective as of the date set forth on the first page hereof and shall continue in full force and effect for a term ending on the Maturity Date, unless sooner terminated pursuant to the terms hereof. The Borrowers may (acting jointly) terminate this Agreement upon giving the Agent 10 Business Days prior written notice thereof. Upon the effective date of termination of the Financing Agreements, the Borrowers shall pay to the Agent, in full, all outstanding and unpaid Obligations (except under or in connection with a Swap Agreement) and shall furnish cash collateral to the

Agent in such amounts as the Agent determines are necessary to secure the Agent, the Lenders and the Secured Parties from loss, cost, damage or expense, including legal fees and expenses, in connection with any contingent Obligations, including issued and outstanding Letter of Credit Accommodations, outstanding Swap Agreements and cheques or other payments provisionally credited to the Obligations and/or as to which the Agent has not yet received final and indefeasible payment. Such payments in respect of the Obligations and cash collateral shall be remitted by wire transfer in Canadian Dollars or U.S. Dollars, as applicable, to such bank account of the Agent, as the Agent may, in its discretion, designate in writing to the Borrowers for such purpose. Interest shall be due until and including the next Business Day, if the amounts so paid by the Borrowers to the bank account designated by the Agent are received in such bank account later than 12:00 noon, Toronto time.

(b) No termination of this Agreement or the other Financing Agreements shall relieve or discharge the Borrowers and/or the Guarantors of their respective duties, obligations and covenants under this Agreement or the other Financing Agreements until all Obligations have been fully and finally discharged and paid, and the Agent's continuing security interest in the Collateral and the rights and remedies of the Agent hereunder, under the other Financing Agreements and applicable law, shall remain in effect until all such Obligations have been fully and finally discharged and paid.

(c) If for any reason this Agreement is terminated prior to the end of the term of this Agreement, in view of the impracticality and extreme difficulty of ascertaining actual damages and by mutual agreement of the parties as to a reasonable calculation of the Lenders' lost profits as a result thereof, the Borrowers agree to pay to the Agent, for the account of the Lenders based on their respective Pro Rata Shares, upon the effective date of such termination, an early termination fee in the amount set forth below if such termination is effective in the period indicated:

<b>Amount</b>	<b>Period</b>
█ % of Maximum Revolving Credit	From and including the Closing Date to and including the 1 <sup>st</sup> anniversary of the Closing Date
█ % of Maximum Revolving Credit	After the 1 <sup>st</sup> anniversary of the Closing Date to and including the 2 <sup>nd</sup> anniversary of the Closing Date
█ % of Maximum Revolving Credit	After the 2 <sup>nd</sup> anniversary of the Closing Date to and including the 3 <sup>rd</sup> anniversary of the Closing Date

Such early termination fee shall be presumed to be the amount of damages sustained by the Lenders as a result of such early termination and the Borrowers agree that it is reasonable under the circumstances currently existing. In addition and for greater certainty, the Lenders shall be entitled to such early termination fee upon the occurrence of any Event of Default described in

Sections 9.1(g) and 9.1(h) hereof, even if the Lenders do not exercise their right to terminate this Agreement, but elect, at their option, to provide financing to the Borrowers or permit the use of cash collateral under any applicable reorganization or insolvency legislation. The early termination fee provided for in this Section 13.1 shall be deemed included in the Obligations.

### **13.2 Notices**

All notices, requests and demands hereunder shall be in writing and (a) made to the Agent and each Lender at their respective addresses set forth below and to the Borrowers and the Guarantors at their respective chief executive offices set forth below, or to such other address as any party hereto may designate by written notice to the other parties hereto in accordance with this provision, and (b) deemed to have been given or made: if delivered in person, immediately upon delivery; if by facsimile transmission, immediately upon sending and upon confirmation of receipt; if by nationally recognized overnight courier service with instructions to deliver the next Business Day, 1 Business Day after sending; and if by registered mail, return receipt requested, 5 days after mailing.

### **13.3 Partial Invalidity**

If any provision of this Agreement is held to be invalid or unenforceable, such invalidity or unenforceability shall not invalidate this Agreement as a whole, but this Agreement shall be construed as though it did not contain the particular provision held to be invalid or unenforceable and the rights and obligations of the parties shall be construed and enforced only to such extent as shall be permitted by applicable law.

### **13.4 Successors**

This Agreement, the other Financing Agreements and any other document referred to herein or therein shall be binding upon and inure to the benefit of and be enforceable by the Agent, the Lenders, the Borrowers and the Guarantors and their respective successors and assigns, except that the Borrowers and the Guarantors may not assign their respective rights under this Agreement, the other Financing Agreements and any other document referred to herein or therein without the prior written consent of all Lenders.

### **13.5 Entire Agreement**

This Agreement, the other Financing Agreements, any supplements hereto or thereto, and any instruments or documents delivered or to be delivered in connection herewith or therewith represents the entire agreement and understanding concerning the subject matter hereof and thereof between the parties hereto, and supersede all other prior agreements, understandings, negotiations and discussions, representations, warranties, commitments, proposals, offers and contracts concerning the subject matter hereof, whether oral or written. In the event of any inconsistency between the terms of this Agreement and any schedule or exhibit hereto, the terms of this Agreement shall govern.

### **13.6 Headings**

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

### **13.7 Facsimile; Counterparts**

This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement. Execution of any such counterpart may be by means of (a) an electronic signature that complies with the federal Electronic Signatures in Global and National Commerce Act, as in effect from time to time, state enactments of the Uniform Electronic Transactions Act, as in effect from time to time, or any other relevant and applicable electronic signatures law; (b) an original manual signature; or (c) a faxed, scanned, or photocopied manual signature. Each electronic signature or faxed, scanned, or photocopied manual signature shall for all purposes have the same validity, legal effect, and admissibility in evidence as an original manual signature. Agent reserves the right, in its discretion, to accept, deny, or condition acceptance of any electronic signature on this Agreement. Any party delivering an executed counterpart of this Agreement by faxed, scanned or photocopied manual signature shall also deliver an original manually executed counterpart, but the failure to deliver an original manually executed counterpart shall not affect the validity, enforceability and binding effect of this Agreement. The foregoing shall apply to each other Financing Agreement, and any notice delivered hereunder or thereunder, *mutatis mutandis*.

### **13.8 Judgment Currency**

To the extent permitted by applicable law, the obligations of the Borrowers and the Guarantors in respect of any amount due under this Agreement and the other Financing Agreements shall, notwithstanding any payment in any other currency (the “**Other Currency**”) (whether pursuant to a judgment or otherwise), be discharged only to the extent of the amount in the currency in which it is due (the “**Agreed Currency**”) that the Agent may, in accordance with normal banking procedures, purchase with the sum paid in the Other Currency (after any premium and costs of exchange) on the Business Day immediately after the day on which the Agent receives the payment. If the amount in the Agreed Currency that may be so purchased for any reason falls short of the amount originally due, the Borrowers and the Guarantors shall pay all additional amounts, in the Agreed Currency, as may be necessary to compensate for the shortfall. Any obligation of the Borrowers and the Guarantors not discharged by that payment shall, to the extent permitted by applicable law, be due as a separate and independent obligation and, until discharged as provided in this Section 13.8, continue in full force and effect.

### **13.9 No Set-Off, Etc.**

Each of the Borrowers and the Guarantors reaffirms that each of the Financing Agreements remains in full force and effect, in favour of the Agent and the Lenders and acknowledges and agrees that there is no defence, set-off or counterclaim of any kind, nature or description to its

obligations arising under any of the Financing Agreements as a result of the execution of this Agreement.

### **13.10 Acknowledgement Regarding Any Supported QFCs**

To the extent that the Financing Agreements provide support, through a guarantee or otherwise, for Swap Agreements or any other agreement or instrument that is a QFC (such support, “**QFC Credit Support**” and each such QFC a “**Supported QFC**”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “**U.S. Special Resolution Regimes**”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Financing Agreements and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States): In the event a Covered Entity that is party to a Supported QFC (each, a “**Covered Party**”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Financing Agreements that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Financing Agreements were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Non-Funding Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

### **13.11 Patriot Act; CAML**

(a) The Agent and each Lender hereby notifies each Borrower and Guarantor that pursuant to the requirements of the *Patriot Act* it is required to obtain, verify and record information that identifies each Person or corporation who opens an account or enters into a business relationship with it, which information includes the name and address of such Borrower and Guarantor and other information that will allow the Agent and each Lender to identify such Person in accordance with the *Patriot Act* and any other applicable law. Each Borrower and Guarantor is hereby advised that any Loans or Letter of Credit Accommodations are subject to satisfactory results of such verification. The Agent and each Lender shall have the right to periodically conduct due diligence on each Borrower and Guarantor, its senior management and key principals and legal and beneficial owners. Each Borrower and Guarantor agrees to cooperate in respect of the conduct of such due diligence and further agrees that the reasonable costs and charges for any such due diligence by the Agent and each Lender shall constitute costs

and expenses under Section 8.20 for which the Agent and each Lender is entitled to reimbursement as provided therein and be for the account of the Borrowers and Guarantors.

(b) Each Borrower and Guarantor acknowledges that, pursuant to the CAML, the Agent and each Lender may be required to obtain, verify and record information regarding each Borrower and Guarantor, its directors, authorized signing officers, direct or indirect shareholders or other Persons in control of each Borrower and Guarantor, and the transactions contemplated hereby. Each Borrower and Guarantor shall promptly provide all such information, including supporting documentation and other evidence, as may be reasonably requested by the Agent and each Lender, or any prospective assign or participant of the Agent and each Lender, in order to comply with any applicable CAML, whether now or hereafter in existence.

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CANADIAN BORROWER  
**TREE ISLAND INDUSTRIES LTD.**

By: NDavis  
Name: Nancy Davies  
Title: Authorized Signing Officer

Address of Chief Executive Office:  
[Redacted]

U.S. BORROWER  
**TREE ISLAND WIRE (USA), INC.**

By: NDavis  
Name: Nancy Davies  
Title: Authorized Signing Officer

Address of Chief Executive Office:  
[Redacted]

GUARANTOR  
**TREE ISLAND STEEL LTD.**

By: NDavis  
Name: Nancy Davies  
Title: Authorized Signing Officer

Address of Chief Executive Office:  
[Redacted]

GUARANTOR  
**TREE ISLAND WIRE HOLDINGS (USA), INC.**

By: NDavis  
Name: Nancy Davies  
Title: Authorized Signing Officer

Address of Chief Executive Office:  
[Redacted]

**EXHIBIT A**  
**INFORMATION CERTIFICATES**

[Redacted - contained commercially sensitive business information]

**EXHIBIT B**  
**CLOSING AGENDA**

[Redacted - contained commercially sensitive business information]

**Schedule 1.53  
Commitments**

Lender	Canadian Revolving Loan Commitment	U.S. Revolving Loan Commitment	Capex Term Loan Commitment
Wells Fargo Capital Finance Corporation Canada	\$25,000,000	Nil	\$10,000,000
Wells Fargo Bank, N.A.	Nil	Equivalent Amount in US Dollars of \$25,000,000	Equivalent Amount in US Dollars of \$10,000,000

**SCHEDULE 6.1**  
**Form of Borrowing Base Certificate**

**See attached.**

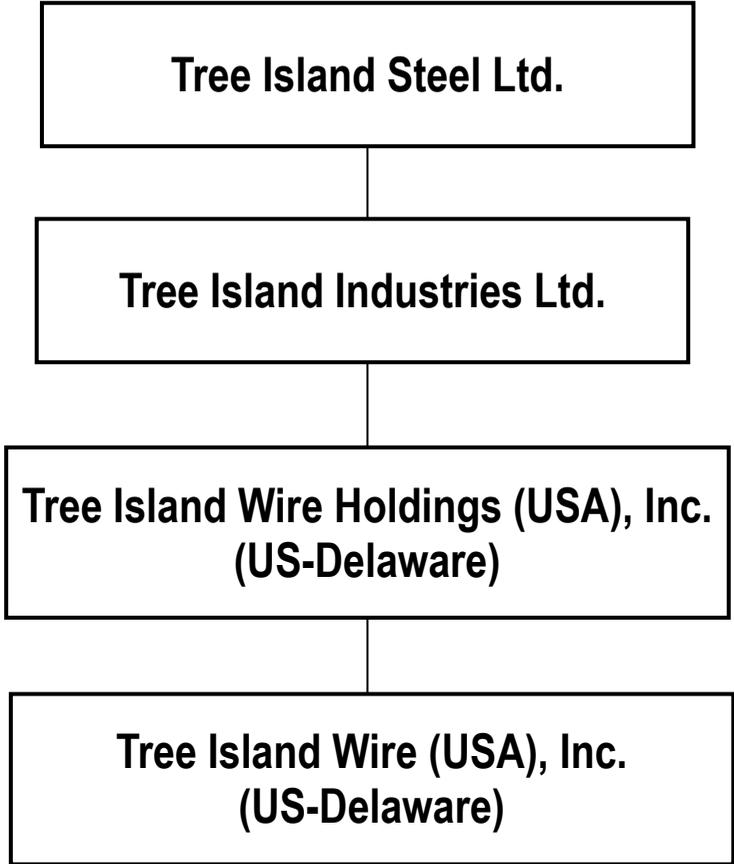
[Redacted - contained commercially sensitive business information]

**SCHEDULE 7.1**  
**Corporate Structure Chart**

**See attached.**

**TREE ISLAND STEEL LTD.**

**Corporate Structure  
January, 2017**



**SCHEDULE 7.4**  
**Existing Encumbrances**

[Redacted - contained commercially sensitive business information]

**SCHEDULE 7.8**

**BANK ACCOUNTS**

[Redacted - contained commercially sensitive business information]

SCHEDULE 8.6(f)

**FORM OF COMPLIANCE CERTIFICATE**

**[Date, 202[\_]]**

To: Wells Fargo Capital Finance Corporation Canada, as Agent  
22 Adelaide Street West  
22<sup>nd</sup> Floor  
Toronto, Ontario M5H 4E3

Ladies and Gentlemen:

I hereby certify to you pursuant to Section 8.6(f) of the Credit Agreement (as defined below) as follows:

1. I am a duly elected officer of Tree Island Industries Ltd./Tree Island Wire (USA), Inc., Terms used herein with initial capital letters without definition shall have the meanings given to such terms in the Third Amended and Restated Credit Agreement dated as of May \_\_, 2023 between the Borrowers, the Guarantors, the Canadian Lenders, the U.S. Lenders and Wells Fargo Capital Finance Corporation Canada, as Agent for and on behalf of the Secured Parties (as amended, modified, supplemented, extended, reviewed, restated, and replaced, the “**Credit Agreement**”).
2. I have reviewed the terms of the Credit Agreement, and have made, or have caused to be made under my supervision, a review in reasonable detail of the transactions and the financial condition of the Borrowers and the Guarantors, during the immediately preceding fiscal month.
3. The review described in Section 2 above did not disclose the existence during or at the end of such fiscal month, and I have no knowledge of the existence and continuance on the date hereof, of any condition or event which constitutes a Default or Event of Default except as set forth on Schedule I attached hereto. Described on Schedule I attached hereto are the exceptions, if any, to this Section 3 listing, in detail, the nature of the condition or event, the period during which it has existed and the action which any of the Borrowers or the Guarantors has taken, is taking, or proposes to take with respect to such condition or event.
4. I further certify that, based on the review described in Section 2 above, the Borrowers and the Guarantors have not at any time during or at the end of such fiscal month, except as specifically described on Schedule II attached hereto or as permitted by the Credit Agreement, done any of the following:
  - a. changed its respective corporate name, or transacted business under any trade name, style, or fictitious name, other than those previously described to you and set forth in the Financing Agreements;

- b. entered into any Intercompany Indebtedness except the Intercompany Indebtedness described in Schedule 8.9 of the Credit Agreement;
  - c. entered into any renewals or replacements of the guarantees listed on Schedule 8.10 of the Credit Agreement other than those previously described to you and set forth in the Credit Agreement;
  - d. changed the location of its chief executive office, changed its jurisdiction of incorporation, changed its type of organization or changed the location of or disposed of any of its properties or assets (other than pursuant to the sale of Inventory in the ordinary course of its business or as otherwise permitted by Section 8.7 of the Credit Agreement), or established any new asset locations;
  - e. permitted or suffered to exist any security interest in or liens on any of its properties, whether real or personal, other than as specifically permitted in the Financing Agreements; or
  - f. become aware of, obtained knowledge of, or received notification of, any breach or violation of any material covenant contained in any Financing Agreement.
5. Attached hereto as Schedule III are the calculations used in determining, as of the end of such fiscal month whether the Borrowers and the Guarantors are in compliance with the financial covenant set forth in Section 8.13 of the Credit Agreement (if applicable in accordance with the terms of the Credit Agreement) for such fiscal quarter and the calculation of Total Excess Availability.

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The foregoing certifications are made and delivered this [ ] day of [ ], 202[ ]

Very truly yours,

**TREE ISLAND INDUSTRIES LTD./ TREE  
ISLAND WIRE (USA), INC.**

By:

Name: Nancy Davies

Title: VP Finance and CFO

**SCHEDULE I**

**Default or Event of Default**

**(Section 3)**

**SCHEDULE II**

**Changes**

**(Section 4)**

**SCHEDULE III**

**Financial Covenant Compliance Calculations and Total Excess Availability**

**(Section 5)**

**SCHEDULE 8.9**  
**EXISTING INDEBTEDNESS**

[Redacted - contained commercially sensitive business information]

**SCHEDULE 8.10**

**Existing Loans, Advances and Guarantees**

[Redacted - contained commercially sensitive business information]

**Schedule 10.1(a)(iv)**  
**Form of Assignment Agreement**

This Assignment Agreement (this “**Agreement**”) is made as of the \_\_\_\_ day of \_\_\_\_, 20\_\_ between [●] (“**Assignor Lender**”) and [●] (“**Assignee Lender**”) and acknowledged and consented to by **WELLS FARGO CAPITAL FINANCE CORPORATION CANADA** as agent (“**Agent**”) [and **Tree Island Industries Ltd. and Tree Island Wire (USA), Inc. (the “Borrowers”)**]. [NTD: Borrowers’ consent not required if an Event of Default has occurred and is continuing or if assignment is to an Eligible Transferee.]. All capitalized terms used in this Agreement and not otherwise defined herein have the respective meanings set forth in the Credit Agreement (as defined below).

**WITNESSETH**

**WHEREAS**, Agent and Lenders entered into certain financing arrangements with Tree Island Industries Ltd., a British Columbia corporation (the “**Canadian Borrower**”) and Tree Island Wire (USA), Inc., a Delaware corporation (the “**U.S. Borrower**”, collectively with the Canadian Borrower, the “**Borrowers**”), as set out in the Third Amended and Restated Credit Agreement dated as of May 8, 2023, between the Borrowers, the Canadian Lenders signatory thereto from time to time (the “**Canadian Lenders**”), the U.S. Lenders signatory thereto from time to time (the “**U.S. Lenders**”; collectively with the Canadian Lenders, the “**Lenders**”) and Agent (as amended, modified, supplemented, extended, renewed, restated or replaced from time to time, the “**Credit Agreement**”);

**WHEREAS**, Assignor Lender desires to assign to Assignee Lender [all/a portion] of its interest in the [Revolving Loans] [Capex Term Loans] and the Collateral and to assign and delegate to Assignee Lender [all/a portion] of its [Canadian/U.S. Revolving Loan] [Capex Term Loan] Commitment and other duties with respect to the [Revolving Loans] [Capex Term Loans];

**WHEREAS**, Assignee Lender desires to become a Lender under the Credit Agreement and to accept such assignment and delegation from Assignor Lender; and

**WHEREAS**, Assignee Lender desires to appoint Agent to serve as Agent for Assignee Lender under the Credit Agreement.

**FOR VALUE RECEIVED**, Assignor Lender and Assignee Lender agree as follows:

**SECTION 1. ASSIGNMENT, DELEGATION AND ACCEPTANCE**

1.1 Assignment

Assignor Lender hereby transfers and assigns to Assignee Lender, without recourse and without representations or warranties of any kind (except as set forth in Section 3.2 hereof), the following amount of the [Revolving Loans] [Capex Term Loans], owned by Assignor Lender as will result in Assignee Lender having, as of the Effective Date (as hereinafter defined), a Pro Rata Share, as follows:

- (a) **Principal amount of Revolving Loans to be Assigned = [●]**

- (b) **Principal amount of Capex Term Loans to be Assigned = [\$●]**
- (c) **Pro Rata Share of Assignor Lender as of the Effective Date = [\$●]**
- (d) **Pro Rata Share of Assignee Lender as of the Effective Date = [\$●]**

## 1.2 Delegation

Assignor Lender hereby irrevocably assigns and delegates to Assignee Lender [all/a portion] of its [**Canadian/U.S. Revolving Loan**] [**Capex Term Loan**] Commitment and its other duties and obligations as a Lender under the Financing Agreements equivalent to [100%/[●]%) of Assignor Lender's [**Canadian/U.S. Revolving Loan**] [**Capex Term Loan**] Commitment (such percentage representing a [**Canadian/U.S. Revolving Loan**] [**Capex Term Loan**] Commitment of \$[●]).

## 1.3 Acceptance by Assignee

By its execution of this Agreement, Assignee Lender hereby irrevocably purchases, assumes and accepts such assignment and delegation and agrees to be a Lender with respect to the assigned and delegated interest under the Financing Agreements and to be bound by the terms and conditions thereof. By its execution of this Agreement, Assignor Lender agrees, to the extent provided herein, to relinquish its rights and be released from its obligations and duties under the Financing Agreements.

## 1.4 Effective Date

Such assignment and delegation by Assignor Lender and acceptance by Assignee Lender will be effective, and Assignee Lender will become a Lender under the Financing Agreements as of the date of this Agreement ("**Effective Date**") and upon payment of the Assigned Amount and the Assignment Fee (as each term is defined below). Applicable interest and fees accrued with respect to the amounts and commitments assigned hereunder prior to the Effective Date are for the account of Assignor Lender, and applicable interest and fees accrued with respect to the amounts and commitments assigned hereunder from and after the Effective Date are for the account of Assignee Lender.

## **SECTION 2. INITIAL PAYMENT**

### 2.1 Payment of the Assigned Amount

Assignee Lender will pay to Assignor Lender, for value not later than 12:00 noon on the Effective Date, an amount equal to [\$●], as set forth above in Section 1.1 (the "**Assigned Amount**").

### 2.2 Payment of Assignment Fee

[**Assignor Lender and/or Assignee Lender**] will pay to Agent, for its own account, for value not later than 12:00 noon on the Effective Date, the assignment fee in the amount of U.S.\$3,500 (the "**Assignment Fee**"), as required pursuant to Section 10.1(a)(vi) of the Credit Agreement.

### **SECTION 3. REPRESENTATIONS, WARRANTIES AND COVENANTS**

#### **3.1 Assignee Lender's Representations, Warranties and Covenants**

Assignee Lender hereby represents, warrants, and covenants to Assignor Lender and Agent the following:

- (a) this Agreement is a legal, valid, and binding agreement of Assignee Lender, enforceable against Assignee Lender according to its terms;
- (b) the execution and performance by Assignee Lender of its duties and obligations under this Agreement and the Financing Agreements will not require any registration with, notice to, or consent or approval by any governmental authority;
- (c) Assignee Lender has full power and authority, and has taken all action necessary, to execute and deliver this Agreement and to fulfill its obligations hereunder and to consummate the transactions contemplated hereby;
- (d) Assignee Lender is familiar with transactions of the kind and scope reflected in the Financing Agreements and in this Agreement;
- (e) Assignee Lender has made its own independent investigation and appraisal of the financial condition and affairs of Borrowers and Guarantors, has conducted its own evaluation of the **[Revolving Loans]** **[Capex Term Loans]**, the Financing Agreements and Borrower's creditworthiness, has made its decision to become a Lender to Borrowers under the Credit Agreement independently and without reliance upon Assignor Lender or Agent, and will continue to do so;
- (f) Assignee Lender is entering into this Agreement in the ordinary course of its business, and is acquiring its interest in the **[Revolving Loans]** **[Capex Term Loans]** and a **[Canadian/U.S. Revolving Loan]** **[Capex Term Loan]** Commitment for its own account, for investment purposes and not with a view to or for sale in connection with any subsequent distribution; provided, however, that at all times the distribution of Assignee Lender's property shall, subject to the terms of the Credit Agreement, be and remain within its control;
- (g) as of the Effective Date, Assignee Lender, is not subject to any withholding as anticipated by Section 5.4(b) of the Credit Agreement, and Assignee Lender will indemnify Agent from and against all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, or expenses that result from any inaccuracy in the foregoing; and
- (h) as of the Effective Date, Assignee Lender is not a Prohibited Transferee.

**[NOTE: The reps in clauses (g) and (h) should be deleted in the event this form is used to effect an actual assignment at a time when an Event of Default has occurred and is continuing under the Credit Agreement.]**

### 3.2 Assignor Lender's Representations, Warranties and Covenants

Assignor Lender hereby represents, warrants and covenants to Assignee Lender the following:

- (a) this Agreement is a legal, valid, and binding agreement of Assignor Lender, enforceable against Assignor Lender according to its terms;
- (b) Assignor Lender has full power and authority, and has taken all action necessary, to execute and deliver this Agreement and to fulfil its obligations hereunder and to consummate the transactions contemplated hereby; and
- (c) Assignor Lender is the legal and beneficial owner of the interests being assigned hereby, free and clear of any adverse claim, lien, encumbrance, security interest, restriction on transfer, purchase option, call or similar right of a third party.

### **SECTION 4. LIMITATIONS OF LIABILITY**

Neither Assignor Lender (except as provided in Section 3.2 hereof) nor Agent makes any representations or warranties of any kind, nor assumes any responsibility or liability whatsoever, with regard to (a) the Financing Agreements or any other document or instrument furnished pursuant thereto or the **[Revolving Loans] [Capex Term Loans]** or the **[Canadian/U.S. Revolving Loan] [Capex Term Loan]** Commitment or other Obligations, (b) the creation, validity, genuineness, enforceability, sufficiency, value or collectability of any of them, (c) the amount, value or existence of the Collateral, (d) the perfection or priority of any lien upon the Collateral, or (e) the financial condition of Borrowers or Guarantors or the performance or observance by Borrowers or Guarantors of their respective obligations under any of the Financing Agreements. Neither Assignor Lender nor Agent has or will have any duty, either initially or on a continuing basis, to make any investigation, evaluation, appraisal of, or any responsibility or liability with respect to the accuracy or completeness of, any information provided to Assignee Lender which has been provided to Assignor Lender or Agent by Borrowers or any Guarantor. Nothing in this Agreement or in the Financing Agreements shall impose upon Assignor Lender or Agent any fiduciary relationship in respect of Assignee Lender,

### **SECTION 5. FAILURE TO ENFORCE**

No failure or delay on the part of Agent, Assignor Lender or Assignee Lender in the exercise of any power, right, or privilege hereunder or under any Financing Agreement will impair such power, right, or privilege or be construed to be a waiver of any default or acquiescence therein. No single or partial exercise of any such power, right, or privilege will preclude further exercise thereof or of any other right, power, or privilege. All rights and remedies existing under this Agreement are cumulative with, and not exclusive of, any rights or remedies otherwise available.

### **SECTION 6. NOTICES**

Unless otherwise specifically provided herein, any notice or other communication required or permitted to be given will be in writing and addressed to the respective party as set forth below its signature hereunder, or to such other address as the party may designate in writing to the other and deemed given in accordance with Section 13.2 of the Credit Agreement.

## **SECTION 7. AMENDMENTS AND WAIVERS**

No amendment, modification, termination, or waiver of any provision of this Agreement will be effective without the written concurrence of Assignor Lender, Agent and Assignee Lender.

## **SECTION 8. SEVERABILITY**

Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law. In the event any provision of this Agreement is or is held to be invalid, illegal, or unenforceable under applicable law, such provision will be ineffective only to the extent of such invalidity, illegality, or unenforceability, without invalidating the remainder of such provision or the remaining provisions of this Agreement. In addition, in the event of any provision of or obligation under this Agreement is or is held to be invalid, illegal, or unenforceable in any jurisdiction, the validity, legality, and enforceability of the remaining provisions or obligations in any other jurisdictions will not in any way be affected or impaired thereby.

## **SECTION 9. SECTION TITLES**

Section and subsection titles in this Agreement are included for convenience of reference only, do not constitute a part of this Agreement for any other purpose, and have no substantive effect.

## **SECTION 10. SUCCESSORS AND ASSIGNS**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

## **SECTION 11. APPLICABLE LAW**

This Agreement will be governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein.

## **SECTION 12. COUNTERPARTS**

This Agreement may be executed in any number of original, fax or pdf counterparts and by different parties hereto in separate counterparts, each of which, when so executed and delivered, will be deemed an original and all of which shall together constitute one and the same instrument.

[Signature page follows.]

**IN WITNESS WHEREOF**, this Agreement has been duly executed as of the date first written above.

**[NAME OF ASSIGNEE LENDER]**

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

Name:

Title:

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

Name:

Title:

Notice Address:

[●]

Attention: [●]

Fax: [●]

**[NAME OF ASSIGNOR LENDER]**

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

Name:

Title:

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

Name:

Title:

Notice Address:

[●]

Attention: [●]

Fax: [●]

**[NOTE: Borrowers' consent not required if an Event of Default has occurred and is continuing or if assignment is to an Eligible Transferee.]**

ACKNOWLEDGED AND CONSENTED TO:

ACKNOWLEDGED AND CONSENTED TO:

**WELLS FARGO CAPITAL FINANCE CORPORATION CANADA, as Agent**

**TREE ISLAND INDUSTRIES LTD.**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

Chief Executive Office:

Chief Executive Office:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[●]

\_\_\_\_\_  
\_\_\_\_\_

Attention: [●]

Fax: [●]

ACKNOWLEDGED AND CONSENTED TO:

**TREE ISLAND WIRE (USA) INC.**

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

Name:

Title:

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

Name:

Title:

Chief Executive Office:

[●]

Attention:

[●]

Fax:

[●]