

Form 39.08

2021

Hfx. No. 503367

Supreme Court of Nova Scotia

Between:

**CANADIAN IMPERIAL BANK OF COMMERCE, a
chartered bank**

Plaintiff

and

3304051 NOVA SCOTIA LIMITED, a body corporate

Defendant

Affidavit of Kyle Lane

I, Kyle Lane, make oath/affirm and give evidence as follows:

1. I am Senior Director, Special Loans, Credit Risk Management for the Canadian Imperial Bank of Commerce ("CIBC"), the Applicant in this proceeding.
2. I have personal knowledge of the evidence sworn to /affirmed in this affidavit except where otherwise stated to be based on information and belief.
3. I state, in this affidavit, the source of any information that is not based on my own personal knowledge, and I state my belief of the source.
4. CIBC is a secured creditor of 3304051 Nova Scotia Limited, which carries on business under the name "Hefler Forest Products" ("Hefler"), the Respondent in this proceeding.
5. Hefler operates a saw mill and biomass power generation plant from lands at 230 Lucasville Road, Middle Sackville, Municipality of Halifax, Nova Scotia, PID 40014862 (the "Lands").
6. Hefler owes CIBC an aggregate amount of \$6,646,978.45 as of January 14, 2021 under the following credit facilities ("Credit Facilities"):
 - a. \$5,104,506.29 under a term loan facility, with interest at 3.7% and a per diem of \$516.76, plus accruing legal and professional costs;

- b. \$1,535,509.62 under an operating line of credit, with interest at 3.7% and a per diem of \$158.93; and
 - c. \$6,962.54 owing on a corporate Visa, with a maximum facility of \$10,000.00
- 7. The Credit Facilities are secured by various security instruments given to CIBC by Hefler. The details of said security include the following:
 - a) A Letter of Agreement dated January 13, 2020, a copy of which is attached as Exhibit "A";
 - b) A Commercial Collateral Mortgage on the Lands, dated March 30, 2017, registered at the Land Registration Office for Halifax County on April 5, 2017 as Document No. 110562692 a copy of which is attached as Exhibit "B";
 - c) A Security Agreement dated March 30, 2017, a copy of which is attached as Exhibit "C", granting a charge on all assets, including over a list of motor vehicles, registered under the NS PPSA on March 29, 2017 as registration number 27388917;
 - d) An Assignment of Contracts dated March 30, 2017, securing, inter alia, a Power Purchase Agreement, a COMFIT Approval and a Standard Small Generator Interconnection Agreement, a copy of which is attached as Exhibit "D".
- 8. Hefler has granted security to the following other secured creditors:
 - a. VFS Canada Inc., with a registered PPSA financing statement over a 2016 Volvo L90H.
- 9. The Letter of Agreement required the stakeholders of Hefler to fund certain future payments and any operating losses. In or about July 2020, the stakeholders of Hefler advised CIBC that they would no longer be funding such payments or losses. As a result, Hefler ceased to be in compliance with the Letter of Agreement.
- 10. CIBC retained Deloitte Restructuring Inc. as financial consultant on July 30, 2020.
- 11. After a series of discussions with Hefler and its stakeholders, CIBC instructed Burchells LLP to send a demand letter and a Notice of Intention to Enforce Security under subsection 244(1) of the Bankruptcy and Insolvency Act to Hefler

on September 15, 2020, a copy of which is attached as Exhibit "E". The time for responding to the demand has expired.

12. CIBC entered into a forbearance arrangement with Hefler on September 25, 2020. Under that forbearance agreement, Hefler and Deloitte Restructuring Inc. engaged in a focused process to seek to identify purchasers for the assets of Hefler as a going concern. That forbearance arrangement was extended informally between CIBC and Hefler from time to time, as Hefler continued to explore opportunities for a sale of assets as a going concern.
13. During those extensions, CIBC, at the request of Hefler, advanced additional funds on the Hefler credit facility to fund certain aspects of the ongoing operations of Hefler. I am advised and do verily believe that Deloitte Restructuring Inc. will be filing a pre-receivership report on this Application describing various of the marketing activities undertaken during the forbearance period.
14. Ultimately, no agreement was entered into by Hefler with any party for a purchase of the Hefler assets. Hefler remains in breach of the Letter of Agreement and has no liquidity to fund its debt payments or its ongoing business operations.
15. The forbearance arrangement was terminated on January 14, 2021.
16. CIBC seeks the appointment by the court of Deloitte Restructuring Inc. as receiver of Hefler. Attached as Exhibit "F" is a consent from Deloitte Restructuring Inc. to act in that capacity.
17. I make this affidavit in support of CIBC's application for the appointment of Deloitte Restructuring Inc. as receiver, and for no improper purpose.

Sworn to/Affirmed before me)
on January, 2021)
at Toronto, Ontario)


)
Signature of Authority)
Print Name: Douglas (Don) Glewaty)
Official Capacity: Barister & Solicitor)
Notary Public Province of)
Ontario)
Gowling WLB (Canada) LLP)
1 First Canadian Place)
100 King Street West)
Suite 1600, Toronto, ON)
M5X 1G5)


Kyle Lane

Form 39.09

2021 HFX No. 503367
This is Exhibit "A" referred to
in the affidavit of Kyle Lane,
[sworn/affirmed] before me
on January 18 2021.



Signature

Damagor (Dum) Glawta
Barrister & Solicitor





Brett Donald
Manager
CIBC Commercial Banking

(t) 902.428.4681
(e) brett.donald@cibo.com

1809 Barrington St, Suite 1501
Halifax, Nova Scotia
B3J 3A3

January 13th, 2020

3304051 Nova Scotia Limited
380 Bedford Highway
Halifax, NS
B3M 2L4

Attention: Mr. Trevor Hennigar

Dear Mr. Hennigar

Re: Credit Facility

Canadian Imperial Bank of Commerce ("CIBC") is pleased to offer the following credit facilities in favour of 3304051 Nova Scotia Limited (the "**Borrower**"), which amend and restate the credit facilities set forth in a credit agreement dated August 14, 2019 and accepted by the Borrower on August 30, 2019 (the "**2019 Credit Agreement**").

Demand Operating Credit

Credit Limit:	\$1,200,000
Purpose:	All amounts obtained under this Credit are to be used for expenses incurred in the normal course of business by the Borrower
Description and Rate:	A revolving Credit, available as follows: <ul style="list-style-type: none">▶ Canadian dollar loans, which will also be available by way of overdrafts. Interest on Canadian dollar loans will be calculated at the Prime Rate plus 1.25% per annum.
Repayment:	Interest on this loan is payable monthly. All amounts under this Credit are repayable immediately on demand by CIBC, and this Credit may be terminated in whole or in part by CIBC at any time.

Demand Term Instalment Loan

Loan Amount: \$5,304,444

Purpose: This loan was used for the purchase of the assets of Hefler Forest Products. This loan has been fully drawn.

Description and Rate: A non-revolving Instalment Loan.

The loan is available by way of Prime based loans, or Bankers Acceptances.

Interest on this loan is calculated at the Prime Rate plus 1.25% per annum

Interest on this loan is calculated with a Stamping Fee on Bankers Acceptances of 300bps.

Interest on this loan is payable monthly.

Repayment: Interest only shall be payable monthly until June 30th, 2020.

Starting July 30th, 2020, regular monthly principle payments of \$34,444.44 shall be payable on the 30th day of each month.

The Borrower shall have the option to repay any principal amount of this loan at any time provided that interest is not on a fixed-rate basis. Any such optional repayment shall be applied to the instalments specified above in the inverse order of their maturity, with the result being that the term of this loan will be reduced accordingly.

All amounts under this Credit are repayable immediately on demand by CIBC, and this Credit may be terminated in whole or in part by CIBC at any time.

Business Credit Card Facility

Credit Limit: CDN \$10,000

Purpose: Purchase and payment of goods and services

Repayment: On demand in accordance with the CIBC Business Credit Card Agreement (Business Liability)

Documentation: CIBC Business Credit Card Agreement (Business Liability)

Security

The following security, which shall be in form and substance satisfactory to CIBC, is required to secure all present and future indebtedness and liabilities of the Borrower to each of CIBC and CIBC's Affiliates (including under any foreign exchange contract or derivative). All references in any such security to indebtedness or liabilities of the Borrower to CIBC shall be deemed to be references to indebtedness and liabilities of the Borrower to each of CIBC and CIBC's Affiliates.

- ▶ a first-priority security interest in all present and future personal property of the Borrower
- ▶ a first-priority security interest in all major assets of the power plant where possible.
- ▶ a first-priority fixed charge in the amount of \$9,000,000 over the real property at 230 Lucoasville Road, Middle Sackville, NS.
- ▶ a joint and several guarantee from Thornridge Holdings Limited (the "Corporate Guarantor" and Katalyst Wind Inc. (the "2nd Corporate Guarantor"), with respect to \$3,000,000 of the liabilities of the Borrower to CIBC
- ▶ a joint and several guarantee from Hawthorne Capital Inc. (the "3rd Corporate Guarantor" and Katalyst Wind Inc. (the "2nd Corporate Guarantor"), with respect to \$900,000 of the liabilities of the Borrower to CIBC
- ▶ an acknowledged assignment of adequate fire and other perils insurance on the property of the Borrower that are subject to CIBC's security with first loss payee to CIBC.
- ▶ Assignment of the Power Purchase Agreement and Standard Small Generator Interconnection and Operating Agreement between the Borrower and Nova Scotia Power Inc. acknowledged by Nova Scotia Power Inc.
- ▶ a postponement of claim from Hawthorne Capital Inc. with respect to all amounts from time to time owing by the Borrower.
- ▶ an assignment and postponement of claim from Thornridge Holdings Ltd. with respect to all amounts from time to time owing by the Borrower.

- ▶ an assignment and postponement of claim from Katalyst Wind Inc. with respect to all amounts from time to time owing by the Borrower.
- ▶ an unlimited liability guarantee from Riverroad Holdings Inc for all the liabilities of the Borrower supported by;
 - A General Security Agreement over all present and future assets of the Guarantor;
 - A pledge of 100% of the shares of 3304051 Nova Scotia Ltd. to the Bank;
- ▶ such further or additional security as, CIBC may reasonably request on the advice of counsel.

Covenants

Financial Covenants:

Existing Financial Covenants shall be suspended for the period ending June 30th, 2020.

On June 30th, 2020 Financial Covenants shall be re-instated as follows:

- ▶ The Borrower will ensure that: Tangible Net Worth shall not be less than \$300,000, tested quarterly.

All Financial Covenants will be calculated including the Borrower and its Subsidiaries on a consolidated basis.

Negative Covenants:

Restricted Payments:

The Borrower and its Subsidiaries will not pay any dividends, make any capital payments or redemptions, pay any amount on account of Postponed Debt or make any gifts or gratuities to affiliated persons.

Debt Restrictions:

The Borrower and its Subsidiaries will not create, incur, assume or permit to exist any Debt, except for amounts owed to CIBC under the Credits and Postponed Debt.

Change of Business:

None of the Borrower and its Subsidiaries will change its principal business activity without the prior written consent of CIBC.

Dispositions of Property:

The Borrower and its Subsidiaries will not sell or otherwise dispose of any material property, except for sales in the normal course of business for fair market value.

Change of Control:

There shall be no change in the effective control of the Borrower, as determined by CIBC, so long as any Credit is in

effect.

Positive Covenants:

All payments of principal and interest to CIBC, together with operating losses incurred by the Borrower, shall be funded via shareholder contributions. This is to be monitored monthly, and statements shall be provided to CIBC together with the unaudited consolidated financial statements required below.

Borrower to provide 3rd party documentation to CIBC by March 31st, 2020 confirming progress of sale discussions with Nova Scotia Power Inc.

Reporting Requirements

Reporting Requirements:

The Borrower will provide to CIBC:

- ▶ within 30 days after the end of each month, the unaudited consolidated financial statements of the Borrower for the month, prepared in accordance with GAAP with comparison to budget and last year's results.
- ▶ Beginning June 30th, 2020 and every quarter thereafter within 45 days of each quarter end, a Compliance Certificate.
- ▶ within 120 days after the end of each fiscal year, the reviewed consolidated financial statements of the Borrower for such year, prepared in accordance with GAAP
- ▶ within 120 days after the end of each fiscal year, the reviewed financial statements of each guarantor for such year, prepared in accordance with GAAP

Fees

Annual Renewal Fee:

A fee of \$3,650 payable on April 30th each year.

Amendment Fee:

A fee of \$2,500 payable on the acceptance of this letter.

Loan Administration Fee:

A fee of \$200 per month, payable monthly in arrears.

Other Provisions

Schedule A:

The attached Schedule A, which contains certain additional provisions applicable to the Credits, and certain definitions, forms part of this Agreement.

Schedule B:

The attached Schedule B, which contains certain additional

provisions applicable to the Business Credit Card Facility and certain definitions, forms part of this Agreement.

Replacement and No Waiver:

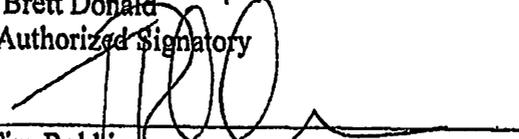
This letter supersedes and replaces all prior discussions, letters and agreements (if any) describing the terms and conditions of any credit facility established by CIBC in favour of the Borrower. Notwithstanding the foregoing, the execution of this Credit Agreement does not restrict any other rights CIBC may have in respect of the Borrower's breach non-compliance with the terms of the 2017 Credit Agreement and does not constitute a waiver of any other rights, powers or remedies available to CIBC in connection with any future non-compliance, including the right to demand payment of any and all amounts owing under the 2017 Credit Agreement or this Credit Agreement at any time.

Please indicate your acceptance of these terms by signing below and returning the enclosed copy to our attention no later than January 24, 2020.

Yours truly,

CANADIAN IMPERIAL BANK OF COMMERCE

By: 
Name: Brett Donald
Title: Authorized Signatory

By: 
Name: Tim Robbins
Title: Authorized Signatory

Accepted this 24TH day of January, 2020.

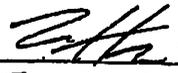
3304051 NOVA SCOTIA LIMITED

By: 
Name: TREVOR HENNIGAR
Title: DIRECTOR

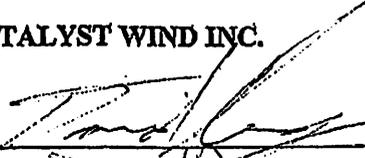
By: 
Name: David Regan
Title: Director

THORNRIDGE HOLDINGS LIMITED

By: 
Name: C. ROBERT GILLIS
Title: PRESIDENT

By: 
Name: TREVOR HENNIGAR
Title: DIRECTOR

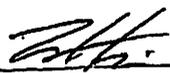
KATALYST WIND INC.

By: 
Name: David Regan
Title: Director

By: _____
Name: _____
Title: _____

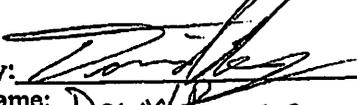
HAWTHORNE CAPITAL INC.

By: 
Name: C. ROBERT GILLIS
Title: CEO & CHAIRMAN

By: 
Name: TREVOR HENNIGAR
Title: PRESIDENT

RIVERROAD HOLDINGS INC.

By: 
Name: TREVOR HENNIGAR
Title: DIRECTOR

By: 
Name: David Regan
Title: Director

**SCHEDULE A - ADDITIONAL DEFINITIONS AND PROVISIONS
FOR DEMAND FACILITIES**

1. GENERAL

- 1.1 **Use of Funds, Returns.** The Borrower will use the Credits only for the purposes specified in this Agreement. The Borrower may not at any time exceed the limit of any Credit, and CIBC may, without notice to the Borrower, return any item that, if paid, would result in the limit of any Credit being exceeded. If, on the other hand, CIBC in its sole discretion elects to pay any such item, the Borrower will pay to CIBC immediately the amount by which the limit of the applicable Credit has been exceeded.
- 1.2 **Notice of Failure.** The Borrower will promptly notify CIBC of the occurrence of any failure to perform or observe any of its covenants in this Agreement.
- 1.3 **Confidentiality.** The terms of this Agreement are confidential between the Borrower and CIBC, and accordingly the Borrower will not disclose the contents of this Agreement to anyone except its professional advisors.
- 1.4 **Applying money received.** At any time that the Borrower has failed (beyond any period of grace permitted by CIBC) to perform or observe any of its covenants in this Agreement, all moneys received by CIBC from the Borrower or from any Security may be applied on such parts of the Borrower's liabilities to CIBC as CIBC may determine.
- 1.5 **Right of Set-Off.** At any time that the Borrower has failed (beyond any period of grace permitted by CIBC) to perform or observe any of its covenants in this Agreement, CIBC is authorized at any time to set-off and apply any deposits held by it and any other amounts owed by it to or for the credit of the Borrower against any and all of the obligations of the Borrower with respect to the Credits, irrespective of whether or not CIBC has made any demand and even though any such obligations may not yet be due and payable.
- 1.6 **Registration of Security.** The Security will be registered or filed in all jurisdictions and in all offices as CIBC considers necessary or advisable from time to time to create, perfect or protect any Lien created thereby.
- 1.7 **Expenses.** The Borrower will reimburse CIBC for all fees and out-of-pocket expenses (including the reasonable fees and expenses of CIBC's solicitors and of any other experts and advisors hired by CIBC) incurred by CIBC in preparing and registering any Security, in responding to requests from the Borrower for waivers, amendments and other matters, in exercising its rights under this Agreement or any Security, and in enforcing any Security.
- 1.8 **Further information requirements.** The Borrower will provide such further information about its business and its Subsidiaries as is reasonably requested by CIBC from time to time, and such information shall be in a form acceptable to CIBC.
- 1.9 **Consent to release information.** CIBC may from time to time give any credit or other information about the Borrower to, or receive such information from, (i) any financial institution, credit reporting agency, rating agency or credit bureau, (ii) any person, firm or corporation with whom the Borrower may have or proposes to have financial dealings, and (iii) any person, firm or corporation in connection with any dealings the Borrower has or proposes to have with CIBC. The Borrower agrees that CIBC may use that information to establish and maintain the Borrower's relationship with CIBC and to offer any services as permitted by law, including services and products offered by CIBC's Subsidiaries when it is considered that this may be suitable to the Borrower.
- 1.10 **Instructions by fax, phone and e-mail.** The Borrower may deliver, and CIBC may accept, instructions by fax, telephone (including cellular phone) and internet e-mail ("Electronic Communication"), according to CIBC-approved procedures, which procedures may be limited to particular types of communications or services. Unless the Borrower expressly indicates otherwise, the Borrower agrees that CIBC may also communicate with the Borrower by e-mail or fax. This may include (i) CIBC sending confidential information to the Borrower, at the Borrower's request, or (ii) the Borrower sending confidential information to CIBC. An Electronic Communication may not be a secure means of communication and the Borrower assumes responsibility for the risks of using Electronic Communications including, without limitation, the possibility that an Electronic Communication is: intercepted by or sent to an unauthorized person, misunderstood, lost, delayed, or not received by CIBC at all. CIBC is entitled to rely upon any Electronic Communication from or purporting to be from the Borrower, as if such instructions were given in writing. However, CIBC may choose not to act upon an Electronic Communication if it believes that the Electronic Communication is unauthorized, incorrect or unclear. CIBC shall not be liable for, and the Borrower will indemnify and save CIBC harmless from, any claims, losses, damages, liabilities and expenses that CIBC incurs (other than those due to CIBC's gross negligence or willful misconduct) including among other things all legal fees and expenses arising from CIBC acting or declining to act on any of your Electronic Communications given under this Agreement. This indemnity is in addition to any other indemnity or assurance against loss provided by you to CIBC under this Agreement or otherwise.
- 1.11 **Further Assurances.** The Borrower will, and will ensure that each of its Subsidiaries will, from time to time promptly upon request by CIBC do and execute all such acts and documents as may be reasonably required by CIBC to give effect to the Credits and the Security, and to any transfer pursuant to section 1.16 of this Schedule.
- 1.12 **Insurance.** The Borrower will, and will ensure that each of its Subsidiaries will, keep all its respective assets and property insured (to the full insurable value) against loss or damage by fire and all other risks usual for similar property and for any other risks CIBC may reasonably require. If CIBC requests, these policies will include a loss payable clause (and with respect to mortgage security, a mortgages clause) in favour of CIBC. As further security, the Borrower assigns all insurance proceeds to CIBC. The Borrower will provide to CIBC either the policies themselves or adequate evidence of their existence. If any insurance coverage for any reason stops, CIBC may (but shall have no obligation to) insure the property. The Borrower will notify CIBC immediately of any loss or damage to any such asset or property.
- 1.13 **Environmental.** The Borrower will, and will ensure that each of its Subsidiaries will, carry on its business, and maintain its assets and property in accordance with all applicable environmental laws and regulations. If there is any release, deposit, discharge or disposal of pollutants of any sort (collectively, a "Discharge") in connection with the business or property of the Borrower or any of its Subsidiaries, and CIBC pays any fines or for any clean-up suffers any loss or damage as a result of the Discharge, the Borrower will reimburse CIBC, its

directors, officers, employees and agents for any and all losses, damages, fines, costs and other amounts (including amounts spent preparing any necessary environmental assessment or other reports, or defending any lawsuits) that result. If CIBC asks, the Borrower will defend any lawsuits, investigations or prosecutions brought against CIBC or any of its directors, officers, employees and agents in connection with any Discharge. The Borrower's obligation under this section continues even after all Credits have been repaid and this Agreement has terminated.

1.14 **Related Transactions.** None of the Borrower and its Subsidiaries will enter into any transaction, including the purchase, sale or exchange of any property or the rendering of any services, with any of its shareholders or with any of its Affiliates, or with any of its or their directors or officers, or enter into, assume or permit to exist any employment, consulting or analogous agreement or arrangement with any such shareholder or Affiliate or with any of its directors or officers, except a transaction or agreement or arrangement which is in the ordinary course of business of the Borrower or such Subsidiary and which is upon fair and reasonable terms not less favourable to the Borrower or its applicable Subsidiary than it would obtain in a comparable arms-length transaction.

1.15 **Waiver.** No delay on the part of CIBC in exercising any right or privilege will operate as a waiver thereof, and no waiver of any failure or default will operate as a waiver thereof unless made in writing and signed by an authorized officer of CIBC, or will be applicable to any other failure or default.

1.16 **Assignment.** CIBC may assign, sell or participate (herein referred to as a "transfer") all or any part of its rights and obligations under all or any of the Credits to any third party, and the Borrower agrees to sign any documents and take any actions that CIBC may reasonably require in connection with any such transfer. Upon completion of the transfer, the third party will have the same rights and obligations under this Agreement as if it were a party to it, with respect to all rights and obligations included in the transfer. The Borrower may not assign any of its rights or obligations under any of the Credits.

1.17 **Authorized Debits.** The Borrower authorizes CIBC to debit its Operating Account for any interest, fees or other amounts that are payable by the Borrower to CIBC with respect to the Credits, as and when such amounts are payable.

1.18 **Communications.** Any communication or notice to be given with respect to the Credits may be effectively given by delivering the same at the addresses set out on the signature page of this Agreement, or by sending the same by facsimile or prepaid registered mail to the parties at such addresses. Any notice so mailed will be deemed to have been received on the tenth day next following the mailing thereof, provided that postal service is in normal operation during such time. Any facsimile notice will be deemed to have been received on transmission if sent on a Business Day and, if not, on the next Business Day following transmission. Either party may from time to time notify the other party, in accordance with this section, of any change of its address which thereafter will be the address of such party for all purposes of the Credits.

1.19 **Governing Law.** This Agreement shall be governed by the laws of Nova Scotia, and the Borrower submits itself to the jurisdiction of any competent federal or provincial court in such jurisdiction.

1.20 **Certain Definitions.** In this Agreement the following terms have the following meanings:

"Affiliate" means, with respect to any person, any other person who directly or indirectly controls, is controlled by, or is under direct or indirect common control with, such person, and includes any person in like relation to an Affiliate. A person shall be deemed to control another person if the first person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person, whether through the ownership of voting securities, by contract or otherwise.

"Agreement" means the attached letter agreement between CIBC and the Borrower, including this Schedule and any other Schedules thereto, as the same may be amended or supplemented from time to time.

"Business Day" means (i) with respect to any amount denominated in Canadian dollars and all matters pertaining thereto, any day excluding Saturday, Sunday and any day which is a legal holiday in Toronto, Canada, and (ii) with respect to any amount denominated in US dollars and all matters pertaining thereto, any day excluding Saturday, Sunday or any day which is a legal holiday in New York, U.S.A., or Toronto, Canada.

"Compliance Certificate" means an Officer's Certificate in the form prescribed by CIBC and stating, as of the applicable date, (i) that the Borrower is not in default of the observance or performance of any of its covenants in this Agreement (or describing any default then existing), (ii) that all representations and warranties contained in this Agreement are true and accurate as if made on and as of such date (or describing any thereof that are not then true and accurate), (iii) the particulars and calculation of all financial covenants of the Borrower contained in this Agreement.

"GAAP" means those accounting principles which are recognized as being generally accepted in Canada from time to time as set out in the handbook published by the Canadian Institute of Chartered Accountants. If the Borrower, or the party to which references to GAAP are intended to apply, has adopted International Financial Reporting Standards ("IFRS"), then the applicable references in this Agreement to GAAP or Generally Accepted Accounting Principles may be interpreted to mean IFRS, but only if CIBC has consented to such change.

"Investment" means, with respect to any person, any direct or indirect investment in or purchase or other acquisition of the securities of or any equity interest in any other person, any loan or advance to, or arrangement for the purpose of providing funds or credit to (excluding extensions of trade credit in the ordinary course of business in accordance with customary commercial terms), or capital contribution to, any other person, or any purchase or other acquisition of all or substantially all of the property of any other person.

"Lien" includes without limitation a mortgage, hypothec, whether legal or conventional lien, Prior Ranking Claims, security interest, prior claim, charge or encumbrance of any sort on any property or asset, and includes conditional sales contracts, title retention agreements, capital trusts, capital leases and leasing.

"Material Adverse Effect" means a material adverse effect on the business, property, condition (financial or otherwise) or prospects of the Borrower and its Subsidiaries, considered as a whole, or a material adverse effect on the ability of any of the Borrower and its Subsidiaries to perform its obligations under any of this Agreement and the Security to which it is a party.

"Monthly Statement of Available Credit" means an Officer's Certificate stating, the amount and particulars of calculation of Receivable Value, Inventory Value (if applicable) and Prior Ranking Claims, and the resulting maximum available amount and undrawn amount of the Demand Operating Credit, as of a specified date.

"Normal Course Lien" means, at any time, the following:

- (i) Liens for taxes and other undetermined or Inchoate Liens arising in the ordinary course of business which relate to amounts not overdue or a claim for which has not been filed or registered pursuant to applicable law;
- (ii) easements, rights-of-way, restrictions and other similar encumbrances arising in the ordinary course of business which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value or use of the property subject thereto;
- (iii) Liens created by the Security and other Liens consented to in writing by CIBC;

"Officer's Certificate" means a certificate, in form satisfactory to CIBC, signed by a senior officer of the Borrower.

"Operating Account" means any Canadian dollar or US dollar account of the Borrower with CIBC as is selected by CIBC from time to time for the purposes hereof.

"Prior Ranking Claims" means, at any time, any liability of any of the Borrower and its Subsidiaries that ranks, in right of payment in any circumstances, equal to or in priority to any liability of the Borrower or such Subsidiary to CIBC, and may include unpaid wages, salaries and commissions, unremitted source deductions for vacation pay, arrears of rent, unpaid taxes, amounts owed in respect of worker's compensation, amounts owed to unpaid vendors who have a right of repossession, and amounts owing to creditors which may claim priority by statute or under a Purchase Money Lien.

"Purchase Money Lien" means any Lien which secures a Purchase Money Obligation permitted by this Agreement, provided that such Lien is perfected not later than 30 days after such Purchase Money Obligation is incurred and does not affect any asset other than the asset financed by such Purchase Money Obligation.

"Purchase Money Obligation" means any Debt (including without limitation a capitalized lease obligation) incurred or assumed to finance all or any part of the acquisition price (and not exceeding the fair market value) of any asset acquired by any of the Borrower and its Subsidiaries.

"Security" means, collectively, all of the items of security held by CIBC for the indebtedness and liabilities, or any part thereof, of the Borrower to CIBC.

"Subsidiary" of any person means any other person of which shares or other equity units having ordinary voting power to elect a majority of the board of directors or other individuals performing comparable functions, or which are entitled to or represent more than 50% of the owners' equity or capital or entitlement to profits, are owned beneficially or controlled, directly or indirectly, by any one or more of such first person and the Subsidiaries of such first person, and shall include any other person in like relationship to a Subsidiary of such first person.

2. INTEREST RATES; PAYMENTS; CALCULATIONS.

2.1 Variable Interest. Each variable interest rate provided for in this Agreement will change automatically, without notice, whenever the Prime Rate or the US Base Rate, as the case may be, changes.

2.2 Payment of interest. Interest is calculated on the applicable balance at the end of each day. Interest is payable in arrears once a month on the day required by CIBC, unless otherwise specified in this Agreement, and interest on amounts in default is payable on demand.

2.3 Interest Rate Applicable to Credit Limit Excesses. The interest rate applicable to Credit Limit Excesses will be charged on the amount outstanding under a Credit that exceeds the limit of such Credit, and if there are several parts of a Credit, the Interest Rate Applicable to Credit Limit Excesses will be charged if the limit of a particular part is exceeded. To determine if the limit of a Credit has been exceeded, any amount in a currency other than the currency in which the limit is designated will be converted into that currency, as described in section 2.10 of this Schedule.

2.4 Interest on Overdue Amounts. Except as otherwise specified herein, if any principal is not paid when due, such overdue principal will bear interest (as well after as before judgment), payable on demand, at the interest rate applicable to such principal prior to default, and interest will be payable on overdue interest (as well after as before judgment) at the same rate as is applicable to the related principal. If any amount is not paid by the Borrower when due and there is no interest otherwise applicable to such amount specified herein, such overdue amount will bear interest (as well after as before judgment), payable on demand, at a rate per annum equal at all times to the Prime Rate plus 5% (in the case of any such amount payable in Canadian dollars) or the US Base Rate plus 5% (in the case of any such amount payable in US dollars) from the date of non-payment until paid in full.

2.5 Reductions of Limit of Credits. On or prior to each date on which the limit of any Credit is reduced, the Borrower will repay such outstanding amounts thereunder, if any, as are necessary so that, after giving effect to the repayment, the total of all amounts outstanding under such Credit does not exceed the limit as so reduced.

2.6 Payments. If any payment is due on a day other than a Business Day, such payment will be due on the next Business Day.

2.7 CIBC's pricing policy. The fees, interest rates and other charges for the Borrower's banking arrangements with CIBC are dependent upon each other. Accordingly, if the Borrower cancels or does not follow through with, in the manner originally contemplated, any of these arrangements, CIBC reserves the right to require payment by the Borrower of increased or added fees, interest rates and charges as a condition of the continuation of the Borrower's banking arrangements.

2.8 Calculations. The following terms apply to all calculations under the Credits:

- (a) CDOR, Federal Funds Rate, Prime Rate and US Base Rate shall be determined by CIBC if and whenever such determination is required for the purpose of this Agreement, and such determination by CIBC shall be conclusive evidence of such rate.
- (b) All interest and fees hereunder shall be computed on the basis of the actual number of days elapsed divided by 365. Any such applicable interest rate, expressed as an annual rate of interest for the purpose of the *Interest Act* (Canada), shall be equivalent to such applicable interest rate multiplied by the actual number of days in the calendar year in which the same is to be determined and divided by 365.
- (c) In calculating interest or fees payable hereunder for any period, unless otherwise specifically stated, the first day of such period shall be included and the last day of such period shall be excluded.

2.9 CIBC's Records. CIBC's loan accounting records will provide conclusive evidence of all terms and conditions of the Credits such as principal loan balances, interest calculations, and payment dates.

2.10 Foreign Currency Conversion. If it is necessary for any purpose relating to the Credits that an amount denominated in a currency other than Canadian dollars be expressed in or equated to an amount of Canadian dollars (such as, for example, to determine whether amounts denominated in US dollars that are outstanding under a Credit which has a limit specified in Canadian dollars exceed the limit of such Credit so as to make applicable the Interest Rate Applicable to Credit Limit Excesses), the applicable amount of Canadian dollars shall be determined by CIBC in accordance with its normal practice.

2.11 Deemed Re-Investment Principle. For the purpose of the *Interest Act* (Canada) and any other purpose, the principle of deemed re-investment of interest is not applicable to any calculation under this Agreement, and the rates of interest and fees specified in this Agreement are intended to be nominal rates and not effective rates or yields.

2.12 Certain Definitions. If and whenever required for the purpose of this Agreement, the following terms have the following definitions:

"CDOR" means, for any day, the average of the annual discount rates for bankers' acceptances denominated in Canadian dollars of certain banks named in Schedule 1 to the *Bank Act* (Canada) for a specified term (that appears on the CDOR page of the Reuters Screen as of 10:00 a.m. on such day (or, if such day is not a Business Day, as of 10:00 a.m. on the next preceding Business Day).

"Federal Funds Rate" means, for any day, an annual interest rate equal to the weighted average of the rates on overnight United States federal funds transactions with members of the Federal Reserve System arranged by United States federal funds brokers, as published for such day (or, if such day is not a business day in New York, for the next preceding business day in New York) by the Federal Reserve Bank of New York; or for any such business day on which such rate is not so published, the arithmetic average of the quotations for such day on such transactions received by CIBC from three United States federal funds brokers of recognized standing selected by it.

"Interest Rate Applicable to Credit Limit Excesses" means the annual interest rate generally established by CIBC from time to time for the purpose of calculating interest on overdrafts in accounts maintained with CIBC in Canada.

"Prime Rate" means a fluctuating annual interest rate equal at all times to the greater of (i) the reference rate of interest (however designated) of CIBC for determining interest chargeable by it on loans in Canadian dollars made in Canada and (ii) 1% per annum above the CDOR for 30-day bankers' acceptances from time to time.

"US Base Rate" means a fluctuating annual interest rate equal at all times to the greater of (i) the reference rate of interest (however designated) of CIBC for determining interest chargeable by it on loans in US dollars made in Canada, and (ii) 1% per annum above the Federal Funds Rate from time to time.

3. NOTICE OF BORROWING; NOTICE OF REPAYMENT; OVERDRAFTS

3.1 Notice of Borrowing. Whenever the Borrower desires to obtain any amount under a Credit (other than a loan by way of a permitted overdraft), it will give to CIBC irrevocable prior written notice (a "Notice of Borrowing") specifying the Credit under which such amount is to be obtained and the particulars of such amount including the Business Day on which such amount is to be obtained. A notice requesting any loan in an amount exceeding \$10,000,000 or US \$10,000,000 must be given not later than 10:00 a.m. on the Business Day preceding the applicable borrowing date.

3.2 Notice of Repayment. Whenever the Borrower desires to make any repayment or repayments under one or more of the Credits in an aggregate amount exceeding \$10,000,000 (or an equivalent amount in any other currency) on any day, it will give to CIBC irrevocable written notice specifying the particulars of such repayment not later than 10:00 a.m. on the Business Day preceding the applicable repayment date.

3.3 Overdrafts. If the Borrower is entitled under any Credit to obtain loans in Canadian dollars or US dollars by way of overdraft, the debit balance in the Borrower's applicable Operating Account from time to time will be deemed to be a loan in Canadian dollars or US dollars, as the case may be, outstanding to the Borrower under such Credit and bearing interest as set out in this Agreement for loans in such currency under such Credit. If at any time the Borrower is a party to a cash concentration arrangement with CIBC, the amount of any overdraft from time to time in the Canadian dollar or US dollar concentration account of the Borrower established pursuant to such arrangement will also be deemed to be a loan in Canadian dollars or US dollars, as applicable, outstanding to the Borrower under the applicable Credit and bearing interest as set out above on the basis of the Prime Rate or the US Base Rate, as the case may be.

4. INDEMNITIES

4.1 Reserve Indemnity. If subsequent to the date of this Agreement any change in or introduction of any applicable law, or compliance by CIBC with any request or directive by any central bank, superintendent of financial institutions or other comparable authority, shall subject CIBC to any tax with respect to the Credits or change the basis of taxation of payments to CIBC of any amount payable under the Credits (except for changes in the rate of tax on the overall net income of CIBC), or impose any capital maintenance or capital adequacy requirement, reserve requirement or similar requirement with respect to the Credits, or impose on CIBC any other condition or restriction, and the result of any of the foregoing is to increase the cost to CIBC of making or maintaining the Credits or any amount thereunder or to reduce any amount otherwise received by CIBC under the Credits, CIBC will promptly notify the Borrower of such event and the Borrower will pay to CIBC such additional amount calculated by CIBC as is necessary to compensate CIBC for such additional cost or reduced amount received. A certificate of CIBC as to any such additional amount payable to it and containing reasonable details of the calculation thereof shall be conclusive evidence thereof.

4.2 Currency Indemnity. Interest and fees hereunder shall be payable in the same currency as the principal to which they relate. Any payment on account of an amount payable in a particular currency (the "proper currency") made to or for the account of CIBC in a currency (the "other currency") other than the proper currency, whether pursuant to a judgement or order of any court or tribunal or otherwise and whether arising from the conversion of any amount denominated in one currency into another currency for any purpose, shall constitute a discharge of the Borrower's obligation only to the extent of the amount of the proper currency which CIBC is able, in the normal course of its business within one Business Day after receipt by it of such payment, to purchase with the amount of the other currency so received. If the amount of the proper currency which CIBC is able to purchase is less than the amount of the proper currency due to CIBC, the Borrower shall indemnify and save CIBC harmless from and against any loss or damage arising as a result of such deficiency.

4.3 Default Indemnity. The Borrower shall indemnify and save harmless CIBC from all claims, demands, liabilities, damages, losses, costs, charges, and expenses, including any loss or expense arising from interest or fees payable by CIBC to lenders of funds obtained by it in order to make or maintain any amount under the Credits and any loss or expense incurred in liquidating or re-employing deposits from which such funds were obtained, which may be incurred by CIBC as a consequence of: (i) default by the Borrower in the payment when due of any amount hereunder or the occurrence of any other default relative to any of the Credits, (ii) default by the Borrower in obtaining any amount after the Borrower has given notice hereunder that it desires to obtain such amount, (iii) default by the Borrower in making any optional repayment of any amount after the Borrower has given notice hereunder that it desires to make such repayment, or (iv) the repayment of any loan on which interest is payable at a fixed annual rate otherwise than on the expiration of the fixed interest rate period applicable thereto, or the repayment of any other amount otherwise than on any specified maturity date thereof. A certificate of CIBC as to any such loss or expense and containing reasonable details of the calculation thereof shall be *prima facie* evidence thereof.

5. CONDITIONS PRECEDENT

5.1 Conditions Precedent to the Initial Amount

CIBC shall not be obliged to make available the initial amount under any Credit unless it shall have received (a) all required Security, which shall have been duly registered and filed as required hereby, (b) such financial and other information relating to the Borrower and its Subsidiaries, and any guarantor, as CIBC shall have reasonably requested, (c) confirmation of all insurance maintained by the Borrower and its Subsidiaries, and such insurance shall comply with the requirements of this Agreement, (d) payment of all fees and other amounts which shall have become due and payable by the Borrower to CIBC on or prior to the initial borrowing date, and (e) the following documents in form, substance and execution acceptable to CIBC: (i) a certified copy of the constituting documents and by-laws of each of the Borrower and its Subsidiaries, and of each corporate guarantor, and of all corporate proceedings taken and required to be taken by each of them to authorize the execution and delivery of such of this Agreement and the Security to which it is a party and the performance of the transactions by it contemplated therein; (ii) a certificate of incumbency for each of the Borrower and its Subsidiaries, and for each corporate guarantor, setting forth specimen signatures of the persons authorized to execute such of this Agreement and the Security to which it is a party; (iii) such legal opinions addressed to CIBC relative to the Borrower, this Agreement and the Security as CIBC may require; and (iv) such other documents relative to this Agreement and the transactions contemplated herein as CIBC may reasonably require.

5.2 Conditions Precedent to All Amounts

CIBC shall not be obliged to make available any amount under any Credit unless (a) CIBC shall have received any applicable Notice of Borrowing, (b) on the applicable borrowing date the Borrower shall not have failed to observe or perform any of its covenants in this Agreement, and the Borrower shall have delivered to CIBC, if so requested by CIBC, an Officers' Certificate to such effect, (c) the representations and warranties contained in this Agreement shall be true on and as of the applicable borrowing date with the same effect as if such representations and warranties had been made on and as of the applicable borrowing date, and the Borrower shall have delivered to CIBC, if so requested by CIBC, an Officers' Certificate to such effect, (d) all other conditions specified herein, to the extent not previously satisfied for any reason, other shall have been satisfied, and (e) in respect of any amount that would result in the aggregated amount outstanding under the Credits being increased, there shall not have occurred subsequent to the date of last annual financial statements of the Borrower, in the opinion of CIBC, any event which (individually or with any other events) has had, or which has a reasonable possibility of having, a Material Adverse Effect.

6. REPRESENTATIONS AND WARRANTIES

6.1 Representations and Warranties. To induce CIBC to establish and maintain each Credit, the Borrower represents and warrants as follows:

- (a) Each of the Borrower and its Subsidiaries has all necessary power and authority to own its property, to carry on the business carried on by it, to enter into and perform its obligations under such of this Agreement and the Security to which it is a party.

(b) This Agreement, and upon delivery thereof the Security, have been duly executed and delivered by each of the Borrower and its Subsidiaries as are parties thereto, and constitute the legal, valid and binding obligation of each of them enforceable in accordance with their terms.

(c) The execution and delivery by the Borrower and its Subsidiaries of this Agreement and the Security and the performance by them of their obligations thereunder, and the obtaining by the Borrower of amounts under the Credits, will not conflict with or result in a breach of any applicable law, and will not conflict with or result in a breach of or constitute a default under any of the provisions of its constituting documents or by-laws or any agreement or restriction to which it is a party or by which it is bound.

(d) The Borrower has delivered to CIBC a true and complete copy of its most recent financial statements, and such financial statements present fairly the financial position of the Borrower, in accordance with GAAP, as of the date thereof and for the fiscal period then ended. All financial statements of the Borrower delivered by the Borrower to CIBC after the date of this Agreement will present fairly the financial position of the Borrower, in accordance with GAAP, as of the dates thereof and for the fiscal periods then ended.

(e) Since the date of the most recent financial statements of the Borrower delivered to CIBC, there has occurred no event which (individually or with any other events) has had, or which has a reasonable possibility of having, a Material Adverse Effect.

(f) The Borrower has not failed to observe or perform (beyond any period of grace permitted by CIBC) any of its covenants in this Agreement.

(g) Except as disclosed in writing by the Borrower to CIBC prior to the date of this Agreement with specific reference to this paragraph, to the best knowledge of the Borrower, (i) the business carried on and the property owned or used at any time by any of the Borrower and its Subsidiaries and their respective predecessors have at all times been carried on, owned or used in compliance with all environmental laws; (ii) there are no circumstances that could reasonably be expected to give rise to any civil or criminal proceedings or liability regarding the release from or presence of any hazardous substance on any lands used in or related to the business or property of any of the Borrower and its Subsidiaries (iii) there are no proceedings and there are no circumstances or material facts which could give rise to any proceeding in which it is or could be alleged that any of the Borrower and its Subsidiaries is responsible for any domestic or foreign clean up or remediation of lands contaminated by hazardous substances or for any other remedial or corrective action under any environmental laws; and (iv) each of the Borrower and its Subsidiaries has maintained all environmental and operating documents and records relating to its business and property in the manner and for the time periods required by any environmental laws and has never had conducted an environmental audit of its business or property.

(h) No representation or warranty made by the Borrower herein or in any other document furnished to CIBC from time to time contains or will contain any untrue statement of a material fact or omits or will omit to state any material fact necessary to make the statements herein or therein, in light of the circumstances under which they are made, not misleading. All projections and *pro forma* information delivered to CIBC from time to time by the Borrower were prepared in good faith based on assumptions believed by the Borrower to be reasonable at the time of delivery.

6.2 **Survival.** All representations and warranties contained in this Agreement shall survive the execution and delivery of this Agreement and the obtaining of amounts under any Credit, and the delivery of each Notice of Borrowing and the obtaining of any amount under any Credit shall constitute a reaffirmation on and as of such delivery date and such borrowing date, in each case, by reference to the then-existing facts and circumstances, of all representations and warranties contained in this Agreement.

7. FINANCIAL COVENANTS

7.1 **Calculation.** All financial covenants will be calculated including the Borrower and its Subsidiaries on a consolidated basis (or, if agreed upon by CIBC in its sole discretion, including the Borrower but excluding its Subsidiaries on an unconsolidated basis), and each amount derived from the Borrower's profit and loss statement shall be calculated as the total of such amount during the Borrower's four most recently-completed fiscal quarters (or, if agreed upon by CIBC in its sole discretion, during the Borrower's most recently-completed fiscal year), as shown in the Borrower's most recent financial statements delivered to CIBC.

7.2 **Certain Definitions.** In this Agreement the following terms have the following meanings:

"Adjusted Debt Service Ratio" means, for any period, the ratio of (a) the sum of (i) EBITDA for such period, (ii) all management bonuses and similar payments deducted in the calculation of such EBITDA but not paid out during such period (and with respect to which the entitlement to receive payment thereof has been postponed in a manner satisfactory to CIBC) and (iii) all management bonuses and similar payments deducted in the calculation of such EBITDA and paid out during such period, and which have then been loaned back to the Borrower during such period by way of Postponed Debt, to (b) Debt Service Requirements.

"Adjusted Fixed Charge Coverage Ratio" means, for any period, the ratio of (a) the sum of (i) EBITDA for such period, (ii) all management bonuses and similar payments deducted in the calculation of such EBITDA but not paid out during such period (and with respect to which the entitlement to receive payment thereof has been postponed in a manner satisfactory to CIBC) and (iii) all management bonuses and similar payments deducted in the calculation of such EBITDA and paid out during such period, and which have then been loaned back to the Borrower during such period by way of Postponed Debt to (b) the sum of (i) Debt Service Requirements for such period, and (ii) cash income taxes for such period and (iii) Unfunded Capital Expenditures for such period.

"Current Assets" means assets that would be shown as current assets on the balance sheet prepared in accordance with GAAP, less all amounts due from Affiliates.

"Current Liabilities" means liabilities that would be shown as current liabilities on a balance sheet prepared in accordance with GAAP.

"Current Ratio" means the ratio of Current Assets to Current Liabilities.

"Debt" means, with respect to any person, (i) an obligation of such person for borrowed money, (ii) an obligation of such person evidenced by a note, bond, debenture or other similar instrument, (iii) an obligation of such person for the deferred purchase price of property or services, excluding trade payables and other accrued current liabilities incurred in the ordinary course of business in accordance with customary commercial terms, (iv) a capitalized lease obligation of such person, (v) a guarantee, indemnity, or financial support obligation of such person, determined in accordance with GAAP, (vi) an obligation of such person or of any other person secured by a Lien on any property of such person, even though such person has not otherwise assumed or become liable for the payment of such obligation, or (vii) an obligation arising in connection with an acceptance facility or letter of credit issued for the account of such person.

"Debt Service Requirements" means, for any periods (i) all principal payments in respect of Debt made or required to be made during such period, (ii) Interest Expense for such period, and (iii) all dividends paid during such period on all preferred shares of the Borrower.

"EBIT" means, for any period, Net Income for such period plus all amounts deducted in the calculation thereof on account of Interest Expense and income taxes.

"EBITDA" means, for any period, Net Income for such period plus all amounts deducted in the calculation thereof on account of Interest Expense, income taxes, depreciation and amortization.

"Effective Tangible Net Worth" means the sum of (i) Shareholders' Equity less any amount that would be included on a balance sheet prepared in accordance with GAAP as an Investment in or as amounts owed by any Affiliate or as an Intangible, and (ii) Postponed Debt.

"Intangible" includes without limitation such personal property as goodwill; copyrights, patents and trademarks; franchises; licences; leases; research and development costs; and deferred development costs.

"Interest Coverage Ratio" means the ratio of EBIT to Interest Expense calculated on a consolidated basis.

"Interest Expense" means, for any period the aggregate amount accrued (whether or not payable or paid) during such period in accordance with GAAP on account of (i) interest expense including amortization of Debt discount and Debt issuance costs, capitalized interest, standby fees, commissions, discounts and other fees and charges owed with respect to letters of credit and bankers' acceptances and (ii) the interest expense components of all capitalized lease obligations.

"Net Income" means, for any period, the net income (loss) for such period, calculated in accordance with GAAP.

"Postponed Debt" means any Debt for borrowed money that is incurred at such time as no failure by the Borrower to perform or observe any of its covenants in this Agreement is continuing or would be created by the incurring thereof (to be evidenced by *pro forma* financial statements delivered to CIBC) and which has the following attributes: (i) no principal thereof is repayable so long as any amount is owed by the Borrower to CIBC (or until such earlier date as CIBC may agree upon in writing), (ii) no covenant with respect to such Debt is more onerous than or in addition to the covenants specified herein, and (iii) all rights of the holder of such Debt are postponed and subordinated to all rights of CIBC under or in respect of the Credits pursuant to a subordination agreement satisfactory in form and substance to CIBC.

"Senior Debt" means all Debt less all Postponed Debt.

"Senior Debt to EBITDA Ratio" means the ratio of Senior Debt to EBITDA.

"Shareholders' Equity" means, at any time, the amount which would, in accordance with GAAP, then be included as shareholders' equity on a balance sheet.

"Tangible Net Worth" means the sum of Shareholders' Equity less any amount that would be included on a balance sheet prepared in accordance with GAAP as an Investment in or as amounts owed by any Affiliate or as an Intangible.

"Total Liabilities" means, all Debt and other liabilities.

"Unfunded Capital Expenditures" means capital expenditures that are not specifically financed with long term Debt.

"Working Capital" means the excess of Current Assets over Current Liabilities.

B. BANKERS' ACCEPTANCES

8.1 Power of Attorney. To facilitate the issuance of Bankers' Acceptances under the Credits, the Borrower appoints CIBC to execute, endorse and deliver on behalf of the Borrower drafts in the form or forms prescribed by CIBC for bankers' acceptances denominated in Canadian dollars (each such executed draft which has not yet been accepted by CIBC is referred to herein as a "Draft"). Each Bankers' Acceptance executed and delivered by CIBC on behalf of the Borrower as provided herein shall be binding upon the Borrower as if it had been executed and delivered by a duly authorized officer or officers of the Borrower.

8.2 Drafts. Notwithstanding the above section, the Borrower will from time to time provide to CIBC if so required by CIBC an appropriate number of Drafts drawn by the Borrower upon CIBC and payable and endorsed as specified by CIBC. The dates, maturity dates and face amounts of all Drafts delivered by the Borrower shall be left blank, to be completed by CIBC as required. All such Drafts shall be held by CIBC subject to the same degree of care as if they were such Lender's own property. CIBC will, upon written request by the Borrower, advise the Borrower of the number and designations, if any, of the Drafts of the Borrower then held by it. CIBC shall not be liable for its failure to accept a Draft as required hereby if the cause of such failure is, in whole or in part, due to the failure of the Borrower to provide appropriate Drafts to CIBC on a timely basis.

8.3 **Term and Amount.** The term of all Bankers' Acceptances issued pursuant to any Notice of Borrowing must be identical. Each Bankers' Acceptance shall be in a face amount of \$100,000 or any whole multiple thereof, and the aggregate face amount of Bankers' Acceptances issued pursuant to any Notice of Borrowing must not be less than \$500,000. Each Bankers' Acceptance will be dated the date on which it is issued, and will be for a term of one, two, three or six months or such other period as may be agreed to by CIBC.

8.4 **Calculation of Fee.** The fee for any Bankers' Acceptance will be calculated, at the rate specified, on the basis of the face amount and term of such Bankers' Acceptance.

8.5 **Payment of Fee.** Upon acceptance of a Draft the Borrower will pay to CIBC the related fee specified in this Agreement, and to facilitate payment CIBC will be entitled to deduct and retain for its own account the amount of such fee from the amount to be paid by CIBC to the Borrower as the purchase price for the resulting Bankers' Acceptance.

8.6 **Purchase by CIBC.** Each Bankers' Acceptance will be purchased by CIBC for a price which produces a yield thereon equal to the Bankers' Acceptance Yield then in effect. Such price will be credited by CIBC to the applicable Operating Account.

8.7 **No Market.** If CIBC determines in good faith, which determination will be conclusive and binding on the Borrower, and so notifies the Borrower, that there does not exist at the applicable time a normal market in Canada for the purchase and sale of bankers' acceptances, then notwithstanding any other provision hereof any obligation of CIBC to purchase Bankers' Acceptances will be suspended until CIBC determines that such market does exist and gives notice thereof to the Borrower, and any Notice of Borrowing requesting Bankers' Acceptances will be deemed to be a Notice of Borrowing requesting Loans in Canadian dollars in a similar aggregate principal amount.

8.8 **Payment on Maturity.** On the maturity of each Bankers' Acceptance the Borrower will pay to CIBC, for the account of the holder of such Bankers' Acceptance, Canadian dollars in an amount equal to the face amount of such Bankers' Acceptance. The obligation of the Borrower to make such payment is absolute and unconditional, and will not be prejudiced by the fact that the holder of any such Bankers' Acceptance is CIBC. No days of grace may be claimed by the Borrower for the payment at maturity of any Bankers' Acceptance. If the Borrower does not make such payment, the amount of such payment shall be deemed to be a loan in Canadian dollars made to the Borrower by CIBC and payable on demand. The Borrower hereby confirms the application of the proceeds of such loan in payment of the liability of the Borrower with respect to the related Bankers' Acceptance.

8.9 **Cash Collateralization.** If any Bankers' Acceptance is outstanding at any time that an Event of Default occurs, the Borrower will forthwith upon demand by CIBC pay to CIBC, for the account of the holder of such Bankers' Acceptance, Canadian dollars in an amount equal to the face amount thereof. Such funds shall be held by CIBC for payment of the liability of the Borrower in respect of such Bankers' Acceptance on the maturity thereof.

8.10 **Signatures on Drafts.** The signature of any duly authorized officer of the Borrower on a Draft may be mechanically reproduced in facsimile, and all Drafts bearing such facsimile signature shall be binding upon the Borrower as if they had been manually signed by such officer, notwithstanding that such person whose manual or facsimile signature appears on such Draft may no longer hold office at the date thereof or at the date of acceptance of such Draft by CIBC or at any time thereafter.

8.11 **Undisbursed Credit.** For the purpose of calculating the undisbursed amount of any Credit and for any other relevant provision of this Agreement, the amount constituted by any Bankers' Acceptance shall be the face amount thereof.

8.12 **Certain Definitions.** In this Agreement the following terms shall have the following meanings:

"Bankers' Acceptance" or "B/A" means a Draft which has been accepted by CIBC pursuant to a Credit.

"Bankers' Acceptance Yield" means, with respect to any Bankers' Acceptance to be purchased by CIBC at any time, the annual yield resulting from the price at which CIBC is offering to purchase at such time bankers' acceptances accepted by it having a term identical to such Bankers' Acceptance and in a comparable face amount to the Bankers' Acceptances to be purchased by CIBC from the Borrower at such time.

"face amount" means, with respect to any Bankers' Acceptance, the principal amount thereof payable on the maturity thereof.

10. **INSTALMENT LOANS**

10.1 **Instalment Loans.** The following terms apply to each Instalment Loan:

(a) **Non-revolving Loans.** Unless otherwise stated in this Agreement, any Instalment Loan is non-revolving. This means that any principal repayment is not available to be re-borrowed, and permanently reduces the amount of such Instalment Loan.

(b) **Floating Rate Instalment Loans.** Floating Rate Instalment Loans may have either (i) blended payments or (ii) payments of fixed principal amounts, plus interest, as described below:

(i) **Blended payments.** If a Floating Rate Instalment Loan has blended payments, the amount of the monthly payments is fixed for the term of such Loan, but the interest rate will vary with changes in the Prime Rate or the US Base Rate (as the case may be). If the Prime Rate or the US Base Rate during any month is lower than it was at the outset, a larger portion of the monthly payment will be allocated to principal and as a result such Loan may be repaid prior to its original maturity. If, however, the Prime Rate or the US Base Rate is higher than it was at the outset, the amount of principal that is repaid will be reduced, and as a result there may remain principal outstanding on the original maturity date.

(ii) **Payments of principal plus interest.** If a Floating Rate Instalment Loan has specified principal payments, in addition to interest, such principal payments are due on each specified payment date. The interest payment is also due on the same date, and will usually be a different amount each month due to the reducing balance of the Loan, the number of days in the month, and changes in the Prime Rate or the US Base Rate (as the case may be) during the month and from month to month.

(c) **Prepayment.** Unless otherwise specified in this Agreement:

(i) all or part of a Floating Rate Instalment Loan may be prepaid at any time without penalty; and

(ii) all (but not part) of a Fixed Rate Instalment Loan may be prepaid provided that the Borrower also pays to CIBC, on the prepayment date, any amount determined by CIBC pursuant to clause 4.3(iv) of this Schedule.

(d) **Demand of Fixed Rate Instalment Loans.** Upon demand for payment of a Fixed Rate Instalment Loan the Borrower will pay to CIBC the prepayment fee specified in clause 10.1(c)(ii) above.

(e) **Certain Definitions.** In this Agreement the following terms have the following meanings:

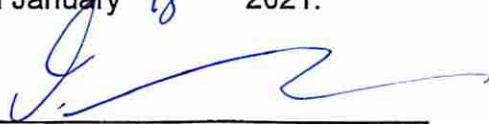
"Fixed Rate Instalment Loan" means an Instalment Loan with respect to which interest is payable at a fixed annual rate of interest (as opposed to being payable on the basis of the Prime Rate or the US Base Rate).

"Floating Rate Instalment Loan" means an Instalment Loan with respect to which interest is payable on the basis of the Prime Rate or the US Base Rate.

"Instalment Loan" means a principal amount that is repayable either in fixed instalments of principal, plus interest, or in blended instalments of both principal and interest, and that (notwithstanding any such specified instalments) is repayable on demand by CIBC at any time if so specified in this Agreement.

Form 39.09

2021 HFX No. 503367
This is Exhibit "B" referred to
in the affidavit of Kyle Lane,
[sworn/affirmed] before me
on January 18 2021.



Signature

Domagoj (Dom) Glavota
Barrister & Solicitor





Commercial Collateral Mortgage

This Mortgage made this 30th day of March, 2017.

Between

3304051 NOVA SCOTIA LIMITED

hereinafter called the "Mortgagor",

and –

CANADIAN IMPERIAL BANK OF COMMERCE

hereinafter called the "Mortgagee",

Whereas the Mortgagee has requested security for the due payment of the Indebtedness (as herein defined); and

Whereas the Mortgagor has agreed to execute and deliver this Mortgage to secure the due payment of the Indebtedness;

In Consideration of the sum of Nine Million Dollars
(\$ 9,000,000.00) (the "Principal Amount") the Mortgagor hereby grants the charges more

particularly described below.

1. Definitions

- a) "Amount Secured" means the aggregate of i) the Principal Amount, ii) all interest and compound interest at the Interest Rate, iii) Costs, and iv) interest at the Interest Rate on any interest or Costs not paid when due;
- b) "Condominium Act" means the statutes, regulations and other laws governing the establishment and management of Condominium Corporations in the Province where the Property is situate;
- c) "Condominium Corporation" means the body corporate created pursuant to the Condominium Act which governs and manages real property that includes the Property;
- d) "Costs" means all fees, costs, charges and expenses which, pursuant to the provisions of this Mortgage (other than paragraph 3), the Mortgagor is required to pay to the Mortgagee and which, without limiting the generality of the foregoing include all of the Mortgagee's fees, costs, charges and expenses, including legal fees on a full indemnity basis, that will reimburse the Mortgagee for amounts incurred to:
 - a) approve, prepare, execute and register this Mortgage;
 - b) advance and secure the Indebtedness;
 - c) investigate title to the Property;
 - d) collect the Indebtedness;

- d) collect the Indebtedness;
- e) enforce the terms of this Mortgage or the obligations and liabilities of the Mortgagor hereunder or exercise any of the Mortgagee's rights or remedies hereunder;
- f) pay a title insurance premium or any mortgage insurance premium;
- g) take and keep possession of the Property;
- h) inspect, appraise, insure, secure, protect, repair or improve the Property;
- i) compensate for any amount the Mortgagee is entitled to charge to the Mortgagor or pay on behalf of the Mortgagor hereunder;
- j) inspect the Property and obtain, including without limitation, any environmental testing, audits, inspections, site assessments, investigations or studies;
- k) renew and cure any defaults under any leasehold interest;
- l) appoint a receiver, a manager, a receiver and manager, administrator or other person with similar powers;
- m) remove any Lien or construction or builders' lien from title to the Property, obtain a discharge of a construction or builders' lien or defend a construction or builders' lien action relating to the Property;
- n) protect the Mortgagee's interests under this Mortgage in any way;
- o) provide any services of an administrative or clerical nature requested by the Mortgagor;
- p) comply with any notices, orders, judgments, directives, permits, licenses, authorizations or approvals with respect to the Property; and
- q) all legal fees and disbursements in connection with the Indebtedness.

"Costs" include interest at the Interest Rate on all such fees, costs, charges and expenses from the date incurred until paid to the Mortgagee.

- e) "Declaration" means the constating document for the Condominium Corporation where the Property is situate;
- f) "Environmental Claims" has the meaning prescribed by paragraph 9c);
- g) "Environmental Laws" has the mean prescribed by paragraph 9a);
- h) "Environmental Proceedings" has the meaning prescribed in paragraph 9a);
- i) "Fixtures" means i) all fixtures and growing things in, on, under or in relation to the Property and ii) all real or personal property whatsoever (whether affixed, mobile or stationary) which is now or later attached to or placed, installed or erected in, on or under the Property, including without limitation: all structures, additions, improvements, fences, plant, machinery, motors, furnaces, boilers, pressure vessels, oil and gas burners, stokers, blowers, water heaters, tanks, electric light fixtures, sprinklers, gas pipes, wiring, radiators, shutters, awnings, fixed mirrors, window blinds, wall-to-wall floor coverings, screen and storm doors and windows, aerials, television antennae, satellite dishes, refrigerators, stoves, air conditioning, ventilating, plumbing, electrical, lighting, cooling, heating, cooking and refrigeration equipment, computers, telecommunications systems, security systems, elevators, central vacuum systems, waste disposal, fire and theft protection equipment and all apparatus and equipment appurtenant to the Property;
- j) "Hazardous Substances" means any substance, mixture of substances or materials that are prohibited, controlled or regulated by any law, regulation or by-law enacted by any legislative, governmental or regulatory body that has jurisdiction over the Property including, without limitation, any contaminants, pollutants, emissions, asbestos, lead, polychlorinated by-phenyl or hydrocarbon products, any materials containing same or derivatives thereof, underground storage tanks, dangerous or toxic substances or materials, controlled products and hazardous wastes;

k) "Improvement" means any alterations, addition or repairs to, and any construction, erection, re-modelling, re-building or installation on or of, any part of the Property and the demolishing or removal of any building or part of any building on the Property;

l) "Indebtedness" means one of the following (check the applicable box):

a) the aggregate of all present and future indebtedness and liabilities of the Mortgagor to the Mortgagee (direct or indirect, absolute or contingent, matured or not, wheresoever and howsoever incurred, whether incurred as principal or surety, whether incurred alone or with another or others, and whether arising from dealings between the Mortgagor and the Mortgagee or from other dealings or proceedings by which the Mortgagee may become a creditor of the Mortgagor) including without limitation the outstanding balance of the Principal Amount advanced to the Mortgagor from time to time, interest thereon at the Interest Rate and all other present and future indebtedness and liabilities of the Mortgagor to the Mortgagee payable under or by virtue of this Mortgage.

b) the aggregate of all present and future indebtedness and liabilities of the Mortgagor to the Mortgagee (direct or indirect, absolute or contingent, matured or not, wheresoever and howsoever incurred, whether incurred as principal or surety, whether incurred alone or with another or others, and whether arising from dealings between the Mortgagor and the Mortgagee or from other dealings or proceedings by which the Mortgagee may become a creditor of the Mortgagor) payable under or by virtue of

i) the

dated _____,
as amended from time to time; and

ii) any instrument, agreement or other document whatsoever taken by way of renewal or replacement thereof, as amended from time to time; and

iii) this Mortgage.

Note: If neither Box a nor Box b is checked off, or if both are checked off, or if box b is checked off but no information is inserted under subparagraph (i) then Box a alone will be deemed to have been checked off.

m) "Interest Rate" means a variable rate per year equal to the Prime Rate plus 5 % per year, calculated and compounded monthly, with interest on overdue interest at the same rate. The Interest Rate will change automatically, without notice, whenever the Prime Rate changes.

Despite the Interest Rate noted above, the Interest Rate payable by the Mortgagor on any part of the Indebtedness will be the interest rate specified in the relevant instrument, agreement, or other document between the Mortgagor and the Mortgagee that relates to that part of the Indebtedness. Interest will be calculated as set out in the relevant instrument, agreement or document, or if not set out, will be calculated and compounded monthly, with interest on overdue interest at the same rate. If no interest rate is specified in the relevant instrument, agreement or document, the Mortgagor will pay interest on such part of the Indebtedness at the Interest Rate.

Interest is payable on the Indebtedness until it has been paid, both before and after default, demand, maturity and judgment.

n) "Lease" means, in respect of any part of the Property in which the Mortgagee has a leasehold

interest, the lease under which such leasehold interest is created and any lease with respect to all or any part of the Property which may be entered into in replacement or renewal of such lease, as any of the foregoing may be amended from time to time;

- o) "Lien" means any mortgage, charge, pledge, assignment, lien, lease, sublease, easement, preference, priority, trust or other security interest or encumbrance of any kind or nature whatsoever with respect to any property or asset, including any title reservations, limitations, provisos or conditions;
- p) "Mortgage" means this Mortgage and any schedules attached hereto, and the expressions "hereof", "herein", "hereto", "hereunder" and similar expressions refer to this Mortgage and not to any particular paragraph or other portion thereof;
- q) "Mortgag e" means Canadian Imperial Bank of Commerce, its successors and assigns;
- r) "Mortgagor" means each party who signs this Mortgage as mortgagor, and the mortgagor's heirs, executors, administrators, successors and assigns;
- s) "Permits" has the meaning prescribed in paragraph 8a) xvi);
- t) "Personal Information" has the meaning prescribed by paragraph 33;
- u) "Prime Rate" means the variable reference interest rate per year declared by the Mortgagee from time to time to be its prime rate for Canadian dollar loans made by the Mortgagee in Canada;
- v) "Principal Amount" means the Principal Amount specified on the first page of this Mortgage;
- w) "Property" means all right, title, estate and interest in and to the lands and premises described in Schedule "A" attached hereto together with all buildings and structures now or later placed, installed or erected on any such land, and all Fixtures; and
- x) "Taxes" means, in respect of the Property, all taxes, duties, rates, imposts, levies, assessments and other similar charges, whether general or special, ordinary or extraordinary, or foreseen or unforeseen, including municipal taxes and local improvement charges, and all related interest, penalties and fines which at any time may be levied, imposed or be a Lien on the Property or any part thereof.

2. Security

The Mortgagor:

- a) if the Mortgagor has a freehold interest in the Property, mortgages, charges, assigns and grants a security interest in the Property, and the Mortgagor's present and future interest in the Property to the Mortgagee; or
- b) if the Mortgagor has a leasehold interest in the Property, mortgages, charges, assigns and sub-leases a security interest in the Property and the Mortgagor's present and future interest in the Property to the Mortgagee for and during the unexpired residue of the term of each Lease, except the last day thereof, and all other estate, term, right of renewal and other interest of the Mortgagor in each Lease;

as collateral security for the payment to the Mortgagee of the Indebtedness in an amount not exceeding the Amount Secured and for the observance and performance by the Mortgagor of all other covenants and obligations under this Mortgage.

3. Continuing Security

This Mortgage shall, whether or not it secures a current or running or revolving account, be a general and continuing collateral security to the Mortgagee for payment and performance to the Mortgagee of the Indebtedness in an amount not exceeding the Amount Secured and for the observance and performance of the Mortgagor's other obligations under this Mortgage

notwithstanding any fluctuation or change in the amount, nature or form of the Indebtedness or in the accounts relating thereto or in the bills of exchange, promissory notes and/or other obligations now or later held by the Mortgagee representing all or any part of the Indebtedness or in the names of the parties to such bills, promissory notes and/or other obligations or that there is no Indebtedness outstanding at any particular time; and this Mortgage will not be deemed to have been redeemed or become void as a result of any such event or circumstance.

4. Payment

- a) The Mortgagor shall pay the Indebtedness to the Mortgagee on demand.
- b) Except as otherwise agreed in writing, payments or other moneys received by the Mortgagee may be applied by it on any part of the Indebtedness and in any order as determined by it from time to time, notwithstanding any contrary stipulation by the Mortgagor. The Mortgagee may from time to time revoke or alter any such application and reapply the amount in question on any other part of the Indebtedness determined by it. If the Mortgagee is notified, or in its sole discretion believes, that the Mortgagor has disposed of, encumbered or otherwise created a Lien or other interest on or in all or any part of the Property or any Lease, the Mortgagee may close any of the Mortgagor's accounts at the amount then owing to the Mortgagee and open a new account or accounts for Indebtedness thereafter arising and for payments thereafter received by the Mortgagee. No amount paid in or credited to any new account shall be applied to or have the effect of reducing or repaying any part of the Indebtedness owing at the time the Mortgagee was so notified or opened any such new account.
- c) The provisions of this Mortgage in no way prejudice or otherwise affect any right the Mortgagee may have independently of this Mortgage (whether pursuant to any agreement, promissory note, other instrument, any rule of law, statute, or otherwise whatsoever) to recover all or any part of the Indebtedness from the Mortgagor and, if the Indebtedness exceeds the Amount Secured, the Mortgagee may conclusively determine what part of the Indebtedness (not exceeding the Amount Secured) shall be secured by this Mortgage and what part shall not be so secured.
- d) The records maintained by the Mortgagee as to the date and amount of any Indebtedness advanced to or otherwise incurred by the Mortgagor from time to time (including any interest accrued thereon), and as to the amount of any payment thereof, shall constitute prima facie evidence of such dates and amounts.
- e) Any demand for payment made by the Mortgagee pursuant to this Mortgage may be delivered personally to the Mortgagor or any employee or officer thereof or may be mailed, postage prepaid, to the address of the Property or to the Mortgagor's most recent address appearing in the Mortgagee's records relating to this Mortgage. **Any such demand shall be conclusively deemed to have been given and received on the date of such delivery or the fifth day after such mailing.**
- f) The Mortgagor shall not, without the Mortgagee's express written consent, be entitled to pay all or any part of the Indebtedness prior to the date the same is payable under the relevant agreement(s) creating the Indebtedness.

5. Advances by the Mortgagee

If the Mortgagee decides, for any reason, not to advance any moneys or other accommodation, it shall not be required to do so whether or not this Mortgage has been signed and registered and whether or not any moneys or other accommodation have been previously advanced. Whether or not any advances are made, the Mortgagor shall immediately pay the Mortgagee's costs, including, without limitation, lawyers' fees (on a full indemnity basis), and expenses for investigating title to the Property and for preparing, signing and registering the Mortgage and any other related instruments or documentation.

6. Additional Security; Judgments

- a) The Mortgage is in addition to and not in substitution for any other security now or later held by the Mortgagee for all or any part of the Indebtedness. The Mortgagor agrees that this Mortgage shall not create any merger or discharge of any part of the Indebtedness or any other debt owing to the Mortgagee or of any Lien, bond, promissory note, bill of exchange or other security now or later held by the Mortgagee (whether from the Mortgagor or any other person). The Mortgagor further agrees that this Mortgage shall not in any way affect any other security now or later held by the Mortgagee for all or any part of the Indebtedness or the liability of any endorser or any other person, or any of the Mortgagee's remedies, in respect of any such Lien, bond, bill of exchange, promissory note or other security, or any renewal thereof, held by the Mortgagee for or on account of all or any part of the Indebtedness.
- b) The taking of a judgment or judgments against the Mortgagor in respect of any of the agreements or obligations contained in this Mortgage, or in respect of all or any part of the Indebtedness, or otherwise, shall not operate as a merger of such agreements or obligations or all or any part of the Indebtedness, or operate as a merger of or in any other way affect the security created by this Mortgage or any other security or Lien or the Mortgagor's right to pursue the Mortgagee's other remedies or to enforce the Mortgagee's other obligations (whether hereunder or otherwise) or the Mortgagee's right to interest on the Indebtedness at the Interest Rate. Any such judgment may provide that interest thereon shall be computed at the Interest Rate until such judgment is fully paid and satisfied.
- c) The obligations of the Mortgagor under this Mortgage shall in no way be affected by the bankruptcy, insolvency, Incapacitation, dissolution, continuance, merger or amalgamation or change of name of the Mortgagor.

7. Delay, Releases, Partial Discharges, Waivers and Amendments

The Mortgagee may increase, reduce, discontinue or otherwise vary the Mortgagor's credit arrangements, grant extensions of time or other indulgences, take and give up securities, abstain from taking, perfecting or registering securities, accept compositions and proposals, grant releases and discharges and otherwise deal with the Mortgagor and other persons (including without limitation any person to whom all or any part of the Property is transferred) and with any securities as the Mortgagee may see fit without affecting any of the Mortgagee's rights or remedies (hereunder or otherwise), the Mortgagor's liability under this Mortgage or the Mortgagor's liability to pay the Indebtedness. The Mortgagee may delay enforcing any of its rights under this Mortgage or any other document relating to the Indebtedness without losing or impairing those rights and may waive any breach of the Mortgagor's obligations under this Mortgage or any such document without affecting the Mortgagee's rights in respect of any other existing breach or any subsequent breach of the same or a different nature. No such waiver shall be effective unless made in writing and signed by an authorized representative of the Mortgagee. The Mortgagee may release others from any liability to pay all or any part of the Indebtedness without releasing the Mortgagor. The Mortgagee may release its interest under this Mortgage in all or any part of the Property or any Lease (or any other collateral) whether or not the Mortgagee receives any value and shall be accountable to the Mortgagor only for moneys which the Mortgagee actually receives. If the Mortgagee releases its interest in part of the Property, the remainder of the Property shall continue to secure the Indebtedness in an amount not exceeding the Amount Secured and the Mortgagor's obligations under this Mortgage will continue unchanged. No sale or other dealing with all or any part of the Property or any Lease, and no amendment of this Mortgage or any other security, agreement or instrument, and no amendment relating to the Indebtedness, will in any way affect the obligation of the Mortgagor or any other person to pay the Indebtedness.

8. Representations, Warranties and Agreements Respecting the Property

- a) The Mortgagor represents and warrants to and agrees with the Mortgagee that:

- i) unless the Mortgagor is the lawful tenant or lessee of the Property, the Mortgagor is the lawful owner and sole registered owner of the Property and has a good and marketable title to the Property, free and clear of any Liens or claims except any the Mortgagor has reported to the Mortgagee in writing;
- ii) each Mortgagor: a) which is a corporation, is a duly organized and validly existing corporation under the laws of its governing jurisdiction; b) which is a partnership, is a valid and subsisting general or limited partnership, as the case may be, under the laws of its governing jurisdiction; c) which owns an interest in the Property, has full power, authority and legal right to own the Property and to carry on its business thereon in compliance with all applicable laws and is duly licensed, registered or qualified in all jurisdictions where the character of its undertaking, property and assets or the nature of its activities makes such licensing, registration or qualification necessary or desirable; d) has full power, authority and legal right to enter into this Mortgage and any other security or loan documents to which it is a party and to do all acts and execute and deliver all other documents as are required to be done, observed or performed by it in accordance with their respective terms; e) has taken all necessary action and proceedings to authorize the execution, delivery and performance of this Mortgage and any other security or loan documents to which it is a party and to observe and perform the provisions of each in accordance with its terms; and f) shall maintain in good standing its existence, capacity, power and authority as a corporation or partnership, as the case may be, and shall not liquidate, dissolve, wind-up, terminate, merge, amalgamate, consolidate, reorganize or restructure or enter into any transaction or take any steps in connection therewith;
- iii) the Mortgagor has the right to execute and deliver this Mortgage and charge the Property and the Mortgagor's interest in it to the Mortgagee in accordance with the terms hereof. Furthermore, this Mortgage and any other security or loan documents constitute valid and legally binding obligations of the Mortgagor enforceable against the Mortgagor in accordance with their terms and are not subject to any right of rescission, and at the date of entering into this Mortgage and any other security or loan documents, the Mortgagor has no right of set-off, counterclaim or defence in respect of the Mortgagee, the indebtedness, this Mortgage, or any other security or loan documents. Neither execution and delivery of the this Mortgage and any other security or loan documents, nor compliance with the terms and conditions of any of them a) has resulted or will result in a violation of the constating documents governing the Mortgagor, including any unanimous shareholders' agreement, or any resolution passed by the board of directors, shareholders or partners, as the case may be, of any Mortgagor, b) has resulted or will result in a breach of or constitute a default under applicable laws or any agreement or instrument to which any Mortgagor is a party or by which it or the Property or any part thereof is bound, or c) requires any approval or consent of any person except such as has already been obtained;
- iv) the Mortgagor has not done, omitted nor permitted anything whereby the Property or any Lease or the Mortgagor's interest in it or any part of it is or may be subject to any Lien or claim except any the Mortgagor has reported to the Mortgagee in writing;
- v) there are no limitations affecting title to the Mortgagor's interest in the Property, except any the Mortgagor has reported to the Mortgagee in writing and except for building and zoning by-laws which have been and will continue to be complied with or with respect to which the Property is a legal non-conforming use;
- vi) the Mortgagor shall, from time to time, both before and after this Charge has become enforceable, sign any document and take any further action at the Mortgagor's expense as the Mortgagee may think necessary in order to carry out the intention of this Mortgage;
- vii) no part of the Property is, has ever been or will in the future be insulated with urea

formaldehyde foam insulation;

- viii) upon the Mortgagor being in default of its obligations under this Mortgage, the Mortgagee shall have quiet possession of the Property free from all Liens and claims, except any referred to in paragraphs 8a) i), 8a) iv) and 8b) i);
- ix) no conveyance, assignment, transfer, sale or other disposition of this Mortgage or any interest in the Property or any part thereof shall be made or permitted to be made by the Mortgagor without the prior written consent of the Mortgagee. The Mortgagee shall have the right to convey, assign, transfer, sell, or otherwise dispose of the Mortgage or any part thereof to a third party without the prior written consent of or notice to the Mortgagor;
- x) the Property is in good condition and repair, complies with all applicable laws, permits, licenses and approvals and the present location, occupancy, operation and use of the buildings, structures and other improvements on the Property either comply with all applicable laws or to the extent of any non-compliance, such non-compliance is legally permitted under the applicable laws;
- xi) the Mortgagee and their respective agents and employees shall have the right to enter and inspect the Property at all reasonable times upon reasonable notice (which notice shall not be required to be in writing) to the Mortgagor. The Mortgagee shall not be considered to have taken possession of the Property or to otherwise become a mortgagee in possession of the Property by reason of its exercise of any such right;
- xii) the Mortgagor shall defend title to the Property for the benefit of the Mortgagee from and against any actions, proceedings and claims;
- xiii) no Liens shall be created, issued, incurred or permitted to exist on any part of the Property or any interest therein (except in favour of the security of the Indebtedness), without the prior written consent of the Mortgagee in its sole discretion;
- xiv) the Mortgagor will not change the use or operation of or abandon the Property, commit or permit any waste of the Property or remove or permit the removal of any building, structure or other improvement from the Property;
- xv) the manager of the Property and each management agreement shall each be subject to the approval of the Mortgagee in its sole discretion from time to time. The manager shall not be removed or replaced and the management agreement shall not be terminated or amended without the prior consent of the Mortgagee in its sole discretion. Upon this Mortgage becoming enforceable, the Mortgagee may terminate or require the Mortgagor to terminate such management agreement and may retain, or require the Mortgagor to retain, a new manager approved by the Mortgagee (in each case at the Mortgagor's sole expense). Each management agreement shall contain termination provisions consistent with this paragraph;
- xvi) the Mortgagor i) has obtained all permits, agreements, rights, licences, authorizations, approvals, franchises, trademarks, trade names and similar property and rights (collectively "Permits") necessary to permit the lawful construction, occupancy, operation and use of the Property; ii) is not in default under such Permits and shall maintain all such Permits in good standing and in full force and effect; iii) shall not terminate, amend or waive any of its rights and privileges under any Permits without the Mortgagee's prior written consent in its sole discretion; and iv) is not aware of any proposed changes or any notices or proceedings relating to any Permits (including pending cancellation, termination or expiry thereof). The Mortgagor shall promptly notify and deliver to the Mortgagee particulars of any such changes, notices or proceedings that may arise from time to time;
- xvii) the Mortgagor is not now a non-resident of Canada within the meaning of the *Income Tax Act (Canada)*. The Mortgagor also covenants that it will not be any time prior to the

discharge of this Charge, a non-resident of Canada within the meaning of the *Income Tax Act* (Canada);

- xviii) all services and utilities (including storm and sanitary sewers, water, hydro, telephone and gas services) necessary for the use and operation of the Property are located in the public highway(s) abutting the Property (or within easements disclosed to and approved by the Mortgagee in writing prior to the date of this Charge) and are connected and available to the Property. The Property has unrestricted and unconditional rights of public access to and from public highways (completed, dedicated and fully accepted for public use by all applicable governmental authorities) abutting the Property at all existing access points. The Mortgagor is not aware of any proposed changes affecting such access or public highways. The Mortgagor is not aware of any existing or threatened expropriation or other similar proceeding in respect of the Property or any part thereof; and
 - xix) there are no existing or threatened actions, proceedings or claims against or relating to the Property or the Mortgagor except as disclosed to and accepted by the Mortgagee in writing prior to the date of registration of this Mortgage. Upon becoming aware of any threatened or actual action, proceeding or claim against or relating to the Property or the Mortgagor, the Mortgagor shall promptly notify the Mortgagee of same and shall provide the Mortgagee with reasonable information concerning such action, proceeding or claim as the Mortgagee may require from time to time.
- b) If the Mortgagor is a tenant or lessee of the Property, the Mortgagor also represents and warrants to and agrees with the Mortgagee that:
- i) the Mortgagor is the lawful tenant or lessee of the Property and has a good and marketable leasehold title to the Property, free of any Liens or claims, except any the Mortgagor has reported to the Mortgagee in writing;
 - ii) the Property is leased to the Mortgagor under a good, valid and subsisting lease which is in full force and effect on the date of this Charge (a complete copy of which the Mortgagor has given to the Mortgagee);
 - iii) all rents and other moneys payable under each Lease have been paid and the Mortgagor has not defaulted in respect of any of the Mortgagor's other obligations set out in such Lease, in both cases up to the date the Mortgagor signed this Mortgage;
 - iv) the Mortgagor has obtained the consent of the Mortgagor's landlord or lessor, or the Mortgagor has the right without such consent, to charge and sublet the Mortgagor's leasehold interest in the Property to the Mortgagee in the manner provided in this Mortgage;
 - v) the Mortgagor shall pay rent and all other amounts, and perform and observe all other obligations of the lessee or tenant, all as required by each Lease, in default of which the Mortgagee may (but shall not be obligated to) make any such payments or perform or observe any such obligations, and the Mortgagor shall immediately pay the Mortgagee the amount of any payments made or costs and expenses incurred by the Mortgagee in so doing;
 - vi) the Mortgagor shall not surrender the Lease or cause or allow it to be terminated or forfeited;
 - vii) the Mortgagor shall not agree to any amendment of any Lease without first obtaining the Mortgagee's written consent;
 - viii) the Mortgagor shall promptly give the Mortgagee a copy of any notice, demand or request which the Mortgagor may receive relating to any Lease or the Property;
 - ix) the Mortgagor shall stand possessed of the Property for the last day of the term or of any renewal term granted by each Lease in trust for the Mortgagee, and will assign and sell it

as the Mortgagee may direct, but subject to the Mortgagor's rights herein;

- x) there are no limitations on the interest of the Mortgagor in the Lease except as set out in the Lease;
- xi) if the Property is located in a national or provincial park, the Lease contains all terms necessary in order for the appropriate governmental authority to consent, if necessary to this Charge;
- xii) the Mortgagor shall not permit any rights of renewal or options to lapse and will exercise all such rights of renewal or options so that the Lease continues as long as this Mortgage is outstanding;
- xiii) if the Mortgagor subsequently buys the Property from the landlord, this Mortgage will automatically become a Mortgage on the entire interest in the Property, as if the Mortgagor had owned the Property when this Mortgage was originally granted. If requested, the Mortgagor shall re-mortgage and charge its interest in the Property to the Mortgagee and execute and authorize a registered Mortgage and any other documentation requested by the Mortgagee;
- xiv) the Mortgagor irrevocably appoints the Mortgagee as its attorney so that it can, on behalf of the Mortgagor, enforce the rights and remedies of the Mortgagor under the Lease and exercise any options or renewal rights, options to purchase or assign the Lease on the last day of the term and transfer the Mortgagor's interest in the Property; and
- xv) the Mortgagor authorizes the Mortgagee to obtain and request information directly from the landlord under the Lease.

9. Environmental

The Mortgagor represents and warrants to and agrees with the Mortgagee that:

- a) The Property and all activities conducted thereon comply with all applicable federal, provincial, state and municipal laws, statutes, regulations, rules, by-laws, orders, permits, licences, authorizations, approvals, certificates, standards and requirements relating to environmental or occupational health and safety matters, including the presence, release, reporting, investigation, disposal, remediation and clean-up of Hazardous Substances (collectively, "Environmental Laws"). The Property is not and will not be used at any time for the principal purpose of manufacturing, storing or using Hazardous Substances. The Property contains no Hazardous Substances (except those used incidentally in the ordinary course of business of the Mortgagor and in compliance with all Environmental Laws), has not been previously, and is not currently, subject to any remediation or clean-up of Hazardous Substances and there has not been and is no prior, existing or threatened investigation, action, proceeding, notice, order, conviction, fine, judgment, claim, directive or Lien of any nature or kind against or affecting the Property or the Mortgagor arising under or relating to Environmental Laws (each, an "Environmental Proceeding"). All existing environmental assessments, audits, tests and reports relating to the Property have been delivered to the Mortgagee. To the best of the Mortgagor's knowledge and belief, there are no pending or proposed changes to Environmental Laws or any Environmental Proceedings which would render illegal or affect the present use and operation of the Property. Neither the Mortgagor nor any other Person has used or permitted the use of the Property to generate, manufacture, refine, treat, transport, store, handle, dispose, transfer, produce or process Hazardous Substances or as a waste disposal site.
- b) The Mortgagor shall: i) ensure that the Property and the Mortgagor comply with all Environmental Laws at all times; ii) not permit any Hazardous Substance to be located, manufactured, stored, spilled, discharged or disposed of at, on or under the Property (except those used incidentally in the ordinary course of business of the Mortgagee and in compliance with all Environmental Laws); iii) ensure that any Hazardous Substance brought onto the Property or used by any person on the Property shall be transported, used and stored only in

accordance with Environmental Laws; iv) notify the Mortgagee promptly of any actual, threatened or potential escape, seepage, leakage, spillage, release or discharge of any Hazardous Substance on, from, or under the Property; v) notify the Mortgagee promptly of any threatened or actual Environmental Proceedings that may arise from time to time and provide particulars thereof; vi) remediate and cure in a timely manner any non-compliance by the Property or the Mortgagee with Environmental Laws, including removal of any Hazardous Substances; and vii) provide the Mortgagee promptly upon request with such information and documents and take such other steps (all at the Mortgagor's expense) as may be required by the Mortgagee to confirm and/or ensure compliance by the Property and the Mortgagor with Environmental Laws.

- c) The Mortgagor shall indemnify and pay, protect, defend and save the Mortgagee and its directors, officers, employees and agents harmless from and against all actions, suits, fines, sanctions, proceedings, losses, damages, liabilities, claims, demands, judgments, costs and expenses (including legal fees and disbursements on a full indemnity or equivalent basis) (collectively "Environmental Claims") occurring, imposed on, made against or incurred by the Mortgagor arising from or relating to, directly or indirectly, whether or not disclosed by any environmental assessment obtained by the Mortgagor prior to the initial advance and whether or not caused by the Mortgagor or within its control: i) any actual or alleged breach of Environmental Laws relating to or affecting the Property, ii) the actual or alleged presence, release, discharge or disposition of any Hazardous Substance in, on, over, under, from or affecting all or part of the Property or surrounding lands, including any personal injury or property damage arising therefrom, iii) any actual or threatened Environmental Proceeding affecting the Property including any settlement thereof, or iv) any assessment, investigation, containment, monitoring, remediation and/or removal of all Hazardous Substances from all or part of the Property or surrounding areas or otherwise complying with Environmental Laws.
- d) The Mortgagee or agent of the Mortgagee may, at any time, before and after this Mortgage becomes enforceable and for any purpose deemed necessary by the Mortgagee, enter upon the Property to inspect the Property. Without limiting the generality of the foregoing, the Mortgagee or agent of the Mortgagee may enter upon the Property to conduct any environmental testing, audits, inspections, site assessments, investigations or studies deemed necessary by the Mortgagee. The exercise of any powers enumerated in this paragraph shall not deem the Mortgagee or agent of the Mortgagee to be in possession, management or control of the Property.

10. Insurance

- a) The Mortgagor will, at its sole expense, in accordance with the provisions of this paragraph 10, insure and keep insured for their full insurable value all buildings and Fixtures now or later forming part of the Property, and all present and future crops and other produce of the land forming part of the Property for the benefit of the Mortgagee until the Indebtedness has been paid in full and this Mortgage has been discharged. The risks so insured against shall include loss or damage by or from fire (with extended perils coverage), explosion, tempest, lightning and other perils usually covered in fire insurance policies and such additional risks as the Mortgagee may from time to time require, including without limitation, loss of rental and other income and public liability insurance, in each case in amounts satisfactory to the Mortgagee.
- b) If a steam boiler, pressure vessel, oil or gas burner, coal blower, stoker or air conditioning or sprinkler system is at any time operated on the Property, the Mortgagor will also insure and keep insured against loss or damage by explosion of or otherwise caused by any such apparatus or system.
- c) Each Insurance policy will be carried with a company or companies, and contain a mortgage clause and a loss payee clause in favour of the Mortgagee as its interest may appear, approved by the Mortgagee. The Mortgagor shall immediately give the Mortgagee a certified copy of each insurance policy and, not less than ten days before any policy expires or is

terminated, evidence of its renewal or replacement. The Mortgagee may require cancellation of any insurance required by this Mortgage and new insurance effected by an insurer to be approved by the Mortgagee.

- d) The Mortgagee has the right, but shall not be obligated, to obtain and maintain any insurance if the Mortgagor fails to do so or fails to comply with any of the obligations set forth in paragraph 10c). The Mortgagor shall immediately pay the Mortgagee all premiums paid and all costs and expenses incurred by the Mortgagee to effect such insurance.
- e) If any loss or damage occurs to any part of the Property, the Mortgagor shall immediately notify the Mortgagee and, at the Mortgagor's expense, do everything necessary to enable the Mortgagee to obtain the insurance proceeds. The Mortgagee may require that all or any part of such proceeds, or the proceeds of any other insurance required hereby or otherwise effected with respect to all or any part of the Property, be applied towards all or any part of the Indebtedness, whether or not due, or be used to repair such loss or damage.
- f) As additional security for payment of the Indebtedness and performance of the Mortgagor's other obligations under this Mortgage, the Mortgagor assigns to the Mortgagee all of the Mortgagor's interest in or under i) any policy of insurance effected with respect to all or any part of the Property, whether or not effected in accordance with the provisions of this paragraph 10 and ii) any insurance trust agreement referred to in paragraph 14f). The Mortgagor hereby irrevocably appoints each authorized representative of the Mortgagee (with power of substitution) as attorney of the Mortgagor to endorse on behalf of the Mortgagor any cheques issued by any insurer with respect to any policy of insurance effected pursuant to this paragraph 10 or otherwise with respect to all or any part of the Property.
- g) The Mortgagee may also require that other risks be covered by insurance, depending on the nature or location of the Property.

11. Taxes and Utility Charges

The Mortgagor shall pay or cause to be paid, when due, all Taxes and utility charges relating to all or any part of the Property. Upon request, the Mortgagor shall give the Mortgagee receipted invoices or other evidence of payment including copies of all utility bills, tax bills, notices of assessment and other notices relating to property taxes and utility charges. If the Mortgagor fails to make any such payment, or to pay any related penalties, fines or interest, the Mortgagee may, but shall not be obligated to, do so and the Mortgagor shall immediately pay the amount of such payment to the Mortgagee.

12. Repairs, Maintenance and Inspection

- a) The Mortgagor shall maintain, use, manage, operate and repair the Property in good condition and in a safe, insurable and state of good repair and shall not do, fail to do or permit anything to be done which, in the opinion of the Mortgagee, will lower its value. The Mortgagor shall not commit or permit any act of waste on the Property nor allow any part of the Property to become or remain vacant without the Mortgagee's written consent.
- b) The Mortgagor shall perform and observe the requirements of every present and future statute, law, by-law, ordinance, regulation and order affecting the operation, condition, maintenance, repair, construction, use or occupation and environmental protection or regulation of all or any part of the Property.
- c) If any part of the Property is farmland, the Mortgagor shall in each year either put into crop or summer fallow in a proper manner every part thereof which has been or may in the future be brought under cultivation. The Mortgagor shall also keep such Property clean and free from all noxious weeds and generally see that it does not depreciate in any way as farmland.
- d) The Mortgagor authorizes the Mortgagee to enter on and inspect the Property at all reasonable

times whenever the Mortgagee deems it necessary or advisable to do so. The Mortgagee shall not be considered to have taken possession of the Property or to otherwise become a mortgagee in possession of the Property by reason of its exercise of any such right.

- e) If, in the sole opinion of the Mortgagee, the Mortgagor does not observe or perform any of the foregoing provisions of this paragraph 12, the Mortgagee may from time to time (but shall not be obligated to) enter on and inspect the Property at any time and make such repairs and do such other acts or things it believes are necessary to protect or preserve the Property and to carry out the Mortgagor's obligations under this paragraph 12 including, without limitation, if the Property is farmland, the farming, improvement and general management thereof. The Mortgagor shall immediately pay the Mortgagee all amounts, costs and expenses paid or incurred by it in connection with any of the foregoing.
- f) If the Mortgagor fails at any time for a period of ten consecutive days to diligently carry on any Improvement to or on any part of the Property or without the written consent of the Mortgagee departs from the plans and specifications approved by the Mortgagee with respect thereto or from the generally accepted standards of construction in the locality of the Property, or if the Mortgagor is in default of its obligations under this Mortgage, the Mortgagee from time to time may enter on the Property and have exclusive possession of all materials, plant and equipment thereon, free of interference from or by the Mortgagor, and complete the Improvement either according to such plans and specifications or according to such other plans, specifications or design as the Mortgagee in its absolute discretion shall determine. The Mortgagor shall immediately pay the Mortgagee all costs and expenses incurred by it in connection with any of the foregoing. In exercising any of the foregoing rights, the Mortgagee shall be deemed not to be a mortgagee or chargee in possession.
- g) Any entry which may be made by the Mortgagee pursuant to any provision of this Mortgage may be made by any agents, representatives, employees and/or contractors thereof.

13. Improvements; Demolition

- a) The Mortgagor agrees that no Improvement to or on the Property will be made or commenced (by the Mortgagor or any other person) unless the Mortgagor first provides a copy of all proposed plans, blueprints and specifications to the Mortgagee and obtains the Mortgagee's prior written consent thereto. Subject to paragraph 5, the Mortgagee may, subject to its satisfaction as to compliance with any applicable builder's lien or analogous legislation, make advances to the Mortgagor under this Mortgage based on progress in completing the Improvement or upon its completion or, in the case of the building, its occupation or sale or otherwise. The Mortgagor shall construct and complete the Improvement in accordance with the plans and specifications approved by the Mortgagee and all applicable governmental building standards, codes and requirements as quickly as possible make all payments for the Improvement that is required to make, and shall provide the Mortgagee with proof of such payment on request. Any Improvement to the Property shall be deemed to be charged by this Mortgage in favour of the Mortgagee.
- b) The Mortgagee may retain funds from any advance or advances under this Mortgage until the Mortgagee is completely satisfied that all statutory holdback provisions have been fully complied with, and may give information in accordance with the Mortgagee's statutory obligations as mortgagee.

14. Condominium Provisions

- a) This paragraph 14 shall apply, in addition to the other provisions of this Mortgage, if all or any part of the Property is a condominium unit regulated by the *Condominium Act*. The Mortgagor agrees that the common elements pertaining to the Property and any other interest that the Mortgagor may have in the assets of the Condominium Corporation form part of the Property and are subject to this Mortgage.

- b) This Mortgage is made pursuant to the *Condominium Act*. The Mortgagor shall comply with the *Condominium Act*, the Declaration and the by-laws, rules and regulations of the Condominium Corporation as they exist from time to time.
- c) The Mortgagor shall pay, when due, all amounts (including without limitation common expenses) which, by the terms of the *Condominium Act*, the Declaration or the by-laws of the Condominium Corporation, are payable by the Mortgagor or with respect to the Property and provide the Mortgagee on request with proof of such payment. If the Mortgagor does not make any such payment, the Mortgagee may (but shall not be obligated to) do so, and the Mortgagor shall immediately pay the Mortgagee any amount so paid.
- d) The Mortgagor shall mail to the Mortgagee, by prepaid registered mail, or deliver to the Mortgagee, copies of every notice, assessment, claim or demand for payment, rule, regulation, request or demand of the Mortgagor to consent to any matter, and every other communication relating to all or any part of the Property or the common elements of the Condominium Corporation so that the Mortgagee receives them at least five days before any such claim or demand is payable or, in the case of other communications, within five days after receipt by the Mortgagor.
- e) The Mortgagor irrevocably appoints, authorizes and empowers the Mortgagee to vote, consent or not consent respecting all matters relating to the affairs of the Condominium Corporation provided that:
 - i) the Mortgagor shall be entitled to exercise such right to vote or consent or not consent unless the Mortgagee gives notice of its intention to exercise such right, which notice may be for an indeterminate period of time, a limited period of time or a specific meeting or matter;
 - ii) the Mortgagee's right to vote, consent or not consent does not impose any obligation on the Mortgagee to do so or to protect the Mortgagor's interests; and
 - iii) the Mortgagee's exercise of its right to vote, consent or not consent shall not constitute the Mortgagee a mortgagee in possession and shall not give rise to any liability on the part of the Mortgagee, provided that the Mortgagee may not exercise any such right in respect of Property situate in the Provinces of Nova Scotia or Newfoundland and Labrador unless it is a mortgagee in possession.
- f) The Mortgagor shall insure all Improvements which at any time the Mortgagor or any previous owner makes or made to the Property and the Mortgagor's common or other interest in buildings which are part of the condominium property or common elements pertaining to the Property, against such risks as the Mortgagee may require. If the Condominium Corporation fails to obtain or maintain the insurance it is required to by the *Condominium Act*, the Declaration, the by-laws or rules of the Condominium Corporation or otherwise to obtain and maintain with respect to all or any part of the Property, the condominium property or common elements pertaining to the Property, or the assets of the Condominium Corporation, the Mortgagor shall do so. If the Mortgagor fails to so insure, the Mortgagee may (but shall not be obligated to) do so and the Mortgagor shall immediately pay the Mortgagee all premiums paid by it. All policies of insurance required to be effected pursuant to this paragraph 14f) upon or in respect of the buildings on the Property shall provide for any loss to be payable to the Mortgagee and a trustee approved by the Mortgagee pursuant to an insurance trust agreement approved by the Mortgagee, the terms of which shall not be altered without the Mortgagee's prior written consent. Without limiting the generality of paragraph 14a), it is expressly agreed that the provisions of this paragraph 14f) are in addition to the Mortgagor's obligations and the Mortgagee's rights set out in paragraph 10.
- g) The Mortgagor will observe all provisions of, and perform all obligations imposed upon the Mortgagor by, the *Condominium Act*, the Declaration, the by-laws of the Condominium Corporation and any rule made pursuant to the *Condominium Act*. The Mortgagee may (but

shall not be obligated to) observe and perform such provisions or obligations if the Mortgagor fails to do so and the Mortgagor shall immediately pay the Mortgagee all costs and expenses incurred by the Mortgagee in so doing.

- h) The Mortgagee shall have the right, but not the obligation, at its option to collect the Mortgagor's contribution to the common expenses or any special assessment payable pursuant to the *Condominium Act*, the Declaration or the by-laws of the Condominium Corporation, and the Mortgagor shall make such payment to the Mortgagee upon request. The Mortgagee shall then forward such payments on to the Condominium Corporation as required.
- i) The Mortgagor shall not sell, transfer, convey or otherwise dispose of any parking or storage unit that forms part of the Property while still retaining ownership of the Property.
- j) The Mortgagor shall, and does hereby, direct and authorize the Condominium Corporation to permit the Mortgagee to inspect the Condominium Corporation's records at any reasonable time.

15. Effect of Subdivision

If the Property is subdivided, each part of the Property shall continue to secure payment of the total amount of the Indebtedness in an amount not exceeding the Amount Secured and no person shall have any right to require the Indebtedness to be apportioned upon or in respect of any part of the Property.

16. Leases and Rents

- a) The Mortgagor assigns to the Mortgagee, as additional security for payment of the Indebtedness i) all leases heretofore or hereafter granted by the Mortgagor (or any predecessor in title) of all or any part of the Property and ii) any rents payable from time to time under such leases and the benefit of the terms and conditions contained therein and of the reversion thereunder. The Mortgagor shall, on request from time to time, execute a formal assignment of any of the foregoing in a form acceptable to the Mortgagee and, if requested by the Mortgagee, suitable for registration. The Mortgagor agrees to give the Mortgagee executed copies of all such leases promptly after their execution and to perform all of the Mortgagor's obligations thereunder. No such assignment or any act of the Mortgagor pursuant thereto shall operate to delay, hinder or prejudice any of the Mortgagee's rights or remedies under this Mortgage. The Mortgagor shall also, from time to time, execute and deliver to the Mortgagee such notices to lessees or others and such other documents as the Mortgagee may request for the purpose of protecting or enforcing its rights in respect of such assignments.
- b) The Mortgagee shall not be responsible for the collection of any rents assigned to it or the performance of the terms and conditions of any lease referred to in this paragraph 16. The Mortgagee shall be responsible to account only for rents actually received, less reasonable collection charges, and may apply such rents to the repayment of the Indebtedness, whether or not due. The Mortgagee shall not by reason of any such collection or any assignment referred to in this paragraph 16 be deemed a mortgagee in possession.
- c) Notwithstanding this paragraph 16, no lease of all or any part of the Property shall be made by the Mortgagor without the prior written consent of the Mortgagee. Notwithstanding any such consent, no such lease shall have priority over this Charge unless the Mortgagee expressly agrees to such priority in writing. For the purposes of this Mortgage, every action or omission by the lessee under any lease of all or any part of the Property shall be conclusively deemed to be the action or omission of the Mortgagor.

17. Other Liens; Renewal of Leases

- a) Unless the Mortgagee otherwise consents, the Mortgagor will not create or permit to exist any Lien on or against all or any part of the Property, any Lease or any leases or rents referred to

in paragraph 16, other than Liens i) for taxes which are not due or ii) incidental to construction, repairs or current operations which have not been registered against the Property, which relate to obligations which are not due and written notice of which has not been given to the Mortgagee. The Mortgagor shall pay, when due, all amounts payable under, in respect of or secured by any Lien or other claim on, against or relating to all or any part of the Property or any Lease or any lease or rents referred to in paragraph 16 and shall comply with all obligations contained in the document or statute under which any such Lien or other claim arose. The Mortgagee may, but shall not be obligated to, pay any such amount and/or cure any default under any such document or statute and the Mortgagor will immediately pay the Mortgagee all amounts, costs and expenses paid or incurred in so doing. To the extent the Mortgagee pays any such amount, it shall be entitled to all equities and securities of the person or persons so paid and it may retain any discharge or release unregistered until paid. The Mortgagor shall immediately notify the Mortgagee in writing of the creation or coming into existence of any Lien on or against all or any part of the Property or any Lease or any lease or rents referred to in paragraph 16 and of the terms and conditions thereof.

- b) The Mortgagee may from time to time obtain a court order vacating any construction or builders' lien registered against all or any part of the Property and, if the Mortgagee considers it necessary, provide financial guarantees or other security to facilitate the obtaining of any such order. The Mortgagor shall immediately pay the Mortgagee all costs and expenses paid or incurred by the Mortgagee to obtain such order or to provide such guarantees or security.
- c) If the Mortgagor has a leasehold interest in the Property and the Mortgagor refuses or neglects to renew any Lease, the Mortgagee may (but shall not be obligated to) from time to time effect any such renewal in its own name or otherwise. The Mortgagor shall immediately pay the Mortgagee all costs and expenses incurred by the Mortgagee in connection with any such renewal. In so doing, the Mortgagee shall not be considered a mortgagee in possession.

18. Possession

Until this Mortgage becomes enforceable, the Mortgagor shall be entitled to possession of the Property, subject to the terms of this Mortgage.

19. Default

Where the Indebtedness of the Mortgagor to the Mortgagee is: a) of a demand nature, then the Mortgagor shall be in default under this Mortgage if it fails to pay on demand by the Mortgagee all or any part of the Indebtedness; or b) not of a demand nature, then the Mortgagor shall be in default under this Mortgage if any of the following events or circumstances (collectively, "Events of Default") shall occur and be continuing:

- a) the Mortgagor fails to pay when due all or any part of the Indebtedness or any amount payable pursuant to any loan agreement, bill of exchange, promissory note, guarantee, any security collateral thereto, or any other instrument, agreement or document (negotiable or otherwise) now or later entered into, with or in favour of or held by the Mortgagee in respect of or representing all or any part of the Indebtedness;
- b) the Mortgagor fails to observe or perform any provisions or obligations hereunder or under any loan agreement, bill of exchange, promissory note, guarantee, any security collateral thereto, or any other instrument, agreement or document (negotiable or otherwise) now or later entered into with or in favour of or held by the Mortgagee except as contemplated in paragraph 19a);
- c) the Mortgagor fails to pay when due any indebtedness for borrowed money except as contemplated in paragraphs 19a) and b);
- d) any statement, representation or warranty the Mortgagor has given or made or hereafter gives or makes to the Mortgagee (whether in the Mortgage or otherwise) in respect of the Property, the Mortgage, any Lease, the Indebtedness or the affairs of the Mortgagor including any

financial statement or other document at any time delivered by or on behalf of the Mortgagor to the Mortgagee in connection with the Indebtedness that is untrue, incorrect or misleading in any material way on the date made or given;

- e) any Lien is created or otherwise exists in respect of the Property or any Lien or notice of a Lien is registered against the Property without the Mortgagee's prior written consent;
- f) the Property is abandoned or any act of waste is committed as to all or any part of the Property; or any building or other structure now or later being erected on the Property remains unfinished and without any work being done on it for a period of ten consecutive days;
- g) the Mortgagor sells, transfers, leases or otherwise disposes of or conveys all or any part of the Property or any Lease or any interest in any of the foregoing, or agrees to do so, without the Mortgagee's prior written consent;
- h) the Mortgagor changes the use of the Property or ceases to carry on the business ordinarily carried on from the Property without the Mortgagee's prior written consent;
- i) any order is made or resolution passed for the winding-up, liquidation or other dissolution of the Mortgagor (if the Mortgagor is a corporation), or there is a change in the membership or a dissolution of the Mortgagor (if the Mortgagor is a partnership);
- j) in the opinion of the Mortgagee, there is a change in effective control of the Mortgagor (if the Mortgagor is a corporation);
- k) the Mortgagor makes an assignment for the benefit of creditors, or any proceedings are instituted by or against the Mortgagor seeking to adjudicate it a bankrupt or insolvent or seeking liquidation, winding-up, dissolution, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or other similar law or seeking the appointment of a receiver, receiver and manager, trustee, custodian or other similar official for it or for any of its property (excluding proceedings which are being contested by the Mortgagor in good faith, which have been outstanding for fewer than 30 days and in respect of which any enforcement proceedings are stayed), or the Mortgagor is declared bankrupt, or a receiver, receiver and manager, trustee, custodian or other similar official is appointed of it or in respect of all or any part of the Property, or power of sale or foreclosure proceedings are commenced against all or any part of the Property;
- l) all or any part of the Property is expropriated;
- m) in the opinion of the Mortgagee, an adverse change has occurred or may occur in the financial condition of the Mortgagor or in respect of the Property;
- n) the Mortgagor or its representative or any other person or municipality or other governmental authority should attempt to rezone the Property or otherwise attempt or cause to be made any changes to the development plan or other secondary plans or site plan or development agreements relating to the Property without the Mortgagee's prior written consent;
- o) the Property is subject to a restraint order under the *Controlled Drugs and Substances Act* (Canada) or a similar order under any law or the Mortgagor or any other person uses or has used the Property for any purpose in violation of the *Controlled Drugs and Substances Act* (Canada) or any similar law;
- p) the Mortgagor fails to pay utility charges and Taxes when due;
- q) the Mortgagor fails to comply with its obligations under paragraph 10 with respect to insurance;
- r) the Mortgagor increases the principal amount owing under any prior mortgage or re-borrows any amount repaid under a prior mortgage without the prior written consent of the Mortgagee;
- s) any default by the Mortgagor under any mortgage, charge, hypothec, security interest or

other financial encumbrance of all or any part of the Property ranking in priority, to or subsequent to the Mortgage which is not cured within any cure periods applicable thereto;

- t) any attornment of rents or withdrawal of consent to collect rents, power of sale or other sale by creditor, judicial sale, foreclosure, taking payment, taking possession or other enforcement or realization proceedings (whether or not permitted hereunder) are commenced against or in respect of the Mortgagor, the Property or any part thereof under or in respect of such mortgage, charge, hypothec, security interest or other financial encumbrance or any holder thereof takes possession or control of any part of the Property; and
- u) any writ of execution, distress, attachment or other similar process is issued or levied against the Mortgagor or all or any part of its assets, or any judgement or order is made against the Mortgagor by a court of competent jurisdiction and such writ, distress, attachment process, judgement or order relates to or otherwise includes the Property or any part thereof;

provided that where loan documentation provides for one or more events of default that are inconsistent or conflict with the terms of one or more Events of Default, then the Events of Default in this Mortgage shall prevail, unless the loan documentation explicitly states that such loan documentation prevails over this Mortgage in the event of inconsistency. If the loan documentation states that it prevails over this Mortgage in the event of inconsistency, it shall only prevail to the extent specifically stated in such loan documentation. Notwithstanding the foregoing, if the loan documentation contains events of default that are in addition to any Events of Default set forth in this Mortgage, the existence of such additional events of default shall not in itself constitute a conflict or inconsistency.

20. Remedies on Default

- a) If the Mortgagor is in default of its obligations under this Mortgage, the Mortgagee may (but shall not be obligated to), from time to time and in any order, separately or in combination, and after giving the minimum notice, if any, required by applicable law and obtaining court approval where necessary, enforce any one or more of the following remedies:
 - i) sue the Mortgagor for all or any part of the Indebtedness;
 - ii) distrain for arrears of all or any part of the Indebtedness;
 - iii) take judicial proceedings to foreclose the Mortgagor's and/or any other person's interest in all or any part of the Property or any Lease, to take possession of it and/or to sell, lease or otherwise deal with the same;
 - iv) enter on and take possession of all or any part of the Property;
 - v) sell and/or lease all or any part of the Property or sell the unexpired term of any Lease;
 - vi) assign any Lease and sell the last day of the term granted by the Lease and/or remove the Mortgagor or any other persons from being a trustee of the last day of the term of any Lease and appoint a new trustee or trustees in its place;
 - vii) appoint in writing a receiver (which term as used herein includes a receiver and manager) of all or any part of the Property and the rents and other income thereof and from time to time remove any receiver and appoint another in its place;
 - viii) exercise in respect of the insurance policies, insurance trust agreements, leases, rents and benefits assigned pursuant to paragraphs 10 f) and 16 a) the remedies exercisable by the Mortgagee in respect of all or any part of the Property; and
 - ix) exercise any other rights or remedies which the Mortgagee may have, whether pursuant to this Mortgage, at law, in equity, by contract or otherwise.
- b) Nothing contained herein and nothing done by the Mortgagee or any receiver, other than taking possession of the Property in fact, shall render the Mortgagee or such receiver a

mortgagee in possession.

- c) The Mortgagor hereby waives the right to claim any exemption with respect to the Mortgagee's right of distress and agrees that the Mortgagee shall not be limited as to the amount for which it may distrain.
- d) Any sale contemplated or permitted herein may be for cash or for credit, or partly for cash and partly for credit, by tender, private sale or public auction, as a whole or in separate parcels, with or without a reserve bid, with or without advertisement and at any time or times and on such terms as the Mortgagee thinks reasonable. The Mortgagee will be accountable for sale proceeds or rent only when received in cash. The Mortgagee may use the services of any real estate agent in connection with any sale or lease (including any agent affiliated with the Mortgagee). The Mortgagee may apply the net proceeds of any lease or sale to any part of the Indebtedness determined by the Mortgagee and the Mortgagor will immediately pay the Mortgagee any part of the Indebtedness remaining unpaid.
- e) The Mortgagee may cancel or amend any contract of sale or lease and sell or lease again, or adjourn any such sale from time to time, all as the Mortgagee thinks reasonable, without being responsible for any resulting loss.
- f) Any purchaser or lessee from the Mortgagee or a receiver pursuant hereto shall not be required to see to the validity, legality, regularity or propriety of such sale or lease, or that the default has happened on account of which the sale or lease is being made. The Mortgagor agrees that each such purchaser and lessee will receive good title to or a valid lease of that part of the Property sold or leased, and that the Mortgagor will not make any claims concerning the validity, legality, regularity or propriety of the sale or lease against the purchaser or lessee or their successors in title. The Mortgagor's only claim respecting such validity, legality, regularity or propriety will be made against the Mortgagee and will be in damages only.
- g) The Mortgagee may lease or sell without entering into actual possession of the Property and, while in possession, shall only be accountable for moneys actually received by it.
- h) Without limiting the generality of paragraph 20a), sales may be made from time to time of parts of the Property to satisfy any part of the Indebtedness, leaving the balance thereof secured under this Mortgage on the remainder of the Property.
- i) If the Mortgagor has a leasehold interest in the Property, the Mortgagor irrevocably appoints each authorized representative of the Mortgagee (with power of substitution) to be the Mortgagor's attorney during the continuance of this Mortgage so as to permit the Mortgagee to execute any document or do any act or thing which the Mortgagee is permitted or the Mortgagor is required to execute or do pursuant to the provisions hereof.
- j) If the Mortgagor has a leasehold interest in the Property, the Mortgagor shall i) at the request of the Mortgagee and at the cost and expense of the Mortgagor, sell and assign to the Mortgagee or any person appointed by the Mortgagee, the last day of the term of the Lease or any renewal term, and ii) in the event of any sale by the Mortgagee as contemplated herein, hold such last day in trust for the purchaser, and the purchaser's heirs, executors, administrators, successors and assigns.
- k) Neither the Mortgagor nor any person claiming an interest in the Property through the Mortgagor shall interfere in any way with the Mortgagee's possession of the Property obtained pursuant to the provisions hereof nor with the possession of anyone to whom all or any part of the Property is sold or leased by the Mortgagee or any receiver appointed pursuant to the provisions hereof.
- l) In appointing a receiver pursuant to the provisions hereof, the Mortgagee shall be deemed to be acting as the Mortgagor's agent and attorney so that the receiver shall, with respect to responsibility for the receiver's acts or omissions, be considered the Mortgagor's agent. The Mortgagee may from time to time fix the remuneration of the receiver and direct its payment

out of the income of the Property, but in no event shall the Mortgagee incur any liability for such remuneration. The receiver shall, in the Mortgagee's discretion, be vested with and may enforce all or any of the Mortgagee's rights and discretions under this Mortgage with the same effect as if exercised by the Mortgagee (including without limitation the rights and discretions set out in paragraph 7) and such other rights as the Mortgagee may confer in writing. The receiver shall have the power to borrow on the security of the Property in priority to this Mortgage or otherwise, to collect rent and other income of the Property and to carry on or concur in carrying on any business carried on by the Mortgagor on the Property. From the rent and other income collected, and from the proceeds of all other realization hereunder, the receiver shall, in such order as the Mortgagee sees fit: pay all the rents, taxes, rates, insurance premiums and other outgoings affecting the Property and any other amount the Mortgagee is permitted to pay hereunder; pay the receiver's own remuneration and the cost of repairs; pay all amounts required to keep in good standing any Liens ranking in priority to this Mortgage; and pay the Mortgagee all or any part of the Indebtedness.

21. Expenses

The Mortgagor shall immediately pay to the Mortgagee all amounts the Mortgagee is permitted to pay under this Mortgage and all costs and expenses of or relating to inspecting, protecting, repairing, completing, insuring, taking and keeping possession of and managing all or any part of the Property, preparing it for sale or lease, selling or leasing it, renewing any leasehold interest, collecting any part of the Indebtedness, the exercise of any of the rights of a receiver appointed pursuant to the provisions hereof, such receiver's fees and expenses, agents' costs and expenses, legal fees and expenses on a full indemnity basis, and any other costs and expenses of exercising or protecting the Mortgagee's rights (hereunder or otherwise) or all or any part of the Property. The Mortgagor shall pay the Mortgagee on demand interest at the Interest Rate on such amounts, costs and expenses (and on all other Costs) from the date they are paid by the Mortgagee until they are repaid by the Mortgagor.

22. Renewing or Amending Charge

This Mortgage (or any agreement referred to in this paragraph 22) may from time to time be renewed or amended by one or more written agreements with the Mortgagor, or with any successor or successors in title to the Mortgagor, with or without any increase or decrease in the Interest Rate or extension of time for payment. Whether or not there are any other instruments registered on title to the Property after this Mortgage at the time any such written agreement is entered into, it will not be necessary for the Mortgagee to register the written agreement on title to the Property in order to retain priority for this Mortgage, as renewed or amended, over any other instrument registered after this Mortgage. The Mortgagor acknowledges that the provisions of this paragraph 22 shall not confer any right of renewal upon the Mortgagor.

23. Discharge

This Mortgage shall only terminate upon payment in full of the Indebtedness and complete performance of the Mortgagor's other obligations hereunder, provided that such termination shall be effective only if the Mortgagee shall have received a written notice from the Mortgagor requesting a discharge or assignment hereof and if no further Indebtedness becomes outstanding prior to the delivery of such discharge or assignment. Upon termination of this Mortgage, the Mortgagor may request in writing that the Mortgagee provide the Mortgagor with a discharge of this Mortgage or an assignment of this Mortgage to a third party and the Mortgagee shall sign such document and send it to the Mortgagor within a reasonable time. The Mortgagor shall pay immediately the Mortgagee's usual administration fee for preparing, reviewing, signing and/or delivering any such discharge or assignment and the Mortgagee's legal and other expenses, whether such documentation is

prepared by the Mortgagee's lawyer or by the Mortgagor's lawyer. It is the Mortgagor's responsibility to register the discharge or assignment on title and to pay the registration fee.

24. Successors and Assigns; Joint and Several Liability

- a) This Mortgage is binding on and enures to the benefit of the Mortgagor and the Mortgagee and their respective heirs, executors, administrators, legal representatives, successors and assigns, and any person(s) to whom the Mortgagor's interest in all or any part of the Property, or the Mortgagee's interest in this Mortgage, may be transferred.
- b) If more than one person signs this Mortgage as chargor, such persons are jointly and severally liable to observe and perform all of the Mortgagor's obligations herein.

25. Interpretation and Headings

Paragraph headings do not form a part hereof but are used only for ease of reference. Any reference herein to the singular or the neuter shall also mean the plural or the masculine or the feminine where the context or the parties to this Mortgage so require. If any provision hereof is illegal or unenforceable it shall be considered separate and severable from the remaining provisions hereof which shall remain in force and be binding as though such first mentioned provision was not included.

26. Set-Off

All payments made by the Mortgagor to the Mortgagee under this Mortgage will be made in respect of the indebtedness without any legal or equitable set-off or counterclaim and without any deduction or withholdings of any kind.

27. Statutes and Regulations

Any reference to a statute herein is a reference to both the statute and any regulations made under the statute. Any reference to a statute also includes any amendments to or re-enactments of the statute or regulations. If a specific section, subsection, paragraph or clause of a statute or regulation is referred to, that reference includes the corresponding provision in any amended or re-enacted statute or regulation.

28. Consents and Disclosure

The Mortgagor hereby consents to the Mortgagee transferring, selling, assigning or syndication of the indebtedness, this Mortgage and all of its rights under this Mortgage. If the Mortgagee does so, it may disclose information about the Mortgagor, this Mortgage and the indebtedness to anyone to whom the Mortgagee transfers, sells, assigns or syndicates or proposes to transfer, sell, assign or syndicate its rights. The Mortgagee may also disclose information about the Mortgagor, this Mortgage and the indebtedness to an insurer or other third party from whom the Mortgagee may obtain benefits to protect its security. The Mortgagor hereby consents to insurers and other third parties that provide benefits or services to the Mortgagee for this Mortgage obtaining information about the Mortgagor from credit bureaus and other lenders to evaluate the Mortgagor and this Mortgage.

29. Security Interest in Personal Property

The Mortgagor covenants and agrees to execute and deliver to the Mortgagee, on demand, a security interest in all chattels, furnishings, equipment, appliances and all other personal property owned now or in the future by the Mortgagor and situate in or about the Property. The form and content of such security interest must be acceptable to the Mortgagee. The Mortgagor agrees to pay all legal and other expenses incurred by the Mortgagee in connection with the preparation and

registration of the security interest and any renewals thereof forthwith upon demand and such fees and expenses, together with interest thereon at the Interest Rate, shall be added to the indebtedness and secured by this Mortgage.

30. Farm Debt Mediation Act

- a) The Mortgagor represents and warrants that, except as previously disclosed to the Mortgagee, it is not a "farmer" as defined in the *Farm Debt Mediation Act*, S.C. 1997, c.21, as amended and/or restated from time to time.
- b) In the event that the Mortgagor is not a "farmer" as defined by the said act, the Mortgagor covenants that it will promptly notify the Mortgagee in writing if the Mortgagor becomes a "farmer" as defined by the said act.

31. New Home Warranty Plan

If any new home warranty plan applies to the Property, the Mortgagor agrees to comply with its requirements and immediately to reimburse the Mortgagee for any costs which the Mortgagee incurs in meeting the Mortgagor's obligations or enforcing the Mortgagor's rights on behalf of the Mortgagor thereunder if the Mortgagor fails to do so and the Mortgagee chooses to so act.

32. Family Law

The Mortgagor represents and warrants that all information given to the Mortgagee in connection with this Mortgage concerning marital and spousal status was, when given and when the Mortgage was delivered to the Mortgagee, completely truthful and accurate. If any change in such status occurs, the Mortgagee covenants to inform the Mortgagee immediately in writing.

33. Collection, Use and Disclosure of Personal Information

The Mortgagor acknowledges and agrees that during the course of the relationship between the Mortgagor and the Mortgagee, the Mortgagee may collect financial and related information about the Mortgagor and/or its employees, officers, and directors (if applicable) (the "Personal Information"), including the following:

- information about this Mortgage, the Amount Secured, and any related documents;
- information about the Mortgagor's transactions using the Mortgagee's products and services;
- information to identify the Mortgagor and/or its employees, officers or directors (if applicable) or to qualify the Mortgagor for products and services; and
- information required by the Mortgagee for regulatory purposes.

The Mortgagee may collect Personal Information from a number of different sources, including the Mortgagor's application for this Mortgage and for the Indebtedness, references provided by the Mortgagee, credit reporting agencies, other financial institutions, service providers, the Mortgagee's internal records, and from individuals authorized to act on the Mortgagee's behalf.

The Mortgagee may use the Personal Information to open, process, service, maintain and collect upon this Charge and any related agreements. The Mortgagee will use and disclose the Personal Information according to the Mortgagee's privacy policies, as such policies may be amended, replaced or supplemented from time to time.

The Mortgagor acknowledges and agrees that the Mortgagee may enter into this Mortgage and any related agreements on behalf of another entity, as an agent or nominee, and also that the Mortgagee may assign this Mortgage and any related agreements to another entity. In these cases, such an entity is known as the "beneficial owner". The Mortgagee may disclose the Personal Information to the beneficial owner, its agents, and any person or entity to which the beneficial

owner assigns this Mortgage or any related agreements. The Mortgagee may also disclose the Personal Information to any service provider. Service providers are any person or entity that:

- is involved in the servicing, maintenance, collection or operation of this Mortgage or any of the related agreements; or
- provides services or benefits to the Mortgagee under this Charge or any of the related agreements, including loyalty programs.

34. Consolidation

The Mortgagor acknowledges and agrees that the Mortgagee has a right of consolidation that applies to this Mortgage and to any other mortgages and/or charges given by the Mortgagor to the Mortgagee. As a result of such right of consolidation, if the Mortgagor has mortgaged other property to the Mortgagee and the Mortgagor is in default of its obligations under this Mortgage, the Mortgagor shall not have the right to pay off this Mortgage or any mortgage or charge of other property unless the Mortgagor pays to the Mortgagee the Amount Secured.

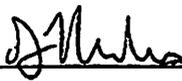
35. General

- a) If more than one person signs this Mortgage the Mortgagee can rely on communications it receives from any Mortgagor, whether these communications are received electronically, in writing, orally or otherwise and such communications from any one Mortgagor are considered to be communication from each Mortgagor. In addition, communications from the Mortgagee to any Mortgagor, whether delivered electronically, in writing, orally or otherwise will be considered to be communication to all Mortgagors. Any communications mailed to the Mortgagors pursuant to this Mortgage will be considered to be received by the Mortgagor the fifth day after mailing.
- b) This Mortgage cannot be assigned by the Mortgagor or assumed by any other person or persons without the express written agreement of the Mortgagee.
- c) Each person who signs this Mortgage acknowledges receipt of a copy of it.
- d) If any of the Property is located in the Province of Prince Edward Island then this Mortgage shall be deemed to have been entered into in pursuance of the enactment respecting Short Forms of Indentures.

In Witness Whereof the parties hereto, other than the Mortgagee, have executed this Mortgage on the day first written above.

Signed and Delivered
in the presence of:

3304051 NOVA SCOTIA LIMITED



SARAH MCINNES
A Barrister of the Supreme
Court of Nova Scotia

}

Per:



Name: Stan Mason
Title: President

PROVINCE OF NOVA SCOTIA

I CERTIFY that on this 30th day of March, 2017, 3304051 NOVA SCOTIA LIMITED, one of the parties thereto, caused the foregoing Mortgage to be executed in its name and on its behalf by its proper officers duly authorized in that behalf in my presence.



A Barrister of the Supreme Court of Nova Scotia

PROVINCE OF NOVA SCOTIA

AFFIDAVIT

I, Stanky Hason, of the City of Halifax, Province of Nova Scotia, make oath and say as follows:

1. THAT I am the President of 3304051 NOVA SCOTIA LIMITED (the "Company"), the Borrower in the attached Mortgage, and as such have a personal knowledge of the matters herein deposed to and am authorized to bind the Company;
2. THAT the Company is not now nor will it be upon delivery of the attached Mortgage, a non-resident of Canada within the meaning of the *Income Tax Act* (Canada);
3. THAT for the purpose of this my affidavit "Matrimonial Home" means a dwelling and real property occupied by a person and that person's spouse as their family residence;
4. THAT the real property described in the attached Mortgage has never been occupied as a Matrimonial Home by any of the shareholders of the Company, nor does the ownership of a share in the Company entitle the owner or owners thereof to occupy the aforesaid property as a Matrimonial Home.

SWORN TO at the City of Halifax
in the Halifax County Province of Nova
Scotia, this 30th day of March,
2017 before me:



A Barrister of the Supreme Court of
Nova Scotia



SARAH McINNES
A Barrister of the Supreme
Court of Nova Scotia

SCHEDULE "A"

PID 40014862

ALL that certain lot, piece or parcel of land situate, lying and being at Middle Sackville, in the County of Halifax and Province of Nova Scotia more particularly bounded and described as follows:

BORDERED on the north by Highway 101;

BORDERED on the west by the Lucasville Road;

BORDERED on the south by the Sackville River; and

BORDERED on the east by lands now or formerly owned or occupied by Armco Capital Inc. (PID 40807380), and which Armco Capital Inc. lands are shown on and identified as "Parcel E-2" on a survey plan filed at the Registry of Deeds for the County of Halifax on January 31, 2005 as Plan No. 81289606.

SAVING AND EXCEPTING from the foregoing described lands that lot of land conveyed by and described in a deed from Hefier Forest Products Limited to Her Majesty the Queen (Canada) dated June 28, 1993 and recorded at the Registry of Deeds for the County of Halifax on October 22, 1993 in book 5482 at page 799, Document No. 44155.

SUBJECT TO an easement/right-of-way in favor of Her Majesty the Queen (Canada) described in book 5482 at page 802.

AND FURTHER SUBJECT HOWEVER TO a utility interest in favor of Nova Scotia Power Inc. described in 2007 Document No. 89433289.

AND FURTHER SUBJECT HOWEVER TO an easement/right-of-way in favor of Bragg Communications Incorporated described in 2012 Document No. 100707471.

AND FURTHER SUBJECT HOWEVER TO a utility interest in favor of Nova Scotia Power Inc. described in 2012 Document No. 10201998.

AND FURTHER SUBJECT HOWEVER to a utility easement in favour of Nova Scotia Power Inc. more particularly described in the Grant of Easement recorded at the Halifax County Land Registration Office as Document No. 105106737.

***** Municipal Government Act, Part IX Compliance *****

Exemption:

The parcel is exempted from subdivision approval under the Municipal Government Act because the parcel was created by a subdivision

Reason for exemption:

Section 268A that is a Deemed Consolidation - (De Facto Consolidation).

Form 39.09

2021 HFX No. 503367
This is Exhibit "C" referred to
in the affidavit of Kyle Lane,
[sworn/affirmed] before me
on January 18 2021.



Signature

Dunlop (Dun) Glover
Barrister & Solicitor





Security Agreement

595 Bay Street, Toronto, ON M5G 2C2

Bank Office (insert transit, mailing address and postal code)

For valuable consideration, the undersigned (the "Customer") agrees with Canadian Imperial Bank of Commerce ("CIBC") as follows:

1. **Grant of Security.** The Customer mortgages, charges and assigns to CIBC, and grants to CIBC, and CIBC takes, a Security Interest in the property described in the following paragraph or paragraphs of this section (as applicable in accordance with the NOTE appearing at the end of this section), and in all property described in any schedules, documents or listings that the Customer may from time to time sign and provide to CIBC in connection with this Agreement, and in all present and future Accessions to, and all Proceeds of, any such property (collectively, the "Collateral") as a general and continuing collateral security for the due payment and performance of the Liabilities:

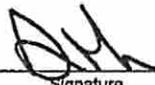
- a) **Specific Personal Property:** the Personal Property described in Schedule A.
- b) **All Personal Property:** all of the Customer's present and after-acquired undertaking and Personal Property (including any property that may be described in Schedule A).
- c) **All Real Property:** all of the Customer's present and after-acquired real property (including any property that may be described in Schedule A), together with all buildings placed, installed or erected on any such property, and all fixtures.

NOTE: Check appropriate box or boxes to indicate which of paragraphs (a), (b) or (c) are to apply. If no box is checked off, paragraph (b) will apply.

2. **Governing Law.** This Agreement is governed by the laws of Nova Scotia.

ADDITIONAL TERMS AND CONDITIONS. The Additional Terms and Conditions (including any schedules) on the following pages form part of this agreement.

The Customer has signed this Agreement on MARCH 30, 2017.

	X	
Date		Signature
3304051 NOVA SCOTIA LIMITED		<u>Stanley Mason, President</u>
Customer's Name (record in full)		Name & Title
4 MacDonald Avenue		
Customer's Address	X	Signature
Dartmouth, NS B3B 1C5		<u>Trevor Keniger, Secretary</u>
City/Town, Province and Postal Code		Name & Title

Note: If the Customer is a corporation, the office (such as "President" or "Secretary") of the person signing should be noted below that person's signature.

Schedule A

The following is a description of property included in the Collateral (describe personal property by item or kind; if space is insufficient, use a separate sheet):

See attached



Asset List

Sawmill:

Debarker - Valone Kone VK800
Debarker - Forano RVF
PLC Controlled Electrical Room
Carriage - Cardinal 4 Bunk Carriage
Programing System - Mudata DIV601 & DIV603
Edger - Valley Machine 8" edger system
Resaw - Comact horizontal resaw
Trimmer Saw - TS Manufacturing 10 Shaft trimmer saw
Log scanner - ScanMeg log scanner
Sawmill Buildings and services

Kiln and Planing Mill:

Kiln Building
A-20 Planer
Newman Planer
Planer Building and services

Power Plant:

Biomass Storage Dome
Biomass loading bay
Biomeass feeding system and conveyor
KMW rentech combustion boiler
Siemens turbine
Hyundal electric generator
Power plant Control room
Steam piping and auxillaries
Ash management system
Steam condenser
Power plant building and servcies

Buildings:

Main building and services

Forklifts, Loaders, Vehicles:

2001 Manitou Forklift M 50-4	154776 Diesel
1996 Toyoto 425 Forklift T25	405FG25-19250 Propane
1999 JCB 940 Forklift 940	0664871 Diesel
1999 Sellick Forklift SD-80	4028909832 Diesel
2005 Sellick S80	6212508S824
2004 Hyundal Loader 757-7	LD0110180 Diesel
1988 Timberjack Porter w/ Serco 125 Grapple 230	793724 Diesel
2014 Dodge Truck Ram	1C6RR7GT5ES141624 Gas
2008 Chev Service Truck Silverado	2GCEK19C681256856 Gas
1988 International S-Series	1HTZVADT2JH586337 Diesel
1999 International 5000	1HTTGAETOXJ002002 Diesel
2000 Ford Truck w/ Fisher. plow F350	1FTWW33F8YED90242
1999 Mack w/	1M2AA18Y7XW094253 Diesel
1987 Trallmobile dump trailer	2TCD262B6HA477601
Morbark Grinder	
Pup Trailer APLW24-3A-TAL	2P932S5G81T017058 N/A

Filing Room Equipment:

Asset List

- 1 Hanchett HAN 40" Planer Blade Sharpener
- 1 Dual Head Resurfacers
- 1 Hanchett Grinder - Band Saw Sharpener
- 1 Armstrong Truesizer 16786
- 1 Carbide Tooth Face Sharpener - Top & Face
- 1 Oxy-Acetylene Torch Set (small)
- 1 Yates Planer Head Sharpener
- 10 Planer Heads

Sawmill Spare Parts

1	Frigidaire Air Conditioner (installed)	In garage
1	V Belt Sheave for sawmill	Warehouse
4	Kiln fan bearings	Kiln
1	Yardman Snow Blower, 30", 10.5 HP	Warehouse
1	Forklift Man Basket	Warehouse
5	Custom Built Chain & Belt Conveyors for Kiln stickers	Warehouse
1	SEW Screw Conveyor Drive	Warehouse
1	SEW Drive	Warehouse
1	Orthophosphate test kit	Kiln
1	Conductivity waterproof Ectester	Kiln
1	Water testing equipment and chemicals	Kiln
5	Box Sylvania fluorescent tube lights	Kiln
1	400 pcs Mastercraft socket set	Garage
1	80 pcs Mastercraft screwdriver set	Garage
2	1/2" LP Impact guns	Garage
1	5 pcs pry bar set	Garage
1	30 pcs mastercraft wrench set	Garage
1	small, medium and large vise grips	Garage
1	90 pcs tap and die set	Garage
1	Jetco 1/2" drive torque wrench	Garage
2	Mastercraft stubby wrench set	Garage
1	Angle grinder	Garage
1	4.5" Dewalt grinder	Garage
4	Ball pein hammers	Garage
1	3lb hammer	Garage
1	Sludge hammer	Garage
1	4' linemans bar	Garage
1	100 gallon air compressor	Garage
2	Forklift tire chains set	Garage
1	1000 watt halogen work light	Garage
300	Assorted hydraulic fittings	Garage
100	Assorted air and brake fittings	Garage
2	72 slot bolt cabinet	Garage
1400	assorted nut, bolts and washers	Garage
1	Honda 5000watt generator	Garage
1	Honda pressure washer	Garage
1	air chisel	Garage
2	air drill	Garage
1	4 wheel barrel cart	Garage
1	50' 1" water hose	Garage
1	3'x6' supply cabinet	Garage
1	Miller 200amp stick welder	Garage
1	Auto tint welding helmet	Garage

Asset List

1	Welding shield	Garage
1	Delta variable speed drill press	Garage
1	bench grinder	Garage
2	3 ton floor jacks	Garage
1	20 ton bottle jacks 10 ton bottle jack	Garage
1	3 tonne Jack stand	Garage
1	paint spray gun	Garage
2	O ring kits	Garage
1	Imperial eastman hydraulic hose crimper	Garage
1	Kerosene salamander heater	Garage
1	Featherlite fiberglass extension ladder	Garage
1	misc pliers, wire strippers, screwdrivers, wrenches and sockets	Garage
1	5 hp electric motor	Garage
4	HD 12v battery 1250ca	Garage
4	12v battery 100ca	Garage
2	4'x8' sheet of steel mesh	Garage
1	Battery load tester and charging system tester	Garage
1	200amp battery charger	Garage
1	Welding supplies - gloves, chipping hammer, wire brushes etc	Garage
1	Pot style sandblaster	Garage
1	Pallet of collars for edger	Garage
1	Landa steam Genie	Garage
1	Lawn mower	Warehouse
2	Huscavarna snow blowers	Warehouse
1	Poulan Snow blower	Warehouse
1	Push salt spreader	Warehouse
1	Dolly cart	Warehouse
4	garage doors	Warehouse
3	turbine oil drums full 205l	Warehouse
1	Glycol drum full 205l	Warehouse
7	8' floresent light fixtures	Warehouse
2	Air gun	Sawmill. Parts room
1	Wire feed welder	Sawmill. Parts room
1	Small portable welder	Sawmill. Parts room
12	Flange bearings	Sawmill. Parts room
7	pillow block bearings	Sawmill. Parts room
8	Conveyor belt fasteners	Sawmill. Parts room
14	bearings	Sawmill. Parts room
6	cylinders	Sawmill. Parts room
1	Polychain belt	Sawmill. Parts room
1	Shop vac	Sawmill. Parts room
1	bucket belt fastener rivots	Sawmill. Parts room
2	bolt bins	Sawmill. Parts room
6	box r80 chain	Sawmill. Parts room
9	sprockets	Sawmill. Parts room
6	set of debarker tips valcone	Sawmill. Parts room
6	set of debarker tips	Sawmill. Parts room
1	air grease gun	Sawmill. Parts room
2	rechargeable grease guns	Sawmill. Parts room
1	hammer drill	Sawmill. Parts room
4	Box of powerband belts	Sawmill old parts room downstairs
5	Sprockets	Sawmill old parts room downstairs
3	Cylinders	Sawmill. old parts room downstairs

Asset List

4	box of bolts	Sawmill old parts room downstairs
2	Bag of floor dry	Sawmill old parts room downstairs
3	Box of r80 chain	Sawmill old parts room downstairs
1	8 drawer cabinet	Sawmill old parts room downstairs
1	Kerosene salamander heater	Sawmill old parts room downstairs
1	3hp gearbox	Sawmill old parts room downstairs
4	gas chainsaws	sawmill
1	electric chainsaw	sawmill
1	Drill press	sawmill
1	extension ladder	sawmill
2	step ladders	sawmill
1	oil pump	sawmill
5	Industrial fans	sawmill
1	cutting tourceh	sawmill
1	hydraulic power pack	sawmill
2	set of 6 debarker arms	sawmill
1	Jockey grinder	sawmill
1	Post grinder	sawmill
1	tool box	sawmill
3	grinders	sawmill
3	drills	sawmill
1	dewalt chop saw	sawmill
1	25hp electric motor	Bark Basement
1	table saw	Bark Basement
1	floor bench grinder	Bark Basement
1	stick welder	Bark Basement
1	gearbox for debarker	Bark Basement
14	pillow block bearings	debarker room
8	flange bearings	debarker room
2	belts for big debarker	debarker room
2	belts for small debarker	debarker room
5	air bags small debarker	debarker room
7	wheels for small debarker	debarker room
1	Plow blade for Volvo loader	Warehouse

Power Plant Spare Parts:

1	oakton ph meter	water testing
1	myron conductivity meter	water testing
1	checkmate 2 meter	water testing
1	ohaus scale	weighing fuel samples
1	minimum flow valve	feedwater pumps
3	bearings	furnace
2	proximity probes	
1	flow meter	grate cooling loop
2	furnace temperature probes	furnace
1	thermocouple	
2	fuel filters	emergency generator
2	lube filters	emergency generator
2	air filters	emergency generator
1	hydac filter element	turbine lube oil filter
1	vibration calbe	turbine
1	ash screw cooling pump	primary ash screw
4	omron proximity sensor	ash handling

Asset List

2	bearings	ash handling
8	couplings	ash handling
1	Ash gate piston	ash handling
1	minimum flow valve repair kit	feedwater pumps
2	attemperator valve repair kit	superheated steam
1	l/p convertor	feedwater control valve.
1	pump coupling	feedwater pumps
1	l.h. Controller	turbine
1	thermocouple	turbine
3	25kv fuse	outgoing power
1	vibration sensor	generator
1	d/a control valve	deaerator
1	labrynth seal	turbine
1	2" air seperator	in floor heating
2	speed reducers	ash handling
3	b-57 belts	combustion fans
0	b-52 belts	combustion fans
9	5vx1150 belts	combustion fans
15	5vx1600 belts	combustion fans
10	pressure gauges	system pressures
12	wsac nozzles	steam condenser
1	oil mist seperator	turbine
7	pressure relief valves	safety valves
6	sprokets	fuel feed conveyor
1	2 wheel dolly	tools
2	crescent wrenches	tools
1	chain falls	holsting
9	pipe wrenches (rigid 14" to 48")	tools
3	grease guns	tools
2	grinders	tools
1	reciprocating saw	tools
2	sockets set	tools
1	rigid pipe threading kit	tools
1	bolt cutters	tools
1	torque multipler kit	tools
4	drills	tools
	assorted hand tools	tools
1	rigid pipe vise	tools
1	pipe roller stand	tools
1	pipe cutter	tools
1	tiger torch	tools
5	step ladders	tools
1	extension ladders	tools
5	shop vacs	tools
1	pressure washer	tools
1	portable air compressor	tools
2	large portable fan	tools
1	stackable washer / drier	
1	chest freezer	
1	bar fridge	
1	pallet jack	tools
1	3 piece rolling tool box	tools
2	storage cabinets	tools

Asset List

1	tool box	turbine
1	sockets set	turbine
1	high pressure hydraulic jack	turbine
1	oil mist separator motor	turbine
1	steam trap	hotwell
1	ro make up control valve	reverse osmosis
2	bearings	generator
1	fluke amp probe	tools
1	motor megger	tools
2	dewalt rechargeable flashlights	tools
1	fluke temperature gun	tools
1	digital thermometer	tools
1	digital camera	tools
2	barrel cart	tools
1	package of FW valve seals	feedwater pumps
1	package of attemperator valve seals	Desuperheater
1	chemical injection pump interface module	Chemical pumps
1	FW min flow recirc valve-seal kit	feedwater pumps
1	roller chain (Tsubaki RS60-1-RP)	fuel conveyor
1	roller chain (Tsubaki RS40-1-RP)	fuel conveyor
6	RS-40 connecting links	fuel conveyor
2	bearings for fuel conveyor (3-7/16")	fuel conveyor
2	bearings for fuel conveyor (2-3/16")	fuel conveyor
2	bearings for fuel conveyor (3-15/16")	fuel conveyor
2	misc bearings	fuel conveyor
4	bin levelling screw bolts	fuel feed
1	bin levelling screw tail end bearing	fuel feed
1	flow meter grate cooling loop	furnace
2	proxy probe for high level m136	fuel feed
2	red ash bin latches	ash
2	motor for rotary airlocks	ash
2	gear reducer for rotary airlocks	ash
1	box of spare parts for control valve rebuild	control valve
2	power pole fuses	
1	socket/ hex key set (metric)	turbine
1	wrench set	turbine
1	safety valve disc	safety valves
8	hydraulic solenoid valves	
1	sump pump / repair kit	
1	oil filter pump	
1	steam trap (1" - 450psi)	
1	plate heat exchanger	
1	nonspillable battery	
1	hammer wrench	tools
4	levels	tools
40	wrenches	tools
40	screwdrivers	tools
1	set of nut drivers	tools
3	drill sets	tools
7	adjustable wrenches	tools
6	hex key sets	tools
1	tube bender	tools
3	vise grips	tools

Asset List

6	pliers	tools
1	bench grinder	tools
3	O ring kits	tools
1	hack saw	tools
6	hammers	tools
14	pry bars	tools
2	crow bars	tools
4	wire brushes	tools
1	breaker bar	tools
9	pipe wrenches	tools
1	pipe threader kit	tools
1	strap wrench	tools
1	heat gun	tools
1	rotary hammer	tools
7	flashlights	tools
2	socket sets	tools
1	come along (1.5 ton)	tools
1	solder kit	tools
2	grinders	tools
3	grease guns	tools
1	gasket cutting kit	tools

Schedule B

The following are the Places of Business (if space is insufficient, use a separate sheet):

230 Lucasville Road
Middle Sackville NS
PID 40014862



Additional Terms And Conditions

3. **Places of Business.** The Customer represents and warrants that the locations of all existing Places of Business are specified in Schedule B. The Customer will promptly notify CIBC in writing of any additional Places of Business as soon as they are established. Subject to section 5, the Collateral will at all times be kept at the Places of Business, and will not be removed without CIBC's prior written consent.
4. **Collateral Free of Charges.** The Customer represents and warrants that the Collateral is, and agrees that the Collateral will at all times be, free of any Charge or trust except in favour of CIBC or incurred with CIBC's prior written consent. CIBC may, but will not have to, pay any amount or take any action required to remove or redeem any unauthorized Charge. The Customer will immediately reimburse CIBC for any amount so paid and will indemnify CIBC in respect of any action so taken.
5. **Use of Collateral.** The Customer will not, without CIBC's prior written consent, sell, lease or otherwise dispose of any of the Collateral (other than Inventory, which may be sold, leased or otherwise disposed of in the ordinary course of the Customer's business). All Proceeds of the Collateral (including among other things all amounts received in respect of Receivables), whether or not arising in the ordinary course of the Customer's business, will be received by the Customer as trustee for CIBC and will be immediately paid to CIBC.
6. **Insurance.** The Customer will keep the Collateral insured to its full insurable value against loss or damage by fire and such other risks as are customarily insured for property similar to the Collateral (and against such other risks as CIBC may reasonably require). At CIBC's request, all policies in respect of such insurance will contain a loss payable clause, and if the Collateral includes real property will contain a mortgage clause, in favour of CIBC and in any event the Customer assigns all proceeds of insurance on the Collateral to CIBC. The Customer will, from time to time at CIBC's request, deliver such policies (or satisfactory evidence of such policies) to CIBC. If the Customer does not obtain or maintain such insurance, CIBC may, but will not have to, do so. The Customer will immediately reimburse CIBC for any amount so paid. The Customer will promptly give CIBC written notice of any loss or damage to all or any part of the Collateral.
7. **Information and Inspection.** The Customer will from time to time immediately give CIBC in writing all information requested by CIBC relating to the Collateral, the Places of Business, and the Customer's financial or business affairs. The Customer will promptly advise CIBC of the Serial Number, model year, make and model of each Serial Number Good at any time included in the Collateral that is held as Equipment, including in circumstances where the Customer ceases holding such Serial Number Good as Inventory and begins holding it as Equipment. CIBC may from time to time inspect any Books and Records and any Collateral, wherever located. For that purpose CIBC may, without charge, have access to each Place of Business and to all mechanical or electronic equipment, devices and processes where any of them may be stored or from which any of them may be retrieved. The Customer authorizes any Person holding any Books and Records to make them available to CIBC, in a readable form, upon request by CIBC.
8. **Receivables.** If the Collateral includes Receivables, CIBC may advise any Person who is liable to make any payment to the Customer of the existence of this Agreement. CIBC may from time to time confirm with such Persons the existence and the amount of the Receivables. Upon Default, CIBC may collect and otherwise deal with the Receivables in such manner and upon such terms as CIBC considers appropriate.
9. **Receipts Prior to Default.** Until Default, all amounts received by CIBC as Proceeds of the Collateral will be applied on account of the Liabilities in such manner and at such times as CIBC may consider appropriate or, at CIBC's option, may be held unappropriated in a collateral account or released to the Customer.
10. **Default.**
 - (1) **Events of Default.** The occurrence of any of the following events or conditions will be a Default:
 - (a) the Customer does not pay any of the Liabilities when due;
 - (b) the Customer does not observe or perform any of the Customer's obligations under this Agreement or any other agreement or document existing at any time between the Customer and CIBC;
 - (c) any representation, warranty or statement made by or on behalf of the Customer to CIBC is untrue in any material respect at the time when or as of which it was made;
 - (d) the Customer ceases or threatens to cease to carry on in the normal course the Customer's business or any material part thereof;
 - (e) if the Customer is a corporation, there is, in CIBC's reasonable opinion, a change in effective control of the Customer, or if the Customer is a partnership, there is a dissolution or change in the membership of the partnership;
 - (f) the Customer becomes insolvent or bankrupt or makes a proposal or files an assignment for the benefit of creditors under the Bankruptcy and Insolvency Act (Canada) or similar legislation in Canada or any other jurisdiction; a petition in bankruptcy is filed against the Customer; or, if the Customer is a corporation, steps are taken under any legislation by or against the Customer seeking its liquidation, winding-up, dissolution or reorganization or any arrangement or composition of its debts;
 - (g) a Receiver, trustee, custodian or other similar official is appointed in respect of the Customer or any of the Customer's property;
 - (h) the holder of a Charge takes possession of all or any part of the Customer's property, or a distress, execution or other similar process is levied against all or any part of such property; or
 - (i) CIBC, in good faith and upon commercially reasonable grounds, believes that the prospect of payment or performance is or is about to be impaired or that the Collateral is or is about to be placed in jeopardy.

- (2) **Rights upon Default.** Upon Default, CIBC and a Receiver, as applicable, will to the extent permitted by law have the following rights.
- (a) **Appointment of Receiver.** CIBC may by instrument in writing appoint any Person as a Receiver of all or any part of the Collateral. CIBC may from time to time remove or replace a Receiver, or make application to any court of competent jurisdiction for the appointment of a Receiver. Any Receiver appointed by CIBC will (for purposes relating to responsibility for the Receiver's acts or omissions) be considered to be the Customer's agent. CIBC may from time to time fix the Receiver's remuneration and the Customer will pay CIBC the amount of such remuneration. CIBC will not be liable to the Customer or any other Person in connection with appointing or not appointing a Receiver or in connection with the Receiver's actions or omissions.
 - (b) **Dealings with the Collateral.** CIBC or a Receiver may take possession of all or any part of the Collateral and retain it for as long as CIBC or the Receiver considers appropriate, receive any rents and profits from the Collateral, carry on (or concur in carrying on) all or any part of the Customer's business or refrain from doing so, borrow on the security of the Collateral, repair the Collateral, process the Collateral, prepare the Collateral for sale, lease or other disposition, and sell or lease (or concur in selling or leasing) or otherwise dispose of the Collateral on such terms and conditions (including among other things by arrangement providing for deferred payment) as CIBC or the Receiver considers appropriate. CIBC or the Receiver may (without charge and to the exclusion of all other Persons including the Customer) enter upon any Place of Business.
 - (c) **Realization.** CIBC or a Receiver may use, collect, sell, lease or otherwise dispose of, realize upon, release to the Customer or other Persons and otherwise deal with, the Collateral in such manner, upon such terms (including among other things by arrangement providing for deferred payment) and at such times as CIBC or the Receiver considers appropriate. CIBC or the Receiver may make any sale, lease or other disposition of the Collateral in the name of and on behalf of the Customer or otherwise.
 - (d) **Application of Proceeds After Default.** All Proceeds of Collateral received by CIBC or a Receiver may be applied to discharge or satisfy any expenses (including among other things the Receiver's remuneration and other expenses of enforcing CIBC's rights under this Agreement), Charges, borrowings, taxes and other outgoings affecting the Collateral or which are considered advisable by CIBC or the Receiver to preserve, repair, process, maintain or enhance the Collateral or prepare it for sale, lease or other disposition, or to keep in good standing any Charges on the Collateral ranking in priority to any Charge created by this Agreement, or to sell, lease or otherwise dispose of the Collateral. The balance of such Proceeds will be applied to the Liabilities in such manner and at such times as CIBC considers appropriate and thereafter will be accounted for as required by law.
- (3) **Other Legal Rights.** Before and after Default, CIBC will have, in addition to the rights specifically provided in this Agreement, the rights of a secured party under the PPSA, as well as the rights recognized at law and in equity. No right will be exclusive of or dependent upon or merge in any other right, and one or more of such rights may be exercised independently or in combination from time to time.
- (4) **Deficiency.** The Customer will remain liable to CIBC for payment of any Liabilities that are outstanding following realization of all or any part of the Collateral.
11. **CIBC not Liable.** CIBC will not be liable to the Customer or any other Person for any failure or delay in exercising any of its rights under this Agreement (including among other things any failure to take possession of, collect, or sell, lease or otherwise dispose of, any Collateral). None of CIBC, a Receiver or any agent of CIBC (including, in Alberta, any sheriff) is required to take, or will have any liability for any failure to take or delay in taking, any steps necessary or advisable to preserve rights against other Persons under any Chattel Paper, Securities or Instrument in possession of CIBC, a Receiver or CIBC's agent.
 12. **Charges and Expenses.** The Customer agrees to pay on demand all costs and expenses incurred (including among other things legal fees on a solicitor and client basis) and fees charged by CIBC in connection with obtaining or discharging this Agreement or establishing or confirming the priority of the Charges created by this Agreement or by law, compliance with any demand by any Person under the PPSA to amend or discharge any registration relating to this Agreement, and by CIBC or any Receiver in exercising any remedy under this Agreement (including among other things preserving, repairing, processing, preparing for disposition and disposing of the Collateral by sale, lease or otherwise) and in carrying on the Customer's business. All such amounts will bear interest from time to time at the highest interest rate then applicable to any of the Liabilities, and the Customer will reimburse CIBC upon demand for any amount so paid.
 13. **Further Assurances.** The Customer will from time to time immediately upon request by CIBC take such action (including among other things the signing and delivery of financing statements and financing change statements, other schedules, documents or listings describing property included in the Collateral, further assignments and other documents, and the registration of this Agreement or any other Charge against any of the Customer's real property) as CIBC may require in connection with the Collateral or as CIBC may consider necessary to give effect to this Agreement. If permitted by law, the Customer waives the right to sign or receive a copy of any financing statement or financing change statement, or any statement issued by any registry that confirms any registration of a financing statement or financing change statement, relating to this Agreement. The Customer irrevocably appoints the Manager or the Acting Manager from time to time of CIBC's branch specified on the first page of this Agreement as the Customer's attorney (with full powers of substitution and delegation) to sign, upon Default, all documents required to give effect to this section. Nothing in this section affects the right of CIBC as secured party, or any other Person on CIBC's behalf, to sign and file or deliver (as applicable) all such financing statements, financing change statements, notices, verification agreements and other documents relating to the Collateral and this Agreement as CIBC or such other Person considers appropriate.

14. **Dealings by CIBC.** CIBC may from time to time increase, reduce, discontinue or otherwise vary the Customer's credit facilities, grant extensions of time and other indulgences, take and give up any Charge, abstain from taking, perfecting or registering any Charge, accept compositions, grant releases and discharges and otherwise deal with the Customer, customers of the Customer, guarantors and others, and with the Collateral and any Charges held by CIBC, as CIBC considers appropriate without affecting the Customer's obligations to CIBC or CIBC's rights under this Agreement.
15. **Definitions.** In this Agreement:
- "Accessions", "Account", "Chattel Paper", "Document of Title", "Equipment", "Goods", "Instrument", "Intangible", "Inventory", "Proceeds", "Purchase-Money Security Interest" and "Security Interest"* have the respective meanings given to them in the PPSA.
- "Books and Records"* means all books, records, files, papers, disks, documents and other repositories of data recording, evidencing or relating to the Collateral to which the Customer (or any Person on the Customer's behalf) has access.
- "Charge"* means any mortgage, charge, pledge, hypothecation, lien (statutory or otherwise), assignment, financial lease, title retention agreement or arrangement, security interest or other encumbrance of any nature however arising, or any other security agreement or arrangement creating in favour of any creditor a right in respect of a particular property that is prior to the right of any other creditor in respect of such property.
- "Consumer Goods"* has the meaning given to it in the PPSA, except that, if this Agreement is governed by the laws of the Yukon, it does not include special consumer goods as that term is defined in the Yukon PPSA.
- "Default"* has the meaning set out in subsection 10(1).
- "Liabilities"* means all present and future indebtedness and liability of every kind, nature and description (whether direct or indirect, joint or several, absolute or contingent, matured or unmatured) of the Customer to CIBC, wherever and however incurred and any unpaid balance thereof.
- "Money"* has the meaning given to it in the PPSA or, if there is no such definition, means a medium of exchange authorized or adopted by the Parliament of Canada as part of the currency of Canada, or by a foreign government as part of its currency.
- "Person"* means any natural person or artificial body (including among others any firm, corporation or government).
- "Personal Property"* means personal property and includes among other things Inventory, Equipment, Receivables, Books and Records, Chattel Paper, Goods, Documents of Title, Instruments, Intangibles (including intellectual property), Money, and Securities, and includes all Accessions to such property.
- "Place of Business"* means a location where the Customer carries on business or where any of the Collateral is located (including any location described in Schedule B).
- "PPSA"* means the Personal Property Security Act in the province or territory noted in section 2 of this Agreement, as such legislation may be amended, renamed or replaced from time to time (and includes all regulations made from time to time under such legislation) and in the case of any province or territory that does not have an act by that name, such legislation as deals generally with Charges on personal property.
- "Receivables"* means all debts, claims and choses in action (including among other things Accounts and Chattel Paper) now or in the future due or owing to or owned by the Customer.
- "Receiver"* means a receiver or a receiver and manager.
- "Securities"* has the meaning given to it in the PPSA or, if there is no such definition and the PPSA defines "security" instead, it means the plural of that term.
- "Serial Number"* means the number that the Person who manufactured or constructed a Serial Number Good permanently marked or attached to it for identification purposes or, if applicable, such other number as the PPSA stipulates as the serial number or vehicle information number to be used for registration purposes of such Serial Number Good.
- "Serial Number Good"* means a motor vehicle, trailer, mobile home, aircraft airframe, aircraft engine or aircraft propeller, boat or an outboard motor for a boat.
16. **General.**
- (1) **Reservation of the Last Day of any Lease.** The Charges created by this Agreement do not extend to the last day of the term of any lease or agreement for lease; however, the Customer will hold such last day in trust for CIBC and, upon the exercise by CIBC of any of its rights under this Agreement following Default, will assign such last day as directed by CIBC.
 - (2) **Attachment of Security Interest.** The Security Interests created by this Agreement are intended to attach
 - i) to existing Collateral when the Customer signs this Agreement, and
 - ii) to Collateral subsequently acquired by the Customer, immediately upon the Customer acquiring any rights in such Collateral. The parties do not intend to postpone the attachment of any Security Interest created by this Agreement.
 - (3) **Purchase-Money Security Interest.** If CIBC gives value for the purpose of enabling the Customer to acquire rights in or to any of the Collateral, the Customer will in fact apply such value to acquire those rights (and will provide CIBC with such evidence in this regard as CIBC may require), and the Customer grants to CIBC, and CIBC takes, a Purchase-Money Security Interest in such Collateral to the extent that the value is applied to acquire such rights. A certificate or affidavit of any of CIBC's authorized representatives is admissible in evidence to establish the amount of any such value.
 - (4) **Description of Collateral in Schedule A.** The fact that box (b) or box (c) of section 1 has been checked without there being any property described in Schedule A does not affect the nature or validity of CIBC's security in the Collateral.

- (5) **Entire Agreement.** CIBC has not made any representation or undertaken any obligation in connection with the subject matter of this Agreement other than as specifically set out in this Agreement, and in particular nothing contained in this Agreement will require CIBC to make, renew or extend the time for payment of any loan or other credit accommodation to the Customer or any other Person.
- (6) **Additional Security.** The Charges created by this Agreement are in addition and without prejudice to any other Charge now or later held by CIBC. No Charge held by CIBC will be exclusive of or dependent upon or merge in any other Charge, and CIBC may exercise its rights under such Charges independently or in combination.
- (7) **Joint and Several Liability.** If more than one Person signs this Agreement as the Customer, the obligations of such Persons will be joint and several.
- (8) **Severability; Headings.** Any provision of this Agreement that is void or unenforceable in any jurisdiction is, as to that jurisdiction, ineffective to that extent without invalidating the remaining provisions of this Agreement. The headings in this Agreement are for convenience only and do not limit or extend the provisions of this Agreement.
- (9) **Interpretation.** When the context so requires, the singular will be read as the plural, and vice versa.
- (10) **Copy of Agreement.** The Customer acknowledges receipt of a copy of this Agreement.
- (11) **Waivers.** If this Agreement is governed by the laws of Saskatchewan and the Customer is a corporation, the Customer agrees that The Limitation of Civil Rights Act, The Land Contracts (Actions) Act and Part IV (excepting only section 46) of The Saskatchewan Farm Security Act do not apply insofar as they relate to actions as defined in those Acts, or insofar as they relate to or affect this Agreement, the rights of CIBC under this Agreement or any instrument, Charge, security agreement or other document of any nature that renews, extends or is collateral to this Agreement.
- (12) **Notice.** CIBC may send to the Customer, by prepaid regular mail addressed to the Customer at the Customer's address last known to CIBC, copies of any document required by the PPSA to be delivered by CIBC to the Customer. Any document mailed in this manner will be deemed to have been received by the Customer upon the earlier of actual receipt by the Customer and the expiry of 10 days after the mailing date. A certificate or affidavit of any of CIBC's authorized representatives is admissible in evidence to establish the mailing date.
- (13) **Enurement; Assignment.** This Agreement will enure to the benefit of and be binding upon CIBC, its successors and assigns, and the Customer and the Customer's heirs, executors, administrators, successors and permitted assigns. The Customer will not assign this Agreement without CIBC's prior written consent.

Form 39.09

2021 HFX No. 503367
This is Exhibit "D" referred to
in the affidavit of Kyle Lane,
[sworn/affirmed] before me
on January 18 2021.



Signature

Du magis (Aum) Glavata
Barrister & Solicitor



THIS ASSIGNMENT OF CONTRACTS made this 30th day of March, 2017.

BETWEEN:

3304051 NOVA SCOTIA LIMITED, a body corporate, incorporated pursuant to the laws of the Province of Nova Scotia (herein called the "Assignor")

OF THE ONE PART

- and -

CANADIAN IMPERIAL BANK OF COMMERCE (herein called the "Assignee")

OF THE SECOND PART

WHEREAS:

1. the Assignor is party to a Power Purchase Agreement for Renewable Energy with Nova Scotia Power Incorporated ("NSPI") dated November 28, 2013 (the "PPA") by way of assignment and assumption agreement dated March 30, 2017;
2. the COMFIT Approval, as defined in the PPA, and as attached as Schedule "E" thereto, has been assigned to the Assignor by way of the assignment and assumption agreement dated March 30, 2017;
3. the PPA provides that prior to interconnection of the Generation Facility to the Distribution System a Standard Small Generator Interconnection Agreement, as defined in the PPA and as attached as Schedule "D" to the PPA, (the "SSGIA") must be executed, which SSGIA dated October 30, 2014 the Assignor became party to by way of assignment and assumption agreement dated March 30, 2017;
4. the PPA, the COMFIT Approval, and the SSGIA are hereinafter collectively referred to as the "Contracts"); and
5. by a letter agreement from the Assignee to the Assignor dated March 30, 2017 (the "Commitment Letter"), which was accepted by the Assignor, the Assignee agreed to loan certain monies to the Assignor subject to an assignment of the Contracts with such related consents/acknowledgements as required, a general security agreement, a collateral mortgage, and certain other agreements as collateral security for the payment of the monies due and accruing due under the Commitment Letter (collectively with the Commitment Letter, the "Loan Documents").

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and mutual covenants herein and the sum of One Dollar (\$1.00) paid to the Assignor by the Assignee, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The Assignor hereby assigns, transfers and sets over unto the Assignee all of its right, title and interest in and to the Contracts together with all of the Assignor's Rights (as hereinafter defined) with full power and authority to enforce performance of the Contracts and the Assignor's Rights and to demand, sure for and collect damages in connection therewith at the Assignee's option either in the name of the Assignor or in its own name and all renewals and replacements thereof as security pursuant to the Commitment Letter provided that:

(a) the Assignee shall not enforce its rights under this Agreement until it has declared the Assignor to be in default of its obligations under the Commitment Letter or one or more of the Loan Documents; and

(b) if the Assignor does well and truly observe and perform all the covenants under the Loan Documents on its part to be observed and performed according to the true intent and meaning thereof then this Agreement shall, upon repayment of all indebtedness owing under the Commitment Letter, be void and of no further force or effect.

(c) For the purposes of this Agreement, the term "Assignor's Rights" shall mean:

(i) the benefits of all covenants, representations, permissions, approvals, rights, entitlements, privileges, powers, consents, licenses and advantages of the Assignor, whether governmental or otherwise, to be derived from each of the Contracts;

(ii) all covenants, obligations and agreement of the Assignor under, in connection with or in respect of each Contract and otherwise to exercise and enforce the rights, entitlements, privileges, and advantages of the Assignor under, in connection with or in respect of each Contract;

(iii) all guarantees, indemnities and warranties (contractual, statutory or otherwise) of the Assignor under, in connection with or in respect of each Contract and all rights, entitlements, privileges, benefits, powers, licenses and advantages of the Assignor to be derived from all such guarantees, indemnities and warranties and all covenants, obligations and agreements given in respect such guarantees, indemnities and warranties;

(iv) all revenues and other moneys now due and payable, or hereafter to become due and payable to the Assignor under or in connection with the Contracts; and

(v) all rights of the Assignor created under the Contracts in respect of having the right to give consents or approvals, make selections, exercise options,

participate in arbitration or other legal proceedings, give notices, declare defaults or to otherwise enforce the rights, entitlements, privileges, benefits, powers, licenses, and advantages under, in connection with or with respect to, and all remedies in connection with, each Contract.

2. The Assignor covenants that:

- (a) subject to any necessary consent to assignment (and the provisions of the Renewable Electricity Regulations pursuant to the *Electricity Act* (Nova Scotia)), it has good right to assign its interest in the Contracts hereby assigned, that it has not executed any prior assignments which have not been released, that the Contracts are good and valid and subsisting and that there are no defaults now existing with respect to the same, and the Assignor further covenants to execute and deliver such further and better assurances and all necessary consents to assignment as the Assignee may reasonably require to give full effect to the intention hereof.
- (b) The Contracts and the Assignor's Rights hereby assigned shall continue as collateral security until the whole of the monies secured by the Loan Documents shall be fully paid and satisfied;
- (c) From time to time as the Contracts and/or the Assignor's Rights are renewed or replaced, it shall advise the Assignee of such renewals and replacements, and on request to immediately execute and deliver an assignment of such renewals or replacements in the same manner as herein set out, and from time to time, and at all times hereafter, at the reasonable request of the Assignee, to execute and deliver to the Assignee, such assignment or assignments, and further assurances as the Assignee may reasonably require, at the expense of the Assignor, and the Assignor hereby constitutes and appoints the Assignee its true and lawful attorney and agent, in the name of the Assignor, or otherwise, to execute and deliver from time to time such assignment, or assignments, or other assurances. The power of attorney hereby granted is intended and hereby declared to be irrevocable;
- (d) Without the prior written consent of the Assignee, not to be unreasonably withheld, it shall not modify, amend, terminate, surrender, assign or transfer the Contracts or any Assignor's Rights or grant or permit any party to grant any licence or material concessions in connection therewith (any such attempted modification, amendments, termination, surrender, assignment, transfer, grant, licence or concession without the prior written consent of the Assignee shall be null and void);
- (e) none of the rights of the Assignee under the Loan Documents shall be delayed or in any way prejudiced by this Agreement;
- (f) notwithstanding any modifications of the terms of the Loan Documents, or any extension of time for payment thereunder, this Agreement shall continue in effect in accordance with its terms;

- (g) it will not subordinate or encumber its interest in the Contracts or Assignor's Rights to any mortgage or encumbrance ranking in priority to, pari passu with or except to the extent expressly permitted in writing by the Assignee;
- (h) it shall at all times observe and perform all of its obligations under the Contracts;
- (i) the Contracts or Assignor's Rights shall remain in full force and effect irrespective of any merger or change or any interest of the Assignor hereunder;
- (j) it shall promptly inform the Assignee of any material default which shall occur under the Contracts after it shall learn of the same;
- (k) if so requested by the Assignee, the Assignor shall take all commercially reasonable steps to enforce all remedies available to it to the extent provided for under the Contracts; and
- (l) if in the event of enforcement of the Loan Documents, the interest of the Assignor under the Contracts shall, if and to the extent required by the Assignee with respect to the Contracts, thereupon vest in and become the absolute property of the Assignee without any further act or assignment of the enforcement of the Loan Documents. The Assignor shall transmit to the Assignee material statements and other communications which it is required or permitted to give or receive pursuant to the Contracts or Assignor's Rights contemporaneously with the giving or receipt of same.

3. This Agreement is for security purposes and shall not impair or diminish any obligation of the Assignor or any other party or parties under the Contracts or the Assignor's Rights, or of the Assignor under the Loan Documents, and no obligation or liability arising under the Contracts or Assignor's Rights shall be imposed upon or incurred by the Assignee by virtue of this Agreement until such time as the Assignee exercise its rights, and the Assignee shall not, by virtue of this Agreement become or deemed to be a mortgagee in possession, and the Assignee shall be under no obligation to take any action or exercise any remedy or to see or to enforce the performance of the obligations of any party or parties under or in respect of the Contracts. The Assignor hereby indemnifies and agrees to save and hold harmless the Assignee and its successors and assigns from and against any and all claims, demand, actions, causes of action, losses, suits, damages and costs whatsoever arising directly or indirectly from the Contracts and Assignor's Rights or any of them other than by reason of gross negligence or willful misconduct of the Assignee.

4. Upon exercise of its rights under this Agreement, the Assignee agrees to be bound by the terms and conditions of the Contracts.

5. The Assignee shall be liable to account for only such monies as shall come into its hands by virtue of this Agreement, and that such monies, when so received by the Assignee, shall be applied on account of the monies from time to time due under the Loan Documents and any renewals thereof, or under any agreement collateral thereto.

6. This Agreement may be executed in counterparts and each of such counterparts shall constitute an original document and such counterparts, taken together, shall constitute one and the same instrument.

7. This Agreement and everything herein contained shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

8. This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Province of Nova Scotia and the laws of Canada applicable therein.

[SIGNATURE PAGE FOLLOWS]

Form 39.09

2021 HFX No. 503367
This is Exhibit "E" referred to
in the affidavit of Kyle Lane,
[sworn/affirmed] before me
on January 18 2021.



Signature

Nunagdi (Dm) Glavata
Barrister & Solicitor





Barristers & Solicitors
1801 Hollis Street, Suite 1800
Halifax, Nova Scotia
Canada B3J 3N4
t. 902.423.6361
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D. Bruce Clarke, Q.C.
bclarke@burchells.ca
File: 18242-1079607

September 15, 2020

VIA COURIER

3304051 Nova Scotia Limited
380 Bedford Highway
Halifax NS B3M 2L4

Dear Sirs:

Re: Indebtedness to Canadian Imperial Bank of Commerce

We are the solicitors for Canadian Imperial Bank of Commerce ("CIBC").

The company has three demand credit facilities with CIBC:

1. A demand operating loan;
2. A demand term loan; and
3. A credit card facility.

You have advised that the company is insolvent and that the stakeholders of the company will no longer be supporting it with working capital injections. The three loan facilities are hereby demanded. As at September 11, 2020, the company owed:

1. \$5,241,393.69 under a term loan facility, with a per diem of \$530.73;
2. \$976,726.67 under an operating line of credit, with a per diem of \$98.86; and
3. The corporate visa has a maximum facility of \$10,000.00.

The operating loan facility and the credit card facility are fluctuating facilities. As a result, the amount owed at any given time will be the amount utilized at that time by the company.

The above figures do not include legal and professional fees, which are accruing. These additional amounts can be provided to you upon request on reasonable notice.

Copies of this letter are being sent to Hawthorne Capital Inc., Thornridge Holdings Limited and Katalyst Wind Inc. in their capacity as guarantors.

Page 2
September 15, 2020

Attached is a Notice to Intention to Enforce Security in accordance with Section 244 of the *Bankruptcy and Insolvency Act*.

Yours very truly,

BURCHELLS LLP

A handwritten signature in black ink, appearing to be "D. Bruce Clarke", written over the printed name.

D. Bruce Clarke, Q.C.

Encl.
cc: Canadian Imperial Bank of Commerce

Form 86

Notice of Intention to Enforce a Security

To: 3304051 Nova Scotia Limited, an insolvent person

Take notice that:

1. The Canadian Imperial Bank of Commerce, a secured creditor, intends to enforce its security on the insolvent person's property described below:

- a) All of the debtor's real estate encumbered by a certain Commercial Collateral Mortgage dated March 30, 2017, including lands known as 230 Lucasville Road, Middle Sackville, Nova Scotia, PID 40014862, recorded at the Land Registration Office for Halifax County on April 5, 2017 as Document No. 110562692;
- b) All of debtor's present and after acquired personal property and all proceeds and renewals thereof, accretions thereto and substitutions therefor, as registered under the Nova Scotia Personal Property Security Registry on March 29, 2017 as Registration No. 27388917;
- c) The security that is to be enforced is:
 - a. the Commercial Collateral Mortgage dated March 30, 2017,
 - b. the General Security Agreement dated March 30, 2017,
 - c. the Assignment of Contracts dated March 30, 2017 registered under the *Personal Property Security Act of Nova Scotia*, as Registration No 9234045, as renewed by registration number 16163792, as renewed by registration number 23839145, as renewed by registration number 32313355.
- d) The total amount of indebtedness secured by the security as at September 11, 2020, is \$6,228,120.36, plus accrued legal and professional fees.
- e) The secured creditor will not have the right to enforce the security until after the expiry of the 10-day period after this notice is sent unless the insolvent person consents to an earlier enforcement.

Dated at Halifax, Province of Nova Scotia, this 15th day of September, 2020.

CANADIAN IMPERIAL BANK OF COMMERCE

Per: 

D. Bruce Clarke, Q.C. – Solicitor

Waiver and Consent

The undersigned, **3304051 Nova Scotia Limited**, hereby consents to the earlier enforcement of the security of the Canadian Imperial Bank of Commerce, a secured creditor, and hereby waives the ten-day period to enforce security.

3304051 NOVA SCOTIA LIMITED

Per: _____

Form 39.09

2021 HFX No. 503367
This is Exhibit "F" referred to
in the affidavit of Kyle Lane,
[sworn/affirmed] before me
on January 18 2021.



Signature

Donaghy, (New) Glendon
Barrister & Solicitor





Deloitte Restructuring Inc.
Purdy's Wharf Tower II
1969 Upper Water St., Suite 1500
Halifax NS B3J 3R7
Canada

Tel: +1 (902) 721-5661
Fax: +1 (902) 423-5820
www.deloitte.ca

October 7, 2020

Pathik Ravani
Senior Account Manager, Special Loans
CIBC
25 King Street West, 16th Floor
Toronto, ON M5L 1A2

Dear Pathik,

Subject: 3304051 Nova Scotia Limited

We understand that CIBC intends to make an application to the Supreme Court of Nova Scotia in Bankruptcy and Insolvency (the "Court") for an Order appointing Deloitte Restructuring Inc. ("Deloitte") as the Court Appointed Receiver/Manager (the "Receiver") of 3304051 Nova Scotia Limited.

Deloitte consents to act as the Receiver pursuant to the draft Order provided to the Court.

Sincerely,

DELOITTE RESTRUCTURING INC.

Per:

James Foran, CPA, CA, CIRP, LIT
Senior Vice President

c: Bruce Clarke, Q.C. (Burchell's)