

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**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 EXTREME FITNESS, INC.**

**APPLICATION UNDER THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**

**APPLICATION RECORD
(PART 1 OF 2)
(returnable February 7, 2013)**

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**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**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 EXTREME FITNESS, INC.**

**APPLICATION UNDER THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**

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Tab 1

CN 13-1000-0002

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
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NOTICE OF APPLICATION

TO THE RESPONDENTS

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following pages.

THIS APPLICATION will come on for a hearing before the Honourable Mr. Justice Campbell of the Ontario Superior Court of Justice (Commercial List) on Thursday, February 7, 2013 at 12:30 p.m., or so soon thereafter as the application can be heard, via conference call. The conference call details for the hearing are: dial-in number: (416) 849-7326 or (888) 848-5559; participant code: 7088432#.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than 2 p.m. on the day before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

**IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY
LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A
LOCAL LEGAL AID OFFICE.**

Date: February 7, 2013

Issued by:


Local Registrar

Address of court office:

A. Anissimova
Registrar
330 University Avenue
7th Floor
Toronto, ON M5G 1R7

TO: ATTACHED SERVICE LIST

APPLICATION

1. Extreme Fitness, Inc. (the “**Applicant**”) makes an application for an order, among other things:
 - (a) abridging the time for service and filing of this notice of application and the application record and dispensing with service thereof on any interested party other than those served with these proceedings;
 - (b) declaring that the Applicant is a company to which the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) applies;
 - (c) staying all proceedings and remedies taken or which might be taken in respect of the Applicant or any of its property, except upon the leave of the Court being granted, or as otherwise provided;
 - (d) authorizing the Applicant to prepare and file with the Court a plan of compromise or arrangement with its creditors;
 - (e) appointing FTI Consulting Canada Inc. (“**FTI**”) as monitor of the Applicant (in such capacity, the “**Monitor**”);
 - (f) approving a debtor-in-possession financing facility (the “**DIP Facility**”) with Golub Capital Incorporated, as agent for the benefit of itself and three lenders, in the principal amount of USD\$2,000,000 and granting a priority charge (the “**DIP Charge**”) over the assets, properties and undertakings of the Applicant (collectively, the “**Property**”) to secure repayment of the amounts borrowed by the Applicant under the DIP Facility;
 - (g) granting a priority charge over the Property in the principal amount of \$500,000 to secure the fees and disbursements of counsel to the Applicant, the Monitor, counsel to the Monitor and Alvarez & Marsal Canada ULC (“**A&M**”) (the “**Administration Charge**”);

- (h) granting a priority charge over the Property in the principal amount of \$2,880,000 in order to protect the Applicant's directors, officers and A&M, in its capacity as Interim Chief Financial Officer and Interim Controller, from certain potential liabilities (the "**D&O Charge**"); and
 - (i) granting such further and other relief as counsel may request and this Court may permit.
2. The grounds for the application are:
- (a) the Applicant is a company to which the CCAA applies;
 - (b) the Applicant is insolvent;
 - (c) the claims against the Applicant exceed \$5 million;
 - (d) such other grounds set forth in the affidavit of Alan Hutchens sworn February 7, 2013;
 - (e) FTI has consented to act as monitor of the Applicant;
 - (f) the circumstances which exist make the order sought by the Applicant appropriate;
 - (g) the provisions of the CCAA and, in particular, section 11;
 - (h) rules 2.03, 3.02, 14.05 and 16 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194;
 - (i) sections 97 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
 - (j) the equitable jurisdiction of this Court; and
 - (k) such further and other grounds as counsel may advise and this Court may permit.
3. The following documentary evidence will be used at the hearing of the application:

- (a) the affidavit of Alan Hutchens sworn February 7, 2013;
- (b) the Pre-Filing Report of FTI dated February 7, 2013;
- (c) the consent of FTI to act as Monitor; and
- (d) such further and other evidence as counsel may advise and this Court may permit.

February 7, 2013

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C-13-1000-0002

Court File No. <*>

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

NOTICE OF APPLICATION

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Tab 2

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) THURSDAY, THE 7TH DAY
)
JUSTICE CAMPBELL) OF FEBRUARY, 2013

**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
EXTREME FITNESS, INC.**

**APPLICATION UNDER THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**

INITIAL ORDER

THIS APPLICATION, made by Extreme Fitness, Inc. (the "**Applicant**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Alan Hutchens sworn February 7, 2013 and the exhibits thereto (the "**Hutchens Affidavit**"), the pre-filing report of FTI Consulting Canada Inc. ("**FTI**"), in its capacity as the intended Monitor in these proceedings, dated February 7, 2013, and the consent of FTI to act as the Monitor, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicant, counsel for FTI, counsel for National Bank of Canada ("**National Bank**") and counsel for Golub Capital Incorporated ("**Golub**"), no one appearing for any other person on the service list, although duly served as appears from the affidavit of Eunice Baltkois sworn February 7, 2013, filed,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that the Applicant is a company to which the CCAA applies.

PLAN OF ARRANGEMENT

3. **THIS COURT ORDERS** that the Applicant shall have the authority to file and may, subject to further Order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**") between, *inter alios*, the Applicant and one or more of its secured and/or unsecured creditors as it deems appropriate.

POSSESSION OF PROPERTY AND OPERATIONS

4. **THIS COURT ORDERS** that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property. The Applicant shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively, "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. **THIS COURT ORDERS** that the Applicant shall be entitled to continue to utilize the central cash management system currently in place as described in the Hutchens Affidavit or replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank or service provider providing the Cash Management System, including, without limitation, National Bank, Royal Bank of Canada and Chase Paymentech Solutions, shall not be under any obligation whatsoever to inquire into

the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. **THIS COURT ORDERS** that the Applicant shall be entitled but not required to pay the following expenses or honour the following obligations whether incurred prior to or after the date of this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- (b) with the prior consent of the Monitor, any or all outstanding and future amounts owing to or in respect of individuals working as independent contractors in connection with the Business if, in the opinion of the Applicant and the Monitor, the individual is critical to the Business and ongoing operations of the Applicant;
- (c) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges; and
- (d) any amounts owing by the Applicant pursuant to the *Consumer Protection Act, 2002* (Ontario).

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course on and after the date of this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods actually delivered or services actually supplied to the Applicant on or after the date of this Order.

8. **THIS COURT ORDERS** that the Applicant shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, which, for greater certainty, shall exclude any pre-filing HST obligations; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

9. **THIS COURT ORDERS** that until a real property lease is disclaimed in accordance with the CCAA, the Applicant shall pay all amounts constituting rent or payable as rent under

real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or such amount as otherwise may be negotiated between the Applicant and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

10. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date except in respect of scheduled payments of interest to be remitted under the Priority Credit Agreement (as such term is defined in the Hutchens Affidavit); (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

11. **THIS COURT ORDERS** that the Applicant shall, subject to such requirements as are imposed by the CCAA, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of non-profitable, redundant or non-material assets and operations not exceeding \$250,000 in any one transaction or \$500,000 in the aggregate;
- (b) terminate the employment of such of its employees or temporarily or indefinitely lay off such of its employees as it deems appropriate on such terms as may be agreed upon between the Applicant and such employee, or failing such agreement, to deal with the consequences thereof in the Plan; and
- (c) pursue all avenues of refinancing and offers for all or material parts of its Business or the Property, in whole or part, subject to prior approval of this Court

being obtained before any material refinancing or sale (except as permitted by subparagraph 11(a) above),

all of the foregoing to permit the Applicant to proceed with an orderly restructuring, sale or winding down of the Business (the "**Restructuring**").

12. **THIS COURT ORDERS** that the Applicant shall provide each of the relevant landlords and the Monitor with notice of the Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the leased premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in subsection 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

13. **THIS COURT ORDERS** that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then: (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice; and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises and such landlord shall be entitled to notify the Applicant of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

14. **THIS COURT ORDERS** that until and including March 8, 2013, or such later date as this Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall: (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on; (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; (iii) prevent the filing of any registration to preserve or re-perfect an existing security interest; or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

16. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, lease, sub-lease, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

17. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including, without limitation, all computer software, communication and other data

services, centralized banking services, including, without limitation, banking and cash management services provided by National Bank, Royal Bank of Canada and Chase Paymentech Solutions, payroll services, insurance, transportation services, utility, leasing or other services to the Business or the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider, the Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

18. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

19. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant, including the Interim Officers (as defined in the Hutchens Affidavit), with respect to any claim against the directors, officers or Interim Officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors, officers or Interim Officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

20. **THIS COURT ORDERS** that the Applicant shall indemnify its directors and officers, including the Interim Officers and any person deemed to be a director or officer, against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings that arise after the date hereof or are otherwise referable to the period after the date hereof, except to the extent that, with respect to any officer, director or Interim Officer, the obligation or liability was incurred as a result of the director's, officer's or Interim Officer's gross negligence or wilful misconduct.

21. **THIS COURT ORDERS** that the directors, officers and Interim Officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**D&O Charge**") on the Property, which charge shall not exceed an aggregate amount of \$2,880,000, as security for the indemnity provided in paragraph 20 of this Order. The D&O Charge shall have the priority set out in paragraphs 38 and 40 of this Order.

22. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the D&O Charge, and (b) the Applicant's directors, officers and Interim Officers shall only be entitled to the benefit of the D&O Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is denied or insufficient to pay amounts indemnified in accordance with paragraph 20 of this Order.

APPOINTMENT OF MONITOR

23. **THIS COURT ORDERS** that FTI is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

24. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicant's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicant, to the extent required by the Applicant, in its dissemination to the DIP Lender (as defined in paragraph 32 below) and its counsel on a periodic basis of financial and other information as agreed to between the Applicant and the DIP Lender which may be used in these proceedings, including reporting on a basis to be agreed with the DIP Lender;
- (d) advise the Applicant in its preparation of the Applicant's cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, but not less than weekly, or as otherwise agreed to by the DIP Lender;
- (e) advise the Applicant in its development of the Plan and any amendments to the Plan;
- (f) assist the Applicant with the Restructuring;
- (g) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (h) have full and complete access to the Property, including, the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order;
- (i) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and

performance of its obligations under this Order, including being at liberty to retain and utilize the services of entities related to FTI as may be necessary to perform the Monitor's duties hereunder;

- (j) consider and prepare a report and assessment of the Plan;
- (k) assist the Applicant with its continuing restructuring activities and in the conduct of any sale process or processes to sell the Property and Business or any part thereof;
- (l) advise and assist the Applicant in its negotiation with suppliers, customers and other stakeholders; and
- (m) perform such other duties as are required by this Order or by this Court from time to time.

25. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

26. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of

any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

27. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicant and the DIP Lender with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

28. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

29. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, counsel to the Applicant and Alvarez & Marsal Canada ULC ("A&M") shall be paid their reasonable fees and disbursements incurred both before and after the making of this Order, in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor, counsel for the Applicant and A&M on a weekly basis and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor and counsel to the Applicant retainers in the amounts of \$50,000 each to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

30. **THIS COURT ORDERS** that, if requested by the DIP Lender, the Applicant, any interested party or this Court, the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

31. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, the Applicant's counsel and A&M shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$500,000 as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor, A&M and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 38 and 40 of this Order.

DIP FINANCING

32. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to obtain and borrow under a credit facility from Golub, as agent for the benefit of itself and three lenders (collectively, in such capacity, the "**DIP Lender**") in order to finance the Applicant's payroll expenses, other operating expenses and other accounts payable, provided that borrowings under such credit facility shall not exceed the principal amount of USD\$2,000,000 unless permitted by further Order of this Court.

33. **THIS COURT ORDERS** that such credit facility shall be on the terms and subject to the conditions set forth in the credit agreement between the Applicant and the DIP Lender dated February 7, 2013 (the "**DIP Credit Agreement**"), filed.

34. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to execute and deliver credit agreements, mortgages, charges, hypothecs and security documents, guarantees, confirmations of security and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the DIP Credit Agreement or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, expenses (including reasonable legal fees), liabilities and obligations to the DIP Lender under and pursuant to the DIP Credit Agreement and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

35. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Charge**") on the Property, which DIP Charge shall not secure

an obligation that exists before this Order is made. The DIP Charge shall have the priority set out in paragraphs 38 and 40 hereof.

36. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the DIP Credit Agreement, the Definitive Documents or the DIP Charge, the DIP Lender may cease making advances to the Applicant and, upon seven (7) days notice to the Applicant and the Monitor, may exercise any and all of its other rights and remedies against the Applicant or the Property under or pursuant to the DIP Credit Agreement, the Definitive Documents and the DIP Charge, including without limitation, to set off and/or consolidate any amounts owing by the DIP Lender to the Applicant against the obligations of the Applicant to the DIP Lender under the DIP Credit Agreement, the Definitive Documents or the DIP Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant;
- (c) upon receipt of any notice referenced in paragraph 36(b) of this Order, the Monitor shall forthwith advise the Court in a Monitor's Report that such notice was received; and
- (d) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

37. **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any proposal filed by the Applicant under the *Bankruptcy and Insolvency Act* (Canada), as

amended (the “**BIA**”), with respect to any advances made under the DIP Credit Agreement or the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

38. **THIS COURT ORDERS** that the priorities of the Administration Charge, the DIP Charge and the D&O Charge (collectively, the “**Charges**”), as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$500,000);

Second – D&O Charge (to the maximum amount of \$2,880,000); and

Third – DIP Charge.

39. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

40. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”) in favour of any Person.

41. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges.

42. **THIS COURT ORDERS** that the Charges, the DIP Credit Agreement and the Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the “**Chargees**”) thereunder shall not otherwise be limited or impaired in any way by: (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of

any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Credit Agreement or the Definitive Documents shall create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicant entering into the DIP Credit Agreement, the creation of the Charges or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicant pursuant to this Order, the DIP Credit Agreement or the Definitive Documents, and the granting of the Charges do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable, reviewable, void or voidable transactions under any applicable law.

43. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant’s interest in such real property leases.

SERVICE AND NOTICE

44. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in the Globe and Mail a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly

available in the prescribed manner, all in accordance with subsection 23(1)(a) of the CCAA and the regulations made thereunder.

45. **THIS COURT ORDERS** that the Applicant and the Monitor be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

46. **THIS COURT ORDERS** that the Applicant, the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Monitor may post a copy of any or all such materials on its website at <http://cfcanda.fticonsulting.com/ExtremeFitness>

GENERAL

47. **THIS COURT ORDERS** that Confidential Exhibit "C", Confidential Exhibit "O" and Confidential Exhibit "P" to the Hutchens Affidavit be sealed and not form part of the public record, but rather shall be placed separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order and shall only be opened upon further Order of this Court.

48. **THIS COURT ORDERS** that the Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

49. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

50. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

51. **THIS COURT ORDERS** that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

52. **THIS COURT ORDERS** that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

53. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard Time on the date of this Order; provided, however, that the DIP Lender shall be entitled to rely on this Order as issued for all advances made under the DIP Credit Agreement and the Definitive Documents up to and including the date this Order may be varied or amended.

54. **THIS COURT ORDERS** that, notwithstanding paragraph 53 of this Order, no order shall be made varying, rescinding or otherwise affecting the priorities of this Order with respect to the DIP Credit Agreement or the Definitive Documents, unless notice of a motion is served on the Monitor, the Applicant and the DIP Lender, returnable no later than February 15, 2013.

**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 EXTREME FITNESS, INC.**

Court File No. CV-13-1000-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

INITIAL ORDER

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Lawyers for Extreme Fitness, Inc.

Tab 3

January 15, 2010

Court File No. _____

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE _____)	WEEKDAY THURSDAY , THE
JUSTICE _____ <u>MR.</u>)	<u>#7TH</u>
)	DAY OF MONTH, 20 YR
<hr/>		
JUSTICE CAMPBELL)	OF FEBRUARY, 2013

**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
[APPLICANT'S NAME] (the "Applicant") EXTREME FITNESS, INC.**

**APPLICATION UNDER THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**

INITIAL ORDER

THIS APPLICATION, made by Extreme Fitness, Inc. (the "**Applicant**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of [NAME] Alan Hutchens sworn [DATE] and the Exhibits thereto February 7, 2013 and the exhibits thereto (the "**Hutchens Affidavit**"), the pre-filing report of FTI Consulting Canada Inc. ("FTI"), in its capacity as the intended Monitor in these proceedings, dated February 7, 2013, and the consent of FTI to act as the Monitor, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for [NAMES] the Applicant, counsel for FTI, counsel for National Bank of Canada ("National Bank") and counsel for Golub Capital Incorporated ("Golub"), no one appearing for [NAME]¹ any other person on the service list,

¹ Include names of secured creditors or other persons who must be served before certain relief in this model Order may be granted. See, for example, CCAA Sections 11.2(1), 11.3(1), 11.4(1), 11.51(1), 11.52(1), 32(1), 32(3), 33(2) and 36(2).

although duly served as appears from the affidavit of service of ~~[NAME]~~ sworn ~~[DATE]~~ and on reading the consent of ~~[MONITOR'S NAME]~~ to act as the Monitor, Eunice Baltkois sworn February 7, 2013, filed.

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated² so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that the Applicant is a company to which the CCAA applies.

PLAN OF ARRANGEMENT

3. **THIS COURT ORDERS** that the Applicant shall have the authority to file and may, subject to further ~~order~~Order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "~~Plan~~" "Plan") between, inter alios, the Applicant and one or more of its secured and/or unsecured creditors as it deems appropriate.

POSSESSION OF PROPERTY AND OPERATIONS

4. **THIS COURT ORDERS** that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "Business") and Property. The Applicant shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "Assistants") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

² ~~If service is effected in a manner other than as authorized by the Ontario Rules of Civil Procedure, an order validating irregular service is required pursuant to Rule 16.08 of the Rules of Civil Procedure and may be granted in appropriate circumstances.~~

5. **[THIS COURT ORDERS** that the Applicant shall be entitled to continue to utilize the central cash management system³ currently in place as described in the Hutchens Affidavit of [NAME] sworn [DATE] or replace it with another substantially similar central cash management system (the "Cash Management System") and that any present or future bank or service provider providing the Cash Management System, including, without limitation, National Bank, Royal Bank of Canada and Chase Paymentech Solutions, shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.]

6. **THIS COURT ORDERS** that the Applicant shall be entitled but not required to pay the following expenses or honour the following obligations whether incurred prior to or after the date of this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
- (b) with the prior consent of the Monitor, any or all outstanding and future amounts owing to or in respect of individuals working as independent contractors in connection with the Business if, in the opinion of the Applicant and the Monitor, the individual is critical to the Business and ongoing operations of the Applicant;

³~~This provision should only be utilized where necessary, in view of the fact that central cash management systems often operate in a manner that consolidates the cash of applicant companies. Specific attention should be paid to cross-border and inter-company transfers of cash.~~

- (c) ~~(b)~~ the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges; and
- (d) any amounts owing by the Applicant pursuant to the *Consumer Protection Act, 2002 (Ontario)*.

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course on and after the date of this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods actually delivered or services actually supplied to the Applicant following on or after the date of this Order.

8. **THIS COURT ORDERS** that the Applicant shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on

or after the date of this Order, which, for greater certainty, shall exclude any pre-filing HST obligations; and

- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

9. **THIS COURT ORDERS** that until a real property lease is disclaimed ~~or resiliated~~⁴ in accordance with the CCAA, the Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or such amount as otherwise may be negotiated between the Applicant and the landlord from time to time ("Rent"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

10. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date except in respect of scheduled payments of interest to be remitted under the Priority Credit Agreement (as such term is defined in the Hutchens Affidavit); (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

⁴The term "resiliate" should remain if there are leased premises in the Province of Quebec, but can otherwise be removed.

RESTRUCTURING

11. **THIS COURT ORDERS** that the Applicant shall, subject to such requirements as are imposed by the CCAA and ~~such covenants as may be contained in the Definitive Documents (as hereinafter defined)~~, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, ~~and to dispose of non-profitable, redundant or non-material assets and operations not exceeding \$250,000 in any one transaction or \$500,000 in the aggregate~~⁵;
- (b) ~~terminate the employment of such of its employees or temporarily or indefinitely lay off such of its employees as it deems appropriate~~⁶; on such terms as may be agreed upon between the Applicant and such employee, or failing such agreement, to deal with the consequences thereof in the Plan; and
- (c) pursue all avenues of refinancing and offers for all or material parts of its Business or the Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing or sale (except as permitted by subparagraph 11(a) above),

all of the foregoing to permit the Applicant to proceed with an orderly restructuring, sale or winding down of the Business (the "Restructuring").

12. **THIS COURT ORDERS** that the Applicant shall provide each of the relevant landlords and the Monitor with notice of the Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant's entitlement to remove any such fixture under the

⁵ Section 36 of the amended CCAA does not seem to contemplate a pre-approved power to sell (see subsection 36(3)) and moreover requires notice (subsection 36(2)) and evidence (subsection 36(7)) that may not have occurred or be available at the initial CCAA hearing.

⁶ It is not clear to the Model Order Subcommittee whether the termination of an employee is a "disclaimer or rescission" of the employment agreement within the meaning of Section 32 of the amended CCAA; since the termination of an employee may not be a matter governed by Section 32 of the amended CCAA (except to the extent that collective agreements are exempted from the application of that Section), the Subcommittee has left this provision in the Model Order.

provisions of the lease, such fixture shall remain on the leased premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant disclaims ~~[or resiliates]~~ the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section subsection 32(5) of the CCAA), and the disclaimer ~~[or resiliation]~~ of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

13. **THIS COURT ORDERS** that if a notice of disclaimer ~~[or resiliation]~~ is delivered pursuant to Section 32 of the CCAA, then: (a) during the notice period prior to the effective time of the disclaimer ~~[or resiliation]~~, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice; and (b) at the effective time of the disclaimer ~~[or resiliation]~~, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises and such landlord shall be entitled to notify the Applicant of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

14. **THIS COURT ORDERS** that until and including ~~[DATE MAX. 30 DAYS]~~ March 8, 2013, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall: (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on; (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; (iii) prevent the filing of any registration to preserve or re-perfect an existing security interest; or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

16. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, lease, sub-lease, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

17. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including, without limitation, all computer software, communication and other data services, centralized banking services, including, without limitation, banking and cash management services provided by National Bank, Royal Bank of Canada and Chase Paymentech Solutions, payroll services, insurance, transportation services, utility, leasing or other services to the Business or the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment

practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

18. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of ~~lease~~leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.⁷

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

19. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant, including the Interim Officers (as defined in the Hutchens Affidavit), with respect to any claim against the directors ~~or~~, officers, or Interim Officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors ~~or~~, officers or Interim Officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

20. **THIS COURT ORDERS** that the Applicant shall indemnify its directors and officers, including the Interim Officers and any person deemed to be a director or officer, against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings that arise after the date hereof or are otherwise referable to the period after the date hereof,⁸ except to the extent that, with respect to any officer-

⁷ This non-derogation provision has acquired more significance due to the recent amendments to the CCAA, since a number of actions or steps cannot be stayed, or the stay is subject to certain limits and restrictions. See, for example, CCAA Sections 11.01, 11.04, 11.06, 11.07, 11.08, 11.1(2) and 11.5(1).

⁸ The broad indemnity language from Section 11.51 of the CCAA has been imported into this paragraph. The granting of the indemnity (whether or not secured by a Directors' Charge), and the scope of the indemnity, are discretionary matters that should be addressed with the Court.

of, director or Interim Officer, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

21. **THIS COURT ORDERS** that the directors and officers and Interim Officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "Directors' 'D&O Charge'")⁹ on the Property, which charge shall not exceed an aggregate amount of ~~\$2,880,000~~, as security for the indemnity provided in paragraph {20} of this Order. The Directors' D&O Charge shall have the priority set out in paragraphs {38} and ~~{40}~~ herein of this Order.

22. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' D&O Charge, and (b) the Applicant's directors and officers and Interim Officers shall only be entitled to the benefit of the Directors' D&O Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is denied or insufficient to pay amounts indemnified in accordance with paragraph {20} of this Order.

APPOINTMENT OF MONITOR

23. **THIS COURT ORDERS** that ~~{MONITOR'S NAME} ETI~~ is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

24. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

⁹ Section 11.51(3) provides that the Court may not make this security/charging order if in the Court's opinion the Applicant could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

- (a) monitor the Applicant's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicant, to the extent required by the Applicant, in its dissemination, to the DIP Lender (as defined in paragraph 32 below) and its counsel on a ~~[TIME INTERVAL]~~ periodic basis of financial and other information as agreed to between the Applicant and the DIP Lender which may be used in these proceedings, including reporting on a basis to be agreed with the DIP Lender;
- (d) advise the Applicant in its preparation of the Applicant's cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, but not less than ~~[TIME INTERVAL]~~ weekly, or as otherwise agreed to by the DIP Lender;
- (e) advise the Applicant in its development of the Plan and any amendments to the Plan;
- (f) assist the Applicant with the Restructuring;
- (g) ~~(f)~~ assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (h) ~~(g)~~ have full and complete access to the Property, including, the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order;
- (i) ~~(h)~~ be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order, including being at liberty to retain

and utilize the services of entities related to FTL as may be necessary to perform the Monitor's duties hereunder:

- (j) consider and prepare a report and assessment of the Plan;
- (k) assist the Applicant with its continuing restructuring activities and in the conduct of any sale process or processes to sell the Property and Business or any part thereof;
- (l) advise and assist the Applicant in its negotiation with suppliers, customers and other stakeholders; and
- (m) (i) perform such other duties as are required by this Order or by this Court from time to time.

25. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

26. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, **"Possession"**) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the **"Environmental Legislation"**), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

27. **THIS COURT ORDERS** ~~that that~~ the Monitor shall provide any creditor of the Applicant and the DIP Lender with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

28. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

29. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor ~~and~~, counsel to the Applicant ~~and Alvarez & Marsal Canada ULC ("A&M")~~ shall be paid their reasonable fees and disbursements incurred both before and after the making of this Order, in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor ~~and~~, counsel for the Applicant ~~and A&M~~ on a ~~[TIME INTERVAL]~~ weekly basis and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicant, retainers in the amount[s] amounts of \$~~•~~ 50,000 each to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

30. **THIS COURT ORDERS** that, if requested by the DIP Lender, the Applicant, any interested party or this Court, the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

31. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, ~~if any, and the~~ Applicant's counsel and A&M shall be entitled to the benefit of and are hereby granted a charge

(the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of \$~~500,000~~ as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor, A&M and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs {38} and {40} ~~hereof~~ of this Order.

DIP FINANCING

32. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to obtain and borrow under a credit facility from [DIP LENDER'S NAME] (Golub, as agent for the benefit of itself and three lenders (collectively, in such capacity, the "DIP Lender") in order to finance the Applicant's ~~working capital requirements and other general corporate purposes and capital expenditures's payroll expenses, other operating expenses and other accounts payable,~~ provided that borrowings under such credit facility shall not exceed \$~~the principal amount of~~ US\$2,000,000 unless permitted by further Order of this Court.

33. **THIS COURT ORDERS** ~~THAT~~ that such credit facility shall be on the terms and subject to the conditions set forth in the ~~commitment letter~~ credit agreement between the Applicant and the DIP Lender dated as of [DATE] (the "~~Commitment Letter~~" February 7, 2013 (the "DIP Credit Agreement"), filed.

34. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to execute and deliver ~~such~~ credit agreements, mortgages, charges, hypothecs and security documents, guarantees, confirmations of security and other definitive documents (collectively, the "Definitive Documents"), as are contemplated by the ~~Commitment Letter~~ DIP Credit Agreement or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, expenses (including reasonable legal fees), liabilities and obligations to the DIP Lender under and pursuant to the ~~Commitment Letter~~ DIP Credit Agreement and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

35. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "DIP Lender's Charge") on the Property, which DIP Lender's Charge shall not secure an obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs {38} and {40} hereof.

36. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

(a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;

(b) upon the occurrence of an event of default under the DIP Credit Agreement, the Definitive Documents or the DIP Lender's Charge, the DIP Lender may cease making advances to the Applicant and, upon ~~seven~~ (7) days notice to the Applicant and the Monitor, may exercise any and all of its other rights and remedies against the Applicant or the Property under or pursuant to the Commitment Letter, DIP Credit Agreement, the Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicant and set off and/or consolidate any amounts owing by the DIP Lender to the Applicant against the obligations of the Applicant to the DIP Lender under the Commitment Letter, DIP Credit Agreement, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant; and—

(c) upon receipt of any notice referenced in paragraph 36(b) of this Order, the Monitor shall forthwith advise the Court in a Monitor's Report that such notice was received; and

(d) ~~(e)~~ the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

37. **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any proposal filed by the Applicant under the *Bankruptcy and Insolvency Act of (Canada)*, as amended (the "BIA"), with respect to any advances made under the DIP Credit Agreement or the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

38. **THIS COURT ORDERS** that the priorities of the ~~Directors' Charge, the Administration Charge, the DIP Charge~~ and the ~~DIP Lender's D&O Charge~~ (collectively, the "**Charges**"), as among them, shall be as follows¹⁰:

First – Administration Charge (to the maximum amount of \$~~●~~500,000);

Second – ~~DIP Lender's D&O Charge; and Third – Directors' Charge~~ (to the maximum amount of \$~~●~~2,880,000); and

Third – DIP Charge.

39. **THIS COURT ORDERS** that the filing, registration or perfection of the ~~Directors' Charge, the Administration Charge or the DIP Lender's Charge~~ (collectively, the "**Charges**") Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

40. **THIS COURT ORDERS** that each of the ~~Directors' Charge, the Administration Charge and the DIP Lender's Charge~~ (all as constituted and defined herein) Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person.

¹⁰ The ranking of these Charges is for illustration purposes only, and is not meant to be determinative. This ranking may be subject to negotiation, and should be tailored to the circumstances of the case before the Court. Similarly, the quantum and caps applicable to the Charges should be considered in each case. Please also note that the CCAA now permits Charges in favour of critical suppliers and others, which should also be incorporated into this Order (and the rankings, above), where appropriate.

41. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the ~~Directors' Charge, the Administration Charge or the DIP Lender's Charge~~, unless the Applicant also obtains the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the ~~Directors' Charge and the Administration Charge~~, or further Order of this Court. Charges.

42. **THIS COURT ORDERS** that the ~~Directors' Charge, the Administration Charge, the Commitment Letter, Charges, the DIP Credit Agreement and the Definitive Documents and the DIP Lender's Charge~~ shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees") and/or the ~~DIP Lender~~) thereunder shall not otherwise be limited or impaired in any way by: (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the ~~Commitment Letter~~ DIP Credit Agreement or the Definitive Documents shall create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicant entering into the ~~Commitment Letter~~ DIP Credit Agreement, the creation of the Charges; or the execution, delivery or performance of the Definitive Documents; and

- (c) the payments made by the Applicant pursuant to this Order, the ~~Commitment Letter~~ DIP Credit Agreement or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable, reviewable, void or voidable transactions under any applicable law.

43. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

SERVICE AND NOTICE

44. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in- ~~[newspapers specified by the Court]~~ Globe and Mail a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with ~~Section~~ subsection 23(1)(a) of the CCAA and the regulations made thereunder.

45. **THIS COURT ORDERS** that the Applicant and the Monitor be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

46. **THIS COURT ORDERS** that the Applicant, the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service

List from time to time, and the Monitor may post a copy of any or all such materials on its website at ~~[INSERT WEBSITE ADDRESS]~~ <http://cfcanada.fticonsulting.com/ExtremeFitness>

GENERAL

47. ~~**THIS COURT ORDERS**~~ that Confidential Exhibit "C", Confidential Exhibit "O" and Confidential Exhibit "P" to the Hutchens Affidavit be sealed and not form part of the public record, but rather shall be placed separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order and shall only be opened upon further Order of this Court.

48. ~~47.~~ **THIS COURT ORDERS** that the Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

49. ~~48.~~ **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

50. ~~49.~~ **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

51. ~~50.~~ **THIS COURT ORDERS** that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a


representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

52. ~~51.~~ **THIS COURT ORDERS** that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

53. ~~52.~~ **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order; provided, however, that the DIP Lender shall be entitled to rely on this Order as issued for all advances made under the DIP Credit Agreement and the Definitive Documents up to and including the date this Order may be varied or amended.

54. **THIS COURT ORDERS** that, notwithstanding paragraph 53 of this Order, no order shall be made varying, rescinding or otherwise affecting the priorities of this Order with respect to the DIP Credit Agreement or the Definitive Documents, unless notice of a motion is served on the Monitor, the Applicant and the DIP Lender, returnable no later than February 15, 2013.

43723695-1



Tab 4

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**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
EXTREME FITNESS, INC.**

**APPLICATION UNDER THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**

**AFFIDAVIT OF ALAN HUTCHENS
(sworn February 7, 2013)**

I, Alan Hutchens, of the Town of Oakville, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am the Interim Chief Financial Officer of Extreme Fitness, Inc. ("**Extreme**", the "**Company**" or the "**Applicant**"). As such, I have personal knowledge of the matters to which I hereinafter depose in this Affidavit. Where I do not have personal knowledge of the matters set out herein, I have stated the source of my information and, in all such cases, believe it to be true.

I. NATURE OF APPLICATION AND RELIEF SOUGHT

2. This Affidavit is sworn in support of an application by the Applicant under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), for an order, among other things:

- (a) staying all proceedings and remedies taken or which might be taken in respect of the Applicant or any of its property, except upon the leave of the Court being granted, or as otherwise provided;
- (b) authorizing the Applicant to prepare and file with the Court a plan of compromise or arrangement with its creditors;

- (c) appointing FTI Consulting Canada Inc. ("**FTI**") as monitor of the Applicant (in such capacity, the "**Monitor**");
- (d) authorizing debtor-in-possession ("**DIP**") financing for the Applicant;
- (e) authorizing an administration charge (the "**Administration Charge**") over the assets of the Applicant to the benefit of the Monitor, Monitor's counsel, the Applicant's counsel and Alvarez & Marsal Canada ULC ("**A&M**") in its capacity as the Applicant's financial advisor (in such capacity, the "**Advisor**") and in its capacity as the Applicant's Interim Chief Financial Officer and Interim Controller (in such capacities, the "**Interim Officers**") to secure their fees and disbursements; and
- (f) indemnifying the Applicant's directors, officers and Interim Officers for obligations and liabilities they may incur as directors and officers of the Applicant after the commencement of the CCAA proceedings and authorizing a charge over the assets of the Applicant as security for such indemnity.

3. The principal objectives of this proceeding are: (i) to ensure the ongoing operations of Extreme; (ii) to ensure the Company has the necessary availability of working capital funds to maximize the ongoing business of Extreme for the benefit of its stakeholders; and (iii) to complete a sale and transfer of substantially all of Extreme's assets and business as a going concern.

4. In connection with the potential sale of Extreme's assets and business, Extreme entered into a letter of intent with GoodLife Fitness Centres Inc. ("**GoodLife**"). The transaction is subject to the satisfaction of certain conditions, as described in greater detail below, and contemplates the completion of a transaction by March 31, 2013. The proposed transaction would involve the retention of most of Extreme's staff.

5. The anticipated scenario in this proceeding is a going concern sale of the Applicant's fitness facilities to GoodLife as set out herein. However, there is also the possibility that there could be a restructuring of the Applicant's business. Protection under the CCAA will allow for a

sale to happen, if possible, under the supervision of the Court for the benefit of all stakeholders and, if necessary, will also allow for the prospect of a restructuring.

II. BACKGROUND OF THE APPLICANT AND ITS BUSINESS

6. The Applicant is a privately held corporation formed by articles of amalgamation under the laws of the Province of Alberta on June 16, 2006. The Applicant is registered to carry on business in the Province of Ontario and all of its assets are located in Ontario. A copy of a corporation information report for Extreme is attached as **Exhibit "A"** to this Affidavit.

7. Through acquisitions and greenfield expansions, Extreme currently operates 13 fitness facilities in the GTA and surrounding region with approximately 57,500 members.

8. The Applicant's ownership structure as at October, 2012 is set out in the organizational chart, attached as **Exhibit "B"** to this Affidavit. On June 15, 2006, Falconhead Capital, LLC ("**Falconhead**"), a New York based private equity firm, purchased the Extreme business which, at the time, operated four fitness facilities in the greater Toronto area (the "**GTA**"). Falconhead is the Applicant's largest shareholder, directly or indirectly holding approximately 80% of the outstanding share capital of the Company.

9. As of the date of this Affidavit:

- (a) the Applicant's directors are David Gubbay, Darko Pajovic and Taso Pappas (collectively, the "**Directors**"); and
- (b) the Applicant's officers are Taso Pappas, President, Alan Hutchens, Interim Chief Financial Officer and Greg Karpel, Interim Controller (collectively, the "**Officers**"). Messrs. Hutchens and Karpel were appointed as Interim CFO and Interim Controller, respectively, effective May 1, 2012, pursuant to an engagement letter between the Applicant and A&M of even date.

10. The Applicant's former CFO and former Controller were placed on administrative leave effective April 26, 2012. The Applicant's former CEO resigned effective June 8, 2012. On the same date, Taso Pappas was appointed President of the Applicant.

11. DBP Maintenance (“**DBP**”) is an independent contractor owned by, among others, Darko Pajovic. DBP currently provides janitorial and general maintenance services to Extreme’s 13 fitness facilities.

12. The Applicant’s revenues are comprised primarily of membership and personal training fees. The Applicant operates its 13 fitness facilities from the following leased locations:

- (a) 80 Bloor Street West, Toronto (“**Bloor**”);
- (b) 3495 Lawrence Avenue East, Scarborough (“**Cedarbrae**”);
- (c) 635 Danforth Avenue, Toronto (“**Danforth**”);
- (d) 1521 Yonge Street, Toronto (“**Delisle**”);
- (e) 319 Yonge Street, Toronto (“**Dundas**”);
- (f) 110 Eglinton Avenue East, Toronto (“**Dunfield**”);
- (g) 90 Interchange Way, Vaughan (“**Interchange**”);
- (h) 4950 Yonge Street, Toronto (“**North York**”);
- (i) 1755 Pickering Parkway, Pickering (“**Pickering**”);
- (j) 267 Richmond Street West, Toronto (“**Richmond**”);
- (k) 8281 Yonge Street, Thornhill (“**Thornhill**”);
- (l) 111 Wellington Street West, Toronto (“**Wellington**”); and
- (m) 75 Consumers Drive, Whitby (“**Whitby**”).

13. The Applicant’s registered office is 600, 12220 Stony Plain Road, Edmonton, Alberta. Its head office is located at 8281 Yonge Street, Thornhill, Ontario.

14. The Applicant has a 75% interest in the share capital of Halsa Studio Inc. (“**Halsa**”), a corporation incorporated pursuant to the laws of the Province of Ontario. Halsa previously

operated as a laser hair removal clinic at the Thornhill location. Halsa ceased operations on or about 2002.

15. The Applicant also has a 51% interest in the share capital of Juice (Whitby) Inc. ("**Juice**"), a corporation incorporated pursuant to the laws of the Province of Ontario. Juice previously operated as a juice bar located at the Whitby location. Juice ceased operations on or about 2007.

16. Nutrition (Whitby) Inc. ("**Nutrition**"), a corporation incorporated pursuant to the laws of the Province of Ontario, is a wholly-owned subsidiary of the Applicant. Nutrition previously operated as a nutritional supplements retailer at the Whitby location. Nutrition ceased operations on or about 2007.

17. As of the date of this Affidavit, none of Halsa, Juice and Nutrition have any material assets and are dormant companies. Accordingly, it is not currently contemplated that Halsa, Juice or Nutrition will be applicants in these proceedings.

III. THE APPLICANT'S FINANCIAL SITUATION

18. In early April, 2012, Extreme's former CEO became aware that the Company was experiencing liquidity difficulties and that certain discrepancies and irregularities existed in the Company's books and records. Accordingly, the Applicant took immediate steps to investigate the situation by, among other things, engaging A&M on April 9, 2012, to provide consulting services in connection with, among other things, efforts to improve the Company's financial and operating performance and to assist in evaluating difficulties with the Company's accounting, financial and operating reporting.

19. In mid-April, 2012, in order to address the Company's liquidity needs, certain of its stakeholders, with the cooperation of National Bank of Canada (the Applicant's senior secured lender), extended the Applicant a priority credit facility, as further detailed below.

20. The Company and A&M worked throughout April and May, 2012 to identify, review and assess the impact of the discrepancies and irregularities that existed in the Company's books and records. As this work progressed, it became evident that the Company's financial statements for

the fiscal years ending December 31, 2010 and 2011, and its monthly financial statements for January to April, 2012 required restatement. The primary financial statement items that had been misstated, included, but were not limited to:

- (a) personal training revenue, accounts receivable and deferred revenue;
- (b) allowance for doubtful accounts;
- (c) membership revenues; and
- (d) GST/HST liabilities.

21. The financial statement restatement work was concluded in mid-June, 2012 which entailed, but was not limited to:

- (a) restatement of the Applicant's financial statements for the fiscal years ending December 31, 2010 and December 31, 2011 and its balance sheet as at December 31, 2009;
- (b) reconciliation of the Applicant's personal training records for fiscal years 2009 to 2011;
- (c) recalculation and restatement of the Applicant's bad debt expense for fiscal years 2010 and 2011;
- (d) filing the Applicant's amended 2010 income tax return; and
- (e) restating the Applicant's GST/HST liability in conjunction with the filing of amended returns under the Canada Revenue Agency's Voluntary Disclosures Program ("VDP"), as further described herein.

22. Attached hereto as **Confidential Exhibit "C"** to this Affidavit is a copy of the Applicant's unaudited financial statements for the fiscal year ended December 31, 2011 and copy of the Applicant's unaudited third-quarter financial statements for the period ended September 30, 2012 (the "**2012 Q3 Financials**"). The 2012 Q3 Financials reflect a loss from operations of

\$7,072,813. The Applicant is requesting a sealing of this exhibit as it contains commercially sensitive information, the release of which could prejudice the stakeholders of the Company.

23. The Applicant's liabilities total approximately \$57 million, \$44 million of which are secured (including capital lease obligations).

IV. STAKEHOLDERS

(a) National Bank of Canada

24. The Applicant and National Bank of Canada ("**National Bank**") are parties to a credit agreement dated May 20, 2011 (the "**National Bank Credit Agreement**"), pursuant to which National Bank agreed to provide a revolving term credit facility in the principal amount of \$3,000,000, a non-revolving term loan facility in the principal amount of \$15,000,000, a non-revolving term loan facility in the principal amount of \$7,000,000 and a Business MasterCard facility in the principal amount of \$500,000 (collectively, the "**National Bank Facilities**"). A copy of the National Bank Credit Agreement is attached as **Exhibit "D"** to this Affidavit.

25. The Applicant executed and delivered a general security agreement in favour of National Bank dated May 20, 2011 (the "**National Bank GSA**"), registration in respect of which was made pursuant to the *Personal Property Security Act* (Ontario) (the "**PPSA**") on March 25, 2011, pursuant to financing statement number 20110325 0910 1862 5333 and reference file number 668533329. A copy of the National Bank GSA is attached as **Exhibit "E"** to this Affidavit.

26. As further security to support the National Bank Credit Agreement, the Applicant executed and delivered a securities pledge agreement in favour of National Bank (the "**National Bank SPA**") and a fixed and floating charged debenture in the principal amount of \$50,000,000 (the "**National Bank Debenture**").

27. The Applicant was in default of certain of its obligations under the National Bank Credit Agreement and, accordingly, entered into a forbearance letter agreement with National Bank dated April 18, 2012 (as amended, the "**National Bank Forbearance Agreement**"). The National Bank Forbearance Agreement operated to forbear enforcement of National Bank's security until October 31, 2012, conditional on certain terms and conditions as set out in the

National Bank Forbearance Agreement. Through a series of extensions to the National Bank Forbearance Agreement, the forbearance date was extended to January 31, 2013. A copy of the National Bank Forbearance Agreement is attached as **Exhibit "F"** to this Affidavit.

28. The total indebtedness of the Applicant to National Bank outstanding as at the date hereof is approximately \$18,734,943, including a \$300,000 letter of credit provided by National Bank as security for the Applicant's lease of the Interchange location.

(b) Golub Capital Incorporated

29. The Applicant and Golub Capital Incorporated ("**Golub**"), as agent for the benefit of itself and the lenders described in the agreement, are parties to an amended and restated credit agreement dated May 20, 2011 (the "**Golub Credit Agreement**"), pursuant to which Golub agreed to provide a term facility to the Applicant in the principal amount of \$16,500,000 (the "**Golub Facility**"). A copy of the Golub Credit Agreement is attached as **Exhibit "G"** to this Affidavit.

30. The Applicant executed and delivered a general security agreement in favour of Golub (the "**Golub GSA**"), registration in respect of which was made pursuant to the PPSA on June 5, 2006, pursuant to financing statement number 20060605 1112 1862 3005 and reference file number 625817394, as amended by financing statement numbers 20110426 0803 1862 7632 and 20110513 1051 1862 9118. This registration has been postponed by operation of financing statement number 20110511 0950 1862 8866 in favour of National Bank's PPSA registration against the Applicant under financing statement number 20110325 0910 1862 5333 and reference number 668533329. A copy of the Golub GSA is attached as **Exhibit "H"** to this Affidavit.

31. The Applicant was in default of certain of its obligations under the Golub Credit Agreement and, accordingly, executed a forbearance letter agreement with Golub, as agent for the benefit of itself and the lenders described therein, dated April 18, 2012 (as amended, the "**Golub Forbearance Agreement**"). The Golub Forbearance Agreement operated to forbear enforcement of Golub's security to October 31, 2012, conditional on certain terms and conditions substantively similar to those set out in the National Bank Forbearance Agreement.

Through a series of extensions to the Golub Forbearance Agreement, the forbearance date was extended to February 15, 2013. A copy of the Golub Forbearance Agreement is attached as **Exhibit "I"** to this Affidavit.

32. The total indebtedness of the Applicant to Golub under the Golub Credit Agreement outstanding as at December 31, 2012 is approximately USD\$18,728,587, including amounts owing for accrued interest.

Priority Credit Facility

33. As stated above, in order to address its liquidity difficulties, the Applicant entered into a priority credit facility agreement with Golub, as agent for the benefit of itself and the lenders described therein (the "**Priority Lenders**"), dated April 18, 2012 (as amended, the "**Priority Credit Agreement**"), under which the Priority Lenders agreed to provide a credit facility in the principal amount of USD\$6,000,000, to be increased up to a maximum amount of USD\$8,000,000 at the discretion of the Priority Lenders. The Priority Credit Agreement was provided to the Applicant expressly to provide liquidity sufficient to satisfy certain of its payroll and other operating expenses pursuant to approved cash flow statements. As of the date of this Affidavit, the Applicant has drawn the aggregate of USD\$8,000,000 under the Priority Credit Agreement. A copy of the Priority Credit Agreement is attached as **Exhibit "J"** to this Affidavit.

34. The Applicant executed and delivered, as an acknowledgment party, an intercreditor agreement between Golub, in its joint capacities as agent for itself and on behalf of each of the senior creditors and junior creditors (as defined therein) dated April 18, 2012 (the "**Golub Intercreditor**"), under which the Applicant's obligations to Golub and the junior creditors under the Golub Credit Agreement were subordinated in favour of those of Golub and the senior creditors under the Priority Credit Agreement up to an amount equal to USD\$8,000,000, plus interest and costs. A copy of the Golub Intercreditor is attached as **Exhibit "K"** to this Affidavit.

35. The Applicant executed and delivered, as an acknowledgment party, an intercreditor agreement between Golub, as agent for and on behalf of the senior creditors (as defined therein), and National Bank, as agent for and on behalf of the junior creditors (as defined therein), dated April 18, 2012 (the "**National Bank / Golub Intercreditor**"), under which the Applicant's

obligations to National Bank and the junior creditors under the National Bank Credit Agreement were subordinated in favour of those of Golub and the senior creditors under the Priority Credit Agreement up to an amount equal to USD\$8,000,000, plus interest and costs. A copy of the National Bank / Golub Intercreditor is attached as **Exhibit "L"** to this Affidavit.

36. Other than the creditors described above and RBC (as defined and described below), I am not aware of any other creditors with general security over the Applicant's assets.

(c) Other Secured Creditors

37. Each of CIT Financial Ltd., Life Fitness International Sales, Inc., Heffner Leasing Limited, Heffner Auto Sales and Leasing Inc., Heffner Auto Finance Corp., Coinamatic Commercial Laundry Inc., Indcom Leasing Inc., Essex Capital Leasing Corp., CLE Leasing Enterprises Ltd., DSM Leasing Ltd., Enercare Solutions Limited Partnership, Dell Financial Services Canada Limited, BMW Canada Inc. and De Lage Laden Financial Services Canada Inc. have made PPSA security registrations against the Applicant in respect to specific leased equipment and motor vehicles, as applicable.

38. A summary of PPSA registrations made against the Applicant is attached as **Exhibit "M"** to this Affidavit.

(d) Cash Management System / Payment Processors: National Bank of Canada, Royal Bank of Canada and Chase Paymentech Solutions

39. The Applicant maintains the following bank accounts:

- (a) two accounts with its primary operating bank, National Bank, being one Canadian dollar account and one U.S. dollar account (together, the "**National Bank Accounts**"); and
- (b) 14 accounts with Royal Bank of Canada ("**RBC**"), being one account for each of the Applicant's 13 fitness facilities and one master account (collectively, the "**RBC Bank Accounts**").

40. The Canadian dollar National Bank account (the "**CAD National Bank Account**") is the Applicant's primary operating account where Visa and Master Card credit card payments and Interac direct deposit payments made in favour of the Applicant are deposited. Approximately 76.5% of the Company's aggregate cash receipts are deposited into the CAD National Bank Account, including cash and cheque payments received directly at the Applicant's 13 fitness facilities and delivered to the Company's head office for deposit. The Company utilizes the cash in the CAD National Bank Account to fund its payroll and to pay all of its landlord, supplier and other Canadian dollar obligations. The U.S. dollar National Bank account (the "**USD National Bank Account**") is used periodically to pay the Applicant's U.S. dollar obligations. Funds are electronically transferred by management of the Applicant from the CAD National Bank Account to the USD National Bank Account on an as-needed basis.

41. The RBC Bank Accounts are the Applicant's secondary operating accounts where pre-authorized debits ("**PADs**") and American Express credit card payments made in favour of the Applicant are deposited. Approximately 23.5% of the Company's aggregate cash receipts are deposited into the RBC Bank Accounts. The funds held in the RBC Bank Accounts are periodically aggregated into the RBC master account and subsequently transferred at the request of management of the Applicant from the RBC master account to the CAD National Bank Account on an as-needed basis. The Applicant does not make any other disbursements to any other parties from the RBC Bank Accounts.

42. As security for its services and the obligations of the Applicant under its agreement with RBC, the Company is required to maintain a minimum aggregate cash balance in its RBC accounts of \$500,000. RBC has a PPSA registration against the Applicant by way of financing statement number 20080709 1945 1531 7923 and reference file number 646777251 over inventory, equipment, accounts, other and motor-vehicle.

43. The Applicant also has an existing agreement with Chase Paymentech Solutions, for itself and on behalf of The Bank of Nova Scotia and First Data Loan Company, Canada (collectively, "**Paymentech**"), dated February 2, 2011 (the "**Paymentech Agreement**"), pursuant to which Paymentech provides processing services for Visa and Master Card credit card payments and Interac direct deposit payments made in favour of the Applicant. Paymentech

currently processes approximately 70% of all cash receipts of the Company. As security for its services and the obligations of the Applicant under the Paymentech Agreement, the Applicant has provided to Paymentech a cash deposit in an amount of \$900,000. A copy of the Paymentech Agreement (without schedules) is attached as **Exhibit "N"** to this Affidavit.

(e) Landlords

44. The Applicant has existing lease agreements with the following landlords:

- (a) Krugarand Corporation, in respect to the Bloor location;
- (b) First Capital (Cedarbrae) Corporation, in respect to the Cedarbrae location;
- (c) 1079268 Ontario Inc., in respect to the Danforth location;
- (d) 1521 Yonge Street Limited, in respect to the Delisle location;
- (e) 10 Dundas Street Ltd., in respect to the Dundas location;
- (f) 110 Eglinton Avenue East Inc., in respect to the Dunfield location;
- (g) 2748355 Canada Inc., in respect to the Interchange location;
- (h) Redbourne Madison Property Inc. and Redbourne Madison LP Inc., in respect to the North York location;
- (i) Pickering Brock Centre Inc., in respect to the Pickering location;
- (j) Festival Hall Developments Inc., in respect to the Richmond location;
- (k) 2079843 Ontario Inc. and 2044922 Ontario Ltd., in respect to the Thornhill location and corresponding parking lot lease;
- (l) 2125879 Ontario Inc., in respect to the Wellington location; and
- (m) Whitby Entertainment Holdings Inc., in respect to the Whitby location.

(f) Government of Canada / Canada Revenue Agency

45. On April 23, 2012, the Company's legal counsel wrote to the CRA to initiate a voluntary disclosure under CRA's VDP relating to under reported GST/HST collections and overstated input tax credits for fiscal years 2009, 2010 and 2011. In a letter dated May 10, 2012, CRA assigned a VDP case number to Extreme and confirmed that the effective date of the voluntary disclosure was April 23, 2012.

46. On July 20, 2012, the Company's legal counsel wrote to CRA to submit amended monthly GST/HST returns prepared by the Company for fiscal years 2009, 2010 and 2011. The amended returns show an aggregate GST/HST liability for those years of approximately \$3.4 million, subject to assessment by CRA. In addition, while the Company did not file amended returns for January and February, 2012, the combined liability of approximately \$624,000 for those months has not been paid to CRA.

47. The Company received Notices of Re-Assessment (the "NORAs") from CRA dated January 11, 2013, which delineated the Applicant's HST obligations flowing from the amended tax returns filed under the VDP. The aggregate HST liability owing pursuant to the NORAs is \$4,548,819, including the above-noted liabilities for January and February, 2012 and interest and penalties of \$369,845.

(g) Employees

48. The Applicant presently employs approximately 160 full-time employees, 700 part-time employees, and 30 independent contractors in Ontario. The 30 independent contractors provide services related to group fitness classes at each of the Applicant's 13 fitness facilities. The Applicant's employees are not unionized and do not have a collective bargaining agent. Wages and benefits total approximately \$1,700,000 per month.

49. Based on the Applicant's current cash position, its pro-forma cash flows and its access to the DIP Credit Facility (as defined herein), it has sufficient cash to continue to pay wages to its remaining employees, contractors and its other obligations arising post-filing until the completion of the proposed sale transaction or restructuring.

50. As of the date of this Affidavit, all source deductions related to the Applicant's employees were current, including, without limitation, income tax withholdings, employee health tax, worker's compensation, Canada Pension Plan and employment insurance.

51. The Applicant has no pension plans.

(h) Trade Creditors

52. As at February 5, 2013, the Applicant's other unsecured liabilities, including trade debt, totalled approximately \$850,000, which amount does not include outstanding February rent payments of approximately \$890,000. Since the Applicant's business does not require significant consumable supplies or services, its trade creditor debt is generally small and is usually satisfied in the ordinary course of business.

V. PRIOR MARKETING AND SALE PROCESS

53. On July 4, 2012, the Company engaged Integrity Square LLC ("ISQ"), a specialty financial advisory firm based in New York that focuses on the fitness and wellness sector, to provide financial advisory services with respect to a sale of the Company or certain of its 13 fitness facilities.

54. Commencing in mid-August, 2012, ISQ contacted numerous potential purchasers that either already had operations in the fitness facility sector or that ISQ believed would have interest in Extreme. Of these parties, several executed non-disclosure agreements and received the confidential information memorandum prepared by ISQ, which memorandum described Extreme's business.

55. Several parties subsequently accessed the confidential electronic data room established to assist with due diligence. October 10, 2012 was set as the date for potential purchasers to submit written non-binding indications of interest that were to include, among other things, information regarding purchase price, form of consideration, financing sources and due diligence requirements.

56. The Applicant and ISQ concluded that the potential realizations from the offers generated by the solicitation process described above were insufficient and, accordingly, no offers were

accepted. A financial summary of the offers tendered under the ISQ sale process is attached hereto as **Confidential Exhibit "O"**. The Applicant is requesting a sealing of this exhibit as it contains commercially sensitive information, the release of which could prejudice the stakeholders of the Company.

VI. SALE UNDER CCAA PROTECTION

57. Based on the information set out above and attached hereto, the Applicant is insolvent as the aggregate of its property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all its obligations, due and accruing due.

58. In addition, without the additional financing made available under the Priority Credit Agreement, the Applicant would be unable to meet its obligations as they fell due.

59. In order for the Applicant to ensure the best possible recovery for its stakeholders, including, without limitation, its creditors, employees, customers and landlords, the Applicant has determined that a sale of its business is required.

60. On January 18, 2013, the Applicant entered into a letter of intent (the "**LOI**") with GoodLife. A copy of the LOI is attached hereto as **Confidential Exhibit "P"**. The Applicant is requesting a sealing of this exhibit as it contains confidential, competitively sensitive information that, if disclosed, could harm the Applicant and its stakeholders. The LOI contemplates the sale of substantially all of the Applicant's assets for an aggregate amount greater than any one or more of the other offers proffered under the ISQ sales process and maximizes value for all stakeholders.

61. The sale transaction contemplated in the LOI must, according to its terms, close on or before March 31, 2013 or such other date as the parties thereto agree. Certain conditions precedent must be satisfied prior to the conclusion of the sale, including, but not limited to:

- (a) GoodLife concluding its due diligence with respect to the Applicant on or before March 4, 2013;

- (b) the execution of a binding asset purchase agreement in respect of substantially all of the Applicant's assets (the "APA") by no later than March 18, 2013; and
- (c) approval of the APA by the Court.

62. Pursuant to the LOI, until the earlier of: (i) the date on which the APA is executed; and (ii) the date on which GoodLife terminates negotiations under the LOI, the Applicant, the Applicant's shareholders, National Bank and Golub are precluded from directly or indirectly soliciting or engaging in discussions or negotiations with any third party seeking to purchase the Applicant's assets.

63. The parties to the LOI are diligently working towards satisfying the conditions set out in the LOI and, to the extent that such conditions are satisfied, will enter into an APA, return to Court to seek approval of the APA and ultimately distribute the realizations from said transaction to the Applicant's creditors entitled thereto in accordance with their priority assuming the transaction closes.

VII. STAY OF PROCEEDINGS

64. A CCAA stay of proceeding is needed to ensure that the Applicant's business can be sold in an efficient and orderly way under the protection of the Court without the threat of proceedings or discontinuation of essential services. A stay of proceedings will restrain temporarily the exercise of rights and remedies under the various agreements to which the Applicant is a party, preserve the status quo, and restrain existing creditors from taking unfair advantage in the circumstances. Importantly, a stay of proceedings will allow the Applicant to fulfil its obligations related to GoodLife's due diligence review of the Applicant under the terms and conditions of the LOI with the view of ultimately entering into and completing the APA.

65. The Applicant believes that a stay of proceedings will not materially prejudice any of the existing creditors when compared to the consequences if a stay of proceedings is not granted. Golub, as agent for the benefit of itself and three lenders (collectively, in such capacity, the "DIP Lender") has agreed to provide the Applicant with the DIP Facility and has agreed to continue funding necessary post-filing expenses during the CCAA proceedings, the details of which are

set out below. I believe that the alternative to a stay of proceedings is the forced sale and/or liquidation of the Applicant and its assets.

VIII. THE PROPOSED MONITOR

66. FTI has been serving as a consultant to National Bank with respect to its lending arrangements with Extreme and has assisted the Applicant in preparing for this CCAA application, including reviewing the cash flow projections of the Applicant for the next 9 weeks, assuming the relief sought is granted (the "**Cash Flow Projection**"). The amounts set out in the Cash Flow Projection reflect, among other things, the minimum payments required to maintain the Applicant's business during the initial thirty day stay period and to the anticipated closing of a sale transaction, as well as professional fees. A copy of the Cash Flow Projection together with a report containing the prescribed representations of the Applicant regarding the preparation of the Cash Flow Projection is attached as **Exhibit "Q"** to this Affidavit.

67. Management believes that it is in the best interests of all stakeholders if this Court appoints FTI as the Court-appointed monitor of the Applicant. As a result of FTI's involvement with the Applicant and certain of its major stakeholders, including, but not limited to, National Bank, in advance of and in preparation for this filing, FTI has gained insight into the Applicant's business and will be in a position to perform the monitoring duties effectively and without delay.

68. FTI has consented to act as monitor of the Applicant in accordance with the requirements of the CCAA, subject to the Court's approval. A copy of FTI's consent is included in the Application Record in these proceedings.

IX. FINANCING DURING CCAA PROCEEDINGS

69. The DIP Lender will provide the Applicant with financing during these proceedings through a new credit facility (the "**DIP Facility**") allowing for one or more advances to a maximum amount of USD\$2,000,000 pursuant to a DIP Credit Agreement dated February 7, 2013 (the "**DIP Credit Agreement**"), a copy of the form of which is attached as **Exhibit "R"** to this Affidavit. The repayment date under the DIP Credit Agreement is the earlier of: (i) the date of demand by the DIP Lender; (ii) the date on which all or substantially all of the assets of the Applicant are sold; and (iii) March 31, 2013. The original scheduled repayment date of March

31, 2013 may be extended at the discretion of the DIP Lender. The Cash Flow Projection demonstrates that, with the funding available under the DIP Facility, the Applicant will have sufficient cash flow to fund the Applicant's operations for the initial 9 week period, the anticipated period to complete a sale transaction.

70. The Applicant has been offered the DIP Facility from certain of its existing lenders under the Priority Credit Agreement and on what the Applicant views as reasonable terms in the circumstances. In addition, National Bank has consented to the DIP Facility. As a result, the Applicant did not canvas the market for other potential lenders. Because this offer for the DIP Facility does not require any alteration of the Company's accounts, the Applicant believes that there was no commercial advantage to pursuing other possible providers of a DIP Facility. In addition, the DIP Lender is already familiar with Extreme's business and financial profile as well as its restructuring options. Any other offer from other lenders would require a great deal of time and expense to pursue, could require a new cash management system and would have to deal with the security granted in connection with the credit facilities provided by Golub and National Bank.

71. As provided in the DIP Credit Agreement, the DIP Facility is conditional on the Applicant obtaining, as part of the initial Order sought in these proceedings (the "**Initial Order**"), a charge in favour of the DIP Lender (the "**DIP Charge**") over all of the Applicant's assets, ranking first in priority to any existing security other than the Administration Charge and the D&O Charge (as defined below). The Service List includes all parties with a security interest registered under the PPSA.

72. The Applicant believes that the terms of the DIP Facility are favourable to it having regard to the circumstances and that the amount of the DIP Facility is necessary and reasonable in the circumstances to ensure the Applicant has a prudent and responsible level of liquidity to meet its post-filing obligations as they become due for the period of the initial stay and to complete the proposed sale. The Applicant will not be able to continue its operations or initiate going-concern sale efforts without access to the DIP Facility.

X. PAYMENTS DURING THE CCAA PROCEEDINGS

73. During the course of these CCAA proceedings, the Applicant intends to make payments for goods and services supplied post-filing in the ordinary course as set out in the Cash Flow Projection described above and as permitted by the Initial Order.

74. It is also contemplated by the Cash Flow Projection that: (a) employee wage obligations relating to active employment will be paid in the ordinary course, whether such obligations are incurred pre-filing or post-filing; and (b) outstanding and future amounts owing to independent contractors may be paid in the ordinary course, if in the opinion of the Company and the Monitor, the individual contractor is critical to Extreme's business and ongoing operations.

75. In addition, the Cash Flow Projection contemplates payment of scheduled interest payments under the Priority Credit Agreement.

XI. ADMINISTRATION CHARGE

76. The Applicant's legal counsel, the Monitor, the Monitor's legal counsel and A&M have indicated that their respective ongoing involvement is conditional upon the granting of an order under the CCAA which grants the Administration Charge on the Applicant's property, assets and undertaking in the maximum amount of \$500,000 to secure their professional fees and disbursements.

77. I believe that that the following factors support the granting of the Administration Charge:

- (a) the beneficiaries of the Administration Charge will provide essential legal and financial advice and support to the Applicant throughout the CCAA proceedings;
- (b) the roles of the Applicant's legal counsel, the Monitor, the Monitor's legal counsel and A&M are distinct and there is no anticipated unwarranted duplication; and
- (c) the Administration Charge does not purport to prime any secured party who has not received notice of this motion.

78. Accordingly, I believe that this is an appropriate case in which to grant the Administration Charge. Each of the proposed beneficiaries of the Administration Charge will play a critical role in the Applicant's restructuring and proposed sale, and it is unlikely that the above-noted advisors will participate in these CCAA proceedings unless the Administration Charge is granted to secure their fees and disbursements.

XII. DIRECTORS' AND OFFICERS' CHARGE

79. The Directors, Officers and Interim Officers have indicated that their respective ongoing involvement is conditional upon the granting of an order under the CCAA which grants a charge on the Applicant's property in the maximum amount of \$2,880,000 (the "**D&O Charge**"), approximately equal to 4 weeks wages plus accrued vacation pay plus 2 months of estimated HST obligations, as security for the Applicant's indemnification for possible liabilities which may be incurred by such Directors, Officers and Interim Officers, which would rank second in priority behind the Administration Charge.

80. The Applicant maintains a Management Liability Insurance policy with Lloyd's Underwriters (the "**Policy**"). The Policy provides coverage to the Applicant, any subsidiary or joint-venture of the Applicant, the Directors and Officers, the Interim Officers and the retired directors and officers of the Applicant. The aggregate limit of liability coverage provided for under the Policy is \$5,000,000.

81. Management of the Applicant has made inquiries with the Applicant's current insurance broker and am advised that a comparable level of insurance coverage is not available through any other insurance provider at rates more favourable than those in place as of the date of this Affidavit.

82. The Policy contains several exclusions and limitations to the coverage it provides and there is a potential for there to be insufficient coverage in respect of the potential liabilities for which the Directors, Officers and Interim Officers may be found responsible.

83. The D&O Charge is required in order to provide a level of protection to the Directors, Officers and Interim Officers with respect to the possible liabilities imposed on individuals in their capacity as directors and officers of the Applicant. I believe that the request of the

Directors, Officers and Interim Officers to receive adequate protection in the form of the D&O Charge is fair and reasonable and advances the integral need of the Applicant to have fully functional, experienced and qualified advisors, board of directors and officers.

XIII. CONCLUSION

84. It is in the best interests of all stakeholders of the Applicant for this Court to grant the relief sought by the Applicant. It will allow the Applicant, with the support of the DIP Lender and the Monitor, to realize upon the business in a way that maximizes value for all stakeholders. I believe this is preferable to the Applicant's assets becoming subject to bankruptcy or receivership proceedings.

85. This Affidavit is sworn in support of the relief requested by the Applicant and for no other or improper purposes.

SWORN BEFORE ME at the City of)
Toronto, in the Province of Ontario,)
this 7th day of February, 2013.)



A commissioner of oaths, etc.)

IAN AVERSA



ALAN HUTCHENS

Tab A

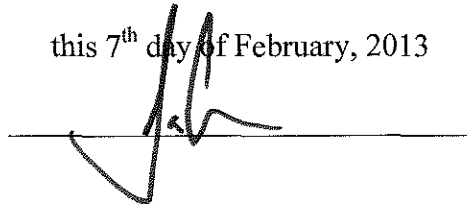
Attached is Exhibit "A"

Referred to in the

Affidavit of Alan Hutchens

Sworn before me

this 7th day of February, 2013

A handwritten signature in black ink, appearing to be "J. A. [unclear]", is written over a horizontal line. The signature is stylized and somewhat cursive.

Commissioner for taking Affidavits, etc

Government Corporation/Non-Profit Search of Alberta ■ Corporate Registration System

Date of Search: 2012/12/17
Time of Search: 02:46 PM
Search provided by: ELDOR-WAL REGISTRATIONS (1987) LTD

Service Request Number: 18982925
Customer Reference Number:

Corporate Access Number: 2012497216
Legal Entity Name: EXTREME FITNESS, INC.

Name History:

Previous Legal Entity Name	Date of Name Change (YYYY/MM/DD)
EXTREME FITNESS HOLDING CORP.	2006/06/15

Legal Entity Status: Active
Alberta Corporation Type: Named Alberta Corporation
Method of Registration: Amalgamation
Registration Date: 2006/06/15 YYYY/MM/DD
Date of Last Status Change: 2008/11/26 YYYY/MM/DD

Registered Office:

Street: 600, 12220 STONY PLAIN ROAD
City: EDMONTON
Province: ALBERTA
Postal Code: T5N 3Y4

Directors:

Last Name: GUBBAY
First Name: DAVID
Street/Box Number: FALCONHEAD CAPITAL 450 PARK AVE 3RD FLOOR
City: NEW YORK
Province: NEW YORK

Postal Code: 10022
Last Name: PAJOVIC
First Name: DARKO
Street/Box Number: 303 - 61 ST. CLAIR AVE
City: TORONTO
Province: ONTARIO
Postal Code: M4V 2Y8

Last Name: PAPPAS
First Name: TASO
Street/Box Number: 31 CARBERRY CRESCENT
City: AJAX
Province: ONTARIO
Postal Code: L1Z 1S1

Voting Shareholders:

Last Name: BELL
First Name: DAVID
Street: 954 KING STREET W #308
City: TORONTO
Province: ONTARIO
Postal Code: M6K 3L9
Percent Of Voting Shares: .05

Last Name: CHAIRMAN OF THE BOARD IN TRUST FOR HEIDI STEINBERG
Street: 500, E.85TH STREET, APARTMENT 21A
City: NEW YORK
Province: NEW YORK
Postal Code: 10028
Percent Of Voting Shares: .35

Last Name: EXTREME FITNESS HOLDING (LUXEMBOURG) S.A.R.L.
Street: 12 RUE LEON
City: GRAND DUCHY
Postal Code: L2636
Country: LUXEMBOURG
Percent Of Voting Shares: 80.43

Last Name: FIT-MORE INC.
Street: 156 1054 CENTRE ST

City: THORNHILL
Province: ONTARIO
Postal Code: L4J 8E5
Percent Of Voting Shares: 2

Last Name: GC EXTREME S.A.R.L.
Street: C/O GOLUB CAPITAL INC. 551 MADISON AVE 6TH FLOOR
City: NEW YORK
Province: NEW YORK
Postal Code: 10022
Percent Of Voting Shares: 5.84

Last Name: KING
First Name: DAVID
Street: 455 BUNN RD
City: BEDMINSTER
Province: NEW JERSEY
Postal Code: 07921
Percent Of Voting Shares: .98

Last Name: LOUISIANA GROWTH FUND II, LP
Street: 2651 N. HARWOOD, SUITE 210
City: DALLAS
Province: TEXAS
Postal Code: 75201
Percent Of Voting Shares: 4.49

Last Name: PAJOVIC
First Name: DANKO
Street: 30 ROBINGROVE RD
City: TORONTO
Province: ONTARIO
Postal Code: M2R 2Z7
Percent Of Voting Shares: .05

Last Name: SD STICKS INC.
Street: 2034 HEARTWOOD COURT
City: MISSISSAUGA
Province: ONTARIO
Postal Code: L5C 4P7
Percent Of Voting Shares: 5.82

Details From Current Articles:

The information in this legal entity table supersedes equivalent electronic attachments

Share Structure: THE ATTACHED SCHEDULE RE AUTHORIZED SHARES IS INCORPORATED IN THIS FORM

Share Transfers Restrictions: THE ATTACHED SCHEDULE RE SHARE TRANSFER RESTRICTIONS IS INCORPORATED IN THIS FORM

Min Number Of Directors: 1

Max Number Of Directors: 15

Business Restricted To: NOT APPLICABLE

Business Restricted From: NOT APPLICABLE

Other Provisions: THE ATTACHED SCHEDULE RE OTHER PROVISIONS IS INCORPORATED IN THIS FORM

Other Information:

Amalgamation Predecessors:

Corporate Access Number	Legal Entity Name
2012302887	EXTREME FITNESS HOLDING CORP.
2012496804	EXTREME FITNESS ULC

Last Annual Return Filed:

File Year	Date Filed (YYYY/MM/DD)
2011	2011/12/12

Outstanding Returns:

Annual returns are outstanding for the 2012 file year(s).

Filing History:

List Date (YYYY/MM/DD)	Type of Filing
2006/06/15	Amalgamate Alberta Corporation
2006/06/15	Name Change Alberta Corporation

2008/08/02	Status Changed to Start for Failure to File Annual Returns
2010/05/18	Name/Structure Change Alberta Corporation
2011/03/22	Change Address
2011/12/12	Enter Annual Returns for Alberta and Extra-Provincial Corp.
2012/08/03	Change Director / Shareholder

Attachments:

Attachment Type	Microfilm Bar Code	Date Recorded (YYYY/MM/DD)
Articles/Plan of Arrangement/Court Order	10000604100285884	2006/06/15
Share Structure	ELECTRONIC	2006/06/15
Restrictions on Share Transfers	ELECTRONIC	2006/06/15
Other Rules or Provisions	ELECTRONIC	2006/06/15
Share Structure	ELECTRONIC	2010/05/18
Letter - For Legal Name Change	10000007102945610	2012/08/03

This is to certify that, as of this date, the above information is an accurate reproduction of data contained within the official records of the Corporate Registry.



Certified Copy

Amalgamate Alberta Corporation - Registration Statement

Alberta Registration Date: 2006/06/15

Corporate Access Number: 2012497216

Service Request Number: 8795535
Alberta Corporation Type: Named Alberta Corporation
Legal Entity Name: EXTREME FITNESS HOLDING CORP.
French Equivalent Name:
Nuans Number:
Nuans Date:
French Nuans Number:
French Nuans Date:

REGISTERED ADDRESS

Street: 3300, 421 - 7 AVENUE S.W.
Legal Description:
City: CALGARY
Province: ALBERTA
Postal Code: T2P 4K9

RECORDS ADDRESS

Street: 3300, 421 - 7 AVENUE S.W.
Legal Description:
City: CALGARY
Province: ALBERTA
Postal Code: T2P 4K9

ADDRESS FOR SERVICE BY MAIL

Post Office Box:
City:
Province:
Postal Code:
Internet Mail ID:

Share Structure: THE ATTACHED SCHEDULE RE AUTHORIZED SHARES IS
INCORPORATED IN THIS FORM

Share Transfers Restrictions: THE ATTACHED SCHEDULE RE SHARE TRANSFER RESTRICTIONS IS INCORPORATED IN THIS FORM
Number of Directors:
Min Number Of Directors: 1
Max Number Of Directors: 15
Business Restricted To: NOT APPLICABLE
Business Restricted From: NOT APPLICABLE
Other Provisions: THE ATTACHED SCHEDULE RE OTHER PROVISIONS IS INCORPORATED IN THIS FORM

Professional Endorsement Provided:
Future Dating Required:
Registration Date: 2006/06/15

Director

Last Name: MOROSS
First Name: DAVID
Middle Name: S.
Street/Box Number: 944 PARK AVENUE, 7TH FLOOR
City: NEW YORK
Province: NEW YORK
Postal Code: 10021
Country:
Resident Canadian: Y
Named On Stat Dec:

Last Name: CROSBY
First Name: BRIAN
Middle Name: D.
Street/Box Number: 25 CROSS GATES ROAD
City: MADISON
Province: NEW JERSEY
Postal Code: 07940
Country:
Resident Canadian: Y
Named On Stat Dec:

Last Name: DACOSTA
First Name: STEPHEN
Middle Name:

Street/Box Number: 2034 HEARTWOOD COURT
City: MISSISSAUGA
Province: ONTARIO
Postal Code: L5C 4P7
Country:
Resident Canadian: Y
Named On Stat Dec:

Amalgamating Corporation

Corporate Access Number	Legal Entity Name
2012302887	EXTREME FITNESS HOLDING CORP.
2012496804	EXTREME FITNESS ULC

Attachment

Attachment Type	Microfilm Bar Code	Date Recorded
Share Structure	ELECTRONIC	2006/06/15
Other Rules or Provisions	ELECTRONIC	2006/06/15
Restrictions on Share Transfers	ELECTRONIC	2006/06/15
Articles/Plan of Arrangement/Court Order	10000604100285884	2006/06/15

Registration Authorized By: STEPHEN L. LIVERGANT
SOLICITOR

Certified Copy

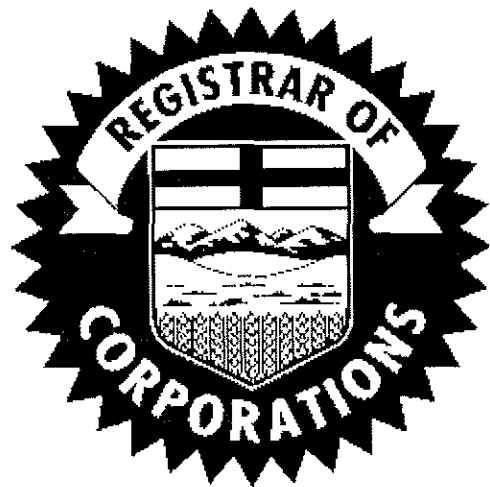
CORPORATE ACCESS NUMBER: 2012497216

**Government
of Alberta ■**

BUSINESS CORPORATIONS ACT

**CERTIFICATE
OF
AMALGAMATION**

**EXTREME FITNESS HOLDING CORP.
IS THE RESULT OF AN AMALGAMATION FILED ON 2006/06/15.**



Certified Copy

Articles of Amalgamation For EXTREME FITNESS HOLDING CORP.

Share Structure: THE ATTACHED SCHEDULE RE AUTHORIZED SHARES IS INCORPORATED IN THIS FORM

Share Transfers Restrictions: THE ATTACHED SCHEDULE RE SHARE TRANSFER RESTRICTIONS IS INCORPORATED IN THIS FORM

Number of Directors:

Min Number of Directors: 1

Max Number of Directors: 15

Business Restricted To: NOT APPLICABLE

Business Restricted From: NOT APPLICABLE

Other Provisions: THE ATTACHED SCHEDULE RE OTHER PROVISIONS IS INCORPORATED IN THIS FORM

Registration Authorized By: STEPHEN L. LIVERGANT
SOLICITOR

Tab B

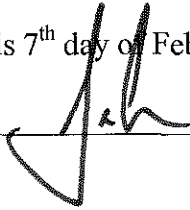
Attached is Exhibit "B"

Referred to in the

Affidavit of Alan Hutchens

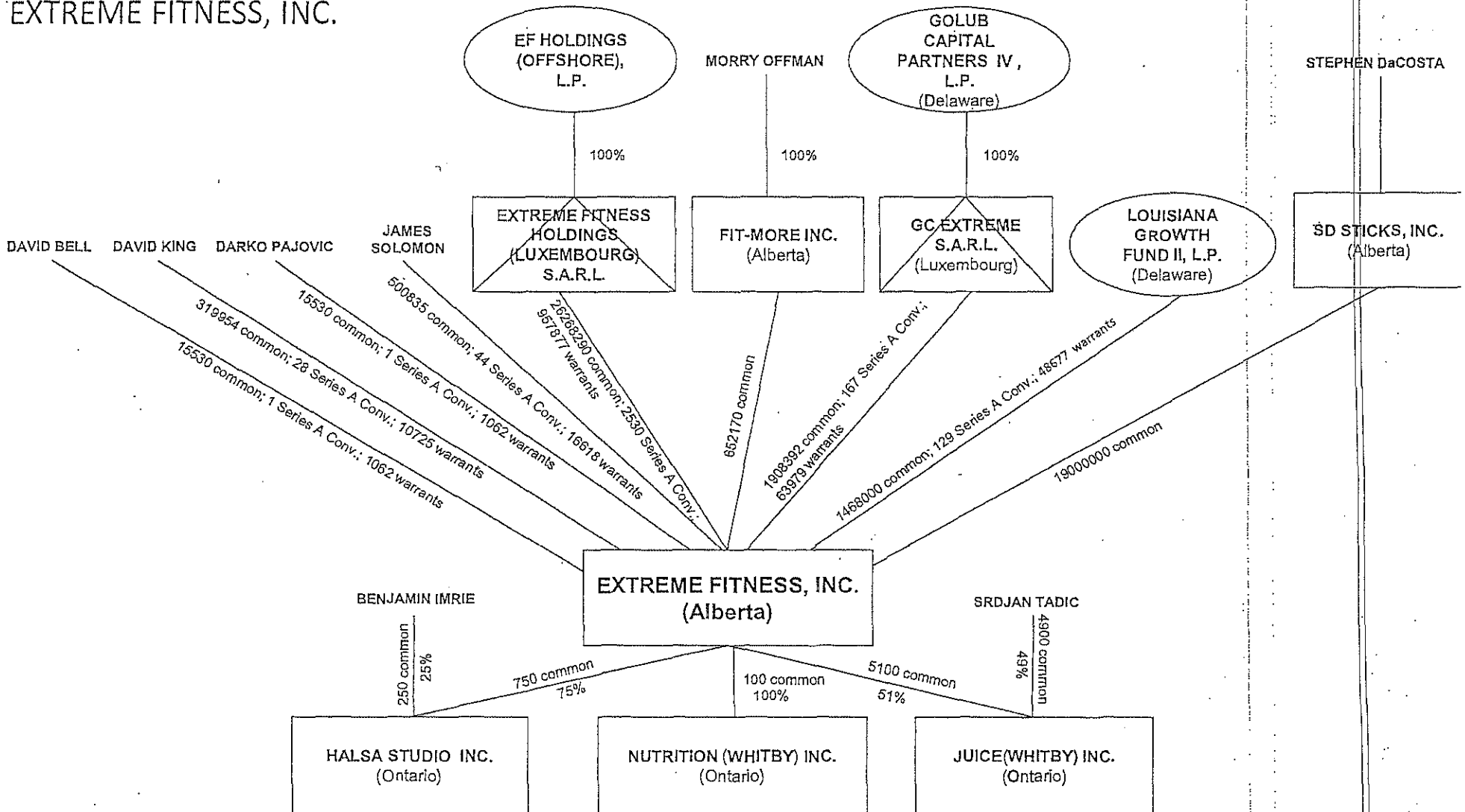
Sworn before me

this 7th day of February, 2013



Commissioner for taking Affidavits, etc

EXTREME FITNESS, INC.



Tab C

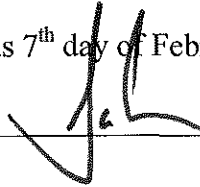
Attached is Exhibit "C"

Referred to in the

Affidavit of Alan Hutchens

Sworn before me

this 7th day of February, 2013

A handwritten signature in black ink, appearing to be 'J. L.', is written over a horizontal line.

Commissioner for taking Affidavits, etc

CONFIDENTIAL – EXHIBIT “C”

(Subject to a request for a sealing order)

Tab D

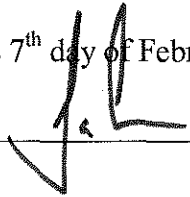
Attached is Exhibit "D"

Referred to in the

Affidavit of Alan Hutchens

Sworn before me

this 7th day of February, 2013



Commissioner for taking Affidavits, etc

CREDIT AGREEMENT

BETWEEN

EXTREME FITNESS, INC.
as Borrower

AND

NATIONAL BANK OF CANADA
as Administrative Agent

AND

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

MADE AS OF

May 20, 2011

McCARTHY TÉTRAULT LLP

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Schedule 9.01(20)	- Intellectual Property
Schedule 9.01(21)	- Material Contracts
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- Schedule 9.01(35) – Government Contracts
- Schedule 9.01(36) – Agreements and Other Documents
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CREDIT AGREEMENT

THIS AGREEMENT is made as of May 20, 2011.

BETWEEN:

EXTREME FITNESS, INC., a corporation existing under the laws of Alberta (hereinafter referred to as the "**Borrower**")

- and -

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

- and -

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

WHEREAS the Borrower has requested the Credit Facilities and the Lenders have agreed to provide the Credit Facilities to the Borrower on the terms and conditions herein set forth;

AND WHEREAS National Bank of Canada will be the Agent as contemplated by Section 7.1 of Schedule AA;

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

ARTICLE 1 - INTERPRETATION

1.01 **Definitions**

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

"**Account Debtor**" means any Person who is obligated to pay an Account Receivable.

Credit Agreement

McCarthy Tétrault LLP DOCS #10182949 v. 11

“Account Receivable” means any right of a Person to payment for services rendered or goods sold in the ordinary course of business classified as an account receivable in accordance with GAAP.

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

“Administrative Questionnaire” has the meaning set forth in Schedule AA.

“Advance” means a borrowing by the Borrower by way of a Prime Rate Advance, a BA Equivalent Note, acceptance by a Lender of a draft or depository bill presented for acceptance as a Bankers’ Acceptance, the issuance of a Letter of Credit by the Issuing Bank, and any reference relating to the amount of Advances shall mean the sum of the principal amount of all outstanding Prime Rate Advances, whether as a result of a Drawdown, Conversion, Rollover or deemed advance, plus the face amount of all outstanding Bankers’ Acceptances and BA Equivalent Notes plus the maximum amount payable under Letters of Credit.

“Affiliate” has the meaning set forth in Schedule AA.

“Agent” means National Bank in its capacity as administrative agent for the Lenders, including any successor agent pursuant to Section 7.7 of Schedule AA.

“Agent’s Payment Branch” means the branch of the Agent located at 130 King Street West, Toronto, Ontario M5X 1K9 or such other office that the Agent may from time to time designate by notice to the Borrower and the Lenders.

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

“Annual Business Plan” means the annual business plan of the Borrower, prepared on a consolidated basis for a four year period, with detailed financial projections and budgets on a quarter to quarter basis for the following Fiscal Year, in each case consisting of a balance sheet, statement of income, retained earnings, statement of cash flows, proposed Capital Expenditures and a list of assumptions upon which such projections are based, together with projected covenant calculations.

“Applicable Law” has the meaning set forth in Schedule AA.

“Applicable Margin” means with respect to any Advance the percentage rate per annum determined in accordance with clauses (a) and (b) below based on the Senior Debt to EBITDA Ratio as at the end of the Borrower’s most recently completed Fiscal Quarter (in this definition such Fiscal Quarter is the **“Relevant Quarter”**). The Applicable Margin to be applied with respect to an Advance shall be the Applicable Margin on the relevant date of the Drawdown, Conversion or Rollover, as the case may be. The Applicable Margin shall change, if required, only once per Fiscal Quarter, on the third Business Day (the **“Applicable Margin Adjustment Date”**) after the earlier of (i) the date the unaudited quarterly financial statements required to be delivered pursuant to Section 10.03(2) for the Relevant Quarter and the related Compliance Certificate required to be delivered pursuant to Section 10.03(4) are delivered to the Agent, and (ii) the date such financial statements and Compliance Certificate are required to be delivered to the Agent. Each Applicable Margin shall be adjusted on the Applicable Margin Adjustment Date. In accordance with Section 5.01, Prime Rate Advances will be subject to adjustment on such date. Notwithstanding anything else in this definition, for the purpose of determining the Applicable Margin: until the delivery of unaudited financial statements and a Compliance Certificate in respect of the Fiscal Quarter ending June 30, 2011, the Senior Debt to EBITDA Ratio shall be deemed to be at Level II; and if the Borrower fails to deliver financial statements or a Compliance Certificate when required, the Senior Debt to EBITDA Ratio shall be deemed to be Level III until such documents have been delivered. For greater certainty, there shall be no adjustments to Bankers’ Acceptances and BA Equivalent Notes that are outstanding on the Applicable Margin Adjustment Date.

(a)

Level	Senior Debt to EBITDA Ratio	Prime Rate Margin	BA Stamping Fee Rate and Letter of Credit Fee Rate	Standby Fee Rate
I	<1.00:1.0	200 bps	350 bps	87.5 bps
II	≥ 1.00x < 2.00:1.0	250 bps	400 bps	100 bps
III	≥ 2.00x < 2.50:1.0	300 bps	450 bps	112.5 bps

(b) Upon the occurrence of, and during the continuance of, an Event of Default, the Applicable Margin shall be at the applicable Level, plus 2.00% per annum.

“Applicable Margin Adjustment Date” has the meaning set forth in the definition of Applicable Margin.

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

“Approved Fund” has the meaning set forth in Schedule AA.

“Arm’s Length” has the meaning specified in the definition of **“Non-Arm’s Length”**.

Credit Agreement

“Assignment and Assumption” has the meaning set forth in Schedule AA.

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

“Auditor” means the Borrower’s auditor, being RSM Richter LLP or a nationally recognized accounting firm acceptable to the Agent, acting reasonably, and includes its successors and any replacement auditor from time to time.

“BA Discount Proceeds” means, with respect to a particular Bankers’ Acceptance or BA Equivalent Note, the following amount:

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

where

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

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

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

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

“BA Discount Rate” means:

- (a) with respect to any Lender which is a Schedule I Lender, and in respect of a Bankers’ Acceptance being purchased by such Lender on any day, CDOR for a term which is comparable to the term of such Bankers’ Acceptance, at or about 10:00 a.m., Toronto time, on such date; and
- (b) with respect to any Lender which is not a Schedule I Lender, and in respect of a Bankers’ Acceptance being purchased by such Lender or a BA Equivalent Note being issued by such Lender on any day, the lower of (i) such Lender’s bid rate for bankers’ acceptances with a term equal to the term selected by the Borrower; and (ii) the sum of CDOR, as determined pursuant to (i) above, applicable to bankers’ acceptances for a term which is comparable to the term of the applicable Bankers’ Acceptance or BA Equivalent Note plus ten (10) basis points.

“BA Equivalent Note” has the meaning set forth in Section 6.01(1).

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

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

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

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

“Borrower” means Extreme Fitness, Inc., an Alberta corporation, and includes its successors by amalgamation or otherwise.

“Borrower’s Counsel” means the firm of Aird & Berlis, LLP or such other firm or firms of legal counsel as the Borrower may from time to time designate.

“Borrowing Base” means:

- (a) 75% of Eligible Accounts Receivable; plus
- (b) 100% of cash pledged in favour of the Agent in a segregated account;
- less:
- (c) Priority Payables.

“Borrowing Base Certificate” means a certificate in the form of Schedule E executed by the a senior officer of the Borrower which shall contain an aged listing of Accounts Receivable and accounts payable, on a consolidated basis, as of the close of business on the last day of the preceding calendar month.

“Business” means the business carried on by the Borrower operating and creating fitness clubs.

“Business Day” shall mean any day other than a Saturday or a Sunday on which banks generally are open for business in Toronto, Ontario.

“Canadian Dollars”, “Cdn. Dollars” and **“Cdn. \$”** mean the lawful money of Canada.

“Canadian Pension Plan” means any “pension plan” that is subject to the funding requirements of the *Pension Benefits Act* (Ontario) or applicable pension benefits legislation in any other Canadian jurisdiction and is applicable to employees resident in Canada of an Obligor.

“Canadian Welfare Plan” means any medical, health, hospitalization, insurance or other employee benefit or welfare plan or arrangement applicable to employees resident in Canada of an Obligor.

“Capital Expenditures” means, for any period, any expenditure made by any Person for the purchase, lease, acquisition, license, erection, development, improvement, construction or replacement of capital assets, and any expenditure related to a Capital Lease or any other expenditure required to be capitalized, all as determined in accordance with GAAP.

“Capital Lease” means, with respect to any Person, any lease of (or other agreement conveying the right to use) any real or personal property by such Person that, in conformity with GAAP, is or should be accounted for as a capital lease on the balance sheet of that Person.

“Capitalization” means, with respect to a Person, the sum of Senior Debt, the Subordinated Debt and Shareholders Equity of such Person as shown on the balance sheet forming part of the most recent consolidated financial statements of such Person.

“Cash Equivalents” means:

- (a) marketable direct obligations issued by, or unconditionally guaranteed by, the governments of Canada or any province thereof or the United States or any agency or instrumentality of any of them, and backed by the full faith and credit of Canada or such province or the United States, as the case may be, in each case maturing within one year from the date of acquisition; and
- (b) term deposits, certificates of deposit or overnight bank deposits having maturities of six months or less from the date of acquisition issued by a Lender or by any commercial bank organized under the laws of Canada or the United States or any state thereof having combined capital and surplus of not less than \$500,000,000 or the Equivalent Amount in any other currency.

“CDOR” means, on any date, the annual rate of interest which is the rate based on an average rate applicable to Canadian Dollar bankers’ acceptances for a specified term appearing on the “Reuters Screen CDOR Page” (as defined in the International Swaps and Derivatives Association, Inc., definitions, as modified and amended from time to time) at approximately 10:00 a.m. (Toronto time), on such date, or if such date is not a Business Day, then on the immediately preceding Business Day, provided that if such rate does not appear on the Reuters Screen CDOR Page on such date as contemplated, then CDOR on such date shall be calculated as the arithmetic mean of the rates for the term referred to above applicable to Canadian Dollar bankers’ acceptances quoted by the Agent as of 10:00 a.m. (Toronto time) on such date or, if such date is not a Business Day, then on the immediately preceding Business Day.

“Change in Law” has the meaning set forth in Schedule AA.

Credit Agreement

"Change of Control" means the occurrence of any event, transaction or occurrence (or any series of events, transactions or occurrences) as a result of which Falconhead and its Affiliates fails to own, directly or indirectly, 50.1% of the Equity Interests of the Borrower, (i) the failure of Falconhead to maintain, directly or indirectly, voting control of the Governing Body of Holdings and the Borrower, (ii) the Borrower fails to own one hundred percent (100%) of any Subsidiary thereof, or (iii) the occurrence of a "Change of Control" or similar event, as defined in the Subordinate Credit Agreement or any indenture or other instrument, agreement or other document evidencing or governing any material Debt of any Obligor.

"Closing Date" means May 20, 2011 or such later date as may be agreed to by the parties hereto.

"Code" means the Internal Revenue Code of 1986, as amended.

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

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

"Contingent Obligation" means, as to any Person, any obligation, whether secured or unsecured, of such Person guaranteeing or indemnifying, or in effect guaranteeing or indemnifying, any indebtedness, leases, dividends, letters of credit or other monetary obligations (the **"primary obligations"**) of any other Person (the **"primary obligor"**) in any manner, whether directly or indirectly, including any obligation of such Person as an account party in respect of a letter of credit or letter of guarantee issued to assure payment by the primary obligor of any such primary obligation and any obligations of such Person, whether or not contingent, (a) to purchase any such primary obligation or any Property constituting direct or indirect security therefor, (b) to advance or supply funds for the purchase or payment of any such primary obligation or to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (c) to purchase Property, securities or services primarily for the purpose of assuring the obligee under any such primary obligation of the ability of the primary obligor to make payment of such primary obligation, or (d) otherwise to assure or hold harmless the obligee under such primary obligation against loss in respect of such primary obligation; provided, however, that the term Contingent Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business.

"Control" has the meaning set forth in Schedule AA.

"Controlled Group" means all members of a controlled group of corporations or other business entities and all trades or businesses (whether or not incorporated) under common control, which are treated as a single employer under Section 414 of the Code or Section 4001 of ERISA.

Credit Agreement

“Conversion” means a conversion of an Advance pursuant to Section 2.05(1).

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

“Conversion Notice” means the notice of request for Conversion substantially in the form annexed hereto as Schedule B to be given to the Agent by the Borrower pursuant to Section 2.05.

“Credit Facilities” means the Revolving Facility, the Term Facility and the Delayed Draw Facility and **“Credit Facility”** means any one of them.

“Debt” means, with respect to any Person, without duplication, the aggregate of the following amounts, at the date of determination: (a) all indebtedness of such Person to any other Person for borrowed money; (b) all obligations of such Person for the deferred purchase price of Property or services which constitute indebtedness, (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments; (d) all obligations of such Person created or arising under any conditional sale or other title retention agreement with respect to Property acquired by such Person (whether or not the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such Property); (e) all obligations of such Person as lessee under leases that have been or should be, in accordance with GAAP, recorded as Capital Leases; (f) all reimbursement obligations, contingent or otherwise, of such Person under bankers' acceptance, letter of credit and similar facilities; (g) all obligations of such Person to purchase, redeem, retire, defease or otherwise acquire for value any partnership or shareholder or other equity interests of such Person (for greater certainty, not including obligations with respect to unexercised options and rights of first refusal and where conditions precedent to the obligations have not occurred); (h) all Contingent Obligations of such Person in respect of Debt of another Person; (i) all obligations of such Person under any Hedge Arrangements; and (j) any other obligation arising under arrangements or agreements that, in substance, provide financing to such Person.

“Default” has the meaning set forth in Schedule AA.

“Delayed Draw Facility” has the meaning set forth in Section 2.01(c).

“Delayed Draw Lenders” means those Lenders designated as such in Schedule A annexed hereto from time to time providing the Delayed Draw Facility to the Borrower pursuant to this Agreement.

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

“Disposition” means any sale, assignment, transfer, conveyance, lease or other disposition of any asset of any Obligor in a single transaction or a series of related transactions and the word **“Dispose”** shall have a correlative meaning.

Credit Agreement

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“Distribution” shall mean, with respect to any Person, any payment, directly or indirectly, by such Person: (a) of any dividends or distributions on any Equity Interests, other than dividends or distributions payable in shares or other Equity Interests; (b) on account of, or for the purpose of setting apart any property for a sinking or other analogous fund for, the purchase, redemption, retirement or other acquisition of any Equity Interests of such Person; (c) of any other distribution (other than distributions in Equity Interests) in respect of any Equity Interests of such Person; (d) of any principal of or interest or premium or fees on or related to the Subordinate Debt or Debt owing by one Obligor to another Obligor; or (e) of any management, consulting, advisory or similar fee or compensation or any bonus payment or comparable payment, or by way of gift or other gratuity, to any Affiliate (including, for certainty, Falconhead and its Affiliates) of such Person or to any director, officer or member of the management of an Affiliate of such Person or to any Person not dealing at Arm’s Length with such first Person provided that payments by an Obligor in the course of its business to employees, officers and members of management of Obligors shall not constitute Distributions hereunder.

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

“Drawdown” means:

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

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

“Drawdown Notice” means the notice of request for Advance substantially in the form annexed hereto as Schedule B to be given to the Agent by the Borrower pursuant to Section 2.05.

“EBITDA” means, for any period with respect to the Borrower on a consolidated basis, the Net Income of the Borrower for such period:

- (a) increased by the sum of (without duplication)
 - (i) Interest Expense for such period;
 - (ii) Income Tax Expense for such period;
 - (iii) Depreciation Expense for such period;
 - (iv) extraordinary non-recurring or unusual losses for such period;
 - (v) cash paid Management Fees as permitted by the terms of this Agreement;

- (vi) cash paid expenses and cash paid fees to directors of the Borrower as permitted by the terms of this Agreement and in an aggregate amount not to exceed \$75,000 in any Fiscal Year;

in each case to the extent that such amounts were deducted in the calculation of Net Income for such period; and

- (b) decreased by extraordinary, non-recurring or unusual gains, all (without duplication, as determined in accordance with GAAP and to the extent included in the calculation of such consolidated net income), provided that:
 - (i) in respect of each Obligor which has become a Subsidiary of the Borrower in such fiscal period, EBITDA shall be determined with the consent of the Lenders; and
 - (ii) in respect of each Obligor which has ceased to be a Subsidiary of the Borrower in such fiscal period, EBITDA shall be determined as if such Obligor had not been a Subsidiary during the entire fiscal period.

“Eligible Accounts Receivable” means at any time, any Account Receivable of the Borrower on a consolidated basis (net, without duplication, of any credit balance, returns, trade discounts, or unbilled amounts or retention) that meets and at all times continues to meet all of the standards of eligibility for Eligible Accounts Receivable from time to time established by the Agent acting reasonably and revised by the Agent in the exercise of its credit judgement. Without in any way limiting the discretion of the Agent to establish other or further standards of eligibility from time to time, Eligible Accounts Receivable shall not include any Account Receivable for which any of the following statements is not accurate and complete (and the Borrower by including such account in any computation of the Borrowing Base shall be deemed to represent and warrant to the Agent and the Lenders that to the knowledge of the Borrower all of the following statements are accurate and complete with respect to such account):

- (a) it is a valid and legally enforceable obligation of the Account Debtor;
- (b) such account is genuine as appearing on its face or as represented in the books and records of the Borrower on a consolidated basis;
- (c) such account is free from valid claims regarding rescission, cancellation or avoidance, whether by operation of law or otherwise, and except to the extent of any reduction made pursuant to paragraph (e) of this definition is net of all then applicable holdbacks provided however, if the Account Debtor has agreed that it will pay such portion of the account that is not being claimed to be rescinded, cancelled or avoided, such portion of the Accounts Receivable shall be allowed;
- (d) such account does not relate to services not as of yet completed;
- (e) without limiting the generality of paragraph (c) of this definition, is not subject to any offset, counterclaim or other defence on the part of the Account Debtor or any claim by the Account Debtor that denies liability in whole or in part; and, if the

Account Debtor denies liability only in part, the undisputed portion of the Account Receivable shall be allowed so long as the Account Debtor has agreed that it will pay such portion not in dispute in accordance with its terms;

- (f) no invoice evidencing it is unpaid sixty (60) days after the date of it being rendered (i.e. sixty (60) days from the invoice date) other than in respect of insured receivables;
- (g) such account is not payable by an Account Debtor which is (or who together with its Affiliates are) more than sixty (60) days unpaid after the date of its invoices being rendered (i.e. more than sixty (60) days from the invoice date) with regard to 25% or more of the total accounts owed to the Obligor by such Account Debtor and their Affiliates unless the Borrower can demonstrate to the satisfaction of the Lenders that the amount unpaid is subject to a legitimate dispute and such dispute does not and will not impact on the likelihood that such Account Debtor will pay subsequent or other existing Accounts Receivable;
- (h) it is owed by an Account Debtor existing pursuant to the laws of Canada or any Province of Canada or any State of the United States of America unless supported by a letter of credit or letter of guarantee acceptable to the Agent or is insured by a Person acceptable to the Agent;
- (i) it is denominated in either Canadian Dollars or United States Dollars;
- (j) it is subject to a first priority security interest in favour of the Agent that has been perfected under Applicable Law governing the perfection of such security interest created under the applicable Security;
- (k) such account is, and at all times will be, free and clear of all Encumbrances other than Priority Payables (to the extent deducted in calculating the Borrowing Base) and any Permitted Encumbrances;
- (l) the Account Receivable does not arise from a sale or lease to or rendering of services to an Affiliate of any Obligor or to an employee, agent, shareholder, director or other representative of any Obligor, or, in each case, to their respective Affiliates;
- (m) in the case of the sale of goods, the subject goods have been sold to an Account Debtor on a true sale basis on open account, or subject to contract, and not on consignment, on approval or on a "sale or return" basis or subject to any other repurchase or return agreement, no material part of the subject goods has been returned, rejected, lost or damaged, and such account is not evidenced by chattel paper or an instrument of any kind unless possession or control of such chattel paper or instrument has been delivered to the Agent on terms acceptable to the Agent;
- (n) the Account Debtor of the Account Receivable is not a Governmental Authority except to the extent the Account Receivable is assignable without consent or all

necessary consents to assignment have been obtained and all applicable statutory requirements for consent have been obtained; and

- (o) the Account Debtor obligated on the Account Receivable has not ceased to carry on business or become insolvent, admitted its inability to pay its debts as they come due or that it is otherwise insolvent, made a general assignment for the benefit of its creditors, or consented to or applied for the appointment of a receiver, trustee, custodian, liquidator for itself or any material part of its Property, and no petition has been filed by or against the Account Debtor under any bankruptcy or reorganization law which is outstanding at such date.

Any Eligible Accounts Receivable which are at any time Eligible Accounts Receivable but which subsequently fail to meet any of the foregoing requirements and any other standards of eligibility for Eligible Accounts Receivable established by the Agent shall immediately cease to be Eligible Accounts Receivable.

"Eligible Assignee" has the meaning set forth in Schedule AA.

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

"Environmental Laws" means any Applicable Law relating to the environment including those pertaining to

- (i) reporting, licensing, permitting, investigating, remediating and cleaning up in connection with any presence or release, or the threat of the same, of Hazardous Materials, and
- (ii) the manufacture, processing, distribution, use, treatment, storage, disposal, transport, handling and the like of Hazardous Materials, including those pertaining to occupational health and safety.

"Environmental Liability" means any liability of an Obligor arising under any Environmental Laws.

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

or (iv), any warrants, rights or other options to purchase or otherwise acquire any of the interests described in any of the foregoing cases.

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

"ERISA" means the Employee Retirement Income Security Act of 1974 of the United States, together with the regulations thereunder as the same may be amended from time to time. Reference to Sections of ERISA also refer to any successive Sections thereto.

"ERISA Plan" means an "employee welfare benefit plan" or "employee pension benefit plan" as such terms are defined in Sections 3(1) and 3(2) of ERISA (other than a Multiemployer Plan), in each case, which is subject to Title 1 of ERISA, that is sponsored or contributed to by an Obligor.

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

"Excess Cash Flow" of the Borrower means, for the applicable Fiscal Year of the Borrower, EBITDA during such Fiscal Year decreased by the sum of the following during such Fiscal Year (without duplication):

- (a) cash paid Taxes;
- (b) Unfunded Capital Expenditures;
- (c) cash paid Interest Expense;
- (d) cash paid Management Fees permitted to be paid in accordance with this Agreement;
- (e) scheduled principal payments made under the Term Facility and the Delayed Draw Facility; and
- (f) the principal component in respect to payments of Capital Leases.

"Excluded Issuances" means Equity Interest issued by the Borrower in which the proceeds are used to effect a Permitted Acquisition.

"Excluded Taxes" has the meaning set forth in Schedule AA.

"Facility" means the corporate office of the Obligors and each fitness center of the Obligors and any ancillary operations used in connection therewith and **"Facilities"** means some or all of the foregoing.

"Falconhead" means Falconhead Capital, LLC, a Delaware limited liability company.

“Financial Assistance” means, without duplication and with respect to any Person, all loans granted by that Person and guarantees or Contingent Obligations incurred by that Person for the purpose of or having the effect of providing financial assistance to another Person or Persons, including, without limitation, letters of guarantee, letters of credit, legally binding comfort letters or indemnities issued in connection therewith, endorsements of bills of exchange (other than for collection or deposit in the ordinary course of business), obligations to purchase assets regardless of the delivery or non-delivery thereof and obligations to make advances or otherwise provide financial assistance to any other entity and for greater certainty **“Financial Assistance”** shall include any guarantee of any third party lease obligations.

“Fiscal Month” shall mean any of the monthly accounting periods of the Borrower.

“Fiscal Quarter” means each successive three-month period of the Borrower’s Fiscal Year ending March 31, June 30, September 30 and December 31.

“Fiscal Year” means, in respect of the Borrower, the twelve month period ending on or about the last day of December in any year.

“Fixed Charge Coverage Ratio” means, for the most recently completed Four Quarter Period the ratio of (a) EBITDA for such period less the sum of (i) cash Taxes paid for such period, (ii) Unfunded Capital Expenditures for such period (iii) Distributions by the Borrower to Holdings or any other shareholder of the Borrower and (iv) cash paid Management Fees and director fees paid to directors of the Borrower or Holdings, to (b) Fixed Charges.

“Fixed Charges” means, without duplication and on a consolidated basis, with respect to the Borrower for any period, the sum of (a) all scheduled principal repayments of Debt during such period, and (b) cash paid and cash payable Interest Expense in such period.

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

“Fund” has the meaning set forth in Schedule AA.

“GAAP” means those accounting principles which are recognized as being generally accepted and which are in effect from time to time in Canada, as published in the Handbook of the Canadian Institute of Chartered Accountants.

“GC Luxco” means GC Extreme S.à r.l., a private limited liability company (société à responsabilité limitée) incorporated and existing under the laws of the Grand-Duchy of Luxembourg.

“Governing Body” means the board of directors, board of managers, board of representatives, board of advisors or similar governing or advisory body of any Person.

“Governmental Authority” has the meaning set forth in Schedule AA.

Credit Agreement

“Guarantors” means Holdings and all Subsidiaries of the Borrower from time to time other than Inactive Subsidiaries and includes, without limitation, each of those Persons identified on Schedule F from time to time and their successors and assigns and **“Guarantor”** means any one of them.

“Hazardous Material” shall mean any substance, product, waste, pollutant, material, chemical, contaminant, dangerous goods, constituent or other material listed, regulated, or addressed under any Requirements of Environmental Law, including, without limitation, asbestos, petroleum product or by-product, polychlorinated biphenyls, radon, any “hazardous waste” as defined by the *Resource Conservation and Recovery Act*, as amended, and any “hazardous substances” listed at 40 C.F.R. Section 302.4.

“Hedge Arrangement” means, for any period, for any Person, any arrangement or transaction between such Person and any other Person which is an interest rate swap transaction, basis swap, forward interest rate transaction, commodity swap, interest rate option, forward foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency interest rate swap transaction, currency option or any other similar transaction (including any option with respect to any of such transactions or arrangements) designed to protect or mitigate against risks in interest, currency exchange or commodity price fluctuations.

“Holdings” means Extreme Fitness Holding (Luxembourg) S.à r.l., a private limited liability company (société à responsabilité limitée), governed by the laws of the Grand Duchy of Luxembourg, having its registered office at 15, rue Edward Steichen, L-2540 Luxembourg, Grand Duchy of Luxembourg, registered with the Luxembourg Register of Commerce and Companies under number B 116.982 and having a share capital of EUR 12,500.

“Hostile Take-Over Bid” shall mean a Take-Over Bid by an Obligor or in which an Obligor is involved, in respect of which the board of directors (or persons performing similar functions) of the Person whose securities are subject to such Take-Over Bid has recommended rejection of such Take-Over Bid.

“Inactive Subsidiaries” means those Subsidiaries of the Borrower that do not carry on any business, which on the Closing Date, are Halsa Studio Inc., Nutrition (Whitby) Inc., and Juice (Whitby) Inc.

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

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

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

Credit Agreement

"Intercreditor Agreement" means the intercreditor agreement dated as of the Closing Date among the Agent, the Subordinate Lenders and the Borrower, as such agreement may be amended, restated, supplemented or replaced from time to time.

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

"Interest Payment Date" means, with respect to each Prime Rate Advance, the first Business Day of each calendar month.

"Interest Period" means,

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

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

"Inventory" means, as determined in accordance with GAAP, all raw materials, work-in-process, and finished goods which in the ordinary course of the Borrower's Business are held for sale in the Borrower's Business, in each case on a consolidated basis.

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

“ISDA Master Agreement” means the 1992 ISDA Master Agreement (Multi-Currency - Cross Border) as published by the International Swaps and Derivatives Association, Inc., as amended, revised or replaced from time to time.

“Issuing Bank” means National Bank.

“Judgement Conversion Date” has the meaning set forth in Section 14.05(1)(b).

“Judgement Currency” has the meaning set forth in Section 14.05(1).

“Lender BA Suspension Notice” has the meaning set forth in Section 6.03(b).

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

“Lenders” means the Persons designated in Schedule A annexed hereto as either a Revolving Lender, a Term Lender or a Delayed Draw Lender and reference to **“Lender”** in this Agreement may mean that Lender in its capacity as a Revolving Lender, a Term Lender or the Delayed Draw Lender, as the case may be, if the context so requires and **“Lender”** means any one of the Lenders and includes each of their successors and permitted assigns.

“Lenders’ Counsel” means the firm of McCarthy Tétrault LLP and any and all local agent counsel retained by McCarthy Tétrault LLP for and on behalf of the Agent.

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

“Letter of Credit Fee Rate” means, with respect to a Letter of Credit, the annual percentage per annum indicated below the reference to **“Letters of Credit Fee Rate”** in the pricing grid in the

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definition of "Applicable Margin" relevant to the period in respect of which determination is being made.

"Letters of Credit" means letters of credit or letters of guarantee issued by the Issuing Bank pursuant to the Revolving Facility at the request and for the account of the Borrower under this Agreement, and **"Letter of Credit"** means any one thereof.

"Loan Documents" means (a) this Agreement, the Security, all guarantees delivered by any Obligor pursuant to this Agreement, the Intercreditor Agreement and each document, agreement, instrument and certificate delivered to the Agent by an Obligor or any other Person on the Closing Date; (b) Service Agreements and all agreements relating to credit and other charge cards issued by a Lender, and (c) all present and future security, agreements, documents, certificates and instruments delivered by any Obligor or any other Person to the Agent or the Lenders pursuant to, or in respect of the agreements and documents referred to in clause (a); in each case as the same may from time to time be supplemented, amended or restated, and **"Loan Document"** shall mean any one of the Loan Documents.

"Majority Lenders" means Lenders holding at least 66%% of the Commitments under the Credit Facilities.

"Management Fees" means management fees paid by the Borrower to Falconhead or its designee from time to time.

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

"Material Contracts" means each of the agreements identified in Schedule 9.01(21) and any agreement, contract or similar instrument or understanding entered into from time to time by an Obligor or to which any of their property or assets may be subject for which breach, non performance, cancellation, failure to renew, termination, revocation or lapse could reasonably be expected to have a Material Adverse Effect.

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

"Maturity Date" means the earlier of May 20, 2015 and the date on which the Credit Facilities are terminated pursuant to Section 12.02.

"Multiemployer Plan" means a multiemployer plan within the meaning of Section 4001(a)(3) of ERISA.

"National Bank" means National Bank of Canada.

"Net Income" means, for any period, with respect to the Borrower, the consolidated net income (loss) of the Borrower, for such period, all as determined in accordance with GAAP.

"Net Proceeds" shall mean, with respect to a Disposition by an Obligor, the sum of cash or readily marketable cash equivalents received (including by way of a cash generating sale or discounting of a note or receivable, but excluding any other consideration received in the form of assumption by the acquiring Person of debt or other obligations relating to the properties or assets so disposed of or received in any other non-cash form) therefrom, whether at the time of such Disposition or subsequent thereto, net of all legal, title and recording tax expenses, commissions and other reasonable fees and all costs and expenses incurred and all federal, provincial, state, local and other taxes required to be accrued as a liability by such Obligor as a consequence of such transactions and of all payments made by the applicable Obligor on any Debt which is secured by the assets disposed of pursuant to a Permitted Encumbrance upon or with respect to such assets or which must, by the terms of such Encumbrance, be repaid out of the proceeds from such Disposition.

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

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

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

"Obligations" means, with respect to any Obligor, all of its present and future indebtedness, liabilities and obligations of any and every kind, nature or description whatsoever (whether direct or indirect, joint or several or joint and several, absolute or contingent, matured or unmatured, in any currency and whether as principal debtor, guarantor, surety or otherwise, including without limitation any interest that accrues thereon after or would accrue thereon but for the commencement of any case, proceeding or other action, whether voluntary or involuntary, *Credit Agreement*

relating to the bankruptcy, insolvency or reorganization whether or not allowed or allowable as a claim in any such case, proceeding or other action) to each of the Agent, the Lenders (and their Affiliates), and any of them under, in connection with, relating to or with respect to each of the Loan Documents and any and all Hedge Arrangements, and any unpaid balance thereof.

“**Obligors**” has the meaning set forth in Schedule AA. As of the Closing Date, the Obligors consist of the Borrower and each Guarantor.

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

“**Other Taxes**” has the meaning set forth in Schedule AA.

“**Participant**” has the meaning set forth in Schedule AA.

“**Permitted Acquisitions**” means those Acquisitions that comply with the following terms:

- (a) at the time of the Acquisition there exists no Default or Event of Default and there shall exist no Default or Event of Default after giving effect to the completion of the Acquisition;
- (b) no Material Adverse Effect has occurred nor will any result from the completion of the Acquisition;
- (c) such Acquisition shall not have a purchase price in excess of \$5,000,000;
- (d) in the event that the Acquisition consists of the purchase of Equity Interests, the acquiring Obligor shall acquire 100% of the Equity Interests of the Person being acquired;
- (e) the business and assets acquired in such Acquisition shall be free and clear of all Encumbrances (other than Permitted Encumbrances);
- (f) the Agent shall be satisfied that the Acquisition shall be accretive to the Borrower’s EBITDA on a consolidated basis, or if the Acquisition is not accretive, the Agent shall have consented to such Acquisition and the aggregate amount of non-accretive Acquisitions shall not exceed \$3,000,000;
- (g) the Acquisition shall be in compliance with all Applicable Laws;
- (h) the Borrower shall have provided to the Agent historical financial information regarding the subject matter of the Acquisition for a 3 year period or a shorter period if three years is not available (which, does not have to be audited financial information if unavailable) and shall also provide to the Agent a 4 year *pro forma* financial forecast on a stand alone and consolidated basis;

- (i) the proposed business subject to the Acquisition shall have positive EBITDA (based on adjustments agreed to by the Agent) for its previous twelve month period;
- (j) immediately prior and after giving effect to the Acquisition, the Borrower shall, on a *pro forma* basis, be in compliance with each of the financial covenants provided for in Section 10.02 of this Agreement;
- (k) the Acquisition shall not constitute a Hostile Take-Over Bid;
- (l) the Agent shall receive at least fifteen (15) days prior written notice of such Acquisition, which notice shall include a reasonably detailed description of such proposed Acquisition;
- (m) the Agent shall have received from the Borrower an information package pertaining to the Acquisition which shall include copies of any due diligence memorandum prepared for the benefit of the Borrower in connection with the Acquisition;
- (n) the business subject to such Acquisition shall have its primary operations in Canada and shall be substantially similar to the Business;
- (o) at or within 60 days following the closing of the Acquisition, the Agent shall be provided with (i) if such Acquisition is of all of the equity of a Person or Persons, a legal, valid, binding and enforceable guarantee by the Person or Persons being acquired in which it or they, as the case may be, guarantees all of the Obligations of the Borrower, (ii) such Security as the Agent views as necessary in order to create a first priority perfected Encumbrance (subject to Permitted Encumbrances) in all assets acquired and/or stock of the acquired Person or Persons, and (iii) such legal opinions as may be reasonably required by the Agent;
- (p) on or prior to the date of the Acquisition, the Agent shall receive copies of the acquisition agreement and such other related material agreements requested by the Agent and will be satisfied with its review thereof;
- (q) if the proposed Acquisition involves the acquisition of Equity Interests, upon the consummation of the Acquisition or promptly thereafter the Agent shall receive certificates along with appropriate stock powers of attorney in respect of all such Equity Interest so acquired; and
- (r) immediately prior to and after giving effect to such Acquisition, the sum of (i) the Borrowing Base, *minus* (ii) all amounts outstanding on the Revolving Facility is greater than \$1,000,000.

“Permitted Debt” means:

- (a) Debt under this Agreement;

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- (b) Debt in respect of Purchase Money Security Interests and Capital Leases in an outstanding amount not to exceed \$2,500,000 in the aggregate at any time;
- (c) the Subordinate Debt; and
- (d) Debt consented to in writing by the Lenders from time to time and subject to the terms imposed by the Lenders in connection with such consent.

“Permitted Disposition” means the Disposition of used, worn-out or surplus equipment in the ordinary course of business and other Dispositions to the extent that no Default or Event of Default exists and the fair market value of the assets Disposed of by all Obligor does not exceed \$50,000 in any single transaction or \$100,000 in the aggregate in any Fiscal Year.

“Permitted Distributions” means the following:

- (a) all amounts and dividends paid by an Obligor to another Obligor;
- (b) amounts payable by the Borrower to the Subordinate Lenders in respect of the Subordinate Debt to the extent permitted by the terms of the Intercreditor Agreement;
- (c) director fees and expenses paid to directors of the Borrower in an aggregate annual amount not to exceed \$75,000 provided that no such Distributions may be made should there exist a Default or an Event of Default,
- (d) Management Fees paid by the Borrower in an aggregate amount not to exceed \$750,000 each Fiscal Year provided that no such Distributions may be made should there exist a Default or an Event of Default, in either case, under any of Sections 12.01(a), 12.01(b), 12.01(c), 12.01(m), 12.01(n) or 12.01(o); and
- (e) provided that no Default or Event of Default exists, cash payments by the Borrower to GC Luxco in respect of reasonable out-of-pocket costs and expenses associated with the maintenance and administration of such entity’s Equity Interests in the Borrower in an aggregate annual amount not to exceed \$25,000.

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

- (a) Encumbrances for Taxes not yet due or for which instalments have been paid based on reasonable estimates pending final assessments, or if due, the validity of which is being contested diligently and in good faith by appropriate proceedings by that Person for which reasonable reserves under GAAP are maintained;
- (b) undetermined or inchoate liens, rights of distress and charges incidental to current operations which have not at such time been filed or exercised and of which none of the Lenders has been given notice, or which relate to obligations not due or payable, or the validity of which is being contested diligently and in good faith by appropriate proceedings by that Person;

- (c) reservations, limitations, provisos and conditions expressed in any original grants from the Crown or other grants of real or immovable property, or interests therein, which do not materially affect the use of the affected land for the purpose for which it is used by that Person;
- (d) zoning, land use and building restrictions, by-laws, regulations and ordinances of federal, provincial, state, municipal and other Governmental Authorities, licences, easements, rights-of-way and rights in the nature of easements (including, without limiting the generality of the foregoing, licences, restrictions, easements, servitudes, rights-of-way and rights in the nature of easements for railways, sidewalks, public ways, sewers, drains, gas, steam and water mains or electric light and power, or telephone and telegraph conduits, poles, wires and cables) which do not materially impair the use of the affected land for the purpose for which it is used by that Person;
- (e) title defects, encroachments or irregularities or other matters relating to title which are of a minor nature and which in the aggregate do not materially impair the use of the affected property for the purpose for which it is used by that Person;
- (f) the right reserved to or vested in any municipality or governmental or other public authority by the terms of any lease, licence, franchise, grant or permit acquired by that Person or by any statutory provision to terminate any such lease, licence, franchise, grant or permit, or to require annual or other payments as a condition to the continuance thereof;
- (g) the Encumbrance resulting from the deposit of cash or securities in connection with contracts, tenders or expropriation proceedings, or to secure workers compensation, employment insurance, surety or appeal bonds, costs of litigation when required by law not to exceed \$100,000 in aggregate outstanding at any time, liens and claims incidental to current construction, mechanics', warehousemen's, carriers' and other similar liens, and public, statutory and other like obligations incurred in the ordinary course of business;
- (h) Encumbrances in favour of Chase Paymentech or another Person that processes credit card payments, in either case securing indebtedness in an aggregate amount not to exceed \$2,200,000 at any time;
- (i) security given to a public utility or any municipality or Governmental Authority when required by such utility or authority in connection with the operations of that Person in the ordinary course of its business provided that such security does not materially impair the use of the affected property for the purpose for which it is used by that Person;
- (j) the Encumbrance created by a judgment of a court of competent jurisdiction, as long as the judgment is being contested diligently and in good faith by appropriate proceedings or is promptly satisfied by that Person and does not result in an Event of Default;

- (k) the Security;
- (l) Purchase Money Security Interests and Capital Leases, provided that such Encumbrances secure Permitted Debt;
- (m) the Subordinate Security; and
- (n) such other Encumbrances as agreed to in writing by the Majority Lenders in accordance with this Agreement.

"Person" has the meaning set forth in Schedule AA.

"Prime Rate" means a fluctuating rate of interest per annum, expressed on the basis of a year of 365 or 366 days, as applicable, which is equal at all times to the greater of (a) the base rate of interest (however designated) of the Agent for determining interest chargeable by it on Canadian Dollar commercial loans made in Canada; and (b) 1.0% above CDOR from time to time for one month Canadian Dollar bankers' acceptances having a face amount comparable to the face amount in respect of which the applicable Prime Rate calculation is being made.

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

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

"Priority Payable" means at any time, any amount due and payable at such time by an Obligor which is secured by an Encumbrance or statutory right or claim in favour of any Person which ranks or is capable of ranking prior to or *pari passu* with the Encumbrances created by the Security in respect of any Account Receivable including, without limitation, amounts due and payable for wages, vacation pay, termination and severance pay, employee deductions (including income, withholding, social security and other employment taxes), sales tax, excise tax, tax payable pursuant to Part IX of the *Excise Tax Act* (Canada) (net of GST input credits), workers compensation, municipal taxes, government royalties, pension fund obligations, overdue rents or taxes, and other statutory or other claims that in each case have priority over or may rank *pari passu* with such Encumbrances created by the Security.

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

"Proportionate Share" means in respect of each Lender from time to time, (a) with respect to a Credit Facility or all Credit Facilities, the percentage of each Credit Facility or of all Credit Facilities, as the case may be, which a Lender has agreed to advance to the Borrower, determined by dividing the Lender's Commitment in respect of each Credit Facility or of all Credit Facilities, as the case may be, by the aggregate of all of the Lenders' Commitments with respect to such Credit Facility or all Credit Facilities, as the case may be, and, with respect to an

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Advance, means the Proportionate Share of the Credit Facility under which such Advance is made and, (b) with respect to the Obligations, *pro rata* in accordance with the aggregate unpaid amount of the Obligations owed to such Lender, which, in the case of all Qualifying Hedge Arrangements, shall mean all amounts due thereunder including, with respect to all Qualifying Hedge Arrangements (whether or not governed by an ISDA Master Agreement), as a result of a Termination Event (as such term is defined in the ISDA Master Agreement).

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

“Qualifying Hedge Arrangements” means a Hedge Arrangement provided by a Lender which is entered into after the date hereof and is permitted pursuant to Section 10.04(13).

“Related Parties” has the meaning set forth in Schedule AA.

“Relevant Jurisdiction” means, from time to time, with respect to a Person that is granting Security hereunder, any province or territory of Canada, any state of the United States or any other country, political subdivision thereof, in which such Person has its jurisdiction of formation, chief executive office or chief place of business or has Property (other than Inventory and vehicles in transit from one Canadian province to another Canadian province or one US state to another US state) and, for greater certainty, at the Closing Date includes the provinces and states set forth in Schedule 9.01(19) attached hereto.

“Relevant Quarter” has the meaning set forth in the definition of Applicable Margin.

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

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

or public safety and health (as they relate to exposure to a Hazardous Material); (d) Hazardous Materials or conditions (matters that are prohibited, controlled or otherwise regulated in connection with the protection of the natural environment and occupational health and safety, such as contaminants, pollutants, toxic substances, dangerous goods, wastes, hazardous wastes, liquid industrial wastes, hazardous materials, petroleum and other materials such as urea formaldehyde and polyurethane foam insulation, asbestos or asbestos-containing materials, polychlorinated biphenyls (PCBs) or PCB contaminated fluids or equipment, lead based paint, explosives, radioactive substances, petroleum and associated products, above ground and underground storage tanks or surface impoundments); and (e) the taking of water.

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

“Revolving Facility” has the meaning set forth in Section 2.01(a).

“Revolving Lenders” means those Lenders designated as such in Schedule A annexed hereto providing the Revolving Facility to the Borrower pursuant to this Agreement.

“Rollover” means a rollover of a maturing Bankers’ Acceptance into a new Bankers’ Acceptance or BA Equivalent Note, as applicable.

“Rollover Date” means the date of commencement of a new Interest Period applicable to a Bankers’ Acceptance or a BA Equivalent Note that is being rolled over.

“Rollover Notice” means the notice of request for Advance substantially in the form annexed hereto as Schedule B to be given to the Agent by the Borrower in connection with the Rollover of a Bankers’ Acceptance or a BA Equivalent Note pursuant to Section 2.05.

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

“Scheduled Repayment Date” has the meaning set forth in Section 7.02(1).

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

“Security Documents” means the documents referred to in Article 11.

“Senior Debt” means, with respect to the Borrower, without duplication and on a consolidated basis, the Debt under this Credit Agreement and Debt owing in respect of Capital Leases and Purchase Money Security Interests.

“Senior Debt to Capitalization Ratio” means, at any time, the ratio of (a) Senior Debt at such time to (b) Capitalization at such time.

“Senior Debt to EBITDA Ratio” means, at any time, the ratio of (a) Senior Debt at such time to (b) EBITDA for most recently completed Four Quarter Period.

“Service Agreements” means agreements made between any Obligor and a Lender in respect of cash management, payroll or other banking services.

“Shareholders Equity” shall mean, at any time, for the Borrower, the shareholders’ equity of the Borrower on a consolidated basis at such time calculated in accordance with GAAP but specifically excluding any minority interests.

“Subordinate Credit Agreement” means the amended and restated credit agreement dated as of the Closing Date between the Borrower and the Subordinate Lenders, as such agreement may be amended, restated or supplemented from time to time.

“Subordinate Debt” means all indebtedness owing by the Borrower to the Subordinate Lenders pursuant to the Subordinate Credit Agreement.

“Subordinate Documents” means, collectively, the Subordinate Credit Agreement and the Subordinate Security.

“Subordinate Lenders” means each of the lenders from time to time party to the Subordinate Credit Agreement.

“Subordinate Security” means the security granted by the Obligors to the Subordinate Lenders to secure the Subordinate Debt.

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

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

“Taxes” has the meaning set forth in Schedule AA.

“Term Facilities” means, collectively, the Term Facility and Delayed Draw Facility.

“**Term Facility**” has the meaning set forth in Section 2.01(b).

“**Term Lenders**” means those Lenders designated as such in Schedule A annexed hereto providing the Term Facility to the Borrower pursuant to this Agreement.

“**Total Debt**” means, with respect to the Borrower, without duplication and on a consolidated basis, all Debt of the Borrower.

“**Total Debt to EBITDA Ratio**” means, at any time, the ratio of (a) Total Debt at such time to (b) EBITDA for most recently completed Four Quarter Period.

“**Unfunded Capital Expenditures**” means Capital Expenditures paid from cash flow of the Obligors.

“**US Pension Plan**” means any employee pension benefit plan covered by Title IV of ERISA or subject to the minimum funding standards under Section 412 of the Revenue Code (other than a Multiemployer Plan) that either (i) is maintained by the Obligors or any of them, or (ii) with respect to which an Obligor has or may have liability (including on account of its membership in a Controlled Group).

1.02 Headings

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

1.03 Accounting Practices

All calculations for the purposes of determining compliance with the financial ratios and financial covenants contained in this Agreement shall be made in accordance with GAAP on a basis consistently applied for each Four Quarter Period. In the event of a change in GAAP, the Borrower and the Agent (with the approval of the Lenders) shall negotiate in good faith to revise (if appropriate) such ratios and covenants to reflect GAAP as then in effect, in which case all calculations thereafter made for the purpose of determining compliance with the financial ratios and financial covenants contained in this Agreement shall be made on a basis consistent with GAAP in existence as at the date of such revisions.

1.04 Permitted Encumbrances

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

1.05 Currency

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

1.06 **Paramountcy**

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

1.07 **Non-Business Days**

Unless otherwise expressly provided in this Agreement, whenever any payment is stated to be due on a day other than a Business Day, the payment will be made on the immediately following Business Day. Unless otherwise expressly provided in this Agreement, whenever any action to be taken is stated or scheduled to be required to be taken on, or (except with respect to the calculation of interest or fees) any period of time is stated or scheduled to commence or terminate on, a day other than a Business Day, the action will be taken or the period of time will commence or terminate, as the case may be, on the immediately following Business Day.

1.08 **Interest Payments and Calculations**

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

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

(3) For the purposes of the *Interest Act* (Canada) and disclosure under such act, whenever interest to be paid under this Agreement is to be calculated on the basis of a year of 365 days or any other period of time that is less than a calendar year, the yearly rate of interest to which the rate determined pursuant to such calculation is equivalent is the rate so determined multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by either 365 or such other period of time, as the case may be.

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

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

1.09 Determinations By the Borrower

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

1.10 Schedules

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

- Schedule AA – Model Credit Agreement Provisions
- Schedule A – Lenders and Commitments
- Schedule B – Notice of Request for Advance
- Schedule C – Repayment Notice
- Schedule D – Compliance Certificate
- Schedule E – Borrowing Base Certificate
- Schedule F – Guarantors on Closing Date
- Schedule 9.01(9) – Litigation
- Schedule 9.01(12) – Description of Real Property
- Schedule 9.01(13) – Insurance Policies
- Schedule 9.01(15) – Labour Relations
- Schedule 9.01(18) – Corporate Structure
- Schedule 9.01(19) – Relevant Jurisdictions
- Schedule 9.01(20) – Intellectual Property
- Schedule 9.01(21) – Material Contracts
- Schedule 9.01(32) – Non-Arm's Length Transactions
- Schedule 9.01(35) – Government Contracts
- Schedule 9.01(36) – Agreements and Other Documents

Schedule 9.01(38) – Conflicts of Interest .

ARTICLE 2 - THE CREDIT FACILITIES

2.01 Credit Facilities

Subject to the terms and conditions of this Agreement:

- (a) Revolving Facility – the Revolving Lenders establish (on a several and not joint or joint and several basis) in favour of the Borrower a revolving term credit facility (the “**Revolving Facility**”) in an amount not to exceed the lesser of:
 - (i) \$3,000,000; and
 - (ii) the Borrowing Base.

The aggregate of all outstanding Advances under the Revolving Facility shall at no time exceed the maximum permitted amount provided for herein.

- (b) Term Facility - the Term Lenders establish (on a several and not joint or joint and several basis) in favour of the Borrower a non-revolving term loan facility (the “**Term Facility**”) in an amount up to \$15,000,000.
- (c) Delayed Draw Facility – the Delayed Draw Lenders establish (on a several and not joint or joint and several basis) in favour of the Borrower a non-revolving term loan facility (the “**Delayed Draw Facility**”) in an amount up to \$7,000,000.

2.02 Purpose of Credit Facilities

Advances under the Credit Facilities shall only be used for the following respective purposes:

- (a) Advances under the Revolving Facility shall only be used by the Borrower for working capital and other general corporate purposes of the Borrower (subject to the terms hereof);
- (b) Advances under the Term Facility shall only be used by the Borrower to repay debt owing to the Subordinate Lenders pursuant to the Subordinate Credit Agreement; and
- (c) Advances under the Delayed Draw Facility shall only be used by the Borrower to finance Permitted Acquisitions including planned capital improvements specific to the Permitted Acquisition.

2.03 Manner of Borrowing

(1) The Borrower may, subject to the terms hereof, make Drawdowns, Conversions and Rollovers as applicable under the Revolving Facility in Canadian Dollars, by way of Prime Rate Advances, Bankers’ Acceptances and BA Equivalent Notes and Letters of Credit. The *Credit Agreement*

Borrower shall have the option, subject to the terms and conditions hereof, to determine which types of Advances shall be drawn down and in which combinations or proportions.

(2) The Borrower may, subject to the terms hereof, make Drawdowns, Conversions and Rollovers as applicable under the Term Facility and the Delayed Draw Facility in Canadian Dollars, by way of Prime Rate Advances and Bankers' Acceptances (and BA Equivalent Notes). The Borrower shall have the option, subject to the terms and conditions hereof, to determine which types of Advances shall be drawn down and in which combinations or proportions.

(3) At any time that the Borrower would be entitled to obtain Prime Rate Advances under the Revolving Facility, the Borrower shall be entitled to draw cheques on its Cdn. Dollar chequing account maintained from time to time with National Bank at the Agent's Payment Branch (or in such other accounts with National Bank at such other branch of National Bank as may be agreed upon by National Bank and the Borrower from time to time). The debit balance from time to time in any such account shall be deemed to be a Prime Rate Advance outstanding to the Borrower from National Bank under the Revolving Facility. If at any time the Borrower is a party to a cash concentration arrangement with National Bank, the amount of any overdraft from time to time in the Cdn. Dollar concentration account, as the case may be, of the Borrower established pursuant to such arrangement (which for greater certainty may include one of the Cdn. Dollar accounts identified above) shall, without duplication, be deemed to be a Prime Rate Advance outstanding to the Borrower from National Bank under the Revolving Facility.

(4) Letters of Credit under the Revolving Facility may not exceed an aggregate face value of \$1,000,000.

2.04 Nature of the Credit Facilities

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

(2) The Term Facility is a non-revolving facility and, accordingly, except for Conversions and Rollovers made in accordance with this Agreement, no amounts repaid under the Term Facility may be reborrowed and the limits of the Term Facility (and the Proportionate Share of the Term Lenders' Commitments under the Term Facility) will be automatically and permanently reduced by the amount of any such repayment so made. Any amount not borrowed by the Borrower after the initial Drawdown under the Term Facility shall be cancelled and may not thereafter be borrowed by the Borrower.

(3) The Delayed Draw Facility is a non-revolving facility and, accordingly, except for Conversions and Rollovers made in accordance with this Agreement, no amounts repaid under the Delayed Draw Facility may be reborrowed and the limits of the Delayed Draw Facility (and the Proportionate Share of the Delayed Draw Lenders' Commitments under the Delayed Draw Facility) will be automatically and permanently reduced by the amount of any such repayment so made. Any amount not borrowed by the Borrower prior to May 20, 2013 shall be cancelled and may not thereafter be borrowed by the Borrower.

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2.05 Drawdowns, Conversions and Rollovers

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

(2) In the case of a Drawdown, Conversion or Rollover, the Borrower shall give the Agent a Drawdown Notice, Conversion Notice or Rollover Notice, as the case may be, three (3) Business Days (in the case of Letters of Credit), two (2) Business Days in the case of Bankers' Acceptances or BA Equivalent Notes, and one (1) Business Day (in the case of all other Advances) prior to the proposed Drawdown Date, Conversion Date or Rollover Date, as the case may be.

(3) Each Drawdown Notice, Conversion Notice or Rollover Notice, as the case may be, shall be delivered by the Borrower on a Business Day on or prior to 11:00 a.m. (Toronto time) to the Agent.

(4) Each Drawdown, Conversion or Rollover under the Credit Facilities shall (i) in the case of Prime Rate Advances, be in a minimum principal amount of \$25,000 for each of the Credit Facilities and in each case whole multiples of \$25,000 thereafter; and (ii) in the case of Banker's Acceptances, be in a minimum face amount of \$500,000 and in whole multiples of \$100,000.

(5) Each Advance under the Delayed Draw Facility shall be in a minimum principal amount of \$250,000.

2.06 Agent's Obligations with Respect to Advances

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

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

Each Lender shall, prior to 11:00 a.m. (Toronto time) on the Drawdown Date, Conversion Date or Rollover Date, as the case may be, specified by the Borrower in a Drawdown Notice, Conversion Notice or Rollover Notice, as the case may be, credit the Agent's account specified in the Agent's notice given under Section 2.06 with such Lender's Proportionate Share of such Advance and by 11:00 a.m. (Toronto time) on the same date the Agent shall make available the full amount of the amounts so credited to the Borrower.

2.08 Irrevocability

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

2.09 Cancellation or Permanent Reduction of the Revolving Facility and the Delayed Draw Facility

The Borrower may, at any time, upon giving at least five (5) Business Days prior notice to the Agent, cancel in full or, from time to time, permanently reduce in whole or in part the Revolving Facility or the Delayed Draw Facility; provided, however that any reduction shall be in a minimum amount of \$500,000 and increments of \$100,000 thereafter. If the Revolving Facility is so reduced, the Commitments of each of the Revolving Lenders, shall be reduced *pro rata* in the same proportion that the amount of the reduction in the Revolving Facility, bears to the then current Commitments of the Revolving Lenders in effect immediately prior to such reduction. If the Delayed Draw Facility is so reduced, the Commitments of each of the Delayed Draw Lenders, shall be reduced *pro rata* in the same proportion that the amount of the reduction in the Delayed Draw Facility, bears to the then current Commitments of the Delayed Draw Lenders in effect immediately prior to such reduction.

ARTICLE 3 - DISBURSEMENT CONDITIONS

3.01 Conditions Precedent to an Initial Advance

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

- (a) this Agreement shall have been executed and delivered by all parties hereto;
- (b) the Agent shall have received timely notice as required under Section 2.05(2);
- (c) the Agent shall have received certified copies of the Organizational Documents of each Obligor, the resolutions authorizing the execution, delivery and performance of each Obligor's respective obligations under the Loan Documents and the transactions contemplated herein, and the incumbency of the officers of the Obligors;
- (d) copies of all shareholder agreements and partnership agreements, if any, applicable to each Obligor, certified by such Obligor to be true, shall have been delivered to the Agent and shall be satisfactory to the Agent;
- (e) the Agent shall have received a certified copy of the Subordinate Documents and an executed copy of the Intercreditor Agreement, which documents shall be in form and substance satisfactory to the Lenders;

- (f) certificates of status or good standing, as applicable, for all Relevant Jurisdictions of each Obligor shall have been delivered to the Agent;
- (g) each Obligor shall be in compliance in all material respects with all Material Contracts and Material Licences to the satisfaction of the Lenders, acting reasonably and copies of all Material Contracts and Material Licences if any, applicable to each Obligor, certified by such Obligor to be true, shall have been delivered to the Agent;
- (h) the Lenders shall have completed and shall be satisfied with their due diligence with respect to the Obligors, including a review of and satisfaction with:
 - (i) the legal structure of the Borrower and its Subsidiaries;
 - (ii) receipt and satisfaction with draft audited financial statements of the Borrower for the twelve-month period ending December 31, 2010 and confirmation of no material deviation from the interim consolidated quarterly management prepared unaudited financial statements for such period; and
 - (iii) the Borrower's insurance coverage;
- (i) the Lenders shall be satisfied with the terms of the Subordinate Credit Agreement and shall be provided with evidence that the amount of the Subordinate Debt will be US\$16,500,000 following the initial Drawdown under the Credit Facilities and corresponding payment of a portion of the Subordinate Debt;
- (j) the Lenders shall have received all required know your client information;
- (k) satisfaction by the Agent that the Borrower has obtained all necessary or required consents or approvals of any Governmental Authority or other Person in connection with the completion of the delivery of the Loan Documents;
- (l) releases, discharges and postponements with respect to all Encumbrances which are not Permitted Encumbrances, if any, shall have been delivered to the Agent;
- (m) payment of all amounts and fees (including the upfront fee due to National Bank and fees of Lenders' Counsel and agent counsel) payable to the Lenders or the Agent;
- (n) execution and delivery of the Intercreditor Agreement;
- (o) duly executed copies of the Security shall have been delivered to the Agent (along with certificates, if any, representing all shares or other securities pledged, together with related stock powers duly executed in blank) and such financing statements or other registrations of such Security, or notice thereof, shall have been filed, registered, entered or recorded in all offices of public record necessary

or desirable in the opinion of the Agent to preserve or protect the charges and security interests created thereby;

- (p) a currently dated letter of opinion of Borrower's Counsel along with the opinions of local counsel, as required, shall have been delivered to the Agent;
- (q) minimum EBITDA for the twelve-month period ending March 31, 2011 shall be no less than \$9,533,000;
- (r) Debt with respect to Capital Leases shall not exceed \$2,326,000;
- (s) the Borrower shall have delivered to the Agent certificates of insurance acceptable to the Agent showing, *inter alia*, the Agent as a loss payee as its interest may appear on all insurance policies;
- (t) a Borrowing Base Certificate for the Borrower calculating the Borrowing Base as at March 31, 2011 shall have been delivered to the Agent;
- (u) a Compliance Certificate confirming on a *pro forma* basis that the Borrower has a Total Debt to EBITDA Ratio not exceeding 3.75:1.0, a Senior Debt to EBITDA Ratio not exceeding 2.00:1.0 and a Senior Debt to Capitalization Ratio not exceeding 30% shall have been delivered to the Agent;
- (v) no Default or Event of Default has occurred and is continuing on the Drawdown Date or would result from making the Advance and a senior officer of the Borrower shall have certified the same to the Lenders;
- (w) no Material Adverse Effect has occurred since January 1, 2011 and a senior officer of the Borrower shall have certified the same to the Lenders;
- (x) all representations and warranties shall be true and correct;
- (y) evidence that the Drawdown under the Credit Facilities will be used solely for the purposes provided for in Section 2.02 hereof shall have been provided to the Agent;
- (z) delivery of the draft audited financial statements of the Borrower for the year ended December 31, 2010 and the unaudited financial statements of the Borrower for the Fiscal Quarter ended March 31, 2011;
- (aa) a source and use of funds statement and an outline of the flow of funds from the Credit Facilities shall have been delivered to the Agent; and
- (bb) the Agent shall have received such additional evidence, documents or undertakings as the Lenders shall reasonably request to establish the consummation of the transactions contemplated hereby and be satisfied, acting reasonably, as to the taking of all proceedings in connection herewith in compliance with the conditions set forth in this Agreement;

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

3.02 Conditions Precedent to Advances under Delayed Draw Facility

The obligation of the Lenders to make any Advance pursuant to the Delayed Draw Facility is subject to and conditional upon the following conditions precedent being satisfied by the Borrower:

- (a) no Material Adverse Effect has occurred since delivery of the Borrower's most recent Fiscal Year end and a senior officer of the Borrower shall have certified the same to the Lenders;
- (b) evidence that the Drawdown under the Credit Facilities will be used solely for the purposes provided for in Section 2.02 hereof shall have been provided to the Agent; and
- (c) the Borrower shall have satisfied all conditions to making an Acquisition as provided for in Section 10.04(9).

3.03 Conditions Precedent to Subsequent Advances

The obligation of the Lenders to make any Advance after the Closing Date (including each Advance under the Delayed Draw Facility) is subject to and conditional upon the following conditions precedent being satisfied by the Borrower:

- (a) the Agent shall have received timely notice as required under Section 2.05(2);
- (b) the representations and warranties pursuant to Section 9.01 are deemed to be repeated and continue to be true and correct; and
- (c) no Default or Event of Default has occurred and is continuing on the Drawdown Date or would result from making the Advance.

3.04 Waiver

The conditions set forth in Sections 3.01, 3.02 and 3.03 are inserted for the sole benefit of the Lenders and may be waived by the Lenders in accordance with the terms of Section 13.04, in whole or in part (with or without terms or conditions), in respect of any Drawdown without prejudicing the right of the Lenders at any time to assert such conditions in respect of any subsequent Drawdown.

ARTICLE 4 - EVIDENCE OF DRAWDOWNS

4.01 Account of Record

The Agent shall open and maintain books of account evidencing all Advances and all other amounts owing by the Borrower to the Lenders hereunder. The Agent shall enter in the *Credit Agreement*

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

ARTICLE 5 - PAYMENTS OF INTEREST AND STANDBY FEES

5.01 Interest on Prime Rate Advances

The Borrower shall pay interest on each Prime Rate Advance during each Interest Period applicable thereto in Canadian Dollars at a rate per annum equal to the sum of (i) the Prime Rate in effect from time to time during such Interest Period plus (ii) the Prime Rate Margin. Each determination by the Agent of the Prime Rate and the Prime Rate Margin applicable from time to time shall, in the absence of manifest error, be binding upon the Borrower. Subject to Section 5.04 and Section 5.05, such interest shall be payable in arrears on each Interest Payment Date for such Advance for the period from and including the Drawdown Date or the preceding Conversion Date or Interest Payment Date, as the case may be, for such Advance to and including the day preceding such Interest Payment Date and shall be calculated on the principal amount of the Prime Rate Advance outstanding during such period and on the basis of the actual number of days elapsed in a year of 365 days or 366 days, as the case may be. Changes in the Prime Rate shall cause an immediate adjustment of the interest rate applicable to such Advance without the necessity of any notice to the Borrower.

5.02 No Set-Off, Deduction etc.

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

5.03 Standby Fees

(1) The Borrower shall pay to the Agent for the account of the Revolving Lenders in accordance with their Proportionate Share a standby fee in Canadian Dollars calculated at the rate per annum specified as the applicable "Standby Fee Rate" in the table contained in the definition of "Applicable Margin" on the amount by which the daily average of the aggregate of all Advances outstanding under the Revolving Facility during such month is less than the maximum amount available under the Revolving Facility (which Commitment, for greater certainty, is \$3,000,000 on the date hereof). The standby fee shall be determined daily beginning

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on the date hereof and shall be calculated on the basis of a calendar year of 365 or 366 days, as the case may be, and shall be payable by the Borrower monthly in arrears on the first Business Day of each subsequent month.

(2) The Borrower shall pay to the Agent for the account of the Delayed Draw Lenders in accordance with their Proportionate Share a standby fee in Canadian Dollars calculated at the rate per annum specified as the applicable "Standby Fee Rate" in the table contained in the definition of "Applicable Margin" on the daily average of the amount available to be drawn pursuant to the Delayed Draw Facility. The standby fee shall be determined daily beginning on the date hereof and shall be calculated on the basis of a calendar year of 365 or 366 days, as the case may be, and shall be payable by the Borrower monthly in arrears on the first Business Day of each subsequent month. For greater certainty, the Commitment available pursuant to the Delayed Draw Facility as of the Closing Date is nil.

5.04 Overdue Principal and Interest

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

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

5.05 Interest on Other Amounts

If any amount owed by the Borrower to the Agent or any Lender under any of the Loan Documents is not paid when due and payable, and there is no other provision in any Loan Document specifying the interest payable on such overdue amount, such overdue amount shall bear interest (as well after as before judgment), payable on demand at a rate per annum equal at all times to the Prime Rate, plus the Prime Rate Margin plus 2%.

ARTICLE 6 - BANKERS' ACCEPTANCES AND LETTERS OF CREDIT

6.01 Bankers' Acceptances

(1) To facilitate the procedures contemplated in this Agreement, the Borrower irrevocably appoints each Lender from time to time as the attorney-in-fact of the Borrower to execute, endorse and deliver on behalf of the Borrower drafts (including book based forms and electronic paper) in the forms prescribed by such Lender (if such Lender is a BA Lender) for bankers' acceptances denominated in Cdn. Dollars (each such executed draft which has not yet been accepted by a Lender being referred to as a "Draft") or non interest-bearing promissory

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notes of the Borrower in favour of such Lender (if such Lender is a Non BA Lender) (each such promissory note being referred to as a "BA Equivalent Note"). Each Bankers' Acceptance and BA Equivalent Note executed and delivered by a Lender on behalf of the Borrower as provided for in this Section shall be as binding upon the Borrower as if it had been executed and delivered by a duly authorized officer of the Borrower.

(2) Notwithstanding Section 6.01(1), the Borrower will from time to time as required by the applicable Lender provide to the Lenders an appropriate number of Drafts drawn by the Borrower upon each BA Lender and either payable to a clearing service (if such BA Lender is a member thereof) or payable to the Borrower and endorsed in blank by the Borrower (if such BA Lender is not a member of such clearing service) and an appropriate number of BA Equivalent Notes in favour of each Non BA Lender. The dates, the maturity dates and the principal amounts of all Drafts and BA Equivalent Notes delivered by the Borrower shall be left blank, to be completed by the Lenders as required by this Agreement. All such Drafts or BA Equivalent Notes shall be held by each Lender subject to the same degree of care as if they were such Lender's own property kept at the place at which the Drafts or BA Equivalent Notes are ordinarily kept by such Lender. Each Lender, upon written request of the Borrower, will promptly advise the Borrower of the number and designation, if any, of the Drafts and BA Equivalent Notes then held by it. No Lender shall be liable for its failure to accept a Draft or purchase a BA Equivalent Note as required by this Agreement if the cause of such failure is, in whole or in part, due to the failure of the Borrower to provide on a timely basis appropriate Drafts or BA Equivalent Notes to the applicable Lender as may be requested by such Lender on a timely basis from time to time.

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

(4) Each BA Lender shall complete and accept on the applicable Drawdown Date a Draft having a face amount (or Drafts having the face amounts) and term advised by the Agent pursuant to subsection 6.01(3). Each applicable BA Lender shall purchase on the applicable Drawdown Date the Bankers' Acceptance accepted by it, for an aggregate price equal to the BA Discount Proceeds of such Bankers' Acceptance. The Borrower shall ensure that there is

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delivered to each applicable BA Lender that is a member of a clearing service the completed Bankers' Acceptances, and such BA Lender is hereby authorized to release the Bankers' Acceptance accepted by it to such clearing house upon receipt of confirmation that such clearing house holds such Bankers' Acceptance for the account of such BA Lender.

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

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

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

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

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

Rate Advance to the Borrower from the Lender that accepted such Banker's Acceptance or purchased such BA Equivalent Note.

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

6.02 Letters of Credit

(1) If the Borrower wishes to request an Advance by way of issuance of Letters of Credit, the Borrower shall, at the time it delivers the notice required pursuant to Section 2.05(2), execute and deliver the Issuing Bank's usual documentation relating to the issuance and administration of Letters of Credit (including, without limitation, all reimbursement and indemnity agreements). In the event of any inconsistency between the terms of such documentation and this Agreement, the terms of this Agreement shall prevail.

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

(3) No Letter of Credit may be issued for a period in excess of one year. Letters of Credit may be used by the Borrower for general commercial purposes, and may not, for greater certainty, be used to guarantee obligations of Persons who are not Obligors.

(4) If, at any time, a demand for payment (the amount so demanded being herein referred to as a "relevant amount") is made under a Letter of Credit and notification thereof is given by the Issuing Bank to the Agent, then:

(a) the Agent shall:

(i) promptly notify the Borrower and each of the other Revolving Lenders of such demand; and

(ii) make demand on each Revolving Lender for an amount equal to its Proportionate Share of such relevant amount which demand shall constitute a deemed Prime Rate Advance to the Borrower without the requirement of any further action on the part of the Borrower;

(b) the Issuing Bank shall pay the amount demanded to the Person entitled thereto on the date upon which such amount becomes payable under the Letter of Credit; and

(c) the Agent shall pay such relevant amount to the Issuing Bank.

(5) Where a demand for payment is made under a Letter of Credit issued in Canadian Dollars, the Borrower shall be deemed to have requested a Prime Rate Advance of the amount

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demanded from the Issuing Bank. Where a demand for payment is made under a Letter of Credit issued in any other currency, the Borrower shall be deemed to have requested a Prime Rate Advance in the Equivalent Amount of Canadian Dollars to the amount demanded from the Issuing Bank. In each case payment will be made by the Borrower of all charges and expenses payable to or incurred by the Issuing Bank and the Lenders in connection with payment being made under such Letter of Credit.

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

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

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

(9) For so long as any Letter of Credit is outstanding, the Borrower shall pay to the Agent for the benefit of the Revolving Lenders a fee equal to the Letter of Credit Fee Rate on the amount of each Letter of Credit in the Equivalent Amount of Canadian Dollars in advance beginning on the date of issuance of such Letter of Credit. Such fee shall each be calculated on the basis of a calendar year and the number of days the Letter of Credit will be outstanding during such period.

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

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

- (i) the return of the Letter of Credit to the Issuing Bank for cancellation;
- (ii) the expiration date of the Letter of Credit; or
- (iii) the deeming of the amount drawn on the Letter of Credit to be a Prime Rate Advance under the Revolving Facility.

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

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

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

(13) The Borrower hereby indemnifies and agrees to hold the Issuing Bank harmless from all losses, damages, costs, demands, claims, expenses (including out-of-pocket expenses) and other consequences which the Issuing Bank may incur, sustain or suffer, other than as a result of its own negligence or wilful misconduct, as a result of issuing or amending a Letter of Credit, including legal and other expenses incurred by the Issuing Bank in any action to compel

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payment by the Issuing Bank under a Letter of Credit or to restrain the Issuing Bank from making payment under a Letter of Credit. Any amounts due under this indemnity shall form part of the Obligations.

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

6.03 Major Disruption

If

- (a) the Agent (acting reasonably) makes a determination, which determination shall be conclusive and binding upon the Borrower, and notifies the Borrower, that there no longer exists an active market for Bankers' Acceptances accepted by the Lenders; or
- (b) the Agent is advised by Lenders holding at least 25% of the Commitments of all Lenders hereunder by written notice (each, a "**Lender BA Suspension Notice**") that such Lenders have determined (acting reasonably and in good faith) that the BA Discount Rate will not or does not accurately reflect the cost of funds of such Lenders or the discount rate which would be applicable to a sale of Bankers' Acceptances accepted by such Lenders in the market;

then:

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

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

ARTICLE 7 – REPAYMENT

7.01 Mandatory Repayment of Principal – Revolving Facility

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

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7.02 Mandatory Repayment of Principal – Term Facility

(1) Subject to the terms hereof, the Term Facility shall be repaid by the Borrower on the dates specified below (each a “**Scheduled Repayment Date**”) by the amount set out opposite each Scheduled Repayment Date. Each payment shall be on a Business Day and if such day is not a Business Day, such payment shall be on the first preceding Business Day.

Scheduled Repayment Date				Repayment Amount each Fiscal Quarter
June 30, 2011	September 30, 2011	December 31, 2011	March 31, 2012	\$281,250
June 30, 2012	September 30, 2012	December 31, 2012	March 31, 2013	\$468,750
June 30, 2013	September 30, 2013	December 31, 2013	March 31, 2014	\$562,500
June 30, 2014	September 30, 2014	December 31, 2014	March 31, 2015	\$562,500
-	-	-	Maturity Date	All remaining principal owing

(2) The Borrower shall repay the outstanding principal amount of all Advances under the Term Facility, together with all accrued interest, fees and other amounts then unpaid by it under the Term Facility in full on the Maturity Date, and the Term Facility and the Commitments thereunder shall be automatically terminated on the Maturity Date.

7.03 Mandatory Repayments of Principal – Delayed Draw Facility

(1) Subject to the terms hereof, the Delayed Draw Facility shall be repaid by the Borrower on the dates specified below by the amount set out opposite each scheduled repayment Date. Each payment shall be on a Business Day and if such day is not a Business Day, such payment shall be on the first preceding Business Day.

Scheduled Repayment Date	Repayment Amount each Fiscal Quarter
June 30, 2013 to March 31, 2014	3.750% of the cumulative principal amount that has been advanced under the Delayed Draw Facility
June 30, 2014 to March 31, 2015	3.750% of the cumulative principal amount that has been advanced under the Delayed Draw Facility
Maturity Date	All amounts outstanding

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(2) The Borrower shall repay the outstanding principal amount of all Advances under the Delayed Draw Facility, together with all accrued interest, fees and other amounts then unpaid by it under the Delayed Draw Facility in full on the Maturity Date, and the Delayed Draw Facility and the Commitments thereunder shall be automatically terminated on the Maturity Date.

7.04 Voluntary Repayments and Reductions

(1) Subject to the Agent receiving a Repayment Notice which shall be given not less than three (3) Business Days prior to the proposed repayment date and which shall be irrevocable, the Borrower may from time to time repay Advances outstanding under the Credit Facilities without premium, penalty or bonus provided that each such repayment shall be in a minimum aggregate amount of \$1,000,000 and in whole multiples of \$100,000. Notwithstanding the foregoing, Bankers' Acceptances, BA Equivalent Notes and Letters of Credit may not be repaid prior to their respective maturity or expiry dates but may be cash collateralized along with delivery of such documentation as may be required by the Agent as specified in Section 7.11. Voluntary prepayments shall be applied against each of the Term Facilities on a *pro rata* basis.

(2) Each such voluntary repayment by the Borrower of the Term Facility will be applied against repayments of principal due under Section 7.02 in inverse order of maturity and may not be reborrowed. Each such repayment shall permanently reduce the Commitment of each Term Lender in respect of the Term Facility by the amounts of the Term Lender's Proportionate Share of such repayments. For greater certainty, the Borrower shall not have the right thereafter to increase the committed amount of the Term Facility so reduced.

(3) Each such voluntary repayment by the Borrower of the Delayed Draw Facility will be applied against repayments of principal due under Section 7.02 in inverse order of maturity and may not be reborrowed. Each such repayment shall permanently reduce the Commitment of each Delayed Draw Lender in respect of the Delayed Draw Facility by the amounts of the Delayed Draw Lender's Proportionate Share of such repayments. For greater certainty, the Borrower shall not have the right thereafter to increase the committed amount of the Delayed Draw Facility so reduced.

7.05 Mandatory Repayments on Proceeds of Debt Issues

(1) If any Obligor incurs any Debt (other than Permitted Debt), which for greater certainty requires the consent of the Majority Lenders, an amount equal to the entire proceeds of such Debt (net of reasonable, *bona fide* direct transaction fees, costs and expenses incurred in connection with incurring such Debt) shall be paid by the Borrower (irrespective as to which Obligor incurred the Debt) to the Agent, within two (2) Business Days of the closing of the transaction under which such Debt is incurred and shall be applied on a *pro rata* basis in permanent repayment of outstanding Obligations under the Term Facilities.

(2) All repayments of the Term Facility under this Section 7.05 will be applied against repayments of principal due under Section 7.02 in inverse order of maturity.

(3) All repayments of the Delayed Draw Facility under this Section 7.05 will be applied against repayments of principal due under Section 7.02 in inverse order of maturity.

7.06 Mandatory Repayments on Proceeds of Equity Issuances

(1) If the Borrower issues any Equity Interests (other than Excluded Issuances), which for greater certainty requires the consent of the Majority Lenders, an amount equal to the entire proceeds of such issuance of Equity Interests (net of reasonable, *bona fide* direct transaction fees, costs and expenses incurred in connection with issuing such Equity) shall be paid by the Borrower (irrespective as to which Obligor issued the Equity Interests) to the Agent, within two (2) Business Days of the closing of the transaction under which such Debt is incurred and shall be applied on a *pro rata* basis in permanent repayment of outstanding Obligations under the Term Facilities.

(2) All repayments of the Term Facility under this Section 7.05 will be applied against repayments of principal due under Section 7.02 in inverse order of maturity.

(3) All repayments of the Delayed Draw Facility under this Section 7.05 will be applied against repayments of principal due under Section 7.02 in inverse order of maturity.

7.07 Mandatory Repayment on Dispositions

(1) If any Obligor makes a Disposition (other than a Permitted Disposition), which for greater certainty requires the consent of the Majority Lenders, an amount equal to the Net Proceeds of such Disposition shall be paid by the Borrower (irrespective as to which Obligor made the Disposition) to the Agent within five (5) Business Days after the closing of the transaction under which such Disposition occurs and shall be applied on a *pro rata* basis in permanent repayment of outstanding Obligations under the Term Facilities; provided that, the Obligors may on written request to the Agent, if no Default or Event of Default exists, receive such Net Proceeds provided that an Obligor reinvests the Net Proceeds from any such Disposition in additional assets of the Borrower within one hundred and eighty day (180) days after the closing of the transaction under which such Disposition occurs. If following the one hundred and eighty day (180) day period no Obligor has reinvested such Net Proceeds in additional assets, such proceeds shall immediately be paid to by the Borrower to the Agent (irrespective as to which Obligor received the Net Proceeds), and shall be applied on a *pro rata* basis in permanent repayment of outstanding Obligations under the Term Facilities.

(2) All repayments of the Term Facility under this Section 7.06 will be applied against repayments of principal due under Section 7.02 in inverse order of maturity.

(3) All repayments of the Delayed Draw Facility under this Section 7.06 will be applied against repayments of principal due under Section 7.02 in inverse order of maturity.

7.08 Mandatory Repayments from Proceeds of Insurance

(1) If the Obligors receive proceeds of insurance, the Obligors may, if no Default or Event of Default exists, request that all such insurance proceeds be ultimately released to the Borrower provided that an Obligor enters into a *bona fide* Arm's Length contract to replace,

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repair or rebuild the asset to which such proceeds relate within one hundred and eighty days (180) days and such replacement, repair or rebuilding has been completed within such one hundred and eighty days (180) days (or such longer period as agreed to by the Majority Lenders, acting reasonably) following the entering of such contract. If following the one hundred and eighty day (180) day period no Obligor has entered into any such contract or following the one hundred and eighty day (180) day period (or such longer period, if applicable), such assets have not been replaced, repaired or rebuilt, such proceeds shall immediately be delivered by the Borrower to the Agent and shall be applied by the Agent against the Obligations under the Term Facilities on a *pro rata* basis in accordance with the terms of Section 7.07(2) and Section 7.07(3).

(2) Notwithstanding anything contained herein, an Obligor shall be entitled to retain all proceeds of business interruption insurance and shall not be required to apply such proceeds in accordance with the foregoing provisions, provided that no Obligor shall be entitled to any proceeds of insurance (including business interruption insurance) if there exists an Event of Default and forthwith upon the occurrence of an Event of Default all proceeds of insurance shall be remitted to the Agent for application against amounts outstanding hereunder.

(3) All repayments of the Term Facility under this Section 7.08 will be applied against repayments of principal due under Section 7.02 in inverse order of maturity.

(4) All repayments of the Delayed Draw Facility under this Section 7.08 will be applied against repayments of principal due under Section 7.02 in inverse order of maturity.

7.09 Cash Flow Sweep

(1) Not later than one hundred and forty (140) days after the end of each Fiscal Year of the Borrower commencing with Fiscal Year 2011, the Borrower will determine its Excess Cash Flow for such Fiscal Year based on its audited financial statements for such Fiscal Year and deliver to the Agent a detailed calculation of its Excess Cash Flow together with such audited financial statements.

(2) Once Excess Cash Flow has been determined in accordance with Section 7.09(1), an amount equal to the percentage of such Excess Cash Flow (as determined based on the Total Debt to EBITDA Ratio of the Borrower for at least two consecutive Fiscal Quarters) set out below shall be paid by the Borrower to the Agent within one hundred and fifty (150) days following the end of such Fiscal Year, and shall be applied on a *pro rata* basis by the Agent against outstanding Obligations under the Term Facilities:

<u>Level</u>	<u>Total Debt to EBITDA</u>	<u>Percentage</u>
I	≥ 3.00	75%
II	≥ 2.00:1.0 but < 3.00:1.00	50%
III	< 2.00:1.0	Nil

(3) All repayments of the Term Facility under this Section 7.09 will be applied against repayments of principal due under Section 7.02 in inverse order of maturity.

(4) All repayments of the Delayed Draw Facility under this Section 7.09 will be applied against repayments of principal due under Section 7.02 in inverse order of maturity.

7.10 Excess Over the Maximum Amounts

If the Agent determines that on any day the aggregate of Advances in Canadian Dollars then outstanding under the Revolving Facility, exceeds the Borrowing Base, the Agent shall notify the Borrower that such an event has occurred, and the Borrower shall within one (1) Business Day following receipt of such notice repay Advances under the Revolving Facility in an amount equal to such excess.

7.11 Cash Collateral etc.

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

ARTICLE 8 - PLACE AND APPLICATION OF PAYMENTS

8.01 Place of Payment of Principal, Interest and Fees

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

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

(3) Unless the Agent shall have been notified by the Borrower not later than 12:00 noon (Toronto time) of the Business Day prior to the date on which any payment to be

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

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

8.02 Netting of Payments

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

ARTICLE 9 - REPRESENTATIONS AND WARRANTIES

9.01 Representations and Warranties

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

(1) Existence and Qualification Each Obligor (a) has been duly incorporated, established, formed, amalgamated, merged or continued, as the case may be, and is validly subsisting and in good standing as a corporation, company, limited partnership or partnership, under the laws of its jurisdiction of formation, amalgamation, merger or continuance, as the case may be (or in the case of Obligors which are not corporations or companies, has been duly created or established as a partnership or other applicable entity and validly exists under and is in good standing under the laws of the jurisdiction in which it has been created or established), (b) is duly qualified to carry on its business in each jurisdiction in which it carries on business, except where failure to do so is not material to the Business, and (c) has all required Material Licences.

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

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

(4) Loan Documents Comply with Applicable Laws, Organizational Documents and Contractual Obligations None of the execution or delivery of, the consummation of the transactions contemplated in, or the compliance with the terms, conditions and provisions of any of, the Loan Documents conflicts with or will conflict with, or results or will result in any breach of, or constitutes a default under or contravention of, any Requirement of Law, any Obligor's Organizational Documents or any Material Contract or Material Licence, or results or will result in the creation or imposition of any Encumbrance upon any of its Property except for Permitted Encumbrances.

(5) Consent Respecting Loan Documents Each Obligor has obtained, made or taken all consents, approvals, authorizations, declarations, registrations, filings, notices and other actions whatsoever required (except for registrations or filings which may be required in respect

of the Security Documents) to enable it to execute and deliver each of the Loan Documents to which it is a party and to consummate the transactions contemplated in the Loan Documents.

(6) Taxes Each Obligor has duly and timely filed all Tax returns required to be filed by it and has paid or made adequate provision for the payment of all Taxes levied on its Property or income which are showing therein as due and payable, including interest and penalties, or has accrued such amounts in its financial statements for the payment of such Taxes except for Taxes which are not material in amount or which are not delinquent or if delinquent are being contested, and, except, after the date of this Agreement, as is disclosed to the Agent in writing there is no material action, suit, proceeding, investigation, audit or claim now pending, or to its knowledge, threatened by any Governmental Authority regarding any Taxes nor has it or any other Obligor agreed to waive or extend any statute of limitations with respect to the payment or collection of Taxes.

(7) Judgments, Etc. No Obligor is subject to any judgment, order, writ, injunction, decree or award, or to any restriction, rule or regulation (other than customary or ordinary course restrictions, rules and regulations consistent or similar with those imposed on other Persons engaged in similar businesses) which has not been stayed or of which enforcement has not been suspended.

(8) Accounts Receivable Each Obligor's Accounts Receivable are genuine and *bona fide* and, except as disclosed or reflected in the Obligor's books and records, are not subject to any material dispute, offset, defence or counterclaim which the applicable Obligor would reasonably expect to impair the ability to collect such Accounts Receivable.

(9) Absence of Litigation There are no actions, suits or proceedings pending or judgments existing or, to the best of its knowledge and belief, after due inquiry and all reasonable investigation, threatened against or affecting any Obligor or their respective properties which could reasonably be expected to be determined adversely to any Obligor and, if so determined, to result in a Material Adverse Effect. All actions, suits or proceeds pending or judgements existing as of the Closing Date with a potential liability in excess of \$100,000 are set forth in Schedule 9.01(9) attached hereto.

(10) Title to Assets Each Obligor has good title to its assets, free and clear of all Encumbrances except Permitted Encumbrances and no Person has any agreement or right to acquire an interest in such assets other than in the ordinary course of its business and pursuant to a Permitted Disposition.

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

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

brief description of such property and its use), (b) all real property leased by each Obligor (including municipal addresses, legal description (to the extent available), the name of the Obligor that leases such property, the name of the landlord, the term and any renewal rights under the applicable lease and a brief description of such property and its use), and (c) all real property not owned or leased by an Obligor at which any of its Inventory may from time to time be stored or located (including municipal addresses, the name of the Obligor which keeps Inventory at such property and the name of the bailee or third party holding such Inventory at such property).

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

(14) Licensors, Suppliers, Distributors and Customers The relationship with each Obligor's material licensors and customers are satisfactory commercial working relationships and, to the Borrower's knowledge, no such licensor or customer has modified, cancelled or otherwise terminated its relationship with or decreased its usage or purchase of the services or products of it in a manner which has had, or could reasonably be expected to be material and adverse to the Business. It has no knowledge of any intention of any such licensor or customer to take any action which could reasonably be expected to cause a Material Adverse Effect.

(15) Labour Relations As of the Closing Date and other than as provided for in Schedule 9.01(15): (i) no Obligor has knowledge that it is engaged in any unfair labour practice; and there is no unfair labour practice complaint or complaint of employment discrimination pending against any Obligor, or, to the knowledge of the Obligors, threatened against any Obligor, before any Governmental Authority; (ii) no material grievance or arbitration arising out of or under any collective bargaining agreement is pending against any Obligor or, to the best of its knowledge, threatened against any Obligor; and (iii) no strike, labour dispute, slowdown or stoppage is pending against any Obligor or, to the best of its knowledge, threatened against any Obligor.

(16) Compliance with Laws No Obligor is in default (other than defaults of an immaterial nature) under any Applicable Law or Applicable Order, including any enacted or adopted for the regulation, protection and conservation of the natural environment.

(17) No Default or Event of Default No Default or Event of Default has occurred which is continuing which is known to the Borrower and which has not been disclosed to the Agent.

(18) Corporate Structure The corporate structure of the Borrower and its Subsidiaries is, as at the Closing Date, as set out in Schedule 9.01(18), which Schedule contains:

- (a) *Shareholdings of the Obligors.* There are no Subsidiaries of the Obligors and the Obligors do not own or hold any shares in the capital of, or any other ownership interest in, any other Person.

- (b) *Share Capital of Obligors.* The authorized capital of the Obligors is as provided for in Schedule 9.01(18), of which the number of issued and outstanding shares and the beneficial owners thereof at such time is provided for in Schedule 9.01(18).
- (c) *Rights to Acquire Shares of Obligors.* No Person has an agreement or option or any other right or privilege (whether by law, pre-emptive or contractual) capable of becoming an agreement or option, including convertible securities, warrants or convertible obligations of any nature, for the purchase, subscription, allotment or issuance of any unissued shares in the capital of any Obligor except as provided for in Schedule 9.01(18).

(19) Relevant Jurisdictions Schedule 9.01(19) identifies in respect of each Obligor as of the Closing Date, the Relevant Jurisdictions including the full address (including postal code) of such Obligor's chief executive office and all places of business and, if different, the address at which the books and records of such Obligor are located, the address at which senior management of such Obligor are located and conduct their deliberations and make their decisions with respect to the business of such Obligor and the address from which the invoices and accounts of such Obligor are issued.

(20) Intellectual Property Each Obligor has rights sufficient for it to use all the Intellectual Property reasonably necessary for the conduct of its business. All patents, trademarks or industrial designs which have been either registered or in respect of which a registration application has been filed by it, as at the Closing Date, are listed on Schedule 9.01(20). To its knowledge as of the Closing Date, no Obligor is infringing or misappropriating or is alleged in writing to be infringing or misappropriating the intellectual property rights of any other Person.

(21) Material Contracts and Material Licenses:

- (a) Schedule 9.01(21) (as amended from time to time and updated in accordance with Section 10.01(12)), accurately sets out all Material Contracts and Material Licences;
- (b) a true and complete certified copy of each Material Contract and Material Licence existing at the date hereof has been delivered to the Agent and each Material Contract and Material Licence is in full force and effect;
- (c) no event has occurred and is continuing which would constitute a material breach of or a default under any Material Contract or Material Licence except as disclosed in writing to the Agent;
- (d) each Material Contract to which an Obligor is a party is binding upon such Obligor and, to its knowledge, is a binding agreement of each other Person who is a party to the Material Contract; and
- (e) it has obtained, as of the Closing Date, all necessary consents, including consents of landlords to the granting of a security interest in each Material Contract and Material Licence except in those instances where the Agent has waived the

requirement for such consents or except where the terms of a Material Licence expressly provides that it may not be assigned.

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

(23) Financial Information All of the monthly, quarterly and annual financial statements which have been furnished to the Agent and the Lenders, or any of them, in connection with this Agreement are complete in all material respects and such financial statements fairly present in all material respects the results of operations and financial position of the Borrower and its Subsidiaries as of the dates referred to therein and have been prepared in accordance with GAAP. All other material financial information (including, without limitation, budgets and projections) provided to the Agent and the Lenders are complete in all material respects and based on reasonable assumptions and expectations; provided however that any projections or forward-looking statements are not guarantees of future performance and as to which the Obligors shall not be held responsible. The Borrower does not have any liabilities (contingent or other) or other material obligations of the type required to be disclosed in accordance with GAAP which are not fully disclosed on the consolidated financial statements of the Borrower provided to the Lenders, other than liabilities and obligations incurred in the ordinary course of the Business, the Obligations and those other liabilities and obligations permitted pursuant to this Agreement.

(24) No Material Adverse Effect Since the date of the Borrower's most recent annual audited financial statements and the Borrower's most recent unaudited financial statements (which have been prepared in accordance with GAAP) provided to the Lenders, there has been no condition (financial or otherwise), event or change in its business, liabilities, operations, results of operations, assets or prospects which constitutes or has, or could reasonably be expected to constitute, or cause, a Material Adverse Effect. All financial statements provided to the Agent shall be prepared in accordance with GAAP (excluding notes in the case of monthly or quarterly financial statements provided to the Agent).

(25) Environmental (a) No Obligor is subject to any civil or criminal proceeding or investigation relating to Requirements of Environmental Law and no Obligor has any knowledge of any threatened proceeding or investigation relating to Requirements of Environmental Law; (b) each Obligor has all material permits, licences, registrations and other authorizations required by the Requirements of Environmental Law for the operation of its business (including, without limitation, all permits for water taking required by each applicable Governmental Authority) and the properties which it owns, leases or otherwise occupies; (c) each Obligor currently operates its business and its properties (whether owned, leased or otherwise occupied) in compliance in all material respects with all applicable Requirements of Environmental Law; (d) no Hazardous Materials are or have been stored or disposed of by any Obligor or otherwise used by any Obligor in violation of any applicable Requirements of Environmental Law (including, without limitation, any release of Hazardous Materials by any Obligor at, on or under any property now or previously owned or leased by an Obligor, the Borrower or any of its Subsidiaries) other than immaterial non-compliance; (e) all underground storage tanks of which an Obligor has knowledge of now or previously located on any real property owned or leased by it have been operated, maintained and decommissioned or closed, as applicable, in compliance in all material respects with applicable Requirements of Environmental Law; and (f) no real property or

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groundwater in, on or under any property now or previously owned or leased by any Obligor is or has been during such Person's ownership or occupation of such property (or, to its knowledge, prior to its ownership or occupation) contaminated by any Hazardous Material except for any contamination that would not reasonably be expected to give rise to any material liability under Requirements of Environmental Law, nor, to the knowledge of the Borrower after due enquiry, is any such property named in any list of hazardous waste or contaminated sites maintained under any Requirements of Environmental Law.

(26) CERCLA No portion of any Obligor's Property has been listed, designated or identified in the National Priorities List or the CERCLA Information System both as published by the United States Environmental Protection Agency, or any similar list of sites published by any federal, state or local authority proposed for requiring clean up or remedial or corrective action under any Requirements of Environmental Laws.

(27) (a) Canadian Welfare and Pension Plans Each Obligor has adopted all Canadian Welfare Plans required by Applicable Laws and each of such plans has been maintained and is in compliance with such laws in all material respects including, without limitation, all requirements relating to employee participation, funding, investment of funds, benefits and transactions with the Obligors and persons related to them. No Obligor has a material contingent liability with respect to any post-retirement benefit under a Canadian Welfare Plan. With respect to Canadian Pension Plans: (a) no steps have been taken to terminate any Canadian Pension Plan (wholly or in part) which could result in any Obligor being required to make an additional contribution to any Canadian Pension Plan; (b) no contribution failure has occurred with respect to any Canadian Pension Plan sufficient to give rise to a lien or charge under any applicable pension benefits laws of any other jurisdiction; and (c) no condition exists and no event or transaction has occurred with respect to any Canadian Pension Plan which is reasonably likely to result in any Obligor incurring any material liability, fine or penalty. Each Canadian Pension Plan is in compliance with all applicable pension benefits and tax laws; (i) all contributions (including employee contributions made by authorized payroll deductions or other withholdings) required to be made to the appropriate funding agency in accordance with all Applicable Laws and the terms of each pension plan have been made in accordance with all Applicable Laws and the terms of each Canadian Pension Plan; (ii) all liabilities under each Canadian Pension Plan are funded in accordance with the terms of the respective Canadian Pension Plans, the requirements of applicable pension benefits laws and of applicable regulatory authorities and there is no accumulated funding deficit with respect to any Canadian Pension Plan and (iii) no event has occurred and no conditions exist with respect to any Canadian Pension Plan that has resulted or could reasonably be expected to result in any Canadian Pension Plan having its registration revoked or refused by any administration of any relevant pension benefits regulatory authority or being required to pay any taxes (other than taxes the amounts of which are immaterial) or penalties under any applicable pension benefits or tax laws.

(b) ERISA Plans Except as would not result in any material liability to an Obligor, each ERISA Plan has been maintained and is in compliance with Applicable Laws including, without limitation, all requirements relating to employee participation, investment of funds, benefits and transactions with the Obligors and persons related to them. None of the Obligors and no member of a Controlled Group to which an Obligor belongs maintains or is obligated to contribute to any US Pension Plan or any Multiemployer Plan, and no fact or event

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exists or has occurred that would give rise to liability under Title IV of ERISA for an Obligor. With respect to ERISA Plans: (a) no condition exists and no event or transaction has occurred with respect to any ERISA Plan that is reasonably likely to result in any Obligor, to the best of its knowledge, incurring any material liability, fine or penalty; and (b) no Obligor has a material contingent liability with respect to any post-retirement benefit under any such ERISA Plan that is a welfare plan except as required by Section 4980B of the Code or a comparable state law. All contributions (including employee contributions made by authorized payroll deductions or other withholdings) required to be made have been made in accordance with all Applicable Laws and the terms of each ERISA Plan except for those which are immaterial. Each of the ERISA Plans that is intended to be "qualified" within the meaning of Section 401(a) of the Code either (a) has received a favourable determination letter from the IRS or is comprised of a master or prototype or volume submitter plan that has received a favourable opinion or advisory letter from the IRS on which the Obligor may rely, or (b) is or will be the subject of an application for a favourable determination, opinion or advisory letter within the appropriate remedial amendment period cycle, and no circumstances exist that has resulted or could reasonably be expected to result in the disqualification of the plan or the revocation or denial of any such determination, opinion or advisory letter.

(28) Not an Investment Company No Obligor is an "investment company" or a company "controlled" by an "investment company" within the meaning of the United States Investment Company Act of 1940, as amended or a "holding company", or a "subsidiary company" of a "holding company", or an "affiliate" of a holding company, or of a "subsidiary company" of a "holding company", within the meaning of the United States Public Utility Holding Company Act of 1935, as amended.

(29) No Margin Stock No Obligor is engaged in the business of extending credit for the purpose of purchasing or carrying margin stock. None of the proceeds of any Advance shall be used to purchase or carry, or to reduce or retire or refinance any credit incurred to purchase or carry, any margin stock (within the meaning of Regulations U and X of the Board of Governors of the Federal Reserve System of the United States) or to extend credit to others for the purpose of purchasing or carrying any margin stock.

(30) Full Disclosure All information provided or to be provided to the Agent or the Lenders by or on behalf of the Borrower in connection with the Credit Facilities is, to its knowledge, true and correct in all material respects and none of the documentation furnished to the Agent and the Lenders by or on behalf of it, to its knowledge, omits or will omit as of such time, a material fact necessary to make the statements contained therein not misleading in any material way, and all expressions of expectation, intention, belief and opinion contained therein were honestly made on reasonable grounds after due and careful inquiry by it.

(31) Insolvency As at the Closing Date, no Obligor nor any of their predecessors where applicable (a) has committed any act of bankruptcy, (b) is insolvent, or has proposed, or given notice of its intention to propose, a compromise or arrangement to its creditors generally, (c) has any petition for a receiving order in bankruptcy filed against it, made a voluntary assignment in bankruptcy, taken any proceeding with respect to any compromise or arrangement, taken any proceeding to have itself declared bankrupt or wound-up, taken any proceeding to

have a receiver appointed of any part of its assets, has had any Encumbrancer take possession of any of its Property.

(32) Non-Arm's Length Transactions All agreements, arrangement or transactions between any Obligor, on the one hand, and any Associate of, Affiliate of or other Person not dealing at Arm's Length with such Obligor (other than another Obligor), on the other hand, in existence as of the Closing Date are set forth on Schedule 9.01(32).

(33) Debt There exists no Debt that is not Permitted Debt other than Debt to be repaid from the funds made available herein.

(34) Inactive Subsidiaries The Inactive Subsidiaries do not carry on any business and do not own any assets.

(35) Government Contracts As of the Closing Date, except as set forth in Schedule 9.01(35), no Obligor is a party to any contract or agreement with any Governmental Authority.

(36) Agreements and Other Documents Each Obligor has provided to the Agent or its counsel, on behalf of the Lenders, accurate and complete copies (or summaries) of all of the following agreements or documents to which any it is subject and each of which are listed on Schedule 9.01(36): (a) supply agreements and purchase agreements not terminable by an Obligor within sixty (60) days following written notice issued by such Obligor and involving transactions in excess of \$50,000 per annum; (b) any lease of equipment having a remaining term of one year or longer and requiring aggregate rental and other payments in excess of \$50,000 per annum; (c) licenses and permits held by the Obligors, the absence of which could be reasonably likely to have a Material Adverse Effect; (d) instruments or documents evidencing Indebtedness of such Obligor and any security interest granted by such Obligor with respect thereto; and (e) instruments and agreements evidencing the issuance of any Equity Indebtedness of such Obligor.

(37) Foreign Assets Control Regulations, Etc.

(a) Neither the making of the Advances by the Lenders hereunder nor its use of the proceeds thereof will violate the Trading with the Enemy Act, as amended, or any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto.

(b) No Obligor nor any of its respective Subsidiaries (i) is, or will become, a Person described or designated in the Specially Designated Nationals and Blocked Persons List of the Office of Foreign Assets Control or in Section 1 of the Anti Terrorism Order or (ii) engages or will engage in any dealings or transactions, or is or will be otherwise associated, with any such Person. Each Obligor and its Subsidiaries are in compliance, in all material respects, with the USA Patriot Act.

(c) No part of the proceeds from the Advances made hereunder or any Letter of Credit issued hereunder will be used, directly or indirectly, for any payments to

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any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended, assuming in all cases that such Act applies to the Obligor.

(38) Conflicts of Interest As of the date hereof, except as set forth in Schedule 9.01(38) or as otherwise disclosed herein, neither Falconhead (nor any Affiliate hereof, related fund or co-investment partnership, or any general partner of Falconhead (including Jim Solomon), any Affiliate thereof or any related fund or co-investment partnership), Stephen daCosta, Mory Offman nor any director (or persons holding a similar position) or officer of any Obligor, (A) owns, directly or indirectly, any interest in (excepting passive holdings for investment purposes of not more than one percent (1%) of the securities of any publicly held and traded company), or is an officer, director, employee, or consultant of, any Person that is a competitor, lessor, lessee or supplier of the Borrower or (B) (i) owns, directly or indirectly, any interest in any tangible or intangible property used in or necessary to the business of the Borrower or (ii) has any cause of action or other claim whatsoever against the Borrower, or owes any amount to the Borrower, except for claims in the ordinary course of business, such as for accrued vacation pay and accrued benefits under employee benefit plans.

9.02 Survival and Repetition of Representations and Warranties

The representations and warranties set out in Section 9.01 will be deemed to be repeated by the Borrower as of the date of each request for new Advance by the Borrower except to the extent that on or prior to such date (a) the Borrower has advised the Agent in writing of a variation in any such representation or warranty as required by the terms hereof, and (b) if such variation in the opinion of the Lenders, acting reasonably, is material to the Property, liabilities, affairs, business, operations, prospects or condition (financial or otherwise) of the Obligor considered as a whole or could have, or be reasonably likely to result in, a Material Adverse Effect, the Lenders have approved such variation.

ARTICLE 10 - COVENANTS

10.01 Positive Covenants

So long as the Obligations remain outstanding and the Commitments have not been terminated and except as otherwise permitted by the prior written consent of the Majority Lenders, the Borrower shall and shall cause each other Obligor to:

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

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

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normal conduct of its business and to comply in all material respects with all Material Contracts, Material Licences and Requirements of Law.

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

(4) Access to Information Promptly provide the Agent with all information reasonably requested by the Agent for and on behalf of the Lenders from time to time concerning its financial condition and Property, and during normal business hours and from time to time upon reasonable notice, permit representatives of the Agent and the Lenders to inspect any of its Property and to examine and take extracts from its financial books, accounts and records including but not limited to accounts and records stored in computer data banks and computer software systems, and to discuss its financial affairs, its business or any part of its Property with its senior officers and (in the presence of such of its representatives as it may designate) its auditors. The Borrower will pay all reasonable expenses incurred by such representatives in order to visit the Borrower's premises or attend at its and each other Obligor's principal office, as applicable, for such purposes.

(5) Obligations and Taxes Pay or discharge or cause to be paid or discharged, before the same shall become delinquent all Taxes imposed upon it or upon its income or profits or in respect of its business or Property and file all tax returns in respect thereof; provided, however that it shall not be required to pay or discharge or to cause to be paid or discharged any such amount so long as the validity or amount thereof shall be contested in good faith by appropriate proceedings and an adequate reserve in accordance with GAAP has been established in its books and records.

(6) Books and Records Keep adequate books and records with respect to its business activities in which proper entries, reflecting all bona fide financial transactions, are made in accordance with GAAP.

(7) Use of Credit Facilities Use the proceeds of the Credit Facilities as contemplated by Section 2.02.

(8) Insurance Maintain or cause to be maintained with reputable insurers, coverage against risk of loss or damage to its Property (including public liability and damage to property of third parties), business interruption insurance, fire and extended peril insurance and boiler and machinery insurance of such types as is customary for and would be maintained by a corporation with an established reputation engaged in the same or similar business in similar locations and provide to the Agent, on an annual basis, evidence of such coverage. The Borrower shall, on an annual basis prior to the expiry or replacement of any insurance policy, notify the Agent of the renewal or replacement and at the Agent's request send copies of all renewed or replacement policies to the Agent and, if requested by the Agent, acting reasonably, shall permit a reputable insurance consultant to complete a review of and comment on the adequacy of such coverage, and the Borrower shall thereafter remedy any inadequacies such other consultant may raise, acting reasonably. The Borrower shall not be responsible for the costs associated in retaining an

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insurance consultant unless (i) there has been a material change in the insurance maintained by the Obligors or (ii) there exists an Event of Default. Without limiting the generality of the foregoing, the Borrower shall maintain in effect all insurance coverage reasonable and prudent for a business similar to its business conducted in similar locations. The Agent on behalf of the Lenders shall be indicated in all insurance policies, as applicable, as first loss payee in respect of property insurance and additional insured in respect of liability insurance, and all property insurance policies shall contain such standard mortgage clauses as the Agent shall reasonably require for the Lenders' protection.

(9) Notice of Default or Event of Default Promptly notify the Agent of any Default or Event of Default that would apply to it or to any Obligor of which it obtains knowledge.

(10) Notice of Material Adverse Effect Promptly notify the Agent of any Material Adverse Effect of which it obtains knowledge.

(11) Notice of Litigation Promptly notify the Agent on obtaining knowledge of the occurrence of any litigation, dispute, arbitration, proceeding or other circumstance the result of which could reasonably be expected to result in (a) a judgment or award against it in excess of \$250,000 or (b) a Material Adverse Effect, and from time to time provide the Agent with all reasonable information requested by the Agent concerning the status of any such proceeding.

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

- (a) any notice of expropriation affecting any Obligor in which the value of the property being expropriated exceeds \$100,000;
- (b) any violation of any Applicable Law which does or may have a Material Adverse Effect on any Obligor;
- (c) any default under any Debt of an Obligor in an amount in excess of \$250,000;
- (d) any termination prior to maturity of, or default under a Material Contract or any termination, lapse, rescission or default under a Material Licence;
- (e) any damage to or destruction of any property, real or personal, of any Obligor having a replacement cost in excess of \$400,000;
- (f) the acquisition of any real property by an Obligor;
- (g) the receipt of insurance proceeds by any Obligor in excess of \$400,000;
- (h) any Encumbrance registered against any property or assets of any Obligor, other than a Permitted Encumbrance;
- (i) any Obligor infringing or misappropriating or having been alleged in writing to be infringing or misappropriating in any material respect, the intellectual property rights of any other Person.

- (j) any Person having the right to go into, collect or seize possession of any Obligor's Property by means of execution, garnishment or other legal process;
- (k) any change in the location of any Obligor's chief executive office or the location of the office from which the invoices and accounts of such Obligor are issued and the date upon which such change is to take effect;
- (l) any knowledge any Obligor may have that any application or registration relating to any material Intellectual Property may become abandoned, dedicated to the public, placed in the public domain, invalid or unenforceable, or of any materially adverse determination or development regarding the Obligor's ownership of any of the Intellectual Property, its right to register the same or to keep and maintain and enforce the same;

In each Compliance Certificate delivered to the Agent, provide notice of:

- (i) any entering into of a Material Contract;
- (ii) any material change in, or material amendment to, any Material Contract or termination of a Material Licence; and
- (iii) any patent, trademark or industrial design which has been registered or in respect of which an application has been filed.

(13) Environmental Compliance Operate its business in compliance in all material respects with Requirements of Environmental Law and operate all Property owned, leased or otherwise used by it such that no material obligation, including a clean-up or remedial obligation, will arise under any Requirements of Environmental Law; provided, however, that if any such claim is made or any such obligation arises, the applicable Obligor shall promptly satisfy, address or contest such claim or obligation at its own cost and expense. The Borrower shall promptly notify the Agent upon: (a) learning of the existence of any Hazardous Material located on, above or below the surface of any land which it owns, leases, operates, occupies or controls (except those being stored, used or otherwise handled in compliance with Requirements of Environmental Law), or contained in the soil or water constituting such land; and (b) the occurrence of any reportable release, spill, leak, emission, discharge, leaching, dumping or disposal of Hazardous Materials that has occurred on or from such land, which, in either the case of (a) or (b), is likely to result in liability under Requirements of Environmental Law in excess of \$100,000.

(14) Security With respect to the Security:

- (a) provide to the Agent the Security required from time to time pursuant to Article 11 in accordance with the provisions of such Article, accompanied by supporting resolutions, certificates and opinions in form and substance satisfactory to the Agent; and
- (b) do, execute and deliver all such things, documents, security, agreements and assurances as may from time to time reasonably be requested by the Agent to

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ensure that the Agent holds at all times valid, enforceable, perfected first priority Encumbrances (subject only to Permitted Encumbrances) from the Obligors meeting the requirements of Article 11.

(15) Maintenance of Property Generally keep the Property useful and necessary in its business in good working order and condition, normal wear and tear excepted, and maintain all Intellectual Property necessary to carry on its business.

(16) Landlord Consents Each Obligor shall obtain a landlord's agreement, mortgagee agreement or bailee letter, as applicable, from the lessor of each leased property or mortgagee of owned property or with respect to any location where Property is located, which agreement or letter shall contain a waiver or subordination of all Encumbrances or claims that the landlord, mortgagee or bailee may assert against the Inventory or Property at that location, and shall otherwise be satisfactory in form and substance to the Agent. After the Closing Date, no real property or space shall be leased or acquired by any Obligor and no Inventory or equipment may be held at a location, under arrangements established after the Closing Date, unless and until a satisfactory landlord or mortgagee agreement or bailee letter, as appropriate, shall first have been obtained with respect to such location; provided that the Borrower may hold Inventory and equipment with a book value not to exceed \$50,000 in the aggregate at newly established locations with the Agent's prior approval and subject to a reserve established at the Agent's discretion. Each Obligor shall timely and fully pay and perform its obligations under all leases and other agreements with respect to each leased location or public warehouse where any Property is or may be located.

(17) Material Contracts and Material Licences Execute and deliver, in a form satisfactory to the Agent, acting reasonably, a specific assignment by way of security in favour of the Agent of each Material Contract and Material Licence (in the event that the Material Contract or Material Licence is not assignable by its terms, the applicable Obligor shall, as a condition to the assignment, use commercially reasonable efforts to obtain consent to the assignment) which the Agent, acting reasonably, requires be specifically assigned to the Agent by the applicable Obligor and further, if the Agent, acting reasonably, so requires, shall, use commercially reasonable efforts to obtain the acknowledgement of each Person or Governmental Authority other than the Borrower or any other Obligor which is party to a Material Contract or that has issued a Material Licence to the assignment, such acknowledgement to be in a form satisfactory in content to the Agent, acting reasonably.

(18) Expenses Pay promptly all reasonable fees and disbursements (including sales tax, goods and services tax and harmonised sales and goods and services tax) incurred or paid by the Agent or the Lenders in connection with the preparation, negotiation, execution, delivery, maintenance, amendment and enforcement (including any workouts in connection with or in lieu of any enforcement) of the Loan Documents and in connection with the consummation of the transactions contemplated by the Loan Documents, including without limitation, all court costs and all reasonable fees and disbursements of lawyers, auditors, consultants and accountants.

(19) Employee Benefit and Welfare Plans Maintain all Canadian Pension Plans, Canadian Welfare Plans, ERISA Plans and all other employee benefits relating to its business in compliance with all Applicable Law.

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

(21) Cash Management Within 120 days following the Closing Date, maintain all cash management services and all accounts of the Obligors with National Bank.

(22) Management Agreements Provide to the Agent an executed copy of any management agreement (and any amendment thereto) that it may enter into with Falconhead or its Affiliates from time to time.

(23) Subordinate Documents Provide to the Agent (a) an executed copy of any amendment, modification, supplement, restatement or replacement of any of the Subordinate Documents, which, for greater certainty, may only be made with the prior written consent of the Agent in accordance with the terms of the Intercreditor Agreement, and (b) prompt written notice of any default in connection with the Subordinate Documents.

(24) Inactive Subsidiaries Ensure that the Inactive Subsidiaries do not carry on any business or hold or acquire any assets or incur any liabilities and are amalgamated into the Borrower or dissolved within one year following the Closing Date.

(25) Landlords' Agreements, Mortgagee Agreements and Bailee Letters (a) The Borrower shall use its commercially reasonable efforts to obtain following the Closing Date a landlord's agreement, non-disturbance agreement, leasehold charge and bailee letter, as applicable, from the lessor and mortgagee of each leased property, which agreement or letter shall contain a waiver or subordination of all Encumbrances or claims that the landlord, mortgagee or bailee may assert against the Inventory or Property at that location, and shall otherwise be satisfactory in form and substance to Agent; and (b) After the Closing Date, no real property or space shall be leased or acquired by any Obligor and no Inventory or equipment may be held at a location, under arrangements established after the Closing Date, unless and until a satisfactory landlord, non-disturbance agreement, leasehold charge and/or bailee letter, as appropriate, shall first have been obtained with respect to such location; provided that Borrower may hold Inventory and equipment with a book value not to exceed \$50,000 in the aggregate at newly established locations with Agent's prior approval. Each Obligor shall timely and fully pay and perform its obligations under all leases and other agreements with respect to each leased location or public warehouse where any Property is or may be located.

10.02 Financial Covenants

(1) So long as the Obligations remain outstanding and the Commitments have not been terminated and except as otherwise permitted by the prior written consent of the Majority Lenders:

(a) Senior Debt to EBITDA Ratio The Borrower, on a consolidated basis, will ensure that its Senior Debt to EBITDA Ratio is not at any time greater than the following amounts during the periods provided for below:

<u>Period</u>	<u>Ratio</u>
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Closing Date to December 30, 2014	2:50:1.00
Thereafter	2:25:1.00

- (b) Total Debt to EBITDA Ratio The Borrower, on a consolidated basis, will ensure that its Total Debt to EBITDA Ratio is not at any time greater than the following amounts during the periods provided for below:

<u>Period</u>	<u>Ratio</u>
Closing Date to December 30, 2014	4:00:1.00
Thereafter	3:75:1.00

- (c) Senior Debt to Capitalization The Borrower, on a consolidated basis, will ensure that its Senior Debt to Capitalization Ratio is not at any time greater than 40%.

- (d) Fixed Charge Coverage Ratio The Borrower, on a consolidated basis, will ensure that its Fixed Charge Coverage Ratio is not at any time less than 1.10:1.0 in respect of the period from the Closing Date to December 30, 2012 and thereafter shall not at anytime be less than 1.15:1.00.

- (e) Minimum EBITDA The Borrower, on a consolidated basis, shall have, calculated as of the last day of the then most recently ended Fiscal Quarter, a minimum EBITDA for the most recently completed Four Quarter Period of not less than the following:

<u>Fiscal Quarter</u>	<u>Minimum EBITDA</u>
For the Fiscal Quarter ending June 30, 2011	\$8,000,000
For the Fiscal Quarter ending September 30, 2011	\$8,000,000
For the Fiscal Quarter ending December 31, 2011	\$8,000,000
For the Fiscal Quarter ending March 31, 2012	\$8,000,000
For the Fiscal Quarter ending June 30, 2012	\$8,000,000
For the Fiscal Quarter ending September 30, 2012	\$8,000,000
For the Fiscal Quarter ending December 31, 2012	\$8,000,000
For the Fiscal Quarter ending March 31, 2013	\$8,500,000
For the Fiscal Quarter ending June 30, 2013	\$8,500,000
For the Fiscal Quarter ending September 30, 2013	\$8,500,000
For the Fiscal Quarter ending December 31, 2013	\$8,500,000
For the Fiscal Quarter ending March 31, 2014	\$9,000,000
For the Fiscal Quarter ending June 30, 2014	\$9,000,000
For the Fiscal Quarter ending September 30, 2014	\$9,000,000
For the Fiscal Quarter ending December 31, 2014	\$9,000,000
For the Fiscal Quarter ending March 31, 2015	\$9,500,000

- (2) For the purposes of calculating the Fixed Charge Coverage Ratio under Section 10.02(1)(d), Fixed Charges of the Borrower will be annualized each Fiscal Quarter until the completion of four Fiscal Quarters.

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10.03 Reporting Requirements

So long as the Obligations remain outstanding and the Commitments have not been terminated and except as otherwise permitted by the prior written consent of the Majority Lenders, the Borrower shall and shall cause each other Obligor to:

(1) Annual Reports As soon as available and in any event within one hundred twenty (120) days after the end of each of the Borrower's Fiscal Years, cause to be prepared and delivered to the Agent, the annual audited consolidated financial statements of the Borrower including, in each case and without limitation, balance sheet, statement of income and retained earnings and statement of cash flows for such Fiscal Year, a comparison to the budget set forth in the Annual Business Plan and the previous year and management discussion and analysis ("MD&A"), which, other than MD&A, the budget and the Annual Business Plan, shall be prepared in accordance with GAAP and certified by an officer of the Borrower.

(2) Quarterly Reports As soon as available and in any event within forty-five (45) days of the end of each Fiscal Quarter (commencing with the Fiscal Quarter ending March 31, 2011), cause to be prepared and delivered to the Agent as at the end of such Fiscal Quarter unaudited financial statements of the Borrower prepared on a consolidated basis, including, in each case and without limitation, balance sheet, statement of income and retained earnings, statement of cash flows, a comparison to the budget set forth in the Annual Business Plan and the previous year and MD&A, and a list of all outstanding Hedge Arrangements, which, other than MD&A, the budget and the Annual Business Plan, shall be prepared in accordance with GAAP (subject to usual year end adjustments and the absence of full note and deferred tax disclosure).

(3) Monthly Reports As soon as available and in any event within 45 days of the end of each Fiscal Month (commencing with the Fiscal Month ending April 30, 2011), cause to be prepared and delivered to the Agent as at the end of such Fiscal Month unaudited financial statements of the Borrower prepared on a consolidated basis, including, in each case and without limitation, balance sheet, statement of income and retained earnings, statement of cash flows, a comparison to the budget set forth in the Annual Business Plan and the previous year and MD&A, and a list of all outstanding Hedge Arrangements, which, other than MD&A, the budget and the Annual Business Plan, shall be prepared in accordance with GAAP (subject to usual year end adjustments and the absence of full note and deferred tax disclosure).

(4) Compliance Certificate Within forty-five (45) days after the end of each Fiscal Quarter, except for the fourth Fiscal Quarter of any Fiscal Year, in which case within one hundred and twenty (120) days of each Fiscal Year, provide the Agent with a Compliance Certificate.

(5) Annual Business Plan Not less than thirty (30) days prior to the end of each Fiscal Year, provide to the Agent the Annual Business Plan for the next four Fiscal Years and provide copies of all "management letters" submitted by the Auditor in connection with the Borrower's audited financial statements.

(6) Borrowing Base Certificate Within thirty (30) days of the end of each Fiscal Quarter, furnish to the Agent a Borrowing Base Certificate setting out the calculation of the Borrowing Base as at the last day of the calendar month previously ended.

(7) Other Information Following the request of a Lender, furnish such other reports or information reasonably requested by a Lender from time to time, including, without limitation, unconsolidated financial statements of any Obligor.

(8) Sufficient Copies to Agent Ensure that in complying with this Section 10.03, the Agent is supplied with sufficient quantities of all materials for each of the Lenders and the Agent and wherever possible, that electronic copies are sent which the Agent is then authorized to send electronically to the Lenders.

(9) Equity Notices Deliver to the Agent, as soon as practicable, copies of all material written notices given or received by an Obligor with respect to any Equity Interest of such Person.

10.04 Negative Covenants

So long as the Obligations remain outstanding and the Commitments have not been terminated and except as otherwise permitted by the prior written consent of the Majority Lenders, the Borrower shall not and shall ensure that each Obligor shall not:

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

(2) No Consolidation, Closing Amalgamation, etc. Subject to the provisions of Section 10.01(24), consolidate, amalgamate or merge with any other Person, export a corporation into a jurisdiction outside of Canada, enter into any corporate reorganization or other transaction intended to effect or otherwise permit a change in its existing corporate or capital structure, liquidate, wind-up or dissolve itself, or permit any liquidation, winding-up or dissolution unless prior written approval has been received by the Lenders and such documentation as is required by Lenders' Counsel is delivered concurrently with such transaction. Notwithstanding the foregoing, an Obligor may consolidate, amalgamate or merge with another Obligor or liquidate, wind-up or dissolve itself into another Obligor, subject to (i) there existing no Default or Event of Default, (ii) the Agent being provided with no less than thirty (30) days' prior written notice of the occurrence of such event, (iii) concurrent with such event, the Agent being provided with such additional Loan Documents that it requires, acting reasonably, in connection with such event including any Equity Interests arising therefrom, (iv) the Agent being provided with such legal opinions as it requires, acting reasonably, and (v) the impact of such event not having any, in the reasonable opinion of the Agent, negative impairment on the Security granted in favour of the Lenders and the obligations of the Obligors pursuant to the Loan Documents in effect at such time.

(3) No Change of Name Change its name, adopt a French form of name or change its jurisdiction of incorporation or formation in each case without providing the Agent with fifteen (15) days' prior written notice thereof.

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

(5) No Investments Make, directly or indirectly, any Investment, except as provided in Sections 10.04(29) and 10.04(16).

(6) No Financial Assistance Give any Financial Assistance to any Person other than (i) the delivery of the Security and (ii) the advancing of Permitted Debt by an Obligor to another Obligor.

(7) No Distributions Make any Distribution except Permitted Distributions.

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

(9) Acquisitions Make any Acquisitions except Permitted Acquisitions; provided that the total-aggregate consideration paid and payable with respect to all such Acquisitions occurring from and after the Closing Date up to the Maturity Date does not exceed \$10,000,000.

(10) Capital Expenditures Make or enter into any agreement which would require it to make any Capital Expenditures in excess of \$2,750,000 in Fiscal Year 2011, \$1,750,000 in Fiscal Year 2012 or \$1,250,000 thereafter (excluding Capital Expenditures financed under the Delayed Draw Facility).

(11) No Change to Year End Make any change to its Fiscal Year.

(12) No Change to Business Carry on any business other than the Business.

(13) Hedge Arrangements Enter into or permit to be outstanding at any time Hedge Arrangement unless:

(a) such Hedge Arrangement is a rate swap, interest rate option, forward rate transaction, forward foreign exchange transaction or cross currency rate swap transaction;

(b) the counterparty under such Hedge Arrangement is a Lender or an Affiliate of a Lender;

(c) such Hedge Arrangement is designed to protect the Borrower against fluctuations in currency exchange rates or interest rates and such Hedge Arrangement has been entered into by the Borrower *bona fide* and in good faith in the ordinary course of its business for the purpose of carrying on the same and not for speculative purposes; and

(d) if such Hedge Arrangement is a currency hedge, the term thereof does not exceed one year or extend beyond the Maturity Date; or if such Hedge Arrangement is an interest hedge, the term thereof does not extend beyond the Maturity Date.

(14) Location of Assets in Other Jurisdictions Except for any Property in transit in the ordinary course of business, acquire any Property outside of the jurisdictions identified in Schedule 9.01(19) or move any Property from one jurisdiction to another jurisdiction where the movement of such Property would cause the Encumbrance of the Security over such Property to cease to be perfected under Applicable Law, or suffer or permit in any other manner any of its Property to not be subject to the Encumbrance of the Security or to be or become located in a jurisdiction as a result of which the Encumbrance of Security over such Property is not perfected, unless (a) the Obligor has first given thirty (30) days' prior written notice thereof to the Agent, and (b) the applicable Obligor has first executed and delivered to the Agent all Security and all financing or registration statements in form and substance satisfactory to the Agent which the Agent or its counsel, acting reasonably, from time to time deem necessary or advisable to ensure that the Security at all times constitutes a perfected first priority Encumbrance (subject only to Permitted Encumbrances) over such Property notwithstanding the movement or location of such Property as aforesaid together with such supporting certificates, resolutions, opinions and other documents as the Agent may deem necessary or desirable in connection with such security and registrations.

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

(16) No New Subsidiaries Create or acquire any Subsidiary after the date of this Agreement unless: (a) such Subsidiary exists pursuant to the laws of Canada or any Province of Canada; (b) all of the issued and outstanding capital of such Subsidiary is owned by an Obligor; (c) such new Subsidiary provides a legal, valid and enforceable guarantee in favour of the Agent for and on behalf of the Lenders and security in form and substance satisfactory to the Lenders; (d) all of the issued and outstanding shares of such new Subsidiary are pledged to the Agent and (e) all resolutions (corporate, shareholder or otherwise) required by the Agent, are delivered to the Agent, and in each case appropriate legal opinions are delivered by Borrower's Counsel to the Lenders, acting reasonably.

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

(18) Non-Arm's Length Transactions Except as set out in Schedule 9.01(32), (i) effect any transactions with any Person (other than an Obligor) not dealing at Arm's Length with the transacting Obligor, and (ii) no Obligor shall enter into any lending or borrowing transaction with any employees of any Obligor, except loans to their respective employees on an arm's-length basis in the ordinary course of business consistent with past practices for travel expenses, relocation costs and similar purposes up to a maximum of \$50,000 to any employee and up to a maximum of \$100,000 in the aggregate at any one time outstanding.

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

(20) US Bank Accounts Open or maintain any bank accounts in the United States unless the Lenders have received a deposit account control agreement in form and substance satisfactory to the Majority Lenders.

(21) Auditor Change its Auditor without first providing the Agent with thirty (30) days' prior written notice and so long as any replacement is a nationally recognized accounting firm.

(22) Subordinate Debt (i) Make any payments (whether principal, interest or otherwise) in respect of the Subordinate Debt not permitted pursuant to the provisions of the Intercreditor Agreement, or (ii) amend, modify, supplement or restate the Subordinate Documents unless such change is not prohibited by the provisions of the Intercreditor Agreement.

(23) Multiemployer Plan and US Pension Plan Establish or incur any obligation to contribute to or participate in a Multiemployer Plan or US Pension Plan.

(24) Holdings ensure that Holdings does not incur any Debt, own any assets (other than Equity Interests in the Borrower) or carry on any business.

(25) Leases; Facility Openings Without the prior written consent of the Agent and other than as set forth on Schedule 9.01(12), open any Facilities or to enter into any new commitments to open any Facilities on which the Obligors do not already own or lease the land on which such Facility is to be developed (including without limitation entering into any lease, purchase agreement, construction contract or other agreement or arrangement relating to the acquisition, build-out or refurbishment of any property in connection with the opening or anticipated opening of a Facility), if at such time a Default or Event of Default is then existing.

(26) Potential Conflicts of Interest Including any Affiliate of any Obligor, or any of their respective officers or directors, (i) own, directly or indirectly, any interest in (excepting passive holdings for investment purposes of not more than one percent (1%) of the securities of any publicly held and traded company), or will become an officer, director, employee, or consultant of, any Person that is a competitor, lessor, lessee, customer, client or supplier of any Obligor or any Affiliate of any Obligor; (ii) shall own, directly or indirectly, any interest in any tangible or intangible property used in or necessary to the business of any Obligor or any Affiliate of any Obligor; or (iii) will have any cause of action or other claim whatsoever against any Obligor or any Affiliate of any Obligor, or owe any amount to any Obligor or any Affiliate of any Obligor, except for claims in the ordinary course of business, such as for accrued vacation pay, accrued benefits under employee benefit plans, and similar matters and agreements.

(27) Anti-Terrorism Laws Conduct, deal in or engage in or permit any Affiliate or agent of any Obligor to conduct, deal in or engage in any of the following activities: (i) conduct any business or engage in any transaction or dealing with any blocked Person, including the making or receiving any contribution of funds, goods or services to or for the benefit of any blocked Person; (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224; or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or

avoiding, or attempts to violate, any of the prohibitions set forth in Executive Order No. 13224, the USA Patriot Act, or the *Proceed of Crime (Money Laundering) and Terrorist Financing Act (Canada)*. The Borrower shall deliver to the Agent and the Lenders any certification or other evidence requested from time to time by the Agent or any Lender, confirming the Borrower's compliance with this Section 10.04(27).

(28) Cancellation of Debt Cancel any claim or debt owing to it, except for reasonable consideration negotiated on an Arm's Length basis and in the ordinary course of business.

(29) Capital Structure Make any change in its capital structure as described on Schedule 9.01(18), including the issuance of any Equity Interests or any revision of the terms of its outstanding Equity Interests (other than issuances of Equity Interest (excluding Disqualified Equity Interests (as such term is defined in the Subordinate Credit Agreement)) of Holdings to the extent the proceeds are used solely to finance a Permitted Acquisition or Capital Expenditures), unless the Person to whom such Equity Interests are issued is an Obligor and then only if such additional Equity Interests so issued are concurrently pledged to the Agent pursuant to the Security and all resolutions (corporate, shareholder or otherwise) and legal opinions (in each case in form and substance satisfactory to the Agent) required by the Agent are delivered to the Agent.

ARTICLE 11 - SECURITY

11.01 Form of Security

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

- (a) a general security agreement from the Borrower in favour of the Agent constituting a first-priority Encumbrance (subject only to Permitted Encumbrances) on all of the present and future Property of the Borrower;
- (b) a securities pledge agreement from the Borrower in favour of the Agent constituting a first-priority Encumbrance (subject to Permitted Encumbrances) on all securities that it owns from time to time and all cash deposited with the Agent for the purpose of margining the Borrowing Base;
- (c) a guarantee from Holdings guaranteeing the due payment and performance to the Agent and the Lenders of all present and future Obligations of the Borrower to the Agent and the Lenders or any one or more of them under the Loan Documents;
- (d) a securities pledge agreement from Holdings in favour of the Agent constituting a first-priority Encumbrance (subject to Permitted Encumbrances) on all securities that it owns in the Borrower from time to time; and

- (e) a \$50,000,000 fixed and floating charge debenture from the Borrower charging all personal property and all of the freehold and leasehold interests in its lands and premises, the said mortgage and encumbrances to be subject to no prior Encumbrances other than Permitted Encumbrances.

11.02 Insurance

Each Obligor or the appropriate Obligor if blanket insurance policies are held, will cause the Agent to be shown as a loss payee and additional insured with respect to all insurance on the Property of each Obligor.

11.03 After Acquired Property and Further Assurances

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

11.04 Application of Proceeds of Security

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

11.05 Security Charging Real Property

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

ARTICLE 12 - DEFAULT

12.01 Events of Default

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

- (a) if the Borrower fails to pay any amount of principal of any Advance when due; or
- (b) if the Borrower fails to pay any interest, fees or other Obligations under the Loan Documents when due and payable and such non-payment continues for a period of three (3) Business Days; or
- (c) if the Borrower fails to observe or perform any of the financial covenants in Section 10.02; or

- (d) if the Borrower fails to observe or perform any of the covenants in Section 10.03 which failure continues for a period of five (5) Business Days; or
- (e) there shall have occurred a Material Adverse Effect; or
- (f) if the Borrower fails to observe or perform any of the covenants contained in Section 10.04 which are not capable of being cured; or
- (g) if any Obligor neglects to observe or perform any covenant or obligation contained in this Agreement or any other Loan Document (other than a covenant or condition whose breach or default in performance is specifically dealt with elsewhere in this Section 12.01) and the Borrower shall fail to remedy such default within thirty (30) days from the date of non-compliance; or
- (h) if any representation or warranty made by any Obligor in this Agreement, any Loan Document or in any certificate or other document at any time delivered hereunder to the Agent or the Lenders shall prove to have been incorrect on and as of the date thereof; or
- (i) if any Obligor ceases or threatens to cease to carry on business generally or admits its inability or fails to pay its debts generally; or
- (j) if any Obligor (i) fails to make any payment when such payment is due and payable to any Person in relation to any Debt which in the aggregate principal amount then outstanding is in excess of \$250,000 and such payment is not made within any applicable cure or grace period; (ii) defaults in the observance or performance of any other agreement or condition in relation to any such indebtedness to any Person which in the aggregate principal amount then outstanding is in excess of \$250,000 or contained in any instrument or agreement evidencing, securing or relating thereto and such default is not waived or cured within any applicable cure or grace period; or (iii) or any other event shall occur or condition exist, the effect of which default or other condition is to cause, or to permit the holder of such Debt to cause, such Debt to become due prior to its stated maturity date; or
- (k) if any Obligor denies its obligations under any Loan Document or claims any of the Loan Documents to be invalid or withdrawn in whole or in part; or
- (l) if any of the Loan Documents or any material provision of any of them becomes unenforceable, unlawful or is changed by virtue of legislation or by a court, statutory board or commission, and if any Obligor does not, within five (5) Business Days of receipt of notice of such Loan Document or material provision becoming unenforceable, unlawful or being changed and being provided with any required new agreement or amendment for execution, replace such Loan Document with a new agreement that is in form and substance satisfactory to the Lenders, or amend such Loan Document to the satisfaction of the Lenders; or

- (m) if a decree or order of a court of competent jurisdiction is entered adjudging an Obligor a bankrupt or insolvent or approving a petition seeking the winding-up of an Obligor under the *Companies' Creditors Arrangement Act* (Canada), the *Bankruptcy and Insolvency Act* (Canada), the *United States Bankruptcy Code* or the *Winding-Up and Restructuring Act* (Canada) or any other bankruptcy, insolvency or analogous laws or issuing sequestration or process of execution against any substantial part of the assets of an Obligor or ordering the winding up or liquidation of its affairs; or
- (n) if any Obligor becomes insolvent, makes any assignment in bankruptcy or makes any other similar assignment for the benefit of creditors, makes any proposal under the *Bankruptcy and Insolvency Act* (Canada) or any comparable law, seeks relief under the *Companies' Creditors Arrangement Act* (Canada), the *Winding-Up and Restructuring Act* (Canada) or any other bankruptcy, insolvency or analogous law, is adjudged bankrupt, files a petition or proposal to take advantage of any act of insolvency, consents to or acquiesces in the appointment of a trustee, receiver, receiver and manager, interim receiver, custodian, sequestrator or other Person with similar powers of itself or of all or any substantial portion of its assets, or files a petition or otherwise commences any proceeding seeking any reorganization, arrangement, composition or readjustment under any applicable bankruptcy, insolvency, moratorium, reorganization or other similar law affecting creditors' rights or consents to, or acquiesces in, the filing of such a petition; or
- (o) if any proceeding or filing shall be instituted or made against any Obligor seeking to have an order for relief entered against such Obligor as debtor or to adjudicate it bankrupt or insolvent, or seeking liquidation, winding-up, reorganization, arrangement, adjustment or composition under any law relating to bankruptcy, insolvency, reorganization or relief of debtors (including, without limitation, the *Bankruptcy and Insolvency Act* (Canada), the *Companies Creditors Arrangement Act* (Canada) and the *Winding-Up and Restructuring Act* (Canada)), or seeking appointment of a receiver, trustee, custodian or other similar official for such Obligor or for any substantial part of its properties or assets unless the same is being contested actively and diligently in good faith by appropriate and timely proceedings and is dismissed, vacated or permanently stayed within fifteen (15) days of institution; or
- (p) if an Encumbrancer takes possession by appointment of a receiver, receiver and manager, or otherwise of any material portion of the Property of any Obligor that has a value in excess of \$250,000; or
- (q) if a final judgment, execution, writ of seizure and sale, sequestration or decree for the payment of money due shall have been obtained or entered against an Obligor in an amount in excess of \$250,000 (individually or in the aggregate for all Obligors) and such judgment, execution, writ of seizure and sale, sequestration or decree shall not have been and remain vacated, satisfied, discharged or stayed pending appeal within the applicable appeal period; or

- (r) if any of the Security shall cease to be a valid and perfected first priority security interest subject only to Permitted Encumbrances and the Borrower shall have failed to remedy such default within five (5) Business Days of receipt of notice thereof from the Agent; or
- (s) if a Material Contract is terminated prior to its stated maturity date or if a Material Licence is revoked, expired or rescinded and such Material Contract or Material Licence is not reinstated on comparable terms or replaced within thirty (30) days after its termination, revocation, expiration or rescission, as the case may be; or
- (t) the institution of any steps by any Obligor or any applicable regulatory authority to terminate a Canadian Pension Plan (wholly or in part) if, as a result of such termination, any Obligor is required to make an additional contribution to such Canadian Pension Plan, or to incur an additional liability or obligation to such Canadian Pension Plan, equal to or in excess of \$250,000 or the equivalent thereof in another currency; or
- (u) the annual consolidated financial statements for the year ended December 31, 2010 delivered to the Agent pursuant to Section 10.03 shall have any material and adverse change from the draft audited financial statements of the Borrower for such period delivered to the Agent on the Closing Date; or
- (v) if a Change of Control shall occur without the Agent's prior written consent; or
- (w) should any event of default arise under the Subordinate Credit Agreement; or
- (x) if any report of the Auditor with respect to the Borrower's audited financial statement contains any qualification which is unacceptable to the Lenders acting reasonably.

12.02 Acceleration and Termination of Rights

If any Event of Default shall occur and be continuing, all Obligations owing by the Borrower under the Loan Documents shall, at the option of the Agent, upon the request of the Majority Lenders, become immediately due and payable, provided that, at the request of the applicable Lender or Lenders, any obligations, contingent or otherwise, arising under Hedge Arrangements owing to the Lenders shall be cash collateralized and secured in a manner satisfactory to the Agent and the Lenders party thereto with interest thereon, at the rate or rates determined as herein provided, to the date of actual payment thereof, all without notice, presentment, protest, demand, notice of dishonour or any other demand or notice whatsoever, all of which are hereby expressly waived by each Obligor; provided, if any Event of Default described in Section 12.01(m) through 12.01(o) with respect to the Borrower shall occur, the Commitments (if not theretofore terminated) shall automatically terminate and the outstanding principal amount of all Advances and all other Obligations shall automatically be and become immediately due and payable. In such event either the Lenders or the Agent on their behalf may, in their discretion, exercise any right or recourse and/or proceed by any action, suit, remedy or proceeding against any Obligor authorized or permitted by law for the recovery of all the Obligations of the Borrower to the Lenders and proceed to exercise any and all rights hereunder

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and under the Security and no such remedy for the enforcement of the rights of the Lenders shall be exclusive of or dependent on any other remedy but any one or more of such remedies may from time to time be exercised independently or in combination.

12.03 Payment of Bankers' Acceptances and Letters of Credit

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

12.04 Remedies Cumulative and Waivers

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

12.05 Termination of Lenders' Obligations

The occurrence of an Event of Default that is continuing shall relieve the Lenders of all obligations to provide any further Advances hereunder whether by Rollover, Conversion or otherwise, by way of Bankers' Acceptances (and BA Equivalent Notes) or Letters of Credit; provided that the foregoing shall not prevent the Lenders from disbursing money hereunder in reduction of then outstanding Bankers' Acceptances and Letters of Credit. For greater certainty

any such Advances shall be at the sole discretion of the Lenders. The Agent may reallocate all Advances *pro rata* among the Lenders in such manner as the Agent determines is equitable.

12.06 **Saving**

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

12.07 **Perform Obligations**

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

12.08 **Third Parties**

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

12.09 **Set-Off or Compensation**

In addition to and not in limitation of any rights now or hereafter granted under applicable law, if repayment is accelerated pursuant to Section 12.02, the Lenders, or any of them, may at any time and from time to time without notice to the Borrower or any other Person, any notice being expressly waived by the Borrower, set-off and compensate and apply any and all deposits, general or special, time or demand, provisional or final, matured or unmatured, and any other indebtedness at any time owing by the Lenders, or any of them, to or for the credit of or the account of the Borrower, against and on account of the Obligations notwithstanding that any of them are contingent or unmatured.

12.10 **Realization of Security**

Each of the Lenders acknowledges that the Agent holds the Security to secure all of the Obligations and upon the event of the occurrence of an Event of Default that is continuing, the Agent shall act on the written instructions of the Majority Lenders as provided in this Agreement and shall distribute the net sale proceeds of realization of the Security to the Lenders in accordance with their Proportionate Share of the Obligations and in accordance with Section 12.11.

12.11 **Application of Payments**

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

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

12.12 **Consultant**

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

ARTICLE 13 - THE AGENT AND THE LENDERS

13.01 Payments by the Borrower

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

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

(2) Notwithstanding the foregoing, any such distribution that would otherwise be made pursuant to Section 13.01(1)(c) or (d) on account of any outstanding Bankers' Acceptances or BA Equivalent Notes will be set aside in a separate collateral account for the primary benefit of the Lenders who have issued such Bankers' Acceptances or BA Equivalent Notes (and for the secondary benefit of the Lenders in respect of other Obligations) until and to the extent that such Obligations become matured and not contingent, at which time such distributions will be made to the Lenders for whose primary benefit such amounts are held, at which time such application will be made in accordance with Section 13.01(1)(c) or (d).

13.02 Knowledge and Required Action

The Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default (other than the non-payment of any principal, interest or other amount to the extent the same is required to be paid to the Agent for the account of the Lenders) unless the Agent has received notice from a Lender or the Borrower specifying such Default or Event of Default and stating that such notice is given pursuant to this Section. In the event that the Agent receives such a notice, it shall give prompt notice thereof to the Lenders, and shall also give prompt notice to the Lenders of each non-payment of any amount required to be paid to the Agent for the account of the Lenders. The Agent shall, subject to Section 13.03 take such action with respect to such Default or Event of Default as shall be directed by the Lenders in accordance with this Article 13 provided that, unless and until the Agent shall have received such direction the Agent may, but shall not be obliged to, take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interest of the Lenders; and provided further that the Agent in any case shall not be required to

take any such action which it determines to be contrary to the Loan Documents or to any Applicable Law.

13.03 Request for Instructions

The Agent may at any time request instructions from the Lenders with respect to any actions or approvals which, by the terms of any of the Loan Documents, the Agent is permitted or required to take or to grant, and the Agent shall be absolutely entitled to refrain from taking any such action or to withhold any such approval and shall not be under any liability whatsoever as a result thereof until it shall have received such instructions from the Lenders. No Lender shall have any right of action whatsoever against the Agent as a result of the Agent acting or refraining from acting under the Loan Documents in accordance with instructions from the Lenders. The Agent shall in all cases be fully justified in failing or refusing to take or continue any action under the Loan Documents unless it shall have received further assurances to its satisfaction from the Lenders of their indemnification obligations under Section 7.5 of Schedule AA against any and all liability and expense which may be incurred by it by reason of taking or continuing to take such action, and unless it shall be secured in respect thereof as it may deem appropriate.

13.04 Actions by Lenders

(1) Any consent, approval (including without limitation any approval of or authorization for any amendment to any of the Loan Documents), instruction or other expression of the Lenders under any of the Loan Documents may be obtained by an instrument in writing signed in one or more counterparts by the Majority Lenders, or where required by Section 13.04(3) all of the Lenders, (which instrument in writing, for greater certainty, may be delivered by facsimile).

(2) Any consent, approval (including without limitation any approval of or authorization for any amendment to any of the Loan Documents), instruction or other expression of the Lenders hereunder may also be included in a resolution that is submitted to a meeting or adjourned meeting of the Lenders duly called and held for the purpose of considering the same as hereinafter provided and shall be deemed to have been obtained if such resolution is passed by the affirmative vote of not less than 66 2/3% (or 100% in the event that there are only two Lenders) of the votes given on a poll of the Lenders with respect to such resolution. A meeting of Lenders may be called by the Agent and shall be called by the Agent upon the request of any two Lenders. Every such meeting shall be held in the City of Toronto or at such other reasonable place as the Agent may approve. At least seven days notice of the time and place of any such meeting shall be given to the Lenders and shall include or be accompanied by a draft of the resolutions to be submitted to such meeting, but the notice may state that such draft is subject to amendment at the meeting or any adjournment thereof. The Lenders who are present in person or by proxy at the time and place specified in the notice shall constitute a quorum. A person nominated in writing by the Agent shall be chairman of the meeting. Lenders representing no less than 60% of the outstanding Advances must be present at a meeting or adjourned meeting. Upon every poll taken at any such meeting every Lender who is present in person or represented by a proxy duly appointed in writing (who need not be a Lender) shall be entitled to one vote in respect of each \$1 of its Commitment. In respect of all matters concerning the convening,

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holding and adjourning of Lenders' meetings, the form, execution and deposit of instruments appointing proxies and all other relevant matters, the Agent may from time to time make such reasonable regulations not inconsistent with this subsection 13.04(2) as it shall deem expedient and any regulations so made by the Agent shall be binding upon the Borrower, the Agent and the Lenders.

(3) Notwithstanding subsection 13.04(1), without the consent of all the Lenders the Agent may not take the following actions:

- (a) amend, modify, discharge, terminate or waive any of the terms of this Agreement if such amendment, modification, discharge, termination or waiver would increase the amount of the Credit Facilities, reduce the fees payable, reduce interest rates or other amounts payable with respect to the Credit Facilities, extend any date fixed for payment of principal, interest or other amounts payable relating to the Credit Facilities, extend the repayment dates of the Credit Facilities, change the definition of Majority Lenders or Applicable Margin;
- (b) amend Section 3.03;
- (c) amend, modify, discharge, terminate or waive any of the Security if the effect is to release a material part of the Property subject thereto otherwise than pursuant to the terms hereof or thereof; or
- (d) amend this Section 13.04(3).

(4) An instrument in writing from the Majority Lenders (any such instrument in writing being an "Approval Instrument") shall (subject to the terms of Section 13.04(3)) be binding upon all of the Lenders, and the Agent (subject to the provisions for its indemnity contained in this Agreement) shall be bound to give effect thereto accordingly. For greater certainty, to the extent so authorized in the Approval Instrument, the Agent shall be entitled (but not obligated) to execute and deliver on behalf of the Agent and all of the Lenders, without the requirement for the execution by any other Lender or Lenders, any consents, waivers, documents or instruments (including without limitation any amendment to any of the Loan Documents) necessary or advisable in the opinion of the Agent to give effect to the matters approved by the Majority Lenders or all of the Lenders, as the case may be, in any Approval Instrument.

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

13.05 Provisions for Benefit of Lenders Only

The provisions of this Article 13, other than this Section 13.05, Section 13.04(5) and the rights of the Borrower to receive notice as specified in this Article 13 relating to the rights and obligations of the Lenders and the Agent *inter se* shall be operative as between the Lenders and the Agent only, and the Obligors shall not have any rights under or be entitled to rely for any purposes upon such provisions.

13.06 Payments by Agent

(1) For greater certainty, the following provisions shall apply to any and all payments made by the Agent to the Lenders hereunder:

- (a) the Agent shall be under no obligation to make any payment (whether in respect of principal, interest, fees or otherwise) to any Lender until an amount in respect of such payment has been received by the Agent from the Borrower;
- (b) if the Agent receives less than the full amount of any payment of principal, interest, fees or other amount owing by the Borrower under this Agreement, then subject to Section 8.02 the Agent shall have no obligation to remit to each Lender any amount other than such Lender's Proportionate Share of that amount which is the amount actually received by the Agent;
- (c) if any Lender advances more or less than its Proportionate Share of Credit Facilities, such Lender's entitlement to such payment shall be increased or reduced, as the case may be, in proportion to the amount actually advanced by such Lender;
- (d) the Agent acting reasonably and in good faith shall, after consultation with the Lenders in the case of any dispute, determine in all cases the amount of all payments to which each Lender is entitled and such determination shall, in the absence of manifest error, be binding and conclusive;
- (e) upon request, the Agent shall deliver a statement detailing any of the payments to the Lenders referred to herein; and
- (f) all payments by the Agent to a Lender hereunder shall be made to such Lender at its address set forth in the signature pages on this Agreement or on the applicable Assignment and Assumption unless notice to the contrary is received by the Agent from such Lender.

(2) Unless the Agent has actual knowledge that the Borrower has not made or will not make a payment to the Agent for value on the date in respect of which the Borrower has notified the Agent that the payment will be made and except to the extent that the Agent has received notice under Section 8.02, the Agent shall be entitled to assume that such payment has been or will be received from the Borrower when due and the Agent may (but shall not be obliged to), in reliance upon such assumption, pay the Lenders corresponding amounts. If the payment by the Borrower is in fact not received by the Agent on the required date and the Agent has made available corresponding amounts to the Lenders, the Borrower shall, without limiting its other obligations under this Agreement, indemnify the Agent against any and all liabilities, obligations, losses (other than loss of profit), damages, penalties, costs, expenses or disbursements of any kind or nature whatsoever that may be imposed on or incurred by the Agent as a result. A certificate of the Agent with respect to any amount owing by the Borrower under this Section shall be *prima facie* evidence of the amount owing in the absence of manifest error.

13.07 Acknowledgements, Representations and Covenants of Lenders

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

(2) Each of the Lenders acknowledges and confirms that in the event that the Agent does not receive payment in accordance with this Agreement, it shall not be the obligation of the Agent to maintain the Credit Facilities in good standing nor shall any Lender have recourse to the Agent in respect of any amounts owing to such Lender under this Agreement.

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

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

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

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

(7) Each Lender that assigns all or a portion of its rights and obligations under this Agreement shall pay to the Agent a processing and recordation fee of \$3,500 with respect to each such assignment in accordance with Section 10(b)(vi) of Schedule AA.

13.08 Rights of Agent

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

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

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

(4) The Agent may round an individual Lender's Proportionate Share of any Advance to the nearest \$1,000 in Canadian Dollars.

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

13.09 Non-Funding Lenders

(1) Each Non-Funding Lender shall be required to provide to the Agent (A) cash or Cash Equivalents in an amount equal to 105% of such Non-Funding Lender's Proportionate Share of the face amount of outstanding Letters of Credit, and (B) cash or Cash Equivalents in an amount, as shall be determined from time to time by the Agent in its discretion, equal to all other obligations of such Non-Funding Lender to the Agent that are owing or may become owing pursuant to this Agreement, including, without limitation, such Non-Funding Lender's obligation to pay its Proportionate Share of any indemnification or expense reimbursement amounts not paid by the Borrower. Such cash or Cash Equivalents shall be held by Agent in one or more cash collateral accounts which accounts shall be in the name of the Agent and shall not be required to be interest bearing. The Agent shall be entitled to apply the foregoing cash and Cash Equivalents in accordance with Section 12.11. Notwithstanding anything in this Agreement to the contrary, so long as there is a Non-Funding Lender it shall be within the sole and joint determination of the Issuing Bank as to whether it is agreeable to issue any new Letters of Credit or extend or renew any expiring Letters of Credit.

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

(3) The Agent shall be entitled to set off any Non-Funding Lender's Proportionate Share of all payments received from the Borrower against such Non-Funding Lender's obligations to fund payments and Advances required to be made by it and to purchase participations required to be purchased by it in each case under this Agreement and the other Loan Documents. The Agent shall be entitled to withhold and deposit in one or more non-interest bearing cash collateral accounts in the name of the Agent all amounts (whether principal, interest, fees or otherwise) received by Agent and due to a Non-Funding Lender pursuant to this Agreement which amounts shall be used by Agent (A) first, to reimburse (I) the Agent for any amounts owing to it by the Non-Funding Lender pursuant to any Loan Document, and then to

reimburse (II) the Issuing Bank for any amounts paid by it that has not been fully reimbursed due to such Non-Funding Lender not funding its Proportionate Share of the applicable Advance, (B) second, to repay any Advances made by a Lender in order to fund a shortfall created by a Non-Funding Lender which repayment shall be in the form of an assignment by each such Lender of such Advance to the Non-Funding Lender, (C) third, (I) first, to cash collateralize all other obligations of such Non-Funding Lender to the Agent owing pursuant to this Agreement in such amount as shall be determined from time to time by the Agent in its discretion including, without limitation, such Non-Funding Lender's obligation to pay its Proportionate Share of any indemnification or expense reimbursement amounts not paid by the Borrower and (II) second, to maintain cash collateral for a Non-Funding Lender's Proportionate Share of reimbursement obligations for Letters of Credit, and (D) fourth, at the Agent's discretion, to fund from time to time the Non-Funding Lender's Proportionate Share of Advances under the Revolving Facility.

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

ARTICLE 14 - GENERAL

14.01 Exchange and Confidentiality of Information

The Borrower authorizes and consents to the reproduction, disclosure and use by the Agent and Lenders of information about the Borrower (including, without limitation, the Borrower's name and any identifying logos) and the transactions herein contemplated to enable the Agent and/or the Lenders to publish promotional "tombstones" and other forms of notices of the transactions contemplated herein in any manner and in any media (including, without limitation, brochures) although such disclosure shall not reference the purchase price and the use of such information shall be subject to the prior approval of the Borrower acting reasonably. The Borrower acknowledges and agrees that the Agent or any Lender shall be entitled to determine, in its discretion, whether to use such information, that no compensation will be payable by the Agent or any Lender resulting therefrom, and that the Agent and the Lender shall have no liability whatsoever to the Borrower or any of its employees, officers, directors, affiliates or shareholders in obtaining and using such information in accordance with the terms hereof.

14.02 Nature of Obligations under this Agreement

(1) The obligations of each Lender and of the Agent under this Agreement are several and not joint and several. The failure of any Lender to carry out its obligations hereunder shall not relieve the other Lenders, the Agent or the Borrower of any of their respective obligations

hereunder. Neither the entering into of this Agreement nor the completion of any transactions contemplated herein shall constitute the Lenders a partnership.

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

14.03 Addresses, Etc. for Notices

The addresses and telecopier numbers for the purposes of notices and other communications to the Borrower and the Agent are set out on the signatures pages of this Agreement.

14.04 Governing Law and Submission to Jurisdiction

Ontario is the Province for the purpose of Sections 11(a) and (b) of Schedule AA.

14.05 Judgement Currency

(1) If for the purpose of obtaining or enforcing judgment against the Borrower or any Obligor in any court in any jurisdiction, it becomes necessary to convert into any other currency (such other currency being hereinafter in this Section 14.05 referred to as the "**Judgement Currency**") an amount due in Canadian Dollars under this Agreement, the conversion shall be made at the rate of exchange prevailing on the Business Day immediately preceding:

- (a) the date of actual payment of the amount due, in the case of any proceeding in the courts of the Province of Ontario or in the courts of any other jurisdiction that will give effect to such conversion being made on such date; or
- (b) the date on which the judgment is given, in the case of any proceeding in the courts of any other jurisdiction (the date as of which such conversion is made pursuant to this Section 14.05(1)(b) being hereinafter in this Section 14.05 referred to as the "**Judgement Conversion Date**").

(2) If, in the case of any proceeding in the court of any jurisdiction referred to in Section 14.05(1)(b), there is a change in the rate of exchange prevailing between the Judgement Conversion Date and the date of actual payment of the amount due, the Borrower shall pay such additional or lesser amount as may be necessary to ensure that the amount paid in the Judgement Currency, when converted at the rate of exchange prevailing on the date of payment, will produce the amount of Canadian Dollars, as the case may be, which could have been purchased with the amount of Judgement Currency stipulated in the judgment or judicial order at the rate of exchange prevailing on the Judgement Conversion Date.

(3) Any amount due from the Borrower under the provisions of Section 14.05(2) shall be due as a separate debt and shall not be affected by judgment being obtained for any other amounts due under or in respect of this Agreement.

(4) The term "rate of exchange" in this Section 14.05 means the noon rate of exchange based on Canadian interbank transactions in Canadian Dollars, in the Judgement

Credit Agreement

Currency published or quoted by the Bank of Canada for the day in question, or if such rate is not so published or quoted by the Bank of Canada, such term shall mean the Equivalent Amount of the Judgement Currency.

14.06 **Benefit of the Agreement**

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

14.07 **Survival**

The provisions of Section 9 of Schedule AA shall survive the repayment of all Advances, whether on account of principal, interest or fees, and the termination of this Agreement, unless a specific release of such provisions by the Agent, on behalf of the Lenders, is delivered to the Borrower.

14.08 **Severability**

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

14.09 **Whole Agreement**

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

14.10 **Further Assurances**

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

14.11 **Time of the Essence**

Time shall be of the essence of this Agreement.

14.12 **Delivery by Facsimile Transmission**

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

14.13 Fondé de Pouvoir

Without limiting the generality of any provisions of this Agreement, each Lender confirms the appointment and designation of the Agent (or any successor thereto) as the person holding the power of attorney (“**fondé de pouvoir**”) within the meaning of Article 2692 of the Civil Code of Québec for the purposes of the hypothecary security under any deed of hypothec granted by each Obligor under the laws of the Province of Québec and, in such capacity, the Agent shall hold any such hypothec granted under the laws of the Province of Québec as such **fondé de pouvoir** in the exercise of the rights conferred thereunder. The execution by the Agent, as such **fondé de pouvoir**, prior to the date hereof of any deed creating or evidencing any such hypothec is hereby ratified and confirmed. Notwithstanding the provisions of Section 2 of the Act respecting the special powers of legal persons (Québec), the Agent may acquire and be the holder of any of the bonds (or similar instruments) secured by such hypothec. Each assignee Lender that becomes party to this Agreement, by becoming a party to this Agreement, shall be deemed to have ratified and confirmed the appointment of the Agent as **fondé de pouvoir**.

14.14 Anti-Money Laundering Legislation

(1) The Borrower acknowledges that, pursuant to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada) and other applicable anti-money laundering, anti-terrorist financing, government sanction and “know your client” laws (collectively, including any guidelines or orders thereunder, “**AML Legislation**”), the Lenders and the Agent may be required to obtain, verify and record information regarding the Borrower, the Guarantors, their directors, authorized signing officers, direct or indirect shareholders or other Persons in control of the Borrower and the Guarantors, and the transactions contemplated hereby. The Borrower shall promptly provide all such information, including supporting documentation and other evidence, as may be reasonably requested by any Lender or the Agent, or any prospective assignee or participant of a Lender or the Agent, in order to comply with any applicable AML Legislation, whether now or hereafter in existence.

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

14.15 CBA Model Terms

The CBA Model Provisions (except for the footnotes contained therein) form part of this Agreement and are incorporated herein by reference, subject to the following variations:

- (i) Each term set out below which is used as a defined term in the CBA Model Provisions shall be deemed to have been replaced as set out below; and for greater certainty the said replacement term shall have the meaning ascribed thereto in Section 1.01 of this Agreement:
 - “Administrative Agent” shall be replaced by “Agent”;

- “bankers’ acceptances” shall be replaced by “Bankers’ Acceptances”;
- “Loans” shall be replaced by “Advances”;
- “Provisions” shall be replaced by “CBA Model Provisions”.

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IN WITNESS WHEREOF the parties hereto have executed this Agreement.

BORROWER:

Address:
8281 Yonge Street
Thornhill, Ontario
L3T 2C7

Attention: Chief Financial Officer

Facsimile: (905) 693-3462

with a copy to:

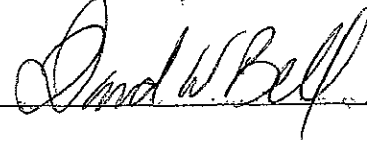
Aird & Berlis LLP
Suite 1800
181 Bay Street
Toronto, Ontario
M5J 2T9

Attention: Louis Amato-Gauci

Facsimile: (416) 863-1515

EXTREME FITNESS, INC.

By: _____



By: _____



AGENT:

Address:

130 King Street West
Toronto, Ontario M5X 1K9

Attention: Jeffrey Weber

Facsimile: (416) 864-7819

**NATIONAL BANK OF CANADA, as
Agent**

By: 

JEFFREY WEBER

Authorized Signatory

By: 

GREG GEORGIU

Authorized Signatory

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

McCarthy Tétrault LLP
Suite 5300
Toronto Dominion Bank Tower
Toronto, Ontario
M5K 1E6

Attention: Joel Scoler

Facsimile: (416) 868-0673

LENDERS:

Address:

130 King Street West
Toronto, Ontario M5X 1K9

Attention: Jeffrey Weber

Facsimile: (416) 864-7819

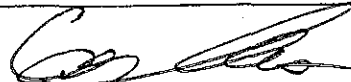
**NATIONAL BANK OF CANADA, as a
Lender**

By:



JEFFREY WEBER
Authorized Signatory

By:



GREG GEORGIU
Authorized Signatory

SCHEDULE AA
MODEL CREDIT AGREEMENT PROVISIONS

- See Attached -

MODEL CREDIT AGREEMENT PROVISIONS

1. Definitions

“Administrative Questionnaire” means an Administrative Questionnaire in a form supplied by the Administrative Agent.

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

“Agreement” means the credit agreement of which these Provisions form part.

“Applicable Law” means (a) any domestic or foreign statute, law (including common and civil law), treaty, code, ordinance, rule, regulation, restriction or by-law (zoning or otherwise); (b) any judgment, order, writ, injunction, decision, ruling, decree or award; (c) any regulatory policy, practice, guideline or directive; or (d) any franchise, licence, qualification, authorization, consent, exemption, waiver, right, permit or other approval of any Governmental Authority, binding on or affecting the Person referred to in the context in which the term is used or binding on or affecting the property of such Person, in each case whether or not having the force of law.

“Approved Fund” means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an Eligible Assignee and accepted by the Administrative Agent, in substantially the form of Exhibit A or any other form approved by the Administrative Agent.

“Change in Law” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any Applicable Law, (b) any change in any Applicable Law or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any Applicable Law by any Governmental Authority.

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

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

“Eligible Assignee” means any Person (other than a natural person, any Obligor or any Affiliate of an Obligor), in respect of which any consent that is required by Section 10(b) has been obtained.

“Excluded Taxes” means, with respect to the Administrative Agent, any Lender, the Issuing Bank or any other recipient of any payment to be made by or on account of any obligation of an Obligor hereunder, (a) taxes imposed on or measured by its net income, and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located, and (b) any branch profits taxes or any similar tax imposed by any jurisdiction in which the Lender is located.

“Fund” means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

“Governmental Authority” means the government of Canada or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central

bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, including any supra-national bodies such as the European Union or the European Central Bank and including a Minister of the Crown, Superintendent of Financial Institutions or other comparable authority or agency.

"Indemnified Taxes" means Taxes other than Excluded Taxes.

"Issuing Bank" means the Person named elsewhere in this Agreement as the issuer of Letters of Credit on the basis that it is "fronting" for other Lenders and not on the basis that it is the attorney of other Lenders to sign Letters of Credit on their behalf, or any successor issuer of Letters of Credit. For greater certainty, where the context requires, references to "Lenders" in these Provisions include the Issuing Bank.

"Loan" means any extension of credit by a Lender under this Agreement, including by way of bankers' acceptance or LIBO Rate Loan, except for any Letter of Credit or participation in a Letter of Credit.

"Obligors" means, collectively, the Borrower and each of the Guarantors.

"Other Taxes" means all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

"Participant" has the meaning assigned to such term in Section 10(d).

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

"Provisions" means these model credit agreement provisions.

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

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

2. **Terms Generally**

(1) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein (including this Agreement) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented, restated or otherwise modified (subject to any restrictions on such amendments, supplements, restatements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person's successors and permitted assigns, (c) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) unless otherwise expressly stated, all references in these Provisions to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, these Provisions, but all such references elsewhere in this Agreement shall be construed to refer to this Agreement apart from these Provisions, (e) any reference to any law or regulation herein shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time and (f) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(2) If there is any conflict or inconsistency between these Provisions and the other terms of this Agreement the other terms of this Agreement shall govern to the extent necessary to resolve the conflict or inconsistency.

3. Yield Protection

3.1 Increased Costs

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender;

(ii) subject any Lender to any Tax of any kind whatsoever with respect to this Agreement, any Letter of Credit any participation in a Letter of Credit or any Loan made by it, or change the basis of taxation of payments to such Lender in respect thereof, except for Indemnified Taxes or Other Taxes covered by Section 3.2 and the imposition, or any change in the rate, of any Excluded Tax payable by such Lender, or

(iii) impose on any Lender or any applicable interbank market any other condition, cost or expense affecting this Agreement or Loans made by such Lender or any Letter of Credit or participation therein;

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

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

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

(d) Delay in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's right to demand such compensation, except that the Borrower shall not be required to compensate a Lender pursuant to this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefore, unless the Change in Law giving rise to such increased costs or reductions is retroactive, in which case the nine-month period referred to above shall be extended to include the period of retroactive effect thereof.

3.2 Taxes

(a) Payments Subject to Taxes. If any Obligor, the Administrative Agent, or any Lender is required by Applicable Law to deduct or pay any Indemnified Taxes (including any Other Taxes) in respect of any payment by or on account of any obligation of an Obligor hereunder or under any other Loan Document, then (i) the sum payable shall be increased by that Obligor when payable as necessary so that after making or allowing for all required deductions and payments (including deductions and payments applicable to additional sums payable under this Section) the Administrative Agent or Lender, as the case may be, receives an amount equal to the sum it would have received had no such deductions or payments been required, (ii) the Obligor shall make any such deductions required to be made by it under Applicable Law and (iii) the Obligor shall timely pay the full amount required to be deducted to the relevant Governmental Authority in accordance with Applicable Law.

(b) Payment of Other Taxes by the Borrower. Without limiting the provisions of paragraph (a) above, the Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with Applicable Law.

(c) Indemnification by the Borrower. The Borrower shall indemnify the Administrative Agent and each Lender, within 10 days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) paid by the Administrative Agent or such Lender and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

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

(e) Treatment of Certain Refunds and Tax Reductions. If the Administrative Agent or a Lender determines, in its sole discretion that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by the Borrower or with respect to which an Obligor has paid additional amounts pursuant to this Section or that, because of the payment of such Taxes or Other Taxes, it has benefited from a reduction in Excluded Taxes otherwise payable by it, it shall pay to the Borrower or other Obligors, as applicable, an amount equal to such refund or reduction (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower or Obligor under this Section with respect to the Taxes or Other Taxes giving rise to such refund or reduction), net of all out-of-pocket expenses of the Administrative Agent or such Lender, as the case may be, and without interest (other than any net after-Tax interest paid by the relevant Governmental Authority with respect to such refund). The Borrower or Obligor as applicable, upon the request of the Administrative Agent or such Lender, agrees to repay the amount paid over to the Borrower or Obligor (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender if the Administrative Agent or such Lender is required to repay such refund or reduction to such Governmental Authority. This paragraph shall not be construed to require the Administrative Agent or any Lender to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrower or any other Person, to arrange its affairs in any particular manner or to claim any available refund or reduction.

3.3 Mitigation Obligations: Replacement of Lenders

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.1, or requires the Borrower to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.2, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.1 or 3.2, as the case may be, in the future and (ii)

would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.1, if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.2, if any Lender's obligations are suspended pursuant to Section 3.4 or if any Lender defaults in its obligation to fund Loans hereunder, then the Borrower may, at its sole expense and effort, upon 10 days' notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(i) the Borrower pays the Administrative Agent the assignment fee specified in Section 10(b)(vi);

(ii) the assigning Lender receives payment of an amount equal to the outstanding principal of its Loans and participations in disbursements under Letters of Credit, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any breakage costs and amounts required to be paid under this Agreement as a result of prepayment to a Lender) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(iii) in the case of any such assignment resulting from a claim for compensation under Section 3.1 or payments required to be made pursuant to Section 3.2, such assignment will result in a reduction in such compensation or payments thereafter; and

(iv) such assignment does not conflict with Applicable Law.

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

3.4 Illegality

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

3.5 Inability to Determine Rates Etc.

If the Majority Lenders determine that for any reason a market for bankers' acceptances does not exist at any time or the Lenders cannot for other reasons, after reasonable efforts, readily sell bankers' acceptances or perform their other obligations under this Agreement with respect to bankers' acceptances, the Administrative Agent will

promptly so notify the Borrower and each Lender. Thereafter, the Borrower's right to request the acceptance of bankers' acceptances shall be and remain suspended until the Majority Lenders determine and the Agent notifies the Borrower and each Lender that the condition causing such determination no longer exists. If the Majority Lenders determine that for any reason adequate and reasonable means do not exist for determining the LIBO Rate for any requested Interest Period with respect to a proposed LIBO Rate Loan, or that the LIBO Rate for any requested Interest Period with respect to a proposed LIBO Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, the obligation of the Lenders to make or maintain LIBO Rate Loans shall be suspended until the Administrative Agent (upon the instruction of the Majority Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a borrowing, conversion or continuation of LIBO Rate Loans or, failing that, will be deemed to have converted such request into a request for a borrowing of Base Rate Loans in the amount specified therein.

4. Right of Setoff

If an Event of Default has occurred and is continuing, each of the Lenders and each of their respective Affiliates is hereby authorized at any time and from time to time to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender or any such Affiliate to or for the credit or the account of any Obligor against any and all of the obligations of the Borrower now or hereafter existing under this Agreement or any other Loan Document to such Lender, irrespective of whether or not such Lender has made any demand under this Agreement or any other Loan Document and although such obligations of the Obligor may be contingent or unmatured or are owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such indebtedness. The rights of each of the Lenders and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff, consolidation of accounts and bankers' lien) that the Lenders or their respective Affiliates may have. Each Lender agrees to promptly notify the Borrower and the Administrative Agent after any such setoff and application, but the failure to give such notice shall not affect the validity of such setoff and application. If any Affiliate of a Lender exercises any rights under this Section 4, it shall share the benefit received in accordance with Section 5 as if the benefit had been received by the Lender of which it is an Affiliate.

5. Sharing of Payments by Lenders

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

(i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest,

(ii) the provisions of this Section shall not be construed to apply to (x) any payment made by any Obligor pursuant to and in accordance with the express terms of this Agreement or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participation in disbursements under Letters of Credit to any assignee or participant, other than to any Obligor or any Affiliate of an Obligor (as to which the provisions of this Section shall apply); and

(iii) the provisions of this Section shall not be construed to apply to (w) any payment made while no Event of Default has occurred and is continuing in respect of obligations of the Borrower to such Lender that do not arise under or in connection with the Loan Documents, (x)

any payment made in respect of an obligation that is secured by a Permitted Lien or that is otherwise entitled to priority over the Borrower's obligations under or in connection with the Loan Documents, (y) any reduction arising from an amount owing to an Obligor upon the termination of derivatives entered into between the Obligor and such Lender, or (z) any payment to which such Lender is entitled as a result of any form of credit protection obtained by such Lender.

The Obligors consent to the foregoing and agree, to the extent they may effectively do so under Applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against each Obligor rights of setoff and counterclaim and similar rights of Lenders with respect to such participation as fully as if such Lender were a direct creditor of each Obligor in the amount of such participation.

6. Administrative Agent's Clawback

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

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

7. Agency

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

7.2 Rights as a Lender. The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in

any other advisory capacity for and generally engage in any kind of business with any Obligor or any Affiliate thereof as if such Person were not the Administrative Agent and without any duty to account to the Lenders.

7.3 Exculpatory Provisions

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

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Majority Lenders (or such other number or percentage of the Lenders as shall be expressly provided for in the Loan Documents), but the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or Applicable Law; and

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

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

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

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

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

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

7.7 Replacement of Administrative Agent

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

(2) If no such successor shall have been so appointed by the Majority Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may on behalf of the Lenders, appoint a successor Administrative Agent meeting the qualifications specified in Section 7.7(1), provided that if the Administrative Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (2) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time as the Majority Lenders appoint a successor Administrative Agent as provided for above in the preceding paragraph.

(3) Upon a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the former Administrative Agent, and the former Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided in the preceding paragraph). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the termination of the service of the former Administrative Agent, the provisions of this Section 7 and of Section 9 shall continue in effect for the benefit of such former Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the former Administrative Agent was acting as Administrative Agent.

7.8 Non-Reliance on Administrative Agent and Other Lenders. Each Lender and the Issuing Bank acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or

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

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

7.10 No Other Duties, etc. Anything herein to the contrary notwithstanding, none of the Bookrunners, Arrangers or holders of similar titles, if any, specified in this Agreement shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent or a Lender hereunder.

8. Notices: Effectiveness; Electronic Communication

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

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

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

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

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

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

9. Expenses; Indemnity; Damage Waiver

(a) Costs and Expenses. The Borrower shall pay (i) all reasonable out-of-pocket expenses incurred by the Administrative Agent and its Affiliates, including the reasonable fees, charges and disbursements of counsel for the Administrative Agent, in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable out-of-pocket expenses incurred by the Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all reasonable out-of-pocket expenses incurred by the Administrative Agent, any Lender or the Issuing Bank, including the reasonable fees, charges and disbursements of counsel, in connection with the enforcement or protection of its rights in connection with this Agreement and the other Loan Documents, including its rights under this Section, or in connection with the Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) Indemnification by the Borrower. The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender and the Issuing Bank and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee" against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the fees, charges and disbursements of any counsel for any Indemnitee, incurred by any Indemnitee or asserted against any Indemnitee by any third party or by any Obligor arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance or non-performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation or non-consummation of the transactions contemplated hereby or thereby, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the Issuing Bank to honour a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by any Obligor, or any environmental liability related in any way to any Obligor, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by an Obligor and regardless of whether any Indemnitee is a party thereto, provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or wilful misconduct of such Indemnitee or (y) result from a claim brought by the Borrower or any other Obligor against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if the Obligor has obtained a final and nonappealable judgment in its favour on such claim as determined by a court of competent jurisdiction, nor shall it be available in respect of matters specifically addressed in Sections 3.1, 3.2 and 9(a).

(c) Reimbursement by Lenders. To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under paragraph (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof), the Issuing Bank or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), the Issuing Bank or such Related Party, as the case may be, such Lender's Proportionate Share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided that the unreimbursed expense or

indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) or the Issuing Bank, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) or the Issuing Bank in connection with such capacity. The obligations of the Lenders under this paragraph (c) are subject to the other provisions of this Agreement concerning several liability of the Lenders.

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

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

10. Successors and Assigns

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

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

(i) except if an Event of Default has occurred and is continuing or in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund with respect to a Lender, the aggregate amount of the Commitment being assigned (which for this purpose includes Loans outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Loan of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than \$5,000,000, in the case of any assignment in respect of a revolving facility or \$1,000,000 in case of any assignment in respect of a term facility, unless each of the Administrative Agent and, so long as no Default has occurred and is continuing, the Borrower otherwise consent to a lower amount (each such consent not to be unreasonably withheld or delayed);

(ii) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loan or the Commitment assigned; except that this clause (ii) shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate credits on a non-*pro rata* basis;

(iii) any assignment of a Commitment relating to a credit under which Letters of Credit may be issued must be approved by any Issuing Bank (such approval not to be unreasonably withheld or delayed), unless the Person that is the proposed assignee is itself already a Lender with a Commitment under that credit;

(iv) any assignment must be approved by the Administrative Agent (such approval not to be unreasonably withheld or delayed) unless;

(x) in the case of an assignment of a Commitment relating to a revolving credit, the proposed assignee is itself already a Lender with the same type of Commitment,

(y) no Event of Default has occurred and is continuing, and the assignment is of a Commitment relating to a non-revolving credit that is fully advanced, or

(z) the proposed assignee is a bank whose senior, unsecured, non-credit enhanced, long term debt is rated at least A3, A- or A low by at least two of Moody's Investor Services Inc., Standard & Poor's, a division of The McGraw-Hill Companies, Inc. and Dominion Bond Rating Service Limited, respectively;

(v) any assignment must be approved by the Borrower (such approval not to be unreasonably withheld or delayed) unless (the proposed assignee is itself already a Lender with the same type of Commitment or a Default has occurred and is continuing; and

(vi) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption; together with a processing and recordation fee in an amount specified elsewhere in this Agreement and the Eligible Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to paragraph (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement and the other Loan Documents, including any collateral security, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3 and 9, and shall continue to be liable for any breach of this Agreement by such Lender, with respect to facts and circumstances occurring prior to the effective date of such assignment. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (d) of this Section. Any payment by an assignee to an assigning Lender in connection with an assignment or transfer shall not be or be deemed to be a repayment by the Borrower or a new Loan to the Borrower.

(c) Register. The Administrative Agent shall maintain at one of its offices in Toronto, Ontario or Montréal, Québec a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, absent manifest error, and the Borrower, the Administrative Agent and the Lenders may treat

each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

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

Subject to paragraph (e) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Section 3 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 4 as though it were a Lender, provided such Participant agrees to be subject to Section 5 as though it were a Lender.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.1 and 3.2 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrowers prior written consent.

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

11. Governing Law; Jurisdiction; Etc.

(a) Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the Province specified elsewhere in this Agreement and the laws of Canada applicable in that Province.

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

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

12. WAIVER OF JURY TRIAL

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

13. Counterparts; Integration; Effectiveness; Electronic Execution

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

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

14. Treatment of Certain Information; Confidentiality

(1) Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to it, its Affiliates and its Affiliates' respective partners, directors, officers, employees, agents advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority), (c) to the extent required by Applicable Laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors to any swap, derivative, credit-linked note or similar transaction relating to the Borrower and its obligations, (g) with the consent of the Borrower or (h) to the extent such Information (x) becomes publicly available other than as a result of a breach of this section or (y) becomes available to the Administrative Agent or any Lender on a non-confidential basis from a source other than an Obligor.

(2) For purposes of this Section, "Information" means all information received in connection with this Agreement from any Obligor relating to any Obligor or any of its Subsidiaries or any of their respective businesses, other than any such information that is available to the Administrative Agent or any Lender on a non-confidential basis prior to such receipt. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information. In addition, the Administrative Agent may disclose to any agency or organization that assigns standard identification numbers to loan facilities such basic information describing the facilities provided hereunder as is necessary to assign unique identifiers (and, if requested, supply a copy of this Agreement), if being understood that the Person to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to make available to the public only such Information as such person normally makes available in the course of its business of assigning identification numbers.

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

ASSIGNMENT AND ASSUMPTION

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

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

1. Assignor: _____
2. Assignee: _____
[and is an Affiliate/Approved Fund of [*identify Lender*]]
3. Borrower(s): _____
4. Administrative Agent: _____, as the administrative agent under the Credit Agreement
5. Credit Agreement: [The [*amount*] Credit Agreement dated as of _____ among [*name of Borrower(s)*], the Lenders parties thereto, [*name of Administrative Agent*], as Administrative Agent, and the other agents parties thereto]
6. Assigned Interest:

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

7. [Trade Date: _____]

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

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

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

<p>[Consented to and] Accepted: [NAME OF ADMINISTRATIVE AGENT], as Administrative Agent</p> <p>By: _____ Title: _____</p>
<p>[Consented to:] [NAME OF RELEVANT PARTY]</p> <p>By: _____ Title: _____</p>

[]

STANDARD TERMS AND CONDITIONS FOR
ASSIGNMENT AND ASSUMPTION

1. Representations and Warranties

1.1 Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2 Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets all requirements of an Eligible Assignee under the Credit Agreement (subject to receipt of such consents as may be required under the Credit Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it has received a copy of the Credit Agreement, together with copies of the most recent financial statements delivered pursuant to Section ___ thereof, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on the Administrative Agent or any other Lender, and (v) if it is a Foreign Lender, attached to the Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments

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

3. General Provisions

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

LOAN MARKET DATA TEMPLATE

Recommended Data Fields – At Close

The items highlighted in bold are those that Loan Pricing Corporation (LPC) deem essential. The remaining items are those that LPC has seen become more prominent over time as transparency has increased in the U.S. Loan Market.

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

Company Level	Deal Specific	Facility Specific
		Fitch Bank Loan
		DBRS
		Other Ratings

*These items would be considered useful to capture from an analytical perspective.

SCHEDULE A

LENDERS AND COMMITMENTS

<u>Lender</u>	<u>Revolving Facility</u>	<u>Term Facility</u>	<u>Delayed Draw Facility</u>	<u>Total Commitment</u>
National Bank of Canada	\$3,000,000	\$15,000,000	\$7,000,000	\$25,000,000
	\$3,000,000	\$15,000,000	\$7,000,000	\$25,000,000

SCHEDULE B

NOTICE OF REQUEST FOR ADVANCE

TO: NATIONAL BANK OF CANADA, as Agent
Corporate Finance Group, Commercial Banking
The Exchange Tower
130 King Street West, Suite 820
Toronto, ON M5X 1K9

Attention: Jeffrey Weber
Fax: (416) 864-7819

FROM: Extreme Fitness, Inc.
(the "Borrower")

DATE: [•]

1. This notice of request for Advance is delivered to you, as Agent, pursuant to the Credit Agreement made as of May 20, 2011, between the Borrower, the Agent and the Lenders and other financial institutions specified therein, as amended, supplemented, restated or replaced from time to time (the "Credit Agreement"). All defined terms set forth, but not otherwise defined, in this notice shall have the respective meanings set forth in the Credit Agreement, unless the context requires otherwise.

2. The Borrower hereby requests an Advance as follows:

(a) Date of Advance: _____

(b) Applicable Credit:

Revolving Facility Advance Amount Cdn.\$ _____

Term Facility Advance Amount Cdn.\$ _____

Delayed Draw Facility Advance Amount Cdn.\$ _____

(c) Type and Amount of Advances (check appropriate boxes)

Amount

() Prime Rate Advance: Cdn.\$ _____

() Bankers' Acceptances and BA Equivalent Notes:

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

() Letter of Credit:

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

Total Cdn.\$ _____

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

(d) Type: _____

(e) Amount: _____

(f) Maturity Date: _____

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

- (a) all of the representations and warranties set forth in Section 9.01 of the Credit Agreement, other than those which by their terms are made only as of a specific date, and other than changes thereto and to the Schedules referred to therein that would not be prohibited pursuant to the Credit Agreement are true and accurate as at the date hereof, as though made on and as of the date hereof; and
- (b) no Default or Event of Default has occurred and is continuing nor will any such event occur as a result of the aforementioned Advances.

EXTREME FITNESS, INC.

Per: _____

Name:

Title:

SCHEDULE C

REPAYMENT NOTICE

TO: NATIONAL BANK OF CANADA, as Agent
Corporate Finance Group, Commercial Banking
The Exchange Tower
130 King Street West, Suite 820
Toronto, ON M5X 1K9

Attention: Jeffrey Weber
Fax: (416) 864-7819

FROM: Extreme Fitness, Inc.
(the "Borrower")

DATE: [•]

1. This notice of request for repayment is delivered to you, as Agent, pursuant to the Credit Agreement made as of May 20, 2011, between the Borrower, the Agent and the Lenders and other financial institutions specified therein, as amended, supplemented, restated or replaced from time to time (the "Credit Agreement"). All defined terms set forth, but not otherwise defined, in this notice shall have the respective meanings set forth in the Credit Agreement, unless the context requires otherwise.
2. The undersigned hereby gives you notice of a repayment as follows:
 - (a) Date of Repayment: _____
 - (b) Advance Type: _____
 - (c) Principal Amount: _____
 - (d) Credit Facility: _____

EXTREME FITNESS, INC.

Per: _____
Name:
Title:

SCHEDULE D
COMPLIANCE CERTIFICATE

TO: **NATIONAL BANK OF CANADA (in its capacity as both "Agent" and "Lender")**
Corporate Finance Group, Commercial Banking
The Exchange Tower
130 King Street West, Suite 820
Toronto, ON M5X 1K9

Attention: Jeffrey Weber
Fax: (416) 864-7819

FROM: Extreme Fitness, Inc.
(the "**Borrower**")

RE: **Credit Agreement dated as of May 20, 2011, made between the Borrower, the Agent and the Lenders (as defined therein) (as amended, modified, revised, restated or replaced from time to time, the "Credit Agreement")**

DATE: [•]

The undersigned, the • of the Borrower, hereby certifies, in that capacity and without personal liability, that:

1. I have read and am familiar with the provisions of the Credit Agreement and have made such examinations and investigations, including a review of the applicable books and records of the Borrower as are necessary to enable me to express an informed opinion as to the matters set out herein. Unless otherwise defined herein terms used herein have the meanings ascribed thereto in the Credit Agreement.
2. I have made or caused to be made such examinations or investigations as are, in my opinion, necessary to furnish this Certificate, and I have furnished this Certificate with the intent that it may be relied upon by the Agent and the Lenders as a basis for determining compliance by the Borrower with its covenants and obligations under the Credit Agreement and the other Loan Documents as of the date of this Certificate.
3. The representations and warranties contained in each of the Loan Documents are true and correct on the date of this Certificate with reference to facts subsisting on such date, with the same effect as if made on such date except for those representations and warranties which speak to a specific date which shall be true as of such date except _____.
4. All of the covenants required by the Credit Agreement have been observed, performed or satisfied, as applicable, and no Default or Event of Default has occurred and is continuing on the date of this Certificate except _____.

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

5. For the most recently completed Fiscal Quarter, set forth on Schedule 1 attached hereto are all Material Contracts that have been entered into and all material changes or amendments to existing Material Contracts.
6. For the most recently completed Fiscal Quarter, set forth on Schedule 2 attached hereto are all Material License that have been terminated.
7. For the most recently completed Fiscal Quarter, set forth on Schedule 3 attached hereto are all patents, trademarks or industrial designs which have been registered or in respect of which an application has been filed.
8. The attached financial statements for the [Fiscal Quarter/Fiscal Year] ending [insert date] fairly present in all material respects the information contained in such financial statements, and such financial statements, and all calculations of financial covenants and presentation of financial information in this Certificate and the Appendices to this Certificate, have been prepared in accordance with GAAP.
9. As of • (the "Computation Date"):

(a) The Senior Debt to EBITDA Ratio was •:1, calculated as follows:

(i)	Senior Debt		\$•
(ii)	Net Income		\$•
(iii)	increased by the sum of (without duplication),		
A.	Interest Expense	=	\$•
B.	Income Tax Expense	=	\$•
C.	Depreciation Expense	=	\$•
D.	extraordinary or unusual losses	=	\$•
E.	cash paid Management Fees as permitted by the terms of this Agreement	=	\$•
F.	cash paid expenses and cash paid fees to directors of the Borrower as permitted by the terms of this Agreement and in an aggregate amount not to		

exceed \$75,000 in any Fiscal
Year = \$•

A + B + C + D + E + F = \$•

(iv) decreased by the sum of (without duplication),

H. extraordinary or unusual
gains = \$•

(v) (ii) + (iii) - (iv) [EBITDA]¹ \$•

(vi) (i) divided by (v) •:1

The maximum Senior Debt to EBITDA Ratio pursuant to Section 10.02(a) of the Credit Agreement on the Computation Date was **[2.50:1.00 [NTD: for the period from the Closing Date to December 30, 2014] / 2.25:1.00 [NTD: thereafter]]**.

(b) The Total Debt to EBITDA Ratio was •:1, calculated as follows:

(i) Total Debt \$•

(ii) EBITDA (from s. 11(a)(v)) \$•

(iii) (i) divided by (ii) •:1

The maximum Total Debt to EBITDA Ratio pursuant to Section 10.02(b) of the Credit Agreement on the Computation Date was **[4.00:1.00 [NTD: for the period from the Closing Date to December 30, 2014] / 3.75:1.00 [NTD: thereafter]]**.

(c) The Senior Debt to Capitalization Ratio was •:1; calculated as follows:

(i) Senior Debt \$•

(ii) Capitalization

A. Senior Debt \$•

B. Subordinated Debt \$•

C. Shareholders Equity \$•

A + B + C = \$•

¹ In respect of each Obligor which has become a Subsidiary of the Borrower in such fiscal period, EBITDA shall be determined with the consent of the Lenders. In respect of each Obligor which has ceased to be a Subsidiary of the Borrower in such fiscal period, EBITDA shall be determined as if such Obligor had not been a Subsidiary during the entire fiscal period.

(iii) (i) divided by (ii) •:1

The maximum Senior Debt to Capitalization Ratio pursuant to Section 10.02(c) of the Credit Agreement on the Computation Date was 40%.

(d) The Fixed Charge Coverage Ratio was •:1, calculated as follows²:

(i)	EBITDA (from s. 9(a)(v))		\$•
(ii)	cash Taxes		\$•
(iii)	Unfunded Capital Expenditures		\$•
(iv)	Distributions by the Borrower to Holdings or any other shareholder of the Borrower		\$•
(v)	cash paid Management Fees and director fees paid to directors of the Borrower or Holdings		\$•
(vi)	(i) – [(ii) + (iii) + (iv) + (v)]		\$•
(vii)	Fixed Charges:		
	A. scheduled principal payments of Debt	=	\$•
	B. cash paid and cash payable Interest Expense	=	\$•
	(A) + (B)		\$•
(viii)	(vi) divided by (vii)		•:1

The minimum Fixed Charge Coverage Ratio permitted pursuant to Section 10.02(d) of the Credit Agreement on the Computation Date was **[1.10:1.00 [NTD: for the period from the Closing Date to December 30, 2012] / 1.15:1.00 [NTD: thereafter]**. Attached hereto is a detailed calculation for each item identified in paragraph 9 above for each of the last four Fiscal Quarters.

(e) The Excess Cash Flow³ was •, calculated as follows:

(i)	EBITDA (from s. 9(a)(v))	\$•
-----	--------------------------	-----

² For the purposes of calculating the Fixed Charge Coverage Ratio, Fixed Charges of the Borrower will be annualized each Fiscal Quarter until the completion of four Fiscal Quarters.

³ To be included only for compliance certificate delivered following the end of a Fiscal Year.

(ii) decreased by the sum of (without duplication)

A.	cash paid Taxes	=	\$•
B.	Unfunded Capital Expenditures	=	\$•
C.	cash paid Interest Expense	=	\$•
D.	cash paid Management Fees	=	\$•
E.	scheduled principal payments made under the Term Facility and the Delayed Draw Facility	=	\$•
F.	principal component in respect to payments of Capital Leases	=	\$•
	(A) + (B) + (C) + (D) + (E) + (F)		\$•

(iii) (i) - (ii) [Excess Cash Flow]

10. The EBITDA is \$ _____.⁴ The minimum EBITDA for the most recently completed Four Quarter Period must be not less than the following:

<u>Fiscal Quarter</u>	<u>Minimum EBITDA</u>
For the Fiscal Quarter ending June 30, 2011	\$8,000,000
For the Fiscal Quarter ending September 30, 2011	\$8,000,000
For the Fiscal Quarter ending December 31, 2011	\$8,000,000
For the Fiscal Quarter ending March 31, 2012	\$8,000,000
For the Fiscal Quarter ending June 30, 2012	\$8,000,000
For the Fiscal Quarter ending September 30, 2012	\$8,000,000
For the Fiscal Quarter ending December 31, 2012	\$8,000,000
For the Fiscal Quarter ending March 31, 2013	\$8,500,000
For the Fiscal Quarter ending June 30, 2013	\$8,500,000
For the Fiscal Quarter ending September 30, 2013	\$8,500,000
For the Fiscal Quarter ending December 31, 2013	\$8,500,000
For the Fiscal Quarter ending March 31, 2014	\$9,000,000
For the Fiscal Quarter ending June 30, 2014	\$9,000,000
For the Fiscal Quarter ending September 30, 2014	\$9,000,000
For the Fiscal Quarter ending December 31, 2014	\$9,000,000
For the Fiscal Quarter ending March 31, 2015	\$9,500,000

⁴ For the twelve-month period ending March 31, 2011, the minimum EBITDA must not be less than \$9,533,000.

11. For the Fiscal Quarter/Year ended _____, _____, Capital Expenditures were \$_____. Detailed calculations of this amount are attached hereto on Schedule III.
12. For the Fiscal Quarter/Year ended _____, _____, the total value of all Acquisitions permitted pursuant to Section 10.04(9) was _____. Detailed calculations of these amounts, including the aggregate value of all Acquisitions permitted pursuant to Section 10.04(9) made since the Closing Date, are attached hereto on Schedule III.
13. For the Fiscal Quarter/Year ended _____, details of Permitted Distributions made pursuant to clause (e) of the definition thereof are as set forth on Schedule IV attached hereto.
14. As of the Computation Date, the aggregate outstanding principal amount of Capital Leases and Purchase Money Security Interests was \$_____.

By: _____
Name:
Title:

SCHEDULE E

BORROWING BASE CERTIFICATE

TO: NATIONAL BANK OF CANADA, as Agent
Corporate Finance Group, Commercial Banking
The Exchange Tower
130 King Street West, Suite 820
Toronto, ON M5X 1K9

Attention: Jeffrey Weber
Fax: (416) 864-7819

FROM: Extreme Fitness, Inc.
(the "Borrower")

DATE: [•]

1. This Borrowing Base Certificate is delivered to you pursuant to Section 10.03(6) of the Credit Agreement made as of May 20, 2011, between the Borrower, the Agent and the Lenders and other financial institutions specified therein, as amended, supplemented, restated or replaced from time to time (the "Credit Agreement"). Capitalized terms used and not otherwise defined herein shall have the meanings given thereto in the Credit Agreement.
2. The following calculations determine the Borrowing Base in accordance with the relevant definitions as set forth in the Credit Agreement and the other Loan Documents.

The Borrower hereby certifies, that with respect to the period • to • [preceding Fiscal Quarter]:

Borrowing Base

(A)	Eligible Accounts Receivable	\$ _____	x .75	= \$ _____
(B)	cash pledged in favour of the Agent in a segregated account			= \$ _____
MINUS				
(C)	Priority Payables			= \$ _____
Total Borrowing Base (A) + (B) - (C)				= \$ _____

3. Attached hereto is a detailed list of all Accounts Receivable and accounts payable broken down by the Borrower and each Subsidiary outlining (i) the aging of such Accounts

Receivable and accounts payable, (ii) the currency in which they are denominated and (iii) any deductions, sales discounts, volume rebates, returns and allowances.

4. The Borrower hereby represents and warrants that this Certificate is a correct statement regarding the status of the Borrowing Base and the amounts set forth herein are in compliance with the provisions of the Credit Agreement. The Borrower further represents and warrants that, in relation to calculation of the Borrowing Base there have been no changes to accounting policies, practices and calculation methods from the accounting policies, practices and methods used by the Borrower as at the date of the Credit Agreement.

EXTREME FITNESS, INC.

Per: _____
Name:
Title:

SCHEDULE F

GUARANTORS

Extreme Fitness Holding (Luxembourg) S.à r.l.

Schedule 9.01(9) - Litigation

1. A member at the Borrower's Wellington location injured their foot on a drain cover and has made an insurance claim in the amount of \$750,000. The claim is currently being handled by the Borrower's insurance company who expects that it will be settled for approximately \$45,500.
2. A member at the Borrower's Wellington location slipped coming out of a change-room and hit their left knee on the corner of a wall. The member has made an insurance claim in the amount of \$1,600,000. The claim is currently being handled by the Borrower's insurance company who expects that it will be settled for approximately \$85,575. (Ontario Superior Court of Justice File No. CV 09 00388604 Atkinson et al. v. Extreme Fitness Inc.)
3. A member at the Borrower's Cedarbrae location was hit by ice upon entering the club's premises and injured their right arm. The member has made an insurance claim in the amount of \$1,000,000. The claim is currently being handled by the Borrower's insurance company who expects that it will be settled for approximately \$20,000. (Ontario Superior Court of Justice File No. CV 09 0039399 Cahill v. First Capital Realty Inc., Extreme Fitness Inc. et al)
4. A member at the Borrower's Cedarbrae location was injured as they fell off a treadmill and has made a claim in the amount of \$785,000. The claim is currently being handled by the Borrower's insurance company who expects that it will be settled for approximately \$72,500. (Ontario Superior Court of Justice File No. CV 09 00389125 Omoruyi et al. v. Extreme Fitness Inc. et al.)
5. A member at the Borrower's Thornhill location was hit on the head by a cable and has made an insurance claim for \$300,000. The claim is currently being handled by the Borrower's insurance company who expects that it will be settled for approximately \$93,000.
6. A member at the Borrower's Whitby location slipped and fell in the change-room's shower area and has made a claim for \$500,000. The claim is currently being handled by the Borrower's insurance company who expects that it will be settled for approximately \$80,800.
7. The Borrower brought an action against Wynn Fitness for \$2,000,000 (Ontario Superior Court of Justice File No. CV 09 00380022 Extreme Fitness Inc. v. Wynn Fitness Clubs Holdings Limited et al.). The claim involves a former senior employee who took a number of confidential documents and participated in the formation of Wynn Fitness. A mediation is currently being scheduled for June 2011. The claim is expected to be settled and will likely include the recovery of the Borrower's costs.
8. A member of the Borrower's Pickering location slipped and fell in the sauna and shower area of the locker room. A claim has been filed for damages in the amount of \$1,050,000 (CV 09 00384140 (Kaklamanos et al. v. Extreme Fitness Inc.).

Schedule 9.01(12) – Description of Real Property

	<u>Municipal Address</u>	<u>Legal Description</u>	<u>Tenant</u>	<u>Landlord</u>	<u>Expiry of Current Term</u>	<u>Remaining Renewal Rights</u>	<u>Description</u>
1.	3495 Lawrence Avenue East, Toronto, Ontario (Cedarbrae Mall)	PIN Nos. 06372-0064 (LT) and 06372-0065 (LT)	Extreme Fitness, Inc.	First Capital (Cedarbrae) Corporation	August 31, 2017	Two (2) periods of five (5) years each	Fitness facility and Pylon Sign
2.	111 Wellington Street West, Toronto, Ontario	PIN Nos. 21409-0001 (LT), 11932-0004 (LT), 11932-0005 (LT), 11932-0006 (LT), 11932-0013 (LT), 11932-0014 (LT), 11932-0233 (LT), 11932-0234 (LT), 11932-0235 (LT), 11932-0282 (LT), 11932-0283 (LT), 11932-0494 (LT) and 11932-0495 (LT)	Extreme Fitness, Inc.	2125879 Ontario Inc.	May 31, 2022	One (1) period of five (5) years	Fitness facility
3.	1521 Yonge Street, Toronto, Ontario (Delisle Court)	PIN No. 21123-0555 (LT)	Extreme Fitness, Inc.	1521 Yonge Street Limited	June 30, 2021	Two (2) periods of five (5) years each	Fitness facility
4.	110 Eglinton Avenue East, Toronto, Ontario (Dunfield)	PIN No. 21136-0165 (LT)	Extreme Fitness, Inc.	110 Eglinton Avenue East Inc.	December 31, 2015	One (1) period of five (5) years	Fitness facility and parking lot

5.	90 Interchange Way, Vaughan, Ontario (Interchange)	Part of PIN Nos. 03228-0195 (LT) and 03228-0278 (LT)	Extreme Fitness Inc.	2748355 Canada Inc.	January 31, 2016	Three (3) periods of five (5) years each	Fitness facility
6.	319 Yonge Street, Toronto, Ontario (aka 10 Dundas Street East, Toronto, Ontario) (Toronto Life Square)	PIN No. 21101-0144 (LT), 21101-0103 (LT) and 21101-0091 (LT)	Extreme Fitness Inc.	Metropolis Entertainment Holdings Inc. -Now 10 Dundas Street Ltd. by Transfer registered on March 29, 2011	August 29, 2018	Two (2) periods of five (5) years each	Fitness facility
7.	75 Consumers Drive, Whitby, Ontario	PIN No. 26488-0135 (LT)	Extreme Fitness, Inc.	Whitby Entertainment Holdings Inc.	May 31, 2014	Two (2) periods of five (5) years each	Fitness facility
8.	1755 Pickering Parkway, Unit 38, Pickering, Ontario	PIN Nos. 26330-0073 (LT), 26330-0165 (LT), 26331-0487 (LT) and 26330-0164 (LT)	Extreme Fitness, Inc.	Pickering Brock Centre Inc.	March 31, 2014	Two (2) periods of five (5) years each	Fitness facility
9.	8281 and 8275 Yonge Street, Markham, Ontario (Thornhill)	PIN Nos. 03028-1277 (LT) and 03028-0097 (LT)	Fitness Club and parking: Extreme Fitness, Inc. Parking License between 2044922 Ontario Ltd. and Extreme Fitness,	2044922 Ontario Ltd. and 2079843 Ontario Inc.	Fitness Club and parking: June 30, 2011	Fitness Club and parking: Five (5) periods of three (3) years each	Fitness facility and parking lot

			Inc.				
10.	4950 Yonge Street, Toronto, Ontario and 100 Upper Madison Avenue, Toronto, Ontario (North York Property)	PIN Nos. 10144-0007 (LT) and 10144-0008 (LT)	Extreme Fitness, Inc.	Redbourne Madison Property Inc. and Redbourne Madison Property LP Inc.	March 31, 2021	One (1) period of five (5) years	Fitness facility, storage area, spa area and juice bar area
11.	635 Danforth Avenue, Toronto, Ontario	PIN No 21062-0414 (LT) Parking -21358-0187 (LT)	Extreme Fitness, Inc.	Fitness Club: 1079268 Ontario Inc. Parking: Roman Catholic Episcopal Corporation for the Diocese of Toronto, in Canada, represented by Holy Name Parish	Fitness Club: October 31, 2016 Parking: September 30, 2008	Two (2) periods of five (5) years each	Fitness facility and parking facilities
12.	267 Richmond Street, Toronto, Ontario (RioCan Hall)	PIN Nos. 21412-0031 (LT), 21412-0030 (LT), 21412-0029 (LT), 21412-0028 (LT), 21412-0027 (LT), 21412-0026 (LT), 21412-0038 (LT), and 21412-0205 (LT)	Extreme Fitness, Inc.	Festival Hall Developments Inc.	August 29, 2017	Four (4) periods of five (5) years each	Fitness facility
13.	80 Bloor Street West, Toronto, Ontario	PIN 21197-0003 (LT)	Extreme Fitness, Inc.	Krugarand Corporation	July 31, 2017	none	Fitness facility

Schedule 9.01(13) - Insurance Policies

Please see the attached summaries of the Borrower's insurance policies with Dalton Timmis Insurance Group, Inc. under policy number 501196249.



**Commercial Insurance Policy
Endorsement #3**

Prepared especially for

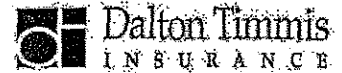
*Extreme Fitness, Inc., Nutrition Whitby
Inc. and Golub Capital Incorporated*

through the facilities of

Dalton Timmis Insurance Group, Inc

Prepared by Greg Padovani

Commercial Insurance Policy
Locations and Loss Payees



Policy No. 501196249

Declarations

Effective 3/18/2011

1. 8281 Yonge Street, Thornhill, Ontario L3T 2C7
Building

Lift Capital Corporation
300 The East Mall, Suite 401
Toronto, Ontario M9B 6B7

Loss Payee & Additional Insured with respect to equipment.

Heffner Auto Sales & Leasing Inc., Heffner Leasing Limited
3121 King Street East
Kitchener, Ontario N2A 1B1

Loss Payee ATIMA

National Bank of Canada
130 King St W 8th Floor
Toronto, Ontario M5X 1J9

In the event of policy cancellation, the insurer will endeavour to provide 15 days written notice to the loss payee.

CIT Financial Ltd.
PO Box 5060
Burlington, Ontario L7R 4C8

Loss Payee RE: Lease #833-023

2. 1755 Pickering Pkwy, Pickering, Ontario L1V 6K5
Building

Capital Underwriters Inc
2020 Windton Park Drive Suite 301
Oakville, Ontario L6H 6X7

In the event of policy cancellation, the insurer will endeavour to provide 15 days written notice to the loss payee.

Lift Capital Corporation
300 The East Mall, Suite 401
Toronto, Ontario M9B 6B7

Loss Payee & Additional Insured with respect to equipment.

CIT Financial Ltd.
PO Box 5060
Burlington, Ontario L7R 4C8

Loss Payee RE: Lease #833-023

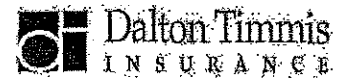
Heffner Auto Sales & Leasing Inc., Heffner Leasing Limited
3121 King Street East
Kitchener, Ontario N2A 1B1

Loss Payee RE: Lease #J381

Pickering-Brock Centre Inc. c/o Avison Young Property Advisors & Managers Inc. & Bayfield Realty Advisors Inc.
600 Cochrane Drive, Suite 220
Markham, Ontario L3R 5K3

Landlord

Commercial Insurance Policy
Locations and Loss Payees



Policy No. 501196249

Declarations

Effective 3/18/2011

3. 4950 Yonge Street, Toronto, Ontario M2N 6R1

Building

Heffner Auto Sales & Leasing Inc., Heffner Leasing
Limited
3121 King Street East
Kitchener, Ontario N2A 1B1

In the event of policy cancellation, the insurer will
endeavour to provide 30 days written notice to the loss
payee.

CIT Financial Ltd.
5035 South Service Road
Burlington, Ontario L7R 3T8

IFC Credit Corporation, its Assignors and Assignees
ATIMA c/o American Lease Insurance
654 Amherst Road
Sunderland, Massachusetts 01375

Loss Payee & Additional Insured ATIMA

Redbourne Madison Property Co-Ownership
4950 Yonge Street
Suite 200
Toronto, Ontario M2N 6K1

Additional Insured with respect to their position as
Landlord

CLE Leasing
3390 South Service Road, 2nd Level
Burlington, Ontario L7N 3J5

Loss Payee ATIMA and additional insured

4. 75 Consumers Drive, Whitby, Ontario L1N 9S2

Building

Heffner Auto Sales & Leasing Inc., Heffner Leasing
Limited
3121 King Street East
Kitchener, Ontario N2A 1B1

5. 635 Danforth Ave, Toronto, Ontario M4K 1R2

Building

CIT Financial Ltd.
5035 South Service Road
Burlington, Ontario L7R 3T8

In the event of policy cancellation, the insurer will
endeavour to provide 30 days written notice to the loss
payee.

Heffner Auto Sales & Leasing Inc., Heffner Leasing
Limited
3121 King Street East
Kitchener, Ontario N2A 1B1

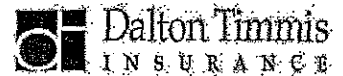
In the event of policy cancellation, the insurer will
endeavour to provide 30 days written notice to the loss
payee.

1079268 Ontario Inc.
c/o C. Voidoncllas
1 Eaton Avenue
Toronto, Ontario M4J 2Z4

Additional Insured with respect to their position as
Landlord.

Commercial Insurance Policy

Locations and Loss Payees



Policy No. 501196249

Declarations

Effective 3/18/2011

6. 267 Richmond Street, Toronto, Ontario

Building

Lift Capital Corporation
300 The East Mall, Suite 401
Toronto, Ontario M9B 6B7

In the event of policy cancellation, the insurer will endeavour to provide 30 days written notice to the loss payee with respect to the Xerox Workcentre Pro 128 Digital Copier/Printer/Fax/Scanner.

Heffner Auto Sales & Leasing Inc., Heffner Leasing Limited
3121 King Street East
Kitchener, Ontario N2A 1B1

In the event of policy cancellation, the insurer will endeavour to provide 30 days written notice to the loss payee.

RioCan Property Services, RioCan Real Estate Investment Trust, RioCan-Festival Hall Developments Inc.
700 Lawrence Avenue West, Suite 315
North York, Ontario M6A 3B4

Additional Insured

CIT Financial Ltd.
PO Box 5060
Burlington, Ontario L7R 4C8

Loss Payee RE Lease #833-023

7. 111 Wellington Street West, Toronto, Ontario M5J 2S6

Building

880368 Ontario Limited
33 University Avenue
Toronto, Ontario M5J 2S7

In the event of policy cancellation, the insurer will endeavour to provide 30 days written notice to the loss payee.

Heffner Auto Sales & Leasing Inc., Heffner Leasing Limited
3121 King Street East
Kitchener, Ontario N2A 1B1

CIT Financial Ltd.
PO Box 5060
Burlington, Ontario L7R 4C8

Loss Payee ATIMA

IFC Credit Corporation, its Assignors and Assignees
ATIMA c/o American Lease Insurance
654 Amherst Road
Sunderland, Massachusetts 01375

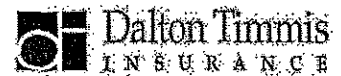
Loss Payee & Additional Insured ATIMA

On Premise Laundry Systems d/o Coinamatic Canada INC.
301 Matheson Boulevard West
Mississauga, Ontario L5R 3G3

Loss Payee ATIMA

Commercial Insurance Policy

Conditions and Loss Payees



Policy No. 501196249

Declarations

Effective 3/18/2011

8. 90 Interchange Way , Vaughan, Ontario L4K 5C3

Building

2748355 Canada Inc. c/o Bentall Rental Services LP
55 University Avenue, Suite 300
Toronto, Ontario M5J 2H2

In the event of policy cancellation, the insurer will endeavour to provide 30 days written notice to the loss payee.

Heffner Auto Sales & Leasing Inc., Heffner Leasing Limited
3121 King Street East
Kitchener, Ontario N2A 1B1

CIT Financial Ltd.
PO Box 5060
Burlington, Ontario L7R 4C8

Loss Payee RE: Lease #833-023 & additional insured

IFC Credit Corporation, its Assignors and Assignees
ATIMA c/o American Lease Insurance
654 Amherst Road
Sunderland, Massachusetts 01375

Loss Payee & Additional Insured ATIMA

9. 80 Bloor Street West, Toronto, Ontario M5S 2V1

Building

Krugarand Corporation
80 Bloor Street West, Suite 505
Toronto, Ontario M5S 2V1

In the event of policy cancellation, the insurer will endeavour to provide 30 days written notice to the loss payee.

Heffner Auto Sales & Leasing Inc., Heffner Leasing Limited
3121 King Street East
Kitchener, Ontario N2A 1B1

CIT Financial Ltd.
PO Box 5060
Burlington, Ontario L7R 4C8

Loss Payee ATIMA

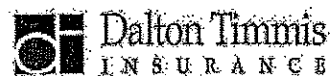
March 21, 2011

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Draft Copy

Commercial Insurance Policy

Locations and Loss Payees



Policy No. 501196249

Declarations

Effective 3/18/2011

10. 110 Eglinton Ave E, Toronto, Ontario M4P 2V1

Building

110 Eglinton Avenue East Inc.
1 Queen Street East, Suite 2010
Toronto, Ontario M5C 2W5

In the event of policy cancellation, the insurer will endeavour to provide 30 days written notice to the loss payee.

Heffner Auto Sales & Leasing Inc., Heffner Leasing Limited
3121 King Street East
Kitchener, Ontario N2A 1B1

IFC Credit Corporation, its Assignors and Assignees
ATIMA c/o American Lease Insurance
654 Amherst Road
Sunderland, Massachusetts 01375

Loss Payee & Additional Insured ATIMA

CIT Financial Ltd.
PO Box 5060
Burlington, Ontario L7R 4C8

Loss Payee ATIMA

11. 1521 Yonge Street, Toronto, Ontario M4T 1Z2

Building

1521 Yonge Street Limited
111 Eglinton Avenue East, Suite 200
Toronto, Ontario M4P 1H4

In the event of policy cancellation, the insurer will endeavour to provide 30 days written notice to the loss payee.

Heffner Auto Sales & Leasing Inc., Heffner Leasing Limited
3121 King Street East
Kitchener, Ontario N2A 1B1

12. 3495 Lawrence Ave E, Toronto, Ontario M2H 1B2

Building

First Capital (Cedarbrae) Corp. c/o FCB Property Management Services LP
3495 Lawrence Avenue East
Toronto, Ontario M1H 1B2

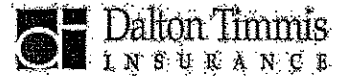
Heffner Auto Sales & Leasing Inc., Heffner Leasing Limited
3121 King Street East
Kitchener, Ontario N2A 1B1

CIT Financial Ltd.
PO Box 5060
Burlington, Ontario L7R 4C8

Loss Payee RE: Lease #833-024

Commercial Insurance Policy

Cancellations and Loss Payees



Policy No. 501196249

Declarations

Effective 3/18/2011

13. 319 Yonge Street, Toronto, Ontario M5B 1R7

Building

Heffner Auto Sales & Leasing Inc., Heffner Leasing
Limited
3121 King Street East
Kitchener, Ontario N2A 1B1

PenEquity Development

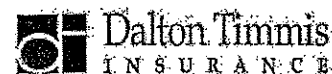
CIT Financial Ltd.
PO Box 5060
Burlington, Ontario L7R 4C8

IFC Credit Corporation, its Assignors and Assignees
ATIMA c/o American Lease Insurance
654 Amherst Road
Sunderland, Massachusetts 01375

In the event of policy cancellation, the insurer will
endeavour to provide 15 days written notice to the loss
payee.

Loss Payee & Additional Insured ATIMA

Commercial Insurance Policy
Schedule of Insurance



Policy No. 501196249

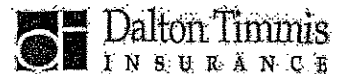
Declarations

Effective 3/18/2011

Form No.	Type of Coverage	Deductible	Co-Insurance	Limit/Amount
Property				
	Property of Every Description (Broad Form)	5,000	90%	
	At 8281 Yonge Street, Thornhill, Ontario	5,000	90%	
	Equipment	5,000	90%	2,471,988
	At 1755 Pickering Pkwy, Pickering, Ontario	5,000	90%	
	Equipment	5,000	90%	4,009,758
	At 4950 Yonge Street, Toronto, Ontario	5,000	90%	
	Equipment	5,000	90%	3,900,856
	At 75 Consumers Drive, Whitby, Ontario	5,000	90%	
	Equipment	5,000	90%	3,965,940
	At 635 Danforth Ave, Toronto, Ontario	5,000	90%	
	Equipment	5,000	90%	3,716,243
	At 267 Richmond Street, Toronto, Ontario	5,000	90%	
	Equipment	5,000	90%	3,205,390
	At 111 Wellington Street West, Toronto, Ontario	5,000	90%	
	Equipment	5,000	90%	2,377,432
	At 90 Interchange Way, Vaughan, Ontario	5,000	90%	
	Equipment	5,000	90%	2,691,818
	At 80 Bloor Street West, Toronto, Ontario	5,000	90%	
	Equipment	5,000	90%	1,784,978
	At 110 Eglinton Ave E, Toronto, Ontario	5,000	90%	
	Equipment	5,000	90%	2,678,820
	At 1521 Yonge Street, Toronto, Ontario	5,000	90%	
	Equipment	5,000	90%	2,165,491
	At 3495 Lawrence Ave E, Toronto, Ontario	5,000	90%	
	Equipment	5,000	90%	2,738,874
	At 319 Yonge Street, Toronto, Ontario	5,000	90%	
	Equipment	5,000	90%	2,973,315
	Replacement Cost Extension			
	Sewer Backup Extension	2,500		
	Flood Extension	25,000		
	Earthquake Extension			
	Deductible percentage	3%		
	Deductible minimum amount	100,000		
	Electronic Data Processing Systems (Broad Form)			
	EDP equipment and media	1,000		
	At 8281 Yonge Street, Thornhill, Ontario	1,000		75,000
	Signs Floater (Broad Form)	1,000	100%	
	At 8281 Yonge Street, Thornhill, Ontario	1,000	100%	30,000
	At 1755 Pickering Pkwy, Pickering, Ontario	1,000	100%	24,000
	At 75 Consumers Drive, Whitby, Ontario	1,000	100%	36,000
	ING Package Extensions			
	Terrorism Exclusion			

Commercial Insurance Policy

Schedule of Insurance



Policy No. 501196249

Declarations

Effective 3/18/2011

Form No.	Type of Coverage	Deductible	Co-Insurance	Limit/Amount
	Data Exclusion			
	Machinery Breakdown			
	Machinery Breakdown			
	Limit per accident			
	Boiler & Machinery Coverage	5,000		
	Crime			
	Comprehensive Dishonesty, Disappearance and Destruction			
	Employee dishonesty			
	Limit per loss (Form A)			10,000
	Money and securities			
	Inside loss			5,000
	Outside loss			5,000
	Money orders and counterfeit paper currency			5,000
	Depositors forgery			5,000
	Liability			
	Commercial General Liability (Occurrence Form) (IBC 3/05)			
	General aggregate limit			5,000,000
	Products-completed operations included			
	Products-completed operations aggregate limit			2,000,000
	Each occurrence limit			2,000,000
	Personal and Advertising injury limit - Any one person or organization			2,000,000
	Medical payments limit - Any one person			10,000
	Tenants' legal liability limit - Any one premises			500,000
	Property Damage Deductible			
	Per occurrence	1,000		
	Employee Benefit			250,000
	Non-Owned Automobile Liability (SPF6)			2,000,000
	Contractual Liability Extension (SEF 96)			
	Legal Liability for Damage to Hired Automobiles Extension (SEF 94)			
	All perils	1,000		50,000
	Long-Term Leased Vehicle Exclusion (SEF 99)			
	Employers' Bodily Injury Liability			
	Limit each person			2,000,000
	Limit each accident			2,000,000

Umbrella Liability

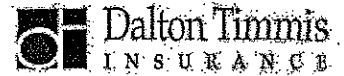
March 21, 2011

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Commercial Insurance Policy

Schedule of Insurance



Policy No: 501196249

Declarations

Effective 3/18/2011

Form No.	Type of Coverage	Deductible	Co-Insurance	Limit/Amount
	Umbrella Liability Self insured retention - 10,000 Underlying insurance, as per attached schedule			3,000,000

Other

Executive Protection Policy -Pro Risk Policy No. DO-9041
June 8, 2010 to 2011

ING Commercial Automobile Policy No. 711471305 - July
18, 2010 to 2011

Annual Premium:

\$0

**Commercial Insurance
Insurance Extensions**



Included in this endorsement:

\$ Limit

Inflation Protection	Included
Stated Amount	(If Requested)
Replacement Cost on Building and Contents	Included
Blanket By-Laws	Included
Blanket Glass	Included
Debris Removal	Included
25% Peak Season Increase	Included
Account Receivable	\$50,000
Valuable Papers & Records	\$50,000
Fire Department Service Charges	\$10,000
Computer Equipment	\$50,000
Computer-Media	\$10,000
Computer-Breakdown	\$10,000
Personal Property of Officers & Employees	\$10,000
Outdoor Signs	\$10,000
Professional Fees	\$25,000
Exhibition Floater	\$10,000
Transit	\$10,000
Newly Acquired Building	\$1,000,000
Contents at Newly Acquired Locations	\$250,000
Sales Samples	\$10,000
Courier or Parcel Post	\$10,000
Consequential Loss Assumption	\$10,000
Installation Floater	\$10,000
Master Key	\$10,000
Contents at Un-named Locations	\$50,000
Fine Arts	\$50,000
Land and Water Pollution Clean Up-First Party	\$10,000
<u>Business Interruption:</u>	
Actual Loss Sustained	Included
Interruption by Civil Authority	2 weeks
Limited Contingent Loss of Income	
-Neighbouring Premises	\$25,000
-Contributing /recipient property	\$25,000
Off Premises Power	\$25,000
Extra Expense (100% 1 st Month)	\$10,000
<u>Crime:</u>	
Employee Dishonesty (Form A)	\$10,000
Broad Form Money & Securities	\$5,000
Custodian Coverage	\$5,000
Money Order & Counterfeit Paper	\$5,000
Depositors' Forgery	\$5,000
<u>Liability:</u>	
Personal Injury & Advertising Injury	
Employees as Additional Insured	
Occurrence Basis Property Damage	
Broad Form Property Damage	
Blanket Contractual Liability	
Contingent Employers Liability	
Non-Owned Auto	
SEF 94, 96, 99	
Non-Owned Watercraft (under 8 metres)	
Incidental Medical Malpractice	
Intentional Acts for the Protection of Persons and Property	
Products and Completed Operations	
Limited Worldwide Liability	
Automatic Coverage on Newly Acquired Locations	
Tenants Legal Liability	\$500,000
Employers Liability & Voluntary Compensation	
Attached Machinery & Equipment	
Cross Liability	
Medical Payments (per person)	\$10,000
Canadian Currency Clause	
Employee Benefits	\$250,000

Executive Protection Policy -Pro Risk Policy No. DO-9041 June 8, 2010 to 2011

Pro Risk Underwriters Executive Liability Policy No DO-941.

Policy Period 12:01am June 8, 2010 to 12:01am June 8, 2011

Limits of Liability

(A) Each Loss \$5,000,000
(B) Each Policy Period \$5,000,000

Note that all limits of liability and any deductible or retention are reduced or exhausted by Defense Costs.

Coinsurance Percent 0%

Deductible Amount \$15,000

Continuity Date March 7, 2008

This is a summary of the insurance protection we have arranged for the Named Insured. It is subject to all the terms, definitions, conditions, exclusions, and limitations of the policy wordings currently in use by the Insurer.

ING Commercial Automobile Policy No. 711471305 - July 18, 2010 to 2011

ING Insurance Company of Canada
Commercial Automobile Policy No. 711471305
Effective: July 18, 2010
Expiry: July 18, 2011

Coverages:

Third Party Liability \$1,000,000
Basic Accident Benefits
Uninsured Motorist Protection
Direct Compensation-Property Damage
Comprehensive Coverage, subject to a deductible of \$300
Collision Coverage, subject to a deductible of \$500
Endorsements: Family Protection, Loss of Use, Permission to Rent/Lease

Vehicles:

2002 Ford Econoline (VIN 1FTSS34L92HA3936)
2008 BMW 323i (VIN WBAVH13548KC99455)

Driver:

Gerald Fetter

Schedule 9.01(15) - Labour Relations

None.

Schedule 9.01(18) – Corporate Structure

1. Shareholdings of the Obligors

SUBSIDIARY	NUMBER OF SHARES HELD BY THE OBLIGOR	PERCENTAGE OF OWNERSHIP
Nutrition (Whitby) Inc.	100 common shares	100%
Halsa Studio Inc.	750 common shares	75%
Juice (Whitby) Inc.	5,100 common shares	51%

2. Share Capital of Obligors

The authorized capital of the Borrower consists of an unlimited number of common shares without nominal or par value and an unlimited number of first preferred shares without nominal or par value.

The issued and outstanding shares are registered on the books of Borrower and held as follows:

NAME	NUMBER OF SHARES	TYPE OF SHARES
Darko Pajovic	15,530	Common
	1	Series A Convertible Preferred
David Bell	15,530	Common
	1	Series A Convertible Preferred
David E. King	319,954	Common
	28	Series A Convertible Preferred
Extreme Fitness Holding (Luxembourg) S.à.r.l.	26,268,290	Common
	2,530	Series A Convertible Preferred
Fit-More Inc.	652,170	Common

GC Extreme S.à.r.l.	1,908,392	Common
	167	Series A Convertible Preferred
James E. Solomon	500,835	Common
	44	Series A Convertible Preferred
Louisiana Growth Fund II, L.P.	1,468,000	Common
	129	Series A Convertible Preferred
SD Sticks, Inc.	1,900,000	Common

3. Rights to Acquire Shares of Obligors

(a) Warrants

WARRANT CERTIFICATE NO.	NAME OF HOLDER	NUMBER OF WARRANTS TO ACQUIRE COMMON SHARES
2010-1	Extreme Fitness Holding (Luxembourg) S.à.r.l.	957,877
2010-2	James E. Solomon	16,618
2010-3	GC Extreme S.à.r.l.	63,979
2010-4	David E. King	10,725
2010-5	David Bell	1,062
2010-6	Darko Pajovic	1,062
2010-7	Louisiana Growth Fund II, L.P.	48,677

(b) Options

The Borrower has issued options pursuant to an employee stock option plan dated September 6, 2006 (the "Plan"). The total number of options authorized pursuant to the Plan is 1,833,333. As of December 31, 2010, 1,617,167 options have been granted.

Schedule 9.01(19) – Relevant Jurisdictions

	DESCRIPTION	RELEVANT JURISDICTION	FULL ADDRESS
1.	JURISDICTION OF FORMATION	ALBERTA	3300, 421 7 Avenue SW Calgary T2P 4K9
2.	CHIEF EXECUTIVE OFFICE All books and records, except the corporate minute books, are held at the chief executive office of the Borrower. Senior management conduct their deliberations and make their decisions from this location, and invoices and accounts are also issued from this address.	ONTARIO	8281 Yonge Street Thornhill L3T 2C7
3.	LOCATION OF CORPORATE MINUTE BOOKS	ONTARIO	Aird & Berlis LLP 181 Bay Street, Suite 1800 Toronto M5J 2T9
4.	ALL OTHER PLACES OF BUSINESS	ONTARIO	1. <u>Interchange</u> 90 Interchange Way Vaughan, L4K 5C3 2. <u>North York</u> 4950 Yonge Street Toronto M2N 6K1 3. <u>Danforth</u> 635 Danforth Avenue Toronto, M4K 1R2 4. <u>Delisle</u> 1521 Yonge Street Toronto, M4T 1Z2 5. <u>Dunfield</u> 110 Eglinton Avenue East Toronto, M4P 2Y1 6. <u>Cedarbrae</u> 3495 Lawrence Ave. East Scarborough, M1H 1B3

			<i>(continued on next page)</i>
	DESCRIPTION	RELEVANT JURISDICTION	FULL ADDRESS
			7. <u>Pickering</u> 1755 Pickering Parkway Pickering, L1V 6K5 8. <u>Whitby</u> 75 Consumers Drive, Whitby, L1N 9S2 9. <u>Bloor/Yorkville</u> 80 Bloor Street West Toronto, M5S 1L9 10. <u>Richmond</u> 267 Richmond Street West Toronto, M5V 3M6 11. <u>Wellington</u> 111 Wellington Street West Toronto, M5J 2S6 12. <u>Yonge & Dundas</u> 319 Yonge Street Toronto, M5B 1R7

Schedule 9.01(20) – Intellectual Property

TRADE-MARK	PARTICULARS
<i>EXTREME FITNESS</i> EXTREME FITNESS Design	REGISTERED App No.:1217183 Reg #: TMA653078 RD: 2005-11-21
EXTREME	REGISTERED App No.:0873473 Reg #: TMA513449 RD: 1999-07-28

Schedule 9.01(21) Material Contracts

Refer to the following:

Schedule 9.01(12) (Description of Real Property);

Schedule 9.01(36)(b) (Equipment Leases); and

Schedule 9.01(36)(d) (Indebtedness)

Leases Agreements:

	<u>Property Address</u>	<u>Lease Summary</u>
1.	3495 Lawrence Avenue East, Toronto, Ontario (Cedarbrae Mall)	<ul style="list-style-type: none"> (a) Lease Agreement dated July 27, 2001 (b) Non-Disturbance Agreement dated July, 2001 (c) Pylon Sign Agreement dated July 27, 2001 (d) Letter re: date of execution of Lease dated October 2, 2001 (e) Assignment of Lease dated January 28, 2003 (f) Assignment of Pylon Agreement dated January 28, 2003 (g) Consent to Assignment of Lease and Amending Agreement dated May 18, 2007 (h) Lease Assignment Agreement dated May 24, 2007 (i) Landlord Consent dated May 30, 2007 (j) Extension Letter dated May 31, 2007
2.	111 Wellington Street West, Toronto, Ontario	<ul style="list-style-type: none"> (a) Lease Agreement dated June 1, 2007 (b) Subordination, Non-Disturbance and Attornment Agreement dated June 1, 2007 (c) Extension Letter dated June 1, 2007 (d) Landlord Consent dated June 1, 2007

	<u>Property Address</u>	<u>Lease Summary</u>
3.	1521 Yonge Street, Toronto, Ontario (Delisle Court)	<ul style="list-style-type: none"> (a) Lease Agreement dated November 4, 1999 (b) Lease Amending Agreement dated November 10, 1999 (c) Notice of Assignment of Lease dated November 14, 1999 (d) Cancellation of Assignment letter dated September 23, 2001 (e) Non-Disturbance Agreement dated September 24, 2001 (f) Lease Amending Agreement dated September 26, 2001 (g) Mutual Release dated September 26, 2001 (h) Tenant's Acknowledgement dated October 31, 2003 (i) Lease Amending Agreement dated May 15, 2007 (j) Assignment of Lease and Consent to Assignment of Lease dated May 15, 2007 (k) Landlord Consent Agreement dated May 29, 2007 (l) Trust and Indemnity Agreement dated June 18, 2007
4.	110 Eglinton Avenue East, Toronto, Ontario (Dunfield)	<ul style="list-style-type: none"> (a) Lease Agreement dated January 1, 1996 (b) Letter of Agreement accepted May 21, 1997 (c) Lease of Additional Space dated June 17, 1998 (d) Letter of Agreement dated August 19, 1998 (e) Landlord's Consent to Sublease dated June 14, 1999 (f) Lease Amending Agreement dated September 20, 1999 (g) Subordination, Non-Disturbance and Attornment Agreement dated October 22, 1999 (h) Lease of Additional Space dated June 8, 2001 (i) Letter re: Landlord's Work dated August 10, 2001 (j) Master Concession Agreement dated November 1, 2003 (k) Letter re: Parking dated April 26, 2006 (l) Lease Amending Agreement dated November 27, 2006 (m) Assignment of Lease dated May 16, 2007 (n) Lease Amending Agreement dated May 25, 2007 (o) Extension letter dated May 31, 2007

	<u>Property Address</u>	<u>Lease Summary</u>
		<p>(p) Landlord Consent Agreement dated June 1, 2007</p> <p>(q) Letter dated October 20, 2010 to correct Lease Extension Letter dated May 31, 2007</p>
5.	90 Interchange Way, Vaughan, Ontario (Interchange)	<p>(a) Lease Agreement dated December 7, 1999</p> <p>(b) Lease Addendum dated December 28, 2000</p> <p>(c) Lease Amending Agreement dated June 21, 2000</p> <p>(d) Notice of Agreement Amending Lease registered on April 20, 2001</p> <p>(e) Commencement Date Agreement dated January 29, 2001</p> <p>(f) Assignment of Lease dated September 25, 2001</p> <p>(g) Notice of Interest in Lease registered on October 3, 2001</p> <p>(h) Partial Surrender of Lease dated June 18, 2002</p> <p>(i) Master Concession Agreement dated January 1, 2006</p> <p>(j) Notice of Assignment of Lessee Interest in Lease registered on June 1, 2007</p> <p>(k) Lease Amending Agreement dated July 12, 2007</p> <p>(l) Partial Surrender of Lease dated July 24, 2007</p> <p>(m) Assignment of Lease dated May 23, 2007</p> <p>(n) Landlord Consent Agreement dated July, 2007</p>
6.	319 Yonge Street, Toronto, Ontario (aka 10 Dundas Street East, Toronto, Ontario) (Toronto Life Square)	<p>(a) Lease Agreement dated September 15, 2007.</p> <p>(b) Extension Letter dated September 26, 2007</p> <p>(c) Landlord Consent Agreement dated November 13, 2007</p> <p>(d) Booking and Licence Agreement dated June 19, 2008</p> <p>(e) Notice of Sublease registered on January 22, 2010</p> <p>(f) Estoppel Agreement dated February 17, 2010</p> <p>(g) Notice and Direction to Tenants re: Sale of Property dated March 4, 2010</p>
7.	75 Consumers Drive, Whitby, Ontario	<p>(a) Agreement to Lease dated May 30, 2002</p> <p>(b) Indemnity Agreements dated May 30, 2002</p> <p>(c) Amendment Letter dated June 14, 2002</p>

	<u>Property Address</u>	<u>Lease Summary</u>
		<ul style="list-style-type: none"> (d) Amendment to Agreement to Lease dated June 18, 2003 (e) Second Amendment to Agreement to Lease dated October 17, 2003 (f) Assignment Agreement dated November 27, 2003 (g) Third Amendment to Agreement to Lease dated January 13, 2004 (h) Fourth Amendment to Agreement to Lease dated March 22, 2004 (i) Letter re: Pre-Sales Facility dated April 14, 2004 (j) Fifth Amendment to Agreement to Lease dated June 1, 2009 (k) Subordination, Non-Disturbance and Attornment Agreement dated July 21, 2004 (l) Agreement to Lease Pylon Signage dated March 28, 2005 (m) Tenant Estoppel Certificate dated July 28, 2004 (n) Consent to Transfer dated May 5, 2006 [UNEXECUTED BY LANDLORD] (o) Landlord Consent Agreement dated June 14, 2006 (p) Subordination, Non-Disturbance and Attornment Agreement dated June 15, 2006
8.	1755 Pickering Parkway, Unit 38, Pickering, Ontario	<ul style="list-style-type: none"> (a) Retail Lease dated October 28, 1998 (b) Agreement re: Transfer of Charge dated October 28, 1998 (c) Agreement change of name dated January 19, 1999 (d) Indenture dated February 2, 1999 (e) Agreement re: amendment of lease dated April 6, 1999 including executed Indemnity Agreements dated March 12, 1999 attached as Schedules (f) Agreement re: amendment of lease dated June 22, 1999 (g) Lease Amending Agreement dated August 17, 1999 (h) Security Agreement dated August 17, 1999 (i) Tenant's Acknowledgement and Estoppel Certificate dated November 11, 2003 (j) Notice and Direction to Tenants dated November 25, 2003 (k) Lease Amending Agreement dated November 22, 2004 [LANDLORD SIGNATURE MISSING] (l) Lease Amending Agreement dated November 22, 2005[MISSING] (m) Confirmation of Possession Date Extension dated October 28, 2005

	<u>Property Address</u>	<u>Lease Summary</u>
		<ul style="list-style-type: none"> (n) Acknowledgement of Possession dated November 15, 2005 (o) Partial Surrender Agreement dated November 30, 2005 (p) Consent To Transfer dated May 26, 2006 [PARTIALLY EXECUTED] (q) Consent letter dated May 8, 2006 [UNEXECUTED BY LANDLORD] (r) Consent To Release Easement dated May 29, 2006 (s) Tenant's Acknowledgement and Estoppel Certificate dated March 16, 2006 (t) Notice of Pending Sale dated January 23, 2006 (u) Memorandum re: Release of Information dated March 2, 2006 (v) Landlord Consent Agreement dated June 13, 2006 (w) Subordination, Non-Disturbance and Attornment Agreement dated June 15, 2006
9.	8281 and 8275 Yonge Street, Markham, Ontario (Thornhill)	<ul style="list-style-type: none"> (a) Lease of Commercial Space dated July 8, 1996 (b) Lease Amending Agreement dated May 27, 1998 (c) Second Lease Amending Agreement dated September 1, 1998 (d) Revised Lease dated May 28, 1999 [MISSING] (e) Letter of Intent accepted on December 2, 1999 [MISSING] (f) Estoppel Certificate dated February 6, 2001 (g) Leasehold Allowance Promissory Note dated May 30, 2000 (h) Extension Agreement dated January 10, 2006 [MISSING] (i) Third Lease Amending Agreement dated June 2006 (j) Parking Lease with Yonge-Kirk Properties Incorporated dated March 27, 1998 [Now Expired] (k) Lease Parking Lot between Yonge-Kirk Properties Inc. and Extreme Fitness Yonge Ltd. Dated December 13, 1999 (l) Lease Extension and Amending Agreement re: Parking dated January 19, 2004 between Yonge-Kirk Properties Incorporated and Extreme Fitness Yonge Limited (m) Lease Parking Lot between 2044922 Ontario Ltd. and Extreme Fitness, Inc. dated June 2006 (n) Landlord Consent Agreement dated June 15, 2006

	<u>Property Address</u>	<u>Lease Summary</u>
		<ul style="list-style-type: none"> (o) Parking Lot Side Letter dated September 2006 (p) Subordination, Non-Disturbance and Attornment Agreement dated June 14, 2006
10.	4950 Yonge Street, Toronto, Ontario and 100 Upper Madison Avenue, Toronto, Ontario (North York Property)	<ul style="list-style-type: none"> (a) Letter Lease Renewal dated April 24, 2000 (b) Storage Lease dated August 13, 2004 (c) Architect Certificates dated October 31, 2000 and July 25, 2005 (d) Spa Premises Retail Lease dated March 24, 2000 (including partial copy of Indemnity Agreement dated March 24, 2000 attached as Schedule "G"-unexecuted) (e) Juice Bar Premises Retail Lease dated March 24, 2000 (including Indemnity Agreement dated March 24, 2000 attached as Schedule "G") (f) Fitness Premises Retail Lease dated March 24, 2000 (including Indemnity Agreement dated March 24, 2000 attached as Schedule "G") (g) Letter dated March 24, 2000 re: Termination of Leases dated October 26, 1999 and re: revised leases [PAGES MISSING AND UNEXECUTED] (h) Indemnity Agreements dated March 24, 2000 (attached as Schedules "G" to items (d), (e) and (f) above) (i) Letter of Indemnity dated March 30, 2000 (j) Spa Lease Amending Agreement dated November 26, 2004 [MISSING] (k) Juice Bar Lease Amending Agreement dated November 26, 2004 (l) Fitness Lease Amending Agreement dated November 30, 2004 (m) Second Fitness Lease Expansion dated December 20, 2006 (n) Landlord Consent Agreement dated June 14, 2006 (o) Consent to Transfer dated May 8, 2006 [UNEXECUTED BY LANDLORD] (p) Third Fitness Lease Extension and Amending Agreement dated December 11, 2009 (q) Lease Extension and Amending Agreement – Spa Premises dated December 11, 2009 (r) Lease Extension and Amending Agreement – Juice Bar Premises dated December 11, 2009

	<u>Property Address</u>	<u>Lease Summary</u>
11.	635 Danforth Avenue, Toronto, Ontario	<ul style="list-style-type: none"> (a) Lease Agreement dated October 30, 2006 (b) Tenant's Acknowledgement dated October 30, 2007 (c) Letter of agreement dated October 30, 2006 (d) Landlord Consent Agreement dated October 30, 2006 (e) Lease renewal letter dated October 12, 2007 (f) Parking Licence Agreement dated September 30, 2006 (g) Parking Licence Agreement dated September 30, 2007 (h) Letter re: base rent dated August 19, 2008 (i) Subordination, Non-Disturbance and Attornment Agreement dated October 30, 2006 (Voidonicolas) (j) Subordination, Non-Disturbance and Attornment Agreement dated October 30, 2006 (Meridian)
12.	267 Richmond Street, Toronto, Ontario (RioCan Hall)	<ul style="list-style-type: none"> (a) Agreement to Lease dated November 27, 2006 (b) Lease Agreement dated December 22, 2006 (c) Non-Disturbance and Attornment Agreement dated December 21, 2006
13.	80 Bloor Street West, Toronto, Ontario	<ul style="list-style-type: none"> (a) Agreement re Bally Lease Surrender dated July 30, 2008 (b) Lease Agreement dated August 1, 2008 (c) Agreement Amendment to 11.1A and 21.23 dated August 11, 2008 [MISSING] (d) Trust Agreement dated June 3, 2002 together with email referencing address discrepancy therein (e) Landlord Consent Agreement dated August 1, 2008

Schedule 9.01(32) -- Non-Arm's Length Transactions

1. Professional Services Agreement between the Borrower and Falconhead Capital, LLC ("Falconhead") dated June 15, 2006 (the "Agreement"). Pursuant to the Agreement, Falconhead provides services relating to (a) corporate strategy; (b) budgeting of future corporate investments; (c) acquisition and divestiture strategies; and (d) debt and equity financings, and related personnel for such services, in exchange for certain investment/management/transaction fees. Falconhead is an indirect beneficial owner of the Borrower.
2. Supply Agreement between the Borrower and DBP Maintenance Inc. ("DBP") as referenced in Schedule 9.01(36). Darko Pajovic, a director, shareholder and warrant holder of the Borrower, is also a shareholder of DBP.
3. Lease dated July 8, 1996 regarding the premises at 8281 Yonge Street, Markham between 550 Adelaide Properties Inc., as landlord, and 1152245 Ontario Inc., as tenant, as amended by lease amending agreements dated May 27, 1998 and September 1, 1998, and as amended and extended by third lease amending agreement dated June 15, 2006 between 2079843 Ontario Inc. ("2079843"), as landlord, and Extreme Fitness, Inc., as tenant. Stephen DaCosta and Mary Offman have an ownership interest in 2079843, the landlord of the premises.
4. Parking Lot Lease regarding the premises at 8275 Yonge Street, Markham dated June 15, 2006 between 2044922 Ontario Ltd. ("2044922"), as landlord, and Extreme Fitness, Inc., as tenant. Stephen DaCosta and Mary Offman have an ownership interest in 2044922, the landlord of the premises.
5. Lease dated June 1, 2007 regarding the premises at 111 Wellington Street West, Toronto, between 2125879 Ontario Inc. ("2125879"), as landlord, and Extreme Fitness, Inc., as tenant. Stephen DaCosta and Mary Offman have an ownership interest in 2125879, the landlord of the premises.

6.

Schedule 9.01(35) - Government Contracts

None.

Schedule 9.01(36) - Agreements and Other Documents

(a) Supply Agreements

SUPPLIER NAME	DATE AGREEMENT SIGNED	SERVICE PROVIDED	NOTICE FOR TERMINATION	ANNUAL \$
Aqua Terra Aquatic Management Inc.	June 2006	Pool and whirlpool maintenance and repairs.	60 Days Notice	\$162,000
DBP Maintenance Inc.	June 2006	Cleaning, building maintenance, gym equipment maintenance, towel services and construction supervision.	120 Days Notice	\$3,200,000
R&S Laundromat Inc.	November 2007	Towel service for Pickering and Whitby locations.	60 Days Notice	\$140,000
Stephens Diversified Inc.	April 2007	Public relations.	60 Days Notice	\$78,000

(b) Equipment Leases

1. Master Lease Agreement dated June 20, 2007 between Heffner Auto Sales and Leasing Inc. and Extreme Fitness, Inc. (Master Lease No. M001)
2. Master Lease Agreement dated November 1, 2007 between Heffner Auto Sales and Leasing Inc. and Extreme Fitness, Inc. (Master Lease No. M007)
3. Security Agreement and Conditional Sales Contract dated July 24, 2008 between Extreme Fitness, Inc. and Life Fitness International Sales, Inc. (#833020)
4. Security Agreement and Conditional Sales Contract dated July 24, 2008 between Extreme Fitness, Inc. and Life Fitness International Sales, Inc. (#833021)
5. Security Agreement and Conditional Sales Contract dated July 24, 2008 between Extreme Fitness, Inc. and Life Fitness International Sales, Inc. (#833022)
6. Security Agreement and Conditional Sales Contract dated November 26, 2008 between Extreme Fitness, Inc. and Life Fitness International Sales, Inc. (#833023)
7. Security Agreement and Conditional Sales Contract dated November 26, 2008 between Extreme Fitness, Inc. and Life Fitness International Sales, Inc. (#833024)

8. Security Agreement and Conditional Sales Contract dated April 16, 2009 between Extreme Fitness, Inc. and Life Fitness International Sales, Inc. (#833025)
9. Security Agreement and Conditional Sales Contract dated April 16, 2009 between Extreme Fitness, Inc. and Life Fitness International Sales, Inc. (#833026)
10. Lease Agreement dated October 21, 2010 between Extreme Fitness, Inc. and IndCom Leasing Inc. (Lease No. EX2661-12661)

(c) Licences and Permits

None.

(d) Indebtedness

An amended and restated credit agreement among the Borrower, Golub Capital Incorporated as administrative agent and the financial institutions from time to time signatory thereto as shown as lenders thereunder, dated May 20, 2011 (the "A&R Credit Agreement"), and the agreements required to be executed and delivered pursuant to the A&R Credit Agreement.

Schedule 9.01(38) -- Conflicts of Interest

Refer to Schedule 9.01(32) (Non-Arm's Length Transactions).

8191446.8

Tab E

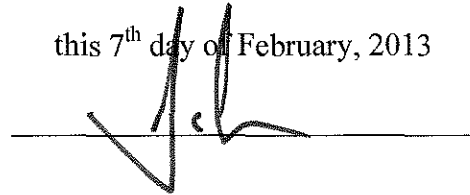
Attached is Exhibit "E"

Referred to in the

Affidavit of Alan Hutchens

Sworn before me

this 7th day of February, 2013

A handwritten signature in black ink is written over a horizontal line. The signature is stylized and appears to be the name of the Commissioner.

Commissioner for taking Affidavits, etc

EXTREME FITNESS, INC.

GENERAL SECURITY AGREEMENT

THIS GENERAL SECURITY AGREEMENT (as amended, modified, supplemented, restated or replaced from time to time, this "Agreement"), dated as of May 20, 2011, made by **EXTREME FITNESS, INC.**, a corporation existing under the laws of the Province of Alberta (together with any successors, by amalgamation or otherwise, and permitted assigns, the "Obligor"), in favour of **NATIONAL BANK OF CANADA**, as administrative agent under the Credit Agreement (as defined below) (together with any successor(s) thereto in such capacity, the "Agent") for the Lender Parties (as defined below).

WITNESSETH:

WHEREAS pursuant to a credit agreement dated as of the 20 day of May, 2011 (together with all amendments, modifications, supplements, restatements or replacements, if any, from time to time thereafter made thereto, the "Credit Agreement"), among the Agent, the other financial institutions party thereto from time to time, as lenders (each a "Lender" and collectively the "Lenders" and together with the Agent and their respective successors and assigns the "Lender Parties") and Extreme Fitness, Inc., as borrower (together with its successors, by amalgamation or otherwise, and permitted assigns, the "Borrower"), the Lenders have extended Commitments to make Advances to the Borrower;

AND WHEREAS as a condition precedent to the making of Advances under the Credit Agreement, the Obligor is required to execute and deliver this Agreement as continuing collateral security to secure the performance of the Obligations (as defined below);

AND WHEREAS the Obligor has duly authorized the execution, delivery and performance of this Agreement;

NOW THEREFORE for good and valuable consideration, the receipt of which is hereby acknowledged, and in order to induce the Lenders to make Advances to the Borrower pursuant to the Credit Agreement, the Obligor agrees, for the benefit of each Lender Party, as follows:

1. As general and continuing security for the payment and performance of the Obligations the Obligor grants, assigns, transfers, sets over, grants a security interest in, mortgages and charges to the Agent, for the benefit of the Agent and the Lender Parties, as and by way of a fixed and specific mortgage, charge and security interest in, all of the present and future assets, property (both real and personal) and undertaking of the Obligor and in all right, title and interest which the Obligor now has or may hereafter have in all of its assets, property and undertaking, including without limitation, all present and after acquired assets, property and undertaking of the kinds hereinafter described (collectively, the "Collateral"):

- (a) all goods comprising the inventory of the Obligor, including but not limited to goods held for sale or lease or furnished or to be furnished under a contract of service or that are raw materials, work in progress or materials used or consumed in a business

or profession or finished goods, including, without limitation, "inventory" as defined in the PPSA (hereinafter sometimes collectively referred to as "**Inventory**");

- (b) all goods which are not inventory or consumer goods, including but not limited to furniture, fixtures, equipment, machinery, plant, tools, vehicles and other tangible personal property, including, without limitation, "equipment" as defined in the PPSA (hereinafter sometimes collectively referred to as "**Equipment**");
- (c) all Computer Hardware and Software Collateral (as defined below);
- (d) all accounts, debts, demands and choses in action which are now due, owing or accruing due or which may hereafter become due, owing or accruing due to the Obligor and all claims of any kind which the Obligor now has or may hereafter have, including but not limited to claims against the Crown and claims under insurance policies (hereinafter sometimes collectively referred to together with intangibles and the Collateral described in paragraphs 1(f) and (n) as "**Receivables**");
- (e) all Intellectual Property Collateral (as defined below);
- (f) all chattel paper;
- (g) all warehouse receipts, bills of lading and other documents of title, whether negotiable or not;
- (h) all instruments, shares, stock, warrants, bonds, debentures, debenture stock or other securities;
- (i) all financial assets;
- (j) all securities entitlements;
- (k) all investment property;
- (l) all securities accounts in the name of the Obligor, including any and all assets of whatever type or kind deposited in or credited to such securities accounts, including all financial assets, all security entitlements related to such financial assets, and all certificates and other instruments from time to time representing or evidencing the same, and all dividends, interest, distributions, cash and other property from time to time received or receivable upon or otherwise distributed or distributable in respect of or in exchange for any or all of the foregoing;
- (m) all rights, contracts (including, without limitation, rights and interests arising thereunder or subject thereto), instruments, agreements, licences, permits, consents, leases, policies, approvals, development agreements, building contracts, performance bonds, purchase orders, plans and specifications all of which may or may not be personal property but may be rights in which the Obligor has interests, all as may be amended, modified, supplemented, replaced or restated from time to time;

- (n) all rents, present or future, under any lease or agreement to lease any part of the lands of the Obligor or any building, erection, structure or facility now or hereafter constructed or located on such lands, income derived from any tenancy, use or occupation thereof and any other income and profit derived therefrom;
- (o) all intangibles, including but not limited to all money, cheques, deposit accounts, letters of credit, advances of credit and goodwill;
- (p) with respect to the property described in paragraphs 1(a) to (o) inclusive, all books, accounts, invoices, letters, papers, documents and other records in any form evidencing or relating thereto and all contracts, securities, instruments and other rights and benefits in respect thereof;
- (q) with respect to the property described in paragraphs 1(a) to (p) inclusive, all substitutions and replacements thereof and increases, additions and accessions thereto; and
- (r) with respect to the property described in paragraphs 1(a) to (q) inclusive, all proceeds therefrom including personal property in any form or fixtures derived directly or indirectly from any dealing with such property or proceeds therefrom and any insurance or other payment as indemnity or compensation for loss of or damage to such property or any right to such payment, and any payment made in total or partial discharge or redemption of an intangible, chattel paper, instrument or security;

provided, however, the security interest created shall not charge, encumber, create a lien upon or otherwise mortgage any consumer goods which the Obligor may own. In this Agreement, the words "accessions", "account", "chattel paper", "consumer goods", "document of title", "equipment", "goods", "instrument", "intangible", "inventory" and "proceeds" shall have the same meanings as their defined meanings in the *Personal Property Security Act* of the Province of Ontario, as amended, re-enacted or replaced from time to time (the "PPSA"), and the terms "certificated security", "entitlement holder", "financial asset", "security", "securities account", "security entitlement", "security intermediary" and "uncertificated security" whenever used herein have the meanings given to these terms in the *Securities Transfer Act, 2006* (Ontario) (the "STA") as amended, re-enacted or replaced from time to time.

The said mortgage, charge and security interest shall not extend or apply to:

- (i) the last day of the term of any lease or any agreement therefor now held or hereafter acquired by the Obligor, but should such mortgage, charge and security interest become enforceable, the Obligor shall thereafter stand possessed of such last day and shall hold it in trust to assign the same to any Person acquiring such term or the part thereof mortgaged and charged in the course of any enforcement of the said mortgage, charge and security or any realization of the subject matter thereof; or
- (ii) any present or after-acquired agreement, right, franchise, licence or permit (for the purpose of this paragraph, the "contractual rights") to which the

Obligor is a party or of which the Obligor has the benefit to the extent that the creation of the mortgage, charge or security therein would constitute a breach of the terms of or permit any Person to terminate any of the contractual rights or otherwise constitute a breach of or violation under any existing law, statute or regulation to which the Obligor is subject, provided that all such contractual rights will be held in trust by the Obligor for the benefit of the Agent. Notwithstanding the foregoing, the said mortgage, charge and security interest shall apply to any proceeds of the disposition of any such contractual rights and the Obligor further agrees to hold such proceeds in trust for the Agent and to keep such proceeds in a segregated account for the benefit of the Agent. In addition, the said mortgage, charge and security interest shall extend to the contractual rights upon delivery by the Agent to the Obligor of written notice to such effect following the occurrence of an Event of Default.

2. Unless otherwise defined herein or the context otherwise requires, capitalized terms used herein shall have the meanings provided in the Credit Agreement, and in this Agreement:

- (a) **“Agreement”** is defined in the preamble;
- (b) **“Computer Hardware and Software Collateral”** means:
 - (i) all computer and other electronic data processing hardware, integrated computer systems, central processing units, memory units, display terminals, printers, features, computer elements, card readers, tape drives, hard and soft disk drives, cables, electrical supply hardware, generators, power equalizers, accessories and all peripheral devices and other related computer hardware;
 - (ii) all software programs (including both source code, object code and all related applications and data files), whether now owned, licenced or leased or hereafter acquired by the Obligor, designed for use on the computers and electronic data processing hardware described in clause (i) above;
 - (iii) all firmware associated therewith;
 - (iv) all documentation (including flow charts, logic diagrams, manuals, guides and specifications) with respect to such hardware, software and firmware described in the preceding clauses (i) through (iii); and
 - (v) all rights with respect to all of the foregoing, including, without limitation, any and all intellectual property rights, copyrights, leases, licences, options, warranties, service contracts, program services, test rights, maintenance rights, support rights, improvement rights, renewal rights and indemnifications and any substitutions, replacements, additions or model conversions of any of the foregoing;
- (c) **“Control Agreement”** means:

- (i) with respect to any uncertificated securities included in the Collateral, an agreement between the issuer of such uncertificated securities and another Person whereby such issuer agrees to comply with instructions that are originated by such Person in respect of such uncertificated securities, without the further consent of the Obligor; and
 - (ii) with respect to any security entitlements in respect of financial assets deposited in or credited to a securities account included in the Collateral, an agreement between the securities intermediary and another Person in respect of such security entitlements pursuant to which such securities intermediary agrees to comply with any entitlement orders with respect to such security entitlements that are originated by the Agent, without the further consent of the Obligor.
- (d) **“Copyright Collateral”** means:
- (i) all copyrights (including without limitation copyrights for semi-conductor chip product mask works and all integrated circuit topography) of the Obligor, whether statutory or common law, registered or unregistered, now or hereafter in force throughout the world, and all applications for registration thereof, whether pending or in preparation, and all copyrights resulting from such applications;
 - (ii) all extensions and renewals of any thereof;
 - (iii) all copyright licences and other agreements providing the Obligor with the right to use any of the items of the type referred to in clauses (i) and (ii);
 - (iv) the right to sue for past, present and future infringements of any of the Copyright Collateral referred to in clauses (i) and (ii) and, to the extent applicable, clause (iii); and
 - (v) all proceeds of the foregoing, including, without limitation, licences, royalties, income, payments, claims, damages and proceeds of suit;
- (e) **“Credit Agreement”** is defined in the first recital;
- (f) **“Intellectual Property Collateral”** means, collectively, the Copyright Collateral, the Patent Collateral, the Trademark Collateral and the Trade Secrets Collateral;
- (g) **“Obligations”** means all of the present and future indebtedness, liabilities and obligations of the Obligor of any and every kind, nature or description whatsoever (whether direct or indirect, joint or several or joint and several, absolute or contingent, matured or unmatured, in any currency, and whether as principal debtor, guarantor, surety or otherwise, including without limitation any interest that accrues thereon after or would accrue thereon but for the commencement of any case, proceeding or other action, whether voluntary or involuntary, relating to the bankruptcy, insolvency or reorganization of the Obligor, whether or not allowed or

allowable as a claim in any such case, proceeding or other action) to the Lender Parties (and their Affiliates) under, in connection with, relating to or with respect to each of the Loan Documents and any and all Hedge Arrangements, and any unpaid balance thereof;

(h) **“Patent Collateral”** means:

- (i) all letters patent and applications for letters patent throughout the world, including all patent applications in preparation for filing anywhere in the world;
- (ii) all reissues, divisions, continuations, continuations-in-part, extensions, renewals and re-examinations of any of the items described in clause (i);
- (iii) all patent licences and other agreements providing the Obligor with the right to use any of the items of the type referred to in clauses (i) and (ii);
- (iv) the right to sue third parties for past, present or future infringements of any patent or patent application, and for breach or enforcement of any patent licence; and
- (v) all proceeds of, and rights associated with, the foregoing (including licence royalties and proceeds of infringement suits), and all rights corresponding thereto throughout the world;

(i) **“Trademark Collateral”** means:

- (i) all trademarks, trade names, corporate names, company names, business names, fictitious business names, trade dress, service marks, logos, other source of business identifiers, prints and labels on which any of the foregoing have appeared or appear and designs (all of the foregoing items in this clause (i) being collectively called a **“Trademark”**), now existing anywhere in the world or hereafter adopted or acquired, whether currently in use or not, all registrations and recordings thereof and all applications in connection therewith, whether pending or in preparation for filing, including registrations, recordings and applications in the Trade-marks Branch of the Canadian Intellectual Property Office or in any office or agency of Canada or any Province thereof or any foreign country, and all reissues, extensions or renewals thereof;
- (ii) all Trademark licences and other agreements providing the Obligor with the right to use any items of the type described in clause (i), including each Trademark licence referred to in Item B of Schedule I attached hereto;
- (iii) all of the goodwill of the business connected with the use of, and symbolized by, the items described in clause (i);

- (iv) the right to sue third parties for past, present and future infringements of any Trademark Collateral described in clauses (i) and (ii); and
 - (v) all proceeds of, and rights associated with, the foregoing, including any claim by the Obligor against third parties for past, present or future infringement or dilution of any Trademark, Trademark registration or Trademark licence, including any Trademark, Trademark registration or Trademark licence referred to in Item A and Item B of Schedule I attached hereto, or for any injury to the goodwill associated with the use of any such Trademark or for breach or enforcement of any Trademark licence and all rights corresponding thereto throughout the world;
- (j) **“Trade Secrets Collateral”** means all common law and statutory trade secrets and all other confidential or proprietary or useful information (to the extent such confidential, proprietary or useful information is protected by the Obligor against disclosure and is not readily ascertainable) and all know-how obtained by or used in or contemplated at any time for use in the business of the Obligor (all of the foregoing being collectively called a **“Trade Secret”**), whether or not such Trade Secret has been reduced to a writing or other tangible form, including all documents and things embodying, incorporating or referring in any way to such Trade Secret, all Trade Secret licences, and including the right to sue for and to enjoin and to collect damages for the actual or threatened misappropriation of any Trade Secret and for the breach or enforcement of any such Trade Secret licence.

3. The fixed and specific mortgages and charges and the security interest granted under this Agreement secure payment and performance of all Obligations.

4. The Obligor hereby represents and warrants to the Lender Parties as at the date of this Agreement and as at the date of the acquisition by the Obligor of Collateral (including any acquisition of Collateral after the date hereof) that:

- (a) the Obligor is a corporation duly incorporated, organized and subsisting under the laws of its jurisdiction of incorporation with the corporate power to enter into this Agreement, this Agreement has been duly authorized by all necessary corporate action on the part of the Obligor and constitutes a legal and valid agreement binding of the Obligor, enforceable against the Obligor in accordance with its terms; the making and performance of this Agreement will not result in the breach of, constitute a default under, contravene any provision of, or result in the creation of, any lien, charge, security interest, encumbrance or any other rights of others upon any property of the Obligor pursuant to any agreement, indenture or other instrument to which the Obligor is a party or by which the Obligor or any of its property may be bound or affected;
- (b) all of the Collateral (i) is located at the places specified in Item C of Schedule I hereto, and (ii) is, or when the Obligor acquires any right, title or interest therein, will be the sole property of the Obligor, free and clear of all Encumbrances, except as may be permitted by the Credit Agreement;

- (c) with respect to any Intellectual Property Collateral:
 - (i) such Intellectual Property Collateral is subsisting and has not been adjudged invalid or unenforceable, in whole or in part;
 - (ii) the Obligor has made all necessary and material filings and recordings in Canada or the United States, as applicable, to protect its interest in such Intellectual Property Collateral; and
 - (iii) the Obligor is the exclusive owner of the entire right, title and interest in and to such Intellectual Property Collateral owned by the Obligor and is entitled to use the Intellectual Property Collateral leased or licensed to the Obligor and, to its knowledge, no claim has been made that the use of such Intellectual Property Collateral does or may violate the asserted rights of any third party;
- (d) the security interest created by this Agreement, once properly perfected in accordance with Applicable Law, will be a valid first priority security interest in the Collateral, subject to Permitted Encumbrances;
- (e) the address of the Obligor's chief executive office, principal place of business and the office where it keeps its records respecting the Receivables is that given at the end of this Agreement;
- (f) the Obligor has not granted "control" (within the meaning of such term under the STA) over any investment property forming part of the Collateral to any Person other than the Agent; and
- (g) except for the filings and registrations necessary to perfect the security interests created herein or otherwise provided for in the Credit Agreement, no authorization, approval or other action by, and no notice to or filing with, any governmental authority, regulatory body or any other Person is required for the grant by the Obligor of the security interest granted hereby in the Collateral or for the execution, delivery and performance of this Agreement by the Obligor.

5. So long as any portion of the Obligations shall remain unpaid or any Lender Party shall have any outstanding Commitment, the Obligor covenants with the Lender Parties that it will comply with or perform, or cause to be complied with or performed, the following obligations:

- (a) the Obligor shall maintain, use and operate the Collateral so as to preserve and protect the Collateral and the earnings, incomes, rents, issues and profits thereof, ordinary wear and tear excepted;
- (b) the Obligor shall keep proper books of account with respect to the Collateral in accordance with generally accepted accounting practice;
- (c) the Obligor shall not sell, lease or otherwise dispose of the Collateral without the prior written consent of the Agent, except as permitted by the Credit Agreement;

- (d) the Obligor shall, upon request by the Agent, execute and deliver all such financing statements, certificates, further assignments and documents and do all such further acts and things as may be necessary and reasonably requested by the Agent to give effect to the intent of this Agreement;
- (e) the Obligor acknowledges that no Collateral shall become affixed to any real property not subject to a security interest in favour of the Agent without the prior written consent of the Agent;
- (f) except with respect to goods in transit, the Obligor shall keep all Equipment and other tangible personal property of the Obligor in jurisdictions in which all required filings have been made for the perfection of the security interests created hereby;
- (g) with respect to any Equipment or Inventory in the possession or control of any third party, upon the request of the Agent, acting reasonably, the Obligor shall notify such third party of the Lender Parties' security interest in such Equipment or Inventory and, upon the Agent's request following the occurrence and during the continuance of an Event of Default, direct such third party to hold all such Equipment or Inventory for the Lender Parties' account and subject to the Agent's instructions;
- (h) upon the request of the Agent, the Obligor shall deliver to the Agent possession of all originals of all negotiable documents, instruments and chattel paper owned or held by the Obligor (duly endorsed in blank, if requested by the Agent);
- (i) if an Event of Default shall have occurred and be continuing, at the written direction of the Agent, all proceeds of Collateral received by the Obligor shall be delivered in kind to the Agent for deposit to a deposit account (the "**Collateral Account**") of the Obligor maintained with the Agent, and the Obligor shall hold all such proceeds in express trust for the benefit of the Lender Parties until delivery thereof is made to the Agent. All amounts so held by the Agent or by the Obligor in trust for the benefit of the Agent) and all income in respect thereof will continue to be collateral security for the Obligations and will not constitute payment thereof until approved as hereinafter provided. No funds, other than proceeds of Collateral, will be deposited in the Collateral Account;
- (j) following the Agent's exercise of the remedy provided for in paragraph 5(i) hereof, the Lender Parties shall have the right but not the obligation to apply any amount held in the Collateral Account to the payment of any Obligations which are due and payable or payable upon demand in such order as the Agent may determine in its discretion. The Agent may at any time transfer to the Obligor's general demand deposit accounts any or all of the collected funds in the Collateral Account; provided, however, that any such transfer shall not be deemed to be a waiver or modification of any of the Lender Parties' rights under this paragraph 5;
- (k) the Obligor shall not, unless the Obligor shall reasonably and in good faith determine (and notice of such determination, in form and substance satisfactory to the Lender Parties, shall have been delivered to the Agent) that any of the Intellectual Property is

not material to the business of the Obligor and has negligible economic value, do any act, or omit to do any act, whereby any of the Intellectual Property may lapse or become abandoned, dedicated to the public, placed in the public domain, invalid or unenforceable, as the case may be;

- (l) at the request of the Agent, the Obligor shall execute and deliver to the Agent any document required to acknowledge or register or perfect the Agent's interest in any part of the Intellectual Property Collateral;
- (m) the Obligor shall defend the title to the Collateral against all Persons and shall, upon reasonable demand by the Agent, furnish further assurance of title and execute any written instruments or do any other acts necessary to make effective the purposes and provisions of this Agreement; and
- (n) the Obligor shall ensure that the representations and warranties set forth in paragraph 4 hereof will be true and correct at all times.

6. The Obligor will maintain or cause to be maintained with reputable insurance companies insurance with respect to the Collateral against such casualties and contingencies and of such types and in such amounts as are required under the Credit Agreement.

7. The Obligor shall not create or suffer to exist any Encumbrance upon any of the Collateral to secure any indebtedness or liabilities of any Person, except for the mortgages, charges and security interest created by this Agreement and except for Permitted Encumbrances.

8. Following the occurrence of an Event of Default which is continuing, (i) the Agent may notify any parties obligated on any of the Collateral to make any payment to the Agent of any amounts due or to become due thereunder and enforce collection of any of the Collateral by suit or otherwise and surrender, release, or exchange all or any part thereof, or compromise or extend or renew for any period (whether or not longer than the original period) any indebtedness thereunder or evidenced thereby, (ii) upon written request of the Agent, the Obligor will, at its own expense, notify any parties obligated on any of the Collateral to make any payment to the Agent of any amounts due or to become due thereunder, and (iii) any payment or other proceeds received by the Obligor from any party obligated on any of the Collateral shall be held by the Obligor in trust for the Lender Parties and paid over to the Agent on request.

9. The Obligor agrees that, forthwith upon request by the Agent, from time to time at its own expense, the Obligor will promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary and reasonably requested by the Agent in order to perfect, preserve and protect any mortgages, charges and security interest created, granted or purported to be created or granted hereby or to enable the Agent to exercise and enforce its rights and remedies hereunder with respect to any Collateral. Without limiting the generality of the foregoing, the Obligor will:

- (a) if reasonably requested by the Agent, if any Receivable shall be evidenced by a promissory note or other instrument, negotiable document or chattel paper, deliver and pledge to the Agent hereunder such promissory note, instrument, negotiable

document or chattel paper duly endorsed and accompanied by duly executed instruments of transfer or assignment, all in form and substance satisfactory to the Agent;

- (b) execute and file such financing or financing change statements, or amendments thereto (including, without limitation, any assignment of claim from or other formality under or pursuant to the *Financial Administration Act* (Canada) or similar provincial or territorial legislation), and such other instruments or notices, as may be necessary and reasonably requested by the Agent in order to perfect and preserve the security interests and other rights granted or purported to be granted to the Lender Parties hereby;
- (c) furnish to the Agent, from time to time at the Agent's reasonable request, statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as the Agent may reasonably request, all in reasonable detail;
- (d) direct the issuer of any certificated securities included in or relating to the Collateral as the Agent may specify in its request to register the applicable security certificate in the name of the Agent or such nominee as it may direct,
- (e) direct the issuer of any uncertificated securities included in or relating to the Collateral as the Agent may specify in its request to register in the books and records of such issuer the Agent or such nominee as it may direct as the registered owner of the uncertificated security; and
- (f) direct the securities intermediary for any security entitlements in respect of financial assets deposited in or credited to a securities account included in or relating to the Collateral as the Agent may specify in its request to transfer any or all of the financial assets to which such security entitlements relate as the Agent may specify,

and the Agent will be entitled but not bound or required to exercise any of the rights that any holder of the above may at any time have. The Agent will not be responsible for any loss occasioned by its exercise of such rights or by failure to exercise the same within the time limited for the exercise thereof other than any loss resulting from the gross negligence or wilful misconduct of the Agent.

With respect to the foregoing and the grant of the security interest hereunder, the Obligor hereby authorizes the Agent on behalf of the Lender Parties to file one or more financing or financing change statements, and amendments thereto, relative to all or any part of the Collateral without the signature of the Obligor where permitted by law. The Agent shall provide a copy of such statement to the Obligor together with details of registration thereof. A photographic or other reproduction of this Agreement or any financing statement covering the Collateral or any part thereof shall be sufficient as a financing statement where permitted by law.

10. The Obligor agrees that forthwith, upon request from time to time by the Agent acting reasonably, the Obligor shall give its consent in writing to:

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- (a) the entering into by any issuer of any uncertificated securities included in or relating to the Collateral as the Agent may specify in its request, of a Control Agreement with the Agent in respect of such uncertificated securities, which consent may be incorporated into an agreement to which such issuer, the Agent and the Obligor are parties; and
- (b) the entering into by any securities intermediary for any security entitlements in respect of the financial assets deposited in or credited to a securities account included in or relating to the Collateral as the Agent may specify in its request, of a Control Agreement with the Agent in respect of such security entitlements which consent may be incorporated into an agreement to which such securities intermediary, the Agent and the Obligor are parties.

11. The Obligor agrees that it shall not consent to:

- (a) the entering into by any issuer of any uncertificated securities included in or relating to the Collateral of a Control Agreement in respect of such uncertificated securities with any Person other than the Agent or such nominee or agent as it may direct; or
- (b) the entering into by any securities intermediary for any security entitlements in respect of the financial assets deposited in or credited to a securities account included in or relating to the Collateral of a Control Agreement with respect to such securities accounts or security entitlements with any Person other than the Agent or such nominee or agent as it may direct.

12. Unless an Event of Default has occurred and is continuing, the Obligor may use the Collateral in any lawful manner not inconsistent with this Agreement or the Credit Agreement, and the Agent and its representatives shall have the right to inspect the operations of the Obligor, its books and records and the Collateral in the manner and at the times set out in the Credit Agreement.

13. Following the occurrence of and during the continuance of an Event of Default, the Agent may have any Collateral comprising instruments, shares, stock, warrants, bonds, debentures, debenture stock or other securities, registered in its name or in the name of its nominee and will be entitled but not bound or required to exercise any of the rights that any holder of such securities may at any time have, but the Agent shall not be responsible for any loss occasioned by the exercise of any of such rights or by failure to exercise the same within the time limit for the exercise thereof.

14. Upon the Obligor's failure to perform any of its duties hereunder the Agent may, but shall not be obliged to, perform any or all of such duties, without waiving any rights to enforce this Agreement, and the Obligor shall pay to the Agent, forthwith upon written demand therefor, an amount equal to the reasonable costs, fees and expenses incurred by the Agent in so doing plus interest thereon from the date such costs, fees and expenses are incurred until paid at the rate or rates set out in the Credit Agreement.

15. Upon the occurrence of an Event of Default that is continuing, the security hereby granted shall immediately become enforceable and the Agent may, in its sole discretion, forthwith or at any time thereafter:

- (a) declare any or all of the Obligations not then due and payable to be immediately due and payable and, in such event, such Obligations shall be forthwith due and payable to the Agent without presentment protest or notice of dishonour;
- (b) commence legal action to enforce payment or performance of the Obligations;
- (c) require the Obligor to disclose to the Agent the location or locations of the Collateral and the Obligor agrees to make such disclosure when so required by the Agent;
- (d) require the Obligor, at the Obligor's sole expense, to assemble the Collateral and deliver or make the Collateral available at a place or places designated by the Agent to the Obligor that is reasonably convenient for the Obligor, and the Obligor agrees to so assemble, deliver or make available the Collateral;
- (e) enter any premises where the Collateral may be situate and take possession of the Collateral by any method permitted by law;
- (f) repair, process, modify, complete or otherwise deal with the Collateral and prepare for the disposition of the Collateral, whether on the premises of the Obligor or otherwise and take such steps as it considers necessary to maintain, preserve or protect the Collateral;
- (g) seize, collect, realize or dispose of the Collateral by private sale, public sale, lease, or otherwise upon such terms and conditions as the Agent may determine or otherwise deal with the Collateral or any part thereof in such manner, upon such terms and conditions and of such times as may seem to the Agent advisable;
- (h) carry on all or any part of the business or businesses of the Obligor and may, to the exclusion of all others, enter upon, occupy and use all or any of such premises, buildings, plant, undertaking and other property of or used by the Obligor as part of or for such time and in such manner as the Agent sees fit, free of charge, and the Agent shall not be liable to the Obligor for any act, omission, or negligence (other than gross negligence or wilful misconduct) in so doing or for any rent, charges, depreciation, damages or other amount in connection therewith or resulting therefrom and any sums expended by the Agent shall bear interest at the rate or rates set out in the Credit Agreement;
- (i) file such proofs of claim or other documents as may be necessary or desirable to have its claim lodged in any bankruptcy, winding-up, liquidation, dissolution or other proceedings (voluntary or otherwise) relating to the Obligor;
- (j) borrow money for the purpose of carrying on the business of the Obligor or for the maintenance, preservation or protection of the Collateral and mortgage, charge, pledge or grant a security interest in the Collateral, whether or not in priority to the security created herein, to secure repayment of any money so borrowed;
- (k) where the Collateral has been disposed of by the Lender Parties as provided in paragraph 15(g), commence legal action against the Obligor for any deficiency;

- (l) pay or discharge any Encumbrance or claims by any Person in the Collateral and the amount so paid shall be added to the Obligations and secured hereby and shall bear interest at the highest rate of interest charged by the Lenders at that time in respect of any of the Obligations until payment thereof;
- (m) take any other action, suit, remedy or proceeding authorized or permitted by this Agreement, the PPSA or by law or equity;
- (n) to the extent permitted by Applicable Law, transfer any securities forming part of the Collateral into the name of the Agent or its nominee, with or without disclosing that the securities are subject to a security interest and cause the Agent or its nominee to become the entitlement holder with respect to any security entitlements forming part of the Collateral; and
- (o) sell, transfer or use any investment property included in the Collateral of which the Agent or its agent has "control" within the meaning of subsection 1(2) of the PPSA.

16. Where required to do so by the PPSA or other Applicable Law, the Agent shall give to the Obligor the written notice required by the PPSA or other Applicable Law of any intended disposition of the Collateral.

17. Any notice or communication to be given under this Agreement to the Obligor or the Agent shall be effective if given in accordance with the provisions of the Credit Agreement as to the giving of notice to each, and the Obligor and the Agent may change their respective address for notices in accordance with the said provisions.

18. If the Agent is entitled to exercise its rights and remedies in accordance with paragraph 15 hereof, the Agent may take proceedings in any court of competent jurisdiction for the appointment of a receiver (which term shall include a receiver and manager) (each herein referred to as a "Receiver") of the Collateral or may by appointment in writing appoint any Person to be a Receiver of the Collateral and may remove any Receiver so appointed by the Agent and appoint another in its stead; and any such Receiver appointed by instrument in writing shall have powers of the Agent set out in subparagraphs 15(b) to (l), inclusive, including, without limitation, the power (i) to take possession of the Collateral, (ii) to carry on the business of the Obligor, (iii) to borrow money required for the maintenance, preservation or protection of the Collateral or for the carrying on of the business of the Obligor on the security of the Collateral in priority to the security interest created under this Agreement, and (iv) to sell, lease or otherwise dispose of the whole or any part of the Collateral at public auction, by public tender or by private sale, either for cash or upon credit, at such time and upon such terms and conditions as the Receiver may determine; provided that, to the extent permitted and in the manner prescribed by law any such Receiver shall be deemed the agent of the Obligor and no Lender Party shall be in any way responsible for any misconduct or negligence of any such Receiver.

19. Any proceeds of any disposition of any Collateral may be applied by the Agent to the payment of reasonable expenses incurred in connection with retaking, holding, repairing, processing, preparing for disposition and disposing of the Collateral (including the remuneration of any Receiver appointed pursuant to paragraph 18, solicitor's fees on a substantial indemnity basis and legal

expenses and any other expenses), and any balance of such proceeds may be applied by the Agent towards the payment of the Obligations in such order of application as the Lender Parties may from time to time elect, subject to the provisions of the Credit Agreement. All such expenses and all amounts borrowed on the security of the Collateral under paragraphs 15 and 18 hereof shall bear interest at the rate or rates set out in the Credit Agreement. If the disposition of the Collateral fails to satisfy the Obligations and the expenses incurred by the Lender Parties, the Obligor shall be liable to pay any deficiency to the Lender Parties on demand.

20. Subject to Applicable Law, the Agent is authorized, in connection with any offer or sale of any securities forming part of the Collateral, to comply with any limitation or restriction as it may be advised by counsel is necessary to comply with Applicable Law, including compliance with procedures that may restrict the number of prospective bidders and purchasers, requiring that prospective bidders and purchasers have certain qualifications and restricting prospective bidders and purchasers to Persons who will represent and agree that they are purchasing for their own account or investment and not with a view to the distribution or resale of such securities. Subject to Applicable Law, the Agent will not be liable or accountable to the Obligor for any discount allowed by reason of the fact that such securities are sold in compliance with any such limitation or restriction.

21. The Obligor further agrees that:

- (a) the Obligor shall not be discharged by any extension of time, additional advances, renewals and extensions, the taking of further security, releasing security, extinguishment of the security interest as to all or any part of the Collateral, or any other act except a release or discharge of the security interest upon the full payment of the Obligations including reasonable charges, expenses, fees, costs and interest;
- (b) any failure by the Agent to exercise any right set out in this Agreement shall not constitute a waiver thereof; nothing in this Agreement or in the Obligations shall preclude any other remedy by action or otherwise for the enforcement of this Agreement or the payment in full of the Obligations;
- (c) the Agent may waive, in whole or in part, any breach by the Obligor of any of the provisions of this Agreement, any default by the Obligor in payment or performance of any of the Obligations or any of its rights and remedies, whether provided for herein or otherwise, provided that no such waiver shall be effective unless given by the Agent to the Obligor in writing;
- (d) no waiver given in accordance with paragraph 21(c) shall be a waiver of any other or subsequent breach by the Obligor of any of the provisions of this Agreement, of any other or subsequent default by the Obligor in payment or performance of any of the Obligations or any of the rights and remedies of the Agent, whether provided for herein or otherwise;
- (e) all rights of the Agent and the Lender Parties hereunder shall be assignable to the extent permitted under the Credit Agreement;

- (f) the mortgage, charge and security interest created by this Agreement is intended to attach when this Agreement is signed by the Obligor with respect to all items of Collateral in which the Obligor has rights at that moment, and shall attach to all other Collateral immediately upon the Obligor acquiring any rights therein; and
- (g) value has been given.

22. The Obligor acknowledges having received an executed copy of this Agreement and of the financing statement registered under the PPSA evidencing the security interest created hereby.

23. The Obligor hereby irrevocably constitutes and appoints the Agent and each of its officers holding office from time to time as the true and lawful attorney of the Obligor with power of substitution in the name of the Obligor, to do any and all such acts and things or execute and deliver all such agreements, documents and instruments as the Agent, in its sole discretion, considers necessary or desirable to carry out the provisions and purposes of this Agreement or to exercise any of its rights and remedies hereunder, and to do all acts or things necessary to realize or collect the proceeds, including, without limitation:

- (a) to ask, demand, collect, sue for, recover, compromise, receive and give acquittance and receipts for moneys due and to become due under or in respect of any of the Collateral;
- (b) to receive, endorse, and collect any drafts or other instruments, documents and chattel paper, in connection with clause (a) above;
- (c) to file any claims or take any action or institute any proceedings which the Agent may reasonably deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce the rights of the Lender Parties with respect to any of the Collateral; and
- (d) to perform the affirmative obligations of the Obligor hereunder.

The Obligor hereby acknowledges, consents and agrees that the power of attorney granted pursuant to this paragraph is irrevocable (until termination of the security interest hereunder) and coupled with an interest. The Obligor hereby ratifies and agrees to ratify all acts of any such attorney taken or done in accordance with this paragraph. The Agent agrees that it shall not exercise the power of attorney granted pursuant to this paragraph 23 unless an Event of Default has occurred and is continuing.

24. The powers conferred on the Lender Parties hereunder are solely to protect their interests in the Collateral and shall not impose any duty on the Agent to exercise any such powers. Except for reasonable care of any Collateral in its possession and the accounting for moneys actually received by it hereunder, the Agent shall have no duty as to any Collateral or as to the taking of any necessary steps to preserve rights against prior parties or any other rights pertaining to any Collateral.

25. Notwithstanding any other term or condition of this Agreement, this Agreement shall not relieve the Obligor or any other party to any of the Collateral from the observance or
General Security Agreement

performance of any term, covenant, condition or agreement on its part to be observed or performed thereunder or from any liability to any other party or parties thereto or impose any obligation on the Agent to observe or perform any such term, covenant, condition or agreement to be so observed or performed, and the Obligor hereby agrees to indemnify and hold harmless the Agent from and against any and all losses, liabilities (including liabilities for penalties), costs and expenses which may be incurred by the Agent under the Collateral and from all claims, alleged obligation or undertaking on its part to observe, perform or discharge any of the terms, covenants and agreements contained in the Collateral. The Agent may, at its option, perform any term, covenant, condition or agreement on the part of the Obligor to be performed under or in respect of the Collateral (and/or enforce any of the rights of the Obligor thereunder) without thereby waiving any rights to enforce this Agreement. Nothing contained in this paragraph 25 shall be deemed to constitute the Agent the mortgagee in possession of the Collateral or the lessee under any lease or agreement to lease unless the Agent has agreed to become such mortgagee in possession or to be a lessee.

26. All rights of the Lender Parties hereunder shall enure to the benefit of their respective successors and permitted assigns, provided that no Lender Party shall be entitled to transfer or assign any of its right, title or interest in, to, or arising under this Agreement except in accordance with the provisions governing assignment contained in the Credit Agreement and all obligations of the Obligor hereunder shall bind the Obligor and its successors and assigns.

27. The Obligor acknowledges and agrees that in the event it amalgamates with any other corporation or corporations, it is the intention of the parties hereto that the security interest created hereby (i) shall extend to "Collateral" (as that term is herein defined) owned by each of the amalgamating corporations and the amalgamated corporation at the time of amalgamation and to any "Collateral" thereafter owned or acquired by the amalgamated corporation, such that the term the "Obligor" when used herein would apply to each of the amalgamating corporations and the amalgamated corporation and (ii) shall secure the "Obligations" (as that term is herein defined) of each of the amalgamating corporations and the amalgamated corporation to the Lender Parties at the time of amalgamation and any "Obligations" of the amalgamated corporation to the Lender Parties thereafter arising. The security interest shall attach to the additional "Collateral" at the time of amalgamation and to any "Collateral" thereafter owned or acquired by the amalgamated corporation when such becomes owned or is acquired.

28. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

29. In the event of any conflict between the provisions hereunder and the provisions of the Credit Agreement then, notwithstanding anything contained in this Agreement, the provisions contained in the Credit Agreement shall prevail and the provisions of this Agreement will be deemed to be amended to the extent necessary to eliminate such conflict. If any act or omission of the Obligor is expressly permitted under the Credit Agreement but is expressly prohibited hereunder, such act or omission shall be permitted. If any act or omission is expressly prohibited hereunder, but the Credit Agreement does not expressly permit such act or omission, or if any act is expressly required to be performed hereunder but the Credit Agreement does not expressly relieve the Obligor from such performance, such circumstance shall not constitute a conflict between the applicable provisions hereunder and the provisions of the Credit Agreement.

30. This Agreement and the security interest, assignment and mortgage and charge granted hereby are in addition to and not in substitution for any other security now or hereafter held by the Agent and this Agreement is a continuing agreement and security that will remain in full force and effect until discharged by the Agent.

31. The Obligor will not be discharged from any of the Obligations or from this Agreement except by a release or discharge signed in writing by the Agent.

32. If any provision of this Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision or part thereof and the remaining part of such provision and all other provisions hereof shall continue in full force and effect.

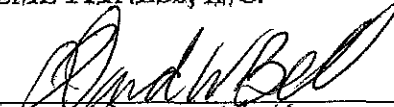
33. The Obligor hereby waives the right to receive a copy of any financing statement or financing change statement, or any statement issued by any registry that confirms the registration of a financing statement or financing change statement, relating to this Agreement, the Credit Agreement or any other Agreement between the Obligor and the Lender Parties.

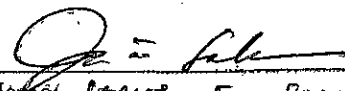
34. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts (including by telecopy or pdf), and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

[Signature page follows]

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by its officer thereunto duly authorized as of the 20 day of May, 2011.

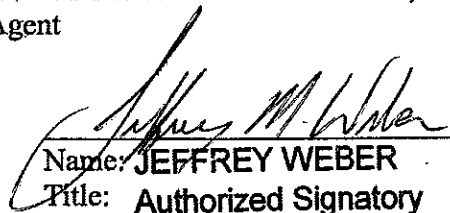
EXTREME FITNESS, INC.

By: 
Name: David W Bell
Title: CFO

By: 
Name: JAMES E SOLOMON
Title: CEO

NATIONAL BANK OF CANADA,
as Agent

By:


Name: **JEFFREY WEBER**
Title: **Authorized Signatory**

By:


Name: **GREG GEORGIU**
Title: **Authorized Signatory**

SCHEDULE I
to
GENERAL SECURITY AGREEMENT

Item A. Trademarks

Registered Trademarks

<u>Country</u>	<u>Trademark</u>	<u>Application No./ Registration No.</u>	<u>Filing Date/ Registration Date</u>	<u>Name of Owner</u>
Canada	<i>EXTREME FITNESS</i> EXTREME FITNESS Design	App No.: 1217183 Reg #: TMA653078	RD: 2005-11-21	Extreme Fitness, Inc.
Canada	EXTREME	App No.: 0873473 Reg #: TMA513449	RD: 1999-07-28	Extreme Fitness, Inc.

Pending Trademark Applications

None

Item B.

Trademark Licences

Trademark Applications in Preparation

None

Item C. Locations of Collateral

1. 8281 Yonge Street, Thornhill L3T 2C7
2. 90 Interchange Way, Vaughan, L4K 5C3
3. 4950 Yonge Street, Toronto M2N 6K1
4. 635 Danforth Avenue, Toronto, M4K 1R2
5. 1521 Yonge Street, Toronto, M4T 1Z2
6. 110 Eglinton Avenue East Toronto, M4P 2Y1
7. 3495 Lawrence Ave. East Scarborough, M1H 1B3
8. 1755 Pickering Parkway, Pickering, L1V 6K5
9. 75 Consumers Drive, Whitby, L1N 9S2
10. 80 Bloor Street West, Toronto, M5S 1L9
11. 267 Richmond Street West Toronto, M5V 3M6
12. 111 Wellington Street West Toronto, M5J 2S6
13. 319 Yonge Street, Toronto, M5B 1R7

Tab F

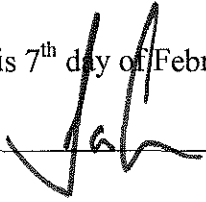
Attached is Exhibit "F"

Referred to in the

Affidavit of Alan Hutchens

Sworn before me

this 7th day of February, 2013



Commissioner for taking Affidavits, etc

April 18, 2012

Delivered Via Courier

Extreme Fitness, Inc.
8281 Yonge Street
Thornhill, ON L3T 2C7

Attention: President

Dear Sir/Madam:

**Re: Indebtedness of Extreme Fitness, Inc. (the "Company") to National Bank of Canada
(the "Bank")**

WHEREAS:

1. The Bank has extended the following credit facilities (collectively, the "**Credit Facilities**") to the Company pursuant to the credit agreement dated May 20, 2011 (the "**Credit Agreement**"). Unless otherwise specified, capitalized terms used herein have the meanings ascribed thereto in the Credit Agreement:
 - (a) Revolving term credit facility limited to the lesser of the principal amount of \$3,000,000 (the "**Principal Limit**") and the amount of the Borrowing Base calculated in accordance with the Credit Agreement (the "**Revolving Facility**"). As of April 16, 2012, the principal amount outstanding under the Revolving Facility was \$4,941,101.46, together with interest and costs (including, without limitation, legal and consultant fees and disbursements). Advances to the Company under the Revolving Facility exceed the maximum amount available thereunder and, accordingly, no further credit is available to the Company under the Revolving Facility;
 - (b) Non-Revolving term loan facility (the "**Term Loan Facility**") in the original principal amount of \$15,000,000. As of April 16, 2012, the principal amount outstanding under the Term Loan Facility was \$13,875,000, together with interest and costs (including, without limitation, legal and consultant fees and disbursements). The Term Loan Facility has been fully advanced by the Bank and no further credit is available thereunder;
 - (c) Non-Revolving term loan facility (the "**Delayed Draw Facility**") in an amount up to \$7,000,000. As of April 16, 2012, there is no amount outstanding under the

Delayed Draw Facility. The Delayed Draw Facility has been terminated by the Bank and no credit is available to the Company thereunder; and

- (d) Business MasterCard Facility (the "**MC Facility**") limited to the maximum principal amount of \$500,000. As of April 16, 2012, the principal amount outstanding under the MC Facility was **\$48,950.04**, together with interest and costs (including, without limitation, legal and consultant fees and disbursements). The MC Facility has been terminated by the Bank and no further credit is available to the Company thereunder.
2. As security for the Company's Obligations (which term includes, for greater certainty, all of the Company's present and future indebtedness and obligations to the Bank under the Credit Facilities), the Company has granted to the Bank security upon all of the real and personal property, assets and undertaking of the Company (the "**Security**"). The Security includes, without limitation, a general security agreement, a securities pledge agreement and a \$50,000,000 fixed and floating charge debenture.
3. Extreme Fitness Holding (Luxembourg) S.À R.L. (the "**Guarantor**") has delivered to the Bank an unlimited guarantee of all of the Company's Obligations. As security for the Guarantor's Obligations, the Guarantor has delivered to the Bank a securities pledge agreement with respect to all securities that it owns in the Company from time to time (the "**Guarantor Pledge Agreement**").
4. Advances to the Company under the Revolving Facility exceed the maximum amount available thereunder by **\$1,941,101.46** (the "**Overdraft**"), with the result that an Event of Default has occurred under section 12.01 of the Credit Agreement (the "**Overdraft Default**").
5. The Bank has been advised by the Company that the Company is, or may be, in default of the terms of the Credit Agreement, including, without limitation, as a result of the following circumstances (collectively, whether or not ascertained by the Company on the date hereof, the "**Reporting Event of Default**" and together with the Overdraft Default, the "**Existing Events of Default**"):
 - (a) the Company's audited financial statements for the fiscal years 2009 and 2010 and unaudited financial statements delivered prior to April 17, 2012 may contain material misstatements regarding the Company's earnings during each such fiscal year, with the result that a Material Adverse Effect may have occurred.
6. The Bank has not waived the Existing Events of Default (and the Existing Events of Default are hereby specifically reserved and preserved) but, subject to the terms of this Agreement, the Bank hereby agrees to forbear from demanding payment under the Credit Facilities or enforcing its rights and remedies (including, without limitation, by sweeping and/or applying funds of the Company to reduce the Company's Obligations) with respect to the Existing Events of Default and any other Event of Default that (i)

occurs prior to the Forbearance Deadline, and (ii) does not also constitute a Forbearance Terminating Event (as described in paragraph 37).

7. The Company has requested that the Bank forbear from enforcing its rights and remedies at this time and that it provide certain accommodations to the Company to permit the Company to continue its operations and conduct an orderly sale of its assets and operations in order to permanently repay the Credit Facilities in accordance with the terms hereof.
8. In consideration of the Bank's forbearance as described herein and the other accommodations described herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby irrevocably acknowledged by the Company and the Guarantor, the Company and the Guarantor hereby agree with the Bank as follows.

ACKNOWLEDGEMENT

9. Each of the Company and the Guarantor acknowledges that, to the best of its knowledge, recital 5 is true and correct and that each of the remaining recitals is true and correct.
10. The Company and the Guarantor acknowledge that, unless otherwise specified, all monetary amounts are expressed in Canadian dollars.
11. Pursuant to the provisions of the *Limitations Act, 2002*, the Company and the Guarantor acknowledge that the Company is indebted to the Bank under the Credit Facilities in the amounts specified in paragraph 1 of this Agreement as at the date specified therein, together with interest and costs (including, without limitation, legal and consultant fees and disbursements) to the date of payment.
12. The Company and the Guarantor acknowledge that although the Maturity Date under the Credit Facilities is May 20, 2015, given the terms of the Credit Agreement and the occurrence of the Overdraft Default, the Bank is (and, in the case of the Reporting Event of Default, may be) entitled to terminate the Credit Facilities, demand payment of the Company's and the Guarantor's Obligations and take steps to enforce the Security.
13. The Company acknowledges and agrees that all security now held by the Bank for the indebtedness and obligations of the Company to the Bank under the Credit Facilities, including, without limitation, the Security, is valid, binding and enforceable in accordance with its terms, and that the Company has no defences, counterclaims or rights of set-off or reduction to any claims which might be brought by the Bank thereunder, notwithstanding the provisions of the *Limitations Act, 2002*.
14. The Guarantor acknowledges and agrees that all security now held by the Bank for the indebtedness and obligations of the Guarantor to the Bank under the Guarantee,

including, without limitation, the Guarantor Pledge Agreement, is valid, binding and enforceable in accordance with its terms, and that the Guarantor has no defences, counterclaims or rights of set-off or reduction to any claims which might be brought by the Bank thereunder, notwithstanding the provisions of the *Limitations Act*, 2002.

CONDITIONS PRECEDENT

15. The forbearance and other accommodations granted by the Bank hereunder shall become effective at the time and day that the following items are received by the Bank, and all escrow arrangements are released (the "**Closing**"), provided that Closing shall take place on or before April 19, 2012:
- (a) this Agreement, duly authorized and executed by the Company and the Guarantor;
 - (b) a rolling thirteen (13) week cash flow forecast for the Company (the "**Forecast**");
 - (c) a duly authorized and executed agreement from Falconhead Capital, LLC ("**Falconhead**") and Golub Capital Incorporated, as Agent ("**Golub**" and, together with Falconhead, the "**Priority Lenders**") pursuant to which each such party severally agrees to reimburse the Bank for one half of the amount by which the Overdraft has increased (or will increase as the cheques referred to in such agreement are cleared) in order to fund the April 12 Payroll (as defined and described below), being approximately \$452,000;
 - (d) confirmation in form satisfactory to the Bank that the Priority Credit Facility (as defined below) has been made available to the Company by the Priority Lenders on the terms described below and that credit is available under the Priority Credit Facility sufficient to fund the Company's working capital needs pursuant to the Forecast;
 - (e) a duly authorized and executed agreement between the Bank, the Company and the Priority Lenders satisfactory to each such party confirming that, other than as provided with respect to payment to the Bank of any Diverted Funds, Insurance Proceeds and the Paymentech Funds (each as defined below), payment of the Company's indebtedness to the Priority Lenders under the Priority Credit Facility up to the maximum amount of \$8,000,000 plus interest and costs (including, without limitation, reasonable expenses, reasonable legal fees and disbursements) (the "**PCF Maximum**") shall rank in priority to payment of the Company's Obligations and that any security therefor ranks in priority to the Security only to the extent of the amount outstanding under the Priority Credit Facility;
 - (f) [Intentionally Deleted]

- (g) confirmation that the Subordinate Lenders (as defined below) have entered into a forbearance agreement with the Company on terms satisfactory to the Bank, (together, the "**Conditions Precedent**").

The Conditions Precedent are for the sole benefit of the Bank and may be waived only by the Bank in writing. If the Conditions Precedent are not complied with to the satisfaction of the Bank by Closing and the Bank will not waive satisfaction thereof, then the offer of forbearance and the other accommodations offered by the Bank hereunder shall be terminated.

Upon satisfaction of the Conditions Precedent, unless a Forbearance Terminating Event (as defined herein) occurs under this Agreement, the Bank shall take no further steps prior to October 31, 2012 (the "**Forbearance Deadline**") to demand payment under the Credit Facilities or to enforce its rights and remedies (including, without limitation, by sweeping and/or applying funds of the Company to reduce the Company's Obligations).

AMENDMENTS TO CREDIT FACILITIES

16. Notwithstanding the existence of the Overdraft, the Company and the Priority Lenders requested, and the Bank made, additional Advances under the Revolving Facility in an amount sufficient to permit the Company to pay its payroll due April 12, 2012 (the "**April 12 Payroll**") in the total amount of approximately \$452,000. Immediately following the foregoing Advance, the Revolving Facility was terminated and no further credit shall be made available to the Company thereunder. The Bank acknowledges that the Priority Lenders have reimbursed the Bank the amount of the April 12 Payroll and, accordingly, the obligations of the Priority Lenders to reimburse such amounts to the Bank under a letter dated April 12, 2012 have been satisfied in full and released.
17. During the term of this Agreement, interest shall accrue and the Company will continue to pay to the Bank all regularly scheduled payments of interest (but not principal or scheduled amortization amounts) in respect of the Credit Facilities at the non-default rate (the Bank's Prime Rate plus 3% per annum, being the Applicable Margin, without any increase thereto arising from the Existing Events of Default), whether from funds available to the Company from its operations, the Priority Credit Facility or otherwise. Upon the occurrence of a Forbearance Terminating Event or the Forbearance Deadline, interest shall accrue and be payable by the Company on the Company's Obligations at the default rate under the Credit Agreement (the Bank's Prime Rate plus 5% per annum). If the Company is able to fund its working capital needs from its cash receipts such that it does not require any funding from the Priority Lenders pursuant to the Priority Credit Facility, then the Company shall deposit to and maintain in its accounts with the Bank all cash flow of the Company in excess of the amount required, as determined by the Company FA, to fund its working capital needs.

18. The Company has advised the Bank that the suspected misstatement of the Company's audited financial statements appears to be attributable to one or more employees of the Company falsifying the Company's financial records. The Company is not aware at this point if such employees or any other party diverted any of the Company's cash or other assets to an account in the name of the Company which has not been disclosed to the Bank, to an account in the employees' own names or otherwise to a third party (collectively, "**Diverted Funds**"). The Company agrees that it shall use reasonable efforts to locate and obtain possession of any Diverted Funds. If the Company obtains possession of any Diverted Funds or receives any employee crime or business interruption insurance proceeds (the "**Insurance Proceeds**"), it shall immediately deposit such Diverted Funds and Insurance Proceeds to its accounts with the Bank. The Company shall apply all Insurance Proceeds as follows:

- (a) 50% of all Insurance Proceeds shall be applied in permanent reduction of the Overdraft and 50% of all Insurance Proceeds shall be applied in reduction of the Priority Credit Facility, until such time as the Overdraft is permanently repaid;
- (b) Following permanent repayment of the Overdraft, all Insurance Proceeds shall be applied by the Company in reduction of the Company's obligations under the Priority Credit Facility and thereafter retained by the Company in its accounts with the Bank and utilized by the Company for working capital.

The Company shall apply all Diverted Funds as follows:

- (a) 50% of all Diverted Funds shall be applied in permanent reduction of the Overdraft and 50% of all Diverted Funds shall be applied in reduction of the Company's obligations under the Priority Credit Facility, until such time as the Overdraft is permanently repaid;
- (b) Upon permanent repayment of the Overdraft, 50% of all Diverted Funds shall be applied by the Company in permanent reduction of the Company's Obligations under the Revolving Facility and 50% of all Diverted Funds shall be applied in reduction of the Company's obligations under the Priority Credit Facility until such time as the Company's obligations under the Priority Credit Facility are permanently repaid. Thereafter, Diverted Funds shall be retained by the Company in its accounts with the Bank and utilized by the Company for working capital.

19. Certain of the Advances to the Company under the Credit Facilities have been utilized by the Company to deposit cash collateral (the "**Paymentech Funds**") with Chase Paymentech Canada, which processes credit card payments for the Company. If the Company obtains possession of some or all of the Paymentech Funds that are permanently released by Paymentech and not needed as cash collateral for a

replacement service provider to process credit card payments for the Company, it shall immediately deposit such Paymentech Funds to its accounts with the Bank and utilize such funds to firstly permanently reduce the Company's Obligations under the Overdraft and thereafter to permanently reduce the Company's obligations under the Priority Credit Facility and thereafter the Credit Facilities.

PRIORITY CREDIT FACILITY

20. On or before Closing, the Priority Lenders shall execute and deliver an agreement establishing an uncommitted, fully discretionary, multi-advance credit facility in favour of the Company in the aggregate maximum principal amount of USD \$6,000,000 (the "**Priority Credit Facility**"). Pursuant to an agreement to be entered into between the Priority Lenders and the Bank, repayment by the Company of advances under the Priority Credit Facility shall rank in priority to repayment of the Company's Obligations in all circumstances as shall the security held in respect of same to the extent of the amounts outstanding under the Priority Credit Facility. The Priority Credit Facility shall be payable upon demand by the Priority Lenders. Advances under the Priority Credit Facility shall bear interest at the rate of 8.0% per annum, payable monthly in arrears. The Company shall also pay an unused line fee of 0.75% on the portion of the Priority Credit Facility that remains undrawn. The Priority Credit Facility shall be utilized by the Company to fund its working capital needs in accordance with the most recent Forecast approved by the Priority Lenders. The Priority Lenders may, in their discretion, increase the principal amount available under the Priority Credit Facility to an amount not exceeding USD \$8,000,000, in which case notice thereof shall be given to the Bank.

APPOINTMENT OF CONSULTANT

21. The Company consents to the appointment of FTI Consulting as the Bank's consultant (the "**Consultant**") for the purpose of reviewing the Company's financial performance, compliance with the Forecast and the Bank's security position. The Company shall provide the Consultant full cooperation and access to its business premises and financial records and shall provide to the Consultant such information regarding the financial position of the Company or the security position of the Bank as the Consultant may require from time to time. The Company acknowledges and agrees that all of the fees and disbursements of the Consultant shall be paid by the Company from its receipts or the proceeds of the Priority Credit Facility in accordance with the Forecast. The Bank will advise the Company in the event that the amount of the Consultant's unbilled fees and disbursements exceeds \$25,000. The Bank will provide to the Company and to the Priority Lenders a copy of the factual portion of any written report delivered by the Consultant to the Bank, but not any conclusions or recommendations provided to the Bank by the Consultant, subject to a non-reliance letter or such other terms as may be requested by the Consultant.
22. The Bank consents to the retainer by Aird & Berlis LLP (legal counsel to the Company) of Alvarez & Marsal as the Company's financial advisor (the "**Company FA**") for the

purpose of assisting the Company in developing and adhering to the Forecast, developing a process to market and sell the Company's assets and to address the existing and any additional irregularities uncovered with respect to the Company's financial reporting. The Bank acknowledges that the fees and disbursements of the Company FA shall be paid by the Company from its receipts or the proceeds of the Priority Credit Facility in accordance with the Forecast. The Company authorizes and directs the Company FA to provide any financial reporting or other information regarding the Company which the Bank may request from time to time, including, without limitation, copies of any and all reports prepared by the Company FA in connection with the foregoing engagement. The Company authorizes and directs the Company FA to immediately notify the Bank in the event that a Forbearance Terminating Event (as defined below) occurs or, with the passage of time, will occur. The Company waives any and all duty of confidentiality which the Company FA may owe the Company arising from the disclosure of the foregoing information or documentation to the Bank. The Company or the Company FA will deliver to the Bank a copy of any written report delivered by the Company FA to the Company.

SALE OF THE COMPANY'S ASSETS

23. The Company shall develop in conjunction with the Company FA a process to market and sell in an orderly fashion the Company's assets and business operations prior to the Forbearance Deadline (the "**Sale Process**"). The Company FA shall deliver to the Bank a draft timeline for the Sale Process as soon as possible. The Company will provide updates to the Bank and to the Consultant regarding the terms and status of the Sale Process as required by the Bank. Without limiting the foregoing, the Company covenants in favour of the Bank to enter into a transaction to sell all of its assets and business operations in an amount sufficient to permanently and indefeasibly repay the Company's Obligations on or before the Forbearance Deadline.
24. During the period from the date of this Agreement until the Forbearance Deadline, none of the Company's assets may be sold out of the ordinary course of business without the specific consent of the Bank, which may be withheld in the Bank's sole discretion. The Company shall apply any proceeds received by the Company from a sale of the Company's assets out of the ordinary course of business, as authorized by the Bank, as a permanent reduction firstly of the Priority Credit Facility and thereafter the Company's Obligations.
25. The Company agrees that it shall not, without the prior written consent of the Bank, discount or otherwise compromise the amount of any account receivable payable to the Company or otherwise compromise or reduce any amount owing to the Company by a third party, except as may be prudently required in the ordinary course of business. Other than normal course maintenance expenditures, the Company shall not make any new capital expenditures prior to the Forbearance Deadline.

26. The Company covenants in favour of the Bank that it shall not grant any new charge upon or otherwise create any new encumbrance upon any of its assets, including any real property owned by the Company, without the Bank's prior written consent. The Company and the Bank confirm that funds provided by the Priority Lenders under the Priority Credit Facility shall be secured by the existing security granted by the Company to Golub Capital Incorporated, as agent, under the loan documentation referred to in the intercreditor agreement described in paragraph 32.

REPORTING REQUIREMENTS

27. During the period commencing on the date hereof and ending on the termination of the forbearance period established in this Agreement, the Company shall only be obliged to comply with the reporting requirements set out in this Agreement, including, without limitation, the following:
- (a) a weekly update of the Forecast, as described in paragraph 29 below; and
 - (b) delivery to the Bank of the Company's restated 2009 and 2010 year-end financial statements and financial statements for 2011 once same are available.
28. The Company hereby agrees to provide the Bank or its agents with any information regarding the Credit Facilities, the financial position of the Company or the security position of the Bank which the Bank may request from time to time. Without limiting the foregoing, the Company shall immediately advise the Bank if the Company will be unable to close a sale transaction on or before the Forbearance Deadline or if the proceeds thereunder will not be sufficient to permanently and indefeasibly repay the Company's Obligations on or before the Forbearance Deadline.
29. On or before 2:00 p.m. on the Tuesday of each week for the 1 week period ending the immediately preceding Friday, the Company shall deliver to the Bank an update of the Forecast for the following thirteen (13) weeks or such other period of time as the Bank may require. The Bank shall provide a grace period not exceeding two business days for the delivery of each Forecast if and to the extent such grace period is reasonably required by the Company. As part of the update to be delivered to the Bank, the Company shall provide to the Bank a report comparing actual cash flows, sales, and closing cash of the Company for the preceding week or such other period as the Bank may require to amounts budgeted in the Forecast and providing an explanation of any "Material Variance". A "Material Variance" shall be:
- (a) a ten percent (10%) or greater negative variance from the Forecast in the Company's closing cash for any given week; and
 - (b) a ten percent (10%) or \$20,000 or greater negative variance from the Forecast in the Company's sales, total cash receipts and disbursements for any given week.

CLOSING OF THE COMPANY'S CURRENT ACCOUNTS

30. The Company's current accounts with the Bank (the "**Accounts**") shall be closed upon the permanent repayment of the Company Obligations. The date upon which the Accounts are closed shall be referred to as the "**Account Closing Date**".
31. The Company acknowledges that the Company's Obligations include the Company's contingent liability to the Bank in respect of any chargebacks which may arise as a result of cheques or other instruments deposited to the Accounts prior to the Account Closing Date being dishonoured, discredited, reversed or returned (collectively, the "**Chargeback Liability**"). The amount of the Chargeback Liability as reasonably determined by the Bank shall be added to and form part of the Company's Obligations and shall be paid to the Bank concurrent with the permanent repayment and cancellation of the Credit Facilities, subject to reimbursement to the Company by the Bank in the event that some or all of such Chargeback Liability is extinguished or otherwise satisfied.

ADDITIONAL COVENANTS

32. Until such time as the obligations under the Priority Credit Facility and the Company's Obligations have been permanently repaid, the Company shall make no payments, whether by way of dividend, repayment of loans, fees or otherwise, to the shareholders of the Company or any party related, within the meaning of the *Business Corporations Act* (Ontario) ("**OBCA**"), to the Company, to Falconhead, Golub or any party related thereto (including, without limitation, the Subordinate Lenders as defined under that certain Intercreditor Agreement dated as of May 20, 2011 (the "**Sub-Debt Intercreditor Agreement**") between the Bank, Golub Capital Incorporated as Subordinate Agent and Golub Capital BDC, Inc., Golub Capital Loan Trust 2005-1, Golub International Loan Ltd. 1, Golub Capital Partners Funding 2007-1 Ltd. and Whitehall Capital Corporation), other than the "**Permitted Payments**", which shall consist of the following (i) the permitted monthly payments of interest and standby fees accruing with respect to the Priority Credit Facility, (ii) all payments in respect of Insurance Proceeds, Diverted Payments and Paymentech Funds permitted hereunder; (iii) Golub's legal fees and other out-of-pocket expenses incurred in connection with this Agreement, the Priority Credit Facility, the forbearance agreement requested by the Company from Golub, as agent for the Subordinate Lenders, the Sub-Debt Intercreditor Agreement and related matters, (iv) concurrently with closing of the sale contemplated in paragraph 23, all principal, accrued interest and expenses owing under the Priority Credit Facility to the PCF Maximum, and (v) Falconhead's legal fees and other out-of-pocket expenses incurred in connection with this Agreement, the Priority Credit Facility and related matters. Nothing in the foregoing paragraph shall prevent the accrual of PIK interest on

indebtedness owing to the Subordinate Lenders, provided that no payment on account of amounts owing to the Subordinate Lenders shall be made by the Company in priority to repayment of the Priority Credit Facility and thereafter the Company's Obligations.

33. The Company confirms that there shall be no change of ownership or control of the Company, as such concept is defined in the OBCA, until the Company's Obligations have been permanently repaid or with the prior consent of the Bank.
34. The Company shall pay when due all wages or other monetary remuneration payable by the Company to its employees under the terms of any contract of employment, oral or written, express or implied (the "Payroll") and all amounts payable to the Canada Revenue Agency with respect to the Payroll (the "Employee Source Deductions").
35. The Company represents, warrants, covenants and agrees that all business in the nature of or related to the business transacted by the Company prior to the date hereof shall continue to be transacted in the name of and for the account of the Company at the Bank. In particular, no such business or transaction shall be performed in the name of or recorded or applied for the benefit of any person, firm or corporation other than the Company. As set out herein, the Company acknowledges and agrees that the Company shall deposit all revenues, collections of accounts receivable and any other income generated by the Company to the Accounts. Notwithstanding the foregoing, the Bank acknowledges and agrees that the Company may continue to utilize its Canadian dollar account with RBC (the "RBC Account") as a deposit-only account to receive pre-authorized payments from RBC. The Company shall immediately terminate all pre-authorized debits with respect to the RBC Account. On each banking day, the Company shall transfer any funds standing to the credit of the Company in the RBC Account to the Accounts. The Company shall not issue cheques or any other form of payment from the RBC Account except to the Accounts. On or before April 24, 2012, the Company shall pay to the Bank in permanent reduction of the Overdraft the sum of \$81,158, being the amount of funds on deposit in the name of the Company in the RBC Account prior to April 12, 2012, less the holdback required by RBC.
36. The Company acknowledges that the Bank has requested that the position of each unsecured creditor of the Company will not be adversely affected during the term of this Agreement, subject to the Company's usual business practices.

FORBEARANCE TERMINATING EVENTS

37. The Bank may terminate its forbearance established under this Agreement following the occurrence of any of the following events (each, a "Forbearance Terminating Event"):
 - (a) any default or breach by the Company occurs under this Agreement, provided that three (3) Business Days' prior written notice of the occurrence of such default or breach is delivered by the Bank to the Company and each of the Priority Lenders;

- (b) if the Priority Credit Facility is terminated, or if the Priority Lenders do not advance funds under the Priority Credit Facility sufficient to meet the Company's working capital needs in accordance with the most recent Forecast;
- (c) if the Subordinate Lenders or any of them terminate their forbearance against the Company or otherwise take steps to enforce any of their rights and remedies against the Company or any of its property, assets or undertaking;
- (d) subject to this Agreement, if any other creditor of the Company exercises or purports to exercise any rights against all or substantially all of the property, assets or undertaking of the Company and such proceedings are not stayed on terms and in a manner satisfactory to the Bank or if the Company or any creditor brings any proceeding or takes any other action under the BIA, the *Companies' Creditors Arrangement Act* (Canada), the *Business Corporations Act* of Ontario or Canada, the *Winding-Up and Restructuring Act* (Canada) or any similar legislation with respect to the Company;
- (e) if any steps are taken by the Company or a third party to wind up or dissolve the Company without the prior written consent of the Bank;
- (f) if the Company makes any representations or delivers any financial reporting to the Bank after the date of this Agreement which the Company actually knows is false, misleading, inaccurate or incorrect in any material respect at the time such representation or financial reporting information is made or delivered to the Bank;
- (g) if any representation or warranty made by the Company in this Agreement was actually known by the Company to have been incorrect in any material respect at the time such representation or warranty was made; and
- (h) any default or failure by the Company to make each Payroll on its regularly scheduled due date, or to remit the required amount of Employee Source Deductions on such Payroll to the Canada Revenue Agency.

38. Upon the earlier of:

- (a) the Forbearance Deadline, or
- (b) the occurrence of a Forbearance Terminating Event,

the Bank may immediately enforce, without further notice or delay, all of its rights and remedies against the Company and the Guarantor, including, without limitation, by terminating the Credit Facilities, demanding payment of the Credit Facilities and taking steps to enforce the Security held by the Bank from the Company and the Guarantor and apply any amounts standing to the credit of the Company and any account or accounts with the Company as a set-off or in combination of the Company's Obligations.

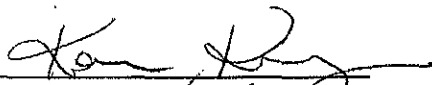
Upon the occurrence of a Forbearance Terminating Event or the Forbearance Deadline, the Company consents and specifically authorizes the Bank or its authorized representatives to contact any customer, creditor, employee, licensor, counterparty to any contract to which the Company is a party, licensing authority or any other person in respect of the Company, the Company's indebtedness to the Bank or any other matter or thing related to the business operations of the Company or any other matter deemed relevant by the Bank for the purpose of recovering the Company's indebtedness to the Bank. For the purpose of the foregoing provision, the Company specifically waives any duty of confidentiality which either the Bank or its agents now have or may in the future have with respect to the Credit Facilities, the Company's indebtedness to the Bank, the business operations of the Company or any other information, whether confidential or otherwise, in the possession of the Bank relating to the business or operations of the Company or the Company's indebtedness to the Bank.


39. The Company hereby irrevocably agrees upon request by the Bank, to duly execute or deliver or cause to be executed or delivered to the Bank such further instruments, agreements or similar documents or do or cause to be done such further acts as may be necessary or desirable in the opinion of the Bank, acting reasonably, to carry out the provisions of this Agreement.
40. All terms and conditions of the Credit Agreement and the Security shall continue in full force and effect save and except as amended by this Agreement. To the extent that any provision thereof is inconsistent with this Agreement, this Agreement shall prevail.
41. Time shall be of the essence of this Agreement and this Agreement shall be governed by the laws of the Province of Ontario.
42. This Agreement may be executed by facsimile or by electronic mail (PDF) (with an original to follow the next business day) and in counterparts, which counterparts taken together shall evidence an agreement as of the date first set out above.
43. The Company agrees to pay all actual present and future legal, Consultant and agent fees and disbursements incurred by the Bank in respect of or in any way related to the Company including, without limitation, the Bank's legal fees in connection with the preparation and enforcement of this Agreement. The Company shall pay the amount of any such legal, Consultant and agent fees and disbursements from its receipts or from the funds available under the Priority Credit Facility on a monthly basis.
44. Golub and Falconhead may also rely upon, and shall have the benefit of, the terms and conditions this Agreement in establishing and funding the Priority Credit Facility.

DATED April 18, 2012.

IN WITNESS WHEREOF the parties have executed this Agreement.

NATIONAL BANK OF CANADA

Per: 
Karen Koury

Per: 
Sonia de Lorenzi

EXTREME FITNESS, INC.

Per: _____
Name:
Title:

(I have authority to bind the Corporation)

EXTREME FITNESS HOLDING (LUXEMBOURG) S.À R.L.

Per: _____
Name:
Title:

(I have authority to bind the Corporation)

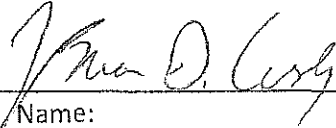
DATED April 18, 2012.

IN WITNESS WHEREOF the parties have executed this Agreement.

NATIONAL BANK OF CANADA

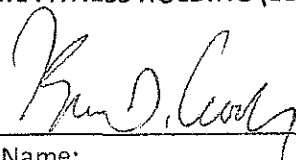
Per: _____
Karen Koury

EXTREME FITNESS, INC.

Per: 
Name:
Title:

(I have authority to bind the Corporation)

EXTREME FITNESS HOLDING (LUXEMBOURG) S.À R.L.

Per: 
Name:
Title:

(I have authority to bind the Corporation)

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 EXTREME FITNESS, INC.

Court File No. CV-13-1000-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**APPLICATION RECORD
(PART 1 OF 2)**

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Lawyers for Extreme Fitness, Inc.