

**THE KING'S BENCH
WINNIPEG CENTRE**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF POLAR WINDOW OF CANADA LTD., ACCURATE DORWIN (2020) INC., GLASS 8 INC., NATIONAL INTERIORS (2021) INC., 12986647 CANADA LTD. o/a ALLSCO WINDOWS & DOORS, 12986591 CANADA LTD. o/a ALWEATHER WINDOWS & DOORS, POLAR HOLDING LTD., 10064720 MANITOBA LTD. AND 12986914 CANADA LTD.

(the "Applicants")

APPLICATION UNDER: THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C., c. C-36, AS AMENDED

AFFIDAVIT OF LILA ALNADI

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File No. 0037903.00035

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(the "**Applicants**")

APPLICATION UNDER: *THE COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C., c. C-36,
AS AMENDED

AFFIDAVIT OF LILA ALNADI

I, LILA ALNADI of the City of Winnipeg, in the Province of Manitoba, legal assistant,

MAKE OATH AND SAY THAT:

1. I am employed by the law firm MLT Aikins LLP ("**MLT Aikins**") in the capacity of legal assistant, and as such, have personal knowledge of the facts and matters hereinafter deposed to by me except where such


facts and matters are stated to be based on information and belief in which case I believe them to be true.

2. MLT Aikins is counsel for the Applicants in respect of this matter.

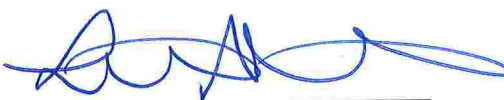
3. Attached hereto and marked as **Exhibit "A"** is a true copy of the Interim Facility Loan Agreement between the Applicants and the Toronto-Dominion Bank dated February 9, 2023.

4. I make this Affidavit *bona fide*.

SWORN before me at the City of)
Winnipeg in the Province of)
Manitoba, this 9th day of)
February, 2023)
)

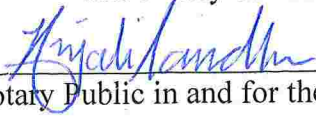


A Notary Public in and for the
Province of Manitoba



LILA ALNADI

This is Exhibit "A" referred to in the
affidavit of
Lila Alnadi
sworn (or affirmed) before me,
this 9th day of February, 2023



A Notary Public in and for the Province of Manitoba

INTERIM FACILITY LOAN AGREEMENT

THIS AGREEMENT is dated as of February 6, 2023

BETWEEN:

ACCURATE DORWIN (2020) INC. (“Accurate”), **NATIONAL INTERIORS (2021) INC.** (“National”), **12986647 CANADA LTD.** (“Allsco”), **GLASS 8 INC.** (“Glass 8”), **POLAR WINDOW OF CANADA LTD.** (“PWC”), **12986591 CANADA LTD.** (“All Weather”), **10064720 MANITOBA LTD.** (“1006”), **12986914 CANADA LTD.** (“6914”), **POLAR HOLDING LTD.** (“PHL”), and PHL collectively with Accurate, National, Allsco, Glass 8, PWC, All Weather, 1006 and 6914 are hereinafter referred to as the “**Borrowers**”, and individually, a “**Borrower**”)

- and -

THE TORONTO-DOMINION BANK (the “**Lender**”)

CONTEXT:

A. The Lender maintains in favour of Accurate and National three operating loan facilities and three committed reducing term loan facilities and provides to them other related banking services pursuant to a loan agreement dated March 23, 2022, and maintains in favour of 1006 an operating loan facility and committed reducing term loan facility and provides other related banking services pursuant to a loan agreement dated March 23, 2022 (collectively, as amended from time to time, the “**Current Loan Agreements**”).

B. The Borrowers are experiencing serious cash flow deficiencies and other financial difficulties and are in default of certain obligations under the Current Loan Agreements. The Borrowers have advised the Lender that they intend to apply to the CCAA Court for protection from their creditors under the CCAA, but prior to doing so required an increase in one of Accurate’s operating loan facilities in order to permit the Borrowers to continue operating and obtain the professional advice required in order to prepare for such application. The Lender therefore agreed to grant a temporary increase of \$800,000 in an operating loan facility of Accurate (the “**Bulge Facility**”) in order to permit the Borrowers to pay certain critical payables and obtain the professional advice pursuant to a forbearance and amending agreement dated January 26, 2023 (the “**Forbearance Agreement**”) between the Lender, Accurate, National, 1006, PHL, Glass 8, All Weather, Allsco, Stephen Segal, Tim Morris and Brant Enderle.

C. The Borrowers, 6914 and 1006 have requested that the Lender provide the Borrowers with super-priority, secured, revolving interim financing during the CCAA Proceeding in order to permit the payment of critical payments and fund restructuring costs, and the Lender has agreed to do so on the terms and subject to the conditions set out in this Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties agree as follows:

1. INTERPRETATION

1.1 Definitions

In this Agreement, in addition to terms defined elsewhere in this Agreement, the following terms have the following meanings:

- (a) **“Administration Charge”** means a charge created by the CCAA Court in the CCAA Proceeding to secure payment of the Administration Costs.
- (b) **“Administration Costs”** means, collectively:
 - (i) all reasonable and documented fees and expenses (including the fees and expenses of its counsel) of any CRO;
 - (ii) all reasonable and documented fees and expenses for the counsel for the Borrowers in connection with the CCAA Proceeding; and
 - (iii) all reasonable and documented fees and expenses incurred by the Monitor and its counsel.
- (c) **“Advance”** means any advance by the Lender to a Borrower under the Interim Facility.
- (d) **“Agreement”** means this interim facility loan agreement between the Borrowers and the Lender, including all Schedules, as it may be confirmed, amended, extended, supplemented or restated by written agreement between the Parties.
- (e) **“Applicable Law”** means, at any time, and whether or not having the force of law any domestic or foreign statute, law (including common and civil law), treaty, code, ordinance, rule, regulation, restriction or by-law, any judgment, order, writ, injunction, decision, ruling, decree or award issued or made by any Governmental Authority, any regulatory policy, practice, guideline or directive of any Governmental Authority, or any other Authorization, in each case binding on or affecting the Person referred to in the context in which the term is used or binding on or affecting the Property of that Person.
- (f) **“Arm’s Length”** means arm’s length as that term is interpreted in connection with its use in the Income Tax Act.
- (g) **“Asset Disposition”** means, at any time, the direct or indirect sale, transfer, assignment, conveyance, lease or other disposition of any Property by any Borrower, other than the sale of Inventory in the ordinary course or the factoring of Receivables in accordance with current practices and with Persons and on terms disclosed in writing to the Lender.
- (h) **“Authorization”** means any authorization, order, permit, approval, grant, licence, qualification, consent, exemption, waiver, right, franchise, privilege, certificate, judgment, writ, injunction, award, determination, direction, decree, by-law, rule or regulation of any Governmental Authority having jurisdiction over any Person, whether or not having the force of law.
- (i) **“Borrowers”** and **“Borrower”** are defined in the introductory paragraph of this Agreement.
- (j) **“Borrower Account”** means the current account maintained by the Lender in favour of Accurate, identified as account no. 5352500, transit no. 6330-004, from which Advances are made under the Interim Facility.
- (k) **“Branch”** means the Lender’s Winnipeg branch 6330 located at 360 Main Street, Concourse Level, PO Box 45, Winnipeg, Manitoba, Canada, R3C 3Z8 or any other branch of the Lender that the Lender designates from time to time.

- (l) **“Bulge Documents”** means the Forbearance Agreement, the Bulge Security and all other documentation taken in connection with or related thereto.
- (m) **“Bulge Facility”** is defined in Context paragraph B.
- (n) **“Bulge Obligations”** means, at any time, all of the indebtedness, liabilities and obligations, absolute or contingent, direct or indirect, matured or not matured, liquidated or unliquidated, of the Accurate, National, 1006, PHL, Glass 8, All Weather, Allsco and the Individual Guarantors to the Lender arising under the Bulge Facility or created by reason of or relating to the Forbearance Agreement, the Bulge Security or any agreement or document taken in connection therewith, including all principal and any unpaid interest on them, all costs and expenses of the Lender thereunder, and any other sums payable to the Lender thereunder.
- (o) **“Bulge Security”** means the security agreements creating Security Interests provided by PHL, All Weather and Allsco under the Forbearance Agreement and the Guarantees provided by 1006, Glass 8, All Weather and Allsco under the Forbearance Agreement, including the agreements and Guarantees listed on **Schedule “A”**.
- (p) **“Business”** means:
 - (i) in the case of Accurate, a window and door producer and installer;
 - (ii) in the case of National, a flooring, tile, windows and wall finishes retailer;
 - (iii) in the case of 1006, a producer of building materials;
 - (iv) in the case of Glass 8, a designer, fabricator and installer of glass;
 - (v) in the case of PHL, an investment and holding company;
 - (vi) in the case of All Weather, an installer of windows, doors, siding and garage doors;
 - (vii) in the case of Allsco, a manufacturer of windows, doors and siding;
 - (viii) in the case of PHC, a holding company that owns the shares of 1006, PWC, Accurate and National;
 - (ix) in the case of PWC, a fabricator, supplier and installer of windows and doors for residential and commercial projects; and
 - (x) in the case of 6914, a holding company which owns the shares of Allsco and Alweather.
- (q) **“Business Day”** means any day excluding a Saturday, Sunday or other day on which commercial banking institutions are authorized or required by law to be closed in Winnipeg, Manitoba, Canada.
- (r) **“Canadian Dollars”**, **“Cdn.\$”** or **“\$”** each means currency of Canada which, as at the time of payment or determination, is legal tender in Canada for the payment of public or private debts.

- (s) “**CCAA**” means the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended.
- (t) “**CCAA Cash Flow**” means the cash receipts (other than Advances under the Interim Facility) of and disbursements by the Borrowers on or after the Commencement Date.
- (u) “**CCAA Charges**” means the Interim Facility Charge, the Administration Charge, the Directors’ Charge and any other charge created by the CCAA Court and consented to by the Lender.
- (v) “**CCAA Court**” means the Court of King’s Bench of Manitoba which will preside over the CCAA Proceeding or any appeal court therefrom.
- (w) “**CCAA Order**” means the Initial Order, the Extension Order or any other Order of the CCAA Court consented to by the Lender.
- (x) “**CCAA Plan**” means any plan of compromise or arrangement filed in the CCAA Proceeding.
- (y) “**CCAA Proceeding**” is defined in Section 5.2(a).
- (z) “**Closing Date**” means the date designated by the Lender following the satisfaction or waiver of the conditions precedent set out in Sections 5.1 and 5.2.
- (aa) “**Collateral**” is defined in Section 4.1(a)(i).
- (bb) “**Come-back Hearing**” means a hearing before the CCAA Court in the CCAA Proceeding subsequent to the granting of the Initial Order to, among other things, increase the Interim Facility and the principal amount secured by the Interim Facility Charge to the Maximum Amount.
- (cc) “**Commencement Date**” means the date on which the Initial Order is pronounced and becomes effective.
- (dd) “**Communication**” means any notice, demand, request, consent, approval or other communication which is required or permitted by this Agreement to be given or made by a Party.
- (ee) “**Constating Documents**” means a Borrower’s articles of incorporation, amalgamation, arrangement or continuance or similar organizational documents, notice of articles, members agreement, memorandum and articles of association, articles or similar organizational documents, by-laws and any unanimous shareholder agreement or other shareholder agreement.
- (ff) “**Criminal Code**” means the *Criminal Code*, R.S.C. 1985, c. C-46.
- (gg) “**Critical Payments**” means any amounts contemplated by the Rolling Thirteen Week Cash Flow Projection or Thirteen Week Cash Flow Projection, as applicable, required to pay suppliers of goods and services that are critical to the immediate continued operations of the Borrowers to pay their employees and make required remittances to applicable Governmental Authorities from such employees payroll, pay Administration Costs and pay any other amounts critical and necessary in order to maintain their operations during the CCAA Proceedings.

- (hh) “**CRO**” means a chief restructuring officer of the Borrowers engaged by the Borrowers to assist them during the CCAA Proceeding, which CRO is, and whose terms of engagement are, acceptable to the Lender.
- (ii) “**Current Facilities**” means the operating loan facilities, committed reducing term loan facilities and related banking services provided by the Lender to Accurate, National and 1006 pursuant to the Current Loan Agreements.
- (jj) “**Current Loan Agreements**” means the loan agreement dated March 23, 2022 between the Lender, Accurate and National and the loan agreement dated March 23, 2022 between the Lender and 1006, as amended from time to time.
- (kk) “**Current Loan Documents**” means the Current Loan Agreements, the Current Security, the Current Guarantees and all other documentation taken in connection with or related thereto.
- (ll) “**Current Guarantees**” means the Guarantees granted in favour of the Lender under the Current Loan Agreements, including the Guarantees listed on **Schedule “B”**.
- (mm) “**Current Obligations**” means, at any time, all of the indebtedness, liabilities and obligations, absolute or contingent, direct or indirect, matured or not matured, liquidated or unliquidated, of Accurate, National and 1006 to the Lender arising under the Current Facilities or created by reason of or relating to the Current Loan Agreements or any other Current Loan Document, including all principal and any unpaid interest on them, all fees due under the Current Loan Agreement, all costs and expenses of the Lender, and any other sums payable by Accurate, National and 1006 to the Lender under the Current Loan Documents.
- (nn) “**Current Security**” means the agreements creating Security Interests in favour of the Lender provided pursuant to the Current Loan Agreements, including the agreements listed on **Schedule “B”**.
- (oo) “**Debt**” means any indebtedness, liabilities or obligations, absolute or contingent, direct or indirect, matured or not matured, liquidated or unliquidated, of any Person, including any obligations that are considered as debt in accordance with GAAP and any indebtedness, liabilities or obligations that would be considered to be a provable claim under the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, as amended.
- (pp) “**Default**” means any event or condition that with the passage of any time specified, the giving of any notice or the satisfaction of any condition subsequent would constitute an Event of Default.
- (qq) “**Directors’ Charge**” means a charge created by the CCAA Court in the CCAA Proceeding in favour of the directors and officers of the Borrowers.
- (rr) “**Environmental Activity**” means any past, present or future activity, event or circumstance in respect of any Hazardous Materials, including their storage, use, holding, collection, purchase, accumulation, assessment, generation, manufacture, construction, processing, treatment, stabilization, disposition, handling or transportation, or their Release, escape, leaching, dispersal or migration into or movement through the Natural Environment.
- (ss) “**Environmental Laws**” means, at any time, all Applicable Laws relating to Hazardous Materials, Environmental Activity and to the protection and regulation of the Natural

Environment, or to human health and safety as it relates to Environmental Activity or the Natural Environment.

- (tt) **“Environmental Liabilities”** means all Losses of any kind suffered by or against any Person or its business or Property, including or as a result of any order, investigation or action by any Governmental Authority, arising from or with respect to any one or more of the following:
- (i) the Release, threat of Release or presence of any Hazardous Materials, affecting any Property, whether or not originating or emanating from a Person’s Property or any contiguous Real Property or immovable Property, including any loss of value of any Property as a result of that Release, threat of Release or presence of any Hazardous Materials;
 - (ii) the Release of any Hazardous Materials owned by, or under the charge, management or Control of, that Person, or any predecessor or assignor of that Person;
 - (iii) liability incurred under any Environmental Laws for any costs incurred by any Governmental Authority or any other Person, or for damages from injury to, destruction of, or loss of natural resources in relation to, a Person’s Property or related Property, including the reasonable costs of assessing that injury, destruction or loss; and
 - (iv) liability for personal injury or Property damage arising in connection with breach of any Environmental Laws, including by reason of any civil law offences or quasi-criminal offences or under any statutory or common law tort or similar theory, including damages assessed for the maintenance of a public or private nuisance or for the carrying on of a dangerous activity at, near, or with respect to a Person’s Property or elsewhere.
- (uu) **“Event of Default”** is defined in Section 8.1.
- (vv) **“Extension Order”** is defined in Section 5.3(a).
- (ww) **“Facility Availability”** is defined in Section 2.1(a)(ii).
- (xx) **“Financial Statements”** means a balance sheet, statement of income and retained earnings, statement of cash flow and any other statements required by GAAP, together with all schedules and notes to them.
- (yy) **“Forbearance Agreement”** means the forbearance and amending agreement dated January 26, 2023 between the Lender as lender, Accurate, National and 1006 as borrowers, and PHL, Glass 8, All Weather, Allsco and the Individual Guarantors as guarantors.
- (zz) **“GAAP”** means Canadian generally accepted accounting principles applicable to private enterprises under Part II of the CPA Canada Handbook of the Chartered Professional Accountants of Canada, as amended at any time, applicable as at the date on which the calculation is made or required to be made in accordance with GAAP.
- (aaa) **“General Conditions”** is defined in Section 5.1.

- (bbb) **“Governmental Authority”** means any federal, provincial, state, local, municipal, regional, territorial, aboriginal, or other government, governmental or public department, branch, ministry, or court, domestic or foreign, including any district, agency, commission, board, arbitration panel or authority and any subdivision of any of them exercising or entitled to exercise any administrative, executive, judicial, ministerial, prerogative, legislative, regulatory, or taxing authority or power of any nature; and any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of them, and any subdivision of any of them.
- (ccc) **“Guarantee”** means any absolute or contingent liability of any Person under any guarantee, agreement, endorsement (other than for collection or deposit in the ordinary course of business), discount with recourse or other obligation to pay, purchase, repurchase or otherwise be or become liable or obligated upon any Debt of any other Person.
- (ddd) **“Hazardous Materials”** means any substance that when Released into the Natural Environment creates a material risk of causing material harm or degradation, immediately or at some future time, to the Natural Environment, or any ascertainable risk to human health or safety, including any pollutant, contaminant, waste, hazardous waste, dangerous goods (as defined by applicable Environmental Laws), asbestos and polychlorinated biphenyls.
- (eee) **“Income Tax Act”** means the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.).
- (fff) **“Individual Guarantors”** means Stephen Segal, Tim Morris and Brant Enderle, and **“Individual Guarantor”** means any one of them.
- (ggg) **“Initial Advance Conditions”** is defined in Section 5.2.
- (hhh) **“Initial Advances”** is defined in Section 2.1(a)(i).
- (iii) **“Initial Order”** is defined in Section 5.2(a).
- (jjj) **“Insolvency Law”** means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, the CCAA, the *Winding-up and Restructuring Act*, R.S.C. 1985, c. W-11, and any other laws relating to bankruptcy, insolvency, reorganization, compromise of debts or similar laws of any jurisdiction affecting creditors’ rights generally.
- (kkk) **“Interim Facility”** is defined in Section 2.1(a).
- (lll) **“Interim Facility Charge”** is defined in Section 4.1(a).
- (mmm) **“Interim Facility Obligations”** means, at any time, all of the indebtedness, liabilities and obligations, absolute or contingent, direct or indirect, matured or not matured, liquidated or unliquidated, of the Borrowers to the Lender arising under the Interim Facility or created by reason of or relating to this Agreement or any other Loan Document, including all Advances and any unpaid interest on them, all fees due under this Agreement, all costs and expenses of the Lender, and any other sums payable by the Borrowers to the Lender, under the Loan Documents.
- (nnn) **“Interest Payment Date”** means the first Business Day of each month.
- (ooo) **“Inventory”** means inventory owned by a Borrower, including raw materials, work-in-process and finished goods.

- (ppp) **“Lien”** means any Security Interest, lien (statutory, common law, equitable or otherwise), privilege, charge, trust deemed to exist under any Applicable Law or other encumbrance of any kind, or any other agreement or arrangement creating in favour of any claimant or creditor a right relating to any particular Property that is in priority to the right of any ordinary creditors relating to that Property, and including the right of a lessor under a capital lease or operating lease.
- (qqq) **“Loan Documents”** means this Agreement and any other instruments and agreements entered into between the Lender and any Borrower relating to the Interim Facility.
- (rrr) **“Margin”** means 4%.
- (sss) **“Material Adverse Change”** means:
- (i) the occurrence and continuance of any action, event, effect or change after the pronouncement date of the Initial Order that results in or causes, or which could reasonably be expected to result in or cause, a material adverse change in any of:
 - (A) the condition (financial or otherwise), business, performance, prospects, operations or property (including the Collateral) of any Borrower;
 - (B) the ability of any Borrower to fully and timely perform its obligations under any Loan Document or Bulge Document to which it is a party;
 - (C) the validity or enforceability of the Interim Facility Charge or any Loan Document, or the rights and remedies of the Lender thereunder; or
 - (ii) the filing by the Monitor with the CCAA Court of a report under section 23(1)(d)(i) of the CCAA of a material adverse change in any Borrower’s projected cash-flow or financial circumstances.
- (ttt) **“Material Contract”** means any agreement or contract to which a Borrower is party the termination of which would constitute a Material Adverse Change.
- (uuu) **“Maximum Amount”** is defined in Section 2.1(a).
- (vvv) **“Monitor”** means Deloitte Restructuring Inc., in its capacity as monitor in the CCAA Proceeding, or such other firm that is acceptable to the Lender and is appointed as a replacement monitor in the CCAA Proceeding.
- (www) **“Natural Environment”** means the air, land, subsoil and water (including surface water and ground water), or any combination or part of them.
- (xxx) **“Net Proceeds”** with respect to an Asset Disposition, the gross cash amount receivable by a Borrower from that Asset Disposition, including, as at the time received by such Borrower, all cash amounts paid following the closing of an Asset Disposition under any deferred or other payment arrangement agreed to by such Borrower in connection with the Asset Disposition, less the aggregate of taxes, commissions and out-of-pocket costs and expenses incurred by such Borrower in connection with the Asset Disposition (including reasonable brokerage fees and legal fees paid to any Person, but excluding any fees or expenses paid to a Person not at Arm’s Length).
- (yyy) **“Order”** means any Order of a Court in the CCAA Proceeding.

(zzz) "**Parties**" means, collectively, the Borrower and the Lender, and their respective successors and permitted assigns, and "**Party**" means any one of them.

(aaaa) "**Permitted Debt**" means:

- (i) the Interim Facility Obligations;
- (ii) any Debt permitted by the Initial Order or Extension Order;
- (iii) any Debt contemplated by the Thirteen Week Cash Flow Projection or any Rolling Thirteen Week Cash Flow Projection approved by the Lender and the Monitor; and
- (iv) any Debt incurred prior to the Commencement Date Debt, or subsequent to the Commencement Date that is subordinate to the Interim Facility and, if in excess of \$25,000, has been consented to by the Monitor and Lender.

(bbbb) "**Permitted Lien**" means any of the following:

- (i) any Lien against Property of a Borrower disclosed to the Lender that arose prior to the Commencement Date;
- (ii) any Lien against Property of a Borrower for Taxes accruing subsequent to the Commencement Date;
- (iii) any Lien against Property of a Borrower imposed or permitted by Applicable Law (including a carrier's Lien, garage keeper's Lien or material supplier's Lien) which arose prior to the Commencement Date or is inchoate and relates to obligations of a Borrower not yet due or delinquent;
- (iv) any undetermined or inchoate Lien against Property of a Borrower arising in the ordinary course of and incidental to construction by or current operations of that Borrower that arose prior to the Commencement Date or that relates to obligations that are not yet due or delinquent;
- (v) easements, rights-of-way, servitudes or other similar rights or restrictions relating to land in which any Borrower has an interest (including rights-of-way and servitudes for railways, sewers, drains, pipe lines, gas and water mains, and electric light, power, telephone internet and cable television conduits, poles, wires, cables and optic fibre cables), granted to or reserved or taken by other Persons, which either alone or in the aggregate do not materially detract from the value of the Property of such Borrower collectively or materially impair the use or operation of that Property;
- (vi) any Lien given by a Borrower to a public utility or any Governmental Authority when and to the extent required by that public utility or Governmental Authority that relates to obligations that are not yet due or delinquent and which Lien does not, either alone or in the aggregate, materially detract from the value of the Property of such Borrower subject to that Lien or materially impair the use or operation of that Property;
- (vii) the reservation in any original grant from the Crown of any real Property of a Borrower or interests in it, and statutory exceptions to title;

- (viii) the Bulge Security;
 - (ix) the Current Security; or
 - (x) any charges granted in the Initial Order as amended by a CCAA Order from time to time or within the CCAA Proceeding.
- (cccc) "**Person**" will be broadly interpreted and includes a natural person, whether acting in their own capacity, or in their capacity as executor, administrator, estate trustee, trustee or personal or legal representative, and the heirs, executors, administrators, estate trustees, trustees or other personal or legal representatives of a natural person; a corporation or a company of any kind, a partnership of any kind, a sole proprietorship, a trust, a joint venture, an association, an unincorporated association, an unincorporated syndicate, an unincorporated organization or any other association, organization or entity of any kind, and a Governmental Authority.
- (dddd) "**Prime Rate**" means a fluctuating interest rate per annum, in effect at any time, which is the interest rate per annum, however designated, announced and adjusted at any time by the Lender as its reference rate then in effect for determining interest rates on Canadian Dollar commercial loans made by it in Canada, provided that no notice by the Lender to the Borrowers of any change to the Prime Rate will be required for that change to be effective.
- (eeee) "**Priority Claim**" means any Debt which is subject to or secured by one or more statutory Liens created or arising, without any necessity for the consent or agreement of any Borrower, by operation of Applicable Law that rank or are capable of ranking in priority to or *pari passu* with the Security Interests created by the Interim Facility Charge or Security Documents.
- (ffff) "**Property**" means present and after-acquired property, assets, undertakings and privileges, whether real or personal, tangible or intangible, moveable or immovable, and all interests in them.
- (gggg) "**Receivable**" means a trade account receivable of or owned by a Borrower, and all related instruments and documents.
- (hhhh) "**Release**" includes deposit, leak, emit, add, spray, inject, inoculate, abandon, spill, seep, pour, empty, throw, dump, place and exhaust, and when used as a noun has a corresponding meaning.
- (iiii) "**Rolling Thirteen Week Cash Flow Projection**" means a 13 week cash flow statement prepared by the Borrowers, on a consolidated basis, that is required under the CCAA and updates the rolling 13 week cash flow forecasts of receipts and disbursements of the Borrowers contained in the Thirteen Week Cash Flow Projection or previously delivered Rolling Thirteen Week Cash Flow Projection, which will be in form and content satisfactory to the Monitor and the Lender.
- (jjjj) "**SISP**" means any sale, refinancing and investment solicitation process satisfactory to the Lender and approved by an Order of the CCAA Court.
- (kkkk) "**Security**" means, collectively, the Interim Facility Charge, the Current Security and the Bulge Security.
- (llll) "**Security Documents**" is defined in Section 9.1(a).

- (mmmm) **"Security Interest"** means any mortgage, charge, pledge, assignment, hypothecation, title retention, finance lease or security interest, including any trust obligations, creating in favour of any creditor a right in respect of any Property.
- (nnnn) **"Subsequent Advance"** is defined in Section 5.3.
- (oooo) **"Subsequent Advance Conditions"** is defined in Section 5.3.
- (pppp) **"Termination"** is defined in Section 2.4.
- (qqqq) **"Termination Date"** is defined in Section 2.4.
- (rrrr) **"Thirteen Week Cash Flow Projection"** means the initial 13 week cash flow statement prepared by the Borrowers, on a consolidated basis, that is required under the CCAA and that sets out the projected cash flow forecasts of receipts and disbursements of the Borrowers for a period of thirteen weeks following the Commencement Date, which will be in form and content satisfactory to the Monitor and the Lender.

1.2 Certain Rules of Interpretation

- (a) In this Agreement, words signifying the singular number include the plural and vice versa, and words signifying gender include all genders. Every use of the words "including" or "includes" in this Agreement is to be construed as meaning "including, without limitation" or "includes, without limitation", respectively.
- (b) The division of this Agreement into Articles and Sections, the insertion of headings and the inclusion of a table of contents are for convenience of reference only and do not affect the construction or interpretation of this Agreement.
- (c) References in this Agreement to an Article, Section or Schedule are to be construed as references to an Article, Section or Schedule of or to this Agreement unless otherwise specified.
- (d) Unless otherwise specified in this Agreement:
- (i) time periods within which or following which any calculation or payment is to be made, or action is to be taken, will be calculated by excluding the day on which the period begins and including the day on which the period ends; and
 - (ii) if the last day of a time period is not a Business Day, the time period will end on the next Business Day.
 - (iii) Unless otherwise specified, any reference in this Agreement to any statute includes all regulations and subordinate legislation made under or in connection with that statute at any time, and is to be construed as a reference to that statute as amended, modified, restated, supplemented, extended, re-enacted, replaced or superseded at any time.
 - (iv) References to an amount of money in this Agreement will, unless otherwise expressly stated, be to that amount in Canadian Dollars.

1.3 Governing Law

This Agreement is governed by, and is to be construed and interpreted in accordance with, the laws of the Province of Manitoba and the laws of Canada applicable in that Province.

1.4 Entire Agreement

This Agreement, together with the other Loan Documents and any other agreements and documents to be delivered under this Agreement, constitutes the entire agreement between the Parties pertaining to the subject matter of this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties, and there are no representations, warranties or other agreements between the Parties, express or implied, in connection with the subject matter of this Agreement except as specifically set out in this Agreement or in the other Loan Documents, or in any other agreements and documents delivered under this Agreement. No Party has been induced to enter into this Agreement in reliance on, and there will be no liability assessed, either in tort or contract, with respect to, any warranty, representation, opinion, advice or assertion of fact, except to the extent it has been reduced to writing and included as a term in this Agreement or in the other Loan Documents, or in any other agreements and documents delivered under this Agreement.

1.5 Conflicts

In the event of a conflict in or between the provisions of this Agreement and the provisions of any other Loan Document, then, despite anything contained in that other Loan Document, the provisions of this Agreement will prevail and those provisions of that other Loan Document will be deemed to be amended to the extent necessary to eliminate the conflict. If any act or omission is expressly prohibited under a Loan Document, other than this Agreement, but this Agreement does not expressly permit that act or omission, or if any act is expressly required to be performed under a Loan Document, other than this Agreement, but this Agreement does not expressly relieve the applicable Borrower from that performance, that circumstance will not constitute a conflict in or between the provisions of this Agreement and the provisions of that other Loan Document.

1.6 Schedules

The following is a list of Schedules:

Schedules	Subject Matter
Schedule "A"	Bulge Security
Schedule "B"	Current Security and Current Guarantees

2. CREDIT FACILITY

2.1 Interim Facility

- (a) Subject to the terms and conditions of this Agreement, the Lender establishes in favour of the Borrowers a senior secured super-priority revolving interim credit facility (the "**Interim Facility**") in the maximum principal amount of \$1,200,000 (as adjusted from time to time in accordance with this Agreement, the "**Maximum Amount**"), provided that the principal amount of the Interim Facility Obligations shall be subject to the following limits:
- (i) in the period between the Closing Date and the date of the Come-Back Hearing, the lesser of (A) \$200,000, (B) the applicable forecast borrowing requirements of

the Borrowers during such period as set forth in the Thirteen Week Cash Flow Projection, and (C) the amount of the Interim Facility Charge approved in the Initial Order (the “**Initial Advances**”); and

- (ii) in the period commencing from and after the Come-Back Hearing, the lesser of (A) the Maximum Amount, less the outstanding Bulge Obligations, (B) the then applicable forecast borrowing requirements of the Borrowers after such date as set forth in the Rolling Thirteen Week Cash Flow Projection, plus such other amount in excess thereof as may be approved in writing by the Monitor and the Lender, and (C) the amount of the Interim Facility Charge approved by the Extension Order,

(such limits being the “**Facility Availability**”).

- (b) Within the limits and restrictions set out in Section 2.1(a), the outstanding principal amount of the Interim Facility Obligations may revolve and the Borrowers may borrow, repay and reborrow amounts under the Interim Facility under from the Lender during the period from the Closing Date to, but excluding, the Termination Date.

2.2 **Advances under Interim Facility**

- (a) Upon the execution of this Agreement, there shall be no further drawdowns or availability under the Current Facilities whereupon the Current Facilities shall cease to be associated with the Borrower Account. Upon the Initial Order being pronounced, there shall be no further drawdowns or availability under the Bulge Facility, whereupon Bulge Facility shall cease to be associated with the Borrower Account.
- (b) Advances under the Interim Facility will be denominated in Canadian currency and shall be made and available in the Borrower Account, provided that no Advance will be made under the Interim Facility if following such Advance, the aggregate outstanding principal Interim Facility Obligations will exceed the Facility Availability, which aggregate outstanding principal Interim Facility Obligations shall, for greater certainty, be equal to the aggregate amount of all cheques, electronic funds transfers and other items of payment drawn on the Borrower Account and honoured by the Lender, together with the aggregate amount of all other withdrawals debited to the Borrower Account net of the credit balance, if any, of the Borrower Account and any deposits or credits to the Borrower Account.
- (c) The Lender may, at any time an Event of Default has occurred and is continuing, after three (3) days terminate the Borrower Account upon written notice to the Borrowers, even if the Lender has not accelerated payment of the outstanding Interim Facility Obligations or exercised any of its other rights and remedies under Article 8.
- (d) In addition to the other limits specified in this Agreement, Advances are subject to the following limitations:
 - (i) Initial Advances are only available if the General Conditions and Initial Advance Conditions have been satisfied or waived;
 - (ii) Subsequent Advances are only available if the General Conditions, Initial Advance Conditions and Subsequent Advance Conditions have been satisfied or waived and continue to be satisfied or waived; and
 - (iii) no Advance may occur if any Default or Event of Default is subsisting.

2.3 Permitted Uses of Interim Facility

The Interim Facility is to be used solely for the following purposes:

- (a) to fund the payment of Debts confirmed by the Monitor to the Lender in writing to be Critical Payments which are contemplated by and in accordance with:
 - (i) in the period between the Closing Date and the date on which the Subsequent Advance Conditions have been satisfied or waived, the Thirteen Week Cash Flow Projection; and
 - (ii) in the period following the satisfaction or waiver of the Subsequent Advance Conditions, the most recent Rolling Thirteen Week Cash Flow Projection, as amended from time to time; and
- (b) to pay Administration Costs approved by the CCAA Court in accordance with the CCAA Order,

provided that no Advances under the Interim Facility shall be used to pay Debts of the Borrowers that arose prior to the Commencement Date, or to make any payments to any Person not at Arm's Length to the Borrowers, except as may be permitted by CCAA Court and agreed to by the Lender in its sole discretion.

2.4 Term of Interim Facility

The Interim Facility shall terminate and the Interim Facility Obligations shall mature and become due and payable (the "**Termination**") on the earlier of the date on which any of the following occurs (each a "**Termination Date**", unless the Interim Facility is extended in writing by the Lender on such terms as it determines):

- (a) on May 8, 2023;
- (b) the date of implementation of any plan of compromise and arrangement sanctioned by final Order of the CCAA Court;
- (c) the effective date of any recapitalization of the Borrowers pursuant to a CCAA Plan;
- (d) the sale of all or substantially all of the Property of the Borrowers, taken as a whole, under and pursuant to the SISP and an Order of the CCAA Court;
- (e) the date on which the CCAA Stay expires without being extended by an Order of the CCAA Court or the CCAA Proceeding is terminated or dismissed; or
- (f) the date on which there occurs and is continuing an Event of Default and the Lender declares all of the Interim Facility Obligations to be immediately due and payable and demands the repayment in full thereof.

2.5 Payments under the Interim Facility

- (a) On the first Business Day of each week following the Commencement Date, the Borrowers shall pay to the Lender 100% of all amounts paid in the prior week to the Borrowers other than Advances or amounts to be held in trust by a Borrower, but including any amounts released from trust, in repayment of the Bulge Facility until paid in full.

- (b) If there is an Asset Disposition by any Borrower, then:
- (i) if the Current Security or Bulge Security ranks in priority to all Liens against the Property subject to such Asset Disposition other than the Interim Facility Charge and the other CCAA Charges, the Net Proceeds of such Asset Disposition shall be paid forthwith to the Lender and applied by the Lender in repayment of the Current Obligations and Bulge Obligations, as applicable; and
 - (ii) if the Current Security or Bulge Security does not rank in priority to all Liens against the Property subject to such Asset Disposition other than the Interim Facility Charge and the other CCAA Charges, such portion of the Net Proceeds as required by the Lender shall be paid to the Lender in permanent repayment of the Interim Facility Obligations, and

any portion of the Net Proceeds in excess thereof shall be held by the Monitor subject to further Order of the CCAA Court. If the Net Proceeds or a portion thereof are applied in repayment of the Interim Facility Obligations, the Maximum Amount shall be reduced by the amount applied to the Interim Facility Obligations. To the extent required under the CCAA or any CCAA Order, the Borrowers shall apply to the CCAA Court for an Order authorizing and directing the Borrowers and/or the Monitor to make such payment.

- (c) If the aggregate amount of the Advances at any time exceeds the Maximum Amount or any other limit to Facility Availability, the Borrowers shall immediately repay to the Lender the amount of excess, whether or not the Lender has given notice to the Borrowers requiring such payment.
- (d) The full amount of the Interim Facility Obligations shall become automatically due and payable to the Lender on the Termination Date without notice or demand.

2.6 Lender's Records

- (a) The Lender will maintain records of the Interim Facility Obligations, outstanding Advances and accrued interest, fees and any other amounts payable under this Agreement or the other Loan Documents, the date or dates on which each Advance was made and the amounts paid at any time by any Borrower to the Lender under this Agreement or any other Loan Document for Advances, interest, fees and other amounts and the operation of the Borrower Account.
- (b) The Borrowers agree that all records kept by the Lender will constitute *prima facie* evidence of the matters referred to in this Section, but the failure of the Lender to make any entry in its records will not limit or otherwise affect the obligations of the Borrowers under this Agreement or with respect to any, Advances, interest, fees or other amounts owed by it to the Lender.

2.7 Consent to Disclosure of Information

Each Borrower consents to the Lender obtaining from the Monitor, any credit bureau, credit reporting agency, creditor of the Borrowers or any other Person, any information, including personal information, relating directly or indirectly to its credit, finances, Business or Property of the Borrowers that may be required by the Lender at any time for the purposes of this Agreement or any other Loan Documents, including to establish, maintain and manage the relationship of each Borrower with the Lender, and authorizes and directs such Persons to provide such information to the Lender. Each Borrower authorizes the Lender to disclose any such information to any Person as the Lender deems necessary in the course of the CCAA Proceeding.

3. CALCULATION OF INTEREST, FEES AND EXPENSES

3.1 Calculation and Payment of Interest

- (a) The Borrowers will pay interest on the Interim Facility Obligations outstanding at any time at a variable rate per annum equal to the Prime Rate in effect at any time plus the Margin, both before and after the Termination Date, Default or judgment, which shall be payable by the Borrowers to the Lender in cash monthly on the last day of each month until the repayment in full of the Interim Facility Obligations.
- (b) Changes in the Prime Rate will cause an immediate adjustment of the interest rate applicable to the Interim Facility without the necessity of any notice to the Borrowers.
- (c) To the maximum extent permitted by Applicable Law, the Borrowers will pay interest on all overdue amounts owing by the Borrowers under this Agreement, including any overdue interest payments, from the date each of those amounts is due until the date each of those amounts is paid in full. That interest will be calculated daily, compounded monthly and payable on demand of the Lender at a rate per annum equal to the interest rate then applicable to that Advance plus 2% per annum.

3.2 Expenses

All reasonable expenses of the Lender incurred in the CCAA Proceeding, in negotiating, preparing, registering and executing the Loan Documents, in enforcing the Security and other Loan Documents, including the fees, disbursements and costs of legal counsel acting on behalf of the Lender (on a solicitor and its own client and full indemnity basis), inspecting or approving the Property of any Borrower subject to the Security, and in any environmental audit or study undertaken or commissioned by the Lender shall be added to and form part of the Interim Facility Obligations.

3.3 Interim Facility Fee

As consideration for the Lender providing the Interim Facility to the Borrowers, the Borrowers shall pay a commitment fee equal to \$25,000, which shall be payable on or before the Closing Date and shall be considered to be earned by the Lender upon the execution by the Lender of this Agreement.

3.4 General Provisions Regarding Interest

- (a) If there is any dispute, disagreement or adjudication involving or relating to the determination of the Prime Rate in effect at any time, a certificate of the Lender as to the rate in question will be accepted as prima facie evidence of that rate for all purposes of this Agreement.
- (b) Each determination by the Lender of the amount of interest, fees or other amounts payable by the Borrowers to the Lender under this Agreement will be prima facie evidence of the accuracy of the determination.
- (c) Except as otherwise provided in this Agreement, all interest, fees and other amounts payable by the Borrowers under this Agreement will accrue daily, be calculated as described in this Agreement, and be payable both before and after demand, maturity, default and judgment.
- (d) To the full extent permitted by Applicable Law, the covenant of the Borrowers to pay interest at the rates provided in this Agreement will not merge in any judgment relating to any obligation of the Borrowers to the Lender.

- (e) For the purposes of the *Interest Act*, R.S.C. 1985, c. I-15:
- (i) the principle of deemed reinvestment of interest will not apply to any calculation or determination of interest under this Agreement;
 - (ii) the rates of interest specified in this Agreement are intended to be nominal rates and not effective rates; and
 - (iii) each rate of interest specified in this Agreement as an interest rate "per annum" or a similar expression, is to be calculated on the basis of a calendar year of 365 or 366 days, as applicable, and the annual rate of interest which is equivalent to that interest rate will be that rate multiplied by a fraction, the numerator of which is the total number of days in each year and the denominator of which is 365 or 366 days, as applicable. If the amount of any interest is determined or expressed on the basis of a period of less than a year of 365 or 366 days, as applicable, the equivalent annual rate is equal to the rate so determined or expressed, divided by the number of days in the period, and multiplied by the actual number of days in that calendar year.

3.5 Maximum Return

- (a) In no event will any interest, fees or other amounts payable under this Agreement exceed the maximum rate permitted by Applicable Law. If any provisions of this Agreement would require the Borrowers to pay any interest or make any other payment that is construed by a court of competent jurisdiction to be interest in an amount or calculated at a rate that would be prohibited by Applicable Law or would result in receipt by the Lender of interest at a criminal rate (as those terms are construed under the Criminal Code), then despite those provisions, that amount or rate will be deemed to have been reduced to the maximum amount or rate recoverable under Applicable Law, as if the Parties had agreed to that amount or rate by contract. That reduction will be effected, to the extent necessary:
- (i) firstly, by reducing the amount or rate of interest otherwise required to be paid under Article 3 of this Agreement; and
 - (ii) secondly, by reducing any fees, commissions, premiums and other amounts that would constitute interest for the purposes of section 347 of the Criminal Code.
- (b) If, despite the provisions of this Section 3.4 and after giving effect to all reductions under it, the Lender has received an amount or rate in excess of the maximum permitted by the Criminal Code, then that excess will be applied by the Lender to reduce the principal balance of the Interim Facility Obligations outstanding and not to the payment of interest, with any remaining portion being paid to Persons with Liens ranking subsequent to the Security or to the applicable Borrowers, as determined by Applicable Law.
- (c) Any amount or rate of interest referred to in this Section 3.4 will be determined in accordance with generally accepted actuarial practices and principles at an effective annual rate of interest over the term of this Agreement on the assumption that any charges, fees, expenses or other amounts that fall within the meaning of "interest" (as defined in the Criminal Code) will, if they relate to a specific period of time, be prorated over that period of time and otherwise be prorated over the term of this Agreement and, in the event of dispute, a certificate of a Fellow of the Canadian Institute of Actuaries appointed by the Lender will be conclusive for the purposes of that determination.

4. SECURITY

4.1 Super Priority Interim Facility Charge

- (a) The payment and performance of the Interim Facility Obligations shall be secured by the following:
 - (i) a first-ranking super-priority charge and security in favour of the Lender created by the CCAA Court in the Initial Order (the “**Interim Facility Charge**”) against all of the Property of each Borrower (collectively, the “**Collateral**”) to secure the Interim Facility Obligations and Bulge Obligations, which Interim Facility Charge will rank in priority to all Liens attaching to the Collateral other than the Administration Charge for Administration Costs up to \$500,000, and will rank in priority to the Directors’ Charge and the Administration Charge, in respect of Administration Costs in excess of \$500,000; and
 - (ii) the Current Security and Bulge Security.

4.2 Registration of Security Documents

Each Borrower will cooperate, and cause each other Borrower to cooperate, fully with the Lender and its counsel to register, record or file the Security Documents, or notice of them in all places where, in the opinion of counsel for the Lender, acting reasonably, registration, recording or filing is necessary or desirable in order to perfect, protect or preserve the Security Interests created by the Security Documents, and each Borrower will also cooperate, and cause each other Borrower to cooperate, with any amendments to or renewals of those registrations, recordings and filings, and will do, or cause to be done, all other things as, in the opinion of counsel for the Lender, acting reasonably, are necessary or desirable to maintain for the Lender the rights, benefits and priority of the Security Documents and related Security Interests.

4.3 Dealing with Security

The Lender may grant extensions, take and give up any Security or other security, accept compositions of, and grant releases and discharges of, any Security or other security in whole or in part, and otherwise deal with any Borrower or any Loan Documents as the Lender may see fit, all without prejudice to the Interim Facility Obligations or the rights, remedies, powers and recourses of the Lender under the Loan Documents. The taking of any Security under this Agreement will not operate by way of merger of any of the Interim Facility Obligations or any previously taken Security.

5. CONDITIONS PRECEDENT

5.1 Effectiveness of this Agreement

This Agreement shall become effective upon the satisfaction or waiver of the following conditions precedent (the “**General Conditions**”):

- (a) the Lender will have received, in form and substance satisfactory to it, duly executed and delivered originals of the following:
 - (i) this Agreement;
 - (ii) a certificate dated as of the Closing Date from an Officer of each Borrower:
 - (A) attaching true copies of its Constating Documents;

- (B) attaching true copies of resolutions dated as of the Closing Date of its directors or other managing body authorizing the entering into, execution, delivery and performance of the Loan Documents to which it is a party and setting out the manner in which those Loan Documents are to be executed and delivered;
 - (C) setting out specimen signatures of one or more Officers or other authorized signatories who will sign on its behalf the Loan Documents to which it is a party; and
 - (D) certifying any other matters as required by the Lender, acting reasonably, including the matters referred to in Section 6.1;
- (iii) certificates of status relating to each Borrower;
 - (iv) an opinion of Manitoba counsel for the Borrowers, addressed to the Lender and its counsel and dated the Closing Date, with respect to the existence, powers and capacity of each Borrower, the authorization, execution and delivery of the Loan Documents, and subject to such qualifications as are acceptable to the Lender and its counsel, acting reasonably;
 - (v) an acknowledgement from the Individual Guarantors that their respective Guarantees guarantee the payment and performance of the Interim Facility Obligations; and
 - (vi) all other documents and instruments that are customary for transactions of this type or as may be reasonably requested by the Lender;
- (b) the Borrowers will have paid to the Lender all fees that are due and payable under Section 3.3 on or before the Closing Date; and
 - (c) the Lender will have been satisfied with the results of its financial, business and legal due diligence with respect to the Borrowers, and will have received and be satisfied with the results of all Property, litigation, judgment, bankruptcy, execution and other searches conducted or caused to be conducted by the Lender and its counsel with respect to the Borrowers in all jurisdictions that the Lender and its counsel deem appropriate.

5.2 Initial Advance

In addition to the satisfaction or waiver of the conditions precedent in Section 5.1, the obligation of the Lender to make the Initial Advances under the Interim Facility shall be subject to and conditional upon the satisfaction or waiver of the following conditions precedent (the “**Initial Advance Conditions**”):

- (a) the CCAA Court shall have issued an Order declaring that the Borrowers are companies to which the CCAA applies and granting protection to the Borrowers under the CCAA (the proceeding commenced thereby being the “**CCAA Proceeding**”), which Order shall be in form and substance satisfactory to the Lender (which Order, as amended from time to time in a manner satisfactory to the Lender, being the “**Initial Order**”) and shall, among other things:
 - (i) appoint the Monitor;
 - (ii) approve the Interim Facility and this Agreement under section 11.2 of the CCAA;

- (iii) create the Interim Facility Charge securing the Interim Facility Obligations and Bulge Obligations, securing the Initial Advance together with interest thereon and fees and costs hereunder and securing the Bulge Obligations;
- (iv) declare that the Property of each Borrower is subject to the Interim Facility Charge in an amount equal to the Initial Advance together with interest thereon and fees and costs hereunder;
- (v) order that the Interim Facility Charge ranks in priority to all Liens other than the Administration Charge, which shall rank in priority to the Interim Facility Charge to the extent of Administration Costs up to \$500,000;
- (vi) declare that the Borrowers are authorized and directed to repay the Bulge Obligations in accordance with Section 2.5(a);
- (vii) stay all proceedings against the Borrowers for ten (10) days until the Comeback Hearing,

which Initial Order shall be in full force and effect and shall not have been amended, modified or stayed except as agreed to by the Lender in writing;

- (b) no Default or Event of Default shall have occurred or be continuing, which shall be certified by Officers of the Borrowers;
- (c) the representations and warranties contained in Section 6.1 will be true and correct on each date of Initial Advance with the same effect as if made as of such date;
- (d) the Thirteen Week Cash Flow Statement shall have been reviewed by the Monitor, the Monitor shall have confirmed to the Lender that it is satisfied therewith (subject to such reasonable conditions as the Monitor requires), and the Lender shall be satisfied with the Thirteen Week Cash Flow Statement and such confirmation; and
- (e) other than the CCAA Proceeding and the Initial Order, no Material Adverse Change shall have occurred and be continuing since this Agreement became effective under Section 5.1.

5.3 Conditions to Subsequent Advances

In addition to the satisfaction or waiver of the conditions precedent in Sections 5.1 and 5.2, the obligation of the Lender to make or permit any Advance subsequent to the Initial Advances (each, a "**Subsequent Advance**") shall be subject to and conditional upon the satisfaction or waiver of the following conditions precedent:

- (a) at the Come-Back Hearing, the CCAA Court shall have issued an Order in form and substance satisfactory to the Lender (the "**Extension Order**") not later than ten (10) days after the granting of the Initial Order that, among other things:
 - (i) extends the CCAA Stay to a date satisfactory to the Lender;
 - (ii) approves the increase in the Interim Facility to the Maximum Amount; and
 - (iii) declares that the Interim Facility Charge secures Interim Facility Obligations up to the Maximum Amount together with interest thereon and fees and costs hereunder together with the Bulge Obligations;

- (b) the Initial Order, as amended by the Extension Order, shall be in full force and effect and there shall have been no application to stay, modify, vary, amend, reverse, amend, or vacate in whole or in part the Initial Order or the Extension Order, terminate the CCAA Stay or CCAA Proceeding, or terminate, vacate or amend or the Interim Facility Charge or in any way to impair, limit or lessen the Security, the priority of the Security, or the protections, rights, or remedies of the Lender, whether under the Initial Order or the Extension Order, the Interim Facility Charge or the Loan Documents;
- (c) no Order shall have been issued by the CCAA Court that materially and adversely affects the Lender;
- (d) the Lender shall, while acting in good faith, be reasonably satisfied with the progress of the CCAA Proceeding and the Borrowers, including negotiations with creditors, the creation of and progress of a SISF, and the formulation and steps taken to implement one or more CCAA Plans;
- (e) no Default or Event of Default shall have occurred or be continuing;
- (f) the representations and warranties contained in Section 6.1 will be true and correct on each date of Subsequent Advance with the same effect as if made as of such date;
- (g) the Lender shall be satisfied with the most recent Rolling Thirteen Week Cash Flow Projection, which Rolling Thirteen Week Cash Flow Projection shall have been reviewed favourably by the Monitor; and
- (h) no Material Adverse Change shall have occurred and be continuing.

5.4 **Waiver of Conditions**

The conditions precedent set out in Sections 5.1 to 5.3 are for the sole benefit of the Lender and may be waived by the Lender, in whole or in part and with or without terms or conditions, relating to all or any portion of any Advance, without affecting the right of the Lender to require that those conditions be satisfied in whole or in part relating to any other Advance.

6. **REPRESENTATIONS AND WARRANTIES**

6.1 **Representations and Warranties**

The Borrowers make the following representations and warranties to the Lender:

- (a) the cash flow projections and other information contained in the Thirteen Week Cash Flow Projection or Rolling Thirteen Week Cash Flow Projection, as applicable, are based upon good faith estimates and stated assumptions believed to be reasonable and fair as of the date made in light of conditions and facts then known and, as of such date, reflect good faith, commercially reasonable and fair estimates of the information projected for the periods set forth therein;
- (b) the Thirteen Week Cash Flow Projection or Rolling Thirteen Week Cash Flow Projection, as applicable, include all payments that are secured by or could be secured by Liens which rank or could potentially rank in priority to the Interim Facility Charge;
- (c) the information prepared or furnished by or on behalf of the Borrowers in connection with the CCAA Proceeding or the Interim Facility is, to the best of the Borrowers knowledge

and belief, materially accurate and does not omit any material fact that would render such information inaccurate or misleading;

- (d) all facts known to the Borrowers that are material to an understanding of the financial condition, business, property or prospects of the Borrowers and Guarantors have been, to the best of the Borrowers' knowledge, disclosed to the Lender;
- (e) except as disclosed to the Lender in writing:
 - (i) each Borrower, and its Property, taken as a whole, complies in all respects, and the business, activities and operations of such Borrower and the use of such Property, and the processes and undertakings performed thereon, comply in all respects with all Environmental Laws except to the extent that failure to so comply would not have a Material Adverse Change;
 - (ii) no Borrower has received written notice from any Governmental Authority of any non-compliance with Environmental Laws, or has knowledge of any facts which could give rise to any such notice of non-compliance, where any such non-compliance would constitute or cause a Material Adverse Change; and
 - (iii) no Borrower has received any notice from any Governmental Authority that such Borrower is a potentially responsible party for a clean-up order or for corrective action in connection with its Property where such clean up order or corrective action would constitute or cause a Material Adverse Change;
- (f) each Borrower has, to the best of their knowledge, made available to the Lender copies of all existing environmental reports, reviews and audits and all documents pertaining to actual or potential Environmental Liabilities of such Borrower, in each case to the extent such reports, reviews, audits and documents are in their possession, custody or control;
- (g) all federal, provincial, local and foreign income and franchise and other tax returns (or information returns), reports and statements (collectively, the "**Tax Returns**") required to be filed have been filed by the Borrowers with the appropriate Governmental Authorities in all jurisdictions in which such Tax Returns are required to be filed, all such Tax Returns are true and correct in all material respects, and all taxes, charges and other impositions reflected therein or otherwise due and payable have been paid prior to the date on which any liability may be added thereto for non-payment thereof except for those contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves are maintained on the books of each Borrower in accordance with GAAP and for which no collection action has been undertaken or threatened by any Governmental Authority, and no Tax Return is under audit or examination by any Governmental Authority and no notice of such an audit or examination or any assertion of any claim for Taxes has been given or made by any Governmental Authority;
- (h) except to the extent disclosed in writing by the Borrowers to the Lender or in the affidavit of Stephen Segal and preliminary report of the Monitor filed in the motion to obtain the Initial Order, to the best of the Borrowers' knowledge, each Borrower has withheld and remitted to the appropriate Governmental Authorities all material amounts which under Applicable Laws such Borrower is required to withhold and remit, and which give rise to Priority Claims, within the time periods required under Applicable Laws;

- (i) except to the extent disclosed in writing by the Borrowers to the Lender, each Borrower is duly organized or formed, validly existing and in good standing under the laws of the jurisdiction of its organization;
- (j) subject to the Initial Order and Extension Order:
 - (i) each Borrower has the necessary power, authority and legal right to make, execute, deliver and perform its obligations under each Loan Document to which it is a party, and to borrow or guarantee, as applicable, under this Agreement, and each Borrower has the necessary power and authority to own and lease its Property and carry on its Business as now conducted, and is qualified to do business and is in good standing in every jurisdiction in which its ownership, lease or operation of Property or the conduct of its Business requires it to be qualified, except where the failure to be qualified could not, individually or in aggregate, reasonably be expected to result in a Material Adverse Effect;
 - (ii) the execution, delivery and performance by each Borrower of each Loan Document to which it is a party has been duly authorized by all necessary corporate action, and each Loan Document to which each Borrower is a party will, when delivered, have been duly executed and unconditionally delivered by it;
 - (iii) each Loan Document delivered on the Closing Date, and each other Loan Document to which each Borrower is a party, when executed and delivered by it, constitutes and will constitute a legal, valid and binding obligation of each Borrower, enforceable against it by the Lender in accordance with its terms, except as may be limited by general principles of equity or by Insolvency Law;
 - (iv) the execution, delivery and performance of each Loan Document to which each Borrower is a party does not and will not violate any Applicable Law or any of its Constating Documents;
- (k) no Authorization by, and no registration, filing or recording with, any Governmental Authority is or will be required in connection with the Advances under this Agreement or the making, execution, delivery or performance of the Loan Documents, except for:
 - (i) registrations, filings or recordings necessary to perfect the Security Interests in the Property granted by the Security Documents;
 - (ii) the approvals of the CCAA Court under the Initial Order and, in respect of Subsequent Advances, the Extension Order; and
 - (iii) the approval of the Monitor;
- (l) each Borrower has complied in all material respects with all Applicable Laws binding on it or its Business or Property, except for any non-compliance that in the aggregate does not, and could not reasonably be expected to, result in a Material Adverse Effect, and no Borrower has violated or failed to obtain any Authorization necessary for the ownership of any of its Property or the conduct of its Business, except to the extent that any violation or failure could not reasonably be expected to result in a Material Adverse Effect;
- (m) each Borrower has good and marketable title in fee simple to, or valid leasehold title under valid and enforceable leases, to its Property;

- (n) all existing policies relating to Insurance comply with all requirements of the Loan Documents and Applicable Law, are valid, in full force and effect, and enforceable, and provide adequate insurance coverage for the Property, Business and operations of the Borrowers in at least those amounts and against at least those risks required under Section 7.1(m), and all premiums with respect to all material policies of Insurance have been paid in accordance with their respective terms, and no notice of cancellation or termination has been received with respect to any of those policies;
- (o) each representation and warranty made by a Borrower in any other Loan Document to which it is a party is true and correct in all material respects;
- (p) other than as disclosed to the Lender, no Default or Event of Default has occurred and is continuing; and
- (q) no Material Adverse Change has occurred and is continuing.

6.2 Repetition of Representations and Warranties

Without limiting Section 6.3, the representations and warranties set out in Section 6.1 will be deemed to be made by each Borrower, for itself and for each other Borrower, on the date of each Advance based on the facts and circumstances then existing.

6.3 Survival of Representations and Warranties

The representations and warranties set out in Section 6.1 will survive the execution and delivery of this Agreement until all Interim Facility Obligations have been fulfilled and the Lender has no further obligations under any Loan Documents, and the Lender will be entitled to rely, and will be deemed to have relied, upon the representations and warranties set out in Section 6.1 in making any Advance available under this Agreement, regardless of any investigation or examination made by the Lender or its counsel

7. COVENANTS

7.1 Positive Covenants

So long as this Agreement is in force, any Interim Facility Obligations remain outstanding or the Lender has any obligations under any Loan Documents, each Borrower covenants and agrees with the Lender that, unless the Lender otherwise expressly agrees in writing, it will, and it will cause each other Borrower to, comply with the following covenants and agreements:

- (a) each Borrower will maintain all of its deposit and operating accounts with the Lender and will deposit all amounts paid to it into the Borrower Account;
- (b) each Borrower shall ensure that, as of any date, the outstanding Advances under the Interim Facility will not exceed the then applicable forecasted borrowing requirements of the Borrowers for such date as set forth in the Thirteen Week Cash Flow Projection or the most recent Rolling Thirteen Week Cash Flow Projection, as applicable;
- (c) the Borrowers shall prepare, with the advice and assistance of the Monitor, the Thirteen Week Cash Flow Projection and all Rolling Thirteen Week Cash Flow Projections based upon good faith estimates and stated assumptions believed to be commercially reasonable and fair as of the date made in light of conditions and facts then known and, as of such date, reflect good faith, commercially reasonable and fair estimates of the information projected for the periods set forth therein;

- (d) the Borrowers shall deliver to the Lender the Thirteen Week Cash Flow Projection prior to commencing the CCAA Proceeding and shall on the first Business Day of each week during the CCAA Proceeding deliver to the Lender the Rolling Thirteen Week Cash Flow Projection updating the Thirteen Week Cash Flow Projection or prior week's Rolling Thirteen Week Cash Flow Projection, as applicable, and in any case prior to filing them with the CCAA Court, which Thirteen Week Cash Flow Projection or Rolling Thirteen Week Cash Flow Projections shall be in form and substance satisfactory to the Lender;
- (e) the Borrowers will prepare and deliver to the Lender, in a form satisfactory to the Lender:
 - (i) as soon as available and in any event within 15 days after the end of each of month, Financial Statements of each Borrower in respect of the previous month; and
 - (ii) as soon as available and in any event within the time periods specified in the Current Loan Agreements, the Financial Statements and other financial information that a borrower is required to deliver to the Lender under the Current Loan Agreements (including, for certainty, Financial Statements and information of Borrowers that are not borrowers under the Current Loan Agreements);
- (f) the Borrowers will take any steps necessary to ensure that the Lender is at all times considered an unaffected creditor in the CCAA Proceeding in respect of the Interim Facility, the Interim Facility Obligations, the Bulge Facility and the Bulge Obligations, and the Interim Facility Obligations and Bulge Obligations will not be subject to any compromise or arrangement under any CCAA Plan;
- (g) the Borrowers shall ensure that any CCAA Plan filed by one or more of the Borrowers will provide for or be conditional upon the repayment in full of the Interim Facility Obligations, the Bulge Obligations and the Current Obligations upon such CCAA Plan becoming effective and being implemented;
- (h) the Borrowers shall comply with all CCAA Orders made in the CCAA Proceeding except to the extent such Orders have been in whole or in part stayed, reversed, modified or amended by the CCAA Court;
- (i) any CRO engaged by the Borrowers shall be, and its engagement shall be on terms, acceptable to the Lender and if reasonably required, the Borrowers shall seek an Order of the CCAA Court approving such engagement, and at the request of the Lender, the Borrowers shall appoint a CRO acceptable to the Lender;
- (j) at the request of the Lender, the Borrowers shall apply to the CCAA Court for the approval of a commercially reasonable form of SISF, and any SISF implemented by the Borrowers shall be in form and substance satisfactory to the Lender;
- (k) the Borrowers shall cause their senior management teams to cooperate fully with the Monitor and the Lender and make themselves available to meet with and promptly respond to enquiries and information requests from the Monitor, the Lender and their advisors;
- (l) the Borrowers shall, to the extent reasonably practicable, provide the Lender with at reasonable advance notice of all material filings by them with the CCAA Court together with copies of all related materials, and shall provide the Lender with notice of all filings or intended filings of any other Person with the CCAA Court, as soon as reasonably practicable after obtaining knowledge of such intended filings;

- (m) the Borrowers shall maintain insurance with respect to its Property, Business and operations against all liabilities, casualties, risks and contingencies, of the types and in the amounts customary for Persons engaged in the same or similar businesses and similarly situated, without co-insurance and in accordance with any requirements of any Governmental Authority (collectively, the “**Insurance**”), the policies of which Insurance will be in form and substance acceptable to the Lender, acting reasonably, and will be underwritten by financially sound and reputable insurance companies that are acceptable to the Lender, and shall maintain Insurance with respect to its Property in an amount no less than the replacement value of the Property insured, endorsed in favour of the Lender as first loss payee with respect to all the Property of the Borrowers, and as an additional insured with respect to all liability policies maintained by the Borrowers;
- (n) during the CCAA Proceeding, each Borrower will in a timely manner and in compliance with Applicable Laws, file all material Tax Returns required to be filed by it with applicable Governmental Authorities, on or before their respective due dates, and withhold, collect and remit all Taxes accruing during such period that it is required to collect, withhold or remit and where the failure to withhold, collect and remit such Taxes would result in a Priority Claim being imposed upon such Borrower or its Property;
- (o) each Borrowers shall maintain its corporate existence and, subject to the CCAA Orders and the CCAA, comply with all Applicable Laws and Authorizations, except to the extent any failure would not result in a Material Adverse Change;
- (p) each Borrower will keep proper books of record and account containing full and accurate entries of all dealings and transactions relating to its Property, Business and operations in a manner sufficient to enable the preparation of Financial Statements as required by this Agreement and permit representatives designated by the Lender, upon reasonable prior notice and during normal business hours, to visit and inspect its Property, examine and make extracts from its books and records, and discuss its affairs, finances and condition with its officers and independent accountants; and
- (q) the Borrowers shall permit the Lender and its employees and agents to enter upon and inspect their Property, books and records from time to time upon reasonable notice and during regular business hours and conduct environmental investigations of their Property and shall execute and deliver all consents and further assurances as may be necessary or desirable in order for the Lender and its agents to obtain information from Governmental Authorities and other Persons with respect to such matters.

7.2 Negative Covenants

So long as this Agreement is in force, any Interim Facility Obligations remain outstanding or the Lender has any obligations under any Loan Documents, each Borrower covenants and agrees with the Lender that, unless the Lender otherwise expressly agrees in writing, it will, and it will cause each other Borrower to, comply with the following negative covenants and agreements:

- (a) no Borrower shall not create, incur, assume or allow any Lien on or relating to all or any part of its Property, whether now owned or later acquired, except for Permitted Liens;
- (b) no Borrower shall make or permit to be made any payment that are not contemplated in the Thirteen Week Cash Flow Projection or the most recent Rolling Thirteen Week Cash Flow Projection, as applicable, without the prior consent of the Monitor, subject to variances in actual cash receipts being up to 10% less than projected on an aggregate

basis, and actual disbursements being up to 10% greater than projected, and subject to variances in the timing of actual receipts and disbursements;

- (c) the Borrowers shall not permit actual cash balances, tested as of the last Business Day of any measurement period, to be less than the amount set forth for such date in the Thirteen Week Cash Flow Projection or the most recent Rolling Thirteen Week Cash Flow Projection, as applicable, with a permitted variance of 10%, and subject to variances based on the timing of receipts and disbursements, without the consent of the Monitor;
- (d) the Borrowers shall not, without the prior written consent of the Lender, after the Commencement Date incur any Debt other than Permitted Debt;
- (e) no Borrower shall, without the prior written consent of the Lender, make any payment of any Debt outstanding on the Commencement Date, other than as may be permitted by the Initial Order or Extension Order and contemplated by the Thirteen Week Cash Flow Projection or the Rolling Thirteen Week Cash Flow Projection, as applicable be;
- (f) the Borrowers shall not create a key employee retention plan in favour of its employees without the consent of the Lender and the approval of the CCAA Court;
- (g) the Borrowers shall not cease to carry on the Business as contemplated by the Initial Order, the Extension Order, the Thirteen Week Cash Flow Projection or the most recent Rolling Thirteen Week Cash Flow Projection, as applicable, without the prior written consent of the Lender or an Order of the CCAA Court;
- (h) the Borrowers shall not make any material change to its existing senior management, without the prior written consent of the Lender and the Monitor;
- (i) no Borrower shall use the proceeds of any Advance for any purposes other than those expressly permitted Section 2.3 and contemplated by the Thirteen Week Cash Flow Projection or the most recent Rolling Thirteen Week Cash Flow Projection, as applicable, without the prior written consent of the Lender;
- (j) no Borrower shall make any material amendments to, or terminate or disclaim, any Material Contract, without the prior written consent of the Lender and the Monitor; and
- (k) no Borrower shall seek, obtain or consent to any amendment to or variation of the Initial Order, the Extension Order or any other CCAA Order in a manner which constitutes a Material Adverse Change without the prior written consent of the Lender.

8. EVENTS OF DEFAULT

8.1 Events of Default

The occurrence of any one or more of the following events or conditions will be an event of default under this Agreement ("**Event of Default**"):

- (a) the Borrowers default in the due and punctual payment of the principal amount, or any part of any amount, of any Interim Facility Obligations under this Agreement, the other Loan Documents or under the Bulge Facility, when that amount becomes due and payable, whether on the Termination Date or otherwise;
- (b) a Borrower fails to observe or perform any agreement, covenant, condition or obligation applicable to it under this Agreement or any other Loan Document;

- (c) the issuance of an Order staying, reversing, vacating or otherwise materially modifying a CCAA Order in any manner that is prejudicial to the rights and interests of the Lender without the prior written consent of the Lender;
- (d) the issuance of an Order terminating or dismissing the CCAA Proceeding or lifting the CCAA Stay to permit the enforcement of a Lien or the exercise of a right or remedy against a Borrower or its Property, the termination or expiry of the CCAA Stay without being extended without being extended, or the appointment of a receiver, receiver and manager, interim receiver or similar official against any of the Borrowers or their Property;
- (e) the entry of any order staying, amending, reversing, vacating or otherwise modifying, in each case without the prior consent of the Lender, the Interim Facility, the Interim Facility Charge or any Loan Document, or any Order creating or granting a Lien ranking in priority to, or *pari passu* basis with the Interim Facility Charge or otherwise altering the priority or amount of the Interim Facility Charge in a manner prejudicial to the Lender's interests, or any other Order is made in the CCAA Proceeding which is prejudicial to the Lender's interests;
- (f) a Borrower undertakes any actions with respect to their Business operations which would, in the determination of the Lender, result in a Material Adverse Change to one or more of the Borrowers;
- (g) the Interim Facility Charge ceases to have the priority ranking as against other Liens required under Section 4.1(a)(i);
- (h) if there occurs a Material Adverse Change;
- (i) if any Borrower makes a material payment of any kind not permitted by a CCAA Order, this Agreement or the Thirteen Week Cash Flow Projection or Rolling Thirteen Week Cash Flow Projection, as applicable, without the consent of the Lender;
- (j) if any representation or warranty in this Agreement is false or erroneous in any material respect when made or deemed to be made;
- (k) if any Borrower sells material Property outside the ordinary course of business and in a manner not permitted by an Order of the CCAA Court; or
- (l) any Termination Event (as defined in the Forbearance Agreement) occurs at any time that the Bulge Obligations remain outstanding.

8.2 Acceleration and Remedies

Upon the occurrence and during the continuance of any Event of Default, the Lender may do any one or more of the following, all of which are authorized by each Borrower:

- (a) the Lender may terminate the Interim Facility, whereupon no Advances shall be available under the Interim Facility, and require the immediate repayment in full of the Interim Facility Obligations and Bulge Obligations;
- (b) apply to the CCAA Court to enforce the Interim Facility Charge and/or for the appointment of any receiver or receiver and manager of the Property of the Borrowers;
- (c) exercising any other right, power or remedy or commence any application, action or proceeding authorized or permitted by the Loan Documents or Applicable Law, including

specifically performing any covenant or agreement contained in any Loan Documents, enforcing the Security, repaying the Interim Facility Obligations and Bulge and enjoining any violation of any of the terms of the Loan Documents.

8.3 Remedies Cumulative

The rights, powers and remedies under the Loan Documents are cumulative and are in addition to and not in substitution for any other rights, powers and remedies available at law or in equity or otherwise. No single or partial exercise by a Party of any right, power or remedy precludes or otherwise affects the exercise of any other right, power or remedy to which that Party may be entitled.

8.4 Application of Proceeds of Realization

When an Event of Default has occurred and is continuing the Lender may allocate any moneys received by it from any Borrower, or from any Security in or toward payment of the Interim Facility Obligations and Bulge Obligations as the Lender in its sole discretion may see fit. Despite any other provision of this Agreement, the proceeds realized from the exercise by the Lender of its powers, rights and remedies under the Loan Documents will be distributed in the following order:

- (a) first, in payment of all costs and expenses, including legal, accounting, receivers' and other similar fees and disbursements, incurred by the Lender in connection with that realization;
- (b) second, in payment of all Liens or claims ranking in priority to the Security;
- (c) third, against payment of the Interim Facility Obligations and Bulge Obligations; and
- (d) fourth, if all Interim Facility Obligations and Bulge Obligations have been paid in full, any surplus proceeds will be paid in accordance with Applicable Law.

8.5 Waivers

No delay on the part of the Lender in exercising any power, right or remedy under any Loan Document will operate as a waiver of that power, right or remedy, no waiver of any Default or Event of Default will operate as a waiver of that Default or Event of Default unless made in writing and signed by an authorized officer of the Lender, and any single or partial exercise by the Lender of any power, right or remedy for a Default or Event of Default will not be deemed to be a waiver of or to alter, affect or prejudice any other power, right or remedy to which the Lender may be lawfully entitled relating to that Default or Event of Default. No written waiver will preclude the exercise by the Lender of any power, right or remedy under any Loan Document other than relating to the specific action or inaction covered by that waiver and strictly in accordance with the terms of that waiver, or extend to or apply to any other Default or Event of Default. The Lender will not be deemed to have waived, by reason of making available any Advance under this Agreement, any Default or Event of Default, including any Default or Event of Default arising from any representation or warranty made or deemed to have been made in any Loan Document proving to be false or incorrect.

8.6 Non-Merger

Any judgment obtained, or any action or proceeding taken, by the Lender under any Loan Document will not operate as a merger of any Interim Facility Obligations and Bulge Obligations, or in any way suspend payment or affect or prejudice the powers, rights and remedies, legal or equitable, that the Lender may have in connection with the Interim Facility Obligations and Bulge Obligations. The surrender or cancellation of, or any other dealings with, any Security Documents will not release or

affect the Interim Facility Obligations and Bulge Obligations under any of the Loan Documents or the Forbearance Agreement.

8.7 Lender May Perform Covenants

If a Borrower fails to perform any covenant or agreement on its part in this Agreement, the Lender may, but is not required to, perform that covenant or agreement if it is capable of being performed by the Lender, and if that covenant or agreement requires the payment of money the Lender may, but is not required to, make that payment with its own funds. All amounts paid by the Lender under this Section will be repaid by the Borrowers on demand for payment, and will bear interest at the rates applicable to the Interim Facility Obligations.

9. GENERAL

9.1 Time of Essence

Time is of the essence in all respects of this Agreement.

9.2 Joint and Several Obligations

The Interim Facility Obligations and all representations, warranties, covenants, agreements and obligations of the Borrowers under this Agreement will be the joint and several representations, warranties, agreements, obligations and covenants thereof. Any request or authorization given to the Lender by any of the Borrowers will be considered to be the joint and several request or authorization of the Borrowers.

9.3 Notices

Except as otherwise expressly provided for in this Agreement, any Communication must be in writing and either delivered personally or by courier, sent by prepaid registered mail or transmitted by e-mail or functionally equivalent electronic means of transmission, charges (if any) prepaid. Any Communication must be sent to the intended recipient at its address as follows:

(a) to the Lender at:

THE TORONTO DOMINION BANK
421 – 7th Ave SW, 10th Floor
Calgary, AB T2P 4K9
Attention: Joe Seidel
Email: joe.seidel@td.com

with a copy to:

GOWLING WLG (CANADA) LLP
Suite 1600, 421 7th Avenue SW
Attention: Sam Gabor
Email: sam.gabor@gowlingwlg.com

(b) to the Borrowers at:

ACCURATE DORWIN (2020) INC, NATIONAL INTERIORS (2021) INC.,
12986647 CANADA LTD., GLASS 8 INC., POLAR WINDOW OF CANADA LTD.,
12986591 CANADA LTD., 10064720 MANITOBA LTD., 12986914 CANADA
LTD., and POLAR HOLDING LTD.,
1535 Seel Avenue
Winnipeg, MB R3T 1C6
Attention: Stephen Segal
Email: ssegal@g8group.com

with a copy to:

MLT AIKINS LLP
30th Floor – 360 Main Street
Attention: J.J. Burnell
Email: jburnell@mltaikins.com

(c) to 7440783 MANITOBA LTD. and POLAR HOLDING CANADA, LLC at:

7440783 MANITOBA LTD.
1535 Seel Avenue
Winnipeg, MB R3T 1C6

Attention: Stephen Segal
Email: ssegal@g8group.com

with a copy to:

POLAR HOLDING CANADA, LLC
10 East Scranton Avenue, Suit 304
Lake Bluff, IL, United States, 60044

Attention: Tim Morris
Email: tim@morriscapitalmanagement.com

and to:

POLAR HOLDING CANADA, LLC
312 S. Gay Street, Suite 200
Knoxville, TN, United States 37902

Attention: Brant Enderle
Email: brant.enderle@henryandwallace.com

or at any other address as any Party may at any time advise the others by Communication given or made in accordance with this Section 9.3. Any Communication delivered to the Party to whom it is addressed will be deemed to have been given or made and received on the day it is delivered at that Party's address, provided that if that day is not a Business Day then the Communication will be deemed to have been given or made and received on the next Business Day. Any Communication sent by prepaid registered mail will be deemed to have been given or made and received on the fifth Business Day after which it is mailed. If a strike or lockout of postal employees is then in effect, or generally known to be impending, every Communication must be delivered personally or by courier or transmitted by e-mail or functionally equivalent electronic means of transmission. Any Communication transmitted by facsimile, e-mail or other functionally equivalent electronic means of transmission will be deemed to

have been given or made and received on the day on which it is transmitted; but if the Communication is transmitted on a day which is not a Business Day or after 5:00 p.m. (local time of the recipient), the Communication will be deemed to have been given or made and received on the next Business Day.

9.4 Severability

Each Section of this Agreement is distinct and severable. If any Section of this Agreement, in whole or in part, is or becomes illegal, invalid, void, voidable or unenforceable in any jurisdiction by any court of competent jurisdiction, the illegality, invalidity or unenforceability of that Section, in whole or in part, will not affect the legality, validity or enforceability of the remaining Sections of this Agreement, in whole or in part or the legality, validity or enforceability of that Section, in whole or in part, in any other jurisdiction.

9.5 Submission to Jurisdiction

Each of the Borrowers irrevocably and unconditionally submits and attorns to the non-exclusive jurisdiction of the courts of the Province of Manitoba and the CCAA Court to determine all issues, whether at law or in equity, arising from this Agreement. To the extent permitted by Applicable Law, each of the Borrowers irrevocably waives any objection, including any claim of inconvenient forum, that it may now or in the future have to the venue of any legal proceeding arising out of or relating to this Agreement in the courts of that Province, or that the subject matter of this Agreement may not be enforced in those courts and irrevocably agrees not to seek, and waives any right to, judicial review by any court which may be called upon to enforce the judgment of the courts referred to in this Section 9.4, of the substantive merits of any suit, action or proceeding.

9.6 Amendment and Waiver

Except as otherwise provided in this Agreement, no amendment, discharge, modification, restatement, supplement, termination or waiver of this Agreement or any Section of this Agreement is binding unless it is in writing and executed by the Party to be bound. No waiver of, failure to exercise, or delay in exercising, any Section of this Agreement constitutes a waiver of any other Section, whether or not similar, nor does any waiver constitute a continuing waiver unless otherwise expressly provided.

9.7 Further Assurances

Except as otherwise provided in any Loan Document, each Borrower will, upon request of the Lender and at the Borrower's own cost and expense, execute and deliver any further agreements and documents and provide any further assurances, undertakings and information as may be reasonably required by the Lender to give effect to the Loan Documents, and without limiting the generality of this Section 9.7 will do or cause to be done all acts and things, execute and deliver or cause to be executed and delivered all agreements and documents and provide any assurances, undertakings and information as may be required at any time by all Governmental Authorities having jurisdiction over the affairs of a Borrower or as may be required at any time under Applicable Law.

9.8 Assignment

- (a) The Lender may, without notice to or consent of the Borrowers, at any time assign, transfer, syndicate, grant a participation interest in, or grant a Security Interest in, all or any part of its rights, remedies and obligations under this Agreement, the other Loan Documents and the Security Interests created by the Security Documents. Each Borrower expressly agrees that the assignee, transferee, syndicated or participating lender or secured party, as the case may be, will have all of the Lender's rights, remedies and obligations under this Agreement and the other Loan Documents, and the Borrowers will not assert any defence, cross-claim, counterclaim, right of set off or any other claim that any Borrower now has or in the future acquires against the Lender in any action

commenced by any assignee, transferee, syndicated or participating lender or secured party, as applicable, and will pay the Interim Facility Obligations payable by it to the assignee, transferee, syndicated or participating lender or secured party, as the case may be, as they become due.

- (b) None of this Agreement, the other Loan Documents or any rights, remedies or obligations under them may be assigned by any Borrower without the prior written consent of the Lender.

9.9 **Enurement**

This Agreement enures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns.

9.10 **Creation and Use of Electronic Document**

This Agreement and any counterpart of it may be created, provided, received, retained and otherwise used, and will be accepted, in any digital, electronic or other intangible form. This Agreement and any counterpart of it may be signed by manual, digital or other electronic signatures and delivered or transmitted by any digital, electronic or other intangible means, including by e-mail or other functionally equivalent electronic means of transmission and that execution, delivery and transmission will be valid and legally effective to create a valid and binding agreement between the Parties.

9.11 **Reproduction of Documents**

All Loan Documents and all documents relating to them, including consents, waivers and modifications that may be executed after the date of this Agreement, documents received by the Lender in connection with the negotiation of this Agreement and making Accommodations available, and Financial Statements, certificates and other information before or after the date of this Agreement provided to the Lender, may be reproduced by the Lender by any means, and the Lender may destroy any original documents so reproduced. Each Borrower agrees that any reproduction by the Lender will be admissible in evidence as the original itself in any judicial or administrative proceeding, whether or not the original is in existence and whether or not that reproduction was made by the Lender in the ordinary course of business, and that any further reproduction, enlargement or facsimile of that reproduction will also be admissible in evidence.

9.12 **No Contra Proferentem**

This Agreement has been reviewed by each Party's professional advisors, and revised during the course of negotiations between the Parties. Each Party acknowledges that this Agreement is the product of their joint efforts, that it expresses their agreement, and that, if there is any ambiguity in any of its provisions, no rule of interpretation favouring one Party over another based on authorship will apply.

[the remainder of this page is left intentionally blank]

Each of the Parties has executed and delivered this Agreement, as of the date noted at the beginning of the Agreement.

THE TORONTO-DOMINION BANK

By:

Breana Vandenberghe

Name:

Title:

**Breana Vandenberghe
Account Manager
TD Financial Restructuring Group**

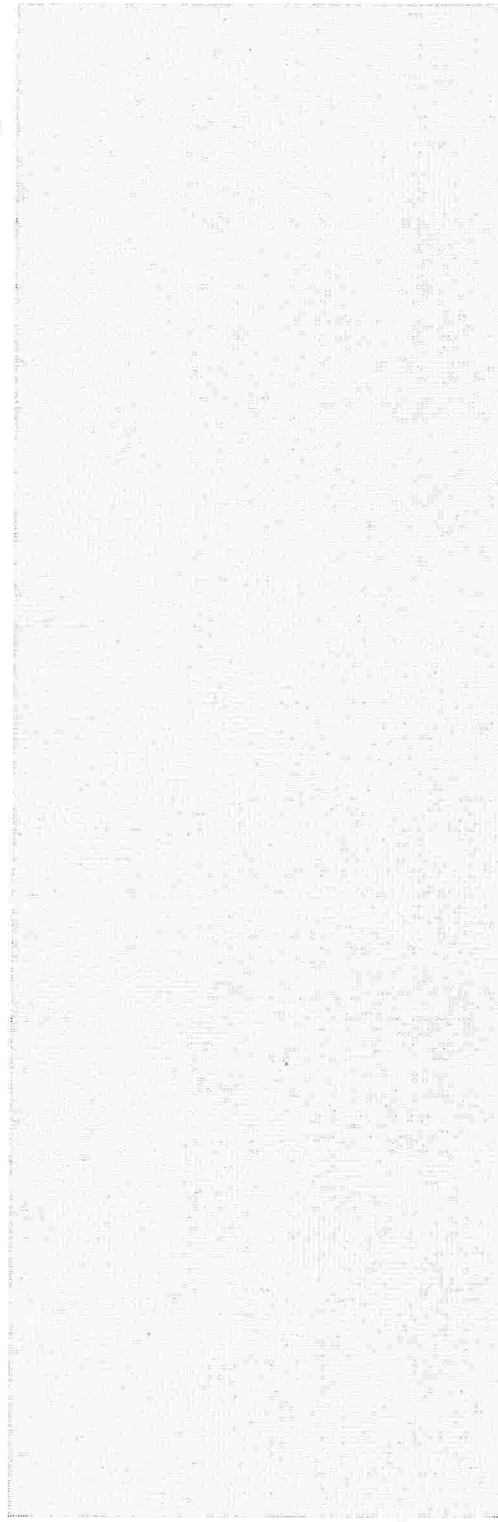
By:

Joe Seidel

Name:

Title:

**Joe Seidel
Associate Vice President
Financial Restructuring Group**



ACCURATE DORWIN (2020) INC.

By:

Stephen Segal

Name: Stephen Segal
Title: Chief Executive Officer

I have authority to bind the corporation.

NATIONAL INTERIORS (2021) INC.

By:

Stephen Segal

Name: Stephen Segal
Title: Chief Executive Officer

I have authority to bind the corporation.

10064720 MANITOBA LTD.

By:

Stephen Segal

Name: Stephen Segal
Title: Chief Executive Officer

I have authority to bind the corporation.

12986647 CANADA LTD.

By:

Stephen Segal

Name: Stephen Segal
Title: Chief Executive Officer

I have authority to bind the corporation.

12986591 CANADA LTD.

By:

Stephen Segal

Name: Stephen Segal
Title: Chief Executive Officer

I have authority to bind the corporation.

POLAR HOLDING LTD.

By:

Stephen Segal

Name: Stephen Segal
Title: Chief Executive Officer

I have authority to bind the corporation.

GLASS 8 INC.

By:

Stephen Segal

Name: Stephen Segal
Title: Chief Executive Officer

I have authority to bind the corporation.

12986914 CANADA LTD.

By:

Stephen Segal

Name: Stephen Segal
Title: Chief Executive Officer

I have authority to bind the corporation.

POLAR HOLDING CANADA, LLC

By:

Name:
Title:

I have authority to bind the corporation.

POLAR WINDOW OF CANADA LTD.

By:

Stephen Segal

Name: Stephen Segal
Title: Chief Executive Officer

I have authority to bind the corporation.

7440783 MANITOBA LTD.

By:

Stephen Segal

Name: Stephen Segal
Title: Chief Executive Officer

I have authority to bind the corporation.

POLAR HOLDING LTD.

By:

Name: Stephen Segal
Title: Chief Executive Officer

I have authority to bind the corporation.

GLASS 8 INC.

By:

Name: Stephen Segal
Title: Chief Executive Officer

I have authority to bind the corporation.

12986914 CANADA LTD.

By:

Name: Stephen Segal
Title: Chief Executive Officer

I have authority to bind the corporation.

POLAR HOLDING CANADA, LLC

By:

Tim Morris Jr.

Name: Timothy Morris
Title: Director

I have authority to bind the corporation.

POLAR WINDOW OF CANADA LTD.

By:

Name: Stephen Segal
Title: Chief Executive Officer

I have authority to bind the corporation.

7440783 MANITOBA LTD.

By:

Name: Stephen Segal
Title: Chief Executive Officer

I have authority to bind the corporation.

SCHEDULE "A"
BULGE SECURITY

- (a) Limited Corporate Guarantee of Advances executed by 10064720 Manitoba Ltd., Glass 8 Inc., 12986591 Canada Ltd. and 12986647 Canada Ltd. up to the amount of \$800,000, for the obligations of Accurate Dorwin (2020) Inc. for the Bulge Obligations;
- (b) General Security Agreement granted. by Polar Holding Ltd., representing a first charge on all the Borrower's present and after acquired personal property, and all other property, assets, and undertakings, including without limitation the following: leasehold, equipment, and inventory dated;
- (c) General Security Agreement granted by 12986591 Canada Ltd., representing a charge on all the Borrower's present and after acquired personal property, and all other property, assets, and undertakings, including without limitation the following: leasehold, equipment, and inventory dated;
- (d) General Security Agreement granted by 12986647 Canada Ltd., representing a charge on all the Borrower's present and after acquired personal property, and all other property, assets, and undertakings, including without limitation the following: leasehold, equipment, and inventory dated.

SCHEDULE "B"
CURRENT LOAN DOCUMENTS

- (a) General Security Agreement granted by Accurate Dorwin (2020) Inc. dated February 28, 2020;
- (b) Assignment of Fire Insurance in the amount of \$5,000,000 CAD with TD Bank listed as First Loss Payee granted by Accurate Dorwin (2020) Inc. dated November 5, 2021;
- (c) Postponement and Assignment of Creditor's Claim executed by Accurate Dorwin (2020) Inc.;
- (d) Investment Property Pledge Agreement by Polar Holding Ltd. in the shares of Accurate Dorwin (2020) Inc. dated February 28, 2020;
- (e) Assignment of EDC Accounts Receivable Insurance in the amount of \$1,000,000 CAD in favour of TD Bank for the obligations of Accurate Dorwin (2020) Inc. dated February 28, 2020 and December 10, 2021;
- (f) General Security Agreement granted by 10091246 Manitoba Ltd. dated March 31, 2021;
- (g) Postponement and assignment of Creditors Claim and Postponement of Security from Tim T. Morris dated March 31, 2021 with respect to 10091246 Manitoba Ltd.;
- (h) Postponement and assignment of Creditors Claim and Postponement of Security from Brant E. Enderle dated March 31, 2021 with respect to 10091246 Manitoba Ltd.;
- (i) Postponement and assignment of Creditors Claim and Postponement of Security from Stephen Segal dated March 31, 2021 with respect to 10091246 Manitoba Ltd.;
- (j) Assignment of Fire Insurance in the amount of CAD \$5,000,000 with TD Bank listed as First Loss Payee granted by 10091246 Manitoba Ltd. dated April 30, 2021;
- (k) Postponement and Assignment of Creditor's Claim executed by 10091246 Manitoba Ltd.;
- (l) Postponement and Assignment of Creditor's Claim executed by Polar Holding Ltd. dated February 28, 2020 with respect to Accurate Dorwin (2020) Inc.;
- (m) Postponement and assignment of Creditors Claim and Postponement of Security from Tim T. Morris dated February 28, 2020 with respect to Accurate Dorwin (2020) Inc.;
- (n) Postponement and assignment of Creditors Claim and Postponement of Security from Brant E. Enderle dated February 28, 2020 with respect to Accurate Dorwin (2020) Inc.;
- (o) Postponement and assignment of Creditors Claim and Postponement of Security from Stephen Segal dated February 28, 2020 with respect to Accurate Dorwin (2020) Inc.;
- (p) General Security Agreement granted by 10064720 Manitoba Ltd. dated August 11, 2022;
- (q) Assignment of Fire Insurance in the amount of CAD \$3,130,000 with TD Bank listed as First Loss Payee dated;

- (r) Investment Property Pledge Agreement by 10064720 Manitoba Ltd. in the shares of Glass 8 Inc. dated February 28, 2020;
- (s) General Security Agreement dated July 1, 2020 granted by Glass 8 Inc.;
- (t) Postponement and Assignment of Creditor's Claim executed between GLASS 8 INC., 10064720 Manitoba Ltd, and TD Bank dated July 1, 2020;
- (u) Limited Personal Guarantee of Advances in the amount of \$1,700,000 CAD executed by Tim T. Morris for the obligations of Accurate Dorwin (2020) Inc. dated February 28, 2020;
- (v) Limited Personal Guarantee of Advances in the amount of \$1,700,000 CAD executed by Brant E. Enderle for the obligations of Accurate Dorwin (2020) Inc. dated February 28, 2020;
- (w) Limited Personal Guarantee of Advances in the amount of \$1,700,000 CAD executed by Stephen Segal for the obligations of Accurate Dorwin (2020) Inc. dated February 28, 2020;
- (x) Unlimited Personal Guarantee of Advances executed by Tim T. Morris for the obligations of 10091246 Manitoba Ltd. dated March 31, 2021;
- (y) Unlimited Personal Guarantee of Advances executed by Brant E. Enderle for the obligations of 10091246 Manitoba Ltd. dated March 31, 2021;
- (z) Unlimited Personal Guarantee of Advances executed by Stephen Segal for the obligations of 10091246 Manitoba Ltd. dated March 31, 2021;
- (aa) Unlimited Corporate Guarantee of Advances executed by 10091246 Manitoba Ltd. for the obligations of Accurate Dorwin (2020) Inc. dated March 31, 2021;
- (bb) Unlimited Corporate Guarantee of Advances executed by Polar Holding Ltd. for the obligations of Accurate Dorwin (2020) Inc. dated February 28, 2020;
- (cc) Unlimited Corporate Guarantee of Advances executed by Accurate Dorwin (2020) Inc. for the obligations of 10091246 Manitoba Ltd. dated March 31, 2021;
- (dd) Limited Personal Guarantee of Advances in the amount of CAD \$1,043,333 executed by Stephen Segal for the obligations of 10064720 Manitoba Ltd. dated July 1, 2020;
- (ee) Limited Personal Guarantee of Advances in the amount of CAD \$1,043,333 executed by Tim T. Morris for the obligations of 10064720 Manitoba Ltd. dated July 1, 2020;
- (ff) Limited Personal Guarantee of Advances in the amount of CAD \$1,043,333 executed by Brant E. Enderle for the obligations of 10064720 Manitoba Ltd. dated July 1, 2020;
- (gg) Unlimited Corporate Guarantee of Advances executed by Glass 8 Inc. in favour of 10064720 Manitoba Ltd. dated August 11, 2022.

