

**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 2 OF 2)  
(returnable February 7, 2013)**

**AIRD & BERLIS LLP**  
Barristers and Solicitors  
Brookfield Place  
181 Bay Street, Suite 1800  
Toronto, Ontario M5J 2T9

**Steven L. Graff (LSUC # 31871V)**  
Tel: 416.865.7726  
Fax: 416.863.1515  
Email: [sgraff@airdberlis.com](mailto:sgraff@airdberlis.com)

**Ian Aversa (LSUC # 55449N)**  
Tel: 416.865.3082  
Fax: 416.863.1515  
Email: [iaversa@airdberlis.com](mailto:iaversa@airdberlis.com)

**James A. Desjardins (LSUC # 62493E)**  
Tel: 416.865.4641  
Fax: 416.863.1515  
Email: [jdesjardins@airdberlis.com](mailto:jdesjardins@airdberlis.com)

*Lawyers for Extreme Fitness, Inc.*

# Index

**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**

**TABLE OF CONTENTS**

|   | <b>TAB NO.</b> |
|---|----------------|
| Notice of Application   | 1              |
| Draft Initial Order   | 2              |
| Draft Initial Order blacklined to Model Initial Order                           | 3              |
| Affidavit of Alan Hutchens sworn February 7, 2013                               | 4              |
| Exhibit "A" - Corporation information report for the Applicant                  | A              |
| Exhibit "B" - Organizational chart  | B              |
| Confidential Exhibit "C" - 2011 and 2012 Q3 unaudited financial statements      | C              |
| Exhibit "D" - National Bank Credit Agreement dated May 20, 2011                 | D              |
| Exhibit "E" - National Bank General Security Agreement dated May 20, 2011       | E              |
| Exhibit "F" - National Bank Forbearance Agreement dated April 18, 2012          | F              |
| Exhibit "G" - Golub Amended and Restated Credit Agreement<br>dated May 20, 2011 | G              |
| Exhibit "H" - Golub General Security Agreement dated June 15, 2006              | H              |
| Exhibit "I" - Golub Forbearance Agreement dated April 18, 2012                  | I              |

|  |   |
|--|---|
| Exhibit "J" - Priority Credit Agreement dated April 18, 2012                     | J |
| Exhibit "K" - Golub Intercreditor Agreement dated April 18, 2012                 | K |
| Exhibit "L" - National Bank / Golub Intercreditor Agreement dated April 18, 2012 | L |
| Exhibit "M" - PPSA search summary  | M |
| Exhibit "N" - Paymentech Agreement dated February 2, 2011                        | N |
| Confidential Exhibit "O" - Financial summary of ISQ offers                       | O |
| Confidential Exhibit "P" - GoodLife LOI dated January 18, 2013                   | P |
| Exhibit "Q" - Cash Flow Projection   | Q |
| Exhibit "R" - DIP Credit Agreement   | R |
| Consent of the Proposed Monitor  | 5 |

# Tab G

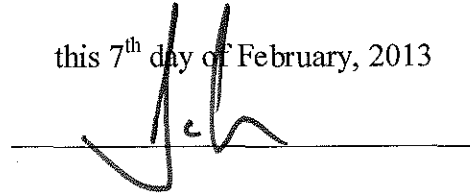
Attached is Exhibit "G"

Referred to in the

Affidavit of Alan Hutchens

Sworn before me

this 7<sup>th</sup> day of February, 2013

A handwritten signature in black ink, appearing to be "J. C. H.", is written over a horizontal line. The signature is stylized and cursive.

Commissioner for taking Affidavits, etc

**AMENDED AND RESTATED CREDIT AGREEMENT**

**BETWEEN**

**EXTREME FITNESS, INC.  
as Borrower**

**AND**

**GOLUB CAPITAL INCORPORATED  
as Administrative Agent**

**AND**

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

**MADE AS OF**

**MAY 20, 2011**

**TABLE OF CONTENTS**

|  |    |
|--|----|
| ARTICLE 1 - INTERPRETATION .....               | 2  |
| 1.01 Definitions.....                          | 2  |
| 1.02 Headings .....                            | 21 |
| 1.03 Accounting Practices .....                | 21 |
| 1.04 Permitted Encumbrances .....              | 21 |
| 1.05 Currency.....                             | 21 |
| 1.06 Paramountcy .....                         | 22 |
| 1.07 Non-Business Days.....                    | 22 |
| 1.08 Interest Payments and Calculations .....  | 22 |
| 1.09 Determinations By the Borrower.....       | 23 |
| 1.10 Schedules .....                           | 23 |
| <br>   |    |
| ARTICLE 2 – THE LOANS.....                     | 24 |
| 2.01 The Term Loan .....                       | 24 |
| 2.02 Purpose of Loan.....                      | 24 |
| 2.03 Reserved.....                             | 24 |
| 2.04 Reserved.....                             | 24 |
| 2.05 Reserved.....                             | 24 |
| 2.06 Reserved.....                             | 24 |
| 2.07 Reserved.....                             | 24 |
| 2.08 Reserved.....                             | 24 |
| 2.09 Reserved.....                             | 24 |
| <br>   |    |
| ARTICLE 3 - CONDITIONS PRECEDENT.....          | 24 |
| 3.01 Conditions Precedent .....                | 24 |
| 3.02 Reserved.....                             | 27 |
| 3.03 Reserved.....                             | 27 |
| 3.04 Waiver.....                               | 27 |
| <br>   |    |
| ARTICLE 4 - EVIDENCE OF LOANS.....             | 27 |
| 4.01 Account of Record.....                    | 27 |
| <br>   |    |
| ARTICLE 5 - PAYMENTS OF INTEREST AND FEES..... | 27 |
| 5.01 Interest on the Loans.....                | 27 |
| 5.02 No Set-Off, Deduction etc. ....           | 28 |
| 5.03 Fees .....                                | 28 |
| 5.04 Reserved.....                             | 28 |
| 5.05 Default Interest.....                     | 28 |
| <br>   |    |
| ARTICLE 6 - RESERVED.....                      | 29 |
| <br>   |    |
| ARTICLE 7 – REPAYMENT .....                    | 29 |
| 7.01 Reserved.....                             | 29 |
| 7.02 Mandatory Repayment at Maturity.....      | 29 |
| 7.03 Reserved.....                             | 29 |



|  |   |    |
|--|---|----|
| 7.04   | Voluntary Prepayments.....                                | 29 |
| 7.05   | Mandatory Repayments on Proceeds of Debt Issues.....      | 29 |
| 7.06   | Mandatory Repayments on Proceeds of Equity Issuances..... | 29 |
| 7.07   | Mandatory Repayment on Dispositions.....                  | 30 |
| 7.08   | Mandatory Repayments from Proceeds of Insurance.....      | 30 |
| 7.09   | Cash Flow Sweep.....                                      | 30 |
| 7.10   | Offer and Acceptance.....                                 | 31 |
| 7.11   | Net Payments.....   | 31 |
| 7.12   | Mandatory Repayments Upon a Change of Control.....        | 31 |
| 7.13   | No Acquisition of Loan.....                               | 32 |
| 7.14   | No Implied Consent.....                                   | 32 |
| ARTICLE 8 - PLACE AND APPLICATION OF PAYMENTS..... |   | 32 |
| 8.01   | Place of Payment of Principal, Interest and Fees.....     | 32 |
| 8.02   | Netting of Payments.....                                  | 33 |
| ARTICLE 9 - REPRESENTATIONS AND WARRANTIES.....    |   | 33 |
| 9.01   | Representations and Warranties.....                       | 33 |
| 9.02   | Reserved.....   | 42 |
| ARTICLE 10 - COVENANTS.....                        |   | 42 |
| 10.01  | Positive Covenants.....                                   | 42 |
| 10.02  | Financial Covenants.....                                  | 48 |
| 10.03  | Reporting Requirements.....                               | 51 |
| 10.04  | Negative Covenants.....                                   | 52 |
| ARTICLE 11 - SECURITY.....                         |   | 57 |
| 11.01  | Form of Security.....                                     | 57 |
| 11.02  | Insurance.....  | 58 |
| 11.03  | After Acquired Property and Further Assurances.....       | 58 |
| 11.04  | Application of Proceeds of Security.....                  | 58 |
| 11.05  | Security Charging Real Property.....                      | 58 |
| ARTICLE 12 - DEFAULT.....                          |   | 58 |
| 12.01  | Events of Default.....                                    | 58 |
| 12.02  | Acceleration and Termination of Rights.....               | 61 |
| 12.03  | Reserved.....   | 62 |
| 12.04  | Remedies Cumulative and Waivers.....                      | 62 |
| 12.05  | Reserved.....   | 62 |
| 12.06  | Saving.....   | 62 |
| 12.07  | Perform Obligations.....                                  | 62 |
| 12.08  | Third Parties.....  | 63 |
| 12.09  | Set-Off or Compensation.....                              | 63 |
| 12.10  | Realization of Security.....                              | 63 |
| 12.11  | Application of Payments.....                              | 63 |
| 12.12  | Consultant.....   | 64 |

|   |    |
|---|----|
| ARTICLE 13 - THE AGENT AND THE LENDERS.....                           | 64 |
| 13.01 Payments by the Borrower.....                                   | 64 |
| 13.02 Knowledge and Required Action.....                              | 64 |
| 13.03 Request for Instructions.....                                   | 65 |
| 13.04 Actions by Lenders.....   | 65 |
| 13.05 Provisions for Benefit of Lenders Only.....                     | 66 |
| 13.06 Payments by Agent.....  | 66 |
| 13.07 Acknowledgements, Representations and Covenants of Lenders..... | 67 |
| 13.08 Rights of Agent.....  | 68 |
| 13.09 Reserved.....   | 69 |
| ARTICLE 14 - GENERAL.....   | 69 |
| 14.01 Exchange and Confidentiality of Information.....                | 69 |
| 14.02 Nature of Obligations under this Agreement.....                 | 69 |
| 14.03 Addresses, Etc. for Notices.....                                | 69 |
| 14.04 Governing Law and Submission to Jurisdiction.....               | 69 |
| 14.05 Judgement Currency.....   | 69 |
| 14.06 Benefit of the Agreement.....                                   | 70 |
| 14.07 Survival.....   | 70 |
| 14.08 Severability.....   | 70 |
| 14.09 Whole Agreement.....  | 71 |
| 14.10 Further Assurances.....   | 71 |
| 14.11 Time of the Essence.....  | 71 |
| 14.12 Delivery by Facsimile Transmission.....                         | 71 |
| 14.13 Fondé de Pouvoir.....   | 71 |
| 14.14 Anti-Money Laundering Legislation.....                          | 71 |
| 14.15 CBA Model Terms.....  | 72 |
| 14.16 Amendment and Restatement.....                                  | 72 |

**TABLE OF SCHEDULES**

|                   |                                     |
|-------------------|-------------------------------------|
| Schedule AA       | - Model Credit Agreement Provisions |
| Schedule A        | - Lenders and Commitments           |
| Schedule C        | - Repayment Notice                  |
| Schedule D        | - Compliance Certificate            |
| Schedule F        | - Guarantors on Restatement 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

**AMENDED AND RESTATED CREDIT AGREEMENT**

THIS AMENDED AND RESTATED CREDIT 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 -

**GOLUB CAPITAL INCORPORATED**, 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, Holdings (as defined herein), certain Inactive Subsidiaries (as defined herein), the lenders from time to time party thereto (the "**Original Lenders**") and the Agent have entered into a Credit Agreement (the "**Existing Credit Agreement**") dated as of June 15, 2006, as amended by (i) the Limited Waiver and First Amendment to Credit Agreement, dated as of October 25, 2006, (ii) the Limited Consent and Second Amendment to Credit Agreement, dated as of June 1, 2007, (iii) Limited Waiver and Third Amendment to Credit Agreement, dated as of May 11, 2009, and (iv) the Limited Waiver and Fourth Amendment to Credit Agreement, dated as of June 16, 2010;

AND WHEREAS on the date hereof, the Borrower is entering into that certain Credit Agreement, dated as of the date hereof, with certain lenders and National Bank of Canada, as administrative agent, whereby the lenders thereunder have agreed to provide (i) a revolving credit facility in the original principal amount of CD\$3,000,000, (ii) a term facility in the amount of CD\$15,000,000, and (iii) a delayed draw facility in the amount of CD\$7,000,000, together with any agreements, documents and instruments executed in connection with such Credit Agreement (the "**NBC Facility**");

AND WHEREAS as a consequence of the NBC Facility, the Borrower no longer requires a revolving credit facility under the Existing Credit Agreement and has requested that

the Lenders (i) restructure the financing provided under the Existing Credit Agreement to provide solely for a \$16,500,000 term loan facility and (ii) otherwise amend and restate the Existing Credit Agreement as provided herein, and the Lenders are willing restructure the financing provided under the Existing Credit Agreement upon the terms and conditions hereinafter set forth;

AND WHEREAS the parties hereto have agreed to amend and restate the terms and provisions of the Existing Credit Agreement in their entirety on the terms and conditions hereinafter set forth.

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

## ARTICLE 1 - INTERPRETATION

### **1.01**            Definitions

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

**“Acquisition”** shall mean, with respect to any Person, any purchase or other acquisition, regardless of how accomplished or effected (including any such purchase or other acquisition effected by way of amalgamation, merger, arrangement, business combination or other form of corporate reorganization or by way of purchase, lease or other acquisition arrangements), of (a) any other Person (including any purchase or acquisition of such number of the issued and outstanding securities of, or such portion of an Equity Interest in, such other Person) 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.

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

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

**“Agent’s Payment Office”** means the office of the Agent located at 551 Madison Ave, New York, NY 10022, 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.

**“Amended and Restated Guarantee”** has the meaning set forth in Section 11.01(b).

**“Amended and Restated Pledge Agreement”** has the meaning set forth in Section 11.01(c).

**“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 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”**.

**“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.

**“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”** as defined in the Senior Credit Agreement as in effect on the date hereof.

**“Borrowing Base Certificate”** as defined in the Senior Credit Agreement as in effect on the date hereof.

**“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” “CDS” 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 outstanding principal balance of the Loans, 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.

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

**“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 (i) Permitted Holders fail to own, directly or indirectly, at any time fifty and one tenth percent (50.1%) of the Equity Interests of the Borrower, (ii) the failure of Permitted Holders to maintain, directly or indirectly, voting control of the Governing Body of Holdings and the Borrower, (iii) the Borrower fails to own one hundred percent (100%) of the Equity Interests of any Subsidiary thereof, other than as permitted by Section 10.01(24), or (iv) the occurrence of a “Change in Control” or similar event, as defined in any of the Senior Loan Documents or any indenture or other instrument, agreement or other document evidencing or governing any material Debt of any Obligor.

**“Change of Control Premium”** means (i) five percent (5%) of the principal amount of the Loans being prepaid if such prepayment occurs after the Restatement Date and on or prior to the first anniversary of the Restatement Date, (ii) three percent (3%) of the principal amount of the Loans being prepaid if such prepayment occurs after the first anniversary of the Restatement

Date and on or prior to the second anniversary of the Restatement Date, and (iii) zero percent (0%) of the principal amount of the Loans being prepaid if such prepayment occurs thereafter.

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

**"Commitment"** means, in respect of each Lender, the maximum principal amount of the Loans which such Lender has agreed to make as set forth in Schedule A to this Agreement.

**"Compliance Certificate"** means the certificate required pursuant to Section 10.03(3), 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.

**"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.

**“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.

**“Disqualified Equity Interest”** means any Equity Interest which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, (a) matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, in whole or in part, on or prior to the date that is ninety-one (91) days following the Maturity Date (other than solely as a result of the occurrence of an event triggering a Change of Control), (b) is convertible into or exchangeable for (i) debt securities or (ii) any Equity Interests referred to in (a) above, in each case at any time on or prior to the date that ninety-one (91) days following the Maturity Date, or (c) is entitled to receive a dividend or distribution (other than for taxes attributable to the operations of the business) prior to the time that the Obligations are paid in full, or (d) has the benefit of any covenants or agreements that restrict the payment of any of the Obligations or that restrict, in any material way, the operations or business of the Obligors.

**“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 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.

“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 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.

**“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 pursuant to the Senior Debt in accordance with the Intercreditor Agreement; and

(f) the principal component in respect to payments of Capital Leases.

**“Existing Security Documents”** means each document listed on Schedule A of the Omnibus Agreement.

**“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 Obligor and each fitness center of the Obligor and any ancillary operations used in connection therewith.

**“Falconhead”** means Falconhead Capital, LLC, a Delaware limited liability company.

**“Federal Funds Rate”** shall mean, for any day, a floating rate equal to the weighted average of the rates on overnight Federal funds transactions among members of the Federal Reserve System, as determined by Agent.

**“Fee Letter”** means that certain Fee Letter, dated as of December 30, 2010, by and among the Borrower and Agent.

**“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 directors fees paid to directors of 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”** shall mean 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.

**“Guarantors”** means (i) Holdings, and (ii) 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 Restatement Date, are Hals 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, trademarks, trade-mark applications, trade names, service marks, copyrights, copyright registrations and trade secrets including, without limitation, customer lists and information and business opportunities, industrial designs, proprietary software, technology, recipes and formulae and other similar intellectual property rights.

**"Intercreditor Agreement"** means the intercreditor agreement dated as of the Restatement Date between the Agent, the Senior Agent and acknowledged by the Borrower, as such agreement may be amended, restated, supplemented or replaced from time to time in accordance with its terms.

**"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 the first Business Day of each Fiscal Quarter.

**"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.

**"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).

**"Lenders"** means the Persons designated in Schedule A annexed hereto, and includes each of their successors and permitted assigns.

**"Lenders' Counsel"** means the firm of Proskauer Rose LLP and any and all local agent counsel retained by Proskauer Rose LLP for and on behalf of the Agent.

**"Loan"** or **"Loans"** shall mean the Term Loan.

**"Loan Documents"** means (a) this Agreement, the Security Documents, the Omnibus Agreement, the Fee Letter, the Amended and Restated Guarantee, the Amended and Restated Pledge Agreement, all other 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 or prior to the Restatement Date; and (b) 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. For avoidance of doubt and notwithstanding anything herein to the contrary, Loan Documents have not and shall not include any document, agreement, instrument or certificate delivered to the Agent, any Lender, or any other their respective Affiliates, relating exclusively to any Equity Interest held by such Persons in GC Luxco.

**"Majority Lenders"** means Lenders holding an aggregate principal amount of more than 50% of the total aggregate principal amount of the Loans outstanding.

**"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 November 24, 2015.

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

**“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.

**“Obligations”** means, with respect to any Obligor, all of its present and future indebtedness, liabilities and obligations of any and every kind, nature or description whatsoever (whether direct or indirect, joint or several or joint and several, absolute or contingent, matured or unmatured, in any currency and whether as principal debtor, guarantor, surety or otherwise, including without limitation any interest that accrues thereon after or would accrue thereon but for the commencement of any case, proceeding or other action, whether voluntary or involuntary, relating to the bankruptcy, insolvency or reorganization whether or not allowed or allowable as a claim in any such case, proceeding or other action) to each of the Agent, the Lenders (and their Affiliates), and any of them under, in connection with, relating to or with respect to each of the Loan Documents, and any unpaid balance thereof. For avoidance of doubt and notwithstanding anything herein to the contrary, Obligations have not and shall not include any present or future liabilities or obligations of any kind relating exclusively to any Equity Interest held by Agent, any Lender, or any of their respective Affiliates in GC Luxco.

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



**“Omnibus Agreement”** means that certain Omnibus Ratification and Reaffirmation Agreement, dated as of the date hereof, by and between the Agent, the Lenders, and the Obligors, whereby the Obligors ratify and reaffirm the Existing Security Documents.

**“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 or Senior Agent, as applicable in accordance with the Intercreditor Agreement, 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 difference of (i) the Borrowing Base, *minus* (ii) all amounts outstanding on the Revolving Facility (as defined in the Senior Credit Agreement as in effect on the date hereof), is greater than CD\$1,000,000.

**“Permitted Debt” means:**

- (a) Debt under this Agreement;
- (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) Senior Debt in an aggregate amount not to exceed the maximum amount permitted by the definition of "Senior Obligations" in the Intercreditor Agreement; 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; and
- (b) 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 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).
- (c) Directors fees and expenses paid to directors of the Borrower in an aggregate annual amount not to exceed \$75,000 provided that no such Distribution may be made should a Default or Event of Default exist at the time of such Distribution or result therefrom; provided, however, that such fees and expenses may be accrued during the continuation of a Default or Event of Default and paid after such Default or Event of Default is cured or waived in accordance with this Agreement so long as, at the time of such payment, no other Default or Event of Default shall exist or result therefrom; and
- (d) 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.

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

- (e) 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;
- (f) 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;

- (g) 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;
- (h) 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;
- (i) 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;
- (j) 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;
- (k) 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;
- (l) 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 CD\$2,200,000 at any time;
- (m) 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;
- (n) 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;

- (o) the Security;
- (p) Purchase Money Security Interests and Capital Leases, provided that such Encumbrances secure Permitted Debt;
- (q) the Senior Security; and
- (r) such other Encumbrances as agreed to in writing by the Majority Lenders in accordance with this Agreement.

**"Permitted Holder"** shall mean Falconhead Capital Partners II AIV (Offshore), L.P., Falconhead Capital Partners II PIV AIV (Offshore), L.P., Falconhead Capital Reinvestment Fund AIV (Offshore), L.P., EF Holdings (Offshore) L.P. and any investment fund managed by any of the foregoing or any co-investment partnership managed by any of the foregoing funds, or any general partner of any such managed fund or co-investment partnership.

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

**"Prepayment Premium"** means (i) five percent (5%) of the amount of the Loans being prepaid if such prepayment occurs after the first anniversary of the Restatement Date and on or prior to the second anniversary of the Restatement Date, (ii) three percent (3%) of the amount of the Loans being prepaid if such prepayment occurs after the second anniversary of the Restatement Date and on or prior to the third anniversary of the Restatement Date, (iii) one percent (1%) of the amount of the Loans being prepaid if such prepayment occurs after the third anniversary of the Restatement Date and on or prior to the fourth anniversary of the Restatement Date, and (iv) zero percent (0%) of the amount of the Loans being prepaid if such prepayment occurs thereafter.

**"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, the percentage determined by dividing the aggregate principal amount of the Loans held by such Lender by the aggregate principal amount of all Loans.

**"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.

**"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 Restatement Date includes the provinces and states set forth in Schedule 9.01(19) attached hereto.

**“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.

**“Restatement Date”** means May 24, 2011 or such later date as may be agreed to by the parties hereto.

**“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 the Existing Security Documents and Article 11 herein.

**"Security Documents"** means the Existing Security Documents, and the other security documents referred to in Article 11.

**"Senior Agent"** shall have the meaning ascribed to such term in the Intercreditor Agreement.

**"Senior Credit Agreement"** shall have the meaning ascribed to such term in the Intercreditor Agreement.

**"Senior Debt"** shall have the meaning ascribed to the term "Senior Obligations" in the Intercreditor Agreement, and shall also include 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) funded Senior Debt at such time to (b) Capitalization at such time.

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

**"Senior Lenders"** shall have the meaning ascribed to such term in the Intercreditor Agreement.

**"Senior Loan Documents"** shall have the meaning ascribed to the term "Senior Documents" in the Intercreditor Agreement.

**"Senior Security"** shall have the meaning ascribed to such term in the Intercreditor Agreement.

**"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.

**"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 Loan"** shall have the meaning ascribed to such terms in Section 2.01.

**"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 Obligor.

**"US Dollars"** means the lawful money of the United States.

**"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 Obligor 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 US Dollars.



**1.06**      **Paramountcy**

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

**1.07**      **Non-Business Days**

Unless otherwise expressly provided in this Agreement, whenever any payment is stated to be due on a day other than a Business Day, the payment will be made on the immediately following Business Day. 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 C        | -- Repayment Notice                 |
| Schedule D        | - Compliance Certificate            |
| Schedule F        | - Guarantors on Restatement 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 LOANS**

**2.01        The Term Loan**

Subject to and upon the terms and conditions set forth herein, on the Restatement Date the Lenders shall continue to hold a term loan (the “**Term Loan**”) hereunder in the respective principal amounts and to the respective Lenders set forth opposite each Lender’s name on Schedule A. The Term Loan is a non-revolving facility and, accordingly, no amounts repaid may be reborrowed and the limits of the Term Loan (and the Proportionate Share of the Lender’s Commitments) will be automatically and permanently reduced by the amount of any such repayment so made.

**2.02        Purpose of Loan**

Proceeds of the Loans shall only be used by the Borrower (i) for working capital and other general corporate purposes of the Borrower (subject to the terms hereof), (ii) to finance Permitted Acquisitions including planned capital improvements specific to the Permitted Acquisition, and (iii) to pay costs, fees, and expenses associated with the foregoing and with this Agreement.

**2.03        Reserved**

**2.04        Reserved**

**2.05        Reserved**

**2.06        Reserved**

**2.07        Reserved**

**2.08        Reserved**

**2.09        Reserved**

**ARTICLE 3- CONDITIONS PRECEDENT**

**3.01        Conditions Precedent**

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 Restatement Date:

- (a) this Agreement shall have been executed and delivered by all parties hereto;
- (b) Reserved;
- (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 Senior Loan Documents and an executed copy of the Intercreditor Agreement, which documents shall be in form and substance satisfactory to the Lenders, and the amount of the Senior Debt shall be CD\$25,000,000;
- (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 Original Lenders shall have received a cash payment constituting a partial paydown of the Obligations outstanding under the Existing Credit Agreement, in an amount sufficient to reduce the outstanding Obligations to \$16,500,000 as of the Restatement Date;
- (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 Agent 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 Omnibus Agreement, the Amended and Restated Guarantee, the Amended and Restated Pledge Agreement shall have been delivered to Agent, 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 May 16, 2011 shall be no less than \$9,533,000;
- (r) intentionally omitted;
- (s) a Borrowing Base Certificate for the Borrower calculating the Borrowing Base as at March 31, 2011 shall have been delivered to the Agent;
- (t) 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;
- (u) Advances (as defined in the Senior Credit Agreement) under the Revolving Credit Facility (as defined in the Senior Credit Agreement) shall not exceed CD\$250,000.
- (v) Debt with respect to Capital Leases shall not exceed CD\$2,326,000.
- (w) no Default or Event of Default has occurred and is continuing on the Restatement Date and a senior officer of the Borrower shall have certified the same to the Lenders;
- (x) 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;
- (y) all representations and warranties shall be true and correct;
- (z) intentionally omitted;
- (aa) delivery of the draft audited financial statements of the Borrower for the year ended December 31, 2010;

- (bb) a source and use of funds statement and an outline of the flow of funds from the proceeds of the Senior Debt shall have been delivered to the Agent; and
- (cc) 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            Reserved

3.03            Reserved

3.04            Waiver

The conditions set forth in Sections 3.01 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).

#### ARTICLE 4 - EVIDENCE OF LOANS

4.01            Account of Record

The Agent shall open and maintain books of account evidencing the Loans and all other amounts owing by the Borrower to the Lenders hereunder. The Agent shall enter in the foregoing accounts details of all amounts from time to time owing, paid or repaid by the 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 the Loans 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 FEES

5.01            Interest on the Loans

The Borrower shall pay interest on the Loans in US Dollars at a rate per annum equal to 14.5%, of which (i) at least twelve percent (12.0%) per annum shall be payable in cash quarterly in arrears on each Interest Payment Date in each year, commencing with the Interest Payment Date on July 1, 2011, following the Restatement Date and (ii) two and one half percent (2.5%) per annum shall be, at the Borrower's option, paid in cash (upon not less than three (3) Business Days notice to the Agent prior to such Interest Payment Date) or paid-in-kind. Any

such payment-in-kind shall be added to the principal amount of the Loans on each Interest Payment Date. Subject to Section 5.05, such interest shall be payable in arrears on each Interest Payment Date and shall be calculated on the principal amount of the Loans outstanding during such period and on the basis of a three hundred and sixty (360) day year and the actual number of days occurring in the period for which such interest is payable.

Notwithstanding anything herein to the contrary, any Permitted Payments (as defined in the Intercreditor Agreement) that have been blocked pursuant to Section 5 of the Intercreditor Agreement may, following the expiration of one hundred eighty (180) days from the date the Agent receives a Notice of Default (as defined in the Intercreditor Agreement) from the Senior Agent, at the election of the Agent in its sole discretion, be added to the principal amount of the Loans, effective as of the one hundred and eighty first day (181st) day from the date that the Agent receives such Notice of Default. Any Permitted Payments so capitalized shall be paid by the Borrower to the Agent promptly upon demand on or after the date that such Permitted Payments are permitted to be paid pursuant to Section 5(f) of the Intercreditor Agreement.

**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            Fees**

The Borrower shall pay to the Agent for its own account and for the account of the Lenders all amounts set forth in the Fee Letter.

**5.04            Reserved**

**5.05            Default Interest**

Notwithstanding the foregoing, (i) upon the occurrence and during the continuance of an Event of Default and at the election of the Agent and the Majority Lenders (which may be made retroactive to the first occurrence of such Event of Default), or (ii) automatically upon the occurrence of any Event of Default pursuant to Sections 12.01(a), 12.01(b), 12.01(m), 12.01(n), or 12.01(o), the Loans and any other amounts due shall bear interest, after as well as before judgment, at a rate per annum equal to 2% plus the rate otherwise applicable as provided in Section 5.01 (such rate, the "Default Rate"). Furthermore, notwithstanding anything herein to the contrary, interest accrued at the Default Rate shall be due and payable on demand.

**ARTICLE 6 - RESERVED**

**ARTICLE 7 - REPAYMENT**

**7.01        Reserved**

**7.02        Mandatory Repayment at Maturity**

The Loans shall be due and payable in full on the Maturity Date, unless payment is sooner required hereunder.

**7.03        Reserved**

**7.04        Voluntary Prepayments**

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, at any time from and after the first anniversary of the Restatement Date, repay principal amounts outstanding on the Loans, in whole or in part, in an amount specified in such Repayment Notice, by payment of the principal amount of the Loans (or portion thereof in a minimum amount of \$1,000,000 and integral multiples of \$500,000 in excess of such amount) to be prepaid, plus accrued and unpaid interest and fees thereon through the date of such prepayment, plus any applicable Prepayment Premium. Voluntary prepayments shall be applied against the Loans on a *pro rata* basis.

**7.05        Mandatory Repayments on Proceeds of Debt Issues**

Subject to Sections 7.10 and 7.11 if any Obligor incurs any Debt (other than Permitted Debt), which for greater certainty requires the consent of the Majority Lenders, such incurrence shall constitute an irrevocable offer by the Borrower (irrespective as to which Obligor incurred the Debt) to pay to the Agent, within two (2) Business Days of the closing of the transaction under which such Debt is incurred, 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).

**7.06        Mandatory Repayments on Proceeds of Equity Issuances**

Subject to Sections 7.10 and 7.11, if any Obligor issues any Equity Interests (other than Excluded Issuances), which for greater certainty requires the consent of the Majority Lenders, such issuance shall constitute an irrevocable offer by the Borrower (irrespective as to which Obligor issued the Equity Interests) to pay to the Agent, within two (2) Business Days of the closing of the transaction under which such Debt is incurred, 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).



**7.07**            **Mandatory Repayment on Dispositions**

Subject to Sections 7.10 and 7.11, if any Obligor makes a Disposition (other than a Permitted Disposition), which for greater certainty requires the consent of the Majority Lenders, such Disposition shall constitute an irrevocable offer by the Borrower (irrespective as to which Obligor made the Disposition) to pay to the Agent, within five (5) Business Days after the closing of the transaction under which such Disposition occurs, an amount equal to the Net Proceeds of such Disposition; 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 irrevocably offered to 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 Loan.

**7.08**            **Mandatory Repayments from Proceeds of Insurance**

(1) Subject to Sections 7.10 and 7.11, 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, 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 irrevocably offered to be delivered by the Borrower to the Agent.

(2) Notwithstanding anything contained herein, an Obligor shall be entitled to retain all proceeds of business interruption insurance and shall not be required to offer such proceeds in accordance with the foregoing provisions, provided that no Obligor shall be entitled to refrain from offering 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 offered to be remitted to the Agent for application against amounts outstanding hereunder.

**7.09**            **Cash Flow Sweep**

Subject to Sections 7.10 and 7.11:

(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 offered to be paid by the Borrower to the Agent within one hundred and fifty (150) days following the end of such Fiscal Year:

| <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               |

**7.10 Offer and Acceptance**

The Borrower shall deliver prior written notice of any mandatory offer to prepay the Loan to the Agent at least two (2) Business Days prior to the date of such proposed prepayment, and any such offer may be accepted or rejected by the Majority Lenders (and if rejected by the Majority Lenders, such rejected proceeds shall be retained by the Borrower) and if so accepted shall be applied to the Loan on a *pro rata* basis.

**7.11 Net Payments**

Notwithstanding anything in this Section 7 to the contrary, the amount of any payments required to be offered under Sections 7.05, 7.06, 7.07, 7.08 and 7.09 above and so accepted by Majority Lenders pursuant to Section 7.10 above shall (i) be reduced, on a dollar-for-dollar basis, by the amount of corresponding prepayments which are required to be paid under the corresponding mandatory prepayment sections of the Senior Credit Agreement and which is in fact paid and applied to the Senior Debt to permanently reduce the Senior Debt together with a corresponding permanent commitment reduction to the extent applied to revolving debt which may be reborrowed upon repayment thereof, and (ii) be accompanied by the principal amount of the Loan to be prepaid, plus accrued and unpaid interest and fees thereon through the date of such prepayment, plus any applicable Prepayment Premium.

**7.12 Mandatory Repayments Upon a Change of Control**

Upon the occurrence of a Change in Control, each Lender shall have the right to require the Borrower to repay all or any part of such Lender's Proportionate Share of the Loans on such date and at a price in cash equal to 100% of the principal amount thereof, plus accrued and unpaid interest and fees thereon through the date of such prepayment, plus the Change of Control Premium.

**7.13 No Acquisition of Loan**

The Obligors shall not and shall not permit any Subsidiary or Affiliate to purchase, redeem, prepay, tender for or otherwise acquire, directly or indirectly, any portion of the Loans except upon the repurchase or prepayment of the Loans in accordance with the other terms of this Section 7.

**7.14 No Implied Consent**

Nothing in this Section 7 shall be construed to constitute the Agent's or any Lender's consent to any transaction which is not otherwise permitted by other provisions of this Agreement or the other Loan Documents.

**ARTICLE 8- PLACE AND APPLICATION OF PAYMENTS**

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

(1) 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 Office, 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 (New York time) for value on the date when due, and shall be made in immediately available funds without set-off or counterclaim.

(2) Unless the Agent shall have been notified by the Borrower not later than 12:00 noon (New York time) of the Business Day prior to the date on which any payment to be 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 Federal Funds 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.

(3) If any amount which has been received by the Agent not later than 12:00 noon (New York 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 Federal Funds 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**

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 are 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 Restatement 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 are on market terms and conditions and, in such case, is on terms which are commercially reasonable.

(12) Description of Real Property Schedule 9.01(12) contains a description as of the Restatement 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 Restatement 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 Restatement 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 Restatement 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 Restatement 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 Restatement Date, are listed on Schedule 9.01(20). To its knowledge as of the Restatement 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 Restatement 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 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 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 Restatement 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 and (d) (i) bankruptcy (faillite), insolvency, suspension of payments, a moratorium of any indebtedness (sursis de paiement), winding-up, dissolution, administration, controlled management (gestion contrôlée) or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of Holdings, (ii) a composition, compromise, assignment, arrangement or general settlement (concordat préventif de faillite) with any creditor of Holdings; (iii) any of the directors managers, shareholders or other officers of either of the Luxembourg Obligor request the appointment of, or give notice of their intention to appoint, a liquidator (liquidateur), trustee in bankruptcy, judicial custodian (administrateur judiciaire), compulsory manager, receiver (curateur), administrative receiver, administrator, commissaire à la gestion contrôlée, expert en relation avec la procédure de la gestion contrôlée or similar officer; (iv) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of Holdings or any of its assets; or (v) enforcement of any Security Interest over any assets of Holdings or any analogous procedure or step is taken in any jurisdiction.

(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 Restatement 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 Restatement 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 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 Obligors.

(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 thereof, 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, accrued benefits under employee benefit plans, and the like.

(39) Not a Reporting Issuer No Obligor (i) is a "reporting issuer" in Ontario, (ii) is required to file reports under Section 15(b) of the Securities Exchange Act of 1934, (iii) has securities registered under Section 12 of the Securities Exchange Act of 1934, as amended or (iv) has filed a registration statement that has not yet become effective under the Securities Act of 1933, as amended.

(40) Status of Holdings As of the Restatement Date, Holdings has not engaged in any business or incurred any Debt or any other liabilities (except in connection with its corporate formation, this Agreement, and the Senior Credit Agreement).

9.02 Reserved

**ARTICLE 10 - COVENANTS**

10.01 Positive Covenants

So long as the Obligations remain outstanding 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 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 Loans 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 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; or

- (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 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 Restatement 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 Restatement 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.

(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 Restatement Date, maintain all cash management services and all accounts of the Obligors with Senior Agent.

(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) Senior Loan Documents Provide to the Agent (a) an executed copy of any amendment, modification, supplement, restatement or replacement of any of the Senior Loan 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 Senior Loan 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 Borrower or dissolved within one year following the Restatement Date.

(25) Landlords' Agreements, Mortgage Agreements and Bailee Letters Ensure that 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 Restatement 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.

(26) Observation Rights Allow a representative designated by the Agent to attend and participate in all meetings and other activities of the Governing Body of each of Holdings and its Subsidiaries, including all committees and sub-committees thereof (each, a "Board Observer"). Each Obligor shall (i) give Agent notice of all such meetings, at the same time as furnished to the directors of any of the applicable Obligor, (ii) provide to each Board Observer all notices, documents and information furnished to the directors of each entity, whether at or in anticipation of a meeting, an action by written consents or otherwise, at the same time furnished to such directors, (iii) notify each Board Observer and permit each such Board Observer to participate by telephone in, emergency meetings of such Boards of Directors and all committees and sub-committees thereof, (iv) provide each Board Observer copies of the minutes of all such meetings at the time such minutes are furnished to such Boards of Directors, and (v) cause regularly-scheduled meetings of the Boards of Directors to be held no less frequently than quarterly with at least one such meeting in each Fiscal Year to be held in person. In addition, the Obligors agree to use their best efforts to hold no less than one meeting of the Governing Body of Holdings and its Subsidiaries per year in New York City. The Borrower shall reimburse the Board Observer for out-of-pocket expenses incurred in connection with attendance to any meeting of any Obligor's board of directors, or any committee or subcommittee thereof.

(27) Senior Credit Enhancements If the Senior Agent or any Senior Lender receives any additional guaranty, or any other credit enhancement (including additional liens upon any Obligors' assets) after the Restatement Date, the Borrower shall cause the same to be granted to the Lenders, subject to the terms of the Intercreditor Agreement.

**10.02      Financial Covenants**

(1) So long as the Obligations remain outstanding and except as otherwise permitted by the prior written consent of the Majority Lenders:

(a) Senior Debt to EBITDA Ratio The Borrower and its Subsidiaries shall have, on a consolidated basis, as of the end of each Fiscal Quarter, a Senior Debt to EBITDA Ratio for the four Fiscal Quarters then ended of not more than the following with respect to the Fiscal Quarter set forth opposite each such ratio below:

| Fiscal Quarter  | Maximum Ratio |
|---|---------------|
| For the Fiscal Quarter ending June 30, 2011   | 2.75 to 1.00  |
| For the Fiscal Quarter ending September 30, 2011  | 2.75 to 1.00  |
| For the Fiscal Quarter ending December 31, 2011   | 2.75 to 1.00  |
| For the Fiscal Quarter ending March 31, 2012  | 2.75 to 1.00  |
| For the Fiscal Quarter ending June 30, 2012   | 2.75 to 1.00  |
| For the Fiscal Quarter ending September 30, 2012  | 2.75 to 1.00  |
| For the Fiscal Quarter ending December 31, 2012   | 2.75 to 1.00  |
| For the Fiscal Quarter ending March 31, 2013  | 2.75 to 1.00  |
| For the Fiscal Quarter ending June 30, 2013   | 2.75 to 1.00  |
| For the Fiscal Quarter ending September 30, 2013  | 2.75 to 1.00  |
| For the Fiscal Quarter ending December 31, 2013   | 2.75 to 1.00  |
| For the Fiscal Quarter ending March 31, 2014  | 2.50 to 1.00  |
| For the Fiscal Quarter ending June 30, 2014   | 2.50 to 1.00  |
| For the Fiscal Quarter ending September 30, 2014  | 2.50 to 1.00  |
| For the Fiscal Quarter ending December 31, 2014   | 2.25 to 1.00  |
| For the Fiscal Quarter ending March 31, 2015  | 2.25 to 1.00  |
| For the Fiscal Quarter ending June 30, 2015   | 2.25 to 1.00  |
| For the Fiscal Quarter ending September 30, 2015  | 2.00 to 1.00  |
| For the Fiscal Quarter ending December 31, 2015, and for each Fiscal Quarter thereafter | 2.00 to 1.00  |

(b) Total Debt to EBITDA Ratio The Borrower and its Subsidiaries shall have, on a consolidated basis, as of the end of each Fiscal Quarter, a Total Debt to EBITDA Ratio for the four Fiscal Quarters then ended of not more than the following with respect to the Fiscal Quarter set forth opposite each such ratio below:

| Fiscal Quarter  | Maximum Ratio |
|---|---------------|
| For the Fiscal Quarter ending June 30, 2011   | 4.25 to 1.00  |
| For the Fiscal Quarter ending September 30, 2011  | 4.25 to 1.00  |
| For the Fiscal Quarter ending December 31, 2011   | 4.25 to 1.00  |
| For the Fiscal Quarter ending March 31, 2012  | 4.25 to 1.00  |
| For the Fiscal Quarter ending June 30, 2012   | 4.25 to 1.00  |
| For the Fiscal Quarter ending September 30, 2012  | 4.25 to 1.00  |
| For the Fiscal Quarter ending December 31, 2012   | 4.25 to 1.00  |
| For the Fiscal Quarter ending March 31, 2013  | 4.25 to 1.00  |
| For the Fiscal Quarter ending June 30, 2013   | 4.25 to 1.00  |
| For the Fiscal Quarter ending September 30, 2013  | 4.25 to 1.00  |
| For the Fiscal Quarter ending December 31, 2013   | 4.25 to 1.00  |
| For the Fiscal Quarter ending March 31, 2014  | 4.00 to 1.00  |
| For the Fiscal Quarter ending June 30, 2014   | 4.00 to 1.00  |
| For the Fiscal Quarter ending September 30, 2014  | 4.00 to 1.00  |
| For the Fiscal Quarter ending December 31, 2014   | 3.75 to 1.00  |
| For the Fiscal Quarter ending March 31, 2015  | 3.75 to 1.00  |
| For the Fiscal Quarter ending June 30, 2015   | 3.75 to 1.00  |
| For the Fiscal Quarter ending September 30, 2015  | 3.50 to 1.00  |
| For the Fiscal Quarter ending December 31, 2015, and for each Fiscal Quarter thereafter | 3.50 to 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. Borrower and its Subsidiaries shall have, on a consolidated basis, as of the end of each Fiscal Quarter, a Fixed Charge Coverage Ratio for the four Fiscal Quarters then ended of not less than the following with respect to the Fiscal Quarter set forth opposite each such ratio below:

| Fiscal Quarter  | Maximum Ratio |
|---|---------------|
| For the Fiscal Quarter ending June 30, 2011   | 1.00 to 1.00  |
| For the Fiscal Quarter ending September 30, 2011  | 1.00 to 1.00  |
| For the Fiscal Quarter ending December 31, 2011   | 1.00 to 1.00  |
| For the Fiscal Quarter ending March 31, 2012  | 1.00 to 1.00  |
| For the Fiscal Quarter ending June 30, 2012   | 1.00 to 1.00  |
| For the Fiscal Quarter ending September 30, 2012  | 1.00 to 1.00  |
| For the Fiscal Quarter ending December 31, 2012   | 1.00 to 1.00  |
| For the Fiscal Quarter ending March 31, 2013  | 1.05 to 1.00  |
| For the Fiscal Quarter ending June 30, 2013   | 1.05 to 1.00  |
| For the Fiscal Quarter ending September 30, 2013  | 1.05 to 1.00  |
| For the Fiscal Quarter ending December 31, 2013   | 1.05 to 1.00  |
| For the Fiscal Quarter ending March 31, 2014  | 1.05 to 1.00  |
| For the Fiscal Quarter ending June 30, 2014   | 1.05 to 1.00  |
| For the Fiscal Quarter ending September 30, 2014  | 1.05 to 1.00  |
| For the Fiscal Quarter ending December 31, 2014   | 1.05 to 1.00  |
| For the Fiscal Quarter ending March 31, 2015  | 1.05 to 1.00  |
| For the Fiscal Quarter ending June 30, 2015   | 1.05 to 1.00  |
| For the Fiscal Quarter ending September 30, 2015  | 1.05 to 1.00  |
| For the Fiscal Quarter ending December 31, 2015, and for each Fiscal Quarter thereafter | 1.05 to 1.00  |

- (e) Maximum Capital Expenditures Borrower, on a consolidated basis, shall not make Capital Expenditures in any Fiscal Year in an aggregate amount in excess of \$3,000,000 in Fiscal Year 2011, \$2,000,000 in Fiscal Year 2012 or \$1,500,000 thereafter (excluding Capital Expenditures financed under the Delayed Draw Facility (as defined in the Senior Credit Agreement as in effect on the date hereof).
- (f) Minimum EBITDA Borrower, on a consolidated basis, shall have, as of the last day of the then most recently ended Fiscal Quarter, a minimum EBITDA for the four Fiscal Quarters then ended of not less than the following with respect to the Fiscal Quarter set forth opposite each such required minimum EBITDA amount indicated below:

| Fiscal Quarter   | Minimum EBITDA |
|--|----------------|
| For the Fiscal Quarter ending June 30, 2011  | CD\$8,000,000  |
| For the Fiscal Quarter ending September 30, 2011   | CD\$8,000,000  |
| For the Fiscal Quarter ending December 31, 2011  | CD\$8,000,000  |
| For the Fiscal Quarter ending March 31, 2012   | CD\$8,000,000  |
| For the Fiscal Quarter ending June 30, 2012  | CD\$8,000,000  |
| For the Fiscal Quarter ending September 30, 2012   | CD\$8,000,000  |
| For the Fiscal Quarter ending December 31, 2012  | CD\$8,000,000  |
| For the Fiscal Quarter ending March 31, 2013   | CD\$8,500,000  |
| For the Fiscal Quarter ending June 30, 2013  | CD\$8,500,000  |
| For the Fiscal Quarter ending September 30, 2013   | CD\$8,500,000  |
| For the Fiscal Quarter ending December 31, 2013  | CD\$8,500,000  |
| For the Fiscal Quarter ending March 31, 2014   | CD\$9,000,000  |
| For the Fiscal Quarter ending June 30, 2014  | CD\$9,000,000  |
| For the Fiscal Quarter ending September 30, 2014   | CD\$9,000,000  |
| For the Fiscal Quarter ending December 31, 2014  | CD\$9,000,000  |
| For the Fiscal Quarter ending March 31, 2015   | CD\$9,500,000  |
| For the Fiscal Quarter ending June 30, 2015  | CD\$9,500,000  |
| For the Fiscal Quarter ending September 30, 2015   | CD\$9,500,000  |
| For the Fiscal Quarter ending December 31, 2015, and<br>for each Fiscal Quarter thereafter | CD\$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.

### 10.03 Reporting Requirements

So long as the Obligations remain outstanding 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 forty-five (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 Concurrently with the delivery of a Borrowing Base Certificate to the Senior Agent pursuant to the Senior Credit Agreement, provide the Agent with a copy of such Borrowing Base Certificate.

(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 any Obligor with respect to any Equity Interest of such Person.

#### **10.04 Negative Covenants**

So long as the Obligations remain outstanding 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.

(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(15) and 10.04(17).

(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 Restatement Date up to the Maturity Date does not exceed \$10,000,000.

(10) Reserved.

(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 Senior Lender or an Affiliate of a Senior 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 (as defined in the Senior Credit Agreement as in effect on the date hereof); or if such Hedge Arrangement is an interest hedge, the term thereof does not extend beyond the Maturity Date (as defined in the Senior Credit Agreement as in effect on the date hereof).

(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) Capital Structure Make any change in its capital structure as described on Schedule 9.01(18), including the issuance of any shares of Equity Interests, warrants or other securities convertible into Equity Interests or any revision of the terms of its outstanding Equity Interests (other than issuances of Equity Interest (excluding Disqualified Equity Interests) 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 the additional Equity Interests so issued are concurrently and validly pledged to the Agent under the Security and all resolutions (corporate, shareholder or otherwise) required by the Agent are delivered to the Agent.

(16) 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.

(17) 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.

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

(19) 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.

(20) 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.

(21) 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.

(22) Auditor Change its Auditor without first providing the Agent with 30 days prior written notice and so long as any replacement is a nationally recognized accounting firm.

(23) Reserved.

(24) Multiemployer Plan and US Pension Plan Establish or incur any obligation to contribute to or participate in a Multiemployer Plan or US Pension Plan.

(25) Holdings ensure that Holdings does not incur any Debt, own any assets (other than Equity Interests in the Borrower) or carry on any business.

(26) Leases; Facility Openings Without the prior written consent of the Agent (which consent shall not be unreasonably withheld or delayed), 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.

(27) Amendments to Senior Loan Documents Agree to amend, supplement or otherwise modify any document, instrument or agreement relating to the Senior Credit Agreement or the Senior Debt should such change not be permitted pursuant to the Intercreditor Agreement.

(28) Acquisition of Senior Debt Notwithstanding any provision of this Agreement to the contrary, acquire or permit any of their Affiliates (including, without limitation, Permitted Holders, Falconhead and their respective Affiliates ) (collectively, "Affiliate Lenders"), to acquire any direct or indirect interest in any of the Senior Debt except pursuant to acquisition agreements and/or assignments which provide that (i) such interest is without any voting rights of any kind whatsoever under the Senior Loan Documents (including, without limitation, with respect to amendments, waivers and the exercise of remedies) and (ii) such Affiliate Lender shall not be included in the determination of "Majority Lenders" or any similar standard for determining voting under any Senior Loan Document; provided, however, that in the event that the Affiliate Lenders, taken together, acquire all of the outstanding Senior Debt, whether in one transaction or a series of transactions, then at such time the Affiliate Lenders may exercise voting rights with respect to the Senior Loan Documents and shall enter into a subordination and intercreditor agreement with Agent providing that the Senior Debt and other "Obligations" (as defined in the Senior Credit Agreement) are subordinated to the Obligations on terms and conditions satisfactory to the Agent. Borrower shall provide Agent with copies of all acquisition agreements and/or assignments with respect to the purchase of Senior Debt by an Affiliate Lender not less than five (5) days prior to the proposed purchase date. The Obligors will promptly cancel, or cause to be cancelled, all Senior Debt acquired by any Affiliate Lender in violation of the foregoing provisions of this Section 10.03(28).

(29) 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.

(30) Antilayering Create or incur any Debt (other than the Obligations) which is subordinated or junior in right of payment to any other Debt of the Obligor, unless such Debt is also subordinated or junior in right of payment, in the same manner and to the same extent, to the Obligations, and (ii) no Obligor shall have outstanding, create or incur any Debt owing to any other Obligor or any Affiliate or employee of any Obligor unless such Debt is expressly subordinated to the Loans and other Obligations in a manner and on terms satisfactory to the Majority Lenders.

(31) 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 Agent and Lenders any certification or other evidence requested from time to time by Agent or any Lender, confirming the Borrower's compliance with this Section 10.03(31).

(32) No Inconsistent Agreements Enter into any contractual obligation or enter into any amendment or other modification to any currently existing contractual obligation, which by its terms restricts or prohibits the ability of the Borrower to pay the principal of or interest on the Loans or prohibits the ability of the Borrower to fully satisfy all of the Obligations.

(33) 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.

## 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) The Omnibus Agreement, which ratifies and reaffirms the Existing Security Agreements;
- (b) An amended and restated guarantee from Holdings (the "**Amended and Restated Guarantee**") 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; and

- (c) An amended and restated securities pledge agreement from Holdings (the "**Amended and Restated Pledge Agreement**") 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.

**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 the Loans 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 and the same shall be un-remedied for a period of five (5) Business Days or more; 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 untrue or incorrect in any material respect 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 applicable 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 applicable 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 applicable law relating to bankruptcy, insolvency, reorganization or relief or 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 \$300,000; 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 \$300,000 (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 \$300,00 or the equivalent thereof in another currency; or
- (u) if a Change of Control shall occur without the Agent's prior written consent; or
- (v) 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 Restatement Date;
- (w) should (i) any "Event of Default" (as defined therein) occur under the terms of the Senior Credit Agreement and the effect thereof is to result in the acceleration of the maturity of the Debt owing pursuant to the Senior Credit Agreement and to cause such Debt to become due and payable, or (ii) any breach or default of an Obligor occurs under any document, instrument or agreement to which it is a party or by which it or any of its Properties is bound, relating to any Debt (other than the Obligations and the Senior Debt) in excess of \$300,000, if the maturity of or any payment with respect to such Debt may be accelerated or demanded due to such breach however, the Agent shall have the ability to waive any such breach; 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, 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. 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 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        Reserved

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        Reserved

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 in accordance with its Proportionate Share; and

- (d) fourth, against all other Obligations owing to the Lenders 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**

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 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.

**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) Reserved.

(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 Loans, reduce the fees payable, reduce interest rates or other amounts payable with respect to the Loans, extend any date fixed for payment of

principal, interest or other amounts payable relating to the Loans, extend the repayment dates of the Loans, change the definition of Majority Lenders;

(b) 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

(c) 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 the Loans, 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 Loans 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 Loan 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 (other than to an Approved Fund) 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 Loans, 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 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 **Reserved**

**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 or 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**

New York is the State 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 US 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 State of New York 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 US 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 US interbank transactions in US Dollars, in the Judgement Currency published or quoted by the Bank of America for the day in question, or if such rate is not so published or quoted by the Bank of America, 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 acknowledge that, pursuant to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada) and other applicable anti-money laundering, anti-terrorist financing, government sanction and "know your client" laws (collectively, including any guidelines or orders thereunder, "**AML Legislation**"), the Lenders and the Agent

may be required to obtain, verify and record information regarding the 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”; and
  - “Provisions” shall be replaced by “CBA Model Provisions”.

#### **14.16 Amendment and Restatement**

The terms, conditions, agreements, covenants, representations and warranties set forth in and relating to the Existing Credit Agreement are hereby amended, restated, replaced and superseded in their entirety (except as provided in the preamble to this Agreement) by the terms, conditions, agreements, covenants, representations and warranties set forth in this Agreement. This Agreement does not extinguish the obligations, including, without limitation, obligations for the payment of money, outstanding under the Existing Credit Agreement or discharge or release the obligations, which shall continue, as modified and restated hereby, without interruption and in full force and effect. Nothing herein contained shall be construed as a substitution or novation of the obligations outstanding under the Existing Credit Agreement, which shall remain in full force and effect, except in each case as amended, restated, replaced and superseded hereby or by instruments executed in connection herewith. Nothing expressed or implied in this Agreement shall be construed as a release or other discharge of any Credit Party from any of their obligations or liabilities under the Existing Credit Agreement or any Existing Security Documents, except in each case as amended, restated, replaced and superseded hereby or by instruments executed in connection herewith. The Borrower hereby confirms and agrees that the Existing Credit Agreement and each Existing Security Document to which it is a party is, and shall continue to be, in full force and effect and is hereby amended, restated, replaced and

superseded hereby or by instruments executed in connection herewith, except that on and after the date hereof all references in any such Existing Credit Agreement or Existing Security Document to "the Agreement", "thereto", "thereof" "thereunder" or words of like import referring to the Existing Credit Agreement shall mean the Existing Credit Agreement as amended, restated, replaced and superseded by this Agreement.

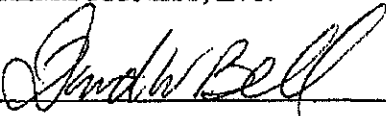
[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

**BORROWER:**

Address:  
8281 Yonge Street  
Thornhill, Ontario  
L3T 2C7

**EXTREME FITNESS, INC.**

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

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

**AGENT:**


**Address:**  
c/o Golub Capital  
551 Madison Avenue, 6th Floor  
New York, NY 10022

**Attention:** Charles Riceman

**Facsimile:** 212-750-5505

**GOLUB CAPITAL INCORPORATED,  
as Agent**

**By:**

  
Name: Andrew H. Steverman  
Title: Authorized Signatory

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

Proskauer Rose LLP  
One International Place  
Boston, MA 02110  
**Attention:** Stephen Boyko  
**Facsimile:** (617) 526-9899

**LENDERS:**

**Address:**

c/o Golub Capital  
551 Madison Avenue, 6th Floor  
New York, NY 10022

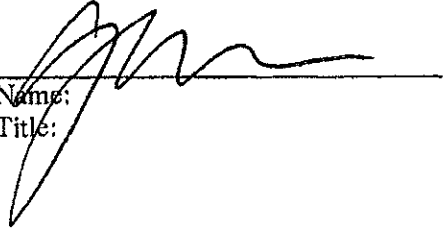
Attention: Charles Riceman

Facsimile: 212-750-5505

**GOLUB CAPITAL BDC, INC.,  
as a Lender**

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

Name:  
Title:

A handwritten signature in black ink, appearing to be 'C. Riceman', is written over a horizontal line. The signature is stylized and cursive.

**Address:**

c/o Golub Capital  
551 Madison Avenue, 6th Floor  
New York, NY 10022


Attention: Charles Riceman

Facsimile: 212-750-5505

**GOLUB CAPITAL LOAN TRUST 2005-1,  
as a Lender**

By: Golub Capital Incorporated, as  
Servicer

By:

  
Name: Andrew H. Steverman  
Title: Authorized Signatory.



**Address:**

c/o Golub Capital  
551 Madison Avenue, 6th Floor  
New York, NY 10022

**Attention:** Charles Riceman

**Facsimile:** 212-750-5505

**GOLUB INTERNATIONAL LOAN LTD. 1,  
as a Lender**

By: Golub Capital Investment  
Management LLC, as Collateral Manager

By: Andrew Steuerman  
Name: Andrew H. Steuerman  
Title: Authorized Signatory

**Address:**

c/o Golub Capital  
551 Madison Avenue, 6th Floor  
New York, NY 10022

Attention: Charles Riceman

Facsimile: 212-750-5505

**GOLUB CAPITAL PARTNERS FUNDING**

**2007-1 LTD., as a Lender**

By: Golub Capital Incorporated, as  
Servicer

By: Andrew Steerman  
Name: Andrew H. Steerman  
Title: Authorized Signatory

**Address:**

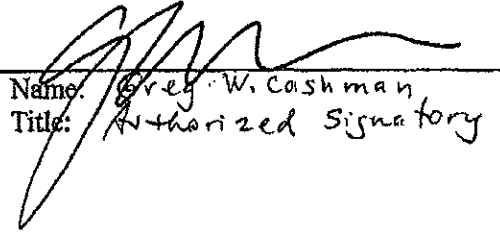
c/o Golub Capital  
551 Madison Avenue, 6th Floor  
New York, NY 10022

**WHITEHALL CAPITAL CORPORATION,  
as a Lender**

**Attention:** Charles Riceman

**Facsimile:** 212-750-5505

**By:**

  
Name: Greg W. Cashman  
Title: Authorized Signatory

**SCHEDULE A**  
**LENDERS AND COMMITMENTS**

| <u>Lender</u>                                 | <u>Commitment</u>          |
|---|----------------------------|
| Golub Capital BDC, Inc.                       | \$ 2,791,581.41            |
| Golub Capital Loan Trust 2005-1               | \$ 1,571,740.54            |
| Golub International Loan Ltd. 1               | \$ 8,360,771.83            |
| Golub Capital Partners Funding<br>2007-1 Ltd. | \$ 3,737,601.77            |
| Whitehall Capital Corporation                 | \$ 38,304.45               |
| <b><u>TOTAL:</u></b>                          | <b><u>\$16,500,000</u></b> |

**SCHEDULE AA**  
**MODEL CREDIT AGREEMENT PROVISIONS**

- See Attached -

## SCHEDULE AA

### 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 any Person, (a) each Person that, directly or indirectly, owns or controls, whether beneficially, or as a trustee, guardian or other fiduciary, five percent (5%) or more of the Stock having ordinary voting power in the election of directors of such Persons, (b) each Person that controls, is controlled by or is under common control with such Person, (c) each of such Person’s officers, directors, joint ventures and partners and (d) in the case of Borrower, the immediate family members, spouses and lineal descendants of individuals who are Affiliates of Borrower. For the purposes of this definition, **“control”** of a Person shall mean the possession, directly or indirectly, of the power to direct or cause the direction of its management or policies, whether through the ownership of voting securities, by contract or otherwise; **provided, however,** that the term **“Affiliate”** shall specifically exclude the Administrative Agent and each Lender.

**“Agreement”** means the Amended and Restated 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.

**“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), permitted to become a Lender hereunder pursuant to Section 10(b), in respect of which consents that are required by Section 10(b) (if any) have been obtained.

**“Excluded Taxes”** means, with respect to the Administrative Agent, any Lender, 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 office is located, (b) any branch profits taxes or any similar

tax imposed by any jurisdiction in which the Lender is located, and (c) taxes imposed by Sections 1471 – 1474 of the United States Internal Revenue Code as in effect on the date hereof.

“**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.

“**Loan**” shall have the meaning ascribed thereto in the Agreement.

“**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 Amended and Restated 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, 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;

and the result of any of the foregoing shall be to increase the cost to such Lender of maintaining any Loan, or to reduce the amount of any sum received or receivable by such Lender 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 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 Loans made 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 (including, for the avoidance of doubt, any consent or similar fees or, in the case of any Lender that is treated as a partnership or "flow-through entity" for tax purposes, including U.S. federal income tax purposes, any payments made by such Lender to or for the account of any of its beneficial owners), 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 (or such Lender's beneficial owner, as the case may be), 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. No amounts shall be payable under this Section 3.2(a) with respect to any Indemnified Taxes which would not be imposed if applicable forms or documentation eliminating or reducing the withholding (to the extent such forms could be legally provided) have been timely provided to the Borrower.

(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 (or, in the case of any Lender that is a partnership or "flow-through entity" for tax purposes, including U.S. federal income tax purposes, such Lender's beneficial owners), 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 (or such Lender's beneficial owners, as the case may be) 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 (or such Lender's beneficial owners), with a copy to the Administrative Agent, or by the Administrative Agent on its own behalf or on behalf of a Lender (or such Lender's beneficial owners), shall be conclusive absent manifest error. For the avoidance of doubt the Borrower shall further indemnify the Administrative Agent and each Lender (or such Lender's beneficial owners, as the case may be), for any Taxes or Other Taxes based on or measured by the overall net income of the Administrative Agent or Lender (or such Lender's beneficial owners, as the case may be) ("Net Income Taxes") imposed by any jurisdiction on or with respect to any increased amount payable by the Borrower under this Section 3.2, but only to the extent, if any, that such Taxes, Other Taxes or Net Income Taxes imposed on such Person exceed (after taking into account available credits, deductions, refunds, remissions, exemptions or other tax allowances in respect of such payment which may be used by the relevant Person, provided that in the case of any Lender, such determination shall be made only at the entity level) the amount of such Taxes, Other Taxes or Net Income Taxes that would have been imposed on it in the absence of any increased amount payable by the Borrower under this Section 3.2.

(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 3.2 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 3.2 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.

(f) None of the amounts paid by the Borrower to the Agent pursuant to Section 5.3 of the Agreement shall be treated by any party as "discount" for applicable tax purposes. The parties agree that they will not take any position on any and all of its federal, state, local and foreign tax returns, or take any other tax reporting position, that is adverse, contrary to or inconsistent with the foregoing, unless otherwise required by a final "determination" within the meaning of Section 1313(a) of the Code or analogous provision of state, local or foreign law to the contrary.

(g) Survival. For the avoidance of doubt, the provisions of this Section 3.2 shall survive the termination of the Agreement and the repayment of the Loan.

### 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, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including 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 to maintain any Loan, 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 any Loans. Upon any such prepayment, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

#### 3.5 Reserved.

#### 4. Right of Setoff

If an Event of Default has occurred and is continuing, each of the Lenders and each of their respective Affiliates are 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. 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, 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) Reserved.

(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 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 and the Lenders, 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 that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loan. 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 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. 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.

(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 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 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.

**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 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 made 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 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), and (ii) all reasonable out-of-pocket expenses incurred by the Administrative Agent or any Lender, 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 hereunder, including all such out-of-pocket expenses incurred during any workout restructuring or negotiations in respect of such Loans.

(b) Indemnification by the Borrower. The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnatee" against, and hold each Indemnatee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the fees, charges and disbursements of any counsel for any Indemnatee, incurred by any Indemnatee or asserted against any Indemnatee by any third party or by any Obligor arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance or non-performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation or non-consummation of the transactions contemplated hereby or thereby, (ii) any Loan or the use or proposed use of the proceeds therefrom, (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 Indemnatee is a party thereto, provided that such indemnity shall not, as to any Indemnatee, 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 Indemnatee or (y) result from a claim brought by the Borrower or any other Obligor against an Indemnatee for breach in bad faith of such Indemnatee'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), or any Related Party, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent) 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 against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) 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 Indemnatee, 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 the use of the proceeds thereof. No Indemnatee 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 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 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 Loans being assigned (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 \$1,000,000, 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 portion of the Loans 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) Reserved;

(iv) any assignment must be approved by the Administrative Agent (such approval not to be unreasonably withheld or delayed) unless the proposed assignee is itself already a Lender, an Affiliate of any Lender, an Approved Fund, or if a Default has occurred and is continuing;

(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, an Affiliate of any Lender, an Approved Fund, or if 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 issued by the Borrower.

(c) Register. The Administrative Agent shall maintain at one of its offices in New York, New York 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 the Loans held by 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 issued by the Borrower.

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, subject to providing forms required by Section 3.2(a) (to the extent such forms could be legally provided) as if it were a Lender. 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 on 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 participations sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's 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 State of New York and the laws of the United States applicable in that State.

(b) Submission to Jurisdiction. Each Obligor irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the courts of the County of New York, State of New York, 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 notes such basic information describing the notes 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.

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 Amended and Restated Credit Agreement identified below (as amended, the "Amended and Restated Credit Agreement"), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex I 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 Amended and Restated 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 Amended and Restated 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 Loans identified below 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 Amended and Restated Credit Agreement, any other documents or instruments delivered, pursuant thereto or the note-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 Amended and Restated Credit Agreement
5. Amended and Restated Credit Agreement: [The [amount] Amended and Restated 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 <sup>3</sup> | 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><b><u>ASSIGNOR</u></b><br/>[NAME OF ASSIGNOR]</p> <p>By: _____<br/>Title: _____</p> |
| <p><b><u>ASSIGNEE</u></b><br/>[NAME OF ASSIGNEE]</p> <p>By: _____<br/>Title: _____</p> |

|   |
|---|
| <p>[Consented to and] Accepted:<br/>[NAME OF ADMINISTRATIVE AGENT],<br/>as<br/>Administrative Agent</p> <p>By: _____<br/>Title: _____</p> |
| <p>[Consented to:]<br/>[NAME OF RELEVANT PARTY]</p> <p>By: _____<br/>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 Amended and Restated 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 Amended and Restated Credit Agreement, (ii) it meets all requirements of an Eligible Assignee under the Amended and Restated Credit Agreement (subject to receipt of such consents as may be required under the Amended and Restated Credit Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Amended and Restated 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 Amended and Restated 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 Amended and Restated 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 Amended and Restated Credit Agreement.



**SCHEDULE C**

**REPAYMENT NOTICE**

**TO:** **GOLUB CAPITAL INCORPORATED**, as Agent

c/o Golub Capital  
551 Madison Avenue, 6th Floor  
New York, NY 10022

Attention: Charles Riceman•  
Fax: 212-750-5505

**FROM:** Extreme Fitness, Inc.  
(the "**Borrower**")

**DATE:** [•]

1. This notice of request for repayment is delivered to you, as Agent, pursuant to the Amended and Restated 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) Principal Amount: \_\_\_\_\_

**EXTREME FITNESS, INC.**

Per: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE D**  
**COMPLIANCE CERTIFICATE**

**TO:** **GOLUB CAPITAL INCORPORATED (in its capacity as both "Agent")**

c/o Golub Capital  
551 Madison Avenue, 6th Floor  
New York, NY 10022

Attention: Charles Riceman•  
Fax: 212-750-5505

**FROM:** Extreme Fitness, Inc.  
(the "**Borrower**")

**RE:** **Amended and Restated 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) [funded] 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 the Agreement

= \$•

F. cash paid expenses and cash paid fees to directors of the Borrower as permitted by the terms of the 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]<sup>1</sup> \$•

(vi) (i) divided by (v) •:1

The maximum Senior Debt to EBITDA Ratio pursuant to Section 10.02(1) of the Credit Agreement on the Computation Date was [2.50:1.00].

(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(2) of the Credit Agreement on the Computation Date was [4.00:1.00].

(c) [The Senior Debt to Capitalization Ratio was •:1; calculated as follows:

<sup>1</sup> 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.

|       |                     |                     |       |
|-------|---------------------|---------------------|-------|
| (i)   | Senior Debt         |                     | \$•   |
| (ii)  | Capitalization      |                     |       |
|       | A.                  | Senior Debt         | \$•   |
|       | B.                  | Subordinated Debt   | \$•   |
|       | C.                  | Shareholders Equity | \$•   |
|       |                     | A + B + C           | = \$• |
| (iii) | (i) divided by (ii) |                     | •:1   |

The maximum Senior Debt to Capitalization Ratio pursuant to Section 10.02(3) of the Credit Agreement on the Computation Date was 40%].

(d) The Fixed Charge Coverage Ratio was •:1, calculated as follows<sup>2</sup>:

|        |  |   |       |
|--------|--|---|-------|
| (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)    | Management Fees  |   | \$•   |
| (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   |

<sup>2</sup> [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.]

The minimum Fixed Charge Coverage Ratio permitted pursuant to Section 10.02(4) 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 Flow<sup>3</sup> was \$•, calculated as follows:

|          |   |   |     |
|----------|---|---|-----|
| (i)      | EBITDA (from s. 9(a)(v))  | = | \$• |
| (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 Senior Debt in accordance with the Intercreditor Agreement | = | \$• |
|          | F. principal component in respect to payments of Capital Leases   | = | \$• |
|          | (A) + (B) + (C) + (D) + (E) + (F)   |   | \$• |
| (iii)(i) | – (ii) [Excess Cash Flow]   |   |     |

10. For the Fiscal Quarter/Year ended \_\_\_\_\_, \_\_\_\_\_, Capital Expenditures were \$\_\_\_\_\_. Detailed calculations of this amount are attached hereto on Schedule III.
11. 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.
12. 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.

<sup>3</sup> To be included only for compliance certificate delivered following the end of a Fiscal Year.

13. As of the Computation Date, the aggregate outstanding principal amount of Capital Leases and Purchase Money Security Interests was \$ \_\_\_\_\_.

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

**SCHEDULE F**  
**GUARANTORS ON CLOSING DATE**

Extreme Fitness Holding (Luxembourg) S.A.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:<br>Extreme Fitness, Inc.<br><br>Parking License between 2044922 Ontario Ltd. and Extreme Fitness, | 2044922 Ontario Ltd. and 2079843 Ontario Inc.  | Fitness Club and parking:<br>June 30, 2011 | Fitness Club and parking:<br>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)<br>Parking -21358-0187 (LT)  | Extreme Fitness, Inc. | Fitness Club: 1079268 Ontario Inc.<br><br>Parking: Roman Catholic Episcopal Corporation for the Diocese of Toronto, in Canada, represented by Holy Name Parish | Fitness Club: October 31, 2016<br><br>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**

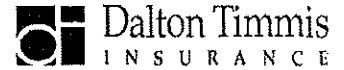
Prepared especially for

*Extreme Fitness, Inc., Nutrition Whitby  
Inc. and Golub Capital Incorporated*

through the facilities of

Dalton Timmis Insurance Group, Inc

**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 Winton 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. Voidonidas  
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

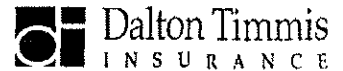
IFC Credit Corporation, its Assignors and Assignees ATIMA c/o American Lease Insurance  
654 Amherst Road  
Sunderland, Massachusetts 01375

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**  
Locations 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

**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

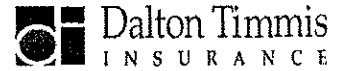
First Capital (Cedarbrae) Corp. c/o FCB Property Management Services LP  
3495 Lawrence Avenue East  
Toronto, Ontario M1H 1B2

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**  
Locations 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

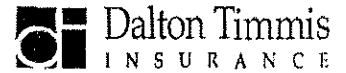
CIT Financial Ltd.  
PO Box 5060  
Burlington, Ontario L7R 4C8

In the event of policy cancellation, the insurer will  
endeavour to provide 15 days written notice to the loss  
payee.

IFC Credit Corporation, its Assignors and Assignees  
ATIMA c/o American Lease Insurance  
654 Amherst Road  
Sunderland, Massachusetts 01375

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 |
|-----------------|--|------------|--------------|--------------|
| <b>Property</b> |  |            |              |              |
|                 | <b>Property of Every Description (Broad Form)</b>      | 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    |              |              |
|                 | <b>Electronic Data Processing Systems (Broad Form)</b> |            |              |              |
|                 | EDP equipment and media                                | 1,000      |              |              |
|                 | At 8281 Yonge Street, Thornhill, Ontario               | 1,000      |              | 75,000       |
|                 | <b>Signs Floater (Broad Form)</b>                      | 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       |
|                 | <b>ING Package Extensions</b>                          |            |              |              |
|                 | <b>Terrorism Exclusion</b>                             |            |              |              |

**Commercial Insurance Policy**  
Schedule of Insurance



Policy No. 501196249

Declarations

Effective 3/18/2011

| Form No. | Type of Coverage   | Deductible | Co-Insurance | Limit/<br>Amount |
|----------|--|------------|--------------|------------------|
|          | <b>Data Exclusion</b>  |            |              |                  |
|          | <b>Machinery Breakdown</b>   |            |              |                  |
|          | Machinery Breakdown  |            |              |                  |
|          | Limit per accident   |            |              |                  |
|          | Boiler & Machinery Coverage  | 5,000      |              |                  |
|          | <b>Crime</b>   |            |              |                  |
|          | <b>Comprehensive Dishonesty, Disappearance and Destruction</b>         |            |              |                  |
|          | 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            |
|          | <b>Liability</b>   |            |              |                  |
|          | <b>Commercial General Liability (Occurrence Form) (IBC 3/05)</b>       |            |              |                  |
|          | 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          |
|          | <b>Non-Owned Automobile Liability (SPF6)</b>                           |            |              | 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)                            |            |              |                  |
|          | <b>Employers' Bodily Injury Liability</b>                              |            |              |                  |
|          | Limit each person  |            |              | 2,000,000        |
|          | Limit each accident  |            |              | 2,000,000        |

**Umbrella Liability**

**Commercial Insurance Policy**  
Schedule of Insurance



Policy No. 501196249

Declarations

Effective 3/18/2011

| Form No. | Type of Coverage   | Deductible | Co-Insurance | Limit/<br>Amount |
|----------|--|------------|--------------|------------------|
|          | <b>Umbrella Liability</b><br>Self insured retention - 10,000<br>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       |
| <b><u>Business Interruption:</u></b>                        |                |
| 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 <sup>st</sup> Month)                  | \$10,000       |
| <b><u>Crime:</u></b>  |                |
| 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        |
| <b><u>Liability:</u></b>                                    |                |
| 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

| <b>SUBSIDIARY</b>       | <b>NUMBER OF SHARES HELD BY THE OBLIGOR</b> | <b>PERCENTAGE OF OWNERSHIP</b> |
|-------------------------|---|--------------------------------|
| 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:

| <b>NAME</b>                                   | <b>NUMBER OF SHARES</b> | <b>TYPE OF SHARES</b>          |
|---|-------------------------|--------------------------------|
| 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<br>Calgary T2P 4K9   |
| 2. | CHIEF EXECUTIVE OFFICE<br><br>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<br>Thornhill L3T 2C7   |
| 3. | LOCATION OF CORPORATE MINUTE BOOKS  | ONTARIO               | Aird & Berlis LLP<br>181 Bay Street, Suite 1800<br>Toronto M5J 2T9   |
| 4. | ALL OTHER PLACES OF BUSINESS  | ONTARIO               | <ol style="list-style-type: none"> <li>1. <u>Interchange</u><br/>90 Interchange Way<br/>Vaughan, L4K 5C3</li> <li>2. <u>North York</u><br/>4950 Yonge Street<br/>Toronto M2N 6K1</li> <li>3. <u>Danforth</u><br/>635 Danforth Avenue<br/>Toronto, M4K 1R2</li> <li>4. <u>Delisle</u><br/>1521 Yonge Street<br/>Toronto, M4T 1Z2</li> <li>5. <u>Dunfield</u><br/>110 Eglinton Avenue East<br/>Toronto, M4P 2Y1</li> <li>6. <u>Cedarbrae</u><br/>3495 Lawrence Ave. East<br/>Scarborough, M1H 1B3</li> </ol> |

|  |                    |                              |  |
|--|--------------------|------------------------------|--|
|  |                    |                              | <i>(continued on next page)</i>  |
|  | <b>DESCRIPTION</b> | <b>RELEVANT JURISDICTION</b> | <b>FULL ADDRESS</b>  |
|  |                    |                              | <p>7. <u>Pickering</u><br/>1755 Pickering Parkway<br/>Pickering, L1V 6K5</p> <p>8. <u>Whitby</u><br/>75 Consumers Drive,<br/>Whitby, L1N 9S2</p> <p>9. <u>Bloor/Yorkville</u><br/>80 Bloor Street West<br/>Toronto, M5S 1L9</p> <p>10. <u>Richmond</u><br/>267 Richmond Street West<br/>Toronto, M5V 3M6</p> <p>11. <u>Wellington</u><br/>111 Wellington Street West<br/>Toronto, M5J 2S6</p> <p>12. <u>Yonge &amp; Dundas</u><br/>319 Yonge Street<br/>Toronto, M5B 1R7</p> |

Schedule 9.01(20) – Intellectual Property

| TRADE-MARK   | PARTICULARS  |
|--|--|
| <p><b><i>EXTREME FITNESS</i></b><br/>           EXTREME FITNESS Design</p> | <p>REGISTERED<br/>           App No.:1217183<br/>           Reg #: TMA653078<br/>           RD: 2005-11-21</p> |
| <p>EXTREME</p>   | <p>REGISTERED<br/>           App No.:0873473<br/>           Reg #: TMA513449<br/>           RD: 1999-07-28</p> |



**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. | <b>3495 Lawrence Avenue East,<br/>Toronto, Ontario (Cedarbrae<br/>Mall)</b> | <ul style="list-style-type: none"> <li>(a) Lease Agreement dated July 27, 2001</li> <li>(b) Non-Disturbance Agreement dated July, 2001</li> <li>(c) Pylon Sign Agreement dated July 27, 2001</li> <li>(d) Letter re: date of execution of Lease dated October 2, 2001</li> <li>(e) Assignment of Lease dated January 28, 2003</li> <li>(f) Assignment of Pylon Agreement dated January 28, 2003</li> <li>(g) Consent to Assignment of Lease and Amending Agreement dated May 18, 2007</li> <li>(h) Lease Assignment Agreement dated May 24, 2007</li> <li>(i) Landlord Consent dated May 30, 2007</li> <li>(j) Extension Letter dated May 31, 2007</li> </ul> |
| 2. | <b>111 Wellington Street West,<br/>Toronto, Ontario</b>                     | <ul style="list-style-type: none"> <li>(a) Lease Agreement dated June 1, 2007</li> <li>(b) Subordination, Non-Disturbance and Attornment Agreement dated June 1, 2007</li> <li>(c) Extension Letter dated June 1, 2007</li> <li>(d) Landlord Consent dated June 1, 2007</li> </ul>  |

|    | <u>Property Address</u>                                      | <u>Lease Summary</u>   |
|----|--|--|
| 3. | <b>1521 Yonge Street, Toronto, Ontario (Delisle Court)</b>   | <ul style="list-style-type: none"> <li>(a) Lease Agreement dated November 4, 1999</li> <li>(b) Lease Amending Agreement dated November 10, 1999</li> <li>(c) Notice of Assignment of Lease dated November 14, 1999</li> <li>(d) Cancellation of Assignment letter dated September 23, 2001</li> <li>(e) Non-Disturbance Agreement dated September 24, 2001</li> <li>(f) Lease Amending Agreement dated September 26, 2001</li> <li>(g) Mutual Release dated September 26, 2001</li> <li>(h) Tenant's Acknowledgement dated October 31, 2003</li> <li>(i) Lease Amending Agreement dated May 15, 2007</li> <li>(j) Assignment of Lease and Consent to Assignment of Lease dated May 15, 2007</li> <li>(k) Landlord Consent Agreement dated May 29, 2007</li> <li>(l) Trust and Indemnity Agreement dated June 18, 2007</li> </ul>   |
| 4. | <b>110 Eglinton Avenue East, Toronto, Ontario (Dunfield)</b> | <ul style="list-style-type: none"> <li>(a) Lease Agreement dated January 1, 1996</li> <li>(b) Letter of Agreement accepted May 21, 1997</li> <li>(c) Lease of Additional Space dated June 17, 1998</li> <li>(d) Letter of Agreement dated August 19, 1998</li> <li>(e) Landlord's Consent to Sublease dated June 14, 1999</li> <li>(f) Lease Amending Agreement dated September 20, 1999</li> <li>(g) Subordination, Non-Disturbance and Attornment Agreement dated October 22, 1999</li> <li>(h) Lease of Additional Space dated June 8, 2001</li> <li>(i) Letter re: Landlord's Work dated August 10, 2001</li> <li>(j) Master Concession Agreement dated November 1, 2003</li> <li>(k) Letter re: Parking dated April 26, 2006</li> <li>(l) Lease Amending Agreement dated November 27, 2006</li> <li>(m) Assignment of Lease dated May 16, 2007</li> <li>(n) Lease Amending Agreement dated May 25, 2007</li> <li>(o) Extension letter dated May 31, 2007</li> </ul> |

|    | <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. | <b>90 Interchange Way, Vaughan, Ontario (Interchange)</b>   | <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. | <b>319 Yonge Street, Toronto, Ontario (aka 10 Dundas Street East, Toronto, Ontario) (Toronto Life Square)</b> | <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. | <b>75 Consumers Drive, Whitby, Ontario</b>  | <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"> <li>(d) Amendment to Agreement to Lease dated June 18, 2003</li> <li>(e) Second Amendment to Agreement to Lease dated October 17, 2003</li> <li>(f) Assignment Agreement dated November 27, 2003</li> <li>(g) Third Amendment to Agreement to Lease dated January 13, 2004</li> <li>(h) Fourth Amendment to Agreement to Lease dated March 22, 2004</li> <li>(i) Letter re: Pre-Sales Facility dated April 14, 2004</li> <li>(j) Fifth Amendment to Agreement to Lease dated June 1, 2009</li> <li>(k) Subordination, Non-Disturbance and Attornment Agreement dated July 21, 2004</li> <li>(l) Agreement to Lease Pylon Signage dated March 28, 2005</li> <li>(m) Tenant Estoppel Certificate dated July 28, 2004</li> <li>(n) Consent to Transfer dated May 5, 2006 [UNEXECUTED BY LANDLORD]</li> <li>(o) Landlord Consent Agreement dated June 14, 2006</li> <li>(p) Subordination, Non-Disturbance and Attornment Agreement dated June 15, 2006</li> </ul>                                |
| 8. | 1755 Pickering Parkway, Unit 38,<br>Pickering, Ontario | <ul style="list-style-type: none"> <li>(a) Retail Lease dated October 28, 1998</li> <li>(b) Agreement re: Transfer of Charge dated October 28, 1998</li> <li>(c) Agreement change of name dated January 19, 1999</li> <li>(d) Indenture dated February 2, 1999</li> <li>(e) Agreement re: amendment of lease dated April 6, 1999 including executed Indemnity Agreements dated March 12, 1999 attached as Schedules</li> <li>(f) Agreement re: amendment of lease dated June 22, 1999</li> <li>(g) Lease Amending Agreement dated August 17, 1999</li> <li>(h) Security Agreement dated August 17, 1999</li> <li>(i) Tenant's Acknowledgement and Estoppel Certificate dated November 11, 2003</li> <li>(j) Notice and Direction to Tenants dated November 25, 2003</li> <li>(k) Lease Amending Agreement dated November 22, 2004 [LANDLORD SIGNATURE MISSING]</li> <li>(l) Lease Amending Agreement dated November 22, 2005 [MISSING]</li> <li>(m) Confirmation of Possession Date Extension dated October 28, 2005.</li> </ul> |

|    | <u>Property Address</u>                                     | <u>Lease Summary</u>  |
|----|---|---|
|    |   | <ul style="list-style-type: none"> <li>(n) Acknowledgement of Possession dated November 15, 2005</li> <li>(o) Partial Surrender Agreement dated November 30, 2005</li> <li>(p) Consent To Transfer dated May 26, 2006 [PARTIALLY EXECUTED]</li> <li>(q) Consent letter dated May 8, 2006 [UNEXECUTED BY LANDLORD]</li> <li>(r) Consent To Release Easement dated May 29, 2006</li> <li>(s) Tenant's Acknowledgement and Estoppel Certificate dated March 16, 2006</li> <li>(t) Notice of Pending Sale dated January 23, 2006</li> <li>(u) Memorandum re: Release of Information dated March 2, 2006</li> <li>(v) Landlord Consent Agreement dated June 13, 2006</li> <li>(w) Subordination, Non-Disturbance and Attornment Agreement dated June 15, 2006</li> </ul>   |
| 9. | 8281 and 8275 Yonge Street,<br>Markham, Ontario (Thornhill) | <ul style="list-style-type: none"> <li>(a) Lease of Commercial Space dated July 8, 1996</li> <li>(b) Lease Amending Agreement dated May 27, 1998</li> <li>(c) Second Lease Amending Agreement dated September 1, 1998</li> <li>(d) Revised Lease dated May 28, 1999 [MISSING]</li> <li>(e) Letter of Intent accepted on December 2, 1999 [MISSING]</li> <li>(f) Estoppel Certificate dated February 6, 2001</li> <li>(g) Leasehold Allowance Promissory Note dated May 30, 2000</li> <li>(h) Extension Agreement dated January 10, 2006 [MISSING]</li> <li>(i) Third Lease Amending Agreement dated June 2006</li> <li>(j) Parking Lease with Yonge-Kirk Properties Incorporated dated March 27, 1998 [Now Expired]</li> <li>(k) Lease Parking Lot between Yonge-Kirk Properties Inc. and Extreme Fitness Yonge Ltd. Dated December 13, 1999</li> <li>(l) Lease Extension and Amending Agreement re: Parking dated January 19, 2004 between Yonge-Kirk Properties Incorporated and Extreme Fitness Yonge Limited</li> <li>(m) Lease Parking Lot between 2044922 Ontario Ltd. and Extreme Fitness, Inc. dated June 2006</li> <li>(n) Landlord Consent Agreement dated June 15, 2006</li> </ul> |

|     | <u>Property Address</u>  | <u>Lease Summary</u>   |
|-----|--|--|
|     |  | <ul style="list-style-type: none"> <li>(o) Parking Lot Side Letter dated September 2006</li> <li>(p) Subordination, Non-Disturbance and Attornment Agreement dated June 14, 2006</li> </ul>  |
| 10. | 4950 Yonge Street, Toronto, Ontario and 100 Upper Madison Avenue, Toronto, Ontario (North York Property) | <ul style="list-style-type: none"> <li>(a) Letter Lease Renewal dated April 24, 2000</li> <li>(b) Storage Lease dated August 13, 2004</li> <li>(c) Architect Certificates dated October 31, 2000 and July 25, 2005</li> <li>(d) Spa Premises Retail Lease dated March 24, 2000 (including partial copy of Indemnity Agreement dated March 24, 2000 attached as Schedule "G"-unexecuted)</li> <li>(e) Juice Bar Premises Retail Lease dated March 24, 2000 (including Indemnity Agreement dated March 24, 2000 attached as Schedule "G")</li> <li>(f) Fitness Premises Retail Lease dated March 24, 2000 (including Indemnity Agreement dated March 24, 2000 attached as Schedule "G")</li> <li>(g) Letter dated March 24, 2000 re: Termination of Leases dated October 26, 1999 and re: revised leases <b>[PAGES MISSING AND UNEXECUTED]</b></li> <li>(h) Indemnity Agreements dated March 24, 2000 (attached as Schedules "G" to items (d), (e) and (f) above)</li> <li>(i) Letter of Indemnity dated March 30, 2000</li> <li>(j) Spa Lease Amending Agreement dated November 26, 2004 <b>[MISSING]</b></li> <li>(k) Juice Bar Lease Amending Agreement dated November 26, 2004</li> <li>(l) Fitness Lease Amending Agreement dated November 30, 2004</li> <li>(m) Second Fitness Lease Expansion dated December 20, 2006</li> <li>(n) Landlord Consent Agreement dated June 14, 2006</li> <li>(o) Consent to Transfer dated May 8, 2006 <b>[UNEXECUTED BY LANDLORD]</b></li> <li>(p) Third Fitness Lease Extension and Amending Agreement dated December 11, 2009</li> <li>(q) Lease Extension and Amending Agreement – Spa Premises dated December 11, 2009</li> <li>(r) Lease Extension and Amending Agreement – Juice Bar Premises dated December 11, 2009</li> </ul> |

|     | <u>Property Address</u>                                    | <u>Lease Summary</u>  |
|-----|--|---|
| 11. | <b>635 Danforth Avenue, Toronto, Ontario</b>               | <ul style="list-style-type: none"> <li>(a) Lease Agreement dated October 30, 2006</li> <li>(b) Tenant's Acknowledgement dated October 30, 2007</li> <li>(c) Letter of agreement dated October 30, 2006</li> <li>(d) Landlord Consent Agreement dated October 30, 2006</li> <li>(e) Lease renewal letter dated October 12, 2007</li> <li>(f) Parking Licence Agreement dated September 30, 2006</li> <li>(g) Parking Licence Agreement dated September 30, 2007</li> <li>(h) Letter re: base rent dated August 19, 2008</li> <li>(i) Subordination, Non-Disturbance and Attornment Agreement dated October 30, 2006 (Voidonicolas)</li> <li>(j) Subordination, Non-Disturbance and Attornment Agreement dated October 30, 2006 (Meridian)</li> </ul> |
| 12. | <b>267 Richmond Street, Toronto, Ontario (RioCan Hall)</b> | <ul style="list-style-type: none"> <li>(a) Agreement to Lease dated November 27, 2006</li> <li>(b) Lease Agreement dated December 22, 2006</li> <li>(c) Non-Disturbance and Attornment Agreement dated December 21, 2006</li> </ul>   |
| 13. | <b>80 Bloor Street West, Toronto, Ontario</b>              | <ul style="list-style-type: none"> <li>(a) Agreement re Bally Lease Surrender dated July 30, 2008</li> <li>(b) Lease Agreement dated August 1, 2008</li> <li>(c) Agreement Amendment to 11.1A and 21.23 dated August 11, 2008 [MISSING]</li> <li>(d) Trust Agreement dated June 3, 2002 together with email referencing address discrepancy therein</li> <li>(e) Landlord Consent Agreement dated August 1, 2008</li> </ul>   |

**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

| <b>SUPPLIER NAME</b>               | <b>DATE AGREEMENT SIGNED</b> | <b>SERVICE PROVIDED</b>   | <b>NOTICE FOR TERMINATION</b> | <b>ANNUAL \$</b> |
|------------------------------------|------------------------------|---|-------------------------------|------------------|
| 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

A credit agreement among the Borrower, National Bank of Canada as administrative agent and the financial institutions from time to time signatory thereto as shown as lenders thereunder, dated May 20, 2011 (the "**Credit Agreement**"), and the agreements required to be executed and delivered pursuant to the Credit Agreement.

**Schedule 9.01(38) – Conflicts of Interest**

Refer to Schedule 9.01(32) (Non-Arm's Length Transactions).

9386122.1

Tab H

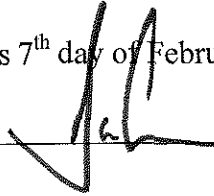
Attached is Exhibit "H"

Referred to in the

Affidavit of Alan Hutchens

Sworn before me

this 7<sup>th</sup> day of February, 2013



---

Commissioner for taking Affidavits, etc

---

**GENERAL SECURITY AGREEMENT**

**EXTREME FITNESS, INC.**

---

## TABLE OF CONTENTS

|  | Page |
|--|------|
| 1. Definitions.....  | 1    |
| 2. Grant of Security Interest.....                                     | 3    |
| 3. Limitations on Grant of Security Interest.....                      | 3    |
| 4. Attachment; No Obligation to Advance.....                           | 3    |
| 5. Representations and Warranties.....                                 | 4    |
| (a) Places of Business, Name, Location of Collateral.....              | 4    |
| (b) Title; No Other Security Interests.....                            | 4    |
| (c) Amount of Accounts.....  | 4    |
| (d) Authority; Consents.....   | 4    |
| (e) Motor Vehicles.....  | 4    |
| (f) No Consumer Goods.....   | 4    |
| (g) Intellectual Property Rights.....                                  | 5    |
| 6. Survival of Representations and Warranties.....                     | 5    |
| 7. Covenants.....  | 5    |
| (a) Further Documentation.....   | 5    |
| (b) Delivery of Certain Collateral.....                                | 5    |
| (c) Payment of Expenses; Indemnification.....                          | 5    |
| (d) Maintenance of Records.....  | 6    |
| (e) Right of Inspection.....   | 6    |
| (f) Limitations on Other Security Interests.....                       | 6    |
| (g) Limitations on Dispositions of Collateral.....                     | 6    |
| (h) Limitations on Modifications, Waivers, Extensions.....             | 6    |
| (i) Limitations on Discounts, Compromises, Extensions of Accounts..... | 7    |
| (j) Maintenance of Collateral.....                                     | 7    |
| (k) Insurance.....   | 7    |
| (l) Further Identification of Collateral.....                          | 7    |
| (m) Notices.....   | 7    |
| (n) Delivery of Agreements re Intellectual Property Rights.....        | 7    |
| 8. Rights on Default.....  | 7    |
| (a) Rights under PPSA, etc.....  | 8    |
| (b) Demand Possession.....   | 8    |
| (c) Take Possession.....   | 8    |
| (d) Deal with Collateral.....  | 8    |
| (e) Carry on Business.....   | 8    |
| (f) Enforce Collateral.....  | 8    |
| (g) Dispose of Collateral.....   | 8    |
| (h) Court-Approved Disposition of Collateral.....                      | 8    |



**TABLE OF CONTENTS**  
(continued)

|     |  | Page |
|-----|--|------|
|     | (i) Purchase by Agent .....                                  | 8    |
|     | (j) Collect Accounts .....                                   | 9    |
|     | (k) Transfer of Securities .....                             | 9    |
|     | (l) Exercise of Rights .....                                 | 9    |
|     | (m) Payment of Liabilities .....                             | 9    |
|     | (n) Borrow and Grant Security Interests .....                | 9    |
|     | (o) Appoint Receiver .....                                   | 9    |
|     | (p) Court-Appointed Receiver .....                           | 9    |
| 9.  | Grant of Licence .....                                       | 10   |
| 10. | Sale of Securities .....                                     | 10   |
| 11. | Application of Proceeds .....                                | 10   |
| 12. | Continuing Liability of Debtor .....                         | 11   |
| 13. | Agent's Appointment as Attorney-in-Fact .....                | 11   |
| 14. | Performance by Agent of Debtor's Obligations .....           | 11   |
| 15. | Interest .....   | 11   |
| 16. | Severability .....   | 11   |
| 17. | Rights of Agent; Limitations on Agent's Obligations .....    | 11   |
|     | (a) Limitations on Agent's Liability .....                   | 11   |
|     | (b) Debtor Remains Liable under Accounts and Contracts ..... | 12   |
|     | (c) Collections on Accounts and Contracts .....              | 12   |
| 18. | Dealings by Agent .....                                      | 12   |
| 19. | Communication .....  | 13   |
| 20. | Release of Information .....                                 | 13   |
| 21. | Waivers and Indemnity .....                                  | 13   |
| 22. | Amalgamation .....   | 14   |
| 23. | Governing Law; Attornment .....                              | 14   |
| 24. | Interpretation .....   | 14   |
| 25. | Successors and Assigns .....                                 | 14   |

**TABLE OF CONTENTS**  
**(continued)**

**Page**

26. Acknowledgment of Receipt/Waiver..... 14

**SCHEDULES**

Schedule A

GENERAL SECURITY AGREEMENT

**TO: Name of Agent:** Golub Capital Incorporated,  
as Administrative Agent for  
the Lenders under the  
Credit Agreement (as each such  
term is defined below)

**Address:** 551 Madison Avenue, 6<sup>th</sup> Floor  
New York, New York  
U.S.A. 10022

**Attention:** Charles F. Riceman

**Facsimile:** (212) 660-7266

**RECITALS:**

**A.** EXTREME FITNESS, INC., a corporation existing under the laws of Alberta, Canada (the "Debtor"), the lenders from time to time parties thereto (such lenders, together with their successors and assigns, being collectively referred to as the "Lenders"), and GOLUB CAPITAL INCORPORATED, as administrative agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Agent"), are parties to a credit agreement dated as of the date hereof (such credit agreement, as it may be amended, supplemented or otherwise modified or restated from time to time, referred to as the "Credit Agreement").

**B.** To secure the payment and performance of the Obligations (this term, and other capitalized terms used in this Agreement, have the meanings set forth in Section 1), the Debtor has agreed to grant to the Agent, for its own benefit and for the benefit of the Lenders, security interests over the Collateral in accordance with the terms of this Agreement.

For good and valuable consideration, the receipt and adequacy of which are acknowledged by the Debtor, the Debtor agrees with and in favour of the Agent, for its own benefit and for the benefit of the Lenders, as follows:

1. **Definitions.** In this Agreement, capitalized terms which are not otherwise defined have the meanings given to such terms in the Credit Agreement. In addition:

"Accessions", "Account", "Chattel Paper", "Consumer Goods", "Document of Title", "Equipment", "Goods", "Instrument", "Intangible", "Inventory" and "Proceeds" have the meanings given to them in the PPSA.

"Books and Records" means all books, records, files, papers, disks, documents and other repositories of data recording in any form or medium, evidencing or relating to the

Collateral which are at any time owned by the Debtor or to which the Debtor (or any Person on the Debtor's behalf) has access.

**"Business Day"** means any day other than a Saturday, Sunday or statutory holiday in the Province of Ontario, Canada.

**"Collateral"** means all of the present and future undertaking, Personal Property (including any Personal Property that may be described in any Schedule to this Agreement or any schedules, documents or listings that the Debtor may from time to time sign and provide to the Agent in connection with this Agreement) and real property (including any real property that may be described in any Schedule to this Agreement or any schedules, documents or listings that the Debtor may from time to time sign and provide to the Agent in connection with this Agreement and including all fixtures and all buildings placed, installed or erected from time to time on any such real property) of the Debtor (including all such property at any time owned, leased or licensed by the Debtor, or in which the Debtor at any time has any interest or to which the Debtor is or may at any time become entitled) and all Proceeds thereof and dividends or distributions thereon, wherever located.

**"Contracts"** means all contracts, licences and agreements to which the Debtor is at any time a party or pursuant to which the Debtor has at any time acquired rights, and includes (i) all rights of the Debtor to receive money due and to become due to it in connection with a contract, licence or agreement, (ii) all rights of the Debtor to damages arising out of, or for breach or default in respect of, a contract, licence or agreement, and (iii) all rights of the Debtor to perform and exercise all remedies in connection with a contract, licence or agreement.

**"Credit Agreement"** means the Credit Agreement as defined in the Recitals.

**"Default"** means an Event of Default under the Credit Agreement.

**"Intellectual Property Rights"** means all industrial and intellectual property rights, including copyrights, patents, trade-marks, industrial designs, know how and trade secrets and all Contracts related to any such industrial and intellectual property rights.

**"Money"** has the meaning given to it in the PPSA or, if there is no such meaning given in the PPSA, means a medium of exchange authorized or adopted by the Parliament of Canada as part of the currency of Canada, or by a foreign government as part of its currency.

**"Obligations"** means Obligations under the Credit Agreement.

**"Permits"** means all permits, licences, authorizations, approvals, franchises, rights-of-way, easements and entitlements that the Debtor has, requires or is required to have, to own, possess or operate any of its property or to operate and carry on any part of its business.

**"Person"** will be broadly interpreted and includes an individual, a corporation, a limited liability company, a partnership, a trust, a joint venture, an association, an unincorporated organization, the government of a country or any political subdivision thereof, any agency or department of any such government, a regulatory agency or any other juridical entity and the heirs, executors, administrators or other legal representatives of an individual.

**"Personal Property"** means personal property and includes Accounts, Books and Records, Chattel Paper, Documents of Title, Equipment, Goods, Instruments, Intangibles (including Intellectual Property Rights and Permits), Inventory, Money and Securities.

**"PPSA"** means the *Personal Property Security Act* of the province of Ontario, Canada, as such legislation may be amended, renamed or replaced from time to time (and includes all regulations from time to time made under such legislation).

**"Receiver"** means a receiver, a manager or a receiver and manager.

**"Securities"** has the meaning given to it in the PPSA, or if there is no such meaning given in the PPSA but the PPSA defines "security" instead, it means the plural of that term.

**"Security Interest"** means any mortgage, charge, pledge, hypothecation, lien (statutory or otherwise), assignment, finance lease, title retention agreement or arrangement, security interest or other encumbrance or adverse claim of any nature, or any other security agreement or arrangement creating in favour of any creditor a right in respect of a particular property.

2. **Grant of Security Interest.** As general and continuing collateral security for the due payment and performance of the Obligations, the Debtor mortgages, charges and assigns to the Agent (for its own benefit and for the benefit of the Lenders), and grants to the Agent (for its own benefit and for the benefit of the Lenders) a security interest in, the Collateral.

3. **Limitations on Grant of Security Interest.** If the grant of any Security Interest in respect of any Contract, Intellectual Property Right or Permit under Section 2 would result in the termination or breach of such Contract, Intellectual Property Right or Permit, then the applicable Contract, Intellectual Property Right or Permit will not be subject to any Security Interest under Section 2 but will be held in trust by the Debtor for the Agent (for its own benefit and for the benefit of the Lenders) and, on exercise by the Agent of any of its rights under this Agreement following Default, assigned by the Debtor as directed by the Agent. In addition, the Security Interests created by this Agreement do not extend to the last day of the term of any lease or agreement for lease of real property. Such last day will be held by the Debtor in trust for the Agent (for its own benefit and for the benefit of the Lenders) and, on the exercise by the Agent of any of its rights under this Agreement following Default, will be assigned by the Debtor as directed by the Agent.

4. **Attachment; No Obligation to Advance.** The Debtor confirms that value has been given by the Lenders to the Debtor, that the Debtor has rights in the Collateral (other than after-acquired property) and that the Debtor and the Agent have not agreed to postpone the time for attachment of the Security Interests created by this Agreement to any of the Collateral. The Security Interests created by this Agreement will have effect and be deemed to be effective whether or not the Obligations or any part thereof are owing or in existence before or after or upon the date of this Agreement. Neither the execution of this Agreement nor any advance of funds shall oblige the Agent or any of the Lenders to advance any funds or any additional funds.

5. **Representations and Warranties.** The Debtor represents and warrants to the Agent (for its own benefit and for the benefit of the Lenders) that:

(a) **Places of Business, Name, Location of Collateral.** The Debtor's full legal name, chief executive office, and the place where it keeps its Books and Records, is at the address specified on the signature page of this Agreement. Any other names under which the Debtor conducts its business, the location of all other existing places where the Debtor carries on business, or keeps tangible Personal Property, the location of all jurisdictions in which Account Debtors of the Debtor are located, and the location of all real property owned by the Debtor, are set out in Schedule A to this Agreement.

(b) **Title; No Other Security Interests.** Except for (i) Security Interests created by this Agreement, and (ii) any other Security Interest permitted under the Credit Agreement, the Debtor owns (or with respect to any leased or licensed property forming part of the Collateral, holds a valid leasehold or licensed interest in) the Collateral free and clear of any Security Interest. No security agreement, financing statement or other notice with respect to any or all of the Collateral is on file or on record in any public office, except for filings in favour of, or permitted in writing by, the Agent.

(c) **Amount of Accounts.** The amount represented by the Debtor to the Agent from time to time as owing by each Account Debtor or by all Account Debtors in respect of the Accounts will at such time be the correct amount so owing by such Account Debtor or debtors and, unless disclosed in writing by the Debtor to the Agent at that time, will be owed free of any dispute, set-off or counterclaim.

(d) **Authority; Consents.** The Debtor has full power and authority to grant to the Agent, for its own benefit and for the benefit of the Lenders, the Security Interests created by this Agreement and to execute, deliver and perform its obligations under this Agreement, and such execution, delivery and performance does not contravene any of the Debtor's charter documents or by-laws or any agreement, instrument or restriction to which the Debtor is a party or by which the Debtor or any of the Collateral is bound. Except for any consent that has been obtained and is in full force and effect, no consent of any Person (other than the Debtor) is required, or purports to be required, for the execution, delivery and performance of this Agreement. Except as disclosed in writing by the Debtor to the Agent, neither the Debtor nor (to the best of the Debtor's knowledge) any other party to any Account or Contract is in default or is likely to become in default in the performance or observance of any of the terms of such Account or Contract.

(e) **Motor Vehicles.** A description of all motor vehicles and other "serial number" goods (i.e. trailers, mobile homes, aircraft, aircraft engines and vessels) (including vehicle identification numbers) presently owned by the Debtor and classified as Equipment is set out in Schedule A to this Agreement.

(f) **No Consumer Goods.** The Debtor does not own any Consumer Goods which are material in value or which are material to the business, operations, property, condition or prospects (financial or otherwise) of the Debtor.

(g) **Intellectual Property Rights.** All Intellectual Property Rights owned by the Debtor, and all rights of the Debtor to the use of any Intellectual Property Rights, are described in Schedule A to this Agreement. To the best of the Debtor's knowledge, each such Intellectual Property Right is valid, subsisting, unexpired, enforceable and has not been abandoned. Except as set out in such Schedule, none of such Intellectual Property Rights has been licensed or franchised by the Debtor to any Person.

6. **Survival of Representations and Warranties.** All agreements, representations, warranties and covenants made by the Debtor in this Agreement are material, will be considered to have been relied on by the Agent and the Lenders and will survive the execution and delivery of this Agreement or any investigation made at any time by or on behalf of the Agent or any Lender and any disposition or payment of the Obligations until repayment and performance in full of the Obligations and termination of all rights of the Debtor that, if exercised, would result in the existence of Obligations.

7. **Covenants.** The Debtor covenants and agrees with the Agent (for its own benefit and for the benefit of the Lenders) that:

(a) **Further Documentation.** The Debtor will from time to time, at the expense of the Debtor, promptly and duly authorize, execute and deliver such further instruments and documents, and take such further action, as the Agent may reasonably request for the purpose of obtaining or preserving the full benefits of, and the rights and powers granted by, this Agreement (including the filing of any financing statements or financing change statements under any applicable legislation with respect to the Security Interests created by this Agreement). The Debtor acknowledges that this Agreement has been prepared based on the existing laws in the province of Ontario and that a change in such laws, or the laws of other jurisdictions, may require the execution and delivery of different forms of security documentation. Accordingly, the Debtor agrees that the Agent will have the right to require that this Agreement be amended, supplemented or replaced, and that the Debtor will promptly on request by the Agent authorize, execute and deliver any such amendment, supplement or replacement (i) to reflect any changes in such laws, whether arising as a result of statutory amendments, court decisions or otherwise, (ii) to facilitate the creation and registration of appropriate security in all appropriate jurisdictions, or (iii) if the Debtor merges or amalgamates with any other Person or enters into any corporate reorganization, in each case in order to confer on the Agent (for its own benefit and for the benefit of the Lenders) Security Interests similar to, and having the same effect as, the Security Interests created by this Agreement.

(b) **Delivery of Certain Collateral.** Promptly upon request from time to time by the Agent, the Debtor will deliver (or cause to be delivered) to the Agent, endorsed and/or accompanied by such instruments of assignment and transfer in such form and substance as the Agent may reasonably request, any and all Instruments, Securities, Documents of Title and Chattel Paper included in or relating to the Collateral as the Agent may specify in its request.

(c) **Payment of Expenses; Indemnification.** The Debtor will pay on demand, and will indemnify and save the Agent harmless from, any and all liabilities, costs and expenses (including legal fees and expenses on a solicitor and own client basis and any sales, goods and services or other similar taxes payable to any governmental authority with respect to any such

liabilities, costs and expenses) (i) incurred by the Agent in the preparation, registration, administration or enforcement of this Agreement, (ii) with respect to, or resulting from, any failure or delay by the Debtor in performing or observing any of its obligations under this Agreement, or (iii) incurred by the Agent in performing or observing any of the other covenants of the Debtor under this Agreement.

(d) **Maintenance of Records.** Subject to the requirements of the Credit Agreement, the Debtor will keep and maintain accurate and complete records of the Collateral, including a record of all payments received and all credits granted with respect to the Accounts and Contracts. At the written request of the Agent, the Debtor will mark any tangible Collateral specified by the Agent to evidence the existence of the Security Interests created by this Agreement.

(e) **Right of Inspection.** Upon reasonable notice, the Agent may, at all times during normal business hours, without charge, examine and make copies of all Books and Records and may discuss the affairs, finances and accounts of the Debtor with its officers and accountants. The Agent may also, upon reasonable notice, without charge, enter the premises of the Debtor where any of the Collateral is located for purpose of inspecting the Collateral, observing its use or otherwise protecting its interest in the Collateral. The Debtor, at its expense, will provide the Agent with such clerical and other assistance as may be reasonably requested by the Agent to exercise any of its rights under this paragraph.

(f) **Limitations on Other Security Interests.** The Debtor will not create, incur or permit to exist, and will defend the Collateral against, and will take such other action as is necessary to remove, any and all Security Interests on and claims in respect of the Collateral other than the Security Interests created by this Agreement or as permitted by the Credit Agreement, and the Debtor will defend the right, title and interest of the Agent and the Lenders in and to the Collateral against the claims and demands of all Persons.

(g) **Limitations on Dispositions of Collateral.** Except as permitted under the Credit Agreement, the Debtor will not, without the Agent's prior written consent, sell or otherwise dispose of any of the Collateral, except that Inventory may be sold, leased or otherwise disposed of, and subject to Section 17, Accounts may be collected, in the ordinary course of the Debtor's business. Following Default, all Proceeds of the Collateral (including all amounts received in respect of Accounts) received by or on behalf of the Debtor, whether or not arising in the ordinary course of the Debtor's business, will be received by the Debtor as trustee for the Agent and will be immediately paid to the Agent.

(h) **Limitations on Modifications, Waivers, Extensions.** Other than as permitted by paragraph (i) below, the Debtor will not (i) amend, modify, terminate or waive any provision of any Permit, Contract or any document giving rise to an Account in any manner which is or could reasonably be expected to be materially adverse to the Debtor or the Agent or any of the Lenders, or (ii) fail to exercise promptly and diligently its rights under each Contract and each document giving rise to an Account if such failure is or could reasonably be expected to be materially adverse to the Debtor or the Agent or any of the Lenders.



(i) **Limitations on Discounts, Compromises, Extensions of Accounts.** Other than in the ordinary course of business of the Debtor consistent with previous practices, the Debtor will not (i) grant any extension of the time for payment of any Account, (ii) compromise, compound or settle any Account for less than its full amount, (iii) release, wholly or partially, any Person liable for the payment of any Account, or (iv) allow any credit or discount of any Account.

(j) **Maintenance of Collateral.** The Debtor will maintain all tangible Collateral in good operating condition, ordinary wear and tear excepted, and the Debtor will provide all maintenance, service and repairs necessary for such purpose.

(k) **Insurance.** The Debtor will keep the Collateral insured in accordance with the requirements of the Credit Agreement.

(l) **Further Identification of Collateral.** The Debtor will promptly furnish to the Agent such statements and schedules further identifying and describing the Collateral, and such other reports in connection with the Collateral, as the Agent may from time to time reasonably request, including an updated list of any motor vehicles or other "serial number" goods owned by the Debtor and classified as Equipment, including vehicle identification numbers.

(m) **Notices.** The Debtor will advise the Agent promptly, in reasonable detail, of (i) any Security Interest (other than the Security Interests created by this Agreement and any Security Interest permitted under the Credit Agreement) on, or claim asserted against, any of the Collateral, (ii) the occurrence of any event, claim or occurrence that could reasonably be expected to have a material adverse effect on the value of the Collateral or on the Security Interests created by this Agreement, (iii) any change in the location of any place of business (including additional locations) or the chief executive office of the Debtor, (iv) any change in the location of any of the tangible Collateral (including additional locations) except if such tangible Collateral is moved between the locations set out in Schedule A, (v) any acquisition of real property by the Debtor, (vi) any change in the name of the Debtor, (vii) any merger or amalgamation of the Debtor with any other Person, (viii) any additional jurisdiction in which material accounts debtors of the Debtor are located, and (ix) any material loss of or damage to any of the Collateral. The Debtor agrees not to effect or permit any of the changes referred to in clauses (iii) to (viii) above unless all filings have been made and all other actions taken that are required in order for the Agent to continue at all times following such change to have a valid and perfected Security Interest in respect of all of the Collateral.

(n) **Delivery of Agreements re Intellectual Property Rights.** The Debtor will promptly, following demand from time to time by the Agent, authorize, execute and deliver any and all agreements, instruments, documents and papers that the Agent may request to evidence the Agent's Security Interests in any Intellectual Property Rights and, where applicable, the goodwill of the business of the Debtor connected with the use of, and symbolized by, any such Intellectual Property Rights.

8. **Rights on Default.** On Default, all of the Obligations will, subject to the Credit Agreement, become immediately due and payable and the security constituted by this Agreement

will become enforceable, and the Agent may, personally or by agent, at such time or times as the Agent in its discretion may determine, do any one or more of the following:

(a) **Rights under PPSA, etc.** Exercise all of the rights and remedies granted to secured parties under the PPSA and any other applicable statute, or otherwise available to the Agent at law or in equity.

(b) **Demand Possession.** Demand possession of any or all of the Collateral, in which event the Debtor will, at the expense of the Debtor, immediately cause the Collateral designated by the Agent to be assembled and made available and/or delivered to the Agent at any place designated by the Agent.

(c) **Take Possession.** Enter on any premises where any Collateral is located and take possession of, disable or remove such Collateral.

(d) **Deal with Collateral.** Hold, store and keep idle, or operate, lease or otherwise use or permit the use of, any or all of the Collateral for such time and on such terms as the Agent may determine; and demand, collect and retain all earnings and other sums due or to become due from any Person in respect of any of the Collateral.

(e) **Carry on Business.** Carry on, or concur in the carrying on of, any or all of the business or undertaking of the Debtor and enter on, occupy and use (without charge by the Debtor) any of the premises, buildings, plant and undertaking of, or occupied or used by, the Debtor.

(f) **Enforce Collateral.** Seize, collect, receive, enforce or otherwise deal with any Collateral in such manner, on such terms and conditions and at such times as the Agent deems advisable.

(g) **Dispose of Collateral.** Realize on any or all of the Collateral and sell, lease, assign, give options to purchase, or otherwise dispose of and deliver any or all of the Collateral (or contract to do any of the above), in one or more parcels at any public or private sale, at any exchange, broker's board or office of the Agent or elsewhere, on such terms and conditions as the Agent may deem advisable and at such prices as it may deem best, for cash or on credit or for future delivery.

(h) **Court-Approved Disposition of Collateral.** Apply to a court of competent jurisdiction for the sale or foreclosure of any or all of the Collateral.

(i) **Purchase by Agent.** At any public sale, and to the extent permitted by law on any private sale, bid for and purchase any or all of the Collateral offered for sale and, upon compliance with the terms of such sale, hold, retain and dispose of such Collateral without any further accountability to the Debtor or any other Person with respect to such holding, retention or disposition, except as required by law. In any such sale to the Agent, the Agent may, for the purpose of making payment for all or any part of the Collateral so purchased, use any claim for Obligations then due and payable to it as a credit against the purchase price.

(j) **Collect Accounts.** Notify the Account Debtors or obligors under any Accounts of the assignment of such Accounts to the Agent and direct such Account Debtors or obligors to make payment of all amounts due or to become due to the Debtor in respect of such Accounts directly to the Agent and, upon such notification and at the expense of the Debtor, enforce collection of any such Accounts, and adjust, settle or compromise the amount or payment of such Accounts, in such manner and to such extent as the Agent deems appropriate in the circumstances.

(k) **Transfer of Securities.** Transfer any Securities forming part of the Collateral into the name of the Agent or its nominee.

(l) **Exercise of Rights.** Exercise any and all rights, privileges, entitlements and options pertaining to any Securities forming part of the Collateral as if the Agent were the absolute owner of such Securities.

(m) **Payment of Liabilities.** Pay any liability secured by any Security Interest against any Collateral. The Debtor will immediately on demand reimburse the Agent for all such payments.

(n) **Borrow and Grant Security Interests.** Borrow money for the maintenance, preservation or protection of any Collateral or for carrying on any of the business or undertaking of the Debtor and grant Security Interests on any Collateral (in priority to the Security Interests created by this Agreement or otherwise) as security for the money so borrowed. The Debtor will immediately on demand reimburse the Agent for all such borrowings.

(o) **Appoint Receiver.** Appoint by instrument in writing one or more Receivers of the Debtor or any or all of the Collateral with such rights, powers and authority (including any or all of the rights, powers and authority of the Agent under this Agreement) as may be provided for in the instrument of appointment or any supplemental instrument, and remove and replace any such Receiver from time to time. To the extent permitted by applicable law, any Receiver appointed by the Agent will (for purposes relating to responsibility for the Receiver's acts or omissions) be considered to be the agent of the Debtor and not of the Agent or the Lenders.

(p) **Court-Appointed Receiver.** Apply to a court of competent jurisdiction for the appointment of a Receiver of the Debtor or of any or all of the Collateral.

The Agent may exercise any or all of the foregoing rights and remedies without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except as required by applicable law) to or on the Debtor or any other Person, and the Debtor by this Agreement waives each such demand, presentment, protest, advertisement and notice to the extent permitted by applicable law. None of the above rights or remedies will be exclusive of or dependent on or merge in any other right or remedy, and one or more of such rights and remedies may be exercised independently or in combination from time to time. Without prejudice to the ability of the Agent to dispose of the Collateral in any manner which is commercially reasonable, the Debtor acknowledges that a disposition of Collateral by the Agent which takes place substantially in accordance with the following provisions will be deemed to be commercially reasonable:

- (i) Collateral may be disposed of in whole or in part;
- (ii) Collateral may be disposed of by public auction, public tender or private contract, with or without advertising and without any other formality;
- (iii) any purchaser or lessee of Collateral may be a customer of the Agent;
- (iv) a disposition of Collateral may be on such terms and conditions as to credit or otherwise as the Agent, in its sole discretion, may deem advantageous; and
- (v) the Agent may establish an upset or reserve bid or price in respect of Collateral.

9. **Grant of Licence.** For the purpose of enabling the Agent to exercise its rights and remedies under Section 8 when the Agent is entitled to exercise such rights and remedies, and for no other purpose, the Debtor grants to the Agent an irrevocable, non-exclusive licence (exercisable without payment of royalty or other compensation to the Debtor) to use, assign or sublicense any or all of the Intellectual Property Rights, including in such licence reasonable access to all media in which any of the licensed items may be recorded or stored and to all computer programs used for the compilation or printout of the same.

10. **Sale of Securities.** 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. The Debtor further agrees that compliance with any such limitation or restriction will not result in a sale being considered or deemed not to have been made in a commercially reasonable manner, and the Agent will not be liable or accountable to the Debtor for any discount allowed by reason of the fact that such Securities are sold in compliance with any such limitation or restriction.

11. **Application of Proceeds.** All Proceeds of Collateral received by the Agent or a Receiver may be applied to discharge or satisfy any expenses (including the Receiver's remuneration and other expenses of enforcing the Agent's rights under this Agreement), Security Interests in favour of Persons other than the Agent, borrowings, taxes and other outgoings affecting the Collateral or which are considered advisable by the Agent or the Receiver to protect, preserve, repair, process, maintain or enhance the Collateral or prepare it for sale, lease or other disposition, or to keep in good standing any Security Interests on the Collateral ranking in priority to any of the Security Interests created by this Agreement, or to sell, lease or otherwise dispose of the Collateral. The balance of such Proceeds may, at the sole discretion of the Agent, be held as collateral security for the Obligations or be applied to such of the Obligations (whether or not the same are due and payable) in such manner and at such times as the Agent considers appropriate and thereafter will be accounted for as required by law.

12. **Continuing Liability of Debtor.** The Debtor will remain liable for any Obligations that are outstanding following realization of all or any part of the Collateral and the application of the Proceeds thereof.

13. **Agent's Appointment as Attorney-in-Fact.** The Debtor constitutes and appoints the Agent and any officer or agent of the Agent, with full power of substitution, as the Debtor's true and lawful attorney-in-fact with full power and authority in the place of the Debtor and in the name of the Debtor or in its own name, from time to time in the Agent's discretion after a Default, to take any and all appropriate action and to execute any and all documents and instruments as, in the opinion of such attorney acting reasonably, may be necessary or desirable to accomplish the purposes of this Agreement. These powers are coupled with an interest and are irrevocable until this Agreement is terminated and the Security Interests created by this Agreement are released. Nothing in this Section affects the right of the Agent as secured party or any other Person on the Agent's behalf, to sign and file or deliver (as applicable) all such financing statements, financing change statements, notices, verification statements and other documents relating to the Collateral and this Agreement as the Agent or such other Person considers appropriate.

14. **Performance by Agent of Debtor's Obligations.** If the Debtor fails to perform or comply with any of the obligations of the Debtor under this Agreement, the Agent may, but need not, perform or otherwise cause the performance or compliance of such obligation, provided that such performance or compliance will not constitute a waiver, remedy or satisfaction of such failure. The expenses of the Agent incurred in connection with any such performance or compliance will be payable by the Debtor to the Agent immediately on demand, and until paid, any such expenses will form part of the Obligations and will be secured by the Security Interests created by this Agreement.

15. **Interest.** If any amount payable to the Agent or the Lenders under this Agreement is not paid when due, the Debtor will pay to the Agent (for its own benefit or for the benefit of the Lenders, as applicable), immediately on demand, interest on such amount from the date due until paid, at a nominal annual rate equal at all times to the applicable default rate provided for in the Credit Agreement. All amounts payable by the Debtor to the Agent under this Agreement, and all interest on all such amounts, compounded monthly on the last Business Day of each month, will form part of the Obligations and will be secured by the Security Interests created by this Agreement.

16. **Severability.** Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and will be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

17. **Rights of Agent; Limitations on Agent's Obligations.**

(a) **Limitations on Agent's Liability.** The Agent will not be liable to the Debtor or any other Person for any failure or delay in exercising any of the rights of the Debtor under this Agreement (including any failure to take possession of, collect, sell, lease or otherwise dispose

of any Collateral, or to preserve rights against prior parties). Neither the Agent, a Receiver nor any agent of the Agent (including, in Alberta or British Columbia, any sheriff) is required to take, or will have any liability for any failure to take or delay in taking, any steps necessary or advisable to preserve rights against other Persons under any Collateral in its possession. Neither the Agent, a Receiver nor any agent of the Agent (including, in Alberta or British Columbia, any sheriff) will be liable for any, and the Debtor will bear the full risk of all, loss or damage to any and all of the Collateral (including any Collateral in the possession of the Agent or any Receiver) caused for any reason other than the gross negligence or wilful misconduct of the Agent or such Receiver.

(b) **Debtor Remains Liable under Accounts and Contracts.** Notwithstanding any provision of this Agreement, the Debtor will remain liable under each of the documents giving rise to the Accounts and under each of the Contracts to observe and perform all the conditions and obligations to be observed and performed by the Debtor thereunder, all in accordance with the terms of each such document and Contract. The Agent will have no obligation or liability under any Account (or any document giving rise thereto) or Contract by reason of or arising out of this Agreement or the receipt by the Agent of any payment relating to such Account or Contract pursuant hereto, and in particular (but without limitation), the Agent will not be obligated in any manner to perform any of the obligations of the Debtor under or pursuant to any Account (or any document giving rise thereto) or under or pursuant to any Contract, to make any payment, to make any inquiry as to the nature or the sufficiency of any payment received by it or as to the sufficiency of any performance by any party under any Account (or any document giving rise thereto) or under any Contract, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to it or to which it may be entitled at any time.

(c) **Collections on Accounts and Contracts.** The Agent hereby authorizes the Debtor to collect the Accounts and payments under the Contracts in the normal course of the business of the Debtor and for the purpose of carrying on the same. If required by the Agent at any time, any payments of Accounts or under Contracts, when collected by the Debtor, will be forthwith (and, in any event, within two Business Days) deposited by the Debtor in the exact form received, duly endorsed by the Debtor to the Agent if required, in a special collateral account maintained by the Agent, and until so deposited, will be held by the Debtor in trust for the Agent, segregated from other funds of the Debtor. All such amounts while held by the Agent (or by the Debtor in trust for the Agent) and all income in respect thereof will continue to be collateral security for the Obligations and will not constitute payment thereof until applied as hereinafter provided. If a Default has occurred and is continuing, the Agent may apply all or any part of the amounts on deposit in said special collateral account on account of the Obligations in such order as the Agent may elect. At the Agent's request, the Debtor will deliver to the Agent any documents evidencing and relating to the agreements and transactions which gave rise to the Accounts and Contracts, including all original orders, invoices and shipping receipts.

18. **Dealings by Agent.** The Agent will not be obliged to exhaust its recourse against the Debtor or any other Person or against any other security it may hold in respect of the Obligations before realizing upon or otherwise dealing with the Collateral in such manner as the Agent may consider desirable. The Agent may grant extensions of time and other indulgences, take and give up security, accept compositions, grant releases and discharges and otherwise deal

with the Debtor and any other Person, and with any or all of the Collateral, and with other security and sureties, as the Agent may see fit, all without prejudice to the Obligations or to the rights and remedies of the Agent under this Agreement. The powers conferred on the Agent under this Agreement are solely to protect the interests of the Agent in the Collateral and will not impose any duty upon the Agent to exercise any such powers.

19. **Communication.** Any communication required or permitted to be given under this Agreement will be in writing and will be effectively given if delivered in a manner and to the applicable address or facsimile number provided for from time to time pursuant to the Credit Agreement. Any communications so given will be deemed to have been given and to have been received as provided in the Credit Agreement.

20. **Release of Information.** The Debtor authorizes the Agent to provide a copy of this Agreement and such other information as may be requested of the Agent by Persons entitled thereto pursuant to any applicable legislation, and otherwise with the consent of the Debtor.

21. **Waivers and Indemnity.** To the extent permitted by applicable law, the Debtor unconditionally and irrevocably waives (i) all claims, damages and demands it may acquire against the Agent or any Lender arising out of the exercise by the Agent, any Lender or any Receiver of any rights or remedies under this Agreement or at law, and (ii) all of the rights, benefits and protections given by any present or future statute that imposes limitations on the rights, powers or remedies of a secured party or on the methods of, or procedures for, realization of security, including any "seize or sue" or "anti-deficiency" statute or any similar provision of any other statute. None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except by a written instrument executed by the Agent and the Debtor. The Agent and the Lenders will not, by any act or delay, be deemed to have waived any right or remedy hereunder or to have acquiesced in any Default or in any breach of any of the terms and conditions hereof. No failure to exercise, nor any delay in exercising, on the part of the Agent or the Lenders, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by the Agent or the Lenders of any right or remedy hereunder on any one occasion will not be construed as a bar to any right or remedy which the Agent or the Lenders would otherwise have on any future occasion. Neither the taking of any judgment nor the exercise of any power of seizure or sale will extinguish the liability of the Debtor to pay the Obligations, nor will the same operate as a merger or any covenant contained in this Agreement or of any other liability, nor will the acceptance of any payment or other security constitute or create any novation. The Debtor agrees to indemnify the Agent and the Lenders from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever (except by reason of the gross negligence or willful misconduct of the Agent or the Lenders or any of their agents or employees) which may be imposed on, incurred by, or asserted against the Agent and arising by reason of any action (including any action referred to in this Agreement) or inaction or omission to do any act legally required by the Debtor. This indemnification will survive the satisfaction, release or extinguishment of the Obligations and the Security Interests created by this Agreement.

22. **Amalgamation.** The Debtor acknowledges that if it amalgamates with any other corporation or corporations, then (i) the Collateral and the Security Interests created by this Agreement will extend to and include all the property and assets of the amalgamated corporation and to any property or assets of the amalgamated corporation thereafter owned or acquired, (ii) the term "Debtor", where used in this Agreement, will extend to and include the amalgamated corporation, and (iii) the term "Obligations", where used in this Agreement, will extend to and include the Obligations of the amalgamated corporation.

23. **Governing Law; Attornment.** This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario, Canada. Without prejudice to the ability of the Agent to enforce this Agreement in any other proper jurisdiction, the Debtor irrevocably submits and attorns to the non-exclusive jurisdiction of the courts of such province. To the extent permitted by applicable law, the Debtor irrevocably waives any objection (including any claim of inconvenient forum) that it may now or hereafter have to the venue of any legal proceeding arising out of or relating to this Agreement in the courts of such Province.

24. **Interpretation.** Unless otherwise expressly provided in this Agreement, if any matter in this Agreement is subject to the consent or approval of the Agent or is to be acceptable to the Agent, such consent, approval or determination of acceptability will be in the sole discretion of the Agent. If any provision in this Agreement refers to any action taken or to be taken by the Debtor, or which the Debtor is prohibited from taking, such provision will be interpreted to include any and all means, direct or indirect, of taking, or not taking, such action. The division of this Agreement into sections and paragraphs, and the insertion of headings, is for convenience of reference only and will not affect the construction or interpretation of this Agreement. Unless the context otherwise requires, words importing the singular include the plural and vice versa, and words importing gender include all genders. When used in this Agreement, the word "including" (or includes) means "including (or includes) without limitation". Any reference in this Agreement to a "Section" means the relevant Section of this Agreement. If more than one Debtor executes this Agreement, their obligations under this Agreement are joint and several.

25. **Successors and Assigns.** This Agreement will enure to the benefit of, and be binding on, the Debtor and its successors and permitted assigns, and will enure to the benefit of, and be binding on, the Agent and its successors and assigns. The Debtor may not assign this Agreement, or any of its rights or obligations under this Agreement, without the prior written consent of the Agent.

26. **Acknowledgment of Receipt/Waiver.** The Debtor acknowledges receipt of an executed copy of this Agreement and, to the extent permitted by applicable law, waives the right to receive a copy of any financing statement, financing change statement or verification statement in respect of any registered financing statement or financing change statement prepared, registered or issued in connection with this Agreement.



[signature page to General Security Agreement]

Dated: June 15, 2006

Address: 8281 Yonge Street  
Thornhill, ON  
L3T 2C7

Facsimile: (905) 709-2960

**EXTREME FITNESS, INC.**

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

Name: David Moross  
Title: President

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

Name:  
Title:

[signature page to General Security Agreement]

Dated: June 15, 2006

**EXTREME FITNESS, INC.**

Address: 8281 Yonge Street  
Thornhill, ON  
L3T 2C7

Facsimile: (905) 709-2960

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

By: Brian D. Crosby  
Name: Brian Crosby  
Title: Secretary/Treasurer

## SCHEDULE A

### Locations of Collateral (Paragraph 5(a))

- Pickering  
Pickering Home and Leisure Centre  
1755 Pickering Parkway, Unit 38  
Pickering, Ontario, Canada
- Whitby  
Whitby Entertainment Centrum  
Building Q  
Whitby, Ontario, Canada
- Thornhill, Ontario, Canada  
8281-8275 Yonge Street  
Thornhill, Ontario, Canada
- North York  
The Madison Centre  
4950 Yonge Street  
Toronto, Ontario, Canada  
AND  
100 Upper Madison Avenue  
Toronto, Ontario, Canada

### Jurisdictions of Account Debtors (Paragraph 5(a))

Ontario, Canada

### Locations of Owned Real Property (Paragraph 5(a))

None.

### Descriptions of Motor Vehicles and Other Serial Number Goods (Paragraph 5(e))

- Ford Econoline Van S E350, 2002 – VIN Serial Number 1FTSS34L92HA39361

### Intellectual Property Rights (Paragraph 5(g))

#### *Registered Trade-Marks*

1. Canadian registered Trade-Mark number TMA513449 for "EXTREME";
2. Canadian registered Trade-Mark number TMA653078 for "EXTREME FITNESS";

#### *Unregistered Trade-Marks*

1. SmartStart – Unregistered trade-mark – registered with the Ontario Ministry of Consumer and Business Services as a business name

2. Unique "X" in word "Extreme" – unregistered design-mark – used in Ontario

*Internet Domain Names*

1. Internet domain name "EXTREMEFITNESS.INFO" expiring on November 28, 2006

*Licenses Of Intellectual Property*

1. Oral agreements between each of the Companies and the Society of Composers, Authors and Music Publishers of Canada (S.O.C.A.N.) pursuant to which the Companies pay a license fee in the approximate amount of \$2,700 per year per club for the right to play music. The fee is calculated based on the number of participants for the year in aerobics classes; and
2. Subscription Application dated November 23, 2004 by Extreme Fitness to Fit DV.com respecting website content, at a term on a month to month basis, at a license fee of approximately \$200 per month for 4 clubs.

# Tab I

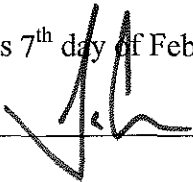
Attached is Exhibit "I"

Referred to in the

Affidavit of Alan Hutchens

Sworn before me

this 7<sup>th</sup> 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 Golub Capital Incorporated, as administrative agent (the "Agent") for and on behalf of itself and each of the lenders that are from time to time lenders under the Credit Agreement (collectively, the "Lenders")**

**WHEREAS:**

1. The Agent and the Lenders have extended a term facility to the Company pursuant to the credit agreement dated as of May 20, 2011, as amended and restated (as amended and restated, the "**Credit Agreement**"), in the original principal amount of \$16,500,000. As of April 16, 2012, the principal amount outstanding under the Credit Agreement was \$16,862,656.03, together with all interest, fees, costs (including, without limitation, legal and consultant fees and disbursements) and other amounts which may be charged to or recovered from the Company under the Credit Agreement. Unless otherwise specified, capitalized terms used herein have the meanings ascribed thereto in the Credit Agreement.
2. As security for all of the Obligations (as defined in the Credit Agreement, which term includes, for greater certainty, all of the Company's present and future indebtedness and obligations to the Agent and the Lenders under the Credit Agreement), the Company has granted to the Agent and the Lenders security upon, among other things, all of the real and personal property, assets and undertaking of the Company pursuant to the General Security Agreement dated May 20, 2011, and the pledged securities and other collateral set out in the Securities Pledge Agreement dated May 20, 2011 (collectively, the "**Company Security**").

3. Extreme Fitness Holding (Luxembourg) S.À R.L. (the "**Guarantor**") has delivered to the Agent and the Lenders an unlimited guarantee of all of the Obligations (the "**Guaranteed Liabilities**"). As security for the Guaranteed Liabilities, the Guarantor has granted to the Agent and the Lenders, security upon, among other things, all of the real and personal property, assets and undertaking of the Guarantor pursuant to the General Security Agreement dated May 20, 2011, and the pledged securities and other collateral set out in the Securities Pledge Agreement dated May 20, 2011 (collectively, the "**Guarantor Security**", and together with the Company Security, the "**Security**").
4. The Agent 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 (i) 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 or other period, with such misstatements resulting in a Material Adverse Effect, (ii) Advances (as defined in the Senior Credit Agreement) having been made which exceed the maximum amount permitted under the Senior Credit Agreement, (iii) the failure of the Company to make a required mandatory prepayment of the Senior Debt in connection therewith as required by Section 7.10 of the Senior Credit Agreement, and (iv) the declaration by the Senior Lenders that all outstanding Senior Debt is immediately due and payable and the termination by the Senior Lenders of all Commitments (as defined in the Senior Credit Agreement) to extend further credit to the Company (collectively, the "**Existing Events of Default**").
5. The Agent 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 Agent, on behalf of itself and the Lenders, hereby agrees to forbear from demanding payment under the Credit Agreement or enforcing its rights and remedies with respect to the Existing Events of Default and any other default or event of default under the Credit Agreement or the Security that (i) occurs prior to the Forbearance Deadline, and (ii) does not also constitute a Forbearance Terminating Event (as described in paragraph 33).
6. The Company has requested that the Agent and the Lenders forbear from enforcing their rights and remedies at this time and that they provide certain accommodations to the Company, including the Priority Credit Facility (as defined below), to permit the Company to continue its operations and conduct an orderly sale of its assets and operations in order to permanently repay the Obligations in accordance with the terms hereof.



7. In consideration of the Agent's and the Lenders' forbearance as described herein and the other accommodations described herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby irrevocably acknowledged by the Company and the Guarantor, the Company and the Guarantor hereby agree with the Agent as follows.

#### ACKNOWLEDGEMENT

8. Each of the Company and the Guarantor acknowledges that, to the best of its knowledge, recital 4 is true and correct and that each of the remaining recitals is true and correct.
9. The Company and the Guarantor acknowledge that, unless otherwise specified, all monetary amounts are expressed in United States dollars.
10. Pursuant to the provisions of the *Limitations Act, 2002*, the Company and the Guarantor acknowledge that the Company is indebted to the Agent and the Lenders under the Credit Agreement in the amounts specified in paragraph 1 of this Agreement as at the date specified therein, together with all interest, fees, costs (including, without limitation, legal and consultant fees and disbursements) and other amounts which may be charged to or recovered from the Company under the Credit Agreement to the date of payment.
11. The Company and the Guarantor acknowledge that, as a result of the Existing Events of Default, the Agent is entitled to terminate the Credit Agreement, demand payment of the Obligations and the Guaranteed Liabilities and take steps to enforce the Security.
12. The Company acknowledges and agrees that all security now held by the Agent and the Lenders for the indebtedness and obligations of the Company to the Agent and the Lenders under the Credit Agreement, including, without limitation, the Company 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 Agent or the Lenders thereunder, notwithstanding the provisions of the *Limitations Act, 2002*.
13. The Guarantor acknowledges and agrees that all security now held by the Agent and the Lenders for the indebtedness and obligations of the Guarantor to the Agent and the Lenders under the Guarantee, including, without limitation, the Guarantor Security, 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 Agent or the Lenders thereunder, notwithstanding the provisions of the *Limitations Act*, 2002.

#### CONDITIONS PRECEDENT

14. The forbearance and other accommodations granted by the Agent and the Lenders hereunder shall become effective at the time and day that the following items are received by the Agent, and all escrow arrangements are released (the "Closing"), provided that the 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) National Bank of Canada shall have made additional advances under its revolving credit 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 Cdn\$452,000 (the "Payroll Overdraft").
  - (d) a duly authorized and executed agreement between Falconhead Capital, LLC, Golub Capital Incorporated, and the National Bank of Canada pursuant to which each such party severally agrees to reimburse the National Bank of Canada for one half of any advance made under the Payroll Overdraft in order to fund the April 12 Payroll.
  - (e) the Priority Credit Facility (as defined below) has been made available to the Company by the Agent, as agent, and the lenders under the Priority Credit Facility (collectively, the "Priority Credit Parties") 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;
  - (f) a duly authorized and executed agreement between National Bank of Canada, the Company and the Priority Credit Parties satisfactory to each such party confirming that, other than as provided with respect to payment of any Diverted Funds, Insurance Proceeds and the Paymentech Funds (each as defined below), payment of the Company's indebtedness to the Priority Credit Parties under the Priority Credit Facility up to the maximum amount of \$8,000,000 plus interest and costs (including, without limitation, expenses, legal fees and disbursements) (the "PCF

**Maximum**") shall rank in priority to payment of all of the Company's obligations (the "**NBC Obligations**") owing to National Bank of Canada under the Credit Agreement dated as of May 20, 2011 (the "**NBC Credit Agreement**") and that any security therefor ranks in priority to all security granted by the Company to National Bank of Canada to secure the NBC Obligations (the "**NBC Security**"), to the extent of the amount outstanding under the Priority Credit Facility;

- (g) [Intentionally Deleted.]; and
- (h) confirmation that National Bank of Canada has entered into a forbearance agreement with the Company on terms satisfactory to the Agent with respect to the NBC Obligations and the NBC Security (the "**NBC Forbearance Agreement**"),

(together, the "**Conditions Precedent**").

The Conditions Precedent are for the sole benefit of the Agent and the Lenders and may be waived only by the Agent in writing. If the Conditions Precedent are not complied with to the satisfaction of the Agent by Closing and the Agent will not waive satisfaction thereof, then the offer of forbearance and the other accommodations offered by the Agent and the Lenders hereunder shall be terminated.

Upon satisfaction of the Conditions Precedent, unless a Forbearance Terminating Event (as defined herein) occurs under this Agreement, the Agent shall take no further steps prior to October 31, 2012 (the "**Forbearance Deadline**") to demand payment under the Credit Agreement or to enforce its rights and remedies against the Company or the Guarantor, or pursuant to the Security.

#### **AMENDMENTS TO CREDIT AGREEMENT**

- 15. [Intentionally Deleted.]
- 16. The Company has advised the Agent 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 Agent, 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 the Company's current accounts with National Bank of Canada (the "**NBC Accounts**"). The Company shall apply all Insurance Proceeds as follows:

- (a) 50% of all Insurance Proceeds shall be applied in permanent reduction of the Overdraft (as defined in the NBC Forbearance Agreement) 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 the NBC Accounts 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 NBC Obligations under the Revolving Facility (as defined in the NBC Forbearance Agreement) 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 the NBC Accounts and utilized by the Company for working capital.

#### **PAYMENTECH FUNDS**

17. Certain advances made by National Bank of Canada 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 the NBC Accounts and utilize such funds to firstly permanently reduce the NBC Obligations under the Overdraft on the terms and conditions set out in the NBC Forbearance Agreement, at the and thereafter to permanently reduce the Company's obligations under the Priority Credit Facility, and thereafter to reduce the NBC Obligations and the Obligations, in accordance with and on the terms and conditions set out in the Intercreditor Agreement dated as of May 20, 2011 between National Bank of Canada, the Agent and the Lenders, as amended (the "Intercreditor Agreement").

#### **PRIORITY CREDIT FACILITY**

18. On or before Closing, the Priority Credit Parties 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 \$6,000,000 (the "Priority Credit Facility"). Pursuant to an agreement to be entered into between the Priority Credit Parties and National Bank of Canada, repayment by the Company of advances under the Priority Credit Facility shall rank in priority to repayment of all of the NBC 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 Credit Parties. 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 Credit Parties. The Priority Credit Parties 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 National Bank of Canada.

#### **APPOINTMENT OF CONSULTANT**

19. The Company consents to the appointment of one or more consultants chosen by the Agent to act as consultant for the Agent and the Lenders (the "Consultant") for the purpose of reviewing the Company's financial performance, compliance with the Forecast and the Agent'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 Agent 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 Agent will advise the Company in the event that the amount of the Consultant's unbilled fees and disbursements exceeds Cdn.\$25,000. The Agent will provide to the Company and National Bank of Canada a copy of the factual portion of any written report delivered by the Consultant to the Agent, but not any conclusions or recommendations provided to the Agent by the Consultant, subject to a non-reliance letter or such other terms as may be requested by the Consultant.

20. The Agent 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 Agent 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 Agent 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 Agent 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 Agent. The Company or the Company FA will deliver to the Agent a copy of any written report delivered by the Company FA to the Company.

#### **SALE OF THE COMPANY'S ASSETS**

21. 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 Agent a draft timeline for the Sale Process as soon as possible. The Company will provide updates to the Agent and the Consultant

regarding the terms and status of the Sale Process as required by the Agent. Without limiting the foregoing, the Company covenants in favour of the Agent to enter into a transaction to sell all of its assets and business operations in an amount sufficient to permanently and indefeasibly repay the Obligations on or before the Forbearance Deadline.

22. 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 Agent, which may be withheld in the Agent'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 Agent, as a permanent reduction firstly of the Priority Credit Facility and thereafter to reduce the NBC Obligations and the Obligations, in accordance with and on the terms and conditions set out in the Intercreditor Agreement.
23. The Company agrees that it shall not, without the prior written consent of the Agent, 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.
24. The Company covenants in favour of the Agent and the Lenders 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 Agent's prior written consent. The Company and the Agent confirm that funds provided by the Priority Credit Parties under the Priority Credit Facility shall be secured by the existing security granted by the Company to the Agent under the Company Security.

#### REPORTING REQUIREMENTS

25. 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 27 below; and

- (b) delivery to the Agent of the Company's restated 2009 and 2010 year-end financial statements and financial statements for 2011 once same are available.
26. The Company hereby agrees to provide the Agent or its agents or consultants with any information regarding the Credit Agreement, the financial position of the Company or the security position of the Agent which the Agent may request from time to time. Without limiting the foregoing, the Company shall immediately advise the Agent 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 Obligations on or before the Forbearance Deadline.
27. 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 Agent an update of the Forecast for the following thirteen (13) weeks or such other period of time as the Agent may require. The Agent 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 Agent, the Company shall provide to the Agent a report comparing actual cash flows, sales, and closing cash of the Company for the preceding week or such other period as the Agent 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 Cdn.\$20,000 or greater negative variance from the Forecast in the Company's sales, total cash receipts and disbursements for any given week.

#### ADDITIONAL COVENANTS

28. Until such time as the Priority Credit Facility, the NBC Obligations and the 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) ("OBICA"), to the Company, to Falconhead or to National Bank of Canada or any party related thereto 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) regularly scheduled payments of interest (but not principal or scheduled amortization amounts) in respect of the facilities under the NBC Credit Agreement as set out in the NBC Forbearance Agreement, (iv) concurrently with closing of the sale contemplated in paragraph 21, all principal, accrued interest and expenses owing under the Priority Credit Facility to the PCF Maximum, and all principal, accrued interest and expenses owing under the NBC Credit Agreement to the extent of the NBC Obligations, (v) Falconhead's legal fees and other out-of-pocket expenses incurred in connection with this Agreement, the Priority Credit Facility and related matters. Notwithstanding anything herein to the contrary, the Company shall be obligated to make the following payments during the forbearance period established under this Agreement: (i) the permitted monthly payments of interest and standby fees accruing with respect to the Priority Credit Facility, (ii) the Agent's legal fees and other out-of-pocket expenses incurred in connection with this Agreement, the Priority Credit Facility and related matters. Nothing herein shall prevent the accrual of PIK interest on indebtedness owing to the Agent or any of the Lenders, provided that no payment on account of amounts owing to the Agent or the Lenders shall be made by the Company in priority to repayment of the Priority Credit Facility.

29. 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 Obligations have been permanently repaid or with the prior consent of the Agent.
30. 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").
31. 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 National Bank of Canada. 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 NBC Accounts. Notwithstanding the foregoing, the Agent 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 NBC Accounts. The Company shall not issue cheques or any other form of payment from the RBC Account except to the NBC Accounts. On or before April 24, 2012, the Company shall pay to the National Bank of Canada 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.

32. The Company acknowledges that the Agent 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**

33. The Agent 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 Agent to the Company and National Bank of Canada;
  - (b) if the Priority Credit Facility is terminated, or if the Priority Credit Parties 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 National Bank of Canada terminates its 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 Agent 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 Agent;
- (f) if the Company makes any representations or delivers any financial reporting to the Agent 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 Agent;
- (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.

34. Subject to the Intercreditor Agreement, upon the earlier of:

- (a) the Forbearance Deadline, or
- (b) the occurrence of a Forbearance Terminating Event,

the Agent may immediately enforce, without further notice or delay, all of the Agent's and the Lenders' rights and remedies against the Company and the Guarantor, including, without limitation, by terminating the Credit Agreement, demanding payment of the Obligations and taking steps to enforce the Security held by the Agent and the Lenders 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 Obligations. Upon the occurrence of a Forbearance Terminating Event or the Forbearance Deadline, the Company consents and specifically authorizes the Agent 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 Agent or the Lenders or any other matter or thing related to the business operations of the Company or any other matter deemed relevant by the Agent

for the purpose of recovering the Company's indebtedness to the Agent and the Lenders. For the purpose of the foregoing provision, the Company specifically waives any duty of confidentiality which either the Agent or its agents or consultants now have or may in the future have with respect to the Credit Agreement, the Company's indebtedness to the Agent or the Lenders, the business operations of the Company or any other information, whether confidential or otherwise, in the possession of the Agent relating to the business or operations of the Company or the Company's indebtedness to the Agent or the Lenders.

35. The Company hereby irrevocably agrees upon request by the Agent, to duly execute or deliver or cause to be executed or delivered to the Agent 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 Agent, acting reasonably, to carry out the provisions of this Agreement.
36. 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.
37. Time shall be of the essence of this Agreement and this Agreement shall be governed by the laws of the Province of Ontario.
38. 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.
39. The Company agrees to pay all actual present and future legal, Consultant and agent fees and disbursements incurred by the Agent in respect of or in any way related to the Company including, without limitation, the Agent'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.

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first written above.

**GOLUB CAPITAL INCORPORATED,**  
as agent

Per: 

**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 WITNESS WHEREOF the parties have executed this Agreement as of the date first written above.

**GOLUB CAPITAL INCORPORATED,**  
as agent

Per: \_\_\_\_\_

**EXTREME FITNESS, INC.**

Per: *Kevin D. Cooley*  
Name:  
Title:

(I have authority to bind the Corporation)

**EXTREME FITNESS HOLDING (LUXEMBOURG) S.À R.L.**

Per: *Kevin D. Cooley*  
Name:  
Title:

(I have authority to bind the Corporation)

Tab J

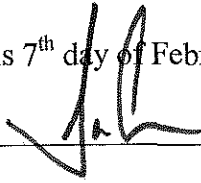
Attached is Exhibit "J"

Referred to in the

Affidavit of Alan Hutchens

Sworn before me

this 7<sup>th</sup> day of February, 2013



---

Commissioner for taking Affidavits, etc



## PRIORITY CREDIT FACILITY AGREEMENT

This Agreement is made as of April 18, 2012 between Extreme Fitness, Inc., as borrower (the "Borrower"), the lenders that are party hereto (individually a "Lender" and collectively the "Lenders"), and Golub Capital Incorporated, as agent (the "Agent").

Reference is made to the letter agreement dated April 18, 2012 between the Borrower and National Bank of Canada (as amended, supplemented, restated or replaced from time to time, the "National Bank Forbearance Agreement").

Reference is also made to the letter agreement dated April 18, 2012 between the Borrower and Golub Capital Incorporated, as administrative agent for the lenders under Subordinate Credit Agreement (as amended, supplemented, restated or replaced from time to time, the "Sub-Debt Forbearance Agreement").

For valuable consideration, the parties agree as follows:

1. Priority Credit Facility. Subject to the terms and conditions of this Agreement, the Lenders hereby agree, on an uncommitted and fully discretionary basis, to make loans to the Borrower in United States dollars from time to time (the "Priority Credit Facility"). The percentage of each loan that shall be provided by each Lender is set out in Schedule A. The initial maximum amount of the Priority Credit Facility shall be USD \$6,000,000, which may be increased to USD \$8,000,000 in the sole discretion of the Lenders. For certainty, the Lenders may decline to make loans to the Borrower at any time in its sole discretion.
2. Purpose. The proceeds of all loans made under the Priority Credit Facility shall be used by the Borrower solely to fund payroll expenses, other operating expenses and other accounts payable described in the most recent weekly cash flow forecast prepared by Alvarez & Marsal and approved in writing by the Lenders (each, an "Approved Cash Flow Forecast").
3. Conditions Precedent to Initial Advance. The Borrower shall deliver a request for the initial advance (in the form attached as Schedule B) not less than one (1) business day prior to the proposed date of the initial advance. Without limiting their discretion to decline to make any advance under the Priority Credit Facility, the Lenders shall have no obligation to make such initial advance prior to the satisfaction of the closing conditions listed in Schedule C.

4. Conditions Precedent to Subsequent Advances. The Borrower shall deliver a request for each subsequent advance (in the form attached as Schedule B) by not later than 1:00 p.m. (local time of the addressee) on the third business day prior to the proposed date of each subsequent advance. Without limiting their discretion to decline to make any advance under the Priority Credit Facility, the Lenders shall have no obligation to make such subsequent advance unless and until the Lenders are satisfied with the information contained in, or accompanying, such request for advance.
5. Interest and Overdue Amounts. The Borrower shall pay interest, from the date of advance until the date of repayment in full, at a rate equal to 8% per annum (the "Interest Rate") on the outstanding principal amount of all loans made by the Lenders under the Priority Credit Facility. Accrued interest shall be payable to the Agent, on behalf of the Lenders, (i) monthly in arrears on the first business day of each month, (ii) on the date of any voluntary or mandatory prepayment, and (iii) on the Repayment Date.
6. Standby Fee. The Borrower shall pay a standby fee of 0.75% per annum on the difference between (i) the outstanding amount of all loans made by the Lenders under the Priority Credit Facility, and (ii) USD \$6,000,000 (or \$8,000,000 if the Lenders have elected to increase the maximum amount of the Priority Credit Facility). The standby fee shall be calculated on a daily basis, and shall be payable to the Agent on behalf of the Lenders (i) monthly in arrears on the first business day of each month, and (ii) on the Repayment Date.
7. Default Interest. If an Event of Default has occurred and is continuing, the Borrower shall pay interest at a rate per annum equal to the Interest Rate plus 2% per annum (the "Default Interest Rate"). In addition, if any principal, interest, standby fee or any other amount payable hereunder is not paid when due, the Borrower shall pay interest on such overdue amount, both before or after demand, default or judgment, at the Default Interest Rate. Such default interest shall accrue on a daily basis, and shall be payable on demand.
8. Voluntary Prepayments. The Borrower may voluntarily prepay indebtedness under the Priority Credit Facility at any time without premium or penalty. For certainty, the amount of any such voluntary prepayment may not be re-borrowed. All voluntary prepayments shall be applied firstly to reimburse out-of-pocket expenses of the Agent and the Lenders, secondly to accrued standby fees and accrued interest on loans made by the Lenders under the Priority Credit Facility, and thirdly, to the outstanding principal amount of such loans.

9. Mandatory Prepayments. The Borrower shall prepay indebtedness under the Priority Credit Facility concurrently with the sale of any assets and undertaking of the Borrower (as more particularly described in paragraphs 22-24 of the National Bank Forbearance Agreement), and upon receipt of any "Diverted Funds" and "Insurance Proceeds" (as more particularly described in paragraph 18 of the National Bank Forbearance Agreement). The amount of such mandatory prepayments may not be re-borrowed. All mandatory prepayments shall applied firstly to reimburse out-of-pocket expenses of the Agent and the Lenders, secondly to accrued standby fees and accrued interest on loans made by the Lenders under the Priority Credit Facility, and thirdly, to the outstanding principal amount of such loans.
10. Repayment Date. The outstanding principal amount of all loans made by the Lenders under the Priority Credit Facility, all accrued interest thereon, all accrued standby fees, and all out-of-pocket expenses incurred by the Agent and the Lenders in connection with this Agreement shall be payable in full on the earlier of (i) the date of demand by the Lenders, and (ii) October 31, 2012 (in either case, the "Repayment Date"). The original scheduled Repayment Date of October 31, 2012 may be extended, on terms and conditions satisfactory to the Lenders, in the sole discretion of the Lenders.
11. Security. The Borrower shall execute and deliver all novations, agreements and other documents as may be required to cause all indebtedness and obligations under the Priority Credit Facility to be secured by the existing security granted by the Borrower to Golub Capital Incorporated pursuant to the Amended and Restated Credit Agreement dated as of May 20, 2011 between Extreme Fitness, Inc., as borrower, the lenders party thereto, and Golub Capital Incorporated, as administrative agent (the "Subordinate Credit Agreement"). In addition, the Agent may require that the Borrower grant new and separate security over all of the present and after-acquired property of the Borrower to secure the indebtedness and other obligations under the Priority Credit Facility.
12. Restriction on Dividends, Distributions, Fees and other Payments. The Borrower may not pay any dividend or other distribution, pay any fee, or make any other payment, to any of its shareholders at any time prior to the repayment in full of the Borrower's indebtedness and obligations under the Priority Credit Facility, other than legal fees and other out-of-pocket expenses incurred by Falconhead Capital, LLC in connection with the National Bank Forbearance Agreement, its participation in the Priority Credit Facility and related matters.

13. Reporting Requirements. The Borrower shall deliver to the Lenders the financial and other reports set out in Schedule D.
14. Sale. The Borrower may not complete the sale contemplated by section 21 of the National Bank Forbearance Agreement without the prior written consent of the Lenders.
15. No Voluntary Insolvency Proceeding. The Borrower shall not commence a voluntary proceeding under the *Bankruptcy and Insolvency Act (Canada)* or the *Companies' Creditors Arrangement Act (Canada)* without the prior written consent of the Lenders.
16. Compliance with Other Agreements. The Borrower shall comply with all of its covenants and obligations in the National Bank Forbearance Agreement, the Sub-Debt Forbearance Agreement, and the Subordinate Credit Agreement (subject to the terms of the Sub-Debt Forbearance Agreement).
17. Events of Default. Without in any way limiting the discretion of the Lenders to demand repayment of amounts advanced under the Priority Credit Facility at any time, all indebtedness and obligations under the Priority Credit Facility shall become immediately due and payable upon the occurrence of any of the following events (each an "Event of Default"):
  - (a) the Borrower shall fail to pay the outstanding principal amount of the loans made under the Priority Credit Facility on the Repayment Date, or shall fail to make any mandatory prepayment described herein;
  - (b) the Borrower shall fail to pay, within two days after the due date thereof, any interest, standby fee or other amount owing to the Lender under this Agreement;
  - (c) the Borrower shall fail to observe or perform any covenant, purpose requirement, condition or agreement contained in this Agreement or any other agreement ancillary to this Agreement;
  - (d) any "Forbearance Termination Event" shall occur under the National Bank Forbearance Agreement or the Sub-Debt Forbearance Agreement;
  - (e) if the Borrower: (i) declares any general moratorium on its indebtedness, or proposes a compromise or arrangement between it and any class of its creditors; or (ii) makes an assignment of its property for the general

benefit of its creditors under the *Bankruptcy and Insolvency Act* (Canada) (the "BIA"), or makes a proposal (or files a notice of its intention to do so) under the BIA; or (iii) institutes any proceeding seeking to adjudicate it an insolvent, or seeking liquidation, dissolution, winding-up, reorganization, compromise, arrangement, adjustment, protection, moratorium, relief, stay of proceedings of creditors generally (or any class of creditors), or composition of it or its debts or any other relief, under any federal, provincial or foreign law now or hereafter in effect relating to bankruptcy, winding-up, insolvency, reorganization, receivership, plans of arrangement or relief or protection of debtors (including the BIA, the *Companies' Creditors Arrangement Act* (Canada) (the "CCAA"), and any applicable corporations legislation) or at common law or in equity, or files an answer admitting the material allegations of a petition filed against it in any such proceeding; or (iv) applies for the appointment of, or the taking of possession by, a receiver, interim receiver, receiver/manager, sequestrator, conservator, custodian, administrator, trustee, liquidator or other similar official for it or any substantial part of its property; or (v) threatens to do any of the foregoing, or takes any action, corporate or otherwise, to approve, effect, consent to or authorize any of the actions described in this paragraph (e) or in paragraph (f) below, or otherwise acts in furtherance thereof or fails to act in a timely and appropriate manner in defense thereof;

- (f) any petition is filed, application made or other proceeding instituted against or in respect of the Borrower: (i) seeking to adjudicate it an insolvent; (ii) seeking a receiving order against it under the BIA; (iii) seeking liquidation, dissolution, winding-up, reorganization, compromise, arrangement, adjustment, protection, moratorium, relief, stay of proceedings of creditors generally (or any class of creditors), or composition of it or its debts or any other relief under any federal, provincial or foreign law now or hereafter in effect relating to bankruptcy, winding-up, insolvency, reorganization, receivership, plans of arrangement or relief or protection of debtors (including the BIA, the CCAA, and any applicable corporations legislation) or at common law or in equity; or (iv) seeking the entry of an order for relief or the appointment of, or the taking of possession by, a receiver, interim receiver, receiver/manager, sequestrator, conservator, custodian, administrator, trustee, liquidator or other similar official for it or any substantial part of its property; and such petition, application or proceeding continues undismissed, or unstayed

and in effect, for a period of 30 days after the institution thereof, provided that if an order, decree or judgment is granted or entered (whether or not entered or subject to appeal) against the Borrower thereunder in the interim, such grace period shall cease to apply, and provided further that if the Borrower provides an answer admitting the material allegations of a petition filed against it in any such proceeding, such grace period shall cease to apply;

- (g) one or more judgments for the payment of money in a cumulative amount in excess of CAD \$500,000 (or its then equivalent in any other currency) in the aggregate is rendered against the Borrower and it has not: (i) provided for the discharge thereof in accordance with its terms within 30 days from the date of entry thereof; or (ii) procured a stay of execution thereof within 30 days from the date of entry thereof and within such period, or such longer period during which execution of such judgment has not been stayed, appealed such judgment and caused the execution thereof to be stayed during such appeal, provided that if enforcement and/or realization proceedings are lawfully commenced in respect thereof in the interim, such grace period shall cease to apply;
- (h) except with the prior written consent of the Lenders, the Borrower grants any security interest after the date hereof in any of its present or future property to any person other than the Agent or National Bank of Canada;
- (i) any property of the Borrower having a fair market value in excess of CAD \$500,000 (or its then equivalent in any other currency) in the aggregate is seized (including by way of execution, attachment, garnishment, levy or distraint), or such property has become subject to any charging order or equitable execution of a governmental authority, or any writ of execution or distress warrant exists in respect of the Borrower or its property, or any sheriff or other person becomes lawfully entitled by operation of law or otherwise to seize or distrain upon such property and in any case such seizure, enforcement, execution, attachment, garnishment, distraint, charging order or equitable execution, or other seizure or right, continues in effect and is not released or discharged for more than 15 days or such longer period during which entitlement to the use of such property continues with the Borrower, and the Borrower is contesting the same in good faith and by appropriate proceedings, provided that if the property is removed from the use of the Borrower, or is sold, in the interim, such grace period shall cease to apply; and

- (k) this Agreement, or any other agreement relating to this Agreement, or any material obligation or other provision hereof or thereof at any time for any reason terminates or ceases to be in full force and effect and a legally valid, binding and enforceable obligation of the Borrower, is declared to be void or voidable or is repudiated, or the validity, binding effect, legality or enforceability hereof or thereof is at any time contested by the Borrower, or the Borrower denies that it has any or any further liability or obligation hereunder or thereunder or any action or proceeding is commenced to enjoin or restrain the performance or observance by the Borrower of any material terms hereof or thereof or to question the validity or enforceability hereof or thereof, or at any time it is unlawful or impossible for the Borrower to perform any of its obligations hereunder or thereunder.
18. Rights and Remedies. Upon default by the Borrower in payment of all indebtedness and other obligations under the Priority Credit Facility following demand by the Agent on behalf of the Lenders, or upon the occurrence of an Event of Default, the Agent on behalf of the Lenders may (i) demand payment (if the Lenders have not already done so), (ii) enforce the security described in section 11, and/or (iii) take such other actions and proceedings and exercise such other rights and remedies as may be available to the Agent and the Lenders under applicable law.
19. Remedies Not Exclusive. The Borrower expressly agrees that the rights and remedies of the Agent and the Lenders under this Agreement are cumulative and in addition to, and not in substitution for, any other rights or remedies. Any single or partial exercise by the Agent or the Lenders of any rights or remedies for a default or breach of any provision of this Agreement shall not constitute or be deemed a waiver of or alter, affect or prejudice any other rights or remedies to which the Agent or the Lenders may be lawfully entitled for the same default or breach. Any waiver by the Lenders of the strict observance of, performance of or compliance with any provision of this Agreement and any indulgence granted, either expressly or by course of conduct, by the Lenders shall be effective only in the specific instance and for the purpose given and shall not constitute or be deemed a waiver of any other rights or remedies of the Lenders as a result of any other default.
20. Currency Indemnity. All payments of interest, standby fees and principal under this Agreement shall be made by the Borrower in U.S. dollars. Any payment on account of an advance made in U.S. dollars (the "required currency") that is paid

in any other currency (the "other currency") for any reason (including, without limitation, pursuant to a court order) shall constitute a discharge of the obligations of the Borrower in the required currency only to the extent of the amount of the required currency that the Lenders are able to purchase in accordance with their usual practices with the other currency amount so received on the date of receipt, and the Borrower shall indemnify each Lender in respect of any shortfall. Such indemnity shall be a separate and distinct obligation of the Borrower to each Lender.

21. General Indemnity. The Borrower agrees to indemnify and hold harmless the Agent and each Lender and their respective shareholders, officers, directors, employees, advisors, and agents (each, an "indemnified person") from and against any and all losses, claims, damages and liabilities to which any such indemnified person may become subject arising out of or in connection with this Agreement, the Priority Credit Facility, the use of the proceeds thereof, or any claim, litigation, investigation or proceeding relating to any of the foregoing, regardless of whether any indemnified person is a party thereto, and to reimburse each indemnified person upon demand for any legal or other expenses incurred in connection with investigating or defending any of the foregoing, provided that the foregoing indemnity will not, as to an indemnified person, apply to losses, claims, damages, liabilities or related expenses to the extent they are found by a final, non-appealable judgement of a court to arise directly from the wilful misconduct or gross negligence of such indemnified person. In no instance shall the Agent or any Lender be liable to the Borrower for any consequential damages arising from any claim related to this Agreement, the Priority Credit Facility, or the lending relationship between any Lender and the Borrower.
22. Agent and Lender Expenses; Falconhead Expenses. The Borrower shall pay all legal fees and disbursements and other out-of-pocket expenses incurred by the Agent and the Lenders in connection with the preparation of this Agreement and all ancillary documentation, the administration of the Priority Credit Facility (including the participation of an interest therein to Falconhead Capital, LLC), and enforcement of the Agent's and the Lenders' rights and remedies under or in connection with this Agreement, the security referred to in section 11, and any other documentation or actions contemplated thereby. In addition, the Borrower may pay Falconhead's legal fees and other out-of-pocket expenses incurred in connection with the negotiation and administration of this Agreement



and the National Bank Forbearance Agreement, the purchase of a participation in the Priority Credit Facility and related matters.

23. Amendment. No amendment or waiver of any provision of this Agreement, nor consent to any departure by the Borrower from such provision, shall be effective unless in writing and approved by the Lenders. Any amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose given.
24. No Waiver, etc. No failure on the part of the Agent or the Lenders to exercise, and no delay in exercising, any of its rights hereunder shall operate as a waiver of such rights, nor shall any single or partial exercise of any of its rights hereunder preclude any other or further exercise of such rights or the exercise of any of their other rights hereunder.
25. Evidence of Indebtedness. The indebtedness of the Borrower under the Priority Credit Facility shall be evidenced by the records of the Lenders, which shall constitute prima facie evidence of such indebtedness. On the request of any Lender, the Borrower shall execute and deliver one or more promissory notes evidencing such indebtedness.
26. Successors and Assigns; Participations. This Agreement shall be binding upon and enure to the benefit of the respective successors and assigns of the Borrower, the Agent and each Lender. The Borrower may not assign any of its rights or obligations under this Agreement. Any reference herein to a party shall be deemed to refer also to its successors and permitted assigns. Each Lender may sell one or more participations in its interests in this Agreement and the Priority Credit Facility without the consent of the Borrower, and each participant shall also have the benefit of the general indemnity provided in section 21.
27. Governing Law; Submission to Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The Borrower, the Agent and the Lenders hereby submit to the jurisdiction of the courts of Ontario in connection with any dispute or other matter arising from this Agreement.
28. Notices. All notices and other communications contemplated by this Agreement shall be delivered by hand, by reputable commercial courier, or by facsimile transmission to the addresses and facsimile numbers listed in Schedule E. Any party may change its address or facsimile number by giving written notice to the

other party in accordance with this Section. All notices delivered by hand or by commercial courier during business hours on a business day of the addressee shall be deemed to have been received on such date, and otherwise on the next following business day of the addressee. All notices and other communications delivered by facsimile transmission prior to 3:00 p.m. (local time of the addressee) on a business day of the addressee shall be deemed to have been received on such date, and otherwise on the next following business day of the addressee.

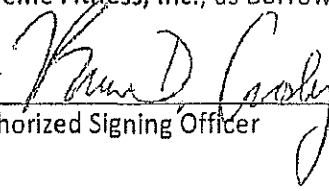
29. Appointment of Agent. Each Lender hereby designates Golub Capital Incorporated as its agent to act as herein specified. Each Lender hereby irrevocably authorizes the Agent to take such action on its behalf under this Agreement and all ancillary agreements and to exercise such powers and to perform such duties hereunder and thereunder as are specifically delegated to or required of the Agent by the terms hereof and thereof and such other powers as are reasonably incidental thereto
  
30. Lender Decisions. Unless described herein as a decision requiring the consent of "all of the Lenders", each decision of the Lenders may be made by one or more Lenders holding not less than 51% of the outstanding principal amount of loans made under the Priority Credit Facility (the "Majority Lenders"), and each such decision of the Majority Lenders shall be binding on all of the Lenders.

[signatures on next following pages]

SIGNATURE PAGE TO PRIORITY CREDIT FACILITY AGREEMENT

Extreme Fitness, Inc., as Borrower

Per:

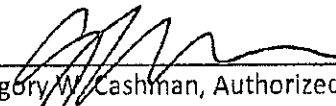
  
\_\_\_\_\_  
Authorized Signing Officer

SIGNATURE PAGE TO PRIORITY CREDIT FACILITY AGREEMENT


**Golub Capital Incorporated, as Agent**

Per:   
Authorized Signing Officer

**Golub Capital BDC, Inc., as Lender**

Per:   
Gregory W. Cashman, Authorized Signatory

**Whitehall Capital Corporation, as Lender**

Per:   
Gregory W. Cashman, President

**GOLUB CAPITAL LTD 2005-2, as Lender**

By: GC Investment Management LLC, Its Manager

Per: \_\_\_\_\_  
Kevin P. Falvey, Authorized Signatory

SIGNATURE PAGE TO PRIORITY CREDIT FACILITY AGREEMENT

**Golub Capital Incorporated, as Agent**

Per: \_\_\_\_\_  
Authorized Signing Officer

**Golub Capital BDC, Inc., as Lender**

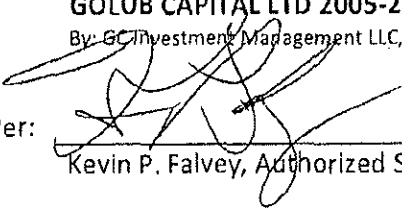
Per: \_\_\_\_\_  
Gregory W. Cashman, Authorized Signatory

**Whitehall Capital Corporation, as Lender**

Per: \_\_\_\_\_  
Gregory W. Cashman, President

**GOLUB CAPITAL LTD 2005-2, as Lender**

By: GC Investment Management LLC, Its Manager

Per:  \_\_\_\_\_  
Kevin P. Falvey, Authorized Signatory

SCHEDULE A TO PRIORITY CREDIT FACILITY AGREEMENT

Lender Percentages

|                               |           |
|-------------------------------|-----------|
| Golub Capital BDC, Inc        | 8.4593 %  |
| Whitehall Capital Corporation | 0.1161 %  |
| Golub Capital Ltd 2005-2      | 91.4246 % |

SCHEDULE B TO PRIORITY CREDIT FACILITY AGREEMENT

Request for Advance

To: Golub Capital Incorporated, as Agent

Re: Priority Credit Facility Agreement made as of April 18, 2012 (the "Priority Credit Facility Agreement") between Extreme Fitness, Inc., as borrower (the "Borrower"), the lenders that are party hereto (individually a "Lender" and collectively the "Lenders"), and Golub Capital Incorporated, as agent (the "Agent")

Dated: \_\_\_\_\_, 2012

The Borrower hereby requests an advance under the Priority Credit Facility Agreement in the amount of USD \$ \_\_\_\_\_ on \_\_\_\_\_, 2012.

The Borrower confirms that the amount of such advance will be applied by the Borrower solely to fund payroll expenses, other operating expenses and other accounts payable described in the most recent Approved Cash Flow Forecast, a copy of which is attached hereto. The Borrower also confirms that it has applied the proceeds of each previous advance under the Priority Credit Facility Agreement to fund expenditures described in the Approved Cash Flow Forecast attached to the applicable Request for Advance.

The Borrower hereby certifies that no Event of Default under Priority Credit Facility Agreement and no "Forbearance Terminating Event" under the National Bank Forbearance Letter or the Sub-Debt Forbearance Agreement has occurred, and no such Event of Default or "Forbearance Terminating Event" shall occur as a result of the advance requested herein.

**Extreme Fitness, Inc.**

Per: \_\_\_\_\_  
Authorized Signing Officer

## SCHEDULE C TO PRIORITY CREDIT FACILITY AGREEMENT

### Conditions Precedent to Initial Advance

1. a certified copy of a resolution of the board of directors of the Borrower approving the Priority Credit Facility, this Agreement and all other documents and actions contemplated by this Agreement;
2. an Alberta certificate of status for the Borrower;
3. a fully-executed copy of the National Bank Forbearance Agreement;
4. a fully-executed copy of the forbearance agreement between the Borrower and Golub Capital Incorporated, in its capacity as administrative agent for the lenders under the Subordinate Credit Agreement (the "Sub-Debt Agent"), which agreement shall be in form and substance satisfactory to the Lender;
5. a priorities agreement between Golub Capital Incorporated, in its capacity as Agent for the Lenders under this Agreement, and National Bank of Canada, in form and substance satisfactory to the Agent and the Lenders, which agreement shall establish and confirm, as between the Lenders and National Bank of Canada, the priority of repayment of the indebtedness and obligations owing by the Borrower under this Agreement in all circumstances;
6. a priorities agreement between Golub Capital Incorporated, in its capacity as Agent for the Lenders under this Agreement, and the Sub-Debt Agent, in form and substance satisfactory to the Agent and the Lenders, which agreement shall establish and confirm, as between Golub Capital Incorporated, in its capacity as Agent for the Lenders under this Agreement, and the Sub-Debt Agent, the priority of repayment of the indebtedness and obligations owing by the Borrower under this Agreement in all circumstances;
7. a fully-executed copy of the engagement letter for Alvarez & Marsal, which engagement shall have the scope and shall be on terms and conditions satisfactory to the Lenders;
8. a cash flow forecast for the Borrower prepared by Alvarez & Marsal, which forecast shall be satisfactory to the Lenders in all respects; and



9. evidence satisfactory to the Lenders that Alvarez & Marsal has assumed effective control over all disbursements of the Borrower's funds (including, without limitation, the issuance of any cheques by the Borrower).

## SCHEDULE D TO PRIORITY CREDIT FACILITY AGREEMENT

### Reporting Requirements

1. On or before 2:00 p.m. on the Tuesday of each week for the one-week period ending the immediately preceding Friday, the Borrower shall deliver to the Agent an update of its cash flow forecast for the following thirteen (13) weeks or such other period of time as the Agent may require. The Agent shall provide a grace period not exceeding two business days for the delivery of each cash flow forecast if and to the extent such grace period is reasonably required by the Borrower. As part of the update to be delivered to the Agent, the Borrower shall provide to the Agent a report comparing actual cash flows, sales, and closing cash of the Borrower for the preceding week or such other period as the Agent may require to amounts budgeted in the cash flow 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 cash flow forecast in the Borrower's closing cash for any given week; and
  - (b) a ten percent (10%) or \$20,000 or greater negative variance from the cash flow forecast in the Borrower's sales, total cash receipts and disbursements for any given week.
2. Promptly upon availability, the Borrower's restated 2009 and 2010 year-end financial statements and the Borrower's financial statements for 2011.
3. The financial reports required under the Subordinate Credit Agreement.

SCHEDULE E TO PRIORITY CREDIT FACILITY AGREEMENT

ADDRESSES FOR NOTICE

To the Agent:

Golub Capital Incorporated, as Agent  
150 S. Wacker Drive  
Suite 800  
Chicago, Illinois  
60606

Attention: Patrick Hayes

Fax: (312) 201-9167

To each Lender:

c/o Golub Capital Incorporated  
150 S. Wacker Drive  
Suite 800  
Chicago, Illinois  
60606

Attention: Patrick Hayes

Fax: (312) 201-9167

To the Borrower:

Extreme Fitness, Inc.  
8281 Yonge Street  
Thornhill, ON  
L3T 2C7

Attention: Secretary-Treasurer

Fax: (212) 634-3305

Tab K

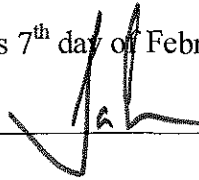
Attached is Exhibit "K"

Referred to in the

Affidavit of Alan Hutchens

Sworn before me

this 7<sup>th</sup> day of February, 2013

A handwritten signature in black ink, appearing to be "Jah", is written over a horizontal line.

Commissioner for taking Affidavits, etc

## **INTERCREDITOR AGREEMENT**

**THIS AGREEMENT** dated as of April 18, 2012 is made among the Junior Creditors, the Senior Creditors and the Debtors (in each case, as defined below).

### **ARTICLE 1 INTERPRETATION**

**1.1**           **Definitions.** In this Agreement, all capitalized terms used but not defined herein have the meanings provided in Schedule A" attached hereto.

### **ARTICLE 2 DEBT SUBORDINATION**

**2.1**           **Junior Debt Postponement.** Subject to Sections 2.3 and 2.4, the Junior Debt is hereby postponed and subordinated to, and made subject in right of payment to the prior payment in full in cash of, the Senior Debt up to the Senior Debt Cap.

**2.2**           **Junior Debt Payment Restriction.** Subject to Sections 2.3 and 2.4 and notwithstanding the terms of the Junior Loan Documents, no Debtor (or any Person on its behalf) shall make or shall be entitled to make, and the Junior Creditors shall not accept and shall not be entitled to accept, any Payment in respect of the Junior Debt until the prior payment in full in cash of the Senior Debt up to the Senior Debt Cap.

**2.3**           **Permitted Payments.** Any Debtor may make, and any Junior Creditor may receive, Permitted Cash Payments at any time.

**2.4**           **Third Party Claim Proceeds.** Any Junior Creditor may receive Third Party Claim Proceeds at any time and apply same in permanent reduction of the Junior Debt.

### **ARTICLE 3 SECURITY**

**3.1**           **Priority.** The Senior Security shall rank senior to and have priority over the Junior Security in all respects, and the Junior Security is hereby subordinated in favour of the Senior Security.

### **ARTICLE 4 ENFORCEMENT**

**4.1**           **Senior Creditor Enforcement.** If any Senior Security becomes enforceable, the Senior Creditors may exercise all rights and remedies provided for in such Senior Security at their sole discretion. Nothing in this Agreement shall require or obligate the

Senior Creditors or any of them to enforce or realize upon, or continue any enforcement or realization upon, any Senior Security.

**4.2**            **Junior Creditor Enforcement.** If any Junior Security becomes enforceable, the Junior Creditors may exercise all rights and remedies provided for in such Junior Security at their sole discretion, provided that any and all Proceeds of Realization received by a Junior Creditor pursuant to any such Enforcement Action shall be applied in accordance with Section 6.1.

## **ARTICLE 5 INSOLVENCY MATTERS**

**5.1**            **Distributions.** Upon any distribution, division or application, partial or complete, voluntary or involuntary, by operation of law or otherwise, of all or any part of the Debtor Assets, or the proceeds thereof, to creditors, or any proposal by any Debtor to creditors for a readjustment, reamortization or restructuring of all or any part of its indebtedness or liabilities (including the Senior Debt or the Junior Debt), whether any of the foregoing is in connection with an Insolvency Proceeding or otherwise, or the application of any Debtor Assets to the payment or liquidation thereof, or upon the dissolution or other winding-up of the business of any Debtor, or upon the sale of all or substantially all of the Debtor Assets of any Debtor, the Senior Creditors shall be entitled to receive payment in full in cash of the Senior Debt up to the Senior Debt Cap and including interest accruing to the date of receipt of such payment at the rate applicable to the Senior Debt, whether or not allowed as a claim in any such proceeding) before any Junior Creditor is entitled to receive any direct or indirect payment or distribution of any cash or other Debtor Assets on account of its Junior Debt.

## **ARTICLE 6 PAYMENTS**

**6.1**            **Application.** All Proceeds of Realization shall be applied and distributed as follows: (a) firstly, to the payment of all costs and expenses (including legal fees) paid or incurred by the Senior Creditors to the extent reimbursable or indemnifiable under the Senior Loan Documents; (b) secondly, to the payment of the Senior Debt up to the Senior Debt Cap in accordance with the Senior Loan Agreement; (c) thirdly, and subject in all respects to the terms of the National Intercreditor Agreement, to the payment of the Junior Debt in accordance with the Junior Loan Agreement; and (d) lastly, as otherwise required by applicable law.

The Senior Debt shall not be considered to have been paid in full unless the applicable Senior Creditors have received indefeasible payment in cash of the full amount of the Senior Debt up to the Senior Debt Cap.

**6.2**            **Proceeds Held in Trust.** If any Payment is made to or received by a Junior Creditor in contravention of this Agreement, such Junior Creditor shall hold such Payment in trust for the Senior Creditors and shall forthwith pay such Payment to the Senior Agent for application against the Senior Debt. If any Proceeds of Realization are delivered to or received by the Junior Creditor, the Junior Creditor shall hold such Proceeds of Realization in trust for the Senior Creditors and shall forthwith deliver such Proceeds of Realization to the Senior Agent.

**6.3**            **Payment Revocation.** To the extent any payment of Senior Debt (whether by or on behalf of any Debtor, as Proceeds of Realization or otherwise) is declared to be fraudulent or preferential, set aside or required to be paid to a trustee, receiver or other similar Person under any bankruptcy, insolvency, receivership or similar law, then if such payment is recoverable by, or paid over to, such trustee, receiver or other Person, the Senior Debt or part thereof originally intended to be satisfied shall be deemed to be reinstated and outstanding as if such payment had not occurred. Each Junior Creditor agrees that, in such event, any Payment received by such Junior Creditor on the Junior Debt shall be deemed to have been received by it in trust for the Senior Creditors and shall promptly be paid over to the Senior Agent until the Senior Debt is paid in full in cash, unless at the time of receipt by such Junior Creditor of such payment it was expressly permitted by Section 2.3 of this Agreement to receive and retain such payment. Such remittance obligation of the Junior Creditors shall survive the termination of this Agreement.

## ARTICLE 7 GENERAL MATTERS

**7.1**            **Junior Debt Transfer.** No Junior Creditor shall sell, assign, or otherwise transfer, in whole or in part, any of the Junior Debt or the Junior Security or any right, title or interest therein to any Person unless (a) such action is made expressly subject to this Agreement, and (b) such Person acknowledges the subordination provided for herein and agrees in writing to be bound by all of the terms hereof, such acknowledgement and agreement to be in favour of and in form and substance satisfactory to the Senior Agent, acting reasonably.

**7.2**            **Application of Agreement.** The rights of the Senior Creditors and the priorities of the Security and the Debt set out in this Agreement shall apply irrespective of any matter or thing.

**7.3**            **Severability.** Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be severed from the balance of



this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability in any other jurisdiction.

**7.4**            **Communication.** 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 electronically by facsimile or e-mail, in each case to the addressee as set out in Schedule "B" attached hereto. Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

**7.5**            **Alteration or Waiver.** None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except by a written instrument executed by the Senior Agent for and on behalf of the Senior Creditors and the Junior Agent for and on behalf of the Junior Creditors. Any such waiver, amendment, supplement or modification shall not require any consent or other agreement of any Debtor, notwithstanding that any such Debtor may be a party to this Agreement. No Creditor will, by any act or delay, be deemed to have waived any right or remedy hereunder or to have acquiesced in any breach of any of the terms and conditions hereof. No failure to exercise, nor any delay in exercising, on the part of any Creditor, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by a Creditor of any right or remedy hereunder on any one occasion will not be construed as a bar to any right or remedy which the Creditor would otherwise have on any future occasion.

**7.6**            **Governing Law; Attornment.** This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. Without prejudice to the ability of a Party to enforce this Agreement in any other proper jurisdiction, the Parties irrevocably submit and attorn to the non-exclusive jurisdiction of the courts of the Province of Ontario.

**7.7**            **Successors and Assigns.** This Agreement shall enure to the benefit of, and be binding on, the Parties and their respective successors and permitted assigns.

**7.8**            **Entire Agreement.** This Agreement constitutes the entire agreement among the parties hereto pertaining to the subject matter of this Agreement and supersedes any and all prior agreements, understandings, negotiations and discussions, whether oral or written, pertaining to the subject matter hereof.

**7.9** Paramountcy. If there is a conflict or inconsistency between the provisions of this Agreement and the provisions of any Loan Document, the provisions of this Agreement shall govern; provided that nothing in this Agreement shall relieve or excuse any Debtor from any of its obligations under any Loan Document for the purpose of determining whether a Default thereunder has occurred.

**7.10** Counterparts and Electronic Signature. This Agreement may be executed in any number of counterparts and by the Parties in separate counterparts, and all such counterparts when taken together shall constitute but one and the same Agreement. Delivery of an executed signature page to this Agreement by facsimile or other electronic form of transmission shall be as effective as delivery of a manually executed copy of this Agreement.

**7.11** Termination. After all of the Senior Debt has been paid in full in cash and all agreements or obligations on the part of the Senior Creditors or any of them to make further financial accommodation available to any of the Debtors shall have been terminated, this Agreement shall terminate.

[signatures on the next following pages]

IN WITNESS WHEREOF the undersigned have caused this Agreement to be duly executed as of the date first written above.

**GOLUB CAPITAL INCORPORATED**, as agent,  
for and on behalf of each of  
**THE SENIOR CREDITORS**

By:   
\_\_\_\_\_  
Authorized Signing Officer:

**GOLUB CAPITAL INCORPORATED**, as administrative  
agent,  
for and on behalf of each of  
**THE JUNIOR CREDITORS**

By:   
\_\_\_\_\_  
Authorized Signing Officer:

**EXTREME FITNESS, INC.**  
for and on behalf of each of  
**THE DEBTORS**

By: \_\_\_\_\_  
Authorized Signing Officer:

IN WITNESS WHEREOF the undersigned have caused this Agreement to be duly executed as of the date first written above.

**GOLUB CAPITAL INCORPORATED**, as agent,  
for and on behalf of each of  
**THE SENIOR CREDITORS**

By: \_\_\_\_\_  
Authorized Signing Officer:

**GOLUB CAPITAL INCORPORATED**, as administrative agent,  
for and on behalf of each of  
**THE JUNIOR CREDITORS**

By: \_\_\_\_\_  
Authorized Signing Officer:

**EXTREME FITNESS, INC.**  
for and on behalf of each of  
**THE DEBTORS**

By:   
Authorized Signing Officer:

## Schedule "A"

### Defined Terms

The following terms have the meanings set out below unless the context requires otherwise:

**"Agreement"** means this agreement, as it may be amended, supplemented, restated or replaced from time to time.

**"Borrower"** means Extreme Fitness, Inc.

**"Credit Party"** means any Person that has provided a Lien or guarantee to a Creditor with respect to the Borrower.

**"Debt"** means, collectively, the Senior Debt and the Junior Debt.

**"Debtors"** means the Borrower, each other Credit Party, and each other present and future Subsidiary of the Borrower, and **"Debtor"** means any of them.

**"Debtor Assets"** means, collectively, all present and future assets, property and undertaking of any Debtor, real and personal, moveable and immoveable, of whatsoever nature and kind and wheresoever situate.

**"Default"** means any of the defaults or events of default specified in any Loan Document (including the failure to pay on Demand with respect to any demand obligation) entitling a Creditor to demand or accelerate payment of any Debt or enforce other remedies, either immediately or after a cure or grace period.

**"Demand"** means any notification by a Creditor to a Debtor of a demand for payment under any Loan Document.

**"Enforcement Action"** means (a) the acceleration of the time for payment of any of the Junior Debt (which shall include the making of a Demand with respect to any demand obligation), (b) the enforcement or exercise of any Junior Security (whether through court proceeding or otherwise) or any action in furtherance thereof, (c) the appointment of a receiver or receiver and manager of any Debtor or any of the Debtor Assets, (d) the commencement or initiation of any Insolvency Proceeding with respect to any Debtor, (e) the commencement or initiation of any action or proceeding to recover or receive payment of any of the Junior Debt, (f) the exercise of any right of set-off, combination or similar right against any Debtor, or (g) the exercise of any put option or the causing of any Debtor to honour any redemption obligation with respect to its securities.

**"Insolvency Proceeding"** means any proceeding seeking to adjudicate a Debtor an insolvent, seeking a receiving order against a Debtor under the *Bankruptcy and Insolvency Act* (Canada), or seeking liquidation, dissolution, winding-up, reorganization, compromise, arrangement, adjustment, protection, moratorium, relief or composition of a Debtor or its debts or a stay of proceedings of a Debtor's creditors generally (or any class of creditors) or any other relief, under any federal, provincial or foreign law now or hereafter in effect relating to bankruptcy, winding-up, insolvency, reorganization, receivership, plans of arrangement or relief or protection of debtors (including the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada) and any similar legislation in any jurisdiction) or at common law or in equity.

**"Junior Agent"** means Golub Capital Incorporated, in its capacity as administrative agent for the Secured Parties under the Junior Loan Agreement, and includes any successor administrative agent appointed pursuant to the Junior Loan Agreement.

**"Junior Creditors"** means the Junior Agent and the lenders under the Junior Loan Agreement.

**"Junior Debt"** means, collectively, all present and future indebtedness, liabilities and obligations of any and every kind, nature and description (whether direct or indirect, absolute or contingent, matured or unmatured) of the Debtors to the Junior Creditors or any of them, and any unpaid balance thereof.

**"Junior Default"** means a Default under or with respect to any Junior Loan Document.

**"Junior Loan Agreement"** means the amended and restated credit agreement dated as of May 20, 2011 among the Borrower, as borrower, the Junior Agent, as administrative agent, and the financial institutions from time to time parties thereto as lenders, as amended, supplemented, restated or replaced from time to time.

**"Junior Loan Documents"** means all documents, instruments and agreements under which (a) any Junior Debt is incurred, evidenced or provided for, and (b) any Junior Security is granted.

**"Junior Security"** means, collectively, all present and future guarantees and Liens granted by any Debtor to the Junior Agent or any other Junior Creditor as security for all or any part of the Junior Debt.

**"Lien"** means any mortgage, charge, pledge, right of set-off, hypothecation, lien (statutory or otherwise), security interest or other encumbrance of any nature or kind howsoever arising, or any other security agreement or arrangement creating in favour

of any creditor a right in respect of any property that is prior to the right of any other creditor in respect of such property.

**"Loan Documents"** means, collectively, the Junior Loan Documents and the Senior Loan Documents, and **"Loan Document"** means any one of them.

**"National Intercreditor Agreement"** means the intercreditor agreement dated as of May 20, 2011 between National Bank of Canada, in its capacities as agent to the senior lenders and as a senior lender, the Junior Agent, as agent to the subordinate lenders, 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, each in their capacity as a lender, as amended, supplemented, restated or replaced from time to time.

**"Parties"** means the Senior Creditors, the Junior Creditors and the Debtors, and **"Party"** means any one of them.

**"Payment"** means, with respect to any Debt, (a) any payment or distribution by any Person of cash, securities, or other form of property, including by the exercise of a right of set-off or in any other manner, on account of such Debt, or (b) any redemption, purchase or other acquisition of such Debt by the Person owing such Debt. For certainty, a Payment does not include the receipt of any Third Party Claim Proceeds.

**"Permitted Cash Payments"** means all legal fees and other out-of-pocket expenses incurred by the Junior Agent, in such capacity, in connection with this agreement and the letter agreement dated as of the date hereof between the Borrower and the Junior Agent.

**"Person"** includes any natural person, corporation, company, limited liability company, unlimited liability company, trust, joint venture, association, incorporated organization, partnership, governmental authority or other entity.

**"Proceeds of Realization"** means all cash and non-cash proceeds derived from any sale, disposition or other realization of any Debtor Assets (a) after any Demand (other than a Demand with respect to any reimbursement or indemnification obligation under the Loan Documents where no Default exists), (b) pursuant to any Insolvency Proceeding, (c) upon the enforcement of, or pursuant to any action taken with respect to, any of the Security, (d) as insurance proceeds as a result of the loss of, destruction of or damage to any of the Debtor Assets which are not applied to the repair or replacement of such Debtor Assets in accordance with the terms of the Senior Debt Documents, (e) as a result of the expropriation or other condemnation of any of the Debtor Assets or (f) as a result of the exercise of any right of set-off or other similar right or remedy. For

certainty, Proceeds of Realization do not include the amount of any Third Party Claim Proceeds.

**"Security"** means, collectively, the Senior Security and the Junior Security.

**"Senior Agent"** means Golub Capital Incorporated, in its capacity as agent for the Secured Parties under the Senior Loan Agreement, and includes any successor agent appointed pursuant to the Senior Loan Agreement.

**"Senior Creditors"** means the Senior Agent and the lenders under the Senior Loan Agreement.

**"Senior Debt"** means, collectively, all present and future indebtedness, liabilities and obligations of any and every kind, nature and description (whether direct or indirect, absolute or contingent, matured or unmatured) of the Debtors to the Senior Creditors or any of them, and any unpaid balance thereof.

**"Senior Debt Cap"** means, at any time, an amount equal to \$8,000,000, plus interest and costs incurred by the Senior Creditors in respect of or in any way related to the Senior Loan Agreement (including, without limitation, reasonable expenses, reasonable legal fees and disbursements).

**"Senior Default"** means any Default under any Senior Loan Document, including any failure to pay on demand.

**"Senior Loan Agreement"** means the priority credit facility agreement dated as of the date hereof among the Borrower, as borrower, the Senior Agent, as agent, and the lenders party thereto from time to time, as amended, supplemented, restated or replaced from time to time.

**"Senior Loan Documents"** means all documents, instruments and agreements under which (a) any Senior Debt is incurred, evidenced or provided for, and (b) any Senior Security is granted.

**"Senior Security"** means, collectively, all present and future guarantees and Liens granted by any Debtor to the Senior Agent or any other Senior Creditor as security for all or any part of the Senior Debt.

**"Third Party Claim Proceeds"** means all cash and non-cash proceeds derived from any claim, demand, action or proceeding by the Junior Creditor against any party other than the Debtors (including, without limitation, any director, officer or other representative of any Debtor or any Debtor's current or former auditors) and includes any payments to or received by the Junior Creditor, whether pursuant to an order of a court, pursuant to



a settlement agreement or otherwise, including, without limitation, recoveries under any directors' or officers' insurance policies with respect to any Debtor or any recoveries under errors and omissions insurance policies maintained by any Debtor's current or former auditors; provided that, to the extent that the Junior Creditor's recovery against any director, officer or other representative of any Debtor has been funded by such Debtor pursuant to an indemnity obligation of such Debtor to such director, officer or other representative (and not from the proceeds of third-party insurance coverage), then the amount so recovered shall constitute Proceeds of Realization (and not Third Party Claim Proceeds); and further provided that, if any Debtor has made such an indemnity payment to a director, officer or other representative, and the Debtor thereafter receives a corresponding payment under any third-party insurance coverage, then such amount shall constitute Third Party Claim Proceeds (and not Proceeds of Realization).

SCHEDULE "B"

NOTICE DETAILS

(i) if to any Debtor:

**Extreme Fitness, Inc.**  
8281 Yonge Street  
Thornhill, ON L3T 2C7  
Attention: Secretary-Treasurer  
Facsimile: (212) 634-3305

(ii) if to any Senior Creditor:

**Golub Capital Incorporated**  
150 S. Wacker Drive  
Suite 800  
Chicago, IL 60606

Attention: Patrick Hayes

Facsimile: (312) 201-9167

(iii) if to any Junior Creditor:

**Golub Capital Incorporated**  
150 S. Wacker Drive  
Suite 800  
Chicago, IL 60606

Attention: Patrick Hayes

Facsimile: (312) 201-9167

Tab L

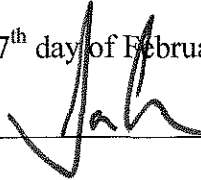
Attached is Exhibit "L"

Referred to in the

Affidavit of Alan Hutchens

Sworn before me

this 7<sup>th</sup> day of February, 2013

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

Commissioner for taking Affidavits, etc

## INTERCREDITOR AGREEMENT

THIS AGREEMENT dated as of April 18, 2012 is made among the Junior Creditors, the Senior Creditors and the Debtors (in each case, as defined below).

### ARTICLE 1 INTERPRETATION

1.1 **Definitions.** In this Agreement, all capitalized terms used but not defined herein have the meanings provided in Schedule A" attached hereto.

### ARTICLE 2 DEBT SUBORDINATION

2.1 **Junior Debt Postponement.** Subject to Sections 2.3 and 2.4, the Junior Debt is hereby postponed and subordinated to, and made subject in right of payment to the prior payment in full in cash of, the Senior Debt up to the Senior Debt Cap.

2.2 **Junior Debt Payment Restriction.** Subject to Sections 2.3 and 2.4 and notwithstanding the terms of the Junior Loan Documents, no Debtor (or any Person on its behalf) shall make or shall be entitled to make, and the Junior Creditors shall not accept and shall not be entitled to accept, any Payment in respect of the Junior Debt until the prior payment in full in cash of the Senior Debt up to the Senior Debt Cap.

2.3 **Permitted Payments.** Any Debtor may make, and any Junior Creditor may receive, Permitted Cash Payments at any time.

2.4 **Third Party Claim Proceeds.** Any Junior Creditor may receive Third Party Claim Proceeds at any time and apply same in permanent reduction of the Junior Debt.

### ARTICLE 3 SECURITY

3.1 **Priority.** The Senior Security shall rank senior to and have priority over the Junior Security in all respects, and the Junior Security is hereby subordinated in favour of the Senior Security.

### ARTICLE 4 ENFORCEMENT

4.1 **Senior Creditor Enforcement.** If any Senior Security becomes enforceable, the Senior Creditors may exercise all rights and remedies provided for in such Senior Security at their sole discretion. Nothing in this Agreement shall require or obligate the

Senior Creditors or any of them to enforce or realize upon, or continue any enforcement or realization upon, any Senior Security.

**4.2**            **Junior Creditor Enforcement.** If any Junior Security becomes enforceable, the Junior Creditors may exercise all rights and remedies provided for in such Junior Security at their sole discretion, provided that any and all Proceeds of Realization received by a Junior Creditor pursuant to any such Enforcement Action shall be applied in accordance with Section 6.1.

## **ARTICLE 5 INSOLVENCY MATTERS**

**5.1**            **Distributions.** Upon any distribution, division or application, partial or complete, voluntary or involuntary, by operation of law or otherwise, of all or any part of the Debtor Assets, or the proceeds thereof, to creditors, or any proposal by any Debtor to creditors for a readjustment, reamortization or restructuring of all or any part of its indebtedness or liabilities (including the Senior Debt or the Junior Debt), whether any of the foregoing is in connection with an Insolvency Proceeding or otherwise, or the application of any Debtor Assets to the payment or liquidation thereof, or upon the dissolution or other winding-up of the business of any Debtor, or upon the sale of all or substantially all of the Debtor Assets of any Debtor, the Senior Creditors shall be entitled to receive payment in full in cash of the Senior Debt up to the Senior Debt Cap and including interest accruing to the date of receipt of such payment at the rate applicable to the Senior Debt, whether or not allowed as a claim in any such proceeding) before any Junior Creditor is entitled to receive any direct or indirect payment or distribution of any cash or other Debtor Assets on account of its Junior Debt.

## **ARTICLE 6 PAYMENTS**

**6.1**            **Application.** All Proceeds of Realization shall be applied and distributed as follows: (a) firstly, to the payment of all costs and expenses (including legal fees) paid or incurred by the Senior Creditors to the extent reimbursable or indemnifiable under the Senior Loan Documents; (b) secondly, to the payment of the Senior Debt up to the Senior Debt Cap in accordance with the Senior Loan Agreement; (c) thirdly, and subject in all respects to the terms of the National Intercreditor Agreement, to the payment of the Junior Debt in accordance with the Junior Loan Agreement; and (d) lastly, as otherwise required by applicable law.

The Senior Debt shall not be considered to have been paid in full unless the applicable Senior Creditors have received indefeasible payment in cash of the full amount of the Senior Debt up to the Senior Debt Cap.

**6.2**            Proceeds Held in Trust. If any Payment is made to or received by a Junior Creditor in contravention of this Agreement, such Junior Creditor shall hold such Payment in trust for the Senior Creditors and shall forthwith pay such Payment to the Senior Agent for application against the Senior Debt. If any Proceeds of Realization are delivered to or received by the Junior Creditor; the Junior Creditor shall hold such Proceeds of Realization in trust for the Senior Creditors and shall forthwith deliver such Proceeds of Realization to the Senior Agent.

**6.3**            Payment Revocation. To the extent any payment of Senior Debt (whether by or on behalf of any Debtor, as Proceeds of Realization or otherwise) is declared to be fraudulent or preferential, set aside or required to be paid to a trustee, receiver or other similar Person under any bankruptcy, insolvency, receivership or similar law, then if such payment is recoverable by, or paid over to, such trustee, receiver or other Person, the Senior Debt or part thereof originally intended to be satisfied shall be deemed to be reinstated and outstanding as if such payment had not occurred. Each Junior Creditor agrees that, in such event, any Payment received by such Junior Creditor on the Junior Debt shall be deemed to have been received by it in trust for the Senior Creditors and shall promptly be paid over to the Senior Agent until the Senior Debt is paid in full in cash, unless at the time of receipt by such Junior Creditor of such payment it was expressly permitted by Section 2.3 of this Agreement to receive and retain such payment. Such remittance obligation of the Junior Creditors shall survive the termination of this Agreement.

## ARTICLE 7 GENERAL MATTERS

**7.1**            Junior Debt Transfer. No Junior Creditor shall sell, assign, or otherwise transfer, in whole or in part, any of the Junior Debt or the Junior Security or any right, title or interest therein to any Person unless (a) such action is made expressly subject to this Agreement, and (b) such Person acknowledges the subordination provided for herein and agrees in writing to be bound by all of the terms hereof, such acknowledgement and agreement to be in favour of and in form and substance satisfactory to the Senior Agent, acting reasonably.

**7.2**            Application of Agreement. The rights of the Senior Creditors and the priorities of the Security and the Debt set out in this Agreement shall apply irrespective of any matter or thing.

**7.3**            Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be severed from the balance of

this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability in any other jurisdiction.

**7.4**            **Communication.** 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 electronically by facsimile or e-mail, in each case to the addressee as set out in Schedule "B" attached hereto. Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

**7.5**            **Alteration or Waiver.** None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except by a written instrument executed by the Senior Agent for and on behalf of the Senior Creditors and the Junior Agent for and on behalf of the Junior Creditors. Any such waiver, amendment, supplement or modification shall not require any consent or other agreement of any Debtor, notwithstanding that any such Debtor may be a party to this Agreement. No Creditor will, by any act or delay, be deemed to have waived any right or remedy hereunder or to have acquiesced in any breach of any of the terms and conditions hereof. No failure to exercise, nor any delay in exercising, on the part of any Creditor, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by a Creditor of any right or remedy hereunder on any one occasion will not be construed as a bar to any right or remedy which the Creditor would otherwise have on any future occasion.

**7.6**            **Governing Law; Attornment.** This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. Without prejudice to the ability of a Party to enforce this Agreement in any other proper jurisdiction, the Parties irrevocably submit and attorn to the non-exclusive jurisdiction of the courts of the Province of Ontario.

**7.7**            **Successors and Assigns.** This Agreement shall enure to the benefit of, and be binding on, the Parties and their respective successors and permitted assigns.

**7.8**            **Entire Agreement.** This Agreement constitutes the entire agreement among the parties hereto pertaining to the subject matter of this Agreement and supersedes any and all prior agreements, understandings, negotiations and discussions, whether oral or written, pertaining to the subject matter hereof.



**7.9**            **Paramountcy.** If there is a conflict or inconsistency between the provisions of this Agreement and the provisions of any Loan Document, the provisions of this Agreement shall govern; provided that nothing in this Agreement shall relieve or excuse any Debtor from any of its obligations under any Loan Document for the purpose of determining whether a Default thereunder has occurred.

**7.10**           **Counterparts and Electronic Signature.** This Agreement may be executed in any number of counterparts and by the Parties in separate counterparts, and all such counterparts when taken together shall constitute but one and the same Agreement. Delivery of an executed signature page to this Agreement by facsimile or other electronic form of transmission shall be as effective as delivery of a manually executed copy of this Agreement.

**7.11**           **Termination.** After all of the Senior Debt has been paid in full in cash and all agreements or obligations on the part of the Senior Creditors or any of them to make further financial accommodation available to any of the Debtors shall have been terminated, this Agreement shall terminate.

[signatures on the next following pages]

IN WITNESS WHEREOF the undersigned have caused this Agreement to be duly executed as of the date first written above.

**GOLUB CAPITAL INCORPORATED**, as agent,  
for and on behalf of each of  
**THE SENIOR CREDITORS**

By:   
\_\_\_\_\_  
Authorized Signing Officer:

**GOLUB CAPITAL INCORPORATED**, as administrative  
agent,  
for and on behalf of each of  
**THE JUNIOR CREDITORS**

By:   
\_\_\_\_\_  
Authorized Signing Officer:

**EXTREME FITNESS, INC.**  
for and on behalf of each of  
**THE DEBTORS**

By: \_\_\_\_\_  
Authorized Signing Officer:

IN WITNESS WHEREOF the undersigned have caused this Agreement to be duly executed as of the date first written above.

**GOLUB CAPITAL INCORPORATED**, as agent,  
for and on behalf of each of  
**THE SENIOR CREDITORS**

By: \_\_\_\_\_  
Authorized Signing Officer:

**GOLUB CAPITAL INCORPORATED**, as administrative  
agent,  
for and on behalf of each of  
**THE JUNIOR CREDITORS**

By: \_\_\_\_\_  
Authorized Signing Officer:

**EXTREME FITNESS, INC.**  
for and on behalf of each of  
**THE DEBTORS**

By: *Kevin D. Coody*  
Authorized Signing Officer:

## Schedule "A"

### Defined Terms

The following terms have the meanings set out below unless the context requires otherwise:

**"Agreement"** means this agreement, as it may be amended, supplemented, restated or replaced from time to time.

**"Borrower"** means Extreme Fitness, Inc.

**"Credit Party"** means any Person that has provided a Lien or guarantee to a Creditor with respect to the Borrower.

**"Debt"** means, collectively, the Senior Debt and the Junior Debt.

**"Debtors"** means the Borrower, each other Credit Party, and each other present and future Subsidiary of the Borrower, and **"Debtor"** means any of them.

**"Debtor Assets"** means, collectively, all present and future assets, property and undertaking of any Debtor, real and personal, moveable and immoveable, of whatsoever nature and kind and wheresoever situate.

**"Default"** means any of the defaults or events of default specified in any Loan Document (including the failure to pay on Demand with respect to any demand obligation) entitling a Creditor to demand or accelerate payment of any Debt or enforce other remedies, either immediately or after a cure or grace period.

**"Demand"** means any notification by a Creditor to a Debtor of a demand for payment under any Loan Document.

**"Enforcement Action"** means (a) the acceleration of the time for payment of any of the Junior Debt (which shall include the making of a Demand with respect to any demand obligation), (b) the enforcement or exercise of any Junior Security (whether through court proceeding or otherwise) or any action in furtherance thereof, (c) the appointment of a receiver or receiver and manager of any Debtor or any of the Debtor Assets, (d) the commencement or initiation of any Insolvency Proceeding with respect to any Debtor, (e) the commencement or initiation of any action or proceeding to recover or receive payment of any of the Junior Debt, (f) the exercise of any right of set-off, combination or similar right against any Debtor, or (g) the exercise of any put option or the causing of any Debtor to honour any redemption obligation with respect to its securities.

**"Insolvency Proceeding"** means any proceeding seeking to adjudicate a Debtor an insolvent, seeking a receiving order against a Debtor under the *Bankruptcy and Insolvency Act* (Canada), or seeking liquidation, dissolution, winding-up, reorganization, compromise, arrangement, adjustment, protection, moratorium, relief or composition of a Debtor or its debts or a stay of proceedings of a Debtor's creditors generally (or any class of creditors) or any other relief, under any federal, provincial or foreign law now or hereafter in effect relating to bankruptcy, winding-up, insolvency, reorganization, receivership, plans of arrangement or relief or protection of debtors (including the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada) and any similar legislation in any jurisdiction) or at common law or in equity.

**"Junior Agent"** means Golub Capital Incorporated, in its capacity as administrative agent for the Secured Parties under the Junior Loan Agreement, and includes any successor administrative agent appointed pursuant to the Junior Loan Agreement.

**"Junior Creditors"** means the Junior Agent and the lenders under the Junior Loan Agreement.

**"Junior Debt"** means, collectively, all present and future indebtedness, liabilities and obligations of any and every kind, nature and description (whether direct or indirect, absolute or contingent, matured or unmatured) of the Debtors to the Junior Creditors or any of them, and any unpaid balance thereof.

**"Junior Default"** means a Default under or with respect to any Junior Loan Document.

**"Junior Loan Agreement"** means the amended and restated credit agreement dated as of May 20, 2011 among the Borrower, as borrower, the Junior Agent, as administrative agent, and the financial institutions from time to time parties thereto as lenders, as amended, supplemented, restated or replaced from time to time.

**"Junior Loan Documents"** means all documents, instruments and agreements under which (a) any Junior Debt is incurred, evidenced or provided for, and (b) any Junior Security is granted.

**"Junior Security"** means, collectively, all present and future guarantees and Liens granted by any Debtor to the Junior Agent or any other Junior Creditor as security for all or any part of the Junior Debt.

**"Lien"** means any mortgage, charge, pledge, right of set-off, hypothecation, lien (statutory or otherwise), security interest or other encumbrance of any nature or kind howsoever arising, or any other security agreement or arrangement creating in favour

of any creditor a right in respect of any property that is prior to the right of any other creditor in respect of such property.

**"Loan Documents"** means, collectively, the Junior Loan Documents and the Senior Loan Documents, and **"Loan Document"** means any one of them.

**"National Intercreditor Agreement"** means the intercreditor agreement dated as of May 20, 2011 between National Bank of Canada, in its capacities as agent to the senior lenders and as a senior lender, the Junior Agent, as agent to the subordinate lenders, 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, each in their capacity as a lender, as amended, supplemented, restated or replaced from time to time.

**"Parties"** means the Senior Creditors, the Junior Creditors and the Debtors, and **"Party"** means any one of them.

**"Payment"** means, with respect to any Debt, (a) any payment or distribution by any Person of cash, securities, or other form of property, including by the exercise of a right of set-off or in any other manner, on account of such Debt, or (b) any redemption, purchase or other acquisition of such Debt by the Person owing such Debt. For certainty, a Payment does not include the receipt of any Third Party Claim Proceeds.

**"Permitted Cash Payments"** means all legal fees and other out-of-pocket expenses incurred by the Junior Agent, in such capacity, in connection with this agreement and the letter agreement dated as of the date hereof between the Borrower and the Junior Agent.

**"Person"** includes any natural person, corporation, company, limited liability company, unlimited liability company, trust, joint venture, association, incorporated organization, partnership, governmental authority or other entity.

**"Proceeds of Realization"** means all cash and non-cash proceeds derived from any sale, disposition or other realization of any Debtor Assets (a) after any Demand (other than a Demand with respect to any reimbursement or indemnification obligation under the Loan Documents where no Default exists), (b) pursuant to any Insolvency Proceeding, (c) upon the enforcement of, or pursuant to any action taken with respect to, any of the Security, (d) as insurance proceeds as a result of the loss of, destruction of or damage to any of the Debtor Assets which are not applied to the repair or replacement of such Debtor Assets in accordance with the terms of the Senior Debt Documents, (e) as a result of the expropriation or other condemnation of any of the Debtor Assets or (f) as a result of the exercise of any right of set-off or other similar right or remedy. For

certainly, Proceeds of Realization do not include the amount of any Third Party Claim Proceeds.

**"Security"** means, collectively, the Senior Security and the Junior Security.

**"Senior Agent"** means Golub Capital Incorporated, in its capacity as agent for the Secured Parties under the Senior Loan Agreement, and includes any successor agent appointed pursuant to the Senior Loan Agreement.

**"Senior Creditors"** means the Senior Agent and the lenders under the Senior Loan Agreement.

**"Senior Debt"** means, collectively, all present and future indebtedness, liabilities and obligations of any and every kind, nature and description (whether direct or indirect, absolute or contingent, matured or unmatured) of the Debtors to the Senior Creditors or any of them, and any unpaid balance thereof.

**"Senior Debt Cap"** means, at any time, an amount equal to \$8,000,000, plus Interest and costs incurred by the Senior Creditors in respect of or in any way related to the Senior Loan Agreement (including, without limitation, reasonable expenses, reasonable legal fees and disbursements).

**"Senior Default"** means any Default under any Senior Loan Document, including any failure to pay on demand.

**"Senior Loan Agreement"** means the priority credit facility agreement dated as of the date hereof among the Borrower, as borrower, the Senior Agent, as agent, and the lenders party thereto from time to time, as amended, supplemented, restated or replaced from time to time.

**"Senior Loan Documents"** means all documents, instruments and agreements under which (a) any Senior Debt is incurred, evidenced or provided for, and (b) any Senior Security is granted.

**"Senior Security"** means, collectively, all present and future guarantees and Liens granted by any Debtor to the Senior Agent or any other Senior Creditor as security for all or any part of the Senior Debt.

**"Third Party Claim Proceeds"** means all cash and non-cash proceeds derived from any claim, demand, action or proceeding by the Junior Creditor against any party other than the Debtors (including, without limitation, any director, officer or other representative of any Debtor or any Debtor's current or former auditors) and includes any payments to or received by the Junior Creditor, whether pursuant to an order of a court, pursuant to

a settlement agreement or otherwise, including, without limitation, recoveries under any directors' or officers' insurance policies with respect to any Debtor or any recoveries under errors and omissions insurance policies maintained by any Debtor's current or former auditors; provided that, to the extent that the Junior Creditor's recovery against any director, officer or other representative of any Debtor has been funded by such Debtor pursuant to an indemnity obligation of such Debtor to such director, officer or other representative (and not from the proceeds of third-party insurance coverage), then the amount so recovered shall constitute Proceeds of Realization (and not Third Party Claim Proceeds); and further provided that, if any Debtor has made such an indemnity payment to a director, officer or other representative, and the Debtor thereafter receives a corresponding payment under any third-party insurance coverage, then such amount shall constitute Third Party Claim Proceeds (and not Proceeds of Realization).



SCHEDULE "B"

NOTICE DETAILS

(i) if to any Debtor:

**Extreme Fitness, Inc.**  
8281 Yonge Street  
Thornhill, ON L3T 2C7  
Attention: Secretary-Treasurer  
Facsimile: (212) 634-3305

(ii) if to any Senior Creditor:

**Golub Capital Incorporated**  
150 S. Wacker Drive  
Suite 800  
Chicago, IL 60606

Attention: Patrick Hayes

Facsimile: (312) 201-9167

(iii) if to any Junior Creditor:

**Golub Capital Incorporated**  
150 S. Wacker Drive  
Suite 800  
Chicago, IL 60606

Attention: Patrick Hayes

Facsimile: (312) 201-9167

Tab M

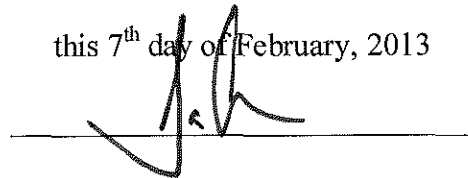
Attached is Exhibit "M"

Referred to in the

Affidavit of Alan Hutchens

Sworn before me

this 7<sup>th</sup> day of February, 2013

A handwritten signature in black ink, appearing to be "J. R. Hutchens", is written over a horizontal line.

Commissioner for taking Affidavits, etc

## SEARCH SUMMARY

The following enquiries and searches were made against:

| Company                      | Corporate Details/Prior and/or Amalgamated Names   |
|------------------------------|--|
| <b>Extreme Fitness, Inc.</b> | <ul style="list-style-type: none"> <li>➤ an active Alberta corporation formed by amalgamation on June 15, 2006; extra provincially registered in Ontario</li> <li>➤ <b>Registered office:</b> 600, 12220 Stony Plain Road, Edmonton, AB T5N 3Y4</li> <li>➤ <b>Registered Business Name:</b> None</li> <li>➤ <b>Prior/Predecessor Names:</b> <ul style="list-style-type: none"> <li>- Extreme Fitness Holding Corp.</li> <li>- Extreme Fitness ULC</li> <li>- Extreme Fitness (Thornhill) Inc.</li> <li>- 1456669 Ontario Ltd.</li> <li>- 1152245 Ontario Inc.</li> <li>- <i>Extreme Fitness Inc.</i></li> <li>- Extreme Kids (Thornhill) Inc.</li> </ul> </li> <li>➤ <b>Director(s)/Officer(s):</b> <ul style="list-style-type: none"> <li>- David Gubbay</li> <li>- Darko Pajovic</li> <li>- Taso Pappas</li> </ul> </li> <li>➤ <b>Voting Shareholders</b> <ul style="list-style-type: none"> <li>- David Bell</li> <li>- Chairman of the Board in trust for Heidi Steinberg</li> <li>- Extreme Fitness Holding (Luxembourg) S.A.R.L.</li> <li>- Fit-More Inc.</li> <li>- GC Extreme S.A.R.L.</li> <li>- David King</li> <li>- Louisiana Growth Fund II, LP</li> <li>- Danko Pajovic</li> <li>- SD Sticks Inc.</li> </ul> </li> </ul> |

- at the registration system maintained pursuant to the *Personal Property Security Act* (Ontario and Alberta ) (the "PPSA").

The currency of each of the aforementioned searches is as follows:

### SEARCHES AND CURRENCY

| Company                      | PPSA   |
|------------------------------|--|
| <b>Extreme Fitness, Inc.</b> | AB: December 17, 2012<br>ON: December 16, 2012 |

| Company                       | PPSA   |
|-------------------------------|--|
| Extreme Fitness Holding Corp. | AB: January 9, 2013<br>ON: January 8, 2013     |
| Extreme Fitness ULC           | AB: December 18, 2012<br>ON: December 17, 2012 |

Such enquiries and searches failed to disclose any undischarged registrations, filings or recordings with respect to the aforementioned names except as follows:

**PPSA REGISTRATIONS**

**Legend:**

A - Accounts      **DOM** - Date of Maturity      **I** - Inventory      **O** - Other  
 CF - Caution Filing      **E** - Equipment      **MV** - Motor Vehicle      **RSLA** *Repair & Storage Lien Act*  
 CG - Consumer Goods      **GCD** - General Collateral Description:      **NFMD** - No Fixed Maturity Date      **\$** - Amount

**Extreme Fitness, Inc.  
Alberta**

{the searches conducted against Extreme Fitness Holding Corp. and Extreme Fitness ULC returned identical results

|    | Registration Number   | Registration Date | Expiry Date  | Debtor  | Secured Party   | Collateral Description  |
|----|---|-------------------|--------------|---|---|---|
| 1. | 06060506299<br>Renewed by 11042608011<br>Subordinated to National Bank of Canada by 11051103053<br>Amended to remove Extreme Fitness ULC as a debtor by 11051305949 | June 5, 2006      | June 5, 2018 | Extreme Fitness Holding Corp.<br><br>Extreme Fitness, Inc.                                | Golub Capital Incorporated<br><br><b>Subordinated to reg # 11032504493 in favour of National Bank of Canada, as Agent</b>                       | All present and after-acquired personal property, and proceeds thereof. |
| 2. | 06060506364<br>Renewed by 11042714838<br>Subordinated to National Bank of Canada by 11051103064   | June 5, 2006      | June 5, 2018 | Extreme Fitness Holding (Luxembourg) S.A R.L.<br><br>Extreme Fitness Holding (Luxembourg) | Golub Capital Incorporated<br><br><b>Subordinated to reg # 11032933546 (as amended by 11033019642) in favour of National Bank of Canada, as</b> | All present and after-acquired personal property and proceeds thereof.  |

**Extreme Fitness, Inc.  
Alberta**

**{the searches conducted against Extreme Fitness Holding Corp. and Extreme Fitness ULC returned identical results}**

|  | Registration Number                               | Registration Date | Expiry Date    | Debtor  | Secured Party  | Collateral Description                           |
|--|---|-------------------|----------------|---|--|--|
|  |   |                   |                |   | <b>Agent</b>   |  |
| 3.   | 09042916964                                       | April 29, 2009    | April 29, 2013 | Extreme Fitness, Inc.                         | CIT Financial Ltd.<br><br>Life Fitness International Sales, Inc. | <b>GCD: see below</b>                            |
| <p><b>Collateral – General:</b> Lifefitness equipment: one (1) mtscp mts chest press, one (1) mtsfp mts front pulldown, one (1) mtshr mts high row, one (1) mtsip mts incline press, one (1) mtsrw mts row machine, one (1) mtssp mts shouler press, one (1) sosr signature olympic squat rack, one (1) sofb signature olympic flat bench, one (1) soib signature olympic incline bench, one (1) psadese pro 2 se assisted dip/chin, together with all attachments, accessories, accessions, replacements, substitutions, additions and improvements thereto. proceeds: goods, chattel paper, investment property, documents of title, instruments, money and intangibles (all as defined in the personal property security act) and including insurance proceeds.</p> |   |                   |                |   |  |  |
| 4.   | 09042916990                                       | April 29, 2009    | April 29, 2013 | Extreme Fitness, Inc.                         | CIT Financial Ltd.<br><br>Life Fitness International Sales, Inc. | <b>GCD: see below</b>                            |
| <p><b>Collateral – General:</b> lifefitness equipment: six (6) clsx classic cross-trainer, five (5) clsr classic recumbent bike, five (5) clsc classic upright bike, four (4) classic treadmill, thirty (30) lcd 17" attachable tv, together with all attachments, accessories, accessions, replacements, substitutions, additions and improvements thereto. proceeds: goods, chattel paper, investment property, documents of title, instruments, money and intangibles (all as defined in the personal property security act) and including insurance proceeds.</p>  |   |                   |                |   |  |  |
| 5.   | 11032504493                                       | March 25, 2011    | March 25, 2021 | Extreme Fitness, Inc.                         | National Bank of Canada, As Agent                                | All present and after-acquired personal property |
| 6.   | 11032933546<br>Amended debtor name by 11033019642 | March 29, 2011    | March 29, 2021 | Extreme Fitness Holding (Luxembourg) S.A R.L. | National Bank of Canada, As Agent                                | <b>GCD: see below</b>                            |
| <p><b>Collateral – General:</b> All of the debtor's right, title and interest in and to:<br/>(a) all:<br/>(i) shares and other investment property in Extreme Fitness, Inc., collectively, the "pledged shares") owned by the debtor, all security certificates, if any, and other instruments evidencing or representing such pledged shares, and all dividends, interest, distributions, cash, instruments and other property, income, profits and proceeds from time to time received or receivable upon or otherwise distributed or distributable in respect of or in exchange for any and all of the pledged shares;<br/>(ii) additional or substitute shares of capital stock or other equity interests of any class of extreme fitness, inc. from</p>           |   |                   |                |   |  |  |

**Extreme Fitness, Inc.  
Alberta**

**{the searches conducted against Extreme Fitness Holding Corp. and Extreme Fitness ULC returned identical results}**

| Registration Number  | Registration Date | Expiry Date | Debtor | Secured Party | Collateral Description |
|--|-------------------|-------------|--------|---------------|------------------------|
| <p>time to time issued to or otherwise acquired by the debtor in any manner in respect of pledged shares, the security certificates, if any, and other instruments representing such additional or substitute shares, and all dividends, interests, distributions, cash, instruments and other property, income, profits and proceeds from time to time received or receivable upon or otherwise distributed or distributable in respect of or an exchange for any or all of such additional or substitute shares; and</p> <p>(iii) to the extent not otherwise included in the foregoing, proceeds thereof;</p> <p>(b) all proceeds in respect of the foregoing and all rights and interest of the debtor in respect thereof or evidenced thereby, including all money received or receivable from time to time by the debtor in connection with the sale of any of the foregoing.</p> <p>Proceeds: goods, chattel paper, securities, investment property, documents of title, instruments, money and intangibles</p> |                   |             |        |               |                        |

**Extreme Fitness, Inc.  
Ontario**

**{the searches conducted against Extreme Fitness Holding Corp. and Extreme Fitness ULC returned only the registration under reference file no. 625817394}**

|    | Registration Number  | Reference File No. | Expiry Date     | Debtor   | Secured Party   | Collateral Classification/Description |
|----|--|--------------------|-----------------|--|---|---------------------------------------|
| 1. | 20060605 1112 1862 3005<br>Renewed for 2 years by<br>20110426 0803 1862 7632<br>Subordinated by<br>20110511 0950 1862 8866<br>Amended to remove <i>Extreme Fitness ULC</i> as a debtor by<br>20110513 1051 1862 9118 | 625817394          | Jun 5,<br>2018  | Extreme Fitness Holding Corp.<br><br>Extreme Fitness, Inc. | Golub Capital Corporation<br><br><b>Subordinated to file no. 668533329 in favour of National Bank of Canada</b> | I, E, A, O, MV                        |
| 2. | 20080709 1945 1531 7923  | 646777251          | July 9,<br>2013 | Extreme Fitness, Inc.                                      | Royal Bank of Canada  | I, E, A, O, MV                        |
| 3. | 20081215 1448 1616 4173  | 650547333          | Dec 15,<br>2012 | Extreme Fitness, Inc.                                      | CIT Financial Ltd.<br><br>Life Fitness International Sales, Inc.  | I, E, A, O, MV                        |
| 4. | 20081215 1055 1616 4162  | 650537829          | Dec 15,<br>2012 | Extreme Fitness, Inc.                                      | CIT Financial Ltd.  | I, E, A, O, MV                        |

**Extreme Fitness, Inc.  
Ontario**

*{the searches conducted against Extreme Fitness Holding Corp. and Extreme Fitness ULC returned only the registration under reference file no. 625817394 }*

|     | Registration Number      | Reference File No. | Expiry Date    | Debtor                              | Secured Party  | Collateral Classification/Description                                |
|-----|--------------------------|--------------------|----------------|-------------------------------------|--|--|
|     |                          |                    |                |                                     | Life Fitness International Sales, Inc.                           |  |
| 5.  | 20081216 1118 1697 0165  | 650568015          | Dec 16, 2012   | Extreme Fitness, Inc.               | Heffner Leasing Limited  | CG, I, E, A, O<br>NFMD<br>GCD: Lease #A388                           |
| 6.  | 20090220 1543 1697 0244  | 651639294          | Feb 20, 2013   | Extreme Fitness, Inc.               | Heffner Auto Sales and Leasing Inc.                              | CG, I, E, A, O<br>NFMD<br>GCD: Lease #J381                           |
| 7.  | 20090429 1624 1616 7056  | 653067234          | April 29, 2013 | Extreme Fitness, Inc.               | CIT Financial Ltd.<br><br>Life Fitness International Sales, Inc. | I, E, A, O, MV   |
| 8.  | 20090429 1622 1616 7055  | 653067207          | April 29, 2013 | Extreme Fitness, Inc.               | CIT Financial Ltd.<br><br>Life Fitness International Sales, Inc. | I, E, A, O, MV   |
| 9.  | 20090529 0948 1752 0027  | 653778864          | May 29, 2014   | Extreme Fitness                     | Coinamatic Commercial Laundry Inc.                               | I, E<br>GCD: Laundry Equipment                                       |
| 10. | 20090921 1501 1697 0517  | 656426385          | Sep 21, 2013   | Extreme Fitness, Inc.               | Heffner Auto Sales and Leasing Inc.                              | CG, I, E, A, O<br>NFMD<br>GCD: Lease #J395                           |
| 11. | 20100416 0939 14697 0743 | 660606543          | April 16, 2014 | Extreme Fitness, Inc.               | Heffner Auto Sales and Leasing Inc.                              | CG, I, E, A, O<br>NFMD<br>GCD: Lease #J404                           |
| 12. | 20100722 1122 2203 5046  | 663145866          | July 22, 2014  | Extreme Fitness, Inc. (3 locations) | Indcom Leasing Inc.  | E, MV<br>GCD: Fitness equipment with all accessories and attachments |
| 13. | 20100726 1021 2988 1071  | 663199542          | July 26, 2014  | Extreme Fitness, Inc.               | Essex Capital Leasing Corp.                                      | E, A, O<br>GCD: <i>see below</i>                                     |



**Extreme Fitness, Inc.  
Ontario**

*{the searches conducted against Extreme Fitness Holding Corp. and Extreme Fitness ULC returned only the registration under reference file no. 625817394 }*

|     | Registration Number  | Reference File No. | Expiry Date       | Debtor                              | Secured Party                          | Collateral Classification/Description   |
|-----|--|--------------------|-------------------|-------------------------------------|--|---|
|     | <b>General Collateral Description:</b> Various Gym equipment including all accessories, attachments and substitutions  |                    |                   |                                     |  |   |
| 14. | 20101125 1703 1462 3065  | 666157293          | Nov 25, 2014      | Extreme Fitness, Inc.               | CLE Leasing Enterprises Ltd.           | E, O<br>GCD: <i>see below</i>   |
|     | <b>General Collateral Description:</b><br>Located at 4950 Yonge St., Toronto, ON M2N 6K1<br>- 1 Back Extension<br>- 1 ABX100 Titanium Frame w/Black Upholstery<br>- 1 Adjustable Decline Bench<br>- 1 Superbench<br>Located at 8281 Yonge St. N, Thornhill, ON L3T 2C7<br>- 3 AMT 100I Adaptive Motion Trainer DT PVS & PEP1I, 1 C605EC, C-Line Extension<br>- 1 C606EC, C-Line Prone Leg Curl<br>- 1 Hackslide<br>- 1 Back Extension<br>- 2 Multi Purpose Bench<br>- 1 Seat Preacher Curl |                    |                   |                                     |  |   |
| 15. | 20101126 1407 1697 1042  | 666175293          | Nov 26, 2014      | Extreme Fitness, Inc.               | Heffner Auto Sales and Leasing Inc.    | CG, I, A, O<br>NFMD<br>GCD: Lease #J407   |
| 16. | 20110104 1408 1462 1005<br>Amended to add a 4 <sup>th</sup> location by<br>20110223 1701 1462 2367   | 666914157          | January 4, 2016   | Extreme Fitness, Inc. (4 locations) | DSM Leasing Ltd.                       | I, E, A, O  |
| 17. | 20110222 1532 1697 1182  | 667819143          | February 22, 2015 | Extreme Fitness, Inc.               | Heffner Leasing Limited                | CG, I, A, O, MV<br>NFMD<br>2011 GMC Savana Cargo<br>GCD: Lease #6483                            |
| 18. | 20110303 1702 1462 4307  | 668037168          | March 3, 2014     | Extreme Fitness Inc.                | Enercare Solutions Limited Partnership | E<br>\$18,198<br>NFMD<br>GCD: RBI Boiler located at 8281 Yonge Street #1, Thornhill, ON L3T 2C7 |
| 19. | 20110325 1710 8077 7312  | 668566656          | March 25, 2014    | Extreme Fitness, Inc.               | Dell Financial Services Canada Limited | E, O<br>NFMD  |
|     | <b>General Collateral Description:</b> All Dell and non Dell computer equipment and peripherals wherever located   |                    |                   |                                     |  |   |

**Extreme Fitness, Inc.  
Ontario**

*(the searches conducted against Extreme Fitness Holding Corp. and Extreme Fitness ULC returned only the registration under reference file no. 625817394)*

|     | Registration Number  | Reference File No. | Expiry Date    | Debtor                              | Secured Party                          | Collateral Classification/Description      |
|-----|--|--------------------|----------------|-------------------------------------|--|--|
|     | heretofore or hereafter leased to Debtor by Secured Party pursuant to an equipment lease 210873-005 together with all substitutions, additions, accessions and replacements thereto and thereof now and hereafter installed in, affixed to, or used in conjunction with such equipment and proceeds thereof together with all rental or installment payments, insurance proceeds, other proceeds and payments due or to become due and arising from or relating to such equipment. Proceeds all present and after-acquired personal property.  |                    |                |                                     |  |  |
| 20. | 20110325 0910 1862 5333  | 668533329          | March 25, 2021 | Extreme Fitness, Inc.               | National Bank of Canada, as Agent      | I, E, A, O, MV                             |
| 21. | 20110526 1418 1462 6139  | 670158117          | May 26, 2016   | Extreme Fitness, Inc. (8 locations) | DSM Leasing Ltd.                       | I, E, A, O                                 |
| 22. | 20110526 1418 1462 6138  | 670158108          | May 26, 2016   | Extreme Fitness, Inc. (6 locations) | DSM Leasing Ltd.                       | I, E, A, O                                 |
| 23. | 20110526 1418 1462 6137<br>Amended to add another location by<br>20110819 1403 1462 8243   | 670158099          | May 26, 2016   | Extreme Fitness, Inc. (9 locations) | DSM Leasing Ltd.                       | I, E, A, O                                 |
| 24. | 20110620 1115 2203 5683  | 670800807          | Jun 20, 2016   | Extreme Fitness, Inc. (2 locations) | Indcom Leasing Inc.                    | E, O<br>GCD: <i>see below</i>              |
|     | <b>General Collateral Description:</b> Commercial Washer with all accessories and attachments  |                    |                |                                     |  |  |
| 25. | 20110622 1716 8077 5054  | 670902381          | Jun 22, 2014   | Extreme Fitness, Inc.               | Dell Financial Services Canada Limited | E, O<br>NFMD<br>GCD: <i>see below</i>      |
|     | <b>General Collateral Description:</b> All Dell and non Dell computer equipment and peripherals wherever located heretofore or hereafter leased to Debtor by Secured Party pursuant to an equipment lease 210873-006 together with all substitutions, additions, accessions and replacements thereto and thereof now and hereafter installed in, affixed to, or used in conjunction with such equipment and proceeds thereof together with all rental or installment payments, insurance proceeds, other proceeds and payments due or to become due and arising from or relating to such equipment. Proceeds all present and after-acquired personal property. |                    |                |                                     |  |  |
| 26. | 20110718 0933 1697 1433  | 671515281          | July 18, 2015  | Extreme Fitness, Inc.               | Heffner Auto Finance Corp.             | CG, I, E, A, O<br>NFMD<br>GCD: Lease #J419 |
| 27. | 20110719 1035 8077 6927  | 671555682          | July 19, 2014  | Extreme Fitness, Inc.               | Dell Financial Services Canada Limited | E, O<br>NFMD<br>GCD: <i>see below</i>      |
|     | <b>General Collateral Description:</b> All Dell and non Dell computer equipment and peripherals wherever located heretofore or hereafter leased to Debtor by Secured Party pursuant to an equipment lease 210873-007 together with all substitutions, additions, accessions and replacements thereto and thereof now and hereafter installed in, affixed to, or used in conjunction with such equipment and proceeds thereof together with all rental or installment   |                    |                |                                     |  |  |

**Extreme Fitness, Inc.  
Ontario**

*{the searches conducted against Extreme Fitness Holding Corp. and Extreme Fitness ULC returned only the registration under reference file no. 625817394 }*

|     | Registration Number  | Reference File No. | Expiry Date      | Debtor                            | Secured Party                          | Collateral Classification/Description                           |
|-----|--|--------------------|------------------|-----------------------------------|--|---|
|     | payments, insurance proceeds, other proceeds and payments due or to become due and arising from or relating to such equipment. Proceeds all present and after-acquired personal property.  |                    |                  |                                   |  |   |
| 28. | 20110803 1700 8077 8108  | 671933646          | Aug 3, 2014      | Extreme Fitness, Inc.             | Dell Financial Services Canada Limited | E, O<br>NFMD<br>GCD: <i>see below</i>                           |
|     | <b>General Collateral Description:</b> All Dell and non Dell computer equipment and peripherals wherever located heretofore or hereafter leased to Debtor by Secured Party pursuant to an equipment lease 210873-008 together with all substitutions, additions, accessions and replacements thereto and thereof now and hereafter installed in, affixed to, or used in conjunction with such equipment and proceeds thereof together with all rental or installment payments, insurance proceeds, other proceeds and payments due or to become due and arising from or relating to such equipment. Proceeds all present and after-acquired personal property. |                    |                  |                                   |  |   |
| 29. | 20110826 1052 1529 8933<br>Amended to remove Extreme Fitness Inc. as a debtor by 20120628 1947 1531 4262   | 672479721          | Aug 26, 2016     | Andrea Austin-Flomen<br>22Jun1960 | BMW Canada Inc.                        | E, O, MV<br>\$49,523<br>NFMD<br>2012 BMW<br>w/VIN details       |
| 30. | 20111114 1051 1529 7660  | 674324442          | Nov 14, 2016     | Extreme Fitness Inc.              | BMW Canada Inc.                        | E, O, MV<br>\$34,843<br>NFMD<br>2011 BMW Sedan<br>w/VIN details |
| 31. | 20111223 1456 1697 1672  | 675274842          | Dec 23, 2015     | Extreme Fitness, Inc.             | Heffner Auto Finance Corp.             | CG, I, E, A, O<br>NFMD<br>GCD: Lease #FG041                     |
| 32. | 20120127 1706 8077 0675  | 675903672          | January 27, 2015 | Extreme Fitness, Inc.             | Dell Financial Services Canada Limited | E, O<br>NFMD<br>GCD: <i>see below</i>                           |
|     | <b>General Collateral Description:</b> All Dell and non Dell computer equipment and peripherals wherever located heretofore or hereafter leased to Debtor by Secured Party pursuant to an equipment lease 210873-009 together with all substitutions, additions, accessions and replacements thereto and thereof now and hereafter installed in, affixed to, or used in conjunction with such equipment and proceeds thereof together with all rental or installment payments, insurance proceeds, other proceeds and payments due or to become due and arising from or relating to such equipment. Proceeds all present and after-acquired personal property. |                    |                  |                                   |  |   |
| 33. | 20120202 1658 8077 1149  | 676025748          | February 2, 2015 | Extreme Fitness, Inc.             | Dell Financial Services Canada Limited | E, O<br>NFMD<br>GCD: <i>see below</i>                           |
|     | <b>General Collateral Description:</b> All Dell and non Dell computer equipment and peripherals wherever located heretofore or hereafter leased to Debtor by Secured Party pursuant to an equipment lease 210873-010 together with all substitutions, additions, accessions and replacements thereto and thereof now and hereafter installed in, affixed to, or used in conjunction with such equipment and proceeds thereof together with all rental or installment payments, insurance proceeds, other proceeds and payments due or to become due and arising from or relating to  |                    |                  |                                   |  |   |

**Extreme Fitness, Inc.  
Ontario**

*{the searches conducted against Extreme Fitness Holding Corp. and Extreme Fitness ULC returned only the registration under reference file no. 625817394 }*

|  | Registration Number  | Reference File No. | Expiry Date      | Debtor                | Secured Party                                 | Collateral Classification/Description   |
|--|--|--------------------|------------------|-----------------------|---|---|
|  | such equipment. Proceeds all present and after-acquired personal property. |                    |                  |                       |   |   |
| 34.  | 20120209 0938 1697 1734  | 676149678          | February 9, 2016 | Extreme Fitness, Inc. | Heffner Auto Finance Corp.                    | CG, I, E, A, O<br>NFMD<br>2008 Chevrolet Express w/VIN details<br>GCD: Lease #F1552 |
| 35.  | 20120405 1945 1531 3613  | 677399679          | April 5, 2018    | Extreme Fitness, Inc. | De Lage Landen Financial Services Canada Inc. | E, O  |
| 36.  | 20120522 1212 1697 1906  | 678533769          | May 22, 2016     | Extreme Fitness, Inc. | Heffner Auto Finance Corp.                    | CG, I, A, O, MV<br>NFMD<br>GCD: Lease #G052   |
| 37.  | 20120531 1004 1697 1921  | 678782799          | May 31, 2016     | Extreme Fitness, Inc. | Heffner Auto Finance Corp.                    | CG, I, E, A, O<br>NFMD<br>GCD: Lease #G057  |
| 38.  | 20120531 0918 1697 1920  | 678782295          | May 31, 2016     | Extreme Fitness, Inc. | Heffner Auto Finance Corp.                    | CG, I, E, A, O<br>NFMD<br>GCD: Lease #G068  |
| 39.  | 20120927 1447 1752 0164  | 681752277          | Sept 27, 2017    | Extreme Fitness Inc.  | Coinamatic Commercial Laundry Inc.            | E<br>GCD: see below   |
| <b>General Collateral Description:</b> (2) IPSO Dryers IT055NEO Serial 1208026536, 120806537 (2) IPSO Washers.....(1) Maytag Washer.....and any proceeds therefrom |  |                    |                  |                       |   |   |

13823927.1

Tab N

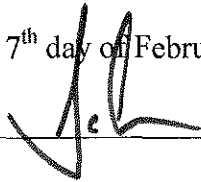
Attached is Exhibit "N"

Referred to in the

Affidavit of Alan Hutchens

Sworn before me

this 7<sup>th</sup> day of February, 2013



---

Commissioner for taking Affidavits, etc

**SELECT MERCHANT  
PAYMENT CARD PROCESSING AGREEMENT**

THIS SELECT MERCHANT PAYMENT CARD PROCESSING AGREEMENT (the "Agreement") is dated as of the Effective Date.

**WHEREAS CHASE PAYMENTECH SOLUTIONS**, having its principal office at One Corporate Plaza, 2075 Kennedy Road, Suite 200, Toronto, Ontario, M1T 3V3 ("Paymentech," "we", "our" or "us"), for itself, and on behalf of The Bank of Nova Scotia ("Scotiabank") and First Data Loan Company, Canada ("FDLCC") is authorized to process the payment card transactions listed on Schedule A; and

**WHEREAS Scotiabank** is a party to this Agreement for the purposes of Visa acceptance and FDLCC is a party to this Agreement for the purposes of MasterCard acceptance; and

**WHEREAS Extreme Fitness, Inc.**, ("Merchant," "you" or "your"), wishes to accept payment cards from its customers for the sale or lease of goods or services offered by Merchant;

**ACCORDINGLY**, in consideration of the mutual promises made and the mutual benefits to be derived from this Agreement, Paymentech, Member (defined below), and Merchant agree to the following terms and conditions intending to be legally bound:

**1. MERCHANT'S ACCEPTANCE OF CARDS.**

**1.1 Exclusivity.** You will tender to us Transaction Data generated from all your Transactions via electronic data transmission according to our formats and procedures. You will not use the services of any bank, corporation, entity, or person other than Paymentech for authorization or processing of Transaction Data throughout the term of this Agreement, except for your divisions, products, or business lines specified in your account application or for which we otherwise agree in writing not to process.

**1.2 Certain Payment Acceptance Policies.** You will honour without discrimination valid Payment Instruments properly tendered for use. Each Payment Transaction and Conveyed Transaction must be evidenced by a single Transaction Data record completed with (i) the transaction date; (ii) a brief description of the goods or services sold, returned, or cancelled; (iii) the price of the goods or services, including applicable taxes, or amount of any credit or adjustment; (iv) the Customer name; (v) your name in a manner recognizable to Customers; (vi) your address; (vii) a customer service telephone number; (viii) any applicable terms and conditions of the Transaction; (ix) the exact date any free trials end; and (x) any other information which the applicable Payment Brand may require. You shall not impose any surcharge or finance charge on a Payment Transaction or Conveyed Transaction or otherwise require the Customer to pay the fees payable by you under this Agreement if prohibited by the applicable Payment Brand. You shall not set a dollar amount above or below which you refuse to honour otherwise valid Payment Instruments in violation of Payment Brand Rules. With respect to any Payment Transaction or Conveyed Transaction for which a Payment Instrument being used is not physically presented, such as in any on-line, mail, telephone, or pre-authorized transaction, you must (i) have notified us on your application or otherwise in writing of your intention to conduct such Payment Transactions and Conveyed Transactions and secured our agreement to accept them, and (ii) have reasonable procedures in place to ensure that each Payment Transaction and Conveyed Transaction is made to a purchaser who actually is the Customer or the authorized user of the Payment Instrument. Notwithstanding the foregoing, you acknowledge that under certain Payment Brand Rules, you cannot rebut a Chargeback where the Customer disputes making the purchase without an electronic record (for example, "swiping", or "electronically reading" a Payment Instrument) or physical imprint of the Payment Instrument.

**1.3 Operating Guide; Payment Brand Rules.** You agree to comply with the operating guide attached to this Agreement, as amended from time to time ("Operating Guide"), and all Payment Brand Rules as may be applicable to you and in effect from time to time as published (on a website or otherwise) by any Payment Brand or of which you have been otherwise informed, and with such other procedures as we may from time to time prescribe for the creation or transmission of Transaction Data. We may modify and supplement the Operating Guide in order to comply with requirements imposed by the Payment Brand Rules, applicable law, and our operating procedures. You acknowledge that you have received a copy of the Operating Guide at or prior to your execution of this Agreement, and that you can also view the Operating Guide on-line at the Chase Paymentech Solutions Internet website (<http://www.chasepaymentech.ca>). To the extent that the Operating Guide is inconsistent with the Payment Brand Rules, the Payment Brand Rules shall prevail.

**1.4 Requirements for Transactions.** As to all Payment Transactions and Conveyed Transactions you tender to us for processing, you represent and warrant that, to the best of your knowledge:

(1) The Transaction Data represents payment or refund of payment, for the bona fide sale or lease of the goods, services, or both, which you have provided in the ordinary course of your business, and the Transaction is not submitted on behalf of a third party.

(2) The Transaction Data represents an obligation of the Customer for the amount of the Transaction.

(3) The Transaction Data does not involve any element of credit for payment of a previously-dishonoured Payment Instrument or for any other purpose, except payment for a current transaction and, except in the case of approved instalment or pre-payment plans, the goods have been shipped or services actually rendered to the Customer.

(4) The Transaction Data is free from any material alteration not authorized by the Customer.

(5) The amount charged to the Customer that is represented in the Transaction is not subject to any dispute, setoff, or counterclaim.

(6) Neither you nor your employee has advanced any cash to the Customer (except as authorized by the Payment Brand Rules) or to yourself or to any of your representatives, agents, or employees in connection with the Transaction, nor have you accepted payment for effecting credits to a Customer. This Sub-section (6) does not apply to Interac Payment Transactions.

(7) The goods or services related to each Transaction are your sole property and you are free to sell them.

(8) You have made no representations or agreements for the issuance of refunds except as it states in your return/cancellation policy, which has been previously submitted to us in writing as provided in Section 3.

(9) Any credit transaction submitted to us represents a refund or adjustment to a Transaction previously submitted.

(10) You have no knowledge or notice of information that would lead you to believe that the enforceability or collectibility of the subject Transaction Data is in any manner impaired. The Transaction Data is in compliance with all applicable laws and regulations. You have originated the Transaction in compliance with this Agreement and the applicable Payment Brand Rules.

(11) For a Transaction where the Customer pays in instalments or on a deferred payment plan, a Transaction Data record has been prepared separately for each instalment transaction or deferred payment on the date(s) the Customer agreed to be charged. All instalments and deferred payments, whether or not they have been submitted to us for processing, shall be deemed to be a part of the original Transaction.

(12) You have not submitted any Transaction that you know or should have known to be either fraudulent, illegal, damaging to the Payment Brand(s), not authorized by the Customer, or otherwise in violation of any provision of this Agreement or Payment Brand Rules.

**2. AUTHORIZATIONS.**

**2.1 Obtaining Authorizations.** You are required to obtain authorization/approval codes through Paymentech in accordance with this Agreement, for all Payment Transactions and Conveyed Transactions. You acknowledge that authorization/approval code of a Payment Transaction or Conveyed Transaction indicates only that (i) the Payment Instrument contains a valid account number; and (ii) that the Customer's Payment Instrument has an

available credit balance sufficient for the amount of the Transaction at the time the authorization is given, but it does not constitute a representation from us, a Payment Brand or a card issuing bank that a particular Payment Transaction or Conveyed Transaction is in fact a valid or undisputed Transaction entered into by the actual Customer or an authorized user of the Payment Instrument.

**2.2 Lack of Authorization.** We reserve the right to refuse to process any Transaction Data presented by you (i) unless a proper authorization/approval code is recorded, (ii) if we reasonably determine that the amount represented by the Transaction Data is or will become uncollectible from the Customer to which the Transaction would otherwise be charged, or (iii) if we determine that the Transaction Data was prepared in violation of any provision of this Agreement.

### **3. REFUNDS AND ADJUSTMENTS.**

**3.1 Disclosure of Refund Policy.** You are required to maintain a fair policy with regard to the return/cancellation of merchandise or services and adjustment of Transactions. You are required to disclose your return/cancellation policy to us on your Application. Your return/cancellation policy must be disclosed to your customers.

**3.2 Changes to Policy.** Any change in your return/cancellation policy must be submitted in writing to us not less than fourteen (14) days prior to the effective date of such change. We reserve the right to refuse to process any Transaction Data made subject to a revised return/cancellation policy of which we have not been notified in advance.

**3.3 Procedure for Refunds/Adjustments.** If you allow a price adjustment, return of merchandise or cancellation of services in connection with a Payment Transaction or Conveyed Transaction, you will prepare and deliver to us Transaction Data reflecting such refund/adjustment within three (3) days of receiving the Customer's request for such refund/adjustment. The amount of the refund/adjustment cannot exceed the amount shown as the total on the original Transaction Data except by the exact amount required to reimburse the Customer for postage that the Customer paid to return merchandise. You are not allowed to accept cash or any other payment or consideration from a Customer in return for preparing a refund to be deposited to the Customer's account nor may you give cash refunds to a Customer in connection with a Payment Transaction, unless required by law.

### **4. SETTLEMENT.**

**4.1 Submission of Transaction Data.** You must transmit your Payment Transactions to us no later than the next business day immediately following the day that such Transaction Data is originated. Failure to do so may result in higher interchange fees and other costs and increased Chargebacks. For debit card transactions that are credits to a Customer's account, you agree to transmit such Transaction Data to us within twenty-four (24) hours of receiving the authorization for such credit. Unless otherwise indicated on Schedule A, you will be solely responsible for all communication expenses required to accept the transmission of Transaction Data.

**4.2 Merchant's Settlement Account.** In order to receive funds from Paymentech, you must maintain a Settlement Account at an institution(s) that is a member of the Canadian Payments Association, as described in the Pre-Authorized Debit Agreement (the "PAD Agreement" attached hereto) hereinafter referred to as (the "Settlement Account"). During the term of this Agreement and thereafter until we notify you that all monies due from you under this Agreement have been paid in full, you agree to notify us prior to closing or changing your Settlement Account. You are solely liable for all fees, costs and expenses associated with your Settlement Account and for all overdrafts. You authorize Paymentech to initiate electronic credit and debit entries and adjustments to your Settlement Account for all obligations arising under this Agreement or resulting from your transaction of business with us, at any time without regard to the source of any monies in the Settlement Account(s), in accordance with the PAD Agreement. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE PAD AGREEMENT, YOU ACKNOWLEDGE AND AGREE THAT THIS AGREEMENT MAY BE TERMINATED IMMEDIATELY BY PAYMENTECH WITHOUT NOTICE IF YOU REVOKE YOUR CONSENT TO DEBIT YOUR SETTLEMENT ACCOUNT UNDER THE PAD AGREEMENT. We will not be liable for any of your losses or expenses whatsoever resulting from delays in receipt of funds or errors in Settlement Account entries caused by third parties, including without limitation, delays or errors by either the Payment Brands or your bank.

**4.3 Conveyed Transactions.** You cannot submit any Conveyed Transaction for processing by Paymentech unless you have a valid agreement in effect with the applicable Payment Brand. Upon your transmission of such Conveyed Transaction to us, we will forward the Conveyed Transaction to the appropriate Payment Brand. Payment of the proceeds due you will be governed by whatever agreement you have with that Payment Brand, and we do not bear any responsibility for their performance. Even if you receive a valid authorization for a Conveyed Transaction, we will not be liable for errors in Settlement Account entries relating to the funding of your Conveyed Transactions, including delays caused by you, third parties, the Payment Brands or your bank. If your agreement with a Payment Brand requires such Payment Brand's consent for us to perform the services contemplated by this Agreement, you are responsible for obtaining that consent.

**4.4 Transfer of Settlement Funds.** For all Payment Transactions, immediately upon our receipt of your Transaction Data, we will process your Transaction Data to facilitate the funds transfer between the various Payment Brands and you for Payment Transactions. Promptly after we receive credit for such Transaction Data, we will provide provisional credit to the Settlement Account for the proceeds. The proceeds payable to you shall be equal to the amounts received by us in respect of your Transaction Data minus the sum of the following: all fees, charges and discounts set forth in Schedule A, all adjustments and Chargebacks, all equipment charges (if any), all Customer refunds, returns, and adjustments, all Reserve Account amounts, and any fees, charges, fines, assessments, penalties, or other liabilities that may be imposed on us or the Member from time to time by the Payment Brands, and all related costs and expenses incurred by us. You agree that all such fees, charges, discounts, adjustments, and all other amounts are due and payable by you at the time the related services are rendered to you and may be imposed on a daily basis if we so determine; that all Reserve Account amounts are due and payable by you upon our establishment; and that the related Chargebacks, Customer refunds and adjustments, fees, charges, fines, assessments, penalties, and all other liabilities are due and payable by you when we receive notice thereof from the Payment Brands or otherwise pursuant to Section 4. In the event we do not deduct such amounts from the proceeds payable to you, you agree to pay all such amounts to us immediately without any deduction or setoff. Alternatively, at our option, we may debit the Settlement Account(s) (in accordance with the terms hereof and the PAD Agreement) or your Reserve Account for such amounts at any time. Without limiting the foregoing or our rights under this Agreement, if a third party notifies us, or a Payment Brand notifies us, or the Member that it or they, intend to impose any fine or penalty as a result of excessive Chargebacks or your acts or omissions (including, without limitation, your failure to fully comply with any Payment Brand Rules), we may suspend the processing of your Transactions.

**4.5 Negative Amounts.** To the extent the proceeds from Payment Transactions do not represent sufficient credits or the Settlement Account does not have a sufficient balance to pay amounts due or reasonably anticipated to become due under this Agreement, we may pursue one or more of the following options: (i) demand and receive immediate payment for such amounts; (ii) debit the Settlement Account for the amount of the negative balance; (iii) withhold your settlement payments until all amounts are paid; (iv) delay presentation of your refunds until you make a payment to us of a sufficient amount to cover the negative balance; and (v) pursue any remedies we may have at law or in equity. Furthermore, if the amount represented by your Transaction Data on any day is negative due to refunds/credits being submitted by you in excess of your proceeds from Transaction Data, you are required to provide us with sufficient funds prior to the submission of the Transaction Data so as to prevent the occurrence of a negative balance.

**4.6 Delinquency/Merchant Fraud.** If (i) there is a material, adverse change in your financial condition or your payment record with creditors, (ii) you are in material default of this Agreement, (iii) you change your billing practice in relation to shipment of merchandise or fulfillment of service or change refund procedures currently in place, and you fail to notify us in advance, or (iv) you are receiving excessive Chargebacks (as defined in Section 7.2 below), (v) you significantly alter the nature of your business or product lines, (vi) we have reasonable grounds to believe that we may be or become liable to third parties for the provisional credit extended to you, or that you may be liable to your Customers, or the Payment Brands, or (vii) we have reasonable grounds to believe that we may be subject to any additional liabilities, including, without limitation, any fines, fees, or penalties



assessed against us by any of the Payment Brands, arising out of or relating to your Payment Transactions, your Chargebacks, or your failure to comply with this Agreement, any of the Payment Brand Rules or the Security Guidelines (as defined in Section 12), we may temporarily suspend or delay payments to you during our investigation of the issue and/or designate an amount of funds that we must maintain in order to protect us against the risk of existing or anticipated Chargebacks, and to satisfy your other obligations under this Agreement (such funds being hereinafter referred to as the "Reserve Account"), which may be funded in the same manner as provided for negative balances in Subsection 4.5. The Reserve Account will contain sufficient funds to cover any unbilled processing costs plus our estimated exposure based on reasonable criteria for Chargebacks, returns, unshipped merchandise and/or unfulfilled services, and additional liabilities anticipated under this Agreement. We may (but are not required to) apply funds in the Reserve Account toward, and set off any funds that would otherwise be payable to the Merchant against, the satisfaction of any amounts which are or become due from you pursuant to this Agreement. The Reserve Account will not bear interest, and you will have no right or interest in the funds in the Reserve Account; provided that upon satisfaction of all of your obligations under this Agreement, we will pay to you any funds then remaining in the Reserve Account. Any funds in the Reserve Account may be commingled with other funds, and need not be maintained in a separate account. Effective upon our establishment of a Reserve Account, you irrevocably grant to us a security interest in any interest you may have or acquire in any and all funds, together with the proceeds thereof, that may at any time be in our possession and would otherwise be payable to you pursuant to the terms of this Agreement. You agree to execute and deliver to us such instruments and documents (including, without limitation, security agreements and releases) that we may reasonably request (i) to perfect and confirm the security interest and right of setoff set forth in this Agreement, and (ii) in connection with any return of Reserve Account funds.

**5. ACCOUNTING.** We will supply a detailed statement reflecting the activity for your merchant account(s) by on-line access (or otherwise if we agree). We will not be responsible for any error that you do not bring to our attention within ninety (90) days from the date of such statement. You acknowledge and agree that it is your responsibility to ensure your secure online access.

#### **6. RETRIEVAL REQUESTS.**

**6.1 Records.** You agree to store original documentation of each Transaction for at least twelve (12) months from the date of such Transaction, and to retain copies of all Transaction Data for at least two (2) years from the date of such Transaction or such longer period of time as prescribed by the Payment Brand Rules. You may not charge a fee to your Customers for the creation or storage of such copies. We may, at our discretion, require you to deliver copies of Transaction Data to us rather than storing it.

**6.2 Response to Retrieval Requests.** We will send you any Retrieval Request that we cannot satisfy with the information we have on file concerning any Transaction. In response, you must provide us in writing by registered or overnight mail or by confirmed fax (or by other means as agreed by Paymentech) the resolution of your investigation of such Retrieval Request and include legible copies of any documentation required by the Retrieval Request within seven (7) business days after we send it to you (or such shorter time as the Payment Brand Rules may require). Once we receive your response, we will take the appropriate steps in a timely manner to reduce the probability of the Customer's bank sending an unjustified Chargeback. You acknowledge that your failure to fulfill a Retrieval Request in accordance with Payment Brand Rules may result in an Irreversible Chargeback.

#### **7. CHARGEBACKS.**

**7.1 Chargeback Reasons.** You may receive a Chargeback from a Customer or a Payment Brand for a number of reasons under the Payment Brand Rules. The following are some of the most common reasons for Chargebacks and in no way is this intended to be an exhaustive list of possible Chargeback reasons:

- (1) Your failure to issue a refund to a Customer upon the return or non-delivery of goods or services.
- (2) An authorization/approval code was required and not obtained.
- (3) The Transaction Data is prepared incorrectly or fraudulently.
- (4) We did not receive your response to a Retrieval Request within seven (7) business days or any shorter time period required by the Payment Brand Rules.
- (5) The Customer disputes the Transaction or the authenticity of the signature on the Transaction Data or Payment Instrument, or claims that the Transaction is subject to a set-off, defence or counterclaim.
- (6) The Customer refuses to make payment for a Transaction because in the Customer's good faith opinion, a claim or complaint has not been resolved, or has been resolved by you but in an unsatisfactory manner.
- (7) The credit or debit card comprising the Payment Instrument was not actually presented at the time of the Payment Transaction or you failed to obtain an electronic record or a physical imprint of such Payment Instrument, and the Customer denies making the purchase. The Merchant acknowledges that, under these circumstances, the fact that an authorization/approval code was obtained does not mean that a particular Transaction is in fact a valid or undisputed transaction entered into by the actual Customer or an authorized user of the Payment Instrument.
- (8) As of the date specified by any Payment Brand, you fail to use Equipment which electronically reads Payment Instruments with an embedded microcomputer EMV chip ("Chip Payment Instrument"), and the Chip Payment Instrument used for a Transaction is lost, stolen, counterfeit or fraudulent.

**7.2 Excessive Chargebacks.** If we determine that you are receiving an excessive amount of Chargebacks, in addition to our other remedies under this Agreement we may take the following actions: (1) review your internal procedures relating to acceptance of Payment Instruments and notify you of new procedures you should adopt (at your sole discretion) in order to avoid future Chargebacks; (2) notify you of a new rate we will charge you to process your Chargebacks, (3) collect from you (pursuant to Subsection 4.6) an amount reasonably determined by us to be sufficient to cover anticipated Chargebacks and related fees and fines; or (4) terminate the Agreement with written notice of termination. You also agree to pay any and all Payment Brand fees and fines assessed against you or against Paymentech or Member relating to your violation of the Agreement, the Operating Guide, or the Payment Brand Rules with respect to your Transaction Data or, with respect to excessive Chargebacks under this Section.

**7.3 Claims of Customers.** You have full liability if any Transaction Data for which we have given the Settlement Account provisional credit is the subject of a Chargeback. Subsequently, you are allowed to resubmit applicable Transaction Data for a second presentation, but only in accordance with Payment Brand Rules. To the extent that we have paid or may be called upon to pay a Chargeback, refund or adjustment for or on the account of a Customer and you do not reimburse us as provided in this Agreement, then for the purpose of our obtaining reimbursement of such sums paid or anticipated to be paid, we have all of the rights and remedies of such Customer under applicable federal, provincial or local law and you authorize us to assert any and all such claims in our own name for and on behalf of any such Customer individually or all such Customers as a class.

**8. DISPLAY OF PAYMENT BRAND MARKS.** Merchant is prohibited from using the Payment Brand Marks, as defined below (sometimes referred to herein as "Marks"), other than as expressly authorized by us in writing or by the Payment Brands. Payment Brand Marks mean the brands, emblems, trademarks and/or logos that identify a Payment Brand. Additionally, Merchant shall not use the Payment Brand Marks other than to display decals, signage, advertising and other forms depicting the Payment Brand Marks that are provided to Merchant (i) by the Payment Brands or (ii) by us pursuant to this Agreement. Merchant shall not use the Payment Brand Marks in such a way that Customers could believe that the products or services offered by Merchant are sponsored, endorsed or guaranteed by the owners of the Payment Brand Marks. Merchant recognizes that it has no ownership rights in the Payment Brand Marks. Merchant shall not assign to any third party the rights to use the Payment Brand Marks. Your right to use of the Payment Brand Marks hereunder terminates simultaneously with the termination of this Agreement.

## 9. FEES.

**9.1 Schedule A.** You agree to pay us for our services as set forth in Schedule A in accordance with this Agreement. If applicable, such pricing is based on all Transactions qualifying under the Payment Brand Rules for the lowest Payment Brand Interchange rates. For Transactions that do not qualify for the best rate, the standard Payment Brand Interchange rate will apply, which may be higher than the qualifying rate shown on Schedule A. Fees payable under this Agreement that contain a fraction of a cent will be rounded up to the next full cent. In addition, you will pay any charges for Equipment provided by Paymentech or its designated service provider as set forth in Schedule A in advance, calculated from the date on which we ship the Equipment to you.

**9.2 Price Changes.** You acknowledge that your pricing is based on your representation as to your volume of Transactions, average ticket size, method of processing, type of business, and Interchange qualification criteria as represented in your Application and Schedule A. To the extent your actual volumes, average ticket size, method, type and criteria differ from this information, we may modify the pricing on Schedule A with thirty (30) days prior written notice. In addition, by giving written notice to you we may change your fees, charges, and discounts in conjunction with (i) changes in Payment Brand fees (such as interchange, assessments, and other charges); (ii) changes in pricing by any third party provider of a product or service used by you; or (iii) fees which are added by a Payment Brand. Such new prices will be applicable to you as of the effective date established by the Payment Brand or third party provider, or as of any later date specified in our notice to you.

**9.3 Pricing Review.** To the extent the volume outlined in Schedule A increases by twenty-five (25%) or more (the "Threshold"), you may request, in writing, a pricing review no sooner than four (4) years from the Effective Date. Upon your request, we will conduct a review, and if, we determine in our sole discretion that your volume of Transactions based on the previous twelve (12) months meets the Threshold, we may modify your pricing and the pricing will become effective thirty (30) days from completion of our satisfactory pricing review.

## 10. TERMINATION.

**10.1 Term.** This Agreement takes effect on the date it is executed by Paymentech and the Merchant, and has an initial term expiring five (5) years from that date. Unless otherwise terminated by either party as provided in this Agreement, the Agreement will automatically extend for successive one-year terms. Either party may give notice of non-renewal of this Agreement in writing no more than ninety (90) days and no less than thirty (30) days prior to any expiration date.

**10.2 Termination for Cause.** If our services provided under this Agreement fail to conform to generally accepted standards for such services in the payment processing industry, then your sole remedy for such failure shall be that upon notice from you specifying the failure of performance, we will rectify such failure of performance. If we do not rectify our failure of performance within thirty (30) days after receipt of notification, then you may terminate this Agreement upon written notice to us. If you terminate the Agreement prior to the expiration of the term other than as a result of our material breach of this Agreement, in order to compensate us for our lost revenue, you agree to pay as liquidated damages the lesser of (a) an amount equal to the fees (net of Payment Brand fees, Interchange, assessments and fines) that Paymentech would have received during the months remaining in the term of the Agreement based upon your representations contained in Schedule A, or (b) if we have at such time been processing all of your Transaction Data for at least six (6) consecutive months, an amount calculated by multiplying the average monthly fees (net of Payment Brand fees, Interchange, assessments and fines) from the immediately preceding six (6) months by the number of months remaining in the term of the Agreement. Such amount will be funded, to the extent possible, according to the same methods for collecting amounts due under Subsection 4.5 of this Agreement. We may terminate this Agreement at any time upon written notice to you as a result of any of the following events: (i) any non-compliance with this Agreement, the Payment Brand Rules or the Operating Guide, which is not cured within thirty (30) days of our notice to you, except as otherwise provided in this Agreement and except that no cure period is allowed for termination based on Merchant fraud or failure to fund a Reserve Account; (ii) any voluntary or involuntary bankruptcy or insolvency proceeding involving you; (iii) Paymentech deems you to be financially insecure; (iv) you or any person owning or controlling your business is or becomes listed in the MATCH file (Member Alert to Control High-Risk Merchants) or similar database maintained by the Payment Brands; (v) any Payment Brand notifies us that it is no longer willing to accept your Transaction Data, (iv) there exists any circumstances that create or could tend to create harm or loss to the goodwill of any Payment Brand, us or Member or (v) you revoke your consent to debit your Settlement Account(s) (as set out in Subsection 4.2), or (vi) for a period of more than sixty (60) consecutive days, you do not transmit Transaction Data to us.

**10.3 Account Activity After Termination.** Termination does not affect either party's respective rights and obligations under this Agreement as to Transaction Data submitted on or before the date of termination. If this Agreement is terminated, our right of direct access to the Settlement Account will survive termination until such time as all credits and debits permitted by this Agreement and the PAD agreement and related to Transactions prior to the effective date of termination have been made. If you submit Transaction Data to us after the date of termination for which you have given us notice, we may, at our sole discretion and without waiving any of our rights or remedies under this Agreement, process such Transaction Data. In the event that we do so, it shall be done in accordance with the terms of this Agreement. Upon notice of any termination of this Agreement, we may estimate the aggregate dollar amount of Chargebacks and other obligations and liabilities that we reasonably anticipate subsequent to termination, and you agree to immediately deposit such amount, or we may withhold such amount from your credits, in order to establish a Reserve Account pursuant to and governed by the terms and conditions of Subsection 4.6.

## 11. INDEMNIFICATION.

**11.1 Paymentech.** We agree to indemnify you and your affiliates, officers, directors, employees, and agents from any losses, liabilities, and damages of any and every kind (including, without limitation, your costs, expenses, and reasonable legal fees) arising out of any Customer complaint or Chargeback related to (i) any failure by us to properly safeguard the Customer's account information, (ii) our failure to deliver funds processed by us in accordance with Subsection 4.4 which relate to payments due from us for Transaction Data, or (iii) any voluntary or involuntary bankruptcy or insolvency proceeding by or against us. This indemnification does not apply to any claim or complaint relating to your failure to resolve a payment dispute concerning merchandise or services sold by you or your negligence or willful misconduct.

**11.2 Merchant.** You agree to indemnify Paymentech, Member, the Payment Brands, and each of their respective affiliates, officers, directors, employees, and agents from any losses, liabilities, and damages of any and every kind (including, without limitation, our costs, expenses, and reasonable legal fees) arising out of any claim, complaint, or Chargeback (i) made or claimed by a Customer with respect to any Transaction Data submitted by you, (ii) caused by your non-compliance with this Agreement, the Operating Guide, or the Payment Brand Rules, (including but not limited to any breach of a representation or warranty made by you, or your failure to comply with the Security Standards) or (iii) resulting from any voluntary or involuntary bankruptcy or insolvency proceeding by or against you or (iv) related to your placement or the placement of any person owning or controlling your business in the MATCH files maintained by Visa and MasterCard. The indemnification provided for in this Section does not apply to any claim or complaint to the extent it is caused by Paymentech's own negligence or willful misconduct.

**12. TRANSACTION DATA AND PAYMENT INSTRUMENT INFORMATION.** You acknowledge and understand the importance of compliance with the Security Standards, such as those relating to the storage and disclosure of Transaction Data and Payment Instrument Information. Therefore, you will exercise reasonable care to prevent disclosure or use of Payment Instrument Information, other than (i) to your agents and contractors for the purpose of assisting you in completing a Transaction, (ii) to the applicable Payment Brand, or (iii) as specifically required by law. You are allowed by the Payment

Brand Rules to store only certain Payment Instrument Information (currently limited to the customer's name, Payment Instrument account number and expiration date) and are prohibited from storing additional Payment Instrument Information, including, without limitation, any security code data such as CVV2, CVC2, and PIN data, and any magnetic stripe track data. You will store all media containing Payment Instrument Information in an unreadable format wherever it is stored and in an area limited to selected personnel on a "need to know" basis only and, prior to discarding any material containing Payment Instrument Information, you will destroy it in a manner rendering the account numbers unreadable. If at any time you determine that Payment Instrument Information has been compromised you will notify Paymentech immediately and assist in providing notification to such parties as may be required by law or Payment Brand Rules, or as we otherwise reasonably deem necessary. Merchant information may be shared by us with our affiliates, and with the Payment Brands subject to the provisions of this Agreement and Payment Brand Rules. You agree to comply with all Security Standards, as defined in Section 19. You further agree to provide us upon our request with such tests, scans and assessments of your compliance with Security Standards as required by the Payment Brands. You must notify us of your use of any Service Provider and, to the extent required by each Payment Brand all Service Providers must be (i) compliant with all Security Standards applicable to Service Providers, and (ii) registered with and/or recognized by such Payment Brand(s) as being so compliant. You agree to exercise due diligence to ensure that all of your Service Providers, and any other agents, business partners, contractors, or subcontractors with access to Payment Instrument Information, maintain compliance with the Security Standards. To the extent required by each Payment Brand, all Payment Applications, or software involved in the processing, storing, receiving or transmitting of Payment Instrument Information, shall be (i) compliant with all Security Standards applicable to such Payment Applications or software, and (ii) registered with and/or recognized by such Payment Brand(s) as being so compliant. You understand that your failure to comply with the Payment Brand Rules, including the Security Standards, or the compromise of any Payment Instrument Information, may result in assessments, fines, and/or penalties by the Payment Brands, and you agree to indemnify and reimburse us immediately for any such assessment, fine, or penalty imposed on us or the Member and any related loss, cost or expense incurred by us or the Member. If any Payment Brand requires a forensic examination of you or any of your Service Providers, agents, business partners, contractors, or subcontractors due to a data security compromise event or suspected event, you agree to cooperate with such forensic examination (including, without limitation, the engagement of an examiner acceptable to the relevant Payment Brand) and agree to pay for all costs and expenses related to such forensic examination, including all of our legal fees and other costs relating to such forensic examination. By executing this Agreement, Merchant represents that, in the event of its failure, including bankruptcy, insolvency, or other suspension of business operations, Merchant shall not sell, transfer, or disclose any materials that contain Transaction Data or Payment Instrument Information to third parties. Merchant must return such information to Paymentech or provide Paymentech with acceptable proof of its destruction.

### **13. INFORMATION ABOUT MERCHANT'S BUSINESS.**

**13.1 Additional Financial Information.** To the extent not available from public sources, you agree to furnish us within five (5) days of our request (i) your most recently prepared financial statements and credit information and (ii) if applicable, your three most recent filings with the Ontario Securities Commission or other applicable Canadian securities regulator.

**13.2 Audit Rights.** With prior notice and during your normal business hours, our duly authorized representatives may visit your business premises and may examine only that part of your books and records that pertain to your Transaction Data or your compliance with this Agreement.

**13.3 Other Information.** You agree to provide us at least thirty (30) days' prior written notice of your intent to change your product line or services, or your trade name, or the manner in which you accept Payment Instruments. If we determine such a change is material to our relationship with you, we may refuse to process Transaction Data made subsequent to the change or terminate this Agreement. You agree to provide us with prompt written notice if you are the subject of any voluntary or involuntary bankruptcy or insolvency petition or proceeding. You will also provide us with prompt written notice of (i) any adverse change in your financial condition, (ii) any planned or anticipated liquidation or substantial change to the basic nature of your business, (iii) any transfer or sale of any substantial part (25% or more in value) of your total assets, or, (iv) if you or your parent is not a corporation whose shares are listed on a national securities exchange or on the over-the-counter market, any change in the control or ownership of you or your parent. You will also notify us of any judgement, writ, attachment, distraint, execution or levy against any substantial part (25% or more in value) of your total assets not later than three (3) days after you obtain knowledge of any such judgement, writ, attachment, distraint, execution or levy.

**14. DISCLAIMER: LIMITATION OF DAMAGES.** Subject to Section 5, we will, at our own expense, correct any Transaction Data to the extent that errors have been caused by us, or by malfunctions of our Intellectual Property or machines. Under no circumstances will Paymentech's financial responsibility for Paymentech's failure of performance under this Agreement exceed the total fees paid to Paymentech under this Agreement (net of Payment Brand fees, third party fees, interchange, assessments, and fines) for the six (6) months prior to the time the liability arose. EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT AND EXCEPT WITH RESPECT TO MERCHANT'S FAILURE TO COMPLY WITH THE SECURITY STANDARDS IN NO EVENT WILL ANY PARTY, ITS RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, OR AFFILIATES OR SPONSORING BANKS, BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES OR ANY LOSS, THEFT, DISAPPEARANCE, OR DAMAGE TO DATA TRANSMITTED ELECTRONICALLY IN CONNECTION WITH THIS AGREEMENT. PAYMENTECH AND MEMBER HEREBY DISCLAIM ANY AND ALL OTHER REPRESENTATIONS, WARRANTIES OR CONDITIONS WITH RESPECT TO THE SERVICES, PRODUCTS AND EQUIPMENT PROVIDED HEREUNDER, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY WARRANTY OR CONDITION REGARDING QUALITY, SUITABILITY, MERCHANTABILITY, OR FITNESS FOR USE FOR ANY PARTICULAR PURPOSE OR OTHERWISE (REGARDLESS OF ANY COURSE OF DEALING, CUSTOM OR USAGE OF TRADE).

### **15. STORED VALUE TRANSACTIONS.**

**15.1 Cards & Packaging.** If indicated on Schedule A, you are required to purchase cards from us for your Stored Value Transaction program ("SV Program"). If you are obligated to purchase cards from us or if you elect to do so anyway, we will arrange for the card production and may, at our option, invoice you therefore, in lieu of electronically debiting your account. Any such invoice will be payable upon receipt. Cards, packaging and point-of-purchase marketing materials are available and priced on a per bundle basis, based on current rates. All production and delivery timeframes and costs provided by us are estimates only and we do not guarantee any specific date of delivery or price for cards produced by third parties. You are responsible for all production costs and delivery charges for cards. The form and content of all cards will be subject to our approval.

**15.2 Compliance and Warranties.** You are solely responsible for complying with all applicable laws relating to your Payment Instruments for Stored Value Transactions ("SV Payment Instruments") and you agree to indemnify and hold us, the Payment Brands, and their respective affiliates, officers, directors, employees and agents harmless from any loss, damage or claim relating to or arising out of any failure to comply with applicable laws in connection with your SV Program. NEITHER THIS AGREEMENT NOR ANY DOCUMENTATION FURNISHED UNDER IT IS INTENDED TO EXPRESS OR IMPLY ANY WARRANTY BY US THAT THE SERVICES WILL FUNCTION WITHOUT INTERRUPTION OR ERRORS. ANY SECURITY MECHANISMS INCORPORATED IN THE SERVICES HAVE INHERENT LIMITATIONS, AND YOU MUST INDEPENDENTLY DETERMINE THAT SUCH MECHANISMS ADEQUATELY MEET YOUR SECURITY AND RELIABILITY REQUIREMENTS. BY USING THE SERVICES, YOU REPRESENT THAT YOU HAVE SO DETERMINED.

**15.3 Indemnity.** In the event of any loss, theft, disappearance of or damage to data that is transmitted electronically in connection with the SV Program, you agree to indemnify and hold harmless Paymentech, the Payment Brands, and their respective affiliates, officers, directors, employees and agents, with respect to such. You are solely responsible for monitoring the legal developments applicable to the operation of your SV Program and

ensuring that your SV Program complies fully with such requirements as in effect from time to time. Merchant acknowledges that Paymentech cannot reasonably be expected to monitor and interpret the laws applicable to its diverse customer base, and has no responsibility to monitor or interpret laws applicable to Merchant's business.

**15.4 Fraud.** You hereby agree (i) that you are responsible for ensuring that all SV Payment Instruments require activation at the point of sale; (ii) to provide notification in writing to Paymentech of any fraud losses by type fifteen (15) days following the end of each calendar quarter; (iii) that you will be solely responsible for any and all value adding and fraud losses and expenses relating to or arising from your SV Program; (iv) to discourage transportation of groups of sequentially numbered SV Payment Instruments; and (v) to deactivate or otherwise remove all value from SV Payment Instruments that have been compromised. You shall be responsible for any fraudulent transactions involving your SV Payment Instruments, including, without limitation, the unauthorized activation of SV Payment Instruments, reloading of existing SV Payment Instruments (whether pursuant to a manual telephone order or otherwise) with additional value, or the unauthorized replication of SV Payment Instruments or SV Payment Instrument data for fraudulent transactions.

#### **16. INTELLECTUAL PROPERTY.**

We retain all ownership and copyright interest in and to any and all intellectual property, computer programs, related documentation, technology, know how and processes developed by us, and provided in connection with this Agreement (collectively, the "Intellectual Property"), and we grant you a non-exclusive license to use the Intellectual Property for the limited purpose of performing under this Agreement. Unless otherwise provided in a separate agreement between you and us, any equipment, terminals or machinery provided by us but not developed by Paymentech, is being licensed or purchased by you directly from the manufacturer or developer of such machinery or Intellectual Property. You acknowledge that the license granted herein is limited to your own use exclusively and that you do not have the right to sub-license any of the Intellectual Property in either their original or modified form. You agree that you will not reverse-engineer, disassemble or decompile the Intellectual Property. Merchant shall not give any third party, except Merchant's employees, access to the Intellectual Property without our prior written consent.

#### **17. EQUIPMENT.**

**17.1 Merchant-Provided/Owned Equipment.** If you use Equipment that is not provided by us, you must ensure that it complies with Payment Brand requirements, including security and chip functionality requirements, at all times. If your Equipment is lost or stolen you agree to notify us immediately. You will supply us with any certification of compliance as requested from time to time by the Payment Brands.

**17.2 Paymentech Provided/Owned Equipment.** If you use Equipment provided by us or by a designated service provider, we will arrange for your Equipment to be delivered. The Equipment, including terminals we provide, are our property and will not become a fixture under any circumstances. You agree to reimburse Paymentech, Member, and their respective affiliates, officers, directors, employees and agents against for any loss, damage or expense resulting from: (i) your use or any misuse of the Equipment and any accompanying parts supplied to you or (ii) another person obtaining a right or an interest in any of our terminals. You do not have the right to sub-lease the Equipment. If your Equipment is lost or stolen you agree to notify us immediately. You are responsible for any loss, theft or damage to any Equipment we have provided to you, except for normal wear and tear. You agree to allow us to inspect your Equipment periodically and, at our option, repair it. If we request, you will tell us where each terminal is at any time and who is in possession of it. We have the right to replace our Equipment with any other type of Equipment if we believe it is necessary.

**17.2.1 Leasing Company Equipment.** If you use Equipment provided by a Leasing Company, we or the Leasing Company will arrange for your Equipment to be delivered. If the Leasing Company Equipment is lost or stolen you agree to notify us immediately. You agree to reimburse Paymentech, Member, and their respective affiliates, officers, directors, employees and agents against any loss, damage or expense resulting from your use or misuse of the Leasing Company Equipment and any accompanying parts supplied to you. You agree to allow us to inspect the Leasing Company Equipment periodically and, at our option, repair or replace it with any other type of Leasing Company Equipment. If we request, you will tell us where each Leasing Company terminal is at any time and who is in possession of it and if we request, you will return the Leasing Company Equipment to us.

**17.3 Installation of Equipment.** You agree to install and activate such Equipment and any accompanying parts supplied to you in accordance with our procedures. If you need to move any Equipment to another location after it has been installed, or if multiple pieces of Equipment are being moved or exchanged, you will notify us in advance and pay any expenses to have it moved. Prior to installing the Equipment in your place of business, you will ensure compliance of all electrical, communication, and other physical facilities with all applicable laws and regulations that relate to the installation of the Equipment. Unless we tell you that we are ordering telecommunications facilities or you have made some other arrangement with us for them, you will order the telecommunications facilities needed to link the Equipment with our network. You will pay all costs associated with this.

**17.4 Using the Equipment.** You will use all Equipment and any accompanying parts supplied to you according to our procedures and applicable laws. You acknowledge that Equipment can be used for transactions and services that are not covered under this Agreement or in any other agreements you have with us (such as communicating with issuers of other types of Payment Instruments). You agree that we are not responsible for such Transaction Data or for any failure of a terminal to communicate with other persons, including other Payment Brands. You may upgrade your Equipment to another type during the term of the Agreement, so long as the Equipment is certified to communicate with our networks. You may have to pay an upgrade fee and/or pay a higher fee.

**17.5 Canceling Your Equipment Rental.** You can cancel the rental of Equipment from us at any time by returning the Equipment (or any portion or piece) we sent to you. If you return the Equipment less than twelve (12) months after the date we shipped it to you, you agree to pay a terminal service charge, unless you have negotiated seasonal pricing. The amount of this service charge is equal to eighteen (18) months rent on your Equipment (or attributable to that portion or piece of the Equipment that you are canceling), including applicable taxes, minus the rent for that portion or piece of Equipment that you have already paid to us. You will owe us fees until you return our Equipment to us and we receive it.

#### **18 MISCELLANEOUS.**

**18.1 Taxes.** Unless you are otherwise exempt, you agree to pay any taxes imposed on the services, Equipment, Intellectual Property, supplies, and other goods purchased or tangible property provided under this Agreement, and you authorize us to increase the amount we collect from you to reflect any and all assessments or increases in the sales, use, excise, goods and services, value added, occupational, property, lease, or other taxes imposed on such sale or lease of services, tangible property, Intellectual Property, Equipment, supplies, and other goods purchased.

**18.2 Application and Credit Check.** You represent and warrant that all statements made on your Application for this Agreement are true as of the date of your execution of this Agreement. Your signature on this Agreement authorizes us to perform any credit check deemed necessary with respect to Merchant and its directors, officers, affiliates, principals and guarantors.

**18.3 Section Headings.** The section headings of this Agreement are for convenience only and do not define, limit, or describe the scope or intent of this Agreement.

**18.4 Assignment.** We cannot assign this Agreement without your prior written consent, except that we may assign this Agreement to an entity qualified under Payment Brand Rules to perform our obligations under this Agreement. You cannot assign or transfer your rights or delegate your responsibilities under this Agreement without our prior written consent. Failure to obtain our consent may result in termination of this Agreement. Any assignee or successor must provide such additional information and execute such additional documentation or take any further actions as we may request in order to ensure continued processing of Transactions under this Agreement.

**18.5 Amendments To Terms and Conditions.** This Agreement may be amended at any time by Paymentech upon thirty (30) days notice to you. Notwithstanding the foregoing, in the event the terms of this Agreement must be amended pursuant to a change required by the Payment Brand Rules,

government entity or any third party with jurisdiction over the matters described herein, such amendment will be effective immediately. YOU ACKNOWLEDGE THAT YOUR CONTINUED SUBMISSION OF TRANSACTIONS TO US THIRTY (30) DAYS FOLLOWING THE DATE OF SUCH NOTICE WILL BE DEEMED TO BE YOUR ACCEPTANCE OF SUCH AMENDMENT AND YOUR AGREEMENT TO BE BOUND BY ALL THE MODIFIED TERMS AND CONDITIONS. IF YOU DO NOT WISH TO ACCEPT ALL OF THE MODIFIED TERMS AND CONDITIONS THEN YOU MUST CONTACT US, WITHIN THE THIRTY (30) DAYS FOLLOWING THE DATE OF SUCH NOTICE THAT YOU ARE TERMINATING THIS AGREEMENT BASED ON THIS PROVISION.

**18.6 Parties.** This Agreement binds you and us and our respective heirs, representatives, successors (including those by merger and acquisition), and permitted assigns. You represent and warrant that your execution of and performance under this Agreement (i) in no way breaches, contravenes, violates or in any manner conflicts with any of your other legal obligations, including, without limitation, your corporate charter or similar document or any agreement between you and any third party or any affiliated entity; and (ii) has been duly authorized by all necessary action and does not require any consent or other action by or in respect of any third party; and (iii) that the person(s) signing this Agreement on your behalf is duly authorized to do so. In providing services to you, we will not be acting in the capacity of your agent, partner, or joint venturer, and we are acting as an independent contractor. Each party agrees that any other party may publicly disclose, through press releases or otherwise, the existence of the business relationship that is the subject of this Agreement. Any such permitted disclosure may identify the parties by name but shall not, without the prior written consent of the non-disclosing party, include any of the terms of this Agreement.

**18.7 Severability.** Should any provision of this Agreement be determined to be invalid or unenforceable under any law, rule, or regulation, including any Payment Brand Rule, such determination will not affect the validity or enforceability of any other provision of this Agreement.

**18.8 Waivers.** No term or condition of this Agreement may be waived except pursuant to a written waiver executed by the party against whom such waiver is sought to be enforced.

**18.9 Entire Agreement.** The Payment Brand Rules, Operating Guide, Application, and all schedules and attachments to this Agreement are made a part of this Agreement for all purposes. This Agreement represents the entire understanding between Merchant and Paymentech with respect to the matters contained herein and supersedes any prior agreements between the parties. This Agreement shall prevail over the terms of any agreement governing the Settlement Account. Merchant agrees that in entering into this Agreement it has not relied on any statement of Paymentech or its representatives.

**18.10 Notices.** Except as otherwise provided in this Agreement, all notices must be given in writing and either emailed, hand delivered, faxed, or mailed first class, postage prepaid (and will be deemed to be given when so delivered or mailed) to the addresses set forth below or to such other address or email address as any party may from time to time specify to the other parties in writing.

**18.11 Governing Law; Waiver of Jury Trial.** This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario without reference to conflict of laws provisions. Any action, proceeding, litigation, or mediation relating to or arising from this Agreement must be brought, held, or otherwise occur exclusively in Toronto, Canada, and the parties hereby attorn to the exclusive jurisdiction of the courts of Ontario. The non-prevailing party in any such proceeding will reimburse the prevailing party the reasonable legal fees, and court costs incurred by the prevailing party in connection with such proceeding. You agree to indemnify and hold harmless Paymentech, its affiliates, officers, directors, employees and agents for all costs, expenses and reasonable legal fees arising in connection with the enforcement by Paymentech of your obligations under this Agreement. THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHTS EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT.

**18.12 Compliance with Laws, Regulations and Privacy Policy.** Each party shall comply with all laws and regulations and Payment Brand Rules applicable to the operation of its business, including without limitation any applicable privacy laws. A copy of Paymentech's privacy policy is available on its Internet website.

**18.13 Force Majeure.** Neither party will be liable for delays in processing or other non-performance caused by such events as fires, telecommunications, utility or power failures, equipment failures, labour strife, riots, war, terrorist attack, non-performance of our vendors or suppliers, acts of God, or other causes over which the respective party has no reasonable control, except that nothing in this Section 18.12 will affect or excuse your liabilities and obligations for Chargebacks, refunds, or unfulfilled products and services.

**18.14 French Language.** THE PARTIES HEREBY ACKNOWLEDGE THAT THEY HAVE REQUIRED THIS AGREEMENT AND ALL RELATED DOCUMENTS TO BE DRAWN UP IN THE ENGLISH LANGUAGE. LES PARTIES RECONNAISSENT AVOIR DEMANDÉ QUE LE PRÉSENT CONTRAT AINSI QUE LES DOCUMENTS QUI S'Y RATTACHENT SOIENT RÉDIGÉS EN LANGUE ANGLAISE.

**18.15 Survival.** The provisions of Sections 1.3, 4.2, 4.4, 4.5, 4.6, 6, 7, 9, 10.3, 11, 12, 14, 15, 16, 17, 18 and 19 shall survive termination of this Agreement.

**18.16 New Services and Products.** From time to time, we may offer you new and/or additional products or services under this Agreement. If you tender to us any Transaction Data thirty (30) days following our notice to you of such new and/or additional product(s) or service(s) then, you will be deemed to have accepted the new and/or additional product(s) or service(s), as the case may be, and will be bound by this Agreement and any additional terms, conditions and pricing set out in connection with the new and/or additional product(s) or service(s) offering. If you do not wish to accept the new and/or additional product(s) or service(s) then you must notify us within the thirty (30) days following the date of our notice that you do not wish to accept the new and/or additional product(s) or service(s). We will advise you at that time if any further action is required to be taken by you to disable the new and/or additional product(s) or service(s) or what other options are available to you.

**18.17 Counterparts, Facsimile, and Electronic Signature.** The Agreement may be executed in several counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. A signature received via facsimile or electronically via email shall be as legally binding for all purposes as an original signature.

## **19. DEFINITIONS.**

"*Application*" is your statement of the characteristics of your business or organization and related information that you have submitted to us to induce us to enter into this Agreement with you, and that has induced us to process your Transactions under the terms and conditions of this Agreement.

"*Chargeback*" is a reversal of a Transaction you previously presented to Paymentech pursuant to Payment Brand Rules.

"*Chase Paymentech Gift Card*" means a stored value and/or loyalty card or account, the transactions of which are processed exclusively by Paymentech, that is issued by Merchant (or a group of merchants, of which Merchant is a member) to a Customer for use only to make purchases from Merchant or other members of such group. A Chase Paymentech Gift Card account consists of an account funded by a Customer either through a payment to the Merchant or another member of such group; by the return of goods initially purchased with such account; or by the Merchant or another member of such group in the case of a promotion or the rewarding of the Customer via a loyalty program.

"*Conveyed Transaction*" is any Transaction conveyed to a Payment Brand for settlement by such Payment Brand directly to Merchant.

"*Customer*" is the person or entity to whom a Payment Instrument is issued or who is otherwise entitled to use a Payment Instrument.

"*Effective Date*" means the date on which this Agreement takes effect pursuant to Section 10.1.

"*Equipment*" is a point-of-sale terminal or other software, hardware or other Payment Instrument processing equipment used by you to obtain Payment Instrument information and transmit Transaction Data to us.

"*Leasing Company*" is a service provider designated by Paymentech.

"*Member*" is the entity providing sponsorship to Paymentech as required by any applicable Payment Brand.

"*Payment Application*" is a third party application used by Merchant that is involved in the authorization or settlement of Transaction Data.

"Payment Brand" is any payment method provider whose payment method is accepted by Paymentech for processing, including, but not limited to, MasterCard International Inc., Visa International, Inc., Visa Canada, Interac, Acxsys Corporation, other credit and debit card providers, debit network providers, Chase Paymentech Gift Card and other stored value, loyalty program providers and Payment Card Industry Security Standards Council.

"Payment Brand Rules" are the bylaws, rules, and regulations, as they exist from time to time, of the Payment Brands.

"Payment Instrument" is an account, or evidence of an account authorized and established between a Customer and a Payment Brand, or representatives or members of a Payment Brand that you accept from Customers as payment. Payment Instruments include, but are not limited to, credit cards, debit cards, stored value cards, loyalty cards, electronic gift cards, authorized account or access numbers, paper certificates, credit accounts and the like.

"Payment Instrument Information" is information related to a Customer or the Customer's Payment Instrument, that is obtained by Merchant from the Customer's Payment Instrument, or from the Customer in connection with his or her use of a Payment Instrument (for example a security code, a PIN number, or the Customer's postal code when provided as part of an address verification system). Without limiting the foregoing, such information may include a the Payment Instrument account number and expiration date, the Customer's name or date of birth, PIN data, security code data (such as CVV2 and CVC2) and any data read, scanned, imprinted, or otherwise obtained from the Payment Instrument, whether printed thereon, or magnetically, electronically or otherwise stored thereon.

"Payment Transaction" is a Transaction other than a Stored Value Transaction or a Conveyed Transaction.

"Personal Information" is information which relates to an individual and allows that individual to be identified.

"Retrieval Request" is a request for information by a Customer or Payment Brand relating to a claim or complaint concerning a Transaction.

"Service Provider" is any party that processes, stores, receives or transmits or has access to Payment Instrument Information on your behalf.

"Security Standards" are all rules, regulations, standards or guidelines adopted or required by the Payment Brands or the Payment Card Industry Security Standards Council relating to privacy, data security and the safeguarding, disclosure and handling of Payment Instrument Information, including but not limited to the Payment Card Industry Data Security Standards ("PCI DSS"), Visa's Cardholder Information Security Program ("CISP"), Discover's Information Security & Compliance Program, American Express's Data Security Operating Policy, MasterCard's Site Data Protection Program ("SDP"), Visa's Payment Application Best Practices ("PABP"), the Payment Card Industry's Payment Application Data Security Standard ("PA DSS"), MasterCard's POS Terminal Security program and the Payment Card Industry PIN Entry Device Standard, in each case as they may be amended from time to time.

"Settlement Account" means an account at a financial institution designated by Merchant as the account to be debited and credited by Paymentech for Transactions, fees, Chargebacks, and other amounts due hereunder or in connection herewith (including without limitation, assessments, fines, and penalties).

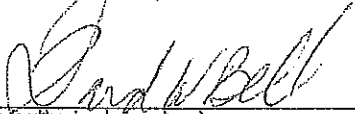
"Stored Value Transaction" is a Transaction utilizing a Payment Instrument issued by or on behalf of a Merchant in respect of which a Customer receives value from the Merchant in exchange for consideration from the Customer.

"Transaction" is a transaction conducted between a Customer and Merchant utilizing a Payment Instrument in respect of which consideration is exchanged between the Customer and Merchant.

"Transaction Data" is the written or electronic evidence of a Transaction.

Agreed and Accepted by:

**Extreme Fitness, Inc.**



By (authorized signature)

Print Name and Title

David W. Bell  
Chief Financial Officer

Date

12/17/10

Address

8281 Yonge Street

City, Province, Postal Code

Thornhill ON  
L3T 2C7

By (authorized signature)

Print Name and Title

Date

Address

City, Province, Postal Code

Agreed and Accepted by:

**CHASE PAYMENTECH SOLUTIONS, for itself and on behalf of  
The Bank of Nova Scotia and First Data Loan Company,  
Canada**

By

Name

Sam Tausend

Title

President

Date

Feb 2, 2011

Address: One Corporate Plaza, 2075 Kennedy Road, Suite 200, Toronto, Ontario, M1T 3V3

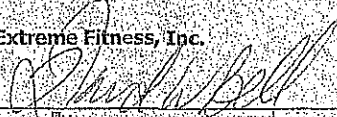
Chase Paymentech Solutions

Pre-Authorized Debit Agreement

1. You acknowledge that this authorization (the "Authorization") is provided for the benefit of Chase Paymentech Solutions and your financial institution (the "Financial Institution") and is provided in consideration of the Financial Institution agreeing to process all debits against your account(s) (the "Settlement Account") in accordance with the Rules of the Canadian Payments Association.
2. You warrant and guarantee that all persons whose signatures are required to sign on the Settlement Account have signed the Chase Paymentech Solutions Select Merchant Application and Agreement.
3. You hereby authorize Chase Paymentech Solutions to draw on the Settlement Account for the purpose of paying Chase Paymentech Solutions all regular payments and/or one time payments from time to time including but not limited to payments required to establish a Reserve Account and any other amounts owing to it pursuant to the Select Merchant Application and Agreement or any other agreement between you and Chase Paymentech Solutions (a "pre-authorized debit" or "PAD"). In particular, you agree that if any payment is dishonoured by your Financial Institution for any reason, Chase Paymentech Solutions shall be entitled to issue another debit in substitution for the dishonoured debit. Chase Paymentech Solutions shall be under no liability whatsoever caused by a dishonoured debit. For debits other than regular recurring debits (eg. sporadic debits) you understand that Chase Paymentech Solutions will obtain your authorization prior to initiating any such debit.
4. You acknowledge that provision and delivery of this Authorization to Chase Paymentech Solutions constitutes delivery by you to the Financial Institution. Any delivery of this Authorization to Chase Paymentech Solutions constitutes delivery by you.
5. You acknowledge that the debits authorized pursuant to this Authorization are for business purposes.
6. The details of the Settlement Account that Chase Paymentech Solutions is authorized to draw upon are either set out in (a) the specimen cheque that has been marked "VOID" or (b) as set out on the Settlement Account Verification Form. You undertake to forthwith inform Chase Paymentech Solutions in writing of any change to the Settlement Account information provided in this Authorization.
7. You acknowledge that the Financial Institution is not required to verify that (i) a PAD has been issued in accordance with the particulars of this Authorization or (ii) any purpose of payment for which the PAD has been issued has been fulfilled by Chase Paymentech Solutions as a condition to honouring a PAD issued on your Settlement Account.
8. This Authorization may be cancelled at any time upon notice by you. You acknowledge that in order to revoke this Authorization, you must provide notice of revocation to Chase Paymentech Solutions. You acknowledge that it could take up to 10 business days after Chase Paymentech Solutions's receipt of such notice to implement the revocation. Chase Paymentech Solutions may debit the Settlement Account up until the time when the revocation is implemented by them. Revocation of this Authorization does not terminate the Select Merchant Application and Agreement between you and Chase Paymentech Solutions. The PAD Agreement applies only to the method of payment and does not otherwise have any bearing on the Select Merchant Application and Agreement. You understand that this Authorization may be cancelled at any time by written notice from you to Chase Paymentech Solutions which notice shall be effective 10 days after receipt. To obtain a sample cancellation form, or for more information on the right to cancel this Authorization, you may contact your Financial Institution or visit [www.cdnipay.ca](http://www.cdnipay.ca).
9. You understand that you have certain recourse rights if any debit does not comply with this Authorization. For example, you have the right to receive reimbursement for any debit that is not authorized or is not consistent with this Authorization. To obtain more information on your recourse rights you may contact your Financial Institution or visit [www.cdnipay.ca](http://www.cdnipay.ca).
10. A PAD may be disputed by you in accordance with the Rules of the Canadian Payments Association. In order to be reimbursed, you acknowledge that a declaration must be completed and presented to the Financial Institution holding the Settlement Account up to and including 10 business days after the date on which the PAD in dispute was posted to the Settlement Account. You acknowledge that a claim that the Authorization was revoked or any other reason is a matter to be resolved solely between Chase Paymentech Solutions and you when disputing any PAD after 10 business days.
11. You acknowledge that you understand the terms hereof and you accept and agree to participate in this PAD arrangement with Chase Paymentech Solutions.
12. You acknowledge that Chase Paymentech Solutions may assign this Authorization, whether directly or indirectly, by operation of law, change of control, or otherwise, by providing at least 10 days prior written notice to you.
13. You understand that you can contact Chase Paymentech Solutions at the address noted below to make any inquiries, obtain information or seek any recourse rights: P.O. Box 466, Station D, Toronto, Ontario, M1R 5B8, Telephone: 1-800-265-5158, Fax: 416-950-6030.
14. You consent to the disclosure of any personal information that may be contained in this Authorization to the Financial Institution at which Chase Paymentech Solutions maintains its account to be credited with the PADs as far as any such disclosure of personal information is directly related to and necessary for the proper application of the Rules of the Canadian Payments Association.

15. You understand and agree to the foregoing terms and conditions and, in particular, you hereby waive the right to receive any notice from Chase Paymentech Solutions of the amount to be debited to the Settlement Account and the dates on which the debits will be processed, as well as notice of any and all future changes to the amounts or payment dates.

Extreme Fitness, Inc.

  
By \_\_\_\_\_

Print Name and Title *David W. Bell*  
*Chief Financial Officer*

Date *12/17/10*

Address *8281 Yonge Street*

City, Province, Postal Code *Thornhill ON*  
*L3T 2C7*

By \_\_\_\_\_

Print Name and Title

Date

Address

City, Province, Postal Code



Tab O

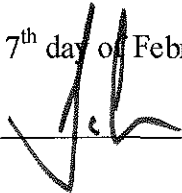
Attached is Exhibit "O"

Referred to in the

Affidavit of Alan Hutchens

Sworn before me

this 7<sup>th</sup> day of February, 2013



---

Commissioner for taking Affidavits, etc

**CONFIDENTIAL – EXHIBIT “O”**

**(Subject to a request for a sealing order)**

Tab P

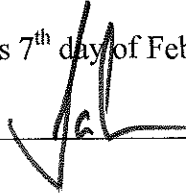
Attached is Exhibit "P"

Referred to in the

Affidavit of Alan Hutchens

Sworn before me

this 7<sup>th</sup> day of February, 2013



---

Commissioner for taking Affidavits, etc

**CONFIDENTIAL – EXHIBIT “P”**

**(Subject to a request for a sealing order)**

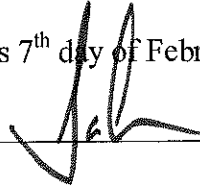
Tab Q

Attached is Exhibit "Q"

Referred to in the  
Affidavit of Alan Hutchens

Sworn before me

this 7<sup>th</sup> 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



**Extreme Fitness, Inc.**  
**9-Week CCAA Cash Flow Forecast**  
**(Unaudited, in '000s CAD)**

| Week Ending, Friday:                          | Notes | Week 1<br>2/8/2013 | Week 2<br>2/15/2013 | Week 3<br>2/22/2013 | Week 4<br>3/1/2013 | Week 5<br>3/8/2013 | Week 6<br>3/15/2013 | Week 7<br>3/22/2013 | Week 8<br>3/29/2013 | Week 9<br>4/5/2013 | Total            |
|---|-------|--------------------|---------------------|---------------------|--------------------|--------------------|---------------------|---------------------|---------------------|--------------------|------------------|
| <b>Receipts</b>                               |       |                    |                     |                     |                    |                    |                     |                     |                     |                    |                  |
| Receipts                                      | 3     | 126.0              | 828.1               | 839.2               | 1,138.7            | 1,619.1            | 890.9               | 884.5               | 396.5               | 2,267.2            | 8,990.0          |
| <b>Total Receipts</b>                         |       | <b>126.0</b>       | <b>828.1</b>        | <b>839.2</b>        | <b>1,138.7</b>     | <b>1,619.1</b>     | <b>890.9</b>        | <b>884.5</b>        | <b>396.5</b>        | <b>2,267.2</b>     | <b>8,990.0</b>   |
| <b>Disbursements</b>                          |       |                    |                     |                     |                    |                    |                     |                     |                     |                    |                  |
| Payroll and related amounts                   | 4     | -                  | 440.0               | 636.5               | 430.0              | 535.0              | 460.0               | 501.5               | 405.0               | 535.0              | 3,943.0          |
| Facility costs                                | 5     | -                  | 875.4               | -                   | 631.5              | -                  | 631.5               | -                   | -                   | 631.5              | 2,769.9          |
| Operating costs                               | 6     | 13.9               | 366.1               | 224.2               | 455.7              | 660.0              | 343.6               | 214.2               | 290.1               | 651.9              | 3,219.6          |
| Professional fees                             | 7     | 100.0              | 232.5               | 187.3               | 180.3              | 136.0              | 165.3               | 25.0                | 197.8               | 30.0               | 1,254.0          |
| Financing charges                             | 8     | 100.0              | -                   | -                   | 54.7               | -                  | -                   | -                   | -                   | 72.8               | 227.5            |
| <b>Total Disbursements</b>                    |       | <b>213.9</b>       | <b>1,914.0</b>      | <b>1,047.9</b>      | <b>1,752.2</b>     | <b>1,331.0</b>     | <b>1,600.3</b>      | <b>740.7</b>        | <b>892.9</b>        | <b>1,921.2</b>     | <b>11,414.0</b>  |
| <b>Net Cash Flow</b>                          |       | <b>(87.9)</b>      | <b>(1,085.9)</b>    | <b>(208.7)</b>      | <b>(613.5)</b>     | <b>288.1</b>       | <b>(709.5)</b>      | <b>143.8</b>        | <b>(496.4)</b>      | <b>346.0</b>       | <b>(2,424.0)</b> |
| <b>Opening Cash Balance</b>                   | 9     | 933.8              | 845.9               | 501.6               | 292.9              | 421.0              | 709.1               | 246.9               | 637.9               | 141.5              | 933.8            |
| Net Cash Flow                                 |       | (87.9)             | (1,085.9)           | (208.7)             | (613.5)            | 288.1              | (709.5)             | 143.8               | (496.4)             | 346.0              | (2,424.0)        |
| Advances Under DIP Facility                   |       | -                  | 741.7               | -                   | 741.7              | -                  | 247.2               | 247.2               | -                   | -                  | 1,977.8          |
| <b>Ending Cash Balance After New Advances</b> |       | <b>845.9</b>       | <b>501.6</b>        | <b>292.9</b>        | <b>421.0</b>       | <b>709.1</b>       | <b>246.9</b>        | <b>637.9</b>        | <b>141.5</b>        | <b>487.5</b>       | <b>487.5</b>     |

**Notes:**

- 1) The purpose of this cash flow forecast is to determine the liquidity requirements of the Applicant during the forecast period.
- 2) Week 1 of the forecast includes activity for two days, February 7 and 8.
- 3) Receipts from operations are forecast based on customer billing cycles, forecast sales and customer payment terms. Receipts also include amounts for monthly subtenant rents.
- 4) Payroll and related payments includes salaries, wages, estimated sales commissions and bonuses, remittances, and other benefit amounts.
- 5) Facility costs include premise lease payments and associated operating costs.
- 6) Forecast operating costs are based on current payment terms and historical analysis.
- 7) Estimated professional fees are based on advisor-level estimates of fees that may be incurred during the forecast period.
- 8) Financing charges include interest and transaction fees associated with the DIP financing and interest payments on the Priority Credit Facility.
- 9) The opening cash balance includes an expected advance of U\$5450,000 (CDN\$445,000), from the Priority Credit Facility.

February 6, 2013

FTI Consulting Canada Inc.  
TD South Tower  
79 Wellington Street West  
Suite 2010, P.O. Box 104  
Toronto ON M5K 1G8

Attention: Steven Bissell

Re: Proceedings under the *Companies' Creditors Arrangement Act* ("CCAA")  
Responsibilities/Obligations and Disclosure with Respect to Cash Flow Projections

Dear Sirs:

In connection with the application by Extreme Fitness, Inc. ("Extreme") for the commencement of proceedings under the CCAA in respect of Extreme, the management of Extreme ("Management") has prepared the attached Cash Flow Statement and the assumptions on which the Cash Flow Forecast is based.

Extreme confirms that:

1. The Cash Flow Statement and the underlying assumptions are the responsibility of Extreme;
2. All material information relevant to the Cash Flow Statement and to the underlying assumptions has been made available to FTI Consulting Canada Inc. ("FTI") in its capacity as the Proposed Monitor; and
3. Management has taken all actions that it considers necessary to ensure:
  - a. that the individual assumptions underlying the Cash Flow Statement are appropriate in the circumstances; and
  - b. that the individual assumptions underlying the Cash Flow Statement, taken as a whole, are appropriate in the circumstances.

Yours Truly,



Alan J. Hutchens  
Interim Chief Financial Officer

(Authorized officer of Extreme)

Tab R

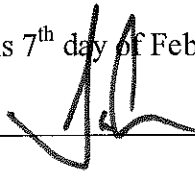
Attached is Exhibit "R"

Referred to in the

Affidavit of Alan Hutchens

Sworn before me

this 7<sup>th</sup> day of February, 2013



---

Commissioner for taking Affidavits, etc

## DIP CREDIT FACILITY AGREEMENT

This Agreement is made as of February 7, 2013 between Extreme Fitness, Inc., as borrower (the "Borrower"), the lenders that are party hereto (individually a "DIP Lender" and collectively the "DIP Lenders"), and Golub Capital Incorporated, as agent (the "DIP Agent").

Reference is made to the order of the Ontario Superior Court of Justice (the "CCAA Court") dated as of the date hereof (the "CCAA Initial Order") pursuant to which, among other things, this DIP Credit Facility Agreement was approved by the CCAA Court and a super priority charge (the "DIP Charge") was granted in favour of the DIP Agent and the DIP Lenders to secure payment by the Borrower of advances made by the DIP Lenders hereunder and performance by the Borrower of all of its obligations to the DIP Agent and the DIP Lenders hereunder.

For valuable consideration, the parties agree as follows:

1. DIP Credit Facility. Subject to the entry of the CCAA Initial Order, and subject to the terms and conditions of this Agreement, the DIP Lenders hereby agree to make loans to the Borrower in United States dollars from time to time (the "DIP Credit Facility"). The percentage of each loan that shall be provided by each DIP Lender is set out in Schedule A. The maximum amount of the DIP Credit Facility shall be USD \$2,000,000 (the "Maximum Amount").
2. Purpose. The proceeds of all loans made under the DIP Credit Facility shall be used by the Borrower solely to fund payroll expenses, other operating expenses and other accounts payable described in the most recent weekly cash flow forecast prepared by the Interim Officers (as defined in the CCAA Initial Order and the related Affidavit of Alan Hutchens) of the Borrower and approved in writing by the DIP Lenders (each, an "Approved Cash Flow Forecast"). For certainty, the proceeds of loans made under the DIP Credit Facility shall not be used to fund litigation expenses of the Borrower or to pay interest on the credit facilities established in the National Bank Credit Agreement (as defined in the CCAA Initial Order and the related Affidavit of Alan Hutchens).
3. Conditions Precedent to Initial Advance. The Borrower shall deliver a request for the initial advance (in the form attached as Schedule B) not less than three (3) business days prior to the proposed date of the initial advance. The DIP Lenders shall have no obligation to make such initial advance prior to the satisfaction of the conditions precedent to the initial advance listed in Schedule C.
4. Conditions Precedent to Subsequent Advances. The Borrower shall deliver a request for each subsequent advance (in the form attached as Schedule B) by not later than

1:00 p.m. (local time of the addressee) on the third business day prior to the proposed date of each subsequent advance. The DIP Lenders shall have no obligation to make such subsequent advance unless and until (i) the conditions precedent to subsequent advances listed in Schedule C are satisfied, and (ii) the DIP Lenders are otherwise satisfied with the information contained in, or accompanying, such request for advance.

5. Interest and Overdue Amounts. The Borrower shall pay interest, from the date of advance until the date of repayment in full, at a rate equal to 10% per annum (the "Interest Rate") on the outstanding principal amount of all loans made by the DIP Lenders under the DIP Credit Facility. Accrued interest shall be payable to the DIP Agent, on behalf of the DIP Lenders, (i) monthly in arrears on the first business day of each month, (ii) on the date of any voluntary or mandatory prepayment, and (iii) on the Repayment Date.
6. Commitment Fee. In consideration of the establishment of the DIP Credit Facility, the Borrower shall pay a commitment fee of USD \$100,000 to the DIP Lenders. Such fee shall be fully earned on execution of delivery of this Agreement by the Borrower and shall be paid by way of a deemed advance by the DIP Lenders under the DIP Credit Facility.
7. Standby Fee. The Borrower shall pay a standby fee of 1% per annum on the difference between (i) the outstanding amount of all loans made by the DIP Lenders under the DIP Credit Facility, and (ii) the Maximum Amount. The standby fee shall be calculated on a daily basis, and shall be payable to the DIP Agent on behalf of the DIP Lenders (i) monthly in arrears on the first business day of each month, and (ii) on the Repayment Date.
8. Default Interest. If an Event of Default has occurred and is continuing, the Borrower shall pay interest at a rate per annum equal to the Interest Rate plus 2% per annum (the "Default Interest Rate"). In addition, if any principal, interest, standby fee or any other amount payable hereunder is not paid when due, the Borrower shall pay interest on such overdue amount, both before or after demand, default or judgment, at the Default Interest Rate. Such default interest shall accrue on a daily basis, and shall be payable on demand.
9. Voluntary Prepayments. The Borrower may voluntarily prepay indebtedness under the DIP Credit Facility at any time without premium or penalty. For certainty, the amount of any such voluntary prepayment may not be re-borrowed. All voluntary prepayments shall be applied firstly to reimburse out-of-pocket expenses of the DIP Agent and the DIP Lenders, secondly to accrued standby fees and accrued interest

on loans made by the DIP Lenders under the DIP Credit Facility, and thirdly, to the outstanding principal amount of such loans.

10. Mandatory Prepayments. The Borrower shall prepay indebtedness under the DIP Credit Facility concurrently with the sale of any assets and undertaking of the Borrower and upon receipt of any "Diverted Funds" and "Insurance Proceeds" (as more particularly described in paragraph 18 of the National Bank Forbearance Agreement). The amount of any such mandatory prepayment may not be re-borrowed. All mandatory prepayments shall be applied firstly to reimburse out-of-pocket expenses of the DIP Agent and the DIP Lenders, secondly to accrued standby fees and accrued interest on loans made by the DIP Lenders under the DIP Credit Facility, and thirdly, to the outstanding principal amount of such loans.
11. Repayment Date. The outstanding principal amount of all loans made by the DIP Lenders under the DIP Credit Facility, all accrued interest thereon, all accrued standby fees, and all out-of-pocket expenses incurred by the DIP Agent and the DIP Lenders in connection with this Agreement shall be payable in full on the earlier of (i) the date of demand by the DIP Lenders, (ii) the date on which all or substantially all of the assets of the Borrower are sold, and (iii) March 31, 2013 (in either case, the "Repayment Date"). The original scheduled Repayment Date of March 31, 2013 may be extended, on terms and conditions satisfactory to the DIP Lenders, in the sole discretion of the DIP Lenders.
12. Security. The indebtedness and obligations of the Borrower hereunder shall be secured by the DIP Charge. In addition, the Borrower shall execute and deliver all novations, agreements and other documents as may be required to cause all indebtedness and obligations under the DIP Credit Facility to be secured by the existing security granted by the Borrower to Golub Capital Incorporated pursuant to the Amended and Restated Credit Agreement dated as of May 20, 2011 between Extreme Fitness, Inc., as borrower, the lenders party thereto, and Golub Capital Incorporated, as administrative agent (the "Subordinate Credit Agreement"). The DIP Agent may also require that the Borrower grant new and separate security over all of the present and after-acquired property of the Borrower to secure the indebtedness and other obligations under the DIP Credit Facility.
13. Restriction on Dividends, Distributions, Fees and other Payments. The Borrower may not pay any dividend or other distribution, pay any fee, or make any other payment, to any of its shareholders at any time prior to the repayment in full of the Borrower's indebtedness and obligations under the DIP Credit Facility.
14. Reporting Requirements. The Borrower shall deliver to the DIP Lenders the financial and other reports set out in Schedule D.

15. Sale. The Borrower may not complete any sale of its assets that does not provide sufficient cash proceeds to repay all principal, accrued interest, fees and other amounts owing hereunder without the prior approval of the CCAA Court and the prior written consent of the DIP Lenders.
16. Compliance with Other Agreements. The Borrower shall comply with all of its covenants and obligations in the letter agreement dated April 18, 2012 between the Borrower and National Bank of Canada, as amended (as further amended, supplemented, restated or replaced from time to time, the "National Bank Forbearance Agreement"), the letter agreement dated April 18, 2012 between the Borrower and Golub Capital Incorporated, as administrative agent for the lenders under Subordinate Credit Agreement, as amended (as further amended, supplemented, restated or replaced from time to time, the "Sub-Debt Forbearance Agreement"), and the Subordinate Credit Agreement (subject to the terms of the Sub-Debt Forbearance Agreement).
17. Events of Default. Without in any way limiting the discretion of the DIP Lenders to demand repayment of amounts advanced under the DIP Credit Facility at any time, all indebtedness and obligations under the DIP Credit Facility shall become immediately due and payable upon the occurrence of any of the following events (each an "Event of Default"):
  - (a) the CCAA Initial Order or the DIP Charge shall cease to be in full force and effect;
  - (b) the CCAA stay shall be lifted to permit enforcement of any material claim against the Borrower;
  - (c) the issuance of an order granting a charge of equal or superior status to the DIP Charge, other than the "Administration Charge" and the "D&O Charge" described in the CCAA Initial Order;
  - (d) the issuance of any order that adversely affects the rights of the DIP Lenders under the DIP Credit Facility Agreement or the existence or priority of the DIP Charge;
  - (e) the Borrower makes any expenditure that is not contemplated by an Approved Cash Flow Forecast;
  - (f) the letter of intent dated January 18, 2013 between the Company and GoodLife Fitness Centres Inc. (the "GoodLife LOI") with respect to the purchase of the assets of the Company is terminated by either party thereto



(unless and until the GoodLife LOI is replaced by the binding asset purchase agreement contemplated by the GoodLife LOI);

- (g) the Borrower shall fail to close the asset sale transaction described in the GoodLife LOI by March 31, 2013, unless the DIP Lenders consent to an extension of such closing date;
- (h) the Borrower shall fail to pay the outstanding principal amount of the loans made under the DIP Credit Facility on the Repayment Date, or shall fail to make any mandatory prepayment described herein;
- (i) the Borrower shall fail to pay, within two days after the due date thereof, any interest, standby fee or other amount owing to the DIP Lender under this Agreement;
- (j) the Borrower shall fail to observe or perform any covenant, purpose requirement, condition or agreement contained in this Agreement or any other agreement ancillary to this Agreement;
- (k) except with the prior written consent of the DIP Lenders, the Borrower grants any security interest after the date hereof in any of its present or future property to any person other than the DIP Agent; or
- (l) this Agreement, or any other agreement relating to this Agreement, or any material obligation or other provision hereof or thereof at any time for any reason terminates or ceases to be in full force and effect and a legally valid, binding and enforceable obligation of the Borrower, is declared to be void or voidable or is repudiated, or the validity, binding effect, legality or enforceability hereof or thereof is at any time contested by the Borrower, or the Borrower denies that it has any or any further liability or obligation hereunder or thereunder or any action or proceeding is commenced to enjoin or restrain the performance or observance by the Borrower of any material terms hereof or thereof or to question the validity or enforceability hereof or thereof, or at any time it is unlawful or impossible for the Borrower to perform any of its obligations hereunder or thereunder.

18. Rights and Remedies. Upon default by the Borrower in payment of all indebtedness and other obligations under the DIP Credit Facility following demand by the DIP Agent on behalf of the DIP Lenders, or upon the occurrence of an Event of Default, the DIP Agent on behalf of the DIP Lenders may (i) demand payment (if the DIP Lenders have not already done so), (ii) enforce the DIP Charge and the other security described in section 12, and/or (iii) take such other actions and proceedings and

exercise such other rights and remedies as may be available to the DIP Agent and the DIP Lenders under applicable law.

19. Remedies Not Exclusive. The Borrower expressly agrees that the rights and remedies of the DIP Agent and the DIP Lenders under this Agreement are cumulative and in addition to, and not in substitution for, any other rights or remedies. Any single or partial exercise by the DIP Agent or the DIP Lenders of any rights or remedies for a default or breach of any provision of this Agreement shall not constitute or be deemed a waiver of or alter, affect or prejudice any other rights or remedies to which the DIP Agent or the DIP Lenders may be lawfully entitled for the same default or breach. Any waiver by the DIP Lenders of the strict observance of, performance of or compliance with any provision of this Agreement and any indulgence granted, either expressly or by course of conduct, by the DIP Lenders shall be effective only in the specific instance and for the purpose given and shall not constitute or be deemed a waiver of any other rights or remedies of the DIP Lenders as a result of any other default.
20. Currency Indemnity. All payments of interest, standby fees and principal under this Agreement shall be made by the Borrower in U.S. dollars. Any payment on account of an advance made in U.S. dollars (the "required currency") that is paid in any other currency (the "other currency") for any reason (including, without limitation, pursuant to a court order) shall constitute a discharge of the obligations of the Borrower in the required currency only to the extent of the amount of the required currency that the DIP Lenders are able to purchase in accordance with their usual practices with the other currency amount so received on the date of receipt, and the Borrower shall indemnify each DIP Lender in respect of any shortfall. Such indemnity shall be a separate and distinct obligation of the Borrower to each DIP Lender.
21. General Indemnity. The Borrower agrees to indemnify and hold harmless the DIP Agent and each DIP Lender and their respective shareholders, officers, directors, employees, advisors, and agents (each, an "indemnified person") from and against any and all losses, claims, damages and liabilities to which any such indemnified person may become subject arising out of or in connection with this Agreement, the DIP Credit Facility, the use of the proceeds thereof, or any claim, litigation, investigation or proceeding relating to any of the foregoing, regardless of whether any indemnified person is a party thereto, and to reimburse each indemnified person upon demand for any legal or other expenses incurred in connection with investigating or defending any of the foregoing, provided that the foregoing indemnity will not, as to an indemnified person, apply to losses, claims, damages, liabilities or related expenses to the extent they are found by a final, non-appealable

judgement of a court to arise directly from the wilful misconduct or gross negligence of such indemnified person. In no instance shall the DIP Agent or any DIP Lender be liable to the Borrower for any consequential damages arising from any claim related to this Agreement, the DIP Credit Facility, or the lending relationship between any DIP Lender and the Borrower established under this Agreement.

22. DIP Agent and DIP Lender Expenses. The Borrower shall pay all legal fees and disbursements and other out-of-pocket expenses incurred by the DIP Agent and the DIP Lenders in connection with the preparation of this Agreement and all ancillary documentation, the administration of the DIP Credit Facility, and enforcement of the DIP Agent's and the DIP Lenders' rights and remedies under or in connection with this Agreement, the security referred to in section 12, and any other documentation or actions contemplated thereby. The DIP Agent may, at its option, charge such amounts against the DIP Credit Facility.
23. Amendment. No amendment or waiver of any provision of this Agreement, nor consent to any departure by the Borrower from such provision, shall be effective unless in writing and approved by the DIP Lenders. Any amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose given.
24. No Waiver, etc. No failure on the part of the DIP Agent or the DIP Lenders to exercise, and no delay in exercising, any of its rights hereunder shall operate as a waiver of such rights, nor shall any single or partial exercise of any of its rights hereunder preclude any other or further exercise of such rights or the exercise of any of their other rights hereunder.
25. Evidence of Indebtedness. The indebtedness of the Borrower under the DIP Credit Facility shall be evidenced by the records of the DIP Lenders, which shall constitute prima facie evidence of such indebtedness. On the request of any DIP Lender, the Borrower shall execute and deliver one or more promissory notes evidencing such indebtedness.
26. Successors and Assigns; Participations. This Agreement shall be binding upon and enure to the benefit of the respective successors and assigns of the Borrower, the DIP Agent and each DIP Lender. The Borrower may not assign any of its rights or obligations under this Agreement. Any reference herein to a party shall be deemed to refer also to its successors and permitted assigns. Each DIP Lender may sell one or more participations in its interests in this Agreement and the DIP Credit Facility without the consent of the Borrower, and each participant shall also have the benefit of the general indemnity provided in section 21.

27. Governing Law; Submission to Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The Borrower, the DIP Agent and the DIP Lenders hereby submit to the jurisdiction of the courts of Ontario in connection with any dispute or other matter arising from this Agreement.
28. Notices. All notices and other communications contemplated by this Agreement shall be delivered by hand, by reputable commercial courier, or by facsimile transmission to the addresses and facsimile numbers listed in Schedule E. Any party may change its address or facsimile number by giving written notice to the other party in accordance with this Section. All notices delivered by hand or by commercial courier during business hours on a business day of the addressee shall be deemed to have been received on such date, and otherwise on the next following business day of the addressee. All notices and other communications delivered by facsimile transmission prior to 3:00 p.m. (local time of the addressee) on a business day of the addressee shall be deemed to have been received on such date, and otherwise on the next following business day of the addressee.
29. Appointment of DIP Agent. Each DIP Lender hereby designates Golub Capital Incorporated as its agent to act as herein specified. Each DIP Lender hereby irrevocably authorizes the DIP Agent to take such action on its behalf under this Agreement and all ancillary agreements and to exercise such powers and to perform such duties hereunder and thereunder as are specifically delegated to or required of the DIP Agent by the terms hereof and thereof and such other powers as are reasonably incidental thereto
30. DIP Lender Decisions. Unless described herein as a decision requiring the consent of "all of the DIP Lenders", each decision of the DIP Lenders may be made by one or more DIP Lenders holding not less than 51% of the outstanding principal amount of loans made under the DIP Credit Facility (the "Majority DIP Lenders"), and each such decision of the Majority DIP Lenders shall be binding on all of the DIP Lenders.

[signatures on next following pages]

SIGNATURE PAGE TO DIP CREDIT FACILITY AGREEMENT

**Extreme Fitness, Inc., as Borrower**

Per:   
Authorized Signing Officer

SIGNATURE PAGE TO DIP CREDIT FACILITY AGREEMENT

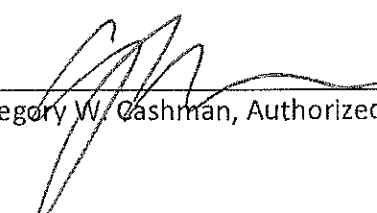
**Golub Capital Incorporated, as DIP Agent**

Per:

  
\_\_\_\_\_  
Authorized Signing Officer

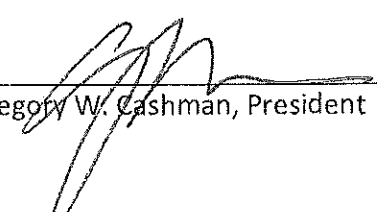
**Golub Capital BDC, Inc., as DIP Lender**

Per:

  
\_\_\_\_\_  
Gregory W. Cashman, Authorized Signatory

**Whitehall Capital Corporation, as DIP Lender**

Per:

  
\_\_\_\_\_  
Gregory W. Cashman, President

**GOLUB CAPITAL LTD 2005-2, as DIP Lender**  
By: GC Investment Management LLC, its Manager

Per:

\_\_\_\_\_  
Kevin P. Falvey, Authorized Signatory

SIGNATURE PAGE TO DIP CREDIT FACILITY AGREEMENT

**Golub Capital Incorporated**, as DIP Agent

Per: \_\_\_\_\_  
Authorized Signing Officer

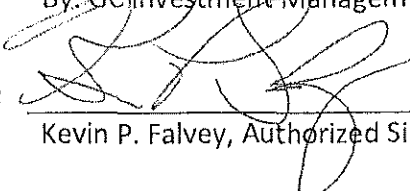
**Golub Capital BDC, Inc.**, as DIP Lender

Per: \_\_\_\_\_  
Gregory W. Cashman, Authorized Signatory

**Whitehall Capital Corporation**, as DIP Lender

Per: \_\_\_\_\_  
Gregory W. Cashman, President

**GOLUB CAPITAL LTD 2005-2**, as DIP Lender  
By: GC Investment Management LLC, its Manager

Per:  \_\_\_\_\_  
Kevin P. Falvey, Authorized Signatory

SCHEDULE A TO DIP CREDIT FACILITY AGREEMENT

DIP Lender Percentages

|                               |           |
|-------------------------------|-----------|
| Golub Capital BDC, Inc.       | 16.9187 % |
| Whitehall Capital Corporation | 0.2321 %  |
| Golub Capital Ltd 2005-2      | 82.8492 % |



SCHEDULE B TO DIP CREDIT FACILITY AGREEMENT

Request for Advance

To: Golub Capital Incorporated, as DIP Agent

Re: DIP Credit Facility Agreement made as of February 7, 2013 (the "DIP Credit Facility Agreement") between Extreme Fitness, Inc., as borrower (the "Borrower"), the lenders that are party hereto (individually a "DIP Lender" and collectively the "DIP Lenders"), and Golub Capital Incorporated, as agent (the "DIP Agent")

Dated: \_\_\_\_\_, 2013

The Borrower hereby requests an advance under the DIP Credit Facility Agreement in the amount of USD \$ \_\_\_\_\_ on \_\_\_\_\_, 2013.

The Borrower confirms that the amount of such advance will be applied by the Borrower solely to fund payroll expenses, other operating expenses and other accounts payable described in the most recent Approved Cash Flow Forecast, a copy of which is attached hereto. The Borrower also confirms that it has applied the proceeds of each previous advance under the DIP Credit Facility Agreement to fund expenditures described in the Approved Cash Flow Forecast attached to the applicable Request for Advance.

The Borrower hereby certifies that no Event of Default under DIP Credit Facility Agreement has occurred, and no such Event of Default shall occur as a result of the advance requested herein.

**Extreme Fitness, Inc.**

Per: \_\_\_\_\_  
Authorized Signing Officer

## SCHEDULE C TO DIP CREDIT FACILITY AGREEMENT

### Conditions Precedent to the Initial Advance

1. The entry of the CCAA Initial Order, in form and substance satisfactory to the DIP Lenders;
2. the CCAA Initial Order and the DIP Charge shall be in full force and effect, and no motion shall be pending or threatened to amend, vary, modify or otherwise alter the CCAA Initial Order or the DIP Charge, or to lift the CCAA stay, except with the consent of the DIP Agent and the DIP Lenders;
3. no Event of Default shall have occurred, or would occur as a result of the making of the initial advance hereunder;
4. a certified copy of a resolution of the board of directors of the Borrower approving the DIP Credit Facility, this Agreement and all other documents and actions contemplated by this Agreement;
5. an Alberta certificate of status for the Borrower;
6. a cash flow forecast for the Borrower prepared by the Interim Officers of the Borrower, which forecast shall be satisfactory to the DIP Lenders in all respects;
7. written confirmation to the DIP Agent from the Interim Officers of the Borrower that they do, and will, maintain effective control over all disbursements of the Borrower's funds (including, without limitation, the issuance of any cheques by the Borrower) at all times following the entry of the Initial CCAA Order.

### Conditions Precedent to each Subsequent Advance

1. The CCAA Initial Order and the DIP Charge shall be in full force and effect, and no motion shall be pending or threatened to amend, vary, modify or otherwise alter the CCAA Initial Order or the DIP Charge, or to lift the CCAA stay, except with the consent of the DIP Agent and the DIP Lenders;
2. no Event of Default shall have occurred, or would occur as a result of the making of such subsequent advance;

3. the DIP Lenders shall have received all required financial reporting, including an updated cash flow forecast, from the Interim Officers of the Borrower and shall have approved same; and
4. the DIP Lenders shall be satisfied that the Interim Officers of the Borrower continue to maintain effective control over all disbursements of the Borrower's funds (including, without limitation, the issuance of any cheques by the Borrower) at all times following the entry of the Initial CCAA Order.

## SCHEDULE D TO DIP CREDIT FACILITY AGREEMENT

### Reporting Requirements

1. On or before 2:00 p.m. on the Tuesday of each week for the one-week period ending the immediately preceding Friday, the Borrower shall deliver to the DIP Agent an update of its cash flow forecast for the following thirteen (13) weeks or such other period of time as the DIP Agent may require. The DIP Agent shall provide a grace period not exceeding two business days for the delivery of each cash flow forecast if and to the extent such grace period is reasonably required by the Borrower. As part of the update to be delivered to the DIP Agent, the Borrower shall provide to the DIP Agent a report comparing actual cash flows, sales, and closing cash of the Borrower for the preceding week or such other period as the DIP Agent may require to amounts budgeted in the cash flow 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 cash flow forecast in the Borrower's closing cash for any given week; and
  - (b) a ten percent (10%) or \$20,000 or greater negative variance from the cash flow forecast in the Borrower's sales, total cash receipts and disbursements for any given week.
  
2. The financial reports required under the Subordinate Credit Agreement.

SCHEDULE E TO DIP CREDIT FACILITY AGREEMENT

ADDRESSES FOR NOTICE

To the DIP Agent:

Golub Capital Incorporated, as DIP Agent  
150 S. Wacker Drive  
Suite 800  
Chicago, Illinois  
60606

Attention: Patrick Hayes

Fax: (312) 201-9167

with a copy to:

Blake, Cassels & Graydon LLP  
Commerce Court West, Suite 4000  
199 Bay Street  
Toronto, ON  
M5L 1A9

Attention: Ian Binnie

Fax: (416) 863-2653

To each DIP Lender:

c/o Golub Capital Incorporated  
150 S. Wacker Drive  
Suite 800  
Chicago, Illinois  
60606

Attention: Patrick Hayes

Fax: (312) 201-9167

To the Borrower:

Extreme Fitness, Inc.  
8281 Yonge Street  
Thornhill, ON  
L3T 2C7

Attention: Alan J. Hutchens, Interim Chief Financial Officer

Fax: (416) 847-5201

Tab 5

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

**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**

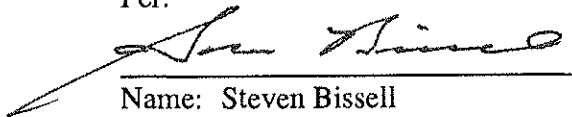
**CONSENT**

The undersigned, FTI Consulting Canada Inc., hereby consents to act as the Court-appointed monitor of Extreme Fitness, Inc. pursuant to the terms of an order substantially in the form filed in the above proceeding.

DATED at Toronto, this 7<sup>th</sup> day of February, 2013.

**FTI CONSULTING CANADA INC.**

Per:



Name: Steven Bissell

Title: Managing Director



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

**CONSENT**

**AIRD & BERLIS LLP**  
Barristers and Solicitors  
Brookfield Place  
181 Bay Street, Suite 1800  
Toronto, Ontario M5J 2T9

**Steven L. Graff (LSUC # 31871V)**  
Tel: 416.865.7726  
Fax: 416.863.1515  
Email: [sgraff@airdberlis.com](mailto:sgraff@airdberlis.com)

**Ian Aversa (LSUC # 55449N)**  
Tel: 416.865.3082  
Fax: 416.863.1515  
Email: [iaversa@airdberlis.com](mailto:iaversa@airdberlis.com)

**James A. Desjardins (LSUC # 62493E)**  
Tel: 416.865.4641  
Fax: 416.863.1515  
Email: [jdesjardins@airdberlis.com](mailto:jdesjardins@airdberlis.com)

*Lawyers for Extreme Fitness, Inc.*

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 2 OF 2)**

**AIRD & BERLIS LLP**  
Barristers and Solicitors  
Brookfield Place  
181 Bay Street, Suite 1800  
Toronto, Ontario M5J 2T9

**Steven L. Graff (LSUC # 31871V)**  
Tel: 416.865.7726  
Fax: 416.863.1515  
Email: [sgraff@airdberlis.com](mailto:sgraff@airdberlis.com)

**Ian Aversa (LSUC # 55449N)**  
Tel: 416.865.3082  
Fax: 416.863.1515  
Email: [iaversa@airdberlis.com](mailto:iaversa@airdberlis.com)

**James A. Desjardins (LSUC # 62493E)**  
Tel: 416.865.4641  
Fax: 416.863.1515  
Email: [jdesjardins@airdberlis.com](mailto:jdesjardins@airdberlis.com)

*Lawyers for Extreme Fitness, Inc.*